

Decision No. R04-0373-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-054T

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO EXECUTE A TRANSFER
OF COLORADO TELESERV, INC.

DOCKET NO. 04A-079T

IN THE MATTER OF THE APPLICATION OF FRANK RAMOGIDA HOLDINGS (CO),
INC., DOING BUSINESS AS ROCK SOLID BROADBAND, FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES AND FOR A LETTER OF REGISTRATION TO
PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION TO CONSOLIDATE,
CONSOLIDATING DOCKETS, SETTING
HEARING, ESTABLISHING PROCEDURAL
SCHEDULE, SHORTENING RESPONSE
TIME, AND DENYING AS MOOT REQUEST
FOR WAIVER OF RESPONSE TIME**

Mailed Date: April 12, 2004

I. STATEMENT

1. On February 3, 2004, Colorado Teleserv, Inc. (Teleserv), and Frank Ramogida Holdings (CO), Inc. (FRHC), filed an Application Requesting Authority to Execute a Transfer (Transfer Application). By this verified filing Teleserv and FRHC seek authority to transfer a controlling interest in Teleserv to FRHC. The Transfer Application commenced Docket No. 04A-054T (Transfer Proceeding). On February 3, 2004, Telserv and FRHC also filed Supplemental Material in Support of the Transfer Application.

2. On February 4, 2004, the Commission gave public notice of the Transfer Application. *See* Notice of Application Filed, dated February 4, 2004 (Transfer Notice). On March 25, 2004, by Decision No. R04-0309-I, the undersigned Administrative Law Judge (ALJ) vacated the procedural schedule established in the Transfer Notice and set a prehearing conference for April 8, 2004.

3. The Commission deemed the Transfer Application complete as of March 22, 2004. *See* Minute Order dated March 17, 2004.

4. On March 24, 2004, Staff of the Commission (Staff) intervened of right and requested a hearing in the Transfer Proceeding. This is the only intervention in that proceeding.

5. On February 23, 2004, FRHC filed an Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services (CPCN Application). By this verified filing FRHC seeks a Certificate of Public Convenience and Necessity (CPCN) and a Letter of Registration to provide telecommunications service in Colorado. FRHC did not file testimony and exhibits in support of the CPCN Application. The CPCN Application commenced Docket No. 04A-079T (CPCN Proceeding).

6. On February 24, 2004, the Commission gave public notice of the CPCN Application. *See* Notice of New Applications Filed, posted to the Commission's website.

7. The Commission deemed the CPCN Application complete as of March 30, 2004. *See* Minute Order dated March 26, 2004.

8. On March 29, 2004, Staff intervened of right and requested a hearing in the CPCN Proceeding. This is the only intervention in that proceeding.

9. On April 2, 2004, in both the Transfer Proceeding and the CPCN Proceeding, Staff filed an Unopposed Motion to Consolidate Docket No. 04A-054T with Docket No. 04A-079T (Motion). In support of its Motion Staff states that the issues in the Transfer Proceeding and the CPCN Proceeding are substantially similar, that consolidation will result in administrative efficiency, and that consolidation will not prejudice the rights of the parties. The Motion is unopposed. Review of the two applications and of Staff's interventions establishes that the issues in the two cases are substantially similar. The requirements of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-79(a) have been met. The Motion will be granted, and the two proceedings will be consolidated.

10. Pursuant to Decision No. R04-0309-I the ALJ held a prehearing conference on April 8, 2004. All parties in the Transfer Proceeding and in the CPCN Proceeding were present,¹ were represented, and participated.

11. As a result of the discussions held during the prehearing conference, the ALJ adopted the following procedural schedule: (a) on or before **May 21, 2004**, Applicants² will file their direct testimony and exhibits; (b) on or before **June 18, 2004**, Staff will file its answer testimony and exhibits; (c) on or before **June 28, 2004**, Applicants will file their rebuttal testimony and exhibits; (d) on or before **July 1, 2004**, each party will file its corrected testimony

¹ At the prehearing conference the parties advised the ALJ that they did not oppose consolidation. The ALJ advised the parties that she would grant the motion to consolidate. As a result of the opportunity for the parties to address the motion to consolidate, the request for waiver of response time is denied as moot.

² Reference to Applicants is to the applicants (*i.e.*, Teleserv and FRHC) in the Transfer Proceeding and to the applicant (*i.e.*, FRHC) in the CPCN Proceeding, collectively.

and exhibits;³ (e) on or before **July 1, 2004**, each party will file its prehearing motions; (f) if necessary, a final prehearing conference will be held on **July 6, 2004**;⁴ (g) on or before **July 8, 2004**, the parties will file any stipulation reached; (h) the hearing will be held on **July 12, 2004**; and (i) on or before **August 13, 2004**, parties will file post-hearing statements of position, to which there will be no response (absent further order).

12. Response time to a prehearing motion filed after June 18, 2004, will be shortened to seven calendar days.

13. Rule 4 CCR 723-1-77 governs discovery in this proceeding *except* response time for discovery directed to Staff's answer testimony and exhibits and response time for discovery directed to Applicants' rebuttal testimony and exhibits will be shortened to three calendar days.

14. This schedule will permit the Commission to meet the § 40-6-109.5, C.R.S., time frames (*i.e.*, a Commission decision on or before October 18, 2004). In addition, the Applicants in the Transfer Proceeding stated that the schedule satisfies their request that the Transfer Application be given expedited treatment. *See* Transfer Application at ¶ 8.1.5.

15. Rule 4 CCR 723-1-22(d)(3) states: "If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading." If a party wishes the ALJ to consider a cited authority, *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

³ This requirement is new and was not discussed during the prehearing conference.

⁴ If the parties do not wish to have a final prehearing conference, they are directed to contact the ALJ no later than noon on July 2, 2004, to inform her of that fact.

16. The parties are requested to provide the decision number when referring to a Commission decision.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Consolidate Docket No. 04A-054T with Docket No. 04A-079T is granted.

2. Dockets No. 04A-054T and No. 04A-079T are consolidated for all purposes.

3. A prehearing conference in this docket is scheduled as follows:

DATE: July 6, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

4. Hearing shall be conducted in this matter at the following date, time, and place:

DATE: July 12, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

5. The procedural schedule and other requirements set out above are adopted.

6. Absent further order, the parties shall comply with the procedural schedule and other requirements set out above.

7. Response time to a prehearing motion filed after June 18, 2004, is shortened to seven calendar days.

8. Response time for discovery directed to Staff of the Commission's answer testimony and exhibits is shortened to three calendar days.

9. Response time for discovery directed to Applicants' rebuttal testimony and exhibits is shortened to three calendar days.

10. The request for waiver of response time to the Unopposed Motion to Consolidate Docket No. 04A-054T with Docket No. 04A-079T is denied as moot.

11. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge