

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0458T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES, 4 CODE OF COLORADO REGULATIONS 723-2-2840, REGARDING SENATE BILL 19-078.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 23, 2019

Adopted Date: August 21, 2019

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend Rule 2840, *et seq.* of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2 (Telecom Rules), and to introduce proposed Rule 2850 of the rules regulating the High Cost Support Mechanism (HCSM) and High Cost Administration Fund.

2. The proposed amendments codify Senate Bill (SB) 19-078. SB 19-078 revises Title 40 of the Colorado Revised Statutes and requires Commission action upon learning that the Broadband Deployment Board (Board) found an Internet Service Provider (ISP) engaged in certain practices that interfere with the open internet.¹ The proposed revisions to the Telecom

¹ SB 19-078 was signed into law and became effective on May 17, 2019.

Rules and addition of proposed Rule 2850 provide process and direction for the Commission to take necessary action, in compliance with SB 19-078.

B. Discussion

3. Among its provisions, SB 19-078 provides that an ISP is no longer eligible to receive HCSM grant money awarded under § 40-15-509.5, C.R.S., if the Board determines the ISP interferes with net neutrality by: blocking any lawful Internet content, application, services, or devices; engaging in paid prioritization; regulating network traffic by throttling bandwidth or otherwise impairs or degrades lawful Internet traffic; or failing or refusing to disclose its network management practices. *See* § 40-15-209(1), C.R.S.

4. Within its provisions, SB 19-078, at § 40-15-209, C.R.S., requires that, upon learning from the Board that the Board determined from a final order, decree, or judgment that an ISP has engaged in conduct specified in § 40-15-209(1), C.R.S., the Commission must issue a written order requiring the ISP to refund fully any HCSM money that the ISP received in the prior 24 months pursuant to a grant awarded by the Board under § 40-15-509.5, C.R.S.

5. Proposed Rule 2850 sets forth the public process before this Commission such that the Board may notify the Commission of its determinations regarding a violation of net neutrality, and the Commission can take the necessary action required by SB 19-078. The proposed rule includes specific information requested from the Board such that the Commission can learn of the Board's determination. Proposed Rule 2850 suggests the Board file a petition pursuant to 4 CCR 723-1-1304 of the Rules of Practice and Procedure, requesting that the Commission initiate a proceeding pursuant to §§ 40-15-209(2)(a) and 40-15-509.5, C.R.S. Upon confirmation of the Board's determinations through this process, the Commission shall issue its written order directing the required refund from the ISP at issue, and shall include the necessary

calculations and direction to the HCSM administrator regarding the required refund to comply with § 40-15-209(2)(b), C.R.S.

6. Prior to our issuance of this NOPR, consistent with § 24-4-103(2), C.R.S., representative groups of participants with an interest in the subject matter of this rulemaking were established, submitted views, and participated informally on the proposal under consideration. Outreach included Commission Staff presenting the proposed Rule 2850 to the Board and its participants, including ISPs, at the Board's regular meeting on June 27, 2019. Commission Staff requested input on the proposed rule throughout July of 2019. No stakeholder provided changes or revisions at the public meeting, and no additional comments were received. Participant stakeholders are included on the list of persons who receive notification of the NOPR and, again, have the opportunity to provide written or oral comments for consideration.

7. This rulemaking proceeding is referred to an Administrative Law Judge for hearing and a recommended decision.

8. We request comments and proposed redlines to the suggested rules. Commenters, in addition to the assigned Administrative Law Judge, are requested to consider and address the proposed petition process. The Board has not yet provided processes or policies for how it would make a determination pursuant to SB 19-078.² As proposed, the rule aims to provide direction such that the Board may notify the Commission of its final determination, requiring that the Board provide its written determinations, supporting documentation, and attestations, in addition to any other information the Board deems necessary. The proposed petition process also

² To date, the Board has not made similar determinations. Current Board policies outline grant award processes and appeals, but do not yet address the Board's determination processes per SB 19-078. *See* The Colorado Department of Regulatory Agencies, The Broadband Fund, *available at*:

<https://www.colorado.gov/dora-broadband-fund>

Then follow the "Members & Policies" hyperlink (last visited August 20, 2019).

aims to permit procedural flexibility and due process before this Commission to interested persons, including notice and response opportunities for an affected ISP. Interested stakeholders should address whether the process proposed in Rule 2850 is efficient and effective to meet the needs of SB 19-078, or if the commenter suggests that a different process³ would better meet flexibility and due process needs in these circumstances.

9. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, and 40-15-209, C.R.S.

10. 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/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0458T

11. Senate Bill 19-078 is also attached to this Decision (Attachment C).

12. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. Written comments may be filed at any time. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than September 20, 2019, that any pre-filed comments responsive to the initial comments be submitted no later than October 4, 2019, and that any changes be proposed in legislative redline format. The Commission prefers that comments be filed using its E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding. The Commission will consider all submissions, whether oral or written.

³ For example, participants may choose to address whether the petition is best framed as a "petition seeking a declaratory order" under Rule 4 CCR 723-1304(i) or some other filing from the Board.

13. Interested persons may provide oral comments at the public hearing, unless the Administrative Law Judge deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, including Attachments A and B, shall be filed with the Colorado Secretary of State for publication in the September 10, 2019, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

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

DATE: October 21, 2019

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado 80202

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally, unless the Administrative Law Judge deems oral presentations unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than September 20, 2019, and that any pre-filed comments responsive to the initial comments be submitted no later than October 4, 2019. 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
August 21, 2019.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners