

Decision No. C06-0726

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 05R-538T

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

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**ORDER ON APPLICATIONS FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION**

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Mailed Date: June 22, 2006

Adopted Date: June 7, 2006

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of Applications for Rehearing, Reargument, or Reconsideration (RRR) filed by Qwest Corporation (Qwest) and the Colorado Office of Consumer Counsel (OCC) to Decision No. C06-0489 issued May 3, 2006. The Commission issued its Notice of Proposed Rulemaking (NOPR) in this docket on December 21, 2005, seeking to adopt permanent rules to serve as a replacement for emergency rules in place at that time.

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.<sup>1</sup> 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

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<sup>1</sup> 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 entered into and executed by the parties in that docket and subsequently approved by the Commission.

3. As a result of the emergency rules, competitive local exchange carriers (CLECs) 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 purpose of the NOPR was for the Commission to promulgate permanent rules and 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. 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.

5. On February 3, 2006, comments were filed by Qwest; AT&T Communications of the Mountain States, Inc., TCG Colorado, and SBC Long Distance, LLC; and the OCC. MCImetro Access Transmission Services, LLC, doing business as Verizon Access Transmission Services filed comments on March 1, 2006. A hearing on this matter was held on March 13, 2006.

6. By Decision No. C06-0489, we retained Option One, the current form of regulation for CLECs in the rules and did not include the service quality reporting or credits that are part of the Qwest settlement in Option Two. Thus, we retained an asymmetric regulatory scheme for incumbent local exchange carriers and CLECs as a means of encouraging competition for all telecommunications services.

7. In RRR, the OCC disagrees with part of our decision and believes that CLECs should be required to meet certain regulatory obligations such as the service quality parameters that Qwest must observe under the regulatory reform resulting from its deregulation docket. However, the OCC responds to our decision by stating that the CLECs need to observe and be held accountable for such service quality measures only if they serve residential, small business or agricultural customers, and not large business or “enterprise” customers.

8. The inclusion of these service quality parameters will promote regulatory symmetry, according to the OCC. If this symmetry is not ordered, customers of CLECs will potentially receive lesser or inferior service quality than the customers of Qwest. The OCC asserts that this would not promote the public interest and in fact conflicts with the Commission’s own statement that “proposed service quality and customer notification requirements are established to protect residential customers.”

9. We disagree with the OCC’s contention and therefore deny RRR. The Commission’s effective service quality rules found generally at 4 CCR 723-2-2300 apply to all providers of intrastate telecommunications service, with certain of those rules applying to providers who serve residential and small business customers. These rules provide adequate protection for customers receiving service from CLECs regardless of the changes we make or do not make to Rule 2203. We reiterate that we have seen no pattern of problems regarding service

quality provided to any CLEC customers. Therefore, to add reporting requirements or penalties for potential poor performance is unnecessary.

10. Qwest also sought RRR on one limited issue. Qwest states that, in the rules we adopted by Decision No. C06-0489, an anomaly exists concerning the customer notice requirements for Modified Existing Regulation under Option Two. Qwest states that as currently ordered the notice requirements for Modified Existing Regulation are the same as those under Option One Regulation and existing law. Qwest notes that there are no notice requirements for CLECs under Option One. Qwest suggests that we correct this problem by deleting the phrase “Option One default regulation and” from the rule.

11. While we recognize and agree with Qwest that an anomaly exists, we disagree with the solution. We note that in our ordering language a further anomaly exists in that CLECs would be required to notify customers of price increasing changes to services under Market Regulation but not under Modified Existing Regulation. *See* Rule 2203(d)(III). The services regulated under Market Regulation are to be less regulated than those under Modified Existing Regulation as we have found more competition exists for those services.

12. Consequently, we move the customer notice requirement for price increases and changes that may affect prices to the rule for Modified Existing Regulation, and delete the requirement for services under Market Regulation. This should correct the anomaly as raised by Qwest as well.

13. We adopt the rules attached to this decision as Attachment A.

**II. ORDER****A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, and Reconsideration filed by the Colorado Office of Consumer Counsel is denied consistent with the discussion above.
2. The Application for Rehearing, Reargument, and Reconsideration filed by Qwest Corporation is granted in part consistent with the discussion above.
3. We adopt the rules attached to this Decision as Attachment A.
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*.
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  
June 7, 2006.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

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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.

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[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; ~~and~~
- ~~(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)~~(E) 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; ~~and~~
- ~~(V)~~(E) 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.

(VII) 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.

(IV) Modified existing regulation.

(A) 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~~.

(B) Customer specific notice. CLECs shall provide 14-days notice to customers of price increases and price-affecting changes in terms and conditions to services regulated under Modified existing regulation, 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.

- (V) 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.