

## **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. Definitions.**

The following definitions apply only in the context of rules 2200 through 2299.

- (a) "Alternative forms of regulation" means those forms of regulation other than the default form of regulation, which may include any combination of the following elements: rate-of-return regulation, modified Tariff requirements, alternative reporting requirements, price bands, benchmark rates, detariffing, or any other such elements of alternative regulation as provided in § 40-15-302(1), C.R.S., that are consistent with the General Assembly's expression of intent stated in § 40-15-101, C.R.S.
- (b) "Applicant" means any provider who files an application with the Commission pursuant to rule 2205.
- (c) "Benchmark-rate" means an element of alternative regulation, as established by the Commission, with an established price ceiling for a service.
- (d) "Cost support" means data, information, methods, and analyses conducted in accordance with the rules 2400 through 2499, as applicable.
- (e) "Detariffing" means offering a service to the public without using a Tariff to administer rates, charges, terms, and conditions. Detariffing is available as an element of alternative regulation.
- (f) "Price band" means a range of rates defined by a Commission-established price floor (the lower boundary) a Commission-established price ceiling (the upper boundary) and within which a provider of basic local exchange or emerging competitive telecommunications service may set a specific price for a service. Price bands are available as an element of alternative regulation.

- (g) "Private telecommunications network" means "private telecommunications network", as that term is defined by § 40-15-102(23), C.R.S.
- (h) "Reference provider" means any ILEC that has secured Commission approval for an alternative form of regulation under §§ 40-15-201(2) and 40-15-503, C.R.S.
- (i) "Rural ILEC" means "rural telecommunications provider", as that term is used in § 40-15-203.5, C.R.S.

**2202. Default Form of Regulation for ILECs.**

- (a) This rule applies to all ILECs.
- (b) Part II services. Each ILEC shall be regulated using a rate-of-return form of regulation for its Part II services, except call delivery to a Basic Emergency Service Provider (BESP), in the absence of another Commission-approved alternative form of regulation.
- (c) Part III services. Each ILEC shall be regulated using rate-of-return regulation for its emerging competitive services, except non-optional operator services, in the absence of a Commission-approved alternative form of regulation.
- (d) The Commission shall regulate the terms and conditions, including rates and charges, under which Part III services are offered and provided to customers exclusively in accordance with the provisions of §§ 40-4-101(1), 40-4-111, 40-4-112, 40-5-105, 40-15-302, 40-15-303, 40-15-306, 40-15-307 and 40-15-503(2)(c)(I) and (II), C.R.S.
- (e) 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 ILEC.
- (f) Switched access prices. Consistent with § 40-15-105(1), C.R.S., and except as otherwise provided by law, ILECs' access charges:
  - (I) Shall be cost-based, as determined by the Commission; and
  - (II) Shall not exceed the average price by rate element and type of access in effect on July 1, 1987.
- (g) Customer-specific contracts and notice.
  - (I) The Commission may permit an ILEC to provide a customer with regulated services, under contract, irrespective of any Tariff or Price List requirements.
  - (II) 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.
  - (III) The contract shall be subject to Commission review to determine if:
    - (A) The negotiated contract is nondiscriminatory;

- (B) The contract terms are not inconsistent with the public interest; and
- (C) The contract terms are not inconsistent with applicable Commission rules.
- (IV) 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.

**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) **Promotions. Promotions may be conducted with no notice to the Commission. The CLEC will post on its website terms and conditions associated with promotions and shall maintain an archive of website promotions for a period of two years from the date of the ending of such promotions. The website posting will be made in a timely and easily accessible manner and will be updated regularly with the rates, term and conditions for such promotions. The CLEC will also archive and provide access to the information to the Staff and the OCC in the same manner as (V) below.**
- (III) 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.
- (IV) 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.
- (V) 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 and 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.
- (VI) 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.
- (VII) **Quality of service.**
- (A) **Out of service (repair). For each primary residence and business line per customer that is out of service and has been reported by the customer or discovered by the company, whichever occurs first, that is not cleared within 24 hours, a credit in the amount of the basic monthly service rate shall be credited to the customer's account.**
  - (B) **Access to repair center.**
    - (i) **If at least 85 percent of calls into the repair center are not answered within 60 seconds or less, all customers will receive a bill credit. The annual maximum amount of bill credits for all customers that a company will have to credit is \$250,000.**
    - (ii) **The pro-rated amount of the credit that must be provided will be based on non-compliance for two consecutive months, or three months throughout the year.**
    - (iii) **Bill credits will be accumulated and tabulated throughout the year. A compliance filing shall be made on or before April 1 of each year and credits shall be implemented by June 1 of each year.**
  - (C) **Reports to be filed 30 days after the end of each month in a Commission-approved format:**

- (i) Customer requests for service held over 150 days;
  - (ii) Customer requests for service held over 30 days;
  - (iii) Percent of time calls to sales office are answered in the first minute;
  - (iv) A count of wire centers with four reports per 100 lines during calendar year. One free miss(failure) per wire center is permitted; and
  - (v) Sufficient central office and inter office channel capacity plus other necessary facilities to meet minimum requirements during any normal busy hour.
- (VIII) Information Disclosures and actions applicable to residential customers. All providers shall follow the information disclosures and actions identified below with respect to their regulated services:
- (A) To the extent reasonably practicable, all consumer inquiries (both prior and subsequent to the solicitation of the sale of any product or service) shall be responded to in a direct and unambiguous manner.
  - (B) The company shall reasonably honor a customer's request that a product, service, feature, package, or bundle of services be removed or disconnected, without undue call transfers to "save-the-sale centers" or other unnecessary call transfers.
  - (C) To the extent reasonably practicable, consumer inquiries and requests should be resolved on the first call and the company shall timely resolve a customer problem if it represents it has or will resolve the problem.
  - (D) The company shall not knowingly engage in inappropriate transferring of customer calls.
  - (E) The company shall, to the extent reasonably practical, timely and accurately record consumer contacts in its customer service and customer tracking systems.
  - (F) "Basic telephone service," is defined as a service which provides a local dial tone, access lines and local usage necessary to place or receive a call within an exchange area and any other services or features that may be added by the Public Utilities Commission under § 40-15-502(2), C.R.S. The characteristics, qualities, and price of basic telephone service shall be disclosed accurately and timely to Colorado customers, including identifying that basic telephone service is, or may be, the least expensive option and identifying that it is not necessary to purchase features or bundles in order to obtain basic telephone service. Disclosure through the company's Voice Response Unit as the customer contacts the company is one of the acceptable methods of complying with this disclosure requirement.
  - (G) The cost and availability of line features and line feature packages shall be disclosed accurately and timely to Colorado customers, including

identifying that features may be purchased individually, as well as part of a package or bundle and disclosing that features can be purchased on a “per call” basis, rather than on a “per line” basis, as applicable. Disclosure through the company’s Voice Response Unit as the customer contacts the company is one of the acceptable methods of complying with these disclosure requirements.

- (H) The company shall provide consumers who use “free-for-a-limited-trial-period” products or services with an effective and timely means to cancel the service prior to the end of the limited trial period. This provision does not apply to offers that include a free period(s) conditioned upon a commitment to purchase the product or service for a longer period.
- (I) Within 30 days of the time a consumer requests new service or adds a new product or service, the company shall send written communication with information that includes an 800 or other toll-free number for questions and changes, the order date of the initiated service, a list of features ordered or added, the application fee and taxes or surcharges, if applicable, and a description of how the feature(s) work, if applicable. If this confirmation is associated with a line feature package that includes features that can also be purchased on a per use basis, it shall include disclosure that a pay per use features are available as another alternative.
- (J) Before completing the sale of a second or additional telephone line, the company shall inform the customer that additional time and material charges will apply if they require the installation of additional jacks or inside wiring.
- (K) When requested by the customer, the Company shall make reasonable efforts to give accurate, timely, and reasonably complete representations of the impact of purchasing additional features or bundles on a customer’s monthly bill.
- (IX) CLECs shall file a copy of all training and code of conduct materials that contain information regarding such customer disclosures, including all updates to such material, with the Commission. This shall be filed within 90 days of the effective date of a Commission order granting this form of regulation. The CLEC shall file all updates or changes to its train manual and code of conduct materials within 30 days of such update.
- (X) 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 nonlisted and nonpublished 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.
- (XII) 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.
- (XIII) 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; nonlisted service; and nonpublished 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.