

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

DOCKET NO. 03R-291T

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IN THE MATTER OF AMENDMENTS TO THE RULES REGULATING  
TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE  
UTILITIES, 4 CCR 723-2, TELECOMMUNICATIONS UTILITIES CUSTOMER  
DEPOSIT RULES, 4 CCR 723-2-8.5.2.

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**DECISION ADOPTING RULES**

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Mailed Date: November 7, 2003

Adopted Date: November 5, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of proposed rules pertaining to the interest rate for customer deposits that telecommunications providers must pay. These rules make permanent the emergency rules this Commission adopted on January 22, 2003, which became effective January 23, 2003.

2. The changes in the Commission's customer deposit interest rate rules were made necessary when, on August 27, 2001, the Department of the Treasury stopped reporting secondary market yields for one-year Treasury Bills. As a result, the Board of Governors of the Federal Reserve System discontinued reporting the average monthly rate in the secondary market for the one-year Treasury Bill in its *Federal Reserve Bulletin*. Since Commission rules for determining the appropriate interest rate that telecommunications providers must pay on customer deposits held employs this reported secondary market rate in setting the interest rate for customer deposits, a rule change was required.

3. As a result of the change in reporting of secondary market yields for one-year Treasury Bills in the *Federal Reserve Bulletin* the Commission adopted emergency rules (referenced above) which required telecommunications providers to pay simple interest on a customer deposit during any calendar year at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent *per annum*, as quoted for one-year United States constant maturities as published in the *Federal Reserve Bulletin*. The emergency rules also provided that if the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate would continue for the next calendar year.

4. In Decision No. C03-0747, we issued a notice of proposed rulemaking to make the emergency rules regarding the interest rate telecommunications providers (as well as gas, electric, and water utilities) were required to pay on customer deposits permanent. We set the matter for hearing on September 16, 2003 before the Commission *en banc*. Written comments were filed by Qwest Corporation (Qwest). At the hearing held on September 16, 2003, appearances were entered by Qwest and Commission Staff (Staff).

#### **B. Findings of Fact and Conclusions of Law**

5. Qwest proposed several modifications to the rules. First, Qwest suggested retaining a deadline of November 1 for Staff to send the notification letter advising of any interest rate change. According to Qwest, this gives providers sufficient time to implement the necessary processes and system changes required to ensure that the new rate can be implemented on January 1. Under Qwest's proposal, providers would in turn file their tariff changes no later than December 15. Qwest also proposed that the rule be modified to provide for a minimum

time frame between the notification letter and the implementation date, so as to preserve sufficient time for providers to modify their systems and properly implement the rate change upon receipt of the notification letter from Staff. Qwest suggests 45 days between receipt of the notification letter and submission of the advice letter and corresponding tariffs.

6. Qwest also proposes that Staff send out a notification letter only upon a change in rates pursuant to the formula described in the rule. Qwest also suggests that no tariff filing would be necessary if the rate remains unchanged for the following year. The tariff language can be worded to allow an existing rate to remain in effect until a change is required and a notice letter is received by the utilities from the Commission.

7. All references to “LEC” in 4 CCR 723-2-8.5.2 should be changed to “provider” according to Qwest. Doing so, according to Qwest, will capture all entities providing jurisdictional services, not just LECs.

8. Additionally, Qwest suggested several minor wording changes to improve the readability and organization of the rule. Qwest suggested combining the two sentences describing the rate change formula into a single sentence for clarity. Qwest also suggested that the rule begin with an introductory sentence stating that the interest rate is to be determined by Staff on an annual basis.

9. All parties present at the hearing accepted the change from secondary market to constant maturities adjustment, and also accepted the 25 basis point change threshold. Qwest presented its written comments suggesting: (1) that the proposed permanent rules be modified to clarify misunderstandings regarding timelines for filing related tariff changes; and (2) that a 45-day period between the date the Staff sends its letter informing utilities of the new rate and the

required effective date of the new rate be established to allow ample time for the utility to implement the change.

10. Staff presented general oral comments regarding the customer deposit rules as well. The current emergency rules require that utilities file their revised tariff sheets, reflecting a change in the customer deposit interest rate, on not less than 30 days' notice to the Commission. Staff suggests that for procedural efficiency, this portion of the rule should read that a utility file its revised tariff sheet (when necessary) on not less than one day's notice.

11. Qwest's written recommendations and oral comments at hearing, regarding the customer deposit interest rate rules and change of wording from "LEC" to "Provider" will be adopted. We find the modifications suggested by Qwest help clarify the intent and spirit of the rules. We also find Staff's recommended change to the rules in the public interest and we adopt those changes.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The proposed rules relating to the telephone utility deposit rules 4 *Code of Colorado Regulations* 723-2-8.5.2, attached to this Order are adopted as described above.

2. The rules shall be effective 20 days after publication by the Secretary of State.

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of reference of the Colorado General Assembly if the General Assembly

is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Mailed Date of this Order.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
November 5, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

GREGORY SOPKIN

POLLY PAGE

JIM DYER

Commissioners

**RULE (4 CCR) 723-2-8.5 CUSTOMER DEPOSITS**

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723-2-8.5.2     ~~Simple interest to be paid on a deposit~~  
~~by the LEC during any calendar year shall be~~The simple interest  
rate to be paid on customer deposits shall be determined by the  
Commission Staff on an annual basis. The rate shall be computed  
at a rate equal to the average for the period October 1 through  
September 30 (of the immediately preceding year) of the 12  
monthly average rates of interest expressed in percent per  
annum, as quoted ~~in the secondary market~~for one-year United  
States Treasury Bills constant maturities, as published in the  
Federal Reserve Bulletin, by the Board of Governors of the  
Federal Reserve System. ~~Each year, the Staff of the Commission~~  
~~shall compute the interest rate to be paid. If the difference~~  
~~between the existing customer deposit interest rate and the~~  
~~newly calculated customer deposit interest rate is less than 25~~  
~~basis points, the existing customer deposit interest rate shall~~  
~~continue for the next calendar year. If the difference between~~  
~~the existing customer deposit interest rate and the newly~~  
~~calculated customer deposit interest~~If the difference between  
the existing customer deposit interest and the newly calculated  
interest rate rate is 25 basis points or more, the newly  
calculated customer deposit interest rate shall be used  
beginning January 1 of the following year; otherwise the rate  
shall remain unchanged. When it is determined that a change in  
the interest rate is warranted, the ~~The Commission~~ and ~~shall~~  
send a letter ~~no later than November 15<sup>th</sup>~~to each LEC provider  
within the state by November 15<sup>th</sup> identifying the new rate to be  
paid on deposits beginning January 1 of the next year. stating  
~~the rate of interest to be paid on deposits during the following~~  
~~calendar year.~~ Following receipt of Staff's letter notification

by the Commission, each utilityprovider shall, ~~no later than December 15th of each year, or an alternative date set by the Commission,~~ file an Advice Letter and revised tariff on not less than one day's notice, ~~citing this rule as authority on not less than one day's notice, or file an appropriate application, to revise the tariff, all~~ to be effective the first day of January 1 of the following year., ~~or on an alternative date set by the Commission, containing the new interest rate to be paid upon customers deposits.~~ To the extent any of the dates contemplated herein are modified, there shall be at least 45 days between the date of the notification letter and the effective date of the rate change.