

Decision No. R02-1349

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-420T

IN THE MATTER OF PROPOSED RULES REGARDING PUBLIC NOTICE OF
CHANGES TO THE RATES, TERMS, AND CONDITIONS FOR INTRASTATE
TELECOMMUNICATIONS SERVICES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ADOPTING RULES**

Mailed Date: December 3, 2002

I. STATEMENT

A. By Decision No. C02-883, mailed on August 16, 2002, the Commission issued notice of proposed rulemaking regarding the public notice to be given by telecommunications service providers when the providers propose to change the rates, terms, and conditions of service. The Commission in its notice stated that the intent of the proposed rules is to implement House Bill 02-1169. In this legislation, the Legislature established requirements for public notice of proposed changes to the services offered by regulated telephone utilities. Section 40-3-104(1)(c)(V)(A), C.R.S., provides that public notice of proposed decreases to the rates and charges for telecommunications services shall be given by filing the proposed new tariffs with the Commission 14 days prior to their

effective date; proposed rate decreases are not subject to other notice. Section 40-3-104(1)(c)(V)(B), C.R.S., provides that proposed changes to the terms and conditions for telecommunications service are also subject to a 14-day notice period, the notice to be given by filing the proposed changes with the Commission. Section 40-3-104(1)(c)(V)(B), C.R.S., provides that the Commission may order additional notice if it determines that such additional notice is in the public interest.

B. The Commission assigned the matter for hearing to an Administrative Law Judge and scheduled a hearing for October 7, 2002.

C. Appearances were entered on behalf of AT&T Communications of the Mountain States, Inc. (AT&T), Qwest Corporation (Qwest), the Colorado Office of Consumer Counsel (OCC), and Staff of the Commission (Staff). At the hearing held on October 7, 2002, oral comments were received by Qwest, AT&T, OCC, and Staff. Written comments were filed by Qwest, AT&T, and OCC after the hearing, summarizing their oral comments.

D. Pursuant to § 40-6-109, C.R.S., the record of the hearing and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Comments of Qwest

1. Qwest comments that proposed Rule 4 Code of Colorado Regulations (CCR) 723-XX-4.2 adds language that is beyond the language contained in House Bill 02-1169 by requiring that a telephone utility proposing changes to terms or conditions of service voluntarily extend, for at least 30 days the proposed effective date for a filing if additional notice is determined to be necessary beyond the 14-day period stated in the statute. Qwest states that by requiring an extension of at least 30 days, the proposed rules fail to recognize the possibility that additional notice may be completed in less than 30 days.

2. Qwest proposes that Rule 4 CCR 723-XX-4.2 read as follows:

Prior to the expiration of the fourteen day notice period, the Commission may determine that additional public notice of a proposed change to the terms or conditions of service is in the public interest, and may require the ILEC to provide additional notice as specified by the Commission. If the Commission determines that additional notice is required, the Commission shall reject without prejudice the Advice Letter and/or Transmittal Letter filing(s), unless the telephone utility voluntarily extends, ~~for at least thirty days,~~ the proposed effective date of its filing to accommodate the additional notice specified by the Commission.

3. The suggestion of Qwest provides flexibility, and would allow the changes to be effective more quickly than if

there was a mandatory 30 days' extension of the notice as currently stated in the proposed rule. The suggestion will be adopted.

4. Qwest next comments that the definitional section of the proposed rules appear to be in some cases duplications of definitions already contained in other Commission rules. Qwest states that the definitions of "price list" "tariff" and "transmittal letters" are already contained in other Commission rules. Qwest recommends that the proposed definitions be deleted.

5. The suggestion of Qwest will be adopted. It is unnecessary to incorporate in the instant rules, terms already defined in other rules.

B. Comments of AT&T

1. AT&T comments that the Commission's proposed definition of incumbent local exchange carrier (ILEC) in the definitional section, 4 CCR 723-XX-2 is slightly inconsistent with the definition of ILEC found in the Telecommunications Act of 1996 and the Federal Communications Commission's (FCC) definitions. AT&T recommends that the definition of ILEC in this Commission's proposed rules reference the FCC's definition contained in 47 C.F.R. § 51.5.

2. The suggestion of AT&T will be adopted.

3. AT&T next comments that the definitions of price list and tariff contained in the proposed rules definitional section 4 CCR 723-XX-2 be modified or deleted since they are inconsistent with Commission Rule 4 CCR 723-1-4(b)(17).

4. The suggestion of AT&T will be adopted. The definitions of price list and tariff contained in the proposed rules will be deleted. The Commission rules should avoid duplication and internal inconsistencies.

C. OCC Comments

1. OCC suggests that proposed Rule 4 CCR 723-XX-3, Notice of Rate Decrease be modified by making it clear that an ILEC proposing only a rate decrease requires no additional notice. OCC recommends that the first sentence of 4 CCR 723-XX-3 be modified by adding the word "solely" to the sentence as follows:

An ILEC proposing solely a decrease to any rate for regulated service shall give notice of the proposed decrease by filing with the Commission an Advice Letter or Transmittal Letter accompanied by the proposed tariff or price list sheets.

2. Qwest in its reply comments filed on October 31, 2002 recommends that the addition of the word "solely" is superfluous and is not necessary since the proposed rule does not suggest a combined advice letter filing. Qwest recommends, however, that if the Commission wishes to modify the proposed rule the word "only" should be used versus the OCC's "solely".

3. The suggestion of OCC will be adopted in order to make it clear that the proposed rule refers only to a rate decrease filing rather than a combined filing. However, the suggestion of Qwest to substitute the word "only" rather than the OCC's "solely" will be adopted.

4. The OCC next comments that in proposed Rule 4 CCR 723-XX-4.2, the Commission should add a provision that any party may request the Commission to require additional notice for changes in terms and conditions. The OCC recommends that the following wording be added to the first sentence of proposed Rule 4 CCR 723-XX-4.2 as follows:

Prior to the expiration of the fourteen day notice period, upon its own motion or the motion of any interested party, the Commission may determine that additional public notice of a proposed change to the terms or conditions of service is in the public interest, and may require the ILEC to provide additional notice as specified by the Commission.

5. Qwest in its reply comments opposes the additional language to permit interested persons to file a motion to request the commission to require additional notice.

6. The OCC's recommendation will not be adopted. As pointed out by Qwest, House Bill 02-1169 states that proposed changes in the terms and conditions of a regulated telecommunications service shall not be subjected to any notice requirements unless the Commission determines that additional notice is in the public interest. The OCC modification would

broaden the scope of House Bill 02-1169. The Commission has the sole authority to make that determination.

7. It is found and concluded that the proposed rules as modified by this decision are necessary to implement House Bill 02-1169.

8. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER

A. The Commission Orders That:

1. The proposed Rules Regarding Public Notice of Changes to the Rates, Terms, and Conditions for Intrastate Telecommunications Services, attached to this Decision are adopted.

2. The rules shall be effective 20 days after publication by the Secretary of State.

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of reference of the Colorado General Assembly if the General Assembly is in session

at the time this Order becomes effective, or to the Committee on Legal Services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot

challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

WILLIAM J. FRITZEL

Administrative Law Judge

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

**RULES CONCERNING NOTICE WHEN INCUMBENT LOCAL EXCHANGE
CARRIERS PROPOSE DECREASES TO RATES,
OR CHANGES TO TERMS OR CONDITIONS OF SERVICE**

4 CCR 723-XX

BASIS, PURPOSE AND STATUTORY AUTHORITY

These rules implement House Bill 02-1169 (codified at § 40-3-104(1)(c)(V), C.R.S.). In that bill, the Legislature established new provisions for public notice when incumbent local exchange carriers propose changes to the rates, terms, and conditions for service. Specifically, when incumbent local exchange carriers propose decreases to their regulated rates, public notice will be given by filing the proposed changes with the Commission fourteen days prior to the effective date; no additional notice is required. When an incumbent local exchange carrier proposes changes to the terms and conditions for services, public notice will be given again by filing those proposals with the Commission fourteen days prior to the effective date; however, the Commission may order additional notice if it determines that such additional notice is in the public interest.

House Bill 02-1169 does not affect existing notice requirements (§ 40-3-104(1)(a),(c)(I-IV), C.R.S.) for rate increases proposed by incumbent local exchange carriers. As such, these rules do not affect any existing Commission requirements regarding public notice of rate increases for telephone service. Additionally, these rules do not affect an incumbent local exchange carrier's right to propose changes to its tariff or price list under the notice provisions set forth in § 40-3-104(2), C.R.S.

The statutory authority for these amendments is found in §§ 40-2-108, and 40-3-104(1)(c)(V), C.R.S.

723-XX-1 APPLICABILITY

These rules apply to incumbent local exchange carriers as defined below.

723-XX-2 Definitions

Advice Letter: A letter, numbered sequentially, in the prescribed Commission format, which shall accompany each tariff filing with the Commission.

Incumbent Local Exchange Carrier (ILEC), as defined by the Federal Communications Commission, 47 CFR 51.5

~~(I) With respect to an a geographic area, the local exchange carrier that: on the day of enactment of the Telecommunications Act of 1996 (February 8, 1996), local exchange service in such geographic area that either:~~

~~(1) On February 8, 1996, provided telephone exchange service in such area; and~~

~~(2)(i) On February 8, 1996, was deemed to be a member of the Exchange Carrier Association pursuant to § 69.601(b) of this chapter; or~~

~~(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section.~~

~~(A) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b) of the Federal Communications Commission's regulations; or,~~

~~(B) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in subparagraph (A) of this paragraph; or~~

~~(II) Any comparable local exchange carrier, or class or category thereof, that the Commission has, by rule or order, deemed to be an incumbent local exchange carrier after finding that:~~

~~(A) such carrier occupies a position in the market for telephone exchange service within a geographic area that is comparable to the position occupied by a carrier described in subparagraph (I) of this paragraph;~~

~~(B) such carrier has substantially replaced an incumbent local exchange carrier described in subparagraph (I) of this paragraph; or~~

~~(C) such treatment is consistent with the public interest, convenience, and necessity and the purpose of this Rule.~~

Local Exchange Carrier: Any person who holds a certificate of public convenience and necessity to provide basic local exchange service as that term is defined in § 40-15-102(3), C.R.S.

~~**Price List:** A filing with the Commission, in the prescribed Commission format, filed as an attachment to a transmittal letter, which contains all current rates of a provider of local exchange or emerging competitive telecommunications services and products. A price list typically does not contain information duplicating information in a tariff.~~

~~**Tariff:** A filing with the Commission, in the prescribed Commission format, which contains all rates and charges, collected or enforced, or to be collected or enforced, combined with all terms and conditions, rules, and regulations which in any manner affect or relate to rates, charges, or services.~~

~~**Transmittal Letter:** A letter, numbered sequentially, in the prescribed Commission format, which shall accompany each price list filing with the Commission.~~

723-XX-3 Notice of Rate Decrease An ILEC proposing only a decrease to any rate for regulated service shall give notice of the proposed decrease by filing with the Commission an Advice Letter or Transmittal Letter accompanied by the proposed tariff or price list sheets. The Advice Letter or Transmittal Letter shall be filed with the Commission at least fourteen days prior to the proposed effective date of the rate decrease. The date of filing with the Commission shall not be considered part of the fourteen day notice. And, the fourteenth day must expire prior to the effective date of the rate decrease. No additional public notice shall be required.

723-XX-4 Notice of Changes to Terms or Conditions of Service

723-XX-4.1 An ILEC proposing a change to the terms or conditions of any regulated service shall give notice of such proposed change by filing with the Commission an Advice Letter or Transmittal Letter accompanied by the proposed tariff or price list sheets. The Advice Letter or Transmittal Letter shall be filed with the Commission at least fourteen days prior to the proposed effective date of the change to the terms or conditions of service. The date of filing with the Commission shall not be considered part of the fourteen day notice. And, the fourteenth day must expire prior to the effective date of the proposed change. No additional notice shall be required unless the Commission determines that additional notice is in the public interest in accordance with section 4.2 of this rule.

723-XX-4.2 Prior to the expiration of the fourteen day notice period, the Commission may determine that additional public notice of a proposed change to the terms or conditions of service is in the public interest, and may require the ILEC to provide additional notice as specified by the Commission. If the Commission determines that additional notice is required, the Commission shall reject without prejudice the Advice Letter and/or Transmittal Letter filing(s), unless the telephone utility voluntarily extends, ~~for at least thirty days,~~ the proposed effective date of its filing to accommodate the additional notice specified by the Commission.