

Decision No. R05-0913-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04B-491T

IN THE MATTER OF THE PETITION OF QWEST CORPORATION FOR
ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH UNION
TELEPHONE COMPANY D/B/A UNION CELLULAR UNDER SECTION 252 OF
THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DENYING MOTION TO CONSOLIDATE HEARINGS**

Mailed Date: July 25, 2005

I. STATEMENT

1. On September 30, 2004, Qwest Corporation (Qwest) filed a Petition for Arbitration of an Interconnection Agreement with Union Telephone Company, doing business as Union Cellular (Union). Union filed its Response to Petition for Arbitration on October 25, 2004. Qwest and Union are the only parties to this proceeding.

2. On July 6, 2005, a prehearing conference was held in this proceeding. The parties proposed a procedural schedule and hearing dates which the Administrative Law Judge (ALJ) found acceptable. Decision No. R05-0852-I. On Union's motion, the hearing dates were changed to November 14 through 16, 2005 in Denver, Colorado. Decision No. R05-0890-I.

3. On July 6, 2005, Union filed a Motion to Consolidate Hearings (Motion). The time to file a response has expired, and Qwest did not file a response. The Motion is unopposed.

4. Union requests that the Commission consolidate the hearing in this proceeding with the hearing to be held (but not yet scheduled, apparently) in an arbitration in Utah. Union

represents that there are only a few major issues remaining for arbitration; that the issues are the same in the Colorado arbitration and in the Utah arbitration; that it "anticipates that the matrices, prefilings [sic] motions, witness statements, and hearings will be nearly identical and certainly substantively identical" (Motion at ¶ 2); and that consolidating the Colorado and Utah hearings will save the resources of the two commissions and of the parties (*id.* at ¶ 3). Union postulates that consolidation will save the commissions' resources as follows:

As an illustration, if the hearings were consolidated by the respective commission and the administrative law judge for one jurisdiction were to travel to the other, the Parties could present the hearing to the administrative law judges sitting jointly. The judges could then hear the evidence presented at the same time, and each take a copy of the hearing record to their respective jurisdictions. As each would hear the same testimony, there would be an enhanced opportunity that their respective decisions would be consistent and the Parties would have saved time and expense.

Id. at ¶ 4.

5. The major issues remaining for decision, as identified at the prehearing conference held on July 6, 2005, are: (a) the rates to be charged under the Interconnection Agreement; and (b) the interconnection architecture. There may be others.

6. Rule 4 *Code of Colorado Regulations* 723-1-79(a) states: "The Commission may consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced." Granting a motion to consolidate is discretionary. For the reasons discussed below, the Motion, although unopposed, will be denied.

7. First, the Motion assumes that one ALJ will travel outside her jurisdiction to preside jointly with the other ALJ over the consolidated hearing. The out-of-state- ALJ would have no authority in the jurisdiction to which she travels because, as a state (not federal) ALJ, her jurisdiction is the state in which she is employed or appointed. Second, the rates to be charged, which the parties identify as one of the major issues remaining, are state-specific and are even

locale-specific. A consolidated proceeding involving rates for two different states increases the likelihood of a confused, confusing, or incomplete evidentiary record. Third, there is no indication that Utah, the other jurisdiction involved, has been approached concerning consolidation; and there is no indication of the procedural posture or status of the Utah proceeding.¹ Fourth, there is no assurance that this Commission and the Utah commission approach arbitration under the Federal Telecommunications Act of 1996 in the same way.² Union makes no representation concerning this issue. If the processes or approaches of the two commissions diverge, this increases the likelihood of a confused, confusing, or incomplete evidentiary record in a consolidated hearing. Fifth, assuming that the parties file pre-hearing motions which affect the presentation of evidence, there is no assurance that the two ALJs would reach the same decision on the motions. This raises the possibility that evidence which is excluded in one jurisdiction would be admitted during the hearing in the other jurisdiction. If there are prehearing rulings which affect the presentation of evidence, this increases the possibility of a confused, confusing, and incomplete evidentiary record in a consolidated hearing. Sixth and finally, while it is possible (even probable) that consolidation would conserve the parties' resources as described in the Motion, there is little indication that consolidation would conserve the resources of the two commissions.³

8. For these reasons, the Motion does not establish that the issues in these two proceedings are substantially similar and that consolidation will not prejudice the rights of the

¹ The Motion provides no information about the Utah case (*e.g.*, procedural schedule, hearing dates).

² For example, Utah may have one or more arbitration-related presumptions which affect the burden of proof, the burden of going forward, or the type or quantum of evidence required.

³ For example, consolidation would reduce the number of hearings for the parties from two to one; would reduce the parties' hearing preparation time; and possibly would reduce the parties' pre-hearing and/or post-hearing filings. The commissions would not see these benefits as each case would be handled individually except for the hearing. In fact, the costs of the proceeding might be higher for the commissions if consolidation is granted (*e.g.*, travel-related expenses and additional hearing time).

parties. The Motion will be denied. There will be no consolidation, and the hearing will be held in Denver, Colorado as previously ordered.

II. ORDER

A. It Is Ordered That:

1. The Motion to Consolidate Hearings is denied.
2. This Order is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

Associated Legal Group, LLC

JUL 7 8 2005

RECEIVED