

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-508T

IN THE MATTER OF THE APPLICATION OF SC TXLINK, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING APPLICANT TO MAKE
FILING REGARDING REPRESENTATION**

Mailed Date: December 3, 2004

I. STATEMENT

1. On October 7, 2004, SC TxLink, LLC (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. Posting of Application Filed, dated October 12, 2004. On November 22, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing. This is the only intervention.

3. The Commission deemed the Application complete as of November 16, 2004.

4. At present, Applicant is not represented by counsel.

5. According to the procedural schedule in this proceeding, the next filing to be made by Applicant is due on or before January 14, 2005. *See* Decision No. R04-1432-I.

6. Based on the information available from the Commission file in this matter, Applicant appears to be a limited liability company. As a limited liability company, Applicant

appears to be an entity which can be sued in its own name and which can participate in an administrative proceeding in its own name. Section 7-80-104(1), C.R.S. (powers of a limited liability company). Thus, Applicant appears to be a legal entity and, therefore, a “person” as defined in § 40-16-101(6), C.R.S.

7. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-21(a) *requires* a party in a proceeding before the Commission to be represented by counsel *unless* one of the following exceptions applies: (a) the person is “an *individual* who is a party to [the] proceeding and who wishes to appear *pro se* [to represent] *only* his *individual* interest” (Rule 4 CCR 723-1-21(b)(1) (emphasis supplied)); or (b) the person appears “on behalf of a closely held corporation, [but] *only* as provided in § 13-1-127, C.R.S.” (Rule 4 CCR 723-1-21(b)(2))¹ (emphasis supplied)).

8. The Commission recently had occasion to emphasize the mandatory nature of this Rule requirement and to determine that pleadings filed by, and appearances made by, non-attorneys which are not in compliance with Rule 4 CCR 723-1-21(a) are void and of no legal effect. *See, e.g.*, Decisions No. C04-1119 and No. C04-0884. Thus, by Rule and by Commission decision, a party cannot appear without counsel unless it is an individual or a closely-held entity.

9. If Applicant can establish that it is an individual and will represent only its individual interest in this matter, Applicant may proceed without counsel. If Applicant believes that it falls within this category, it must file, on or before **December 23, 2004**, a verified (*i.e.*, sworn) filing that establishes the required elements.

10. If Applicant can establish that it is a closely-held entity and will appear in this matter through an authorized officer, Applicant may proceed without counsel. If Applicant

¹ To the extent necessary, the Administrative Law Judge grants a variance to Rule 4 CCR 723-1-21(b)(2) so that the Rule is as broad in its reach as § 13-1-127, C.R.S.

believes that it falls within the category of closely-held entity, § 13-1-127(2), C.R.S., controls. That section provides that an officer² may represent a closely held entity³ before an administrative agency *provided* two conditions are met: (a) the amount in controversy does not exceed \$10,000; *and* (b) the officer provides the agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely held entity.

11. Section 13-1-127(2.3), C.R.S., provides that:

each of the following persons shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status:

- (a) An officer of a cooperative, corporation, or nonprofit corporation;
- (b) A general partner of a partnership or of a limited partnership;
- (c) A person in whom the management of a limited liability company is vested or reserved; and
- (d) A member of a limited partnership association.

12. In order for the Commission to determine whether Applicant is a closely-held entity which may appear without counsel, Applicant must file, on or before **December 23, 2004**, a verified (*i.e.*, sworn) filing that: (a) establishes that Applicant meets the statutory criteria as a closely held entity; (b) states whether the amount in controversy in this proceeding does or does not exceed \$10,000 and explains in detail the basis for the conclusion reached; (c) identifies the individual who will represent Applicant in this matter; (d) establishes that the identified individual is an officer of Applicant; and (e) if the identified individual does not meet the requirements of § 13-1-127(2.3), C.R.S., has appended to it a resolution from Applicant's Board

² Section 13-1-127(a)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

³ The criteria for a closely-held entity are found in § 13-1-127(1)(a), C.R.S.

of Directors that specifically authorizes the identified individual to represent Applicant in this matter.

13. Applicant must make the filing described in ¶ 9 *or* the filing described in ¶ 12 if Applicant wishes to proceed *pro se* in this matter.

14. In the alternative, on or before **December 23, 2004**, Applicant may file a pleading stating that it will be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado and identifying that counsel. The identified counsel must enter an appearance in this matter on or before **December 23, 2004**.

15. **Applicant is advised that its failure to make a filing as required by this Order will result in a determination that it must appear through counsel in this proceeding.**

16. **Applicant is advised further** that, if the ALJ determines that it must be represented by counsel in this matter and if Applicant fails to obtain counsel following such a determination, the motions and other filings made by Applicant in this proceeding will be void. It will be as if those filings, including potentially the Application, were never made.

II. **ORDER**

A. **It Is Ordered That:**

1. On or before December 23, 2004, SC TxLink, LLC, shall make the filing described in ¶ I.9, the filing described in ¶ I.12, *or* the filing described in ¶ I.14.

2. In the event SC TxLink, LLC, elects to retain counsel (as permitted by ¶ I.14), counsel for SC TxLink, LLC, shall enter an appearance in this proceeding on or before December 23, 2004.

3. To the extent necessary, a variance to Rule 4 *Code of Colorado Regulations* 723-1-21(b)(2) is granted to make that Rule as broad in its reach as § 13-1-127, C.R.S.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge