

Decision No. R04-0509

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-057T

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADOPTING RULES**

Mailed Date: May 14, 2004

I. STATEMENT

1. The Commission commenced this proceeding by the issuance of Decision No. C04-0149 on February 18, 2004. That decision gave public notice of a proposed rulemaking to adopt permanent 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.

2. The rules implement the decision of the Federal Communications Commission (FCC) in, and are promulgated pursuant to the authority granted to the Commission in, *Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Docket NSD-L-99-24 and CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, FCC 00-256 (2000) (*Third Report and Order*). The rules describe the process by which a governmental entity may request that the Commission assign the abbreviated dialing code 5-1-1 for the purpose of providing transportation and traffic information (5-1-1 abbreviated dialing code) to the citizens of

Colorado, establish the standard the Commission will use to make an assignment of the 5-1-1 abbreviated dialing code, and establish the requirements applicable to jurisdictional telecommunications service providers and others.

3. Notice of the proposed rulemaking was published in the *Colorado Register*. The hearing was scheduled for April 9, 2004. No written comments were received in this proceeding.

4. At the assigned place and time, the undersigned Administrative Law Judge (ALJ) called the matter for hearing. Mr. Thomas Dixon made an oral presentation on behalf of MCI, Inc. (MCI). This was the only comment received on the proposed rules. The *Third Report and Order* was placed in the rulemaking record by administrative notice, and no exhibits were admitted in this proceeding.

5. At the conclusion of the rulemaking hearing, the ALJ took the matter under advisement.

II. FINDINGS, CONCLUSIONS, AND DISCUSSION

6. The rules promulgated in this docket are intended, *inter alia*, to implement the *Third Report and Order*. In addition, the rules are intended to establish the procedures for seeking an assignment of the 5-1-1 abbreviated dialing code, to inform affected jurisdictional telecommunications service providers of their responsibilities in the event the Commission assigns the 5-1-1 abbreviated dialing code, and to inform a governmental entity of its responsibilities in the event the Commission assigns the 5-1-1 abbreviated dialing code in response to a petition filed by the governmental entity. The ALJ finds and concludes that the rules promulgated here and appended to this Decision as Attachment A are necessary to accomplish, and do accomplish, these purposes.

7. While supporting the proposed rules, MCI made several suggestions with respect to information which should be included in the rules. Except as discussed, those suggestions have been incorporated into the final rules.

8. In addition, on April 28, 2004, the Commission issued Decision No. C04-0445 in *In the Matter of the Petition of the Colorado Department of Transportation for Approval of a Plan for the Provision of 5-1-1 Service in Colorado and the Assignment of the 5-1-1 Dialing Code for System Implementation*, Docket No. 04A-127T. This is the first Commission decision addressing a petition for assignment of the 5-1-1 abbreviated dialing code. The ALJ considered, but was not bound by, Decision No. C04-0445 in this docket.

9. Rule 4 CCR 723-24-6.3 specifies the content of a petition to assign the 5-1-1 abbreviated dialing code. The rule requires that such a petition contain information identifying the petitioner and identifying contact persons. These changes are in response to MCI's comments. The rule does not contain, however, the MCI-requested requirement that a petition contain a suggested implementation date and a suggested time line. First, a petitioner is unlikely to know the amount of time which providers require in order to implement the 5-1-1 abbreviated dialing code. Second, Rule 4 CCR 723-24-6.7 states that the Commission will make the time line decision based on information from the providers and other factors. Because suggestions from a petitioner are unlikely to assist in establishing the assignment and implementation time line, the MCI suggestion was not adopted.

10. Rule 4 CCR 723-24-6.5 specifies the actions which a provider must take, and the information it must provide to the Commission (*see* Rule 4 CCR 723-24-6.6), after it receives notification of a Commission decision initially assigning the 5-1-1 abbreviated dialing code. The

language in Rule 4 CCR 723-24-6.5 as promulgated is changed from that in the rule as proposed. The changes, in part, respond to the MCI comments; in part, reflect the actions required by Decision No. C04-0445; and, in part, simply clarify the requirements.

11. MCI requested that the rules specify that providers receive notice of Commission orders which assign the 5-1-1 abbreviated dialing code and of Commission orders which establish the time line for assignment and implementation of the 5-1-1 abbreviated dialing code. In response to the comments, Rules 4 CCR 723-24-6.5 and 4 CCR 723-24-6.7 provide for such notice.

12. A new Rule 4 CCR 723-25-6.8 is added to make it clear that a provider must make a tariff filing with respect to its offering of 5-1-1 abbreviated dialing code. The rule also establishes the time within which the provider must make that tariff filing.

13. Finally, there is a new Rule 4 CCR 723-24-6.9. The language of this rule was previously contained in Rule 4 CCR 723-24-6.6 and is made a separate rule for ease of reference. The language has not changed from that of the proposed rule.

14. The rules attached to this Decision contain grammatical, numbering, and similar changes made so that the rules are clearer, more understandable, and internally consistent.

15. The rules attached to this Decision are clear; are necessary to protect the public health, safety, and welfare; are understandable; do not conflict with other provisions of law; and do not duplicate other rules. The rules are in the public interest, and they should be adopted.

16. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Rules Relating to the Provisioning of the Abbreviated Dialing Code 5-1-1 for Traffic and Transportation Information, 4 *Code of Colorado Regulations* 723-24-6, which are set out in Attachment A to this Order, are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Bruce N. Smith".

Bruce N. Smith
Director

RULES RELATING TO THE PROVISIONING OF THE ABBREVIATED DIALING CODE

5-1-1 FOR TRAFFIC AND TRANSPORTATION INFORMATION (to be inserted in rule 723-24-6 “reserved for future use”)

723-24-6 A governmental entity submitting a petition for use of the 5-1-1 abbreviated dialing code to provide traffic and transportation information to the public shall be granted use of that abbreviated dialing code if the Commission finds there is public benefit from that use. Any petitioner that is granted the authority to offer 5-1-1 abbreviated dialing 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 The assignment of the 5-1-1 abbreviated dialing code to provide traffic and transportation information will be considered by the Commission either upon its own motion or upon the filing of a petition by a governmental entity.

723-24-6.2 Petition for Consideration of the Assignment of 5-1-1. A governmental entity filing a petition to request assignment of the 5-1-1 abbreviated dialing code for providing intelligent transportation systems or other transportation information must present substantial evidence that a public benefit either exists or will be created from assignment of that abbreviated dialing code to petitioner. The Commission will evaluate the petition based upon this evidence.

723-24-6.3 Contents of the Petition. The petition shall contain the following information and documentation:

723-24-6.3.1 Name and address of the governmental entity filing the petition.

723-24-6.3.2 Name, address, and telephone number of the person filing the petition on behalf of the governmental entity.

723-24-6.3.3 If different than the person identified in response to rule 723-35-6.3.3, name, address, and telephone number of the governmental entity’s representative to whom inquiries concerning the petition should be addressed.

723-24-6.3.4 Name, address, and telephone number of the person to contact with respect to implementation of the 5-1-1 abbreviated dialing code if the Commission grants the petition.

723-24-6.3.5 Background of the petitioner, including composition of any governing board or agency.

723-24-6.3.6 Demonstration of public need.

723-24-6.3.7 Historic volume of calls seeking transportation information.

723-24-6.3.8 Description of the geographic area, including a list of cities, towns, and counties or, if known, of central offices, to be included within the assignment and a description of any plans for expansion of that geographic area.

723-24-6.3.9 Estimated cost of implementing the 5-1-1 abbreviated dialing code if the Commission grants the petition.

723-24-6.3.10 Proposed cost recovery solution, including funding mechanisms.

723-24-6.3.11 Letters of support.

723-24-6.3.12 Proposed plan for community outreach and notification.

723-24-6.3.13 Other pertinent factors that the Commission deems relevant.

723-24-6.3.14 A statement that is made under penalty of perjury, that is signed by a person authorized to act on behalf of the governmental entity, and that states that the contents of the petition are true, accurate, and correct. The petition shall contain the title and complete address of this affiant.

723-24-6.4 If two or more government entities petition the Commission to provide access to intelligent transportation systems or other transportation information using the 5-1-1 abbreviated dialing code in the same or overlapping geographic areas, the Commission shall use the criterion in rule 723-24-6.2 to establish one assignee.

723-24-6.5 When the Commission issues an order assigning the 5-1-1 abbreviated dialing code for providing traffic and transportation information to the public, each jurisdictional telecommunications service provider that provides service in the geographic area covered by the order shall receive, within 10 days of the date of the Commission order, written notice of the Commission order. When it receives the written notice, a jurisdictional telecommunications service provider that provides service in the affected geographic area shall do the following:

723-24-6.5.1 If the 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 the non-compliant use so that the provider can meet the Commission-ordered implementation date.

723-24-6.5.2 If the jurisdictional telecommunications service provider plans to seek recovery of its costs associated with implementation of the 5-1-1 abbreviated dialing code for providing traffic and transportation information, the provider shall perform all analyses required to quantify the cost to it for the translations and/or facilities work necessary to implement the 5-1-1 abbreviated dialing code.

723-24-6.5.3 The jurisdictional telecommunications service provider shall estimate the time required to perform the translation and/or facilities work necessary to implement the 5-1-1 abbreviated dialing code for the purpose of providing traffic and transportation information.

723-24-6.6 Within 30 days of the date of the Commission order assigning the 5-1-1 abbreviated dialing code, each jurisdictional telecommunications service provider that provides service in the geographic area covered by the order shall file with the Commission the information required by rules 723-24-6.5.2 and 723-24-6.5.3.

723-24-6.7 Taking into consideration the jurisdictional telecommunications service providers' filed information, the public need for the assignment of the 5-1-1 abbreviated dialing code for traffic and transportation purposes, and other factors which it may consider relevant, the Commission will establish, by written order, a time line for assignment and implementation of the 5-1-1 abbreviated dialing code in the affected geographic area. Each jurisdictional telecommunications service provider providing service within the affected geographic area shall receive a copy of the Commission order establishing the assignment and implementation time line.

723-24-6.8 Not less than 30 days prior to the Commission-ordered implementation date, each jurisdictional telecommunications service provider that offers service within the affected geographic area shall file, on not less than 30 days' notice, an advice letter and accompanying tariff that describes the availability of the 5-1-1 abbreviated dialing code; that contains the terms and conditions of the 5-1-1 abbreviated dialing code service; and, if the provider desires to recover its costs, the rates for the 5-1-1 abbreviated dialing code service.

723-24-6.9 Unless a waiver is sought and granted, each jurisdictional telecommunications service provider providing service in the affected geographic area shall comply with the Commission order establishing the assignment date and the implementation date for the use of the 5-1-1 abbreviated dialing code to provide traffic and transportation information.