

Decision No. R03-0402

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-646T

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: April 18, 2003

I. STATEMENT

1. This proceeding was instituted by the issuance of Decision No. C02-1407, December 19, 2002. By that decision the Commission gave notice of a proposed rulemaking regarding new rules to establish regulations by which the Commission may regulate rural or local exchange providers of telecommunications services subject to simplified regulatory treatment under § 40-15-203.5, C.R.S. A hearing on the proposed rules was held on March 13, 2003 in a Commission hearing room in Denver, Colorado. At the conclusion of the hearing the Administrative Law Judge (ALJ) authorized an extension of the comment period to and including March 28, 2003. Upon subsequent request by the Colorado Telecommunications Association, Inc. (CTA), the ALJ extended the comment period until April 11, 2003. *See* Decision No. R03-0330-I, April 1, 2003.

2. On April 11, 2003, CTA, Staff of the Public Utilities Commission, Office of Consumer Counsel, AT&T Communications of the Mountain States, Inc., AT&T Local Services

on behalf of TCG Colorado, and WorldCom, Inc., on behalf of its regulated subsidiaries filed their combined supplemental comments.

3. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

4. The purpose of the proposed rules is to allow for the possibility of relaxed regulatory treatment for rural local exchange telecommunications companies. The proposed rules: (1) establish a procedure for utilizing the relaxed regulatory treatment form of alternative regulation for the pricing of Part 3 regulated retail services and products by qualifying rural providers; (2) establish a process for “opting in” and “opting out” of the relaxed regulatory treatment form of alternative regulation for rural providers that assures adequate customer notice of such action; (3) outline a procedure for Part 3 regulated retail service and product pricing flexibility that identifies when, how, and under what circumstances those Part 3 regulated retail services and products can be made by qualifying rural providers; and (4) establish that rural incumbent local exchange carriers (ILECs) have the right and opportunity to utilize customer specific contracts for their services, and also the right to make promotional offerings and offer volume discounts to their customers.

5. The proposed rules should allow the rural ILECs to compete in the increasingly competitive marketplace. The greater pricing flexibility that the rules provide, subject to certain price ceilings for a particular Part 3 regulated retail service or product, will allow the ILECs to respond more quickly to various types of competition that they now face. The net result should

be an increase in the competitiveness of the marketplace to the benefit of the consumer. Therefore the rules should be adopted as proposed, subject to the changes suggested in the combined supplemental comments filed April 11, 2003. These combined supplemental comments clarified two main areas. First, they helped to clarify that the proposed rules are not intended to affect the pricing of switched access services by qualifying rural providers. Second, they noted several typographical errors contained in the initial proposed rules.

6. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Rules Concerning Regulation by the Commission of Rural Local Exchange Providers Subject to Simplified Regulatory Treatment, attached to this Decision as Appendix A, are hereby adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

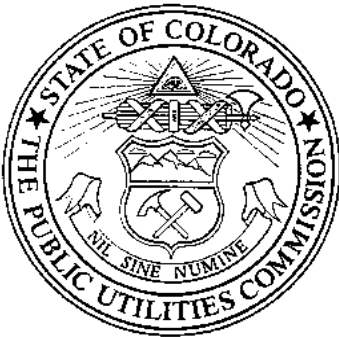
3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

**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 for its Part 3 regulated retail services and products 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 3.5, 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 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 3.5 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 3.2, 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 3.2, 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.

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