

Decision No. C09-1302

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-845T

IN THE MATTER OF THE PROPOSED RULES REGULATING FINING OF
TELECOMMUNICATIONS PROVIDERS, 4 CODE OF COLORADO REGULATIONS 723-2
UNDER HOUSE BILL 08-1227.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 23, 2009

Adopted Date: November 19, 2009

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2.

2. This NOPR proposes changes to the Commission's rules necessitated by the passage of House Bill 08-1227 (the bill).

3. The bill adds, *inter alia*, § 40-7-113.5 and § 40-7-116.5, C.R.S. The bill became effective on July 1, 2008.

4. The bill's amendment of Article 7 of Title 40 of the *Colorado Revised Statutes* applies to telecommunications utilities. Under the bill, the Commission was granted authority to issue civil penalties to certain public utility service providers including electric, gas, water, water and sewer, and telecommunications service providers.

5. The Commission's existing rules for telecommunications utilities were established in Docket No. 03R-524T. Various sections of these rules have been amended in Docket Nos. 05R-538T, 05R-527T, 05R-528T, 06R-316T, 05R-529T, and 06R-495T.

6. The basis and purpose of the proposed amendments is to revise the current telecommunications rules to add rules regarding fining of telecommunications utilities.

7. The statutory authority for the proposed rules is found in §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, 40-3-101, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-8.7-105(5), 40-7-113.5, and 40-7-116.5, C.R.S.

8. New rules have been added to establish the fining process and to list the finable rules.

9. Rule 2009 is added to define civil penalty, civil penalty assessment, civil penalty assessment notice, and public utility as used in the proposed fining rules.

10. Rule 2010 is added to identify regulated telecommunications utility violations, civil enforcement, and enhancement of civil penalties.

11. Rule 2895 is added to list the specific fineable rules.

12. Rules not specifically discussed in this NOPR do not constitute a portion of this NOPR. The Commission is not proposing any changes to the rules not specifically discussed in this NOPR.

13. The proposed amendments will be published in the December 10, 2009, edition of *The Colorado Register*. Additionally, interested persons may acquire a copy of the proposed amendments, either in hard-copy or electronic form, from the Commission's Records

Management Unit. The Records Management Unit may be contacted by phone or email at 303.894.2040 or Cheryl.Fisher@dora.state.co.us, respectively. The proposed amendments will also be available on the Commission's website:

www.dora.state.co.us/puc/rulemaking/RulemakingNotices.htm

14. Considering the limited scope of the instant NOPR, the Commission requests that interested persons limit their comments to the proposed rule changes only. The instant rulemaking should not be construed as an opportunity to reopen contentious issues resolved in preceding rulemakings.

15. An Administrative Law Judge (ALJ) will conduct a hearing on the proposed amendments and related issues at the below-stated time and place. Interested persons may submit written comments on the amendments, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than January 8, 2010. Reply comments should be submitted by January 22, 2010. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 10, 2009, edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: February 4, 2010
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The ALJ may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary. Interested persons may file written comments in this matter before hearing. The Commission prefers that such pre-filed comments be submitted in both paper and, when possible, electronic format no later than January 8, 2010. Reply comments should be submitted by January 22, 2010.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 19, 2009.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
ABSENT.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-2

PART 2

RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose of these rules is generally to: regulate jurisdictional telecommunications providers, services, and products; administer and enforce the telecommunications provisions of Title 40 of the Colorado Revised Statutes; and regulate telecommunications proceedings before the Commission. These rules address a wide variety of subject areas. Therefore, specific statements of Basis, Purpose, and Statutory Authority are found at the beginning of each subchapter of these rules.

The statutory authority for the promulgation of these rules is found at §§ 29-11-106(3); 39-32-104; 40-2-108; 40-3-101; 40-3-102; 40-3-103; 40-3-107; 40-3-110; 40-3.4-106; 40-4-101; [40-7-113.5\(2\)\(a\)](#); 40-15-101; 40-15-108(2); 40-15-109(3); 40-15-201; 40-15-203.5; 40-15-208(2)(a); 40-15-301; 40-15-302(1)(a) and (2); 40-15-302.5; 40-15-305; 40-15-404; 40-15-502(1), (3)(a), and (5)(b); 40-15-503; 40-17-103(2) and (3), C.R.S.

* * *

[indicates omission of unaffected rules]

[new rule follows]

CIVIL PENALTIES

2009. Definitions.

The following definitions apply to rules 2009, 2010, and 2895, unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Civil penalty" means any monetary penalty levied against a public utility because of violations of statutes, regulations, rules, or Commission decisions.

(b) "Civil penalty assessment" means the act of imposing a civil penalty against a public utility.

(c) "Civil penalty assessment notice" means the written document by which a public utility is notified of a violation and proposed civil penalty.

(d) "Public utility" means those public utilities defined in § 40-7-113.5-(1)(a), C.R.S.

2010. Regulated Telecommunications Utility Violations, Civil Enforcement, and Enhancement of Civil Penalties.

- (a) The Commission may impose a civil penalty in accordance with the requirements and contents contained in § 40-7-113.5, C.R.S., § 40-7-116.5, C.R.S., and paragraph 1302(b), 4 Code of Colorado Regulations 723-1, for finable offenses as specified in these rules.
- (b) Notwithstanding any provision in these rules to the contrary, the Commission may assess doubled or tripled civil penalties against any public utility, as provided by statute and this rule.
- (c) The Commission may assess any public utility a civil penalty containing doubled penalties if:
 - (I) the public utility engaged in prior conduct that resulted in the issuance of a prior civil penalty assessment notice;
 - (II) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct that was cited in a prior civil penalty assessment notice;
 - (III) the conduct for which doubled civil penalties are sought occurred within one year after conduct that resulted in the issuance of a civil penalty assessment notice;
 - (IV) the conduct for which doubled civil penalties are sought occurred after the public utility's receipt of a prior civil penalty assessment notice; and
 - (V) a prior civil penalty assessment notice resulted in the public utility's admission to the prior conduct or in a finding of liability related to the prior conduct.
- (d) The Commission may assess any public utility a civil penalty containing tripled penalties if:
 - (I) the public utility engaged in prior conduct that resulted in the issuance of two or more prior civil penalty assessment notices;
 - (II) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct that was cited in prior civil penalty assessment notices;
 - (III) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent prior instances of conduct cited in prior civil penalty assessment notices;
 - (IV) the conduct for which tripled civil penalties are sought occurred after the public utility's receipt of two or more prior civil penalty assessment notices; and
 - (V) the prior civil penalty assessment notices resulted in the public utility's admission to at least two instances of the prior conduct or in a finding of liability related to at least two instances of the prior conduct.
- (e) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the conduct for which tripled civil penalties are sought.
- (f) Nothing in this rule shall preclude the assessment of tripled penalties when doubled and tripled penalties are sought on the same civil penalty assessment notice.
- (g) The Commission shall not issue a decision on doubled or tripled penalties until after the effective date of the Commission decision upon which the single penalty was based.

- (h) If the respondent pays the doubled or tripled civil penalties prior to the effective date of the Commission decision upon which the doubled or tripled civil penalties are based, and such Commission decision finds the respondent not liable for the violation(s), on its own motion the Commission shall refund the appropriate amount of any overpayment. By way of example, if the respondent pays a doubled civil penalty and is later found to be not liable for the first violation upon which the doubled penalty is based, the Commission shall retain one half of the doubled civil penalty amount and refund the other half to the respondent. Likewise, for payment of the reduced amount provided in paragraph (i) of this rule, the Commission shall make an appropriate proportional refund.
- (i) The civil penalty assessment notice shall contain the maximum penalty amount provided by rule for each individual violation noted, with a separate provision for a reduced penalty of 50 percent of the maximum penalty amount if paid within ten days of receipt of the civil penalty assessment notice.
- (j) The civil penalty assessment notice shall contain the maximum penalty amount provided by the rule for each individual violation noted, and the amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S.
- (k) A penalty surcharge referred to in paragraph (j) of this rule shall equal to the percentage set by the Department of Regulatory Agencies on an annual basis. The surcharge shall not be included in the calculation of the statutory limits set in § 40-7-113.5(5), C.R.S.
- (l) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of issuing civil penalties.

200911. – 2099. [Reserved].

* * *

[indicates omission of unaffected rules]

[new rule follows]

2895. Regulated Telecommunications Utility Rule Violations, Civil Enforcement, and Civil Penalties.

A violation of the following rules may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limit set in § 40-7-113.5, C.R.S.

<u>Citation</u>	<u>Failure to Comply with Commission Rules Regarding:</u>
	<u>Failure to Follow a Commission Decision</u>
<u>Rule 1301(c) and 2004</u>	<u>Disputes and Informal Complaints</u>
<u>Rule 2005</u>	<u>Records and Record Retention</u>

<u>Rule 2006</u>	<u>Annual Reporting Requirements</u>
<u>Rule 2103</u>	<u>Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to Operate in a Service Territory</u>
<u>Rule 2104</u>	<u>Amending a Certificate of Public Necessity for Changes in Service Territory or Facilities</u>
<u>Rule 2105</u>	<u>Applications to Change Exchange Area Boundaries</u>
<u>Rule 2106</u>	<u>Declarations of Intent to Serve Within the Territory of a Rural Telecommunications Provider</u>
<u>Rule 2108</u>	<u>Discontinuance of Regulated Services</u>
<u>Rule 2109</u>	<u>Applications to Transfer or Encumber</u>
<u>Rule 2110</u>	<u>Toll Reseller Restrictions and Obligations</u>
<u>Rule 2122</u>	<u>Keeping a Current Tariff on File with the Commission</u>
<u>Rule 2122(b)</u>	<u>Filing a New or Changed Tariff with the Commission</u>
<u>Rule 2122(b)(X)(D)</u>	<u>Filing an Advice Letter to Implement a Tariff Change</u>
<u>Rule 2123</u>	<u>Price Lists and Transmittal Letters</u>
<u>Rule 2133(a) and (b)</u>	<u>Service Components and Requirements</u>
<u>Rule 2134</u>	<u>Process for Certification of Basic Emergency Service Providers</u>
<u>Rule 2135</u>	<u>Uniform System of Accounts, Cost Segregation and Collection</u>
<u>Rule 2136</u>	<u>Obligations of Basic Emergency Service Providers</u>
<u>Rule 2137</u>	<u>Obligations of ALI Database Providers</u>
<u>Rule 2138</u>	<u>Obligations of Basic Local Exchange Carriers</u>
<u>Rule 2139</u>	<u>Obligations of Resellers of Basic Local Exchange Service</u>
<u>Rule 2140</u>	<u>Obligations of Wireless Providers</u>
<u>Rule 2141</u>	<u>Obligations of Multi-line Telephone Systems</u>
<u>Rule 2142</u>	<u>Nondisclosure of Name/Number/Address Information</u>
<u>Rule 2143</u>	<u>Diverse Routing and Priority Service Restoration</u>

Rule 2144	Reports
Rule 2146	National Emergency Number Association (NENA) Data Standards
Rule 2164	Regulation of Non-optional Operator Services
Rule 2165	Requirements for Non-optional Operator Service Providers
Rule 2168	Access Codes of Non-Optional Operator Service Providers
Rule 2169	Access From Registered Equipment and Access to Common Carriers
Rule 2185	Obligations of Providers of Last Resort
Rule 2186	Relinquishment of Designation as Provider of Last Resort
Rule 2187	Eligible Telecommunications Carrier Designation
Rule 2202	Default Form of Regulation for ILECs
Rule 2203	Default Forms of Regulation for CLECs
Rule 2204	General Requirements
Rule 2205	Application for Alternative Form of Regulation
Rule 2206	Simplified Regulatory Treatment for Rural ILECs
Rule 2208(d)	Reclassification of a Part II Service to a Part III Service
Rule 2209(d) and (e)	Deregulation of Part III Emerging Competitive Services
Rule 2210	Deregulation of IntraLATA Interexchange Telecommunications Services
Rule 2212	Combined Applications
Rule 2302	Applications for Service, Customer Deposits, and Third Party Guarantees
Rule 2303(a-c)	Availability of Installation Payments to Customers
Rule 2303(a)	Discontinuance of Service
Rule 2303(b) and (d)	Notice of Discontinuation of Service
Rule 2303(e)	Restoration of Service
Rule 2304	Billing Information, Procedures, and Requirements
Rule 2304(b)	Meter and Billing Error Adjustments

Rule 2306	Public Information
Rule 2307	Directories for Basic Local Exchange Service
Rule 2308	Local Exchange Service Standards
Rule 2310	Line Extensions
Rule 2311	Changing Providers and Carrier Presubscription
§ 40-15-113, C.R.S.	Unauthorized Charge for Services
Rule 2312	IntraLATA Equal Access
Rule 2334	Construction and Maintenance Practices for Telecommunications Facilities
Rule 2335	Provision of Service During Maintenance or Emergencies
Rule 2336	Adequacy of Service
Rule 2337	Standard Performance Characteristics for Customer Access Lines
Rule 2338	Interexchange Trunk Connections
Rule 2339	PBX and Multiline Channels
Rule 2340	Network Call Completion Requirements
Rule 2341	Trouble Report Response, Interruptions and Curtailments of Service
Rule 2404	Uniform System of Accounts
Rule 2405	State-Interstate Separation of Costs
Rule 2406	Cost Segregation Standards
Rule 2407	Specific Cost Segregation Standards and Guidelines
Rule 2410	Reporting and Record Keeping
Rule 2411	Auditing
Rule 2413	Affiliate Transactions for Local Exchange Providers
Rule 2414	Affiliate Transactions for Interexchange Providers
Rule 2415	Separation of Colorado Intrastate Access Costs
Rule 2416	Intrastate Access Charge Elements

<u>Rule 2502</u>	<u>Interconnection</u>
<u>Rule 2503</u>	<u>Compensation for Terminating Local Traffic</u>
<u>Rule 2504</u>	<u>Other Intercompany Arrangements</u>
<u>Rule 2505</u>	<u>Unbundling</u>
<u>Rule 2506</u>	<u>Process and Imputation</u>
<u>Rule 2507</u>	<u>Exemption for Rural Telephone Companies</u>
<u>Rule 2533</u>	<u>Submission of Agreement and Amendments for Approval</u>
<u>Rule 2534</u>	<u>Approval of Interconnection Agreements and Amendments to Interconnection Agreements</u>
<u>Rule 2582</u>	<u>Regulation of Facilities-Based Telecommunications Providers</u>
<u>Rule 2583</u>	<u>Service Quality</u>
<u>Rule 2584</u>	<u>Confidentiality</u>
<u>Rule 2585</u>	<u>Tariff Filings</u>
<u>Rule 2586</u>	<u>Negotiation, Mediation and Arbitration</u>
<u>Rule 2587</u>	<u>Regulation of Resellers</u>
<u>Rule 2702</u>	<u>Assignment of Telephone Numbers in Colorado</u>
<u>Rule 2703</u>	<u>Variance of the Rules Regarding Assignments of Telephone Numbers in Colorado</u>
<u>Rule 2723</u>	<u>Local Number Portability</u>
<u>Rule 2724</u>	<u>Long-Term Service Provider Number Portability</u>
<u>Rule 2741</u>	<u>Abbreviated Dialing Codes</u>
<u>Rule 2803</u>	<u>LITAP Plan Implementation</u>
<u>Rule 2804(b)</u>	<u>LITAP Fund Administration</u>
<u>Rule 2805</u>	<u>Timely or Completely Filing or Making Appropriate Payments to the LITAP Fund</u>
<u>Rule 2806</u>	<u>Prohibition of Disconnection of LITAP Customers</u>
<u>Rule 2807</u>	<u>Offering of Toll Limitation for LITAP</u>

Rule 2808	LITAP Service Deposit
Rule 2809	LITAP Federal Reporting Requirements
Rule 2823	Conformity with the Federal Americans with Disabilities Act of 1990
Rule 2824	Conformity with the Commission's Quality of Service Rules
Rule 2827	Timely or Completely Filing or Making Appropriate Payments to the TRS Fund
Rule 2846	Timely or Completely Filing or Making Appropriate Payments to the CHCSM Fund
Rule 2894	Local Exchange Carriers' Responsibilities – Notification of Designated Agent

~~2895~~[2896](#). – 2899. [Reserved].

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[indicates omission of unaffected rules]