

Decision No. R14-1323

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0958T

CARWILE CONSTRUCTION COMPANY, INC.,

COMPLAINANT,

V.

ESCHELON TELECOM OF COLORADO, INC. DBA INTEGRA TELECOM,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO DISMISS
AND VACATING HEARING**

Mailed Date: October 31, 2014

I. STATEMENT

1. On September 24, 2014, Complainant Carwile Construction Company Inc. (Complainant), filed a Complaint against Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom (Respondent or Integra).

2. On September 26, 2014, the Commission served its Order to Satisfy or Answer on Respondent and set an evidentiary hearing for December 8, 2014.

3. During the Commission's weekly meeting held October 1, 2014, the matter was referred to an administrative law judge for disposition

4. On October 16, 2014, Integra filed its Motion to Dismiss or in the Alternative, Answer (Motion). As grounds Integra argues that the Commission is without jurisdiction to grant the relief requested by the Complainant.

5. Based upon a review of the Commission's files it has been determined that the Complainant has failed to file a response to the Motion.

6. Complainant's response to the Motion was due on October 30, 2014. No response was filed on or before that date. In addition, the Complainant did not file a request for an extension of time to respond to the Motion.

7. Complainant's failure to so respond to the Motion shall be deemed a confession of the Motion to Dismiss. *Rule 1400 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1*. The Complainant failed to meet his burden to show the Commission has jurisdiction in this matter.

8. Based upon the forgoing circumstances, the above captioned Formal Complaint shall be dismissed.

9. Pursuant to § 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 Motion to Dismiss filed by Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom on October 16, 2014 is granted.

2. The Formal Complaint filed by Carwile Construction Company Inc. against Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom is dismissed without prejudice.

3. The hearing set in this matter for December 8, 2014 is vacated.

4. The proceeding is now closed.

5. 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.

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

7. 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.

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge