

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES)
REGARDING REVIEW AND APPROVAL OF)
INTERCONNECTION AGREEMENTS NEGOTIATED BY TELECOMMUNICATIONS PROVIDERS WITHIN THE STATE OF COLORADO.)

DOCKET NO. 96R-172T

NOTICE OF PROPOSED RULEMAKING

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Mailed Date: April 25, 1996
Adopted Date: April 24, 1996
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I. BY THE COMMISSION:

Statement

1. The Colorado Public Utilities Commission hereby gives notice of proposed rulemaking regarding review and approval of interconnection agreements negotiated by telecommunications providers within the State of Colorado. The intent of the proposed rules is to prescribe the information to be submitted to the Commission by telecommunications providers when seeking approval of negotiated interconnection agreements, and to establish procedures to be used by the Commission in reviewing such agreements. A copy of the proposed rules is attached to this notice of proposed rulemaking. The statutory authority for the proposed rules is found at 40-2-108 and 40-3-102, C.R.S. In addition, the proposed rules are intended to comply with federal directives set forth in 47 U.S.C. 252.¹

¹ In Decision Nos. C96-358 and C96-413, we adopted emergency rules relating to the review and approval of interconnection agreements negotiated by telecommunications providers within the state or to and after February 8, 1996. The instant proceeding is intended to lead to adoption of permanent rules to replace the emergency rules approved in those decisions.

2. The Commission will conduct a hearing before an administrative law judge on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the Commission deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before hearing, the Commission requests that initial comments be filed 20 days prior to the hearing date; reply comments should be submitted 10 days prior to the hearing scheduled herein. The Commission will consider all submissions.

3. We note that the confidentiality provisions in the proposed rules represent a significant change in the manner in which the Commission treats claims of confidentiality in proceedings before us. For example, in current practice, the Commission does not rule upon claims that particular documents are confidential until a challenge to such a claim is made. We specifically request comment upon the proposed confidentiality provisions.

4. In addition, we specifically request comment upon the authority of the Commission to review and approve an interconnection agreement without conducting a hearing, in light of the provisions of State statutes *e.g.*, 40-6-109, C.R.S.).

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the May 10, 1996 edition of *The Colorado Register*. At the time of filing with the Secretary of State, this notice shall also be filed with the Office of Regulatory Reform.

2. Hearing on the proposed rules and related matters shall be held before an administrative law judge of the Commission as follows:

DATE: June 4, 1996

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

3. Interested persons may file written comments in this matter before hearing. The Commission requests that initial prefiled comments be submitted 20 days before the scheduled hearing. Reply comments should be submitted 10 days prior to hearing. All submissions, whether oral or written, will be considered by the Commission.

4. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING ON April 24, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

____ Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
RESIGNED EFFECTIVE APRIL 5, 1996.

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**RULES ESTABLISHING PROCEDURES RELATING TO
THE SUBMISSION FOR APPROVAL
OF INTERCONNECTION AGREEMENTS WITHIN COLORADO
BY TELECOMMUNICATIONS CARRIERS**

4 CCR 723-XX

BASIS, PURPOSE, AND STATUTORY AUTHORITY

These rules are issued under the general authority of 40-2-108 and 40-3-102 C.R.S., and are consistent with 40-15-503 C.R.S. and 47 U.S.C. 252(a)(1). They establish the process to be used and the information required by the Commission to review an interconnection agreement submitted to the Commission for approval in accordance with 47 U.S.C. 252(a)(1), requiring that any interconnection agreement negotiated between telecommunications carriers pursuant to the Telecommunications Act of 1996, [February 8, 1996] shall be submitted to the State commission for consideration under 47 U.S.C. 252(e). The Commission is to act either to approve or to reject: a) a negotiated interconnection agreement, with written findings as to any deficiencies, within ninety (90) days after receipt of the submittal, and b) an arbitrated agreement within thirty (30) days after receipt of the submittal.

RULE 1. APPLICABILITY. Pursuant to 47 U.S.C. 252(a)(1), these rules apply to all interconnection agreements between and among telecommunications carriers negotiated before or after February 8, 1996, the date of enactment of the Telecommunications Act of 1996. Pursuant to 47 U.S.C. 252(e)(1), any interconnection agreements adopted by negotiation

or arbitration shall be submitted for approval to the State commission.

RULE 2. DEFINITIONS. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by the Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

2.1 Commission. The Public Utilities Commission of the State of Colorado.

2.2 Incumbent Local Exchange Carrier. Consistent with 47 U.S.C. 251(h), with respect to an area, the local exchange carrier that:

2.2.1 on the date of enactment of the Telecommunications Act of 1996 [February 8, 1996], provided telephone exchange service in such area and was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b) on such date of enactment;

2.2.2 is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in Rule 2.2.1; or

2.2.3 is a compatible local exchange carrier determined by the Federal Communications Commission (FCC) to be treated as an incumbent local exchange carrier pursuant to 47 U.S.C. 251(h)(2).

2.3 Local Exchange Carrier (LEC) or Telecommunications Carrier. Any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under 47 U.S.C. 332(c) except to the extent that the FCC finds that such service should be included in the definition of such term.

2.4 Negotiated Interconnection Agreement; or Agreement. An agreement entered into between or among Parties for the purpose of the

electronic, optical or any other means of transmission of information between separate points by prearranged means.

2.5 Network Element. A facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

2.6 Party(ies) to the Agreement; or Party(ies). Any telecommunications carrier providing or desirous of providing telecommunications services in the State of Colorado.

2.7 Submittal. A filing made by a telecommunications carrier with the Commission seeking approval of an Agreement pursuant to this Rule.

2.8 Telecommunications. The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received regardless of the technology used.

2.9 Telecommunications Carrier. A Local Exchange Carrier (LEC).

2.10 Telecommunications Equipment. Equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

2.11 Telecommunications Service. The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

RULE 3. REQUIREMENT TO NOTIFY COMMISSION OF A "REQUEST TO NEGOTIATE".

An incumbent local exchange carrier shall notify the Commission that it has received a request to negotiate an interconnection agreement pursuant to 47 U.S.C. 252(a)(1). The notice shall be given to the Director of the Colorado Public Utilities Commission (CPUC) at 1580 Logan Street, Denver,

Colorado 80203 within five (5) days after the incumbent local exchange carrier receives the request. The notice shall include the names of the parties to the negotiation, the date on which the incumbent local exchange carrier received the request for negotiation, and a copy of the request.

RULE 4. REQUIREMENT TO SUBMIT AGREEMENT FOR APPROVAL. Pursuant to 47 U.S.C. 252(a)(1) and 47 U.S.C. 252(e)(1), any interconnection agreement adopted by negotiation or arbitration between or among telecommunications carriers shall be submitted for approval to the Commission. Fifteen paper copies of the Agreement and attachments shall be submitted to the Commission at its offices at 1580 Logan Street, Denver, Colorado. One additional copy shall be submitted in electronic format compatible with PC DOS TEXT, WordPerfect, or MicroSoft Word. Upon receipt, the Commission will assign a docket number to the Submittal.

RULE 5. INFORMATION TO BE INCLUDED IN THE SUBMITTAL. The Submittal shall contain, in the following order and specifically identified, the following information, either in the Submittal or in appropriately identified, attached exhibits:

5.1 Identifying Information.

5.1.1 The name, address, and telephone number of the Parties to the Negotiated Interconnection Agreement;

5.1.2 The name under which the Parties will provide their services if different from that provided in the carriers' current tariffs on file with the Commission;

5.1.3 The name and addresses of the Parties to the Agreement's representatives, if any, to whom all inquiries should be made;

5.1.4 If a Party to the Agreement is a corporation:

5.1.4.1 The state in which it is incorporated, and, if any (ous a current copy is already on file with the Commission);

5.1.5 If a Party is a partnership, the name, title, and business address of each partner, both general and limited, and a copy of

the partnership agreement establishing the partnership and later amendments, if any (unless a current copy is already on file with the Commission);

5.2 A Copy of the Entire Agreement. The Agreement, in its entirety including any attachments, shall be submitted to the Commission and, pursuant to 47 U.S.C. 252(a)(1), shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the Agreement.

5.3 Supporting Information. The Submittal shall contain, either in the Agreement, or by attachment, the facts upon which the Parties will rely to demonstrate that:

5.3.1 Approval of the Agreement is in the public interest;

5.3.2 Approval of the Agreement does not discriminate against other telecommunications carriers who are interconnected with any of the Parties to the Agreement;

5.3.3 Approval of the Agreement will encourage and not inhibit competition;

5.3.4 A description of the services which the Parties to the Agreement are providing pursuant to the Agreement;

5.3.5 A statement of the means by which the Parties to the Agreement are providing the services pursuant to the Agreement;

5.3.6 The agreed upon price of the interconnection services is, pursuant to 47 U.S.C. 252(d)(1), just and reasonable for the interconnection of facilities and equipment for purposes of 47 U.S.C. 251(c)(2); just and reasonable for network elements for purposes of 47 U.S.C. 251(c)(3); based on the cost of providing the interconnection or network element; and nondiscriminatory. Prices may include a reasonable profit. The provider(s) of the service(s) shall provide, as part of the Submittal, its cost studies conducted partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the submitter, stating that the contents of the submittal and all attachments, are true, accurate, complete and correct.

RULE 6. INCOMPLETE SUBMITTAL. In the event a Submittal is made which the Commission determines does not include the above required submittal information, the Commission shall, by an order, reject the Submittal within fifteen (15) calendar days from the date of the submittal, with written findings as to the deficiencies in the information submitted. The Parties to the Agreement may then correct and resubmit the Agreement for approval.

RULE 7. CONSOLIDATION OF STATE PROCEEDINGS. Pursuant to 47 U.S.C. 252(g), where not inconsistent with the requirements of the Telecommunications Act of 1996 (the Act), the Commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 252, and 253 of the Act in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the Commission in carrying out its responsibilities under the Act.

RULE 8. CONFIDENTIALITY OF INFORMATION IN THE SUBMITTAL.

8.1 Information in Submittal Considered Non-Confidential. Pursuant to 24-72-101 *et seq.* C.R.S., all information submitted to the Commission in a Submittal is public information and shall be considered and treated as non-confidential by the Commission.

In order to evaluate the public interest, non-discriminatory, and pro-competitive aspects of the Agreement, it is necessary that all information submitted to the Commission in a Submittal be available for inspection by entities other than the Commission and the Parties.

8.2 Option for Party Seeking Confidentiality. Any Party to the Agreement requesting confidentiality of some or all of the information in the Submittal must seek a waiver under Rule 12 by submitting a Request for Confidentiality with the Submittal. In the Request for Confidentiality, the Party shall indicate the information which is claimed to be confidential and shall state the grounds with specificity and cite the specific provisions of the Colorado Public (Open) Records Act, 24-72-101

et seq. C.R.S. and other legal authority for the claim of confidentiality.

If a Request for Confidentiality is not made with the Submittal, any claim of confidentiality of information included in the Submittal or supporting information shall be deemed waived. Under no circumstances shall a Party be permitted to label portions of a Submittal as "Confidential" with no further burden of filing a Request for Confidentiality or supporting the request with appropriate documentation.

8.3 Submittal Process When Making A Request for Confidentiality.

If a Party to the Agreement contends any portion of the Submittal, except the Agreement, is confidential, it shall provide 15 copies of the Submittal without the asserted confidential information, together with a Request for Confidentiality. The submittal without the claimed confidential information and the Request for Confidentiality will be available to the public immediately. The requestor also shall provide under seal six copies of the complete Submittal claimed to be confidential and the subject of a Request for Confidentiality. The Agreement, including the detailed schedule of itemized charges for interconnection and each service or network element included in the Agreement, shall not be considered confidential and shall, pursuant to Rule 11, be made available for public inspection.

8.4 Public Response to Request. Any entity may respond to the Request within ten (10) business days after the notice of the Submittal is mailed as provided in Rule 9.

8.5 Decision Schedule. The Request for Confidentiality will be decided by the Commission within twenty business calendar days from the date the Submittal is submitted to the Commission. If the Request is granted, a protective order shall be issued by the Commission.

8.6 Treatment of Information Requested to be Confidential Until Order Issued by Commission. Until an order is issued, and while in the custody of the Commission, the specified materials shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. _____" and no person or entity, other than Staff of the Commission, shall have access

to the specified confidential information without signing a non-disclosure Agreement.

8.7 If Request for Confidentiality Is Denied. In the event the Commission orders that the specified information is not confidential, the requesting Party may seek a stay or other relief. For this purpose, the specified information shall not be disclosed or used in the public record for five business days after the Commission's order.

8.8 If Request for Confidentiality Is Approved. In the event the Commission orders that the specified information is confidential, the materials will be used by the Commission in its approval or denial of the Negotiated Interconnection Agreement. The specified information shall then be returned to the submitting Party, subject to Rule 11.

Rule 9. NOTICE TO THE PUBLIC AND OPPORTUNITY FOR PUBLIC COMMENT.

9.1 Public Notice. On the day of its submittal, the Parties shall publish notice of the Submittal, and that a Request for Confidentiality, if any has also been submitted, in a newspaper having general circulation. A copy of the published notice shall be included in the Submittal to the Commission. Proof of publication of the notice shall be provided to the Commission by the Parties to the Agreement within three days after submittal.

9.2 Additional Notice Requirements. On the day the Submittal is filed with the Commission, the Parties to the Agreement shall, by first class mail furnish a written notice that a Submittal, including any Request for Confidentiality of information, has been made to: a) any public utility then known to be providing interconnected telecommunications service in the State of Colorado, as contained on a list maintained by the CPUC; and b) the Office of Consumer Counsel. The Submittal shall contain a Certificate of Service, showing that the Submittal and any Request for Confidentiality was mailed on the day of submission to the above entities.

9.3 Public Comment. Public comment on the Submittal shall be provided within 25 business days of the mailing of the required notice.

Responses to the Request for Confidentiality shall be provided to the Commission within ten (10) business days from the date of the Mailing of the notice.

Rule 10. REVIEW PROCESS.

10.1 After a Submittal has been made, the Commission shall either approve or reject the Agreement with written findings as to any deficiencies.

10.2 Grounds for Rejection. The Commission may only reject an Agreement, or any portion thereof, if it finds that:

10.2.1 the Agreement, or portion thereof, discriminates against a telecommunications carrier not a Party to the Agreement; or

10.2.2 the implementation of such Agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity; or

10.2.3 an Agreement is not in compliance with intrastate telecommunications service quality standards or requirements.

10.3 Schedule for Decision. If the Commission does not act to approve or reject: a) the Negotiated Agreement within ninety (90) days after a submission by the Parties, or b) the Arbitrated Agreement within thirty (30) days after a submission by the Parties; the Agreement shall be deemed approved.

Rule 11. PUBLIC FILING REQUIRED. Pursuant to 47 U.S.C. 252(h) and 47 U.S.C. 252(i), the Commission shall make a copy of each Agreement approved under 47 U.S.C. 252(e) available for public inspection and copying within ten (10) days after the Agreement is approved.

RULE 12. WAIVER OF RULES. THE COMMISSION MAY PERMIT variance from these rules, if not contrary to law, for good cause shown or it if finds compliance to be impossible, impracticable, or unreasonable.

