

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

DOCKET NO. 04A-197T

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IN THE MATTER OF THE JOINT APPLICATION OF SUNWEST COMMUNICATIONS, INC., AND USURF AMERICA, INC., FOR AN ORDER APPROVING THE TRANSFER OF SUNWEST COMMUNICATIONS, INC., TO UTEL, INC.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING UNOPPOSED MOTION,  
DISMISSING APPLICATION, VACATING  
HEARING AND PROCEDURAL  
SCHEDULE, CLOSING DOCKET,  
AND WAIVING RESPONSE TIME**

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Mailed Date: August 30, 2004

**I. STATEMENT, FINDINGS, AND CONCLUSION**

1. On April 23, 2004, SunWest Communications, Inc., UTEL, Inc., and USURF America, Inc. (collectively, Applicants), jointly filed an Application in which they seek a Commission order approving the transfer of the assets of SunWest Communications, Inc., to UTEL, Inc., which is a wholly-owned subsidiary of USURF America, Inc. (Application). The Application commenced this docket.

2. On May 19, 2004, Applicants submitted a letter to Mr. Bruce N. Smith, Director of the Commission. Several documents were appended to that letter. On May 21, 2004, Applicants submitted another letter to Mr. Bruce N. Smith. Both the May 19, 2004 and the May 21, 2004 letters, and the appended documents, are supplements to the Application and are part of the Application.

3. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated April 27, 2004. Both the Colorado Office of Consumer Counsel (OCC) and the Staff of the Commission (Staff) intervened in this proceeding of right, and each requested a hearing. OCC and Staff (collectively, Intervenors) and Applicants are the only parties in this proceeding.

4. By Decision No. R04-0791-I, following a prehearing conference, the undersigned Administrative Law Judge (ALJ) established a procedural schedule and set hearing dates of October 7 and 8, 2004, in this proceeding.

5. On August 25, 2004, Applicants filed an Unopposed Motion to Withdraw Application and for Waiver of Response Time (Motion). In that filing the Applicants cite business reasons as the basis for their request. The ALJ finds and concludes that the Motion, which was filed by the parties which commenced this proceeding, states good cause for dismissing the Application. In addition, the Intervenors do not oppose the Motion; therefore, neither will not be prejudiced by granting the Motion. The Motion will be granted, the Application will be dismissed, the hearing dates and procedural schedule will be vacated, and this docket will be closed.

6. The Motion is unopposed. In view of this fact, response time to the Motion will be waived.

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

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Unopposed Motion to Withdraw Application is granted.

2. The Application filed by SunWest Communications, Inc., UTEL, Inc., and USURF America, Inc., is dismissed.

3. The procedural schedule established in Decision No. R04-0791-I is vacated.

4. The hearing scheduled in this matter for October 7 and 8, 2004, is vacated.

5. The Unopposed Motion to Waive Response Time is granted.

6. Response time to the Unopposed Motion to Withdraw Application is waived.

7. Docket No. 04A-197T is closed.

8. 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.

9. As provided by § 40-6-109, 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 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 basic findings 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.

10. If exceptions to this 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

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Administrative Law Judge