

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
SETTING HEARING DATES, ESTABLISHING
PROCEDURAL SCHEDULE, AND SHORTENING
RESPONSE TIME FOR DISCOVERY**

Mailed Date: July 16, 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). The Application commenced this docket.

2. On May 19, 2004, Applicants submitted a letter to Mr. Bruce N. Smith, Director of the Commission. Several documents were appended to that letter. On May 21, 2004, Applicants submitted another letter to Mr. Bruce N. Smith. Both the May 19, 2004 and the May 21, 2004 letters, and the appended documents, are supplements to the Application and will be considered part of the Application.

3. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated April 27, 2004. Both the Colorado Office of Consumer Counsel (OCC) and the Staff

of the Commission (Staff) intervened in this proceeding of right, and each requested a hearing. OCC and Staff (collectively, Intervenors) and Applicants are the only parties in this proceeding.

4. On July 16, 2004, pursuant to Decision No. R04-0701-I, the undersigned Administrative Law Judge (ALJ) held a prehearing conference in this proceeding. All parties were present, were represented, and participated. During the prehearing conference Applicants presented a proposed procedural schedule which was acceptable to the parties. This proposed schedule was discussed. The proposed procedural schedule provides sufficient time for the issuance of a Commission decision in this matter within the time frames of § 40-6-109.5, C.R.S., and so is found to be acceptable.

5. The following procedural schedule will be adopted: (a) on or before **August 26, 2004**, Intervenors will file their answer testimony and exhibits; (b) on or before **September 23, 2004**, Applicants will file their rebuttal testimony and exhibits; (c) on or before **September 23, 2004**, Intervenors will file their cross-answer testimony and exhibits;¹ (d) on or before **September 30, 2004**, each party will file its corrected testimony and exhibits; (e) on or before **September 30, 2004**, each party will file its prehearing motions;² (f) on or before **September 30, 2004**, the parties will file any stipulation reached; (g) hearing will be held on **October 7 and 8, 2004**; and (h) on or before **October 21, 2004**, each party will file its post-hearing statement of position to which, absent further Order, no response will be permitted.

6. No final prehearing conference is scheduled. Should a party wish to have a prehearing conference, that party may file an appropriate motion.

¹ Cross-answer testimony and exhibits may address *only* the answer testimony and exhibits of another intervenor.

² Response to a prehearing motion may be oral, and prehearing motions will be heard as preliminary matters on the first day of hearing.

7. With respect to discovery, the procedures of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern *except* as follows: (a) responses to discovery will be due seven calendar days from the date of receipt; and (b) objections to discovery will be served with the responses. Copies of discovery requests and copies of responses to discovery will be served on all parties.

8. 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.

9. The parties must provide the decision number when referring to or citing a Commission decision.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule set out above is adopted.
2. Hearing in this matter will be conducted on the following dates, at the following times, and in the following location:

DATES: October 7 and 8, 2004
TIME: 9:00 a.m.
PLACE: Commission hearing Room
 1580 Logan Street, OL2
 Denver, Colorado

3. The time for responding to, and for making objections to, discovery is as set forth above.

4. The parties shall follow the procedures and shall make the filings set out above.
5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge