

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES )  
PRESCRIBING THE PROVISION OF EMERGENCY )  
REPORTING SERVICES FOR EMERGENCY )  
TELECOMMUNICATIONS SERVICE PROVIDERS AND )  
TELEPHONE UTILITIES, 4 CCR 723-29. )  
)

DOCKET NO. 95R-553T

DECISION ADOPTING RULES

- - - - -  
Mailed Date: February 8, 1996  
Adopted Date: February 7, 1996  
- - - - -

I. **BY THE COMMISSION:**

A. **Background and procedural matters**

1. This matter comes before the Commission to consider adoption of amendments to the Rules Prescribing the Provision of Emergency Reporting Services for Emergency Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-29, 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 access to emergency 911 service in the context of this competitive market. See 40-15-503(2)(b)(VI), 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 Prescribing the Provision of Emergency Reporting Services for Emergency Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-29. Those proposed rules were attached to our Notice of Proposed Rulemaking in this docket, Decision No. C95-1170, dated November 29, 1995.

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: Colorado Municipal League; TCI and Sprint; University of Colorado and Colorado State University

("Universities"); AT&T; ICG Access Services and Teleport Denver; Phil Davey, Adams County Communications Center ("Adcom"); US WEST Communications, Inc. ("USWC"); Colorado Independent Telephone Association; Staff of the Commission ("Staff"); Colorado Chapter of the National Emergency Number Association ("NENA Colorado"); AT&T Wireless Services; Office of Consumer Counsel ("OCC"); and Sandy Wicklund.

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 not 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 only 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. Rules 1 through 10.

1. 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.<sup>1</sup>

a. 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

---

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

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.

b. Clearly, with the advent of HB 1335, the local exchange 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"<sup>2</sup>, and clearly contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort<sup>3</sup>. 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.

c. 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 1335<sup>4</sup>, of the

<sup>2</sup> 40-15-501(3)(c), C.R.S.

<sup>3</sup> 40-15-502(6), C.R.S.

<sup>4</sup> "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.

broad statutory definition of "public utility" found at 40-1-103, C.R.S.<sup>5</sup>, and of the inclusive definition of "person" found at 40-1-102(5), C.R.S.<sup>6</sup>, 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.

2. Comments of NENA Colorado. NENA Colorado requests that the Commission adopt the hyphenated "9-1-1" in its rules, instead of "911." Adcom states that the hyphenated version leads to better consumer information and less consumer confusion in emergency situations. We agree.

3. Comments of CITA. CITA expressed concern that Rule 3.1 should only require the "availability" of basic emergency service within each local exchange area, rather than the "provision" of such service. Since the local government entities which would be purchasing such service are not required by law to do so, we agree that the term "availability" is appropriate. Similarly, Rule 5.2 should be modified to require the certified BESP to "arrange for" service, rather than "provide the necessary service."

4. Comments of ICG and Teleport Denver Ltd. ICG and Teleport Denver argue that the Commission need not make a finding of inadequacy of

---

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

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

service by a current provider of emergency service in order for another provider to be certificated. In Rule 13, the Commission charges the Advisory Task Force to be created in accordance with these rules with the duty, among others, of reporting to the Commission on the issue of how or whether multiple providers of 9-1-1 service should be allowed. After the Advisory Task Force reports to the Commission, the Commission will determine whether multiple providers of 9-1-1 service should be certificated. Rule 3 has been rewritten to reflect that prior to the report of the Advisory Task Force, the Commission will consider each application for certification on a case-by-case basis.

a. ICG and Teleport Denver also argue that the Commission should ascertain whether an ALI database provider has sufficient facilities and should ensure compliance with Commission rules. However, no authority has been cited for the imposition of regulation on ALI database providers by this Commission. We are unaware of any authority which would enable this Commission to regulate these entities. Therefore, we reject ICG's and Teleport Denver's argument.

b. With respect to Rule 8, ICG and Teleport Denver object to the imposition on resellers of the responsibility to ensure that the underlying facilities-based carrier's facilities are sufficient to transport emergency calls. However, we agree with NENA that the importance of 9-1-1 service to the public health, safety and welfare outweighs the cost and the potential for adverse impacts on competition. We adopt the rule as proposed.

c. We also reject their argument concerning the local exchange carrier's obligation not to interconnect with a coin(less) phone provider unless the coin(less) phone provider meets certain obligations. Rule

9 does not impose impermissible indirect regulation on the coin(less) phone providers, and is not unreasonably burdensome on the local exchange carrier.

C. Rule 11.

Rule 11 was a consensus rule, except with respect to certain time limits proposed in Rule 11.5 and 11.8.

D. Rule 11.5 deals with implementation of a contingency plan in the event of an outage or failure of 9-1-1 service. In Option 1, if a 9-1-1 failure or outage exceeds or is expected to exceed fifteen minutes from the time the basic emergency service provider becomes aware of the outage, the basic emergency service provider must implement the contingency plan or take other action to implement a temporary solution until restoration of 9-1-1 service. Option 2 allows a thirty minute time period prior to implementation of a temporary solution. Only CITA and USWC supported Option 2.

Because of the need to protect public safety, and because the fifteen minute option does not impose any additional burden on the emergency service provider to correct the outage or failure in a shorter time frame, but simply to implement a contingency plan, we believe that fifteen minutes is the appropriate time period. We adopt Option 1.

E. Rule 11.8 requires a basic emergency service provider to report to the Commission verbally concerning any 9-1-1 outage or failure that exceeds a certain time period. Option 1 sets that time period at fifteen minutes; Option 2 sets that time period at one hour. We agree with the parties supporting Option 1 that reporting only outages exceeding one hour is inadequate for the monitoring of quality of 9-1-1 service and for protection

of the public safety. However, we intend to issue a policy statement in accordance with this rule that will provide the emergency service providers with a 24 hour a day contact at the Commission for such verbal reporting. The Commission will then be in a position to fulfill a public information function, to ensure that there is redundancy in notifying PSAPs and governing bodies of outages and failures in 9-1-1 service, and to monitor compliance with Rule 11.5. The attached Rule 11.8 accomplishes these objectives.

F. Rules 12 through 16.

Rules 12 through 15 are consensus proposals. Nothing in the record of this proceeding supports substantive modifications to proposed Rules 12 through 15.

G. Rule 16 has been added to comply with the requirements of the Administrative Procedure Act, 24-4-103(12.5), C.R.S., for incorporation by reference of the NENA Data Standards identified in Rule 14.

H. Cost Recovery and State-wide Averaging.

ICG and Teleport Denver argue that the Commission should address cost recovery and state-wide averaging 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.

I. Adoption of Rules.

In general, we are convinced that 911 service is essential to the public health, safety, and welfare. We determine that the amendments adopted here will advance the goal of continued access to emergency 9-1-1 service while

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. 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