Decision No. C98-46

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97R-177T

IN THE MATTER OF MODIFICATIONS TO THE PUBLIC UTILITIES COMMISSION'S RULES TO REFLECT A COMPETITIVE TELECOMMUNICATIONS ENVIRONMENT, INCLUDING THOSE CURRENTLY DESCRIBED IN 4 CODE OF COLORADO REGULATIONS, REGULATING TELECOMMUNICATIONS ACCOUNTING AND REPORTING METHODS (723-1-25), TARIFF REQUIREMENTS (723-1-40 AND 41), RELAXED REGULATION (723-24), COST ALLOCATION (723-27), E-911 (723-29), COSTING AND PRICING (723-30), PRICE REGULATION (723-38), INTERCONNECTION AND UNBUNDLING (723-39), AND ELIGIBLE TELECOMMUNICATIONS CARRIER (723-42) AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35), AND AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35).

RULING ON APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

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I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration ("RRR") to Decision No. C97-1204. In that decision, we preliminarily adopted, pending the filing of applications for RRR, amended rules concerning the methods for regulating telecommunications providers. A number of parties have filed applications for RRR including: Commission Staff ("Staff"); the Competitive Local Exchange Carriers comprised of WorldCom, Inc., AT&T Communications of the Mountain States, Inc., ("AT&T"), ICG Telecom Group, Inc., MCImetro Access Transmission Systems, Inc., ("MCI"), Sprint Communications, ("Sprint"), and TCG Colorado ("Joint Commentors"); U S WEST Communications, Inc. ("USWC"); the Colorado Telecommunications Association ("CTA"); the Colorado Office of Consumer Counsel ("OCC"); and AT&T, MCI, and Sprint. In Decision No. C98-15 we granted the applications

for RRR which were filed on December 9, 1997. That action was taken only for the purpose of precluding denial of any application for RRR by operation of law, pursuant to the provisions of § 40-6-114(1), C.R.S. Decision No. C98-15 stated that we would address the merits of all applications for RRR by future order. We now do so. Having considered the merits of each of the applications for RRR, we will grant them, in part, and deny them, in part, consistent with the discussion below.

II. RULE 38 - RULES REGULATING APPLICATION BY TELECOMMUNICATIONS PROVIDERS FOR SPECIFIC FORMS OF PRICE REGULATION.

A. 723-38-3 SPECIFIC FORMS OF PRICE REGULATION.

1. OCC

a. In its application for RRR, the OCC generally agrees with the principle of asymmetrical regulation and the Commission's adoption of a default regulatory scheme for the competing local exchange carriers ("CLECs"). However, in one respect the OCC claims that the Decision goes too far in relaxing regulatory constraints on the CLECS. In particular, the OCC seeks reconsideration of our decision not to adopt price ceilings for the CLECs for basic local exchange, low-income, emergency, public safety, privacy, or information services.

b. The OCC contends that the prices charged by the incumbent providers will not create an effective ceiling in the markets for basic local exchange, low-income, emergency,

public safety, privacy, or information services. According to the OCC, without price ceilings on these services, there are significant risks during this early phase of the transition to a competitive telecommunications market that many Colorado consumers will not receive the benefits of competition in the form of lower prices for these services.

c. Specifically, the OCC is concerned about consumers who have poor credit histories or are unable to afford a deposit and consumers who use low income, emergency, public safety, privacy or information services. The OCC argues that economic theory and Colorado specific experiences provide a basis for anticipating that CLECs will price some of these less visible services in excess of the incumbent's price.

d. The OCC claims that there is little dispute that all of the telecommunications providers that are entering the market today are experiencing great pressure to increase revenues. Therefore, the CLECs all have the incentive to price each service at whatever price the market will bear. The OCC claims that important services such as Lifeline, Link Up, toll restrict as a deposit alternative, busy line interrupt, busy line verify, Call Trace, Caller ID Per Line Blocking, directory assistance and nonoptional operator services can be priced by the CLECs above the price charged by the incumbent for comparable services in order to increase revenues without losing customer base. The OCC argues this could occur because the CLECs can use

the lack of consumer information in these markets to mislead customers into believing that there are no competitive alternatives. Establishing price ceilings, according to the OCC, will avoid the kinds of problems that were recently experienced in the operator service market where many competitors did not feel restrained by the prices charged by the dominant providers.

2. Commission Decision

a. We will deny this request for reconsideration. The OCC raised similar concerns at the August 18, 1997 hearing in this docket. In weighing these concerns in our original decision, we stated:

> As we make the transition to a more competitive local telecommunications market these issues of consumer education and the need to maintain affordable basic service are paramount issues of public interest. In this regard, our decision not to impose price ceilings and floors on CLECs is certainly not a signal that the Commission will be less vigilant with regard to these issues. Rather, our decision is based on judgments about the present state of market incentives and the benefits of encouraging the development of an effectively competitive local telecommunications market for Colorado consumers.

See, Decision No. C97-1204, at page 42. The Commission reiterates that if the problems the OCC has identified do in fact emerge, the Commission stands ready to address them. However, in our judgment, the imposition of price ceilings on the CLECS is in conflict with the promotion of effective competition, at least as long as the price-regulated services of USWC remain as an alternative for consumers.

3. Staff

a. Staff's request for reconsideration raises three issues concerning Rule 723-38-3. First, according to Staff, the wording of Rule 723-38-3 (and 723-24-5.3.9.1, and Rule 723-40-1 among others) does not maintain the clear distinction and differentiation between "price regulation" and "relaxed regulatory treatment." Staff requests: (a)that the Commission amend Rule 723-38-3 by substituting the phrase "default form of price regulation" for the phrase "default form of relaxed regulatory treatment" wherever it appears. (b)amend Rule 723-24-5.3.9.1 by substituting the phrase "price regulation" for the phrase "relaxed regulation" as appropriate; and (c) make conforming changes to other rules as necessary.

b. Secondly, Staff requests that the Commission amend the rule to make clear that prices for residential basic local exchange service, including zone charges, may not exceed the rate for comparable service in effect on May 24, 1995, unless the Commission has permitted an increase, in accordance with § 40-15-502(3)(b), C.R.S.

c. Thirdly, Staff contends that the absence of Commission-approved price ceilings may allow the CLECs to price residential service sufficiently above the incumbent local exchange carrier's ("ILEC's") rate so as to discourage residential customers from subscribing. Staff claims that the CLECs could thereby circumvent the Commission's policy to require

the provision of residential service by CLECs. Staff requests clarification of this issue to assist Staff in carrying out Commission policy.

4. Commission Decision

a. The Commission grants Staff's first request for RRR for the reasons stated by Staff.

b. With respect to Staff's second point, the Commission denies the request. The Commission is fully aware that § 40-15-502(3)(b) constrains rate increases for residential basic local exchange service. Whatever constraints are placed upon residential basic exchange rates by the statute, these rules are not intended--in fact, cannot--modify any of the statutory obligations of CLECs operating in the State of Colorado.

c. As for Staff's third issue, we conclude that our decision not to apply price ceilings and floors to the CLECs, even for residential basic exchange service, is consistent with the legislative mandate to encourage the emergence of a competitive telecommunications market in Colorado. Given current market conditions, USWC's prices will serve as an effective price ceiling on CLEC services. The Commission believes that CLEC price ceilings would be a needless and burdensome supplement to existing market incentives.

5. USWC

a. USWC's application for RRR raises two issues. First, according to USWC, the Commission's discussion of

asymmetrical regulation as a justification for the adoption of the default price regulation for CLECS is overbroad and has already led to unintended consequences for ILECs. USWC requests that the Commission clarify that its decision adopting rules here, and the modified rules on default regulation themselves, have not foreclosed US WEST or any ILEC from seeking relaxed regulatory treatment or pricing flexibility.

b. Secondly, USWC requests that the Commission clarify that this proceeding is a rulemaking, not an adjudication; that the decision makes no adjudicative findings that US WEST is a dominant carrier; and that the decision does not hold that USWC is not entitled to relaxed regulatory treatment or pricing flexibility in other dockets.

6. Commission Decision

We will deny USWC's requests as unnecessary. As USWC itself points out, our decision already indicates that the default regulation of the CLECs has not foreclosed USWC or any other ILEC from seeking relaxed regulatory treatment. *See,* Decision No. C97-1204, at pages 31-32, and 42. With respect to USWC's second request, it is obvious that the present **rulemaking** proceeding is not intended to adjudicate parties' rights in other dockets.

B. 723-38-3.2.2.1 Applicability

1. Staff

a. In Decision No. C97-1204, at page 43, the Commission decided that the default form of price regulation

shall apply to all products offered by the CLECs with the single exception of 911 call delivery. The Commission declined to grant exceptions for switched access or interconnection. In its application for RRR, Staff repeats its original request in this docket that the Commission exempt certain services from the default form of price regulation. Staff cites various statutory rationales, claimed inconsistencies with other Commission rules, and economic reasons to support its contention that the Commission should grant exceptions for access and interconnection. *See,* Staff application for RRR, pages 3-12. Staff concludes on pages 11 and 12 of its application for RRR, that Rule 723-38-3.2.2.1 be modified as follows:

> The default form of price regulation should apply to all local exchange telecommunications products and services offered by CLECs, with the following exceptions:
>
> 1. Rates, terms, and conditions for 911 call delivery to a Basic Emergency Service Provider;
>
> 2. Rates, terms, and conditions for switched access;
>
> 3. Rates terms and conditions for interconnection;
>
> 4. Rates terms and conditions for termination of local exchange traffic; and
>
> 5. Rates terms and conditions for unbundled network elements.

2. USWC

Similarly, USWC's application for RRR also notes that our decision extends the default regulatory scheme to switched access and interconnection rates. USWC states that it

has serious concerns with the default relaxed regulatory treatment being afforded to these wholesale services. According to USWC, the call termination function, whether switched access or local call termination, bestows upon a facilities-based provider a bottleneck facility which all other providers must use because the customer has chosen that provider. USWC points out that the customer does not pay these wholesale charges. Therefore, USWC claims, there is no economic dynamic which would prevent exorbitant wholesale prices in CLEC rates for call termination and access. USWC requests that we recognize the bottleneck nature of the facilities of any provider which terminates calls on behalf of its customers, and refrain from applying the default price regulatory treatment to the wholesale prices associated with terminating switched access and local call termination.

3. Commission Decision

a. The Commission denies Staff's and USWC's requests for reconsideration. Specifically, we deny the requests to exempt switched access, call termination, interconnection, and unbundled network elements, all as may be provided by CLECs, from the default price regulation established here.

b. Staff's suggestion that the default form of price regulation for access (*e.g.,* no price ceilings or floors, no specific requirement that CLECs file customer-specific contracts for access with the Commission, etc.) may be

inconsistent with statutory requirements is based upon the provisions of § 40-15-105, C.R.S. Generally, that statute provides that access charges by local exchange carriers shall be cost-based and shall not exceed prices in effect in Colorado as of July 1, 1987 (40-15-105(1)); and that any contracts for access on the part of a local exchange carrier must be filed with the Commission and open to review by other purchasers of access (§ 40-15-105(3)). We disagree that the default form of regulation adopted in this docket violates §40-15-105.

c. Notably, the rules adopted in this proceeding are not intended to modify any statutory requirements placed upon local exchange carriers, including CLECs. We acknowledge that, as a matter of law, Commission rules cannot modify statutory directives. Therefore, the requirements set forth in §40-15-105 continue to apply to the provision of access. In our view, nothing in the default form of price regulation contravenes any mandate in the statute.[1] For example, Commission rules need not repeat a statutory requirement in order for such a requirement to apply.

[1] In fact, Staff's application for RRR merely suggested that the default price regulation "may" violate § 40-15-105.

d. Staff also suggests that §§ 40-15-503(2)(g)(III) and (IV), C.R.S. mandate that all local exchange carriers, including CLECs, file tariffs (not price lists) for the provision of interconnection and unbundled facilities and functions. Therefore, Staff suggests, to the extent the default form of price regulation permits CLECs to file price lists, it is inconsistent with statutory requirements. We disagree with this argument. Notably, § 40-15-503(2)(c), in conjunction with § 40-15-503(2)(f), permits the Commission to adopt price regulation, including "modified tariff requirements", for CLECs. We find that the default form of price regulation is consistent with our authority to devise a lesser (as compared to traditional regulation) regulatory program for CLECs.

e. Staff correctly points out that the default form of price regulation adopted in Decision No. C97-1204 is inconsistent with some provisions in the Rules on Interconnection and Unbundling, 4 CCR 723-39. To correct those inconsistencies we are making certain modifications to Rule 723-39 as shown in the attachments to this order.

f. The Commission is aware of the **potential** for market abuses by CLECs with regard to the rates terms and conditions for switched access, interconnection and the termination of local exchange traffic. The Commission will stand ready to act quickly if such abuses begin to occur. At this time, we conclude that it is unnecessary to exempt such services

from the default price regulation inasmuch as CLECs have little market share for these services.

C. 723-38-3.2.2.2 Filing of Initial Tariffs.

1. Joint Commentors

The Joint Commentors request that the requirement for filing an initial tariff be modified. According to the Joint Commentors, CLECs should only be required to file an initial tariff for services not subject to the default form of regulation (*i.e.,* 911). The Joint Commentors maintain that CLECs should be permitted to file a price list, on 14 days notice, for all services subject to the default form of regulation. Furthermore, the Joint Commentors contend, the price list should include both prices and terms and conditions of service. The Joint Commentors request that the Commission modify the rules to reflect their suggestions.

2. Commission Decision

We will grant the Joint Commentors request in part only, as reflected in the revisions to Rule 38-3.2.2.2. Specifically, CLECs shall be permitted to change their initial tariff upon 14 days notice to the Commission (for products and services subject to the default price regulation). However, CLECs shall continue to be required to file an initial tariff. This tariff requirement reflects the Commission's attempt to balance consumers' needs to be fully informed as they compare the services offered by the various providers, against the

Commission's desire to give maximum opportunity for the market to respond to changes in economic circumstances.

D. 723-38-3.2.2.5 Promotional Offerings

1. Staff

Staff points out that the Commission's proposed new Rule 723-38-3.2.2.5 does not state how far in advance, if at all, the Commission must be made aware of promotional offerings and/or volume discounts. Staff also notes that the new rule does not state the form the filing of the promotional offering or volume discount should take. Finally, Staff claims that since that are no limitations on the duration of promotional offerings and volume discounts CLECS could offer so-called "promotions" for years. Staff recommends certain amendments to Rule 723-38-3.2.2.5 to address these issues.

2. Commission Decision

Except for Staff's suggestion to limit promotional offerings and volume discounts to 90 days duration, we generally agree with Staff. The revision to Rule 723-38-3.2.2.5 will reflect this general agreement.

III. RULE 723-24: RULES REGULATING EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE.

A. 723-24-5.3.9.1 Revision of Terms of Relaxed Regulation

The only suggested modification to Rule 24 was Staff's, that the wording of Rule 723-24-5.3.9.1 does not maintain the

clear distinction between **price regulation** and **relaxed regulatory treatment**. Staff requests that we amend Rule 723-24-5.3.9.1 by substituting the phrase "price regulation" for the phrase "relaxed regulation" as appropriate. The Commission granted this request with respect to Rule 723-38 and will do so here.

IV. RULE 723-1-40 TARIFFS AND PRICE LISTS AND, RULE 723-1-41 TARIFFS-APPLICATIONS TO CHANGE TARIFFS BY FIXED UTILITIES - HEARING AND SUSPENSION-NOTICE.

1. Joint Commentors

The Joint Commentors point out that in our discussion of the filing of initial tariffs and price lists, (Decision No. C97-1204, at pages 46 & 48) we did not specifically state that cost support need not be filed with an initial tariff or price list. The Joint Commentors therefore request that the Commission clarify that the supporting information required by Rule 723-1-40.1.5 and referenced in Rule 723-1-40.2.4 is not cost support.

2. Commission Decision

The Commission grants this request and clarifies that the supporting information required of the CLECs in 723-1-40.1.5 and referenced in Rule 723-1-40.2.4 does not include cost support.

3. Joint Commentors

With respect to the supporting information to be filed with Advice Letters (Rule 723-1-40.1.5), the Joint

Commentors state that it should be sufficient for a CLEC to include a statement that the prices proposed are just and reasonable, and the Commission should clarify that such a statement is sufficient "supporting information". This change is not well-taken. Therefore, we will deny this request for reconsideration.

4. Staff

a. According to Staff there are inconsistencies in and between, or omissions to these rules (Rules 723-1-40 and 1-41). Staff suggests, therefore, that the rules be modified. In particular, Staff makes four requests. First:

> Both rules should be amended to state that they apply to (a) providers who are offering Part 3 services under forms of relaxed regulatory treatment (rules found at 4 CCR 723-24), or have elected to provide Part 3 services under the default form of price regulation (rules found at 4 CCR 723-38); (b) CLECS who are providing local exchange telecommunication services either under a specific form of price regulation or under the default form of price regulation; and (c) nonoptional operator service providers. Each group is required to file tariffs or price lists, or both with the Commission. Each group should be specifically mentioned in the appropriate rule(s) and directed to follow the procedures (whether for tariffs, for price lists, or -- where applicable -- for both) contained in Rules 723-1-40 and 723-1-41.

b. Add the following new paragraph to Rule 723-1-40.2.2, Price List:

> The initial price list shall be filed upon 30 days notice to the Commission. Changes to a price list shall be filed upon 14 days notice to the Commission. In calculating the effective date of a price list, the date filed with the Commission shall not be included.

Additionally, the 30th or 14th day must expire prior to the effective date of the price list.

c. Add the following new paragraph to Rule 723-1-40.2.3, Transmittal Letters

Notification of (a) promotional offerings and (b) volume discounts shall be submitted to the Commission as a serially numbered transmittal letter, upon 14 days notice."

d. Add the following new paragraph to Rule 723-1-41.3, Procedure to Change Tariffs upon 30 - Days or More Notice.

In calculating the effective date of a tariff change on 30 days notice, the date filed with the Commission shall not be included. Additionally, the 30th day must expire prior to the effective date of the tariff.

5. Commission Decision

Except for the suggestion in ¶ 4a, *supra.*, the Commission will grant these requests for the reasons stated by Staff. These changes to the rules will clarify procedures before the Commission, and reduce confusion on the part of those entities expected to comply with the rules.

V. RULE 4 CCR 723-27: COST ALLOCATION RULES FOR TELECOMMUNICATION SERVICE PROVIDERS AND TELEPHONE UTILITIES

A. Positions of the Parties

1. Joint Commentors

a. The Joint Commentors argue that the Commission misapplies § 40-15-108(2) when we require the CLECs to "continue to be able to provide adequately segregated cost

information to the Commission." Decision No. C97-1204, at 61. The Joint Commentors believe that the Commission's statutory authority to prescribe an allocation methodology gives it the latitude to exempt the CLECs entirely from such methodologies or to adopt some less stringent methodology for them. Furthermore, the CLECs argue, not exempting them from Rule 27 is inconsistent with the Commission's adoption of asymmetric regulation and price flexibility without cost support for the CLECs. For these reasons, the Joint Commentors suggest that CLECs should be given total exemption from Rule 27. If this is not forthcoming, the Joint Commentors argue that we should at least make significant modifications to Rules 27-4 through 27-7.

b. Rule 27-4 requires that USOA be used when complying with Rule 27 unless a waiver is granted. The Joint Commentors contend that they should not have to request waivers individually since they have already been given a collective exemption from USOA in Rules 38-3.2.2.9 and 1-25(c)(1). Therefore, they request that CLECs be given an automatic exemption from USOA in Rule 27-4 as well.

c. Rule 27-5 includes a provision whereby a telecommunications provider not required by the FCC to follow Part 36 rules, may apply for a similar waiver here. Again, the Joint Commentors argue that a CLEC, so exempted by the FCC, should not have to apply for such a waiver, but rather that it should be made automatic in Rule 27-5. Furthermore, they request

that the language in Rule 27-7.1 be amended to refer only to applicable federal rules, reflecting the fact that not all federal rules will apply to CLECs.

d. With respect to Rule 27-6, the Joint Commentors argue that requiring CLECs to use a fully distributed cost methodology for cost-segregation purposes is inconsistent with exempting them from Rule 30; thus, this requirement should be deleted. Finally, they believe that Rules 27-7.2 through 27-7.6 are burdensome to the CLECs and are clearly designed to address firms with market power. Hence, the CLECs should be exempt from these rules as well. Finally, the Joint Commentors observe that there should be some indication in Rule 27-1 that only certain rules are applicable to the CLECs and that others are applicable only under certain circumstances.

2. Commission Decision

a. We do not find that giving the CLECs a complete exemption from Rule 27 is prudent at this time, but we do view favorably the Joint Commentors' specific requests for modification of Rules 27-4 through 27-7. Concerning Rule 27-4, the Commission recognizes that CLECs have already been accorded an exemption from USOA in Rule 1-25(c)(1) and that ruling should be reflected here. Requiring them to request individual waivers from USOA under Rule 27-4 would be unnecessary. Similarly, if a CLEC has been granted an exemption from federal cost allocation or separations procedures by the FCC, the Commission believes

that it is unnecessary for that CLEC to be forced to request a waiver under Rule 27-5. Rather, that exemption should be automatic. Furthermore, the fact that, in this instance, not all federal rules would apply to that CLEC should be acknowledged by modifying the phrase "federal rules" by the word "applicable" in Rule 27-7.1.

b. Turning to Rules 27-6 and 27-7, the Commission affirms its position that CLECs are subject to § 40-15-108(2) and that they have the obligation to establish their compliance with this statute in appropriate Commission proceedings. We do not believe, however, that we should necessarily dictate the precise methodology by which the CLECs demonstrate their compliance. Consequently, we will exempt the CLECs from Rules 27-6.1 through 27-6.5, and Rules 27-7.2 through 27-7.6. While, for example, this exemption means that the CLECs are not required to use the fully distributed cost methodology, the Commission observes that this is the type of methodology that has been found to be effective in demonstrating compliance with § 40-15-108(2) in the past, and we encourage a CLEC to take account of this when selecting a methodology of its own.

c. In conclusion, we will grant, in part, and deny, in part, this portion of the Joint Commentors' request for reconsideration, reargument, and rehearing.

VI. RULE 4 CCR 723-30. RULES PRESCRIBING PRINCIPLES FOR COSTING AND PRICING OF REGULATED SERVICES OF TELECOMMUNICATIONS SERVICE PROVIDERS

A. Positions of the Parties

1. AT&T, MCI, and Sprint

These parties contend that the local loop allocation for ILECs is both contrary to federal and state law and bad public policy. They argue: The Telecommunications Act of 1996 defines the local loop as an unbundled network element (UNE) and, therefore, as a separate service so that a CLEC, when purchasing an UNE, must pay the entire cost of the loop, not just a portion allocated to local service. Since the CLEC must pay the entire cost of the loop and then contribute to the coverage of loop costs when paying for other ILEC services as well, the ILECs will be able to reap the benefits of double recovery. In addition, the allocation of loop costs favors resale over facilities-based competition, which is contrary to the intent of both the Telecommunications Act and Colorado HB 1335.[2] For example, if the universal service subsidy is based upon only the portion of the loop costs allocated to basic exchange, the subsidy will be too low and facilities-based competition will be deterred. Finally, loop allocation perpetuates the system of implicit subsidies. For all of these reasons, AT&T, MCI, and

[2] Section 40-15-501, C.R.S. *et seq.*

Sprint request that the loop allocation provision in Rule 30 be deleted.

2. Staff

The Staff is concerned that exempting the CLECs from Rule 30 may be inconsistent with §§ 40-15-106 and 40-15-108(2), which address cross-subsidization of deregulated services by regulated services. Its concern is that, without Rule 30, the information which the CLECs provide the Commission may be insufficient to determine whether cross-subsidization exists and, if so, how to proceed to prevent it from continuing. Staff also sees a contradiction between the CLEC exemption from Rule 30 and the mandated treatment of interconnection and switched access rates. For example, §§ 40-15-503(2)(b)(I) and 40-15-503(2)(g)(IV)(B) require that interconnection rates be cost based. Moreover, § 40-15-105 states that access charges must also be cost-based, as determined by the Commission, but not to exceed the average price by rate element and by type of access in effect in Colorado on July 1, 1987. These inconsistencies call into question the advisability of exempting the CLECs from Rule 30.

3. Commission Decision

a. Concerning AT&T, MCI, and Sprint's recommendation to delete the loop allocation discussion from Rule 30, we believe that their arguments were all made earlier in this docket. In reconsidering them, we continue to endorse, for

present purposes, the allocation of loop costs among all services for which the loop is an input. This request for reconsideration will, therefore, be denied.

b. Turning to the Staff's concerns, we agree that the CLECs are subject to both § 40-15-106 and § 40-15-108(2) and that they would have the obligation to establish compliance with either statute in an appropriate Commission proceeding. We do not, however, believe that the CLECs' exemption from Rule 30 is inconsistent with these statutory obligations. Therefore, we see no reason for withdrawing that exemption. Similarly, the Commission finds no inconsistency between the CLECs' exemption from Rule 30 and their compliance with the statutes cited by Staff concerning interconnection and switched access. Our treatment of these statutes as they relate to the CLECs can be found in the discussion of Rule 38-3.2.2.1. Consequently, we deny this portion of the Staff's request for reconsideration.

VII. RULE 4 CCR 723-2. RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES

A. Positions of the Parties

1. CTA

a. CTA begins by observing that § 40-15-203.5, enacted in 1993, mandates that the Commission take three steps: (1) change existing rules by January 1, 1994, to initiate the process of reducing regulation for small LECs; (2) apply

cost/benefit analysis to any new rules applicable to small LECs; and (3) grant less comprehensive regulation to small LECs in the future. CTA argues that only the first step has actually been taken. Furthermore, CTA contends that § 40-15-503(2)(d), enacted in 1995, requires the Commission to take the initiative in granting reduced regulation through rules which would go into effect no later than July 1, 1996, but that the Commission has not fulfilled this obligation.

b. In the remainder of CTA's application for reconsideration, reargument, and rehearing, CTA concentrates on three points:

(1) Small LECs should be given the same regulatory flexibility as the CLECs, but, instead, are subject to heightened regulatory scrutiny because of rulemakings undertaken to address concerns with U S WEST. CTA is not only concerned that the Commission has not afforded small LECs relaxed regulatory treatment but that the Commission, in paragraph e on page 31 of Decision No C97-1204, has established competitive entry as a precondition for reduced regulation. CTA argues that this is inappropriate and violates both §§ 40-15-203.5 and 40-15-503(2)(d).

(2) Asymmetrical regulation is based upon the analyses of dominant/nondominant carriers and market power. CTA argues that the small LECs, however, are unfairly lumped together with U S WEST in this regard. Unlike U S WEST, the

small LECs do not have any control over price and thus do not have any market power. CTA also criticizes the decision for not rigorously defining the market or quantifying market power as a necessary first step in implementing asymmetric regulation.

(3) CTA contends that the issues which it raised with respect to Rule 2 in particular, namely, held service orders, toll bridging, termination of service, and exemptions from backup power requirements, should not have been ruled by the Commission to be outside the bounds of the notice of proposed rulemaking. Toll bridging is especially burdensome to small LECs in that they are unjustly losing access revenue which will ultimately result in increased pressure to raise basic exchange rates. CTA also observes that the existing held service order rules are burdensome to the small LECs because compliance requires hiring additional personnel. This is another example of the small LECs being adversely affected by rules designed to address problems with U S WEST.

c. Finally, CTA attaches an appendix to its filing in which it lists a number of recent changes which it contends have had the effect of increasing regulation for small LECs. These include rules dealing with held service orders, backup power, basic service quality standards, telephone response time by customer service representatives, reports if trouble repair standards are not met, and reports of 911 outages.

2. Commission Decision

a. We believe that CTA's arguments were generally all made earlier in this docket. There are two specific areas, however, upon which we wish to comment at this time:

(1) First, as noted above, CTA contends that the Commission, in paragraph e on page 31, Decision No. C97-1204, establishes competitive entry as a precondition for reduced regulation of small LECs, and that this is in violation of §§ 40-15-203.5 and 40-15-503(2)(d).[3] CTA is correct that neither statute establishes competitive entry as a precondition for reduced regulation for small LECs. On the other hand, these statutes are silent on the question of what factors the Commission should consider when determining the future regulatory structure for small LECs. Consequently, the Commission may, in the future, use whatever factors it deems relevant, including the extent of competition. For purposes of the present proceeding, however, we will modify Decision No. C97-1204, paragraph e, page 31, by deleting the language:

> until competitive entry takes place in a small LEC territory and the Commission determines that market is capable of checking the ILECs'' market power. That entry may come either through a bona fide request which is approved by the Commission, or by virtue of the small LEC filing interconnection tariffs and thereby opening up its markets.

[3] Obviously, Decision No. C97-1204 cannot bind future Commissions to act in a certain manner. As such, the language of which CTA complains is dicta.

This modification of the decision clarifies that it is not our intent, in this docket, to indicate what actions the Commission might take in the future with respect to regulation of small LECs.

(2) Secondly, CTA's appendix to its filing provides a list of recent rule changes which, it argues, increase the regulatory burden on small LECs. The Commission believes, however, that many of these changes were designed to address the interests of the customers of the small LECs and are quite defensible. The Commission also notes that these rules are not necessarily as burdensome to the small LECs as CTA alleges (*i.e.*, a small LEC can comply with them rather easily if it avails itself of its options). For example, if a small LEC has only an occasional held order, it can inform the Commission of this instance with a simple letter and need not hire consultants, lawyers, or additional personnel of any sort to handle this matter. On the other hand, if a small LEC experiences numerous held orders, a more formal response may be necessary; but, in this case, the customers of this small LEC warrant such a response because they deserve as much protection as do customers of U S WEST.

b. The Commission remains concerned about the issues raised by CTA and wishes to continue to work toward reduced regulation for small LECs. Nevertheless, at this time,

the Commission denies CTA's request for reconsideration, reargument, and rehearing.

VIII. RULE 4 CCR 723-1-25: RULES OF PRACTICE AND PROCEDURE, ANNUAL REPORTS AND UNIFORM SYSTEM OF ACCOUNTS

1. Joint Commentors

Rule 723-1-25(c), as adopted in Decision No. C97-1204, generally exempted the CLECs from the requirement to maintain their books and records according to the Uniform System of Accounts ("USOA"). However, the rule would require the use of USOA for CLECs desiring to receive support from the Colorado High Cost Fund ("CHCF"). The Joint Commentors object to this requirement. According to their application for RRR, the substantial burden to maintain books and records under USOA will discourage CLECs from applying for designation as an Eligible Telecommunications Carrier (and thereby receiving support from the CHCF). This will, in turn, result in less competition in high cost areas of the State, inasmuch as CLECs may choose not to participate in the CHCF where use of USOA is a precondition for such participation. Furthermore, the Joint Commentors argue that use of USOA is not necessary to calculate and distribute appropriate amounts of universal service support.

2. Commission Decision

The Joint Commentors raise a significant question as to whether USOA is overly burdensome and whether it is

necessary for participation in CHCF. Therefore, we will eliminate this requirement at this time. We do note that issues concerning providers' participation in the CHCF are now under consideration in Docket No. 97R-043T. That proceeding is likely to be the more appropriate forum for consideration of the advisability of requiring the use of USOA for receipt of support from the CHCF. While we will not mandate such use of USOA at this time, we may consider such a requirement in Docket No. 97R-043T.

3. Staff

Staff, in its application for RRR, raises a host of concerns relating to Rule 1-25(c) and its provision that CLECs will, as a general matter, not be required to use USOA or, alternatively, an accounting system which maps to USOA. In general, Staff suggests that USOA or mapping to USOA is necessary to ensure that the Commission is provided accurate financial information in a standardized format. For example, Staff suggests, the Commission must obtain information in a standardized form to assess the progress of competition, to examine rates of providers, to investigate issues regarding improper cross-subsidization of services, etc. Staff argues that USOA or mapping provides the requisite standard format. Consequently, Staff essentially suggests that Rule 1-25 require

CLECs to maintain their books and records according to USOA or with mapping to USOA.[4]

4. Commission Decision

We will deny Staff's request. First, we are not persuaded that GAAP-based accounting will fail to provide the Commission with accurate information for regulatory purposes. We note that Rule 723-1-25(c)(3) (attached to this decision) will require providers exempt from USOA to maintain their records in such manner as will enable the Commission to ensure compliance with regulatory standards. Moreover, our decisions in this docket point out that, for purposes of promoting competition, CLECs should not be required to comply with burdensome regulatory directives. Comment in this docket convinces us that a mandate to use USOA or mapping would be a substantial burden to the CLECs. In light of these findings, we will not impose USOA or mapping on the CLECs at this time.

IX. ORDER

A. The Commission Orders That:

1. The applications for rehearing, reargument, or reconsideration filed by Commission Staff are granted, in part, and denied, in part, consistent with the above discussion.

[4] Staff would exempt pure resellers (*i.e.* non-facilities based providers).

2. The application for rehearing, reargument, or reconsideration filed by the Competitive Local Exchange Carriers is granted, in part, and denied, in part, consistent with the above discussion.

3. The applications for rehearing, reargument, or reconsideration filed by U S WEST Communications, Inc. are denied.

4. The application for rehearing, reargument, or reconsideration filed by AT&T Communications of the Mountain States; MCI Telecommunications Company, and Sprint Communications L.P. is denied.

5. The application for rehearing, reargument, or reconsideration filed by the Colorado Office of Consumer Counsel is denied.

6. The application for rehearing, reargument, or reconsideration filed by the Colorado Telecommunications Association is denied.

7. The rules appended to this decision are hereby adopted. In addition, to the extent not modified in the present order, the rules appended to Decision No. C97-1204 are readopted. This order adopting rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of

adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

8. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the rules.

9. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within twenty days following issuance of the above-referenced opinion by the Attorney General.

10. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.[5]

11. This Order is effective upon its Mailed Date.

[5] In the absence of extraordinary circumstances the Commission will likely deny any requests for extension of time to file new applications for rehearing, reargument, or reconsideration.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 14, 1998.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

R. BRENT ALDERFER

Commissioners

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