

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-550T

IN THE MATTER OF THE APPLICATION FOR DECLARATORY RELIEF OR
ALTERNATIVE RELIEF FILED BY DIECA COMMUNICATIONS, INC. D/B/A COVAD
COMMUNICATIONS COMPANY REGARDING PARTICIPATION IN THE CHANGE
MANAGEMENT PROCESS FOR LOCAL SERVICE.

ORDER DENYING APPLICATION AS MOOT

Mailed Date: December 27, 2004
Adopted Date: December 15, 2004

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. On October 26, 2004, DIECA Communications, Inc., doing business as Covad Communications Company (Covad) filed an Application for a Declaratory Order Regarding Participation in the Change Management Process for Local Service.

2. Covad states in this Application that in Docket No. 98A-300T, the Commission granted it a Certificate of Public Convenience and Necessity (CPCN) authorizing it to provide local exchange service. Covad was given five years to file a local exchange tariff or its CPCN would be declared null and void. Covad requested and was granted numerous extensions of time to file its tariff, ending with Decision No. C04-1166 which granted Covad an extension until December 6, 2004.

3. Covad is concerned about its ability to participate in the Change Management Process (CMP) if it does not possess a CPCN. Covad believes, according to the language of the CMP document, a carrier must be certified by the state, in other words be a Competitive Local

Exchange Carrier (CLEC), in order to participate in CMP. Covad believes that this was not the intention of the authors of the CMP document. However, Covad asserts that Qwest Corporation (Qwest) representatives have expressed their position that a CPCN may be a prerequisite for participation in the CMP.

4. Covad requests that the Commission grant one of the following forms of relief:

- a) Issue a Declaratory Order stating that Covad may participate in the CMP despite the fact that Covad does not possess a CPCN;
- b) Issue an Order amending the CMP to explicitly allow participation by non-certified carriers;
- c) Grant Covad a waiver of 4 *Colorado Code of Regulations* 723-25-6, allowing Covad to retain its CPCN notwithstanding the fact that it has not filed tariffs for the provision of jurisdictional service; or
- d) Any other form of relief the Commission deems appropriate that will achieve the result desired by Covad.

5. On November 23, 2004, Qwest filed an Entry of Appearance and Notice of Intervention and a Response to Application for Declaratory Order (Response) in this docket. In its Response, Qwest states that it is unable to respond to Covad's allegations that a Qwest representative expressed that a CPCN may be a prerequisite for participation in CMP. However, Qwest states that it believes a carrier need not possess a CPCN from this Commission in order to participate in the CMP.

6. Qwest suggests, therefore, that a declaratory order is not needed and Covad's Application should be dismissed.

7. On December 6, 2004, in compliance with Decision No. C04-1166, Covad filed an Initial Technical Trial Tariff attached to Advice Letter No. 1. This tariff includes the terms and conditions for a technical trial to be implemented by Covad for a local exchange jurisdictional service offering to be effective January 6, 2005. With this filing, Covad has met the terms of the

decision authorizing its CPCN and is a jurisdictional CLEC. As a result, we find the request for declaratory relief is moot.

8. It is because of Covad's local tariff filing and not because of Qwest's assertion in its Response, that we find Covad's request to be moot. We are not compelled by Qwest's statement that non-certified carriers can "participate" in CMP, because that level of participation is not defined by Qwest in its response. It is not clear whether Qwest is contemplating something other than the full and active participation that Covad has in mind.

9. If, in the future, Covad determines that it will not convert its technical trial to a full service offering, thereby relinquishing its CPCN, it can file a similar application for declaratory relief for a decision on the merits, at that time.

II. ORDER

A. The Commission Orders That:

1. DIECA Communications, Inc., doing business as Covad Communications Company's Application for a Declaratory Order Regarding Participation in the Change Management Process for Local Service is denied as moot.

2. Qwest Corporation's Entry of Appearance and Notice of Intervention is denied as moot.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 15, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners