

Decision No. R14-0127-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1374T

IN THE MATTER OF THE APPLICATION OF TEMPO TELECOM, LLC, FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING WIRELESS LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING PREHEARING CONFERENCE,
ADDRESSING INTERVENTIONS, NOTIFYING
PARTIES THAT APPLICATION HAS BEEN
DEEMED COMPLETE, VACATING PROCEDURAL
SCHEDULE, GRANTING MOTION TO APPEAR
PRO HAC VICE, AND CONTAINING ADVISEMENTS**

Mailed Date: February 4, 2014

I. STATEMENT

1. On December 24, 2013, Tempo Telecom, LLC (Tempo or Applicant), filed an Application for Designation as a Wireless Eligible Telecommunications Carrier in the State of Colorado and [for] Waiver of Certain Commission Rules (Application). That filing commenced this Proceeding.

2. On December 26, 2013, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period and contained a procedural schedule. This Interim Decision will vacate that procedural schedule.

3. On January 29, 2014, by Minute Order the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Interventions.

4. On January 24, 2014, the Colorado Office of Consumer Counsel (OCC) timely filed, in one document, a Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. In that filing, OCC identifies issues that are of concern to it but does not state whether it supports, opposes, contests, or takes no position with respect to the Application. OCC is an intervenor and a party in this Proceeding.

5. On February 3, 2014, Trial Staff of the Commission (Staff) timely filed, in one document, its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing.¹ In that filing, Staff identifies issues that are of concern to it but does not state whether it supports, opposes, contests, or takes no position with respect to the Application. Staff is an intervenor and a party in this Proceeding.

6. The intervention period has expired. Review of the Commission file in this matter reveals that, as if the date of this Interim Decision, no other person has filed an intervention as of right or a motion or petition for leave to intervene by permission. Review of the Commission file in this matter reveals that, as of the date of this Interim Decision, no person has filed a motion for leave to intervene out-of-time.

7. OCC, and Staff, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

B. Motion to Appear *Pro Hac Vice*.

8. On January 6, 2014, Angela F. Collins, Esquire, filed a Verified Motion to Appear *Pro Hac Vice* as Attorney for Tempo Telecom, LLC (Collins Motion). Ms. Collins made this

¹ In that filing, Staff identifies both trial (testimonial) Staff and advisory Staff.

filing pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a),² which governs the admission of attorneys not licensed to practice law in Colorado. Rule 4 CCR 723-1-1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 221.1.

9. On January 8, 2014, the Commission received a notice from the Attorney Registration Office of the Supreme Court of Colorado. The notice advises the Commission that Ms. Collins has been assigned a *Pro Hac Vice* registration number with respect to this case.

10. The time for filing a response to the Collins Motion has expired. Review of the Commission file in this matter reveals that no response to the Collins Motion was filed. The Collins Motion is unopposed.

11. The ALJ has reviewed the Collins Motion, the Attorney Registration Office notice, and the requirements of Rule 4 CCR 723-1-1201(a) and Colo.R.Civ.P. 221.1. The ALJ finds that Ms. Collins has complied with Rule 4 CCR 723-1-1201(a) and Colo.R.Civ.P. 221.1, that the Collins Motion states good cause, and that no party will be prejudiced if the Collins Motion is granted. The ALJ will grant the Collins Motion and will admit Ms. Collins *pro hac vice* to represent Applicant in this Proceeding.

C. Application Complete and Time for Commission Decision.

12. When it filed the Application, Tempo filed neither its direct testimony and complete copies of exhibits in support of the Application nor a detailed summary of its testimony and complete copies of exhibits in support of the Application.

13. On January 29, 2014, the Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

14. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicant's waiver of § 40-6-109.5, C.R.S., a Commission decision on the Application should issue not later than 210 days from the date on which the Commission deemed the Application to be complete. Thus, the Commission should issue its decision on the Application on or before **August 27, 2014**.

D. Prehearing Conference.

15. Intervenors request an evidentiary hearing in this Proceeding. Consequently, a prehearing conference is necessary to address the matters identified below and to establish a procedural schedule and hearing date in this matter. The ALJ will schedule a prehearing conference in this matter to be held on **February 14, 2014**.⁴

16. *At the prehearing conference*, OCC must be prepared to state whether it supports, opposes, contests, or takes no position with respect to the Application.

17. *At the prehearing conference*, Staff must be prepared to state whether it supports, opposes, contests, or takes no position with respect to the Application.

18. *At the prehearing conference*, the Parties must be prepared to discuss: (a) the date by which Applicant will file its direct testimony and exhibits; (b) the date by which each intervenor will file its answer testimony and exhibits; (c) the date by which Applicant will file its rebuttal testimony and exhibits; (d) the date by which each intervenor will file cross-answer testimony and exhibits;⁵ (e) the date by which each party will file its corrected testimony and

³ Pursuant to § 40-6-109.5(4), C.R.S., the Commission may extend the time for decision an additional 90 days upon a finding of extraordinary circumstances.

⁴ Counsel for Applicant has her office in Washington, D.C. If she wishes to do so, counsel for Applicant may participate in the prehearing conference by telephone. To make arrangements to participate by telephone, counsel for Applicant must contact the ALJ (e-mail address: mana.jennings-fader@state.co.us; telephone: 303.894.2842) not later than 3:00 p.m. Mountain Time on Wednesday, February 12, 2014.

⁵ Cross-answer testimony responds only to the answer testimony of another intervenor.

exhibits; (f) the date by which each party will file its prehearing motions;⁶ (g) whether a final prehearing conference is necessary and, if it is, the date or dates for that prehearing conference; (h) the date by which the Parties will file any stipulation or settlement reached;⁷ (i) the date(s) for the evidentiary hearing; and (j) the date by which each party will file its post-hearing statement of position,⁸ to which (absent further order) no response will be permitted.

19. In considering hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue not later than August 27, 2014. To allow time for statements of position, recommended decision, exceptions, responses to exceptions, and a Commission decision on exceptions, the **evidentiary hearing must be concluded not later than May 23, 2014.**

20. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to discovery if the procedures and time frames contained in Rule 4 CCR 723-1-1405 are not sufficient.

21. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to information claimed to be confidential if the procedures in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate. This discussion will include information for which highly confidential designation and extraordinary protection will (or may) be sought, assuming there is such information.

22. *At the prehearing conference*, a party may raise any additional issue.

⁶ This date **must** be at least seven calendar days before the final prehearing conference or, if there is no final prehearing conference, **must** be at least ten calendar days before commencement of the hearing.

⁷ This date **must** be at least five business days before the first day of hearing.

⁸ Statements of position should be filed no later than two weeks after the close of the evidentiary hearing.

23. The ALJ expects the Parties to come to the prehearing conference with proposed dates for the procedural schedule and evidentiary hearing. The Parties must consult prior to the prehearing conference with respect to the matters identified in this Interim Decision and are encouraged to present, if possible, a procedural schedule and hearing date or dates that are satisfactory to all Parties. The ALJ will order Applicant to coordinate the discussions.

24. **The Parties are advised, and are on notice, that** the ALJ will deem a party's failure to attend or to participate in the prehearing conference to be a waiver of objection to the decisions made, the procedural schedule established, and the hearing date or dates and prehearing conference date scheduled at the prehearing conference.

E. Advisements.

25. **The Parties are advised, and are on notice, that** they must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

26. **The Parties are advised, and are on notice, that** they must be familiar with the applicable Rules Governing Telecommunications Providers, Services, and Products, 4 CCR 723 Part 2. These Rules are available on-line at www.dora.colorado.gov/puc.

27. **The Parties are advised, and are on notice, that** a document is filed with the Commission on the date that the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission.

28. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about -- and, if one chooses, may register to use -- that system at www.dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. The Verified Motion to Appear *Pro Hac Vice* as Attorney for Tempo Telecom, LLC, is granted.

2. Angela F. Collins, Esquire, is admitted *pro hac vice* as counsel for Tempo Telecom, LLC, in this Proceeding.

3. The Office of Consumer Counsel is a party in this Proceeding.

4. Trial Staff of the Commission is a party in this Proceeding.

5. On January 29, 2014, the Commission deemed the Application for Designation as a Wireless Eligible Telecommunications Carrier in the State of Colorado and [for] Waiver of Certain Commission Rules filed by Tempo Telecom, LLC, on December 24, 2013 to be complete within the meaning of § 40-6-109.5, C.R.S.

6. The procedural schedule established in the Notice of Application Filed dated December 26, 2013 is vacated.

7. A prehearing conference in this matter is scheduled as follows:

DATE: February 14, 2014
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

8. The matters identified above will be discussed at the prehearing conference. Those attending the prehearing conference must be prepared to discuss the matters identified above and must have authority to agree to a procedural schedule and evidentiary hearing dates(s).

9. Failure to attend or to participate in the prehearing conference shall be deemed a waiver of objection to the decisions made, the procedural schedule established, and the hearing date(s) and the prehearing date scheduled at the prehearing conference.

10. Prior to the prehearing conference, the Parties shall consult about the matters discussed and identified above. Tempo Telecom, LLC, shall coordinate the discussions.

11. The Parties are held to the advisements in this Interim Decision.

12. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director