

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12R-1248T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF
COLORADO REGULATIONS 723-2, § 2307.

**DECISION GRANTING, IN PART, AND
DENYING, IN PART, EXCEPTIONS**

Mailed Date: December 12, 2013
Adopted Date: December 4, 2013

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions to Decision No. R13-1205 (Recommended Decision). Both Dex Media East, Inc. (Dex) and the Boulder Regional Emergency Telephone Service Authority (BRETSA) timely filed exceptions on October 17, 2013. Dex filed a response in opposition to BRETSA’s exceptions on October 31, 2013, which response was joined, in part, by the Colorado Telecommunications Association (CTA).

2. Being fully advised in the matter: (1) Dex's exceptions are granted, in part, and denied, in part; (2) BRETSA's exceptions are denied, with clarification; and (3) we revise the proposed rules on our own motion as discussed.

B. Procedural History

3. The Commission issued a Notice of Proposed Rulemaking (NOPR) on December 12, 2012, by Decision No. C12-1404, and assigned the proceeding to an Administrative Law Judge to propose modifications to 4 Code of Colorado Regulations (CCR) 723-2-2307 (Directories for Basic Local Exchange Service) and conforming amendments related to the publication and distribution of white page telephone directories.

4. The Administrative Law Judge held hearings on January 28, 2013, and July 11, 2013. On September 27, 2013, the Administrative Law Judge issued her Recommended Decision that adopted amendments to Rule 2307, and to related Rule 2504.

5. The proposed rules would permit a local exchange carrier (LEC) to elect a process in which all of its customers use an "opt in" means of requesting paper White Pages directory services (*i.e.*, by default, the LEC will *not* deliver, or cause to be delivered, a paper directory to the customer unless the customer affirmatively requests delivery), or an alternative process in which all of the LEC's customers use an "opt out" process of requesting a paper copy of the White Pages directory (*i.e.*, by default, the LEC will deliver, or cause to be delivered, a paper directory to the customer unless the customer affirmatively declines delivery). As proposed by the Recommended Decision, both the opt-in and opt-out processes require the LEC to ensure the

delivery to all customers certain information required by Rule 2307(b)(III) through (VI) (Information Pages), including emergency and non-emergency phone numbers,¹ in printed form – either by White Pages directory delivery or by an alternative printed form.²

C. Exceptions from Dex

6. On exceptions, Dex first requests the Commission revise numbering in proposed Rule 2307(a) due to the inadvertent duplication of the numbering of subpart (III). We note that the first instance of subparagraph (a)(III) contains duplicative language of the second instance in subparagraph (a)(III). Therefore, we delete the first subpart (III). The rules are revised and attached to this Decision, accordingly.

7. In its second request on exceptions, Dex challenges the rule requiring the provision of Information Pages in an alternative printed form to those customers who opt out of receiving *all* directories. In its exceptions, Dex argues that the Commission should add the following language to Rule 2307(a)(III)(C)(vi):

Except for customers who opt-out of all telephone directories, each customer served by a White Pages telephone directory shall receive the information required by subparagraphs 2307(b)(III) through (VI). This information shall be contained in a White Pages telephone directory that is provided to a customer or in an alternative printed form that is provided to all customers that choose not to receive a White Pages telephone directory....

¹ Rule 2307(b)(III) through (VI) includes the following: emergency numbers; alternative emergency numbers; instructions for placing local calls and long distance calls; instructions for placing calls to repair and directory assistance services; the business office website, if applicable; the telephone number of the LEC's business offices appropriate to the area served by the directory; and the Commission's toll free number and notice of the right to make inquiries regarding telecommunications services to the Commission.

² As discussed further herein, the information required by Rules 2307(b)(III) through (VI) may be included in Yellow Pages directories, which would qualify as an "alternative printed form" if the Yellow Pages directory is delivered to the customer but the customer does not receive a printed White Pages directory.

8. Dex claims that this change would harmonize the impact of the proposed rules with the stated intent of the Recommended Decision, which it argues was to “retain the alternative printed form *as proposed*.” Recommended Decision, ¶ 57 (emphasis added). Dex argues that the participants did not intend that an opt-out process would require delivery of an “alternative printed form” to all customers, including those who opt-out of receiving *all* directories. Dex states that the intent of requiring an alternative printed form was “to cover a much narrower and remote contingency; *i.e.*, that one day LECs and directory publishers may no longer distribute Yellow Pages on a saturated basis.” If widespread distribution of both the White Pages and Yellow Pages did not occur, Dex contends that, as intended by participants, widespread distribution of the Information Pages would likewise no longer occur.

9. Dex argues that, by requiring the Information Pages in an alternative printed form to customers who have opted out of all directories, the Recommended Decision did not take into account the differences between consumer desires and behavior. Dex argues that “the opt-out customer does not want a telephone directory at all...” and that “it is not in the public interest to force unwanted paper on customers who have affirmatively requested not to receive it.”

10. We agree with the ALJ’s careful consideration of this matter and her determination that the Information Pages be contained in an alternative printed form should the customer opt out of White Pages directory delivery. In the Recommended Decision, the ALJ recognizes the “critical importance” of the Information Pages and elaborates that “[a] change in White Pages telephone directory distribution should not affect, and certainly should not reduce or eliminate, customers’ ready access to this information.” Recommended Decision, ¶ 57. The ALJ further noted that “given the importance of the information required by proposed Rules 2307(b)(III) through 2307(b)(VI) and given the advisability of having this information as widely

and readily available as possible, the ALJ finds that customers must have access to the information *in some printed form*, either the White Pages telephone directory or the alternative printed form.” *Id.* (emphasis added). We agree with the ALJ and do not revise the rule language as suggested by Dex.

11. We also find that customers that choose to opt out of White Pages telephone directories should be aware that the Information Pages shall continue to be provided in an alternative printed form; *i.e.*, through the Yellow Pages or otherwise if the customer opts out of all directories. We therefore modify Rule 2307(a)(III)(C) to include notice to customers as follows:

(ii) customers served by a White Pages telephone directory shall receive written and verifiable notice of the option not to receive a directory; shall receive written instructions informing them how to request that a White Pages telephone directory not be provided; ~~and~~ shall receive written notice that, if they choose, they later may request a White Pages telephone directory and instructions informing them how to make that request; and shall receive written notice that, even if they choose to opt out of all telephone directories, information required by subparagraphs 2307(b)(III) through (VI) shall continue to be provided in an alternative printed form. This information shall be contained in one notice; ...

12. Both the opt-in and opt-out processes require the LEC to provide an alternative printed form for the Information Pages.³ Therefore, similar notice to customers shall be added to Rule 2307(a)(III)(B)(ii) regarding the opt-in process in the revised rules attached to this Decision.

D. BRETSA Exceptions

13. BRETSA first requests that the Commission add language to the rules requiring that the process by which customers opt in to receiving the White Pages directory be provided without cost and without a requirement that customers have access to the Internet.

³ Dex makes clear in its exceptions that it does not take issue with use of the alternative written form as proposed in the opt-in process. For consistency, regardless of whether the LEC chooses the opt-in or opt-out process, customers shall be notified that this information will continue to be provided in an alternative printed form.

In its response, Dex opposes this exception, arguing that the rules already require the option “free of charge.” Dex adds that customers have access to a toll free number for requesting directories and that LECs are required to have toll free numbers for customers to contact their local company at no cost.

14. We agree with Dex that the rules, as amended, already require that the White Pages directories be provided to customers “free of charge.”⁴ Further, the rules require that the LEC make such options “verifiable.”⁵ The ALJ made clear that she intentionally left the explicit process out of the rules and that the LEC would determine the mechanisms of how it implemented the opt-in processes. Recommended Decision, ¶ 45. We agree that the rules need not dictate the means by which the LEC implements how to verify, free of charge, the customer’s preferred option. BRETSA’s exception is denied.

15. Second, BRETSA argues that the ALJ erred by not requiring inclusion of alternative emergency numbers and non-emergency numbers on the *first page* of the White Pages directories, as opposed to the “front part,” which is prescribed in the proposed rules. BRETSA recognizes that the ALJ considered and rejected BRETSA’s proposal to include these non-emergency numbers on the first page, but sets forth arguments disagreeing with the ALJ’s reasoning. Dex opposes BRETSA’s exception, arguing that the ALJ fully considered and rejected BRETSA’s arguments and notes that this inclusion would expose the Commission unnecessarily to First Amendment concerns that were considered by the ALJ. CTA joins in Dex’s opposition to this exception.

⁴ Rule 2307(a)(III)(A)

⁵ Rule 2307(a)(III)(B)(iii)

16. We agree with the ALJ's rejection of BRETSA's arguments. However, while the ALJ indicated the importance of these non-emergency numbers by requiring that they be included in the "front part" of the directory, we clarify that these numbers, in addition to being in the front part of the directory, should be easily identified and accessible. We therefore modify Rule 2307(b)(IV) as follows:

If provided by governmental public safety agencies, alternative numbers to use in case of an outage of 9-1-1 system and non-emergency numbers to reduce inappropriate use of 9-1-1; this information shall be contained in, or shall be referenced *conspicuously* in, the front part of the directory.

E. Clarification and Non-Substantive Revision

17. We find that the rules should indicate clearly that the LEC may perform, or *cause to be performed*, such as through a contract directory publisher, the requirements set forth for publication. We therefore modify, on our own motion, Rule 2307(a)(III) as follows:

A LEC satisfies this requirement if it does, *or causes to be done*, one of the following....

18. Non-substantive and typographical corrections are made as necessary and are reflected in the attached revised rules adopted by this Decision.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Decision No. R13-1205 filed on October 17, 2013, by Dex Media East, Inc., are granted, in part, and denied, in part, as discussed above.

2. The exceptions to Decision No. R13-1205 filed on October 17, 2013, by the Boulder Regional Emergency Telephone Service Authority are denied, with clarification, as discussed above.

3. Revisions to the proposed rules are made on the Commission’s own motion, as discussed above.

4. The adopted rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and in final format (Attachment B) are attached to this Decision and are available through the Commission’s Electronic Filings (E-Filings) system at:

www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=12R-1248T

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
December 4, 2013.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners