

Decision No. C05-0448

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-411T

IN THE MATTER OF THE COMBINED APPLICATION OF QWEST CORPORATION FOR RECLASSIFICATION AND DEREGULATION OF CERTAIN PART 2 PRODUCTS AND SERVICES AND DEREGULATION OF CERTAIN PART 3 PRODUCTS AND SERVICES.

DOCKET NO. 04D-440T

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION'S PETITION FOR A DECLARATORY ORDER CONCERNING THE RECLASSIFICATION AND DEREGULATION OF TELECOMMUNICATIONS SERVICES UNDER PARTS 2 AND 3, TITLE 40, ARTICLE 15 OF THE COLORADO REVISED STATUTES.

INTERIM PROCEDURAL ORDER

Mailed Date: April 18, 2005

Adopted Date: April 15, 2005

I. BY THE COMMISSION

A. Introduction

1. This matter comes before the Commission as a result of a status conference held in this matter pursuant to Commission Decision No. C05-0443, issued April 14, 2005. The status conference was held in response to a Joint Motion to Set Aside or Modify the Commission's Interim Decision No. C05-0442, Regarding the Joint Motion to Continue Hearing, Extend Procedural Deadlines and for Waiver of Response Time filed April 14, 2005 by Qwest Corporation (Qwest), the Colorado Office of Consumer Counsel (OCC) and Commission Staff (Staff) (collectively, Joint Movants).

2. After hearing representations of the Parties present at the April 15, 2005 status conference, and being fully advised in the matter, we set a procedural schedule consistent with the discussion below.

B. Background

3. On April 12, 2005, Joint Movants requested that the Commission vacate the first week of hearings on this matter, scheduled to begin April 18, 2005, and that hearings instead begin on April 25, 2005. Joint Movants represented that they had been engaged in extensive settlement discussions and made significant progress towards narrowing or resolving the disputed issues in these dockets. Among other procedural requests, the Joint Movants further requested a status conference be held on the afternoon of April 21, 2005, to allow the Joint Movants (and presumably, the other Parties to this matter) the opportunity to update the Commission on their progress and what issues remained for hearing.

4. In Decision No. C05-0442, we reminded the Joint Movants of our statutory obligation to render a decision in this matter no later than June 28, 2005. In consideration of this deadline, we partially granted Joint Movant's request by setting a deadline for filing a proposed stipulation and settlement agreement by 9:00 a.m. on April 19, 2005. We further ordered that should no settlement agreement be forthcoming by such deadline, hearings on Qwest's original application would commence on April 20, 2005 at 9:00 a.m.

5. Subsequently, on April 14, 2005, the Joint Movants filed the Motion to Set Aside or Modify Decision No. C05-0442. According to Joint Movants, our Interim Order did not provide adequate time for all Parties in this docket to continue settlement negotiations, draft a stipulation and simultaneously prepare for hearing. Joint Movants represent that it will be extremely problematic for them to meet the deadlines set forth in that Interim Order.

6. As a result, Joint Movants requested we vacate the scheduled hearing dates of April 18 through 22; commence hearings (presumably hearings on a settlement agreement, or if a settlement is not achieved, hearing on Qwest's application) on April 25; set additional hearing dates for the week of May 2, 2005; and extend various procedural deadlines including discovery response deadlines, the deadline to respond to Qwest's Motion to Modify Decision No. C05-0409, and Qwest's deadline to file witness lists and cross-examination times. Joint Movants further requested that a status conference be held on the afternoon of April 15, 2005 or morning of April 18, 2005 to inform the Commission of the status of negotiations and to provide the Commission with a date certain by which a stipulation could be filed.

7. Joint Movants maintain they, as well as other Parties to this docket, are working diligently towards a comprehensive settlement agreement of many, if not all the issues raised in Qwest's application. As such, Joint Movants request that this Commission give them due deference and grant the relief requested.

8. In an emergency Commission Deliberation Meeting held on April 14, 2005, we granted Joint Movant's request in part. We set a status conference for Friday April 15, 2005 at 9:00 a.m. to take comments from the Joint Movants as well as other Parties to this docket to ascertain updated, specific information about the status of settlement negotiations. To ensure such information was forthcoming, we additionally issued a set of questions which we required the Parties to be prepared to answer in detail at the status conference. It was also anticipated that those questions would assist us in attempting to reconcile the parties' need for additional time within which to submit a proposed settlement agreement with the Commission's need to meet its jurisdictional deadline.

9. The above-mentioned status conference was convened at 9:00 a.m. on Friday April 15, 2005. Parties entering appearances included Qwest, Staff, OCC, ICG, AT&T, Colorado Payphone Association, Covad Communications, XO Communications, Time-Warner, CBeyond, Eschelon, MCI and AARP.

10. Counsel for Qwest, speaking on behalf of the negotiating Parties, responded to the questions we propounded in Decision No. C05-0443. Those responses are as follows.

Question No. 1: Inquired as to which Parties were involved in settlement negotiations; which Parties are not participating; and which Parties anticipate asserting their right to a hearing, and the form of such a hearing.

Response: AARP, SECOM, the Home Builders Association, Colorado Telecommunications Association (CTA), and Century-Tel¹ are not actively involved in negotiations at this time, but are continuing to monitor the docket. Neither CTA nor Century-Tel request a hearing on any proposed settlement at this time. Colorado Payphone Association is in separate negotiations with Qwest, as is Home Builders Association.

Question No. 2: Information as to the current status of the settlement process.

Response: Discussions are on-going and moving towards resolution.

Question No. 3: The scope of the settlement, and whether there are major issues that will not be settled.

Response: Not sure at this time whether settlement will be totally comprehensive or global. It appears that 90 percent of the issues are resolved and only a “handful” of unresolved issues remain, with one major issue (from Qwest's perspective) still unresolved.

Counsel for AARP indicates it has reservations regarding the proposed settlement agreement in its current form and as such may raise notice issues when a proposed settlement is filed. AARP also represents it will likely request a full hearing with cross-examination on the proposed settlement.

¹At the status conference, Qwest made representations concerning SECOM, the Home Builders Association, CenturyTel and CTA who were not in attendance.

Counsel for Covad indicates that, although Covad has not been a participant in settlement talks to this point, given the nature of what it understands are some proposed terms, it will enter negotiations regarding a single issue.

Question No. 4: Whether an agreement in principle has been reached.

Response: See response to No. 3 above. The Parties in agreement with the resolved issues as indicated in No. 3 above include Qwest, Staff, OCC, MCI, AT&T, ICG, XO, CBeyond, Time Warner, Eschelon, and possibly Colorado Payphone Assoc. and Home Builders Assoc.

Question No. 5: Whether any agreement has been reduced to writing.

Response: Qwest's counsel indicates he has maintained a "term sheet" of the resolved issues to this point, however, no formal document has been drafted.

Question No. 6: When the Parties anticipate completion of the document and filing with the Commission.

Response: Counsel for Qwest represents the Parties require a filing date of close of business on April 22, 2005, with a hearing on the settlement to begin on April 25, 2005. In the alternative, the Parties request a settlement filing date of noon on April 25, 2005 with hearings beginning on May 2, 2005.

Question No. 7: Regarding procedural issues such as timelines for a hearing on a stipulation should an agreement be reached and a stipulation filed; time necessary for a hearing; how the docket should proceed if a settlement is approved only in part; whether a final date should be set for filing a stipulation; and, options for the Parties and Commission should no settlement be filed.

Response: Most of these issues were addressed and elaborated on in response to the questions above. Generally, the Parties indicated that at least one week would be necessary for a hearing on a proposed settlement agreement. Timelines were presented as indicated above in response to Question No. 6. If no settlement agreement is filed upon the agreed to date, it is understood by the Parties that a full hearing on Qwest's application will then ensue.

In direct response to Question No. 7(c),² counsel for Qwest indicated that should a settlement agreement be filed in this docket, Qwest would then consider the settlement agreement its “case in chief.” Counsel for Qwest further represented that, once the Commission renders a decision on such a settlement agreement (whether it be a grant, denial, grant in part or denial in part or modification), Qwest would consider that the Commission would have fulfilled its statutory obligation to render a decision within 270 days or no later than June 28, 2005.³ Qwest's counsel clarified, however, that that Qwest could ask for hearing on its original application should we deny a settlement agreement.⁴

C. Decision

11. Given the complexity of the issues involved, representations that active Parties may not participate in or have withdrawn from settlement negotiations, representations that the scope of a proposed settlement may have changed significantly, and given the rather limited time parameters with which we are faced in issuing a decision we shall implement the following schedule:

The public hearing shall proceed as scheduled at 4:00 p.m. on..... April 18, 2005

Responses to Qwest’s motion to modify Decision No. C05-0178

shall be due on April 22, 2005

² Question 7(c) asked: If a stipulation is presented but only approved in part by the Commission or denied by the Commission, how should the docket proceed? Specifically, what options exist at that point for the Commission and the parties?

³ See April 15 Status Conference Transcript at p. 13, line 4 through p. 15, line 1. As of the date of this decision, this reference is to an unfiled transcript.

⁴ The Commission does not take any position on this issue at this time. This is merely a statement made by Qwest’s counsel at the status conference. See April 15, 2005 Status Conference Transcript at p. 36 line 14 through p. 37 line 25.

Schedule A

If no stipulation is filed by close of business on April 22, 2005, the schedule shall proceed as follows:

Parties' witness lists due to Qwest on April 25, 2005
 Complete witness lists due to Commission by noon on April 26, 2005
 Discover cut-off on April 27, 2005
 Hearings on Qwest's application shall begin at 9:00 a.m. on April 27, 2005
 Statements of Position due..... May 16, 2005
 Commission Decision due June 28, 2005

Schedule B

If a stipulation is filed by close of business April 22, 2005, the schedule shall proceed as follows:

Signatories' witness lists due on April 22, 2005
 Non-signatories' witness lists due on April 26, 2005
 Any motions regarding the settlement or stipulation shall be filed
 by close of business on April 26, 2005
 Responses to motions shall be filed by close of business on April 28, 2005
 Deliberations regarding motions shall be conducted at 1:30 p.m. on April 29, 2005
 Discovery cut-off May 2, 2005
 Hearings shall begin
 (unless modified by subsequent Commission order) at 9:00 a.m. on May 2, 2005
 Statements of Position due..... May 16, 2005
 Commission Decision due June 28, 2005

12. Qwest's representation that a proposed stipulation and settlement agreement shall be substituted for its application and become its case in chief is important, procedurally. We interpret Qwest's representation to mean that Qwest, with the submission of a stipulation and

settlement agreement, shall have modified its request for relief from the specific relief requested in the application to the specific relief presented in the stipulation and settlement agreement. Additionally, in order to avoid any subsequent confusion or misunderstanding regarding statutory time requirements or due process concerns, we require Qwest to indicate in writing in its motion for approval of any stipulation or settlement agreement in this matter, that the filing of a settlement agreement or stipulation shall substitute for its application and become its “case in chief,” and a final Commission decision regarding such stipulation and settlement agreement will satisfy the Commission’s statutory obligation to render such a decision no later than June 28, 2005.

13. Based on Qwest’s representation at the status conference that any stipulation and settlement agreement would become its case in chief in substitute of its application, we require all Parties to enter into the record at hearing, all the pre-filed testimony they determine is in support of or relates to such a stipulation and settlement agreement.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Set Aside or Modify Decision No. C05-0442 and waive response time is granted in part and denied in part consistent with the discussion above.

2. A new procedural schedule with attendant new deadlines is adopted consistent with the discussion above.

3. Qwest Corporation shall, in any motion for approval of a stipulation and settlement agreement, include a statement that any stipulation and settlement agreement that is filed becomes its case in chief.

4. If a stipulation is filed, the signatory parties, including Qwest, shall provide a list of proposed witnesses along with the scope of each witnesses' testimony and estimated cross-examination times to Qwest by April 22, 2005.

5. If a stipulation is filed, any non-signatory Parties (that intend to participate at hearing), shall provide a list of proposed witnesses, scope of testimony and estimated cross-examination times to the Commission by April 26, 2005.

6. If no stipulation is filed, the Parties that intend to participate at hearing shall provide a list of proposed witnesses, along with the scope of each witnesses' testimony and estimated cross-examination times to Qwest by April 25, 2005.

7. Qwest shall prepare and provide by noon on April 26, 2005, a spreadsheet listing each parties' witness, along with scope of testimony and estimated cross-examination times.

8. Should a stipulation and settlement agreement be filed in this matter, all Parties shall enter into the record at hearing on the stipulation and settlement agreement all pre-filed testimony in support of, or that relates to, any such stipulation or settlement agreement.

9. This Order is effective upon its Mailed Date.

B. ADOPTED IN STATUS CONFERENCE April 15, 2005.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners