

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04D-477T

IN THE MATTER OF THE PETITION FOR COMMISSION DECLARATORY ORDER TO
DECLARE INVALID COMMISSION RULE 723-41.18.6.1.2 AS THE SAME IS APPLIED TO
RURAL TELECOMMUNICATIONS PROVIDERS.

**ORDER DISMISSING PETITION
FOR DECLARATORY ORDER**

Mailed Date: November 2, 2004
Adopted Date: September 29, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Petition for Declaratory Order by the Colorado Telecommunications Association (CTA). The Petition requests that the Commission declare invalid Rule 18.6.1.2, 4 *Code of Colorado Regulations* 723-41 (Colorado High Cost Support Mechanism Rules). In essence CTA is requesting that the Commission repeal existing Rule 18.6.1.2. Since repeal of a rule constitutes rulemaking, the Petition essentially requests that the Commission adopt a new rule.¹

2. The Commission, when undertaking rulemaking, must comply with the rulemaking procedures set forth in § 24-4-103, C.R.S. For example, the Commission must issue a Notice of Proposed Rulemaking and publish that Notice in the *Colorado Register*. The Commission cannot adopt a rule by issuing a declaratory order in response to a petition. Since

¹ Section 24-4-103(7), C.R.S., provides: “Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule....Action on such petition shall be within the discretion of the agency....”

the Commission cannot repeal Rule 18.6.1.2 in response to CTA's Petition, we dismiss the Petition and close this docket.

II. ORDER

A. The Commission Orders That:

1. The Petition for a Commission Declaratory Order by the Colorado Telecommunications Association is dismissed and this docket is closed.

2. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 29, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.