

Decision No. R04-0744

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-054T

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO EXECUTE A TRANSFER
OF COLORADO TELESERV, INC.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING REQUEST TO WITHDRAW
APPLICATION, DISMISSING
APPLICATION WITHOUT PREJUDICE,
AND CLOSING DOCKET**

Mailed Date: July 5, 2004

I. STATEMENT

1. On February 3, 2004, Colorado Teleserv, Inc. (Teleserv), and Frank Ramogida Holdings (CO), Inc. (FRHC), filed an Application Requesting Authority to Execute a Transfer (Application). In the Application FRHC seeks Commission authority to purchase all of the issued and outstanding shares of stock of Teleserv. The Application, which was supplemented on February 3, 2004, commenced this proceeding.

2. The Commission gave public notice of the Application in its Notice of Application Filed (Notice). See Notice dated February 4, 2004. In that Notice the Commission established a procedural schedule for this proceeding. By Decision No. R04-0309-I the undersigned Administrative Law Judge (ALJ) vacated that procedural schedule.

3. The Commission deemed the Application complete as of March 22, 2004. See Minute Order dated March 17, 2004.

4. On March 24, 2004, Staff of the Commission (Staff) intervened of right and requested a hearing. This is the only intervention in this proceeding.

5. On February 23, 2004, FRHC filed an Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services, which commenced Docket No. 04A-079T. Staff timely intervened in that proceeding.

6. On April 2, 2004, Staff filed an Unopposed Motion to Consolidate this proceeding with Docket No. 04A-079T.

7. On April 8, 2004, the ALJ held a prehearing conference in this case. By Decision No. R04-0373-I the ALJ granted the Staff motion to consolidate, consolidated the two dockets, scheduled a hearing date, and established a procedural schedule. A final prehearing conference was scheduled for July 6, 2004; and the hearing was scheduled for July 12, 2004.

8. On April 13, 2004, counsel for Teleserv filed a Motion to Withdraw. The ALJ granted that motion. See Decision No. R04-0458-I.

9. On May 21, 2004, FRHC filed its direct testimony in this matter.

10. On June 14, 2004, pursuant to Decision No. R04-0614-I, the ALJ held a prehearing conference to discuss the matters set out in that Order.

11. On June 18, 2004, Staff filed its answer testimony and exhibits in this proceeding.

12. On June 29, 2004, Teleserv filed a letter, which was served on all parties, stating its intention not to proceed with the sale of its company (*i.e.*, the stock) to FRHC.

13. On July 6, 2004, pursuant to Decision No. R04-0373-I, the ALJ held a final prehearing conference in the consolidated proceeding. At that prehearing conference Mr. Albert E. Brust, President of Teleserv and signer of the June letter, stated that Teleserv was no longer interested in consummating its agreement to sell its stock to FRHC and, therefore, wished to withdraw the Application. Mr. Brust recounted the events which have transpired since the filing of the Application and which led to the request not to proceed with the stock sale.¹

14. While it did not join in the request and stated that it wished to proceed with the stock sale and the transfer, FRHC did not object to the dismissal of the Application. Staff also did not object to the dismissal of the Application.

15. The ALJ finds and concludes that the request states good cause, that granting the request will not prejudice any party because FRHC has a pending application to obtain a Certificate of Public Convenience and Necessity which will not be affected by dismissing the instant Application, and that the request should be granted. The Application will be dismissed without prejudice. Docket No. 04A-054T will be closed.

16. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. It Is Ordered That:

1. The oral request made by Colorado Teleserv, Inc., to withdraw the Application Requesting Authority to Execute a Transfer is granted.

¹ In short, for a variety of reasons, Teleserv has decided to suspend its operation upon approval by the Commission. In addition, the existing business relationship between Teleserv and FRHC has soured.

2. The Application Requesting Authority to Execute a Transfer is dismissed without prejudice.

3. Docket No. 04A-054T is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge