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(Decision No. C88-1405)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE RULES OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO PRESCRIBING COST ALLOCATION METHODS IN ACCORDANCE WITH TITLE 40, ARTICLE 15, SECTION 108, OF THE COLORADO REVISED STATUTES.	CASE NO. 6685 COMMISSION DECISION GRANTING, IN PART, REHEARING, REARGUMENT OR RECONSIDERATION

October 19, 1988

BY THE COMMISSION:

STATEMENT

On August 31, 1988, in Decision No. C88-1162, the Commission adopted rules which prescribed cost-allocation methods in accordance with § 40-15-108, C.R.S. Petitions or applications for rehearing, reargument or reconsideration of Decision No. C88-1162 were filed by The Mountain States Telephone and Telegraph Company d/b/a U S West Communications (U S West), The El Paso County Telephone Company (El Paso), the Office of Consumer Counsel (OCC), AT&T Communications of the Mountain States, Inc. (AT&T), Eagle Telecommunications, Inc. (Eagle) and a group of independent telephone companies, namely, Agate Mutual Telephone Exchange, Big Sandy Telcom Inc., Bijou Telephone Cooperative, Columbine Telephone Company, Delta County Tele-Comm, Inc., Eastern Slope Rural Telephone Association, Farmers Telephone Company, Inc., Nucla-Naturita Telephone Company, Inc., and Wiggins Telephone Association (Independents). This decision will address those petitions and applications. On October 7, 1988, Eagle filed a response to the U S West petition for rehearing, reargument or reconsideration. On October 17, 1988, U S West filed a Motion to Strike that response asserting that a response is not permitted under Rule 22(b) of the Commission's Rules of Practice and Procedure. U S West is correct and Eagle's response should be stricken.

FINDINGS OF FACT AND CONCLUSIONS THEREON

1. U S West argues that this proceeding is entirely dependent upon findings made in Case No. 6645. As stated by the Commission in Decision No. C88-664, dated June 1, 1988, these rules were proposed to effectuate the purposes of Title 40, Article 15, and in particular, § 40-15-108, C.R.S. The Commission went on to state in that decision that the rules follow from the Commission's deliberations and determinations in Case Nos. 6645 and 6647 (emphasis supplied). U S West

misconstrues the language cited in Decision No. C88-664. As explained by Staff witness Warren Wendling in the hearing, this language simply showed the logical progression of the Commission's decisions in Case Nos. 6645, 6647 and 6634. Nowhere in the rules or in the Commission's findings does the Commission rely upon pronouncements in those cases as a basis, purpose or authority for adoption of these rules and the Commission expressly reaffirms the basis, purpose and statutory authority found in the rules as the only basis, purpose and statutory authority upon which the Commission relied.

2. U S West also argues that the rules proposed were significantly different from those adopted and, therefore, not in compliance with § 24-4-103, C.R.S. Changes were made to the rules originally proposed by the Commission, but based only on the record in this case as required by § 24-4-103(4), C.R.S. Under § 24-4-103(4), C.R.S., the record consists of "the proposed rules, evidence, exhibits and other matters presented or considered, matters officially noticed, . . . and any written comments or briefs filed." That section also clearly contemplates that the proposed rules may be changed, since it provides that if changes are made, any party to the public hearing will have at least four working days after the availability of the proposed final rules to submit written comments regarding the changes prior to their adoption. Moreover, the changes made were not so significant as to violate parties' due process or statutory requirements. For example, the subject matter of each rule proposed remained the same and the overall subject matter of the rules remained the same even with the changes. Modifications proposed by witness Wendling did not constitute a new rulemaking proceeding as was clearly stated on the record (T 155, lines 19 through 23; T 156, lines 20 through 23).

Finally, U S West cites specific changes and argues that those changes together with other modifications were so sweeping as to violate the rulemaking statutes. Simply put, the Commission disagrees and has complied with the rulemaking statutes, not only in spirit but to the letter, particularly when that very statute was amended by the General Assembly to change the rulemaking process which requires some transition as of September 1, 1988.

3. U S West and El Paso argue that the fiscal impact issued as Appendix B with the proposed rules is inaccurate, misleading and fails to comply with statutory requirements. Under § 24-4-103(8)(d), C.R.S., the Commission must issue a fiscal impact statement where rules have a fiscal impact. That subsection requires the fiscal statement to include an identification of the types of persons or groups who will bear the costs and the persons or groups who will benefit, directly or indirectly. The fiscal impact statement complies with the rule. U S West's argument that implementation of these rules will be more costly, and therefore, contrary to the assertion in the fiscal statement that these rules will not result in any increased or deceased revenues by any state agency or political subdivision of the state is without merit. Finally, as of May 17, 1988, a fiscal impact statement is not required under § 24-4-103(8)(d), C.R.S. The fiscal impact statement was replaced with a

regulatory analysis under § 24-4-103(4.5), C.R.S. which must be issued only if requested by any person. No person requested a regulatory analysis of the proposed rules. However, the Commission has nonetheless substantially complied with the new amendments to § 24-4-103(4) and (4.5), C.R.S., and has acted in good faith.

The Commission has in its fiscal impact statement identified the classes of person who will bear the costs and benefit from the proposed rule. As will be noted later in this decision, the costs to comply with these rules and in an effort to make these similar with requirements established by the Federal Communication Commission (FCC), as testified to by witness Christopher Schroeder, is one of the very reasons this Commission is granting relief to certain telephone companies from having to file cost-allocation manuals until they provide more than 10,000 access lines as was argued by El Paso and other independents. Finally, throughout its deliberations in open meetings, the Commission has been concerned with costs of compliance. We also stated that we were adopting cost-allocation methods similar to those required by the FCC in CC Docket 86-111 in order to minimize the costs to comply and in order to eliminate preparing similar information in different formats. In fact, the Commission has incorporated the FCC system of accounts in Rule 4.

Under § 40-15-108(2), C.R.S., the Commission was specifically, and unequivocally, directed to prescribe methods for cost allocation for segregation of investments and expenses of providers who intend to offer both regulated and deregulated telecommunications service so that the regulated services do not subsidize the deregulated services. To do this in any manner, other than by rulemaking, would clearly violate Home Builders Association v. PUC, 720 P.2d 552 (1986), since the methods prescribed would have the effect of rulemaking.

4. U S West and El Paso argue that the Commission has required compliance with asset segregation prior to any change in revenue requirements citing Rules 10.4 and 12.1 of the rules adopted by Decision No. C88-1162, stating this violates § 40-3-111, C.R.S. or § 40-6-111, C.R.S. Both of these rules require a provider to comply with the cost segregation rules when it files a request for a change in revenue requirements. Neither rule states that a requested change in revenue requirements will be denied for failure to comply with these rules. A request to change revenue requirements can be submitted at any time under the law. Under § 40-3-111, C.R.S., the Commission must determine if rates, charges, and classifications are just, reasonable or sufficient. Section 40-3-111, C.R.S. also provides that in order to make that determination, the Commission may consider, among other things, any other factors which affect the sufficiency of the rates, charges or classifications. Under § 40-3-110, C.R.S., the Commission can require every public utility to furnish to the Commission at any time and in any form required by the Commission any information it requests in order to keep itself informed. Under §§ 40-15-201 and 301, C.R.S., Article 3 of Title 40 applies to providers of part 2 or part 3 services. Therefore, the requirement in Rules 10.4 and 12.1 are proper.

5. U S West generally argues that the many of the Findings of Fact in Decision No. C88-1162 are not supported by the record. Findings found in Paragraphs 1, 2, 3, 4, and 5 of that decision are simply recitations of the law which the Commission finds are relevant for the adoption of appropriate rules prescribing cost-allocation methods required under § 40-15-108, C.R.S. Paragraph 6 simply refers to rules adopted by the Commission in Case No. 6636 which the Commission also finds are relevant for the adoption of appropriate rules prescribing cost allocation methods required under § 40-15-108, C.R.S. Moreover, each of the statutory sections referred to in those findings were cited by the Commission as part of the statutory authority under which the Commission is prescribing cost allocations methods in the proposed rules, which are part of the record. U S West, throughout this case, has argued that the statutory authority cited by the Commission is too broad. By reciting the sections of law noted above in Decision No. C88-1162 and as stated in Paragraph 7 of that decision, the Commission rejected U S West's arguments that the statutory authority was too broad or incorrect and clearly found that those sections are relevant and a primary basis for adopting the rules at issue.

6. The use of a fully distributed cost (FDC) study in Rule 6 is not contrary to the findings in Paragraph 3 of Decision C88-1162 and there is sufficient evidence in the record to support the use of FDC. We completely agree with the testimony provided by witness Wendling (T 22, lines 3 through 25, T 23, lines 1 through 7). In addition, witness Garrett Fleming, on behalf of U S West, approves the use of FDC for services that use joint facilities. He noted that the use of FDC will result in a fair sharing "of cost of the overall business." (T 182, line 1, and lines 11 through 16).

7. U S West and El Paso argue that the Commission is requiring unregulated affiliates to report information to the Commission under Rule 14 which, it argues, violates § 40-15-107, C.R.S. (discussed in Paragraph 4 and 14 of the findings). The Commission is not requiring affiliates to provide any information to the Commission under Rule 14, as suggested by U S West. Rather it is requiring <u>providers</u> subject to its jurisdiction to provide information where there are certain transfers between regulated and nonregulated affiliates. By definition, only regulated affiliates are subject to the Commission's jurisdiction. Therefore, the Commission has not misconstrued its authority under § 40-15-107, C.R.S. Rule 14 is consistent with and in support of § 40-15-107, C.R.S. However, as previously noted, under § 40-3-110, C.R.S., applicable to part 2 and part 3 service providers the Commission has authority to create additional reporting requirements. Since unregulated affiliates are not regulated by these rules, no notice was required to be sent to them concerning these rules under § 24-4-103, C.R.S.

8. U S West and El Paso argue that the definition of cross-subsidization in Rule 2.3 is inconsistent with the Commission's refusal to include the use of royalty payments as a relaxed form of regulation in Case No. 6636. Although the Commission did not adopt the use of royalty payments as a form of relaxed regulation in Case No. 6636,

failure to compensate the regulated operations for the use of good will or other intangible assets for the benefit of the deregulated operations is improper cross-subsidization under § 40-15-106, C.R.S. Use of any asset owned by the regulated provider or division, whether tangible or intangible, by an unregulated division without payment of just and reasonable compensation would surely permit the unregulated division to price a service below its cost since, but for the definition in Rule 2.3, there would be no cost for the use of an asset for which it would otherwise have to pay. This is not inconsistent with the rules issued in Case No. 6636. There is, however, a typographical error in Rule 2.3 which was noted by the OCC and which has been corrected.

9. U S West argues that certain references to statutory sections other than § 40-15-108, C.R.S. in the statutory authority for these rules is improper. As discussed in Paragraph 5 earlier, we reject that argument. U S West also argues that the Commission has failed to define affordability of basic telephone service and fostering free market competition as used in the Basis, Purpose and Statutory Authority section of these rules. Suffice it to say these terms are found in § 40-15-101, C.R.S., are undefined in the statute, and presumably have a common meaning. Rather than making further findings of fact as suggested by U S West, the Commission simply recognized the legislative declaration in the amended Article 15 of Title 40 and fully intends to implement the declaration in its regulation of telecommunication service providers as mandated by the General Assembly.

10. U S West seems to contend that the Commission used only the size of providers to determine the level of compliance required under these rules in the findings in Paragraph 8 and 12. This is not the case. The size is a factor and was used to demarcate the types of providers. The difference in the treatment between Class A, B, C and D providers is based not only on size, but on other factors as well such as the potential for providers to cross-subsidize, whether the provider controls the public switched network, whether it controls any bottleneck facilities, and whether it dominates any particular market. Moreover, in Decision No. C88-1162 in Paragraph 8, we stated:

> The Federal Communication Commission (FCC) has recognized that AT&T and the Bell operating companies such as Mountain Bell, should be subject to greater scrutiny to ensure that cross-subsidization does not occur because of their prior monopoly status. As more competition evolves, the market shares may decline for these providers, and where a particular service becomes more competitive and the share of the market held by Mountain Bell or AT&T is reduced, more relaxed regulatory treatment may be appropriate which could reduce the reporting required under these rules. (Emphasis supplied)

If size were the sole criteria for the distinction between classes, the statement above would be meaningless. Disparate treatment

is appropriate as noted by the FCC and as this Commission has noted in Decision No. C87-1348 issued in Application No. 37367 and Case No. 6633 concerning private line services, for example. The disparate treatment, to the extent it exists, is mandated by the opportunity certain providers have to price deregulated services below costs and subsidize those services from customers of regulated services.

11. U S West contends that the Commission cannot require segregation of investments and expenses between part 2 and part 3 services, both still regulated by the Commission under law. The OCC has argued that the Commission should modify this requirement for other reasons. The Commission has reviewed this requirement in the proposed rules repeatedly. Initially, it was believed that this requirement would not prove burdensome. It was also believed that since the General Assembly authorized the Commission to relax regulation of part 3 services, these services might ultimately become part 4 services; thereby, clearly requiring segregation of investments and expenses. Moreover, under part 3, rate-of-return regulation cannot be the sole factor for regulation of part 3 services. Therefore, conceivably some regulated services would be subject to rate-of-return regulation and some would not. Under this scenario it was also believed that segregation would be necessary.

However, the Commission will modify the relevant rules and only require segregation of investments and expenses between part 2 and part 3 services on a case-by-case or service-by-service basis, and only upon specific order by the Commission as is contemplated in the rules issued in Case No. 6636. This has been the practice of the Commission to date. See, for example, Application Nos. 37367 and recently in 38755. Thus, appropriate changes have been made to the rules proposed in this case to only require segregation of investments and expenses when specifically ordered by the Commission. Moreover, under Rule 10.1, as modified, part 3 services may be aggregated with part 2 services.

12. Finally, U S West argues that "peak-period usage" must be further defined on the basis it is vague. It argues that each wire center could have a different peak for each service or product. We do not believe the use of this term is vague. Even if each wire service or product for each wire center had a different peak, that does not make the term vague. The term peak period usage found in Rule 7.3.2.1 is used in conjunction with the phrase "engineering design criteria" and is a term of art within the industry.

13. U S West also has proposed changes to the rules consistent with its arguments. Although we are making some changes to the rules, we are not adopting the language proposed by U S West.

14. El Paso contends that the Commission failed to comply with § 24-4-103(4), C.R.S., by failing to announce at the public hearing the date of availability to any party of the incorporated changes in the proposed final rules in order to allow comment upon the change. On August 31, 1988, the Commission issued the modified rules. As part of

that decision, in ordering paragraph 6, parties were given 20 days to comment upon the incorporated changes, obviously more than the four days required. Moreover, since the Commission is granting rehearing, reargument and reconsideration in this decision, the parties will again have 20 days within which to comment upon the rules as modified by this decision. We believe that the 40 days have been sufficient to fulfill these statutory requirements and note that the Supreme Court did seem to approve this process in Regular Route Common Carriers Conference v. PUC, ____ P2d. ____, Colo. S. Ct., Case No. 87SA123 (Sept. 12, 1988), Footnote 9. Accordingly, we have complied with § 24-4-103(4), C.R.S.

15. El Paso, Eagle and other independents argue that the demarcation between Class B and Class C providers should be 10,000 access lines rather than 2,000 access lines as now stated in the rules. Testimony provided by witness Schroeder convinces us that the 10,000 access line demarcation is more appropriate (Discussed intermittently between T 113, line 10 through T 133, line 23). The potential for cross-subsidization by telephone companies which are now classified as Class B providers is more remote than for Class A and D providers. Moreover, there was no evidence that this group is likely to cross-subsidize at this time. As we have repeated in this decision and in Decision No. C88-1162, we are concerned with the cost of compliance, but recognize that § 40-15-108(2), C.R.S. requires us to develop cost-allocation methods for any provider, regardless of size. By changing the demarcation line from 2,000 access lines to 10,000 access lines, small providers will still be required to comply with the standards in these rules, but will not be required to file their manuals with the Commission nor will they be required to file an Appendix B to their annual reports. Since they won't have to file the manuals and Appendix B, they also will not be required to have those documents independently audited. Rather, the Commission Staff will inspect their workpapers to ensure compliance with the procedures established in these rules and will develop a model segregation manual to be used, if desired. The Commission Staff will also monitor these workpapers to determine whether the potential for cross-subsidization by any particular small provider is increasing. Finally, since we are changing the demarcation point between Class B and C providers, we do recognize that, to our knowledge, there are no Class C providers presently operating in the state.

16. AT&T has argued that Rule 8 should be clarified. We are making a minor change in Rule 8.1.2 which simply clarifies the rule and recognizes that the surrogate method must fairly reproduce the results of a time-reporting method based on statistically valid samples. AT&T also argues that Rule 7 requires modification. We do not agree. This rule does not use an incremental-cost approach, but a cost-causative approach (See Rule 6.1.3).

17. The OCC has argued that where the Commmission presumptively makes certain filings proprietary, the rule should be modified so that those sensitive filing may be accorded proprietary status upon an appropriate showing or where no one contests the request that the filing be deemed proprietary. It is noted that in some rules, the proprietary

status is permissive whereas in others, it is presumed. The rules should be consistent. We believe the OCC's approach is the better alternative.

18. The independents address several issues, aside from the 2,000 line demarcation point, which are more in the nature of clarification, rather than substantive changes. We have made changes in the rules to clarify the issues discussed by the independents. Specifically, "Colorado operating revenue" as used in Rule 3.2.2.1 refers to revenue from products and services sold in Colorado and regulated by the Commission, not interstate revenues or unregulated Colorado revenues. A provider obtaining an exemption under Rule 9.2 would have to comply with cost-segregation standards or principles under Rule 10.4, not the precise rules. The verification required under Rule 10.5.4 is self executing, that is, providers will attest to compliance with federal standards. Staff will determine compliance with workpapers or filed manuals.

19. The Commission has addressed virtually every argument raised under the applications for rehearing, reargument and reconsideration to Decision No. C88-1162. To the extent we have not specifically addressed an argument, the requested relief is denied. The Commission finds that the changes made in the rules attached to this decision are in keeping with the intent of the proposed rules. Parties desiring to comment upon the changes incorporated may do so in applications for rehearing, reargument and reconsideration of this decision, using the legislative drafting format.

O R D E R

THEREFORE THE COMMISSION ORDERS THAT:

1. Applications for rehearing, reargument or reconsideration of Decision No. C88-1162 which were filed by The Mountain States Telephone and Telegraph Company d/b/a U S West Communications, The El Paso County Telephone Company, the Office of Consumer Counsel, AT&T Communications of the Mountain States, Inc., Eagle Telecommunications, Inc. and a group of independent telephone companies, namely, Agate Mutual Telephone Exchange, Big Sandy Telcom Inc., Bijou Telephone Cooperative, Columbine Telephone Company, Delta County Tele-Comm, Inc., Eastern Slope Rural Telephone Association, Farmers Telephone Company, Inc., Nucla-Naturita Telephone Company, Inc., and Wiggins Telephone Association are granted in part, consistent with the findings and conclusions set forth in Paragraphs 1 through 19 of this Decision. Except where specifically addressed and granted, any other arguments contained in or relief requested in the applications for rehearing, reargument or reconsideration of Decision No. C88-1162 are denied. The rules adopted by Decision No. C88-1162, as here modified, are adopted as of the effective date of this Decision and Order.

2. The Motion to Strike the response filed by Eagle Telecommunications, Inc. to the Application for Rehearing, Reargument or

Reconsideration of Decision No. C88-1162 filed by The Mountain States Telephone and Telegraph Company d/b/a U S West Communications is granted.

3. The 20-day time period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument, or reconsideration begins on the first day after mailing or serving of this Decision and Order. In accordance with § 24-4-103(4), C.R.S., and since the rules have been changed by this Decision and are different from those attached to Decision No. C88-1162 and from those originally proposed, any party desiring to comment upon the changes discussed in this Decision and Order, and attached as Appendix A, should do so during this 20-day time period.

This Decision and Order shall be effective 30 days after the date of issuance.

DONE IN OPEN MEETING the 19th day of October 1988.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARNOLD H. COOK

ANDRA SCHMIDT

RONALD L. LEHR

Commissioners

ATTEST: A TRUE COPY

James P. Spiers
Executive Secretary

4325d/TD

RULES UNDER §40-15-108, C.R.S. PRESCRIBING COST-ALLOCATION METHODS FOR SEGREGATION OF INVESTMENTS AND EXPENSES OF TELECOMMUNICATIONS PROVIDERS

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose for these rules are to prescribe cost-allocation methods in order to allow intrastate telecommunications service providers to provide both regulated and deregulated telecommunications services as permitted by law, to provide for flexible regulatory treatments, and to prevent cross-subsidy and illegal restraint of trade, while guaranteeing the affordability of basic telephone service and fostering free-market competition within the telecommunications industry.

These rules will establish the policies and requirements for segregating the intrastate investments and expenses of regulated telephone service from the intrastate investments and expenses of non-regulated activities of telephone companies and their affiliates. Further, these rules will establish the policies and requirements to incorporate into the provider's cost-segregation manual, the accounting plans that segregate assets as adopted by the Commission according to Rule 1.3 of the Rules Under Section 40-15-302(1) C.R.S., Emerging Competitive Telecommunication Service, Decision No. C87-1654.

The specific statutory authority for these rules is §§ 24-4-103, 40-3-101, 40-4-111, 40-15-101, 40-15-106, 40-15-107, and 40-15-108 C.R.S.

RULE 1: APPLICABILITY

These rules are applicable to all intrastate telecommunications service providers who provide both regulated and deregulated telecommunications services as permitted by law.

There are four classes of telecommunications service providers.

1.1 Local exchange providers who furnish more than 20,000 access lines are Class A providers.

1.2 Local exchange providers who furnish no more than 10,000 access lines are Class B providers.

1.3 Local exchange providers who furnish no more than 20,000 access lines but more than 10,000 access lines are Class C providers.

1.4 Interexchange providers who furnish no access lines are Class D providers.

RULE 2: DEFINITIONS. As used in this rule, unless the context otherwise requires:

2.1 Product or service: When referencing product or service, one includes the other.

2.2 Provider: Provider means telecommunication service provider.

2.3 Cross-subsidization: Cross-subsidization occurs when telecommunications services or products which are not subject to the jurisdiction of the Commission (deregulated) are priced below cost by use of subsidization from customers of services or products subject to the jurisdiction of the Commission (regulated); or when a provider's deregulated services or products derive benefits from the regulated operations without the regulated operations receiving just and reasonable compensation from the deregulated operations for the benefits derived.

RULE 3: APPLICABILITY TO SPECIFIC TYPES OF ACTIVITIES

3.1 Each provider must file in its cost-segregation manual with the Commission a list of each product and service that it offers, providing a description of each product or service and the classification of that product or service as a Part 2, Part 3,or Part 4 product or service as those terms are used in Title 40, Article 15, C.R.S. and as determined by the Commission. This list shall be updated as substantive changes occur.

3.2 Treatment of incidental activities. Providers will be permitted to continue accounting for nontariffed activities as regulated activities when they are offered incidental to tariffed services provided that:

3.2.1 The activities are outgrowths of regulated operations; and

3.2.2 The total revenue from all those activities does not exceed:

3.2.2.1 One percent of the provider's total annual Colorado operating revenue for regulated activities; or

3.2.2.2 The provider-specific revenue levels as ordered by the Commission; and

3.2.3 The activity is a non-line-of-business activity; and

3.2.4 The activity has traditionally been treated as an incidental service.

3.3 Providers shall specify in their initial cost-segregation manuals precisely which activities they propose to treat as incidental activities.

3.4 Providers shall update their cost-segregation manuals as changes occur to specify any new activity they propose to treat as incidental and will ensure that the activity proposed for treatment as an incidental activity complies with this rule, except for section 3.2.2.2.

3.5 Each cost-segregation manual filed with the Commission must include a showing that any activity proposed for treatment as an incidental activity complies with this rule.

RULE 4: UNIFORM SYSTEM OF ACCOUNTS

4.1 All providers who are subject to the jurisdiction of this Commission are required by Rule 25 (a) of the Rules of Practice and Procedure of the Commission to file an annual report by March 31 of each year. Rule 25(c)(1) of the Rules of Practice and Procedure of this Commission requires telephone and telegraph companies to maintain their books of account and records under the Uniform System of Accounts (USOA) prescribed by the Federal Communications Commission (FCC) or its successor regulatory agency. The system of accounts shall be further prescribed for the following classified types of providers:

4.1.1	Class A	FCC Part 32 USOA Class A
4.1.2	Class B	FCC Part 32 USOA Class A OR B
4.1.3	Class C	FCC Part 32 USOA Class A OR B
4.1.4	Class D	FCC Part 32 USOA Class A or in accordance with Commission Order.

4.2 Any provider may request a waiver from maintaining their books of account and records under the prescribed system, provided that the FCC does not require the provider to maintain its books according to the prescribed uniform system of accounts, as set forth in the FCC'S Part 32 Rules. Any system of accounts proposed to be used in lieu of the prescribed uniform system of accounts must be capable of providing sufficient information to the Commission to support compliance with these rules.

RULE 5: SEPARATION OF COSTS BETWEEN THE STATE AND INTERSTATE JURISDICTIONS

Any provider which provides facilities or equipment for use by interstate users or providers of telecommunications services must apply federal cost allocation and separations principles as described in Part 64 of the Rules of the FCC (the Cost Allocation Manual) and Part 36 of the Rules of the FCC (the Separations Manual). A provider which is not required by the FCC to apply the Part 36 rules may apply for a waiver of Rule 5 as it relates to Part 36. However, the provider requesting that waiver must implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission.

RULE 6: COST SEGREGATION STANDARDS - GENERAL

The Commission adopts the use of a fully distributed cost study as the standard for the determination of whether there is cross-subsidization between regulated and deregulated services.

6.1 In performing a fully distributed cost study the following cost segregation principles (listed in descending order of preferred application) will be used by all providers:

6.1.1 Cost causation - Costs are assigned to all products and services that cause those costs to be incurred.

6.1.2 Traceability - Costs that are identified in their entirety with a specific product and service are directly assigned.

6.1.3 Variability - Costs that are not directly traceable to a particular product or service, but do vary in total with some measure of the volume of activity that is associated with products and services, are segregated according to the estimated rate of variability.

6.1.4 Capacity Required - Costs of capacity are assigned according to whether they are necessary for the performance of the service.

6.1.5 Beneficiality - A service is said to benefit from a cost if that cost is necessary to render that service.

6.2 Any investments or expenses that are used jointly by two or more different services or that are used in common by services must be segregated among all of those services using allocators that, to the maximum extent practicable, track how those costs are incurred.

6.3 Consistent with FCC Docket 86-111, Report and Order adopted September 23, 1986, ¶ 131, these rules do not require or suggest the sole use of Cost Accounting Standards Board (CASB) standards.

6.4 The method for segregating investments and associated expenses which are common or jointly used must ensure that all products and services that use those assets are allocated a portion of the joint investments and expenses. Incremental or marginal cost studies will not be accepted for the purposes of this rule.

RULE 7: COST SEGREGATION STANDARDS AND GUIDELINES - SPECIFIC

7.1 All investments and expenses attributable to the interstate jurisdiction are to be allocated using federal rules. Each cost-segregation procedure manual filed with this Commission must demonstrate that these federal procedures have been properly applied prior to the intrastate segregation process.

7.2 Each product and service must be treated specifically in the cost-segregation procedure. Each product or service must be identified in sufficient detail to determine the appropriate cost categories to be employed unless they qualify for treatment as an incidental service in Rule 3.2.

7.3 In order to provide a consistent approach to segregating all costs, the Commission requires consideration in descending order of the following factors:

7.3.1 Costs must be directly assigned whenever possible. Directly assignable costs are defined as those costs that can be attributed only to the specific product or service. Clearly, where more than one product or service uses an investment or causes a cost to be incurred, direct assignment is inappropriate. (This employs the Traceability principle in Rule 6.1.2.)

7.3.2 The method of segregating common or jointly used investments and expenses, must use the provider's own engineering and service-provision design criteria as the primary assumption. (This employs the Variability principle in Rule 6.1.3.) The segregation method employed must, to the maximum extent possible, mirror the design criteria, including but not limited to the following:

7.3.2.1 If the amounts of use vary in intensity by time period, and the engineering design criteria are sensitive to the peak period usage, i.e., end office or toll switching, then the segregation method must also follow the engineering cost-causation.

7.3.2.2 Common or joint costs that vary in direct proportion to the relative amounts of use of a service shall be segregated based upon those relative amounts of use.

7.3.3 Common or joint costs that do not vary in direct proportion to the relevant amounts of use of the service shall be segregated by a surrogate measure that has a logical or observable correlation to the use of the product or service. (This employs the Capacity required principle in Rule 6.1.4.)

7.3.4 Common costs for which there is no direct or indirect measure of allocation shall be segregated using an appropriate general allocator that is based upon total expenses otherwise assigned. (This employs the Beneficiality principle in Rule 6.1.5.)

7.3.5 Residual common marketing expenses which cannot be directly assigned, or directly or indirectly attributed, will be allocated using a general marketing allocator. This allocation will be derived based upon the previously assigned or attributed marketing expenses between regulated and nonregulated operations.

7.4 Providers ordinarily shall segregate costs using the directly-attributable and cost-causative principles. General allocators shall be used only in exceptional cases and, then, only when the justification for their use is explained fully.

7.5 Providers will be required to provide the Commission with all the data necessary to verify the cost segregation.

7.6 As providers develop new products and services, investments will be used and expenses incurred in order to begin offering those products or services. It is not appropriate to allocate these investments or expenses exclusively to an existing service. As new products and services begin to use joint and common assets and expenses are incurred, the methods of segregation in the manuals must be modified to track the usage and expenses. The manual modifications are necessary when the use of facilities and expenses incurred become material.

RULE 8: COST SEGREGATION POINTS OF EMPHASIS

8.1 A time-reporting method of allocation rather than a general allocator must be used for labor-intensive items. For example, the allocation of costs associated with joint marketing of services should employ actual time-reporting methods for the allocation.

8.1.1 An allocation method which uses statistically valid samples based on time-reporting is permissible.

8.1.2 A method different from a strict time-reporting allocation method may be approved by the Commission if it can be verified that the surrogate method is reasonably related to the expense being allocated and that it fairly reproduces the results of a statistically valid sampled time-reporting method.

RULE 9: IMPLEMENTATION AND ENFORCEMENT

9.1 The Commission will enforce these cost-segregation methods and affiliate transaction rules by requiring providers to file cost-segregation manuals demonstrating, in detail, their application of the methods and affiliate transaction rules to their particular operations. These manuals must be approved by the Commission and must be kept current. These manuals shall be subject to public comment and review by the Commission and its staff. The results derived from the application of the allocation methods described in these manuals will be subject to audit review by this Commission and its staff.

9.2 Any provider desiring an exception to the cost-segregation standards in these rules must make that request by application, and may be granted an exception by Commission order.

RULE 10: COST SEGREGATION MANUALS

10.1 Classes of Utilities Required to File. All local exchange companies (LECs) that are classified as Class A or Class C providers are likely to have services that fall into Part 2, Part 3, and Part 4, Title 40, Article 15, C.R.S. Class D Interexchange Carriers are likely to have services defined in Part 3 and Part 4 of Title 40, Article 15, C.R.S. Class B providers are not required to file a cost-segregation manual but will be afforded an opportunity to employ a model manual for small telephone company cost-segregation that will be developed and maintained by the Commission Staff. Class A, C and D providers are required to file a manual that segregates their investments and expenses.

Part 3 services may be aggregated with part 2 regulated services for manual and reporting purposes, unless otherwise ordered by the Commission.

Where the Commission has issued a decision granting relaxed regulatory treatment under the rules under section 40-15-302(1) C.R.S., emerging competitive telecommunication service, the adopted accounting plan for segregation shall be incorporated into the provider's cost-segregation manual of this rule.

10.2 Filing and Review Procedures. All providers described in these rules must use a cost-segregation manual. The detailed manual will describe the manner in which each provider will implement these cost-segregation standards. Each manual will be reviewed by the Staff of the Commission for conformity with these rules and the public will be given an opportunity for comment. Each manual filing and subsequent change may be the subject of a hearing.

10.3 Exemption from the Manual-Filing Requirement. Any provider desiring a waiver from the manual-filing requirement must make that request by application, and may be granted a waiver by Commission order.

10.4 Applicability of Cost-Segregation Standards after Exemption from Manual Filing Requirement. The cost-segregation standards described in Rules 2, 3, 4, 5, 6, 7, 8, 11, 12, and 14, of these rules are applicable to all providers. Even though it may have been granted an exemption from filing a manual or was not required to file a manual, a provider must comply with these cost-segregation rules when: 1) it submits to the Commission a request for a change in revenue requirement, or 2) it files an Appendix B to its annual report (if required). Compliance with this rule shall be demonstrated by documentation of allocation methods and workpapers showing their application.

10.5 Manual Content. Each provider's cost-segregation manual shall contain the following information:

10.5.1 A description of each service (or service family) provided by provider comprehensive enough to provide sufficient information about the service to ascertain its cost treatment.

10.5.2 The category in which the service belongs, namely, Part 2, Part 3, or Part 4, Title 40, Article 15, C.R.S.

10.5.3 For each account and sub-account, a detailed specification of cost categories to which amounts in each account or sub-account will be assigned and the basis on which each cost category will be apportioned. Whenever a direct assignment is made, it must be specifically explained. Each provider must show in its manual the method it uses to segregate its costs between Part 2, Part 3, and Part 4 service grouping described in Title 40, Article 15, C.R.S., when appropriate or ordered by the Commission. The manual must show how the segregation methods used conform to the prescribed standards in this rule.

10.5.4 A verification that the federally mandated Part 32, or the provider-specific FCC authorized accounting method, Part 64 and Part 36 (FCC) cost-allocation standards and separations procedures were used. A provider that is not required by the FCC to apply Part 36 or Part 64 will not have to make such a showing. However, the provider must implement a suitable alternative method of producing Colorado jurisdictional intrastate-specific information to the Commission.

10.5.5 A list of all activities to which the provider now accords incidental accounting treatment, and the justification for treating each as incidental.

10.5.6 A chart showing all of its corporate affiliates, as defined in Rule 14.

10.5.7 A statement identifying affiliates that engage in transactions with the providing entity and describing the nature, terms and frequency of those transactions.

RULE 11: REPORTING AND RECORDKEEPING

11.1 Each provider will be required to keep records and all supporting documentation for cost segregations two years following the close of the fiscal year to which the records relate.

11.2 Each provider, except Class B providers, shall provide to the Commission its segregated financial statements as an Appendix B to its annual report. The segregated financial statements in Appendix B need only display the aggregated totals for Part 2, 3 and 4 divisions, when appropriate.

11.3 Class B providers are not required to file an Appendix B to their annual report. Any other provider desiring a waiver must make that request by application, and may be granted a waiver by Commission order.

11.4 The Appendix B to the Annual Report may be accorded proprietary status by the Commission.

RULE 12: AUDITING

12.1 The providers will be required to submit certified reports of an independent auditor, attesting that the provider has designed and implemented its cost-segregation methods and procedures consistent with its approved cost-segregation manual. These audit reports also will be required as part of any formal request by the provider for a change in revenue requirements submitted to the Commission.

12.2 The independent auditor's certified report filed with the Commission shall include:

12.2.1 The scope of work conducted, specifying the items examined and the extent of examination.

12.2.2 The auditor's conclusion as to whether actual methods and procedures designed and implemented by the provider conform with the objectives, approach and procedures described in the cost-segregation manual.

12.2.3 Any material exceptions or qualifications that the auditor may have identifying the adequacy of the procedures.

12.2.4 Any limitations in the scope of review imposed upon the auditor by the provider.

12.2.5 A statement that the attestation standards have been fully met during the examination.

RULE 13: PROPRIETARY INFORMATION

13.1 The Auditor's Attestation Report shall be filed with the Commission and may be given proprietary status if requested and approved. Any workpapers used by the independent auditors must be made available for Commission staff review. The provider must make the proper authorization to release these workpapers to the Staff of the Commission.

13.2 The detailed specifications, documentation and supporting information implementing the provider's cost-allocation manual must be made available to the Commission and its Staff for review, and may be given proprietary status if requested and approved.

RULE 14: AFFILIATE TRANSACTIONS

All providers are subject to the following rule. This rule applies to transfers between regulated and nonregulated books of accounts and records within the company and to transfers between regulated and nonregulated affiliates.

14.1 Transfer of Assets

14.1.1 All assets transferred between regulated providers and nonregulated affiliates must be valued at the prevailing market price held out to the general public in the normal course of business or at the current effective tariff rate on file with the Commission.

14.1.2 If there is no prevailing company price or tariff rate, the asset transfer from the nonregulated affiliate to the regulated provider should be recorded at the lower of net-book cost or fair market value, while transfers from the regulated provider to the nonregulated affiliate should be recorded at the higher of net-book cost or fair market value.

14.2 Valuation of Services Provided to or by an Affiliate.

14.2.1 All services provided to or by an affiliate must be valued at the federally tariffed rate or the rate on file with the Colorado Commission.

14.2.2 If there is no tariffed rate, but the affiliate provides the service to the general public in the normal course of business, then this prevailing price should be used to determine the price charged to the regulated provider.

14.2.3 When a regulated provider furnishes to a nonregulated affiliate a service which is neither tariffed nor offered to the general public in the normal course of business, or when a regulated provider receives from a nonregulated affiliate a service which is not offered to the general public in the normal course of business, the cost of the service should be valued at the fully allocated cost, determined in a manner that complies with these cost-segregation standards and rules.

14.3 Prevailing Price. The mere offering of a service to unaffiliated persons or entities is not sufficient to establish a prevailing company price. The company must show that the service is actually provided to a sufficient number of unaffiliated persons or entities to establish a prevailing price.

14.4 Manual Content. The providers must include in their cost-segregation manuals a statement identifying affiliates that do engage in transactions with the provider. They shall describe the nature, terms and frequency of those transactions.

14.4.1 Nature of transactions. The company must state in its manual, for each service transaction, a description of of the nature of the transactions (that is, whether the service involves the provision of services or asset transfers).

14.4.2 Terms of affiliate transactions. The company must state in its manual the terms at which the service is provided (that is, at tariff rate, prevailing company price, or fully distributed cost).

14.4.3 Frequency of affiliate transactions. The company must state in its manual the frequency with which the service is rendered.

14.5 Transactions with nonaffiliates. Providers must state whether the services listed in the portion of the manual concerning affiliate transactions are offered to nonaffiliates, and if so, the terms and frequency at which they are provided to the nonaffiliates.

INCORPORATION BY REFERENCE

References in these rules to Parts 32, 36, and 64 and Federal Communications Commission CC Docket 86-111, are rules issued by the FCC and have been incorporated by reference in these rules. These parts may be found at 47 CFR Parts 32, 36, and 64, revised as of October 1, 1987. References to Parts 32, 36, and 64 do not include later amendments to or editions of those parts. A certified copy of these parts which have been incorporated by reference are maintained at the Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and may be obtained through the Executive Secretary during normal business hours. Certified copies shall be provided at cost upon request.