

Decision No. R04-1001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-356AT

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION, ACCEPTING
STIPULATION, APPROVING TRANSITION
PLAN, GRANTING WAIVERS, GRANTING
APPLICATION, DENYING REQUEST TO
WAIVE RESPONSE TIME AS MOOT,
AND CLOSING DOCKET**

Mailed Date: August 25, 2004

Appearances:

Mark A. Davidson, Esq., Denver, Colorado, for Applicant Premier Communications, Inc.;

Winslow B. Waxter, Esq., Denver, Colorado, for Intervenor Qwest Corporation;

G. Harris Adams, Esq., Assistant Attorney General, for Intervenor Colorado Office of Consumer Counsel; and

Michael J. Santisi, Esq., Assistant Attorney General, for Intervenor Staff of the Colorado Public Utilities Commission.

I. STATEMENT

1. On July 8, 2004, Premier Communications, Inc. (Premier or Applicant), filed a verified 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, 2004.¹ The Application commenced this proceeding.

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

3. By Commission designation, Qwest Corporation (Qwest) was made a party. *See* Decision No. C04-0783. In that order the Commission also referred this matter to an administrative law judge (ALJ) and directed this proceeding be heard on an expedited basis.

4. The Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right. Staff of the Commission (Staff) intervened of right.²

5. The undersigned ALJ, to whom this matter was assigned, found the Application to be complete as of July 20, 2004. *See* Decision No. R04-0808-I.

6. Following a prehearing conference held on August 3, 2004, the ALJ issued Decision No. R04-0911-I. This Order contained a procedural schedule and set this matter for hearing on August 17, 2004.

7. On August 6, 2004, Qwest and OCC filed a Joint Motion Requesting Initial Commission Decision and Request to Waive Response Time. The Commission denied this motion by Decision No. C04-0956.

8. Pursuant to the procedural schedule, each Party filed its list of witnesses.

¹ Premier has acknowledged that, due to the time necessary to hear this matter, to have a final Commission decision, and to implement the Transition Plan, it is aware that it will not be able to discontinue service by this date.

² Qwest, OCC, and Staff, collectively, are the Intervenors. Applicant and the Intervenors, collectively, are the Parties.

9. On August 13, 2004, Premier, OCC, and Staff filed a Joint Motion to Approve Proposed Transition Plan, Request to Waive Certain Commission Rules, and Request to Waive Response Time (Joint Motion). Premier, OCC, and Staff are the Signatories; and Qwest does not oppose the Joint Motion. In addition, the Parties testified concerning the proposed Transition Plan at the August 17, 2004 hearing. The Parties have had an opportunity to respond to the Joint Motion. As a result, the request to waive response time will be denied as moot.

10. On August 17, 2004, the ALJ called this matter for hearing as scheduled. The hearing was held to receive testimony and evidence regarding the Transition Plan. Premier presented the testimony of Mr. John Gray, its Chief Operating Officer and General Manager. OCC presented the testimony of Ms. Dian Callaghan, its Administrative Director, and of Ms. Pat Parker, a Rate Financial Analyst with the OCC. Staff presented the testimony of Mr. Gerald Enright, a Rate Financial Analyst with the Commission. Qwest presented the testimony of Mr. Paul R. McDaniel, who is in charge of Qwest's regulatory affairs for Colorado.

11. During the hearing, Hearing Exhibit Nos. 1 through 3 were marked, offered, and admitted into evidence. Hearing Exhibit No. 3, filed August 17, 2004 following the hearing, was admitted during the hearing as a late-filed exhibit.³ This Exhibit is the complete Transition Plan, including all attachments, as amended and corrected during the course of the August 17, 2004 hearing. Reference to the Transition Plan in this Decision is to Hearing Exhibit No. 3.

12. Following the hearing, the ALJ took this matter under advisement.

13. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

³ On August 23, 2004, the OCC supplies an attachment mistakenly omitted from Hearing Exhibit No. 3 when it was submitted. Hearing Exhibit No. 3 consists of the August 17, 2004 and August 23, 2004 filings.

II. FINDINGS AND CONCLUSIONS

14. Applicant is a Colorado corporation. Premier seeks to discontinue providing regulated telecommunications service.

15. Premier holds a Certificate of Public Convenience and Necessity (CPCN) and a Letter of Registration (LOR) from the Commission to provide regulated telecommunications services in Colorado and has tariffs on file with the Commission. It has an Interconnection Agreement with Qwest, and Qwest is Premier's wholesale service provider. As of the date of the hearing in this matter, Premier serves approximately 3,700 customers, primarily residential, in Colorado and provides both local telecommunications services and long-distance service.

16. At the hearing the Signatories presented testimony in support of the Transition Plan, which Qwest does not oppose. If the Transition Plan is accepted, the Signatories estimate that the transition process, which commences on the date on which Premier sends its letter to its customers and ends on the date on which the last Premier customer is disconnected from Premier, will take approximately 75 days. *See* Transition Plan, which is Appendix A to this Decision, at ¶¶ 1 and 9.

17. Under the Transition Plan Premier will give written notice to customers that it intends to leave the market and that they have the right to select an alternative telecommunications provider from a list provided with Premier's letter.⁴ *See* Transition Plan at Attachment A. Premier will send the letter within ten calendar days of a final Commission decision in this matter. *See id.* at ¶ 1. Premier will provide separate written notice to interested governmental entities. *See id.* at ¶ 3.

⁴ The list was prepared by the OCC and Staff.

18. To assure that no customer will lose telephone service through inaction, the Signatories propose that Qwest, which is the Provider of Last Resort in the area served by Premier, be designated as the default provider for all Premier customers. *See id.* at ¶ 2. Within 10 to 15 calendar days of the effective date of a final Commission decision in this matter, Qwest will send written notice to all Premier customers. This notice, which is Attachment B to the Transition Plan, will describe Qwest's role as the default provider in accordance with the Transition Plan and is intended to satisfy the requirements of 47 *Code of Federal Regulations* (CFR) § 64.1120(e)(3). *See* Transition Plan at ¶¶ 1 and 5. The Transition Plan contains provisions which explain how and under what terms Qwest, as the default provider, will migrate Premier customers to Qwest.⁵ *See id.* at ¶¶ 8 and 10. The transfer of Premier customers to the default provider will not begin until 30 days after Qwest sends its letter. *See id.* at ¶ 5.

19. At any time during and after the transition period, customers may change providers if they wish to do so. *See id.* at ¶ 1. Affected customers will not be charged for the transfer to the default provider. Each affected customers will have the same telephone number irrespective of the alternative provider (including the default provider) to which the customer migrates. Qwest, as the default provider, will attempt to match the services, products, and features (including long-distance, as applicable) provided by Premier. *See id.* at ¶¶ 5 and 8 and Attachment B.

20. The Transition Plan contains protections for Premier's customers with respect to deposits (*see id.* at ¶ 13), prepayment for service (*see id.* at ¶ 14), and billing (*see id.* at ¶ 15). These provisions address the OCC's concern and the Staff's concern about the possibility that

⁵ There are separate provisions for migration of Premier customers who do not have a past indebtedness to Qwest for jurisdictional service and for migration of Premier customers who have a past indebtedness to Qwest for jurisdictional service.

Premier might over-collect from, or double-bill, its customers. The Transition Plan also contains a provision under which Qwest will cease to bill Premier for wholesale services used to provide service to a customer who has transferred to another provider (*see id* at ¶ 12).

21. At the conclusion of the transition period (that is, on the date on which the last Premier customer is transitioned to Qwest or is disconnected from Premier), Premier will cease providing local exchange service and long-distance service in Colorado. *See id.* at ¶ 12. Premier will surrender its CPCN and its LOR, and its tariffs will be automatically canceled, at the conclusion of the transition period. *See id.* at ¶ 16.

22. Premier and Qwest will each file information and reports with the Commission at various times during the transition period.

23. The Transition Plan is self-executing. It will proceed even if Premier should fail to provide customer notice or should fail to comply with any aspect to the Transition Plan.⁶

24. The ALJ notes that there are other provisions in the Transition Plan. If a provision is not discussed, the provision is nonetheless part of the Transition Plan approved by this Decision.

25. The ALJ finds and concludes that the Transition Plan is in the public interest. The Transition Plan provides a sound method to transfer Premier's customers to Qwest and to other carriers/providers in as transparent and seamless a process as possible under the circumstances. When a provider ceases operations, ensuring that its customers are not deprived of telephone service is of paramount importance. Based on the record, the Transition Plan proposed in this

⁶ By this statement, the ALJ does not intend to imply, and does not imply, that Premier will fail to meet its obligations under the Transition Plan. In fact, from the testimony of Mr. Gray, it appears that Premier plans to meet, and is prepared to meet, all of its obligations.

matter serves that purpose. The Transition Plan will be accepted. The Signatories and Qwest will be ordered to implement the Transition Plan.

26. Qwest will be designated as the default provider of telecommunications service for Premier's current customers who do not designate an alternate provider.

27. Qwest's wholesale operations will be ordered and authorized to communicate with Qwest's retail operations concerning the affected customers in order to meet, and solely for the purpose of meeting, Qwest's obligations under the Transition Plan.

28. The Application to discontinue offering basic local exchange services in Colorado will be granted, so long as the Transition Plan is implemented fully in accordance with this Decision. In no event, however, shall Premier discontinue service without first submitting the necessary change order requests (*i.e.*, the Local Service Requests) to Qwest with the necessary information to switch these customers.

29. In the Joint Motion, the Signatories request that the Commission waive the requirement to use the Form A customer notice *See Rule 4 Code of Colorado Regulations (CCR) 723-25-7.7*. The Rule as written allows the Signatories to use the Notices attached to the Transition Plan so long as the Commission approves those Notices. *See Transition Plan at Attachments A and B*. There is no need to waive that rule. Accordingly, the request for waiver of Rule 4 CCR 723-25-7.7 will be denied as moot.

30. In the Joint Motion, the Signatories request that the Commission waive the Rule 4 CCR 723-25-7.6(d) requirement to attach to the Notices the most recent jurisdictional list of local exchange providers maintained by the Commission. Instead, the Signatories propose to substitute the list of alternative providers prepared by Staff and the OCC. *See Transition Plan at Attachment A*. The proposed list contains the names and current contact information of

telecommunications service providers who are ready, willing, and able immediately to process and to complete customer orders for service when they are received from Premier's customers. Given the relatively short transition period and the need for Premier's customers to be able to find an alternative provider which can accommodate them, the waiver will be granted.

31. In the Joint Motion, the Signatories request waiver of the Rules Regulating the Changing of Presubscription, found at 4 CCR 723-2-25, including the requirement to obtain a letter of agency from the customer authorizing a change of providers/carriers. The Signatories request this change to permit the default provider automatically to transfer customers who do not choose another provider or carrier so that the transition is seamless and preserves the customer's telephone service uninterrupted. The waiver will be granted in order to facilitate the transfer of Premier's customers.

32. In the Joint Motion, the Signatories request waiver of Rule 4 CCR 723-2-25.4.1 of the Rules Regulating the Changing of Presubscription. This specific Rule requires written customer authorization to remove a freeze of a local provider or long-distance provider. In addition, the Signatories request that the Commission order Qwest and Premier to remove all preferred carrier freezes before the Notices are sent. According to the Signatories, granting these requests will make the transition process easier for Premier's customers and will facilitate Qwest's providing service as the default provider. The waiver and the request will be granted in order to facilitate the transfer of Premier's customers.

33. In the Joint Motion, the Signatories seek a waiver of Rule 4 CCR 723-2-27.4.2, which requires a local exchange carrier to inform new customers about their interLATA and intraLATA toll carrier options. The Transition Plan Notices will advise Premier's customers who have Premier as their long-distance carrier that they must choose another long-distance provider

or be defaulted to Qwest long-distance service. According to the Signatories, granting these requests will make the transition process easier for Premier's customers and will facilitate Qwest's providing service as the default provider. The waiver will be granted in order to facilitate the transfer of Premier's customers.

34. In the Joint Motion the Signatories request waiver of any claim of "cramming" or unauthorized charges on a customer's bill that may appear inadvertently when a customer's enhanced services or packaged service is transferred. The Signatories represent that this waiver is required because the default provider's and Premier's bundled service offerings may not be exactly the same. The requested waiver will be granted.

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

III. ORDER

A. It Is Ordered That:

1. The Joint Motion to Approve Proposed Transition Plan is granted.
2. The Transition Plan signed by Premier Communications, Inc., the Colorado Office of Consumer Counsel, and Staff; supported by Qwest Corporation; and filed of August 17, 2004, is approved consistent with the discussion above. The approved Transition Plan is attached to this Order as Appendix A and is incorporated here as if fully set out. In no event, shall Premier Communications, Inc., discontinue service without first submitting the necessary change order requests (*i.e.*, the Local Service Requests) to Qwest Corporation with the necessary information to switch Premier Communications, Inc.'s customers.
3. Premier Communications Inc.'s Application to Discontinue Offering Basic Local Exchange Services in Colorado is granted, consistent with the above discussion.

4. Qwest Corporation is designated as the default provider for telecommunications services, consistent with the above discussion.

5. The Request to Waive Certain Commission Rules is granted and denied as moot, consistent with the above discussion.

6. The request for waiver of Rule 4 *Code of Colorado Regulations 723-25-7.7* is denied as moot.

7. The Commission's Rule Regulating the Changing of Presubscription found at 4 *Code of Colorado Regulations 723-2-25*, including the requirement to obtain a letter of agency from the customer authorizing a change of providers/carriers, is waived for the purpose of implementing the Transition Plan.

8. Rule 4 *Code of Colorado Regulations 723-25-7.6(d)* is waived for the purpose of implementing the Transition Plan. The List of Alternative Local Telephone Service Companies, dated August 13, 2004 and appended to Attachment A to the Transition Plan is to be used.

9. Rule 4 *Code of Colorado Regulations 723-2-25.4.1* is waived for the purpose of implementing the Transition Plan.

10. Qwest Corporation and Premier Communications, Inc., shall remove all preferred carrier freezes before the Notices require by the Transition Plan are sent.

11. Rule 4 *Code of Colorado Regulations 723-2-27.4.2* is waived for the purpose of implementing the Transition Plan..

12. Commission rules addressing the cramming prohibitions are waived as necessary for the purpose of implementing the Transition Plan.

13. Qwest Corporation's wholesale operations are authorized to communicate with Qwest Corporation's retail operations to the extent necessary to meet, and solely for the purpose of meeting, Qwest Corporation's obligations under the Transition Plan.

14. The approved Transition Plan is to be implemented immediately.

15. The Request to Waive Response Time to the Joint Motion to Approve Proposed Transition Plan and Request to Waive Certain Commission Rules is denied as moot.

16. Docket No. 04A-356AT is closed.

17. 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.

18. 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.

19. 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