

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-528T

RULES RELATING TO THE DEREGULATION OF INTERLATA INTEREXCHANGE
TELECOMMUNICATIONS SERVICES FOR TELECOMMUNICATIONS SERVICE
PROVIDERS AND TELEPHONE UTILITIES.

ORDER ADOPTING PERMANENT RULES

Mailed Date: July 28, 2006
Adopted Date: July 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 deregulation of interLATA interexchange telecommunications services (interLATA toll services). In a related matter, the Commission recently enacted emergency rules on this same topic in Commission Docket No. 05R-509T, Decision No. C05-1428, dated December 7, 2005 (Emergency Rules) and reissued emergency rules in Commission Docket No. 06R-361T, Decision No. C06-0729, dated June 23, 2006. The Commission issued its Notice of Proposed Rulemaking (NOPR) Docket No. 05R-528T, on December 14, 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 No. C05-0802, dated June 28, 2005, issued in consolidated Docket Nos. 04A-411T and 04D-440T. Section 40-15-305, C.R.S., provides for the deregulation of specific emerging competitive telecommunications services upon a finding that effective competition exists in the

relevant market for such service and that deregulation will promote the public interest. The Commission made such specific findings regarding interLATA toll services in Decision No. C05-0802.

3. The purpose of the NOPR issued in Docket No. 05R-528T was for the Commission to consider comments on the proposed rules and to set a hearing on this matter. Interested persons were requested to submit written comments on the proposed rules by January 4, 2006. In addition, the comments were to be presented orally at the hearing unless the Commission deemed oral presentations unnecessary. A hearing on this matter was set for January 30, 2006. On January 4, 2006, comments were filed by the Colorado Office of Consumer Counsel (OCC). No other written comments were filed.

4. The OCC commented on the following issues: (1) the Commission's authority to retain regulatory oversight and the chance that statutes and rules may not be complied with; (2) the Commission's enforcement authority upon providers who fail to remove rates, terms, and conditions from its tariff; and (3) the current placement of the interLATA rule and its interaction with other Commission rules.

5. A hearing on this matter was held on January 30, 2006. Attending parties included Qwest Corporation (Qwest); OCC; MCI, LLC on behalf of its regulated subsidiaries; AT&T Communications of the Mountain States, Inc. and TCG Colorado; and Commission Staff. At this hearing, the OCC discussed the issues filed in its written comments and all parties were allowed to state their position on each item discussed. As a result, we found that the record was sufficient and no further written comments were necessary.

B. Discussion

6. We now consider the positions of the parties and adopt the rules as attached to this decision as Attachment A. The first issue relates to the Commission's authority to retain regulatory oversight and the possibility that providers may not comply with applicable statutes and Commission rules, including, but not limited to filing the required report and submitting payments into the Colorado High Cost Support Mechanism Fund (CHCSM). The OCC's proposal included language that providers of interLATA telecommunications services shall continue to comply with Commission rules and applicable statutes not expressly excluded by § 40-15-401, C.R.S. This would include Part 1 and Part 5 of Title 40, Article 15 of the Colorado Revised Statutes, and any Commission rules that remain applicable to toll providers. Qwest suggested a shortened version of the OCC's proposed language and the OCC did not oppose Qwest's proposal. We agree with the joint proposal from Qwest and OCC and order the language to be included in the rule.

7. An additional aspect of the OCC's comments was its proposal on the matter of regulatory oversight to include language regarding the rates, terms, and conditions that remain in a tariff that are different than those offered by a company. The OCC's suggestion to add the requirement that if a provider fails to file a notice of deregulation of such services and an Advice Letter and/or Transmittal Letter removing rates from its tariff and/or price list, the rates, terms, and conditions more favorable to the customer shall be applied by the provider. The OCC states that it will protect consumers and will also provide an incentive to InterLATA toll providers to comply with the mandatory filings. No parties opposed the insertion of this language. We agree with this proposal and order the language be included in the rule.

8. The OCC proposed that all toll providers be required to register with the Commission. The OCC stated that this requirement would enable the Commission to have knowledge of the providers for purposes of remitting payments to the CHCSM Fund and filing of any required reports. Qwest opposed this proposal on the basis that the service(s) may be or are deregulated and therefore the Commission does not have the regulatory authority to require such registration. We agree with Qwest and will not include this requirement in the rules as it is our belief that it would require a legislative change to the Colorado Revised Statutes to include such requirement.

9. The OCC voiced concern over the current placement of the rule in the Operator Services Chapter of the current rules and suggested placement elsewhere in the rules. The other parties did not oppose this. For clarification purposes, we agree with this proposal and order that the rule be placed in the Default, Alternative, and Simplified Forms of Regulation; Refraining from Regulation; and Reclassification of Parts II and III Services Chapter of the current rules.

10. Qwest's last concern pertains to the language regarding who is authorized to sign an affidavit. They note that comparable language in the other Commission rules state that: "An affidavit signed by an authorized agent, officer, partner, or owner, as appropriate". The language in the proposed rule uses "employee" not "authorized agent" and is not consistent with the language in other Commission rules. Qwest proposed to replace "employee" with "authorized agent." No parties opposed this proposed change. We agree with this proposal and order that "employee" be replaced with "authorized agent."

11. 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*.
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
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.

**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, 40-15-112, 40-15-113, 40-15-201, 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, rule 2206 is only applicable to rural ILECs, rule 2210 is only applicable to intraLATA interexchange telecommunications providers, and rule 2211 is only applicable to interLATA interexchange telecommunications providers. Nothing in rules 2200 through 2299, except rules 2210, and 2211, shall limit the Commission's authority to investigate the rates and charges assessed by providers.

2211. Deregulation of interLATA Interexchange Telecommunications Services.

InterLATA interexchange telecommunications services are not regulated by the Commission except as provided for in §§ 40-15-112, 40-15-113 and those not excluded by 40-15-401 C.R.S. Upon the effective date of this rule, all providers of such services shall:

- (a) File a notice of compliance with the Director of the PUC. Such Notice shall include the Docket No. which granted the provider the authority to offer such service, acknowledgment that interLATA interexchange services are deregulated, the name, address telephone number and email address of the person to contact and an affidavit signed by an officer, partner, owner or authorized agent, who is authorized to act on behalf of the company, stating that the contents of the notice are true, accurate and correct that the company will fully comply with all applicable rules, statutes and requirements in paragraph b of this rule.
- (b) Within 10 days of the filing of the notice, make a compliance filing(s) in the form of an advice letter and/or transmittal letter (whichever is applicable) effective on not less than 14 days notice to modify its effective tariff and/or price list by deleting all references to interLATA toll offerings or identifying interLATA toll offerings as deregulated by the Commission.
 - (I) If a provider of such services fails to file such compliance filing pursuant to paragraph (b) of this rule, the rates, terms and conditions which are more favorable to the customer shall be the rates billed to the customer by the provider. Upon the effective date of such compliance filing, this condition shall be lifted.

- (c) Providers of interLATA interexchange telecommunications service shall continue to comply with all Commission rules and applicable statutes not expressly excluded by C.R.S. § 40-15-401.

2212. Combined Applications.

An applicant may file an application for an alternative form of regulation, an application for reclassification, and/or an application for deregulation, in combination with any other application, *e.g.*, an application for a CPCN. In a combined application, the applicant shall provide all information required for each component of the combined application.

2213. – 2299. [Reserved].

**Default, Alternative, and Simplified Forms of Regulation; Refraining from Regulation; and
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- (a) File a notice of compliance with the Director of the PUC. Such Notice shall include the Docket No. which granted the provider the authority to offer such service, acknowledgment that interLATA interexchange services are deregulated, the name, address telephone number and email address of the person to contact and an affidavit signed by an officer, partner, owner or authorized agent, who is authorized to act on behalf of the company, stating that the contents of the notice are true, accurate and correct that that the company will fully comply with all applicable rules, statutes and requirements in paragraph b of this rule.
- (b) Within 10 days of the filing of the notice, make a compliance filing(s) in the form of an advice letter and/or transmittal letter (whichever is applicable) effective on not less than 14 days notice to modify its effective tariff and/or price list by deleting all references to interLATA toll offerings or identifying interLATA toll offerings as deregulated by the Commission.

(l) If a provider of such services fails to file such compliance filing pursuant to paragraph (b) of this rule, the rates, terms and conditions which are more favorable to the customer shall be the rates billed to the customer by the provider. Upon the effective date of such compliance filing, this condition shall be lifted.

(c) Providers of interLATA interexchange telecommunications service shall continue to comply with all Commission rules and applicable statutes not expressly excluded by C.R.S. § 40-15-401.

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221~~32~~. – 2299. [Reserved].

~~Operator Services and Interexchange Telecommunication Services~~

~~Basis, Purpose, and Statutory Authority~~

~~The basis and purpose of these rules is to identify and describe operator services that are subject to Commission regulation; to distinguish operator services subject to the Commission's jurisdiction from those not subject to the Commission's jurisdiction; to prescribe the regulatory treatment of jurisdictional services; and to identify alternative forms of regulatory treatment for such services and providers when appropriate.~~

~~The statutory authority for the promulgation of these rules is found at §§ 40-3-101; 40-15-112; 40-15-113; 40-15-201; 40-15-301(1) and (2)(g); 40-15-302(1)(a) and (5); and 40-2-108, C.R.S.~~

~~2170. Interexchange Telecommunications Services.~~

- ~~(a) InterLATA interexchange telecommunications services are not regulated by the Commission except as provided for in §§ 40-15-112 and 40-15-113 C.R.S. Upon the effective date of this rule, all providers of such services shall file a notice of acknowledgement of the deregulation of such services with the Director of the Commission and within 10 days of filing the notice, shall file an Advice Letter and/or Transmittal Letter on not less than 14 days notice, to remove all rates, terms and conditions for interLATA toll services from their tariffs and/or price lists, if applicable, or identify interLATA toll offerings as deregulated by the Commission.~~
- ~~(b) Pursuant to § 40-15-306, C.R.S., intraLATA interexchange telecommunications services are regulated by the Commission unless a provider of such services has filed an application for deregulation and that application has been approved by the Commission. See rule 2210 of the Commission's rules regarding the deregulation of intraLATA interexchange telecommunications services.~~

~~2170. – 2179. [Reserved].~~