

Decision No. R04-1238

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-422T

TEIKYO LORETTO HEIGHTS UNIVERSITY,

COMPLAINANT,

V.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DISMISSING COMPLAINT**

Mailed Date: October 21, 2004

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. This proceeding was initiated on August 5, 2004, when the Complainant, Teikyo Loretto Heights University (Loretto Heights), filed a formal complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, AT&T Communications of the Mountain States, Inc. (AT&T).

2. On August 11, 2004, the Commission entered its Order to Satisfy and Answer. On that date it also issued an Order Setting Hearing and Notice of Hearing scheduling a hearing in this matter on September 23, 2004. The hearing was subsequently rescheduled to October 21, 2004. See, Decision No. R04-1110-I.

3. On August 31, 2004, AT&T filed its Answer, Affirmative Defenses and Counterclaims and on October 7, 2004, it filed a Motion for Summary Judgment on All Issues or in the Alternative Motion to Dismiss the Case in Its Entirety (Motion for Summary Judgment).

4. On October 19, 2004, the parties submitted a Settlement Agreement, Joint Motion to Dismiss and Request to Vacate the Hearing (Motion to Dismiss). The Motion to Dismiss states that the dispute encompassed by the Complaint arises out of Loretto Heights' purchase of a DS1 facility and 19 trunks to carry DID/DOD service (Trunks) from AT&T. It requests that any and all claims arising out of Loretto Heights' purchase of the Trunks be dismissed with prejudice and that the claims asserted with regard to the DS1 facility be dismissed without prejudice. It also requests that the October 21, 2004, hearing be vacated.

5. Good grounds having been shown, the Motion to Dismiss will be granted. Resolution of the Complaint in this manner renders the Motion for Summary Judgment moot.

6. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Settlement Agreement, Joint Motion to Dismiss and Request to Vacate the Hearing filed by Complainant, Teikyo Loretto Heights University, and Respondent, AT&T Communications of the Mountain States, Inc., is granted.

2. The hearing of this matter scheduled for October 21, 2004, is vacated.

3. Any and all claims set forth in the Complaint arising out of the purchase of 19 trunks to carry DID/DOD service by Complainant, Teikyo Loretto Heights University, from Respondent, AT&T Communications of the Mountain States, Inc., are dismissed, with prejudice.

4. The claims set forth in the Complaint arising out of the purchase of a DS1 facility by Complainant, Teikyo Loretto Heights University, from Respondent, AT&T Communications of the Mountain States, Inc., are dismissed, without prejudice.

5. The Motion for Summary Judgment on All Issues or in the Alternative Motion to Dismiss the Case in Its Entirety filed by Respondent, AT&T Communications of the Mountain States, Inc., is denied as moot.

6. The captioned proceeding is dismissed and Docket No. 04F-422T is closed.

7. 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.

8. 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.

9. 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

Administrative Law Judge