

MAILED

OCT 7 1991

(Decision No. C91-1335)

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF RULE 24(A) OF THE)
 RULES OF PRACTICE AND PROCEDURE OF)
 THE COLORADO PUBLIC UTILITIES)
 COMMISSION, 4 CODE OF COLORADO)
 REGULATIONS 723-1, CONCERNING) DOCKET NO. 91R-557
 NONCONTESTED AND UNOPPOSED)
 PROCEEDINGS, PROPOSAL TO ABOLISH THE)
 NOTARY REQUIREMENT AND SUBSTITUTE)
 AN OATH ABOVE THE SIGNATURE.)

**COMMISSION ORDER GIVING RE-NOTICE OF PROPOSED
 RULEMAKING BEFORE CHIEF ADMINISTRATIVE LAW
 JUDGE ROBERT E. TEMMER ON NOVEMBER 26, 1991
 TO ABOLISH THE NOTARY REQUIREMENT.**

 Mailing date: October 4, 1991
 Adopted date: September 25, 1991

I. Introduction.

On July 3, 1991, Greg Romberg, Director of the Department of Regulatory Agencies' Office of Regulatory Reform, wrote a memorandum to Eugene Eckhardt, Chief of Transportation at the Commission, in which Director Romberg proposed abolishment of the requirement that non-contested common carrier applications be notarized. In place of the notary requirement, Director Romberg proposed that an oath be included above the signature of the applicant, similar to the oath printed in Department of Revenue form DR 590.

The Commission discussed Director Romberg's proposal at its Open Meetings on July 31, 1991 and August 21, 1991, and concluded that the proposal had merit.

Accordingly, the Commission proposes to modify Rule 24(a) of its Rules of Practice and Procedure to explicitly abolish the notary requirement, and to substitute an oath, as proposed by Director Romberg. (Proposed modified Rule 24(a) is attached as Appendix "A").

II. Discussion.

Title 40, Article 6 of the Public Utility law concerning hearings, does not require the Commission to conduct a hearing in every application. For example, the Commission saves everyone time, money, and unnecessary delay by not holding hearings in noncontested applications. Colorado Revised Statutes § 40-6-109(5) (1990 Cum.Supp. Vol.17) allows the Commission the discretion to waive hearings in noncontested applications. It provides:

The commission may by general rule or regulation provide for the taking of evidence in noncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. Such shortened or informal proceedings shall otherwise be subject to all of the provisions of this title. Upon its own motion the commission shall assign any such noncontested or unopposed proceeding for hearing.

Section 40-6-109(5) (1990 Cum. Supp.) (emphasis added.)

The Commission has two "general rules or regulations" to take advantage of Section 40-6-109(5)'s permission to rule on noncontested applications without hearings. Rule 4(b)(9) of the Commission Rules of Practice and Procedure, 4 Code of Colorado Regulation 723-1, defines "modified procedure" as "the process used by the Commission in accordance with Rule 24 of these rules and § 40-6-109(5), C.R.S., to review matters which are noncontested and unopposed and which do not require a hearing."

Rule 24 of the Practice and Procedure Rules (entitled "Noncontested - Unopposed Proceedings) is somewhat longer. The pertinent part is in Rule 24(a), which states:

For any matter that is noncontested and unopposed under § 40-6-109(5), C.R.S., and a hearing is not requested, the matter may be determined by the Commission under its modified procedure as defined in Rule 4(b)(9) without a hearing and without further notice. A verified statement (affidavit) stating sufficient facts, together with verified exhibits which adequately support the filing must be filed within ten days after the matter had been designated to be determined under the Commission's modified procedure. The verified statement, affidavits, and exhibits shall be signed under oath by the person having knowledge of the stated facts. If no verified statement, affidavits and supporting exhibits have been filed within ten days after the matter has been assigned to modified procedure, the matter will be set for hearing and shall not be determined under the Commission's modified procedure unless good cause is stated for failure to file the necessary verified statements, affidavits, and exhibits within the ten day period.

Rule 24(a), Rules of Practice and Procedure, 4 Code of Colorado Regulation 723-1 (emphasis added).

Rule 24(a) speaks of a "verified statement" in support of a noncontested application, which it defines parenthetically as an "affidavit". The requirement in Rule 24(a) of a "verified statement" can be met by including an oath above the signature of the applicant -- a notarized signature may not be required. The Office of Regulatory Reform gave an example of such a signature in a Department of Revenue form, "Tax Application and Trade Name Registration". (Attached to Appendix "A"). The best-known example is the Internal Revenue Service's famous Form 1040, "U.S. Individual Income Tax Return" which contains the following language above the signature line:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

IRS Form 1040, Individual Income Tax Return.

The Office of Regulatory Reform argues that the work of a notary in notarizing a document is not to verify the truth of the matters asserted in the document. "A notary verifies only that the person signing the application can produce proof of identification. This in no way certifies the accuracy of the information contained in the application." See Memorandum of Director Greg Romberg to Chief Eckhardt (July 3, 1991).

Finally, the Office of Regulatory Reform argues that the PUC notarization requirement probably violates a section of the State Administrative Procedure Act, Colorado Revised Statutes § 24-4-104 entitled "Licenses - issuance, suspension or revocation, renewal". Specifically, Colorado Revised Statutes § 24-4-104(13)(b) (1988 Repl. Vol. 10A) provides:

On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

Section 24-4-104(13)(b), Colorado Revised Statutes.

For these reasons, the Commission issued a Notice of Proposed Rulemaking, to abolish the notary requirement on its applications, on August 30, 1991, in Decision No. C91-1181, and will refer the matter to Chief Administrative Law Judge Robert E. Temmer.

The Commission will file a re-notice of these proposed rules with the Office of Regulatory Reform during September 1991, because they may affect small businesses. The Commission will send the re-notice of proposed rule-making to the Secretary of State, who will publish the notice in the Colorado Register on or about October 10, 1991. See Colorado Revised Statutes § 24-4-103.5 (1988 Repl. Vol.10A) (requiring 10-days advance notice to the office of regulatory reform); Colorado Revised Statutes § 24-4-103(3)(a) (1988 Repl. Vol.10A) (requiring a minimum of 20-days notice of

hearing after publication by the secretary of state). Chief Administrative Law Judge Robert E. Temmer will conduct public hearings on the proposed modified Rule 24(a) on Tuesday November 26, 1991, commencing at 9:30 o'clock a.m.

For the convenience of the parties, the Commission will attach proposed rules to this notice. This notice will be mailed to all parties in Docket No. 90R-379 (the recent Rules of Practice and Procedure docket); will be published in the Notice of Applications Filed, which is mailed to all motor vehicle common carriers; and, as discussed, will be published in the Colorado Register. In the future, only persons who intervene in this new docket will be maintained on the mailing list.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Executive Secretary shall file with the Secretary of State the necessary documents to allow for notice of the proposed modified Rule 24(a) of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1, to be published in the Colorado Register. The modified rule is attached to this Decision and Order, as Appendix "A".

2. The hearing set for Thursday October 17, 1991 before the en banc Commission in this matter in Decision No. C91-1181, is hereby vacated.

3. Chief Administrative Law Judge Robert E. Temmer shall conduct public hearings on the proposed rules as follows:

Date: Tuesday November 26, 1991.

Time: 9:30 o'clock a.m.

Place: Colorado Public Utilities Commission
Logan Tower

1580 Logan Street, Office Level 2
Commission Hearing Room "A"
Denver, Colorado 80203

3. All parties wishing to participate in this docket may file an Entry of Appearance to be on the Commission's official mailing list, and shall do so by November 11, 1991.

4. Initial comments on the proposed rules shall be filed on or before Friday November 22, 1991. The Commission may allow further comments to be filed after the conclusion of the hearings.

ADOPTED IN OPEN MEETING ON September 25, 1991.

(S E A L)



ATTEST: A TRUE COPY
Suzanne A. Fasing
Suzanne A. Fasing
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARNOLD H. COOK

CHRISTINE E. M. ALVAREZ

Commissioners

COMMISSIONER GARY L. NAKARADO ABSENT
BUT CONCURRING IN THE RESULT.

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Arnold H. Cook, Chairman
Ronald L. Lehr, Commissioner
Gary L. Nakarado, Commissioner
James P. Spiers, Executive Secretary

Department of Regulatory Agencies

Steven V. Berson
Executive Director



Roy Romer
Governor

December 14, 1990

Re: Commission Order Adopting Revised Rule 19.5, Colorado High Cost Fund Local Network Services Tariff Cap for Telecommunications Providers in Docket No. 90R-506T

Dear Friends,

At the Commission's Open Meeting on December 12, 1990, the Colorado Public Utilities Commission unanimously adopted a new version of Rule 19.5 of the PUC Cost Allocation Rules for Telecommunications Service and Telephone Utilities Providers (found at 4 Code of Colorado Regulations 723-27). The new version of Rule 19.5 is the same as the old rule, except the tariff cap is lowered to 100% of the average U S West exchange revenue per line for 1991. It will rise in increments to 115% of the average U S West exchange revenue per line in 1992, then to 130% of the average U S West exchange revenue per line for 1993 and afterwards. The average monthly U S West exchange revenue per line ("average U S West rate") is \$20.15.

In the various Open Meetings held in this docket, and in its review of the written comments submitted by the parties, the Commission considered various percentages of the U S West average rate to use in Rule 19.5 as the "safety net" in the Colorado High Cost Fund. The Commissioners decided to adopt the compromise proposed by the PUC Staff. The compromise lowered the tariff cap to 100% of the average U S West base rate for 1991, as requested by the independent telephone companies and the Office of Consumer Counsel. The Commissioners agreed that the Staff proposal of a step upward in the tariff cap to 115% in 1992, and a further step upward to a tariff cap of 130% in 1993 and thereafter, would provide an incentive to the independents to cut costs. The Commission feels that this mechanism will implement the policy goals of avoiding "rate shock" in 1991 and providing universal affordable basic local telephone service, as well as providing an economic incentive to the independents to become efficient and control costs.

At the Open Meeting on December 12, 1990, the Commissioners expressed a desire to conduct an ongoing review of the Rule 19.5 "safety net" tariff cap, which could change the Rule in future years if the facts indicated a need for change. Future, the Commissioners stated that they were willing to consider a waiver of the Rule if special circumstances warranted a waiver for a particular company.

in conclusion, rule 19.5 of the PUC Cost Allocation Rules for Telecommunications Service and Telephone Utilities Providers (found at 4 Code of Colorado Regulations 723-27) shall read:

19.5 LOCAL NETWORK SERVICE TARIFF CAP

In no event shall the local network services revenue requirement, as defined in 47 CFR §§ 32.5000 through 32.5069 (1989), of small local exchange carriers, who have been certified as providing a level of local exchange service which encompasses a community of interest standard, be in excess of 100 percent of the average in 1991, 115 percent of the average in 1992, and 130 percent of the average in 1993 and thereafter, of such revenue requirement for local exchange providers which are not small local exchange carriers. Such excess shall be considered as a part of the small local exchange carriers Colorado High Cost Fund revenue requirement.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James P. Spiers', written in a cursive style.

James P. Spiers
Executive Secretary

COMPOSITE APPENDIX "B"

MODIFIED RULES 17.1, 19.1.1, 19.2.1.2, AND 19.5
TO THE COMMISSION'S COST ALLOCATION RULES FOR
TELECOMMUNICATIONS SERVICE AND TELEPHONE UTILITIES
PROVIDERS, 4 CODE OF COLORADO REGULATION 723-27

Decision No. C91-1333
Docket No. 91R-638T
October 2, 1991

Additions to current Rules are shown as redlined ~~redlined~~.
Deletions are shown as strike-outs ~~strike-outs~~.

RULE 17

Calculations of Average Loop, Local Switching, and Exchange
Trunk Costs for Fund Support

- 17.1 The averages used in calculating CHCF support will be computed on the basis of the data reported per this Rule 17 for the preceding calendar year which may be updated at the option of the small LEC pursuant to 47 CFR 36.612(a).

RULE 19

Colorado High Cost Fund

19.1 SUPPORT FOR HIGH LOOP COSTS

- 19.1.1 For small LECs reporting an average unseparated loop cost per working loop less than or equal to 115 percent of the national average for this cost, the CHCF revenue requirement for high loop costs shall be the sum of: (a) zero (0); and (b) the difference between 0.265 and twice the small LEC's intrastate interexchange SLU, (if greater than zero) times ~~115 percent of the national average~~ the LEC's average unseparated loop cost per working loop for this cost.

19.2 SUPPORT FOR HIGH LOCAL SWITCHING COSTS

- 19.2.1.2 For small LECs reporting an unseparated local switching equipment investment per working loop in excess of the Colorado average as determined by Rule 17.6, for this investment, the revenue requirement for high local switching cost support will be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following Part 36, 47 CFR. The service category for the CHF high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment. The percentage of Category 3 allocated to CHCF service category shall be known as the Colorado High Local Switching Allocation Factor and shall be calculated as one minus the sum of a) the Interstate factor(s), b) the Intrastate factors of Rule 18.2.2, and c) the 1993 local exchange factor. The 1993 local exchange factor for each local exchange provider shall be calculated as the Colorado state average unseparated local switching equipment Category 3 investment per working loop, times the small LEC's local DEM percentage divided by the small LEC's average investment per working loop for this

investment. In no event shall the Colorado high local switching allocation factor be less than zero. If, by the application of the formula of this Rule 19.2.1.2, the Colorado high local switching allocation factor is less than zero, the factors of 19.2.1.2. (b) and (c) above shall be proportionally reduced.

19.5 LOCAL NETWORK SERVICE TARIFF CAP

In no event shall the local network services revenue requirement, as defined in 47 CFR §§ 32.5000 through 32.5069 (1989), of small local exchange carriers, who have been certified as providing a level of local exchange service which encompasses a community of interest standard, be in excess of 100 percent of the average in 1991, ~~115 percent of the average in 1992, and 130 percent of the average in 1993 and thereafter, of such revenue requirement~~ for local exchange providers which are not small local exchange carriers. Such excess shall be considered as a part of the small local exchange carriers Colorado High Cost Fund revenue requirement.