

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14M-0947T

IN THE MATTER OF COMMISSION CONSIDERATION OF EFFECTIVE COMPETITION FOR BASIC SERVICE UNDER § 40-14-207, C.R.S., IN CERTAIN AREAS SERVED BY QWEST CORPORATION, DOING BUSINESS AS CENTURYLINK QC; EL PASO COUNTY TELEPHONE COMPANY; CENTURYTEL OF COLORADO, INC.; AND CENTURYTEL OF EAGLE, INC.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACKNOWLEDGING INTERVENTIONS BY
RIGHT, GRANTING MOTIONS FOR LEAVE
TO INTERVENE, REQUIRING ALL PARTIES
TO HAVE LEGAL COUNSEL, ADDRESSING
ADMISSION *PRO HAC VICE*, SCHEDULING
PREHEARING CONFERENCE, AND
CONTAINING ADVISEMENTS**

Mailed Date: November 7, 2014

TABLE OF CONTENTS

I. <u>STATEMENT</u>	2
A. Interventions.....	2
B. Representation by Legal Counsel.....	7
C. Motions for Admission <i>Pro Hac Vice</i>	8
D. Prehearing Conference.....	10
E. Additional Advisements and Other Matters.....	17
II. <u>ORDER</u>	18
A. It Is Ordered That:	18

I. STATEMENT

1. On September 23, 2014, by Decision No. C14-1163, the Commission *sua sponte* opened this Proceeding “to make findings pursuant to [§ 40-15-207, C.R.S.] as to whether basic service in certain areas of Colorado [is] subject to effective competition or [is] ‘without effective competition’ for purposes of” §§ 40-15-208 and 40-15-502, C.R.S. Decision No. C14-1163 at ¶ 4. The Commission stated that this Proceeding will “review the 104 wire center serving areas listed in Attachment A” to Decision No. C14-1163. *Id.*

2. In Decision No. C14-1163 at ¶ 16, the Commission referred this Proceeding to an Administrative Law Judge (ALJ)

to make findings and [to] issue one or more recommended decisions indicating which areas listed in Attachment A [to Decision No. C14-1163] should be found to be subject to effective competition or are “without effective competition,” pursuant to

§ 40-15-207, C.R.S., and Decision No. C14-1163.

A. Interventions.

3. By Decision No. C14-1163 at Ordering Paragraph No. 4, the Commission designated the following as Parties in this matter: Staff of the Commission (Staff); Qwest Corporation, doing business as CenturyLink QC; El Paso County Telephone Company; CenturyTel of Colorado, Inc.; and CenturyTel of Eagle, Inc.¹ *See also id.* at ¶ 18 (“Staff ... and CenturyLink are deemed interested parties in this proceeding and need not intervene to participate.”).

4. On October 22, 2014, counsel for Staff entered their appearance.

¹ Unless the context indicates otherwise, reference in this Interim Decision to CenturyLink is to the following entities, collectively: Qwest Corporation, doing business as CenturyLink QC; El Paso County Telephone Company; CenturyTel of Colorado, Inc.; and CenturyTel of Eagle, Inc.

5. In Decision No. C14-1163, the Commission established a 30-day intervention period. The intervention period has expired.

6. On October 21, 2014, the Colorado Office of Consumer Counsel (OCC) filed (in one document) its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. OCC is an intervenor as of right, is a party, and is represented by counsel in this Proceeding.

7. On October 23, 2014, AT&T Corp. (AT&T) filed its Notice of Intervention as of Right. AT&T is an intervenor and is a party in this Proceeding. The Notice of Intervention as of Right is signed by Ann Ahrens Beck, Esquire, whose office is located in Missouri.²

8. On October 23, 2013, Teleport Communications America, LLC, filed its Notice of Intervention as of Right. Teleport Communications America, LLC, is an intervenor and a party in this Proceeding.³ The Notice of Intervention as of Right is signed by Ann Ahrens Beck, Esquire, whose office is located in Missouri.⁴

9. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400(c)⁵ contains the requirements that a person seeking to intervene by permission must meet. As pertinent here, Rule 4 CCR 723-1-1401(c) states:

A motion to permissively intervene *shall state* [a] the specific grounds relied upon for intervention, [b] the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the *specific interest* that justifies intervention, and [c] why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The *motion must demonstrate* [a] that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it

² Ms. Beck's entry of appearance is discussed *infra*.

³ Unless the context indicates otherwise, reference in this Interim Decision to AT&T is to AT&T Corp. and Teleport Communications America, LLC, collectively.

⁴ Ms. Beck's entry of appearance is discussed *infra*.

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

may represent) and [b] that the movant's interests would not otherwise be adequately represented. ... Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

(Emphasis supplied.) A person seeking to intervene by permission has the burden to establish that the intervention meets the requirements of that Rule.

10. On October 15, 2014, Sprint Communications Company L.P. filed its Motion to Intervene. In that filing, Sprint Communications Company L.P. establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. Sprint Communications Company L.P. has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed. By this Interim Decision, the ALJ will grant the motion and will grant Sprint Communications Company L.P. leave to intervene by permission. Sprint Communications Company L.P. is an intervenor; is a party in this Proceeding; and is represented by counsel.⁶

11. On October 15, 2014, Sprint Spectrum L.P., doing business as Sprint PCS, filed its Motion to Intervene. In that filing, Sprint Spectrum L.P., doing business as Sprint PCS, establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. Sprint Spectrum L.P., doing business as Sprint PCS, has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed.

⁶ The Verified Motion of W. Richard Morris to Appear *Pro Hac Vice* is discussed *infra*.

By this Interim Decision, the ALJ will grant the motion and will grant Sprint Spectrum L.P., doing business as Sprint PCS, leave to intervene by permission. Sprint Spectrum L.P., doing business as Sprint PCS, is an intervenor; is a party in this Proceeding;⁷ and is represented by counsel.⁸

12. On October 16, 2014, N.E. Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero), filed a Motion to Intervene. In that filing, Viaero establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. Viaero has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed. By this Interim Decision, the ALJ will grant the motion and will grant Viaero leave to intervene by permission. Viaero is an intervenor, is a party in this Proceeding, and is represented by counsel.

13. On October 17, 2014, Bresnan Broadband of Colorado, LLC (Bresnan), filed its Motion to Intervene. In that filing, Bresnan establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. Bresnan has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed.

⁷ Unless the context indicates otherwise, reference in this Interim Decision to Sprint is to Sprint Communications Company L.P. and Sprint Spectrum L.P., doing business as Sprint PCS, collectively.

⁸ The Verified Motion of W. Richard Morris to Appear *Pro Hac Vice* is discussed *infra*.

By this Interim Decision, the ALJ will grant the motion and will grant Bresnan leave to intervene by permission. Bresnan is an intervenor, is a party in this Proceeding, and is represented by counsel.

14. On October 22, 2014, Comcast Phone of Colorado, LLC (Comcast), filed its Motion to Intervene. In that filing, Comcast establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. Comcast has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed. By this Interim Decision, the ALJ will grant the motion and will grant Comcast leave to intervene by permission. Comcast is an intervenor, is a party in this Proceeding, and is represented by counsel.

15. On October 22, 2014, Northern Colorado Communications, LLC (NCC), filed its Motion to Intervene. In that filing, NCC establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are specific to it; and that its interests are not otherwise adequately represented. NCC has established that it meets the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). In addition, no response was filed; the Motion to Intervene is unopposed; and, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ deems the Motion to Intervene to be confessed. By this Interim Decision, the ALJ will grant the motion and will grant NCC leave to intervene by permission. NCC is an intervenor, is a party in this Proceeding, and is represented by counsel.

16. The following, collectively, are the Parties in this matter: AT&T; Bresnan; CenturyLink; Comcast; NCC; OCC; Sprint; Staff; and Viaero.

B. Representation by Legal Counsel.

17. Not all Parties are represented by legal counsel in this Proceeding.

18. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication before the Commission to be represented by an attorney except that: (a) pursuant to Rule 4 CCR 723-1-1201(b)(I), an individual may appear without an attorney to represent the individual's own interests;⁹ and (b) pursuant to Rule 4 CCR 723-1-1201(b)(II), an individual may appear without an attorney to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

19. The Commission has held that, unless an exception applies, a party must be represented by counsel in a Commission adjudication. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: *first*, any filing made by a non-attorney on behalf of the party is void and of no legal effect; and, *second*, the party must have an attorney in order to participate in a hearing, a prehearing conference, or an oral argument.

20. Rule 4 CCR 723-2-2213(a)¹⁰ provides in relevant part: “Based upon *evidence provided through an adjudicatory proceeding initiated by the Commission ...*, the Commission may find that certain wire centers serving areas in Colorado are designated as ‘effective competition areas’ or ‘ECAs’.” (Emphasis supplied). The present case is a Rule 4 CCR 723-2-2213(a) adjudicatory proceeding.

21. The ALJ finds that each party in this Proceeding must be represented by legal counsel because the requirements of § 13-1-127, C.R.S., are not met. As a result, the exception in Rule 4 CCR 723-1-1201(b)(II) is inapplicable.

⁹ This provision does not apply here because none of the Parties is an individual.

¹⁰ This Rule is found in the Rules Regulating Telecommunications Providers, Services, and Products, Part 2 of 4 *Code of Colorado Regulations* 723.

22. Legal counsel for each party must enter an appearance in this matter no later than **November 21, 2014**.

23. Legal counsel in this case *either* must be licensed to practice law in and be in good standing in Colorado *or* must be granted permission to appear *pro hac vice* in this Proceeding.

C. Motions for Admission *Pro Hac Vice*.

24. Legal counsel who are not licensed to practice law in Colorado (out-of-state attorney) must be granted permission to appear *pro hac vice* in this Proceeding. Counsel who seek to appear *pro hac vice* must comply with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 205.5, which rule was effective on September 1, 2014. Colo.R.Civ.P. 205.5 incorporates by reference Colo.R.Civ.P. 205.3.

25. As pertinent here, Colo.R.Civ.P. 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- (i) File a verified motion with the [administrative agency] requesting permission to appear;
- (ii) Designate an associate attorney who is admitted and licensed to practice law in Colorado;
- (iii) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the [administrative agency];
- (iv) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- (v) Obtain permission from the [administrative agency] for such appearance.

26. Colo.R.Civ.P. 205.3(2)(b) specifies the content of a motion for leave to appear *pro hac vice*. Of particular importance here are: (a) Colo.R.Civ.P. 205.3(2)(b)(vi), which requires that a motion for leave to appear *pro hac vice* include the “name, address, and

membership status of the licensed Colorado attorney associated for purposes of the representation;” and (b) Colo.R.Civ.P. 205.3(2)(b)(viii), which requires such a motion to include the “signature of the licensed Colorado associate attorney, verifying that attorney’s association on the matter[.]”

27. In addition, Colo.R.Civ.P. 205.3(3) provides:

The name and address of the licensed Colorado associate attorney must be shown on all papers served and filed by the out-of-state attorney in a *pro hac vice* representation. The Colorado associate attorney shall appear personally and, unless excused, remain in attendance with the out-of-state attorney in all *pro hac vice* appearances.

28. On October 15, 2014, W. Richard Morris, Esquire, filed a Verified Motion to Appear *Pro Hac Vice* as Attorney and Co-counsel for Sprint Communications Company L.P. and Sprint Spectrum L.P., doing business as Sprint PCS (Morris Motion). On October 21, 2014, the Attorney Registration Office of the Supreme Court of Colorado informed the Commission that Mr. Morris has been assigned a *pro hac vice* registration number for this Proceeding. The notice states that the final decision with respect to Mr. Morris’s admission *pro hac vice* lies with the Commission.

29. The Morris Motion does not comply with the requirements of Colo.R.Civ.P. 205.3(2)(b). As a result, the ALJ will not consider the motion at this time. If the motion is amended to comply with Colo.R.Civ.P. 205.3(2)(b), the ALJ will consider the motion.

30. On October 23, 2014, Ann Ahrens Beck, Esquire, entered her appearance in this Proceeding by signing AT&T’s Notice of Intervention as of Right. Rule 4 CCR 723-1-1201(c). Ann Ahrens Beck appears to be an out-of-state attorney, and she has not filed in this Proceeding a motion for permission to appear *pro hac vice*.

31. For the reasons discussed above, Ann Ahrens Beck may not appear in this Proceeding unless and until she has been granted permission to appear *pro hac vice* to represent AT&T in this matter.

D. Prehearing Conference.

32. It is necessary to address various issues and, potentially, to schedule hearing dates and to establish a procedural schedule in this case. To do so, the ALJ will schedule a **December 4, 2014** prehearing conference in this matter.

33. In this Interim Decision, the ALJ identifies issues that the Parties are to be prepared to discuss at the prehearing conference. Some of the identified issues are discussed in Decision No. R13-1091-I;¹¹ the rulings made in that Interim Decision are not controlling in this Proceeding.

34. There will be at least one substantive decision issued in this Proceeding. *At the prehearing conference*, the Parties must be prepared to discuss whether there is a legal impediment to the Commission's issuing a substantive decision in a miscellaneous proceeding.

35. In Decision No. C14-1163 at ¶ 11, the Commission directs Staff to “present direct testimony that includes data-specific information showing which wire center serving areas listed in Attachment A [to Decision No. C14-1163] are subject to effective competition or are ‘without effective competition’ for basic service, applying the criteria in” § 40-15-207, C.R.S. To accomplish this, the Commission directs Staff to do at least the following:

¹¹ This Interim Decision was issued on September 4, 2013 in Proceeding No. 13M-0422T, *In the Matter of Commission Consideration of Effective Competition Areas and the Classification of Basic Local Exchange Service Pursuant to 4 CCR 723-1-2213*.

(a) update “the data used in [Proceeding No. R12-862T] for Amended Exhibit 2 and the coverage maps for the specific wire center serving areas listed in Attachment A [to Decision No. C14-1163 in order] to address changes in coverage offered by providers in the relevant areas and to include directives set forth in” Decision No. C14-1163 (Decision No. C14-1163 at ¶ 12; *see also id.* At ¶ 13 (encouraging Staff to present data in maps as was done in Proceeding No. 10M-565T¹²)); and (b) provide direct testimony containing its recommendations on “including or excluding areas in this proceeding with data indicating that CenturyLink and at least one other facilities-based provider are present and offering service in the serving area” (Decision No. C14-1163 at ¶ 14).

36. *At the prehearing conference*, the Parties must be prepared to discuss: (a) whether one party carries the burden of proof in this matter; (b) if so, whether Staff is that party; and (c) if not, whether each party carries the burden of proof as to its recommendations.

37. In Decision No. C14-1163, the Commission stated that a

threshold issue is a determination of the relevant geographic area. [Rule 4 CCR 723-2-2213(d)(II)] establishes wire centers as the relevant geographic areas, and we applied this rule in Proceeding No. 13M-0422T. For purposes of identifying the areas under review in this proceeding, we will examine wire centers in which an incumbent provider and one or more other facilities-based providers are offering basic service. Parties to the 56 wire center proceeding indicated their intent to request waivers of [Rule 4 CCR 723-2-2213(d)(II)] in subsequent [§ 40-15-207, C.R.S.] proceedings. *The Commission’s use of wire centers in Proceeding No. 13M-0422T is not dispositive of the relevant geographic area in other effective competition proceedings, though parties requesting different*

¹² Proceeding No. 10M-565T was: *The Creation of a Telecom Policy Advisory Group for the Purpose of Informing the Commission on Current Advancements in Telecommunications Technology and the Telecommunications Marketplace Pursuant to § 40-15-101, C.R.S.* That proceeding established the Telecom Advisory Group (TAG), a group that consisted of a cross-section of telecommunications stakeholders. The role of the TAG was to study, and to inform the Commission on, technological and marketplace advancements in telecommunications.

geographic areas must provide evidence and reasoning for why the Commission should depart from the wire center designation adopted in

Proceeding No. 12R-862T.¹³ Decision No. C14-1163 at ¶ 8 (footnote omitted; emphasis supplied).¹⁴

38. *At the prehearing conference*, the Parties must be prepared to discuss whether Rule 4 CCR 723-2-2213(d)(II) creates, in effect, a rebuttable presumption that the relevant geographic areas are wire centers.¹⁵

39. In Decision No. C14-1163, the Commission stated:

In Proceeding No. 13M-0422T, the Commission implemented the process established in [Proceeding No. 12R-862T] and reviewed 56 of the 283 wire center serving areas in Colorado. ... *The approach taken to determine effective competition areas in the 56 wire centers will serve as a model for effective competition determinations in this proceeding, subject to consideration of different testimony and arguments presented by the parties.*

Decision No. C14-1163 at ¶ 6 (emphasis supplied). The ALJ is not familiar with the referenced approach used in Proceeding No. 13M-0422T to make effective competition determinations.

40. The Commission also provided these instructions to the ALJ and the Parties:

For wire center serving areas where evidence of competition is abundant, the Commission may be able to expedite consideration of the relevant factors. *We invite parties* to stipulate agreement to information provided in reports, charts, graphs, and other documents presented in Staff's direct testimony. *Parties also should consider* entering into stipulations that address the criteria listed in [§ 40-15-207, C.R.S.] *We further instruct parties* to indicate contested data and provide support for why such data may be unreliable or inaccurate. *We instruct*

¹³ Proceeding No. 12R-862T was: *In the Matter of the Proposed Rules Regulating Telecommunications Providers, Services, and Products, 4 Code of Colorado Regulations 723-2.*

¹⁴ The referenced Proceeding No. 13M-0422T was: *In the Matter of Commission Consideration of Effective Competition Areas and the Classification of Basic Local Exchange Service Pursuant to 4 CCR 723-1-2213.*

¹⁵ Unless the context indicates otherwise, the term "wire center" or wire center serving area" refers to any geographic area that a party advocates be used as the relevant geographic area for determination of an ECA. The use of the term wire center or wire center serving area is for ease of reference only and is not -- and is not intended to be -- an indication of the geographic area that, based on the evidentiary record, the ALJ will determine to be the relevant geographic area.

the ALJ to expedite consideration of areas where there is agreement among the parties and where the evidence indicates effective competition.

Decision No. C14-1163 at ¶ 17 (emphasis supplied).

41. *At the prehearing conference*, the Parties must be prepared to discuss the overall approach that the ALJ should take in this Proceeding and to describe in some detail the approach used in Proceeding No. 13M-0422T to make effective competition determinations. In particular, the Parties must be prepared to discuss whether the approach used in Proceeding No. 13M-0422T realistically may be used in the instant Proceeding in the event that one or more of the Parties advocate that the relevant geographic area is an area other than a wire center. *See* Decision No. C14-1163 at ¶ 8 (discussion of threshold issue).

42. *At the prehearing conference*, the Parties must be prepared to offer suggestions on the following process issues: (a) whether the wire center serving areas identified in Attachment A to Decision No. C14-1163 should be placed in groups for consideration; (b) if the wire center serving areas should be placed in groups, the basis for the groups; (c) the process to be used to gather the requisite *factual* information (*e.g.*, one “mega” evidentiary hearing, several discrete evidentiary hearings, affidavits, stipulated record with legal argument (something akin to a motion for summary judgment-type process), some other approach); and (d) whether the ALJ should issue one recommended decision or several recommended decisions in this Proceeding. In addition, each party should be prepared to provide an estimate (stated in months) of how long it will take to complete this Proceeding.

43. Rules 4 CCR 723-1-1101(b) and 723-1-1101(d) specify the process by which a party obtains extraordinary protection for information that is highly confidential.

44. Given the nature of the evidence that will be required to determine whether a particular wire center is an ECA, the ALJ is of the opinion (at least preliminarily) that data claimed to be highly confidential will be used in this Proceeding and that one or more parties will seek to limit access to those data. *At the prehearing conference*, the Parties must be prepared to discuss: (a) whether the Rules 4 CCR 723-1-1101(b) and 723-1-1101(d) process should be followed in this Proceeding; and (b) if that process should not be followed, the process that should be adopted for this Proceeding.

45. Irrespective of the process used to determine whether information is highly confidential and requires extraordinary protection, the following situation may arise: (a) a party wishes to challenge (*e.g.*, through testimony or cross-examination) another party's testimony that includes data-specific information in support of, or in opposition to, a Commission finding that particular wire centers are ECAs; (b) in order to do so, the party needs access to information that the ALJ has determined is highly confidential and to which the party does not have access under the terms of the ALJ's protective order; and (c) the party whose information it is will not agree to provide the information to the party that wishes to challenge the testimony. One could argue that, in such circumstances, denial of access to the highly confidential information may have due process implications given that designating a wire center as an ECA may result in loss of Colorado High Cost Support Mechanism funding for one or more Eligible Providers serving the ECA. *At the prehearing conference*, the Parties must be prepared to discuss this issue and how to address a party's need for access to highly confidential information.

46. In Decision No. C14-1163 at ¶ 13, the Commission stated:

While we note that compilations of data in charts or matrices are beneficial for review especially when considering data specific to a particular

wire center serving area, we request that Staff (and subsequently CenturyLink and other parties) file as exhibits the data underlying any such compilations.

(Emphasis supplied.) *At the prehearing conference*, the Parties must be prepared to discuss:

(a) whether the ALJ should order the filing of the underlying data; and (b) if ordered, whether filing of the underlying data addresses the need for access to highly confidential information.

47. As discussed, Staff will file *direct* testimony and exhibits that contain its recommendations as to the wire centers that are and are not ECAs. During the course of the Proceeding, other Parties may file *answer* testimony and exhibits that contain alternative recommendations as to the wire centers that are and are not ECAs. *At the prehearing conference*, the Parties must be prepared to discuss the impact (if any) on the procedural schedule (for example, the need for sur-rebuttal testimony and exhibits) should a party wish to file testimony and exhibits containing alternative recommendations as to the wire centers that are and are not ECAs.¹⁶

48. *At the prehearing conference*, and assuming there is to be an evidentiary hearing, the Parties must be prepared to discuss the following: (a) the date by which Staff will file its direct testimony and exhibits; (b) the date by which each other party will file its answer testimony and exhibits; (c) the date by which Staff will file its rebuttal testimony and exhibits; (d) the date by which each other party will file its cross-answer testimony and exhibits;¹⁷ (e) the date by which each party will file its corrected testimony and exhibits; (f) the date by which each party will file its prehearing motions, including dispositive motions,

¹⁶ The procedural dates listed in this Interim Decision at ¶ 48 do not take this issue into consideration.

¹⁷ Cross-answer testimony responds only to the answer testimony of another party; it does not address or respond to Staff's direct case.

motions *in limine*, and motions to strike testimony or exhibits;¹⁸ (g) the date by which the Parties will file any stipulation (*e.g.*, facts, admissibility of documents) or settlement agreement reached;¹⁹ (h) if the Parties believe a final prehearing conference to be necessary, the date for the final prehearing conference; (i) the date(s) for the evidentiary hearing; (j) the date by which each party will file its post-hearing statement of position; and (k) the date by which each party will file its response to post-hearing statements of position.

49. *At the prehearing conference*, the Parties must be prepared to discuss whether one or more hearings to take public comment should be held in this Proceeding and, if so, the dates and locations for those hearings.

50. *At the prehearing conference*, the Parties must be prepared to discuss discovery if the procedures and timeframes contained in Rule 4 CCR 723-1-1405 are not sufficient.

51. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate.

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

53. **The Parties are advised, and are on notice, that** failure to attend or to participate in the prehearing conference will be deemed a waiver of objection to the rulings made, the procedural schedule established, the prehearing conference date established, and the hearing date(s) established during the prehearing conference.

¹⁸ This date should be at least seven calendar days before the final prehearing conference or, if there is no final prehearing conference, before the first day of the evidentiary hearing.

¹⁹ This date should be at least three business days before the first day of evidentiary hearing.

54. **The ALJ suggests, but will not require, that** the Parties discuss the issues to be addressed at the prehearing conference (particularly, the procedural matters identified in ¶¶ 41-51) in advance of the prehearing conference. To the extent that the Parties reach agreement on a procedural schedule and the identified procedural matters, the prehearing conference will proceed more efficiently. The ALJ requests that Staff coordinate the discussion.

E. Additional Advisements and Other Matters.

55. **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 dora.colorado.gov/puc.

56. The ALJ calls counsel's attention to the requirement of Rule 4 CCR 723-1-1202(d) that

[e]very pleading of a party represented by an attorney shall be signed by the attorney, and *shall state* the attorney's address, telephone number, email address, and attorney registration number.

(Emphasis supplied.) **The Parties are advised and are on notice that** filings must comply with this requirement.²⁰

57. **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, the document is *not* timely filed.

²⁰ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks for the appropriate e-mail addresses. Thus, if no e-mail address is provided, counsel may not receive notice of the rulings.

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

II. **ORDER**

A. **It Is Ordered That:**

1. AT&T Corp. is a party in this matter.
2. Teleport Communications America, LLC, is a party in this matter.
3. The Colorado Office of Consumer Counsel is a party in this matter.
4. The Motion to Intervene filed by Bresnan Broadband of Colorado, LLC, is granted.
5. Bresnan Broadband of Colorado, LLC, is a party in this matter.
6. The Motion to Intervene filed by Comcast Phone of Colorado, LLC, is granted.
7. Comcast Phone of Colorado, LLC, is a party in this matter.
8. The Motion to Intervene filed by N.E. Colorado Cellular, Inc., doing business as Viaero Wireless, is granted.
9. N.E. Colorado Cellular, Inc., doing business as Viaero Wireless, is a party in this matter.
10. The Motion to Intervene filed by Northern Colorado Communications, LLC, is granted.
11. Northern Colorado Communications, LLC, is a party in this matter.
12. The Motion to Intervene filed by Sprint Communications Company L.P. is granted.

13. Sprint Communications Company L.P. is a party in this matter.
14. The Motion to Intervene filed by Sprint Spectrum L.P., doing business as Sprint PCS, is granted.
15. Sprint Spectrum L.P., doing business as Sprint PCS, is a party in this matter.
16. Consistent with the discussion above, each party in this Proceeding must be represented by legal counsel.
17. Legal counsel for a party in this matter shall enter an appearance in this Proceeding not later than November 21, 2014.
18. Consistent with the discussion above, legal counsel must be licensed to practice law in, and must be in good standing in, Colorado or must be granted permission to appear *pro hac vice* in this Proceeding.
19. Consistent with the discussion above, legal counsel who are not licensed to practice law in Colorado and who wish to represent a party in this Proceeding shall file a motion for admission *pro hac vice* that complies with the requirements of Colorado Rule of Civil Procedure 205.3. Counsel shall file the motion for admission *pro hac vice* not later than November 21, 2014.
20. A prehearing conference is scheduled in this matter as follows:

DATE:	December 4, 2014
TIME:	10 a.m. Mountain Time
PLACE:	Commission Hearing Room 1560 Broadway, Suite 250 Denver, Colorado
21. Consistent with the discussion above, at the prehearing conference, the Parties shall be prepared to discuss the identified matters.

22. A party's failure to attend or to participate in the prehearing conference is a waiver of that party's objection to: (a) the rulings made during the prehearing conference, (b) the procedural schedule established as a result of the prehearing conference, (c) the final prehearing conference date scheduled as a result of the prehearing conference; and (d) the evidentiary hearing date(s) scheduled as a result of the prehearing conference.

23. Staff of the Commission is requested to coordinate discussions in accordance with ¶ 54 above.

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

25. 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