

Decision No. R14-0671-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
MAKING FINDINGS PURSUANT TO
§ 40-6-109.5(4), C.R.S., AND PROVIDING
OPPORTUNITY FOR HEARING**

Mailed Date: June 20, 2014

I. STATEMENT

1. On December 24, 2013, Tempo Telecom, LLC (Tempo or Applicant), filed a verified 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. The Colorado Office of Consumer Counsel (OCC) and Trial Staff of the Commission (Staff) timely intervened. Both OCC and Staff contest the Application.

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

4. On January 29, 2014, by Minute Order, the Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S. On February 4, 2014,

Decision No. R14-0127-I notified the Parties that the Commission had deemed the Application to be complete.

5. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ 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.

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

7. The procedural history of this Proceeding is set out in Interim Decisions previously issued in this matter. The procedural history is repeated here to put this Interim Decision in context.

8. On February 18, 2014, by Decision No. R14-0182-I, the ALJ scheduled a May 20, 2014 evidentiary hearing and established the procedural schedule for this Proceeding. On May 30, 2014, by Decision No. R14-0585-I, the ALJ vacated the hearing and the remainder of the procedural schedule.

9. On April 14, 2014, the Parties filed a Joint Motion to Approve Stipulation and Settlement Agreement and for Waiver of Response Time. The Stipulation and Settlement Agreement (Stipulation) accompanied that filing.

¹ 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.

10. The ALJ finds the following:

a) At the time the Parties filed the Stipulation, House Bill 14-1328, House Bill 14-1329, House Bill 14-1330, and House Bill 14-1331 (collectively, 2014 telecommunications bills) were pending in the Colorado General Assembly.

b) At the time the Parties filed the Stipulation, the ALJ was aware that enactment of the 2014 telecommunications bills would have a significant impact on the Commission's authority in telecommunications matters which, in turn, had the potential to impact the Stipulation and this Proceeding. As a result, the ALJ waited to address the Stipulation until the General Assembly considered the 2014 telecommunications bills.

c) The General Assembly passed the 2014 telecommunications bills in April 2014. In May 2014, Governor Hickenlooper signed the 2014 telecommunications bills. Each is now in effect.

d) By Decision No. R14-0585-I, the ALJ asked the Parties to address, among other issues: (1) whether the 2014 telecommunications bills impact the Stipulation or the issues in this Proceeding, or both; and (2) if there is an impact, the nature of the impact.

e) On June 20, 2014, the Parties filed their Joint Responses to the questions posed in Decision No. R14-0585-I. The ALJ has not yet had an opportunity to review the responses.

f) On April 14, 2014, Tempo filed an Unopposed Motion for Waiver of Certain Commission Rules. In Decision No. R14-0585-I, the ALJ posed questions with respect

to the impact (if any) of the 2014 telecommunications bills on the relief sought in that motion. The Parties responded to those questions on June 20, 2014.

g) At present, a Commission decision on the Application should issue not later than August 27, 2014.

h) A recommended decision on the Application has not issued. The ALJ will not issue a recommended decision until she has considered the Parties' responses to the questions posed in Decision No. R14-0585-I, including their responses to the questions on the impact (if any) of the 2014 telecommunications bills on the Stipulation and this Proceeding.

i) Due to the need to determine the impact (if any) of the 2014 telecommunications bills on the Stipulation and this Proceeding,² due to the press of other business, and given that the recommended decision may not become the decision of the Commission,³ the ALJ will not issue the recommended decision in this Proceeding in time for an August 27, 2014 Commission decision.

j) As a result, a 90-day extension of time pursuant to § 40-6-109.5(4), C.R.S., is necessary.⁴ The extension will provide time for the issuance of a recommended decision, the filing of exceptions (if any) and response to exceptions, and the issuance of a Commission decision on exceptions (should exceptions be filed) within the statutory timeframe.

² This is a matter of first impression for the ALJ as it is the first Proceeding in which the ALJ will examine the 2014 telecommunications bills in order to determine their impact (if any) on a case.

³ A party may file exceptions to the recommended decision, or the Commission *sua sponte* may review the recommended decision.

⁴ At this time, the ALJ does not anticipate that the Commission will use the entire 90-day extension. To avoid the need for one or more additional decisions on this issue, however, the ALJ chooses to extend the time for Commission decision for the entire additional 90 days.

k) The facts stated in this Interim Decision constitute extraordinary conditions, as that term is used in § 40-6-109.5(4), C.R.S., and are sufficient to support extending for an additional 90 days the time for a Commission decision in this Proceeding.

11. Section 40-6-109.5(4), C.R.S., provides for a hearing to be held. At the request of the Applicant filed on or before **June 27, 2014**, the ALJ will schedule such a hearing.⁵ The purpose of a hearing, if held, will be to present evidence to establish the existence of extraordinary conditions (that is, the facts as set out above).

12. The ALJ will extend for an additional 90 days the time for Commission decision in this Proceeding. With this extension, a Commission decision in this Proceeding should issue not later than **November 25, 2014**. This extension may be modified by further order.

II. ORDER

A. It Is Ordered That:

1. Absent further order, the time for Commission decision in this Proceeding is extended to and including November 25, 2014.

2. On or before June 27, 2014, if it wishes to do so, Tempo Telecom, LLC, may file a request for a hearing pursuant to § 40-6-109.5(4), C.R.S.

3. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

⁵ The hearing will be held at the Commission's offices in Denver, Colorado.

4. 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