

Decision No. R04-1444

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04C-527T

IN THE MATTER OF AN INVESTIGATION OF REGISTERED TOLL RESELLERS OF
TELECOMMUNICATIONS SERVICES CONCERNING ALLEGED VIOLATIONS OF
COLORADO REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND
PROCEDURE RELATING TO THE FILING OF ANNUAL REPORTS BY PUBLIC
UTILITIES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
REVOKING REGISTRATIONS
AND GRANTING FURTHER RELIEF**

Mailed Date: December 8, 2004

Appearances:

Jean S. Watson-Weidner, Assistant Attorney General, Denver,
Colorado, for the Staff of the Commission.

I. STATEMENT

1. The Colorado Public Utilities Commission (Commission) initiated the captioned docket on October 21, 2004, by issuance of its Decision No. C04-1219 entitled "Order to Show Cause, and Notice of Hearing" (Show Cause Order). The Show Cause Order was served on the Respondents listed in Attachments A and B thereto on that date.¹

2. The Show Cause Order directed the Toll Resellers to appear before the Commission to show cause why various sanctions should not be imposed against them as a result

¹ The entities listed on Attachment A of the Show Cause Order resell intrastate telecommunications toll services to Colorado consumers (Toll Resellers). They purchase telecommunications services at wholesale from the interexchange carriers listed on Attachment B of the Show Cause Order who connect the entities listed on Attachment A to the public switched network. The interexchange carriers listed on Attachment B were included in this proceeding as necessary parties.

of their failure to file an annual report for the calendar year ending December 31, 2003. The Show Cause Order also established a procedural schedule governing this proceeding and set the matter for hearing on December 6, 2004, at the Commission's offices in Denver, Colorado.

3. The undersigned administrative law judge (ALJ) called the matter for hearing at the assigned time and place. Jean S. Watson-Weidner, Assistant Attorney General, entered her appearance on behalf of the Staff of the Commission (Staff). None of the Respondents listed on Attachments A or B of the Show Cause Order appeared at the hearing. Ms. Jamie Jack, a Financial Analyst for the Commission, testified on behalf of Staff. During the course of the hearing, Exhibits A through F were identified, offered, and admitted into evidence.

4. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Toll Resellers are required to register with the Commission and file an annual report with the Commission on or before April 30 of each year for the preceding calendar year. *See*, § 40-15-302.5, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-25(a)(1). As pertinent to this proceeding, Toll Reseller annual reports for calendar year 2003 were due April 30, 2004.

6. Ms. Jack testified that five of the Toll Resellers originally listed on Attachment A of the Show Cause Order filed annual reports for the 2003 calendar year subsequent to issuance of the Show Cause Order. As a result, Staff requested that the five Toll Resellers identified on Exhibit E be dismissed from this show cause proceeding. Good grounds having been shown, the request of Staff to dismiss these Toll Resellers will be granted.

7. The evidence presented at hearing established that the Toll Resellers identified on Exhibit F have failed to make the required annual report filing despite numerous notices provided by the Commission advising them of the need to file such a report. Written notices of this filing requirement were mailed to the last addresses provided by these Toll Resellers to the Commission on February 24, 2004; June 10, 2004; August 4, 2004; and October 21, 2004. *See*, Exhibits A, B, C, and D.

8. Because such Toll Resellers have failed to file an annual report for the calendar year ended December 31, 2003, as required by 4 CCR 723-1-25(a)(1), their registrations authorizing them to resell intrastate telecommunications toll services to Colorado consumers should be revoked. In addition, these Toll Resellers should be ordered to cease and desist from reselling intrastate telecommunications toll services to Colorado consumers and should be disconnected from the public switched network. These remedies are appropriate since these Toll Resellers' obligation to file the subject annual reports is long overdue and they have refused or failed to make the required filing notwithstanding four separate notices from the Commission. The involved Toll Resellers may avoid the sanctions imposed herein by filing their 2003 annual reports prior to the effective date of this Order (*i.e.*, within 20 days of the date this Order is served).

III. ORDER

A. The Commission Orders That:

1. The registrations of the Respondents listed in Attachment A of this Order to operate as resellers of intrastate telecommunications toll services to Colorado consumers are revoked as of the effective date of this Order.

2. The Respondents listed in Attachment A of this Order are hereby ordered to cease and desist operations as resellers of intrastate telecommunications toll services to Colorado consumers as of the effective date of this Order.

3. The interexchange carriers listed in Attachment B of this Order are hereby ordered to disconnect the resellers of intrastate telecommunications toll services listed in Attachment A of this Order from the public switched telecommunications network. Such disconnection shall be accomplished no later than 15 business days after the effective date of this Order.

4. Ordering paragraph nos. 1, 2, and 3 shall be void, and this proceeding shall be dismissed, as to any Respondent listed on Attachment A of this Order who files the required annual report before the effective date of this Order.

5. The motion of Staff of the Commission to dismiss those resellers of intrastate telecommunications toll services listed on Attachment C of this Order from this annual report show cause proceeding is granted.

6. 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.

7. 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 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.

8. 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