

Decision No. C06-0489

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-538T

IN THE MATTER OF RULES RELATING TO THE DEFAULT REGULATION OF
COMPETITIVE LOCAL EXCHANGE CARRIERS.

ORDER ADOPTING PERMANENT RULES

Mailed Date: May 3, 2006
Adopted Date: April 19, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the adoption of permanent rules regarding the subject of the regulation of competitive local exchange carriers (CLECs). In a related matter, the Commission recently enacted emergency rules on this same topic in Commission Docket No. 05R-514T, Decision No. C05-1430, dated December 8, 2005 (Emergency Rules). The Commission issued its Notice of Proposed Rulemaking (NOPR) on December 21, 2005, seeking to adopt permanent rules to serve as a replacement for those emergency rules.

2. The Emergency Rules and the NOPR were issued pursuant to Commission Decision Nos. C05-0802, dated June 28, 2005, and C05-0984, dated August 12, 2005, both issued in Commission Docket Nos. 04A-411T and 04D-440T.¹ In that docket, the Commission created a new form of regulation for Qwest Corporation, formerly known as U S WEST Communications, Inc. (Qwest). That new form of regulation constituted a substantial

¹ In Decision No. C05-1430, effective December 8, 2005, we issued an emergency rule because we found immediate adoption necessary to implement the Commission's order in Commission Decision No. C05-0802.

modification to Qwest's existing regulatory format and was based on a Stipulation and Settlement Agreement filed by the parties in that docket.

3. CLECs, as a result of the Emergency Rules, are currently regulated in two general ways, both of which derive from 4 *Code of Colorado Regulations* (CCR) 723-2-2203. That body of rules allows CLECs, and similar entities, to choose between two "default" forms of regulation. Alternatively, these entities may craft, subject to application and Commission approval, a form of regulation specific to a particular carrier's needs. *See* 4 CCR 723-2-2205.

4. The reformation of Qwest's regulatory format has altered the existing balance between the two default schemes for new entrants and the existing scheme for incumbents. The new Qwest format, relative to the existing default form for incumbent local exchange carriers (ILECs) in 4 CCR 723-2-2202, likely is less stringent overall and certainly is much less strict for certain regulatory parameters. Therefore, it is appropriate to reevaluate, and possibly to adjust, the default form of regulation for CLECs.

5. The purpose of the NOPR is for the Commission to entertain suggestions on the question of possible changes to the default forms of regulation in the Emergency Rules and the current treatment found at 4 CCR 723-2-2203. In particular, the Commission sought comment on the Rules attached to the NOPR. Specifically, we sought comment on whether Option One, the current form of default regulation that CLECs have been operating under for approximately six years should be retained; and whether Option Two, the new form of default regulation based on the new Qwest regulatory format, should retain or omit several components of that Qwest format – specifically, several “service quality” related parameters.

6. We asked for comments on these issues and any others that parties wished to have the Commission address be filed no later than February 3, 2006. We also set a hearing on this

matter for March 13, 2006. On February 3, 2006, comments were filed by Qwest; AT&T Communications of the Mountain States, Inc., TCG Colorado, and SBC Long Distance, LLC (collectively AT&T); and the Colorado Office of Consumer Counsel (OCC). MCImetro Access Transmission Services, LLC, doing business as Verizon Access Transmission Services (Verizon Business) filed comments on March 1, 2006.

7. A hearing on this matter was held on March 13, 2006. At this hearing, all parties that filed comments were present and each stated that their positions had not changed from their written comments. As a result, we found that the record was sufficient and no further written comments were necessary.

8. We now consider the positions of the parties and adopt the rules as attached to this decision as Attachment A. The first major issue for our decision is whether to retain Option One, the current form of regulation for CLECs, or to replace it with the new form of regulation modeled after the Stipulation from Docket No. 04A-411T. Verizon Business and the OCC both state in their comments that Option One should be retained. According to these parties, CLECs should have the ability to remain regulated as they are today. They see no drawback to retaining this form of regulation, in fact, the CLECs that choose to keep this form will be regulated to a greater degree than Qwest. Verizon Business states that to take away this form of regulation would inappropriately force CLECs into market regulation and possibly Qwest-specific service quality standards.

9. Qwest presents an opposing view, stating that Option One should be eliminated in order to ensure regulatory parity for all local exchange carriers. Qwest believes that the new form of regulation – the Qwest Alternative Regulation Plan – should be the only default form of regulation available to CLECs. Any other result, according to Qwest, would be a move away

from regulatory parity rather than realizing that the dominant provider regulation should be obsolete in light of the competition present in local markets.

10. We agree with Verizon Business and the OCC and order Option One to be retained in the rules. We see no downside to retaining this current form of regulation, but agree that certain CLECs may wish to remain regulated under this scheme rather than go through the process of changing tariffs and/or price lists that would be required for Option Two. If, in the future, we find that a vast majority of CLECs are electing Option Two, we may revisit the elimination of Option One, but for now, we agree that it is appropriate to allow CLECs the ability to maintain the status quo.

11. As discussed more fully below, we disagree with Qwest that a one-size-fits-all approach to regulation of local exchange carriers is appropriate at this time. We have acknowledged in Docket No. 04A-411T and resulting dockets that there is increased competition in the local market. However, we have found neither that Qwest is a non-dominant provider nor that effective competition exists with respect to local services. We thus retain an asymmetric regulatory scheme for ILECs and CLECs as a means of encouraging competition for all telecommunications services.

12. To that end, we also disagree with Qwest that the service quality, customer notification, and promotion requirements that are part of the Stipulation and Settlement Agreement we approved in Docket No. 04A-411T should be obligations of the CLECs under Option Two. Verizon Business and AT&T strongly oppose the inclusion of these requirements stating that there is no factual basis for the application of these requirements to CLECs. According to these commentors, CLECs have won customers without the Commission-imposed disclosure obligations and without the assistance of Commission-imposed rules telling them to

be “accurate, clear and concise” in their communications with customers. They state that market regulation, by its definition, would suggest that less regulation of customer oversight is appropriate, rather than more. As a practical matter, the CLECs state that if they do not treat customers correctly, the market will punish them by allowing the customers to choose other providers.

13. The OCC and Qwest, on the other hand, assert that CLECs should have the same service quality standards and customer notification requirements that Qwest does under the Stipulation. The OCC states that not to include these requirements would permit a customer of a CLEC to receive lesser service quality than a customer of Qwest. According to the OCC, this does not promote the public interest. Further, the OCC asserts that if CLECs are able to enjoy market regulation that is less stringent overall than their current form of regulation, then the CLECs ought to be obligated to live up to the service quality obligations that were found to be just and reasonable and in the public interest in the Qwest docket.

14. As stated above, we disagree with the assertions made by the OCC and Qwest on this issue. Placing additional reporting and penalty requirements on the CLECs for service quality standards is unnecessary regulation. Qwest still retains greater than 90 percent of the residential access lines and remains the provider of last resort (POLR) throughout its territory. These proposed service quality and customer notification requirements are established to protect residential customers. If these customers do not like the customer service or quality of service they receive from their CLEC provider they have the option of choosing a different provider, even the POLR, Qwest. Further, we note that the Customer Relationship Rules, 4 CCR 723-2-2300, include service quality parameters, provisioning of retail service, deposit arrangements, and the like, and are applicable to all local exchange carriers, including CLECs.

15. The Commission has found there to be more competition in all regulated telecommunications markets in Colorado. However, due to a large market share for Qwest, recent developments in the courts and at the Federal Communications Commission, and the structure of the industry, it is difficult to predict the course of competition for basic local exchange and related services. We will continue to pursue our obligations to encourage competition and reduce regulatory oversight in a manner consistent with that goal.² We see no reason, under current market and regulatory conditions, to impose additional regulatory obligations on CLECs. The current scheme has served our purposes under the statute and has increased the ability of CLECs to provide a viable alternative to Qwest's service offerings. Consistent with our discussion at the outset of this docket, we maintain for now an appropriate, pro-competitive asymmetry between the dominant provider and other providers.

16. Therefore, we adopt the rules attached to this decision as Attachment A.

II. ORDER

A. The Commission Orders That:

1. We adopt the rules attached to this Decision as Attachment A.
2. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.
3. 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*.

² See §§ 40-15-101, 501, and 502, C.R.S.

4. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time 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 Commission mails or serves this Order.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 19, 2006.**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

Default, Alternative, and Simplified Forms of Regulation; Refraining from Regulation; and Reclassification of Parts II and III Services

Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to identify default forms of regulation for services subject to the jurisdiction of the Commission and to establish procedures and standards concerning: alternative forms of regulation; simplified regulatory treatment for rural telecommunications providers; refraining from regulation for competitive purposes; reclassifying a regulated telecommunication service as an emerging competitive service; and deregulation of emerging competitive services.

The statutory authority for the promulgation of these rules is found at §§ 40-15-101, 40-15-203, 40-15-203.5, 40-15-207, 40-15-301, 40-15-302, 40-15-305, 40-15-501, 40-15-502, 40-15-503, and 40-2-108, C.R.S.

2200. Applicability.

Rules 2200 through 2299 are applicable to all providers of services pursuant to § 40-15-201, C.R.S., (Part II) or pursuant to § 40-15-301, C.R.S., (Part III or emerging competitive services); except that rule 2202 is only applicable to ILECs, rule 2203 is only applicable to CLECs, and rule 2206 is only applicable to rural ILECs. Nothing in rules 2200 through 2299 shall limit the Commission's authority to investigate the rates and charges assessed by providers.

* * *

[signifies omission of unaffected rule sections]

2203. Default Forms of Regulation for CLECs.

(a) Requirements of all CLECs.

- (I) Prices for residential basic local exchange service. Consistent with § 40-15-502(3)(b)(I) and except as otherwise provided by law, prices for residential basic local exchange service, including zone charges, if any, shall not rise above the levels in effect on May 24, 1995, for comparable services regardless of the form of regulation of the provider.
- (II) Switched access prices. Consistent with § 40-15-105(1), C.R.S., and except as otherwise provided by law, providers' access charges:
 - (A) Shall be cost-based, as determined by the Commission; and
 - (B) Shall not exceed the average price by rate element and type of access in effect on July 1, 1987.
- (III) To enable the Commission to track the progress of competition and to monitor the delivery of basic, premium and advanced services to all areas of the state, it is in the public interest for CLECs to provide the Commission with information in annual reports and/or other special reports, pursuant to rule 2006.

- (b) A CLEC may elect to opt into one of two forms of default regulation in their entirety. A new CLEC shall designate at the time of application for a CPCN and/or LOR under which form of default regulation it requests to be regulated or apply for an alternative form of regulation pursuant to rule 2205. An existing CLEC, certified at the effective date of this rule, shall notify the Commission by filing a Notice of Election on the form supplied by the Commission if it wishes to change to the Option Two form of default regulation. In addition to filing the Notice of Election, the CLEC shall, within 30 days of filing the Notice, file an Advice Letter and/or Transmittal Letter, effective on not less than 14 days notice, modifying its tariff and/or price list to conform with Option Two regulation. If an existing carrier desires to be regulated under an alternative form of regulation, this must still be accomplished by application pursuant to rule 2205.
- (c) Default Form of Regulation: Option One.
- (I) This default form of regulation shall apply to all jurisdictional products and services offered by a CLEC provider, with the exception of the rates, terms and conditions for 9-1-1 call delivery to a BESP. Each CLEC shall establish rates, terms and conditions governing 9-1-1 call delivery to a BESP, as directed in rule 2138.
- (II) Pursuant to rule 2122, each CLEC shall file an initial Tariff that contains the rates, terms and conditions governing its Part II and Part III services and products.
- (III) Tariff changes. For products and services subject to this default form of regulation, changes to the Tariff may be made upon 14-days notice to the Commission. Additional notice to customers shall not be required unless ordered by the Commission. If the Commission does not suspend the effective date of the proposed Tariff change, the Tariff change shall become effective according to its terms.
- (IV) Customer-specific contracts and notice.
- (A) The Commission may permit a provider to provide a customer with regulated services, under contract, irrespective of any Tariff or Price List requirements.
- (B) A notice of contract shall be filed with the Commission under seal within 14-days of the date the contract is executed. The notice shall: disclose any early termination penalty to the customer; confirm that the contract is a non-discriminatory offering; confirm that the charges exceed the company's cost; and confirm that the contract contains a provision acknowledging that it is subject to regulatory review.
- (C) The contract shall be subject to Commission review to determine if:
- (i) The negotiated contract is nondiscriminatory;
- (ii) The contract terms are not inconsistent with the public interest; and
- (iii) The contract terms are not inconsistent with applicable Commission rules.

- (D) The Commission may set the contract for hearing and, after hearing, may approve or disapprove the contract. At the hearing, the applicant shall bear the burden of proof with respect to the contract. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

(d) Default Form of Regulation: Option Two.

Option Two default form of regulation recognizes that the Commission found in Docket No. 04A-411T that sufficient competition exists to warrant a reduction in the regulatory oversight of certain products and services.

- (I) Customer specific contracts. Customer specific contracts may be negotiated and entered into without notice or filing to the Commission. CLECs shall maintain a log of such contracts and give Staff and the OCC reasonable access to the contracts upon request.
- (II) There shall be minimal Commission oversight of certain telecommunications products and services under Market Regulation. Market Regulation includes:
 - (A) Detariffing;
 - (B) The ability to geographically deaverage prices;
 - (C) The ability to withdraw or cease offering a product or service to new customers without initial Commission review or approval; and
 - (D) The ability to make changes in rates, terms and conditions for services and products without any initial Commission review or approval.
- (III) Customer specific notice. CLECs shall provide 14-days notice to customers of price increases and price-affecting changes in terms and conditions using customer-specific mechanisms such as direct letter contact, postcards, bill inserts and/or bill messages. CLECs are neither required nor prohibited from providing customer specific notices of price decreases.
- (IV) Commission notice. CLECs shall provide the Supervisor of the Consumer Affairs section of the Commission with an e-mailed copy of all customer specific notices, including promotional material, at the same time the customers receive those notices. In addition, CLECs shall e-mail a one-day notice of all changes to rates, terms and conditions for all services subject to Market Regulation to a designated Staff person in the Fixed Utilities Section of the Commission.
- (V) CLECs are required to post on their website the rates, terms and conditions associated with the services under Market Regulation in a timely and easily accessible manner and update such information regularly. CLECs shall maintain an archive of the website postings for a period of not less than two years from the time the rates, terms or conditions for that service are rescinded or changed. This archive data must be available to the Commission upon request.

- (VI) The services subject to Market Regulation are:
- (A) Additional residential access lines located within the following exchange wire centers the Denver Metro Exchange: Aberdeen, Arvada, Aurora Main, Capitol Hill, Columbine, Curtis Park, Denver International Airport, Dry Creek, Denver East, Denver Main, Denver North, Denver Northeast, Denver South, Denver Southeast, Denver Southwest, Denver West, Englewood, Golden, Highland Ranch, Lakewood, Littleton, Monaghan, Montbello, Smoky Hill, Sullivan and Westminster; the Boulder Exchange: Boulder Main, Table Mesa and Gun Barrel; the Longmont Exchange: Longmont and Niwot; the Lafayette/Louisville Exchange: Cottonwood; the Broomfield Exchange: Broomfield and Northglenn; Erie; and Parker and the Colorado Springs exchange: Air Force Academy, Colorado Springs East, Colorado Springs Main, Gatehouse, Fountain, Monument, Pikeview, Security and Stratmoor (known as the zones of competition).
 - (B) Residential features and services except for the public interest features and services described in Modified Existing Regulation;
 - (C) Six and above flat-rated, message or measured business access lines, at a given location;
 - (D) Advanced features or services provided on business lines as defined in § 40-15-102(2), C.R.S. including hunting on six and above flat-rated, message or measured business access lines except public interest features and services;
 - (E) All other business services except for one to five flat-rated, message or measured business access lines and hunting on those lines, at a given location;
 - (F) Premium services as defined by § 40-15-102(21), C.R.S., other than non-listed and non-published services;
 - (G) All packages and bundles (which include any combination of access lines and/or features or services subject to Commission jurisdiction) with a price cap.
 - (i) Prices for packages and bundles shall not exceed the sum of the highest prices of the a la carte components of the package.
 - (H) Non-optional operator services except busy line verify and busy line interrupt. The Commission approved statewide benchmark rate applies to all non-optional operator services, as required by § 40-25-302(5) C.R.S.
- (VII) Modified existing regulation. Products and services regulated under Modified existing regulation shall have the same tariffing and notice requirements as those under Option One default regulation and existing law.

- (VIII) The services subject to Modified existing regulation are:
- (A) Residential primary access lines;
 - (B) Additional residential access lines in areas other than the zones of competition identified above;
 - (C) Public interest features and services on residential and business access lines defined as per call and per line blocking; call trace; busy line verification; busy line interrupt; non-listed service; and non-published service;
 - (D) One to five flat-rated, message or measured business access lines and hunting on those lines, at a given location;
 - (E) Payphone service offerings;
 - (F) Line extensions; and
 - (G) 9-1-1, E9-1-1 and N-1-1 services.

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