

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-496T

IN THE MATTER OF THE JOINT APPLICATION TO EXPAND THE LOCAL CALLING
AREA IN NORTHERN COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DENYING MOTION OF THE CITY
OF LOVELAND, COLORADO REQUESTING
THAT THE COLORADO PUBLIC UTILITIES
COMMISSION GRANT AN EXCEPTION TO
4 CCR 723-2-17.3.6.1 AND REQUIRE THE
LOCAL EXCHANGE PROVIDERS TO
INCLUDE COMMERCIAL CUSTOMERS
IN THE CUSTOMER SURVEY**

Mailed Date: April 16, 2004

I. STATEMENT

1. On April 1, 2004, the City of Loveland, Colorado (Loveland) filed a Motion Requesting the Colorado Public Utilities Commission (Commission) to make an exception to 4 *Code of Colorado Regulations* (CCR) 723-2-17.3.6.1. Loveland requests that the local exchange providers, Qwest Corporation (Qwest) and Nunn Telephone Company be required to include commercial customers in the customer survey.

2. Loveland argues that commercial customers should be included in the survey since a possible rate increase will affect them and the inclusion of commercial customers in the survey will provide for a more complete understanding of the community's desire for expansion.

3. Responses to the motion were filed by the Colorado Office of Consumer Counsel (OCC), Qwest, and Staff of the Commission (Staff).

4. Qwest does not object to the motion as long as a single survey is mailed including both residential and business customers. Qwest objects to any proposal that increases the cost of the survey, such as a proposal that would increase the sample size or require more than one survey to be mailed.

5. Staff does not oppose the motion of Loveland to include business customers in the survey. However, it agrees with Qwest's position that it would be opposed to any proposal that increases the cost of the survey.

6. OCC objects to the motion, pointing out that 4 CCR 723-2-17.3.6.1 requires affected local exchange providers to conduct a survey of all **residential** customers in the relevant exchange areas. OCC believes that Loveland has failed to show good cause for an exception to the rule.

7. Rule 4 CCR 723-2-17.3.6.1 states:

When a local calling area is proposed to be expanded, a statistically valid survey of all residential customers in the exchange areas being considered for calling area expansion shall be performed by the affected local exchange provider(s). The statistical sample of residential customers shall be sized to produce not more than plus or minus five percent margin of error. The survey must explain the proposed expansion of the local calling area and the resultant increase in local rates. The survey results must demonstrate at least a 50 % positive acceptance of the local calling area at the stated rate levels. The Customer Survey shall be completed within 30 days of Commission notification or as ordered.

8. The Commission's rules pursuant to 4 CCR 723-2-1.3 provide exceptions to the rules as follows:

The adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service equipment, facilities, or standards, either upon complaint or upon the Commission's own motion, or upon the application of any entity under its jurisdiction. In special cases for good cause shown, not contrary to law, the

Commission may permit deviation from these rules insofar as it may find compliance to be impossible, impractical, or unnecessary.

9. Rule 4 CCR 723-2-17.3.6.1 clearly requires affected local exchange providers to conduct a statistically valid survey of all residential customers in exchange areas being considered for expansion. It does not require inclusion of commercial customers or a combined survey of residential and commercial customers. Although the Commission's rules pursuant to 4 CCR 723-2-1.3 provides that the Commission may make exceptions to the rules, Loveland has failed to show good cause to demonstrate that compliance is impossible, impractical, or unnecessary. Therefore, the motion of Loveland will be denied.

II. ORDER

A. It Is Ordered That:

1. The motion of the City of Loveland for the Commission to make an exception to 4 *Code of Colorado Regulations* 723-2-17.3.6.1 is denied.
2. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge