

Decision No. C03-0197

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 98S-363T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY NOW COMMUNICATIONS, INC., WITH ADVICE LETTER NO. 3 AND ITS AMENDMENT, TO IMPLEMENT INITIAL TARIFF.

**DECISION PARTIALLY GRANTING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: February 21, 2003

Adopted Date: February 12, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Joint Application for Rehearing, Reargument, or Reconsideration (RRR) by the Colorado Office of Consumer Counsel (OCC) and the Staff of the Colorado Public Utilities Commission (Staff). The Application for RRR requests that we modify Decision No. C03-0071 (Decision) in two respects. Now being duly advised in the premises, we grant the Application, in part, and deny it, in part.

2. This case concerns certain rates for residential local exchange service charged by NOW Communications, Inc. (NOW). On remand from the Colorado Supreme Court, the Decision clarified NOW's obligation to make certain refunds to its customers. In particular, the Decision concludes that NOW is obligated to refund to its residential customers charges in excess of the recurring rate for stand-alone residential local service. The Decision identified that charge as being \$14.91 per month. Additionally, the Decision directed NOW to file a report

detailing its plans for refunding overcharges to customers consistent with the Decision. The OCC and Staff, in their joint Application for RRR, request reconsideration of these two rulings.

3. First, the OCC and Staff point out that the recurring rate for stand-alone residential service is \$14.74 per month, not \$14.91. The Application for RRR points out that the record in this case, including NOW's tariff, supports only the \$14.74 amount. As such, the OCC and Staff request that we modify the Decision to change \$14.91 to \$14.74 (as one of the bases for calculating NOW's refund obligation). We agree. The record does reflect that the recurring rate for the non-NOW Plan residential service is \$14.74. We modify the Decision accordingly.

4. The Application for RRR also requests that NOW be required to file a formal application for Commission approval of the refund plan, pursuant to Rule 58, 4 *Code of Colorado Regulations* (CCR) 723-1, and Rule 10.2.5, 4 CCR 723-2, instead of the report discussed in the Decision. We deny this request. NOW's obligation to make certain refunds is ancillary to the primary issues in this proceeding. As such, it is appropriate for the Commission to resolve this matter in this case. Moreover, many of the matters that would ordinarily be decided in an application for approval of a refund plan have already been settled in the Decision (*e.g.*, the obligation to make a refund, and the bases for calculating necessary refunds). Finally, we note that requiring NOW to file a new application for refund would result in additional delay in making refunds to customers. A new application would entail those procedures attendant to all applications. Such delay is unjustified, especially since this case has been pending before the Commission and the courts for several years.

5. We affirm our directive that NOW file a report explaining its refund plan in this docket. That report will be due 30 days from the effective date of this decision. Staff and the

OCC may file a response or comments to the report within 14 days of its filing with the Commission. The Commission retains jurisdiction to modify NOW's proposed refund plan.

II. ORDER

A. The Commission Orders That:

1. The Joint Application for Rehearing, Reargument, or Reconsideration by the Colorado Office of Consumer Counsel and Staff of the Colorado Public Utilities Commission is granted in part only consistent with the above discussion. Otherwise the Joint Application is denied.

2. NOW Communications, Inc., shall file its refund report (Ordering Paragraph 2, Decision No. C03-0071) within 30 days of the effective date of the instant decision.

3. 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 Mailed Date of this Decision.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 12, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners