

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-197T

IN THE MATTER OF THE JOINT APPLICATION OF SUNWEST COMMUNICATIONS, INC., AND USURF AMERICA, INC., FOR AN ORDER APPROVING THE TRANSFER OF SUNWEST COMMUNICATIONS, INC., TO UTEL, INC.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SETTING PREHEARING CONFERENCE,
EXTENDING DATE FOR COMMISSION DECISION,
AND STATING ISSUES FOR DISCUSSION**

Mailed Date: June 23, 2004

I. STATEMENT

1. On April 23, 2004, SunWest Communications, Inc., UTEL, Inc., and USURF America, Inc. (collectively, Applicants), jointly filed an Application in which they seek a Commission order approving the transfer of the assets of SunWest Communications, Inc., to UTEL, Inc., which is a wholly-owned subsidiary of USURF America, Inc. (Application). When they filed the Application, Applicants filed the direct testimony and exhibits of Messrs. Atkinson and McKinnon.¹ The Application commenced this docket.

2. On April 27, 2004, the Commission gave public notice of the Application. *See* Notice of Application Filed (Notice), dated April 27, 2004. In that Notice, the Commission

¹ An exhibit appended to the Application and an exhibit appended to the Direct Testimony of Mr. McKinnon were filed under seal with the Commission.

established a 30-day intervention period and a procedural schedule in this proceeding. This Order will vacate that procedural schedule.

3. On May 19, 2004, Applicants submitted a letter to Mr. Bruce N. Smith, Director of the Commission. Several documents were appended to that letter. It is not clear whether Applicants intend some or all of those documents to amend or to supplement the Application. This is an issue which Applicants must be prepared to address at the prehearing conference scheduled by this Order.

4. On May 27, 2004, the Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right and requested a hearing.

5. On June 8, 2004, the Commission deemed the Application complete as of June 11, 2004.

6. On June 21, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing. OCC and Staff (collectively, Intervenors) and Applicants are the only parties in this proceeding.

7. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. To do so, a prehearing conference will be held on July 16, 2004. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and Rule 4 CCR 723-1-79(b)(4) govern this prehearing conference.

8. The parties should be prepared to discuss the following matters at the prehearing conference: (a) date by which Intervenors will file their answer testimony and exhibits; (b) date by which Applicants will file their rebuttal testimony and exhibits; (c) date by which Intervenors

will file their cross-answer testimony and exhibits;² (d) date by which each party will file its corrected testimony and exhibits; (e) date by which each party will file its prehearing motions;³ (f) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (g) date by which the parties will file any stipulation reached;⁴ (h) hearing date(s); and (i) whether post-hearing statements of position are necessary and, if they are, whether the statements should be written or oral and, if written, whether responses should be permitted. In addition, the parties should be prepared to discuss any matters pertaining to discovery if the procedures of Rule 4 CCR 723-1-77 are not sufficient. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Moreover, Applicants should be prepared to address the issue raised in ¶ I.3, above. Finally, any party may raise any additional issue.

9. In considering proposed dates, parties should keep in mind that the Commission has deemed the Application complete as of June 11, 2004. Absent Applicants' waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, on or before January 7, 2005).⁵ See §§ 40-6-109.5(1) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and must allow time for, preparation of a recommended decision, preparation of

² Cross-answer testimony and exhibits may address *only* the answer testimony and exhibits of another intervenor.

³ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

⁴ This date should be at least seven calendar days before the first day of hearing.

⁵ By this Order the Administrative Law Judge (ALJ) finds, due to the nature of the factual and legal issues presented in this proceeding and due to the extended unavailability of the ALJ (noted *infra*), that 120 days does not provide sufficient time for a Commission decision to be rendered in this matter and that additional time is required. The ALJ, therefore, will extend the time for Commission decision an additional 90 days. See § 40-6-109.5(1), C.R.S.

exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁶ all of which should occur by January 7, 2005.

10. The parties are advised that the **Administrative Law Judge (ALJ) is not available** from August 25, 2004 through and including September 27, 2004.

11. The ALJ expects the parties to come to the prehearing conference with proposed dates for all deadlines. In addition, the parties must consult prior to the prehearing conference with respect to the listed matters. Finally, the parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to both parties.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule established in the Notice of Application Filed, dated April 27, 2004, is vacated.

2. The time for Commission decision in this matter is extended to and including January 7, 2005.

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

DATE: July 16, 2004

TIME: 10:00 a.m.

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

4. The parties must be prepared to discuss the matters set forth above.

⁶ As a general rule and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the end of the hearing, the filing of statements of position, or the filing of responses to statements of position, whichever occurs last.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge