

Decision No. C02-1407

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-646T

IN THE MATTER OF PROPOSED RULES FOR SIMPLIFIED REGULATORY TREATMENT
FOR RURAL TELECOMMUNICATIONS PROVIDERS.

NOTICE OF PROPOSED RULE MAKING

Mailed Date: December 19, 2002

Adopted Date: December 18, 2002

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding new Rules to establish regulations by which the Commission may regulate rural local exchange providers of telecommunications services that are subject to simplified regulatory treatment pursuant to § 40-15-203.5, C.R.S. As provided under § 40-15-503(2)(d), C.R.S. these rules provide for simplified regulatory treatment for basic local exchange providers that serve only rural exchanges of ten thousand or fewer access lines. Simplified treatment pursuant to this section includes optional methods of regulatory treatment that reduce regulatory requirements, reduce the financial burden of regulation, and allow pricing flexibility.

2. A copy of the new Rules is attached to this notice of proposed rulemaking. The statutory authority for the proposed Rules is found within §§ 24-4-101, *et seq.*, 40-2-108, 40-15-201, 40-15-203.5, 40-15-302, 40-15-501(2)(a),(b), and 40-15-503(2)(d), C.R.S.

3. The Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules

and present these orally at hearing, unless the Commission deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed ten days prior to the hearing date. The Commission will consider all submissions.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the January 18, 2003 edition of *The Colorado Register*.
2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge of the Commission as follows:

DATE:	March 13, 2003
TIME:	9:00 a.m.
PLACE:	Commission Hearing Room Office Level 2 (OL2) Logan Tower 1580 Logan Street Denver, Colorado

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

3. Interested persons may file written comments in this matter before hearing. The Commission requests that such pre-filed comments be submitted at least ten days before the scheduled hearing. All submissions, whether oral or written, will be considered by the Commission.

4. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 18, 2002.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**RULES CONCERNING REGULATION BY THE COMMISSION
OF RURAL LOCAL EXCHANGE PROVIDERS
SUBJECT TO SIMPLIFIED REGULATORY TREATMENT**

4 CODE OF COLORADO REGULATIONS (CCR) 723-52

BASIS, PURPOSE AND STATUTORY AUTHORITY

The basis and purpose of these rules is to establish regulations by which the Commission shall regulate rural local exchange providers of telecommunications services that are subject to simplified regulatory treatment pursuant to Section 40-15-203.5, C.R.S.

These rules are issued pursuant to Sections 40-2-108, 40-15-201, 40-15-203.5, 40-15-302, 40-15-501(2)(a) and (b) 40-15-503(2)(d), C.R.S.

RULE (4 CCR) 723-52-1. APPLICABILITY.

These rules are applicable to all rural telecommunications providers as defined in § 40-15-102(24.5), C.R.S. and rule 723-52-2.9.

RULE 4 CCR 723-52-2. DEFINITIONS.

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

- 723-52-2.1 "Advice Letter " means a letter, numbered sequentially, in the prescribed Commission format, which shall accompany each tariff filing with the Commission.
- 723-52-2.2 "Alternative Regulatory Plan" means any form of regulation specifically approved by the Commission for an individual rural or non-rural telecommunications provider other than rate of return regulation.
- 723-52-2.3 "Commission" means the Public Utilities Commission, two or more commissioners acting on behalf of the Public Utilities Commission , a hearing commissioner, or an administrative law judge, as the context requires.
- 723-52-2.4 "Part Two" means Part 2 of Article 15, Title 40 of the Colorado Revised Statutes.
- 723-52-2.5 "Part Three" means Part 3 of Article 15, Title 40, of the Colorado Revised Statutes.

- 723-52-2.6 "Price list" means a filing with the Commission, in the prescribed Commission format, filed as an attachment to a transmittal letter, which contains all current rates of a provider of local exchange or emerging competitive telecommunications products and services. A price list typically does not contain information duplicating information in a tariff.
- 723-52-2.7 "Promotional Letter" means a letter, numbered sequentially, in the prescribed Commission format, and filed with the Commission at least 14 days prior to the proposed effective date. The letter must contain the terms, conditions, description and rates for the promotional offering. It must also include a specific start and end date, which shall not exceed 90 calendar days.
- 723-52-2.8 "Reference Provider" means any incumbent provider of local exchange service, which has secured Commission approval for an alternative form of regulation under Section 40-15-503, C.R.S. and 723-52-2.4.
- 723-52-2.9 "Rural Telecommunications Provider" means a local exchange provider that meets one or more of the following conditions:(a) provides common carrier service to any local exchange carrier study area, as defined by the Commission, that does not include either: (I) any incorporated place of ten thousand inhabitants or more or any part thereof, based on the most recently available population statistics of the United States Bureau of the Census; or (II) any territory, incorporated or unincorporated, included in an urbanized area as defined by the United States Bureau of the Census as of August 10, 1993; (b) provides telephone exchange service, including exchange access to fewer than fifty thousand access lines; (c) provides telephone exchange service to any local exchange carrier study area, as defined by the Commission, with fewer than one hundred thousand access lines; or (d) has less than fifteen percent of its access lines in communities of more than fifty thousand inhabitants.
- 723-52-2.10 "Simplified Regulatory Plan" means any form of regulation provided for in Rules 723-52-3, et seq.
- 723-52-2.11 "Tariff" means a filing with the Commission, in the prescribed Commission format, which contains all rates and charges, collected or enforced, or to be collected or enforced, combined with all terms, conditions, rules, and regulations which in any manner affect or relate to rates, charges, or services.
- 723-52-2.12 "Transmittal letter" means a letter, numbered sequentially, in the prescribed Commission format, which shall accompany each price list filing with the Commission.

RULE 4 CCR 723-52-3. SIMPLIFIED REGULATORY TREATMENT

Regulatory Treatment of Rural Telecommunications Providers. Each rural telecommunications provider regulated by the Commission shall elect to be regulated under one of the following forms of regulation: (a) As subject to rate of return regulation; (b) As subject to simplified regulatory treatment under these Commission rules; or (c) As subject to a specific form of price regulation as authorized in Section 40-15-503, C.R.S., as implemented by Rule 723-38, and as approved by the Commission.

- 723-52-3.1 Rate of Return Regulation. A rural telecommunications provider that elects to be subject to rate of return regulation shall not be required to take any specific action to remain under such form of regulation. Each rural telecommunications provider that takes no action under these rules shall remain, on a default basis, subject to continuing rate-of-return regulation.
- 723-52-3.2 Simplified regulatory treatment. A rural telecommunications provider that elects to be subject to simplified regulatory treatment shall file a Notice with the Commission advising of its election to be so regulated and shall also provide 30 days' notice to its customers by direct mailing, or bill stuffer, or billing statement notification. The provider's election is effective 30 days from the date of filing, and shall remain effective until revoked. A rural telecommunications provider may also elect to revoke its election to be subject to simplified regulatory treatment by providing Notice of such revocation to the Commission. No customer notice or revocation is required. A Notice of revocation is effective as of its date of filing and returns the rural local exchange provider to default, rate-of-return regulation.
- 723-52-3.3 Effect of Election of Simplified Regulatory Treatment. If a rural telecommunications provider has elected simplified regulatory treatment, the Commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. Election by a rural telecommunications provider of simplified regulatory treatment has no effect upon either the provider's rights and obligations as to Part Three local exchange service or the Commission's rate-of-return regulatory powers as to basic local exchange service. Election by a rural telecommunications provider of simplified regulatory treatment also has no effect upon the existing prices of any of its Part Three services unless and until the provider elects to seek a change in the price of one or more of its products or services under the procedure specified in these rules. If at the time of electing simplified regulatory treatment, a rural telecommunications provider's prices for one or more Part Three products or services exceeds the price ceiling that would be established as provided in Rule 3.1.4, its then current pricing shall remain in effect as the price ceiling until the provider seeks a change. Additionally, any price change secured by a rural telecommunications provider for a Part Three product or service shall remain in force and effect even if the price ceiling "benchmark" price for the product or service is lowered either voluntarily by the reference provider or by Commission action.
- 723-52-3.4 Products and Services Subject to Simplified Regulatory Treatment. Only Part Three products and services provided by a rural telecommunications provider electing simplified regulatory treatment are subject to the simplified pricing procedures provided for in these rules.
- 723-52-3.5 Price Ceilings. Price ceilings for Part Three products and services provided by a rural telecommunications provider that has elected simplified regulatory treatment shall be established as follows: (a) For switched access service, prices shall not rise above those in effect on March 31, 1999, except that such price ceilings for switched access service may be adjusted by the Commission to conform to its rules concerning the High Cost Support Mechanism established

under Section 40-15-208, C.R.S., or to conform to any rural telecommunications provider filing that is subject to the Commission's rate-of-return jurisdiction. In no event shall access rates exceed those levels specified in Section 40-15-105(1), C.R.S.; (b) For all other products and services, price ceilings shall be established by reference by the rural telecommunications provider to the prices for such products and services that are in effect under a single alternative form of regulation for any one reference provider that has been approved by the Commission.

- 723-52-3.6 Procedure for Price Change Up to Price Ceiling. On or before 14 days prior to the desired effective date for a change in one or more of the prices contained in its associated price list, a rural telecommunications provider subject to simplified regulatory treatment shall file a transmittal letter with the Commission describing the proposed change(s) and containing its revised price list. The rural telecommunications provider may, but need not, provide notice to its customers of any proposed price change provided that the price as changed is at or below the price ceiling. In its transmittal letter, the rural telecommunications provider shall include a statement to the effect that the change does not exceed the price ceiling for the affected product(s) or service(s) that the Commission has approved in a reference provider's alternative form of regulation plan and shall set forth the name of the provider and the provider's approved product or service price ceiling for each product or service addressed by the transmittal letter. Unless suspended by the Commission, the revised price list will become effective according to its terms. The Commission may suspend or investigate any price or price list filed. In any suspension and investigation proceeding, the rural telecommunications provider shall have both the burden of going forward and the burden of persuasion that any price or price list meets the requirements of this rule. If the rural telecommunications provider establishes that its proposed price change is at or below the price ceiling for the same product or service as established under Rule 3.1.4 above, the Commission shall allow the filing to become effective.
- 723-52-3.7 Procedure for Price Change Above Price Ceiling. On or before 30 days prior to the desired effective date for a change in one or more of the prices contained in its tariffs, a rural telecommunications provider seeking to increase the price of a product or service above the price ceiling rate of any reference provider or seeking to establish a rate for a product or service not provided by any reference provider shall file an advice letter with the Commission describing the proposed price changes or initial price setting and containing its revised tariff rate. The rural telecommunications provider shall additionally file together with its advice letter a service-specific or product-specific cost analysis supporting the proposed rates and demonstrating that the proposed rate or rates are cost-based and otherwise just and reasonable.
- 723-52-3.8 Specific Forms of Price Regulation. A rural telecommunications provider, or group of such providers, whether subject to rate-of-return regulation or simplified regulatory treatment under these rules, may at any time file an application for a specific form of price regulation under the Commission's applicable rules. Any such application shall not be delayed or deferred by the Commission because of the prior form of regulatory treatment that any such rural telecommunications provider applicant has elected.

- 723-52-3.9 Customer Specific Contracts and Promotions. A rural telecommunications provider that has elected simplified regulatory treatment under these rules may negotiate and enter into customer specific contracts under the provisions of 723-38-3.2.2.4.
- 723-52-3.10 Promotional Offerings and Volume Discounts. A rural location exchange provider may make promotional offerings and volume discounts under the provisions of Rule 723-38-3.2.2.5. The provider shall file a promotional letter, numbered sequentially, at least 14 days prior to the proposed effective date. The Commission may suspend or investigate any such filing and may set any customer-specific contract for hearing and retain the rights specified in Rule 723-38-3.2.2.6.
- 723-52-3.11 Effect of Revoking Election of Simplified Regulatory Treatment on Existing Rates. If a rural telecommunications provider has elected to be subject to simplified regulatory treatment, and thereafter revokes its election under Rule 3.1.1, the rates for the products and services of the rural telecommunications provider in effect at the time that notice of revocation is filed with the Commission shall continue in effect until the effective date of a Commission order establishing new rates.
- 723-52-3.12 Eligibility for Simplified Regulatory Treatment After Revocation. If a rural telecommunications provider has elected to be subject to simplified regulatory treatment, and thereafter revokes such election under Rule 3.1.1, that provider may not elect to become subject to simplified regulatory treatment for a period of at least three years from the date its notice of revocation is filed with the Commission.
- 723-52-3.13 Supplemental Information for Application to Increase Rates for Part Two Services. In any proceeding in which a rural telecommunications provider subject to simplified regulatory treatment makes a filing with the Commission putting an increase of its rates for Part Two services at issue, the provider agrees that it will file together with its application, relevant cost allocation information pertaining both to its Part Two services and products, and to its Part Three services and products subject to simplified regulatory treatment under these rules. The filing of such information shall be subject to any applicable Commission rules and orders concerning confidentiality and shall not constitute a waiver of the provider's rights under Sections 40-15-201 and 40-15-302, C.R.S.