

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04B-491T

IN THE MATTER OF THE PETITION OF QWEST CORPORATION FOR
ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH UNION
TELEPHONE COMPANY D/B/A UNION CELLULAR UNDER SECTION 252 OF
THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING HEARING AND
ESTABLISHING PROCEDURAL
SCHEDULE AND OTHER REQUIREMENTS**

Mailed Date: November 10, 2004

I. STATEMENT

1. On September 30, 2004, Qwest Corporation (Qwest) filed a Petition for Arbitration of an interconnection agreement with Union Telephone Company, doing business as Union Cellular (Union). The Petition for Arbitration (Petition) commenced this proceeding.

2. By Minute Order, the Commission referred the Petition to an Administrative Law Judge (ALJ) for hearing. The docket is assigned to the undersigned ALJ. The Commission will issue an initial decision in this proceeding.

3. Union filed its Response to Petition for Arbitration (Response) on October 25, 2004. Among the issues raised in its Response, Union challenges the Commission's jurisdiction in this matter based on its assertion that the time within which Qwest could seek Commission arbitration expired on June 23, 2004. This issue appears to be fact-based and should be addressed, as necessary, in the testimony filed by the parties. In addition, it should be addressed

in Union's response to the Motion to Strike Response to Petition for Arbitration and Motion for Judgment on the Pleadings (*see* note 15 at 6) filed by Qwest.

4. Qwest and Union are the only parties to this proceeding.

5. On November 4, 2004, Qwest filed a Motion to Strike Response to Petition for Arbitration and Motion for Judgment on the Pleadings (Qwest Motion). Response to the Qwest Motion will be due on or before **November 19, 2004**. Oral argument on the Qwest Motion will be heard as a preliminary matter on the first day of hearing (*i.e.*, December 3, 2004).

6. On November 5, 2004, pursuant to Decision No. R04-1267-I, the ALJ held a prehearing conference. Both parties were represented and participated.

7. Based on the provisions of 47 U.S.C. § 252(b), it appears that the Commission should issue its decision in this matter on or before **January 23, 2005**. At the prehearing conference Union requested that Qwest waive voluntarily, or that the Commission order Qwest to waive, the nine-month arbitration time frame contained in § 252(b)(4)(C) of the Federal Telecommunications Act of 1996. Qwest refused to agree to the requested waiver. The ALJ determined that the Commission does not have the authority to order a party to waive the time frame although the parties may voluntarily waive that statutory provision. Because both parties did not waive the statutory time frame, the final date for issuance of a Commission decision in this matter remains January 23, 2005. The procedural schedule adopted by this Order permits the Commission to issue its decision by that date.

8. Based on the January 23, 2005 date, the ALJ will adopt the following procedural schedule and hearing dates: (a) on or before **November 19, 2004**, each party will file its direct

testimony¹ and exhibits; (b) on or before **November 29, 2004**, each party will file its answer testimony and exhibits; (c) on or before **November 29, 2004**, the parties will file their final joint issues matrix and a diskette containing an electronic version of that matrix; (d) on or before **November 29, 2004**, each party will file its prehearing motions;² (e) hearing will be held on **December 3 and 6, 2004**; and (f) on or before **December 17, 2004**, each party will file its post-hearing statement of position to which (absent further Order) there will be no response.

9. The final joint issues matrix will address only unresolved issues and will be in the format customarily used by the Commission in arbitration proceedings. The final joint issues matrix must be filed on a diskette formatted in Microsoft Word. For each unresolved issue, the final joint issues matrix must contain *both* the language each party proposes for adoption *and* a brief statement of the rationale supporting the proposal. Specific proposals for the same Interconnection Agreement provision must be presented side-by-side for ease of comparison. Qwest will provide an electronic copy of an example of a final joint issues matrix to Union.

10. Union's counsel is located in Wyoming. Filings made by Union will be considered timely made if served electronically on Qwest, provided electronically to the ALJ, and post-marked on (or before) the relevant date contained in ¶ I.8, *supra*.

11. Daily transcript will be prepared in this proceeding. Union and Qwest will each bear 50 percent of the transcript's cost. Qwest will be responsible for making the necessary arrangements with the court reporters.

¹ All testimony will be filed in question and answer format. Except for rebuttal witnesses, no person will be permitted to testify in this proceeding unless that person has submitted either direct or answer testimony.

² Except as stated in the Order with respect to the Qwest Motion, response to a prehearing motion may be made orally on the first day of hearing.

12. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery addressed to direct testimony filed in this matter. Because there are only a few days between the date on which answer testimony is to be filed and first day of hearing, Qwest and Union agreed to handle informally any discovery addressed to answer testimony. If either of the parties should believe that it is necessary to use formal means for discovery addressed to answer testimony, that party may make an oral motion to the ALJ; and the ALJ will hold an emergency hearing to address the issue.

13. The parties will exchange testimony, discovery requests, and discovery responses by electronic means. The parties are not to file with the Commission or to provide to the ALJ their discovery requests and discovery responses unless they are exhibits to testimony or attachments to a motion to compel response to discovery.

14. The ALJ requests that the parties provide her with an electronic copy of the testimony and exhibits, of any prehearing motion, and of the final joint issues matrix on the date each is filed with the Commission (e-mail address: mana.jennings-fader@dora.state.co.us).

15. The fact that the parties exchange documents electronically and provide specified documents to the ALJ by electronic means does not eliminate the requirement that the testimony, any prehearing motions, the joint final issues matrix, and the post-hearing statements of position must be filed with the Commission and, further, does not reduce the number of copies of those documents required to be filed.

16. At the prehearing conference Qwest withdrew its request for a protective order. Qwest may renew its request for a protective order should it become necessary to do so.

17. If counsel for Union is not licensed to practice law in Colorado, he must associate local counsel or must be admitted *pro hac vice*. See Rule 4 CCR 723-1-21(a) and

Colo.R.Civ.P. 220 through 221.1 (governing admission of, and conditions of practice for, out-of-state attorneys). This must occur on or before the first day of hearing in this matter. If the requirements are not met by that date, the filings made by counsel on behalf of Union will be stricken from the record of this proceeding.

18. When citing or referring to an order of the Federal Communications Commission (FCC), a party (including its witnesses) shall provide the name of the order, the docket number(s) in which the order was issued, and the FCC order number (*e.g.*, the *Triennial Review Order* is Order No. FCC 03-36 issued in CC Dockets No. 01-338, No. 96-98, and No. 98-147).

19. A party (including its witnesses) shall provide the decision number when referring to or citing a Commission decision.

20. 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.

II. ORDER

A. It Is Ordered That:

1. This procedural schedule is adopted: (a) on or before November 19, 2004, each party will file its direct testimony and exhibits; (b) on or before November 29, 2004, each party will file its answer testimony and exhibits; (c) on or before November 29, 2004, the parties will file their final joint issues matrix and a diskette containing an electronic version of that matrix;

(d) on or before November 29, 2004, each party will file its prehearing motions; and (e) on or before December 17, 2004, each party will file its post-hearing statement of position.

2. The hearing in this docket is scheduled on the following dates, at the following times, and in the following location:

DATES: December 3 and 6, 2004
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

3. If counsel for Union Telephone Company, doing business as Union Cellular, is not licensed to practice law in Colorado, counsel for Union Telephone Company, doing business as Union Cellular, must associate local Colorado counsel or must be admitted pro hac vice on or before December 3, 2004, the first day of hearing in this matter. If the requirements are not met by that date, the filings made by counsel on behalf of Union Telephone Company, doing business as Union Cellular, will be stricken from the record of this proceeding.

4. The parties shall follow the procedures, and shall make the filings, as detailed above.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge