

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-356AT

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IN THE MATTER OF THE APPLICATION OF PREMIER COMMUNICATIONS, INC. TO  
DISCONTINUE OR CURTAIL JURISDICTIONAL TELECOMMUNICATIONS SERVICE.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
ESTABLISHING PROCEDURAL  
SCHEDULE, SCHEDULING HEARING,  
DENYING ORAL MOTION TO ADD PARTY,  
SHORTENING DISCOVERY RESPONSE  
TIME, AND GRANTING RULE VARIANCE**

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Mailed Date: August 5, 2004

**I. STATEMENT**

1. On July 8, 2004, Premier Communications, Inc. (Premier or Applicant), filed an Application to Discontinue or Curtail Jurisdictional Telecommunications Service (Application). The proposed effective date of the discontinuance of the telecommunications services provided by Premier is September 10, 2004. The Application commenced this proceeding.

2. The Commission issued a Notice of Application Filed (Notice) on July 9, 2004. This Notice was subsequently amended. *See* Amended Notice of Application Filed, dated July 15, 2004; Decision No. C04-0783.

3. The Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right and requested a hearing. By Commission designation, Qwest Corporation (Qwest), the wholesale provider to Premier, is a party. Staff of the Commission (Staff) intervened of right and requested a hearing. These are the three intervenors in this proceeding.

4. The undersigned Administrative Law Judge (ALJ) found the Application to be complete as of July 20, 2004. *See* Decision No. R04-0808-I.

5. On August 3, 2004, pursuant to Decisions No. R04-0808-I and No. R04-0867-I, the ALJ held a prehearing conference in this matter. All parties were present, were represented, and participated.

6. As a preliminary matter, Qwest and OCC requested that the ALJ find Premier Communications of Colorado, Inc. (Premier-Colorado), to be an indispensable party and order Premier-Colorado be made a party to this proceeding. The ALJ denied that oral motion, and this Order memorializes that ruling.

7. As grounds for the oral motion, Qwest and OCC stated: Applicant and Premier-Colorado are separate corporations but have overlapping boards of directors and officers; Premier-Colorado recently submitted a CLEC Questionnaire to Qwest, and Qwest is now processing that questionnaire; while it has a Certificate of Public Convenience and Necessity and (CPCN) an approved Interconnection Agreement with Qwest, Premier-Colorado lacks a Billing Account Number with Qwest and, as a result, cannot yet provide telecommunications service in Colorado; and Premier-Colorado contracted with Applicant to have Applicant enclose, in its July bills, an insert from Premier-Colorado which solicited Applicant's customers to sign a letter of authorization to become Premier-Colorado customers.<sup>1</sup> Based on this information, Qwest and OCC argued that Premier-Colorado should be made a party in this proceeding due to the apparently close relationship between it and Applicant; the potential for customer confusion

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<sup>1</sup> On or about July 17, 2004, Applicant apparently mailed the insert with its customer bills.

arising from the notices to customers about changing telecommunications providers;<sup>2</sup> the fact that Premier-Colorado appeared to be soliciting customers when it is not in a position to provide service; and a concern that the July bill insert was a deliberate attempt to interfere with, or to avoid entirely, the transition envisioned by Rule 4 *Code of Colorado Regulations* (CCR) 723-25.

8. Applicant opposed the motion, arguing that there is no assertion that Colorado-Premier has violated a statute or regulation, that there is no assertion that the Colorado-Premier CPCN is invalid, and that granting the motion would broaden the issues. Staff took no position with respect to the motion.

9. The ALJ denied the motion, finding that Colo.R.Civ.P. 19 criteria for declaring a party to be indispensable had not been satisfied. In addition, the ALJ found that there was insufficient basis to conclude that Colorado-Premier has a substantial interest in this matter. *See* Rule 4 CCR 723-1-64 (governing intervention). Further, the ALJ concluded that no information presented in support of the motion suggested that any statute or Commission rule had been violated.<sup>3,4</sup> Moreover, the ALJ was not convinced that adding Premier-Colorado as a party would or could have any direct impact on the letters of authorization which customers of Applicant might have signed as a result of the bill insert.<sup>5</sup> Finally, the ALJ noted that the parties

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<sup>2</sup> Specifically, they cited the July 17, 2004 bill insert from Colorado-Premier and the notice which will be sent in accordance with Rule 4 *Code of Colorado Regulations* 723-25-7.6 (notice regarding transition to another telecommunications provider).

<sup>3</sup> For example, because Applicant sent out the bill inserts, there was no indication that a violation of the customers' privacy rights occurred. In addition, because each customer was free to submit or not to submit a letter of authorization, it did not appear that a violation of the slamming rules had occurred. In fact, no party identified any statute or Commission rule which Colorado-Premier may have violated.

<sup>4</sup> There is the additional difficulty that public notice of this matter did not state that this proceeding would address actions by, or letters of authorization granted to, Premier-Colorado. Addressing concerns, if any, about Premier-Colorado's conduct should be the subject of a different proceeding.

<sup>5</sup> When asked if the Commission could set aside, or could find to be void, a letter of authorization duly signed and submitted by a Premier customer in response to the July bill insert, no party had researched that issue and, as a result, no party was prepared to respond.

could address the issues raised by the motion, to the extent relevant, through examination of Applicant's witness. Accordingly, the oral motion was denied.

10. Applicant then offered, with the agreement of the other parties, a procedural schedule designed to meet the Commission's direction that this proceeding be heard and decided on an expedited basis. *See* Decision No. C04-0783. Following discussion, the procedural schedule was adopted; and this Order memorializes that ruling.

11. The following procedural schedule will be adopted: (a) on or before **August 6, 2004**, each party will file and serve a list identifying each of its proposed witnesses; no summary of testimony need be provided; (b) on or before **noon on August 16, 2004**, the parties will file any stipulation reached and will provide a copy directly to the ALJ; (c) the hearing will be held on **August 17, 2004**; and (d) any party wishing to make an oral closing statement may do so immediately following the close of the evidence.

12. The provisions of Rule 4 CCR 723-1-77 will govern **discovery** in this proceeding except that the time for response to, and objection to, discovery will be shortened to three business days after service of discovery. In addition, the parties will serve objections to discovery at the time the response is due. The parties have agreed to work cooperatively in the event it becomes necessary slightly to extend a response date.

13. The parties will serve copies of discovery requests and discovery responses on all counsel. Unless proffered as part of a motion to compel response to discovery or as an exhibit, discovery requests, responses, and objections are not to be filed with the Commission and are not to be served on the Commission advisors (including Commission counsel) identified in Staff's Rule 9(d) Notice filed in this docket.

14. The parties will serve by electronic means all discovery requests, objections, and discovery responses *except* confidential materials and materials not available in electronic form. The parties will serve by hand-delivery confidential materials and materials not available in electronic format.

15. Applicant orally moved, without objection, that the ALJ grant a variance to Rule 4 CCR 723-25-7.5 (date for sending notice of proposed discontinuance and transition plan) and to Rule 4 CCR 723-25-7.8 (date for filing affidavit concerning mailing of required notice). Applicant requested that the content of the notice to customers, the mailing date for that notice, and the date for filing the affidavit regarding that notice be made elements of, and to subject to the time table in, the transition plan to be ordered as a result of this proceeding. The ALJ granted that oral motion and granted the requested variances. This Order memorializes that ruling.

16. Parties are reminded of Rule 4 CCR 723-1-22(d)(3), which states: “If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.” If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide a copy of, or a website address for, that cited authority.

17. The parties shall provide the decision number when referring to or citing a Commission decision.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The oral motion to add Premier Communications of Colorado, Inc., as an indispensable party is denied.

2. The procedural schedule set out above is adopted.

3. Hearing in this matter will be conducted on the following date, at the following time, and in the following location:

DATE: August 17, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room  
1580 Logan Street, OL2  
Denver, Colorado

4. The parties shall follow the procedures and shall make the filings set out above.

5. The time for responding to discovery and for objecting to discovery is shortened to three business days.

6. A variance to Rule 4 *Code of Colorado Regulations* 723-25-7.5 is granted, consistent with the discussion above.

7. A variance to Rule 4 *Code of Colorado Regulations* 723-25-7.8 is granted, consistent with the discussion above.

8. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge

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