

Decision No. C03-0080

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-027T

IN THE MATTER OF EMERGENCY AMENDMENTS TO THE RULES REGULATING
TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES, 4 CCR
723-2.

**DECISION REPEALING EMERGENCY RULES
AND ADOPTING NEW EMERGENCY RULES**

Mailed Date: January 23, 2003

Adopted Date: January 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of an emergency rule amending the Commission's Rules Regulating Telecommunications Service Providers and Telephone Utilities (Telecom Rules), 4 *Code of Colorado Regulations* (CCR) 723-2. The emergency rule repeals emergency Rule 8.5.2 of the Telecom Rules and requires that the interest rate for customer deposits that local exchange carriers (LECs) must pay shall be at a rate equal to the average of the preceding year's 12 monthly average rates of interest for 1-year U.S. Treasury constant maturities, as published in the *Federal Reserve Bulletin*, by the Board of Governors of the Federal Reserve System. For the reasons set forth in this decision, we now adopt, on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the rule appended to this order as Attachment A. We take this emergency action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. We find that adoption of the rule is necessary for the preservation of public health, safety, and welfare, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

3. As grounds for these findings, we state: It is necessary to adopt this emergency rule due to the termination of the publication by the Federal Reserve System that served as the benchmark for setting the interest rates that telecommunications utilities were required to pay on customer deposits.

4. In our Decision No. C02-1373 in Docket No. 02R-631T, we adopted an emergency rule continuing the interest rate on customer deposits at 4.32 percent, thereby maintaining the status quo of Rule 8.5.2, and avoiding a regulatory gap that would have occurred on January 1, 2003, without adoption of the emergency rule.

5. Pursuant to 4 CCR 723-2-8.5, a LEC may require customers to maintain a cash deposit with it to ensure payment for services. The LEC is required to pay simple interest on the deposit held.

6. Staff of the Commission calculates the interest rate to be paid on customer deposits pursuant to guidelines in Rule 4 CCR 723-2-8.5.2. Specifically, the interest to be paid on deposits for the forthcoming year is to be the average monthly rate in the secondary market for one-year U.S. Treasury Bills for the previous 12-month period beginning October 1 and ending September 30, as posted in the Federal Reserve Bulletin, Board of Governors of the Federal Reserve System, Washington D.C., from the page entitled, *Interest Rate, Money and Capital Markets*.

7. The Board of Governors of the Federal Reserve Bank no longer publishes the information on the secondary market for one-year U.S. Treasury Bills necessary to establish the interest rate for customer deposits held by LECs.

8. We also found that the Proposed Repeal and Reenactment of the Rules for Electricity, Gas, Water and Telephone Services will address the interest rate on customer deposits, however, the process for establishing those rules is ongoing and would not be completed prior to early January 2003. The existing rate of 4.32 percent terminated on December 31, 2002.

9. To avoid a regulatory gap, we found it essential that a new rule be adopted as rapidly as possible in order for LECs to have a specific interest rate in place for customer deposits subsequent to December 31, 2002. We determined that implementation of the emergency rule served to continue the interest rate until the proposed new telecommunications services rules become effective.

10. However, it was brought to our attention that the 4.32 percent interest rate could be nearly double the rate that should be paid because of the significant drop in short-term interest rates that occurred over the past year.

11. Because it is not clear when our repeal and reenactment of the telecommunications rules will become effective, we are concerned with the adverse financial impact on regulated utilities of maintaining the interest rate on customer deposits at such a high level.

12. Commission Staff determined that a simple interest rate accurately reflecting current market conditions could still be calculated utilizing U.S. Treasury constant maturities

averages for the previous year, as published in the *Federal Reserve Bulletin*. The rule also provides that if the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year.

13. Implementation of this emergency rule will serve to establish an accurate short-term interest rate.

14. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-102, 40-4-101 40-15-201, and 40-15-302, C.R.S. The rule attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The emergency telecommunications rule adopted by the Commission on December 4, 2002 in Decision No. C02-1373 in Docket No. 02R-631T and effective on December 10, 2002 is repealed.

2. Emergency Rule 4 *Code of Colorado Regulations* 723-2-8.5.2, appended to this Decision as Attachment A is hereby adopted as an emergency rule consistent with the above discussion.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2003.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

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RULE (4 CCR) 723-2-8.5 CUSTOMER DEPOSITS

723-2-8.5.2 Simple interest to be paid on a deposit by the LEC during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent per annum, as quoted ~~in the secondary market~~ for one-year United States Treasury ~~Bills constant maturities~~, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, the Staff of the Commission shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. The Commission ~~and~~ shall send a letter ~~no later than November 15th~~ to each LEC within the state stating the rate of interest to be paid on deposits during the following calendar year. Following receipt of Staff's letter, each utility shall, no later than December 15th of each year, or an alternative date set by the Commission, file an Advice Letter and revised tariff citing this rule as authority on not less than one day's notice, or file an appropriate application, to revise the tariff, all effective the first day of January of the following year, or on an alternative date set by the Commission, containing the new interest rate to be paid upon customers deposits.