Decision No. C06-1108

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-537T

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

ORDER DENYING APPLICATIONS FOR REHEARING, REARGUMENT OR RECONSIDERATION

Mailed Date: September 19, 2006
Adopted Date: September 6, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument or reconsideration (RRR) filed on August 24, 2006 by the Colorado Office of Consumer Counsel (OCC) to Commission Decision No. C06-0917. In that decision we denied applications for RRR filed by multiple parties and clarified some of the rules on reporting requirements for eligible telecommunications carriers (ETCs) wishing to be certified by the Commission to receive federal universal support. The OCC asks the Commission to adopt its positions on Rule 2187(e). We deny the OCC's application for RRR.

B. Discussion

2. The OCC submitted several general arguments on proposed Rule 2187(e), and the Commission's authority to regulate wireless providers. The OCC argues in different ways that the Commission has authority to regulate wireless carriers, and thus ought to treat them in a competitively neutral manner and regulate them in the same manner as wireline providers.

3. The OCC states that, to the extent that questions about the Commission's legal authority over wireless carriers arise from the Commission's interpretation of federal preemption of State regulation of wireless providers as contained at 47 U.S.C. § 332(c)(3)(A), the Commission should look at the United States Court of Appeals for the Eleventh Circuit opinion in *NASUCA v. FCC*, Case Nos. 05-11682, 98-00170 and 06-12601 (rel. July 30, 2006). We take no position on that ruling with respect to this matter, because our decision is based on §§ 40-15-401 and 402, C.R.S., which deregulate wireless service.

4. However, the OCC asserts that § 40-15-402(1), C.R.S. provides: "Nothing in articles 1 to 7 of this title or parts 2 and 3 of this article shall apply to deregulated services and products pursuant to this part 4," and asks how a wireless ETC/EP can be eligible to receive Part 2 high cost support when application of the Part 2 mechanism is expressly prohibited as to deregulated wireless carriers? The implied answer is that the Commission has retained jurisdiction over wireless carriers. The OCC makes the same argument with respect to E-911 matters, with the same implication.

5. The OCC argues that the deregulated status of wireless carriers is not absolute under federal or state law, and that the Commission retains limited authority and jurisdiction. We agree that the Commission does have very limited jurisdiction over wireless providers. We emphasize that our jurisdiction is limited. The Commission decided to certify wireless providers to receive ETC funds at the voluntary request of the wireless community, which certainly did not intend to put their service quality under the Commission's microscope. That request does not lead to the conclusion that the Commission has the authority to regulate service quality.

6. We disagree that the Commission has retained some jurisdiction over wireless carriers as a general matter (not in the context of an ETC), as the OCC asserts. Our limited jurisdiction relates to the provision of specific services such as E-911, and instances where a wireless carrier voluntarily submits to Commission jurisdiction, such as ETC certification. Regulation of the quality of service provided by wireless carriers is quite beyond the Commission's authority over wireless carriers with respect to E-911. To regulate service quality would directly insert the Commission into the competitive market place for wireless service, something the General Assembly intended to forbid with the passage of § 40-15-401 and 402, C.R.S. The competition in that market is sufficiently robust that an individual that believes their cellular service is poor can switch carriers.

7. We also disagree with the OCC's interpretation of §§ 40-15-502(2) and (3), C.R.S. which provide:

> (2) Basic Service. Basic service is the availability of high quality, minimum elements of telecommunications services, as defined by the commission, at just, reasonable, and affordable rates to all people of the state of Colorado. . . .
>
> (3) Universal Basic service – affordability of basic service. (a) The commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado. . . .

The OCC reads this statute to require that the Commission regulate the service quality of wireless providers because the Commission must ensure the spread of basic service, which mandates high quality of minimum elements of service. We do not believe that the presence of "quality" in § 40-15-502(2), C.R.S., means that the Commission must or may regulate service quality of wireless providers, or that this statute in any way negates the effect of §§ 40-15-401 and 402, C.R.S., which specifically identify wireless service as deregulated.

C. Conclusion

8. We deny the OCC's application for RRR as discussed above. We do not believe that state statues permit regulation of wireless provider service quality, or that ETC submission to Commission regulation for the limited purposes of certification to the FCC means that the Commission may regulate service quality.

II. ORDER

A. The Commission Orders That:

1. The Colorado Office of Consumer Counsel's application for rehearing, reargument or reconsideration is denied consistent with the discussion above.

2. This Order is effective upon its Mailed Date

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING September 6, 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

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