

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22D-0293T

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IN THE MATTER OF THE VERIFIED PETITION OF TRIAL STAFF OF THE COMMISSION FOR A DECLARATORY ORDER REGARDING THE APPLICABILITY OF C.R.S. § 17-42-103 AND CONSTRUING THE DEFINITION OF THE TERM “PENAL COMMUNICATION SERVICES.”

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
ESTABLISHING PROCEDURAL SCHEDULE, AND  
GRANTING MOTION FOR CLARIFICATION AND  
REQUEST TO INTERVENE**

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Mailed Date: September 6, 2022

**I. STATEMENT AND BACKGROUND**

**A. Statement**

1. This Decision establishes a procedural schedule to move this matter forward; grants Global Tel\*Link Corporation’s doing business as ViaPath Technologies and its subsidiary Telmate, LLC’s doing business as ViaPath Technologies (collectively, ViaPath) Unopposed Motion for Clarification (Unopposed Motion) filed August 19, 2022; and grant’s ViaPath’s Petition for Leave to Intervene (Intervention) filed August 8, 2022.

**B. Procedural History<sup>1</sup>**

2. On June 22, 2022, the Colorado Public Utilities Commission Trial Staff (Staff) initiated this matter by filing the above-captioned Petition, which sought, among other things, an order compelling HomeWAV LLC’s (HomeWAV) joinder.<sup>2</sup>

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

3. On July 19, 2022, the Commission accepted the Petition; provided public notice of it; established an August 8, 2022 intervention and responsive brief deadline; and referred this matter to an Administrative Law Judge (ALJ) for disposition.<sup>3</sup>

4. On August 8, 2022, ViaPath filed its Intervention and Responsive Brief.

5. On August 18, 2022, the ALJ granted Staff's request to compel HomeWAV's joinder; noted that no interventions or responsive briefs had been filed; and ordered the parties to confer on a procedural schedule and Staff to file a proposed schedule by August 26, 2022.<sup>4</sup>

6. On August 19, 2022, ViaPath filed its Unopposed Motion.

7. On August 26, 2022, Staff filed its Conferral Report and Proposed Procedural Schedule (Conferral).

8. On August 29, 2022, HomeWAV's counsel filed an Entry of Appearance.

## **II. FINDINGS AND CONCLUSIONS**

### **A. Unopposed Motion for Clarification and ViaPath's Intervention**

9. In its Unopposed Motion, ViaPath seeks the ALJ to correct or clarify the statement in Decision No. R22-0493-I that no intervention or responsive brief was filed given that the Commission's E-Filing System reflects its Intervention and Responsive Brief. The ALJ grants the Unopposed Motion. The statement in Decision No. R22-0493-I paragraph 5 that no intervention or responsive brief was filed is incorrect. As noted above, ViaPath, did timely file an

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<sup>2</sup> Petition at 1.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> Decision No. R22-0493-I (mailed August 18, 2022).

Intervention and Responsive Brief.<sup>5</sup>

10. Turning to ViaPath's Intervention, the ALJ finds that ViaPath meets the requirements under Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 to permissively intervene. In addition, because no party filed a response to the Intervention, it is deemed confessed.<sup>6</sup> For all these reasons, and the reasons stated in the Intervention, the ALJ grants ViaPath's Intervention. ViaPath is a party to this Proceeding and its Responsive Brief filed August 8, 2022 is accepted.

**B. Procedural Schedule**

11. In its Conferral, Staff proposes the following procedural schedule:

Filing	Proposed Deadline
HomeWAV's Responsive Brief	September 8, 2022
Factual Stipulation	September 23, 2022
Motions for Summary Judgment	October 12, 2022
Responses to Motions for Summary Judgment	October 26, 2022 <sup>7</sup>

12. Staff and HomeWAV agree that no evidentiary hearing is necessary.<sup>8</sup>

13. Given that Decision No. R22-0493-I neither acknowledged nor addressed ViaPath's Intervention, Staff only conferred with Home WAV on the procedural schedule.<sup>9</sup> In

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<sup>5</sup> The ALJ's error was inadvertent, and caused by referencing data in this Proceeding that was pulled from the E-Filings System before ViaPath filed its Intervention and Responsive Brief. The ALJ regrets any inconvenience that this inadvertent error caused.

<sup>6</sup> Rule 1400(d), 4 CCR 723-1.

<sup>7</sup> Conferral at 3.

<sup>8</sup> *Id.* Staff also notes that HomeWAV was not registered in the Commission's E-Filing System and does not appear on the E-Filing System's service list. *Id.* at 2. The Commission's E-Filing System's service list for this Proceeding now includes HomeWAV and its counsel.

<sup>9</sup> *Id.* at fn. 2.

doing so, Staff complied with Decision No. R22-0493-I, which only required Staff to confer with the parties.

14. Based on the timing of this Decision and the issues concerning ViaPath's Intervention, the ALJ pushes back the proposed deadlines by a short period to allow the parties sufficient time to meet the deadlines. For the reasons stated in the Conferral, the ALJ agrees that HomeWAV should be given an opportunity to file a Responsive Brief to the Petition, and thus establishes a deadline for this. In addition, per the Conferral, the ALJ will not schedule an evidentiary hearing in this proceeding at this time. An evidentiary hearing may be scheduled if the ALJ determines material disputed facts exist after reviewing the parties' summary judgment filings, or if ViaPath makes a filing (discussed below), asserting that an evidentiary hearing is necessary.

15. If ViaPath objects to the procedural schedule ordered below, which does not include an evidentiary hearing, by September 13, 2022, ViaPath must make a filing indicating this. In doing so, ViaPath must confer with the parties as to an alternative schedule, and include the results of that conferral in its filing. If ViaPath believes that an evidentiary hearing is necessary, it must also confer on the matters identified in ¶ 13 of Decision No. R22-0493-I, and include the results of the conferral in its filing. If ViaPath fails to make such a filing by the stated deadline, the ALJ will construe this failure to mean that ViaPath does not object to the procedural schedule, including the lack of an evidentiary hearing.

### **III. ORDER**

#### **A. It Is Ordered That:**

16. Consistent with the above discussion, Global Tel\*Link Corporation's doing business as ViaPath Technologies and its subsidiary Telmate, LLC's doing business as ViaPath

Technologies (collectively, ViaPath) Unopposed Motion for Clarification filed August 19, 2022 is granted.

17. ViaPath's Petition for Leave to Intervene filed August 8, 2022 is granted and ViaPath is a party to this Proceeding. ViaPath's Responsive Brief filed August 8, 2022 is accepted. The parties to this proceeding are: ViaPath, HomeWAV LLC (HomeWAV), and the Colorado Public Utilities Commission Trial Staff.

18. **Deadline to Object to Procedural Schedule.** If ViaPath objects to the below procedural schedule, including that no evidentiary hearing is scheduled, it must make a filing consistent with paragraph 15 above on or by the close of business on September 13, 2022.

19. **Responsive Brief Deadline.** HomeWAV must file and serve its brief responding to the above-captioned Petition on or by the close of business on September 16, 2022.

20. **Factual Stipulation Deadline.** The parties must file and serve their stipulated material facts on or by the close of business on October 3, 2022.

21. **Motions for Summary Judgment Deadline.** The parties must file and serve Motions for Summary Judgment on or by the close of business on October 21, 2022.

22. **Responses to Motions for Summary Judgment Deadline.** The parties must file and serve Responses to Motions for Summary Judgment on or by the close of business on November 4, 2022.

23. Unless a party makes a filing showing good cause per Rule 1400(e), 4 CCR 723-1, no replies to Motions for Summary Judgment are permitted.

24. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director