

Decision No. C01-278

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00R-480T

IN THE MATTER OF PROPOSED AMENDMENTS TO TELECOMMUNICATIONS
RULES, 4 CCR 723-18, 723-24, 723-35, 723-36, 723-37, 723-38,
723-51; AND THE RULES OF PRACTICE AND PROCEDURE, 4 CCR 723-1-22,
24, 42, 55, 57, AND 70.

DECISION ADOPTING RULES

Mailed Date: March 23, 2001
Adopted Date: March 7, 2001

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I. BY THE COMMISSION

A. Statement

1. This matter is before the Commission for consideration of proposed amendments to the telecommunications rules regulating certification, registration, asset transfer,

mergers, and abandonment of services: Rules 22, 24, 42, 55, 57 and 70 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1; the Commission's Rules Regulating Operator Services For Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-18; the Commission's Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24; the Commission's Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, 4 CCR 723-35; the Commission's Rules Regulating Proposals By Local Exchange Telecommunications Providers To Abandon, To Discontinue, or to Curtail any Service, 4 CCR 723-36; the Commission's Rules Regulating Applications By Local Exchange Telecommunications Providers To Execute A Transfer, 4 CCR 723-37; the Commission's Rules Regulating Applications By Local Exchange Telecommunications Providers For Specific Forms of Price Regulation, 4 CCR 723-38; and, the Commission's Rules Regulating Registration Of Toll Resellers, 4 CCR 723-51 (collectively, "NTR" or "New Telecommunications Rules"). The Commission gave formal notice of proposed rulemaking through Decision No. C00-922, mailed on August 25, 2000. We convened a rulemaking hearing on October 13, 2000, which continued to December 21, 2000. Representatives of Qwest Corporation ("Qwest"), AT&T Communications of the Mountain States, Inc. ("AT&T"), the Colorado Telecommunications

Association, Inc. ("CTA"), the Office of Consumer Counsel ("OCC"), ICG Telecom Group, Inc. ("ICG"), and certain small local exchange carriers attended the hearing. Qwest, CTA, the OCC, ICG, AT&T, and Teligent Services, Inc. provided written comments.

2. Now being duly advised in the matter, we adopt the rules appended to this decision as Attachment A.

B. Discussion

1. Introduction

The present rules regulating certification, registration, asset transfers, mergers, and abandonment of services by regulated telecommunications providers are contained in various sections of the Commission's rules. These proposed rules are intended to simplify and streamline the Commission's present rules and processes, and collect all necessary rules in a single section. The participants supported the basic concepts of restructuring and simplifying, and none objected to the many references deleted and replaced in associated rules. For example, the present Rule 18, 4 CCR 723-18, refers an applicant for a letter of registration for non-optional operator services to 4 CCR 723-24. The reference has been changed to refer the applicant to the NTR. Overall, the participants support these proposed rules. The contested areas are discussed below.

2. Text change issues.

a. Many of the participants suggested basic text changes. Many of the changes were stylistic or grammatical, while others were more substantive. For example, the OCC suggested substituting the words "applying for" a certificate rather than "requesting" a certificate. We incorporate that change into these rules. Qwest suggested eliminating the definition of "controlled telecommunications service" because it is not a standard industry term. The concept is useful as a definition in these rules and is thus maintained, but modified, as "*regulated* telecommunications service."

b. Qwest contends that the definition of Local Exchange Telecommunications Services should exclude "switched access." Qwest argues that switched access is not a local exchange service and the definition conflicts with state and federal statutes. We disagree. First, Local Exchange Telecommunications Services as defined in the present and the proposed rules is not the same as basic service as defined by the Colorado Revised Statutes. § 40-15-102(3), C.R.S. Local exchange services are, generally, non-toll services, or basic plus those options generally provided by competitive local exchange carriers ("CLEC"). The Colorado Revised Statutes include switched access as "services or facilities furnished by

a local exchange company to interexchange providers which allow them to use the basic exchange network. . . " Section 40-15-102 (28), C.R.S. We will maintain switched access within the definition of Local Exchange Telecommunications Services.

c. The proposed rules provide for statewide authority for any certificate of public convenience and necessity ("CPCN") issued. Presently, while most providers request and receive statewide authority, a provider can obtain a more geographically limited CPCN. Thus, there are now providers with limited CPCNs. AT&T suggests adding language allowing a limited CPCN holder to convert to statewide authority via simple notice to the Commission. We will decline the suggestion. Those providers wishing to extend their limited CPCNs need simply apply. Under the proposed rules, the application process is simple and short.

3. Applications to discontinue or curtail service.

a. The OCC, Qwest, and AT&T commented about discontinuance or curtailment of services. The OCC suggests that applications by providers of last resort ("POLR") to discontinue or curtail service should be filed 45 days in advance of the proposed discontinuance or curtailment of service rather than the proposed 30 days. The OCC contends that stakeholders could need the additional time to respond with concerns and government entities might need the time to take

action. On the other hand, throughout the docket, commenters advocated consistent notice periods. Qwest argued at hearing that 30 days was ample time in advance of any discontinuance or curtailment. We will maintain the proposed 30-day period between filing and discontinuance or curtailment. There is no clear need for a longer period.

b. Qwest has concerns about the discontinuance of services in merger cases. While there generally is no disruption of services in a merger, services could be seen as being discontinued by one party and picked up by another. We agree that there should be a clarification. Unnecessary regulation is not the intent of the discontinuance rules. Consequently, the proposed rules include a clarifying exemption for such situations.

c. As originally written, these proposed rules include a plan for transferring customers in the event of a discontinuance. AT&T and Qwest attacked the plan and some of the language as anticompetitive and conducive to abuses. The biggest concern was the original idea that the provider would give its customers a list of possible sources for continued service. The commenters argued that the exiting carrier could, for example, simply send everyone to a specific carrier, thus preventing all other available carriers from competing. We agree.

d. There remains a need for a transfer plan to protect consumers, but certain facets must be changed. The provider will not be responsible for developing a list of current providers for its customers, but will be responsible for providing customers with the jurisdictional list maintained by the Commission. While this may provide the customer with too much information, it will avoid the more serious problems noted by AT&T and Qwest.

e. Finally, AT&T wants to delete the requirement that the provider notify county and municipal officials of discontinuances of services. We disagree. Telephone services to a community are significant concerns for the community leaders. They should have notice of such discontinuances. Carriers could argue that only major discontinuances would be of concern to community leaders, and they might be correct. But, it is difficult, if not impossible, to define. We will maintain the notice requirement.

4. Applications to transfer.

a. As originally drafted, the proposed transfer rules differentiated between CLECs and incumbent local exchange carriers ("ILEC"). The rules required an application from ILECs but only notice from CLECs with the possibility of an application after Staff review of the notice. CLECs and ILECs objected.

b. Qwest, an ILEC, argues that all carriers should be treated the same. It also argues that allowing Staff review of CLEC notices improperly delegates Commission authority to the Staff and imports a substantive standard into a simple procedure. ICG wants more certainty in the timing of approvals of transfers for the CLECs; the possibility of the Staff requiring an application leaves the timing of final approval uncertain. AT&T asks for changes on the sections regarding emerging competitive services carriers. All comments are well taken.

c. From the outset, these rules were meant to streamline and simplify regulation. Attempts to make small distinctions often lead to further complications. And so it is here with transfers. To meet the objections of all parties, these proposed rules will not differentiate between ILECs and CLECs. All carriers will be required to apply to transfer assets. As noted above, the application process is simple and short.

d. The proposed rules appended to this decision as Attachment A will be adopted.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this decision as Attachment A are adopted. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the rules.

3. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within twenty days following issuance of the above-referenced opinion by the Attorney General.

4. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 7, 2001.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



ROBERT J. HIX

POLLY PAGE

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

CHAIRMAN RAYMOND L. GIFFORD
SPECIALLY CONCURRING.

III. CHAIRMAN RAYMOND L. GIFFORD SPECIALLY CONCURRING:

A. I concur in adopting these "New Telecommunications Rules," but would urge to the Commission on reconsideration to go one step further. I would change the rules governing transfer from the current application to a notice. The change from application to notice would, in effect, abrogate the Commission's merger and transfer review. This would be a positive step for three reasons.

B. First, § 40-5-105, C.R.S., the authority under which we review mergers provides no meaningful standard of review.

This invites mischief by the Commission, on the one hand, and violates the nondelegation doctrine, on the other. The nondelegation doctrine requires the legislature to set "sufficient standards and safeguards, in combination, to protect against unnecessary and uncontrolled exercise of discretionary power." *Cottrell v. City and County of Denver*, 636 P.2nd 703, 709 (Colo. 1981). The doctrine exists not only to preserve the proper distribution of powers among governmental departments, but also to protect the public from irrational rules created by unelected officials. *People v. Lowrie*, 761 P.2d 778, 781 (Colo. 1988).

C. To be sure, even the broadest statutory direction has been held not to violate nondelegation. Thus, protection of public safety, *Elizondo v. State*, 194 Colo. 113, 570 P.2d 518 (Colo. 1977), charging reasonable fees for services, *Krupp v. Breckenridge Sanitation District*, 1 P.3d 178, 183 (Colo. App. 1999) *aff'd.*, 2001 WL 185035 (Colo. 2001), reasonableness in exercise of a police power, *State Farm Mutual Automobile Insurance Company*, 788 P.2d 808, 816 (Colo. 1990), standards of cleanliness, orderliness and decency, *Lowrie, supra.* at 783, and health and safety of the public, *Mountain View Electric Association v. Public Utilities Commission*, 686 P.2d 1336, 1341 (Colo. 1984), have been adequate standards to survive nondelegation challenges. Indeed, courts will even imply a

reasonableness standard where the statute fails to specify one. *Elizondo, supra., Krupp, supra.*

D. Nevertheless, if the nondelegation doctrine has any life left to it, it would need to apply to § 40-5-105, C.R.S.¹ In contrast to statutes that give broad and general standards, see *Cottrell*, 636 P.2d at 709, this statute contains no standards. Indeed, § 40-5-105, C.R.S. is the ultimate invitation for an agency to exercise unnecessary and uncontrolled discretionary power. It is all the more tempting for this Commission to exercise unnecessary and uncontrolled power in the context of a telecommunications merger. With a telecommunication merger, the parties' desire to consummate the transaction will inevitably override their ability to make a principled legal objection to capricious and arbitrary commission power. In the end, the merging companies will pay ransom to free their merger, in lieu of challenging the basis of commission authority.

E. Because there is no intelligible statutory standard for the Commission to apply, it should decide up front, by rule,

¹ *Mountain States Tel. and Tel. Co. v. Public Utilities Commission*, 763 P.2d 1020, 1029 (Colo. 1988), presents the biggest challenge to my argument here. There, the Supreme Court, citing *Elizondo*, cited articles 3 and 4 of title 40, along with the "public interest" standard as providing adequate standards and guidance for review of an asset transfer. There is, however, no public interest standard in this rule. Neither does the statute direct the Commission to articles 3 and 4 in its standards search. And things have changed. Merger review under the vague "public interest" standard is objectionable and lawless in the regulated monopoly context; it is potentially destructive and pernicious when a competitive environment is involved.

that the terms and conditions it will prescribe are: none. This will avoid any nondelegation peril.

F. A second reason to adopt notice over an application is that our role is redundant. Any conceivable legitimate focus of this Commission's merger review is already being done by other agencies. The U.S. Department of Justice reviews mergers for antitrust compliance under the Hart-Scott-Rodino Act, 15 U.S.C. § 18(a) . The Federal Trade Commission reviews mergers under section 7 of the Clayton Act, [15 U.S.C. § 18](#). Other than these legitimate antitrust concerns, I cannot see a legitimate role for state commission merger review in a competitive telecommunications marketplace. Because other agencies with greater expertise will analyze mergers for antitrust harms, this agency ought just to forebear.

G. Third, adoption of a notice rule will be more consistent with the purpose and scope of the Commission's role in the telecommunications marketplace. The legislature has instructed us "to encourage competition," "foster[] free market competition," and extend "flexible regulatory treatments. . . ." §§ 40-15-101, 501, C.R.S. § 40-5-105 invites rentseeking and regulatory game-playing. This is antithetical to the notion of a free, competitive market. It would be better to eliminate the regulatory burden altogether, and just require a notice.

H. I believe that the Commission can adopt a notice, as opposed to application, rule without falling short of the job § 40-5-105 asks us to do. The language reads that any public utilities' assets can be transferred "only upon authorization by the commission and upon such terms and conditions as the commission may prescribe." There is no command from the legislature that this has to be done by application. By adopting a notice rule, the Commission would authorize all transfers for certificated telecommunications carriers, deciding that no terms and conditions for the merger will be prescribed. This would be better policy, avoid duplicative regulatory analyses and remove temptations for lawless mischief.

I. If the opportunity arises to reconsider these rules, I would urge the Commission to take the next step and retreat from the lawless and standardless world of merger review.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN RAYMOND L. GIFFORD

Commissioner

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING THE AUTHORITY TO OFFER
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES,
EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES,
TO DISCONTINUE OR CURTAIL ANY SERVICE,
TO EXECUTE A TRANSFER OR MERGER,
AND REGISTRATION AS A TOLL RESELLER

4 CODE OF COLORADO REGULATIONS (CCR) 723-25

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to establish regulations regarding applications for a certificate of public convenience and necessity to provide local exchange telecommunications services; a letter of registration to provide emerging competitive telecommunications services; to discontinue or curtail any telecommunications service; to execute a merger or transfer; and registration as a toll reseller. These rules are issued pursuant to §§ 24-4-103, 40-2-108, 40-15-301(2), 40-15-302(2), 40-15-302.5, 40-15-305(2), and 40-15-503(2), C.R.S.

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RULE (4 CCR) 723-25-1. APPLICABILITY.

These rules apply to all telecommunications service providers applying for a certificate of public convenience and necessity to provide local exchange telecommunications services, a letter of registration to provide emerging competitive telecommunications services, authority to discontinue or curtail any telecommunications service, and authority to execute a merger or transfer, and to providers required to register as toll resellers. Additional rules regulating telecommunications service providers and telephone utilities are contained in 4 CCR 723-2. Additional rules regulating providers of non-optional operator services are contained in 4 CCR 723-18.

RULE (4 CCR) 723-25-2. DEFINITIONS.

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

723-25-2.1 Application. A formal filing with the Commission to request a certificate of public convenience and necessity to provide local exchange telecommunications services, a letter of registration to provide emerging competitive telecommunication services, authority to discontinue or curtail any telecommunications service, or authority to execute a transfer or merger.

723-25-2.2 Certificate of Public Convenience and Necessity ("Certificate" or "CPCN"). Commission-granted authority to provide local exchange telecommunications services. The CPCN for telecommunications is generally granted on a statewide basis, subject to terms and conditions established by the Commission in its decision.

723-25-2.3 Competitive Local Exchange Carrier ("CLEC"). A telecommunications provider that has been granted a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services in the State of Colorado on or after February 8, 1996, pursuant to 4 CCR 723-25-4 and § 40-15-503(2)(f), C.R.S.

723-25-2.4 Days. Calendar days, unless otherwise indicated.

723-25-2.5 Declaration of Intent to Serve ("Declaration"). A filing with the Commission in which a certificated provider states its intent to provide local exchange telecommunications services within the service territory of a Rural Telecommunications Provider.

723-25-2.6 Emerging Competitive Telecommunications Services. Services and products regulated by the Commission in accordance with Title 40, Article 15, Part 3, C.R.S.

723-25-2.7 Letter of Registration. Commission-granted authority to provide emerging competitive telecommunications services. The Letter of Registration is generally granted on a statewide basis, subject to terms and conditions established in the Commission decision.

723-25-2.8 Local Exchange Telecommunications Services. Basic local exchange service and such other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (e), C.R.S.; or any of the above singly or in combination.

723-25-2.9 Price List. A filing with the Commission which contains all current rates of a provider of local exchange or emerging competitive telecommunications products and services.

723-25-2.10 Provider of Last Resort ("POLR"). A Commission-designated telecommunications provider that has the responsibility to offer basic local exchange service to all consumers who request it within a geographic area.

723-25-2.11 Provider of Local Exchange Telecommunications Services ("Provider"). Any person, as defined at § 40-1-102(5), C.R.S., who holds a certificate of

public convenience and necessity to provide local exchange telecommunications services.

723-25-2.12 Regulated Telecommunications Services. Services and products regulated by the Commission in accordance with Title 40, Article 15, Part 2, Part 3, or Part 5, C.R.S.

723-25-2.13 Rural Telecommunications Provider. As defined at § 40-15-102(24.5), C.R.S.

723-25-2.14 Service Territory. Specific geographic area in which a provider of local exchange telecommunications services is authorized by the Commission to provide such service.

723-25-2.15 Tariff. A filing with the Commission which contains all rates, terms and conditions of a provider of local exchange or emerging competitive telecommunications services and products. The tariff of local exchange service providers shall also include a description of the service territory and local calling areas.

723-25-2.16 Toll Reseller. Any person who provides toll services to end-use customers by using the transmission facilities, including without limitation wire, cable, optical fiber, or satellite or terrestrial radio signals of another person. A toll reseller may, but need not, possess its own switching facilities.

723-25-2.17 Transfer. Any or all of the following: a) a transaction to convey, by sale, assignment, or lease, a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, a letter of registration, or any combination of these; b) a transaction to obtain, whether by conveyance of assets or shares, controlling interest in a telecommunications service

provider; c) a conveyance of assets not in the ordinary course of business; or d) execution of a merger.

RULE (4 CCR) 723-25-3. APPLICATION PROCEDURES.

723-25-3.1 The applicant shall submit an original plus four copies of any application or other pleading and any supporting documentation.

723-25-3.2 The Commission will accept electronic filing of application forms and related pleadings when such filings become technically feasible. The Commission reserves the right to require the applicant to submit a certified original application or other pleading and any supporting documentation for the official file.

723-25-3.3 The Director of the Commission, or the Director's designee, shall review applications to determine completeness, using the procedures set forth below

723-25-3.4 Incomplete applications will not be processed. The Commission staff shall send written notice of the deficiencies to the applicant within 10 days of the Commission's receipt of the application. If the deficiencies are not cured within 30 days of the Commission's receipt of the application, the application shall be rejected and the docket closed.

723-25-3.5 Until the Commission issues an order approving such authority, no certificate of public convenience and necessity, letter of registration, authority to discontinue or curtail service, or authority to execute a transfer or merger shall become effective.

723-25-3.6 Absent unusual or extraordinary circumstances, the Commission shall reject an application that does not meet the requirements of 4 CCR 723-25.

RULE (4 CCR) 723-25-4. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES, LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES, OR ANY COMBINATION THEREOF.

To request a certificate of public convenience and necessity to provide local exchange telecommunications services, a letter of registration to provide emerging competitive telecommunications services, or any combination thereof, the applicant shall file an application on the form provided by the Commission, or a separate pleading with the information and documentation set forth below.

723-25-4.1 Contents of Application. The application shall contain the following information:

723-25-4.1.1 Applicant's name, complete mailing address (street, city, state, and zip code), telephone number, e-mail address, and the name(s) under which the applicant is, or will be, providing telecommunications service in Colorado;

723-25-4.1.2 Name, mailing address, telephone number and e-mail address of person to contact for questions about the application;

723-25-4.1.3 Name, mailing address, and toll free telephone number of applicant's representative responsible for responding to consumer complaint inquiries by either the public or the Commission;

723-25-4.1.4 A copy of the applicant's applicable organizational documents, e.g., Articles of Incorporation; Partnership Agreement; Articles of Organization, etc.;

723-25-4.1.5 If the applicant is not organized in Colorado, a copy of the certificate issued by the Colorado Secretary of State authorizing the applicant to transact business in Colorado;

723-25-4.1.6 Name and address of applicant's Colorado agent for service of process;

723-25-4.1.7 A description of the applicant's affiliation, if any, with any other company;

723-25-4.1.8 Identification of any adverse decision entered by any court or regulatory body within the last five years regarding the applicant's provision of local exchange telecommunications services or other regulated telecommunications services that resulted in: (a) assessment of civil penalties; (b) assessment of criminal penalties; (c) injunctive relief; (d) corrective action; (e) reparations; (f) initiation of a show cause proceeding; (g) initiation of a disciplinary action, including but not limited to, proceedings to limit or to place restrictions on any authority to operate, any certificate of public convenience and necessity, or any service offered; (h) refusal to grant authority to operate or to provide a service; (i) decertification or revocation of authority to operate or to provide a service; or (j) any combination of the foregoing.

The applicant shall identify the jurisdiction and provide the docket or file number for each action, and shall provide a copy of any identified decision to the Commission upon request.

723-25-4.1.9 Identification of the emerging competitive telecommunications services to be provided, which may include any or all of the following: advanced features; premium services; interLATA toll; intraLATA toll; switched access; private line services with a capacity of less than twenty-four voice grade circuits; non-optional operator services; and any other emerging competitive

telecommunications services as classified pursuant to § 40-15-305 (2), C.R.S.

723-25-4.1.10 Acknowledgment that by signing the application, the applicant:

a. Certifies that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide the local exchange telecommunications services for which it is applying;

b. Agrees to answer all questions posed by the Commission or any authorized member of its staff concerning the application, and to permit the Commission or any authorized member of its staff to inspect the applicant's books and records as part of the investigation into the application;

c. Understands that filing of the application does not by itself constitute authority to operate. If a certificate or letter of registration is granted, the applicant may not provide regulated telecommunications services until: 1) the Commission approves its Declaration of Intent to Serve, if seeking to provide local exchange service in the service territory of a Rural Telecommunications Provider; 2) the Commission approves its tariffs or price lists for relevant services; and 3) the applicant complies with applicable Commission rules and any conditions established by Commission order;

d. Agrees to respond in writing, within ten business days, to all consumer complaints filed with the Public Utilities Commission;

e. Agrees to contribute, in a manner prescribed by statute, rule, or order of the Commission, to the funding of: 1) the Commission's Fixed Utility Fund; 2) the Colorado High Cost Support Mechanism; 3) the Colorado Disabled Telephone

Users Fund; 4) the Low Income Telephone Assistance Program; 5) Emergency Telecommunications Services (e.g. 911 and E911); and 6) any other financial support mechanism created by § 40-15-502(5), C.R.S., and adopted by the Commission, as required by § 40-15-503(2)(b)(V), C.R.S.;

f. Understands that if any portion of the application is found to be false or to contain material misrepresentations, any telecommunications certificate of public convenience and necessity or letter of registration granted may be revoked, upon Commission order; and

g. Certifies that the provider, pursuant to its tariff or price list, will not unjustly discriminate among and between consumers in the provision of local exchange telecommunications services within its service territory.

723-25-4.1.11 An affidavit signed by an officer, partner, owner, or employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

723-25-4.2 Notice of application. The Commission shall give notice of an application for a certificate of public convenience and necessity to provide local exchange telecommunications services and a letter of registration to provide emerging competitive telecommunications services via electronic posting on the Commission's web site within five working days of receipt of the application. The notice period will expire 20 days after the notice is posted on the Commission's web site.

723-25-4.3 Combined applications. Applicants may file a combined application for: a) a certificate of public convenience and necessity to provide local exchange telecommunications services; b) a letter of registration to

provide emerging competitive telecommunications services; c) a specific form of price regulation; d) a specific form of relaxed regulation, or e) any combination of the above.

723-25-4.4 Default form of regulation. Providers of local exchange and emerging competitive telecommunications services, other than incumbent local exchange carriers (as defined in 4 CCR 723-38), shall be regulated under the default regulatory scheme contained in 4 CCR 723-38, unless the provider requests and is granted a specific form of price regulation or a specific form of relaxed regulation. Rural Telecommunications Providers seeking simplified regulatory treatment pursuant to § 40-15-203.5, C.R.S. should refer to 4 CCR 723-38 for those application requirements.

RULE (4 CCR) 723-25-5. DECLARATION OF INTENT TO SERVE WITHIN TERRITORY OF RURAL TELECOMMUNICATIONS PROVIDER.

A provider that has been granted a certificate of public convenience and necessity to provide local exchange telecommunications services, and that wishes to provide such services in the service territory of a Rural Telecommunications Provider, shall file with the Commission a Declaration of Intent to Serve at least 45 days prior to offering such services. The provider may file the Commission-provided declaration form, or a separate pleading with the information and documentation set forth below.

723-25-5.1 Contents of Declaration. The Declaration shall contain the following information:

723-25-5.1.1 Provider's name, complete mailing address (street, city, state, and zip code), telephone number, e-mail address and the name(s) under which the applicant is, or will be, providing telecommunications service in Colorado;

723-25-5.1.2 Name, mailing address, telephone number, and e-mail address of person to contact for questions about the declaration;

723-25-5.1.3 Identification of the Rural Telecommunications Provider(s) operating in the service territory proposed to be served;

723-25-5.1.4 Description of the service territory proposed to be served by submitting the following: a) a list of exchange area(s) and local calling areas; and b) a copy of the exchange map(s) of the proposed service territory or a comparably precise description;

723-25-5.1.5 Identification of the city or town in which the provider prefers a hearing be held, if necessary.

723-25-5.2 Notice of Declaration. Within five working days of the receipt of the Declaration, the Commission shall provide notice via electronic posting on the Commission's web site and shall send by first class mail written notice to the affected Rural Telecommunications Provider(s) within the proposed service territory. The Rural Telecommunications Provider has 20 days in which to protest or intervene.

723-25-5.3 If the Declaration is incomplete, the Commission staff shall notify the provider of the deficiencies within ten days of the filing of the Declaration. If the deficiencies are not cured within 30 days of the original filing of the Declaration, it shall be rejected.

723-25-5.4 The Declaration shall become effective only upon order of the Commission.

RULE (4 CCR) 723-25-6. COMMISSION MAY DEEM CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR LETTER OF REGISTRATION NULL AND VOID.

A certificate of public convenience and necessity or a letter of registration shall be deemed null and void without further action of the Commission, if the provider fails to file an effective tariff and/or price list, pursuant to Rule 4 CCR 723-38, within three years after the effective date of the Commission order granting the certificate of public convenience and necessity or letter of registration. For good cause shown, the provider may file, and the Commission may consider, a motion to extend the three year filing deadline.

723-25-6.1 Providers holding certificates of public convenience and necessity to provide emerging competitive telecommunication services on the effective date of these rules shall be allowed three years from the effective date of these rules to file an effective tariff. This rule supercedes those timeframes for filing tariffs outlined in the Commission order granting the certificate of public convenience and necessity to provide emerging competitive telecommunication services.

RULE (4 CCR) 723-25-7. APPLICATION TO DISCONTINUE OR CURTAIL REGULATED TELECOMMUNICATIONS SERVICES.

To discontinue or curtail regulated telecommunications service, any service required for the provisioning of regulated telecommunications service, or service in a selected service territory or portion(s) thereof, a provider shall file an application with the Commission not less than 30 days prior to the effective date of the proposed discontinuance or curtailment. The applicant may complete the Commission-

provided application form, or may file a separate pleading with the information and documentation set forth below.

723-25-7.1 Exemptions. An application to discontinue or curtail service shall not be required when: a) the provider has no customers (see Rule 4 CCR 723-25-7.9); b) the provider is discontinuing or curtailing toll resale service (see Rule 4 CCR 723-25-9.2.3); or c) the discontinuance or curtailment is the result of a transfer or merger, and no interruption of service will occur.

723-25-7.2 Contents of application. The application shall contain the following information:

723-25-7.2.1 Applicant's name, complete mailing address (street, city, state, and zip code), telephone number, e-mail address, and the name(s) under which the applicant is providing telecommunications service in Colorado;

723-25-7.2.2 Name, mailing address, telephone number and e-mail address of person to contact for questions about the application;

723-25-7.2.3 Identification of the telecommunications services, either facilities-based or resale, to be discontinued or curtailed, and the associated service territory or portion thereof proposed for discontinuance or curtailment;

723-25-7.2.4 The proposed effective date, which shall not be sooner than 30 days after the date on which the provider files the application with the Commission;

723-25-7.2.5 Identification of the town or city within the affected service territory where the applicant prefers a hearing be held, if necessary;

723-25-7.2.6 Acknowledgment that by signing the application, the applicant and its successors understand and agree that:

a. Filing of the application does not, by itself, constitute authority to discontinue or curtail any service;

b. If the application is granted, any discontinuance or curtailment is conditional upon fulfillment of any conditions established by Commission order; and

c. If any portion of the application is found to be false or to contain material misrepresentations, any order granting authority to discontinue or curtail may be deemed null and void, upon Commission Order.

723-25-7.2.7 An affidavit signed by an officer, partner, owner, or employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

723-25-7.3 Provider of last resort. If the applicant has been designated as a provider of last resort, it must supplement its application by providing the information required by the Commission's rules relating to Relinquishment of Eligible Telecommunications Carrier Designation found at 4 CCR 723-42-8.

723-25-7.4 Customer Notice of Application. The applicant shall provide customer notice of the application to discontinue or curtail service, as follows.

723-25-7.5 At least 30 days prior to the effective date of the proposed discontinuance or curtailment, the applicant shall mail by a separate first class mailing, or hand-deliver, the notice to each of the applicant's affected customers; to the board of county commissioners of each

affected county; and to the mayor of each affected city, town, or municipality.

723-25-7.6 Contents of Customer Notice. The notice shall explain clearly and specifically the applicant's procedures to transfer customers to another provider. At a minimum, the notice shall: a) identify the proposed discontinuance or curtailment of service; b) state the proposed effective date of the discontinuance or curtailment; c) notify customers of their option to select another local exchange carrier; d) provide a copy of the most recent jurisdictional list maintained by the Commission, which indicates the name, address, and toll free telephone number of each and every alternative provider regulated by the Commission, including providers of last resort; e) notify customers that they will be allowed to retain their current telephone numbers and will receive the same telecommunications products and services that have been provided by the applicant, where technically feasible; f) state the specific time period during which customers must select an alternative provider; g) notify the customer that if they do not select an alternative carrier within that specified time period, the customer will be transferred automatically to the default local exchange carrier as designated by the Commission, and h) notify the customer that there will be no charge to change to another carrier as a result of the discontinuance or curtailment of service.

723-25-7.7 The notice required by this rule shall be in the form attached to these rules as Form A for basic local exchange service or a combination of basic local exchange and other telecommunications services, or Form B for service other

than basic local exchange service, or as ordered by the Commission.

723-25-7.8 When notice is required under this rule, the applicant shall file with the Commission an affidavit attesting to its compliance with this rule not less than 15 days before the date of the proposed discontinuance or curtailment. The affidavit shall state the date on which notice was completed and the method used to give notice. A copy of each form of notice given shall accompany the affidavit.

723-25-7.9 Discontinuance or curtailment where no customers are affected. Where no customers will be affected by the proposed discontinuance or curtailment, the provider is not required to file an application. However, at least 30 days prior to the proposed date of discontinuance or curtailment, the provider shall file with the Commission a written notification of discontinuance or curtailment and an affidavit attesting that no customers will be affected.

723-25-7.10 Amendment of tariff or price list. If the proposed discontinuance or curtailment requires an amendment of the provider's tariff or price list, nothing in this rule shall be construed as a waiver or variance from statute or Commission rules regarding the provider's obligation to file an appropriate advice letter or transmittal letter in accordance with the Rules of Practice and Procedure, 4 CCR 723-1, or other applicable Commission rules.

RULE (4 CCR) 723-25-8 APPLICATION TO TRANSFER

To request authority to execute a transfer, as defined at 4 CCR 723-25-2.17, the transferor and the transferee shall file a joint application with the Commission not less than 30

days prior to the effective date of the proposed transfer. If the transferee does not hold a Commission-issued certificate of public convenience and necessity to provide local exchange telecommunications services, the transferee shall provide the Commission with the information required pursuant to Rule 4 CCR 723-25-4, and must receive an appropriate grant of authority from the Commission. The joint applicants may complete the Commission-provided application form, or may file a separate pleading with the information and documentation set forth below.

723-25-8.1 Contents of application. The application shall contain the following information:

723-25-8.1.1 Applicants' names, complete mailing addresses (street, city, state, and zip code), telephone numbers and e-mail addresses of each party to the proposed transfer;

723-25-8.1.2 Names, mailing addresses, telephone numbers and e-mail addresses of persons to contact for questions about the application;

723-25-8.1.3 Name under which the transferee is, or shall be, providing service in Colorado, if the transfer is approved;

723-25-8.1.4 The specific assets, including any certificate, operating authority, or CPCN, or rights obtained under such certificate, operating authority, or CPCN, proposed to be sold, assigned, leased, or otherwise transferred;

723-25-8.1.5 The proposed effective date of the transfer;

723-25-8.1.6 A statement of the facts (not in the form of conclusory statements) relied upon to show that the proposed transfer is consistent with, and not contrary to, the

statements of public policy in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.;

723-25-8.1.7 Identification of the town or city where the applicant prefers a hearing be held, if necessary;

723-25-8.1.8 Acknowledgment that by signing the application, the joint applicants understand and agree:

a. To answer all questions posed by the Commission or any authorized member of its staff concerning the application, and to permit the Commission or any authorized member of its staff to inspect the applicants' books and records as part of the investigation into the application;

b. That the filing of the application does not, by itself, constitute authority to execute the transfer;

c. That the applicants shall not undertake the proposed transfer unless and until a Commission decision granting the application is issued;

d. That if a transfer is granted, such transfer is conditional upon: 1) the existence of applicable, effective tariffs or price lists for relevant services, including any required adoption notices; 2) compliance with the statutes and all applicable Commission rules; and 3) compliance with any and all conditions established by Commission order; and

e. That, if any portion of the application is found to be false or to contain material misrepresentations, any transfer granted may be deemed null and void, upon Commission Order.

723-25-8.1.9 An affidavit signed by an officer, partner, owner, or employee, as appropriate, who is authorized to act on behalf of each applicant, stating that the contents of the application are true, accurate, and correct.

723-25-8.2 Provider of last resort. If the Commission has designated either the transferor or the

transferee as a provider of last resort, the application must also contain the information required by Commission rules relating to Relinquishment of Eligible Telecommunications Carrier Designation found at 4 CCR 723-42-8, in addition to the information required by Rule 723-25-8.

RULE (4 CCR) 723-25-9. TOLL RESELLER REGISTRATION AND OBLIGATIONS.

The Commission has limited jurisdiction over the activities of toll resellers, including slamming oversight, as specified in Rule 4 CCR 723-2-25. Toll resellers shall be regulated in the following manner.

723-25-9.1 Registration. All toll resellers shall register using the registration form approved by the Commission.

723-25-9.2 Obligations. All toll resellers shall:

723-25-9.2.1 Submit an annual report or other periodic reports required by Commission rules;

723-25-9.2.2 Contribute to all lawful funds or support mechanisms administered by the Commission, including but not limited to the Fixed Utility Fund and the high cost support funds; and

723-25-9.2.3 File an updated registration form within 15 days of any change in the information previously provided to the Commission, including any discontinuance or curtailment of service.

723-25-9.3 Remedies for misconduct by toll resellers. For the purposes of enforcing § 40-15-112, C.R.S., the Commission may invoke against toll resellers all lawful remedies available under Title 40, Articles 1 through 7, C.R.S. Failure to comply with applicable statutes or

Commission rules is cause for revocation of the registration, an order to cease and desist, an order to the appropriate local exchange providers to disconnect a toll reseller's service, or any other remedy deemed appropriate by the Commission.

RULE (4 CCR) 723-25-11. WAIVER OR VARIANCE.

The Commission may permit a waiver or variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable.

(4 CCR) 723-25-FORM A
NOTICE OF A DISCONTINUANCE OR CURTAILMENT
OF BASIC LOCAL EXCHANGE SERVICE

**NOTICE OF [NAME OF PROVIDER]'S INTENT TO [STOP OFFERING]
[LIMIT THE OFFERING OF] LOCAL TELEPHONE SERVICE IN YOUR AREA**

[Name of provider] has asked the Colorado Public Utilities Commission (PUC) for approval to discontinue offering [limit the offering of] basic local telephone service in your area effective on [date]. [Name of provider] proposes to discontinue offering [limit the offering of] local telephone service in your area as follows: [provide details of proposal here including the jurisdictional list of alternative providers].

Anyone may object to this proposal by sending a letter to the Colorado Public Utilities Commission, 1580 Logan St., OL2, Denver, CO 80203. You may also object to this proposal by calling the PUC at [phone numbers].

Your written objection by itself does not allow you to participate as a party in any proceeding before the PUC on this proposal. If you want to actively participate as a party to any proceeding, you must submit a written request to the PUC at the above address at least 10 calendar days before the proposed effective date of [date]. Your written request to intervene must follow Rules 20, 21, and 22 of the Commission's Rules of Practice and Procedure and any other rules that apply. You may request a copy of these rules, 4 CCR 723, from the Commission.

The PUC may hold hearings on [name of provider]'s proposed actions. If the Commission holds hearings, it will decide what actions, if any, are allowed. Members of the public may attend any hearing and make a statement under oath about the proposed action even if they did not submit a written objection or intervention.

If you want to know if and when hearings are held, please submit a written request to the PUC at the above address. Your written request for hearing notification must be submitted to the PUC at least 10 calendar days before the proposed effective date of [date].

Please be assured that basic local telephone service will still be available to you whatever the outcome of [name of provider]'s requested action. If [name of provider]'s request to stop offering local telephone service is granted, another telephone company will offer service to you.

by: [name, title and address of officer]

(4 CCR) 723-25-FORM B

NOTICE OF DISCONTINUANCE OR CURTAILMENT
OF AN EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

NOTICE OF [NAME OF PROVIDER]'S INTENT TO [DISCONTINUE] [LIMIT]
ITS OFFERING OF [NAME OF] SERVICE

[Name of provider] has asked the Colorado Public Utilities Commission (PUC) for approval to [specify action whether discontinue offering or limit offering] of [name the service or facility] effective on [date]. The details of this proposal are as follows: {provide details of proposal here including jurisdictional list of alternative providers}

Anyone may object to this proposal by filing a written complaint with the Public Utilities Commission, 1580 Logan St. OL2, Denver, CO 80203. A complaint should be submitted to the PUC prior to the proposed effective date of [date]. A written complaint must follow Rule 61 of the PUC's Rules of Practice and Procedure, or any subsequent revision, and any other rules that apply. A copy of these rules can be obtained from the PUC. The filing of a complaint does not require the Commission to stop the proposed action.

The PUC may hold hearings on [name of provider]'s proposed actions. If the Commission holds hearings, it will decide what actions, if any, are allowed. Members of the public may attend any hearings and make a statement under oath about the proposed action even if they did not file a complaint.

If you want to know if and when hearings are held, please submit a written request to the PUC at the above address. Your written request for hearing notification must be submitted to the PUC at least 10 calendar days before the proposed effective date of [date].

by: (name, title and address of officer)

**STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
PUBLIC UTILITIES COMMISSION
PHONE: 303-894-2000
WEB SITE: www.dora.state.co.us/puc**

Attachment A
Decision No. C01-498
DOCKET NO. OOR-480T
PART A-1-Page 1 of 3

**APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND
LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE
TELECOMMUNICATIONS SERVICES**

1. Applicant's Name and Complete Mailing Address:

Legal Name: _____
Mailing Address: _____

Regulatory Contact: _____
Phone Number: (____) _____ Fax Number (____) _____
e-mail Address: _____

2. Name under which Applicant is, or will be, providing telecommunications services in Colorado:

3. Person to Contact for Questions about this Application:

Contact Name: _____
Mailing Address: _____

Phone Number: (____) _____ Fax Number (____) _____
e-mail address: _____

4. Applicant's Customers Can Contact the Company at:

Phone Number: (____) _____ Fax Number (____) _____
Toll Free Number: (____) _____
e-mail address: _____
Mailing Address: _____

5. Person to Respond to Customer Complaints Referred to the PUC:

Contact Name: _____
Mailing Address: _____

Phone Number: (____) _____ Fax Number (____) _____
Toll Free Number: (____) _____
e-mail address: _____

6. Applicant's Organizational Information:

Please provide the following:

- A. A copy of the applicant's organizational documents: Articles of Incorporation (for corporations), Partnership Agreement (for partnerships), Articles of Organization (for Limited Liability Companies), etc.
- B. If the applicant is not organized in Colorado, a copy of your certificate of authority to transact business in Colorado, issued by the Colorado Secretary of State.
- C. Name and address of applicant's Colorado agent for service of process.

7. Applicant is Requesting: (Check all applicable boxes and complete all corresponding sections)

- ☐ **Certificate of Public Convenience and Necessity to provide local exchange services**
Complete Section 8
- ☐ **Letter of Registration to provide emerging competitive telecommunications services**
Complete Section 9
- ☐ **Specific Forms Of Price Regulation or Relaxed Regulation – Go to Section 10**

8. Certificate of Public Convenience and Necessity to provide Local Exchange Services:

A Certificate of Public Convenience and Necessity (“CPCN”) authorizes the applicant to provide local exchange telecommunications services. The CPCN for telecommunications is generally granted on a statewide basis, subject to terms and conditions established by the Commission’s decision.

A “Declaration of Intent to Serve ” must be filed if the applicant is proposing to provide services in an operating area served by a Rural Telecommunications Provider. The “Declaration of Intent to Serve” must be filed at least 45 days prior to offering such services.

Providers of Local Exchange Services will be regulated under the default regulatory scheme outlined in 4 CCR 723-38. If the applicant wishes to request specific forms of price regulation or relaxed regulation, you must also complete Section 10 of this application.

A. Is the applicant affiliated with any other company? ☐ Yes ☐ No

If “Yes”, describe the affiliation.

B. Within the last five years, has any court or regulatory body entered any adverse decision regarding the applicant’s provision of local exchange services or other controlled telecommunications services that resulted in any of the penalties or sanctions in Rule 4 CCR 723-NTR-4? ☐ Yes ☐ No

If “Yes”, identify the jurisdiction and provide the docket number or file number for each action.

9. Letter of Registration to provide Emerging Competitive Telecommunications Services:

A Letter of Registration authorizes the applicant to provide emerging competitive telecommunications services on a statewide basis, subject to any terms and conditions established by the Commission’s decision. See 40-15-301 and 40-15-305 (2), C.R.S. for a complete list of emerging competitive services.

Emerging competitive services to be provided by the applicant (Check all that you will provide)

- | | | |
|---|---|--|
| <input type="checkbox"/> Advanced Features | <input type="checkbox"/> Premium Services | <input type="checkbox"/> IntraLATA toll |
| <input type="checkbox"/> InterLATA toll | <input type="checkbox"/> Switched Access | <input type="checkbox"/> Jurisdictional Private Line |
| <input type="checkbox"/> Non-Optional Operator Services | | |

10. For Specific Forms of Price Regulation and Relaxed Regulation:

Applicants requesting specific forms of price regulation or relaxed regulation, should read Rule 4 CCR 723-38 before completing this section. Attach the information requested in 4 CCR 723-38 to your application, including testimony in support of your request for specific forms of regulation.

11. Signature and Attestation (to be completed by all applicants):

By signing this application form, applicant and its successors:

- 1) Certify that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide the local exchange telecommunications services for which it is applying (if applicable);
- 2) Will answer all questions posed by the Commission or any authorized member of its staff concerning the application, or any information supplied in support of the application, and will permit the Commission or any member of its staff to inspect the applicant's books and records as part of the investigation into the application.
- 3) Understand that filing of the application does not by itself constitute authority to operate. If a CPCN is granted, applicant may not provide regulated telecommunications services until:
 - a) the Commission approves its "Declaration of Intent to Serve" (if seeking to provide local exchange service in the service territory of in a Rural Telecommunications Provider);
 - b) the Commission approves its tariffs or price lists for relevant services; and
 - c) the applicant complies with applicable Commission rules and any conditions established by Commission Order.
- 4) Agree to respond, in writing, within ten business days, to all consumer complaints filed with the Public Utilities Commission.
- 5) Agree to contribute, as prescribed by statute, rule and the Commission, to funding the following:
 - a) Colorado PUC's Fixed Utility Fund;
 - b) Colorado High Cost Support Mechanism;
 - c) Disabled Telephone Users Fund (TRS/TDD);
 - d) Low Income Telephone Assistance Program; and
 - e) Emergency Telecommunications Services (911/E911)
 - f) any other financial support mechanism created by statute.
- 6) Understand that if an portion of the application is found to be false or to contain material misrepresentations, any telecommunications CPCN or Letter of Registration may be deemed null and void, upon Commission Order.
- 7) Certify that the provider, pursuant to its tariff or price list, will not unjustly discriminate among and between consumers in the provision of local exchange telecommunications services within its service territory.

SIGNATURE _____ DATE _____
NAME OF SIGNATORY _____ TITLE _____

12. Affidavit (to be completed by all applicants):

Attach an affidavit signed by an officer, partner, owner, or authorized employee, stating that the contents of the application are true, accurate and correct.

STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
PUBLIC UTILITIES COMMISSION
PHONE: 303-894-2000
E-MAIL ADDRESS: www.dora.state.co.us/puc

**DECLARATION OF INTENT TO SERVE WITHIN TERRITORY
OF RURAL TELECOMMUNICATIONS PROVIDER**

1. Provider's Name and Complete Mailing Address:
Legal Name: _____
D/B/A: _____
Mailing Address: _____

Regulatory Contact: _____
Phone Number: (____) _____ Fax Number (____) _____
e-mail Address: _____
2. Person to Contact for Questions about this Declaration:
Contact Name: _____
Mailing Address: _____

Phone Number: (____) _____ Fax Number (____) _____
e-mail address: _____
3. Declaration of Intent to Serve:
Read Rule 4 CCR 723-NTR- before completing this declaration form.
A. Identify the Rural Telecommunications Provider(s) operating in the service territory proposed to be served
B. Describe the proposed service territory by submitting the following: 1) a list of exchange area(s) and local calling area(s); and 2) a copy of the exchange map(s) of the proposed service territory or a comparably precise description.
C. If the Declaration is set for a hearing by the Commission, in which town or city does the provider prefer a hearing be held? _____
4. Signature and Verification:

By signing this form, service provider agrees that:

- 1) If the Declaration is granted, the provider understands that such operating authority is conditional upon the existence of effective tariffs or price lists for relevant services, and compliance with statutes, Commission rules, and any conditions established by the Commission Order.
- 2) Provider will answer all questions posed by the Commission or any authorized member of its staff concerning the Declaration, or any information supplied in support of the declaration.
- 3) If any portion of the Declaration is found to be false or to contain material misrepresentations, any operating authority granted may be deemed null and void, upon Commission Order.
- 4) Provider will not unjustly discriminate among and between consumers in the provision of local exchange telecommunications service within its operating area.

SIGNATURE_____	DATE_____
NAME OF SIGNATORY_____	TITLE_____

**STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
PUBLIC UTILITIES COMMISSION
PHONE: 303-894-2000
E-MAIL ADDRESS: www.dora.state.co.us/puc**

Attachment B-1
Decision No. C01-278
DOCKET NO. OOR-480T
Page 1 of 1

**APPLICATION TO DISCONTINUE OR CURTAIL SERVICE
FOR JURISDICTIONAL TELECOMMUNICATIONS PROVIDERS**

1. Applicant's Name and Complete Mailing Address:

Legal Name: _____
D/B/A _____
Mailing Address: _____

Regulatory Contact: _____
Phone Number: (____) _____ Fax Number (____) _____
e-mail Address: _____

2. Person to Contact for Questions about this Application:

Contact Name: _____
Mailing Address: _____

Phone Number: (____) _____ Fax Number (____) _____
e-mail address: _____

3. Proposal to Discontinue or Curtail any Service (Read Rule 4 CCR 723-NTR):

- A. Identify the telecommunications services to be discontinued or curtailed, and the associated service territory or portion thereof proposed for discontinuance or curtailment.
- B. Proposed effective date for discontinuance or curtailment. ____/____/____
(Shall not be sooner than 30 days after the date on which the provider filed the application with the Commission.)
- C. If the Application is set for a hearing by the Commission, in which town or city does the provider prefer a hearing be held? _____

4. Signature and verification (to be completed by all applicants):

By signing this form, applicant agrees to the following:

- 1) Filing of the application does not, by itself, constitute authority to discontinue or curtail any service.
- 2) If the application is granted, any discontinuance or curtailment is conditional upon fulfillment of any conditions established by Commission Order.
- 3) If any portion of the application is found to be false or to contain material misrepresentations, any order granting authority to discontinue or curtail service may be deemed null and void, upon Commission Order.
- 4) The applicant shall provide customer notice of the application to discontinue or curtail, as described in 4 CCR 723-NTR-7, "Contents of Customer Notice"..

SIGNATURE _____ DATE _____
NAME OF SIGNATORY _____ TITLE _____

5. Affidavit (to be completed by all applicants):

Attach an affidavit signed by an officer, partner, owner, or authorized employee, stating that the contents of the application are true, accurate and correct.

**STATE OF COLORADO
DEPARTMENT OF REGULATORY AGENCIES
PUBLIC UTILITIES COMMISSION
PHONE: 303-894-2000
E-MAIL ADDRESS: www.dora.state.co.us/puc**

Attachment B-2
Decision No. C01-278
DOCKET NO. OOR-480T
Page 1 of 2

**JOINT APPLICATION TO EXECUTE A TRANSFER OR MERGER
FOR JURISDICTIONAL TELECOMMUNICATIONS PROVIDERS**

1. Applicant's Name and Complete Mailing Address (Transferor):

Legal Name: _____
D/B/A _____
Mailing Address: _____

Regulatory Contact: _____
Phone Number: (____) _____ Fax Number (____) _____
e-mail Address: _____

2. Applicant's Name and Complete Mailing Address (Transferee):

Legal Name: _____
D/B/A _____
Mailing Address: _____

Regulatory Contact: _____
Phone Number: (____) _____ Fax Number (____) _____
e-mail Address: _____

3. Person to Contact for Questions about this Application:

Contact Name: _____
Mailing Address: _____

Phone Number: (____) _____ Fax Number (____) _____
e-mail address: _____

4. To Execute a Transfer or Merger:

Read Rule 4 CCR 723-NTR-8 before completing this section. Use attachments as necessary.

- A. Identify the assets, including any certificate, operating authority, or CPCN, or rights obtained under such certificate, operating authority, or CPCN, proposed to be sold, assigned, leased or otherwise transferred.
- B. Proposed effective date of the transfer: ____/____/____
- C. Provide a statement of the facts relied upon to show that the proposed transfer is consistent with, and not contrary to, the statements of public policy in 40-15-101, 40-15-501, and 40-15-502, C.R.S.
- D. If the Application is set for a hearing by the Commission, in which town or city does the provider prefer the hearing be held? _____

Note: If the transferee does not hold a Commission issued certificate of public convenience and necessity to provide local exchange telecommunications services, the transferee shall also provide the information required pursuant to Rule 4 CCR 723-NTR and must receive an appropriate grant of authority from the Commission.

5. Signature and verification (to be completed by all applicants):

By signing this form, joint applicants understand and agree:

- 1) To answer all questions posed by the Commission or any authorized member of its staff concerning the application, and to permit the Commission or any member of its staff to inspect the applicants' books and records as part of the investigation into the application.
- 2) That filing of the application does not, by itself, constitute authority to execute a transfer or merger . Applicant will not execute the proposed transfer unless and until a Commission granting the application is issued.
- 3) That if a transfer is approved, applicant understands that such authority is conditional upon: a) the existence of applicable, effective tariffs or price lists for relevant services, including any required adoption notices; b) compliance with statutes and all applicable Commission rules; and c) compliance with any and all conditions established by Commission order.
- 4) That if any portion of the application is found to be false or to contain material misrepresentations, any transfer granted may be deemed null and void, upon Commission order.

Transferor

SIGNATURE _____ DATE _____
NAME OF SIGNATORY _____ TITLE _____

Transferee

SIGNATURE _____ DATE _____
NAME OF SIGNATORY _____ TITLE _____

6. Affidavit: (to be provided by both applicants)

Each applicant shall attach an affidavit signed by an officer, partner, owner, or authorized employee, stating that the contents of this application are true, accurate and correct.

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

RULES OF PRACTICE AND PROCEDURE

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-22. PLEADINGS

(a) Title. Pleadings before the Commission are applications, petitions, complaints, answers, notices, interventions, motions, statements of position, briefs, exceptions, applications for rehearing, reargument, or reconsideration, responses to pleadings, and proposed orders required by paragraph (c) of this rule. [Pleadings related to telecommunications applications will follow the process detailed in 4 CCR 723-25 as applicable.](#)

(b) Responses to Pleadings. A response may only be filed to: applications, petitions, complaints, motions, statements of position, briefs, and exceptions. A response shall be filed with the Commission within 14 days after the pleading to which it responds was mailed to all parties of record as shown in the certificate of mailing. The Commission, upon filing of a motion showing good cause, filed within the 14-day response time, or upon its own motion, may enlarge or shorten the time for filing a response. Upon a finding that time is of the essence, the Commission may waive response time and may act on a pleading, notwithstanding the provisions permitting a responsive pleading. No responsive pleading may

be filed to answers, interventions, notices, responses, or applications for rehearing, reargument or reconsideration.

(c) Proposed Orders. A party filing a pleading seeking action by the Commission shall submit a proposed order in a format approved by the Commission granting the action, if requested by the Commission.

(d) Form, Content, Size and Filing of Pleadings.

(1) Form and Size. Pleadings shall be typewritten in standard-size elite or pica type, 10 or 12 characters to the inch, on 8 1/2" x 11" white bond paper or on an electronic medium as provided and designed by the Commission. All pleadings shall be double-spaced, with one-inch margins at the top, bottom, and both sides of each page. No pleading shall be more than 30 pages in length, including attachments, except where the attachments are required by a rule and exceed 30 pages or unless otherwise ordered by the Commission. However, the cover sheet, table of contents, certificate of mailing, copies of cases or authorities cited, and copies of a decision which may be the subject matter of the pleading shall not be included when determining the 30-page limitation.

(2) Content. A pleading shall identify the proceeding by caption and docket number, and shall state the title of the pleading, the relief sought, a clear and concise statement of the matters relied upon as a basis for the pleading, and the name, address, and telephone number of the party or the party's attorney.

(3) Cases or Authorities Cited. If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.

(4) Signature and Verification. A pleading of a party represented by an attorney shall be signed by the attorney, and shall state his address, telephone number and attorney registration number. A pleading of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state his title, address and day time telephone number. The signature of an attorney is a certification by him that he has read the pleading; that to the best of his knowledge, information and belief there are good grounds to support it; and that it is not interposed for purposes of delay. An application need not be verified unless the Applicant desires that it be processed as a noncontested or unopposed proceeding without a hearing under Rule 24. Other pleadings need not be verified.

(5) Certificate of Service. Proof of service under § 40-6-108(3), C.R.S., of any pleading or document filed by a party, shall be shown on all pleadings or filed documents by a certificate of service. Any pleading or document, which must also be served on other parties, and which does not contain a certificate of service when filed, or whose certificate of service omits counsel of record for a party will be presumed not to have been served on other parties or on all counsel of record. This presumption may be overcome by evidence of proper service.

(6) Filing of Pleadings. All pleadings must be filed at the Commission either by hand delivery, by mail, or by facsimile. Pleadings transmitted by facsimile for purposes of filing shall be followed by filing the original and number of copies required by this rule within one business day.

(e) Amendments to Pleading.

(1) The Commission may permit any pleading to be amended or supplemented in accordance with C.R.C.P. 15.

(2) No restrictive amendment to an application shall be permitted except on written motion. Any motion that is filed more than 15 days before the first day of a hearing shall be ruled upon before the hearing. Any motion that is filed less than 15 days before the first day of a hearing may be ruled upon before the hearing.

(3) No amendment enlarging an application shall be allowed except upon written motion. If the Commission grants a motion to enlarge an application, it shall be renoticed by the Commission.

(f) Number of Copies. Unless otherwise ordered, the number of copies of pleadings to be filed are:

(1) Applications:

(A) Fixed Utilities as defined in Rule 4(b)(5)- Original and 15 copies.

(B) Transportation Utilities as defined in Rule 4(b)(18) - Original and eight copies.

(C) Application to only register interstate motor carrier operating authority - original only.

(2) Interventions: original and six copies.

(3) Formal Complaints: original and one copy plus one copy for each named Respondent.

(4) All Other Pleadings:

(A) Fixed Utilities as defined in Rule 4(b)(5)- Original and 15 copies, unless the matter is assigned to an administrative law judge, in which case original and eight copies.

(B) Transportation utilities as defined in Rule 4(b)(18) - Original and eight copies, unless the matter is assigned to an administrative law judge, in which case original and four copies.

(g) Pleadings Not in Compliance. Any pleading or document presented for filing, which substantially fails to comply with the requirements of this rule, may be subject to a motion to strike or motion to dismiss in accordance with Rules 11 and 12, C.R.C.P., or a motion seeking other appropriate relief.

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SOURCE: Rules 11, 1970 ed., Rule 22, 1987 ed.

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(h)

(1) Voluntary Dismissal of Applications By Applicant. An applicant may withdraw or dismiss an application upon notification to the Commission prior to 45 days before the first day of hearing. A withdrawal or dismissal within this period of time shall be without prejudice. An applicant may withdraw or dismiss its application during the 45-day period preceding the commencement of the hearing only upon motion and approval by the Commission. In ruling upon a motion for dismissal or withdrawal, the Commission shall consider whether good cause for dismissal or withdrawal is stated, and whether other parties would be prejudiced.

(2) Voluntary dismissal of Applications Upon Less Than 30 days' Notice. An application for approval of changes to the tariff of any public utility, including changes to rates, fares, tolls, rentals, charges or classification, pursuant to section 40-3-104, C.R.S. (upon less than 30 days'

notice) may be voluntarily withdrawn or dismissed by the applicant at any time before approval of such application by the Commission.

(3) Dismissal or withdrawal of Tariffs and Advice Letters. Any advice letter or other filing stating a change to, including additions, the tariff of any public utility may be voluntarily withdrawn upon notification to the Commission, if such advice letter or other filing has not yet been set for hearing and suspended by the Commission. After suspension, a filing stating any change to a tariff may be dismissed or withdrawn by the filing utility only upon motion and approval by the Commission. In ruling upon a motion for dismissal or withdrawal, the Commission shall consider whether good cause is stated, and whether other parties would be prejudiced by such dismissal or withdrawal.

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE**

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-24. NONCONTESTED - UNOPPOSED PROCEEDINGS

(a) General. 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, but do not have to be notarized. The statements, affidavits, and exhibits may be verified by the following oath, appearing above the signature line. "Under the penalties of perjury, I declare that all statements made herein are true and complete to the best of my knowledge. I understand that any statement made in violation of this oath shall constitute grounds for the dismissal of my application, or revocation of any authority granted." 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 the failure to file the necessary verified statements, affidavits, and exhibits within the ten-day period.

(1) An intervention will not be deemed to be a contest or opposition to a proceeding unless a statement specifying the grounds for the contest or opposition is included with the entry of appearance and notice of intervention or petition to intervene filed pursuant to Rule 64.

(b) Withdrawal of Contest or Opposition. If all parties withdraw before completion of a hearing, the matter may be determined as a noncontested or unopposed proceeding under Rule 24(a).

(c) Applicability of Other Provisions. A noncontested or unopposed proceeding shall be subject to all applicable provisions of these Rules and to all applicable provisions of The Colorado Revised Statutes.

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Source: Rule 17, 1970, ed.; Rule 24, 1987 ed.

THE
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RULES OF PRACTICE AND PROCEDURE

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-42. ADOPTION NOTICES WHEN NAME OR CONTROL OF A FIXED UTILITY CHANGES.

(a) Adoption Notice. When control of a fixed utility is transferred to another utility, or the name is changed, the utility which will afterwards operate under the certificate shall file with the Commission, post in a prominent public place in each business office of the utility, and have available for public inspection at each office, in the form of a tariff numbered in its P.U.C. series, an adoption notice as in Form G.

(b) Contents of Adoption Notice. The adoption notice shall contain, to the extent applicable, all the data, items, and information required by Rule 55(c) or 4 CCR 723-25 as applicable.

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4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-55. APPLICATIONS BY FIXED UTILITIES, NOT INCLUDING TELECOMMUNICATIONS SERVICE PROVIDERS, FOR ISSUANCE, EXTENSION OR TRANSFER OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, INCLUDING AUTHORITY TO EXERCISE FRANCHISE RIGHTS, ASSET TRANSFER, STOCK TRANSFER, OR MERGER - NOTICE.

(a) Applicability. This Rule applies to all fixed utilities as defined in Rule 4(b)(5), except telecommunications service providers ~~who seek: (1) to provide any local exchange telecommunications service in an area for which they were not certificated to provide such service prior to July 1, 1996, or (2) to execute a transfer. If a person seeks to provide local exchange telecommunications service and was not certificated to provide such service prior to July 1, 1996, that person must file an application in accordance with the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, 4 CCR 723-35~~^{NTR.} If a person seeks to execute a transfer pertaining to a local exchange telecommunications services, that person must comply with the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, Emerging Competitive Telecommunications Services, to Discontinue or Curtail Any Service, to Execute a Transfer or Merger, and Registration as

~~a Toll Reseller, 4CCR 723-NTR. Applications by Local Exchange Telecommunications Service Providers to Execute a Transfer, 4 CCR 723-37NTR.~~

(b) Procedure. Any fixed utility applying for the issuance, extension or transfer of a certificate of public convenience and necessity, including authority for approval of the exercise off franchise rights, to obtain controlling interest in any utility, or asset transfer, stock transfer, or merger shall proceed as set forth in this Rule.

(c) Contents of Application. When a fixed utility proposes to obtain, extend or transfer a certificate of public convenience and necessity, including authority to exercise franchise rights, or to obtain controlling interest in any utility. or an asset transfer stock transfer, or merger, it shall file an application with the Commission for that authority. The application shall comply with all other applicable provisions of these Rules, and shall contain the following applicable information, either in the application or in appropriately identified attached exhibits:

(1) Applicant's name and complete address (street, city, state, and zip code), and the name under which the operation shall be conducted.

(A) If the applicant is a corporation, a statement of that fact; the name of the state in which it is incorporated; the location of its principal office, if any, in this state; the names of its directors, officers, and Colorado agent for service; and a copy of its Articles of Incorporation or Charter;

(B) If the applicant is an out-of-state corporation, a copy of the authority qualifying it to do business in Colorado shall either accompany the application or

be filed with the Commission as soon on as possible after the filing of the application. The application will not be granted until applicant's authority qualifying it to do business in the state of Colorado is filed;

(C) If the applicant is a partnership, the names and addresses of all general and limited partners.

(2) The name and address of applicant's representative, if any, to whom all inquiries should be made.

(3) A statement describing the authority sought, or franchise rights proposed to be exercised. The statement shall include a description of the type of utility service to be rendered and a description of the area sought to be served, together with a map of the area. The statement also shall include a description of applicant's existing operations and general service area.

(4) Statements describing in detail the extent the applicant is affiliated with any other company and the extent the applicant, or any person affiliated with applicant, holds authority duplicating in any respect the authority sought.

(5) A copy of a feasibility study for areas previously not served, which shall at least include estimated investment, income and expense. An applicant may request that balance sheets, income statements, and statements of retained earnings be submitted in lieu of a feasibility study.

(6) A copy of a proposed tariff showing the proposed rates, rules and regulations.

(7) A copy of the most recent balance sheet available for a period ending not earlier than six months before the date of the filing of the application.

(8) A statement of income and of retained earnings for the same time period as the balance sheet referred to in Rule 55(c)(7).

(9) A statement of the names of public utilities and other entities of like character providing similar service in or near the area involved in the application.

(10) A statement that evidence will be presented at the hearing to show the qualifications of applicant to conduct the utility operations proposed in the application.

(11) Where the application is for the issuance or-extension of a certificate, including authority to exercise franchise rights, a statement of the facts (not conclusory statements) relied upon by the applicant to show that the public convenience and necessity require the granting of the application.

(12) Where the application is for the approval of the transfer of a certificate, which includes obtaining controlling interest in any utility, or an asset transfer, stock transfer, or merger, a statement of the facts (not conclusory statements) relied upon by the applicant to show that the transfer is not contrary to the public interest, along with a statement that evidence will be presented at any hearing on the application to establish the facts.

(13) An application to transfer a certificate may be made by joint or separate applications of the transferor and the transferee. The application shall include:

(A) The information required by Rule 55(c);

(B) A statement showing accounting entries, under the Commission's Prescribed Uniform System of Accounts, including any plant acquisition adjustment, gain or loss,

proposed on the books by each party before and after the proposed transfer;

(C) Copies of any sales agreement or contract of sale and all documents pertaining to the transfer;

(D) Facts showing that the transfer is not contrary to the public interest, and an evaluation of the benefits and detriments, if any, to the customers of each party and to all other persons who will be affected by the transfer; and

(E) A comparison of the kinds and costs of service rendered before and after the proposed transfer.

(14) Where the application is to exercise franchise rights, a certified copy of the franchise ordinance, proof of publication, adoption and acceptance by applicant, and a statement as to the number of customers served or to be served and the population of the city or town, and any other pertinent information.

(15) A statement indicating, if the application is assigned for hearing by the Commission, the town or city where the applicant prefers the hearing to be held and any alternative choice.

(16) A statement indicating that the applicant understands that the mere filing of the application does not, by itself, constitute authority to operate.

(17) A statement that if the authority is granted, applicant will file necessary tariffs and will operate in accordance with all applicable Commission Rules and Regulations.

(18) An affidavit signed by an officer, partner or owner, as appropriate, authorized to act on behalf of the

utility, stating that the contents of the application and supporting documentation are true, accurate and correct.

(d) Notice. The Commission shall give notice of the filing of an application to issue, extend or transfer a certificate of public convenience and necessity under Rules 63(a) and (g).

(1) The applicant shall publish notice of the filing of the application to exercise rights or privileges under a franchise, within 3 days after its filing, in a newspaper having general circulation as defined in Rule 4(b)(10), or in one or more local newspapers as defined in Rule 4(b)(8).

(2) The form of notice of an application to exercise rights or privileges under a franchise shall be as in Form X.

(e) Application deemed complete. The Commission shall deem the application complete in accordance with the procedural requirements of Rule 70.

(f) Failure to provide required information. In the absence of unusual or extraordinary circumstances, the Commission will both reject an application that does not meet the requirements of this Rule and close the docket pertaining to that application.

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SOURCE: Prior Rule 18. Part II; prior Appendix H, Part IV.A.

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THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-57 APPLICATIONS BY FIXED UTILITIES, NOT INCLUDING TELECOMMUNICATIONS SERVICE PROVIDERS, TO CHANGE, ABANDON, DISCONTINUE OR CURTAIL ANY SERVICE, OR TO ABANDON OR DISCONTINUE ANY FACILITY - NOTICE.

(a) Application to be Filed with the Commission. When a fixed utility proposes to change, abandon, discontinue or curtail any service, or to abandon or discontinue the use of any facility without equivalent replacement, it shall file with the Commission, at least 30 days before the effective date of the proposed change, abandonment, discontinuance, or curtailment, an application containing a complete explanation of the proposed change, abandonment, discontinuance or curtailment. When a telecommunications services provider proposes to discontinue or curtail telecommunications services, it shall comply with the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, Emerging Competitive Telecommunications Services, to Discontinue or Curtail Any Service, to Execute a Transfer or Merger, and Registration as a Toll Reseller, 4 CCR 723-25.

(b) Notice to Customers. In addition to filing an application with the Commission, the utility shall prepare a

written notice stating the proposed change, abandonment, discontinuance or curtailment, and its proposed effective date, and shall mail or deliver the notice at least 30 days before the effective date of the proposed change to each of the utility's affected customers or subscribers. If no customers are being served by the service or facility, or in the case of telegraph companies, the notice shall be mailed to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town or municipality.

(c) Form of Notice. The notice required in Rule 57(b) shall be as in Form Y.

(d) Proof of Public Notice. Within 15 days before the date of the proposed change, abandonment, discontinuance or curtailment, the utility shall file with the Commission a written affidavit stating its compliance with Rule 57(b). The affidavit shall state the date notice was completed and the method used to give notice. A copy of the notice shall accompany the affidavit.

(e) Noncontested or Unopposed Applications. An application under this Rule only becomes contested if intervention under these Rules is had or granted by the Commission. A noncontested or unopposed application to change, abandon, discontinue, or curtail any service, or to abandon or discontinue the use of any facility may be processed under Rule 245 without a formal hearing.

(f) Hearing on Applications.

(1) If the Commission receives an intervention of right, or grants a petition for permissive intervention to an application at least 10 days before the date of the proposed change, abandonment, discontinuance, or curtailment, the

Commission shall set the application for hearing, unless the intervention or petition is stricken, dismissed, or denied.

(2) The Commission may set the application for hearing on its own motion whether or not any intervention or petition to intervene is received.

(3) For good cause shown, the Commission, may waive the deadline for interventions or petitions to intervene.

(g) Commission Approval. No proposed change, abandonment, discontinuance, or curtailment shall be effective until the Commission order approving it, with or without formal hearing, has been entered.

(h) Application deemed complete. The Commission shall deem the application complete in accordance with the procedural requirements of Rule 70.

(i) Failure to provide required information. In the absence of unusual or extraordinary circumstances, the Commission will both reject an application that does not meet the requirements of this Rule and close the docket pertaining to that application.

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE

4 CODE OF COLORADO REGULATIONS (CCR) 723-1

RULE (4 CCR) 723-1-70 APPLICATIONS - FIXED UTILITIES - NOTICE

(a) Generally. When an application is filed and a docket number is assigned to it, the Commission Director, within 5 working days of the filing, shall issue and mail a notice of the filing under Rule 63. Telecommunications applications related to matters contained in 4 CCR 723-25 may be noticed as outlined in 4 CCR 723-25 therein.

During the notice period, the Commission Staff shall determine if the application meets the requirements of Rules 55 through 58. If the application meets the requirements and the notice period has expired, the application will be placed on the Commission agenda for consideration at the next open meeting.

If the application does not meet the requirements of Rules 55 through 58, Staff shall give written or electronic notification to the applicant of the information or documentation necessary to meet the requirements. Once the required information is provided and the notice period has expired, the application will be placed on the Commission agenda for consideration at the next open meeting.

If the applicant does not provide the required information or documentation, within 10 days after being so advised by Staff, or if the applicant believes the additional information is not required and so advises Staff in writing, setting forth the grounds for its belief, Staff will place the application on the Commission agenda for consideration at the next open meeting after the 10-day response time and after the notice period have expired.

The Commission shall review the submitted application and supporting information and documentation, and the applicant's statement, if any. If it determines that the application is complete, the Commission shall issue a decision containing that determination. The application is deemed complete on the date of mailing of that Commission decision. If the Commission determines that the application is not complete, the Commission will both reject the application absent unusual or extraordinary circumstances and close the docket. Telecommunications applications related to matters contained in 4 CCR 723-25 shall be deemed complete in the process outlined therein.

If the Commission fails to mail its decision on the status of an application by the fifteenth day following the expiration of the notice period or fifteen days after the application was last supplemented, or the receipt of applicant's advise that no additional information or documentation is necessary, whichever date is later, the application shall be deemed complete as of the fifteenth day.

(b) Contents of Notice. The Commission Director shall issue or create electronically a notice of the filing of the application. The notice shall contain:

(1) The caption and docket number of the proceeding.

(2) The date the application was filed.

(3) A statement concerning whether the applicant has pre-filed testimony and exhibits and is seeking a Commission decision within 120 days.

(4) A statement concerning whether the applicant has waived the time-limits for processing the application under § 40-6-109.5, C.R.S. (1993).

(5) The date by which any notice of intervention or petition to intervene must be filed. The date ordinarily will be 30 days after the mailing of the notice. Unless otherwise ordered by the Commission upon a finding of good cause, the time period for intervention shall not be less than 10 days or more than 30 days after the mailing of the notice. As a matter of right, Staff may intervene up to 10 days after the date the application is deemed complete.

(6) A statement that the proceeding may be considered by the Commission without a hearing if the application is deemed complete and no notice of intervention or petition to intervene is timely filed.

(7) If the applicant did not file its testimony, or a detailed summary of testimony, and copies of its exhibits with its application, a statement that the applicant is required to file its testimony, or a detailed summary of testimony, and copies of its exhibits not later than 15 days after the date the application is deemed complete. The applicant shall file and serve its testimony, or a detailed summary of testimony, and copies of its exhibits in accordance with Rule 22(f) if the Commission Staff is not a party or in

accordance with Rule 7(b)(5) if the Commission Staff is a party.

(8) A statement requiring each intervenor to file and to serve its testimony, or a detailed summary of testimony, and copies of its exhibits not later than 10 days before the first day of the hearing. Applications shall be set not sooner than 45 days nor more than 70 days after the date the application was deemed complete. Each intervenor shall file and serve its testimony, or a detailed summary of testimony, and copies of its exhibits in accordance with Rule 22(f) if the Commission Staff is not a party or in accordance with Rule 7(b)(5) if the Commission Staff is a party.

(9) A statement that no witness will be permitted to testify and no exhibit will be received in evidence, except in rebuttal, unless filed and served as provided in the notice.

(10) A statement that, if a party does not meet the requirements of the notice, the Commission may dismiss the application or an intervention upon motion filed by any cause for the failure to meet the requirements is shown.

(11) A statement that no motion for continuance of the hearing date will be granted except upon a finding of extraordinary conditions.

(12) A statement that the commission will notify the parties of the hearing date, time, and location.

(13) A statement that, at the time of the notice, the Commission has not deemed the application complete within the meaning of § 40-6-109.5, C.R.S. (1993).

(14) Any other statement required by or deemed appropriate by the Commission.

(c) Change in Hearing Date - Usual Course. Unless extraordinary conditions exist (Rule 70(d)), a party seeking a change of hearing date shall file a motion to accelerate. In the motion, the party filing the motion shall provide available dates earlier than the scheduled hearing date. The available dates must be both available on the Commission calendar and acceptable to all parties. If agreement cannot be reached, the motion to accelerate shall contain available dates on the Commission calendar and all available dates for all parties.

(d) Change in Hearing Date - Extraordinary Conditions.

The Commission may consider a request to continue a hearing date to a later date. A party seeking to continue a hearing must file a motion for continuance. That motion must state the extraordinary conditions that make the request necessary and if the Commission cannot meet the statutory requirements of § 40-6-109.5 must request issuance of notice and a hearing at which the moving party will have the burden of proving the existence of the stated extraordinary conditions. If, after hearing, the Commission determines that extraordinary conditions exist, the Commission may reschedule the hearing to a later date. However, under no circumstances will the Commission grant a hearing date more than 30 days later than the hearing date originally set. In any application docket, the Commission will not entertain any motion for continuance which, if granted, will cause the Commission to exceed the statutory deadline.

(e) WAIVER. With the application, before the application is deemed complete, or at any time within 210 days after an application is deemed complete, the applicant may file a written waiver of the time limits contained in

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§ 40-6-109.5, C.R.S. (1993). If an application is a joint application, any one of the applicants may file a written waiver of the time limits contained in § 40-6-109.5, C.R.S. (1993). Upon filing of the written waiver, the Commission is not bound by the time limits contained in § 40-6-109.5, C.R.S. (1993).

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THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING OPERATOR SERVICES
FOR TELECOMMUNICATIONS SERVICE PROVIDERS
AND TELEPHONE UTILITIES
4 CODE OF COLORADO REGULATIONS (CCR) 723-18

723-18-5.2 Persons who provide nonoptional operator services shall provide information to the Commission in accordance with 40-15-302(2), C.R.S., ~~and Rule 3.1 of the Rules Regulating Emerging Competitive Telecommunications Services found at 4 CCR 723-24 and Rule 4 CCR 723-25~~. After a determination of completeness, the Commission shall issue a letter of registration granting operational authority for the company, upon approval of its tariff. Telecommunications service providers or telephone utilities which already have certificates or the authority to provide nonoptional operator services shall continue to have the authority.

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING
EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-24

[REPEALED]

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING
THE AUTHORITY TO OFFER LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES

4 CODE OF COLORADO REGULATIONS (CCR) 723-35

[REPEALED]

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING PROPOSALS
BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS
TO ABANDON, TO DISCONTINUE, OR
TO CURTAIL ANY SERVICE

4 CODE OF COLORADO REGULATIONS (CCR) 723-36

[REPEALED]

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING APPLICATIONS
BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS
TO EXECUTE A TRANSFER

4 CODE OF COLORADO REGULATIONS (CCR) 723-37

[REPEALED]

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING APPLICATIONS
BY LOCAL EXCHANGE AND EMERGING COMPETITIVE
TELECOMMUNICATIONS PROVIDERS
FOR SPECIFIC FORMS OF PRICE REGULATION.**

4 CODE OF COLORADO REGULATIONS (CCR) 723-38

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to establish regulations regarding applications for specific forms of price regulation for local exchange telecommunications services. These rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law, and there are no duplicating or overlapping rules.

These rules are issued pursuant to §§ 40-2-108, 40-15-101, 40-15-305 and 40-15-503, C.R.S.

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RULE (4 CCR) 723-38-1. APPLICABILITY.

These rules are applicable to all persons who are applying for a specific form of price regulation for a specific local exchange telecommunications service.

RULE (4 CCR) 723-38-2. DEFINITIONS.

The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

723-38-2.1 Advice letter. Filing which is made with the Commission and which accompanies a tariff.

723-38-2.2 Applicant. Any provider of local exchange telecommunications services, or any person seeking to be authorized by the Commission to offer local exchange telecommunications services, who files an application with the Commission pursuant to these rules.

723-38-2.3 Application. A formal filing with the Commission, made by an applicant, which requests a specific form of price regulation.

723-38-2.4 Band of rates or banded prices. Range of rates or prices, which range is defined by a Commission-established price floor (the lower boundary) and a Commission-established price ceiling (the upper boundary) and within which a provider of local exchange telecommunications service may set a specific price.

723-38-2.5 Certificate of public convenience and necessity or CPCN. Commission-granted authority, subject to such terms and conditions as the Commission may establish, to provide the local exchange telecommunications services specifically identified and approved by the Commission; consists of a certificate to provide local exchange telecommunications services and an operating authority within a specific operating area or areas.

723-38-2.6 Certificate to provide local exchange telecommunications services or certificate. Commission-granted authority to offer local exchange telecommunications services in the state of Colorado; the first of two prerequisites to obtaining a certificate of public convenience and necessity.

723-38-2.7 Commission. The Public Utilities Commission of the state of Colorado.

723-38-2.8 Competitive Local Exchange Carrier (CLEC). A telecommunications provider that has been granted a Certificate of Public Convenience and Necessity ("CPCN") to

provide local exchange telecommunications service in the State of Colorado on or after February 8, 1996, pursuant to the Rules Regulating the Authority to Offer Local Exchange Telecommunications Service, 4 CCR 723-35, and § 40-15-503(2)(f), C.R.S.

723-38-2.9 Cost Support. Data, information, methods, and analysis conducted in accordance with, and subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of these rules is modified or waived by the Commission.

723-38-10 "Deregulated services" means services and products deregulated by the General Assembly in § 40-15-401, C.R.S. or the Commission in accordance with § 40-15-305(1), C.R.S.

723-38-2.11 Detariffed or detariffing. A local exchange telecommunications service which the Commission has determined may appropriately be offered without filing a tariff setting forth the terms and conditions pursuant to which the service is generally offered; or, the process for obtaining commission approval of such a service offering; not synonymous with deregulation.

723-38-2.12 Form tariff, form price list, price list, or tariff. A document which contains all of the terms and conditions for all local exchange telecommunications services to be offered by a provider of local exchange telecommunications services.

723-38-2.13 Incumbent Telecommunications Provider or Incumbent Local Exchange Carrier [ILEC].

723-38-2.13.1 For purposes of this rule, the term incumbent local exchange carrier means, with respect to an

area, the local exchange carrier that- (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and, (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Federal Communications Commission's regulations (47 C.F.R. 69.601(b)); or, (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

723-38-2.13.2 The Commission also may, by rule, provide for the treatment of a comparable local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this Rule 723-38, if- (A)

such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1); (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and, (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this Rule.

723-38-2.14 Local exchange telecommunications services or service. Basic local exchange service and such other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (e), C.R.S.; or any of the above, singly or in combination.

723-38-2.15 Operating area. Specific geographic area in which a provider of local exchange telecommunications services is authorized by the Commission to exercise the rights and privileges granted pursuant to a certificate of public convenience and necessity.

723-38-2.16 Operating authority. Commission-granted authority to offer local exchange telecommunications services within an operating area; the second and last prerequisite to obtaining a certificate of public convenience and necessity.

723-38-2.17 Price regulation. Commission-approved form of regulation of a provider's offering of any local exchange telecommunications service, which form of regulation may contain, without limitation: regulation of the price and quality of services; price floors and price ceilings; flexibility in pricing between price floors and price ceilings; modified tariff requirements; incentives for increased efficiency, productivity, and quality of service; or any combination of these.

723-38-2.18 Provider of local exchange telecommunications services or provider. Any person who holds a certificate of public convenience and necessity to provide local exchange telecommunications services.

723-38-2.19 "Relaxed regulation" means flexible pricing, detariffing, and other such manner and methods of regulation as provided in § 40-15-302(1), C.R.S., that are consistent with the General Assembly's expression of intent stated in § 40-15-101, C.R.S. for services and products declared to be emerging competitive telecommunications services as defined in §§ 40-15-301(2) and 40-15-305(2), C.R.S.

723-38-2.20 Transmittal letter. Filing which is made with the Commission and which accompanies a notice of change to a price list.

RULE (4 CCR) 723-38-3. GENERAL RULES CONCERNING APPLICATIONS FOR SPECIFIC FORMS OF RELAXED REGULATION AND DEREGULATION.

723-38-3.1 Relaxed Regulation and Deregulation of Emerging Competitive Telecommunications Services

723-38-3.1.1 The Commission, upon its own motion, or upon application by any person using, providing, or planning to provide telecommunications service, within Colorado, shall regulate pursuant to Part 3 of Article 15, Title 40, C.R.S., any emerging competitive telecommunications service provided by any person otherwise subject to its jurisdiction, in whole or in part, and shall grant one or more specific forms of relaxed regulation for services upon a finding that the specific form of relaxed regulation is consistent with the General Assembly's expression of intent stated in § 40-15-101, C.R.S.

723-38-3.1.2 The Commission, upon its own motion, or upon applications by any person using, providing, or planning to provide telecommunications service, within Colorado, shall deregulate any emerging competitive telecommunications service, upon a finding that there is effective competition for the service, and that deregulation will promote the public interest, and the provision of adequate, reliable service at just and reasonable rates as stated in § 40-15-301(1) C.R.S.

723-38-3.2 Notice. Upon the filing of an application for a specific form of relaxed regulation or for deregulation, the applicant must provide notice of the application within 15 days to all existing customers on accordance with one of the methods of notice in § 40-3-104, C.R.S., unless the Commission approves a different means to notify existing customers. The applicant also must provide notice by first class mail to all providers of telecommunications services who are regulated by the Commission under Title 40, Article 15, Part 2 of Part 3, C.R.S. The Commission will maintain a current list of these providers with their mailing addresses at the Commission's office.

723-38-3.3 Non-Action by the Commission. Effect of Failure to Comply With Procedural Requirements.

No application or request filed with the Commission shall be deemed granted by non-action of the Commission or by the Commission's failure to comply with any procedural requirement in these Rules except as specifically required by statute and except non-action pursuant to Rule 4.3.2(c)

RULE (4 CCR) 723-38-4. RULES RELATING TO APPLICATIONS FOR SPECIFIC FORMS OF RELAXED REGULATION.

723-38-4.1 Application Information for Specific Forms of Relaxed Regulation.

723-38-4.1.1 Any application for a specific form of relaxed regulation of an emerging competitive telecommunications service must include the following information:

(a) The name, address, and telephone number of the applicant;

(b) A specific description of the service for which relaxed regulation is sought and the specific form of relaxed regulation requested;

(c) The geographic areas in which the service is, or will be, offered;

(d) A list of other known providers of similar or substitutable services, and any significant, functional differences between the applicant's service and other available services, if known;

(e) The estimated market share of the applicant;

(f) Any available cost and estimated demand data;

(g) A list and copies of all presently effective tariff pages for the service;

(h) A description of all presently effective rate elements for the service;

(i) If the provision of the service involves the use of investments and expenses that are jointly or commonly used to provide part 2 services or not subject to relaxed regulation under Title 40, Article 15, Part 3, then identify the Uniform System of Accounts account numbers affected, and briefly describe the methods by which the jointly or commonly used assets, liabilities, revenues, and expenses are allocated between the relevant services and products, and

(j) Specific information demonstrating that the specific form of relaxed regulation will be consistent with the General Assembly's expression of intent state in § 40-15-101, C.R.S.

723-38-4.1.2 At the time the application is filed, the applicant shall file its direct testimony and copies of exhibits to be offered at the hearing. If an exhibit is too large or cumbersome to prefile, the location of the exhibit shall be disclosed where parties may inspect it, and the applicant shall file a title of each exhibit and a summary of the information contained in the exhibit. The applicant shall indicate any information which is claimed to be confidential and shall set forth the grounds for the claim of confidentiality. The applicant may file a motion for the protection of information which it claims to be confidential.

723-38-4.2 Processing Applications for Specific Forms of Relaxed Regulation.

723-38-4.2.1 Upon the filing of an application for a specific form of relaxed regulation or upon Commission motion, the applicant shall immediately issue notice to the public as required by Rule 3.2 of these rules. If the Commission institutes a proceeding for relaxed regulation upon its own motion, it shall issue notice to the public in accordance with § 40-6-108(2), C.R.S.

723-38-4.2.2 With the inclusion of the information required by Rule 4.2.1, the Commission will process an application for a specific form of relaxed regulation as set forth in Rule 70 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. When the Commission issues its "Notice of Filing" pursuant to Rule 70, such notice shall contain provisions for the handling of any confidential information. In addition, Rule 77 of the Commission's Rules of Practice and Procedure shall govern all discovery with regard to the application.

~~723-24-5.2.3 [deleted]~~

~~723-24-5.2.4 [deleted]~~

723-38-4.3 Specific Forms of Relaxed Regulation.

723-38-4.3.1 Alternatives to Rate-of-Return Regulation. The Commission may use alternatives to traditional rate-base or rate-of-return regulation and may adopt any surrogate process it deems appropriate under the circumstances to protect the public and promote competition with respect to an emerging competitive telecommunications service, which may include, but is not limited to, the alternatives listed in this rule.

723-38-4.3.2 Flexible Pricing Bands. (See Rule 6.1.1.1)

(a) The Commission may set a band of rates in which the applicant will be allowed to price without further Commission approval.

(b) Within 14 days of receiving approval to offer a service within a band of rates, the applicant shall provide the Commission with a price list that clearly describes the rates to be charged for the service. The price list shall also be sent to affected customers at least 14 days prior to those prices taking effect. If prices vary across different

customer classes, territories, or levels of services, the price list must reflect each of these distinctions.

(c) When an applicant requires that the Commission modify an existing band of rates, the applicant shall supply, in its application to modify the existing band of rates, the Commission with available cost and marketing data used to conclude that the existing band is no longer appropriate. The Commission shall have 14 days to approve or deny the application or set a hearing date for comments on the requested change. If the Commission takes no action within the 14-day period, the application to modify the existing band shall be deemed approved.

723723-38-4.3.3 Trial Offerings.

(a) The Commission may authorize the applicant to offer the service on a limited basis for a period of six months, unless extended further by the Commission. The applicant will be required to provide all customers with written notice of the trial-nature and duration of the offering. The Commission may limit the trial in terms of the investment level, prices, the territory in which the service may be offered, or the number of customers which can be served during the trial period.

(b) During the trial period, the applicant may be required to maintain segregated books and accounts in a manner prescribed by the Commission, and to file the data with the Commission at the end of the trial period.

723-38-4.3.4 Shortened Notice Periods. Revised tariffs for emerging competitive telecommunications services that reflect only decreases in rates shall require a minimum of five days' notice to the Commission. Tariffs for emerging competitive telecommunications services which reflect increased rates shall require a minimum of 14 days' notice to the Commission and affected customers. Unless the Commission

sets a hearing date for the tariff and suspends its proposed effective date, the tariff will become effective according to its terms.

723-38-4.3.5 Detariffing of Services. The Commission may detariff any emerging competitive telecommunications service. Detariffing shall mean that providers of the competitive service shall provide the Commission with a price list, including the terms and conditions of the provision of the competitive service. Except as otherwise provided by Commission decision or order, the price list shall not be subject to Commission review except in establishing that the prices do not result in improper cross-subsidization as described in § 40-15-106, C.R.S.

723-38-4.3.6 Waiver of Tariff Requirements for Competitive Firm. The Commission may also waive tariff requirements for any applicant who offers only emerging competitive telecommunications services.

723-38-4.3.7 Segregation of Assets.

723-38-4.3.7.1 Where a provider provides Part 2 services and/or Part 3 services which are not subject to relaxed regulation, the Commission may require the provider to file with the Commission an accounting plan that segregates assets, liabilities, revenues, and expenses for the services at issue from the assets, liabilities, revenues, and expenses associated with all other regulated services in order to define the regulated rate base and to implement the alternatives to rate-of-return regulation. The accounting plan shall be filed within 30 days after a final Commission decision has been issued concerning the services at issue.

723-38-4.3.7.2 If an industry-wide service or market has been authorized a specific form of relaxed regulation by the Commission, the Commission may require all

providers that provide Part 2 services and/or Part 3 services which are not subject to relaxed regulation and the services at issue, to submit to the Commission, an accounting plan that segregates the assets, liabilities, revenues, and expenses associated with providing the services at issue. The accounting plan shall be filed within 30 days from the effective date of the final Commission decision granting the relaxed regulation of the services at issue. The Commission may establish a proceeding to adopt an appropriate method to segregate the assets, liabilities, revenues, and expenses associated with providing the services at issue. If no party to the proceeding requests a hearing, the Commission may approve a plan for the segregation of assets, liabilities, revenues, and expenses without hearing under § 40-6-109(5), C.R.S.

723-38-4.3.7.3 In the event the Commissions orders that an accounting plan be filed in accordance with Rule 4.3.7, no provider shall offer the services at issue prior to Commission approval of an appropriate accounting plan to segregate assets, liabilities, revenues, and expenses of the services. In the event the Commission requires an accounting plan to segregate assets, liabilities, revenues, and expenses of the services under Rules 4.3.7.1 or 4.3.7.2, the provider shall also modify its cost separation manual required by the Rules under § 40-15-108, C.R.S. Prescribing Cost-Allocation Methods for Segregation of Investments and Expenses of Telecommunications Providers, 4 CCR 723-27. Small LECs exempted from filing a cost-segregation manual shall not be required to file plans nor updates but shall be required to follow the cost-segregation rules.

723-38-4.3.8 Additional Procedures. The Commission may adopt other procedures it deems appropriate in furtherance of relaxing regulation of services subject to its

jurisdiction, consistent with the expression of intent pursuant to § 40-15-101. C.R.S.

723-38-4.3.9 Revision of Terms of Relaxed Regulation. The Commission may, upon its own motion or upon the motion of any person, revise a form of relaxed regulation for a service if continued use of the form of relaxed regulation is no longer consistent with the General Assembly's expression of intent in § 40-15-101, C.R.S.

723-38-4.3.9.1 Revision of Terms of Relaxed Regulation. A provider that has previously implemented relaxed regulation, granted under these rules, may elect to modify the terms of that relaxed regulation. In that event, the provider may choose between the relaxed regulation ordered by the Commission or the default price regulation for Part 3 local exchanges services as detailed in 4 CCR 723-38-3. The provider may elect to have those rule provisions supersede the provisions of the Commission order granting the provider's form of relaxed regulation. The provider shall make that election by filing a notice with the Commission. That notice, signed by a duly authorized representative of the provider, shall be filed in the docket granting the provider the relaxed regulation, shall identify the previous Commission order granting the relaxed regulation which is to be superseded by the provisions of 4 CCR 723-38-3.2.2, and shall state that the provider is electing the form of price regulation specified in 4 CCR 723-38-3.2.2.

RULE (4 CCR) 723-38-5. RULES RELATING TO DEREGULATION.

723-5.1 Application Information for Deregulation.

723-5.1.1 Any application for deregulation of an emerging competitive telecommunications service in accordance § 40-15-305(1), C.R.S. must include the following information:

a) The name, address, and telephone number of the applicant;

b) A specific description of the service for which deregulation is sought;

c) The geographic areas in which the service is, or will be, offered;

d) A list of other known providers of similar or substitutable services, and any significant, functional differences between the applicant's service and other available services, if known;

e) The estimated market share of the applicant;

f) Any available cost and estimated demand data;

g) A list and copies of all presently effective tariff pages for the service;

h) A description of all presently effective rate elements for the service;

i) If the provision of the service involves the use of investments and expenses that are jointly or commonly used to provide Part 2 and/or Part 3 services, then identify the account affected under an accounting plan designed to segregate assets, liabilities, revenues, and expenses as required in Rule 5.3 of these rules, and briefly describe the methods by which the jointly or commonly used assets, liabilities, revenues, and expenses are allocated between the relevant services and products, and

j) Specific information demonstrating that the service is subject to effective competition in the relevant market for such service, that such deregulation will promote the public interest, and the provision of adequate and reliable service at just and reasonable rates.

723-5.1.2 At the time the application is filed, the applicant shall file its direct testimony and copies of exhibits to be offered at the hearing. If an exhibit is too

large or cumbersome to prefile, the location of the exhibit shall be disclosed where parties may inspect it, and the applicant shall file a title of each exhibit and a summary of the information contained in the exhibit. Any information which is claimed to be confidential shall set forth the grounds for the claim of confidentiality, including information in Rule 5.1.1 above.

723-5.2 Processing Applications for Deregulation

723-5.2.1 Upon the filing of an application for deregulation, the applicant shall issue notice of the application to the public as required by Rule 3.2, of these rules. If the Commission institutes a proceeding for relaxed regulation upon its own motion, it shall issue notice to the public in accordance with § 40-6-108(2), C.R.S.

723-5.2.2 The Commission shall issue a procedural order within 20 days from the date the application is filed concerning the processing of the application, including protective provisions for the handling of any alleged confidential information.

723-5.2.3 Should an application be filed which the Commission determines is not complete, the Commission shall notify the applicant within 10 days from the date the application is filed of the need for additional information. The applicant may then supplement the application so that it is complete. Once complete, the application will then be processed as of the date the application is completed.

723-5.2.4 The schedule for processing an application for deregulation shall be as follows:

723-5.2.4.1 Within 85 days from the date the Commission issues its procedural order, Staff of the Commission and intervenors shall file their direct testimony and copies of exhibits to be offered at the hearing. If an exhibit is too large or cumbersome to prefile, the location of

the exhibit shall be disclosed where parties may inspect it, and the applicant shall file a title of each exhibit and a summary of the information contained in the exhibit. Parties shall indicate any information which is claimed to be confidential and shall give the grounds for the claim of confidentiality.

723-5.2.4.2 All discovery requests shall be completed within 90 days after the issuance of the procedural order. Response time for discovery requests shall be 20 days.

723-5.2.4.3 The hearing shall be set and begin within 110 days of the date of the procedural order and may only be continued for a period of 15 days upon a showing of good cause.

723-5.2.4.4 Simultaneous closing statements and briefs may be filed within 10 days after completion of the hearing.

723-5.2.4.5 A decision will be issued within 180 days from the date the application is filed unless the proceeding cannot be completed within 180 days; then the Commission may defer the decision for an additional 90 days as permitted by § 40-15-305(1)(c), C.R.S.

723-5.3 Accounting Plan to Segregate Assets

723-5.3.1 Where a provider of telecommunications services furnishes regulated services and providers or proposes to offer deregulated services, the provider shall file with the Commission an accounting plan that segregates assets, liabilities, revenues and expenses associated with providing regulated services from assets, liabilities, revenues, and expenses associated with providing deregulated services. The accounting plan shall be filed with the Commission within 30 days after a final decision has been issued by the Commission granting deregulation of services at issue.

723-5.3.2 If an industry-wide service, product, or market is deregulated by the Commission under § 40-15-305(1), C.R.S., all providers that provide regulated services and the deregulated services at issue shall submit to the Commission an accounting plan to segregate the assets, liabilities, revenues, and expenses associated with providing the deregulated services at issue. The accounting plans shall be filed with the Commission within 30 days from the effective date of the final order granting deregulation of the services at issue. The Commission may establish a proceeding to adopt an appropriate method to segregate the assets, liabilities, revenues, and expenses associated with providing the deregulated services at issue. If no party to the proceeding requests a hearing, the Commission may approve the plans for the segregation of assets, liabilities, revenues, and expenses without hearing under § 40-6-109(5), C.R.S.

723-5.3.3 No provider shall offer deregulated services prior to Commission approval of an appropriate accounting plan to segregate assets, liabilities, revenues, and expenses of the services as required by Rule 6.3.1 or 6.3.2. The provider shall also modify its cost separation manual required by the Rules under § 40-15-108, C.R.S. Prescribing Cost-Allocation Methods for Segregation of Investments and Expenses of Telecommunications Providers, 4 CCR 723-27, when the Commission deregulates services under § 40-15-305(1), C.R.S. Small LECs exempted from filing a cost-segregation manual shall not be required to file plans nor updates but shall be required to follow the cost-segregation rules.

RULE (4 CCR) 723-38-6. SPECIFIC FORMS OF PRICE REGULATION.

On its own motion (by adjudication or by rulemaking) or in response to an application, the Commission may grant, for any

local exchange telecommunications service and on a geographic basis, a specific form of price regulation.

723-38-6.1 Specific forms of price regulation. The Commission may grant, singly or in combination, without limitation, any of the following:

723-38-6.1.1 Tariffed forms of price regulation.

723-38-6.1.1.1 Banded prices. The Commission may set a band of rates within which an applicant will be allowed to price. When the Commission approves the use of a price band, the following procedures shall apply unless the Commission issues an order modifying them:

723-38-6.1.1.1.1 Price ceilings and price floors defining price band. Within 30 days of the date of a final Commission decision approving an application to offer a service within a band of rates, a provider shall file an advice letter setting a ceiling price and a floor price which defines the band of rates. Both the price floor and the price ceiling shall be determined in accordance with, and shall be subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of those rules is waived by the Commission.

723-38-6.1.1.1.2 Initial price list. The provider shall file, as part of the advice letter defining the price band, an initial price list that describes the terms and conditions of service and the rates to be charged for the service. If prices vary between, among, or within different customer classes, territories, or levels of service, the price list must reflect each such variance.

723-38-6.1.1.1.3 Changes to boundaries of band of rates. A provider wishing to change the price

ceiling or the price floor, or both, of a band of rates shall file an advice letter. Both the amended price floor and the amended price ceiling shall be determined in accordance with, and shall be subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of those rules is waived by the Commission.

723-38-6.1.1.1.4 Changes to prices within established band of rates. On or before 14 days prior to the desired effective date for a change to one or more prices contained in an established price band, a provider shall file with the Commission, by transmittal letter, a price list that describes each change proposed to the prices to be charged for the service. If prices vary between, among, or within different customer classes, territories, or levels of services, the price list must reflect each such variance. The Commission may set for hearing and, after hearing, may approve, modify, or deny any aspect of a change proposed to a price within a band of rates. If the Commission sets a proposed change in a price for hearing, the proposed change shall not go into effect on the proposed effective date without further order of the Commission. At the hearing, the provider shall bear the burden of proof with respect to each proposed change in the price(s) within a band of rates. If the Commission does not set the proposed change to the price(s) for hearing within 14 days of the filing of the transmittal letter, the new price shall go into effect by its terms.

723-38-6.1.1.2 Modified tariff requirements. The Commission may, in its sole discretion, permit the use of

modified tariff requirements (for example, shortened notice period) for the offering of a specific service.

723-38-6.1.2 Detariffed forms of price regulation. There are two steps to detariffing: first, the Commission must grant an application for a specific detariffed form of price regulation; second, the provider must submit specific information about the manner in which the provider intends to implement the specific detariffed form of price regulation. For the following types of detariffed forms of price regulation, except as otherwise provided by Commission decision and order, the following procedures apply for submission of the specific information about implementation:

723-38-6.1.2.1 Confidential price floor. The Commission may permit the use of a confidential price floor for a specific service. If permitted, the price floor shall be filed with the Commission under seal on or before 14 days before the proposed effective date for implementation of the price floor. The price floor is subject to Commission review to determine that the price floor (a) is consistent with the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30; (b) is not inappropriate; and (c) is not inconsistent with the public interest. The Commission may set the proposed confidential price floor for hearing pursuant to such modified procedures as the Commission may deem appropriate and as are consistent with the Commission's practice and procedure designed to deal with confidential filings. At the conclusion of such modified procedure or hearing, the Commission may approve, modify, or reject the proposed confidential price floor. If the Commission sets a price floor for hearing, the proposed price floor shall not go into effect on the proposed effective date without further order of the Commission. At the hearing, the applicant shall

bear the burden of proof with respect to the price floor. If the Commission does not set the price floor for hearing within 14 days of the filing of the price floor, the price floor shall go into effect by its terms.

723-38-6.1.2.2 Confidential contract. The Commission may permit a provider to contract with a customer, subject to Commission approval, for the provision of a local exchange telecommunications service irrespective of tariff or price list requirements. If permitted, a notice of contract shall be filed with the Commission under seal prior to the expiration of 14 days from the date the contract is executed. The contract shall be subject to Commission review to determine whether (a) the rate negotiated is nondiscriminatory and the customer who is a party to the contract did not receive an inappropriate rate; (b) the contract terms are consistent with the public interest; and (c) the contract terms are consistent with applicable Commission rules. The Commission may set the contract for hearing and, after hearing, may approve or disapprove the contract. At the hearing, the applicant shall bear the burden of proof with respect to the contract. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

723-38-6.1.3 Incentives for increased efficiency, productivity, and quality of service. The Commission may devise a specific form of price regulation which, in the Commission's judgment, and without limitation, enhances efficiency, productivity, or service quality, or any combination of these.

723-38-6.1.4 Other specific forms of price regulation. The Commission may devise any specific form of price regulation which is, in the Commission's judgment, in

the public interest and appropriate for the applicant's circumstances.

723-38-6.1.5 Price Ceilings. Consistent with § 40-15-502(3)(b)(I), prices for residential basic local exchange service, including zone charges, if any, shall not rise above the levels in effect on May 24, 1995 for comparable services, except as otherwise provided for by law.

723-38-6.2 Default Forms Of Regulation.

723-38-6.2.1 Part 2 Service . In the absence of a Commission-approved specific form of price regulation, an incumbent local exchange carrier shall be regulated pursuant to a traditional rate-of-return regulation methodology.

723-38-6.2.2 Part 3 Service . In the absence of any specific Commission-approved form of price regulation, a competitive local exchange carrier shall be regulated by the default form of price regulation detailed herein.

723-38-6.2.2.1 Applicability. This default form of price regulation shall apply to all products offered by competitive local exchange carriers, with the exception of the rates, terms and conditions for 911 call delivery to a Basic Emergency Service Provider. Each local exchange carrier shall establish rates, terms and conditions governing 911 call delivery to a Basic Emergency Service Provider, as directed in Rule 4 CCR 723-29.

723-38-6.2.2.2 Filing of Initial Tariffs. In accordance with Commission rules, each CLEC shall file an initial tariff that contains the terms and conditions governing its services and products, as directed in 4 CCR 723-1-40.1. The tariff shall also contain the rates, terms, and conditions governing those services and products that are not subject to the specific form of price regulation established by this rule. For products and services subject to the default form of price regulation, changes to the initial tariff may be made upon 14

days notice to the Commission; additional notice to customers shall not be required unless ordered by the Commission. If the Commission does not suspend the effective date of the proposed tariff change, it shall become effective according to its terms.

723-38-6.2.2.3 Price Lists. In accordance with Commission rules, each CLEC shall file a price list that contains the current rates it charges for its services and products, as directed in 4 CCR 723-1-40.2.

723-38-6.2.2.3.1 Price List Changes. On or before 14 days prior to the desired effective date for a change in one or more prices contained in a price list, the CLEC shall file with the Commission, by transmittal letter, a price list that describes each proposed change. The CLEC may, but need not, provide notice to customers of any proposed price change.

723-38-6.2.2.3.2 Effective Date of Price Lists. Unless the Commission suspends the effective date of a new price list, or a change in an existing price list, filed by a CLEC with the Commission, the new price list or changed price list shall become effective according to its terms.

723-38-6.2.2.4 Customer Specific Contracts. A CLEC may negotiate and enter into customer-specific contracts, with terms and conditions tailored to the specific customer's needs. The CLEC shall file a notice of the contract with the Commission prior to the expiration of 14 days after the date the contract is executed. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

723-38-6.2.2.5 Promotional Offerings and Volume Discounts. A CLEC shall file promotional offerings and volume discounts in its price list. Such a filing shall be in the

form of a transmittal letter, submitted to the Commission at least 14 days prior to the proposed effective date. The transmittal letter shall be numbered sequentially as set forth in Rule 723-1-40.2, and shall otherwise comply with Rule 723-1-40.2. The price list for promotional offerings and volume discounts shall contain the terms, conditions, and prices for such offerings. No supporting cost or other information need be filed unless specifically requested by the Commission.

723-38-6.2.2.6 Right to Investigate Tariffs and Prices. The Commission may suspend and investigate any tariff, tariff rate, price, or price list filed; and the Commission may set any customer-specific contract for hearing. Nothing in this Rule shall be deemed in any way to limit or to abridge any right of the Commission.

723-38-6.2.2.7 Burden of Proof. In any proceeding before the Commission pursuant to Rule 3.2.2.6, the CLEC shall have both the burden of going forward and the burden of persuasion that any price, term or condition contained in a tariff, price list, or customer-specific contract is just, reasonable, and non-discriminatory.

723-38-6.2.2.8 Reporting Requirements. To enable the Commission to track the progress of competition and to monitor the delivery of basic and advanced services to all areas of the state, it is in the public interest for CLECS to provide the Commission with information in annual reports and/or other special reports.

723-38-6.2.2.8.1 Annual Reports. Annual reports, of both ILECs and CLECs, shall be filed in accordance with Rule 723-1-25, except that only one copy of the stockholder or certified public accountant report need be filed.

723-38-6.2.2.8.2 Further Reporting Requirements. The CLEC, as a requirement of this specific form

of price regulation, shall file with the Commission periodic informational reports requested by the Commission. The CLEC and Commission staff may propose formats for such reports. The provider may file the periodic informational reports under seal if appropriate. Provided, however, interested persons have the right to challenge the CLEC'S designation of a periodic informational report, or any portion of it, as confidential and proprietary. In addition, the Commission on its own motion, may determine that a report, or portions of a report, are not confidential and proprietary.

723-38-6.2.2.9 Form of Financial Records. CLECs shall use the system of accounts specified in Rule 723-1-25(c)

723-38-6.2.2.10 Location of Records A CLEC shall not be required to maintain its books of account and records in the State of Colorado. However, each CLEC shall produce its books of account and records in Colorado at a place and time designated by the Commission, upon request by the Commission. Alternatively, a CLEC shall compensate the Commission for the expenses, including, but not limited to, transportation and lodging, associated with Commission Staff's inspection of the CLEC's books and records outside the State of Colorado.

723-38-6.2.2.11 Cost Allocation Manual (CAM). The CLEC shall be exempt from the requirement to file a Cost Allocation Manual. Each provider shall be required to follow the methods, standards, and guidelines of the Cost Allocation Rule to produce Colorado intrastate specific information for the Commission.

723-38-6.2.2.12 Price Ceilings. Consistent with § 40-15-502(3)(b)(I), prices for residential basic local exchange service, including zone charges, if any, shall not rise above the levels in effect on May 24, 1995 for comparable services, except as otherwise provided for by law.

723-38-6.3 Price regulation and relaxed regulation. With respect to a service which is a Part 3 of Title 40, Article 15, C.R.S., service, nothing in these rules shall limit the ability of the applicant to seek or to obtain both a specific form of price regulation and a specific form of relaxed regulation, as provided for in Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24.

723-38-6.4 Providers Previously Granted Price or Relaxed Regulation. Any provider previously granted a specific form of price regulation or relaxed regulatory treatment by the Commission may elect to have the provisions of Rule 38.3.2.2 supersede the provisions of the provider's form of price regulation or relaxed regulatory treatment. The provider shall make that election by filing a notice with the Commission. That notice, signed by a duly authorized representative of the provider, shall be filed in the docket granting the provider the specific form of price regulation or relaxed regulatory treatment which is to be superseded by the provisions of Rule 38-6.2.2, and shall state that the provider is electing the default form of price regulation specified in Rule 38-6.2.2.

RULE (4 CCR) 723-38-7. APPLICATION FOR SPECIFIC FORMS OF PRICE REGULATION - CONTENTS OF APPLICATION; CRITERIA.

To obtain a specific form of price regulation, an applicant shall file an application with the Commission for approval of such specific form of price regulation.

723-38-7.1 Contents of application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified, attached exhibits:

723-38-7.1.1 The name, address, and telephone number of the applicant and the name(s) under which the applicant provides or will provide each local exchange

telecommunications service for which a specific form of price regulation is sought;

723-38-7.1.2 The service or services for which a specific form of price regulation is requested;

723-38-7.1.3 A description of the specific form of price regulation requested on a service-specific basis and on an operating area, or smaller geographic area, basis;

723-38-7.1.4 If other than as provided by statute or rule, a description (a) of the type of public notice which the applicant proposes to give in connection with the specific form of price regulation, if granted, and (b) of the timing of that public notice;

723-38-7.1.5 The operating area(s), or smaller geographic area(s), stated in metes and bounds, in which the service will be offered under the requested specific form of price regulation;

723-38-7.1.6 A list of other known providers of the service or of similar or substitutable services and a description of any significant, functional differences between the applicant's service and other available services, if known;

723-38-7.1.7 The estimated market share held by the applicant for each service for which the requested specific form of price regulation is sought;

723-38-7.1.8 Any available cost and estimated demand data for each service for which the requested specific form of price regulation is sought;

723-38-7.1.9 A list of all currently effective tariff and price list pages for each service for which the requested specific form of price regulation is sought. The applicant must provide copies of the listed tariff and price list pages upon request by the Commission;

723-38-7.1.10 A description of all currently effective rate elements for each service for which the requested specific form of price regulation is sought;

723-38-7.1.11 If the provision of the service for which the requested specific form of price regulation is sought involves the use of investments and expenses that are jointly or commonly used to provide services (a) not subject to the specific form of price regulation sought or (b) not subject to the jurisdiction of the Commission, identification of, in accordance with the Uniform Systems of Accounts or other Commission-approved methodology, the account numbers affected; and a brief description of the methods by which the jointly or commonly used assets, liabilities, revenues, and expenses are allocated between the relevant services;

723-38-7.1.12 If the Commission has not approved an accounting method to be used by the applicant in its offering of local exchange telecommunications services, a designation of the accounting method to be used to provide the service for which a specific form of price regulation is sought and a statement (not in the form of conclusory statements) explaining how the proposed accounting method meets the requirements of Rule 5;

723-38-7.1.13 If the Commission has approved an accounting method to be used by the applicant in its offering of local exchange telecommunications services, a statement (not in the form of conclusory statements) explaining how that accounting method meets the requirements of Rule 5;

723-38-7.1.14 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to show that a grant of the requested, specific form of price regulation to applicant is consistent with, and not contrary to, the statements of public policy contained in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503(2)(c), C.R.S.;

723-38-7.1.15 A statement that the applicant agrees (a) to answer all questions propounded by the Commission or any authorized member of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application and (b) to permit the Commission or any authorized member of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application;

723-38-7.1.16 A statement indicating, if the application is assigned for hearing, the town or city where the applicant prefers the hearing to be held and any alternative choices;

723-38-7.1.17 A statement that the applicant understands that the filing of the application does not, by itself, constitute authority to operate under the requested specific form of price regulation and that the applicant shall not implement any provisions of the requested specific form of price regulation unless and until a Commission decision granting the application is issued;

723-38-7.1.18 A statement that, if the requested specific form of price regulation is granted, the applicant understands that the grant is conditioned upon: (a) filing of necessary advice letters and tariffs, transmittal letters and price lists, or adoption notices, as applicable; (b) compliance with statute and all applicable Commission rules; and (c) compliance with any and all conditions established by Commission order;

723-38-7.1.19 A statement that the applicant understands that, if contents of the application are found to be false or to contain misrepresentations, any specific form of price regulation granted may be, upon Commission order, null and void; and

723-38-7.1.20 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act upon behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

723-38-7.2 Applicant's notice of application. Within 14 days of filing an application for a specific form of price regulation, the applicant shall give notice of the application to all existing customers of the service for which a specific form of price regulation is sought. The applicant shall give notice in accordance with one of the methods of notice specified in § 40-3-104, C.R.S., unless the Commission approves a different means to notify existing customers. In addition, the applicant shall give notice by first class mail to all providers of local exchange telecommunications services who are identified in the list required by Rule 4.1.6 and who offer the service within the geographic area(s) in which the applicant proposes to offer service under the specific form of price regulation that is the subject of the application. The Commission will maintain, at its office, a current list of these providers with their mailing addresses. Not more than seven days after notice is given pursuant to this rule, the applicant shall provide the Commission with written verification of compliance with this rule.

723-38-7.3 Criteria and Commission consideration. In determining whether or not to grant an application, the Commission will, in the exercise of its sole discretion and judgment, and as appropriate, consider whether granting the requested, specific form of price regulation: (a) is suitable and appropriate under the circumstances; (b) is consistent with, and advances, the public policies contained in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503(2)(c), C.R.S.; (c) will have a beneficial effect on the availability of services to all consumers in the state at fair, just,

reasonable, adequate, nondiscriminatory, and affordable rates; and (d) is not contrary to law or to Commission policy.

RULE (4 CCR) 723-38-8. SEGREGATION OF ASSETS.

723-38-8.1 To define the regulated rate base and to implement alternatives to traditional rate-of-return regulation, it is necessary to segregate the assets, liabilities, revenues, and expenses associated with the service subject to a specific form of price regulation from the assets, liabilities, revenues, and expenses associated with all other regulated telecommunications services. As a result, and if deemed necessary, the Commission may require a provider which provides local exchange telecommunications service which is subject to a specific form of price regulation other than tradition rate-of-return regulation to file with the Commission an accounting plan that accomplishes this segregation of assets, liabilities, revenues, and expenses. If required, the accounting plan shall be filed within 30 days following a final Commission decision approving a specific form of price regulation.

723-38-8.2 In the event the Commission orders an applicant to file an accounting plan in accordance with Rule 5.1, the applicant shall not offer the service under the approved specific form of price regulation prior to Commission approval of an appropriate accounting plan to segregate assets, liabilities, revenues, and expenses of the service. In the event the Commission requires an accounting plan to segregate assets, liabilities, revenues, and expenses of the service, the applicant shall, to the extent necessary, modify its cost separation manual required by the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, to conform to the accounting plan required by the Commission.

723-38-8.3 If required by the Commission to file an accounting plan, the applicant shall bear the burden of proving that the accounting plan submitted is sufficient to segregate assets, liabilities, revenues, and expenses to permit the Commission to define the regulated rate base and to implement the alternatives to traditional rate-of-return regulation.

723-38-8.4 Small local exchange carriers exempted from filing a cost segregation manual pursuant to Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, shall not be required to file plans or updates but shall be required to follow the cost segregation rules.

RULE (4 CCR) 723-38-9. ADDITIONAL PROCEDURES.

The Commission may adopt such other procedures as it deems appropriate for services subject to its jurisdiction, consistent with the expression of public policy contained in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503(2)(c), C.R.S.

RULE (4 CCR) 723-38-10. REVISION OF TERMS OF APPROVED FORM OF PRICE REGULATION.

On its own motion, or upon the application of the provider which has been granted the specific form of price regulation affected, and after notice and opportunity to be heard, the Commission may revise a specific form of price regulation granted pursuant to these rules if the Commission finds that continued use of the approved specific form of price regulation is contrary to, or inconsistent with, statements of public policy in §§ 40-15-101, 40-15-501, 40-15-502, and 40-15-503(2)(c), C.R.S.

RULE (4 CCR) 723-38-11. PROCESSING OF APPLICATIONS.

723-38-11.1 The Commission will process applications in accordance with the Rules of Practice and Procedure found

at 4 CCR 723-1. The specific form of price regulation sought in an application shall not be in effect until the Commission issues an order approving it, with or without hearing.

723-38-11.2 The Commission shall deem all applications complete in accordance with the procedural requirements of 4 CCR 723-1, Rule 70.

723-38-11.3 Absent unusual or extraordinary circumstances, the Commission will reject an application that is incomplete (see 4 CCR 723-1, Rule 70) and will close the docket pertaining to that application.

RULE (4 CCR) 723-38-12. COMBINED APPLICATIONS.

An applicant may file a combined application to obtain a specific form of price regulation under these rules; to obtain a certificate to provide local exchange telecommunications services and operating authority under Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, 4 CCR 723-35; to transfer a certificate, an operating authority, a CPCN, or a combination of these, under Rules Regulating Applications by Local Exchange Telecommunications Providers to Execute a Transfer, 4 CCR 723-36; and, if applicable, to obtain a specific form of relaxed regulation under Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24; or to do any of these in combination. In a combined application, the applicant shall comply with the application process and provide all information required for each separate component of the combined application.

RULE (4 CCR) 723-38-13. WAIVER OR VARIANCE.

The Commission may permit a waiver or variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable.

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THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES REGULATING
REGISTRATION OF TOLL RESELLERS

4 CODE OF COLORADO REGULATIONS (CCR) 723-51

[REPEALED]