Decision No. C03-0292

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-538T

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF A PLAN TO RESTRUCTURE REGULATED INSTRASTATE SWITCHED ACCESS RATES AND PETITION FOR DECLARATORY ORDER.

DECISION DENYING APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: March 21, 2003
Adopted Date: February 26, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) filed by the Applicants in this case.[1] The Applicants request reconsideration of Decision No. C03-0114 (Mailed Date of January 30, 2003) (Decision). In the Decision, we found that the Applicants' proposal to impose a $1.47/month subscriber line charge (SLC) upon residential telephone customers would violate the rate cap established in § 40-15-502(3)(b)(I), C.R.S. Based on that finding we dismissed the Application. The Application for RRR requests that we find that the proposed SLC does not violate the

[1] The Applicants are AT&T Communications of the Mountain States Inc.; Qwest Corporation (Qwest); WorldCom, Inc., on behalf of its regulated subsidiaries; Sprint Communications Company, L.P.; and the Colorado Telecommunications Association on behalf of the following members: Agate Mutual Telephone Cooperative Association; Big Sandy Telecom, Inc.; Blanca Telephone Company; CenturyTel; Columbine Telecom Company; Delta County Tele-Comm, Inc.; Dubois Telephone Exchange, Inc.; Eastern Slope Rural Telephone Association, Inc.; El Paso County Telephone Company; Farmer's Telephone Company, Inc.; Haxtun Telephone Company; Nucla-Naturita Telephone Company; Nunn Telephone Company; Peetz Cooperative Telephone Company; Phillips County Telephone Company; Pine Drive Telephone Company; Plains Cooperative Telephone Association, Inc.; Rico Telephone Company; Roggen Telephone Cooperative Company; Rye Telephone Company; South Park Telephone Company; Stoneham Cooperative Telephone Corporation; Strasburg Telephone Company; Sunflower Telephone Company, Inc.; Union Telephone Company; Wiggins Telephone Association; and Willard Telephone Company.

statutory rate cap for residential local service, or, alternatively, that we take testimony and further argument on the issue prior to ruling. Now being duly advised in the premises, we deny the Application for RRR.

B. Discussion

2. In the Decision we held that the Applicants' proposed SLC would be a basic local exchange service rate element because the charge would be imposed on all customers having an access line, and the charge would be dependent on nothing other than being a basic local service customer. As such, we concluded, the proposed SLC would constitute a rate increase for residential basic local exchange service. We also held that the SLC would constitute an additional charge for access to toll services, an existing component of basic local exchange service. Because access to toll is already a component of basic local service, customers are already paying for this "service" as part of their basic local service rates. For these reasons, we concluded that the proposed SLC would violate the rate cap for residential basic local exchange service established in § 40-15-502(3)(b)(I), C.R.S. The Application for RRR disputes our findings and conclusions.

3. The Applicants first contend that we erred in finding that subscribers are currently paying for access to toll services as part of the price paid for basic local exchange service. Specifically, the Applicants state that they "... disagree with the Commission factual finding that current prices for basic local exchange service *reflect the costs associated with the provision of access to toll services*" (emphasis added). Application for RRR, pages 3-4. According to the Application for RRR, "access to toll services" includes only access to 1+ dialing for the toll provider of their choice (citing 4 *Code of Colorado Regulations* (CCR) 723-2-17.1.7

(Rule 17.1.7)). Basic local service subscribers are not now paying for the originating and terminating access services for which the Applicants seek to restructure rates in this docket.

4. We disagree with these arguments and assertions. Notably, the Application for RRR misstates our findings in the Decision. We did not find that current prices for basic local exchange service "reflect the costs" associated with the provision of access to toll services. The Decision says nothing about whether local service prices reflect *the costs* of access to toll, particularly the originating and terminating access costs now paid by interexchange carriers.[2] Rather, we found that access to toll services is already a component of basic local exchange service according to Rule 17.1.7. As such, when basic local service subscribers pay their local service rate, access to toll is included in the service paid for under existing Commission rule. Our findings, in short, concerned the services and features included in existing local service prices, not costs recovered in those prices.

5. The Application for RRR disputes whether local service rates cover the cost of access to toll,[3] and, apparently, whether access to toll should be included in the Commission's existing definition of basic local service. However, these matters are beside the point for purposes of our conclusion that the Application must be dismissed. Regardless of whether local service prices are high enough to cover the costs of access to toll, and whether access to toll

[2] In this respect, the Applicants attempt to muddy the distinction between the fixed charge to customers for access to toll—which was set by the Commission long ago as a portion of basic local exchange service and subsequently frozen by the legislature as of May 24, 1995, in the statutory rate cap—and the variable charge to customers for actually making intrastate toll calls. Our Decision nowhere implied that originating and terminating costs are part of the monthly basic local exchange service fee, thus the argument advanced by Applicants is inapposite. It may be that the fixed charge for access to toll is set too low, but that would be a matter to address at the Colorado Legislature, not here.

[3] Undoubtedly, consistent with the Commission's Costing and Pricing Rules, the Commission's decisions in the last rate case for Qwest (the major local exchange carrier Applicant) reflect an allocation of access costs (*i.e.*, loop and other joint and common costs) to toll services *and* basic local service. The Applicants might dispute that allocation. However, they cannot reasonably dispute that existing Commission rules make access to toll a component of basic local service.

should be included as a component of basic local service, the fact remains that the existing Commission Rule (Rule 17.1.7) does make access to toll an element of basic local service. It follows that the existing price for basic local service includes access to toll. The Decision then correctly points out that the proposed SLC would constitute an additional charge for a component of service already included in the definition of basic local service. The Application in this case proposes to impose an additional charge on residential basic local service customers with no additional services provided. Such a charge would be contrary to the statutory mandate contained in § 40-15-502(3)(b)(I), C.R.S.

6. The Applicants are also incorrect in contending that "access to toll" simply refers to 1+ dialing capability. The rule does require all telecommunications providers to offer 1+ dialing where the incumbent provider offers 1+ dialing. However, the definition of "access to toll" is clear. *See* Rule 4 CCR 723-2-2.2.2 (use of the subscriber loop and the switch necessary to access an interexchange carrier's network). For these reasons, we reject the first argument in the Application for RRR.

7. In any event, the Decision points out that the proposed SLC would constitute a rate increase for residential basic local exchange service. The Applicants, in their second argument in the Application for RRR (pages 4-7), contend that the Decision improperly holds that charges to recover access costs, especially loop costs, must be recovered from interexchange carriers only. This too is a misstatement of the conclusions in the Decision. The pertinent portions of the Decision (paragraphs 17-18, pages 7-8) discussed and rejected the Applicants' argument that the proposed SLC would not be a basic local service rate element, but, instead, would be a switched access rate element. The Decision (paragraph 17) explains that the SLC could not, as a legal matter, be considered a switched access rate element because switched

access rates are charges paid by interexchange carriers. Instead, the proposed SLC, as an unavoidable charge on basic service customers, would constitute a local service rate element. Nowhere does the Decision hold or even imply that all access costs, including loop costs, must be recovered from interexchange carriers only.[4]

8. Finally, the Application for RRR points out that the Federal Communications Commission (FCC) has restructured access rates in much the same manner as proposed by the Applicants in this case. In particular, the FCC has adopted a SLC to recover interstate non-traffic sensitive costs. This point, however, is irrelevant to our determinations here. The Colorado Legislature, in § 40-15-502(3)(b)(I), C.R.S., limited the Commission's authority to increase residential basic local service rates. That statute is dispositive of the Application regardless of FCC actions at the interstate level. If the Applicants believe that the statutory rate cap is an anachronistic impediment to access reform, their remedy lies at the legislature, not this Commission.[5]

C. Conclusion

9. Contrary to the suggestion in the Application for RRR, there is no need for a hearing to consider the legality of the SLC proposed by the Applicants. An evidentiary hearing would serve no purpose as no questions of fact have been implicated by the Application. As a matter of law, § 40-15-502(3)(b)(I), C.R.S., establishes a rate cap for residential basic local service. For the reasons discussed in the Decision and here, the Applicants cannot reasonably dispute that their SLC proposal constitutes an increase in residential basic local service rates

[4] Indeed, the Applicants are undoubtedly aware that presently not all access costs are recovered in switched access rates. If they were, switched access rates would be much greater than their present levels.

[5] We note that the Commission is concerned with the intrastate versus interstate access rate differential. It makes little sense that an intrastate toll call costs more—often substantially more—than a call to another state. We encourage the parties to continue to work toward access reform.

above the statutory rate cap, and none of the exceptions to the rate cap justifies that increase. We affirm the findings and conclusions in the Decision and deny the Application for RRR.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration filed by the Applicants in this case is denied.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING February 26, 2003.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

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