

**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.<sup>1</sup>

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

---

<sup>1</sup> 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.