

Decision No. C23-0270

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0129T

IN THE MATTER OF THE APPLICATION OF UNDERLINE EL PASO, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE PART IV
SERVICES

**COMMISSION DECISION GRANTING
APPLICATION WITH CONDITIONS**

Mailed Date: April 26, 2023
Adopted Date: April 26, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, we grant, with conditions set forth below, the application of Underline El Paso, LLC (El Paso) for a Certificate of Public Convenience and Necessity (CPCN) to provide Part IV services in Colorado, as discussed below.

B. Background

2. On March 14, 2023, El Paso filed an Application for a CPCN to provide Part IV services. El Paso is a broadband access billing services provider, which coordinates access to the internet and other connectivity services in Colorado. El Paso builds open-access fiber optic networks and facilities internet-based services to consumers.

3. On March 17, 2023, a notice of the Application was provided to all persons, firms, or corporations, interested in, or affected by the grant or denial of the request. Interventions were due on or before April 17, 2023. No interventions were received in this proceeding.

4. On April 3, 2023, El Paso filed confidential financial statements, satisfying staff's deficiency notice.

5. On April 21, 2023, El Paso filed a statement of willingness to provide the Commission financial assurance in the form of a bond or a letter of credit in the amount of \$9,975 as a condition of obtaining its CPCN.

C. Discussion

6. No one has filed an intervention opposing the Application. We, therefore, find that the Application is unopposed and consider it without a formal hearing pursuant to § 40-6-109(5), C.R.S.

7. The Commission modified its Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2 (Proceeding No. 16R-0453T, with an effective date of September 1, 2017). The modified rules allow providers offering Part IV services under § 40-15-401, C.R.S., to apply to the Commission to obtain a CPCN. No CPCN is required for services classified in Part IV of Article 15 of Title 40 of the Colorado Revised Statutes. Pursuant to § 40-15-503.5, C.R.S., and Commission Rule 2111, 4 CCR 723-2, the Commission may require an applicant requesting an operating authority to post a bond or provide other security] as a condition of obtaining a Commission operating authority.

8. Due to the financial information provided by El Paso, we conclude that financial assurance for the issuance of a CPCN is necessary and appropriate in the form of either a bond or a letter of credit and shall be required to be posted with the Commission under the terms and conditions specified in the Attachments to this Decision. The issuance of a bond or letter of credit is consistent with previously issued Commission decisions granting CPCNs when financial fitness

is an issue. Section 40-15-503.5, C.R.S., and Commission Rule 2111 allow the Commission to impose a bond or other security as a condition of obtaining an operating authority.

9. With the issuance of this authority, El Paso must: (1) file a bond or letter of credit consistent with the terms and conditions in the Attachments to this Decision; and (2) comply with all applicable statutory and regulatory requirements pursuant to Rule 2103(a)(XVI), 4 CCR 723-2.

II. ORDER

A. The Commission Orders That:

1. Underline El Paso, LLC is granted a Certificate of Public Convenience and Necessity (CPCN) to provide Part IV services on a statewide basis with the conditions included herein.

2. Underline El Paso, LLC is not required to create and provide tariffs to the Commission.

3. Underline El Paso, LLC shall not unjustly discriminate among customers in the same class of service, per Commission Rule 4 *Code of Colorado Regulations* 723-2-2103.

4. Before commencing operations under this CPCN to provide Part IV services, Underline El Paso, LLC shall file with the Commission, financial assurance in the form of a bond or letter of credit consistent with the terms and conditions as described in the Attachments to this Decision.

5. If Underline El Paso, LLC fails to file financial assurance within one year from the Mailed Date of this Decision, this CPCN to provide Part IV services shall be deemed null and void without further action of the Commission. For good cause shown, and if a proper request is filed

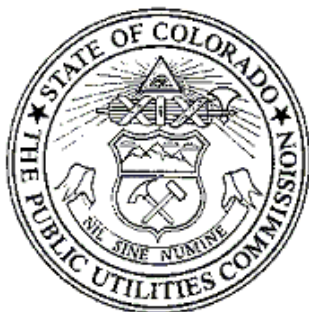
within one year of the Mailed Date of this Decision, the Commission may grant additional time within which to file financial assurance.

6. Consistent with terms and conditions established in previous Commission decisions, Underline El Paso, LLC will be required to contribute, as prescribed by statute, rule, or order of the Commission, based on the entirety of its intrastate services regardless of the technology, to the Public Utilities Commission's Telecommunications Utilities Fund, the Colorado High Cost Support Mechanism, the Colorado Telephone Users Disabilities Fund, the Statewide 9-1-1 Surcharge Trust Cash Fund, and other financial support mechanisms that may be created in the future by the Commission to implement §§ 40-15-502(4) and (5), C.R.S.

7. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 26, 2023.**



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

Commissioners

COMMISSIONER TOM PLANT ABSENT