

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.

**INTERIM DECISION OF
HEARING COMMISSIONER
FRANCES A. KONCILJA**

Mailed Date: December 9, 2016

I. STATEMENT

1. The undersigned Hearing Commissioner conducted, at the request of the parties, an additional workshop on December 6, 2016. The three working groups prepared and filed on December 5, 2016 a “consensus” red-lined version of the draft rules. All participants reserved their rights to take different positions, depending on instructions from clients and the final resolution of certain issues. This is a complicated document and certain sections depend on definitions in other sections.

2. The undersigned Hearing Commissioner recognizes and is appreciative of the huge amount of work put into this process by the working groups as well as staff and is very appreciative of the effort, especially the effort of the representatives of CenturyLink who undertook the Herculean task of preparing the new red-line to the current rules.

3. At the December 6, 2016 workshop, the working groups engaged in additional discussion and drafting of language to be included in the draft rules. Staff has prepared Attachment A which is a redline to the current rules that attempts to incorporate the suggestions

in the red-line submitted by the working groups on December 5, 2016, as well as the discussions that took place on December 6, 2016 and Attachment B, a clean version of the document. Attachments A and B will be the basis for the rulemaking hearing on December 19, 2016 as well as any additional comments and positions that the parties wish to file before that hearing. Attachments A and B may be found in the proceeding record in the Commission's E-Filings system at:

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

4. It appears that Attachment A is close to being a consensus document, but the various participants should review the document carefully and file their comments and positions by 11:00 p.m. on Thursday December 15, 2016. (Because I am authorizing a filing up until the end of the day, as opposed to using the 5:00 p.m. cut-off, please be aware that the E-filing system will date this filing as a December 16th filing, but I will refer to it as the December 15th filing throughout this Order.)

5. At the end of the December 6, 2016 workshop, there were certain unresolved issues which the undersigned requests the participants address in their comments and positions.

6. The Wholesale Proposed Rules in Attachment A are titled "Provider Obligations to Other Providers" and include proposed rules 2500 to 2599. The participants suggested at the workshop that the undersigned defer all consideration of this chapter of rules until later. However, that approach would maintain in the final rules language from statutes that have been repealed or modified by the Colorado General Assembly. Instead, Attachment A attempts to delete the outdated rules and implement the 2014 Telecom Reform statutes. The participants should include in any comments and positions their position on Rules 2500 through 2599 in their filing on December 15.

7. The proposed rule 2309 in Attachment A uses the title “Changing Providers of Telecommunications Service/Carrier Presubscription”, to refer to “Slamming and Cramming”. The participants at the December 6, 2016 workshop discussed the meaning and possible inconsistency or ambiguity of § 40-15-112, 40-15-113, 40-15-401(1)(s), 40-15-401(1)(t), 40-15-401 (2) and 40-15-401 (3), C.R.S. In comments and positions, provide the legal and operational analysis of those sections. For example, does “providers” refer to the providers of the services and products that are described in the exception at 40-15-401(1)(b). If, on the other hand “services, products and providers” is read broadly what is still subject to regulation? If that expansive definition is adopted, what is the legal basis for the assessment and collection of certain other fees, such as the High Cost Fund?

8. Voluntary application for a Certificate of Public Convenience and Necessity—the first draft of proposed rules included a voluntary application for operating authority to assist industry in obtaining rights of way, pole attachment agreements, interconnection agreements, and/or access to numbering resources. Certain participants have indicated that calling this document a voluntary operating authority will not be acceptable to the numbering authority agency as well as to others. It appears to be the consensus of the working groups that this voluntary application must request and the Commission must issue a “Certificate of Public Convenience and Necessity” in order for the document to be of any use to industry. In your comments and positions, provide the legal basis and analysis on the issue of the commission’s authority to issue Certificates of Public Convenience and Necessity for Part 4 services on a voluntary basis and specifically address § 40-15-402, C.R.S.

9. In addition, Attachment A does not include language that participants who have obtained a voluntary Certificate of Public Convenience and Necessity must file a request every

two years to confirm the information contained in the Certificate. Staff will prepare that language and send it via e-mail to participants next week so that you can be prepared to comment on the language.

10. It would also be helpful for the record in this proceeding if each of the participants provide a list of previous filings, including advice letters, tariffs and or requests for Certificates of Public Convenience and Necessity, and identify any harm or damages the participants have suffered as the result of not having rules in place that implemented the 2014 Telecom Reform. I will take administrative notice of those proceedings and include them in the record and any list that each of you have would be helpful.

11. In preparing the Attachment A, an inconsistency in the rules addressing expansion of local calling areas was reconciled by modifying language in rule 2309 to incorporate a process for notification only when LECs expand their local calling areas. This was necessary to continue to assure that all providers impacted by such expansion are appropriately noticed and can make necessary and timely network changes. Provide comments and positions as to whether you agree or believe additional modifications are necessary.

12. Currently, there are only legal pleadings in the record. Participants will have the opportunity to provide public comment and respond to questions at the hearing on December 19, 2016. If participants would like to bring someone other than their lawyer to make a statement, participants are welcome to do so.

13. At the close of the public comment hearing participants must be prepared to discuss whether they wish to file closing statements of position. In light of the amount of filings that have already occurred in this proceeding and light of the consensus on many of the points,

it may not be necessary for the parties to incur the additional costs and time in submitting additional pleadings, but we can discuss that at the end of the hearing.

II. ORDER

A. It Is Ordered That:

1. The participants shall file with the Commission, no later than 5:00 p.m. on Thursday December 15, 2016 comments and legal positions the above matters as well as anything the participants request the Hearing Commissioner consider in advance of the hearing, including any previous Commission proceedings of which the parties request the Hearing Commissioner take judicial notice.

2. The Hearing Commissioner will conduct a public comment hearing on final revised proposed rules and related issues as follows:

DATE: December 19, 2016

TIME: 9:00 a.m.

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

3. Comments may be filed in this rulemaking proceeding using the Commission's E-Filing System at <http://www.dora.state.co.us/pls/efi/EFI.homepage>.

4. This Decision is effective immediately.

(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