

Decision No. C06-0884

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-527T

RULES RELATING TO THE DEREGULATION OF INTRALATA INTEREXCHANGE
TELECOMMUNICATIONS SERVICES.

ORDER ADOPTING PERMANENT RULES

Mailed Date: July 28, 2006
Adopted Date: July 19, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the adoption of permanent rules regarding the subject of the deregulation of intraLATA interexchange telecommunications services (intraLATA toll services). In a related matter, the Commission recently enacted emergency rules on this same topic in Commission Docket No. 05R-440T, Decision No. C05-1261, dated October 19, 2005, (Emergency Rules) and reissued emergency rules in Commission Docket No. 06R-279T, Decision No. C06-0527, dated May 10, 2006. The Commission issued its Notice of Proposed Rulemaking (NOPR) Docket No. 05R-527T, on December 14, 2005, seeking to adopt permanent rules to serve as a replacement for those emergency rules.

2. The Emergency Rules and the NOPR were issued pursuant to Commission Decision No. C05-0802, dated June 28, 2005, issued in consolidated Docket Nos. 04A-411T and 04D-440T. Section 40-15-306, C.R.S., provides for the deregulation of intraLATA toll services upon application by the provider of such services and obtaining prior approval by the Commission.

3. The purpose of the NOPR issued in Docket No. 05R-527T was for the Commission to entertain comments on the proposed rules and to set a hearing on this matter. We requested that interested persons submit written comments on the proposed rules prior to the hearing no later than January 4, 2006. In addition, the comments were to be presented orally at the hearing unless the Commission deemed oral presentations unnecessary. A hearing on this matter was set for January 30, 2006. On January 4, 2006, comments were filed by the Colorado Office of Consumer Counsel (OCC). No other written comments were filed.

4. The OCC commented on the following issues: (1) the OCC filed comments regarding the Commission's authority to retain regulatory oversight and the chance that statutes and rules may not be complied with; (2) the Commission's authority to enforce continuing obligations; and (3) the interaction of the proposed rules with other Commission rules.

5. A hearing on this matter was held on January 30, 2006. Attending parties included Qwest Corporation (Qwest); OCC; MCI, LLC on behalf of its regulated subsidiaries; AT&T Communications of the Mountain States, Inc. and TCG Colorado; and Commission Staff. At this hearing, the OCC discussed the issues filed in its written comments and all parties were allowed to state their position on each item discussed. As a result, we found that the record was sufficient and that no further written comments were necessary.

B. Discussion

6. We now consider the positions of the parties and adopt the rules as attached to this decision as Attachment A. The first issue relates to the Commission's authority to retain regulatory oversight and the possibility that providers may not comply with applicable statutes and Commission rules, including, but not limited to submitting payments into the Colorado High Cost Support Mechanism Fund (CHCSM). The OCC's proposal included language that

providers of intraLATA telecommunications services shall continue to comply with Commission rules and applicable statutes not expressly excluded by § 40-15-401, C.R.S., and that Part 1 and Part 5 of Title 40, Article 15 of the Colorado Revised Statutes and any Commission rules that remain applicable to toll providers. Qwest suggested a shortened version, which ended after "excluded by § 40-15-401". The OCC did not oppose Qwest's proposal. We agree with Qwest and order the language proposed by Qwest to be included in the rule.

7. The OCC proposed that all toll providers be required to register with the Commission. The OCC stated that this requirement would enable the Commission to have knowledge of the providers for purposes of remitting payments to the CHCSM Fund and the filing of any required reports. Qwest opposed this proposal on the basis that the service(s) may be or are deregulated and therefore the Commission does not have the regulatory authority to require such registration. We agree with Qwest and will not include this requirement in the rules as it is our belief that it would require a legislative change to the Colorado Revised Statutes to include such requirement.

8. The OCC requested clarification of what Commission rules might be superseded by this rule. We will update the Basis, Purpose and Statutory Authority section as well as the Applicability section where Rule 2210 will reside. This will include additional statutory authority sections and identify that Rule 2210 is only applicable to intraLATA interexchange telecommunications service providers. These changes are made to complete the rule and to clarify our intent in the Commission's rules.

9. Qwest had an additional issue not specifically related to deregulation of toll services. Other Commission rules contain language regarding who is authorized to sign an affidavit. Language in the other rules states: "An affidavit signed by an authorized agent, officer,

partner, or owner, as appropriate". Qwest proposed to replace "employee" with "authorized agent". None of the other parties opposed this proposed change. We agree with this proposal and order that "employee" be replaced by "authorized agent."

10. Therefore, we adopt the rules attached to this decision as Attachment A.

II. ORDER

A. The Commission Orders That:

1. We adopt the rules attached to this Decision as Attachment A.

2. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

3. A copy of the rules adopted by this Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*.

4. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, 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.

5. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the Commission mails or serves this Order.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 19, 2006.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

CARL MILLER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.

**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, 40-15-112, 40-15-113, 40-15-201, 40-15-203, 40-15-203.5, 40-15-207, 40-15-301, 40-15-302, 40-15-305, 40-15-306, 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 Part III providers, rule 2206 is only applicable to rural ILECs, and rule 2210 is only applicable to intraLATA interexchange telecommunications services providers. Nothing in rules 2200 through 2299 shall limit the Commission's authority to investigate the rates and charges assessed by providers.

2210. Deregulation of IntraLATA Interexchange Telecommunications Services.

To apply for deregulation of intraLATA interexchange telecommunications services (intraLATA toll services), pursuant to § 40-15-306 C.R.S., a provider shall file an application with the Commission. The applicant may complete the Commission-issued application form, or may file a separate pleading with the information and documentation set forth below.

- (a) Contents of Application. The application shall contain the following information:
 - (i) Applicant's name, complete mailing address (street, city, state and zip code), telephone number, and the name(s) under which the applicant is providing intraLATA toll services in Colorado, the name of the person filing the application, the representative's title or relationship to the applicant and e-mail address of the representative;

- (II) Name, mailing address, telephone number and e-mail address of the person to contact for questions about the application;
 - (III) Commission Decision number that granted the applicant the authority to provide intraLATA toll services (the Decision that granted a CPCN and/or LOR, whichever is applicable);
 - (IV) Whether the applicant provides toll service on a resale basis from another facilities-based provider;
 - (V) Whether the applicant has effective tariffs on file with the Commission for the offering of intraLATA toll;
 - (VI) Acknowledgement that within ten days of Commission approval to deregulate the applicant's intraLATA toll authority, the applicant shall make a compliance filing(s) in the form of an Advice Letter and/or Transmittal Letter (whichever is applicable), effective on not less than 14-days notice, to modify its effective tariff and/or price list by deleting all reference to intraLATA toll offerings or identify intraLATA toll offerings as deregulated by the Commission; and
 - (VII) An affidavit signed by an officer, partner, owner, or authorized agent, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct and that the applicant will fully comply with all of the requirements in the Decision which grants the authority to deregulate its intraLATA toll services.
- (b) Providers of IntraLATA interexchange telecommunications services shall continue to comply with all Commission rules and applicable statutes not expressly excluded by C.R.S. § 40-15-401.

2211. Combined Applications.

An applicant may file an application for an alternative form of regulation, an application for reclassification, and/or an application for deregulation, in combination with any other application, e.g., an application for a CPCN. In a combined application, the applicant shall provide all information required for each component of the combined application.

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, 40-15-112, 40-15-113, 40-15-201, 40-15-203, 40-15-203.5, 40-15-207, 40-15-301, 40-15-302, 40-15-305, 40-15-306, 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 Part III providers, and rule 2206 is only applicable to rural ILECs, and rule 2210 is only applicable to intraLATA interexchange telecommunications services providers. Nothing in rules 2200 through 2299 shall limit the Commission's authority to investigate the rates and charges assessed by providers.

2210. Deregulation of IntraLATA Interexchange Telecommunications Services.

To apply for deregulation of intraLATA interexchange telecommunications services (intraLATA toll services), pursuant to § 40-15-306 C.R.S., a provider shall file an application with the Commission. The applicant may complete the Commission-issued application form, or may file a separate pleading with the information and documentation set forth below.

- (a) Contents of Application. The application shall contain the following information:
 - (i) Applicant's name, complete mailing address (street, city, state and zip code), telephone number, and the name(s) under which the applicant is providing intraLATA toll services in Colorado, the name of the person filing the application, the representative's title or relationship to the applicant and e-mail address of the representative;

- (II) Name, mailing address, telephone number and e-mail address of the person to contact for questions about the application;
- (III) Commission Decision number that granted the applicant the authority to provide intraLATA toll services (the Decision that granted a CPCN and/or LOR, whichever is applicable);
- (IV) Whether the applicant provides toll service on a resale basis from another facilities-based provider;
- (V) Whether the applicant has effective tariffs on file with the Commission for the offering of intraLATA toll;
- (VI) Acknowledgement that within ten days of Commission approval to deregulate the applicant's intraLATA toll authority, the applicant shall make a compliance filing(s) in the form of an Advice Letter and/or Transmittal Letter (whichever is applicable), effective on not less than 14-days notice, to modify its effective tariff and/or price list by deleting all reference to intraLATA toll offerings or identify intraLATA toll offerings as deregulated by the Commission; and
- ~~(VII)~~ (VIII)—An affidavit signed by an officer, partner, owner, or ~~employee, as appropriate~~ authorized agent, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct and that the applicant will fully comply with all of the requirements in the Decision which grants the authority to deregulate its intraLATA toll services.

(b) Providers of IntraLATA interexchange telecommunications services shall continue to comply with all Commission rules and applicable statutes not expressly excluded by C.R.S. § 40-15-401.

2211. Combined Applications.

An applicant may file an application for an alternative form of regulation, an application for reclassification, and/or an application for deregulation, in combination with any other application, e.g., an application for a CPCN. In a combined application, the applicant shall provide all information required for each component of the combined application.