

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0222T

IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND PROCEDURE RELATING TO:
1) REQUIRED CONTRIBUTIONS TO THE FIXED UTILITY FUND, THE COLORADO HIGH COST SUPPORT MECHANISM, THE DISABLED TELEPHONE USERS FUND, AND THE LOW INCOME TELEPHONE ASSISTANCE FUND; 2) FILING OF ADVICE LETTERS FOR COMMISSION ORDERED CHANGES IN SURCHARGES; AND 3) COLLECTION AND REMITTANCE OF EMERGENCY TELEPHONE CHARGES TO THE APPROPRIATE GOVERNING BODIES AGAINST ZIPPYTECH INCORPORATED.

**FORMAL COMPLAINT
AND NOTICE OF HEARING**

Mailed Date: March 12, 2014
Adopted Date: March 12, 2014

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. This matter comes before the Colorado Public Utilities Commission (Commission or PUC) to determine whether to initiate a formal complaint proceeding regarding ZippyTech Inc. (ZippyTech) for several telecommunications carriers for violation of Rule 4 *Code of Colorado Regulations* (CCR) 723-2-2122 of the Commission's Rules Regulating Telecommunications Providers, Services, and Products. ZippyTech provides competitive local exchange telecommunications services to Colorado consumers.

2. ZippyTech may purchase assorted telecommunications services on a wholesale basis from the various facilities-based carriers listed on Attachment A to this Decision which connect ZippyTech with the public switched network.

3. Providers of competitive local exchange services are required, pursuant to § 40-2-111, C.R.S., to pay fees to the Department of Revenue (DOR) based on intrastate utility business of the preceding calendar year, on DOR form DR525.

4. The Staff of the Colorado Public Utilities Commission (Staff) has investigated ZippyTech's compliance with identifying regulated intrastate revenue on their DR525 and PUC annual report. Staff's investigation reflects that ZippyTech may not have identified regulated intrastate revenue correctly and may be in violation of not filing correct intrastate revenue to the DOR and the PUC and also of not paying fixed utility fees.¹

5. Staff has also investigated ZippyTech's compliance with tariff surcharge rate(s) compliance requirements and remittance of surcharge collections. Staff's investigation reflects that ZippyTech's tariff is not in compliance with all of the required surcharges and that they may not have been remitting required surcharge collections for the Colorado High Cost Support Mechanism (CHCSM), Telecommunications Relay Service (TRS), and Low Income Telephone Assistance Program (LITAP).²

6. Staff has also investigated ZippyTech's compliance with collection and remittance of emergency telephone charges to appropriate governing agencies responsible for E911.³

7. Sections 40-15-502(3), (4), and (5), C.R.S., and 4 CCR 723-2-2846(a), 4 CCR 723-2-2827(a), and 4 CCR 723-2-2805 require providers of competitive local exchange services to contribute to financial support for the CHCSM, TRS, and LITAP.

¹ Section 40-2-111, C.R.S., requires each public utility to pay fees (fixed utility fees) to the DOR based on intrastate utility business of the preceding calendar year.

² Although LITAP tariffs were eliminated on July 1, 2013 per Proceeding No. 91M-314T, Decision No. C13-0395, ZippyTech was responsible to contribute to this fund prior to its elimination.

³ Sections 29-11-102 and 29-11-103, C.R.S., require each service supplier to collect and remit the emergency telephone charge to the appropriate governing body.

8. Providers of competitive local exchange services are also required, pursuant to Rule 4 CCR 723-2-2122, to update their tariffs with any changes in program(s) (e.g., CHCSM, TRS, and LITAP) surcharges.

9. Accordingly, local exchange service tariffs should have been updated with the revised program surcharges no later than the effective date(s) of each related order and corresponding decision. Those proceedings, decisions, and dates for each program are:

- a) TRS, Proceeding No. 10M-518T, Decision No. C10-0768, effective 10/1/2010, \$.20/access line;
- b) TRS, Proceeding No. 13M-1199T, Decision No. C13-1413, effective 1/1/2014, \$.05/access line;
- c) LITAP, Proceeding No. 91M-314T, Decision No. C12-0098, effective 4/1/2012, \$.07/access line;⁴
- d) LITAP, Proceeding No. 91M-314T, Decision No. C13-0395, effective 5/1/2013, Eliminate Program;
- e) CHCSM, 98M-236T, Decision No. C11-0450, effective 7/1/2011, 2.9%; and
- f) CHCSM, 98M-236T, Decision No. C13-0151, effective 4/1/2013, 2.6%.

10. ZippyTech, as of the date of this Decision, has not updated their local exchange service tariffs to reflect the correct surcharge rate(s).

11. On February 6, 2014, at the request of the Commission, Director Doug Dean sent a letter to ZippyTech. The letter informed ZippyTech that Staff was considering initiating a formal complaint proceeding against the company for failing to: 1) correctly report their regulated intrastate revenue; 2) pay fixed utility fees; 3) remit CHCSM, LITAP, and TRS surcharges; 4) collect and remit emergency telephone charges to the appropriate governing

⁴ Although LITAP tariffs were eliminated July 1, 2013 per Proceeding No. 91M-314T, Decision No. C13-0395, ZippyTech was responsible to contribute to this fund prior to its elimination

agencies responsible for E911; and 5) updating their tariffs to reflect current surcharge rates. ZippyTech was given 20 days to comply with the reporting requirements.

12. Staff has reviewed its records and determined that as of March 12, 2014, ZippyTech had not remedied any of these conditions.

B. Discussion

13. Section 40-2-111, C.R.S., requires providers of competitive local exchange services to pay fees to the DOR based on intrastate utility business of the preceding calendar year.

14. Sections 40-15-502(3), (4), and (5), C.R.S., requires companies providing local exchange services to contribute to financial support for the CHCSM, TRS and LITAP. Section 40-3-103, C.R.S., requires all utilities to file their rate schedules and § 40-3-104, C.R.S., requires utilities to provide notice of changes in rates.

15. TRS Decision No. C10-0768 identified the new surcharge rate of \$0.20 with an effective date of October 1, 2010.

16. TRS Decision No. C13-1413 required modified tariffs to be filed on not less than one day's notice with an effective date of January 1, 2014.

17. LITAP Decision No. C12-0098 required modified tariffs to be filed on not less than one day's notice, on or before March 29, 2012 with an effective date of April 1, 2012.

18. LITAP Decision No. C13-0395 required modified tariffs to be filed on not less than one day's notice, on or before April 29, 2013 with an effective date of May 1, 2013.

19. CHCSM Decision No. C11-0450 required modified tariffs to be filed on not less than one day's notice, to be effective July 1, 2011.

20. CHCSM Decision No. C13-0151 required modified tariffs to be filed on not less than one day's notice, to be effective April 1, 2013.

21. The Commission finds that ZippyTech may have failed to comply with one or all of the requirements enumerated above. Accordingly, sufficient cause exists to hold a hearing to determine the facts of the matter, to hear material arguments, to receive evidence and testimony, and to determine what order or requirement, if any, shall be imposed by the Commission.

22. If the Commission determines that it is appropriate to do so, the Commission may issue a decision including but not limited to: (a) an order to cease and desist providing of local exchange service; (b) an order that amends or revokes, wholly or in part, the provider's Certificate of Public Convenience and Necessity (CPCN) to provide local exchange service; (c) an order that requires the underlying facilities-based carriers listed on Attachment A to disconnect the Company from the public switched network; (d) an order that levies fines; (e) an order that contains a combination of the forgoing remedial actions; (f) notification to the North American Numbering Plan Administrator of loss of CPCN; and/or (g) an order that requires any other corrective or remedial action which the Commission deems appropriate.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, ZippyTech, Inc. (ZippyTech) shall appear before the Commission to address why the Commission should not take action and enter an order including but not be limited to: an order to cease and desist; an order that amends or revokes the provider's Certificate of Public Convenience and Necessity (CPCN), including the cancellation of applicable tariffs; an order that restricts ZippyTech's ability to connect with facilities-based local exchange service providers or long distance providers; an order that levies fines; an order

that contains a combination of the forgoing remedial actions; notification to the North American Numbering Plan Administrator of loss of CPCN; notification to appropriate governing agencies responsible for E911 for non-compliance with collection and remittance of emergency telephone charges; and/or an order that requires any other corrective or remedial action which the Commission deems appropriate.

2. Those entities listed on Attachment A, the underlying facilities-based carriers, are joined as necessary parties. In the event that the Commission orders entities listed on Attachment A to disconnect ZippyTech from the public switched telephone network, all entities listed on Attachment A shall perform the Commission-ordered disconnect not prior to 40 days from the effective date of the Commission's final Decision, but no later than 60 days from the effective date of the Decision. All Attachment A entities that effect a disconnection of ZippyTech shall provide to the Commission, within 14 days after the disconnect, a notice and affidavit stating that they have disconnected ZippyTech from the public switched telephone network and the date of disconnection. An Attachment A party may petition for dismissal from this proceeding if it is not an underlying provider for ZippyTech.

3. PROCEEDING No. 14C-0222T is set for hearing before an Administrative Law Judge:

DATE: April 21, 2014
TIME: 9:00 a.m.
PLACE: Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

4. If ZippyTech remediates these complaints prior to the hearing date, the Commission may dismiss them from the proceeding.

5. The Staff of the Public Utilities Commission shall file, at least 30 days before hearing: (1) two copies of a list containing the name, address, and title of each of its witnesses; and (2) two copies of each of the exhibits which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

6. ZippyTech shall satisfy this Complaint or file its answer within 20 days of service of this Decision. ZippyTech shall file, at least 20 days before hearing: (1) two copies of a list containing the name, address, and title of each of its witnesses; and (2) two copies of each of the exhibits, which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

7. No witness shall be permitted to testify nor shall any document be received in evidence, except in rebuttal, unless filed and served as provided in this Decision.

8. If Staff of the Public Utilities Commission or ZippyTech fails to meet the above requirements, the Commission may dismiss the proceeding or any defense, upon motion filed by any other party, unless good cause for non-filing is shown. No motion for continuance shall be granted if filed within 20 days before the first day of the hearing, except for good cause shown.

9. No exception to the procedure in the Decision shall be made except upon timely motion showing good cause.

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 12, 2014.**

(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

PAMELA J. PATTON

GLENN A. VAAD

Commissioners