

Decision No. C04-1056

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-359AT

IN THE MATTER OF THE APPLICATION OF COLORADO TELESERV, INC. DOING
BUSINESS AS ROCK SOLID BROADBAND TO DISCONTINUE OR CURTAIL
JURISDICTIONAL TELECOMMUNICATIONS SERVICES.

**DECISION GRANTING JOINT MOTION AND
ACCEPTING STIPULATION IN PART**

Mailed Date: September 2, 2004

Adopted Date: September 2, 2004

Appearances:

Winslow B. Waxter, Esq., Denver, Colorado, for Intervenor Qwest
Corporation;

G. Harris Adams, Esq., Assistant Attorney General, for Intervenor
Colorado Office of Consumer Counsel; and

John J. Roberts, Esq., Assistant Attorney General, for Intervenor
Staff of the Colorado Public Utilities Commission.

I. STATEMENT

1. On July 9, 2004, Colorado Teleserv, Inc. (CTI or Applicant), filed a verified Application to Discontinue or Curtail Jurisdictional Telecommunications Service (Application). The proposed effective date to discontinue the telecommunications services provided by CTI is September 9, 2004. The Application commenced this proceeding.

2. The Commission issued a Notice of Application Filed (Notice) on July 13, 2004. The Commission subsequently amended the Notice. *See* Decision No. C04-0784; Amended Notice of Application Filed, dated July 15, 2004.

3. By Commission designation, Qwest Corporation (Qwest) was made an indispensable party. *See* Decision No. C04-0784. In that order the Commission also referred this matter to an administrative law judge (ALJ) and directed that this proceeding be heard on an expedited basis.

4. The Colorado Office of Consumer Counsel (OCC) intervened as of right in this proceeding. Staff of the Commission (Staff) also intervened as of right.

5. The ALJ, to whom this matter was assigned, found the Application to be complete as of July 20, 2004. *See* Decision No. R04-0801-I.

6. FRHC, Inc., formerly known as Frank Ramogida Holdings, Inc. (FRHC), petitioned for leave to intervene in this proceeding on July 22, 2004.¹

7. Following a prehearing conference held on August 2, 2004, the ALJ issued Decision No. R04-0894-I. This Order contained a procedural schedule and set this matter for hearing on September 2, 2004. This Order also granted the intervention of FRHC.

8. On August 6, 2004, Qwest and OCC filed a Joint Motion Requesting Initial Commission Decision and Request to Waive Response Time. On August 17, 2004, FRHC filed a response in opposition to the Joint Motion. The Commission denied this motion by Decision No. C04-0983 and instead vacated its prior decision (Decision No. C04-0784), referring the matter to an ALJ and deciding to hear the issue *en banc*. The same procedural schedule was retained.

9. Pursuant to the procedural schedule, each Party filed its list of witnesses.

10. On August 27, 2004, the OCC and Staff filed a Joint Motion to Approve Proposed Transition Plan, Request to Waive Certain Commission Rules, and Request to Shorten Response

¹ Qwest, OCC, Staff, and FRHC collectively, are the Intervenors. Applicant and the Intervenors, collectively, are the Parties.

Time (Joint Motion). The OCC and Staff are the Signatories to the Transition Plan and, though not signatories, Qwest and CTI do not oppose the Joint Motion. FRHC indicated its opposition to the shortened response time to the Joint Motion. In addition, the Parties testified concerning the proposed Transition Plan at the September 2, 2004 hearing. At the hearing the Parties had an opportunity to respond to the Joint Motion. The only party to oppose the Request to Shorten Response Time, FRHC, was not present at the hearing. As a result, the request to shorten response time will be granted.

11. On September 2, 2004, the Commission called this matter for hearing as scheduled. The hearing was held to receive testimony and evidence regarding the Transition Plan. The OCC presented the testimony of Ms. Dian Callaghan, its Administrative Director. Mr. Albert Brust, President of CTI, also testified regarding the relationship between CTI, FRHC and Rock Solid Broadband.

12. During the hearing, Hearing Exhibit Nos. 1 through 3 were marked, offered, and admitted into evidence. Hearing Exhibit No. 2, filed September 2, 2004 following the hearing, was admitted during the hearing as a late-filed exhibit. Exhibit No. 2 is an amended and corrected notice approved by Parties present at the hearing to be sent out by Qwest as discussed below. Reference to the Transition Plan in this Decision is to Hearing Exhibit No. 1.

13. Following the hearing, the Commission took this matter under advisement.

II. FINDINGS AND CONCLUSIONS

14. Applicant is a Colorado corporation. CTI seeks to discontinue providing regulated telecommunications service.

15. CTI holds a Certificate of Public Convenience and Necessity (CPCN) and a Letter of Registration (LOR) from the Commission to provide regulated telecommunications services in

Colorado and has tariffs on file with the Commission. It has an Interconnection Agreement with Qwest, and Qwest is CTI's wholesale service provider. As of the date of the hearing in this matter, CTI serves approximately 515 customers, primarily residential, in Colorado and provides both local telecommunications services and long-distance service.

16. At the hearing the Signatories presented testimony in support of the Transition Plan, which Qwest does not oppose. If the Transition Plan is accepted, the Signatories estimate that the transition process, which commences on the date on which CTI sends its letter to its customers and ends on the date on which the last CTI customer is disconnected from CTI, will take approximately 75 days. *See* Transition Plan, which is Appendix A to this Decision, at ¶ II.1.

17. Under the Transition Plan, CTI, or FRHC, on behalf of CTI, will give written notice to customers that it intends to leave the market and that they have the right to select an alternative telecommunications provider from a list provided with CTI's letter.² *See* Transition Plan at Attachments A and B.³ CTI will send the letter within ten calendar days of a final Commission decision in this matter. *See id.* at ¶ 4. CTI will provide separate written notice to interested governmental entities. *See id.*

18. To assure that no customer will lose telephone service through inaction, the Signatories propose that Qwest, which is the Provider of Last Resort in the area served by CTI, be designated as the default provider for all CTI customers. *See id.* at ¶ 3. Within 10 to 15 calendar days of the effective date of a final Commission decision in this matter, Qwest will send written notice to all CTI customers. This notice, which is Attachment C to the Transition Plan, will describe Qwest's role as the default provider in accordance with the Transition Plan, and is

² The list was prepared by the OCC and Staff.

³ The Plan calls for different notices to be sent to customers being provided service under the name Rock Solid Broadband, Attachment A, and Home Phone Company, Attachment B.

intended to satisfy the requirements of 47 *Code of Federal Regulations* (CFR) § 64.1120(e)(3). *See* Transition Plan at ¶ 6. The Transition Plan contains provisions which explain how and under what terms Qwest, as the default provider, will migrate CTI's customers to Qwest.⁴ The transfer of CTI's customers to the default provider will not begin until 30 days after Qwest sends its letter. *See id.* at ¶ 9.

19. At any time during and after the transition period, customers may change providers if they wish to do so. *See id.* at ¶ 1. Affected customers will not be charged for the transfer to the default provider. Each affected customer will have the same telephone number irrespective of the alternative provider (including the default provider) to which the customer migrates. Qwest, as the default provider, will attempt to match the services, products, and features (including long-distance, as applicable) provided by CTI. *See id.* at ¶¶ 6 and 9 and Attachment C.

20. The Transition Plan contains protections for CTI's customers with respect to deposits (*see id.* at ¶ 14), prepayment for service (*see id.* at ¶ 15), and billing (*see id.* at ¶ 16). These provisions address the OCC's and Staff's concern regarding the possibility that CTI might overcollect from, or double-bill, its customers. The Transition Plan also contains a provision under which Qwest will cease to bill CTI for wholesale services used to provide service to a customer who has transferred to another provider (*see id.* at ¶ 13).

21. At the conclusion of the transition period (that is, on the date on which the last CTI customer is transitioned to Qwest or is disconnected from CTI), CTI will cease providing local exchange service and long-distance service in Colorado. *See id.* at ¶ 12. CTI will surrender

⁴ There are separate provisions for migration of CTI customers who do not have a past indebtedness to Qwest for jurisdictional service and for migration of CTI customers who have a past indebtedness to Qwest for jurisdictional service.

its CPCN and its LOR, and its tariffs will be automatically canceled, at the conclusion of the transition period. *See id.* at ¶ 17.

22. CTI and Qwest will each file information and reports with the Commission at various times during the transition period.

23. The Commission notes that there are other provisions in the Transition Plan. If a provision is not discussed, the provision is nonetheless part of the Transition Plan approved by this Decision.

24. The Commission finds and concludes that the Transition Plan is in the public interest. The Transition Plan provides a sound method to transfer CTI customers to Qwest and to other carriers/providers in as transparent and seamless a process as possible under the circumstances. When a provider ceases operations, ensuring that its customers are not deprived of telephone service is of paramount importance. Based on the record, the Transition Plan proposed in this matter serves that purpose. The Transition Plan is approved with modification discussed below. The Signatories and Qwest will be ordered to implement the Transition Plan with the exception of the notice requirements.

25. Although we approve the Transition Plan as proposed, we nonetheless find it is more prudent at this time to order Qwest to provide the customer notice of disconnection rather than CTI or FRHC. Our concern in this matter stems from the fact that Mr. Brust offered testimony that CTI is no longer operating as a going concern and has neither the means or inclination to provide notice to the affected customers. We are also concerned that FRHC, though it represented to OCC and Staff it would assume responsibility for providing the disconnection notice to the affected customers, chose not to participate in the hearing on this matter. Finally, given the confusion over the relationships between CTI, FRHC and Rock Solid

Broadband, we find it dubious at best to assume that any of those parties will assume the responsibility to provide the required notice letters to the affected customers. We commend Qwest for representing at the hearing that it will assume this responsibility.

26. Therefore, Qwest shall provide notice to the affected customers utilizing the notice letter submitted for Commission approval as late-filed Hearing Exhibit No. 2. We also order that no other party to this proceeding shall attempt to provide any notice to the affected customers regarding the disconnection. The notice letter which will be sent by Qwest shall constitute the only Commission-authorized notice to the affected customers.

27. Attached to the late-filed Hearing Exhibit No. 2 was an affidavit of Robert Bowen, President of FRHC. The Parties request that we accept this affidavit as a late-filed Exhibit No. 4. We grant that request. In this affidavit, Mr. Bowen states that FRHC has reviewed the Joint Motion and Transition Plan and has no objection to the Commission granting the Motion. With this filing, all Parties are either Signatories or do not oppose the Plan. As such, we assume no applications for rehearing, reargument, or reconsideration will be filed. Therefore, Qwest's notice shall be mailed within five business days of the effective date of this Order. All other associated timelines shall continue from that date.

28. Qwest will be designated as the default provider of telecommunications service for CTI's current customers who do not designate an alternate provider.

29. Qwest's wholesale operations will be ordered and authorized to communicate with Qwest's retail operations concerning the affected customers in order to meet, and solely for the purpose of meeting, Qwest's obligations under the Transition Plan.

30. The Application to discontinue offering basic local exchange services in Colorado will be granted so long as the Transition Plan is implemented fully in accordance with this

Decision. In no event, however, shall CTI discontinue service without first submitting the necessary change order requests (*i.e.*, the Local Service Requests) to Qwest with the necessary information to switch these customers.

31. In the Joint Motion, the Signatories request that the Commission waive the Rule 4 CCR 723-25-7.6(d) requirement to attach to the Notices the most recent jurisdictional list of local exchange providers maintained by the Commission. Instead, the Signatories propose to substitute the list of alternative providers prepared by Staff and the OCC. *See* Transition Plan at Attachment A and B. The proposed list contains the names and current contact information of telecommunications service providers who are ready, willing, and able immediately to process and to complete customer orders for service when they are received from CTI's customers. Given the relatively short transition period and the need for CTI's customers to be able to find an alternative provider which can accommodate them, the waiver will be granted.

32. In the Joint Motion, the Signatories request waiver of the Rules Regulating the Changing of Presubscription, found at 4 CCR 723-2-25, including the requirement to obtain a letter of agency from the customer authorizing a change of providers/carriers. The Signatories request this change to permit the default provider automatically to transfer customers who do not choose another provider or carrier so that the transition is seamless and preserves the customer's telephone service uninterrupted. The waiver will be granted in order to facilitate the transfer of CTI's customers.

33. In the Joint Motion, the Signatories request waiver of Rule 4 CCR 723-2-25.4.1 of the Rules Regulating the Changing of Presubscription. This specific Rule requires written customer authorization to remove a freeze of a local provider or long-distance provider. In addition, the Signatories request that the Commission order Qwest and CTI to remove all

preferred carrier freezes before the Notices are sent. According to the Signatories, granting these requests will make the transition process easier for CTI's customers and will facilitate Qwest's providing service as the default provider. The waiver and the request will be granted in order to facilitate the transfer of CTI's customers.

34. In the Joint Motion, the Signatories seek a waiver of Rule 4 CCR 723-2-27.4.2, which requires a local exchange carrier to inform new customers about their interLATA and intraLATA toll carrier options. The Transition Plan Notices will advise CTI's customers who have CTI as their long-distance carrier that they must choose another long-distance provider or be defaulted to Qwest long-distance service. According to the Signatories, granting these requests will make the transition process easier for CTI's customers and will facilitate Qwest's providing service as the default provider. The waiver will be granted in order to facilitate the transfer of CTI's customers.

35. In the Joint Motion the Signatories request waiver of any claim of "cramming" or unauthorized charges on a customer's bill that may appear inadvertently when a customer's enhanced services or packaged service is transferred. The Signatories represent that this waiver is required because the default provider's and CTI's bundled service offerings may not be exactly the same. The requested waiver will be granted.

III. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Proposed Transition Plan is granted in part as discussed above.

2. The Transition Plan signed by the Colorado Office of Consumer Counsel and Staff, supported by Qwest Corporation and filed on August 27, 2004, is approved consistent with

the discussion above. The approved Transition Plan is attached to this Order as Appendix A and is incorporated here as if fully set out. In no event, shall Colorado Teleserv, Inc., discontinue service without first submitting the necessary change order requests (*i.e.*, the Local Service Requests) to Qwest Corporation with the necessary information to switch Colorado Teleserv, Inc.'s customers.

3. Colorado Teleserv, Inc.'s Application to Discontinue Offering Basic Local Exchange Services in Colorado is granted, consistent with the above discussion.

4. Qwest Corporation is designated as the default provider for telecommunications services, consistent with the above discussion.

5. Hearing Exhibit No. 2 is approved as the official and only disconnection notice to be provided by Qwest Corporation to the affected customers.

6. Qwest Corporation is designated as the only party authorized to provide notice of the disconnection, submitted as Hearing Exhibit No. 2 and approved by the Commission.

7. The Commission's Rule Regulating the Changing of Presubscription found at 4 *Code of Colorado Regulations* 723-2-25, including the requirement to obtain a letter of agency from the customer authorizing a change of providers/carriers, is waived for the purpose of implementing the Transition Plan.

8. Rule 4 *Code of Colorado Regulations* 723-25-7.6(d) is waived for the purpose of implementing the Transition Plan. The List of Alternative Local Telephone Service Companies, dated August 27, 2004 and appended to Attachment A to the Transition Plan, is to be used.

9. Rule 4 *Code of Colorado Regulations* 723-2-25.4.1 is waived for the purpose of implementing the Transition Plan.

10. Qwest Corporation and Colorado Teleserv, Inc., shall remove all preferred carrier freezes before the Notices require by the Transition Plan are sent.

11. Rule 4 *Code of Colorado Regulations* 723-2-27.4.2 is waived for the purpose of implementing the Transition Plan.

12. Commission rules addressing the cramming prohibitions are waived as necessary for the purpose of implementing the Transition Plan.

13. Qwest Corporation's wholesale operations are authorized to communicate with Qwest Corporation's retail operations to the extent necessary to meet, and solely for the purpose of meeting, Qwest Corporation's obligations under the Transition Plan.

14. The Request to Shorten Response Time to the Joint Motion to Approve Proposed Transition Plan and Request to Waive Certain Commission Rules is granted.

15. This Order is effective on its Mailed Date.

**B. Adopted in Commissions' Deliberations Meeting
September 2, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners