

Decision No. C03-1429

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-541T

IN THE MATTER OF EMERGENCY RULES RELATING TO THE PROVISIONING OF THE ABBREVIATED DIALING CODE 5-1-1 FOR TRAFFIC AND TRANSPORTATION INFORMATION.

ORDER ADOPTING EMERGENCY RULES

Mailed Date: December 22, 2003

Adopted Date: December 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules entitled rules Relating to the Provisioning of the Abbreviated Dialing Code 5-1-1 for Traffic and Transportation Information, 4 *Code of Colorado Regulations* (CCR) 723-24-6 (Traffic Information Rules). For the reasons set forth in this decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the rules appended to this Order as Attachment A. We take this action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. Generally, the purpose of the rules adopted by this order is to set the procedure for implementation of a 5-1-1 abbreviated dialing code to be used by a government entity to provide transportation and traffic information to the citizens of Colorado. These rules are enacted within the authority granted to the Commission by the Federal Communications Commission (FCC)

pursuant to its *Third Report and Order*.¹ In that order, the FCC determined that the U.S. Department of Transportation had demonstrated that assignment of an N11 dialing code for nationwide access to travel and traffic information services was in the public interest, and therefore assigned 5-1-1 for that purpose.

3. These rules also further the FCC's directive that government entities may request 5-1-1 and that state transportation agencies may have the discretion to determine the deployment schedule and the type of transportation information that will be provided using 5-1-1.² These emergency rules also follow the FCC's mandate that state public utilities commissions continue their jurisdiction over 5-1-1 codes to ensure, among other things, that carriers comply with transportation agencies' requests to deploy 5-1-1 expeditiously.

4. Therefore, with these emergency rules, we adopt such rules as are necessary for the expeditious administration of the 5-1-1 dialing code for transportation and traffic information.

5. Rule 24-6 sets forth the "public benefit" standard in order to grant use of the 5-1-1 dialing code. Rule 24-6.1 provides the process for assignment of the 5-1-1 dialing code shall be upon the Commission's own motion or by petition of a government entity. Rule 24-6.2 sets the burden of proof required for assignment of the 5-1-1 dialing code. The rule requires that a governmental entity must show by clear and convincing evidence that a public benefit exists.

¹ *In the Matter of Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide*, NSD-L-99-24, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Third Report and Order and Order on Reconsideration, adopted July 21, 2000, released July 31, 2000. FCC 00-256.

² *Id.* at ¶15.

6. Rule 24-6.2.1 sets forth the required contents of a petition to the Commission for assignment of the 5-1-1 dialing code for transportation and traffic information. This rule requires that the petitioner provide information on the petitioner's background, as well as demonstration of public need. Additionally, the petitioner must provide background on the historic volume of calls it has received seeking transportation and traffic information, as well as the proposed geographic area it proposes to serve. The rule also requires the petitioner to provide cost recovery solutions, letters of support from stakeholders, its proposed community outreach and notification plan, and other pertinent factors the Commission may deem necessary.

7. Rule 24-6.3 sets out the procedure if two or more entities petition this Commission to provide access to transportation and traffic information via the 5-1-1 dialing code. Rule 24-6.4 sets out the tasks required of the jurisdictional telecommunications providers affected by the 5-1-1 designation, including discontinuation of non-compliant uses, providing information regarding recovery or internal costs associated with 5-1-1 call completion, and estimates of the time required to perform the necessary translation and/or facilities work to allow 5-1-1 call completion from its subscribers. Rule 24-6.5 sets 30 days from the date a petition is granted as the deadline for jurisdictional telecommunications service providers to file the information required by Rule 25-6.4. Rule 24-6.6 provides that the Commission will set a timeline for assignment and implementation of the 5-1-1 dialing code based upon a showing of public benefit, and that all jurisdictional telecommunications service providers serving customers in the affected area are to comply with this assignment date, unless the Commission grants a waiver for additional time.

8. We adopt the attached rules as emergency rules in accordance with the provisions of § 24-4-103(6), C.R.S. We find that immediate adoption of the rules is imperative and

necessary to provide a process for implementation of the 5-1-1 dialing code in Colorado. Further, compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

9. As grounds for these findings, we state: It is necessary to adopt these emergency rules to ensure that the 5-1-1 dialing code may be implemented in Colorado in a timely manner to provide its citizens with critical information regarding transportation and traffic information.

10. Failure to adopt these rules on an emergency basis would delay action on this matter for several months. These rules provide for easy, consistent access to critical information to the citizens of Colorado traveling the state's highways and freeways via the 5-1-1 dialing code. Implementation of this shortcut dialing code would be unduly delayed without these rules.

11. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-101, 40-4-101 and 24-4-103(6), C.R.S. The rules attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 22, 2003.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

RULES RELATING TO THE PROVISIONING OF THE ABBREVIATED DIALING CODE 5-1-1 FOR TRAFFIC AND TRANSPORTATION INFORMATION

[to be inserted as rule 723-24.6 “reserved for future use”]

723-24-6 A government entity submitting a Petition for use of the 5-1-1 abbreviated dialing code established by the Commission, shall be granted use of that dialing code if it is found to meet a public benefit standard outlined in this rule. Any petitioner that is granted the authority to offer 5-1-1 access to intelligent transportation systems or other transportation information shall comply with this rule and any provisions set out in the Commission’s decision granting such authority.

723-24-6.1 Process for Assignment of 5-1-1 Abbreviated Dialing Code. The assignment of the 5-1-1 abbreviated dialing code will be considered by the Commission upon: 1) the Commission’s own motion; or 2) the Petition of a government entity.

723-24-6.2 Petition for Consideration of the Assignment of 5-1-1. A government entity filing a Petition to request consideration of the assignment of the 5-1-1 abbreviated dialing code for intelligent transportation systems or other transportation information must present clear and convincing evidence that a public benefit exists. The Commission will evaluate the Petition based upon this evidence.

723-24-6.2.1 Contents of the Petition. The Petition shall contain the following information and documentation:

723-24-6.2.1(a) Background of the Petitioner, including composition of any governing board or agency;

723-24-6.2.1(b) Demonstration of public need;

723-24-6.2.1(c) Historic volume of calls seeking transportation information;

723-24-6.2.1(d) Proposed affected geographic area, including a list of cities/towns and counties or central offices, if known, and any plans for expansion of that initial geographic area;

723-24-6.2.1(e) Proposed cost recovery solution, including funding mechanisms;

723-24-6.2.1(f) Letters of support from stakeholders;

723-24-6.2.1(g) Proposed plan for community outreach and notification; and

723-24-6.2.1(h) Other pertinent factors that the Commission deems relevant.

723-24-6.3 If two or more entities petition the Commission to provide access to intelligent transportation systems or other transportation information using 5-1-1 in the same or overlapping geographic areas, the Commission shall apply the criteria in rule 24.6.2 to establish one assignee.

723-24-6.4 When a Petition is granted by the Commission under rule 24.6.2, any jurisdictional telecommunications provider that provides service in the geographic area outlined in the Petition shall complete the following tasks:

723-24-6.4.1 If an affected jurisdictional telecommunications service provider is using 5-1-1 for purposes other than access to intelligent transportation systems or other transportation information, that provider shall discontinue use for that non-compliant purpose.

723-24-6.4.2 If the affected jurisdictional telecommunications service provider plans to seek recovery of internal costs associated with 5-1-1 call completion, the affected provider shall perform all analyses required to quantify its cost for the necessary translations and/or facilities work.

723-24-6.4.3 The affected jurisdictional telecommunications service provider shall estimate the time required to perform the necessary translation and/or facilities work to allow 5-1-1 call completion from its subscribers as requested in the Petition.

723-24-6.5 Within 30 days of the granting of a Petition, the affected jurisdictional telecommunications service providers shall file with the Commission the information requested in rules 24-6.4.2 and 24-6.4.3.

723-24-6.6 Upon a showing that the public will benefit from the assignment of 5-1-1 to a petitioner and factoring in the jurisdictional telecommunications service providers' filed information the Commission will set a timeline for assignment and implementation of the 5-1-1 abbreviated dialing code in the affected geographic area. All jurisdictional telecommunications service providers serving customers in the affected area will comply with this assignment date unless a waiver is sought and granted.