

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-493T

IN THE MATTER OF THE JOINT APPLICATION OF SUNWEST COMMUNICATIONS, INC. AND FALCON BROADBAND, INC. FOR AN ORDER APPROVING THE TRANSFER OF ASSETS OF SUNWEST COMMUNICATIONS, INC. TO FALCON BROADBAND, INC.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
ANTHONY M. MARQUEZ
GRANTING STAFF MOTION FOR LATE
INTERVENTION; DENYING MOTION TO GRANT
APPLICATION UNDER MODIFIED PROCEDURE; AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: December 15, 2004

I. STATEMENT

1. This matter concerns the Application by SunWest Communications, Inc. and Falcon Broadband, Inc. (collectively SunWest), for Commission approval of a transfer of assets from SunWest to Falcon. SunWest and Falcon filed this Application on September 30, 2004. The Commission issued notice of the Application on October 5, 2004. That notice directed that interested persons file requests for intervention in this case within 30 days of the date of the notice, or November 4, 2004.

2. No person intervened within that 30-day period. And on November 19, 2004, the Commission deemed the Application complete. Therefore, pursuant to Commission Rule 70(b)(5), Commission Rules of Practice and Procedure,¹ Staff of the Commission (Staff)

¹ 4 Code of Colorado Regulations 723-1.

was required to file a request for intervention by November 29, 2004 (ten days after the Application was deemed complete).

3. On December 3, 2004, SunWest filed its Motion to Grant the Application of Asset Transfer Under Modified Procedure. The Motion requested that the Commission approve the Application without hearing since no person had timely intervened, and, therefore, the Application was noncontested.

4. However, on December 6, 2004, Staff filed its Notice of Intervention and Request for Hearing and its Motion for Leave to Intervene Out of Time. SunWest filed its Response opposing Staff's motion for late intervention on December 10, 2004.

5. Now being fully advised, I grant Staff's motion for late intervention, and, since the Application is now contested, deny SunWest's motion to approve the Application under modified procedure. As noted above, Commission rules specifically permit Staff to file a request for intervention within ten days of the date the Application was deemed complete. Therefore, Staff's request for intervention in this case was 7 days late, not 32 days as asserted by SunWest in its Response. Staff's motion states that "it did not anticipate the necessity of participating in hearings" in this case. While this is less than a compelling reason for late intervention, Staff also points out that approval of the Application could significantly affect approximately 2,500 customers who would be transferred from SunWest to Falcon. The motion, especially as supplemented with the Notice of Intervention and Request for Hearing, points out that Staff properly seeks to investigate, at hearing, Falcon's financial capabilities to serve the customers to be transferred from SunWest. Staff's pleadings raise important issues that should be examined before approval of the Application. As such, I find good cause for granting a request for intervention that was only seven days out of time.

6. SunWest's motion to approve the Application without hearing was, as noted above, based upon the lack of intervention and opposition at the time the motion was filed. However, Staff has now been permitted to intervene, and Staff has requested a hearing in this case. Given these recent events, it is not appropriate to consider the Application under Rule 24's modified procedure. SunWest's motion, therefore, is denied.

7. I now direct the parties to appear at a prehearing conference at the below-stated time and place. The prehearing conference will deal with all issues contemplated by Rule 79(b)(5), Commission Rules of Practice and Procedure, and related matters. This includes without limitation: identification of issues to be addressed in this proceeding; resolution of any pending motions; the timing and scope of discovery; and establishment of a procedural schedule including hearing dates and deadlines for filing of direct, answer, and rebuttal testimony and exhibits, and closing statements of position. I encourage the parties to confer prior to the prehearing conference in an attempt to reach agreement on a procedural schedule.

8. I note that SunWest has expressed a wish for a prompt decision. Therefore, the parties should anticipate that expedited hearing dates will be established at the prehearing conference.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to Intervene Out of Time by Trial Staff of the Commission is granted.

2. The Motion to Grant the Application of Asset Transfer Under Modified Procedure by SunWest Communications, Inc. and Falcon Broadband, Inc. is denied.

3. A prehearing conference is scheduled in this matter as follows:

DATE: December 28, 2004

TIME: 1:30 p.m.

PLACE; Commission Hearing Room
1580 Logan Street, OL 2
Denver, Colorado

4. The parties shall be prepared to discuss those matters specified above.
5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge