

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04C-526T

IN THE MATTER OF AN INVESTIGATION OF EMERGING COMPETITIVE
TELECOMMUNICATIONS SERVICE PROVIDERS AND COMPETITIVE LOCAL
EXCHANGE CARRIERS CONCERNING ALLEGED VIOLATIONS OF COLORADO
REVISED STATUTES AND THE COMMISSION RULES OF PRACTICE AND
PROCEDURE RELATING TO THE FILING OF ANNUAL REPORTS BY PUBLIC
UTILITIES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
REVOKING CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY,
REGISTRATIONS, AND LETTERS
OF REGISTRATION**

Mailed Date: December 21, 2004

Appearances:

Jean S. Watson-Weidner, Assistant Attorney General for the Staff
of the Colorado Public Utilities Commission.

I. STATEMENT

1. By Decision No. C04-1218, mailed on October 21, 2004, the Commission issued an Order to Show Cause and Notice of Hearing. The Commission ordered emerging competitive telecommunications service providers and competitive local exchange carriers listed on Appendix A to its order to appear before the Commission to show cause why the Commission should not enter an order including, but not limited to, an order to cease and desist; an order that amends or revokes the provider's certificate of public convenience and necessity, including the revocation of applicable tariffs; an order that restricts the provider's ability to connect with local

exchange service providers; an order that contains a combination of the foregoing remedial actions; and/or an order that requires any other corrective or remedial action that the Commission deems appropriate.

2. The Commission scheduled a hearing for December 7, 2004.

3. The hearing was held as scheduled. None of the telecommunications carriers listed on Appendix A of Decision No. C04-1218 appeared at the hearing. Testimony was received from Ms. Jamie Jack of the Staff of the Colorado Public Utilities Commission (Staff). Exhibit Nos. 1 through 8 were marked for identification. Exhibit Nos. 1 through 4 and 6 through 8 were admitted into evidence. Exhibit No. 5 was not offered. On December 8, 2004, Staff filed a Motion to Accept Late-Filed Exhibit and for Waiver of Response Time. The motion of Staff will be granted and response time will be waived. The late-filed exhibit designated as Exhibit No. 9 offered by Staff is admitted into evidence.

4. Pursuant to § 40-6-109, C.R.S., the record and exhibits of this proceeding together with a written recommended decision are transmitted to the Commission.

II. FINDINGS AND CONCLUSIONS

5. Ms. Jamie Jack testified that she reviewed the Commission's records concerning compliance by providers of jurisdictional emerging competitive telecommunications carriers regarding their obligation to file an annual report with the Commission. These providers are required under the provisions of § 40-3-110, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-25(a)(1) to file an annual report with the Commission on or before April 30 of each year for the proceeding calendar year. Annual reports for the calendar year ending December 31, 2003 were required to be filed on or before April 30, 2004.

6. By Decision No. C04-0179, mailed on February 24, 2004, the Commission ordered each utility holding a Certificate of Public Convenience and Necessity or a Letter of Registration to provide telecommunications services, or that are registered to resell intrastate toll service in Colorado during the calendar year 2003 to file an annual report (Exhibit No. 1).

7. On June 10, 2004, Ms. Jack mailed a letter addressed to Colorado telecommunications providers that had not filed their 2003 annual report with the Commission. The delinquent providers were notified that unless the 2003 annual report was filed by July 15, 2004 with the Commission, Staff would recommend that the Commission initiate an enforcement action (Exhibit No. 2).

8. On August 4, 2004, a letter was mailed to the delinquent telecommunications providers by Bruce N. Smith, Director of the Commission advising that unless the delinquent carriers filed their 2003 annual report within 30 days of the date of the letter, a show cause proceeding would be initiated, and possible enforcement action would be taken by the Commission (Exhibit No. 3).

9. On October 21, 2004, the Commission issued Decision No. C04-1218 ordering a show cause proceeding and setting the hearing for December 7, 2004. The order was served on the delinquent providers listed in Attachment A of the Order.

10. Exhibit Nos. 6, 7, and 8 are lists of telecommunications providers who have not filed 2003 annual reports with the Commission. .

11. Ms. Jack testified that prior to the hearing she checked the telecommunications providers on Appendix A to determine whether any of the carriers filed their annual reports. She testified that four of the carriers, namely France Telecom Corporate Solutions, LLC; Futurum Communications Corporation; New Century Datacom, Inc.; and Premier Communications, Inc.,

filed their 2003 annual reports with the Commission. Staff recommends that these four telecommunications providers be dismissed from this show cause proceeding. The recommendation will be accepted and the four providers will be dismissed from this show cause proceeding.

12. Staff further recommended that as to the remaining providers listed on Appendix A to Commission Decision No. C04-1218, that the Commission revoke the Certificates or Letters of Registration of these providers. Staff also recommended that these providers be ordered to cease and desist from providing telecommunications services in Colorado and that they be disconnected from the public switched network in Colorado.

13. It is found and concluded that the telecommunications providers listed in Attachment A of Commission Decision No. C04-1218, with the exception of France Telecom Corporate Solutions, LLC; Futurum Communications Corporation; New Century Datacom, Inc.; and Premier Communications, Inc., failed to comply with § 40-3-110, C.R.S., and 4 CCR 723-1-25(a)(1) by failing to file an annual report with the Commission. Accordingly, certificates of public convenience and necessity and/or letters of registration for the telecommunications providers listed in Attachment A except for the four providers listed above are revoked. The delinquent providers were given ample opportunity by the Commission to comply with the filing requirement.

14. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The certificates of public convenience and necessity, registrations, and letters of registration of the providers listed on Appendix A to this Decision are revoked as of the effective date of this Order.

2. The providers listed in Appendix B of this Decision are ordered to disconnect all providers listed in Appendix A to this Decision from the public switched network.

3. The following telecommunications providers are dismissed from this show cause proceeding:

France Telecom Corporate Solutions, LLC
Futurum Communications Corporation
New Century Datacom, Inc.
Premier Communications, Inc.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If

no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge