

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13C-1267T

IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES
AND COMMISSION RULES OF PRACTICE AND PROCEDURE RELATING TO THE
REQUIREMENT OF MAINTAINING CURRENT PROGRAM SURCHARGES IN LOCAL
EXCHANGE SERVICE TARIFFS OF COMPETITIVE LOCAL EXCHANGE CARRIERS,
AND EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE PROVIDERS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINT AGAINST ALL RESPONDENTS**

Mailed Date: February 7, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 5, 2013, the Commission issued a “Formal Complaint and Notice of Hearing” (Complaint).¹ Decision No. C13-1489. That Complaint commenced this proceeding. The Complaint was initiated to determine whether the identified telecommunications carriers violated §§ 40-3-103, 40-3-104, 40-15-502(4), and 40-15-503(2)(b)(V), C.R.S., and Rule 2122 of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2 and whether action should be taken against said carriers if it is found that the carriers committed said violations.

2. In Attachment A to the Complaint, the following Respondents are identified: Cardinal Broadband LLC, Dubois Telephone Exchange Inc., Falcon Broadband Inc.,

¹ The Complaint and Decision No. C13-1489 are the same document; reference herein to the Decision is a reference to the Complaint and vice versa.

Grand Valley Telecommunications Inc., Great Plains Communications, Ionex Communications North Inc., and Pac-West Telecom Inc.

3. Attachment B to the Complaint identifies the facilities-based carriers who connect the Respondents listed in Attachment A to the public switched network. Those carriers were joined as necessary parties in the event the Commission orders that the Attachment B carriers disconnect any entities listed on Attachment A from the public switched network.

4. By Decision No. R13-1560-I issued December 19, 2013, a hearing was scheduled in this matter for February 10, 2014 at 10:00 a.m.

5. On January 10, 2014, Commission trial Staff (Staff) filed a “Motion to Dismiss Certain Complaint Carriers” (Motion). The Motion seeks to dismiss certain identified carriers with prejudice on the grounds that the carriers have answered or satisfied the Complaint. In particular, the Motion seeks to dismiss the following carriers: Dubois Telephone Exchange Inc., Ionex Communications North Inc., Great Plains Communications, Pac-West Telecom Inc., and Grand Valley Telecommunications Inc. Staff states that these carriers have complied with Commission requirements. No response has been filed to the Motion.

6. On February 6, 2014, Staff filed a “Motion to Dismiss Certain Identified Carriers and to Vacate the Hearing on February 10, 2014” (second Motion). This second Motion seeks to dismiss with prejudice Falcon Broadband Inc., and Cardinal Broadband LLC and to vacate the hearing scheduled for February 10, 2014. As grounds, Staff states that these carriers have complied with Commission requirements.

7. The second Motion requests that the ALJ shorten the response time to the Motion to noon on Friday, February 7, 2014.

8. Combined, the Motion and the second Motion seeks dismissal of all Respondents identified in Attachment A of the Complaint.

9. The ALJ finds good cause to shorten the response time to the second Motion as requested, and will do so pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

10. No response has been filed to the second Motion by the shortened response time.

11. Because all the Respondents identified in Attachment A to the Complaint have complied with the pertinent Commission requirements, the ALJ finds good cause to grant both Motions to Dismiss. Given this, the ALJ finds good cause to vacate the February 10, 2014 hearing.

12. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The “Formal Complaint and Notice of Hearing” (Complaint), Decision No. C13-1489, is hereby dismissed with prejudice against all Respondents listed in Attachments A and B to the Complaint.

2. The hearing scheduled for February 10, 2014 at 10:00 a.m. is vacated.

3. Proceeding No. 13C-1267T is closed.

4. This Recommended Decision shall be effective on the date it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. 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 a 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; the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits the limit to be exceeded.

(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