

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING JOINT MOTION, VACATING
PROCEDURAL SCHEDULE, VACATING HEARING,
AND PLACING THIS PROCEEDING IN ABEYANCE**

Mailed Date: May 16, 2014

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I. STATEMENT

1. On February 6, 2014, Commission Director Doug sent a letter along with a proposed Formal Complaint to ZippyTech Incorporated (ZippyTech or Company). That letter informed the Company that Staff of the Public Utilities Commission (Staff) was considering initiating a Formal Complaint against ZippyTech for failing to: (1) correctly report their regulated intrastate revenue; (2) pay fixed utility fees; (3) remit Colorado High Cost Support Mechanism (CHCSM), Low-Income Telephone Assistance Program (LITAP), and Telecommunications Relay Service (TRS) surcharges; (4) collect and remit emergency telephone charges to the appropriate governing agencies responsible for E911; and (5) updating their tariffs to reflect current surcharge rates. Decision No. C14-0275 at 3-4.

2. On March 12, 2014, the Commission issued Decision No. C14-0275 (Decision) which was a Formal Complaint and Notice of Hearing that initiated this proceeding. The Decision also referred this proceeding to an Administrative Law Judge (ALJ) and set the matter for hearing.

3. On March 21, 2014, counsel for Staff entered his appearance in this matter.

4. By Decision No. R14-0317-I, issued March 24, 2014, the hearing was rescheduled to June 3, 2014 and the deadline for ZippyTech to satisfy the Complaint or file its answer was extended to April 17, 2014.

5. On April 15, 2014, Staff filed its Unopposed Motion to Extend ZippyTech's Deadline to Answer or Satisfy the Complaint (Motion to Answer or Satisfy). The Motion to Answer or Satisfy was granted on April 16, 2014 by Decision No. R14-0409-I.

6. On April 25, 2014, Staff and ZippyTech filed a Joint Motion for Satisfaction of the Complaint (Joint Motion) including several exhibits. In large part, the Joint Motion defines a process that will ultimately lead to resolution of the Formal Complaint. At this time, it is requested that the procedural schedule be vacated and that the proceeding be held in abeyance so that the process may be completed. The motion also requests that the agreed-upon conditions in the Joint Motion be adopted and made an order of the Commission.

II. MOTION FOR SATISFACTION

7. Since the issuance of the Formal Complaint, ZippyTech and Staff have engaged in numerous teleconferences, exchanges of information, and email discussions aimed at resolving the Complaint. Joint Motion at 3. During these discussions Staff discovered two more issues that were not included in the Decision that initiated this proceeding.

8. First, Rule 4 *Code of Colorado Regulations* (CCR) 723-2-2005(d)(I) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products states:

Except as specifically provided by Commission rule, each provider shall maintain its books of accounts and records using Generally Accepted Accounting Principles (GAAP).

Staff does not believe that ZippyTech keeps its financial records in accordance with GAAP.

9. Second, Rule 4 CCR 723-2-2106 states:

A provider that has been granted a CPCN to provide Part II regulated telecommunications services, and that wishes to provide such services in the service territory of an incumbent rural telecommunications provider, shall file with the Commission, a petition stating its Declaration of Intent to Serve at least 45 days prior to offering such services.

ZippyTech has not filed a Declaration of Intent in this manner.

10. ZippyTech has agreed to address Staff's additional concerns as part of the resolution of the Formal Complaint. It has also agreed to the Joint Motion in order to resolve this Formal Complaint.

11. A copy of the Joint Motion, attached hereto as Appendix A, is incorporated herein by reference. In reviewing the Joint Motion, the undersigned finds certain aspects require clarification or interpretation. Additionally, some aspects require adjustment in light of the timing of the motion's consideration. The discussion below incorporates those clarifications, interpretations, and adjustments which are intended to be consistent with the parties' intent expressed in the Joint Motion. To the extent of any conflict, the provisions of this Decision shall prevail.

A. Reporting of Intrastate Revenue.

12. ZippyTech agrees to have an outside audit performed of its financial records covering calendar years 2010, 2011, 2012, and 2013. The auditor selected by ZippyTech shall be a Colorado Certified Public Accountant (CPA) approved by Staff. A Colorado license with an active status, length of experience, number of engagements, and experience in auditing telecommunications providers shall be factors for Staff's approval of the CPA, which shall not be unreasonably withheld.

13. The CPA shall audit ZippyTech intrastate revenues that should have been reported in its CHCSM Report for calendar years 2010 through 2013. The audit shall be completed on or before August 1, 2014. ZippyTech shall amend both its annual reports and CHCSM reports to reflect the audited intrastate revenues, if necessary, on or before September 15, 2014.

B. Payment of Fixed Utility Fees Plus CHCSM, LITAP, and TRS Surcharges

14. Exhibit 1 to Joint Motion reflects the revenue reported by ZippyTech in the CHCSM reports filed with the Commission. Based upon amounts reported in Exhibit 1, utility fees and CHCSM surcharges are calculated in Confidential Exhibit 2. Confidential Exhibit 2 also shows amounts owed for LITAP and TRS surcharges.

15. ZippyTech shall pay the LITAP and TRS amounts appearing in Exhibit 2 to the Commission on or before May 30, 2014. ZippyTech shall also pay 1/3 of the amount of the total fixed utility fee and CHCSM surcharges reflected in Confidential Exhibit 2 on or before May 30, 2014. It shall pay the next 1/3 on or before November 15, 2014. The final 1/3 payment shall be made on or before May 15, 2015.

16. If the audit addressed above results in different intrastate revenues than those reported in the annual reports shown in Exhibit 1, amounts in Confidential Exhibit 2 shall be adjusted accordingly. If ZippyTech has then overpaid, it shall receive a refund. If unpaid amounts increase, two-thirds of the adjusted amount due shall be paid on or before November 15, 2014. Any remaining balance shall be paid on or before May 15, 2015.

C. Collection and Remittance of Emergency Telephone Charges

17. Confidential Exhibit 3 attached to the Joint Motion is a list of 911 authorities serving areas where ZippyTech offers voice service. Using the form letter attached as Exhibit 4 to the Joint Motion, ZippyTech shall report the number of ZippyTech customers to the authorities listed in Confidential Exhibit 3 in each respective service area for the years 2009, 2010, 2011, 2012, and 2013. Such reports shall be sent on or before May 30, 2014. ZippyTech shall email

Commission Staff members Judith Swinnerton (judith.swinnerton@state.co.us) and John Scott (johnt.scott@state.co.us) copies of all letters, when sent, as well as all responses received in response to those letters

18. ZippyTech shall inform Ms. Swinnerton and Mr. Scott if any of the authorities fail to respond to the letter within 30 days after it is sent.

19. Generally, Staff will not consider the 911 portion of the Complaint to be satisfied until all the authorities have responded that ZippyTech has remitted the appropriate 911 surcharge amounts. If the parties are not able to agree as to the effect of an unresponsive authority, further relief may be requested.

D. Tariff Sheets

20. If not previously filed, on or before May 23, 2014, ZippyTech shall file an advice letter and proposed tariff on not less than two business days' notice to reflect current surcharge rates. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

E. Petition

21. If not previously filed, ZippyTech shall file a Declaration of Intent in compliance with Rule 4 CCR 723-2-2106 on or before May 30, 2014.

F. Financial Records

22. ZippyTech's financial records shall be audited by an outside auditor to ensure compliance with GAAP. The Company shall submit the auditor's report for calendar year 2013

on or before August 1, 2014. For calendar years 2014 and 2015, the Company shall submit the auditor's report on or before the last calendar day of March in 2015 and 2016, respectively.

G. Other Conditions

23. ZippyTech shall immediately begin activation of compliance with Items A through F above. Staff shall monitor ZippyTech's compliance with these conditions.

24. ZippyTech shall not recover any amounts paid in resolution of the Formal Complaint from its customers.

III. CONCLUSIONS

25. ZippyTech is a provider of telecommunications service in Colorado. It is important to ensure that ZippyTech's customers receive uninterrupted telephone service with access to 911 services. Satisfaction of conditions in the Joint Motion will resolve the complaint and facilitate future compliance with Commission rules. The Joint Motion will be granted.¹

26. The procedural schedule will be vacated and the proceeding will be held in abeyance.

IV. ORDER

A. It Is Ordered That:

1. The Joint Motion for Satisfaction of the Complaint (Joint Motion) filed on April 25, 2014 is granted, as modified consistent with the discussion above.

2. The procedural schedule adopted in Decision Nos. C14-0275, R14-0317-I, and R14-0409-I is vacated.

¹ The undersigned notes that the requested relief in the Joint Motion is being granted. To the extent that any party should contend that a change in law affects the parties' request in any way, it may be raised by separate motion.

3. The hearing scheduled for June 3, 2014 is vacated.
4. Proceeding No. 14C-0222T shall be held in abeyance pending further order or a request for further relief by either party.
5. To the extent not inconsistent with this Decision, the conditions of the Joint Motion filed April 25, 2014, a copy of which is attached hereto as Appendix A, are made an order of the Commission. All parties shall comply with all terms of the Joint Motion, except as modified or superseded by the remainder of this Decision.
6. ZippyTech Incorporated shall not recovery any amounts paid in resolution of the Formal Complaint from its customers.
7. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

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

Doug Dean,
Director