

Decision No. C02-660

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-051T

IN THE MATTER OF PROPOSED RULES REGARDING N11 ABBREVIATED
DIALING CODES.

ORDER DENYING EXCEPTIONS

Mailed Date: June 13, 2002

Adopted Date: May 22, 2002

I. BY THE COMMISSION:

A. Statement

This matter comes before the Colorado Public Utilities Commission ("Commission") for consideration of Qwest Corporation's ("Qwest") exceptions to the Recommended Decision of Hearing Commissioner Page Adopting Rules, Decision No. R02-390 ("Recommended Decision"). After a hearing on the matter, the hearing commissioner issued a Recommended Decision adopting the proposed rules regarding N11 abbreviated dialing codes in Colorado. Qwest subsequently filed exceptions to the Recommended Decision arguing that the proposed rules exceed the Commission's jurisdiction; 211 is not a regulated service and therefore the tariffing and cost support rules should be stricken; and the amendment to Rule 24.3.2 regarding a 14-day

notice for recall should be reconsidered. Now, being duly advised in the premises, we deny the exceptions.

B. Discussion

1. The Commission gave notice of proposed rulemaking ("NOPR") regarding N11 Abbreviated Dialing Codes on January 31, 2002 in Decision No. C02-103. The purpose of the new rule is to clarify the limitation on the use of N11 codes by individual companies for purposes that are not consistent with the Federal Communications Commission's ("FCC") assignments of 211, 311, and 511. The new rule describes the process for the use of the 211 abbreviated dialing code for community information and referral services. The rules also reserve for future use sections for the petition and implementation process for 311 and 511. The 311 abbreviated code has been assigned by the FCC to non-emergency governmental services and 511 has been assigned for traffic and transportation information.

2. In the NOPR, the Commission assigned a hearing commissioner for hearing and a hearing was held on March 12, 2002. Qwest and AT&T Communications of the Mountain States, Inc. ("AT&T"), filed written comments. Verizon Wireless filed an Entry of Appearance and Notice of Intervention. At the hearing, appearances were entered by Qwest, AT&T, and Commission Staff.

3. Subsequent to the hearing, Hearing Commissioner Page issued her Recommended Decision. In that decision, the hearing commissioner found that there was nothing to indicate that the FCC declined to delegate jurisdiction over the implementation of N11, and specifically, 211 service to the states. The Recommended Decision found that the FCC had clearly defined its role in the administration of N11 codes, but found nothing to indicate that states were left without authority regarding 211 service.

4. The Recommended Decision also pointed out that several other states had asserted jurisdiction over N11 services and required certificated telecommunications utilities to file tariffs to recover costs for the services provided to agencies that make 211 service available. According to the Commissioner, there was nothing on record to indicate that the FCC had taken issue with those states that asserted their jurisdiction to require tariff filings for recovery of costs associated with implementation of 211 service.

5. The hearing commissioner also addressed Qwest's argument that Colorado statutes do not support Commission jurisdiction in this matter. In its filed comments, Qwest

argued that N11, and specifically 211 service, is essentially speed-dialing. Therefore, Qwest concluded that N11 is not a product or service that has been included in the definition of basic local exchange service in Colorado under § 40-15-201, C.R.S. Rather, Qwest asserted that 211 service was a new product or service being introduced in Colorado, deregulated under part 4 of Article 15 of Title 40 of the Colorado Revised Statutes. The Recommended Decision also addressed other minor recommendations for changes to the rule to clarify the meaning of certain provisions.

6. Qwest filed exceptions to the Recommended Decision rearguing its position that the proposed rules exceeded the Commission's jurisdiction and that 211 is not a regulated service. Qwest, therefore, urges the full Commission not to adopt the tariffing and cost support rules. Qwest also argued for reconsideration of Rule 24.3.2 regarding a 14-day notice for recall of non-conforming N11 codes.

7. Qwest's jurisdiction argument is similar to the argument it advanced in its written comments to the proposed rules. Relying on the FCC's Third Report and Order on Reconsideration, released July 31, 2000 ("Third Report and

Order"),¹ Qwest interprets the order to mean that the only parties necessarily engaged in the implementation of 211 service are the telecommunications providers and the entity applying for use. According to Qwest, because the FCC has retained the authority to redesignate the use of a N11 code if it determines whether a N11 code is not being utilized in the manner and to the extent anticipated, the states have no role in implementing 211 service. Qwest attempts to support this argument with language from the *Third Report and Order* that indicates that the states' role would be necessarily determined on a case-by-case basis as the FCC makes national assignment.

8. The FCC makes an important clarification when it holds that "states will be allowed to continue to make local assignments that do not conflict with our national assignments."² We interpret this to mean that state commissions may continue to oversee implementation of N11 codes within their jurisdictional boundaries so long as that authority and oversight do not conflict with the FCC's national assignment of

¹ Before the Federal Communications Commission: In the Matter of Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide NSD-L-99-24; Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code NSD-l-98-80; The Use of N11 Code and Other Abbreviated Dialing Arrangements CC Docket No. 92-105.

² *Third Report and Order*, ¶ 43.

the specific N11 code. We find nothing to indicate, as Qwest suggests, that the FCC has specifically excluded states from any authority over 211 implementation. Nor do we find any evidence that the FCC has left it entirely to telecommunications utilities and information providers to implement 211 service as they see fit. The anticipated use of 211 in Colorado is within the ambit of the FCC's national assignment of that dialing code. Accordingly, the proposed N11 rules do not exceed this Commission's jurisdiction under federal law.

9. Qwest next argues that Colorado law does not support a finding that 211 is subject to this Commission's jurisdiction. Instead, Qwest advances the assertion that as a premium service, or a service of convenience, 211 can be categorized as part 4 deregulated service as defined in § 40-15-401, C.R.S., rather than regulated service under § 40-15-201, C.R.S. We disagree with Qwest's arguments.

10. We agree with the analysis of regulated and non-regulated telecommunications services in Colorado found in the Recommended Decision. Qwest offers nothing persuasive in its exceptions to convince us that 211 service is a new product or service being introduced in Colorado other than those included in the definition of basic local exchange service pursuant to § 40-15-401(1)(e), C.R.S., and is therefore exempt from

regulation. We deny Qwest's exceptions that 211 is not a regulated service.

11. Finally, Qwest offers no evidence that proposed Rule 24.3.2, that provides for a 14-day notice for a user to discontinue use of a N11 code in the event of a recall, provides a sufficient amount of time for compliance. Qwest argues that Rule 24.3.2 should be deleted. We disagree. When the FCC determines to issue a national N11 assignment, it typically involves a process measured in months rather than days. The assignment process itself provides notice to users that they may have to discontinue use of the N11 code. The FCC's assignment process provides ample opportunity for users to educate customers and for telecommunications utilities to work out logistics related to misdirected calls. We also note that should a party have a concern about meeting the 14-day notice period for recall of a N11 number, it may apply for a waiver of the rule.

C. Conclusion

We deny Qwest's exceptions and uphold the hearing Commissioner's Recommended Decision in its entirety.

II. ORDER

A. The Commission Orders That:

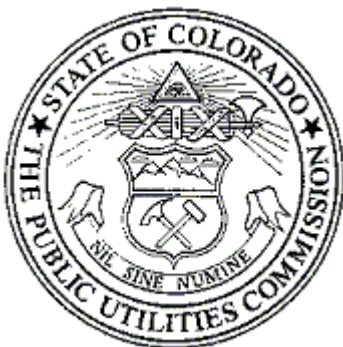
1. The exceptions of Qwest Corporation to Recommended Decision No. R02-390 are denied.

2. The Commission upholds the hearing Commissioner's Recommended Decision No. R02-390 in its entirety.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 22, 2002.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith
Director

JIM DYER

Commissioners