

Decision No. C04-0055

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03C-415T

IN THE MATTER OF AN INVESTIGATION OF REGISTERED TOLL RESELLERS OF TELECOMMUNICATIONS SERVICES CONCERNING ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND PROCEDURE RELATING TO THE FILING OF ANNUAL REPORTS BY PUBLIC UTILITIES.

ORDER GRANTING EXCEPTIONS

Mailed Date: January 16, 2004

Adopted Date: January 7, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions filed by Staff of the Colorado Public Utilities Commission (Staff) to Recommended Decision No. R03-1341 (Recommended Decision). In that Recommended Decision, the Administrative Law Judge (ALJ) recommended that the registration of the registered toll resellers of telecommunications services in Colorado (listed in Attachment A to the Recommended Decision) be revoked for violating Colorado statutes and Commission rules regarding the filing of annual reports. Staff represents that KMC Telecom V, Inc. (KMC Telecom), was inadvertently included in the list of toll resellers who had not filed an annual report for calendar year 2002. Staff now requests that KMC Telecom be removed from Attachment A to the Recommended Decision and that the Commission not order the carriers listed in Attachment B to the Recommended Decision to disconnect KMC Telecom from the public switched network. Now, being duly advised in the matter, we grant Staff's exceptions.

2. Providers of intrastate toll telecommunications services on a resale basis are required, pursuant to § 40-15-302.5, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-25(a)(1), to file an annual report with the Commission on or before April 30 of each year, for the preceding calendar year. The annual reports for calendar year 2002 were due April 30, 2003.

3. The ALJ found, that as of November 25, 2003, the date of the hearing on this matter, no annual report for calendar year 2002 was filed by any of the respondents, including KMC Telecom. As a result, the ALJ additionally found that the Commission-issued authorities under which KMC Telecom (as well as the other respondents listed in Attachment A) operate in Colorado should be revoked. Further, the ALJ ordered that KMC Telecom and the other respondents should be ordered to cease and desist from providing competitive local exchange services and should be disconnected from the public switched network. The ALJ found this remedy appropriate because the subject annual reports were seven months overdue, and KMC Telecom and the other respondents failed to make the required filing despite four separate Commission notices.

4. Staff represents that through an administrative error, it listed KMC Telecom on the attachment to the Show Cause Order that commenced this proceeding as a toll reseller who had not filed its 2002 annual report. However, Staff points out that in fact, KMC Telecom did file its 2002 annual report before the November 25, 2003 hearing in this Docket. Staff points out that KMC Telecom filed its annual report under seal. Consequently, Staff did not become aware of the filing until after the hearing. Staff indicates that it is persuaded that KMC Telecom has fully complied with the filing requirements of § 40-15-302.5, C.R.S., and 4 CCR 723-1-25(a)(1).

5. Therefore, Staff requests that the Commission remove KMC Telecom from Attachment A to the Recommended Decision, maintain KMC Telecom's registration to resell intrastate telecommunications toll services to Colorado customers, and refrain from ordering the carriers listed in Attachment B to the Recommended Decision to disconnect KMC Telecom from the public switched network.

6. We find Staff has stated good cause to grant its exceptions to the Recommended Decision.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed by Commission Staff to Recommended Decision No. R03-1341 are granted consistent with the discussion above.

2. KMC Telecom V. Inc.'s authority will not be revoked nor will it be disconnected from the public switched network.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Mailed Date of this Order.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 7, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners