Decision No. C98-46

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97R-177T

IN THE MATTER OF MODIFICATIONS TO THE PUBLIC UTILITIES COMMISSION'S RULES TO REFLECT A COMPETITIVE TELECOMMUNICATIONS ENVIRONMENT, INCLUDING THOSE CURRENTLY DESCRIBED IN 4 CODE OF COLORADO REGULATIONS, REGULATING TELECOMMUNICATIONS ACCOUNTING AND REPORTING METHODS (723-1-25), TARIFF REQUIREMENTS (723-1-40 AND 41), RELAXED REGULATION (723-24), COST ALLOCATION (723-27), E-911 (723-29), COSTING AND PRICING (723-30), PRICE REGULATION (723-38), INTERCONNECTION AND UNBUNDLING (723-39), AND ELIGIBLE TELECOMMUNICATIONS CARRIER (723-42) AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35), AND AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35).

RULING ON APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

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I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration ("RRR") to Decision No. C97-1204. In that decision, we preliminarily adopted, pending the filing of applications for RRR, amended rules concerning the methods for regulating telecommunications providers. A number of parties have filed applications for RRR including: Commission Staff ("Staff"); the Competitive Local Exchange Carriers comprised of WorldCom, Inc., AT&T Communications of the Mountain States, Inc., ("AT&T"), ICG Telecom Group, Inc., MCImetro Access Transmission Systems, Inc., ("MCI"), Sprint Communications, ("Sprint"), and TCG Colorado ("Joint Commentors"); U S WEST Communications, Inc. ("USWC"); the Colorado Telecommunications Association ("CTA"); the Colorado Office of Consumer Counsel ("OCC"); and AT&T, MCI, and Sprint. In Decision No. C98-15 we granted the applications

for RRR which were filed on December 9, 1997. That action was taken only for the purpose of precluding denial of any application for RRR by operation of law, pursuant to the provisions of § 40-6-114(1), C.R.S. Decision No. C98-15 stated that we would address the merits of all applications for RRR by future order. We now do so. Having considered the merits of each of the applications for RRR, we will grant them, in part, and deny them, in part, consistent with the discussion below.

II. RULE 38 - RULES REGULATING APPLICATION BY TELECOMMUNICATIONS PROVIDERS FOR SPECIFIC FORMS OF PRICE REGULATION.

A. 723-38-3 SPECIFIC FORMS OF PRICE REGULATION.

1. OCC

a. In its application for RRR, the OCC generally agrees with the principle of asymmetrical regulation and the Commission's adoption of a default regulatory scheme for the competing local exchange carriers ("CLECs"). However, in one respect the OCC claims that the Decision goes too far in relaxing regulatory constraints on the CLECS. In particular, the OCC seeks reconsideration of our decision not to adopt price ceilings for the CLECs for basic local exchange, low-income, emergency, public safety, privacy, or information services.

b. The OCC contends that the prices charged by the incumbent providers will not create an effective ceiling in the markets for basic local exchange, low-income, emergency,

public safety, privacy, or information services. According to the OCC, without price ceilings on these services, there are significant risks during this early phase of the transition to a competitive telecommunications market that many Colorado consumers will not receive the benefits of competition in the form of lower prices for these services.

c. Specifically, the OCC is concerned about consumers who have poor credit histories or are unable to afford a deposit and consumers who use low income, emergency, public safety, privacy or information services. The OCC argues that economic theory and Colorado specific experiences provide a basis for anticipating that CLECs will price some of these less visible services in excess of the incumbent's price.

d. The OCC claims that there is little dispute that all of the telecommunications providers that are entering the market today are experiencing great pressure to increase revenues. Therefore, the CLECs all have the incentive to price each service at whatever price the market will bear. The OCC claims that important services such as Lifeline, Link Up, toll restrict as a deposit alternative, busy line interrupt, busy line verify, Call Trace, Caller ID Per Line Blocking, directory assistance and nonoptional operator services can be priced by the CLECs above the price charged by the incumbent for comparable services in order to increase revenues without losing customer base. The OCC argues this could occur because the CLECs can use

the lack of consumer information in these markets to mislead customers into believing that there are no competitive alternatives. Establishing price ceilings, according to the OCC, will avoid the kinds of problems that were recently experienced in the operator service market where many competitors did not feel restrained by the prices charged by the dominant providers.

2. Commission Decision

a. We will deny this request for reconsideration. The OCC raised similar concerns at the August 18, 1997 hearing in this docket. In weighing these concerns in our original decision, we stated:

> As we make the transition to a more competitive local telecommunications market these issues of consumer education and the need to maintain affordable basic service are paramount issues of public interest. In this regard, our decision not to impose price ceilings and floors on CLECs is certainly not a signal that the Commission will be less vigilant with regard to these issues. Rather, our decision is based on judgments about the present state of market incentives and the benefits of encouraging the development of an effectively competitive local telecommunications market for Colorado consumers.

See, Decision No. C97-1204, at page 42. The Commission reiterates that if the problems the OCC has identified do in fact emerge, the Commission stands ready to address them. However, in our judgment, the imposition of price ceilings on the CLECS is in conflict with the promotion of effective competition, at least as long as the price-regulated services of USWC remain as an alternative for consumers.

3. Staff

a. Staff's request for reconsideration raises three issues concerning Rule 723-38-3. First, according to Staff, the wording of Rule 723-38-3 (and 723-24-5.3.9.1, and Rule 723-40-1 among others) does not maintain the clear distinction and differentiation between "price regulation" and "relaxed regulatory treatment." Staff requests: (a)that the Commission amend Rule 723-38-3 by substituting the phrase "default form of price regulation" for the phrase "default form of relaxed regulatory treatment" wherever it appears. (b)amend Rule 723-24-5.3.9.1 by substituting the phrase "price regulation" for the phrase "relaxed regulation" as appropriate; and (c) make conforming changes to other rules as necessary.

b. Secondly, Staff requests that the Commission amend the rule to make clear that prices for residential basic local exchange service, including zone charges, may not exceed the rate for comparable service in effect on May 24, 1995, unless the Commission has permitted an increase, in accordance with § 40-15-502(3)(b), C.R.S.

c. Thirdly, Staff contends that the absence of Commission-approved price ceilings may allow the CLECs to price residential service sufficiently above the incumbent local exchange carrier's ("ILEC's") rate so as to discourage residential customers from subscribing. Staff claims that the CLECs could thereby circumvent the Commission's policy to require

the provision of residential service by CLECs. Staff requests clarification of this issue to assist Staff in carrying out Commission policy.

4. Commission Decision

a. The Commission grants Staff's first request for RRR for the reasons stated by Staff.

b. With respect to Staff's second point, the Commission denies the request. The Commission is fully aware that § 40-15-502(3)(b) constrains rate increases for residential basic local exchange service. Whatever constraints are placed upon residential basic exchange rates by the statute, these rules are not intended--in fact, cannot--modify any of the statutory obligations of CLECs operating in the State of Colorado.

c. As for Staff's third issue, we conclude that our decision not to apply price ceilings and floors to the CLECs, even for residential basic exchange service, is consistent with the legislative mandate to encourage the emergence of a competitive telecommunications market in Colorado. Given current market conditions, USWC's prices will serve as an effective price ceiling on CLEC services. The Commission believes that CLEC price ceilings would be a needless and burdensome supplement to existing market incentives.

5. USWC

a. USWC's application for RRR raises two issues. First, according to USWC, the Commission's discussion of

asymmetrical regulation as a justification for the adoption of the default price regulation for CLECS is overbroad and has already led to unintended consequences for ILECs. USWC requests that the Commission clarify that its decision adopting rules here, and the modified rules on default regulation themselves, have not foreclosed US WEST or any ILEC from seeking relaxed regulatory treatment or pricing flexibility.

b. Secondly, USWC requests that the Commission clarify that this proceeding is a rulemaking, not an adjudication; that the decision makes no adjudicative findings that US WEST is a dominant carrier; and that the decision does not hold that USWC is not entitled to relaxed regulatory treatment or pricing flexibility in other dockets.

6. Commission Decision

We will deny USWC's requests as unnecessary. As USWC itself points out, our decision already indicates that the default regulation of the CLECs has not foreclosed USWC or any other ILEC from seeking relaxed regulatory treatment. *See,* Decision No. C97-1204, at pages 31-32, and 42. With respect to USWC's second request, it is obvious that the present **rulemaking** proceeding is not intended to adjudicate parties' rights in other dockets.

B. 723-38-3.2.2.1 Applicability

1. Staff

a. In Decision No. C97-1204, at page 43, the Commission decided that the default form of price regulation

shall apply to all products offered by the CLECs with the single exception of 911 call delivery. The Commission declined to grant exceptions for switched access or interconnection. In its application for RRR, Staff repeats its original request in this docket that the Commission exempt certain services from the default form of price regulation. Staff cites various statutory rationales, claimed inconsistencies with other Commission rules, and economic reasons to support its contention that the Commission should grant exceptions for access and interconnection. *See,* Staff application for RRR, pages 3-12. Staff concludes on pages 11 and 12 of its application for RRR, that Rule 723-38-3.2.2.1 be modified as follows:

> The default form of price regulation should apply to all local exchange telecommunications products and services offered by CLECs, with the following exceptions:
>
> 1. Rates, terms, and conditions for 911 call delivery to a Basic Emergency Service Provider;
>
> 2. Rates, terms, and conditions for switched access;
>
> 3. Rates terms and conditions for interconnection;
>
> 4. Rates terms and conditions for termination of local exchange traffic; and
>
> 5. Rates terms and conditions for unbundled network elements.

2. USWC

Similarly, USWC's application for RRR also notes that our decision extends the default regulatory scheme to switched access and interconnection rates. USWC states that it

has serious concerns with the default relaxed regulatory treatment being afforded to these wholesale services. According to USWC, the call termination function, whether switched access or local call termination, bestows upon a facilities-based provider a bottleneck facility which all other providers must use because the customer has chosen that provider. USWC points out that the customer does not pay these wholesale charges. Therefore, USWC claims, there is no economic dynamic which would prevent exorbitant wholesale prices in CLEC rates for call termination and access. USWC requests that we recognize the bottleneck nature of the facilities of any provider which terminates calls on behalf of its customers, and refrain from applying the default price regulatory treatment to the wholesale prices associated with terminating switched access and local call termination.

3. Commission Decision

a. The Commission denies Staff's and USWC's requests for reconsideration. Specifically, we deny the requests to exempt switched access, call termination, interconnection, and unbundled network elements, all as may be provided by CLECs, from the default price regulation established here.

b. Staff's suggestion that the default form of price regulation for access (*e.g.,* no price ceilings or floors, no specific requirement that CLECs file customer-specific contracts for access with the Commission, etc.) may be

inconsistent with statutory requirements is based upon the provisions of § 40-15-105, C.R.S. Generally, that statute provides that access charges by local exchange carriers shall be cost-based and shall not exceed prices in effect in Colorado as of July 1, 1987 (40-15-105(1)); and that any contracts for access on the part of a local exchange carrier must be filed with the Commission and open to review by other purchasers of access (§ 40-15-105(3)). We disagree that the default form of regulation adopted in this docket violates §40-15-105.

c. Notably, the rules adopted in this proceeding are not intended to modify any statutory requirements placed upon local exchange carriers, including CLECs. We acknowledge that, as a matter of law, Commission rules cannot modify statutory directives. Therefore, the requirements set forth in §40-15-105 continue to apply to the provision of access. In our view, nothing in the default form of price regulation contravenes any mandate in the statute.[1] For example, Commission rules need not repeat a statutory requirement in order for such a requirement to apply.

[1] In fact, Staff's application for RRR merely suggested that the default price regulation "may" violate § 40-15-105.

d. Staff also suggests that §§ 40-15-503(2)(g)(III) and (IV), C.R.S. mandate that all local exchange carriers, including CLECs, file tariffs (not price lists) for the provision of interconnection and unbundled facilities and functions. Therefore, Staff suggests, to the extent the default form of price regulation permits CLECs to file price lists, it is inconsistent with statutory requirements. We disagree with this argument. Notably, § 40-15-503(2)(c), in conjunction with § 40-15-503(2)(f), permits the Commission to adopt price regulation, including "modified tariff requirements", for CLECs. We find that the default form of price regulation is consistent with our authority to devise a lesser (as compared to traditional regulation) regulatory program for CLECs.

e. Staff correctly points out that the default form of price regulation adopted in Decision No. C97-1204 is inconsistent with some provisions in the Rules on Interconnection and Unbundling, 4 CCR 723-39. To correct those inconsistencies we are making certain modifications to Rule 723-39 as shown in the attachments to this order.

f. The Commission is aware of the **potential** for market abuses by CLECs with regard to the rates terms and conditions for switched access, interconnection and the termination of local exchange traffic. The Commission will stand ready to act quickly if such abuses begin to occur. At this time, we conclude that it is unnecessary to exempt such services

from the default price regulation inasmuch as CLECs have little market share for these services.

C. 723-38-3.2.2.2 Filing of Initial Tariffs.

1. Joint Commentors

The Joint Commentors request that the requirement for filing an initial tariff be modified. According to the Joint Commentors, CLECs should only be required to file an initial tariff for services not subject to the default form of regulation (*i.e.,* 911). The Joint Commentors maintain that CLECs should be permitted to file a price list, on 14 days notice, for all services subject to the default form of regulation. Furthermore, the Joint Commentors contend, the price list should include both prices and terms and conditions of service. The Joint Commentors request that the Commission modify the rules to reflect their suggestions.

2. Commission Decision

We will grant the Joint Commentors request in part only, as reflected in the revisions to Rule 38-3.2.2.2. Specifically, CLECs shall be permitted to change their initial tariff upon 14 days notice to the Commission (for products and services subject to the default price regulation). However, CLECs shall continue to be required to file an initial tariff. This tariff requirement reflects the Commission's attempt to balance consumers' needs to be fully informed as they compare the services offered by the various providers, against the

Commission's desire to give maximum opportunity for the market to respond to changes in economic circumstances.

D. 723-38-3.2.2.5 Promotional Offerings

1. Staff

Staff points out that the Commission's proposed new Rule 723-38-3.2.2.5 does not state how far in advance, if at all, the Commission must be made aware of promotional offerings and/or volume discounts. Staff also notes that the new rule does not state the form the filing of the promotional offering or volume discount should take. Finally, Staff claims that since that are no limitations on the duration of promotional offerings and volume discounts CLECS could offer so-called "promotions" for years. Staff recommends certain amendments to Rule 723-38-3.2.2.5 to address these issues.

2. Commission Decision

Except for Staff's suggestion to limit promotional offerings and volume discounts to 90 days duration, we generally agree with Staff. The revision to Rule 723-38-3.2.2.5 will reflect this general agreement.

III. RULE 723-24: RULES REGULATING EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE.

A. 723-24-5.3.9.1 Revision of Terms of Relaxed Regulation

The only suggested modification to Rule 24 was Staff's, that the wording of Rule 723-24-5.3.9.1 does not maintain the

clear distinction between **price regulation** and **relaxed regulatory treatment**. Staff requests that we amend Rule 723-24-5.3.9.1 by substituting the phrase "price regulation" for the phrase "relaxed regulation" as appropriate. The Commission granted this request with respect to Rule 723-38 and will do so here.

IV. RULE 723-1-40 TARIFFS AND PRICE LISTS AND, RULE 723-1-41 TARIFFS-APPLICATIONS TO CHANGE TARIFFS BY FIXED UTILITIES - HEARING AND SUSPENSION-NOTICE.

1. Joint Commentors

The Joint Commentors point out that in our discussion of the filing of initial tariffs and price lists, (Decision No. C97-1204, at pages 46 & 48) we did not specifically state that cost support need not be filed with an initial tariff or price list. The Joint Commentors therefore request that the Commission clarify that the supporting information required by Rule 723-1-40.1.5 and referenced in Rule 723-1-40.2.4 is not cost support.

2. Commission Decision

The Commission grants this request and clarifies that the supporting information required of the CLECs in 723-1-40.1.5 and referenced in Rule 723-1-40.2.4 does not include cost support.

3. Joint Commentors

With respect to the supporting information to be filed with Advice Letters (Rule 723-1-40.1.5), the Joint

Commentors state that it should be sufficient for a CLEC to include a statement that the prices proposed are just and reasonable, and the Commission should clarify that such a statement is sufficient "supporting information". This change is not well-taken. Therefore, we will deny this request for reconsideration.

4. Staff

a. According to Staff there are inconsistencies in and between, or omissions to these rules (Rules 723-1-40 and 1-41). Staff suggests, therefore, that the rules be modified. In particular, Staff makes four requests. First:

> Both rules should be amended to state that they apply to (a) providers who are offering Part 3 services under forms of relaxed regulatory treatment (rules found at 4 CCR 723-24), or have elected to provide Part 3 services under the default form of price regulation (rules found at 4 CCR 723-38); (b) CLECS who are providing local exchange telecommunication services either under a specific form of price regulation or under the default form of price regulation; and (c) nonoptional operator service providers. Each group is required to file tariffs or price lists, or both with the Commission. Each group should be specifically mentioned in the appropriate rule(s) and directed to follow the procedures (whether for tariffs, for price lists, or -- where applicable -- for both) contained in Rules 723-1-40 and 723-1-41.

b. Add the following new paragraph to Rule 723-1-40.2.2, Price List:

> The initial price list shall be filed upon 30 days notice to the Commission. Changes to a price list shall be filed upon 14 days notice to the Commission. In calculating the effective date of a price list, the date filed with the Commission shall not be included.

Additionally, the 30th or 14th day must expire prior to the effective date of the price list.

c. Add the following new paragraph to Rule 723-1-40.2.3, Transmittal Letters

Notification of (a) promotional offerings and (b) volume discounts shall be submitted to the Commission as a serially numbered transmittal letter, upon 14 days notice."

d. Add the following new paragraph to Rule 723-1-41.3, Procedure to Change Tariffs upon 30 - Days or More Notice.

In calculating the effective date of a tariff change on 30 days notice, the date filed with the Commission shall not be included. Additionally, the 30th day must expire prior to the effective date of the tariff.

5. Commission Decision

Except for the suggestion in ¶ 4a, *supra.*, the Commission will grant these requests for the reasons stated by Staff. These changes to the rules will clarify procedures before the Commission, and reduce confusion on the part of those entities expected to comply with the rules.

V. RULE 4 CCR 723-27: COST ALLOCATION RULES FOR TELECOMMUNICATION SERVICE PROVIDERS AND TELEPHONE UTILITIES

A. Positions of the Parties

1. Joint Commentors

a. The Joint Commentors argue that the Commission misapplies § 40-15-108(2) when we require the CLECs to "continue to be able to provide adequately segregated cost

information to the Commission." Decision No. C97-1204, at 61. The Joint Commentors believe that the Commission's statutory authority to prescribe an allocation methodology gives it the latitude to exempt the CLECs entirely from such methodologies or to adopt some less stringent methodology for them. Furthermore, the CLECs argue, not exempting them from Rule 27 is inconsistent with the Commission's adoption of asymmetric regulation and price flexibility without cost support for the CLECs. For these reasons, the Joint Commentors suggest that CLECs should be given total exemption from Rule 27. If this is not forthcoming, the Joint Commentors argue that we should at least make significant modifications to Rules 27-4 through 27-7.

b. Rule 27-4 requires that USOA be used when complying with Rule 27 unless a waiver is granted. The Joint Commentors contend that they should not have to request waivers individually since they have already been given a collective exemption from USOA in Rules 38-3.2.2.9 and 1-25(c)(1). Therefore, they request that CLECs be given an automatic exemption from USOA in Rule 27-4 as well.

c. Rule 27-5 includes a provision whereby a telecommunications provider not required by the FCC to follow Part 36 rules, may apply for a similar waiver here. Again, the Joint Commentors argue that a CLEC, so exempted by the FCC, should not have to apply for such a waiver, but rather that it should be made automatic in Rule 27-5. Furthermore, they request

that the language in Rule 27-7.1 be amended to refer only to applicable federal rules, reflecting the fact that not all federal rules will apply to CLECs.

d. With respect to Rule 27-6, the Joint Commentors argue that requiring CLECs to use a fully distributed cost methodology for cost-segregation purposes is inconsistent with exempting them from Rule 30; thus, this requirement should be deleted. Finally, they believe that Rules 27-7.2 through 27-7.6 are burdensome to the CLECs and are clearly designed to address firms with market power. Hence, the CLECs should be exempt from these rules as well. Finally, the Joint Commentors observe that there should be some indication in Rule 27-1 that only certain rules are applicable to the CLECs and that others are applicable only under certain circumstances.

2. Commission Decision

a. We do not find that giving the CLECs a complete exemption from Rule 27 is prudent at this time, but we do view favorably the Joint Commentors' specific requests for modification of Rules 27-4 through 27-7. Concerning Rule 27-4, the Commission recognizes that CLECs have already been accorded an exemption from USOA in Rule 1-25(c)(1) and that ruling should be reflected here. Requiring them to request individual waivers from USOA under Rule 27-4 would be unnecessary. Similarly, if a CLEC has been granted an exemption from federal cost allocation or separations procedures by the FCC, the Commission believes

that it is unnecessary for that CLEC to be forced to request a waiver under Rule 27-5. Rather, that exemption should be automatic. Furthermore, the fact that, in this instance, not all federal rules would apply to that CLEC should be acknowledged by modifying the phrase "federal rules" by the word "applicable" in Rule 27-7.1.

b. Turning to Rules 27-6 and 27-7, the Commission affirms its position that CLECs are subject to § 40-15-108(2) and that they have the obligation to establish their compliance with this statute in appropriate Commission proceedings. We do not believe, however, that we should necessarily dictate the precise methodology by which the CLECs demonstrate their compliance. Consequently, we will exempt the CLECs from Rules 27-6.1 through 27-6.5, and Rules 27-7.2 through 27-7.6. While, for example, this exemption means that the CLECs are not required to use the fully distributed cost methodology, the Commission observes that this is the type of methodology that has been found to be effective in demonstrating compliance with § 40-15-108(2) in the past, and we encourage a CLEC to take account of this when selecting a methodology of its own.

c. In conclusion, we will grant, in part, and deny, in part, this portion of the Joint Commentors' request for reconsideration, reargument, and rehearing.

VI. RULE 4 CCR 723-30. RULES PRESCRIBING PRINCIPLES FOR COSTING AND PRICING OF REGULATED SERVICES OF TELECOMMUNICATIONS SERVICE PROVIDERS

A. Positions of the Parties

1. AT&T, MCI, and Sprint

These parties contend that the local loop allocation for ILECs is both contrary to federal and state law and bad public policy. They argue: The Telecommunications Act of 1996 defines the local loop as an unbundled network element (UNE) and, therefore, as a separate service so that a CLEC, when purchasing an UNE, must pay the entire cost of the loop, not just a portion allocated to local service. Since the CLEC must pay the entire cost of the loop and then contribute to the coverage of loop costs when paying for other ILEC services as well, the ILECs will be able to reap the benefits of double recovery. In addition, the allocation of loop costs favors resale over facilities-based competition, which is contrary to the intent of both the Telecommunications Act and Colorado HB 1335.[2] For example, if the universal service subsidy is based upon only the portion of the loop costs allocated to basic exchange, the subsidy will be too low and facilities-based competition will be deterred. Finally, loop allocation perpetuates the system of implicit subsidies. For all of these reasons, AT&T, MCI, and

[2] Section 40-15-501, C.R.S. *et seq.*

Sprint request that the loop allocation provision in Rule 30 be deleted.

2. Staff

The Staff is concerned that exempting the CLECs from Rule 30 may be inconsistent with §§ 40-15-106 and 40-15-108(2), which address cross-subsidization of deregulated services by regulated services. Its concern is that, without Rule 30, the information which the CLECs provide the Commission may be insufficient to determine whether cross-subsidization exists and, if so, how to proceed to prevent it from continuing. Staff also sees a contradiction between the CLEC exemption from Rule 30 and the mandated treatment of interconnection and switched access rates. For example, §§ 40-15-503(2)(b)(I) and 40-15-503(2)(g)(IV)(B) require that interconnection rates be cost based. Moreover, § 40-15-105 states that access charges must also be cost-based, as determined by the Commission, but not to exceed the average price by rate element and by type of access in effect in Colorado on July 1, 1987. These inconsistencies call into question the advisability of exempting the CLECs from Rule 30.

3. Commission Decision

a. Concerning AT&T, MCI, and Sprint's recommendation to delete the loop allocation discussion from Rule 30, we believe that their arguments were all made earlier in this docket. In reconsidering them, we continue to endorse, for

present purposes, the allocation of loop costs among all services for which the loop is an input. This request for reconsideration will, therefore, be denied.

b. Turning to the Staff's concerns, we agree that the CLECs are subject to both § 40-15-106 and § 40-15-108(2) and that they would have the obligation to establish compliance with either statute in an appropriate Commission proceeding. We do not, however, believe that the CLECs' exemption from Rule 30 is inconsistent with these statutory obligations. Therefore, we see no reason for withdrawing that exemption. Similarly, the Commission finds no inconsistency between the CLECs' exemption from Rule 30 and their compliance with the statutes cited by Staff concerning interconnection and switched access. Our treatment of these statutes as they relate to the CLECs can be found in the discussion of Rule 38-3.2.2.1. Consequently, we deny this portion of the Staff's request for reconsideration.

VII. RULE 4 CCR 723-2. RULES REGULATING TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES

A. Positions of the Parties

1. CTA

a. CTA begins by observing that § 40-15-203.5, enacted in 1993, mandates that the Commission take three steps: (1) change existing rules by January 1, 1994, to initiate the process of reducing regulation for small LECs; (2) apply

cost/benefit analysis to any new rules applicable to small LECs; and (3) grant less comprehensive regulation to small LECs in the future. CTA argues that only the first step has actually been taken. Furthermore, CTA contends that § 40-15-503(2)(d), enacted in 1995, requires the Commission to take the initiative in granting reduced regulation through rules which would go into effect no later than July 1, 1996, but that the Commission has not fulfilled this obligation.

b. In the remainder of CTA's application for reconsideration, reargument, and rehearing, CTA concentrates on three points:

(1) Small LECs should be given the same regulatory flexibility as the CLECs, but, instead, are subject to heightened regulatory scrutiny because of rulemakings undertaken to address concerns with U S WEST. CTA is not only concerned that the Commission has not afforded small LECs relaxed regulatory treatment but that the Commission, in paragraph e on page 31 of Decision No C97-1204, has established competitive entry as a precondition for reduced regulation. CTA argues that this is inappropriate and violates both §§ 40-15-203.5 and 40-15-503(2)(d).

(2) Asymmetrical regulation is based upon the analyses of dominant/nondominant carriers and market power. CTA argues that the small LECs, however, are unfairly lumped together with U S WEST in this regard. Unlike U S WEST, the

small LECs do not have any control over price and thus do not have any market power. CTA also criticizes the decision for not rigorously defining the market or quantifying market power as a necessary first step in implementing asymmetric regulation.

(3) CTA contends that the issues which it raised with respect to Rule 2 in particular, namely, held service orders, toll bridging, termination of service, and exemptions from backup power requirements, should not have been ruled by the Commission to be outside the bounds of the notice of proposed rulemaking. Toll bridging is especially burdensome to small LECs in that they are unjustly losing access revenue which will ultimately result in increased pressure to raise basic exchange rates. CTA also observes that the existing held service order rules are burdensome to the small LECs because compliance requires hiring additional personnel. This is another example of the small LECs being adversely affected by rules designed to address problems with U S WEST.

c. Finally, CTA attaches an appendix to its filing in which it lists a number of recent changes which it contends have had the effect of increasing regulation for small LECs. These include rules dealing with held service orders, backup power, basic service quality standards, telephone response time by customer service representatives, reports if trouble repair standards are not met, and reports of 911 outages.

2. Commission Decision

a. We believe that CTA's arguments were generally all made earlier in this docket. There are two specific areas, however, upon which we wish to comment at this time:

(1) First, as noted above, CTA contends that the Commission, in paragraph e on page 31, Decision No. C97-1204, establishes competitive entry as a precondition for reduced regulation of small LECs, and that this is in violation of §§ 40-15-203.5 and 40-15-503(2)(d).[3] CTA is correct that neither statute establishes competitive entry as a precondition for reduced regulation for small LECs. On the other hand, these statutes are silent on the question of what factors the Commission should consider when determining the future regulatory structure for small LECs. Consequently, the Commission may, in the future, use whatever factors it deems relevant, including the extent of competition. For purposes of the present proceeding, however, we will modify Decision No. C97-1204, paragraph e, page 31, by deleting the language:

> until competitive entry takes place in a small LEC territory and the Commission determines that market is capable of checking the ILECs'' market power. That entry may come either through a bona fide request which is approved by the Commission, or by virtue of the small LEC filing interconnection tariffs and thereby opening up its markets.

[3] Obviously, Decision No. C97-1204 cannot bind future Commissions to act in a certain manner. As such, the language of which CTA complains is dicta.

This modification of the decision clarifies that it is not our intent, in this docket, to indicate what actions the Commission might take in the future with respect to regulation of small LECs.

(2) Secondly, CTA's appendix to its filing provides a list of recent rule changes which, it argues, increase the regulatory burden on small LECs. The Commission believes, however, that many of these changes were designed to address the interests of the customers of the small LECs and are quite defensible. The Commission also notes that these rules are not necessarily as burdensome to the small LECs as CTA alleges (*i.e.*, a small LEC can comply with them rather easily if it avails itself of its options). For example, if a small LEC has only an occasional held order, it can inform the Commission of this instance with a simple letter and need not hire consultants, lawyers, or additional personnel of any sort to handle this matter. On the other hand, if a small LEC experiences numerous held orders, a more formal response may be necessary; but, in this case, the customers of this small LEC warrant such a response because they deserve as much protection as do customers of U S WEST.

b. The Commission remains concerned about the issues raised by CTA and wishes to continue to work toward reduced regulation for small LECs. Nevertheless, at this time,

the Commission denies CTA's request for reconsideration, reargument, and rehearing.

VIII. RULE 4 CCR 723-1-25: RULES OF PRACTICE AND PROCEDURE, ANNUAL REPORTS AND UNIFORM SYSTEM OF ACCOUNTS

1. Joint Commentors

Rule 723-1-25(c), as adopted in Decision No. C97-1204, generally exempted the CLECs from the requirement to maintain their books and records according to the Uniform System of Accounts ("USOA"). However, the rule would require the use of USOA for CLECs desiring to receive support from the Colorado High Cost Fund ("CHCF"). The Joint Commentors object to this requirement. According to their application for RRR, the substantial burden to maintain books and records under USOA will discourage CLECs from applying for designation as an Eligible Telecommunications Carrier (and thereby receiving support from the CHCF). This will, in turn, result in less competition in high cost areas of the State, inasmuch as CLECs may choose not to participate in the CHCF where use of USOA is a precondition for such participation. Furthermore, the Joint Commentors argue that use of USOA is not necessary to calculate and distribute appropriate amounts of universal service support.

2. Commission Decision

The Joint Commentors raise a significant question as to whether USOA is overly burdensome and whether it is

necessary for participation in CHCF. Therefore, we will eliminate this requirement at this time. We do note that issues concerning providers' participation in the CHCF are now under consideration in Docket No. 97R-043T. That proceeding is likely to be the more appropriate forum for consideration of the advisability of requiring the use of USOA for receipt of support from the CHCF. While we will not mandate such use of USOA at this time, we may consider such a requirement in Docket No. 97R-043T.

3. Staff

Staff, in its application for RRR, raises a host of concerns relating to Rule 1-25(c) and its provision that CLECs will, as a general matter, not be required to use USOA or, alternatively, an accounting system which maps to USOA. In general, Staff suggests that USOA or mapping to USOA is necessary to ensure that the Commission is provided accurate financial information in a standardized format. For example, Staff suggests, the Commission must obtain information in a standardized form to assess the progress of competition, to examine rates of providers, to investigate issues regarding improper cross-subsidization of services, etc. Staff argues that USOA or mapping provides the requisite standard format. Consequently, Staff essentially suggests that Rule 1-25 require

CLECs to maintain their books and records according to USOA or with mapping to USOA.[4]

4. Commission Decision

We will deny Staff's request. First, we are not persuaded that GAAP-based accounting will fail to provide the Commission with accurate information for regulatory purposes. We note that Rule 723-1-25(c)(3) (attached to this decision) will require providers exempt from USOA to maintain their records in such manner as will enable the Commission to ensure compliance with regulatory standards. Moreover, our decisions in this docket point out that, for purposes of promoting competition, CLECs should not be required to comply with burdensome regulatory directives. Comment in this docket convinces us that a mandate to use USOA or mapping would be a substantial burden to the CLECs. In light of these findings, we will not impose USOA or mapping on the CLECs at this time.

IX. ORDER

A. The Commission Orders That:

1. The applications for rehearing, reargument, or reconsideration filed by Commission Staff are granted, in part, and denied, in part, consistent with the above discussion.

[4] Staff would exempt pure resellers (*i.e.* non-facilities based providers).

2. The application for rehearing, reargument, or reconsideration filed by the Competitive Local Exchange Carriers is granted, in part, and denied, in part, consistent with the above discussion.

3. The applications for rehearing, reargument, or reconsideration filed by U S WEST Communications, Inc. are denied.

4. The application for rehearing, reargument, or reconsideration filed by AT&T Communications of the Mountain States; MCI Telecommunications Company, and Sprint Communications L.P. is denied.

5. The application for rehearing, reargument, or reconsideration filed by the Colorado Office of Consumer Counsel is denied.

6. The application for rehearing, reargument, or reconsideration filed by the Colorado Telecommunications Association is denied.

7. The rules appended to this decision are hereby adopted. In addition, to the extent not modified in the present order, the rules appended to Decision No. C97-1204 are readopted. This order adopting rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of

adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

8. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the rules.

9. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within twenty days following issuance of the above-referenced opinion by the Attorney General.

10. The twenty-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.[5]

11. This Order is effective upon its Mailed Date.

[5] In the absence of extraordinary circumstances the Commission will likely deny any requests for extension of time to file new applications for rehearing, reargument, or reconsideration.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 14, 1998.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

R. BRENT ALDERFER

Commissioners

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Decision No. C98-46-E

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ERRATA NOTICE

DOCKET NO. 97R-177T

IN THE MATTER OF MODIFICATIONS TO THE PUBLIC UTILITIES COMMISSION'S RULES TO REFLECT A COMPETITIVE TELECOMMUNICATIONS ENVIRONMENT, INCLUDING THOSE CURRENTLY DESCRIBED IN 4 CODE OF COLORADO REGULATIONS, REGULATING TELECOMMUNICATIONS ACCOUNTING AND REPORTING METHODS (723-1-25), TARIFF REQUIREMENTS (723-1-40 AND 41), RELAXED REGULATION (723-24), COST ALLOCATION (723-27), E-911 (723-29), COSTING AND PRICING (723-30), PRICE REGULATION (723-38), INTERCONNECTION AND UNBUNDLING (723-39), AND ELIGIBLE TELECOMMUNICATIONS CARRIER (723-42) AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35), AND AUTHORITY TO OFFER LOCAL TELECOMMUNICATIONS SERVICES (723-35).

RULING ON APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Decision No. C98-46
Mailed Date: January 16, 1998
Adopted Date: January 14, 1998
Errata Mailed Date: February 12, 1998

I. Correct Attachment A to Decision No. C98-46, at Rule 38-3.2.2.11, concerning the Cost Allocation Manual (CAM), to exclude language no longer valid which was intended to be striken by the Commission as follows:

> 723-38-3.2.2.11 Cost Allocation Manual (CAM). The CLEC shall be exempt from the requirement to file a Cost Allocation Manual. ~~as directed in Rule 4 CCR 723-27-8 "Cost Allocation Rules for Telecommunications Service Providers and Telephone Utilities".~~ Each provider shall be required to follow the methods, standards, and guidelines of the Cost Allocation Rule to produce Colorado intrastate specific information for the Commission.

II. Commission Decision C98-46 is hereby corrected to replace Rule 38-3.2.2.11 with the following:

> 723-38-3.2.2.11 Cost Allocation Manual (CAM). The CLEC shall be exempt from the requirement to file a Cost Allocation Manual. Each provider shall be required to follow the methods, standards, and guidelines of the Cost Allocation Rule to produce Colorado intrastate specific information for the Commission.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
Director

Dated at Denver, Colorado this
12th day of February, 1998.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES REGULATING APPLICATIONS
BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS
FOR SPECIFIC FORMS OF PRICE REGULATION

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-38

RULE (4 CCR) 723-38-2. DEFINITIONS

723-38-2.8 Competitive Local Exchange Carrier (CLEC). A telecommunications provider that has been granted a Certificate of Public Convenience and Necessity ("CPCN") to provide local exchange telecommunications service in the State of Colorado on or after February 8, 1996, pursuant to the Rules Regulating the Authority to Offer Local Exchange Telecommunications Service, 4 CCR 723-35, and § 40-15-503(2)(f), C.R.S.

723-38-2.9~~16~~ Cost Support. Data, information, methods, and analysis~~,~~ conducted in accordance with, and subject to, the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, and the Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers, 4 CCR 723-27, unless the applicability of these rules is modified or waived by the Commission.

723-38-2.1017 Incumbent Telecommunications Provider or Incumbent Local Exchange Carrier [ILEC].

723-38-2.10.1 For purposes of this rule, the term incumbent local exchange carrier means, with respect to an area, the local exchange carrier that-

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and,

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Federal Communications Commission's regulations (47 C.F.R. 69.601(b)); or,

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

723-38-2.10.2 The Commission also may, by rule, provide for the treatment of a comparable local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this Rule 723-38~~section~~ if—

(A~~C~~) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B~~D~~) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and,

(C~~E~~) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this Rule~~section~~.

723-38-3.2 DEFAULT FORMS OF REGULATION.

723-38-3.2.1 Part 2 Service . In the absence of a Commission-approved specific form of price regulation, an incumbent local exchange carrier ~~(ILEC)~~ shall be regulated pursuant to a traditional rate-of-return regulation methodology.

723-38-3.2.2 Part 3 Service . In the absence of any specific Commission-approved form of price regulation, a competitive local exchange carrier ~~(CLEC)~~ shall be regulated by ~~in~~ the default form of price regulation ~~relaxed regulatory treatment~~ detailed herein.

723-38-3.2.2.1 Applicability. This default form of price ~~relaxed~~ regulation shall apply to all products offered by competitive local exchange carriers~~,~~ ~~(CLECs)~~, with the exception of the rates, terms and conditions for 911 call delivery to a Basic Emergency Service Provider. Each local exchange carrier ~~LEC~~ shall establish rates, terms and conditions governing 911 call delivery to a Basic Emergency Service Provider, as directed in Rule 4 CCR 723-29.

723-38-3.2.2.2 Filing of Initial Tariffs. In accordance with Commission rules, each CLEC shall file an initial tariff that contains the terms and conditions governing its services and products, as directed in 4 CCR 723-1-40.1. The tariff shall also contain the rates, terms, and conditions governing those services and products that are not subject to the specific form of price ~~relaxed~~ regulation established by this rule. For products and services subject to the default form of price regulation, changes to the initial tariff may be made upon 14 days notice to the Commission; additional notice to customers shall not be required unless ordered by the Commission. If the Commission does not suspend the effective date of the proposed tariff change, it shall become effective according to its terms.

723-38-3.2.2.3 Price Lists. In accordance with Commission rules, each CLEC shall file a price list that contains the current rates it charges for its services and products, as directed in 4 CCR 723-1-40.2.

723-38-3.2.2.3.1 Price List Changes. On or before 14 days prior to the desired effective date for a change in one or more prices contained in a price list, the CLEC shall file with the Commission, by transmittal letter, a price list that describes each proposed change. The CLEC may, but need not, provide notice to customers of any proposed price change.

723-38-3.2.2.3.2 Effective Date of Price Lists. Unless the Commission suspends the effective date of a new price list, or a change in an existing price list, filed by a CLEC with the Commission, the new price list or changed price list shall become effective according to its terms.

723-38-3.2.2.4 Customer Specific Contracts. A ~~[~~CLEC~~]~~ may negotiate and enter into customer-specific contracts, with terms and conditions tailored to the specific customer's needs. The ~~[~~CLEC~~]~~ shall file a notice of the contract with the Commission prior to the expiration of 14 days after the date the contract is executed. If the Commission does not set the contract for hearing, the contract is effective according to its terms.

~~723-38-3.2.2.5 Promotional Offerings. CLECs shall file promotional offerings and volume discounts in its price list. No supporting information need be filed with the Commission.~~

723-38-3.2.2.5 Promotional Offerings and Volume Discounts. A CLEC shall file promotional offerings and volume discounts in its price list. Such a filing shall

be in the form of a transmittal letter, submitted to the Commission at least 14 days prior to the proposed effective date. The transmittal letter shall be numbered sequentially as set forth in Rule 723-1-40.2, and shall otherwise comply with Rule 723-1-40.2. The price list for promotional offerings and volume discounts shall contain the terms, conditions, and prices for such offerings. No supporting cost or other information need be filed unless specifically requested by the Commission.

723-38-3.2.2.6 Right to Investigate Tariffs and Prices. The Commission may suspend and investigate any tariff, tariff rate, price, or price list filed; and the Commission may set any customer-specific contract for hearing. Nothing in this Rule shall be deemed in any way to limit or to abridge any right of the Commission.

723-38-3.2.2.7 Burden of Proof. In any proceeding before the Commission pursuant to Rule 3.2.2.6, the CLEC shall have ~~the~~ both the burden of going forward and the burden of persuasion that any price, term or condition contained in a tariff, price list, or customer-specific contract is just, reasonable, and non-discriminatory. ~~. The CLEC shall carry the same burden of proof with respect to whether or not any term or condition, whether contained in a tariff, or in a customer specific contract, is discriminatory.~~

723-38-3.2.2.8 Reporting Requirements. To enable the Commission to track the progress of competition~~,~~ and to monitor the delivery of basic and advanced services to all areas of the state, it is in the public interest for CLECS to provide the Commission with information~~,~~ in annual reports and/or other special reports.

723-38-3.2.2.8.1 Annual Reports. Annual reports, of both ILECs and CLECs, shall be

filed in accordance with Rule 723-1-25, except that only ~~with the exception of filing only~~ one copy~~, instead of three,~~ of the stockholder or certified public accountant report need be filed.

723-38-3.2.2.8.2 Further Reporting Requirements. The CLEC, as a requirement of this specific form of price regulation, shall file with the Commission periodic informational reports requested by the Commission. The CLEC and Commission staff may propose formats for such reports. The provider~~providor~~ may file the periodic informational reports under seal if appropriate. Provided, however, ~~I~~interested persons have the right to challenge the CLEC'S designation of a periodic informational report, or any portion of it, as confidential and proprietary. In addition, the Commission on its own motion, may determine that a report, or portions of a report, are not confidential and proprietary.

723-38-3.2.2.9 Form of Financial Records. CLECs ~~Local exchange carriers~~ shall use the system of accounts specified ~~outlined~~ in Rule 723-1-25(c)

~~723-38-3.2.2.10 Location of Records. Records may be maintained in any location convenient for the utility, so long as the records are both readily and accurately accessible to Staff.~~

723-38-3.2.2.10 Location of Records A CLEC shall not be required to maintain its books of account and records in the State of Colorado. However, each CLEC shall produce its books of account and records in Colorado at a place and time designated by the Commission, upon request by the Commission. Alternatively, a CLEC shall compensate the Commission for the expenses, including, but not limited to, transportation and lodging, associated with

Commission Staff's inspection of the CLEC's books and records outside the State of Colorado.

723-38-3.2.2.11 Cost Allocation Manual (CAM). The CLEC~~,~~ shall be exempt from the requirement to file a Cost Allocation Manual as directed in Rule 4 CCR 723-27-8 "Cost Allocation Rules for Telecommunications Service Providers and Telephone Utilities". Each provider shall be required to follow the methods, standards, and guidelines of the Cost Allocation Rule to produce Colorado intrastate specific information for the Commission.

723-38-3.~~4~~2.2.12 Providers Previously Granted Price or Relaxed Regulation. Any provider~~,~~ previously granted a specific form of price regulation or relaxed regulatory treatment ~~regulation~~ by the Commission~~,~~ may elect to have the provisions of ~~this~~ Rule 38.3.2.2 supersede the provisions of the provider's form of price regulation or relaxed regulatory treatment~~regulation~~. The provider shall make that election by filing a notice with the Commission. That notice, signed by a duly authorized representative of the provider, ~~[CLEC],~~ shall be filed in the docket granting the provider the specific ~~a~~ form of price regulation or relaxed regulatory treatment ~~regulation~~ which is to be superseded by the provisions of R~~r~~ule ~~723-~~38-3.2.2, and shall state that the provider is electing the default form of price ~~relaxed~~ regulation specified in Rule ~~723-~~38-3.2.2.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES REGULATING APPLICATIONS

BY LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDERS

FOR SPECIFIC FORMS OF PRICE REGULATION

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-38

RULE (4 CCR) 723-38-2. DEFINITIONS

723-38-3.2.2.11 Cost Allocation Manual (CAM). The CLEC shall be exempt from the requirement to file a Cost Allocation Manual. ~~as directed in Rule 4 CCR 723-27-8 "Cost Allocation Rules for Telecommunications Service Providers and Telephone Utilities".~~ Each provider shall be required to follow the methods, standards, and guidelines of the Cost Allocation Rule to produce Colorado intrastate specific information for the Commission.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES REGULATING

EMERGING COMPETITIVE TELECOMMUNICATION SERVICES

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-24

723-24-5.3.9.1 Revision of Terms of Relaxed Regulation. A provider that has previously implemented relaxed regulation, granted under these rules, may elect to modify the terms of that relaxed regulation. In that event, the provider may choose between the relaxed regulation ordered by the Commission or the default price ~~relaxed~~ regulation for Part 3 local exchanges services as detailed in 4 CCR 723-38-3. The provider may elect to have those rule provisions supersede the provisions of the Commission order granting the provider's form of ~~price or~~ relaxed regulation. The provider shall make that election by filing a notice with the Commission. That notice, signed by a duly authorized representative of the provider, shall be filed in the docket granting the provider the ~~a form of price or~~ relaxed regulation, shall identify the previous Commission order granting the ~~price or~~ relaxed regulation which is to be superseded by the provisions of 4 CCR ~~Rule~~ 723-38-3.2.2, and shall state that the provider is electing the form of price ~~relaxed~~ regulation specified in 4 CCR ~~Rule~~ 723-38-3.2.2.

THE

THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-1

RULE (4 CCR) 723-1-40. TARIFFS AND PRICE LISTS.

723-1-40.1.2 Advice Letters. An advice letter, numbered serially as the Commission may direct, shall accompany each tariff filing with the Commission, and shall be as in Form U.

723-1-40.1.3 Powers of Attorney. A fixed utility may appoint an attorney or agent to issue, file, amend, or adopt a tariff, by filing a power of attorney with the Commission in the form set forth as Form H. Any fixed utility appointing an attorney or agent for the above is responsible for the acts of its attorney or agent.

723-1-40.1.4 Number of Copies Unless otherwise ordered by the Commission, an original and three copies of each tariff sheet, ~~shall be filed with the Commission, and~~ an original and 10 copies of each advice letter and ~~along with~~ three copies of supporting information, if required, shall be filed with the Commission. The special filing procedures specified in Rule 78 shall be followed when applicable. However, where a filing is made under a specific Commission Decision, an original and three copies of each tariff sheet and each advice letter shall be filed. One copy shall be stamped filed and returned to the utility. An original and one copy of a Power of Attorney, if any, shall be filed.

723-1-40.1.5 Supporting Information to be Submitted with Advice Letters. The supporting information submitted by a fixed utility to the Commission must contain the information that the utility asserts will support a conclusion that the tariffs filed with the Advice Letter are just and reasonable and in accordance with §40-3-101, C.R.S.

723-1-40.1.6 Exemption Providers of basic local exchange telecommunications service who have been granted a specific form of price regulation or relaxed regulatory~~ion~~ treatment or are providing service pursuant to the ~~D~~default form of price regulation in ~~Regulatory Scheme of~~ Rule 723-38-3.2.2 ~~of the Rules Regulating Applications by Local Exchange Telecommunications Providers for Specific Forms of Price Regulation, 4 CCR 723-38,~~ may place, for those services and products identified in said Rule, all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced in a Price List, pursuant to Rule 40.2.

723-1-40.2 Price Lists - Transmittal Letters.

723-1-40.2.1 Applicability. This Rule 40.2 shall apply ~~be applicable~~ to providers of ~~basic~~ local exchange telecommunications service who have been granted a specific form of price regulation or relaxed regulatory ~~ion~~ treatment or are providing service pursuant to the d~~D~~efault form of price regulation established in Rule 723-38-3.2.2. ~~Regulatory Scheme of Rule 3.2.2 of the Rules Regulating Applications by Local Exchange Telecommunications Providers for Specific Forms of Price Regulation, 4 CCR 723-38 ("Provider").~~

723-1-40.2.2 Price List. Each Provider shall transmit to the Commission price lists showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced. Price Lists shall be as in Form T.

The initial price list shall be filed upon 30 days notice to the Commission. Changes to a price list shall be filed upon 14 days notice to the Commission. In calculating the effective date of a price list, the date filed with the Commission shall not be included. Additionally, the 30th or 14th day must expire prior to the effective date of the price list.

723-1-40.2.3 Transmittal Letters. A transmittal letter, numbered serially as the Commission may direct, shall accompany each price list filing with the Commission, and shall be as in Form U.

723-1-40.2.3.1 Notification of (a) promotional offering and (b) volume discounts shall be submitted to the Commission as a serially numbered transmittal letter, upon 14 days notice.

723-1-40.2.4 Number of Copies. Unless otherwise ordered by the Commission, an original and three copies of each transmittal letter, price list sheet, and any explanatory or supporting material shall be filed with the Commission. One copy shall be stamped filed and returned to the utility.

THE

THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-1

RULE (4 CCR) 723-1-41. TARIFFS-APPLICATIONS TO CHANGE TARIFFS BY FIXED UTILITIES - HEARING AND SUSPENSION-NOTICE.

723-1-41.1 Applicability. This Rule applies to all fixed utilities as defined in Rule 4(b)(5).

723-1-41.2 Definitions:

723-1-41.2.1 Tariff means a publication containing an index of articles, with schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service.

723-1-41.2.2 Rate means any rate, fare, toll, rental or charge.

723-1-41.3 Procedure to Change Tariffs upon 30-Days' or More Notice. Any fixed utility proposing to change any tariff shall give notice in accordance with section 40-3-104, C.R.S. In calculating the effective date of a tariff change on 30 days notice, the date filed with the Commission shall not be included. Additionally, the 30th day must expire prior to the effective date of the tariff.

723-1-41.4 Procedure to Introduce a New Service Upon 30-Days' or More Notice. Any fixed utility proposing to introduce any new tariffed service shall provide no less than 30-days' notice to the Commission and to the public by filing

with the Commission, and keeping open for public inspection at each business office of the utility, the new tariff. Said tariff shall plainly state the nature, terms, conditions, rates, and regulations regarding the new service to be introduced and the proposed effective date. The Commission may, by order, require the utility to give additional notice of the proposed new service by publication or mailing.

723-1-41.5 Procedure to Change Tariffs Upon Less than 30 Days Notice.

723-1-41.5.1 Where a fixed utility has made formal application, the Commission, for good cause shown, under § 40-3-104(2), C.R.S., may grant permission for a change in a tariff to become effective without formal oral hearing and on less than 30-days' notice. ~~But n~~No change shall become effective unless the Commission orders a change to be made, the time when it shall take effect, and the manner in which it shall be filed and published.

723-1-41.5.2 A fixed utility, at the time of filing its application to change a tariff upon less than 30 days notice, shall submit the following data in the application or in exhibits:

723-1-41.5.2.1 Details of the change which the utility proposes to put into effect, with a copy of the proposed tariff.

723-1-41.5.2.2 The tariff which the utility proposes to change, or an adequate summary.

723-1-41.5.2.3 The circumstances and conditions relied upon to justify the change becoming effective on less than 30-days' notice.

723-1-41.5.2.4 Any prior Commission action, in any proceeding, pertaining to the present or proposed tariff.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

COST ALLOCATION RULES FOR TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-27

RULE (4 CCR) 723-27-1. APPLICABILITY AND PURPOSE FOR RULES.

723-27-1.4 The Competitive Local Exchange Carriers (CLECs) are exempt from Rules 4.1, 6.1 through 6.5, Rules 7.2 through 7.6, and, under certain circumstances, Rule 5.1.

4 CCR 723-27-PART 1

RULES UNDER § 40-15-108, C.R.S. PRESCRIBING COST-ALLOCATION METHODS FOR SEGREGATION OF INVESTMENTS AND EXPENSES OF TELECOMMUNICATIONS PROVIDERS

RULE (4 CCR) 723-27-2. DEFINITIONS.

723-27-2.9 Competitive Local Exchange Carrier ("CLEC") means a telecommunications provider that applied for and received a certificate of public convenience and necessity to provide local exchange services in the State of Colorado after February 8, 1996, pursuant to *Rules Regulating the Authority to Offer Local Exchange Telecommunications Service, 4 CCR 723-35, and § 40-15-503(2)(f), C.R.S.*

RULE (4 CCR) 723-27-3. APPLICABILITY TO SPECIFIC TYPES OF SERVICES.

723-27-3.1 Each provider must file with the Commission, a list of each service that it offers, providing a description of each service and the classification of each service as a regulated or deregulated telecommunications service as those terms are used in Title 40, Article 15, C.R.S., and as determined by the Commission. This list shall be updated as changes occur.

RULE (4 CCR) 723-27-4. UNIFORM SYSTEM OF ACCOUNTS ("USOA").

723-27-4.2 In the event a provider, other than a CLEC, is authorized by the FCC to maintain its books of account and records in a manner other than under the USOA, it may seek a waiver from Rule 4.1 allowing it to maintain its books of account and records as permitted by the FCC. However, the provider requesting that waiver must implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission.

723-27-4.3 Providers who are already authorized by this Commission prior to April 30, 1990, to maintain their books of account and records in a manner other than the USOA need not seek a waiver from Rule 4.1 and are authorized to continue maintaining their books of account and records in the manner previously authorized by this Commission.

723-27-4.4 CLECs are automatically exempt from Rule 4.1 pursuant to 4 CCR 723-1-25(c)(1). However, a CLEC must implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission.

RULE (4 CCR) 723-27-5 SEPARATION OF COSTS BETWEEN THE STATE AND INTERSTATE JURISDICTIONS.

723-27-5.1 Any provider which provides facilities or equipment for use by users or providers of interstate telecommunications services must apply federal cost allocation and separations principles as described in Part 64 (The Cost Allocation Manual) and Part 36 (The Separations Manual).

723-27-5.2 A provider, other~~provider~~ than a CLEC, which is not required by the FCC to apply the Part 36 rules may apply for a waiver of Rule 5.1 as it relates to Part 36. However, the provider requesting that waiver must implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission.

723-27-5.3 If a CLEC has been given an exemption by the FCC from either Part 64 or Part 36, it is automatically exempt from that portion of Rule 5.1 as well. However, the CLEC must implement a suitable alternate method of producing Colorado intrastate-specific information to the Commission.

RULE (4 CCR) 723-27-7. COST-SEGREGATION STANDARDS AND GUIDELINES - SPECIFIC.

723-27-7.1 All investments and expenses attributable to the interstate jurisdiction are to be allocated using applicable federal rules. Each provider must be able to demonstrate that these federal procedures have been properly applied.

RULE (4 CCR) 723-27-9. INFORMATION REQUIREMENTS.

Each provider shall provide the following information:

723-27-9.4 A list of all services which the provider accords de minimis accounting treatment and treats as

de minimis services and the justification for treating each as de minimis.

RULE (4 CCR) 723-27-12. PROPRIETARY INFORMATION.

723-27-12.2 The detailed specifications, documentation, and supporting information implementing these rules must be made available to the Commission and its staff and may be given proprietary status if requested.

RULE (4 CCR) 723-27-13. AFFILIATE TRANSACTIONS - LOCAL EXCHANGE PROVIDERS.

723-27-13.1 Transactions with affiliates involving asset transfers or provision of services into or out of the regulated accounts shall be recorded by the provider in its regulated accounts as provided in Rules ~~paragraphs~~ 13.2 through 13.5. ~~of this Rule.~~

723-27-13.2 Transfer of Assets.

723-27-13.2.1 Assets sold or transferred between a provider and its affiliate pursuant to a tariff shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a provider and its affiliate that qualify for prevailing price valuation, as defined in Rule ~~paragraph~~ 13.4, ~~of this rule,~~ shall be recorded at the prevailing price.

723-27-13.2.2 For all other assets sold by or transferred from a provider to its affiliate, the assets shall be recorded at either ~~the higher of~~ fair market value or ~~and~~ net book cost, whichever is higher. For all other assets purchased by or transferred to a provider from its affiliate, the assets shall be recorded at either ~~the lower of~~ fair

market value or ~~and~~ net book cost, whichever is lower. For purposes of this section providers are required to make a good faith determination of fair market value.

723-27-13.3 Valuation of Services Provided to or by an Affiliate.

723-27-13.3.1 Services provided between a provider and its affiliate pursuant to a tariff shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a provider and its affiliate pursuant to publicly-filed agreements submitted to the Commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a provider and its affiliate that qualify for prevailing price valuation, as defined in Rule ~~paragraph~~ 13.4, shall be recorded at the prevailing price.

723-27-13.3.2 For all other services provided by a provider to its affiliate, the services shall be recorded at either ~~the higher of~~ fair market value or ~~and~~ fully distributed cost, whichever~~cost~~ is higher. For all other services received by a provider from its affiliate, the service shall be recorded at either ~~the lower of~~ fair market value or ~~and~~ fully distributed cost, whichever is lower, except that services received by a provider from an ~~its~~ affiliate which ~~that~~ exists solely to provide services to members of the provider's corporate family shall be recorded at fully distributed cost. For purposes of this section providers are required to make a good faith determination of fair market value.

723-27-13.5 Income taxes shall be allocated among the regulated activities of the provider, its nonregulated divisions, and members of an affiliate group. Under circumstances in which income taxes are determined on a consolidated basis by the provider and other members of an affiliated group, the income tax expense to be recorded by the provider shall be the same as would result if determined for the provider separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the provider shall be recorded by the provider during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

723-27-13.6 All providers, except small LECs and interexchange providers, must provide to the Commission a statement identifying affiliates that engage in transactions with the provider. They shall describe the nature, terms, and frequency of those transactions.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES OF PRACTICE AND PROCEDURE

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-1

RULE (4 CCR) 723-1-25. ANNUAL REPORTS - UNIFORM SYSTEM OF ACCOUNTS.

PRESERVATION OF RECORDS

723-1-25(a) Regulated Entities - General Rules.

723-1-25(a)(1) Each entity operating in Colorado over which the Commission has jurisdiction except transportation utilities regulated pursuant to title 40, articles 10, 11, 13, and 16, shall file with the Commission, on or before April 30 of each year, an annual report for the preceding calendar year. The annual report shall be submitted on a prescribed form(s) and/or supplement(s) supplied by the Commission; shall be properly filled out; and shall be verified and signed by a proprietor, an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the entity submitting the report. If the entity is granted an extension of time to file its annual report, it is still required to provide to the Commission, on or before April 30, its total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year. The entity also shall file additional reports as required by the Commission. If the entity publishes an annual report or an annual statistical

report to stockholders, other security holders or members, or receives an annual certified public accountant's report of its business, the utility also shall file *one copy* of such reports with the Commission within 30 days after publication or receipt of such report.

723-1-25(c) Fixed Utilities - Telecommunications Service Providers - System of Accounts - Preservation of Records.

723-1-25(c)(1) Except as specifically provided by Commission rule, eEach telecommunications service provider shall maintain its books of accounts and records using Generally Accepted Accounting Principles (GAAP).~~, in lieu of the Uniform System of Accounts (USOA), with the following exceptions:~~

723-1-25(c)(2)~~(1)(a) Utilities who are determined to be an i~~Incumbent telecommunications service providers as defined in 4 CCR 723-39-2.10; shall use the Uniform System of Accounts (USOA) prescribed for Common Carriers, Classes A and B, and Class C, by the Federal Communications (FCC) or its successor regulatory agency.

~~723-1-25(c)(1)(b) Utilities who wish to file for Colorado High Cost Funding; or,~~

~~723-1-25(c)(1)(c) Utilities who must file reports or studies where cross subsidization or separations for Colorado specific data is needed, such as utilities under rate of return regulation.~~

~~723-1-25(c)(2) Utilities who fit an exception to using GAAP as addressed in Rule 723-1-25(c)(1) above, have the option of using the following:~~

~~723-1-25(c)(2)(a) Uniform System of Accounts (USOA) prescribed for Common Carriers, Classes A and~~

~~B, and Class C, by the Federal Communications Commission (FCC) or its successor regulatory agency.~~

~~723-1-25(c)(2)(b) Accounting that maps to each account in the USOA. The mapping shall produce data required by the commission governing the provider's operations in Colorado. For purposes of financial reporting, the provider must separate Colorado jurisdictional intrastate investments, expenses, and revenue from other investments, expenses, and revenues.~~

723-1-25(c)(3) For all providers exempt from USOA requirements, the books-of-accounts and records system used shall be capable of generating Colorado intrastate-specific information upon request as shall allow for review and determination by the Commission of compliance with standards relating to cross-subsidization and separations, or other standards set forth in Commission order, rule, or applicable statutes.

THE

PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

RULES ON

INTERCONNECTION AND UNBUNDLING

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-39

723-39-3.3 Telecommunications providers shall provide for the interconnection with the facilities and equipment of any requesting telecommunications provider:

723-39-3.3.1 for the transmission and routing of telephone exchange service and exchange access;

723-39-3.3.2 at any technically feasible point within the provider's network;

723-39-3.3.3 that is at least equal in quality to that provided by the provider to itself or to any subsidiary, affiliate, or any other party to which the provider interconnects; and,

723-39-3.3.4 (1) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory; (2) in accordance with the rates, terms, and conditions established by the provider pursuant to contract, arbitration, ~~or~~ tariff or price list, if applicable; and, (3) for incumbent telecommunications providers only, consistent with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers (4 CCR 723-30).

RULE (4 CCR) 723-39-7. PROCESS AND IMPUTATION.

723-39-7.2 Termination of Local Traffic.

723-39-7.2.1 Except as provided in Rule 9 below, pursuant to Rule 4.8, each telecommunications provider shall, on the first day after the time period identified in Rule 4.8, file with the Commission tariffs effective on thirty days notice or, if applicable, price lists, that establish rates, terms, and conditions for the termination of local exchange traffic.

723-39-7.2.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the period identified in Rule 4.8 concludes shall file tariffs effective on thirty days notice or, if applicable, price lists, with the Commission establishing rates, terms, and conditions for the termination of local exchange traffic.