

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0453T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO TELECOMMUNICATIONS
RULES IMPLEMENTING HB14-1329, HB14-1330*AND HB14-1331, 4 CODE OF
COLORADO REGULATIONS 723-2.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: June 10, 2016
Adopted Date: June 1, 2016

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* An incorrect reference to HB-1333 in the caption is corrected to HB-1330 by Errata Notice C16-0508-E.

I. BY THE COMMISSION**A. Statement**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Providers, Services, and Products contained in 4 *Code of Colorado Regulations* (CCR) 723-2 implementing House Bills (HB) 14-1329, 14-1330, 14-1331 (2014 Telecom Reform Legislation).

2. We do not propose amendments to Rules 2130-2159 (Basic Emergency Service Rules), which are the subject of the suspended Rulemaking Proceeding No. 15R-0318T.¹ Additionally, we do not propose amendments to Rules 2840-2855 (High Cost Support Mechanism), Rules 2820-2839 (Telecommunications Relay Services for Disabled Telephone Users),² or Rules 2890-2895 (Colorado No-Call List) because each of these sets of rules will be the subject of separate rulemaking proceedings.

3. In addition to changes based on the 2014 Telecom Reform Legislation, the proposed rules amend the current rules consistent with applicable federal rules and the current telecommunications nomenclature and remove outdated rules and subsections of rules. Numerous rules remain unchanged because they are not affected by the 2014 Telecom Reform Legislation.

4. Attached to this decision is a table that summarizes the proposed rule changes (Attachment C). The summary is not a complete list or description of all of the proposed rules or of the reasons for each proposed rule. It is intended to provide a general discussion of the changes made to all sections of the rules and to provide a starting point for comments.

¹ The Commission suspended this proceeding by Decision No. C16-0429, issued May 19, 2016.

² By Decision No. C16-0505, adopted June 8, 2016 in [Proceeding No. 16R-0451T](#) the Commission adopted temporary rules concerning Telecommunication Relay Services For Telephone Users With Disabilities.

It is also not intended to be a declaration of the Commission's jurisdiction or authority to adopt the proposed rules or amendments.

5. We welcome comments from interested participants. To the extent a participant disagrees with the proposed rules, comments should include suggested rules revisions, in legislative format.

B. 2014 Telecom Reform Legislation

6. Article 15 of Title 40 promotes a competitive telecommunications marketplace while protecting and maintaining a wide availability of high-quality telecommunications services. *See* § 40-15-101, C.R.S. The statutes are intended to guarantee the affordability of basic telephone service while fostering free market competition within the telecommunications industry. *Id.*

7. On May 9, 2014, Governor Hickenlooper signed into law legislation reforming certain sections of Article 15 of Title 40 (2014 Telecom Reform Legislation).³ Among other things, the 2014 Telecom Reform Legislation deregulated certain telecommunications services by moving them from § 40-15-201, C.R.S., *et seq.* (part 2) and § 40-15-301, C.R.S., *et seq.* (part 3), into § 40-15-401, C.R.S., *et seq.* (part 4), with certain exceptions. The rule amendments proposed herein effectuate the changes made by the 2014 Telecom Reform Legislation. Existing rules applicable to all services were modified to apply only to services that continue to be regulated.

³ The 2014 Telecom Reform Legislation was comprised of five bills: House Bill (HB) 14-1327, HB14-1328, HB14-1329, HB14-1330, and HB14-1331.

C. Proposed Rule Changes Required by Definitional Amendments

8. The 2014 Telecom Reform Legislation made numerous changes to definitions in the telecom laws. Definitions were added to or deleted from the rules in their entirety or otherwise modified to reflect the new laws and to be consistent with the current telecommunications nomenclature. For example, the 2014 Telecom Reform Legislation modified § 40-15-102, C.R.S., by amending the definitions of “basic local exchange service”/“basic service,” “information services,” and “telecommunications service”/“telecommunications,” and adding definitions for “commercial mobile radio service,” “internet-protocol-enabled service”/“IP-enabled service,” and “voice-over-internet protocol service”/“VoIP.” The 2014 Telecom Reform Legislation also deleted definitions of “access” and “toll reseller,” and added definitions of “competitive local exchange carrier,” and amending the definitions of “exchange area,” “interexchange provider,” “interexchange telecommunications service,” “local exchange provider,” “premium services,” “private telecommunications network,” and “toll service.”

9. The Commission proposes to amend Rule 2001 to be consistent with these definitional changes. These definitional changes also result in other changes to the rules. For example, the deletion of “toll reseller” from the definitions required amendments to Proposed Rules 2100, 2109, 2120, and 2122.

D. Proposed Rule Changes Addressing Regulatory Jurisdiction

10. The 2014 Telecom Reform Legislation also changed the Commission’s regulatory authority. Most significantly, it moved many services from part 2 and part 3 into part 4. Under § 40-15-401(1), C.R.S., part 4 “products, services, and providers are exempt from regulation under [Article 15 of Title 40] or under the ‘Public Utilities Law’ of the state of Colorado.” The legislation also added § 40-15-401(3), C.R.S., which states:

“If a telecommunications service or product is not defined in part 1 of this article and is not classified under part 2 or 3 of this article, the telecommunications service or product is classified as a deregulated telecommunications service under this part 4.”

11. All services previously listed in § 40-15-201, C.R.S., were deleted from part 2, except basic emergency services. All services previously listed in § 40-15-301 were deleted from part 3, except switched access services. Under § 40-15-401(1), C.R.S., all of the deleted services from parts 2 and 3 are now considered part 4 services.

12. Basic service, which is now defined under § 40-15-102(3), C.R.S. as: “[a] local dial tone; [l]ocal usage necessary to place or receive a call within an exchange area; and [a]ccess to emergency, operator, and interexchange telecommunications services,” is generally no longer subject to the Commission’s jurisdiction. However, under § 40-15-401(1)(b)(IV), C.R.S., the Commission retains jurisdiction over basic service in geographic support areas where the provider receives support from the Colorado High Cost Support Mechanism (HCSM). Under Proposed Rule 2183(a), no provider of telecommunications services retains provider of last resort (POLR) obligations other than in geographic support areas in which they receive HCSM support. These legislative changes are also reflected in proposed amendments to Proposed Rules 2180-2186 and 2307-2309.

13. The 2014 Telecom Reform Legislation also revised § 40-15-302.5, C.R.S., by replacing “toll resellers” with “interexchange providers,” and repealed subsections (1), (2)(a), (2)(b), and (2)(g) of § 40-15-503, C.R.S. These legislative changes are reflected in amendments to Proposed Rules 2109, 2122, and 2580-2584.

14. The legislation amended § 40-15-201(1), C.R.S., by deleting a sentence which required the Commission to regulate basic local exchange service provided by rural telecommunications providers subject to simplified regulatory treatment under §§ 40-15-203.5 or 40-15-503(2)(d), C.R.S. The legislation also repealed § 40-15-203(2)-(5), which allowed the Commission to refrain from regulating, for competitive purposes, a competitive local exchange provider. These legislative changes resulted in amendments to Proposed Rule 2203, and the proposed repeal of current Rules 2201, 2206, and 2207.

15. Finally, the 2014 Telecom Reform Legislation deleted § 40-15-302(3), C.R.S., which stated that § 40-15-206, C.R.S., regulated the “discontinuation or rearrangement” of all services and products regulated pursuant to part 3. This legislative change is reflected in the proposed repeal of current Rule 2108(g).

E. Additional Proposed Rule Changes

16. We specifically request that interested parties, including providers of telecommunication services, comment on the following rules. We also welcome input on alternative rules, in legislative format, that are consistent with the statutory changes.

1. CPCNs and LORs

17. By moving all part 2 services (except basic emergency services) and all part 3 services (except switched access services) to part 4, the 2014 Telecom Reform Legislation removed the Commission’s obligation to issue Certificates of Public Convenience and Necessity (CPCNs) or Letters of Registration (LORs) for those services. *See* §§ 40-15-402(1), (2) C.R.S. However, we intend to continue to require a CPCN to provide basic service in geographic support areas in which a provider receives HCSM support.⁴ *See* Proposed Rule 2106(b).

⁴ We retain CPCN authority over basic service in geographic support areas where the provider receives high cost support. *See* § 40-15-401(1)(b)(IV), C.R.S.; § 40-15-503(2)(e), C.R.S.; Decision No. C15-0575, issued June 18, 2015, in Proceeding No. 14AL-0816T.

18. In Proposed Rule 2106(a), we propose to make null and void all CPCNs, or equivalent authorities, held by a telecom provider for services no longer regulated. However, because the statutes do not specify the legal status of previously issued CPCNs or LORs for newly deregulated services, we welcome comment on whether the Commission should promulgate the proposed rule, particularly from the parties that provided comments in Proceeding No. 15D-0575T. We acknowledge that some parties argued against such a rule in that Proceeding, and that others cited § 40-15-503(2)(e) as requiring a CPCN for all basic local exchange services.

19. We also request comment on whether it is necessary, and whether the Commission has legal authority, to issue “operating authorities” sought by providers on a voluntary basis for services no longer regulated. For example, a “voluntary authority” might be needed for providers of telecommunications services to obtain access to public rights of way or to address other market-entry requirements. Commenters should provide the jurisdictional basis for any proposed rule with respect to “voluntary authorities,” including whether the Commission has jurisdiction under Article 15 of Title 40 and the Public Utilities Law to issue such operating authorities for deregulated services upon an application of the provider. The Commission is also interested in specific obligations that would be attached to any voluntary authority. Please provide statutory and legal support for any proposed changes.

2. Tariffs

20. Proposed Rule 2122 requires tariffs only for basic emergency service, switched access services, and basic service in geographic support areas where the provider receives HCSM support. We request comments on whether the rules should contain specific service terms and conditions for any regulated service, in particular for basic service in geographic support areas where the provider receives HCSM support. If so, interested parties should

provide the specific rule language in legislative format. We also welcome comment on whether the Commission should adopt a rule that declares null and void any existing tariffs or tariff language for services no longer regulated and whether we should adopt a rule that requires tariffs for basic service for all providers in geographic support areas receiving HCSM support, even if the provider does not receive such support.

3. Reporting Requirements

21. Proposed Rule 2006 requires all providers of telecommunications services that file a DR525 form with the Department of Revenue to also file the form with the Commission. The Commission uses the information in a DR525 about a provider's gross operating revenue from intrastate utility business transacted in Colorado in the proceeding calendar year for budget purposes.

4. Registration

22. The Commission requires information from providers to fulfil the statutory obligation for interexchange carrier registration and also to meet federal obligations for numbering administration and wholesale interconnection. Proposed Rule 2007 requires the following providers of telecommunications services to initially register and provide any necessary updates to their registration information to the Commission: (1) providers of interexchange telecommunications services; (2) providers requesting numbering resources; and (3) providers entering into a new interconnection agreement with an ILEC.

5. Financial Assurances

23. Proposed Rule 2110 states: "The Commission may require a bond or other security as a condition of obtaining an operating authority." The purpose of this rule is to decrease the risk that a new market entrant is not financially, operationally, or technically fit to provide the telecommunication service that it seeks authority to provide. We did not specify

which operating authorities or telecommunication service providers would need to provide a bond or other financial assurances because the Commission will consider each application on a case-by-case basis.

24. We welcome comment about whether and why, for each type of operating authority, the Commission should require a bond or other security as assurance including whether the financial assurance obligations should be imposed on required authorities, voluntary authorities, or both.

6. Primary Interexchange Carrier Freeze

25. We welcome comment on whether Proposed Rule 2122–Tariffs and Advice Letters, Proposed Rule 2309–Changing Providers of Telecommunications Services/Carrier Presubscription, or and Proposed Rule 2310–IntraLATA Equal Access are affected by FCC Order No. FCC 15-166, ¶ 46 -54 (C. Equal Access Obligations), which grandfathered customers that are pre-subscribed to stand-alone long distance service and eliminated the requirement that incumbent local exchange carriers offer a choice of long distance providers to new customers or to customers subscribing to an existing all-distance voice service. Provide any rule language necessary to implement these changes.

7. Costing & Pricing

26. Proposed Rule 2406(b)(IV) provides a method for using bandwidth to calculate the capacity of a basic access line for the purposes of HCSM support. We welcome comment on whether this is the appropriate metric to allocate network costs, or whether an alternative is warranted. Comments should provide statutory and legal support for any proposed alternative.

8. Resale

27. Proposed Rules 2580-2586 address the resale of telecommunication exchange services and implements federal rules and statutes. We welcome comment on whether the

Commission should impose any filing requirements—for example an interconnection agreement tariff—because regulation of resale is still required by § 40-15-502(5)(b), C.R.S., or whether the provisions in 47 USC §§ 251 and 252 are sufficient to ensure the non-discriminatory availability of services for resale. Please provide statutory and legal support for any proposed changes.

F. Conclusion

28. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 40-2-108; 40-3-101, -102, -103, -107, -110; 40-4-101; 40-7-113.5, -116.5; 40-15-101, -108(2), -109(3), -112, -201, -203.5, -301, -302, -302.5, -401, -404, -501, -502, -503, -503.5; and 40-17-103(2), C.R.S.

29. The proposed rules in legislative (i.e., ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=16R-0453T.

30. Attachment C is an index that matches the currently effective rule numbers to the proposed rule numbers. The index also lists the existing rule numbers that are proposed to be eliminated.

31. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

32. This matter is referred to Commissioner Frances A. Koncilja as Hearing Commissioner for the issuance of a recommended decision.

33. Commissioner Koncilja will conduct a hearing on the proposed rules and related issues on August 8-9, 2016. Interested persons may submit written comments on the rules and present these orally at hearing, unless Commissioner Koncilja deems oral presentations unnecessary.

34. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than July 15, 2016, and that any pre-filed comments responsive to the initial comments be submitted no later than July 29, 2016. The Commission prefers that comments be filed using its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFL.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the June 25, 2016, edition of *The Colorado Register*.

2. This matter is referred to Commissioner Frances A. Koncilja as Hearing Commissioner for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE August 8-9, 2016

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless Commissioner Frances A. Koncilja deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than July 15, 2016, and that any pre-filed comments responsive to the initial comments be submitted no later than July 29, 2016. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
JUNE 1, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean, Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners