

Decision No. C13-0317

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-862T

IN THE MATTER OF THE PROPOSED RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF COLORADO REGULATIONS 723-2.

**DECISION DENYING SECOND REQUEST FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: March 13, 2013

Adopted Date: March 13, 2013

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of CenturyLink's Second Request for Reconsideration, Reargument, or Rehearing, filed March 4, 2013 (Second Request for RRR). The Second Request for RRR was filed on behalf of Qwest Corporation, doing business as CenturyLink QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. (collectively, CenturyLink). The Second Request for RRR challenges the Commission's ruling in Decision No. C13-0203, issued February 12, 2013, to retain Part 2 regulation for white page directory listing services, even in areas of effective competition for basic local exchange services.¹

2. In our initial Order Adopting Rules, Decision No. C12-1442, issued December 17, 2012, the Commission addressed whether, in areas in which effective competition exists for

¹ Parts of CenturyLink's Second Request for RRR reference Commission Decision No. C12-1442 as the source for the Commission's ruling to retain white page directory listing services in Part 2 in ECAs. See Second Request for RRR, pp. 1, 2. We understand and interpret CenturyLink's Second Request for RRR as challenging Decision No. C13-0203, issued February 12, 2013.

basic local exchange services (ECAs), other Part 2 services listed in § 40-15-201(2), C.R.S., also should be reclassified and subject to Part 3, as described in proposed Rule 2215(a).² We ruled that Part 2 services listed in § 40-15-201(2) linked closely to the offering and provisioning of basic services also should be reclassified as Part 3 services in ECAs. White pages directory listing was identified as one of those services.³

3. On January 14, 2013, Staff of the Commission (Staff) filed its Request for Reconsideration, Reargument or Rehearing (RRR) of Decision No. C12-1442 asking the Commission to reconsider reclassification of white page directory listings as a Part 3 service in ECAs.⁴

4. In Decision No. C13-0203, we described “white page directory listings” as identifying a customer’s name, address, and telephone number.⁵ We stated that the ability to list this information in the white page directory is an essential service for customers and that our rules require local exchange carriers (LECs) to publish white page listings.⁶ Further, we noted that our rules require, regardless of ECA designations, all basic local exchange carriers to furnish the information comprising white page directory listings to the Automatic Location Identification (ALI) database providers for the provision of 9-1-1 services and emergency notification services.⁷ Because white page directory listings correlate with emergency services and are essential, we ordered that “our rules should state that ‘white pages directory listings’ remain under Part 2, even in ECA designated areas, and that LECs in ECAs are obligated under

² Proposed Rule 2215(a) was renumbered in our final rules as Rule 2214(a).

³ Order Adopting Rules, Decision No. C12-1442, issued December 17, 2012, at ¶ 37.

⁴ Staff’s Request for Reconsideration, Reargument or Rehearing, at pp. 3, 10-11.

⁵ Decision Denying Request for Waiver; Granting, in Part, and Denying, in Part, Rehearing, Reargument, or Reconsideration; and Adopting Revised Rules; Decision No. C13-0203, issued February 12, 2013; at ¶ 27.

⁶ *Id.*, at ¶ 28.

⁷ *Id.*

Rule 2307 to publish and distribute directories.”⁸ We therefore granted Staff’s Request for RRR on this matter and revised the rules accordingly.

5. In its Second Request for RRR, CenturyLink argues that maintaining Part 2 regulation over any aspect of telephone service, including white page listings, is discriminatory and inconsistent with Commission policy. CenturyLink contends that the alternative providers to be considered in the ECA dockets will include wireless and cable providers, which CenturyLink argues are not regulated by the Commission and not required to comply with white page listing rules. CenturyLink states that thousands of customers choose wireless or cable telephony providers every year even though those providers are not required to offer traditional white page listings. CenturyLink opines that white page directory listing is not an essential service associated with local telephone service, but rather a “competitive feature” that carriers may offer to differentiate their service. In conclusion, CenturyLink claims that providers can market white page directory listings as a competitive advantage, and that the market, not Part 2 regulation, should determine whether listings have value and are essential.⁹

6. We deny CenturyLink’s Second Request for RRR. We disagree with CenturyLink’s threshold premise that maintaining regulation over “any” aspect of telephone service is discriminatory and inconsistent with Commission policy. Basic emergency service is an aspect of telephone service and is enumerated as a Part 2 service in § 40-15-201(2), C.R.S.; and it is Commission policy and consistent with the public interest to ensure the public’s ready access to emergency services by retaining Part 2 authority over them, even in ECAs. As we found in Decision No. C13-0203, the information constituting white page directory listing—a customer’s name, address, and telephone number—is correlated to emergency services

⁸ *Id.*

⁹ CenturyLink’s Second Request for RRR, at pp. 2-3.

due to its necessity to the Automatic Location Identification (ALI) database providers for the provision of 9-1-1 services and emergency notification services. Emergency and related services are more than “competitive features.” They are vital to the public interest, and market forces cannot ensure the availability of basic emergency services, including 9-1-1 services, in time of need.

7. We also disagree with CenturyLink’s characterization of white page directory listing as a competitive feature of basic services that differentiates providers’ offerings. Sub-sections 40-15-201(2)(a) and (d), C.R.S., itemize basic service separately from white page directory listing; accordingly, the Legislature confers a regulatory significance upon white page directory listing that is independent of basic service. We decided in our Order Adopting Rules that some of the services listed in § 40-15-201(2), C.R.S., such as dual tone multifrequency signaling, were closely aligned with basic services, and determinations of effective competition of basic service should apply to those services as well. We further determined in that Order that basic emergency services have a separate public interest importance and should not be reclassified based on a showing of effective competition for basic service. We applied this same reasoning in Decision C13-0203 for white page directory listing. For the Commission to make findings based on the considerations set forth in § 40-15-207, C.R.S., to reclassify white page listings, additional or alternative information than that considered for basic services may be appropriate. Absent a specialized showing that the elements of § 40-15-207, C.R.S., justify a determination of effective competition for such services, white page listings will not be reclassified as a Part 3 service in ECAs.

8. New Rule 2213(d)(III) authorizes the Commission to make additional findings of effective competition and reclassify telecommunications services other than basic service in the relevant geographic area. Thus, a provider may join white page directory listing as a service to be considered under § 40-15-207, C.R.S., along with basic service in an ECA proceeding.

II. ORDER

A. The Commission Orders That:

1. CenturyLink's Second Request for Rehearing, Reargument, or Reconsideration filed March 4, 2013, by Qwest Corporation dba Century Link QC, El Paso County Telephone Company, Century Tel of Colorado, Inc., and Century Tel of Eagle, Inc., is denied.

2. The Commission affirms that the rules adopted in Decision No. C13-0203 shall be effective 20 days after publication in the Colorado Register by the Office of 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 the 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 the Colorado General Assembly if it is in session at the time this Decision becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 13, 2013.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,

Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners