

Decision No. R22-0591-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0293T

IN THE MATTER OF THE VERIFIED PETITION OF TRIAL STAFF OF THE COMMISSION FOR A DECLARATORY ORDER REGARDING THE APPLICABILITY OF C.R.S. § 17-42-103 AND CONSTRUING THE DEFINITION OF THE TERM “PENAL COMMUNICATION SERVICES.”

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
CONDITIONALLY GRANTING *PRO HAC VICE* MOTION**

Mailed Date: September 30, 2022

I. STATEMENT AND BACKGROUND

A. Statement

1. This Decision grants “Out of State Counsel’s Verified Motion Requesting Pro Hac Vice Admission” (Motion) filed on September 7, 2022 subject to the condition that counsel file a Certificate of Service on or by October 11, 2022 establishing that the Motion was served on HomeWAV LLC (HomeWAV). This Decision also finds that no party objects to the procedural schedule established in this matter, including that no evidentiary hearing is scheduled.

B. Procedural History¹

2. On June 22, 2022, the Colorado Public Utilities Commission Trial Staff (Staff) initiated this matter by filing the above-captioned Petition.

¹ Only the procedural history necessary to understand this Decision is included.

3. On July 19, 2022, the Commission accepted the Petition and referred this matter to an Administrative Law Judge (ALJ) for disposition.

4. In addition to Staff, the following entities are parties to this Proceeding: Global Tel*Link Corporation, doing business as ViaPath Technologies and its subsidiary Telmate, LLC, doing business as ViaPath Technologies (collectively, ViaPath), and HomeWAV.²

5. On August 29, 2022, Mr. Thomas Snyder entered his appearance on behalf of HomeWAV.

6. On September 6, 2022, the ALJ established a procedural schedule that includes summary judgment briefing, but does not schedule an evidentiary hearing.³

7. On September 7, 2022, Attorney Jacqueline R. McHugh filed the Motion with a supporting Affidavit and Certificate of Service,⁴ seeking *pro hac vice* admission to practice before the Commission to represent HomeWAV in this Proceeding.⁵

8. On September 9, 2022, a Notice from the Colorado Supreme Court's Attorney Registration Office (Notice) relating to the Motion was filed.

9. No party filed a response to the Motion.

10. ViaPath has not made a filing in this Proceeding since August 19, 2022.⁶

² Decision No. R22-0518-I at 4-5 (mailed September 6, 2022).

³ *Id.* at 3 and 5.

⁴ The Motion is a single pdf document that includes an Affidavit and Certificate of Service. Given that they were all filed as one document, citations herein to the Affidavit and the Certificate of Service are to the "Motion," and relevant page number within the Motion filing.

⁵ Motion at 2.

⁶ The administrative record in this Proceeding as reflected in the Commission's E-Filing System shows that ViaPath's last filing was on August 19, 2022 (its Unopposed Motion for Clarification).

II. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Motion for *Pro Hac Vice* Admission

11. Given that no parties filed a response to the Motion, the ALJ finds that the Motion is unopposed.⁷

12. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in Commission proceedings. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs the admission of out-of-state attorneys, and requires compliance with Colorado Rule of Civil Procedure (CRCP) 205.4, which itself expressly incorporates CRCP 205.3.

13. CRCP 205.3(2)(a) requires an out-of-state attorney seeking *pro hac vice* admission in Colorado to: file a verified motion requesting permission to appear; designate an associate attorney who is admitted and licensed to practice law in Colorado; file a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration (Attorney Registration); pay the required fee; and, ultimately, obtain permission from the tribunal for such appearance.⁸

14. In addition, per CRCP 205.3(2)(b), the verified motion must include:

- a statement identifying all jurisdictions in which the attorney has been licensed;
- a statement identifying by date, case name, and case number all other matters in Colorado in which the attorney has sought *pro hac vice* admission in the preceding five years and whether such request was granted or denied;
- a statement identifying all jurisdictions in which the attorney has been publicly disciplined or placed on disability inactive service, and all jurisdictions in which *pro hac vice* admission was denied or revoked, or in

⁷ See Rule 1400(b) and (d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁸ CRCP 205.3(2).

which the attorney has a pending formal disciplinary or disability proceeding;

- a statement identifying the parties represented and verifying the attorney has notified such parties of the verified motion;
- a statement acknowledging that the attorney is subject to the Colorado Rules of Professional Conduct, the CRCP, and other court rules, that the attorney will follow those rules, and that the verified motion complies with those rules;
- the name, address, and membership status of the licensed Colorado attorney associated for purposes of the representation;
- a certificate indicating service of the verified motion upon all counsel of record and the attorney's client in the matter;
- the signature of the licensed Colorado attorney verifying that attorney's association on the matter; and
- any other information the Attorney Regulation Counsel (ARC) may from time to time, request.⁹

15. The Motion is verified, and states that Ms. McHugh is a member in good standing of the bar in the Commonwealth of Virginia, and has not been subject to any disciplinary or disability order by any bar in which she has been admitted, or been denied *pro hac vice* admission or had such admission revoked.¹⁰ The Motion states that Ms. McHugh has not previously sought *pro hac vice* admission in Colorado.¹¹ Ms. McHugh acknowledges that she is subject to all applicable provisions of the Colorado Rules of Professional Conduct, the CRCP, the Commission's rules and other relevant court rules; that she has read such rules and will follow them; and that the Motion complies with those rules.¹²

16. The Motion identifies Mr. Snyder as the associated local counsel in this Proceeding; states that Mr. Snyder is licensed and in good standing in Colorado; provides his

⁹ CRCP 205.3(2)(b)(i) to (ix).

¹⁰ Motion at 2 and 5.

¹¹ *Id.*

¹² *Id.* at 2 and 6-7.

local address; and includes his verified signature.¹³ As noted, on August 29, 2022, Mr. Snyder entered an appearance on behalf of HomeWAV, further confirming that he represents HomeWAV. The Motion states that all parties (including HomeWAV) have been notified of the Motion, and includes a Certificate of Service stating that the Motion was served upon all parties' counsel.¹⁴ The Certificate of Service does not state that the Motion was served on HomeWAV, the party whom Ms. McHugh seeks to represent in this Proceeding.¹⁵

17. The Notice confirms that Ms. McHugh filed a copy of the Motion with Attorney Registration and paid the required fee.¹⁶ The Notice also states that the Office of Attorney Regulation obtained a disciplinary history for Ms. McHugh and no adverse information was revealed, and that Ms. McHugh is assigned *pro hac vice* registration number 22PHV7157.¹⁷ No information in the record indicates the ARC has requested or required any other information from Ms. McHugh in relation to her *pro hac vice* admission.

18. Based on the foregoing, the ALJ concludes that except for one requirement, Ms. McHugh has met the requirements for *pro hac vice* admission set forth in ¶¶ 11-13 above. Specifically, Ms. McHugh fails to fully comply with CRCP 205.3(2)(b)(vii) because the Motion's Certificate of Service fails to establish that the Motion was served on Ms. McHugh's client in this Proceeding, HomeWAV.¹⁸ But, given that the Motion and the Affidavit both confirm that Ms. McHugh informed HomeWAV of the Motion, the ALJ finds that HomeWAV has actual

¹³ *Id.* at 2-4.

¹⁴ *Id.* at 2 and 8.

¹⁵ *Id.* at 8.

¹⁶ Notice.

¹⁷ *Id.*

¹⁸ Motion at 8.

notice of the Motion, and the Motion's deficiency can be cured without prejudice to any party (including HomeWAV).

19. For all these reasons, the ALJ will grant the Motion subject to the condition that counsel file a Certificate of Service by the established deadline that demonstrates that HomeWAV has been served with the Motion, including its attachments. Once this is filed, the conditions on Ms. McHugh's *pro hac vice* admission will be automatically lifted, and she will be deemed admitted *pro hac vice* to represent HomeWAV in this Proceeding, *nunc pro tunc*, September 9, 2022 (the date that the Notice was filed).

20. Counsel are reminded that Commission Rule 1400(a), 4 CCR 723-1 requires that before filing a motion, moving counsel make a reasonable good faith effort to confer with all parties about the motion and to report in the motion when the requested relief is unopposed. The Motion fails to include any information about conferral. Failing to confer, particularly when the requested relief is unopposed, may delay resolution of a motion because the ALJ must either shorten the response time to the motion, or wait for the response time to lapse before ruling on it.¹⁹

B. Consensus on Procedural Schedule

21. Decision No. R22-0518-I required ViaPath to make a filing by September 13, 2022 should it object to the procedural schedule established by that Decision, which does not include an evidentiary hearing.²⁰ The Decision advises that failure to do so would be construed as not opposing the procedural schedule, including that no evidentiary hearing is scheduled.²¹

¹⁹ See Rule 1400(b), 4 CCR 723-1 (establishing a default 14-day response time to motions).

²⁰ See Decision No. R22-0518-I at 3-5.

²¹ *Id.* at 4.

22. ViaPath did not make such a filing. As such, the ALJ finds that all parties either agree to or do not object to the procedural schedule in Decision No. R22-0518-I, including that no evidentiary hearing is scheduled at this time. As noted in that Decision, the ALJ may schedule an evidentiary hearing at later date if she finds, after reviewing the parties' motions for summary judgment and responses thereto, that material disputed facts exist.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, Attorney Jacqueline R. McHugh's "Out of State Counsel's Verified Motion Requesting Pro Hac Vice Admission" (Motion) filed on September 7, 2022 is granted subject to the condition that counsel file a Certificate of Service on or by October 11, 2022 establishing that the Motion and all its attachments were served upon HomeWAV LLC (HomeWAV). Once this is filed, the condition on Ms. McHugh's *pro hac vice* admission will be automatically lifted, and she will be deemed admitted *pro hac vice* to represent HomeWAV in this Proceeding without conditions, *nunc pro tunc*, September 9, 2022.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director