

Decision No. C95-1237

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 95R-140T

IN THE MATTER OF AMENDMENTS TO RULES REGARDING QUALITY OF TELECOMMUNICATIONS SERVICE OF THE PUBLIC UTILITIES COMMISSION'S RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES, 4 CCR 723-2.

DECISION ADOPTING RULES

Mailed Date: December 8, 1995
Adopted Date: December 6, 1995

I. BY THE COMMISSION:

Statement

1. This matter comes before the Commission to consider adoption of amendments to the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 *Code of Colorado Regulations* 723-2. In particular, the present proceeding concerns amendments to Rules 16.1, 21.2, and 22.¹ Generally, these amendments: (1) set forth new standards for the time in which telephone companies must answer customer calls for service repair or to the companies' business offices; (2) specify how violations of the call-answering standards to repair and business offices will be measured; (3) specify how violations of the rule relating to trouble reports/access lines will be measured;² and (4) establish new standards by which telephone utilities must clear (*i.e.*, remedy) out-of-service reports.

¹ The adopted rules attached to this decision also incorporate a new Rule 2.33.1, a definition of "out-of-service trouble report." This new definition is related to the amendments to Rule 22.2.

² With respect to these items 2 and 3, our specification of how violations will be measured is, in essence, part of the standard we adopt for the provision of adequate telephone service.

2. We issued a Notice of Proposed Rulemaking in this matter on March 31, 1995. See Decision No. C95-290. In accordance with the provisions of that notice, we commenced rulemaking hearings on September 11, 1995. Hearings continued on September 12, 1995. A number of parties submitted written and/or oral comments in this matter, including U S WEST Communications, Inc. ("USWC"), the El Paso Telephone Company ("El Paso"), the Colorado Office of Consumer Counsel ("OCC"), and various members of the Commission Staff ("Staff"). Now being duly advised in the premises, we adopt the rules appended to this decision as Attachment 1 (subject to requests for reconsideration).

3. The Notice of Proposed Rulemaking explained that this docket was initiated, in part, in response to a Petition for Rulemaking regarding Rule 22.2 filed by USWC on March 2, 1995. That petition itself was the result of Docket No. 94C-587T, show cause proceedings for violations of the rules which are the subject of the present docket on the part of USWC. We granted the petition by issuing the notice herein, and, in addition, suggested proposed revisions to Rules 16.1 and 21.2.

4. The amendments to Rule 21.2, as specified in Attachment 1, provide that telephone companies shall answer within 60 seconds, during each monthly period, 85 percent of customer calls for service repair or to business offices. The amendments provide that each business day during any month for which the standard (*i.e.*, the 60 second/85 percent call answering standard) is unmet, measured on a service center or business office basis, shall be deemed a separate violation of the rule. In addition,

the revised rule requires telephone companies who violate the call-answering standard to submit certain written reports to the Commission. In part, that report must explain the actions taken by the non-complying company to remedy the violations. The new rule would exclude from the call-answering criterion calls which cannot be answered by a company due to circumstances beyond the company's control. See Rule 16.1.4. The amendments specify that it is the responsibility of the companies to document the reasons why certain calls could not be answered due to such circumstances.

5. Based upon the comment submitted in this proceeding, we find that the amendments to Rule 21.2 are appropriate. Comments submitted by Staff (*e.g.*, comments by witnesses Mitchell and Fernandez) indicates that the Commission has received numerous customer complaints regarding limited calling access to telephone company repair and business offices. During the period of time during which these complaints were examined, it appears that one telephone company (*i.e.*, USWC) was answering 70 to 75 percent of all such calls within 60 seconds. These comments suggest that customer expectations are consistent with the standard established in the amendments.

6. Moreover, the comment in this docket also suggests that the 60-second/85 percent standard is realistic and readily achievable by telephone companies. Witness Mitchell observed that reports submitted by USWC in Docket No. C94-587T demonstrate that USWC, the largest telephone company in Colorado, has met

this standard throughout 1995. USWC itself stated that telephone companies will typically meet a 60-second/85 percent standard.

7. USWC did recommend that violations of the standard be measured on a quarterly basis, and apparently that noncompliance with the rule would constitute **one** violation. That is, USWC apparently objects to measuring violations based upon each day for each month in which the 60-second/85 percent criterion is unmet. This objection is apparently based upon the assertion that a company should not be penalized for "one bad month" where such below-standard performance might be based upon seasonal or unusual circumstances. We disagree with these comments.

8. We note that the rule accounts for circumstances beyond a company's control by excluding data for that period of time. Furthermore, defining non-compliance over a period of time (e.g., a month or a quarter) as **one** violation would make the rule virtually meaningless for enforcement purposes. That is, the possible \$2,000 penalty (§ 40-7-105, C.R.S.) for one violation of the rule, as defined by USWC, would be trivial to many telephone companies.

9. Moreover, defining violations of the rules in the manner suggested by USWC would not account for inadequacies in customer service on a daily basis. We find it appropriate to measure violations on the basis stated in the revisions to the rule whenever companies fail to meet a standard which is reasonable. Consumers should, **on a daily basis**, be able to contact repair and business offices within a reasonable time. In addition, measurement of violations are based, in part, upon

monthly data accounts for unusual events or times when calls to service centers may be unusually heavy. The criterion, by averaging data on a monthly basis, "smooths-out" performance data, and thereby accounts for times when calls to service centers are inordinate.

10. With respect to Rule 22 (Trouble Report Response), the amendments first define violations of the rule as occurring for each day in a month for which the three-month average of trouble reports for that month and the preceding two months exceed the existing standard (*i.e.*, 8 reports per 100 access lines), measured on a wire-center basis. The intent of this amendment is to clarify how the Commission will apply this rule for enforcement purposes. As with similar amendments to Rule 21.2, discussed above, we find that the rule will encourage LECs ("local exchange carriers") to maintain adequate service **on a daily basis**.³ The revisions will also motivate companies to maintain quality of service throughout their service area, since violations will be measured on a wire-center basis. At the same time, the standard, by incorporating a three-month average in measurement of violations of the rule, accounts for times when the number of trouble reports may be atypical.

11. The revisions to Rule 22.2 also require LECs, on a monthly basis, to clear a certain percentage of out-of-service reports within 24 hours. The table contained in the rule sets a

³ These amendments do not change the existing substantive standard for reports per access line. Rule 22.1 continues to provide that LECs shall maintain their networks such that trouble reports shall not exceed 8 reports/100 access lines/month measured on a wire center basis and averaged over a 3-month period.

70 percent standard for the first 6 months after the effective date of the amendments and increases to 85 percent in the 19th month. We find these revisions to be appropriate.

12. In its comments, USWC recommended that the standard be changed such that the statewide average time for clearance of **all** trouble reports not exceed 48 hours. We reject this suggestion for the reasons articulated by Staff and the OCC. The amendments' emphasis on out-of-service reports, to the exclusion of all other trouble reports, is proper, inasmuch as these reports indicate that a customer's phone service is substantially (if not entirely) impaired. That is, out-of-service reports signify that a customer cannot place calls, receive calls, or both. Other trouble reports (e.g., line noise) are not likely to be as significant. Furthermore, Staff comments demonstrate that a substantial number of trouble reports, both in terms of a proportion of total trouble reports and in total numbers, for USWC are out-of-service reports. USWC's suggestion to change the standard to refer to all trouble reports is, for these reasons, inappropriate.

13. USWC also suggests that diminishing the standard for clearance of out-of-service reports, in accordance with its proposed rule, is fitting given its service area. Specifically, USWC contends that its Colorado service territory is large and includes many rural areas with low population (and access line) density. These characteristics, according to USWC, justify greater leniency in clearing out-of-service reports as compared

to companies with different service areas. We disagree with these suggestions.

14. Staff witnesses pointed out that USWC's urban/rural ratio for access lines is greater than its average for the USWC region as a whole. Furthermore, Staff and the OCC witnesses note that many states have adopted standards for clearance of out-of-service reports which are consistent, if not higher, than the standards set forth in the amendments. See Attachment A to OCC comments. Staff witness Allstot pointed out that, in the past, USWC itself in its Colorado operations has met the most stringent standards adopted here. Finally, we observe that no small LEC--these are telephone companies who, in relative terms, likely have service areas every bit as rural as USWC's--has complained that the revisions are unrealistic or unduly burdensome.⁴ These comments indicate that USWC's service territory is not so unique that the adopted standards are unrealistic.⁵ We also note that, in the event companies are presently unable to comply with the 85 percent standard, the sliding scale set forth in the rules provides adequate notice and opportunity for such companies to take necessary actions to meet the increasing standards.

⁴ El Paso, a small LEC, commented that its historical experience suggests that it should have no problem meeting the new standards.

⁵ The fact that USWC, in the past, was able to comply with similar requirements indicates that its present failure to meet these criteria is not due to the nature of its service area, but is, more than likely, due to recent cost-cutting measures instituted by management. It should come as no surprise than reducing employees and initiating other cost reductions, in an effort to improve the bottom line, may adversely affect a company's ability to maintain quality of service.

15. El Paso commented that small LECs should be exempt from the new rules pursuant to the provisions of § 40-15-203.5, C.R.S. We reject this suggestion. El Paso itself stated in its comments that small LECs, including El Paso, have not historically experienced the type of problems which these rules are meant to address. Therefore, these requirements should not pose significant burdens to the small LECs. Moreover, the new rules are intended to help ensure the adequacy of basic telephone service to customers. The importance of such service to end-users, including customers of small LECs, dictates that these standards apply to all companies. No reason exists to establish lesser standards relating to these customers.

16. In general, we note that adequate basic telephone service is essential to the public health, safety, and welfare. We determine that the amendments adopted here will advance the goal of adequate service. Hence, the rules are appropriate for adoption.

II. ORDER

A. The Commission Orders That:

1. This Order adopting the attached rules shall become final 20 days following the Mailed Date of this Decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this Order of Adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

3. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

4. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.

5. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING December 6, 1995.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
ABSENT.

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO
(COPUC)

RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS
AND TELEPHONE UTILITIES
4 CCR 723-2

COPUC RULE 4 CCR 723-2-1. APPLICATION OF RULES.

723-2-1.1 BASIS, PURPOSE AND STATUTORY AUTHORITY OF RULES.
The statutory authority for these amendments is found in sections 40-3-101(2), 40-3-102, 40-3-103, 40-3-106(1)(A) and 40-4-101, C.R.S. which empower the Commission to establish standards for the adequacy of public utility services, including the timely provisioning of adequate telephone service, basic telephone service and regulated telecommunications services, and requires the Commission to prescribe rules and regulations for the performance of any service or the furnishing of any commodity by a public utility and to enforce those rules and regulations. In addition, the Commission is authorized to promulgate rules generally by section 40-2-108, C.R.S., and specifically for telecommunications services by §§ 40-15-201 and 40-15-301, C.R.S., in order to implement the provisions of Title 40, Article 15, Part 2 and 3, C.R.S.

The basis and purpose of these amendments is to update and revise certain rules within the Rules Regulating Telecommunications Service Providers and Telephone Utilities to require an adequate level and timely provisioning of basic telephone service and regulated telecommunications service to the public throughout the state. Specifically, such revisions or amendments are to Rules 2.33.1, 16.1.4, 21.2.4, 21.2.5, and 22. The update and revision of these rules is necessary to

reflect the present and continuing evolution of a standard for adequate basic telephone service and regulated telecommunications service which is expected by the public and is available through the changing technology being deployed in the telecommunications industry. The rules establish standards for basic telephone service and regulated telecommunications services in light of current technology and public expectations. These amendments prescribe requirements for provision of certain capabilities and services by Local Exchange Carriers.

The amendments to the rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law and there are no duplicating or overlapping rules.

723-2-1.2 Applicability of Rules. These rules and regulations govern the furnishing of intrastate telecommunications services and facilities to the public and shall apply to providers of telecommunications services and telephone services subject to the jurisdiction of the Commission.

723-2-2.33.1 Out-of-Service Trouble Report - occurs when a customer reports no dial tone, or an inability to make calls, or an inability to receive calls, or that service quality has deteriorated to such an extent that normal conversation on the line is not possible, or that the customer is incapable of sending or receiving a facsimile or data transmission at a minimum of 2400 bits per second.

723-2-2.34 Outside Plant - means the telecommunications equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between central office and customers' locations or between central office.

723-2-2.35 Party Line Service - means a grade of Basic Local Exchange Service which provides for a number of customers to be served by the same central office channel.

723-2-2.36 Private Line Service - means any point-to-point or point-to-multi-point service dedicated to the exclusive use of an end-user for the transmission of any telecommunications service.

723-2-2.37 Public Telephone Service - means an individual line service equipped with a coin collecting telephone instrument installed for the use of the general public in locations where the general public has access to these telephones.

723-2-2.38 Small LEC - means a Local Exchange Carrier serving fewer than 50,000 access lines in the State of Colorado.

723-2-2.39 Station - means a device and any other necessary equipment at the customer's premises which allows the customer to establish and continue communication.

723-2-2.40 Switched Access - means the services or facilities furnished by a local exchange company or carrier, to interexchange providers or carriers, which allows them to use the basic exchange network or the public switched network for origination or termination of interexchange telecommunications services.

723-2-16.1.3 Each LEC and toll service provider shall make regular periodic measurements to determine the level of service for each item included in these rules. These records shall be available for review by this Commission upon request.

723-2-16.1.4 The standards within these rules establish the minimum acceptable quality of service under normal operating conditions. They do not establish a level of performance to be achieved during the periods of emergency, catastrophe, natural disaster, severe storm or other events affecting large numbers of customers nor shall they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events for which a provider may not have been expected to accommodate. To the extent such conditions affect the measurement records required under Rule 16.1.3 and consequently the ability of the provider to meet any other standards within Rules 16 through 24, the Rules Regarding Quality of Telecommunications Service, it is the responsibility of the utility to separately document the duration and magnitude or effect of such occurrences in its records.

COPUC RULE 4 CCR 723-2-17. BASIC TELEPHONE SERVICE STANDARD.

723-2-17.1 Basic Service Standard. As part of its obligation to provide adequate basic telephone service, each LEC shall construct and maintain its telecommunications network so that the instrumentalities, equipment and facilities within the network shall be adequate, efficient, just and reasonable in all respects in order to provide each customer within its jurisdictional service area with the following services or capabilities:

723-2-21.2.2 Suitable rules and instructions shall be adopted by each provider and followed by employees or other entities employed by the provider governing the language and operating methods to be used by operators during assistance to customers. Specifically, operators must be instructed to be courteous, considerate, and efficient in the handling of all customer calls. Any required call timing for jurisdictional operator assisted calls shall accurately record when the customer requested connection is established and when it is terminated.

723-2-21.2.3 Each provider offering operator assistance to the public shall provide a service that can answer 85 percent of directory, intercept, toll and local assistance calls within 10 seconds.

723-2-21.2.4 Other calls directed to the published telephone numbers for service repair or the business offices of the LEC or MTS providers shall be acknowledged within 20 seconds and shall be answered by either a company representative or a voice-response or mechanized unit menu within 60 seconds (as measured from the same starting point in time as for the 20 second acknowledgement standard) for 85 percent of all such calls during any monthly period. Each business day during any month for which the standard was not obtained for the published telephone number associated with the respective service center or business office shall be deemed a separate violation of this Rule.

When fewer than 85 percent of such calls are answered in any month for any service center or business office, a written report listing each offending service center or business office will be submitted to the Commission within twenty-one (21) calendar days from the end of the month in which the standard was not met. For each violation listed, the report shall identify the percent of calls answered, the reason for

failure to meet the 85 percent standard, the remedial action the LEC has taken, and any known results of that remedial action.

723-2-21.2.5 The measurement records for determining the minimum acceptable call completion criteria described under Rules 21.2.3 and 21.2.4 may be adjusted, as allowed under Rule 16.1.4, For the circumstances specifically described within Rules 10.2.3.2 and 16.1.4.

723-2-21.2.6 An answer shall mean that either a company representative or a voice-response or mechanized unit menu is ready to assist the customer or accept information necessary to process the call. An acknowledgement that the customer is waiting on the line shall not constitute an answer. A dropped call shall not be considered an answer. An answer shall not mean either directing the call to a company representative or mechanized system incapable of providing assistance to the customer or directing the call to a system that will only take a message from the customer.

723-2-21.3 Intra-LATA Interexchange Toll Dialing Pattern.

723-2-21.3.1 BASIS, PURPOSE, AND STATUTORY AUTHORITY. The basis and purpose is to establish a new rule to provide for uniform dialing patterns for all intra-LATA interexchange toll calls (calls which are not included within basic local exchange service.) The current supply of available central office codes will be exhausted in the near future. In order to provide for more numbers, the Administrator of the North American Numbering Plan, and the telecommunications industry have agreed to proceed with the implementation or interchangeable area codes, also referred to as interchangeable Numbering Plan Areas (NPA or INPA). The interchangeable area codes change "1+" and "0+" from "toll indicators" to "area code indicators". To preserve a "toll indicator" for consumer protection it will be necessary to adopt a 1 + ten digit dialing pattern for all intra-LATA, interexchange toll calls.

The amendments to the rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law and there are no duplicating or overlapping rules.

The statutory authority for this new Rule 21.3 is found at §§40-2-108, 40-4-101, and 40-15-306. C.R.S.

723-2-21.3.2 The North American Number Plan (NANP) specifies the format for telephone numbers in the United States, Canada, Bermuda, and many Caribbean Basin islands. On January 1, 1995, the NANP format changes to permit fully interchangeable codes. Prior to January 1, 1995 all jurisdictional LECs will convert to a new dialing plan which will permit the new NANP format to be used. Use of an area code or NPA is required for all intra-LATA, interexchange toll calls which originate and terminate in the same area code (NPA). The new dialing plan will replace the existing 1+ seven digit dialing plan in use today with the "1+ 10 digit" dialing plan.

COPUC RULE 4 CCR 723-2-22. TROUBLE REPORT RESPONSE.

723-2-22.1 Maximum Acceptable Number of Reports. Each LEC shall maintain its network so as to minimize customer trouble reports for jurisdictional services economically but shall not exceed eight reports per 100 access lines per month per wire center averaged over a three-month period. An occurrence of a violation of this Rule shall be considered as each day in the month for which the three month average of trouble reports for that month and the preceding two months exceed this criteria for the wire center in question.

For the purpose of this paragraph of Rule 22, each customer receiving party line service shall be considered to have one access line. [This sentence is repealed effective January 1, 1996.]

723-2-22.2 Allowable Response Time. The response of a LEC to customer trouble reports shall be such that the percent

of all out-of-service reports for each month, for each wire center, listed in the table below are cleared within 24 hours. A separate occurrence of a violation of this Rule shall be considered as each day of each month for which the criteria was not met in each wire center served by the LEC.

MONTH**	CLEARED WITHIN 24 HOURS
1 through 6	70%
7 through 12	75%
13 through 18	80%
19 and beyond	85%

** The number of months shall be measured from the effective date of these rule amendments.

When fewer than the percent listed in the table for any month for any wire center are not cleared within 24 hours, a written report listing each offending wire center will be submitted to the Commission within twenty-one (21) calendar days from the end of the month in which the standard is not met. For each violation listed, the report shall identify the percent of trouble reports cleared within 24 hours, the reason for falling below the standard, the remedial action the LEC has taken, and the date the wire center is expected to meet or exceed the standard.

This criteria excludes the following conditions to the extent the LEC can separately document the number of such occurrences:

723-2-22.2.1 Reports for nonjurisdictional services or services of another provider.

723-2-22.2.2 Situations where access to the customers premise is required but not available.

723-2-22.3 The measurement records for determining the maximum acceptable number of reports (Rule 22.1), or the allowable response time (Rule 22.2) may be adjusted, as allowed

under Rule 16.1.4, for the circumstances specifically described within Rules 10.2.3.2 and 16.1.4.

723-2-22.4 Response Priority. If requested by the customer, the LEC shall give priority to and initiate repairs regardless of the hour for customer trouble reports which may affect the public health and safety.

723-2-22.5 Customer Notification. If employees of the LEC cannot clear the reported trouble promptly, the customer will be given a reasonable estimate of when the trouble report will be cleared.

723-2-22.6 Appropriate adjustments to the customer's bill shall be automatically made by the LEC for jurisdictional service interruptions pursuant to Rule 10.2.3.