

Decision No. R04-1439

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

DOCKET NO. 04C-559T

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IN THE MATTER OF THE INVESTIGATION OF COMPETITION IN COLORADO'S  
TELECOMMUNICATIONS MARKET.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
KEN F. KIRKPATRICK  
REVOKING AND CANCELING CERTIFICATES OF  
PUBLIC CONVENIENCE AND NECESSITY,  
REGISTRATIONS, AND LETTERS OF REGISTRATION**

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Mailed Date: December 13, 2004

Appearances:

Ann Botterud, Assistant Attorney General, Denver, Colorado, for  
Staff of the Commission; and

Lettie S.D. Friesen, Esq., Denver, Colorado, for ACC National  
Long Distance Corp.

**I. STATEMENT**

1. This proceeding was instituted by the issuance of Decision No. C04-1287, November 19, 2004. A hearing was scheduled for 9:00 a.m. on December 2, 2004 in a Commission hearing room in Denver, Colorado. At the assigned place and time the undersigned called the matter for hearing. Staff of the Public Utilities Commission appeared through counsel as noted above; ACC National Long Distance Corporation (ACC) appeared through counsel. None of the other respondents appeared. As a preliminary matter the Motion to Dismiss ACC from this proceeding was granted, as it currently has no registration to provide long distance toll

as a reseller or certificate of public convenience and necessity (CPCN) to provide local exchange service.

2. The matter then proceeded to hearing. During the course of the hearing Exhibits 1 through 6 were identified, offered, and admitted into evidence. At the conclusion of the hearing the undersigned Administrative Law Judge announced that he would revoke the CPCNs, registrations, and letters of registration of the respondents for failure to comply with a lawful Commission order. In addition, the CPCNs, registrations, and Letters of Registration are revoked for failure to appear at the hearing.

## **II. FINDINGS AND CONCLUSIONS**

3. On September 1, 2004, by Decision No. C04-0984, the Commission distributed a survey on competition to all telecommunications providers subject to the Commission's jurisdiction. The Commission is authorized to request responses to such surveys under § 40-3-110, C.R.S., which states "Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information..." The Commission originally ordered compliance with the survey within 21 days. The Commission subsequently extended the deadline by which Respondents could respond to the survey. On October 28, 2004, Bruce N. Smith, Director of the Commission, sent a letter and proposed order to show cause to the respondents in this proceeding giving them an opportunity to comply with the requirements of Decision No. C04-0984 before the institution of a formal show cause proceeding.

4. On November 19, 2004, by Decision No. C04-1287 the Commission instituted a proceeding against named respondents for failure to comply with the survey. Subsequent to

Decision No. C04-1287, additional utilities filed the survey. However, as of the date of the hearing, the respondents indicated on attached Appendix A had failed to file responses to the Competition Survey.

5. The Commission is authorized explicitly by statute to require reports from those under its jurisdiction, including those respondents listed on Appendix A to this Decision. Respondents have been given ample opportunity, including extensions, within which to comply. Since the respondents have failed to respond to a direct Commission order to provide information, the harshest sanction permissible is appropriate. Therefore, the Order below revokes the CPCNs, registrations, and Letters of Registration of the respondents listed on Appendix A. Further, the underlying facilities based exchange providers listed in Appendix B to this proceeding will be ordered to cease providing any service on the public switched telephone network to any of the respondents.

### **III. ORDER**

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

1. The certificates of public convenience and necessity, registrations, and letters of registration of those carriers listed on Appendix A to this Decision are revoked as of the effective date of this Order.

2. The carriers listed in Appendix B to this Decision are ordered to disconnect all providers listed in Appendix A to this Decision from the public switched network.

3. 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.

4. 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.

5. 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

