

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-057T

IN THE MATTER OF PROPOSED RULES RELATING TO THE PROVISIONING OF THE
ABBREVIATED DIALING CODE 5-1-1 FOR TRAFFIC AND TRANSPORTATION
INFORMATION.

ORDER ADOPTING RULES

Mailed Date: July 23, 2004

Adopted Date: July 20, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of proposed rules at 4 *Code of Colorado Regulations* (CCR) 723-24-6, pertaining to the provisioning of the abbreviated dialing code 5-1-1 for traffic and transportation information. These rules, with several modifications, make permanent the emergency rules this Commission adopted on December 22, 2003 in Decision No. C03-1429. These permanent rules also adopt, with several modifications, the rules recommended by the Administrative Law Judge (ALJ) in Recommended Decision No. R04-0509, mailed May 14, 2004.

2. These rules are enacted within the authority granted to the Commission by the Federal Communications Commission (FCC) pursuant to, *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, *the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, FCC 00-256 (rel. July 31, 2000) (*Third Report and*

Order). In that order, the FCC determined that the U.S. Department of Transportation had demonstrated that assignment of an N11 dialing code for nationwide access to travel and traffic information services was in the public interest, and therefore assigned 5-1-1 for that purpose.

3. These rules set out the process by which a governmental entity may request the Commission to assign 5-1-1 to provide transportation and traffic information to the citizens of Colorado in accordance with the directives of the *Third Report and Order*. These rules also establish the procedures and standards the Commission will utilize to make 5-1-1 assignments and establish the requirements applicable to jurisdictional telecommunications service providers and others.

4. Notice of the proposed rulemaking was published in the *Colorado Register*. A hearing on the proposed rules was held before an ALJ on April 9, 2004. No written comments were received in this docket. At the hearing, an appearance was entered by MCI, Inc. No other comments were filed or appearances entered.

5. The ALJ issued her Recommended Decision on May 14, 2004 with the recommended rules attached to that decision. On May 27, 2004, we stayed that Recommended Decision pending a review of the rules to ensure their accuracy and their consistency with the 2-1-1 and 3-1-1 rules.

B. Findings of Fact and Conclusions of Law

6. At the hearing before the ALJ, MCI proposed several modifications to the emergency rules. For example, MCI requested that a petition for assignment of 5-1-1 contain information that identifies the petitioner and a specific contact person. MCI also suggested language in Rule 4 CCR 723-24-6.5 that specified that actions a provider must take, and the information it must provide to the Commission after it receives notification of an initial

Commission decision assigning 5-1-1. MCI also suggested that the rules specify that providers receive notice of Commission orders that assign 5-1-1 and of Commission orders that establish the time line for assignment and implementation of 5-1-1.

7. In response to the suggestions proposed by MCI discussed *supra*, the ALJ incorporated language into the rules reflecting those suggestions. The ALJ also added new rule 4 CCR 723-24-6.8 which contains language requiring a provider to make a tariff filing with respect to its offering of 5-1-1 service. The rule also establishes the time frame in which such a filing is to be made.

8. Additionally, the ALJ added Rule 4 CCR 723-24-6.9 which extracted the language from Rule 4 CCR 723-24-6.6 for ease of reference.

9. We thank MCI for its comments and applaud the ALJ's efforts to edit the emergency rules in order to arrive at a set of rules that are logical, clear and concise. However, after a review of the recommended rules, we find that several further edits are necessary in order that the permanent rules are consistent with the 2-1-1 and 3-1-1 rules we have previously promulgated.

10. We edited language in Rule 4 CCR 723-24-6 to more closely resemble the language from similar rules regarding 2-1-1 and 3-1-1. We also realigned Rule 4 CCR 723-24-6.3 by enumerating the contents of the rule as subparagraphs (a) through (l), rather than assigning a separate rule number to each element. We find that this allows for ease of reference.

11. In addition, we eliminated recommended Rule 4 CCR 723-24-6.3.14. We find it unnecessary to require a "penalty of perjury" statement in the petition since only government entities may apply to provide 5-1-1 service. We also eliminated the requirement under recommended Rule 723-24-6.5 that we issue notice of a Commission decision assigning 5-1-1 to

provide traffic and transportation information within 10 days of that decision. The decision itself, which will be mailed to all affected jurisdictional telecommunications providers on its effective (mailed) date will serve as proper notice.

12. Finally, we added Rule 4 CCR 723-24-6.9, which delineates the procedure necessary for a government entity which is providing 5-1-1 service to discontinue such service. This ensures that proper notice is provided to the public as to the discontinuance and alternative methods of obtaining traffic and transportation information is available.

II. ORDER

A. The Commission Orders That:

1. The proposed rules relating to the provisioning of the abbreviated dialing code 5-1-1 for traffic and transportation information, rules 4 *Code of Colorado Regulations* 723-24-6 attached to this Order 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 Order 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 the Colorado General Assembly if the General Assembly is in session at the time of 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. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the mailed date of this Order.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 20, 2004.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

RULES RELATING TO THE PROVISIONING OF THE ABBREVIATED DIALING CODE 5-1-1 FOR TRAFFIC AND TRANSPORTATION

723-24-6. A governmental entity submitting a petition for use of the 5-1-1 abbreviated dialing code established by the Commission shall be granted use of that abbreviated dialing code if it is found to meet the public benefit standard as delineated in this rule. Any government entity that is granted the authority to offer 5-1-1 abbreviated dialing access to intelligent transportation systems or other transportation information shall comply with this rule and any provisions set out in the Commission's decision granting such authority.

723-24-6.1 Process for Assignment of 5-1-1 Abbreviated Dialing Code. The assignment of the 5-1-1 abbreviated dialing code to provide traffic and transportation information will be considered by the Commission either upon its own motion or upon the filing of a petition by a governmental entity.

723-24-6.2 Petition for Consideration of the Assignment of 5-1-1. A governmental entity filing a petition to request assignment of the 5-1-1 abbreviated dialing code for providing intelligent transportation systems or other transportation information must present evidence that a public benefit exists. The Commission will evaluate the petition based upon this evidence.

723-24-6.3 Contents of the Petition. The petition shall contain the following information and documentation:

- (a) Name and address of the governmental entity filing the petition;
- (b) Name, address, and telephone number of the person filing the petition on behalf of the governmental entity;
- (c) If different than the person identified in response to (b), name, address, and telephone number of the governmental entity's representative to whom inquiries concerning the petition should be addressed;
- (d) Name, address, and telephone number of the person to contact with respect to implementation of the 5-1-1 abbreviated dialing code if the Commission grants the petition;
- (e) Background of the petitioner, including composition of any governing board or agency;
- (f) Demonstration of public need;
- (g) Historic volume of calls seeking transportation information;
- (h) Description of the geographic area, including a list of cities, towns, and counties or, if known, of central offices within the proposed area, to be included within the assignment and a description of any plans for expansion of that geographic area;
- (i) Estimated cost of implementing the 5-1-1 abbreviated dialing code if the Commission grants the petition;

- (j) Proposed cost recovery solution, including funding mechanisms;
- (k) Letters of support;
- (l) Proposed plan for community outreach and notification.

723-24-6.4 If two or more government entities petition the Commission to provide access to intelligent transportation systems or other transportation information using the 5-1-1 abbreviated dialing code in the same or overlapping geographic areas, the Commission shall use the criterion in rule 723-24-6.2 to establish one assignee.

723-24-6.5 When the Commission issues an order assigning the 5-1-1 abbreviated dialing code for providing traffic and transportation information to the public, each jurisdictional telecommunications service provider that provides service in the geographic area covered by the order that receives notice of such an order shall do the following:

723-24-6.5.1 If an affected jurisdictional telecommunications service provider is using 5-1-1 for purposes other than access to intelligent transportation systems or other transportation information, that provider shall discontinue the non-compliant use.

723-24-6.5.2 If an affected jurisdictional telecommunications service provider plans to seek recovery of its costs associated with implementation of the 5-1-1 abbreviated dialing code for providing traffic and transportation information, the provider shall perform all analyses required to quantify the costs for the translations and/or facilities work necessary to implement the 5-1-1 abbreviated dialing code.

723-24-6.5.3 The affected jurisdictional telecommunications service provider shall estimate the time required to perform the translation and/or facilities work necessary to allow 5-1-1 call completion from its subscribers as requested in the Petition.

723-24-6.6 Within 30 days of the date of the Commission order assigning the 5-1-1 abbreviated dialing code, each affected jurisdictional telecommunications service provider that provides service in the geographic area covered by the order shall file with the Commission the information required by rules 723-24-6.5.2 and 723-24-6.5.3.

723-24-6.7 Taking into consideration the jurisdictional telecommunications service providers' filed information, the public need for the assignment of the 5-1-1 abbreviated dialing code for traffic and transportation purposes, and other factors which it may consider relevant, the Commission will establish, by written order, a time line for assignment and implementation of the 5-1-1 abbreviated dialing code in the affected geographic area. Each jurisdictional telecommunications service provider providing service within the affected geographic area shall comply with this assignment date unless a waiver is sought and granted.

723-24-6.8 Not less than 30 days prior to the Commission-ordered implementation date, each jurisdictional telecommunications service provider that offers service within the affected geographic area shall file, on not less than 30 days' notice, an advice letter and accompanying tariff that describes the availability of the 5-1-1 abbreviated dialing code; that contains the terms and conditions of the 5-1-1 abbreviated dialing code service; and,

if the provider desires to recover its costs, the rates for the 5-1-1 abbreviated dialing code service.

723-24-6.9. Discontinuance of 5-1-1 Access

723-24-6.9.1 Any government entity that has been granted the authority to offer 5-1-1 service shall file a notification of discontinuance with the Commission not less than 45 days prior to the effective date of the proposed discontinuance.

723-24-6.9.2 Contents of Discontinuance Notification. The notification shall contain the following information:

- (a) The entity's name, complete mailing address (street, city and zip code), telephone number, and e-mail address;
- (b) Name, mailing address, telephone number and e-mail address of the person to contact for questions regarding the discontinuance;
- (c) The proposed effective date, which shall not be sooner than 45 days after the date on which the notification is filed with the Commission;
- (d) The reason(s) for the discontinuance;
- (e) A detailed description of the affected area, including a map of the affected area;
- (f) A copy of the notice to the affected users of the proposed discontinuance of the 5-1-1 service, and a list of all newspapers of general circulation in which the notice of discontinuance will be published;
- (g) A detailed description of the other means to be utilized to inform and educate the affected users of the discontinuance of 5-1-1 service; Acknowledgment that by signing the notification, it is understood that:
 - i.) Filing the notification does not, by itself, constitute authority to discontinue the offering of service, and
 - ii.) If the discontinuance is granted, it is conditional upon fulfillment of any conditions established by Commission Order.
- (h) An affidavit signed by a person authorized to act on behalf of the provider, stating that the contents of the notification are true, accurate and correct.