

Decision No. C04-1402

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.

ORDER SETTING PROCEDURAL SCHEDULE

Mailed Date: November 29, 2004

Adopted Date: November 23, 2004

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of matters discussed by the Commission and parties at a prehearing conference on November 23, 2004, and which are relevant to scheduling a hearing in these combined dockets. Specifically, in this order we rule on interventions, set procedural timelines, establish the allotted time for discovery responses, request legal briefs on two issues, extend our decision due date by a statutorily permitted time of 90 days, and address other administrative matters.

B. Interventions

2. We construe all company interventions as notices to receive all filings in this matter. All service providers, with the exception of the small rural incumbent local exchange carriers, have already been made parties to this docket in Commission Decision No. C04-1296. The Colorado Payphone Association, the Colorado Association of Home Builders, CenturyTel of Eagle, Inc., and CenturyTel of Colorado, Inc. have all petitioned for intervention by motion, and we now grant these motions. The rights of these parties and their members will potentially be affected by a Commission decision in this matter, and they should have the ability to participate fully. All other parties who have filed notices with the Commission to date shall be added to the official service list.

C. Timelines

3. Initially, pursuant to § 40-15-305(c), C.R.S., we extend by 90 days the time period in which we must issue a decision in this matter. It will be virtually impossible to give due consideration to all the parties' arguments given the complex nature of this matter without this

extension. The additional time will be necessary for the Commission to adequately and completely fulfill its statutory obligations.

4. Procedural rules contained in 4 *Code of Colorado Regulations* (CCR) 723-38-10 will not provide workable timelines for discovery in this case, and were waived in Decision No. C04-1203, which was issued on October 15, 2004. (Specifically, 4 CCR 723-38-10.2.4.2 provides that all discovery shall be completed within 90 days of the issuance of this procedural order, and response time to discovery requests shall be 20 days.) Qwest Corporation (Qwest) in its application remarked that many of the Commission rules were not workable with respect to its application. We find that to be the case with respect to procedural deadlines.

5. The following deadlines shall apply to this docket:

<u>DATE (All 2005)</u>	<u>EVENT</u>
January 7	Legal Briefs due
January 24	Reply Legal Briefs due
February 18	Answer Testimony due
February 18	Discovery cut off for Direct Testimony
March 25	Cross-Answer and Rebuttal Testimony due
March 25	Discovery cut off for Direct Testimony
April 18	Discovery cut off for Cross-Answer and Rebuttal Testimony
April 18-29	Hearing
May 16	Statements of Position due
June 28	Commission order due

All deadlines are 5 p.m. on the day of the deadline. "Discovery cut off" means that requests for information shall not be submitted later than 5 p.m. on the day of the deadline. The following

deadlines shall apply to responses to discovery requests in these combined dockets, and objections and responses shall be submitted together:

<u>TYPE OF REQUEST</u>	<u>DEADLINE FOR RESPONSES/OBJECTIONS</u>
Discovery on Direct Testimony	10 days
Discovery on Answer Testimony.....	8 days
Discovery on Cross-Answer and Rebuttal Testimony.....	6 days

Responses shall be provided by 5 p.m. on the day of the deadline.

D. Prehearing Motions

6. Because the timelines in this matter are relatively tight, and because the time allotted to the Commission to issue a decision is short relative to the task, in order to expedite resolution of prehearing motions, we now refer all motions (including motions to compel discovery and all motions concerning discovery disputes) to an Administrative Law Judge (ALJ). We fully expect that the parties will settle these types of discovery disputes among themselves, to the extent possible, and thus avoid the need for an ALJ's services. We exclude from referral to an ALJ motions for summary judgment, motions to dismiss, motions to exclude evidence, and motions that would change the procedural schedule. We also reserve the right to rule on any other motions that might warrant a Commission decision.

E. Legal Issues

7. There are two outstanding legal issues that the Commission believes are important to determining the outcome of Qwest's application. The first is the movement of services within one application from part 2 to part 3 and then directly to part 4 of Article 15. Qwest's application seeks to move certain services, currently regulated under Title 40, Article 15 part 2, to the regulatory apparatus in part 3 of Article 15, and then directly to § 40-15-401 *et seq.*, C.R.S.,

without any transition period under the regulatory scheme in part 3. As requested in the application, the Commission would in effect shift services from regulation under part 2 directly to deregulation under part 4. Section 40-15-207(1)(a), C.R.S., provides:

Notwithstanding any other provision of this title, upon its own motion or upon application by any person, the commission shall regulate, *pursuant to part 3 of this article, specific telecommunications services regulated under this part 2* upon a finding that there is effective competition in the relevant market for such service and that such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates. (emphasis added)

The Commission seeks input from the parties as to whether, given the language above, a particular service currently regulated under part 2 may be moved directly to part 4 and be unregulated, without having been regulated for any significant time under part 3.

8. The Commission also seeks input from the parties as to what statutory provisions would apply to a service deregulated pursuant to this application. We understand that briefs on this issue will elaborate upon material provided in Qwest's application. Some questions that should be answered include: If a service is deregulated pursuant to Qwest's application, what portions of Title 40 would still apply to that service? For example, § 40-15-402(1), C.R.S., provides: "Nothing in articles 1 to 7 of this title or parts 2 and 3 of this article shall apply to deregulated services and products pursuant to this part 4." Does it follow that §§ 40-15-101 through 113, C.R.S., would apply? What about §§ 40-15-501 *et seq.*, C.R.S.? Would this be at the discretion of the Commission? If a service is deregulated, will there be any resulting inconsistencies with respect to statutory treatment of that service? Generally, what authority would remain with the Commission, if any, to administer Title 40 C.R.S.?

9. Because discussion provided by parties with respect to these two issues could significantly narrow the scope of the proceedings, we request that parties submit briefs on these

two issues. Initial briefs shall be due on January 7, 2005, and reply briefs shall be due on January 24, 2005. Parties are not required to submit briefs, but, if they choose to do so, they must be submitted by the dates fixed here. These dates are also noted in the procedural schedule above.

F. Other Administrative Matters

10. The Office of Consumer Counsel, AARP, and Staff have requested that the Commission hold public hearings on this matter. We plan to do so, but will establish times and locations as the case progresses.

11. We also note that in order to receive “confidential information,” and “highly confidential information,” non-disclosure agreements must be filed for each type of information. Thus, parties seeking access to all confidential information must file two types of non-disclosure agreements.

12. Commission Advisory Staff should not be sent copies of discovery requests, or responses.

13. Electronic service of documents shall be permitted. It shall be the parties’ responsibility to ensure that electronic mail systems are compatible with electronic service. Commission Advisory Staff and counsel shall be provided hard copies of all documents (except discovery) served in this matter. An official service list (which may be added to depending on future requests for intervention) is available from the following link to the Commission’s website www.dora.state.co.us/puc/docket_activity/HighprofileDockets/04A-411T.htm#servicelist. As always, the appropriate number of hard copies also shall be filed with the Commission.

II. ORDER**A. The Commission Orders That:**

1. The procedural schedule is fixed as set forth above.
2. Deadlines for discovery requests, and deadlines for responses are fixed as set forth above.
3. Legal briefs may be, but need not be filed by the parties as discussed above. However, in order to be considered, briefs must be submitted by the dates set forth in the procedural schedule above.
4. Prehearing motions shall be referred to an administrative law judge save for motions to dismiss, motions for summary judgment, motions to exclude evidence, motions to change the procedural schedule, and any other motion the Commission decides it should determine.
5. The motions to intervene of Colorado Payphone Association, the Colorado Association of Home Builders, CenturyTel of Eagle, Inc., and CenturyTel of Colorado, Inc. are granted.
6. Electronic service of documents shall be permitted consistent with the above discussion. It is the parties' responsibility to ensure that this is technically feasible.
7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
November 23, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners