

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13M-0422T

IN THE MATTER OF COMMISSION CONSIDERATION OF EFFECTIVE COMPETITION
AREAS AND THE CLASSIFICATION OF BASIC LOCAL EXCHANGE SERVICE
PURSUANT TO 4 CCR 723-1-2213.

DECISION DENYING EXCEPTIONS

Mailed Date: April 28, 2014
Adopted Date: April 23, 2014

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I. BY THE COMMISSION

A. Statement

1. On March 13, 2014, AARP filed exceptions to Recommended Decision No. R14-0190 (Recommended Decision). AARP takes exception to four points and requests the Commission make the following determinations: (1) AARP substantiated its assertions regarding choices of consumers over the age of 65 through testimony and evidence presented;

(2) comparable substitutes for basic wireline service do not exist in the areas at issue; (3) the Commission should continue oversight of consumer complaints in effective competition areas (ECAs); and (4) the record does not support the conclusion that benefits result from reduced regulation. We deny the exceptions filed by AARP.

B. Background

2. The Commission opened this proceeding pursuant to Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations*, 723-2, approved in Proceeding No. 12R-862T (Basic Service Competition Rules).¹ The Commission applies these rules to determine whether certain wire center serving areas² are effectively competitive for basic service pursuant to § 40-15-207, C.R.S. (Section 207).³ Areas found to satisfy the criteria of Section 207 and the Basic Service Competition Rules are designated ECAs.

3. By Decision No. C13-1279-I mailed October 10, 2013, the Commission assigned Chairman Joshua Epel as the Hearing Commissioner. This proceeding examines 56 wire centers in which Commission Staff (Staff) identified five or more facilities-based competitive telecommunications providers. The geographic range of these 56 wire centers is primarily the urban corridor from Ft. Collins to Pueblo. With the exception of AARP, parties generally supported classification of the 56 wire centers as ECAs.

4. On January 7, 2014, the Hearing Commissioner held a hearing focused on two specific issues raised by AARP, which AARP again raises within its exceptions: (1) whether wireless services are substitutes for basic telephone service; and (2) whether bundled, packaged,

¹ Decision No. C13-0522, mailed on May 6, 2013.

² “Wire center serving area” and “wire center” are used interchangeably for purposes of this Decision.

³ Reference to subsections is similarly abbreviated herein; *e.g.*, § 40-15-207(1)(a), C.R.S., is abbreviated as Section 207(1)(a).

and stand-alone pricing for telecommunications services are comparable, and whether reclassifying basic services on, at least in part, bundled and packaged offerings promotes the public interest.⁴

5. On February 21, 2014, the Hearing Commissioner issued the Recommended Decision, finding effective competition for basic service in each of the 56 wire centers. When addressing the issues raised by AARP at the January 7, 2014, hearing, the Hearing Commissioner found that, for the 56 wire centers: (1) wireless services are available as substitutes for basic telephone services;⁵ and (2) bundled, packaged, and stand-alone pricing for telecommunications services are comparable.⁶ The Hearing Commissioner determined it was in the public interest to reclassify basic service as a part 3 service in the 56 wire centers.⁷

6. On March 13, 2014, AARP filed exceptions to the Recommended Decision. On March 27, 2014, Staff and Qwest Corporation, doing business as CenturyLink QC (CenturyLink), filed responses requesting the Commission deny all exceptions.

C. AARP's Exceptions

1. "Unsubstantiated" Assumptions

7. AARP's first exception focuses on the following statement in the Recommended Decision:

⁴ See Recommended Decision, ¶ 16 (citing Decision No. R13-1572-I, ¶ 6).

⁵ See Recommended Decision, ¶¶ 31-32.

⁶ See Recommended Decision, ¶¶ 36-41.

⁷ See Recommended Decision, ¶¶ 52-55.

While *AARP makes an unsubstantiated assumption that a segment of the population may be more or less likely to make certain purchasing choices*, the preference of any demographic group is not evidence that the market lacks the availability of comparable functionality, rates, terms, and conditions offered from numerous providers.⁸

8. AARP requests modification of the Recommended Decision to incorporate AARP's contention that consumers 65 and older rely on wireline service more than other consumer groups. AARP states it relied on Center for Disease Control Report data, which the Hearing Commissioner also used to support the finding that customers are choosing wireless alternatives in lieu of wireline basic service. AARP requests the Commission to recognize the decreased likelihood older consumers would migrate away from wireline to wireless services and apply that fact to the policy issues in this proceeding, such as whether the Commission should retain complaint jurisdiction over CenturyLink's basic service.⁹

9. In Response, CenturyLink contends the use of the word "unsubstantiated" in the context of paragraph no. 30 to the Recommended Decision is unimportant in the determination of the number and characteristics of alternative providers offering service in the 56 wire centers. The statement does not affect the ultimate determination of seniors' access to the same functionality, rates, terms, and conditions offered from multiple providers to all consumers in these wire centers. CenturyLink notes "[a]ll consumers benefit from competition in the market as a whole, even if individual consumers or groups prefer one provider (or technology) over another."¹⁰

⁸ Recommended Decision, ¶ 30 (emphasis added).

⁹ AARP Exceptions, at 4.

¹⁰ CenturyLink Response, at 2.

10. Staff states in its response that AARP has not contested the availability of telecommunications choices to the 65 and over demographic and states the Hearing Commissioner was legally and factually correct when he wrote, “[t]he preferences of any demographic group is not evidence that the market lacks the availability of comparable functionality, rates, terms, and conditions offered from numerous providers.”¹¹ Additionally, Staff notes the continuing year-to-year increase in the percentage of wireless-only households and suggests that the “65+” demographic is not static.

11. We agree with CenturyLink and Staff. The characterization of AARP’s assumptions as “unsubstantiated” does not affect the conclusion reached by the Hearing Commissioner. We find, in this context, the purpose of the sentence’s structure and wording is to render AARP’s position irrelevant to the issue of whether reasonable alternatives for basic service are available to all customers. Even if AARP had evidentiary support for its position, the preference of a group of consumers to choose one of the alternatives for basic service does nothing to alter the Hearing Commissioner’s finding of the availability of reasonable alternatives for all population segments. The Recommended Decision correctly applied this finding to the standards and criteria under Section 207.¹² The exception requesting to revise the Recommended Decision and include findings specific to consumers over 65 is denied.

¹¹ Staff Response, at 5.

¹² As emphasized in the Recommended Decision, the Commission reserves judgment on fact-specific concerns for other wire centers raised in future proceedings, including without limitation, demographic, socio-economic, and other considerations relevant to the criteria in Section 207 and our rules. *See* Recommended Decision, ¶¶ 56 and 57 (stating, in part, “parties will raise different facts and issues, particularly for rural and other geographic areas of the state, which are not applicable to the instant determinations and findings”).

2. Comparable Alternatives

12. In its second request, AARP states the record fails to show the accessibility of reasonable basic service alternatives for older consumers. Paragraph no. 36 of the Recommended Decision cites Section 207(1)(b)(III) and its use of “*comparable*” to describe rates, terms, and conditions, and this section “does not require that *identical* rates, terms, and conditions be offered.” (emphasis in original) AARP takes exception to the implication that AARP interpreted Section 207 as requiring identical substitutes to support a finding of effective competition; however, AARP does maintain substitutes must be reasonably comparable. AARP claims that fixed wireless service, which it characterizes as the only alternative priced lower than CenturyLink basic service, is not comparable because it cannot accommodate medical alert and security systems. AARP also contends that fixed wireless service “could well lead to consumer complaints,” which would not be subject to Commission jurisdiction.¹³

13. In Response, CenturyLink states that AARP inappropriately focuses on fixed wireless service while ignoring mobile wireless and cable telephony, all of which are functionally equivalent and reasonably comparable to basic landline service. CenturyLink also points to AARP’s marketing materials in which AARP members are encouraged to purchase cellular service and discontinue their landlines.¹⁴

14. Staff responds that a number of available and comparably priced alternatives support medical and security alert services.¹⁵ Staff also notes that neither the statutes nor rules

¹³ AARP Exceptions, at 5-6.

¹⁴ See Hearing Exhibits 19 and 20.

¹⁵ Staff Response, at 10-12 (citing AARP Witness Baldwin Answer Testimony (Ex. 6) at 39:5-6; Staff Witness Sigalla Direct Testimony (Ex. 3) at 8:5-8, 8:9-11; Staff Witness Sigalla Direct Testimony (Ex. 4 at 4:4-9; Verizon Statement of Position, at 2; CenturyLink Witness Brigham Answer Testimony (Ex. 11) at 14 and 31; Verizon Witness Price Answer Testimony (Ex. 13) at 16:11-17).

require the Commission to consider the preferences of older consumers to the exclusion of other consumers.

15. We agree that the record includes ample evidence that there are multiple comparable service offerings available in the 56 wire centers and that consumers continue to purchase these alternative service offerings. Even if security and medical alert functionality were part of the definition of basic services at issue here, the record shows alternatives offerings support the security and medical alert services in addition to voice. The statute requires the Commission to consider the *ability* of consumers to obtain basic services from other providers on *comparable* terms; it does not preclude a finding of effective competition if a segment of the population may not prefer one of the available alternatives.¹⁶

16. Further, when declining to rule in favor of AARP's arguments, the Hearing Commissioner stated "nothing presented in this proceeding indicates that a reclassification of basic service in these 56 wire center serving areas reduces the ability of customers to continue to obtain standalone basic service."¹⁷ As the Hearing Commissioner stated in his consideration of the public interest,¹⁸ reclassification of basic services to part 3 regulation does not result in the discontinuance of basic service by designated providers of last resort.

3. Consumer Complaints in ECAs

17. AARP contends the Commission should not "unnecessarily and prematurely abandon[ing] its regulatory oversight of consumer complaints" in ECAs.¹⁹ It argues that, even in areas deemed ECAs, the Commission should retain complaint jurisdiction. AARP contends that

¹⁶ See, § 40-15-207(1)(b)(III), C.R.S.

¹⁷ Recommended Decision, ¶ 40.

¹⁸ Recommended Decision, ¶¶ 49-50, 53.

¹⁹ AARP Exceptions, at 6.

the Hearing Commissioner incorrectly rejected its arguments when he found that this issue had been determined in the recent rulemaking, Proceeding No. 12R-862T, and should not be revised in this proceeding.²⁰

18. In Response, CenturyLink agrees with the Hearing Commissioner that this issue was considered by the Commission and addressed in Rulemaking Proceeding No. 12R-862T. Staff states that AARP's request that the Commission establish complaint jurisdiction in ECAs exceeds the scope of this proceeding; the issue was not included in the Commission's original directives when opening this proceeding and was determined in Proceeding No. 12R-862T. Furthermore, Staff notes that important consumer protections do continue in ECAs, including provider of last resort obligations.

19. We deny AARP on this exception because this issue was addressed in the Rulemaking Proceeding, 12R-862T, and is beyond the scope of this proceeding. Although regulatory burdens are lessened in ECAs, part 3 regulation of basic service within these areas continues to include consumer protections, which the Commission considered and adopted in the rulemaking.

20. Further, if a consumer complains about an aspect of a reclassified service not regulated pursuant to part 3, Commission assertion of jurisdiction to resolve the complaint and order remedial action would have the practical effect of regulating an unregulated issue. The Commission retains formal complaint jurisdiction over basic service for only the limited matters to be regulated under part 3 and our rules; AARP's request for the Commission to retain jurisdiction to resolve formal complaints about issues not regulated under part 3 classification

²⁰ See Recommended Decision, ¶ 60.

undermines the legislative intent to reduce regulation over service providers in areas of effective competition.

4. Benefits of Reduced Regulation

21. In AARP's fourth exception it asserts the record lacks evidence to support that benefits will result from reduced regulatory oversight. CenturyLink responds that Staff Witness Fiona Sigalla's pre-filed testimony explained "at length how decreasing regulation in competitive markets is beneficial, and how retaining regulation over only one or a few market participants in such markets is counterproductive."²¹ Staff cites written and oral testimony noting the benefits to consumers of reduced regulation.²² Staff also references AARP's witness testimony, which stated, "[i]n theory, the presence of effective competition should cause prices to decline and/or the quality of service to improve."²³

22. We agree with CenturyLink and Staff and deny AARP's exception on this point. The record evidence supports the conclusion that consumers would benefit from reduced regulation, including, but not limited to, the potential for reduced prices, increased competition, and reduced regulatory burden and costs on providers. The exceptions filed by AARP to the Recommended Decision are denied.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed by AARP to Decision No. R14-0190 are denied consistent with the discussion above.

²¹ CenturyLink Response, at 4.

²² Staff Response, at 10-12.

²³ AARP Witness Baldwin Answer Testimony (Ex. 6) at p. 39:5-6.

2. The 20-day period stated in § 40-6-114(1), C.R.S., within which the parties may file applications for rehearing, reargument, or reconsideration, begins on the first day following the mailed date of this Decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 23, 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