

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF EMERGENCY RULES)  
RELATING TO THE APPROVAL OF )  
INTERCONNECTION AGREEMENTS ) DOCKET NO. 96R-142T  
NEGOTIATED BY TELECOMMUNICATIONS)  
PROVIDERS WITHIN THE STATE OF )  
COLORADO. )

**DECISION ADOPTING EMERGENCY RULES**

- - - - -  
Mailed Date: April 12, 1996  
Adopted Date: April 10, 1996  
- - - - -

**I. BY THE COMMISSION:**

**Statement**

1. This matter comes before the Commission for adoption of emergency rules relating to the approval of interconnection agreements negotiated by telecommunications providers within the state. For the reasons set forth in this decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in 24-4-103, C.R.S.), the rules appended to this order as Attachment A. We take this action pursuant to the provisions of 24-4-103(6), C.R.S.

2. The purpose of the rules adopted by this order is: (1) to prescribe the information to be submitted to the Commission by telecommunications providers when seeking approval of interconnection agreements negotiated prior to February 8, 1996; and (2) to establish procedures to be used by the Commission in reviewing such interconnection

agreements. The rules attached to this order set forth specific requirements relating to each of these purposes.

3. We adopt the attached rules as emergency rules, in accordance with the provisions of 24-4-103(6), C.R.S., in order to comply with the requirements of the recently enacted Telecommunications Act of 1996 ("the Act"), Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 151 *et seq.*). President Clinton signed the Act into law on February 8, 1996.

4. In part, 251(c) of the Act requires telecommunications carriers to negotiate in good faith the particular terms and conditions of interconnection agreements for the transmission and routing of telephone exchange service and exchange access. Section 252 of the Act sets forth the procedures for negotiation, arbitration, and approval of interconnection agreements between telecommunications providers. Significantly, 252(a) and (e) mandate that all interconnection agreements between providers, **including** any agreement negotiated before the date of enactment of the Act, shall be submitted to the state commission (*e.g.*, the Colorado Public Utilities Commission) for review and approval. The state commission may approve or reject any submitted agreement in accordance with the standards listed in 252(e)(2) (commission may reject a negotiated agreement if it discriminates against a carrier not a party to the agreement, or implementation of such agreement is not consistent with the public interest, convenience, and

necessity; commission may reject an agreement adopted by arbitration if it does not comply with the requirements of 251).

5. Since the Act compels us to review and approve interconnection agreements between telecommunications carriers, including any agreement negotiated before February 8, 1996, we must establish procedures and informational requirements relating to our review and approval of such agreements. Given the mandates in the Act (*i.e.*, for Commission review of previously-negotiated interconnection agreements), we find that immediate adoption of the rules attached to this decision is imperatively necessary to comply with federal law, and compliance with the rulemaking requirements associated with permanent rules, as set forth in 24-4-103, C.R.S., would be contrary to the public interest.

The statutory authority for adoption of these rules is set forth in 40-2-108, and 40-3-102, C.R.S.

6. The rules attached to this order shall be effective immediately upon the mailed date of this decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING April 10, 1996.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

---

Commissioners

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

TM:srs

THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO  
  
EMERGENCY RULES  
ESTABLISHING PROCEDURES  
RELATING TO THE SUBMISSION FOR APPROVAL  
OF INTERCONNECTION AGREEMENTS WITHIN COLORADO  
NEGOTIATED BY TELECOMMUNICATIONS PROVIDERS  
BEFORE FEBRUARY 8, 1996

4 CCR 723-43

**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 a negotiated 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 providers before the date of enactment of 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 the interconnection agreement, with written findings as to any deficiencies, within 90 days after receipt of the submittal.

**RULE 4 CCR 723-43-1. APPLICABILITY.** Pursuant to 47 U.S.C. 252(a)(1), these rules apply to all interconnection agreement(s) between and among telecommunications carriers negotiated before 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 4 CCR 723-43-2. 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:

723-43-2.1 Commission. The Public Utilities Commission of the State of Colorado.

723-43-2.2 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.

723-43-2.3 Party(ies) to the Agreement; or Party(ies).  
Any telecommunications carrier providing telecommunications services in the State of Colorado.

723-43-2.4 Submittal. A filing made by a telecommunications provider with the Commission seeking approval of an Agreement pursuant to this Rule.

**RULE 4 CCR 723-43-3. REQUIREMENT TO SUBMIT.** Pursuant to 47 U.S.C. 252(a)(1), any telecommunications carrier that negotiated an interconnection agreement prior to February 8, 1996 shall submit such Agreement for review to the Colorado Public Utilities Commission (CPUC) on or before May 15, 1996. 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 submittal, the Commission will assign a docket number to the Submittal.

**RULE 4 CCR 723-43-4. 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:

723-43-4.1 Identifying Information -

723-43-4.1.1 The name, address, and telephone number of the Parties to the Negotiated Interconnection Agreement;

723-43-4.1.2 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;

723-43-4.1.3 The name and addresses of the Parties to the Agreement's representatives, if any, to whom all inquiries should be made;

723-43-4.1.4 If a Party to the Agreement is a corporation

-

723-43-4.1.4.1 The state in which it is incorporated, and, if any out-of-state corporation, a copy of the authority qualifying it to do business in Colorado;

723-43-4.1.4.2 Location of its principal office; and

723-43-4.1.4.3 A copy of its Articles of Incorporation (unless a current copy is already on file with the Commission);

723-43-4.1.5 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);

723-43-4.2 A Copy of the Entire Negotiated Interconnection Agreement

- The Agreement, in its entirety including any attachments, shall be submitted 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.

723-43-4.3 Supporting Information - The Submittal shall contain, either in the Agreement, or by attachment, the facts upon which the Parties will rely to demonstrate that:

723-43-4.3.1 Approval of the Agreement is in the public interest;

723-43-4.3.2 Approval of the Agreement does not discriminate against other telecommunications carriers who are interconnected with any of the Parties to the Agreement;

723-43-4.3.3 Approval of the Agreement will encourage and not inhibit competition;

723-43-4.3.4 A description of the services which the Parties to the Agreement are providing pursuant to the Agreement;

723-43-4.3.5 A statement of the means by which the Parties to the Agreement are providing the services pursuant to the Agreement;

723-43-4.3.6 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; nondiscriminatory; and may include a reasonable profit. The provider(s) of the service(s) shall provide, as part of the Submittal, its cost studies conducted in accordance with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30.

723-43-4.4 Affidavit - An affidavit signed by an officer, a 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 4 CCR 723-43-5. 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 ten 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 4 CCR 723-43-6. CONFIDENTIALITY OF INFORMATION IN THE SUBMITTAL.**

723-43-6.1 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.

723-43-6.2 Any Party to the Agreement requesting confidentiality of some or all of the information in the submittal must seek a waiver under Rule 10 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.

723-43-6.3 If a Party to the Agreement contends any portion of the Submittal, except the Negotiated Interconnection Agreement, is confidential, it shall provide 15 copies of the Submittal without the asserted confidential information, together with a Request for Confidentiality. This information 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 Negotiated Interconnection 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 9, be made available for public inspection.

723-43-6.4 The Request for Confidentiality will be decided by the Commission within ten (10) calendar days from the date of the Submittal. Any entity may respond to the Request within five calendar days after the notice of the Submittal is published. If the Request is granted, a protective order shall be issued by the Commission.

723-43-6.5 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.

723-43-6.6 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 ing a non-disclosure Agreement.

723-43-6.7 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.

723-43-6.8 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 returned to the submitting Party, subject to Rule 9.

**RULE 4 CCR 723-43-7. NOTICE TO THE PUBLIC AND OPPORTUNITY FOR PUBLIC COMMENT**

723-43-7.1 On the day of its submittal, the Parties shall publish notice of the Submittal in a newspaper having general circulation. A copy of the legal 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.

723-43-7.2 Additional Notice Requirements. At the time the Submittal is made with the Commission, the Parties to the Agreement shall furnish a copy of the Submittal 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.

723-43-7.3 Public comment shall be provided within 20 days of the completion of the required notice.

**RULE 4 CCR 723-43-8. REVIEW PROCESS**

723-43-8.1 After a Submittal has been submitted, the Commission shall either approve or reject the Agreement, with written findings as to any deficiencies.

723-43-8.2 Grounds for Rejection. The Commission may only reject an Agreement, or any portion thereof, adopted by negotiation if it finds that:

723-43-8.2.1 the Agreement, or portion thereof, discriminates against a telecommunications carrier not a Party to the Agreement; or

723-43-8.2.2 the implementation of such Agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity; or

723-43-8.2.3 an Agreement is not in compliance with intrastate telecommunications service quality standards or requirements.

723-43-8.3 Schedule for Decision. If the Commission does not act to approve or reject the Agreement within 90 days after a submission by the Parties, the Agreement shall be deemed approved.

**RULE 4 CCR 723-43-9. PUBLIC FILING REQUIRED.** Pursuant to 47 U.S.C. 252(h), the Commission shall make a copy of each Agreement approved under 47 U.S.C. 252(e) available for public inspection and copying within 10 days after the Agreement is approved.

**RULE 4 CCR 723-43-10. AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.** Pursuant to 47 U.S.C. 252(i), a local exchange carrier shall make available any interconnection, service, or network element provided under a Commission-approved agreement to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

**RULE 4 CCR 723-43-11. 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.