

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06R-401T

IN THE MATTER OF EMERGENCY RULES RELATING TO ANNUAL REPORTING
REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS TO BE
CERTIFIED TO RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT.

ORDER ADOPTING EMERGENCY RULES

Mailed Date: July 20, 2006

Adopted Date: July 19, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider adoption of emergency rules entitled Rules Regarding Annual Reporting Requirements for Eligible Telecommunications Carriers to Be Certified to Receive Federal Universal Service Support.

2. 47 U.S.C. Section 214(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, provides state commissions with the primary responsibility for performing eligible telecommunications carrier (ETC) designations. The proposed emergency rules seek to implement annual reporting requirements for designated ETCs in Colorado pursuant to the guidelines set forth in 47 Code of Federal Regulations §§ 54.313 and 54.314. A copy of the proposed emergency rules is attached to this NOPR.

3. For the reasons set forth in this decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the rules appended to this Order as Attachment A. We take this action in accordance with the provisions of § 24-4-103(6), C.R.S.

4. On March 17, 2005, the Federal Communications Commission (FCC) released its Report and Order augmenting its rules requiring ETCs to submit certain information annually regarding its network and its use of federal universal service funds. The attached proposed rules adopt the FCC's reporting requirements plus additional Colorado specific requirements to help determine whether an ETC has satisfied its burden of proof necessary to continue to receive universal service support each year.

5. The proposed rules are intended to add provisions to the rules adopted in Docket No. 03R-524T, which became effective on April 1, 2006. Specifically, the proposed rules add ETC reporting requirements to rule 2187 as adopted in Docket No. 03R-524T. The statutory authority for proposed rules is found at §§ 40-2-108, C.R.S.; 40-4-101, C.R.S.; 40-15-108, C.R.S.; C.R.S.; 40-15-208, C.R.S.; 40-15-502, C.R.S.; and 40-15-503, C.R.S.

6. We adopt the attached rules as emergency rules in accordance with the provisions of § 24-4-103(6), C.R.S. We find that immediate adoption of the rules is imperative and necessary to allow the Commission to properly certify ETCs to the FCC. Failure to adopt these rules on an emergency basis would cause the Commission to evaluate ETCs using outdated criteria. To the extent these emergency rules conflict with current rules, the emergency rules are intended to supersede current rules. We note that the Commission is promulgating permanent rules in Docket No. 05R-537T, but these rules will not be effective by the due date for the next submission of information by ETCs pursuant to the Commission's rules.

7. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-101, 40-4-101 and 24-4-103(6), C.R.S. The rules attached to this order shall be effective immediately upon the mailed

date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

8. Proposed Rule 2187(f)(II)(N) requires submission of a Colorado specific trial balance, and we are aware that some carriers indicated in docket No. 05R-537T that they are not easily able to obtain information in a trial balance format. If carriers are not able to provide the Commission with a trial balance specific to Colorado, we encourage them to apply for a waiver of the rule, and to propose an alternative submission that would include information similar to that included in a trial balance, that would allow Commission Staff to certify that the carrier is using Federal Universal Support funds as intended.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. The rules attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. This Order is effective upon its Mailed Date.

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

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

CARL MILLER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.

Rule 2187. Eligible Telecommunications Carrier Designation.

* * *

[signifies omission of unaffected rule sections]

- (f) Annual Reporting Requirements for Eligible Telecommunication Carriers.
- (I) In order for an Eligible Telecommunication Carrier (ETC) previously designated by the Commission, or previously designated by the Federal Communications Commission (FCC), to be certified to receive federal support for the following calendar year, or to retain its ETC designation, it shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. ETCs failing to meet these annual report filing requirements and deadlines may not be certified by the Commission to the FCC and the Universal Service Administrative Company (USAC) as eligible to receive federal support for the following calendar year.
- (II) Every ETC shall submit the following information in its report:
- (A) The number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and written explanation detailing how the ETC attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).
- (B) The number of complaints per 1,000 access lines or handsets.
- (C) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users in a service area, or that could affect access to 9-1-1. An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. The ETC must report the following information regarding each outage: date and time of outage; description of the outage and resolution; specific service(s) affected; specific geographic area(s) affected; steps taken to prevent it from happening again; and number of customers affected by the outage.
- (D) Certification that the ETC is complying with the applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service.
- (E) Certification that the ETC is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).
- (F) Certification that the ETC acknowledges the FCC may require it to provide customers with equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.
- (G) The total amount of all federal high cost support received in the previous calendar year and year-to-date through June 30 for the current calendar year.
- (H) For the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange

service within the service areas in Colorado where the carrier has been designated an ETC. An explanation regarding any network improvement targets that have not been fulfilled. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center is not needed, an explanation of why improvement is not need and how funding will otherwise be used to further the provision of supported services in that area.

- (I) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service offerings, Lifeline, and Linkup programs throughout the service areas in Colorado where the carrier has been designated an ETC. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.
- (J) Documentation that a competitive ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas.
- (K) A map of the service areas where the carrier has ETC designation showing the locations of facilities or for wireless providers, maps showing the location of all cellular towers and the coverage area of these towers. Maps shall be submitted in 2007 and at least once every three years thereafter.
- (L) Through June 30 of the current calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for any local exchange service within the service areas in Colorado where the carrier has been designated an ETC. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information shall be submitted at the wire center level or at the authorized service area.
- (M) A copy of cost study filing made on July 31st to NECA for current year. If ETC is not required to file cost study to NECA, then a copy of the line count filing made to the FCC and USAC Administrator shall be submitted.
- (N) A copy of company's Colorado-specific trial balance for previous year.
- (O) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule are true and correct. The affidavit must also state that the ETC is aware of the purpose of the support for the federal high-cost support and it is complying with the requirement set forth by the FCC in 47 U.S.C. § 254(e). An officer, director, partner, or owner of the company must sign the affidavit.
- (P) If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may refrain from certifying the carrier to the FCC or revoke the carrier's designation as an ETC. In addition, carriers must submit their reports on a timely basis.