

Decision No. C06-0458

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05M-364T

REQUEST BY QWEST CORPORATION THAT THE COLORADO PUBLIC UTILITIES COMMISSION MEDIATE ITS INTERCONNECTION AGREEMENT NEGOTIATIONS WITH RUBY RANCH INTERNET COOPERATIVE ASSOCIATION.

**ORDER DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: April 26, 2006

Adopted Date: April 12, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) of Decision No. C06-0234 filed by Qwest Corporation (Qwest) on March 31, 2006. Qwest seeks RRR in order to remedy what it argues are serious due process violations that the Decision granting Ruby Ranch Internet Cooperative Association's (Ruby Ranch) Petition for Declaratory Ruling (Petition) has occasioned.

2. Now, being fully advised in the matter, we deny the procedural arguments raised by Qwest, but nonetheless allow further argument for RRR consistent with the discussion below.

B. Background

3. Qwest argues that we must grant RRR in order to remedy "the serious due process violations" that occurred through Decision No. C06-0234. According to Qwest, the procedural course that should have ensued upon the filing of the Petition by Ruby Ranch should have ensured that interested parties were given a full and fair opportunity to be heard on the subject matter of the Petition.

4. In Qwest's estimation, that procedural course should have included issuance of a Commission and/or petitioner notice of the petition, along with a date upon which intervention will be permitted, citing our procedural rules at 4 *Code of Colorado Regulations* (CCR) 723-1-60(a)(4). Qwest further argues that Commission rules provide that, after the time set for intervention, the Commission, by separate order, shall establish the procedure, including hearing dates, for consideration of the petition. Qwest points out that Rule 4 CCR 723-1-60(a)(4) also provides that the statutory provisions governing hearings shall apply to all declaratory petitions.

5. According to Qwest, we ignored our own rules regarding the handling of declaratory orders and ignored our rules regarding the handling of matters that are uncontested or unopposed. Qwest notes that Rule 4 CCR 723-1-24 requires that a matter be designated to be determined under the Commission's modified procedure. As such, we were required to designate this docket as a matter to be determined under the Commission's modified procedure. The outcome of this, according to Qwest, is that interested parties (including Qwest) were deprived of their opportunity to be heard on the substantive issues raised in Ruby Ranch's Petition.

C. Analysis

6. Ruby Ranch filed its Petition for Declaratory Order, seeking a declaratory ruling that Qwest must negotiate prices for unbundled loops located in the Ruby Ranch subdivision based on the specific costs Qwest incurs in providing those subloops. Additionally, Ruby Ranch sought a declaratory ruling that Qwest cannot require it to use the prices contained in Qwest's Statement of Generally Available Terms and Conditions (SGAT) for the subloops.

7. Ruby Ranch's Petition arises in an ongoing matter between it and Qwest involving negotiations between the parties for an interconnection agreement of which the subloops appear to be the area of contention in those negotiations. The original agreement

between Qwest and Ruby Ranch expired on April 1, 2005. The parties agreed to a month-to-month subloop rental agreement. Subsequently, on August 26, 2005, Qwest delivered a letter to the Director of the Commission requesting that the Commission mediate its interconnection agreement negotiations with Ruby Ranch. In Decision No. C05-1057, issued September 2, 2005, the Commission, upon representations made by Qwest, granted Qwest's request and agreed to mediate negotiations between the parties through an administrative law judge.

8. In its Petition filed November 19, 2005, Ruby Ranch represents that a mediation session was held on November 9, 2005. Ruby Ranch further represented that, at that session, Qwest indicated it had subloops available, however, it was required to charge Ruby Ranch the \$24.13 SGAT price for those subloops. Ruby Ranch further represented that it was Qwest's position that it cannot negotiate a different price.

9. In its response to Ruby Ranch's Petition dated December 22, 2005, Qwest generally took issue with many of the factual assertions of Ruby Ranch. However, Qwest provided no specifics as to which factual assertions it considered incorrect, citing confidentiality of the mediation session in which Ruby Ranch asserts those representation by Qwest took place. Qwest further indicated that no controversy exists in this matter because offering a lower rate to Ruby Ranch would trigger concerns that Qwest was discriminating between carriers in violation of 47 U.S.C. § 251(d)(1)(A)(ii). Qwest argued that changing the SGAT rate for unbundled subloops is an issue best decided in the current 04M-111T Qwest-specific cost docket. We note that Qwest did not request a hearing on the Petition in its response filing.

10. Commission Rule 4 CCR 723-1-60¹ provides that any person may file a petition for declaratory order in an original proceeding, or in a pending proceeding. 4 CCR 723-1-60(a). When a petition is filed in an original proceeding, and if the Commission determines that a declaratory order should issue, it is then required to give “notice of the petition to persons, firms, or corporations who, in the opinion of the Commission, would be interested in or affected by the [petition].” 4 CCR 723-1-60(a)(4). Additionally, in original proceedings, the Commission is required to establish procedures, including hearing dates, for consideration of the petition. 4 CCR 723-1-60(a)(7). With petitions filed in pending matters, such a process is not required.

11. It is uncontroverted that Ruby Ranch filed its Petition in this Docket to settle a dispute between it and Qwest regarding the price Ruby Ranch must pay for the subloops at issue. The Petition was filed as part of a pending proceeding to settle a controversy. Consequently, the procedures Qwest argues were ignored by the Commission were in fact not required in this matter. Had Ruby Ranch filed its Petition as an original proceeding with no underlying case, then we agree with Qwest that the procedures outlined in 4 CCR 723-1-60(a)(4)-(7) must have been followed. However, as discussed above, since the Petition was part of an ongoing proceeding, this was not the case. We find no procedural error in granting Ruby Ranch’s Petition. Notice and hearing were not required in this matter because the Petition was requested in an ongoing proceeding. Further, Qwest, in its response to the Petition did not request a hearing. Therefore, we deny Qwest’s RRR as it relates to the procedural aspects surrounding the Petition.

¹ This rule was in effect at the time Ruby Ranch filed its Petition. However, subsequent to that filing, the Commission has adopted new rules of practice and procedure that became effective April 1, 2006. Rule 4 CCR 723-1-60 is now codified at 4 CCR 723-1304. We further note that the language of that rule is significantly altered from Rule 4 CCR 723-1-60.

12. However, we find that no harm arises in allowing Qwest the ability to respond substantively to Decision No. C06-0234. Therefore, Qwest, if it so chooses, may argue the substantive aspects of Decision No. C06-0234, and may request reconsideration. We find this is in conformance with § 40-6-114, C.R.S., and our Rules of Practice and Procedure.

13. Ruby Ranch filed a response to Qwest's RRR. We note that the response was not accompanied by a request or motion to accept the response. Commission Rule 4 CCR 723-1-22(b) states that "[n]o responsive pleading may be filed to ... applications for rehearing, reargument or reconsideration." Ruby Ranch failed to provide any reason to waive our rule. Therefore we deny the pleading and will not consider it here.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration of Decision No. C06-0234 of Qwest Corporation is denied consistent with the discussion above.

2. Qwest Corporation may file for reconsideration of the substantive issues of Decision No. C06-0234 within 20 days of the effective date of this Order.

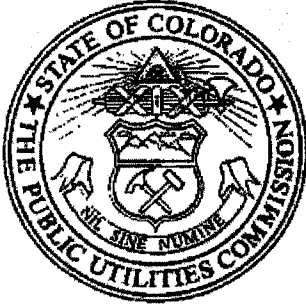
3. The Response to Qwest Corporation's application for rehearing, reargument, or reconsideration filed by Ruby Ranch Cooperative Association is denied.

4. 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.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 12, 2006.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

CARL MILLER

Commissioners

COMMISSIONER POLLY PAGE ABSENT.