

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 723-35¹, and § 40-15-503(2)(f), C.R.S.

723-38-2.9¹⁶ Cost Support. Data, information, methods, and analysis⁷ 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~~) 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~~) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and,

(~~C~~) 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~~provider may file the periodic
informational reports under seal if appropriate. Provided,
however, 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~~7~~ 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.

723-38-3.42.2.12 Providers Previously
Granted Price or Relaxed Regulation. Any provider~~7~~ previously granted a specific form of price regulation or relaxed regulatory treatment ~~regulation~~ by the Commission~~7~~ 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~~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~~.