

CONDITIONS FOR AUTHORITY

1. Pursuant to § 40-15-503.5, C.R.S., Talk America Services, LLC (TAS) shall maintain a bond or letter of credit for a period of three years from the date that its initial tariff to provide regulated telecommunications service to any customer in Colorado becomes effective, which shall occur after the certificate of public convenience and necessity (CPCN) becomes effective. Concurrent with the filing of an Advice Letter and initial tariff to provide telecommunications services in Colorado, TAS shall file with the Commission, as a separate filing, a verified statement signed by an officer of TAS, attaching the original and two copies of the bond or letter of credit to the verified statement. The beneficiary of the bond or letter of credit shall be the Colorado Public Utilities Commission.
2. Initially, the bond or letter of credit shall be in the amount of \$60,000, which will be the minimum amount required for the duration of the financial assurance requirement. The formula used to calculate the amount of the bond is found in Attachment AA.
3. The issuer of a bond shall be rated “Secure” by A.M. Best Company, Inc.
4. TAS shall have 30 calendar days from the date it can claim 2,000 revenue producing lines¹ in which to recalculate the amount of the financial assurance required and shall file a report with the Commission clearly showing the number of revenue producing lines and the recalculated amount of the financial assurance required, using the same formula used for determining the initial amount of the bond or letter of credit, attached as Attachment AA.

¹ The term “revenue producing lines” shall mean lines that have been activated and for which customers are being billed. In the event TAS sells systems that serve multiple lines, “revenue producing lines” will be calculated using Federal Communications Commission Form 477, “Instructions for the Local Competition and Broadband Reporting Form.”

Within 30 calendar days of the day after the 30-day report period set forth above has expired, an officer of TAS shall file with the Commission, a verified statement that the bond or letter of credit has been increased to the required amount, clearly identifying the new amount and the new term of the instrument and attaching the original and two copies of the bond or letter of credit to the verified statement. Once TAS has increased the amount of its bond to the obligation for 2,000 lines, it will not need to increase its obligation until the number of access lines increases to the level where the TAS financial assurance obligation is 20 percent or higher than the amount of the existing bond or letter of credit.

5. TAS shall file a report with the Commission no later than December 31st of each year the bond is required, beginning in the year that it offers regulated telecommunications services to its customers under its effective tariff. This report shall include:

(a) the total number of TAS revenue producing lines providing regulated telecommunications services to end user customers in Colorado for the six months preceding the date of the report;

(b) any change in the number of TAS revenue producing lines providing regulated telecommunications services to end user customers in Colorado for the six months preceding the date of the report;

(c) the amount of the existing bond or letter of credit; and

(d) any recalculation of the amount of the bond or letter of credit that may be required.

6. Should the Commission issue an order resulting from a formal complaint brought under Paragraphs 9 and 14 below, the funds from the bond or letter of credit shall be disbursed on a percentage basis, as set forth in Attachment AA and described below:

(a) to funds mandated by the Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Fixed Utilities Fund, the 9-1-1 fund, and the Telecommunications Relay Service;

(b) to wholesale telecommunications provider(s), specifically for services provided to TAS for which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if TAS fails to do so due to TAS's discontinuance of providing service, after verification of those costs by Commission Staff (Staff);

(c) to refund any customer deposits and prepayments for telecommunications services not yet received in the event that TAS discontinues service to its customers. Upon attestation by an officer of TAS that all refunds owed to customers for deposits and payment for services not yet received have been rendered and the disbursement of the funds to all other parties has been completed, the Commission shall disburse to TAS any remaining proceeds from the bond up to the amount of the refunds TAS issued to customers; and

(d) for Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or any designated default provider if TAS discontinues service and fails to mail notice to customers, as required by Rule 2108 of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2; any Commission-incurred costs associated with the transitioning of customers to another provider; and any Commission-incurred bankruptcy court costs.

7. At any time any portion of the bond is disbursed, TAS shall obtain an addition to the current bond or letter of credit or a new bond or letter of credit for the amount required based on the formula set forth in Attachment AA.

8. TAS shall be considered in default of the bond or letter of credit in the following circumstances:

(a) if TAS

(i) untimely remits² or fails to remit payments to statutory funds (including the Colorado High Cost Support Mechanism, the Fixed Utilities Fund, 9-1-1 Fund, and the Telecommunications Relay Service);

(ii) untimely remits or fails to submit undisputed payments to wholesale providers;

(iii) untimely pays or fails to pay any refunds, credits, or deposits owed to customers; and

(b) if TAS untimely files or fails to file Commission required reports including, but not limited to:

(i) annual reports;

(ii) line count reports when the number of revenue-producing lines exceeds 2,000 lines for the first time;

(iii) verified annual statements of line counts and bond or letter of credit amounts;

(iv) verified statements of bond or letter of credit renewal or modification; and/or

² “Untimely” is defined as late by more than 30 calendar days which period shall begin on the first day after the due date.

(v) violation of any Commission rules concerning regulated telecommunications providers.

9. If any of the items described in Paragraph No. 8 occur, Staff shall have cause to request that the Commission issue a formal complaint against TAS. Staff shall also have cause to make recommendations to the Commission concerning a TAS bond or letter of credit and the status of the TAS CPCN. In the event the Commission issues an order resulting from a formal complaint finding TAS is in breach of any or all of the items described in Paragraph No. 8, the Commission may authorize its representatives to draw on the bond or letter of credit. No demand for a draw on the bond or letter of credit shall be honored by the issuing financial institution absent an order resulting from a formal complaint issued by the Commission authorizing a draw.

10. TAS agrees it will not discontinue service to customers for any reason unless the Commission grants its application to discontinue pursuant to Rule 2108, 4 CCR 723-2. For so long as TAS is obligated to provide the bond or letter of credit, in the event that TAS files an application pursuant to Rule 2108, 4 CCR 723-2, TAS shall file with the Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by the discontinuance; (b) a customer list, including the name, address, and telephone number of each customer; (c) the amount of any refund due to each individual customer for deposit held and for payment of service not received by the customer; and (d) the identity of all underlying providers supporting the regulated telecommunications services affected by such discontinuance.

11. TAS expressly acknowledges that, in accordance with § 40-5-105, C.R.S., as amended, it cannot sell, assign, or otherwise transfer without prior Commission approval, its Colorado assets used in the provision of regulated telecommunications services, including, without limitation, Billing Account Numbers, customer information, Interconnection Agreements, and its CPCN.

12. TAS shall file notice with the Commission in this proceeding within 30 days of executing any agreement with a third party for the provision of marketing, customer service, or customer acquisition services in connection with TAS regulated telecommunications service in Colorado. If a third party agreement is entered into with a party affiliated with TAS and over whom TAS exercises substantial oversight, TAS shall provide notice of such agreement within seven days of its entry into the agreement. This requirement does not include employment agreements with TAS employees who may be hired to perform inside sales, marketing, customer service, or acquisition activities.

13. For the three-year period that TAS is required to maintain financial assurance pursuant to Paragraph No. 1, TAS shall file a report with the Commission in writing within ten calendar days of any of the following occurrences in connection with the regulated telecommunications services provided by TAS or one of its regulated affiliates:

- (a) assessment of civil penalties by any court or regulatory body;
- (b) assessment of criminal penalties by any court or regulatory body;
- (c) entry of an injunction by any court or regulatory body;
- (d) any corrective action imposed by any court or regulatory body;
- (e) any refund of more than \$100 in any individual case, or any refund of \$250 or more to any class of customers awarded by any court or regulatory body;
- (f) reparations to any party awarded by any court or regulatory body;
- (g) initiation of a show cause or formal complaint proceeding by any court or regulatory body;
- (h) initiation of disciplinary proceedings by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate a CPCN or offer any service;

- (i) refusal to grant authority to operate or provide a service by any court or regulatory body;
- (j) revocation of authority to operate or to provide a service by any court or regulatory body;
- (k) voluntary surrender of any certificate or authority to operate in lieu of any action by a court or regulatory body; or
- (l) any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings.

14. If TAS fails to perform any or all of the obligations set forth herein including, but not limited to, failure to obtain and maintain a bond or letter of credit according to the terms outlined herein or failure to timely report to the Commission any events set forth in Paragraph No. 13, the Commission shall consider TAS to have violated the terms of its granted authority to operate. In that event, Staff may request the Commission issue a formal complaint to determine whether the Commission should take action against TAS's, CPCN. In the event the Commission issues an order resulting from a formal complaint finding TAS is in breach of any or all of the obligations set forth herein, the Commission may authorize its representatives to draw on the bond. No demand for a draw on the bond or letter of credit shall be honored by the issuing financial institution, absent an order resulting from a formal complaint issued by the Commission authorizing its representative to draw on the bond.