

Decision No. R04-1323

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-488AT

IN THE MATTER OF THE APPLICATION OF INSPIREN 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, GRANTING REQUEST TO
WAIVE RESPONSE TIME, AND CLOSING DOCKET**

Mailed Date: November 9, 2004

I. STATEMENT

1. On September 27, 2004, Inspiren Communications, Inc. (Inspiren 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 Inspiren is November 15, 2004. Applicant did not file testimony and exhibits with the Application. The Application commenced this proceeding.

2. By Decision No. C04-1136, the Commission established a ten-day intervention period; designated Qwest Corporation (Qwest) as an indispensable party; and assigned this matter to an Administrative Law Judge (ALJ).

3. The Commission issued a Notice of Application Filed (Notice) on September 29, 2004. In the Notice, the Commission established a procedural schedule in this proceeding. By

Decision No. R04-1192-I, the undersigned ALJ, to whom this matter is assigned, vacated that procedural schedule.

4. On October 7, 2004, the Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right and requested a hearing.

5. On October 8, 2004, the Staff of the Commission (Staff) intervened in this proceeding of right and requested a hearing.

6. The ALJ found the Application to be complete as of October 14, 2004, and scheduled a prehearing conference for October 27, 2004. *See* Decision No. R04-0808-I.

7. On October 26, 2004, Inspiren, 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). Inspiren, OCC, and Staff are the Signatories; and Qwest does not oppose the Joint Motion.

8. On October 26, 2004, the ALJ granted an oral motion of the parties to vacate the prehearing conference scheduled for October 27, 2004. The parties were notified orally of the ruling. This Decision memorializes that ruling.

9. On November 8, 2004, Qwest filed its Acknowledgement of Joint Motion and Transition Plan. In that filing Qwest states that it “understands and agrees to undertake the obligations imposed on it as set forth in the joint motion and transition plan.” Affidavit of Paul R. McDaniel, filed in support of Acknowledgement of Joint Motion and Transition Plan, at ¶ 2.

10. In view of the Joint Motion and the Qwest Acknowledgement, the ALJ determines that this matter may be decided without a hearing because there are no issues of fact, no party

opposes granting the Joint Motion and the Application (assuming the Joint Motion is granted), and the Joint Motion and accompanying Transition Plan need no clarification.

11. 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.

II. FINDINGS AND CONCLUSIONS

12. Applicant is a Colorado corporation. Inspiren 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 Inspiren's wholesale service provider. At present, Inspiren serves approximately 100 customers in Colorado and provides both local telecommunications services and long-distance service.

13. If the Transition Plan is accepted, the transition process, which commences on the date on which Inspiren sends its notice letter to its customers and ends on the date on which the last customer is disconnected from Inspiren, will take approximately 75 days. *See* Transition Plan, which is Appendix A to this Decision, at ¶ II.1.

14. Under the Transition Plan Inspiren will give written notice to customers that it intends to leave the Colorado market and that they have the right to select an alternative telecommunications provider from a list provided with Inspiren's letter.¹ *See* Transition Plan at Attachment A. Inspiren will send the letter within five calendar days of the effective date of a Commission order approving the Application. *See id.* at ¶ II.1. Inspiren will provide separate written notice to interested governmental entities. *See id.* at ¶ II.3.

¹ The list was prepared by the OCC and Staff.

15. To assure that no customer will lose telephone service through inaction, Qwest, which is the Provider of Last Resort in the area served by Inspiren, will be designated as the default provider for all Inspiren customers. *See id.* at ¶ II.2. Within between five and ten business days following the effective date of a Commission order approving the Application, Qwest will send written notice to all Inspiren customers. *See id.* at ¶ II.1. 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. The notice is intended to satisfy the requirements of Commission rules and of 47 *Code of Federal Regulations* § 64.1120(e)(3). *See* Transition Plan at ¶¶ II.1 and II.5. The Transition Plan contains provisions which explain how and under what terms Qwest, as the default provider, will migrate Inspiren customers to Qwest.² *See id.* at ¶¶ II.8 and II.10. The transfer of Inspiren customers to the default provider will not begin until 30 days after Qwest sends its notice letter to those customers. *See id.* at ¶ II.8.

16. At any time during and after the transition period, affected customers may change providers if they wish to do so. *See id.* at ¶ II.1. Affected customers will not be charged for the transfer to the default provider. Each affected customer 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 Inspiren. *See id.* at ¶¶ II.5 and II.8 and Attachment B to the Transition Plan.

17. The Transition Plan contains protections for Inspiren's customers with respect to deposits (*see id.* at ¶ II.13), prepayment for service (*see id.* at ¶ II.14), and billing and refunds

² There are separate provisions for migration of Inspiren customers who do not have a past indebtedness to Qwest for jurisdictional service and for migration of Inspiren customers who have a past indebtedness to Qwest for jurisdictional service.

(*see id.* at ¶ II.15). The Transition Plan also contains a provision under which Qwest will cease to bill Inspiren for wholesale services used to provide service to a customer who has transferred to another provider (*see id.* at ¶ II.12).

18. At the conclusion of the transition period (that is, on the date on which the last Inspiren customer is transitioned to Qwest, is transitioned to another local exchange carrier, or is disconnected from Inspiren), Inspiren will cease providing local exchange service and long-distance service in Colorado. *See id.* at ¶ II.12.

19. Inspiren will surrender its CPCN and its LOR, and its tariffs will be automatically canceled, at the conclusion of the transition period (*i.e.*, simultaneous with the disconnection of the last customer from Inspiren's service). *See id.* at ¶ II.16.

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

21. The Transition Plan is self-executing. It will proceed even if Inspiren should fail to provide customer notice or should fail to comply with any aspect to the Transition Plan.³

22. 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.

23. The ALJ finds and concludes that the Transition Plan is in the public interest. The Transition Plan provides a sound method to transfer Inspiren'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

³ By this statement, the ALJ does not imply, and does not intend to imply, that Inspiren will fail to meet its obligations under the Transition Plan.

matter serves that purpose and meets that objective. The Transition Plan will be accepted. The alternative forms of customer notices appended to the Transition Plan as Attachments A and B will be approved. The Signatories and Qwest will be ordered to implement the Transition Plan.

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

25. 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.

26. 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 Inspiren 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.

27. In the Joint Motion, the Signatories request that the Commission waive the Rule 4 *Code of Colorado Regulations* (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 Inspiren's customers. Given the relatively short transition period and the need for Inspiren's customers to be able to find an alternative provider which can accommodate them within the time frame established by the Transition Plan, the waiver will be granted.

28. 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 from the affected customer a letter of agency 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 but only to the extent necessary to facilitate the transfer of Inspiren's customers.

29. 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 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 Inspiren to remove all preferred carrier freezes before the Notices are sent. Granting these requests will make the transition process easier for Inspiren's customers and will facilitate Qwest's providing service as the default provider. The waiver and the request will be granted but only to the extent necessary to facilitate the transfer of Inspiren's customers.

30. In the Joint Motion, the Signatories seek a waiver of Rule 4 CCR 723-2-27.4.1, which requires a local exchange carrier to inform new customers about their interLATA and intraLATA toll carrier options. The Transition Plan Notices will advise Inspiren's customers who have Inspiren as their long-distance carrier that they must choose another long-distance provider or be defaulted to Qwest long-distance service. Granting these requests will make the transition process easier for Inspiren'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 Inspiren's customers.

31. 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 to the default provider. The Signatories represent that this waiver is required because Qwest’s and Inspiren’s bundled service offerings may not be exactly the same. The requested waiver will be granted.

32. There is a request to waive response time to the Joint Motion. The request will be granted. All parties are either signatories or have indicated that they have no objection to the granting of the Joint Motion. The request states good cause, and granting the request will not prejudice any party. Response time to the Joint Motion will be waived.

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

III. ORDER

A. The Commission Orders That:

1. The prehearing conference scheduled for October 27, 2004, is vacated.
2. The Joint Motion to Approve Proposed Transition Plan is granted.
3. The Transition Plan signed by Inspiren Communications, Inc., the Colorado Office of Consumer Counsel, and Staff of the Commission; supported by Qwest Corporation; and filed on October 26, 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.
4. Inspiren Communications Inc.’s Application to Discontinue or Curtail Jurisdictional Telecommunications Service is granted, consistent with the above discussion.

5. In no event shall Inspiren Communications, Inc., discontinue service in Colorado without first submitting the necessary change order requests (*i.e.*, the Local Service Requests) to Qwest Corporation with the necessary information to switch Inspiren Communications, Inc.'s customers.

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

7. The Request to Waive Certain Commission Rules is granted, consistent with the above discussion.

8. The Notices appended to the Transition Plan as Attachments A and B are approved.

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

10. 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 October 25, 2004 and appended to Attachment A to the Transition Plan is to be used.

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

12. Qwest Corporation and Inspiren Communications, Inc., shall remove all preferred carrier freezes before the Notices required by the Transition Plan are sent.

13. Rule 4 *Code of Colorado Regulations* 723-2-27.4.1 is waived for the purpose of implementing the Transition Plan..

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

15. 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.

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

17. The Request to Waive Response Time to the Joint Motion to Approve Proposed Transition Plan and Request to Waive Certain Commission Rules is granted.

18. Response time to the Joint Motion to Approve Proposed Transition Plan and Request to Waive Certain Commission Rules is waived.

19. Docket No. 04A-488AT is closed.

20. 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.

21. 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.

22. 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