

Decision No. C04-0623

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-309T

RULES PRESCRIBING THE PROCEDURES FOR ADMINISTERING THE LOW-INCOME TELEPHONE ASSISTANCE FUND.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: June 9, 2004

Adopted Date: June 8, 2004

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding its Rules Prescribing the Procedures for Administering the Low-Income Telephone Assistance Fund (LITAP), 4 *Code of Colorado Regulations* 723-13. This proposed rulemaking will make modifications to the LITAP Rules, such as those reflected in the attached proposed rules.

2. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-3.4-106, and 40-15-502(3)(a), C.R.S.

3. An Administrative Law Judge (ALJ) for the Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before hearing, the Commission requests that such comments be

filed no later than fourteen days prior to the scheduled hearing. The Commission will consider all submissions.

4. Docket No. 03R-524T concerns the proposed repeal and reenactment of all the Commission's existing telecommunications rules. As such, the LITAP rules were included in that proceeding. However, the major proposals included in this Notice of Proposed Rulemaking (*e.g.* requiring all local exchange carriers to collect the LITAP surcharge) were not noticed in Docket No. 03R-524T. For purposes of providing notice regarding the major proposals reflected in the attached proposed rules, we initiate this docket. For purposes of administrative efficiency we will consider revisions to the LITAP Rules in this docket, instead of Docket No. 03R-524T. Parties intending to suggest changes to the LITAP Rules specifically should file their comments in this docket.

5. LITAP, also known as Lifeline, was established by the Legislature in 1990 through § 40-3.4, C.R.S., "Emergency Telephone Access." The program provides discounted basic telephone service to eligible subscribers, as defined in § 40-3.4-105, C.R.S. The present discount is \$6.50 per month, as ordered by the Commission in Decision C03-0529. Pursuant to § 40-3.4-108, C.R.S., the Commission determines and imposes a uniform charge on each business and residential line of non-eligible subscribers. Decision C04-0552 set the surcharge at 12 cents per access line.

6. The present LITAP Rules require only those carriers providing LITAP service to collect the LITAP surcharge from their customers (*i.e.* carriers not providing LITAP service are not required to charge their customers the LITAP surcharge). That limitation and the increasing costs of funding LITAP service (due to substantial increases in the subscriber line surcharge established by the Federal Communications Commission) are resulting in noticeable increases in

the LITAP surcharge. We are concerned that principles of competitive neutrality may be undermined under the present rules, since some carriers are charging their customers to fund the LITAP program, while increasing numbers of carriers are not. The Commission believes that it has the authority to extend applicability of the rules to all providers of local exchange telecommunications service. Although § 40-3.4-108(1), C.R.S. could be interpreted as suggesting that only carriers offering LITAP service are required to collect the surcharge, we note that the later enacted § 40-15-502(3)(a) (low-income telephone assistance programs further goal of universal service, and Commission shall have authority to regulate providers of telecommunications services to extent necessary to assure universal basic service) supports a rule requiring all telecommunications carriers to collect the LITAP surcharge. We conclude that such a rule is consistent with §§ 40-15-501 *et seq.* which directs the Commission to promote competition in the local exchange market. That is, requiring all subscribers of local exchange service, including those customers of competitive local exchange carriers, to support the LITAP program is competitively neutral (as opposed to the existing requirement), and, therefore, promotes competition.

7. Proposed Rule 723-13-1 sets forth the applicability of the rules to providers of basic local exchange telecommunications service. Proposed Rule 723-13-3.1 details the tariff requirements for participating telecommunications service providers. Proposed Rule 723-13-5 sets forth the manner in which the uniform surcharge may be collected.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the July 12, 2004 edition of *The Colorado Register*.

2. Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge beginning at:

DATE: August 6, 2004
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

3. Interested persons are encouraged to submit their written comments fourteen days before the hearing. At the time set for hearing, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 8, 2004.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-13

RULES **PRESCRIBING**

THE PROCEDURES FOR ADMINISTERING

THE LOW-INCOME TELEPHONE ASSISTANCE FUND

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis and purpose for these Rules is to prescribe the procedures for administering the low-income telephone assistance fund ~~for the provision of basic local exchange telecommunications services by providers of basic local exchange telecommunications services in order to promote the public health, safety and welfare, and~~ so that low-income individuals receive assistance adequate to ~~ensure~~ access to basic local exchange telecommunications services.

The ~~authority for these Rules is § 40-3.4-106, C.R.S.~~ Further, ~~the~~ Commission is authorized to promulgate rules generally by §40-2-108- C.R.S., and specifically to promulgate rules for ~~the use of~~ low-income telephone assistance programs to further the goal of Universal Service by §§ 40-3.4-106 and 40-15-502(3)(a) C.R.S.

These rules are consistent with 47 U.S.C., 254 and newly adopted Federal Communications Commission Rules found at Part 54 of 47 *Code of Federal Regulations* (C.F.R.), implementing 47 U.S.C. section 254.

RULE (4 CCR) 723-13-1. APPLICABILITY.

~~Rules 1 through 5 are applicable to providers of basic local exchange telecommunications services who are not eligible telecommunications carriers with more than five hundred thousand subscribers and certified to do business in the state; except that any such certified company with fewer subscribers may apply to the Commission for discounted rates for their subscribers eligible to receive low-income telephone assistance by complying with Rule 3.~~

Rules 1 through 5 are applicable to all providers of basic local telecommunications service.

Rules 1 through 10 are applicable to providers of basic local exchange telecommunications services who are eligible telecommunications carriers and certified to do business and to offer basic local exchange service within the state of Colorado.

RULE (4 CCR) 723-13-2 DEFINITIONS.

As used in this rule, unless the context otherwise requires:

723-13-2.1 "Basic local exchange telecommunications services" means any of the telecommunications services which provide a dial-tone line and local usage necessary to place or receive a call within a local calling area.

723-13-2.2 "Eligible Telecommunications Carrier" (ETC) means a carrier designated as such by the Commission pursuant to the Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier, 4 CCR 723-42.

723-13-2.3 "Eligible subscriber" means an individual who is qualified to receive low-income telephone assistance pursuant to § 40-3.5-105, C.R.S.

723-13-2.4 "Lifeline", as used in this Rule, means a retail local service offering:

723-13-2.4.1 That is available only to a eligible subscribers;

723-13-2.4.2 For which eligible subscribers pay reduced charges as a result of application of the support amount described in § 40-3.4-104 C.R.S.; and

723-13-2.4.3 That includes the services or functionalities enumerated in Rule 2.1.

723-13-2.5 "Toll blocking" is a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their dial-tone line.

723-13-2.6 "Toll control" is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their dial-tone line per month or per billing cycle.

723-13-2.7 "Toll limitation" denotes either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, "toll limitation" denotes both toll blocking and toll control.

RULE (4 CCR) 723-13-3. IMPLEMENTATION OF PLANS.

Each provider to which these rules are applicable shall file with the Commission that information specified in Rule 4.2 of these rules, along with an advice letter and implementing tariffs, prior to implementing a program plan.

723-13-3.1 Implementing tariffs shall include a description of the service offered to eligible subscribers and the associated monthly rate. Such tariff shall consist of a twenty-five percent discount for a single local dial tone line and the flat rate usage charge in the principal residence of an eligible subscriber. Eligible subscribers who pay mileage charges associated with basic telephone service may be eligible

for a twenty-five percent discount for these charges. In no event shall the discount provided be less than the end user common line charges imposed by the Federal Communications Commission.

723-13-3.2 Intrastate Lifeline customer local tariffed rates implementing the Colorado low-income telephone assistance program shall be further reduced by any amount that the basic local exchange telecommunications service provider receives from any federal program providing for a reduction in such intrastate rate.

RULE (4 CCR) 723-13-4. FUND ADMINISTRATION.

The Commission shall determine, and by appropriate order, impose a uniform charge on each business and residential access line ~~in a uniform amount~~. So that such charge can be adjusted on or before July 1 of each year, ~~beginning with the 1991 fiscal year~~, the Commission will require certain information.

To assist the Commission:

723-13-4.1 The Department of Human Services shall forward to the Commission by April 1 of each calendar year its estimate of its administrative expenses incurred under § 40-~~3.4-101~~, et seq., C.R.S., and its estimate of the number of eligible subscribers for the coming fiscal year.

723-13-4.2 Each provider of basic local exchange telecommunications services shall, in its annual report to the Commission, state its estimate for the coming year of the number of eligible subscribers who will receive low-income telephone assistance, the number of business and residential subscribers to be subject to the uniform charge, and its administration cost of the program. In addition, the provider shall report for the previous year as well as the historic monthly amounts of collections generated by the uniform charge, the monthly amounts of revenue foregone due to the discount of the program, its

monthly administration expenses and amounts— reimbursed from or remitted to the Low-Income Telephone Assistance Fund as managed by the State Treasurer. ~~However, providers of basic local exchange telecommunications services, having less than 500,000 subscribers, with an approved program, may report using an average cost to administer, with a minimum amount per local exchange carrier, and an amount per eligible subscriber access line, as determined by the Commission.~~ Providers of basic local exchange telecommunications services having more than 500,000 subscribers shall report program administrative fees based on actual costs. Providers having fewer than 500,000 subscribers shall report a Commission-approved administrative fee based on average cost to administer the program as shown in the provider's industry-standard cost documentation, or actual cost to administer as demonstrated through the provider's accounting documentation.

723-13-4.3 The State Treasurer shall forward to the Commission by April 1 of each calendar year an accounting of the transactions occurring in the Low-Income Telephone Assistance Fund.

723-13-4.4 The Commission by April 1, of each calendar year shall estimate its administrative expenses incurred under § 40-3.4-101, et seq., C.R.S.

723-13-4.5 The Commission, within 30 days of receipt of each report and after examining same, shall calculate the uniform charge based upon the undisputed amounts. Disputes concerning the amounts due for reimbursements from the fund, shall be resolved through the Commission's administrative hearing process.

RULE (4 CCR) 723-13-5. UNIFORM CHARGE.

723-13-5.1 The uniform charges imposed pursuant to §§ 40-3.4-108(1), and 40-15-502(3)(a), C.R.S., shall be billed to

each subscriber of each provider of basic local exchange telecommunications services ~~with an approved low-income telephone assistance program based upon their number of access lines.~~

723-13-5.2 The uniform charge shall not be imposed on any state or local governmental body or on eligible subscribers.

723-13-5.3 A provider of basic local exchange telecommunications service may collect the uniform charge by a specific line item on subscriber's bills if provided for by tariff. ~~Absent an effective tariff providing for collection of the uniform charge by an alternative method,~~ Alternatively, the uniform charge shall be included in each subscriber's bill as part of the subscriber's ~~base~~ basic exchange service rate provided that and the provider's the tariff shall indicate, through a footnote or other explanatory text, that the basic exchange service rate contains the uniform charge. ~~If the basic exchange service rate contains~~ includes the uniform charge, ~~A~~ market informational note shall be added to the bill, once a year, informing customers that the ~~base~~ basic exchange service rate contains a Commission approved ~~(state the current monthly charge)~~ monthly charge for the Low-Income Telephone Assistance Program.

723-13-5.4 Upon collecting the uniform charge, each provider may retain, from the total charges collected, an amount sufficient to reimburse such provider for its provision of low-income telephone assistance.

723-13-5.4.1 If the total collected is in excess of the amount sufficient to reimburse the provider, the provider shall by the 30th day following the end of each quarter (January 30, April 30, July 30, and October 30) remit the excess to the Commission. To assist providers, the Commission may provide net contributors a form at least 30 days prior to the above due dates in order to accurately calculate the amounts to be remitted to

the Commission. The Commission shall deposit such amount with the State Treasurer, who shall credit the same to the Low-Income Telephone Assistance Fund.

723-13-5.4.2 If the total collected is insufficient to reimburse the provider, the provider shall request reimbursement from the fund by providing the required information of Rule 4.2 in its annual report to the Commission. The Commission, after examining same, shall calculate the amount due for reimbursements from the fund and request reimbursement from the State Treasurer, who shall debit the same to the Low-Income Telephone Assistance Fund.

723-13-5.5 The Department of Human Services shall file with the Commission reports detailing its costs in administering the low-income telephone assistance program in accordance with § 40-3.4-101, *et seq.*, C.R.S. The Commission shall request reimbursement of the approved expenses of the Department of Human Services from the State Treasurer, who shall remit that amount and shall debit the same from the Low-Income Telephone Assistance Fund.

RULE (4 CCR) 723-13-PART II

RULES APPLICABLE TO ELIGIBLE TELECOMMUNICATIONS CARRIERS

RULE (4 CCR) 723-13-6. OFFERING OF TOLL LIMITATION.

Eligible telecommunications Carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation, that service shall become part of the consumer's Lifeline service.

723-13-6.1 Lifeline support for providing toll limitation shall be provided from the federal Lifeline program.

RULE (4 CCR) 723-13-7. PROHIBITION OF DISCONNECTION.

Eligible Telecommunications Carriers may not disconnect Lifeline service for non-payment of toll charges.

723-13-7.1 The Commission may grant a waiver of this requirement if the local exchange carrier can demonstrate that:

723-13-7.1.1 It would incur substantial and unjustifiable costs in complying with this requirement;

723-13-7.1.2 It offers toll limitation to its qualifying low-income consumers without charge; and

723-13-7.1.3 Telephone subscribership among low-income consumers in the carrier's service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a "low-income consumer" is one with an income below the poverty level as defined by the Colorado Department of Human Services for a family of four residing in the state for which the carrier seeks the waiver. The carrier may reapply for the waiver.

RULE (4 CCR) 723-13-8. SERVICE DEPOSIT.

Eligible Telecommunications Carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

RULE (4 CCR) 723-13-9. FEDERAL REPORTING REQUIREMENTS.

Each carrier shall file information with the administrator of the federal lifeline program demonstrating that the carrier's Lifeline plan meets the criteria set forth in Subpart E, 47 C.F.R., Part 54 and stating the number of qualifying low-income consumers and the amount of state assistance.

RULE (4 CCR) 723-13-10. INCORPORATION BY REFERENCE.

References in these Rules to "Part 54" refers to rules issued by the Federal Communications Commission and incorporated by reference in these Rules. Those rules may be found at 47 C.F.R. Part 54, issued as of ~~January 1, 1998~~ October 1, 2003. References to Part 54 do not include later amendments to or editions of this part. A certified copy of this part which has been incorporated by reference is maintained at the offices of the Colorado Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and is available for inspection during normal business hours. Certified copies of the incorporated rules shall be provided at cost upon request. The Director of the Public Utilities Commission, or his designee, will provide information regarding how the incorporated rules may be obtained or examined. These incorporated rules may be examined at any state publications depository library.

RULE (4 CCR) 723-13-11. WAIVER OR VARIANCE

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