

Decision No. C05-1430

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-514T

IN THE MATTER OF EMERGENCY RULES RELATING TO THE DEFAULT REGULATION
OF COMPETITIVE LOCAL EXCHANGE CARRIERS.

ORDER ADOPTING EMERGENCY RULES

Mailed Date: December 8, 2005

Adopted Date: December 8, 2005

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules entitled Default, Alternative and Simplified forms of Regulation; Refraining from Regulation; and Reclassification of Parts II and III Services, 4 *Code of Colorado Regulations* (CCR) 723-2-2203, pursuant to Commission Decision No. C05-0802 in consolidated Docket Nos. 04A-411T and 04D-440T. 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 emergency rules appended to this Decision as Attachment A, in the format pursuant to Docket No. 03R-524T. 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 Decision is to provide competitive local exchange carriers (CLECs) with two options for default regulation. The rules identify the two default forms of regulation for CLECs for services subject to the jurisdiction of the Commission and establish the procedures and standards for those default forms.

3. Rule 2203 presents the two forms of default regulation available to CLECs. Option One is the current form of default regulation and Option Two is a new regulatory scheme available to a CLEC upon notice of election to the Director of the Colorado Public Utilities Commission. Rule 2203 outlines the requirements of all CLECs and the requirements of Option One and Option Two. Further, Rule 2203 specifies under Option Two, the services subject to Market Regulation and Modified Existing Regulation and explains the regulatory scheme of each.

4. 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 necessary to provide a process for implementation of the options for default forms of regulation for CLECs. 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.

5. As grounds for these findings, we state: It is necessary and appropriate to adopt these rules on an emergency basis to ensure that the CLECs are afforded the opportunity to enjoy the benefits of reduced regulation as Qwest Corporation (an ILEC) will enjoy those benefits beginning December 9, 2005, pursuant to our decisions in the above mentioned dockets.

6. Failure to adopt these rules on an emergency basis would delay action on this matter for several months. These rules provide a means to allow CLECs to remain competitive with Qwest. Implementation of such rules allowing CLECs to opt-in to a similar form of regulation as Qwest would be unduly delayed if not done on an emergency basis. We also note that to the extent these rules conflict with the repealed and re-enacted telecommunications rules in Docket No. 03R-524T, these rules shall supersede those repealed and re-enacted rules.

7. The statutory authority for adoption of these rules is set forth in §§ 24-4-103(6), 40-2-108, 40-4-101, and 40-15-306, 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 emergency 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' DELIBERATIONS MEETING
December 8, 2005.**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

Default, Alternative, and Simplified Forms of Regulation; Refraining from Regulation; and Reclassification of Parts II and III Services

Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to identify default forms of regulation for services subject to the jurisdiction of the Commission and to establish procedures and standards concerning: alternative forms of regulation; simplified regulatory treatment for rural telecommunications providers; refraining from regulation for competitive purposes; reclassifying a regulated telecommunication service as an emerging competitive service; and deregulation of emerging competitive services.

The statutory authority for the promulgation of these rules is found at §§ 40-15-101, 40-15-203, 40-15-203.5, 40-15-207, 40-15-301, 40-15-302, 40-15-305, 40-15-501, 40-15-502, 40-15-503, and 40-2-108, C.R.S.

2200. Applicability.

Rules 2200 through 2299 are applicable to all providers of services pursuant to § 40-15-201, C.R.S., (Part II) or pursuant to § 40-15-301, C.R.S., (Part III or emerging competitive services); except that rule 2202 is only applicable to ILECs, rule 2203 is only applicable to CLECs, and rule 2206 is only applicable to rural ILECs. Nothing in rules 2200 through 2299 shall limit the Commission's authority to investigate the rates and charges assessed by providers.

2201. [Reserved].

2202. [Reserved].

2203. Default Forms of Regulation for CLECs.

(a) Requirements of all CLECs.

- (I) Prices for residential basic local exchange service.** Consistent with § 40-15-502(3)(b)(I) and except as otherwise provided by law, prices for residential basic local exchange service, including zone charges, if any, shall not rise above the levels in effect on May 24, 1995, for comparable services regardless of the form of regulation of the provider.
- (II) Switched access prices.** Consistent with § 40-15-105(1), C.R.S., and except as otherwise provided by law, providers' access charges:
 - (A) Shall be cost-based, as determined by the Commission; and**
 - (B) Shall not exceed the average price by rate element and type of access in effect on July 1, 1987.**
- (III) To enable the Commission to track the progress of competition and to monitor the delivery of basic, premium and advanced services to all areas of the state, it is in the public interest for CLECs to provide the Commission with information in annual reports and/or other special reports, pursuant to rule 2006.**

(b) A CLEC may elect to opt into one of two forms of default regulation in their entirety. A new CLEC shall designate at the time of application for a CPCN and/or LOR under which form of default regulation it requests to be regulated or apply for an alternative form of regulation pursuant to rule

2205. An existing CLEC certified at the effective date of this rule shall notify the Commission by letter addressed to the Director of the Commission if they wish to change to the Option Two form of default regulation. If an existing carrier desires to be regulated under an alternative form of regulation, this must still be accomplished by application pursuant to rule 2205.

(c) Default Form of Regulation: Option One.

- (I) This default form of regulation shall apply to all jurisdictional products and services offered by a CLEC provider, with the exception of the rates, terms and conditions for 9-1-1 call delivery to a BESP. Each CLEC shall establish rates, terms and conditions governing 9-1-1 call delivery to a BESP, as directed in rule 2138.
- (II) Pursuant to rule 2122, each CLEC shall file an initial Tariff that contains the rates, terms and conditions governing its Part II and Part III services and products.
- (III) Tariff changes. For products and services subject to this default form of regulation, changes to the Tariff may be made upon 14-days notice to the Commission. Additional notice to customers shall not be required unless ordered by the Commission. If the Commission does not suspend the effective date of the proposed Tariff change, the Tariff change shall become effective according to its terms.
- (IV) Customer-specific contracts and notice.
 - (A) The Commission may permit a provider to provide a customer with regulated services, under contract, irrespective of any Tariff or Price List requirements.
 - (B) A notice of contract shall be filed with the Commission under seal within 14-days of the date the contract is executed. The notice shall: disclose any early termination penalty to the customer; confirm that the contract is a non-discriminatory offering; confirm that the charges exceed the company's cost; and confirm that the contract contains a provision acknowledging that it is subject to regulatory review.
 - (C) The contract shall be subject to Commission review to determine if:
 - (i) The negotiated contract is nondiscriminatory;
 - (ii) The contract terms are not inconsistent with the public interest; and
 - (iii) The contract terms are not inconsistent with applicable Commission rules.
 - (D) The Commission may set the contract for hearing and, after hearing, may approve or disapprove the contract. At the hearing, the applicant shall bear the burden of proof with respect to the contract. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

(d) Default Form of Regulation: Option Two.

Option Two default form of regulation recognizes that the Commission found in Docket No. 04A-411T that sufficient competition exists to warrant a reduction in the regulatory oversight of certain products and services.

- (I) Customer specific contracts. Customer specific contracts may be negotiated and entered into without notice or filing to the Commission. CLECs shall maintain a log of such contracts and give Staff and the OCC reasonable access to the contracts upon request.
- (II) There shall be minimal Commission oversight of certain telecommunications products and services under Market Regulation. Market Regulation includes:
 - (A) Detariffing;
 - (B) The ability to geographically deaverage prices;
 - (C) The ability to withdraw or cease offering a product or service to new customers without initial Commission review or approval; and
 - (D) The ability to make changes in rates, terms and conditions for services and products without any initial Commission review or approval.
- (III) Customer specific notice. CLECs shall provide 14-days notice to customers of price increases and price-affecting changes in terms and conditions using customer-specific mechanisms such as direct letter contact, postcards, bill inserts and/or bill messages. CLECs are neither required nor prohibited from providing customer specific notices of price decreases.
- (IV) Commission notice. CLECs shall provide the Supervisor of the Consumer Affairs section of the Commission with an e-mailed copy of all customer specific notices, including promotional material, at the same time the customers receive those notices. In addition, CLECs shall e-mail a one-day notice of all changes to rates, terms and conditions for all services subject to Market Regulation to a designated Staff person in the Fixed Utilities Section of the Commission.
- (V) CLECs are required to post on their website the rates, terms and conditions associated with the services under Market Regulation in a timely and easily accessible manner and update such information regularly. CLECs shall maintain an archive of the website postings for a period of not less than two years from the time the rates, terms or conditions for that service are rescinded or changed. This archive data must be available to the Commission upon request.
- (VI) The services subject to Market Regulation are:
 - (A) Additional residential access lines located within the following exchange wire centers the Denver Metro Exchange: Aberdeen, Arvada, Aurora Main, Capitol Hill, Columbine, Curtis Park, Denver International Airport, Dry Creek, Denver East, Denver Main, Denver North, Denver Northeast, Denver South, Denver Southeast, Denver Southwest, Denver West, Englewood, Golden, Highland Ranch, Lakewood, Littleton, Monaghan, Montbello, Smoky Hill, Sullivan and Westminster; the Boulder Exchange: Boulder Main, Table Mesa and Gun Barrel; the Longmont Exchange: Longmont and Niwot; the Lafayette/Louisville Exchange: Cottonwood; the Broomfield Exchange: Broomfield and Northglenn; Erie; and Parker and the Colorado Springs exchange: Air Force Academy, Colorado Springs East, Colorado Springs Main, Gatehouse, Fountain, Monument, Pikeview, Security and Stratmoor (known as the zones of competition).

- (B) Residential features and services except for the public interest features and services described in Modified Existing Regulation;
 - (C) Six and above flat-rated, message or measured business access lines;
 - (D) Advanced features or services provided on business lines as defined in § 40-15-102(2) including hunting on six and above flat-rated, message or measured business access lines except public interest features and services;
 - (E) All other business services except for one to five flat-rated, message or measured business access lines and hunting on those lines;
 - (F) Premium services as defined by § 40-15-102(21), C.R.S., other than non-listed and non-published services;
 - (G) All packages and bundles (which include any combination of access lines and/or features or services subject to Commission jurisdiction) with a price cap.
 - (i) Prices for packages and bundles shall not exceed the sum of the highest prices of the a la carte components of the package.
 - (H) Non-optional operator services except busy line verify and busy line interrupt. The Commission approved statewide benchmark rate applies to all non-optional operator services, as required by § 40-25-302(5) C.R.S.
- (VII) Modified existing regulation. Products and services regulated under Modified existing regulation shall have the same tariffing and notice requirements as those under Option One default regulation.
- (VIII) The services subject to Modified existing regulation are:
- (A) Residential primary access lines;
 - (B) Additional residential access lines in area other than the zones of competition identified above;
 - (C) Public interest features and services on residential and business access lines defined as per call and per line blocking; call trace; busy line verification; busy line interrupt; non-listed service; and non-published service;
 - (D) One to five flat-rated, message or measured business access lines and hunting on those lines;
 - (E) Payphone service offerings;
 - (F) Line extensions; and
 - (G) 9-1-1, E9-1-1 and N-1-1 services.