

Decision No. C02-530

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01R-434T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES CONCERNING THE COLORADO HIGH COST SUPPORT MECHANISM, 4 CCR 723-41, AND THE RULES CONCERNING ELIGIBLE TELECOMMUNICATIONS CARRIERS, 4 CCR 723-42.

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

Mailed Date: May 7, 2002
Adopted Date: April 17, 2002

I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration ("RRR") by the Colorado Telecommunications Association, Inc. ("CTA"). In its Application for RRR, CTA objects to certain rules approved by the Commission in Decision No. C02-319 ("Decision"). Now being duly advised, we deny the application. The rules attached to the Decision are now finally adopted.

B. Discussion

1. The Decision, in part, discusses various changes to be made to the Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of

Last Resort, or as an Eligible Telecommunications Carrier ("ETC"), 4 *Code of Colorado Regulations* 723-42. Amendments to Rule 10 mandate that each rural incumbent carrier select one of three paths to disaggregate its study area *for purposes of targeting high cost support*. Rule 11 provides that the disaggregation plans submitted by a rural incumbent local exchange carrier pursuant to Rule 10 will also be used by the Commission *for purposes of disaggregating that carrier's service area*. CTA objects to the amendments to Rule 11.

2. The application for RRR asks for the Commission to conduct further formal, adjudicative hearings before disaggregating rural service areas. CTA argues that disaggregating high cost support (Rule 10) is entirely unrelated to disaggregating (or redefining) service areas (Rule 11). As such, disaggregation of any rural carrier's service area requires formal hearings at which evidence is presented to support that disaggregation. CTA argues that rural carriers have a property interest in maintaining their service areas. Before the Commission redefines any rural service areas, due process requires formal adjudicatory hearings.

3. We reject these arguments for the reasons stated in the Decision at pages 14 and 15. We believe that CTA is fundamentally incorrect in arguing that disaggregation for purposes of targeting support is unrelated to disaggregation for

purposes of redefining service areas. The main point of disaggregation is to ensure that high cost monies are used to support those access lines that are actually high cost within a rural carrier's service area. *Disaggregation is intended to better reflect the costs of providing service in particular geographic areas.*¹ Therefore, targeting of support is critically related to redefining of service areas.

4. CTA's assertions that due process requires formal disaggregation hearings is also misplaced. CTA cites no authority for the proposition that rural carriers have some legal entitlement to maintaining their service areas for purposes of receiving high cost support. Furthermore, Rule 11 does not actually disaggregate any carrier's service area. The Rule simply establishes the principle that the manner of disaggregating high cost support under Rule 10 (*i.e.*, paths 1, 2, or 3) will also be the manner of disaggregating service areas.

5. Under two of the three disaggregation paths (1 and 3) available under Rule 10 the carrier chooses how to disaggregate support. Therefore, under Rule 11, the rural carrier itself decides how to disaggregate its service area for

¹ For example, the Decision observes that without disaggregation, competing ETCs could "cream-skim" rural customers. This concern was expressed in the Western Wireless decision cited by CTA. See Decision No. C01-476, pages 23 and 24.

two of the possible three paths. Thus, the suggestion that the Commission is imposing disaggregation methods upon unwilling carriers is erroneous. Under path 2 the Commission could order a disaggregation plan not proposed by the rural carrier. However, a ruling under path 2 would be made after formal application proceedings.² See Rule 10.2.6. CTA is, therefore, incorrect that disaggregation methods may be imposed on rural carriers without any process being accorded those carriers. The rules, in fact, contemplate formal proceedings in cases where the Commission might order some method not chosen by the carrier itself.

6. We conclude that the interests of competitive neutrality require consistency between the methods for disaggregating high cost support and the methods for disaggregating service areas. We also conclude that the adopted procedures for disaggregating high cost support and redefining rural service areas are reasonable and fair. For all these reasons CTA's Application for RRR is denied.

² The Commission retains the authority to order a different disaggregation path other than one chosen by a rural carrier, but this also would take place only after formal proceedings. See Rules 10.1.3 and 10.3.5.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration by the Colorado Telecommunications Association, Inc., is denied.

2. The rules appended to Decision No. C02-319 as Attachments A and B are adopted.

3. Within 20 days of the effective date of this Decision, 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. The rules shall also be submitted to the appropriate committee of reference of the Colorado General Assembly if the General Assembly is in session or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 17, 2002.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith
Director

JIM DYER

Commissioners