

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF PROPOSED RULES REGARDING)
LOCAL NUMBER PORTABILITY)

DOCKET NO. 95R-554T

DECISION ADOPTING RULES

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Mailed Date: February 8, 1996
Adopted Date: February 7, 1996
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I. BY THE COMMISSION:

Background and procedural matters

1. This matter comes before the Commission to consider adoption of Rules on Local Number Portability and Administration, in accordance with the requirements of House Bill 95-1335 ("HB 1335"), codified at 40-15-501 *et seq.*, C.R.S.

2. In enacting HB 1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. See 40-15-501, C.R.S. Consistent with that policy goal, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace the existing regulatory framework. Specifically, the Commission must:

- a. establish standards for basic telephone service;
- b. establish mechanisms to advance the goal of universal service, *i.e.*, provision of basic telephone service to all at just and reasonable rates;
- c. consider the necessity for specific mechanisms to advance goals relating to universal access to advanced telecommunications services; and
- d. resolve other issues relating to implementation of

competition in the local exchange market.

3. The Commission was also specifically charged with the responsibility of adopting rules governing cost-based number portability and the competitively neutral administration of telephone numbering plans in the context of this competitive market. See 40-15-503(2)(b)(II), C.R.S.

4. The working group established pursuant to 40-15-503 and 504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335, in the form of the Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated November 30, 1995, (the "Preliminary Report"), and the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995, (the "Supplemental Report").

5. As part of the Preliminary Report, the working group transmitted to the Commission proposed Rules on Local Number Portability and Administration. Those proposed rules were attached to our Notice of Proposed Rulemaking in this docket, Decision No. C95-1171, dated November 29, 1995. The intent of the proposed rules is to allow telecommunications customers to choose between authorized providers of basic local exchange service without changing their telephone numbers.

6. In accordance with our Notice of Proposed Rulemaking, hearing on these proposed rules was held on January 11, 1996. A number of parties submitted written and oral comments for our consideration: TCI and Sprint; University of Colorado and Colorado State University ("Universities"); AT&T; MFS Intelenet of Colorado; ICG Access Services and Teleport Denver; US WEST Communications, Inc. ("USWC"); Colorado Independent Telephone Association;

Staff of the Commission ("Staff"); SSC Communications Corporation; Colorado Chapter of the National Emergency Number Association ("NENA Colorado"); AT&T Wireless Services; and Office of Consumer Counsel ("OCC").

7. In addition to the comments filed with the Commission and the comments received at hearing, the Commission took administrative notice of the Preliminary Report, the Supplemental Report and the House Bill 1335 Public Outreach Meetings Report filed by Bruce N. Smith, all filed in Docket No. 95M-560T, the docket established by the Commission as the repository for these documents.

II. DISCUSSION

A. The rules proposed by the working group were wholly "consensus" rules. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we give "substantial deference" to the proposals submitted by the working group in regard to issues on which the working group reports it has reached consensus on or before January 1, 1996. Thus, we are required to defer substantially to the working group pursuant to statute in those areas of the proposed rules where the working group reached and reported consensus prior to January 1, 1996. We are of the opinion that we may make non-substantive changes to the proposed consensus rules where we deem it necessary, and that we may depart from the proposed consensus where we feel that it is necessary in the public interest.

B. Proposal of the Universities. The Universities proposed a new option for Rule 1: Applicability. The University option would exclude from the application of the proposed rules institutions of higher education defined

in 24-113-102(2) and 104, C.R.S., who own or lease and operate telecommunications systems for the purpose of providing intercommunications within those systems and local exchange access services to administration, faculty, staff, government and/or university-affiliated non-profit corporation employees at their work locations, and to students resident in institution-affiliated housing. The Universities rely on this Commission's Decision No. R84-428 in support of their position. In that decision, the Commission determined that the CSU telephone system did not constitute public utility service.¹

C. In the Discussion section of Decision No. R84-428, the ALJ stated: CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately.

The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service.

The Commission has ... in Decision No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

Decision No. R84-428 at 5.

D. Clearly, with the advent of HB 1335, the local exchange

¹ Decision No. R84-428 is expressly limited in its applicability to the telephone system of described in that decision.

telecommunications service market in Colorado has changed radically. The definition of resale that the Commission adopted in 1982 will probably be changed in the course of our rulemaking proceedings in Docket No. 95R-557T, *In the Matter of Proposed Rules Regarding Implementation of 40-15-101, et seq. -- Resale of Regulated Telecommunications Services*. Further, HB 1335 speaks in terms of "multiple providers of local exchange service"², and clearly contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort³. The obligation of a local exchange service provider to serve all members of the public indiscriminately, and thus its status as a public utility as defined in Decision No. R84-428, has been affected by the enactment of HB 1335.

E. For the purpose of this rulemaking proceeding, we reject the argument of the Universities that institutions of higher learning should be exempted from the application of these rules. In light of the evolving responsibilities of local exchange service providers under HB 1335⁴, of the broad statutory definition of "public utility" found at 40-1-103, C.R.S.⁵, and of the inclusive definition of "person" found at 40-1-102(5), C.R.S.⁶,

² 40-15-501(3)(c), C.R.S.

³ 40-15-502(6), C.R.S.

⁴ "Wise public policy relating to the telecommunications industry and the other crucial services provides is in the interest of Colorado and its citizens[.]" 40-15-501(2)(a), C.R.S.

A provider that offers basic local exchange service through use of its own facilities or on a non-discriminatory basis may be qualified as a provider of last resort, and resale shall be made available on a non-discriminatory basis. 40-15-502(5)(b), C.R.S.

⁵ A public utility includes any person operating for the purpose of supplying the public utility services, or person declared by law to be affected with a public interest.

⁶ "Person" means any individual, firm, partnership, corporation, company, association, joint venture, or other legal entity.

we find that the record in this proceeding does not support the adoption of the Universities' proposed language. We also find that the Universities' proposed language may create an exemption from the application of these rules that is overly broad. We believe that the issue raised by the Universities is more properly considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed.

F. Comments of other parties. None of the other parties offering comment has interposed substantive objections to the rules proposed. Indeed, all parties have supported the consensus proposal.

G. USWC and MCI raise the issue of "ownership" of telephone numbers in the context of local number portability. Rule 3 of the attached rules does not, in and of itself, create any ownership interest in a telephone number. The Commission takes no position at this time as to the resolution of the issue of who owns a particular telephone number.

H. These rules set forth regulatory and technical mechanisms to establish local number portability and provide for the administration of telephone numbering plans, telephone number assignment, and a number portability database network architecture. However, we recognize that at present only an interim solution is ready for implementation through the use of remote call forwarding and direct inward dialing. The Local Number Portability Task Force, established pursuant to Commission Decision No. C95-785, will be working on implementation in Colorado of a permanent database solution. These rules allow for the use of this interim solution until such time as a permanent database solution is available.

I. These rules are consensus proposals. Nothing in the record of this

proceeding justifies substantive modifications to the proposed rules.

J. Cost Recovery and Pricing.

Some parties argue that the Commission should address cost recovery and pricing in this proceeding. We disagree. We have previously promulgated Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30. As has been our practice in the past, we will apply those rules on a case-by-case basis in considering tariff filings of providers.

K. Adoption of Rules.

In general, we are convinced that local number portability is essential to the achievement of the goals announced in HB 1335. We determine that the rules adopted here will advance the goal of implementing competition in the local exchange service market in Colorado. The rules attached as Attachment A are appropriate for adoption.

III. **ORDER**

A. **The Commission Orders That:**

1. The rules set forth in Attachment A are adopted.

a. This Order adopting the attached rules shall become final 20 days following the Mailed Date of this Decision in the absence of 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 denying any such application, in the absence of further order of the Commission.

b. Within 20 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.

c. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

d. Pursuant to Rule 5.2 of the attached rules, on the first day after the effective date of these rules, US WEST Communications, Inc. shall file tariffs with the Commission providing for interim local number portability through the use of Remote Call Forwarding and Direct Inward Dialing.

e. The 20-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 effective date of this Order.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING February 7, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners