

Decision No. C05-0056

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-309T

RULES PRESCRIBING THE PROCEDURES FOR ADMINISTERING THE LOW-INCOME TELEPHONE ASSISTANCE FUND.

**ORDER LIFTING STAY
AND ADOPTING RULES**

Mailed Date: January 12, 2005
Adopted Date: January 12, 2005

I. BY THE COMMISSION

A. Background

1. This matter comes before the Commission upon its own motion to determine whether to lift the stay and adopt the Rules Prescribing the Procedures for Administering the Low-Income Telephone Assistance Fund (LITAP), 4 *Code of Colorado Regulations* (CCR) 723-13-1 *et seq.* Now, being duly advised in the matter, we lift the stay and adopt the rules.

2. On June 9, 2004, in Decision No. C04-0623, we issued a Notice of Proposed Rulemaking (NOPR) for the promulgation of rules which modified the existing LITAP rules. We determined that the statutory authority for the proposed rules was found at §§ 40-2-108, 40-3.4-106, and 40-15-502(3)(a), C.R.S. Although Docket No. 03R-524T concerns the proposed repeal and reenactment of all the Commission's existing telecommunications rules, which included the LITAP rules, the major proposals included in the LITAP NOPR, such as requiring all local exchange carriers to collect the LITAP surcharge, were not noticed in Docket No. 03R-524T. This docket was initiated for the purpose of providing notice of those major proposals. We also found it administratively expedient to consider the LITAP revisions in this docket.

3. Of note in the NOPR, we concluded that we had the authority to extend the applicability of the LITAP rules to all providers of local exchange telecommunications services. We determined that although § 40-3.4-108(1), C.R.S. could be interpreted as suggesting that only carriers offering LITAP service are required to collect the surcharge, we noted that the later enacted § 40-15-502(3)(a) supports a rule requiring all telecommunications carriers to collect the LITAP surcharge. We concluded that such a rule is consistent with § § 40-15-501 *et seq.* which directs the Commission to promote competition in the local exchange market. That is, requiring all subscribers of local exchange service, including those customers of competitive local exchange carriers (CLEC), as opposed to the existing requirement, and, therefore, promotes competition.

4. A hearing on the LITAP rules was held before an Administrative Law Judge (ALJ) on August 6, 2004. Appearances were entered by counsel on behalf of the Colorado Office of Consumer Counsel (OCC) and Qwest Corporation (Qwest). Commission Staff presented a summary of the proposed rules. OCC and Qwest presented oral comments.

5. On August 26, 2004, the ALJ issued Recommended Decision No. R04-1015 (Recommended Decision). In his Recommended Decision, the ALJ noted the comments of the interested parties. Although Qwest generally supported the rules, it did indicate that extending the LITAP rules to all local exchange carriers is contrary to § 40-3.4-110, notwithstanding the later enacted statute, § 40-15-502(3)(a). Qwest commented that a specific statute (here § 40-3.4-110) overrides a general statute (§ 40-15-502(3)(a)).

6. OCC supported the LITAP rules and believed the Commission should by rule expand the LITAP program to those local exchange carriers with fewer than 500,000 access

lines. OCC commented that it is important for all low-income customers to have access to the LITAP program.

7. Staff supported the proposed rules as well. It stated that the LITAP surcharge should be collected from all local exchange providers. Staff pointed out that although there are 79 competitive local exchange carriers eligible certified to do business in Colorado, only a fraction have opted to offer LITAP's program and collect the surcharge.

8. In written comments, the Colorado Telephone Association (CTA) supported the stated goal of the proposed rules, which is to ensure fair, competitively neutral, and non-discriminatory treatment by the Commission of all providers in Colorado who offer basic local exchange service. However, CTA did express concern that the Commission's proposal to have the LITAP program applied to all Colorado providers offering basic local exchange service was not in accord with § 40-3.4-110.

9. The ALJ found that the proposed LITAP rules, especially that portion that makes the collection of the LITAP surcharge mandatory for all providers of basic local exchange telecommunications services is in conflict with § 40-3.4-110. The ALJ stated that the proposed rules conflict with the provisions of the statute that makes mandatory LITAP participation only for providers with more than 500,000 subscribers. As such, the ALJ recommended that the Commission enter an order that did not adopt the proposed LITAP rules.

B. Analysis

10. We find two statutes enacted at different times, as discussed below, are at issue in the promulgation of the proposed LITAP rules. Section 40-3.4-110 specifically states that:

“[Article 3.4] shall apply to all providers of basic local exchange telecommunications services with more than five hundred thousand subscribers and certified to do business in the state; except that any such certified company

with fewer subscribers may petition the commission for discounted rates for their subscribers eligible to receive low-income telephone assistance.”

On the other hand, §40-15-502(3)(a) provides that:

“the commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado. The general assembly acknowledges the use of low-income telephone assistance programs, including but not limited to 'life-line' and 'link-up,' and telecommunication relay services for disabled telephone users to further the goal of universal service. The commission shall have the authority to regulate providers of telecommunications service to the extent necessary to assure that universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.”

11. In determining whether the LITAP rules run afoul of §40-3.4-110, it is necessary to review the enactment and amendment of the two statutes seemingly in conflict. First, Article 3.4 of Title 40 was recreated and reenacted in 1990. The latest that any of its provisions was amended was in 1994. Section 40-3.4-110 was reenacted in 1990 and no amendments have been made to it since. This would indicate that §40-3.4-110 was enacted prior to the introduction of competition in the local telecommunications market in Colorado in the form of CLECs. Therefore, that provision cannot anticipate or include the addition of competitive local exchange providers to the market within its terms. It therefore can only be applicable to ILECs.

12. Section 40-15-502 was enacted later, in 1995, and a portion amended in 1998. That section's provisions directly address a local competitive local exchange market and order that the Commission *shall* require the furtherance of universal basic service to be available and affordable to all citizens of Colorado. The language of this statute provides a clear legislative intent and mandate for this Commission.

13. A careful review of the conflicting statutes leads us to conclude that strict adherence to the 500,000 subscriber threshold required in § 40-3.4-110 would lead to a result

which is inconsistent with the requirements of § 40-15-502(3)(a). As we indicated above, § 40-3.4-110 could not have anticipated the additional basic local exchange carriers added to the market through the advent of competition. To strictly adhere to that provision at the expense of our statutory requirements to promote competition in the local exchange market pursuant to § 40-15-502(3)(a) would undermine the competitive environment to the extent that it currently exists.

14. As we emphasized in the NOPR for these rules, the present LITAP rules only require those carriers providing LITAP service to collect the LITAP surcharge from their respective customers. Carriers not providing LITAP service are not required to charge their customers the surcharge. That limitation and the increasing costs of funding LITAP service, which are due to increases in the subscriber line surcharge established by the Federal Communications Commission, result in noticeable increases in the LITAP surcharge. Therefore, we have concerns that the principles of competitive neutrality may be undermined under the present rules, given that some carriers are charging their customers to fund the LITAP program, while increasing numbers of carriers are not.

15. We believe that our position is supported by statutory directive and ample case law. We are initially guided by the requirements of § 2-4-201, C.R.S. *et seq.* Specifically, § 2-4-205 provides that:

"if a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, *unless the general provision is 'the later adoption and the manifest intent is that the general provision prevail.'*" (emphasis added)

Section 2-4-206 provides that:

"[i]f statutes enacted at the same or different sessions of the general assembly are irreconcilable, the statute prevails which is latest in its effective date. If the

irreconcilable statutes have the same effective date, the statute prevails which is latest in its date of passage."

16. An analysis of statutory interpretation begins with our responsibility regarding interpretation of the two statutes at issue. In *People v. Luther*, 58 P.3d 1013 (Colo.2002) the Supreme Court reiterated the well established procedures for interpreting statutes. The court stated that there is a fundamental responsibility to interpret statutes in a way that gives effect to the General Assembly's purpose or intent in enacting a statute. *Id.* at 1015. To accomplish this objective, the court must begin with the plain language of the statute. If the statute is unambiguous and does not conflict with other statutory provisions, the court need look no further. If, however, the language of the statute is ambiguous, or in conflict with other provisions, the court then looks to legislative history, prior law, the consequences of a given construction, and the goal of the statutory scheme, to ascertain the correct meaning of a statute. *Id.* (Citations omitted). The court must presume that the General Assembly intended the entire statute to be effective and intended a just and reasonable result (Section 2-4-201(1)(b), C.R.S.). *Id.* The court must read and consider the statutory scheme as a whole to give consistent, harmonious and sensible effect to all its parts. *Id.* (Citations omitted). If an interpretation would yield an absurd result, it is disfavored. *Id.* (Citation omitted).

17. When statutes conflict, as here, we must rely on the directives provided pursuant to § 2-4-201, *et seq.* Cases interpreting those statutory provisions generally hold that when statutes conflict irreconcilably, we are to consider the special rules of statutory construction to determine which statute prevails. *People v. Cooper*, 27 P.3d 348 (Colo.2001). Under § 2-4-205, if a general statute conflicts with a specific statute, the more specific prevails unless the general statute is the later adoption and the manifest intent is that the general provision prevails. *Id.*

When several statutes apply to the same subject matter, courts examine all relevant provisions to determine the intent of the General Assembly. *Bontrager v. La Plata Elec. Ass'n*, 68 P.3d 555 (Colo.App.2003). Courts must reconcile potentially conflicting statutes relating to the same subject matter, if possible, to avoid an inconsistent or absurd result. *Bodelson v. City of Littleton*, 36 P.3d 214 (Colo.App.2001). Courts will not adopt a statutory construction that defeats the intent of the General Assembly. *State v. Nieto*, 993 P.2d 493 (Colo.2000). If two statutory provisions appear to be in conflict, the reviewing court must attempt to construe the statutes in a manner that will avoid the conflict. *People v. James*, 178 Colo. 401, 497 P.2d 1256 (Colo.1972).

18. After reviewing the two statutes, we find that irreconcilable differences exist. On the one hand, § 40-3.4-110 directs that only those providers with more than 500,000 subscribers are required to collect funds for the LITAP program. On the other hand, § 40-15-502(3)(a) requires the Commission to further universal basic service and grants the Commission the authority to regulate providers of telecommunications services to the extent necessary to assure affordable universal basic service to all consumers in Colorado.

19. We cannot be sure that the legislature intended to keep the 500,000 subscriber requirement when it enacted § 40-15-502(3)(a), or if it was merely an oversight. However, we find that § 40-15-502(3)(a) was clearly enacted after § 40-3.4-110, consequently, §§2-4-205 and 206 require that we find that § 40-15-502(3)(a) prevails. Therefore, we find that we must be bound by the clear legislative intent that affordable universal service, in the form of the LITAP program, be made available to all Colorado telecommunications consumers. We therefore find that we possess the authority to enact the proposed LITAP rules.

II. ORDER

A. The Commission Orders That:

1. The stay the Commission placed on the Proposed Rules Prescribing the Procedures for Administering the Low-Income Telephone Assistance Fund is lifted.

2. The Commission adopts the Proposed Rules Prescribing the Procedures for Administering the Low-Income Telephone Assistance Fund attached to this Order as Attachment A.

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

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

5. A copy of the rules adopted by this Order 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 the Colorado General Assembly if the General Assembly is in session at the time of 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.

6. 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 effective date of this Order.

7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 12, 2005.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

CARL MILLER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
DISSENTING.

III. CHAIRMAN GREGORY E. SOPKIN DISSENTING:

1. I would uphold Administrative Law Judge Fritzel's decision that C.R.S. § 40-15-502(3) [corrected by errata to 40-3.4-110] precludes the Commission from imposing new LITAP rules that extends the LITAP surcharge, on a mandatory basis, to all local exchange providers, not just those who have more than 500,000 subscribers. The ALJ points out in Decision No. R04-1015, that C.R.S. § 24-4-103(4)(b)(IV) requires that any proposed rule or regulation not be in conflict with other provisions of the law. Since the proposed new LITAP rule directly conflicts with C.R.S. § 40-3.4-110, I believe the Commission does not possess the authority to adopt the new rule, whatever its salutary purpose.

2. C.R.S. § 40-3.4-110 expressly limits the LITAP program

to all providers of basic local exchange telecommunications services with more than 500,000 subscribers and certified to do business in the state; except that any such certified company with fewer subscribers may petition the commission for discounted rates for their subscribers eligible to receive low-income telephone assistance.

This statute was passed in 1990, before the advent of competition. In 1995, the Colorado Legislature passed C.R.S. § 40-15-502(3)(a), [which] provides that

the commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado. The general assembly acknowledges the use of low-income telephone assistance programs, including but not limited to "life-line" and "link-up," and telecommunication relay services for disabled telephone users to further the goal of universal service. The commission shall have the authority to regulate providers of telecommunications service to the extent necessary to assure that universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.

The Commission holds today that this latter statute gives the Commission the authority necessary to adopt a rule that extends the LITAP surcharge to all local exchange providers, i.e., to remove the "more than 500,000 subscribers" requirement.

3. The overriding question is whether the latter statute irreconcilably conflicts with the former. The two relevant statutes on legislative interpretation are as follows:

C.R.S. § 2-4-205: If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

C.R.S. § 2-4-206: If statutes enacted at the same or different sessions of the general assembly are irreconcilable, the statute prevails which is latest in its effective date. If the irreconcilable statutes have the same effective date, the statute prevails which is latest in its date of passage.

Clearly, § 40-3.4-110 is unambiguous: there is no mandatory LITAP surcharge to providers with less than 500,000 subscribers. The question is whether this statute irreconcilably conflicts with the legislative policy expressed in § 40-15-502(3)(a) that the Commission, through the use of low-income programs, should further universal service such that “universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.”

4. It is a close call, but I believe a state agency should be hesitant to override an explicit numerical statutory threshold without a more explicit legislative command. In other words, if the legislature wanted to repeal the 500,000-subscriber limitation as part of Colorado’s 1995 Telecommunication Act, it could have done so. To the extent the Commission believes that the 500,000-subscriber threshold should be eliminated, the more appropriate venue is to ask the legislature to do so.

5. More saliently, I am not convinced that allowing competitive local exchange carriers with less than 500,000 subscribers to “opt-in” to the LITAP program necessarily conflicts with the goal of universal basic service. After all, any low-income customer of a nonparticipating

CLEC could switch to the incumbent carrier¹ or a participating CLEC (if available) in order to take advantage of the LITAP program. Since there is no irreconcilable conflict, I do not believe the Commission has the authority to adopt the rule in question.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN GREGORY E. SOPKIN

Chairman

¹ Regardless of the number of subscribers, the FCC requires every ILEC that is an Eligible Telecommunications Carrier to participate in the LITAP program. In Colorado, every ILEC is an ETC.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-13

RULES ~~PRESCRIBING~~

~~THE PROCEDURES~~ FOR ADMINISTERING

THE LOW-INCOME TELEPHONE ASSISTANCE FUND

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose for these Rules is to prescribe the procedures for administering the low-income telephone assistance fund ~~for the provision of basic local exchange telecommunications services by providers of basic local exchange telecommunications services in order to promote the public health, safety and welfare, and~~ so that low-income individuals receive assistance adequate to ~~ensure~~ access to basic local exchange telecommunications services.

The ~~authority for these Rules is § 40-3.4-106, C.R.S.~~ Further, ~~the~~ Commission is authorized to promulgate rules generally by §40-2-108, ~~C.R.S.~~, and specifically to promulgate rules ~~for the use of~~ low-income telephone assistance programs to further the goal of Universal Service by ~~§§ 40-3.4-106 and 40-15-502(3)(a) C.R.S.~~

These rules are consistent with 47 U.S.C., 254 and newly adopted Federal Communications Commission Rules found at Part 54 of 47 *Code of Federal Regulations* (C.F.R.), implementing 47 U.S.C. section 254.

RULE (4 CCR) 723-13-1. APPLICABILITY.

~~Rules 1 through 5 are applicable to providers of basic local exchange telecommunications services who are not eligible telecommunications carriers with more than five hundred thousand subscribers and certified to do business in the state; except that any such certified company with fewer subscribers may apply to the Commission for discounted rates for their subscribers eligible to receive low-income telephone assistance by complying with Rule 3.~~

Rules 1 through 5 are applicable to all providers of basic local telecommunications service.

Rules 1 through 10 are applicable to providers of basic local exchange telecommunications services who are eligible telecommunications carriers and certified to do business and to offer basic local exchange service within the state of Colorado.

RULE (4 CCR) 723-13-2 DEFINITIONS.

As used in this rule, unless the context otherwise requires:

723-13-2.1 "Basic local exchange telecommunications services" means any of the telecommunications services which provide a dial-tone line and local usage necessary to place or receive a call within a local calling area.

723-13-2.2 "Eligible Telecommunications Carrier" (ETC) means a carrier designated as such by the Commission pursuant to the Rules Prescribing the Procedures ~~for~~ Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible tTelecommunications Carrier, 4 CCR 723-42.

723-13-2.3 "Eligible subscriber" means an individual who is qualified to receive low-income telephone assistance pursuant to § 40-3.5-105, C.R.S.

723-13-2.4 "Lifeline", as used in this Rule, means a retail local service offering:

723-13-2.4.1 That is available only to ~~a~~-eligible subscribers;

723-13-2.4.2 For which eligible subscribers pay reduced charges as a result of application of the support amount described in § 40-3.4-104~~+~~ C.R.S.; and

723-13-2.4.3 That includes the services or functionalities enumerated in Rule 2.1.

723-13-2.5 "Toll blocking" is a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their dial~~-~~tone line.

723-13-2.6 "Toll control" is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their dial~~-~~tone line per month or per billing cycle.

723-13-2.7 "Toll limitation" denotes either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, "toll limitation" denotes both toll blocking and toll control.

RULE (4 CCR) 723-13-3. IMPLEMENTATION OF PLANS.

Each provider to which these rules are applicable shall file with the Commission that information specified in Rule 4.2 of these rules, along with an advice letter and implementing tariffs~~s~~, prior to implementing a program plan.

723-13-3.1 Implementing tariffs shall include a description of the service offered to eligible subscribers and the associated monthly rate. Such tariff shall consist of a twenty-five percent discount, or the end user common line charge, whichever is greater, for a single local dial~~-~~tone line and the flat rate usage charge in the principal residence of an eligible subscriber. Eligible subscribers who pay mileage charges

associated with basic telephone service may be eligible for a twenty-five percent discount for these charges. In no event shall the discount provided be less than the end user common line charges imposed by the Federal Communications Commission.

723-13-3.2 Intrastate Lifeline customer local tariffed rates implementing the Colorado low-income telephone assistance program shall be further reduced by any amount that the basic local exchange telecommunications service provider receives from any federal program providing for a reduction in such intrastate rate.

RULE (4 CCR) 723-13-4. FUND ADMINISTRATION.

The Commission shall determine, and by appropriate order, impose a uniform charge on each business and residential access line ~~in a uniform amount~~. So that such charge can be adjusted on or before July 1 of each year, ~~beginning with the 1991 fiscal year~~, the Commission will require certain information.

To assist the Commission:

723-13-4.1 The Department of Human Services shall forward to the Commission by April 1 of each calendar year its estimate of its administrative expenses incurred under § 40-~~3.4-101~~, et seq., C.R.S., and its estimate of the number of eligible subscribers for the coming fiscal year.

723-13-4.2 Each provider of basic local exchange telecommunications services shall, in its annual report to the Commission, state its estimate for the coming year of the number of eligible subscribers who will receive low-income telephone assistance, the number of business and residential subscribers to be subject to the uniform charge, and its administration cost of the program. In addition, the provider shall report for the previous year as well as the historic monthly ~~amounts of~~ collections generated by the uniform charge, the monthly ~~amounts~~

~~of~~ revenue foregone due to the discount of the program, its monthly administration expenses and amounts— reimbursed from or remitted to the Low-Income Telephone Assistance Fund as managed by the State Treasurer. ~~However, providers of basic local exchange telecommunications services, having less than 500,000 subscribers, with an approved program, may report using an average cost to administer, with a minimum amount per local exchange carrier, and an amount per eligible subscriber access line, as determined by the Commission.~~ Providers of basic local exchange telecommunications services having more than 500,000 subscribers shall report program administrative fees based on actual costs. Providers having fewer than 500,000 subscribers shall report a Commission-approved administrative fee based on average cost to administer the program as shown in the provider's industry-standard cost documentation, or actual cost to administer as demonstrated through the provider's accounting documentation.

723-13-4.3 The State Treasurer shall forward to the Commission by April 1 of each calendar year an accounting of the transactions occurring in the Low-Income Telephone Assistance Fund.

723-13-4.4 The Commission by April 1, of each calendar year shall estimate its administrative expenses incurred under § 40-3.4-101, et seq., C.R.S.

723-13-4.5 The Commission, within 30 days of receipt of each report and after examining same, shall calculate the uniform charge based upon the undisputed amounts. Disputes concerning the amounts due for reimbursements from the fund, shall be resolved through the Commission's administrative hearing process.

RULE (4 CCR) 723-13-5. UNIFORM CHARGE.

723-13-5.1 The uniform charges imposed pursuant to §§ 40-3.4-108(1), and 40-15-502(3)(a), C.R.S., shall be billed to each subscriber of each provider of basic local exchange telecommunications services ~~with an approved low-income telephone assistance program based upon their number of access lines.~~

723-13-5.2 The uniform charge shall not be imposed on any state or local governmental body or on eligible subscribers.

723-13-5.3 A provider of basic local exchange telecommunications service may collect the uniform charge by a specific line item on subscriber's bills if provided for by tariff. ~~Absent an effective tariff providing for collection of the uniform charge by an alternative method, Alternatively,~~ the uniform charge shall be included in each subscriber's bill as part of the subscriber's base-basic exchange service rate provided that and the provider's the tariff shall indicates, through a footnote or other explanatory text, that the basic exchange service rate contains the uniform charge. ~~If the basic exchange service rate contains includes the uniform charge,~~ A market informational note shall be added to the bill, once a year, informing customers that the base-basic exchange service rate contains a Commission-approved (state the current monthly charge) monthly charge for the Low-Income Telephone Assistance Program.

723-13-5.4 Upon collecting the uniform charge, each provider may retain, from the total charges collected, an amount sufficient to reimburse such provider for its provision of low-income telephone assistance.

723-13-5.4.1 If the total collected is in excess of the amount sufficient to reimburse the provider, the provider shall by the 30th day following the end of each quarter (January 30, April 30, July 30, and October 30) remit the excess to the

Commission. To assist providers, the Commission may provide net contributors a form at least 30 days prior to the above due dates in order to accurately calculate the amounts to be remitted to the Commission. The Commission shall deposit such amount with the State Treasurer, who shall credit the same to the Low-Income Telephone Assistance Fund.

723-13-5.4.2 If the total collected is insufficient to reimburse the provider, the provider shall request reimbursement from the fund by providing the required information of Rule 4.2 in its annual report to the Commission. The Commission, after examining same, shall calculate the amount due for reimbursements from the ~~f~~Fund and request reimbursement from the State Treasurer, who shall debit the same to the Low-Income Telephone Assistance Fund.

723-13-5.5 The Department of Human Services shall file with the Commission reports detailing its costs in administering the ~~t~~Low-~~i~~Income ~~t~~Telephone ~~a~~Assistance ~~p~~Program in accordance with § 40-3.4-101, *et seq.*, C.R.S. The Commission shall request reimbursement of the approved expenses of the Department of Human Services from the State Treasurer, who shall remit that amount and shall debit the same from the Low-Income Telephone Assistance Fund.

RULE (4 CCR) 723-13-PART II

RULES APPLICABLE TO ELIGIBLE TELECOMMUNICATIONS CARRIERS

RULE (4 CCR) 723-13-6. OFFERING OF TOLL LIMITATION.

Eligible telecommunications Carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation, that service shall become part of the consumer's Lifeline service.

723-13-6.1 Lifeline support for providing toll limitation shall be provided from the federal Lifeline program.

RULE (4 CCR) 723-13-7. PROHIBITION OF DISCONNECTION.

Eligible Telecommunications Carriers may not disconnect Lifeline service for non-payment of toll charges.

723-13-7.1 The Commission may grant a waiver of this requirement if the local exchange carrier can demonstrate that:

723-13-7.1.1 It would incur substantial and unjustifiable costs in complying with this requirement;

723-13-7.1.2 It offers toll limitation to its qualifying low-income consumers without charge; and

723-13-7.1.3 Telephone subscribership among low-income consumers in the carrier's service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a "low-income consumer" is one with an income below the poverty level as defined by the Colorado Department of Human Services for a family of four residing in the state for which the carrier seeks the waiver. The carrier may reapply for the waiver.

RULE (4 CCR) 723-13-8. SERVICE DEPOSIT.

Eligible Telecommunications Carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

RULE (4 CCR) 723-13-9. FEDERAL REPORTING REQUIREMENTS.

Each carrier shall file information with the administrator of the federal lifeline program demonstrating that the carrier's Lifeline plan meets the criteria set forth in Subpart E, 47 C.F.R., Part 54 and stating the number of

qualifying low-income consumers and the amount of state assistance.

RULE (4 CCR) 723-13-10. INCORPORATION BY REFERENCE.

References in these Rules to "Part 54" refers to rules issued by the Federal Communications Commission and incorporated by reference in these Rules. Those rules may be found at 47 C.F.R. Part 54, issued as of ~~January 1, 1998~~ October 1, 2003. References to Part 54 do not include later amendments to or editions of this part. A certified copy of this part which has been incorporated by reference is maintained at the offices of the Colorado Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and is available for inspection during normal business hours. Certified copies of the incorporated rules shall be provided at cost upon request. The Director of the Public Utilities Commission, or his designee, will provide information regarding how the incorporated rules may be obtained or examined. These incorporated rules may be examined at any state publications depository library.

RULE (4 CCR) 723-13-11. WAIVER OR VARIANCE

The Commission may permit a variance from or waiver of any of these rules for good cause shown if it finds compliance to be impossible, impracticable, or unreasonable, if not otherwise contrary to law.