

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0453T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE TELECOMMUNICATIONS
RULES IMPLEMENTING HB14-1329, HB14-1330 AND HB 14-1331, 4 CODE OF
COLORADO REGULATIONS 723-2.

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

Mailed Date: April 14, 2017

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A. The Commission Orders That:26

I. STATEMENT

1. The Colorado Public Utilities Commission (**Commission**), issued a Notice of Proposed Rulemaking, (**NOPR**) on June 10, 2016 that opened this docket, appointed Commissioner Frances Koncilja as the Hearing Commissioner, set a deadline for initial comments of July 15, 2016, responsive comments for July 29, 2016, and set a hearing for August 8-9, 2016.¹

2. The purpose of the NOPR was to provide notice that the Commission was proposing revisions to current Rules 2000 through 2899 to implement statutory changes made by the General Assembly in 2014 that reformed, and in many instances, deregulated certain services provided by the telecom industry to citizens in Colorado, to remove outdated rules, and to align the rules with applicable federal rules. This rulemaking did not include changes to Rules 2140 – 2159 (Basic Emergency Service Rules) which were the subject of a suspended rulemaking in Proceeding No. 15R-0318T; Rules 2840 – 2855 (High Cost Support Mechanism); Rules 2820 – 2839 (Telecommunications Relay Services for Disabled Telephone Users) which were subject to separate rulemakings in Proceeding Nos. 16R-0451T and 16R-0497T, and Rules 2890 - 2894 (Colorado No-Call List).

3. In order to facilitate this rulemaking, the NOPR included not only an Attachment A (a red-lined version of the proposed rules in legislative format) and an Attachment B (a clean version of the proposed rules), but also an Attachment C. Staff of the Commission prepared Attachment C which was a table that summarized the proposed rule changes and the reasons for the proposed rule changes, in order to provide a starting point for the discussions.

¹ See Decision No. C16-0508.

4. Throughout the proceeding, the following entities filed written comments and or participated in the workshops and public hearings: Eschelon Telecom of Colorado, Inc. dba Integra Telecom (**Integra**); AT&T Corp., Teleport Communications America, LLC, New Cingular Wireless PCS, LLC dba AT&T Mobility, and Cricket Wireless, LLC (**AT&T**); CTIA – The Wireless Association (**CTIA**); West Safety Communications, Inc. fka Intrado Communications Inc. (**West Safety**); ExteNet Systems, Inc. (**ExteNet**); Blynco, Inc. (**Blynco**); Level 3 Telecom of Colorado, LLC (**Level 3**) and McLeodUSA Telecommunications Services, LLC (**McLeod**); Qwest Corporation dba CenturyLink QC, CenturyTel of Eagle, Inc., CenturyTel of Colorado, Inc. and El Paso County Telephone Company (**CenturyLink**); Colorado Telecommunications Association, Inc. (**CTA**); Spring Communications Company L.P. (**Sprint**); Comcast Phone of Colorado LLC (**Comcast**); Bresnan Broadband of Colorado LLC and Time Warner Cable Information Services (Colorado) LLC (**Charter**).

5. Pursuant to written and or oral requests of some or all of the above participants, and after providing proper notice, I continued the public hearing dates set for August 8-9, 2016 to September 26, 2016. This hearing date was subsequently continued to accommodate for the workshop schedule. The final public hearing was held December 19, 2016.

6. At the request of some or all of the above participants, I conducted full or half day workshops on August 29, 2016, September 27, 2016, October 27, 2016 and December 6, 2016. I also issued interim orders requesting comments on certain legal and or factual issues.

7. Staff participated in additional workshops with some or all of the above participants. Staff also prepared two additional red-line versions of the current rules, based on discussions that occurred at the workshops.

8. By Decision No. R16-0873-I, mailed September 22, 2016, the Hearing Commissioner, with the assistance of Staff, and incorporating many of the previously filed comments, filed and served a revised set of proposed rules for discussion purposes for the workshop on September 27, 2016.

9. The revised proposed rules attached to Decision No. R16-0873-I addressed issues raised in the comments and reply comments regarding: consistency in the use of the defined term “jurisdictional services” and its application for different rule requirements throughout the rules; addition of an operating authority, obtained on a voluntary basis for certain telecommunication services as a new Rule 2014, the removal of the incorporations by reference on updated NENA standards in Rule 2008, the reworking of the Default, Alternative and Simplified Forms of Regulation, Rules 2200—through 2206 and the removal of Costing and Pricing Rules from consideration for this rulemaking, stating that these rules will be addressed in a separate rulemaking in the future.

10. After the workshop held on September 27, 2016 and based on the comments and discussions at the workshop, this I issued Decision No. R16-0902-I, dated September 29, 2016 requesting joint comments and suggested redlines from participants by October 14, 2016. I also issued a list of legal and factual questions and requested responses and positions by October 14, 2016.

11. During the course of the workshops, the participants agreed to create three working groups because it appeared that there were three specific areas that might benefit from further discussions and work—jurisdictional language, tariffs and authorities for certain providers to obtain certifications or registrations from the Commission in order to conduct their business. On December 5, 2016 CenturyLink filed a redlined version of the rules that

harmonized the agreements of the three working groups. This work product went a long way in preparing all stakeholders for the final discussions.

12. I conducted the final public comment hearing on December 19, 2016. Significant discussion at the hearing on December 19, 2016 involved Charter's December 6, 2016 written comments on proposed changes language that was the result of multiple stakeholder informal and formal workshops. Given the breadth and potential impact of the written comments, by Interim Order, Decision No. R16-1171-I, I provided all participants an opportunity to file additional written comments.²

13. Being fully advised in this matter and consistent with the discussion below, and after having reviewed the oral and written comments and in accordance with § 40-6-109, C.R.S., I now transmit to the Commission the record and exhibits in this proceeding along with this written recommended decision and Recommended Rules which are referred to below as the Recommended Telecom Reform Rules.

14. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the attached redline version of the rules are recommended for adoption. Any specific recommendations made by interested parties that are not discussed below

² Shortly after being sworn in as Commissioner in January of 2016, I realized that the Commissioners had not commenced a NOPR to implement the 2014 Telecom Reform Legislation and that, as a result, industry was forced to file tariffs and advice letters relating to services no longer regulated which then went into effect by operation of law—in my opinion an unnecessary burden and inefficient use of resources of industry and the Commission staff. I made it a personal priority to provide updated telecom rules. See my dissents or concurrences in Proceeding Nos. 16AL-0030T, 16Al-061T, 16AL-0062T, 16AL-0072T, 16 AL-0073T, 16AL-0074T and 16A-0034T. However, although all participants, reserved their rights to reject and or provide different language from the language resulting from the workshops, Charter's delay in submitting its concerns and the scope of its proposed rule changes very late in the proceeding, necessitated due process for other stakeholders to respond to the comments. The additional time required to accommodate any responses to Charter's comments precluded my ability to issue this recommended decision until now. The missed window of opportunity in December along with the required time commitment for a significant energy docket in the first quarter of 2017 prevented me from finalizing these recommendations until now.

or otherwise incorporated into the redlined rules attached are rejected and are not adopted in this recommended decision.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. 2014 Telecom Reform Legislation

15. In order to fully understand these Recommended Telecom Reform Rules and the purpose of their promulgation, it is important to understand legislation passed by the Colorado General Assembly in 2014. On May 9 and 10, 2014, Governor Hickenlooper signed into law five bills relating to the telecommunications industry, only four of which are relevant to this rulemaking:

- a) House Bill 14-1327—Measures to Expand Deployment of Communication Networks;
- b) House Bill 14-1320—Deregulation of Internet Protocol;
- c) House Bill 14-1330—Updating Telecommunications Technology Language
- d) House Bill 14-1331—Regulation of Basic Local Exchange Service. (jointly, **2014 Telecom Reform Legislation**).³

16. The 2014 Telecom Reform Legislation deregulated certain services that the Commission had regulated under Part 2 of § 40-14-201, C.R.S. and Part 3 of § 40-15-301, C.R.S. by moving those services to Part 4 of § 40-15-401, C.R.S. Subject to certain exceptions, the products, services and providers listed in Part 4 are “exempt from regulation.” As a result of the 2014 Telecom Reform Legislation, many of the current rules of the Commission apply to these services no longer regulated by the Commission.

B. General Discussion of Comments

17. In both the written comments and the workshops, the participants suggested that they divide themselves into three working groups to discuss and provide suggested language describing the jurisdiction that the Commission retained after the 2014 Telecom Reform

³ House Bill 14-1328—Connect Colorado Broadband Act is not relevant to this rulemaking.

Legislation, the legal basis, need for and form of operating authorities obtained on a voluntary basis, that some of the participants requested from the Commission, as well as tariffing and reporting requirements. These working groups became known as the “Jurisdictional Group,” the “Authorities Group,” and the “Detariffing Group.” Some participated in more than one group, staff participated in all groups and certain attorneys agreed to prepare red-lines of the proposed rules and to make progress reports to me.

C. Jurisdictional Group

18. The Jurisdictional Group faced the largest challenge because even after they believed that they had agreed upon recommended changes, both deletions and additions, to the definitions, bases and purposes, once the participants reviewed other operational portions of the draft rules, they realized that additional changes were necessary to the definitions, bases and purposes. The participants engaged in lengthy discussions as to whether or not one set of terms could be used at the beginning of the proposed rules which we all agreed would be a “more elegant” solution. Unfortunately, so many qualifiers and clauses were required, that the “elegant” solution became very awkward and clumsy.

19. The participants were very concerned (in my opinion somewhat paranoid) that language choice in even the introductory sentences could be used by the Commission to expand the Commission’s authority. After discussing at length the use of numerous possible terms including jurisdictional services, regulated services, telecom services, provider of telecom services, the participants concluded and recommended that the introductory language as to basis and purpose refer to Title 40 and that each chapter of the proposed rules use more specific language.

20. As explained in more detail below, that is the approach that this I concluded as a matter of fact and law to be the most effective in capturing the intent and plain language of the 2014 Telecom Reform Legislation as well as providing a cohesive set of rules.

D. Authorities Group

21. The original recommended rules, attached to the NOPR, proposed to void existing CPCNs if they included deregulated telecommunication services. Almost all of the participants argued against this approach. Those telecommunication service providers who had existing CPCNs that covered in whole or in part, services no longer subject to regulation by the Commission, asserted that such action violated their due process rights, that the CPCN's, even if they included services no longer regulated, constituted a property right and that the Commission was required to commence individual proceedings if the Commission determined to void the CPCNs or LORs.⁴

22. Other participants, such as ExteNet, argued that any action voiding the CPCNs or LORs ignored two facts—the holders of the CPCNs had already used them to enter the market and negotiate pole attachment agreements and right of way access and those companies would continue to benefit, while a company such as ExteNet, was not able to enter into pole attachment agreements and obtain right of way access.⁵

23. ExteNet asserted that it had been commercially damaged by the Commission's refusal to grant ExteNet's request for a CPCN or LOR even though ExteNet provided only deregulated services in Colorado. "ExteNet designs, builds, owns and operates distributed networks for use by national and regional wireless service providers (WSPs) in key strategic markets throughout the United States..." It deploys "distributed networks to enhance the WSP's

⁴ See CTA Initial Comments filed on August 12, 2016 at page 6.

⁵ See ExteNet Initial Comments filed on August 12, 2016 at pages 4-5.

coverage and capacity and enable superior wireless service in both outdoor and indoor environments. ExteNet is sometimes referred to as a ‘carrier’s carrier,’ as it provides distributed networks and point to point telecommunications to WSP customers.”⁶

24. In August 2014, several months after the enactment of the Telecom Reform Legislation, ExteNet had filed an Application with the Commission.⁷ CenturyLink had refused to enter into a pole attachment agreement with ExteNet because ExteNet did not have a CPCN or a LOR. This Commission denied both ExteNet’s Application and subsequent request for Rehearing, Reargument and Reconsideration by Decision Nos. C15-0417 and C15-0599.

25. ExteNet pointed out that the Commission had granted requests for CPCNs or LORs from NewPath, Vodafone and Global Capacity (Proceeding Nos. 14A-0386T, 14A-0907T, 14A-0995T, respectively) relying on §§ 40-15-101, 40-15-501 and 40-15-502, C.R.S. and then denied ExteNet’s request.⁸

26. ExteNet argued that, without some type of Commission issued operating authorities, smaller providers and new entrants, would be irreparably disadvantaged and that would diminish Colorado’s competitive telecommunications marketplace, a key goal of the 2014

⁶ *Ibid.* at pages 2-4.

⁷ Proceeding No. 14A-1173T.

⁸ *See* In re the Matter of ExteNet Systems, Inc., for a Letter of Registration to Provide Emerging Competitive Telecommunications Services, Proceeding No. 14A-1173T.

In the Matter of the Application of NewPath Networks, LLC for a Registration to Provide Emerging Competitive Telecommunications Services, Decision No. C14-0613, Ordering paragraph 2, Proceeding No. 14A-0386T (mailed June 9, 2014); In the Matter of the Application of Vodafone US Inc. for a Certificate of Public Convenience and Necessity to Competitive Telecommunications Services, Decision No. C14-1228, Ordering paragraph 4, Proceeding No. 14A-0907T (mailed September 9, 2015); In the Matter of the Application of GC Pivotal LLC DBA Global Capacity for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services, Decision No. C14-1334, Ordering paragraph 4, Proceeding No. 14A-0995T (mailed November 7, 2014).

See In re the Matter of ExteNet Systems, Inc., for a Letter of Registration to Provide Emerging Competitive Telecommunications Services, Proceeding No. 14A-1173T, Decision No. C15-0417 at ¶5 (mailed May 4, 2015).

See Petition for Rehearing, Reargument and Reconsideration, of ExteNet Systems, Inc., Proceeding No. 14A-1173T (filed May 26, 2015).

Telecom Reform Legislation. Instead, ExteNet urged that the Commission exercise its authority and issue operating authorities, obtained on a voluntary basis to deregulated service providers and ExteNet undertook the task of developing suggested language for such an approach ExteNet referred to previous proceedings before this Commission to establish the damages that it had suffered and the arbitrary nature of previous Commission action.⁹

27. Instead the Commission opened a declaratory judgment action, Proceeding No. 15D-0575T to consider the validity of CPCNs and LORs and then the Commission, after receiving comments, closed that proceeding on January 6, 2016 holding that a rulemaking was the appropriate way to proceed.

28. The Authorities Group was led by ExteNet. There were numerous discussions and comments as to the term or terms to be used to grant an entrant some type of Commission sanctioned operating authority—by way of example, the use of the terms such as authorities or registrations.¹⁰ However, the agency that provides numbers, Neustar, the current North American Numbering Administrator, requires that providers have a Commission sanctioned operating authority and would not recognize any term other than the terms that have been used in this state in the past—namely CPCNs or LORs.¹¹

29. Based on the record in this case, I find as a matter of fact that the failure to obtain CPCN's and or LOR's is damaging businesses such as ExteNet and prohibiting them from competing in the now deregulated market.

⁹ See ExteNet Initial Comments filed on August 12, 2016 at page 2.

¹⁰ See AT&T, CTA, ExteNet, Integra, and Level 3 Joint Comments filed on October 14, 2016 at page 2 and November 9, 2016 at pages 2-3; and ExteNet Initial Comments filed on August 12, 2016 at pages 4-6 and November 9, 2016 at pages 2-3.

¹¹ 47 C.F.R. 52.15(g)(2)(i) of the FCC rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The FCC in FCC 15-70 Order, explained that it has interpreted this rule as requiring evidence of either a state certificate of public convenience and necessity (CPCN) or a FCC license.

30. I now turn to the legal question of whether or not the Commission has the legal authority to issue CPCNs or LORs to providers no longer subject to Commission regulation.

31. Section 40-15-402 (2), C.R.S. states as follows:

No certificate of public convenience and necessity shall be required for the provision of services under this part 4.

32. Section 38-5.5-101, C.R.S. of Colorado's telecommunications right of way (**ROW**) statute provides "the construction, maintenance, operation, oversight and regulation of telecommunications providers and their facilities is a matter of statewide concern and interest" and goes on to state "telecommunications providers operating under the authority of the federal communications or the Colorado public utilities commission, pursuant to Article 15 of Title 40, C.R.S. require no additional authorization to conduct business within a geographic area."

33. Under Title 40 there is no prohibition depriving the Commission of the authority to issue an operating authority on a voluntary basis. The only prohibition is that the Commission may not require a provider to apply for a CPCN or LOR for Part 4 services.¹²

34. The plain language of the ROW statute reflects the Commission has the authority to issue authorizations to telecommunications providers so that they can efficiently access public ROWs.

35. The goals of the 2014 Telecom Reform Legislation is to encourage competition, to reduce barriers to entry and to ensure that consumers benefit from competition.

36. I conclude that there is no legal prohibition that restricts the Commission from issuing operating authorities, obtained on through a voluntary process.

¹² See ExteNet Initial Comments filed on August 12, 2016 at pages 10-14.

37. I find as a matter of fact that imposing conditions on those operating authorities obtained voluntarily that are similar to the conditions imposed upon emergency service providers and basic service providers, who are regulated under Part 2 or Part 4 of Title 40, respectively encourages competition and meets the public policy objectives of Title 40.

E. Detariffing Group.

38. A provider currently files and maintains a tariff that contains rates, terms, and conditions of services. This tariff serves as a contract with their customers. The Detariffing Group was formed to discuss and propose a way to move from the current tariffing requirements to an alternative process of informing customers of the company's terms of service.

39. I agree that the proposed modification in Rule 2122 that allows recipients of HCSM funding to file a Terms of Service (**TOS**) document on their website is adequate and reasonable. Providers of switched access and basic emergency services are required to maintain tariffs and file for any changes in rates pursuant to § 40-3-104, C.R.S. The Commission maintains its discretion to require additional notice for public interest concerns. Rule 2122 specifies the required contents of the TOS, such as descriptions of telecommunications surcharges included in customer bills and provides sufficient notice of any modifications in the TOS to both the Commission and customers. This is an efficient and elegant way of communicating information that previously resided in tariffs.

F. Charter's December 6, 2016 and January 6, 2017 Comments

40. At the public hearing on December 19, 2016 Charter explained the reasons for its requests to modify the consensus language that had been the result of the workshops. Many of the participants who filed written comments by January 6, 2017 largely rejected Charter's

proposals. In its written comments filed on January 6, 2017, Charter withdrew many of its December 6, 2016 and December 19, 2016 proposed modifications.

41. As is explained in more detail below, with the exception of a modification to Rule 2001 (mmm), I reject all of the remaining proposals of Charter because they are either not supported by or not the subject of the 2014 Telecom Reform Legislation.

42. Pursuant to Decision No. R16-1171-I, the participants filed a final set of comments on January 6, 2017.

G. CenturyLink's and AT&T's Response to Charter's Proposed Rule Modifications

43. CenturyLink and AT&T, in their filings on January 6, 2016, objected to most of the suggested changes that Charter included in its December 15, 2016 comments. For example, CenturyLink indicated that Charter proposed a change to the definition of "telecommunications carrier" to explicitly include wholesale telecommunications providers and Charter did not establish a need for this suggested change. CenturyLink also noted Charter's proposals at page 8 of its comments and at page 16 of its Attachment where Charter requested that the Commission regulate discontinuance of basic service only by ILECs in both areas where no HCSM support is provided and where findings of effective competition have been made. Existing wholesale change management processes and federal discontinuance filing requirements currently exist and provide ample opportunity for competitors to be aware of and input their position on discontinuances. Charter's proposal not only would apply the discontinuance obligations just on the incumbent telecommunications carriers and not other providers of Part 4 services but is beyond the limited scope of Commission authority set forth in the 2014 Telecom Reform Legislation.

44. CenturyLink concluded its comments by stating that the Commission, Staff and participants made a significant investment of time and effort in gaining consensus on the “topics of jurisdiction, authorities and detariffing for Part 4 services that conform the Commission’s rules to the 2014 legislation and present a balanced set of protections for consumers while reducing unneeded regulation.”¹³ Therefore, CenturyLink requested that Charter’s recommendations be rejected.

45. AT&T was also concerned with Charter’s late comments and substantive modifications “at this late date which the participants in the rulemaking had no opportunity address in workshops and collaborative discussions.” AT&T further stated, “Moreover, some of Charter’s proposed changes are inconsistent with the scope of the rulemaking and the intent of the legislature...”¹⁴ AT&T indicated that it “appreciates the collaborative, collegial manner in which this docket has been managed. As a result of good cooperation and hard work among all participants, the proposed rules reflect consensus in all but a very few areas.”¹⁵ For example, AT&T specifically opposed the addition of federal law statutes to the Colorado rules suggested. AT&T did agree however, with Charter’s comments to definition (mmm) because the participants had agreed to use the term “jurisdictional service”.

H. CTA’s January 6, 2017 Comments

46. In CTA’s January 6, 2017 post-hearing comments “CTA commends the remarkably collaborative process that drove this proceeding to conclusion and reaffirms its position that the rules as finally proposed in Decision No. 16R-1137-I, while not perfect,

¹³ See CenturyLink’s Comments filed January 6, 2017 at page 8.

¹⁴ See AT&T’s Comments filed January 6, 2017 at page 3.

¹⁵ *Ibid.* at page 1.

generally succeed in implementing the 2014 deregulation legislation.”¹⁶ CTA goes on to ask the Commission to follow one fundamental guiding principle in adopting rules in this proceeding and that “is to give effect to the deregulatory intent of the 2014 legislation.”¹⁷

III. BASIS, PURPOSE AND STATUTORY AUTHORITY.

47. While one might conclude that language describing the basis, purpose, and statutory authority for these Telecom Reform Rules would be non- controversial, that proved not to be the case. The participants were very concerned that certain terms could be interpreted as giving authority to the Commission that the Telecom Reform Legislation had removed. There was discussion as to whether or not the term “jurisdictional telecommunications providers, services and products” was too broad. Then as the discussion turned to operating authorities obtained on a voluntary basis, the concern was that the proposed language was too narrow. All participants finally agreed that the following language, which is included in the Recommended Telecom Reform Rules, accurately reflects the intent and scope of the 2014 Telecom Reform Legislation:

“The basis and purpose of these rules is generally to implement, administer and enforce the telecommunications of Title 40 of the Colorado Revised States; and regulate telecommunications proceedings and regulatory activities before the Commission.”

48. I find as a matter of fact and conclude as a matter of law that the above language appropriately describes the basis, purpose and statutory authority and implements the 2014 Telecom Reform Legislation.

¹⁶ See CTA’s Comments filed January 6, 2017 at page 1.

¹⁷ *Ibid.*

49. Written comments requested that § 38-5.5-101, C.R.S. (which refers to pole attachments) be included as an additional basis of statutory authority. I conclude that § 38-5.5-101, C.R.S. should be included.

A. Rule 2000 - Scope and Applicability

50. The participants originally suggested general scope and applicability language in Rule 2000 that would be applicable to each chapter of the Telecom Reform Rules. However, that approach proved to be unwieldy requiring numerous qualifiers. As a result, the commenters requested to include only the reference “be applied consistent with Commission jurisdiction and rules 2100 through 2999” and leave specific provisions to subsequent subchapters.

51. I conclude that this proposal is reasonable and an efficient means to deal with the complexity of the Telecom Reform Rules.

B. Rule 2001 - Definitions.

52. Paragraphs (a) through (aaaa) of current Rule 2001 contains numerous out of date and or irrelevant terms and definitions, including, by way of example, interexchange carrier, busy line interrupt service, busy line verify service, dual tone multifrequency signaling, flat rate service, local access line, message rate service, non-listed service, non-optional operator services, non-published services, operations support systems, operator interrupt service, operator service, price list, private line service, toll blocking toll control. I conclude that all of these and similar out of date, irrelevant and or inaccurate definitions that are struck out in the attached redline, should be deleted and or modified to accurately reflect the current language and statutory framework.

53. I conclude that current usage and statutory framework requires that certain terms must be added to the recommended Rules, including by way of example, Internet-Protocol-enabled service, Voice-over-Internet Protocol. I conclude that the additions of the definitions and or the modifications of defined terms, as set forth in the attached redline are appropriate and necessary to implement the 2014 Telecom Reforms.

54. There were numerous comments concerning the definitions and interconnection of the terms “HCSM recipient,” “Jurisdictional service,” and “Provider” at paragraphs (mm), (tt) and (aaaa). Although the NOPR excluded High Cost Rules, it became important to include a definition of HCSM recipient because that term is used throughout the current rules. Therefore, the following definition is included as 2001(mm): “HCSM recipient” means a provider of basic service in a geographic support area that receives high cost support distributions pursuant to §§ 40-15-208 and 40-15-502(5), C.R.S.”

55. Paragraph (k) defines a CPCN and paragraph (uu) defines a LOR. These definitions are adopted to encourage competition as mandated by the Telecom Reform Legislation.

56. Charter’s proposal to change Rule 2001(uu) at page 10 of its comments, page 2 of the Attachment, alters the Part 4 CPCN process agreed upon through the authorities working group process and ultimately makes a LOR identical to the Part 4 CPCN and therefore is rejected.

57. Paragraph (ooo) adopts definitions for “telecommunications service” and “telecommunications” (terms that are used through these Telecom Reform Rules) to have the same meaning as set forth in 47 U.S.C. 153(53), 47 U.S.C. 153(50) and § 40-15-102(29), C.R.S.

C. Rule 2002 - Applications

58. Rule 2002 lists the types of matters for which an applicant may seek Commission actions. The deletions at subparagraphs XIV, XV, XVI, XIX, and XX reflect the changes to Commission authority enacted by the 2014 Telecom Reform Legislation.

59. Changes to subparagraphs (I), (II), (III) implement the new scope of CPCNs or LORs as set forth in the 2014 Telecom Reform Legislation as well as operating authorities obtained on a voluntary basis, CPCNs or LORs to implement revised Rule 2103.

60. Paragraphs (b),(c), and (d) in Rule 2002 make consistent the information that the Commission requires in order to issue a CPCN, a LOR, or to grant a Petition pursuant to Rule 2003, as set forth in the next section.

D. Rule 2003 - Petitions

61. The deletions in Rule 2003 reflect the changes made to Commission jurisdiction by the 2014 Telecom Reform Legislation.

62. In other instances, the deletions in Rule 2003 reflect a more elegant and efficient approach to the rules by referring at paragraph (b) to the information required in paragraph 2002(b) as opposed to repeating the requirements.

E. Rule 2005 - Records

63. In order to implement the 2014 Telecom Reform Legislation, it is necessary to delete the paragraphs requiring record keeping and production to the Commission of certain types of records—by way of example, customer billing and dispute information (other than for HCSM recipients), deposits, maintenance and operation records, plant facilities records and records previously required under Part 2. The additions make clear that the maintenance and production of records to the Commission is limited to providers of “jurisdictional services.”

F. Rule 2006 - Reports.

64. As required by the 2014 Telecom Reform Legislation, all of the reporting requirements are deleted except as follows. Pursuant to §§ 40-2-109 and 40-2-111, C.R.S., only a copy of the DR525 form required by the Department of Revenue must be filed with the Commission for use in the Commission's budgetary process.

G. Rule 2008 - Incorporations by Reference.

65. Incorporations by reference of the Code of Federal Regulations must be updated to the most current version, which are identified.

66. As pointed out by both CenturyLink and AT&T, it is not appropriate to incorporate by reference the sections of the Code of Federal Regulations suggested by Charter, because those sections are either redundant with Colorado statutory framework and or the rules of this Commission, thus leading to confusion. In other cases, those sections are irrelevant to the Colorado statutory framework, thus leading to confusion. I agree with CenturyLink and AT&T.

H. Rule 2011 - Regulated Telecommunications Utility Rule Violations, Civil Enforcement, and Civil Penalties.

67. As required by the 2014 Telecom Reform Legislation, all penalties referring to matters no longer subject to Commission jurisdiction are deleted.

I. Operating Authority to Offer Local exchange or Emerging Competitive Telecommunication - Basis, Purpose and Statutory Authority.

68. The deletions are required in order to implement the 2014 Telecom Reform Legislation.

69. The additions are required to provide a consistent application process for CPCNs and or LORs, including CPCNs that are voluntarily requested.

J. Applicability

70. The deletions and additions are required by the 2014 Telecom Reform Legislation and the format adopted in these recommended rules for describing Commission authority.

K. Rule 2101 - Definitions

71. The deletions and additions are required by the 2014 Telecom Reform Legislation and the format adopted in these recommended rules for describing Commission authority

L. Rule 2102 - Applications Procedures

72. The deletions and additions are required by the 2014 Telecom Reform Legislation and the format adopted in these recommended rules for describing Commission authority

M. Rule 2103 - Applications for CPCN and LOR

73. As set forth in the above discussion concerning the Authorities Working Group, it is appropriate to authorize CPCNs and LORs and CPCNs that are voluntarily requested.

74. AT&T, similarly to CenturyLink, objected to the insertion of new language to proposed Rule 2103(g) which could be read to require a Part 4 provider to obtain a CPCN or LOR. “The consensus of the parties was that the ability of a provider of Part 4 services to obtain a CPCN should be preserved because of practical operational issues such as numbering, but that no Commission authorization would be required to provide such services.”

75. The suggestions of Charter are rejected.

76. The deletions and additions are required by the 2014 Telecom Reform Legislation and the format adopted in these recommended rules for describing Commission authority

77. The language added in the first paragraph of the rule makes clear that no CPCN or LOR is required for services that are classified in Part 4 and that a provider is not required but may apply for a CPCN on the same condition as a provider of regulated services—including the

obligation to pay into the Telecommunications Utility Fund, the Colorado High Cost Support Mechanism, the Colorado Disabled Telephone Users Fund, Emergency Telecommunications Services and any other financial support mechanism created by §40-15-5-2(4), C.R.S. and adopted by the Commission.

78. Some of the written comments requested an affirmative statement in these rules that current CPCNs or LORs, even those covering services no longer regulated, remain in effect. I reject those requests and instead, I leave those issues for individual resolution by parties who may want to challenge current CPCNs or LORs and the parties holding those CPCNs or LORs. Holders of existing CPCNs and LORs for services no longer regulated, may avail themselves of the new rules, if necessary, which allow providers to apply for an operating authority on a voluntary basis.

79. It is appropriate to add the suggested language at paragraph (b) to allow an applicant the opportunity to seek a determination from the Commission that the services they provide or seek to provide are telecommunication services under these rules.

N. Rule 2104 - Registrations—Providers of Interexchange Telecommunications Service.

80. This rule requires registration and updates so that the Commission has the ability to verify and or enforce the payment into the funds identified in this rule.

O. Rule 2105 - Application to Amend a CPCN or LOR

81. The deletions to this recommended rule are required to make the format of these rules more elegant and to avoid unnecessary duplication.

P. Rule 2106 - Application to Change Exchange Area Boundaries.

82. The deletions to this recommended rule and the reference to Rule 2002(b) are required to make the format of these rules more elegant and to avoid unnecessary duplication.

Q. Rule 2107 - Declaration of Intent to Serve within Territory of Rural Telecommunications Provider.

83. The deletion is required to implement the 2014 Telecom Reform Legislation.

R. Rule 2108 - CPCN or LOR Deemed Null and Void

84. The addition of the term “jurisdictional service” is required to make the format of these rules and the definitions consistent throughout.

S. Rule 2109¹⁸ - Discontinuance of Services

85. AT&T, similarly to CenturyLink, objected to Charter’s proposed changes to paragraphs 2108(b),(c),(f) and (g) because the participants had agreed that no substantive changes should be made to the wholesale rules or requirements of a wholesale relationship in this proceeding.

T. Rule 2110 - Application to Transfer or Encumber

86. The modifications to this rule are required for consistency of language and format.

U. Rule 2110 - Toll Reseller Registration and Obligations.

87. The 2014 Telecom Reform Legislation requires repeal of this rule.

V. Rule 2111 - Financial Assurance

88. This rule was added to recognize the Commission’s authority, pursuant to §40-15-503.5 C.R.S., and long standing practice of allowing financial assurance as a condition of operating authority.

¹⁸ This Rule was incorrectly numbered as 2108 during the final comments of this rulemaking.

W. Rules 2120 through 2124 - Advice Letters, Tariffs, Price Lists, Promotional and Discount Offerings, etc.

89. Any deletions of rules requiring the filing of transmittal letters, price lists, some tariffs, promotional and discount offerings and the language describing those obligations are required to implement the 2014 Telecom Reform Legislation.

90. As a result of the 2014 Telecom Reform Legislation, only providers of basic emergency service and providers of switched access service are required to file tariffs and the deletions and additions to these rules implement the 2014 Telecom Reform Legislation. In addition the term “jurisdictional” as it relates to service is included throughout these rules including these rules to make the format and terms consistent.

91. Rule 2122 (i) provides that all tariffs on file with the Commission that contain only deregulated services are “null and void”—thus removing any obligation of the provider to file a request to withdraw a complete tariff. Staff will notify the providers of the process to updated tariff sheets in circumstances where a tariff contains a combination of regulated and services deregulated.

X. Rules 2160 through 2169 - Operator Services.

92. The 2014 Telecom Reform Legislations requires that these rules be deleted.

Y. Rule 2180 through 2190 - Designation of Providers of Last Resort, Eligible Telecommunications Carriers and Eligible Providers and Relinquishments of Designations.

93. These rules were updated to include “in geographic areas receiving HCSM” to reflect that these rules only apply to basic local exchange providers in geographic areas receiving HCSM.

Z. Rules 2310 – Slamming and Cramming.

94. AT&T objected to Charter’s proposed revisions to Proposed Rule 2310 which would broaden the Commission authority over slamming and cramming to cover all telecommunications providers as opposed to only those identified in § 40-15-401(1)(s) and (t), C.R.S., namely intraLATA and interLATA toll providers.

95. CTIA’s January 6, 2017 comments focus on the Commission’s slamming and cramming jurisdiction. CTIA asserts that “pursuant to Section 40-15-401(1)(c), C.R.S., the Commission has no slamming or cramming jurisdiction over CMRS providers”. CTIA asks the Commission to make it clear in the final rules, and the order issuing those rules, the Commission’s slamming and cramming rules do not apply, generally, to all Part 4 services.¹⁹

96. I agree with AT&T’s legal analysis. While it might have been an oversight or a mistake by the General Assembly, the Commission’s authority to apply §§ 40-15-112 and 113, C.R.S. is limited to interexchange carriers or IXC service, not all telecommunication providers.

97. The Commission, however, continues to receive complaints about slamming and cramming involving other types of providers.²⁰ Thus there is harm to customers but the 2014 Telecom Reform Legislation has not provided the Commission authority to address these ongoing problems.

AA. Rules 2500 to 2529 – Provider Obligations to Other Providers.

98. During the course of the rulemaking, participants agreed the 2014 Telecom Reform Legislation did not change the Commission’s authority over the regulation of wholesale. I agree and have recommended minimal changes to these rules, such as, the removal of Incumbent Local Exchange Carrier (**ILEC**) directory distribution obligations. Minor changes

¹⁹ See CTIA’s Comments filed January 6, 2017 at page 3.

²⁰ See Decision No R17-0034-I and the attachments to that Decision.

such as this allow the rules to conform to specific portions of the 2014 Telecom Reform Legislation, yet do not disturb the Commission's regulatory authority over wholesale. The participants agreed that specific changes to these rules merit a comprehensive review of the wholesale rules consistent with the evolution of wholesale at the federal level.²¹

IV. CONCLUSIONS

99. These Recommended Telecom Reform Rules are within the Commission's jurisdiction and implement those portions of the 2014 Telecom Reform Legislation that were identified in the NOPR. These rules represent a repeal of approximately 75 pages of rules and many regulatory requirements.

100. Pursuant to the provisions of §40-6-109, C.R.S., I recommended that the Commission adopt the attached rules.

V. ORDER

A. The Commission Orders That:

1. The Commission Rules pertaining to the 2014 Telecom Reform Legislation, pursuant to 4 Code of Colorado Regulations 723-2 of the Rules Regulating Telecommunications, contained in Attachment A to this Decision and shown in clean format in Attachment B, are adopted consistent with the discussion above, and 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.

2. 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.

²¹ See CenturyLink Comments filed December 15, 2016 at page 13.

3. 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.

4. 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.

5. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in The Colorado Register.

6. 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.

7. 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.

8. 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 administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed. 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