

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0451T

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING HB16-1414
CONCERNING TELECOMMUNICATION RELAY SERVICES FOR TELEPHONE USERS
WITH DISABILITIES, 4 CODE OF COLORADO REGULATIONS 723-2-2820 THROUGH
2828.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: June 15, 2016

Adopted Date: June 8, 2016

I. BY THE COMMISSION

A. Statement

1. By this Decision, we adopt temporary rules to comply with amendments to §§ 40-17-101 to -104, C.R.S., made by House Bill (HB) 16-1414. These statutes require voice telecommunication service providers to assess customers a monthly surcharge to fund the Colorado Telephone Users with Disabilities Fund. These temporary rules are effective for 210 days from the effective date of this decision, or until the Commission issues permanent rules to implement HB 16-1414. *See* § 40-2-108(2), C.R.S. For the reasons set forth in this Decision, we have the authority to adopt temporary rules under § 24-4-103(6), C.R.S.

B. Background

2. On May 4, 2016, the Governor signed HB 16-1414, which provides a monthly assessment on customers of voice service providers to fund telecommunications relay services for telephone users with disabilities and appropriates new funds to the Colorado Commission for the Deaf and Hard of Hearing. HB 16-1414 renames the Colorado Disabled Telephone Users fund the Colorado Telephone Users with Disabilities Fund. HB 16-1414 adds § 29-11-102.7, C.R.S. and § 40-17-105, CRS, and amends § 24-75-402, C.R.S., § 26-21-106, C.R.S., and

§§ 40-17-101 to-104, C.R.S. The statutory changes take effect September 1, 2016, and apply to surcharges assessed on or after that date.¹

3. A summary of the statutory changes are as follows:

a) *Telephone access line* is defined as each voice grade channel or its equivalent assigned to residential or commercial end user customer by a voice service provider, regardless of the technology used to provide the service. § 40-17-102(4), C.R.S.

b) *Voice service provider* is defined as a company that provides telephone access lines to members of the general public who are its customers for voice services. § 40-17-102(5), C.R.S.

c) Providers of prepaid wireless services must assess the telecommunication relay surcharge. § 29-11-102.7, C.R.S.

d) The monthly surcharge, not to exceed fifteen cents, may be adjusted by the Commission and must be an amount sufficient to: (1) reimburse the commission for its costs in developing, implementing, and administering telecommunications relay services; (2) reimburse voice service providers for their administrative costs in imposing and collecting the surcharge; (3) cover the costs of providers in rendering the service; (4) cover annual appropriations pursuant to § 40-17-104, C.R.S.; and (5) reimburse the Department of Revenue for its administrative costs in collecting prepaid wireless TRS charges on prepaid wireless phones pursuant to § 29-11-102.7, C.R.S. § 40-17-103, C.R.S.

e) For the 2016-17 fiscal year, \$172,778 is appropriated to the Colorado Commission for the Deaf and Hard of Hearing cash fund created in § 26-21-107 (1), C.R.S. This appropriations is to be made from the Colorado telephone users with disabilities fund created in § 40-17-104, C.R.S. § 26-21-106, C.R.S.

C. Findings and Conclusions

4. The Commission, through the promulgation of rules, develops and implements a mechanism to recover its costs in implementing and administering the telecommunication relay services. The Commission may adopt a temporary rule without engaging in the processes required for a permanent rule “only if the agency finds that immediate adoption of the rule is imperative to comply with a state or federal law or federal regulation or for the preservation of

¹ The appropriation of \$172,778 to the Colorado Commission for the Deaf and Hard of Hearing for the 2016-2017 fiscal year set forth in § 26-21-106, C.R.S., takes effect on July 1, 2016.

public health, safety, or welfare and compliance with the requirements of these section [to complete a permanent rulemaking] would be contrary to the public interest and makes such a finding on the record.” § 24-4-103(6), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to provide for the public health, safety, and welfare of telephone users with disabilities.

5. Section 40-17-101(1) states: “[t]he general assembly hereby finds, determines, and declares that many of Colorado’s residents are unable to utilize telecommunication services without assistance and are therefore telephone users with disabilities.”

6. The part of HB 16-1414 regarding surcharges takes effect September 1, 2016, thus indicating the General Assembly’s desire to allow time for voice service providers to implement the necessary processes, procedures, and billing system changes. Awaiting completion of a permanent rulemaking under Title 24, however, would delay the process of imposing a monthly surcharge and administering telecommunications relay services including the additional resources for the Colorado Commission for the Deaf and Hard of Hearing required by statute.

7. Through HB 16-1414, the General Assembly recognized that additional funds were needed to provide services to the deaf-blind community who were highly under served. Adoption of temporary rules would fulfill the statutory requirement of assessing of the monthly surcharge on additional voice service customers to allow the Colorado Commission for the Deaf and Hard of Hearing to administer telecommunications relay services and otherwise serve telephone users with disabilities. The adoption of temporary rules will also address an immediate need for voice service providers to implement a billing and collection process and to ensure the surcharge is listed or included as a separate item that appears on each customer’s monthly billing statement as required by § 40-17-103(c), C.R.S.

8. We find that these matters require our immediate and continuing attention to protect public safety for telephone users with disabilities. We also find that the time that will transpire before completing a permanent rulemaking on these issues risks the safety and access to telephone facilities of Colorado consumers and visitors to our state. Thus, immediate adoption of temporary rules addressing certain telecommunications relay services that are imperatively necessary to preserve public health, safety, and welfare for Colorado's individuals with disabilities.

9. By this Decision, we adopt temporary rules that accomplish the following:

- a) adding a definition of *telephone access line* that includes the phrase "regardless of technology used to provide the service;"
- b) adding a definition of *voice service provider* consistent with the statute;
- c) assessing a monthly surcharge on all voice service providers, and requiring all voice service providers to file necessary information to determine and adjust the monthly surcharge appropriately;
- d) allowing reimbursement for administrative costs to voice service providers, the Commission, and the Department of Revenue;
- e) setting the length of time voice service providers must maintain records for audit purposes;
- f) exempting certain providers or consumers who receive federally supported Lifeline service;
- g) requiring that all voice service providers register and provide contact information to the Commission no later than July 1, 2016; and

h) changing the monthly remittance to quarterly remittance beginning January 1, 2017.

10. House Bill 16-1414 addresses numerous administrative issues in addition to those forming the basis of temporary rules, and we have selected for these temporary rules provisions from House Bill 16-1414 requiring our immediate attention. In our permanent rulemaking, we will revisit these temporary rules and other provisions of House Bill 16-1414.

11. The temporary rules shall be effective on the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

12. The temporary rules in legislative (strikeout and underline) format, the temporary rules in final version format, and a copy of House Bill 16-1414 are available through the Commission's E-Filings system² at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0451T.

II. **ORDER**

A. **The Commission Orders That:**

1. The rules in final version format available in this proceeding through the Commission's E-Filings system are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be effective on mailed date of this order.

² From the *Electronic Filings* (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number (16R-0451T) in the "Proceeding Number" box and then selecting "Search".

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

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 8, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean, Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

FRANCES A. KONCILJA

Commissioners

COMMISSIONER GLENN A. VAAD
ABSENT.