

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
GRANTING UNOPPOSED MOTION;
VACATING AND RESCHEDULING
PREHEARING CONFERENCE; GRANTING
W. RICHARD MORRIS, ESQUIRE,
ADMISSION *PRO HAC VICE*; WAIVING
RESPONSE TIME TO UNOPPOSED MOTION;
AND CONTAINING ADVISEMENTS**

Mailed Date: November 18, 2014

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.* The Commission referred this Proceeding to an Administrative Law Judge (ALJ).

2. The following are the Parties in this Proceeding: AT&T Corp.; Bresnan Broadband of Colorado, LLC; CenturyTel of Colorado, Inc.; CenturyTel of Eagle, Inc.;

Colorado Office of Consumer Counsel; Comcast Phone of Colorado, LLC; El Paso County Telephone Company; N.E. Colorado Cellular, Inc., doing business as Viaero Wireless; Northern Colorado Communications, LLC; Qwest Corporation, doing business as CenturyLink QC; Sprint Communications Company L.P.; Sprint Spectrum L.P., doing business as Sprint PCS;¹ Teleport Communications America, LLC; and Trial Staff of the Commission (Staff).

3. Previous Decisions contain the procedural history of this matter. The procedural history is repeated here as necessary to put this Interim Decision in context.

A. Prehearing Conference.

4. On November 7, 2014, by Decision No. R14-1343-I, the ALJ scheduled a December 4, 2014 prehearing conference in this Proceeding. At ¶¶ 32-52 of that Interim Decision, the ALJ identified and discussed the issues that the Parties are to be prepared to discuss at the prehearing conference.

5. On November 13, 2014, Staff filed an Unopposed Motion to Reschedule the Prehearing Conference (Staff Motion). In that filing, Staff states that a number of counsel have scheduled matters that conflict with the prehearing conference and that all counsel are available for a prehearing conference on December 16, 2014. In addition, Staff represents that no party opposes the Staff Motion. Finally, Staff requests that response time to the Staff Motion be waived.

6. The ALJ will grant the Staff request for waiver of response time as no party will be prejudiced if the request is granted. The ALJ will waive response time to the Staff Motion.

¹ 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.

7. The Staff Motion states good cause, no party will be prejudiced if the Staff Motion (which is unopposed) is granted, and the ALJ is available on December 16, 2014. The ALJ will grant the Staff Motion; will vacate the December 4, 2014 prehearing conference; and will schedule the prehearing conference in this Proceeding for December 16, 2014.

8. The only modification to Decision No. R14-1343-I is the changed prehearing conference date; the remainder of the Interim Decision remains in effect. The ALJ expects the Parties to be prepared to discuss, at the December 16, 2024 prehearing conference, the matters identified in Decision No. R14-1343-I at ¶¶ 32-52.

B. Morris Motion for Admission *Pro Hac Vice*.

9. An attorney who is not licensed to practice law in Colorado (out-of-state attorney) must be granted permission to appear *pro hac vice* in this Proceeding. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² governs the admission of out-of-state attorneys. Rule 4 CCR 723-1-1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 221.1, which is now Colo.R.Civ.P. 205.5 and which became effective on September 1, 2014. Colo.R.Civ.P. 205.5 incorporates by reference the requirements of Colo.R.Civ.P. 205.3.

10. 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];

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

- (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.

11. Colo.R.Civ.P. 205.3(2)(b) specifies the content of a motion for leave to appear *pro hac vice* and, as pertinent here, includes

- (v) A statement that the [out-of-state attorney] acknowledges that he or she is subject to the Colorado Rule of Professional Conduct, the Colorado Rules of Civil Procedure, and other [administrative agency] rules, that the [out-of-state attorney] will follow those rules throughout the *pro hac vice* admission, ... [.]

12. 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.

13. 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.

14. 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.

15. On November 12, 2014, W. Richard Morris, Esquire, filed an Amended 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).

16. The ALJ has reviewed the Morris Motion, the Attorney Registration Office notice, and the requirements of Colo.R.Civ.P. 205.3. The ALJ finds that Mr. Morris has complied with

Rule 4 CCR 723-1-1201(a) and Colo.R.Civ.P. 205.5 (and the incorporated Colo.R.Civ.P. 205.3), that the Morris Motion states good cause, and that no party will be prejudiced if the Morris Motion is granted. The ALJ will grant the Morris Motion and will admit Mr. Morris *pro hac vice* to represent Sprint in this Proceeding.

17. **W. Richard Morris, Esquire, is advised and is on notice that** he will be held to the requirements of Colo.R.Civ.P. 205.3(3) as incorporated by reference into Colo.R.Civ.P. 205.3 and to the acknowledgements contained in the verified Morris Motion.

18. **Thorvald A. Nelson, Esquire, and Emanuel T. Cocian, Esquire,³ are advised and are on notice that** they will be held to the requirements of Colo.R.Civ.P. 205.3(3) as incorporated by reference into Colo.R.Civ.P. 205.3.

II. **ORDER**

A. **It Is Ordered That:**

1. The Unopposed Motion to Reschedule the Prehearing Conference, which motion was filed on November 13, 2014, is granted.

2. The prehearing conference in this Proceeding scheduled for December 4, 2014 is vacated.

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

DATE: December 16, 2014
TIME: 10 a.m. Mountain Time
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

³ Messrs. Nelson and Cocian are associated with Mr. Morris for purposes of Mr. Morris's *pro hac vice* representation. Morris Motion at ¶ 7.

4. At the prehearing conference, the Parties shall be prepared to discuss the matters identified and discussed in Decision No. R14-1343-I at ¶¶ 32-52.

5. 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.

6. Trial Staff of the Commission is requested to coordinate discussions in accordance with Decision No. R14-1343-I at ¶ 54.

7. Consistent with the discussion above, the Amended Verified Motion of W. Richard Morris 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, is granted.

8. W. Richard Morris, Esquire, is granted permission to appear *pro hac vice* as counsel for Sprint Communications Company L.P. and Sprint Spectrum L.P., Doing Business as Sprint PCS, in this Proceeding.

9. Consistent with the discussion above, W. Richard Morris, Esquire, is held to the advisements contained in ¶ 18 of this Interim Decision.

10. Consistent with the discussion above, Thorvald A. Nelson, Esquire, and Emanuel T. Cocian, Esquire, are held to the advisements contained in ¶ 19 of this Interim Decision.

11. Response time to the Unopposed Motion to Reschedule the Prehearing Conference is waived.

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

13. 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