

723-36-4.4.3 If the Commission sets a notice for hearing, the notice shall not become effective unless and until approved by the Commission.

723-36-4.5 Effective date of notice. Unless the Commission sets the notice for hearing or unless the notice contains deficiencies, the notice shall be effective either (a) upon decision of the Commission, which decision shall be rendered no more than 45 days after the notice is filed with the Commission, or (b) 45 days after it is served and filed with the Commission, unless the notice contains an effective date later than 45 days after it is filed and served, in which event the later date shall control.

723-36-4.6 Modification of tariff or price list. If the proposed abandonment, discontinuance, or curtailment requires a modification of the provider's tariff or price list, nothing in this rule shall be construed as a waiver or variance from statute or Commission rules regarding the provider's obligation to file an appropriate advice letter or transmittal letter in accordance with the Rules of Practice and Procedure, 4 CCR 723-1, or other applicable Commission rules.

RULE 4 CCR 723-36-5. PROCESSING OF APPLICATIONS.

723-36-5.1 An uncontested application to abandon, to discontinue, or to curtail any basic local exchange service or any service required for the provisioning of basic local exchange service may be processed under the Rules of Practice and Procedure, 4 CCR 723-1, rule 24, without a formal hearing.

723-36-5.2 If an application to abandon, to discontinue, or to curtail basic local exchange service or any

service required for the provisioning of basic local exchange service is contested, the Commission will set the application for hearing. Where where possible, the Commission will set the hearing in the area affected by the proposed abandonment, discontinuance, or curtailment.

723-36-5.3 The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1. No abandonment, discontinuance, or curtailment sought in an application shall be effective until the Commission, with or without hearing, issues an order approving it.

723-36-5.4 The Commission shall deem all applications complete in accordance with the procedural requirements of the Rules of Practice and Procedure and these rules.

723-36-5.5 Absent unusual or extraordinary circumstances, the Commission will reject an application that does not meet the requirements of rule 70 of the Rules of Practice and Procedure and will close the docket pertaining to that application.

RULE 4 CCR 723-36-6. WAIVER OR VARIANCE. The Commission may permit a waiver or variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable.

4 CCR 723-36-Form A - Notice of a discontinuance or curtailment of basic local exchange service

**NOTICE OF [NAME OF PROVIDER]'S INTENT TO [STOP OFFERING]
[LIMIT THE OFFERING OF] LOCAL TELEPHONE SERVICE IN YOUR AREA**

[Name of provider] has asked the Colorado Public Utilities Commission (PUC) for approval to stop offering [limit the offering of] basic local telephone service in your area effective on [date]. [Name of provider] proposes to stop offering [limit the offering of] local telephone service in your area as follows: [provide details of proposal here including the list of alternative providers].

Anyone may object to this proposal by sending a letter to the Colorado Public Utilities Commission, 1580 Logan St., OL2, Denver, CO 80203. You may also object to this proposal by calling the PUC at [phone numbers].

Your written objection by itself does not allow you to participate as a party in any proceeding before the PUC on this proposal. If you want to actively participate as a party to any proceeding, you must submit a written request to the PUC at the above address at least 10 calendar days before the proposed effective date of [date]. Your written request to intervene must follow Rules 20, 21, and 22 of the Commission's Rules of Practice and Procedure and any other rules that apply. You can request a copy of these rules from the Commission.

The PUC may hold hearings on [name of provider]'s proposed actions. If the Commission holds hearings, it will decide what actions, if any, are allowed. Members of the public may attend any hearing and make a statement under oath about the proposed action even if they did not submit a written objection or intervention.

If you want to know if and when hearings are held, please submit a written request to the PUC at the above address. Your written request for hearing notice must be submitted to the PUC at least 10 calendar days before the proposed effective date of [date].

Please be assured that basic local telephone service will still be available to you whatever the outcome of [name of provider]'s requested action. If [name of provider]'s request to stop offering local telephone service is granted, another telephone company will offer service to you.

by: [name, title and
address of officer]

Attachment A
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4 CCR 723-36-Form B - Notice of abandonment, discontinuance or curtailment of a service other than basic local exchange service.

**NOTICE OF [NAME OF PROVIDER]'S INTENT TO [STOP] [LIMIT]
ITS OFFERING OF [NAME OF] SERVICE**

[Name of provider] proposes to [specify action whether stop offering or limit offering] of [name the service or facility] effective on [date]. [Name of provider] has notified the Colorado Public Utilities Commission of its proposal. The details of this proposal are as follows: (detail proposed action here)

Anyone may object to this proposal by filing a written complaint with the Public Utilities Commission, 1580 Logan St. OL2, Denver, CO 80203. A complaint should be submitted to the PUC prior to the proposed effective date of [date]. A written complaint must follow Rule 61 of the PUC's Rules of Practice and Procedure and any other rules that apply. A copy of these rules can be obtained from the PUC. The filing of a complaint does not require the Commission to stop the proposed action.

The PUC may hold hearings on [name of provider]'s proposed actions. If the Commission holds hearings, it will decide what actions, if any, are allowed. Members of the public may attend any hearings and make a statement under oath about the proposed action even if they did not file a complaint.

If you want to know if and when hearings are held, please submit a written request to the PUC at the above address. Your written request for hearing notice must be submitted to the PUC at least 10 calendar days before the proposed effective date of [date].

By: (name, title and address of officer)

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED)
RULES REGARDING CERTIFICATION)
OF PROVIDERS OF LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES.)

DOCKET NO. 95R-555T

DECISION ADOPTING RULES

Mailed Date: March 29, 1996
Adopted Date: March 29, 1996

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I. **BY THE COMMISSION:**

Background and Procedural Matters

1. This matter is before the Commission to consider adoption of rules regulating the specific forms of price regulation available to providers of local exchange telecommunications services, in accordance with the requirements of House Bill No. 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, eventually, the existing regulatory framework. Specifically, the Commission must:

1. establish standards for basic telephone service;
2. establish mechanisms to advance the goal of universal service, i.e., provision of basic telephone service to all at just and reasonable rates;
3. consider the necessity for specific mechanisms to advance goals relating to universal access to advanced telecommunications services; and
4. resolve other issues relating to implementation of competition in the local exchange market.

3. The Commission has the responsibility to open local exchange telecommunications markets to competition and to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To that end, the Commission must establish the terms and conditions under which competition will occur,¹ including the process by which a provider of local exchange telecommunications service applies for a specific form of price regulation.²

4. HB 1335 contains an equally important, and somewhat counterbalancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service, which is

the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S.

5. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the economic conditions of urban and rural areas of the state. *Id.* Further, the Commission must adopt rules which allow simplified

¹ See §§ 40-15-502(1) and (3)(b), C.R.S.

² See § 40-15-503(2)(c), C.R.S.

regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

6. The Working Group established pursuant to §§ 40-15-503 and 40-15-504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335. These proposals are found in the Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated November 30, 1995 (the "November report"), and in the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "December report").

7. The Working Group reported that, due to time constraints, it "did not have time to fully discuss [the] issues of 'price and alternative/relaxed regulation[.]'" December report at 8. As a result, the Working Group presented no consensus rule for Commission consideration.

8. As part of the December report, however, and notwithstanding the absence of consensus, the Working Group transmitted to the Commission two, alternative sets of proposed rules regulating applications for specific forms of price regulation available to providers of local exchange telecommunications services.³ These alternative sets of proposed rules were attached to our supplemental notice of proposed

³ December report at Appendix A, discussed in the December report at pp. 7-9. See also November report at Appendix G, discussed at pp. 76-86.

rulemaking in this docket, Decision No. C95-1301, dated December 22, 1995.

9. In accordance with our notice of proposed rulemaking, a hearing on these proposed rules was held on February 1, 1996. The following parties submitted written and oral comments for our consideration: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&T Wireless"); Colorado Independent Telephone Association ("CITA"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Office of Consumer Counsel ("OCC"); staff of the Commission ("Staff"); TCI Communications, Inc., et al. ("TCI"); University of Colorado and Colorado State University ("Universities"); and U S WEST Communications, Inc. ("USWC").

10. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission took administrative notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995.⁴ These reports are filed in Docket No.

⁴ This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition

(continued...)

95M-560T, the repository docket regarding implementation of §§ 40-15-105 *et seq.*, C.R.S.

II. DISCUSSION

A. Consensus and "substantial deference"

1. The rules proposed by the Working Group were not "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 with respect to issues on which the Working Group reports that it has reached consensus on or before January 1, 1996. In the absence of a consensus rule, however, there is nothing to which to give substantial deference. Therefore, our consideration of the proposed rule concerning applications for specific forms of price regulation proceeds in accordance with our general rulemaking authority found at § 40-2-108, C.R.S.

2. We also note that, although there were two sets of proposed rules (option 1 and option 2) published for comment, the proposals are similar in many respects and contain substantial overlap in content, even if the structures are different. In addition, several parties⁵ filed a proposed set of rules

⁴(...continued)
to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

Outreach Report at 4.

⁵ The parties are: AT&T, AT&T Wireless, ICG, MCI, OCC, TCI, and U S WEST.

("post-hearing proposed rules") with their post-hearing comments.⁶ The post-hearing proposed rules are similar to, and contain substantial overlap with, the two sets of proposed rules. In sum, there was substantial agreement among and between the parties about the content of the rules insofar as price regulation is concerned.

B. Need for Rules Regulating Applications for Specific Forms of Price Regulation.

The parties were prevented by time constraints from reaching consensus. Yet, the parties in this proceeding have expressed unanimous recognition that rules pertaining to specific forms of price regulation are necessary. We agree. The parties could not agree, however, on whether the rules pertaining to price regulation should be contained in separate rules or should be blended with the existing Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24. We find, for the following reasons among others, that the rules should be separate rules.

1. First, and foremost, separating the rules for price regulation from the rules for relaxed regulatory treatment is consistent with, and maintains, the statutory structure. Price regulation under § 40-15-503(2)(c) is distinct from relaxed regulatory treatment under § 40-15-302, C.R.S.

a. Section 40-15-503(2)(c)(I), which these rules implement, directs the Commission to "consider changing to forms of

⁶ These post-hearing proposed rules were generally, but not whole-heartedly, supported by those submitting them. See, e.g., reply comments of U S WEST regarding relaxed regulation.

price regulation other than rate-of-return regulation for any telecommunications provider that provides services regulated under part 2 or [part] 3" of title 40, article 15.⁷ Under this section, if the request is in the public interest, we may permit any provider, whether an incumbent⁸ or a new entrant⁹, to offer any local exchange telecommunications service under a specific form of price regulation.

b. In contrast, relaxed regulatory treatment is limited to "services and products provided pursuant to . . . Part 3" of Title 40, Article 15. See § 40-15-302, C.R.S. Under this section, then, only a local exchange telecommunications service which is a part 3 service may be permitted relaxed regulatory treatment.

c. Based on this statutory differentiation, we find it is appropriate to have two sets of rules: one for price regulation, the other for relaxed regulatory treatment.

2. Second, we are not convinced that the regulatory treatments available under price regulation and those available

⁷ This necessarily implies that the provider has, or has filed a combined application seeking, a certificate of public convenience and necessity to offer the specific local exchange telecommunications service within the specific geographic area which is the subject of the application for a specific form of price regulation. In the absence of a certificate of public convenience and necessity, no application for a specific form of price regulation can be granted.

⁸ As used in this decision, the term "incumbent" or "incumbent provider" refers to a provider of local exchange telecommunications services certificated to provide such service within a specific geographic area on or before January 1, 1996.

⁹ As used in this decision, the term "new entrant" refers to a provider of local exchange telecommunications services who became or becomes certificated to provide such service within a specific geographic area on or after January 1, 1996.

under relaxed regulation are fully coincident. For example, § 40-15-503(2)(c)(II)(E) provides that, if the Commission deems it appropriate under the circumstances and in the public interest, a specific form of price regulation could be "incentives for efficiency, productivity, and quality of service." No such language appears in § 40-15-302 or in the Rules Regulating Emerging Competitive Telecommunications Service, 4 CCR 723-24. Thus, price regulation may be different from relaxed regulatory treatment.¹⁰

a. This observation is further strengthened by the last sentence of § 40-15-503(2)(c)(I): "This paragraph (c) shall not be construed to limit the manner and methods of regulation available under § 40-15-302." It seems obvious that the General Assembly believed some distinction exists between price regulation and relaxed regulatory treatment.

b. To allow each form of regulatory treatment to develop and to prevent blurring of any distinctions which may exist between price regulation and relaxed regulation, we now promulgate rules on price regulation only.

3. Third, separate rules are appropriate because differentiating price regulation from relaxed regulation continues the parallel with the statutory structure pertaining to moving telecommunications services from part 3 to part 4 (that is, from a

¹⁰ We make no determination at present that, in fact, a distinction exists. The Commission will establish the parameters of price regulation and of relaxed regulatory treatment in future decisions, and possibly rulemaking proceedings, implementing each statutory provision. Nothing in this rulemaking or in this decision should be taken as, or requires, a Commission determination that price regulation and relaxed regulatory treatment are or are not the same.

relaxed regulation environment to a fully deregulated environment). Section 40-15-305(1), C.R.S., states that the Commission "shall deregulate" a specific telecommunications service regulated pursuant to part 3, title 40, article 15, if, after hearing and consideration of several factors, the Commission makes specified findings with respect to that part 3 service. Local exchange telecommunications services provided by new entrants are presumptively regulated pursuant to part 3.¹¹ See § 40-15-503(2)(f), C.R.S. Thus, some or all of the local exchange telecommunications services provided by new entrants may be moved to part 4, and thus deregulated, more quickly than similar services provided by incumbent providers. Determining whether sufficient competition exists to warrant deregulation of a local exchange telecommunications service is a critical step and, as discussed, is applicable only to part 3 services. It is imperative, therefore, to minimize confusion about which local exchange telecommunications services are part 2 and which are part 3. Having separate rules for price regulation (which pertain to both part 2 and part 3 local exchange telecommunications services) and for relaxed regulation (which pertains to part 3 local exchange telecommunications services) achieves that goal of reducing confusion.

¹¹ It is important to note, however, that the presumption is rebuttable. Section 40-15-503(2)(f) states that the part 3 presumption applies "unless the commission determines that the services of such provider [i.e., a new entrant] are not subject to effective competition from the incumbent local exchange provider." In the absence of effective competition, the local exchange telecommunications services provided by a new entrant are part 2 services, subject to full traditional rate-of-return regulation unless a specific form of price regulation is granted.

4. Fourth, separate price regulation rules allow us to implement the transition begun by HB 1335 without impacting the regulatory scheme established in 1987 for part 2, part 3, and part 4 services. The established scheme is well-known and works well. The General Assembly recognized this fact when it elected to add to that regulatory scheme, rather than replace it, with the provisions of HB 1335. The price regulation rules should likewise respect, and complement, the existing regulatory scheme. The Commission determines that the rules as promulgated meet this objective.

5. Fifth, separate price regulation rules focus attention on the specific findings and procedures associated with price regulation of local exchange telecommunications services. This should assist incumbents, new entrants, and other interested parties in understanding when, how, and whether to file for a specific form of price regulation. In addition, these rules provide interested parties with information concerning the criteria which the Commission will use in determining whether or not to grant an application for a specific form of price regulation (see, e.g., Rule 4.3). Blending price regulation with relaxed regulatory treatment would, in our judgment, result in less clarity.

6. Sixth, and certainly not least important, separate rules perform an important consumer protection function. Consumer protection is of paramount importance to us. As Colorado proceeds through the transition to a fully competitive telecommunications environment, we cannot and will not sacrifice customers. We are mindful of, and give substance to, the legislatively-declared

public policies of increasing the choices available to customers, increasing access to advanced services, reducing the costs of telecommunications service, and maintaining the availability of high quality basic service. However, to the extent possible and within the statutory scheme, the legislature clearly intended for the Commission to continue its efforts to protect end-use customers and to hold them harmless from circumstances beyond their control.

a. With the advent of competition in the local exchange telecommunications services market, we recognize that the Commission is no longer in the same position to protect consumers and to ensure that telecommunications service providers will continue to provide quality basic service. It is possible some consumers may be harmed by certificated providers who abandon their customers and who take money for services which they then do not provide. However, the fact that the Commission's authority to protect consumers is modified does not mean that it has been eliminated. In fact, there are many who believe that the Commission's oversight and protective responsibilities will be even more important as an increasing number of unknown market operators seek Colorado dollars. We believe it necessary to have some protection for consumers. These rules provide that protection by focusing the attention of the Commission, the provider, and interested persons on the specific form of price regulation appropriate for the provision of a specific local exchange telecommunications service in a specific geographic area.

b. We find that separate rules pertaining to price regulation under § 40-15-503(2)(c) are appropriate and that the rules meet the stated objectives.

C. **Content of Rules.**¹² We adopt rules which are, in our opinion, necessary and appropriate to carry out our constitutional and statutory responsibilities.

1. **Rule 1.** This rule states that these rules apply to all persons applying for a specific form of price regulation.

a. **Applicability.** As is clear from the individual rules and from consideration of the rules in their entirety, these rules are applicable to all persons who seek Commission approval to offer a specific telecommunications service in a specific geographic area under a specific form of price regulation.

b. **Proposal of the Universities.**

(1) The Universities proposed a new option for Rule 1: **Applicability.** The Universities argued that the requirements of these rules should not apply to institutions of higher education¹³ which 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

¹² We have determined that proposed Rule 1: basis, purpose, and statutory authority, is not a rule. Thus, although we retain the statement, it is not numbered as a rule. As a result, the rules we promulgate have been renumbered from the proposed rules. We use the final rule numbers in our discussion, making reference to the proposed rule numbers where necessary for clarity.

¹³ Section 24-113-102(2), C.R.S. (1988), defines an "institution of higher education" as "a state-supported college, university, or community college."

work locations, and to students resident in institution-affiliated housing.

(2) The Universities rely on this Commission's April 11, 1984, Decision No. R84-428, in support of their position. In that decision, the Commission determined that the Colorado State University ("CSU") telephone system did not constitute public utility service.¹⁴

(3) In the discussion section of Decision No. C84-428, the administrative law judge 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 Decisions 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.

(4) Clearly, with the advent of HB 1335, the local exchange telecommunications service market in Colorado has

¹⁴ Decision No. R84-428 is expressly limited in its applicability to the telephone system of CSU as described in that decision.

changed radically. For example, in Docket No. 95R-557T, *In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101, et seq. -- Resale of Regulated Telecommunications Services*, there are proposals to change the definition of "resale" that the Commission adopted in 1982. Further, HB 1335 speaks in terms of "multiple providers of local exchange service"¹⁵ and clearly contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort.¹⁶ 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 clearly been affected by the enactment of HB 1335.

(5) 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 1335,¹⁷ the broad statutory definition of "public utility" (see

¹⁵ Section 40-15-501(3)(c), C.R.S.

¹⁶ Section 40-15-502(6), C.R.S.

¹⁷ "Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens[.]" Section 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 resale basis may be qualified as a provider of last resort, . . . Resale shall be made available on a nondiscriminatory basis[.]" Section 40-15-502(5)(b), C.R.S.

§ 40-1-103, C.R.S.¹⁸), and the inclusive definition of "person" (see § 40-1-102(5), C.R.S.¹⁹), we find that the record in this proceeding does not support the adoption of the Universities' proposed language.

(6) 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 appropriately considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed.

2. **Rule 2.** This rule defines the words and phrases used in these rules. The rule contains a statement that the statutory definitions are applicable and controlling. This language places interested persons on notice that they must refer to the statute to be sure that they understand the definitions of words and phrases used in the rules. This is the same procedure that utilities and other interested persons should follow in any situation involving Commission rules.

3. **Rule 2.2.** This is a new definition. In this rule the Commission has narrowly defined "applicant" as either the provider of the local exchange telecommunications service for which

¹⁸ As relevant here, this section defines a "public utility" as "every common carrier, . . . telephone corporation, telegraph corporation, . . . person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest[.]" This definition is subject to exemptions found in § 40-1-103(1)(b).

¹⁹ This section defines "person" as "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity."

a specific form of price regulation is sought or, in recognition of the opportunity for the filing of combined applications, the person seeking to be authorized to provide the local exchange telecommunications service for which a specific form of price regulation is sought. By this definition, the Commission restricts the types of persons who may seek a specific form of price regulation.

a. In so doing, the Commission considered, and did not adopt, the suggestion of some commenters that "any person using, providing, or planning to provide" ("any person") a service should be permitted to file an application for price regulation. With regard to that proposal, the Commission determined that "any person" is too broad and results in unreasonable effects and complications. For example, under that language, a customer or even a competitor could apply to the Commission to force a provider to offer a service under a specific form of price regulation. Further, again under the "any person" language, a customer or a competitor could apply to the Commission to force a provider to change the specific form of price regulation under which a service is provided (see Rule 7 and discussion *infra* at paragraph II.C.18). If such an application were granted, a provider would have to offer a service under a specific form of price regulation not of the provider's choosing. Moreover, even if such an application were denied, the provider would be put to the needless expense of time and money to defend against the application. The Commission considered the possible impact of this suggestion to use "any

person" to be highly anti-competitive, to create the potential for abuse, and to be contrary to the public interest.

b. In the Commission's judgment, the better course, and the one selected, is to permit no one other than the provider of the service to apply for a specific form of price regulation.²⁰ This assures that the provider will retain control of the timing for applying for a specific form of price regulation and, subject to Commission approval, of the manner in which it offers its local exchange telecommunications services.

c. The Commission added definitions as necessary for clarity (see, e.g., definition of advice letter, band of rates, detariffed or detariffing, and transmittal letter). In addition, the Commission deleted definitions which were unnecessary because the terms are not used in these rules.

4. **Rule 3.** (Proposed Rule 4, options 1 and 2 and the proposed rules submitted by AT&T, AT&T Wireless, MCI, OCC, TCI and U S WEST ("OCC *et al.*") Rule 5). In this rule the Commission begins the evolutionary process of defining specific forms of price regulation and of specifying the processes to be used once a specific form of price regulation is granted. Section 40-15-503(2)(c) contains a preliminary outline of the types of specific forms of price regulation, an outline which the Commission adopts for this rule.

²⁰ As Rule 3 makes clear, the Commission may, on its own motion (either by adjudication or by rulemaking), grant a specific form of price regulation for any local exchange telecommunications service on a geographic basis.

a. Both the statute and the rule are clear, however, that the Commission may adopt any specific form of price regulation which, in the Commission's judgment, is appropriate under the circumstances and is in the public interest. This flexibility is both necessary and desirable because the transition to a fully competitive local exchange telecommunications market is barely underway. The market is, at present, unformed, undifferentiated, and unknown. During this early period, it is imperative that the Commission retain the ability to examine, critically and on a case-by-case basis, each request for a specific form of price regulation. As time passes, as the market for local exchange telecommunications services becomes more competitive, and as the Commission, providers, customers, and other interested persons gain experience with price regulation, the rule provides the possibility of rulemaking to establish specific forms of price regulation for specific services.

b. For these reasons, among others, the Commission does not adopt the suggestion of some parties that the rules require the Commission to grant a specific form of price regulation if certain conditions are met. In our judgment, it is too early in the process to put constraints on the exercise of the Commission's discretion. It is our responsibility to shepherd the transition to a fully competitive local exchange telecommunications services market. We cannot do so if we are hamstrung by rules which are too restrictive. Accordingly, the rules as promulgated state that the Commission "may" grant a specific form of price regulation.

c. Similarly, the Commission does not adopt the suggestion by CITA that, *ipso facto*, an incumbent provider, particularly an incumbent serving only rural exchanges of 10,000 or fewer access lines, should receive the same specific form of price regulation as a new entrant offering service in the incumbent's service territory. First, for the reasons discussed above, we find that the proposal is too restrictive and is inappropriate at this early date. Second, and equally important, we find that the proposal may disadvantage the incumbent provider by forcing it to provide a service in the same manner as the new entrant. The incumbent may wish to provide service in a manner completely different from the manner chosen by the new entrant, and the incumbent should have that flexibility. Third, we find that the incumbent may file an application for a specific form of price regulation which mirrors the application of a new entrant and that, under proper circumstances, it may be appropriate to consolidate those applications for hearing. This consolidated proceeding would permit us to review and to consider the applications at one time, taking into account all factors and circumstances surrounding offering the specific local exchange telecommunications service in a specific geographic area. Fourth and finally, Rule 10 provides for waiver or variance from these rules. If a provider, including any incumbent, wishes to do so, it may ask for a waiver or variance to obtain relief from any requirement contained in these rules. Thus, to maintain our flexibility and in view of the procedures

available to reduce the expense to incumbents, we do not adopt CITA's proposal.

5. **Rule 3.1.** The Commission restructured this rule (proposed Rule 4, and post hearing OCC *et al.* proposed Rule 6.15) for clarity. It mirrors the outline contained in § 40-15-503(2)(c)(II) and reiterates the ability of the Commission to create any form of price regulation which, in the Commission's judgment, is appropriate under the circumstances.

a. Rule 3.1 also sets out the procedures to be followed, absent a Commission order establishing different procedures, to implement a Commission decision approving banded rates (Rule 3.1.1.1), confidential price floor (Rule 3.1.2.1), and confidential contract (Rule 3.1.2.2). With respect to confidential price floor and confidential contract, which are detariffed forms of price regulation, we recognize that these are highly confidential and proprietary data. As a result, the rules are specific that the filings are made under seal and that the Commission may adopt modified procedures to protect the confidentiality of those filings. In this regard, we anticipate, for example, the use of procedures flexible enough to allow *in camera* proceedings in which competitors and potential competitors do not participate. We understand and appreciate that the procedures used must both protect the confidential data and provide due process. The precise procedures will be adopted as needed and on a case-by-case basis.