

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0497T

IN THE MATTER OF THE RULES IMPLEMENTING HB16-1414 CONCERNING
TELECOMMUNICATION RELAY SERVICES FOR TELEPHONE USERS WITH
DISABILITIES, 4 CODE OF COLORADO REGULATIONS 723-2-2820 THROUGH 2827.

**RECOMMENDED DECISION OF COMMISSIONER
FRANCES A. KONCILJA
AMENDING RULES**

Mailed Date: September 9, 2016

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I. STATEMENT

1. On June 30, 2016, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend the rules regulating

Telecommunications Relay Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2.¹ By that decision, the Commission ordered that notice of a proposed rulemaking be filed with the Secretary of State for publication in the July 10, 2016, edition of *The Colorado Register*. The matter was referred to Commissioner Frances A. Koncilja as Hearing Commissioner and a public hearing was scheduled for August 15, 2016.

2. The purpose of the Proposed Rules is to maintain consistency with House Bill (HB) 16-1414 and to update the Temporary Telecommunication Relay Rules (Temporary Rules) which implemented House Bill 16-1414 that, *inter alia*, requires voice service providers to assess customers a monthly surcharge to fund the Colorado Telephone Users with Disabilities Fund.² The Temporary Rules are currently in effect.³

3. The hearing on August 15, 2016, was held as scheduled to consider oral and written data, views and arguments. At the conclusion of the hearing, the Hearing Commissioner took the matter under advisement

II. BACKGROUND

4. On May 4, 2016, Governor Hickenlooper signed into law HB 16-1414, which provides a monthly assessment on customers of all voice service providers, regardless of technology, to fund telecommunications relay services for telephone users with disabilities and appropriates new funds to the Colorado Commission for the Deaf and Hard of Hearing. HB 16-1414 renames the Colorado Disabled Telephone Users Fund the Colorado Telephone Users with Disabilities Fund. HB 16-1414 adds §§ 29-11-102.7 and 40-17-105, C.R.S., and

¹ Decision No. C16-0591, mailed June 30, 2016.

² By Decision No. C16-0505 in Proceeding No. 16R-0451T, the Commission adopted Temporary Rules to implement House Bill 16-1414.

³ The Proposed Rules attached to the NOPR and the Adopted Rules attached to this Recommended Decision are red-lined to the currently effective Temporary Rules.

amends §§ 24-75-402, 26-21-106, and 40-17-101 through 104, C.R.S. The statutory changes took effect September 1, 2016, and apply to surcharges assessed on or after that date.

5. Through HB 16-1414, the General Assembly recognized that additional funds were needed to provide services to the deaf-blind community who were highly under served. For the 2016-17 fiscal year, an additional \$172,778 is appropriated to the Colorado Commission for the Deaf and Hard of Hearing cash fund created in § 26-21-107 (1), C.R.S. This appropriation is to be made from the Colorado telephone users with disabilities fund created in §§ 40-17-104 and 26-21-106, C.R.S.⁴

6. A summary of the statutory changes currently effective through the adoption of the Temporary Rules are as follows:

a) *Telephone access line* is defined as each voice grade channel or its equivalent assigned to residential or commercial end user customer by a voice service provider, regardless of the technology used to provide the service. § 40-17-102(4), C.R.S.

b) *Voice service provider* is defined as a company that provides telephone access lines to members of the general public who are its customers for voice services. § 40-17-102(5), C.R.S.

c) Providers of prepaid wireless services must assess the telecommunication relay surcharge. § 29-11-102.7, C.R.S.

d) The monthly surcharge, not to exceed 15 cents, may be adjusted by the Commission and must be an amount sufficient to: (1) reimburse the Commission for its costs in developing, implementing, and administering telecommunications relay services; (2) reimburse voice service providers for their administrative costs in imposing and collecting the surcharge; (3) cover the costs of providers in rendering the service; (4) cover annual appropriations pursuant to § 40-17-104, C.R.S.; and (5) reimburse the Department of Revenue for its administrative costs in collecting prepaid wireless TRS charges on prepaid wireless phones pursuant to §§ 29-11-102.7 and 40-17-103, C.R.S.

⁴ The appropriation of an additional \$172,778 to the Colorado Commission for the Deaf and Hard of Hearing for the 2016-2017 fiscal year set forth in § 26-21-106, C.R.S., took effect on July 1, 2016.

III. REVIEW OF WRITTEN AND ORAL COMMENTS

7. No party filed a request for reconsideration of the Temporary Rules.

8. The written comments concerning the Proposed Rules agreed that the Proposed Rules appropriately implemented House Bill 16-1414, but requested minor modifications to clarify that any audit was limited to an audit of compliance with the proposed rules. The written comments also indicated there was some confusion over the term “contractor” and whether or not the contractor might be a competitor.

9. AT&T Corp.; Teleport Communications America, LLC; New Cingular Wireless PCS, LLC d/b/a AT&T Mobility; Cricket Wireless LLC; (collectively AT&T) filed Initial Comments on July 18, 2016. AT&T stated that it believes the Proposed Rules are “consistent with HB-16-1414 and should be approved. Pursuant to the new law and the conforming Rule, AT&T is now obligated to begin surcharging its VoIP and Commercial Mobile Radio (“CMRS”) customers and remitting those dollars to the TRS fund.”⁵

10. AT&T further “recognizes the Commission has the authority to enforce the TRS Rule, including the authority to audit voice provider records as reasonably necessary to determine compliance with the Rule.”⁶ However, AT&T is concerned that Proposed Rule 2826(d) is broad enough “to create confusion about the intent of the Rule and the Commission’s authority to audit providers of deregulated services such as VoIP and CMRS” which have been deregulated. AT&T requested clarifying language to ensure that any audit by the Commission could be conducted “for the sole purpose of ensuring compliance with Rules 2820-2827.”⁷

⁵ Initial Comments of AT&T, at 1.

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

11. AT&T is also concerned that Proposed Rule 2827(c)(I)(C) referred to the TRS contractor who is currently Sprint, a wireless carrier that competes with AT&T, and thus requested that Proposed Rule 2827(c)(I)(C) either be deleted in its entirety or that surcharge remittances be sent directly to the Commission.

12. CTIA – The Wireless Association (CTIA) filed initial comments on July 25, 2016, and raised only the issue of the breadth of the audit, asserting that the language could be misconstrued.

13. Bresnan Broadband of Colorado, LLC and Time Warner Cable Information Services (Colorado), LLC d/b/a Time Warner Cable (TWCIS) filed responsive comments on August 8, 2016 in support of the initial comments filed by AT&T and CTIA and requested similar clarifications and or modifications.

14. At the hearing on August 15th, CTIA, through its counsel, Philip J Roselli, appeared and discussed changes to the audit language at 2826(d).

15. At the hearing on August 15th, AT&T, through its Director Regulatory & External Affairs, Cindi Gallagher, appeared and repeated concerns about the third party contractor's possible access to confidential and proprietary information.

16. At the hearing on August 15th, Colorado Telecommunications Association (CTA), through its counsel, Richard Corbetta, appeared and joined in the comments of AT&T and CTIA.

17. In sum, all parties who appeared at the August 15th hearing voiced the same concerns as those included in the written comments and did not raise any additional issues.

IV. FINDINGS, DISCUSSION, AND CONCLUSIONS

18. The Hearing Commissioner has reviewed and considered the record in this proceeding to date, including written and oral comments.

19. The Hearing Commissioner concludes that certain changes to the Proposed Rules should be adopted in order to provide additional specificity and clarification which address the concerns raised in the comments and at the hearing and in order to provide for administrative efficiency. Those changes are incorporated into the rules attached as Attachments A and B and are recommended for adoption.

A. Audit Authority

20. Rule 2826(d) incorporates the statutory provision that the Commission may require an audit of a voice service provider's records at the Commission's expense, but adds the following language "for the sole purpose of ensuring compliance with 40-17-101 through 105, C.R.S." to clarify that this audit authority does not extend beyond Rules 2820-2827.

B. Surcharge Remittances

21. Proposed Rule 2827(c)(I)(C) encourages all voice service providers to submit surcharge remittances to the TRS fund contractor directly. Comments assert that the TRS contractor is a competitor, and requiring voice service providers to submit the surcharge form with "sensitive" information to the TRS contractor could allow the competitor to determine the customer count since the TRS surcharge is set by law.

22. The commenters are mistaken about the entity collecting the surcharge forms and payments. However, the Proposed Rules do not contain a definition of contractor or the entity that receives the funds. Therefore, the adopted rule adds to Rule 2821, definitions of TRS Contractor and TRS Custodial Receiver and then makes changes to Rules 2827(a)(III) and (c)(IC) to clarify that the TRS Custodial Receiver, who is not a competitor, is the entity that will receive the forms and the surcharges which shall also be filed with the Commission.

23. The TRS Custodial Receiver is a neutral third party and does not provide any telecommunications service nor is it an affiliate of any provider of telecommunication services. The TRS Contractor is a telecommunications provider who may be a competitor to voice service providers but will not receive the forms or the assessments.

24. To clarify the different roles of these two third-party contractors, Rule 2821(d) defines TRS Contractor as “the company that provides telecommunication relay services in accordance with the state’s TRS request for proposal and all Colorado Public Utilities Commission and Federal Communication Commission’s rules and regulations for TRS.” Rule 2821(e) defines TRS Custodial Receiver as “a designee selected by the Commission that performs certain administrative functions of the TRS program under the direction of the Commission.”

25. As a result, Rules 2826(a) and (b) refer to a TRS Contractor as the entity that administers the telecommunications relay services, and Rule 2827(c)(I)(C) refers to a TRS Custodial Receiver as the entity to which all voice service providers must submit all surcharge remittances and the surcharge form.

C. Electronic Filing Requirement

26. To reduce the administrative burdens, adopted rule 2827(c)(I)(B) includes a requirement that voice service providers shall electronically file the Colorado Telecommunications Relay Service Surcharge form through the Commission’s E-Filings System, but the Commission, for good cause shown, may grant a waiver of this requirement, upon the filing of a motion in the appropriate proceeding.

V. CONCLUSION

27. Being fully advised in this matter and consistent with the discussion above, the Hearing Commissioner now transmits to the Commission the record and exhibits in this proceeding along with this Recommended Decision and rules attached as Attachments A and B.

28. The statutory authority for the rules adopted here is found at §§ 24-4-101, et seq., 40-2-108, 40-3-101 through 110; and §§ 40-17-101 through 104 and 29-11-102.7, C.R.S.

29. The Proposed Rules as modified by this Recommended Decision are reasonable and should be adopted.

30. The Hearing Commissioner finds as a matter of fact and concludes as a matter of law that the Rules adopted herein are within the authority of the Commission and that they correctly implement House Bill 16-1414.

31. Attachment A to this Recommended Decision represents the rule amendments adopted by this Decision with modifications to the currently effective Rules indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

32. Attachment B to this Recommended Decision represents the rule amendments adopted by this Decision in final form.

33. Attachments A and B are available through the Commission's Electronic Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0497T.

34. Pursuant to the provisions of § 40-6-109, C.R.S., the undersigned Hearing Commissioner recommends that the Commission adopt the attached rules and enter the following Order.

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

1. The Rules Regulating Telecommunications Relay Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2 contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, available through the Commission's Electronic Filings (E-Filings) system at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0497T are adopted.

2. The rules adopted by this Decision shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules adopted by this Decision.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in

§ 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Hearing Commissioner and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

c) If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

Hearing Commissioner

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director