

2. The Application for Rehearing, Reargument or Reconsideration of Decision No. C96-349 filed by AT&T Communications of the Mountain States, Inc., is denied.

3. The Application for Rehearing, Reargument or Reconsideration of Decision No. C96-349 filed by the Colorado Independent Telephone Association is denied.

4. The Application for Rehearing, Reargument or Reconsideration of Decision No. C96-349 filed by MCI Telecommunications Corporation is granted, in part, and denied, in part.

5. The Application for Rehearing, Reargument or Reconsideration of Decision No. C96-349 filed by the Office of Consumer Counsel is granted, in part, and denied, in part.

6. This Decision shall become final 20 days following its Mailed Date 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 Decision Granting, in Part, and Denying, in Part, Applications for Rehearing, Reargument, or Reconsideration shall become final upon a Commission ruling denying any such application, in the absence of further order of the Colorado Public Utilities Commission ("Commission").

7. Within twenty 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.

8. 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.

9. 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 Mailed Date of this Decision.

10. This Order is effective upon its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING April 25, 1996.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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VINCENT MAJKOWSKI

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Commissioners

ATTEST: A TRUE COPY

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

*Bruce N. Smith*

Bruce N. Smith  
Director

provider has provided the capability for a customer to presubscribe to different MTS providers for the use of 1+ dialing capability shall also provide that capability to all customers served in such area;

723-2-17.1.6 Customer billing, public information assistance, directory listing, directory assistance and intercept to the extent described in Rules 10, 11, 12 of these Rules Regulating Telecommunications Service Providers and Telephone Utilities, (4 CCR 723-2);

723-2-17.1.7 In the event of a commercial ~~alternating current (AC)~~ power failure, the telecommunications service provider shall provide, ~~until commercial power is restored, through the local access line, up to eight hours of~~ backup power from the telecommunications service provider's power source to the network interface in landline (coaxial, fiber, or copper) applications in order to support existing basic service to lines that utilize a traditional ringer; and

723-2-17.1.8 At a minimum, all telecommunications service providers shall offer basic telephone service (as defined in this Rule) by itself as a separate tariff offering. This provision does not preclude the telecommunications service provider from also offering basic telephone service packaged with other services.

723-2-17.2 Universal Service Availability Standard. In order to maintain a reasonable uniformity between all localities in the state for adequate basic telephone service in the ordinary course of its business pursuant to its certificate of public convenience and necessity, each LEC shall construct and maintain its telecommunications network so as to provide for universal (*i.e.* ubiquitous) availability of the following services or capabilities when requested by a customer within its jurisdictional serving area:

723-2-17.2.1 The basic service standard defined in Rule 17.1 (17.1.1 through 17.1.8); and

723-2-25.1.4.2 The name of the customer's current CSBLEP or CSIIIIXC;

723-2-25.1.4.3 The name of the newly requested CSBLEP or CSIIIIXC;

723-2-25.1.4.4 A description of any terms, conditions, or charges that will be incurred;

723-2-25.1.4.5 The name of the person ordering the change;

723-2-25.1.4.6 The name, address, and telephone number of both the customer and the soliciting CSBLEP or CSIIIIXC;

723-2-25.1.4.7 A postpaid postcard which the customer can use to deny, cancel, or confirm a service order;

723-2-25.1.4.8 A clear statement that if the customer does not return the postcard, then the customer's carrier will not be switched; and

723-2-25.1.4.9 The name, address, and telephone number of a contact point at the Commission for consumer complaints.

723-2-25.2 Letter of Agency Form and Content.

723-2-25.2.1 A CSBLEP or CSIIIIXC shall obtain any necessary written authorization from a ~~subscriber-customer~~ for a CSBLEP or CSIIIIXC change by using a letter of agency as specified in this Rule 25.2. Any letter of agency that does not conform with this Rule 25.2 is void.

723-2-25.2.2. The letter of agency shall be a separate or severable document (an easily separable document containing only the authorizing language described below) the sole purpose of which is to authorize a CSBLEP or CSIIIIXC change. The letter of agency must be signed and dated by the ~~subscriber-customer~~ of the telephone line(s) requesting the change to the customer's selected IIIIXC or BLEP.

723-2-25.2.3 The letter of agency shall not be combined with inducements of any kind on the same document.

723-2-25.2.4 Notwithstanding Rules 25.2.2 and 25.2.3 of this Rule, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in Rule 25.2.5 below and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a CSBLEP or CSIIIXC change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

723-2-25.2.5 At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible to persons with normal and monochrome vision, and must contain clear and unambiguous language that confirms:

723-2-25.2.5.1 The ~~subscriber~~~~customer~~'s billing name and address and each telephone number to be covered by the CSBLEP and/or CSIIIXC change order;

723-2-25.2.5.2 The decision to change the presubscribed provider/carrier from the current CSBLEP or CSIIIXC to the prospective CSBLEP or CSIIIXC;

723-2-25.2.5.3 That the ~~subscriber~~~~customer~~ designates the new CSBLEP or CSIIIXC to act as the ~~subscriber~~~~customer~~'s agent for the respective customer-selected provider/carrier service change;

723-2-25.2.5.4 That the ~~subscriber~~~~customer~~ understands that currently only one CSBLEP/CSIIIXC may be designated as the ~~subscriber~~~~customer~~'s CSBLEP/CSIIIXC for any one telephone number (e.g., the CSBLEP and the CSIIIXC must be the same provider/carrier). When, pursuant to future Commission order, the CSBLEP and CSIIIXC can be different provider/carriers, the letter of agency must contain separate statements regarding each choice of service selection (i.e., CSBLEP or CSIIIXC for which the letter of agency is authorizing

a designation). Any provider/carrier designated as a preferred CSBLEP or CSIIIXC must be the provider/carrier directly setting the rates for the ~~subscriber~~customer. One provider/carrier can be both a ~~subscriber~~customer's interstate preferred interexchange carrier and a ~~subscriber~~customer's CSBLEP/CSIIIXC; and

723-2-25.2.5.5 That the ~~subscriber~~customer understands that any CSBLEP or CSIIIXC selection the ~~subscriber~~customer chooses may involve a charge to the ~~subscriber~~customer for changing the ~~subscriber~~customer's CSBLEP or CSIIIXC.

723-2-25.2.6 Letters of agency shall not suggest or require that a ~~subscriber~~customer take some action in order to retain the ~~subscriber~~customer's current CSBLEP and/or CSIIIXC.

723-2-25.2.7 If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

723-2-25.3 Freezing a Telecommunications Service Provider.

723-2-25.3.1 Each CSBLEP must offer customers, at no charge, the option to freeze their CSBLEP and/or CSIIIXC. As used herein, freeze occurs when a ~~subscriber~~customer designates ~~his/her~~its existing CSBLEP and/or CSIIIXC as a permanent choice which may not be changed absent further written authorization initiated by the ~~subscriber~~customer.

723-2-25.3.2 CSBLEPs and CSIIIXCs shall conduct an education program upon initiation of service to a ~~subscriber~~customer which informs the ~~subscriber~~customer of the ~~option to freeze its choice of provider and the effects of freezing a~~ CSBLEP and/or a CSIIIXC on the ~~subscriber~~customer's service choices.

723-2-25.3.3 Tariff filing requirement. Each telecommunications service provider shall file a tariff subject to the Commission's approval, describing ~~its education program regarding~~, ~~as required by~~consistent with Rule 25.3.2, its

customers' options as to freezing subscriber's their CSBLEP and/or CSIIIXC.

723-2-25.4 Enforcement.

723-2-25.4.1 A provider/carrier that violates any provision contained in these rules is subject to enforcement and penalties as provided in Article 7 of Title 40, Colorado Revised Statutes, pursuant to due process requirements.

~~723-2-25.4.2 Upon notification that one of its end-users has been switched to another BLEP/IIIXC without authorization, the preferred BLEP/IIIXC shall notify the CSBLEP that the CSBLEP should switch the end user to the preferred BLEP/IIIXC.~~

~~723-2-25.4.2 Upon notification from an end-user that it has been switched to another BLEP/IIIXC without its authorization, the CSBLEP/CSIIIXC shall switch an the end-user's presubscribed CSBLEP and/or CSIIIXC that has been found to have been unauthorized designated without end-user authorization in accordance with Rule 25.1 back to the end-user's previously presubscribed CSBLEP and/or CSIIIXC the CSBLEP/CSIIIXC (itself) at no charge to the end-user. This Rule 25.4.3 shall be void at such time as the Commission orders that an end-user can select different provider/carriers to be its CSBLEP and CSIIIXC.~~

723-2-25.4.3 When, pursuant to future Commission order, the CSBLEP and CSIIIXC can be different provider/carriers and upon notification from an end-user that it has been switched to another BLEP/IIIXC without its authorization, the CSBLEP shall switch the end-user's BLEP and/or IIIXC that has been found to have been designated without end-user authorization in accordance with Rule 25.1 back to the end-user's previously presubscribed CSBLEP and/or CSIIIXC (or itself if that is the case) at no charge to the end-user.

723-2-25.4.4 —The customer's selected BLEP/IIIIXC shall pay to the CSBLEP the provider/carrier change fee to switch the customer's service back to the CSBLEP and/or CSIIIIXC.

723-2-25.4.5 —The CSBLEP/CSIIIIXC may seek reimbursement of such charge from the BLEP/IIIIXC found to have made the unauthorized switch of an end-user's CSBLEP and/or CSIIIIXC.

723-2-25.4.36 Any BLEP/IIIIXC found to have requested a change for a presubscribed end user that violates the verification procedures set forth in Rule 25.1 without the end-user's authorization shall refund to the end-user the entire amount of such end-user's current month telephone charges attributable to intrastate telephone service provided by that BLEP/IIIIXC.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED )  
RULES REGARDING AMENDMENTS TO )  
THE RULES REGULATING )  
TELECOMMUNICATIONS SERVICE )  
PROVIDERS AND TELEPHONE )  
UTILITIES, 4 CCR 723-2. )

DOCKET NO. 95R-609T



COMMISSION DECISION ADOPTING RULES

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Mailed Date: April 1, 1996  
Adopted Date: March 29, 1996  
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I. BY THE COMMISSION:

A. **Statement**

1. This matter comes before the Colorado Public Utilities Commission ("Commission") to consider adoption of amendments and additions to the Rules Regulating Telecommunications Service Providers and Telephone Utilities (the "Telephone Rules"), 4 *Code of Colorado Regulations* 723-2. The intent of these changes is primarily to modify the existing rules in response to impending changes in the market for basic local exchange telecommunications service. These impending changes are a result of the passage of House Bill 95-1335, codified at §§ 40-15-101 *et seq.*, C.R.S., which opens the local exchange telecommunications service market to competition.

2. The Commission issued notice of this rulemaking docket on December 22, 1995 in Decision No. C95-1286. This notice contained proposed rule amendments and additions to the Telephone Rules. The notice also explained that these proposed amendments and additions address issues concerning line extension policies on the part of telecommunications service providers; the recording of telephone conversations by end-users; the use of purchased accounts receivable by telecommunications service providers to discontinue or deny service to customers; updated references to the National Electric Safety Code; updated references to the current version of Part 68 of Title 47, *Code of Federal Regulations*; the provision of equal access by telecommunications service providers; the provision of backup power by telecommunications service providers to the

network interface in landline applications; the provision of basic exchange service by itself as a separate tariff offering; the provision of local calling areas on the part of new providers in the local exchange market; and the unauthorized switching of a customer's selected presubscribed basic local exchange provider and/or intrastate intraLATA interexchange carrier.

3. In accordance with our Notice of Proposed Rulemaking, a hearing on the proposed rule amendments was held on February 22, 1996. A number of parties submitted written and oral comments for our consideration. They are: AT&T Communications of the Mountain States, Inc. ("AT&T"); Colorado Independent Telephone Association ("CITA")<sup>1</sup>; ICG Access Services, Inc., and Teleport Denver Ltd. (collectively "ICG"); MCI Telecommunications Corporation ("MCI"); Office of Consumer Counsel ("OCC"); Staff of the Commission ("Staff"); and U S West Communications, Inc. ("USWC").

4. 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 95-1335 Public Outreach Meetings Report filed by Bruce N. Smith, all filed in Docket No. 95M-560T, the

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<sup>1</sup> CITA filed its comments on behalf of Agate Mutual Telephone Cooperative Association, Big Sandy Telecommunications, Inc., Bijou Telephone Co-Operative Association, Inc., Blanca Telephone Company, Columbine Telephone Company, Delta County Tele-Com, Inc., Dubois Telephone Exchange, Eastern Slope Rural Telephone Association, Inc., El Paso County Telephone Company, Farmers Telephone Company, Inc., Haxtun Telephone Company, Nucla-Naturita Telephone Company, Nunn Telephone Company, Peetz Cooperative Telephone Company, Phillips County Telephone Company, Pine Drive Telephone Company, Pioneer Telephone Association, Plains Cooperative Telephone Association, Inc., PTI Communications, Inc., Rico Telephone Company, Roggen Telephone Cooperative Company, Rye Telephone Company, S&T Telephone Coop Association, Stoneham Telephone Cooperative Corp., Strasburg Telephone Company, Sunflower Telephone Company, Union Telephone Company, Universal Telephone Company of Colorado, Wiggins Telephone Association, and Willard Telephone Company.

docket established by the Commission as the repository for these documents.

## II. DISCUSSION

A. Several portions of the Telephone Rules are affected by these amendments and/or additions. These amendments and additions cover a wide variety of subject areas and each will be discussed individually. Additionally, in the rules which have been amended in this docket, we have attempted to avoid reference to a "local exchange carrier" or "LEC," *i.e.* an entity governed by Part 2 of Title 40, Article 15 of the Colorado Revised Statutes. Instead, an entity previously referred to as a LEC, where appropriate, is now referred to as a telecommunications service provider.

### B. Application of Rules (Rule 1 of the Telephone Rules)

This rule has been amended to reflect passage of Part 5 of Title 40, Article 15, of the Colorado Revised Statutes (§§ 40-15-501 *et seq.*) which declares that competition in the market for basic local exchange service should be encouraged with the ultimate goal of replacing the regulatory framework established in §§ 40-15-201 *et seq.* We will adopt this amendment.

### C. Line Extension Policy (Rule 5.4 of the Telephone Rules)

1. The amendments to this rule were proposed as a mechanism to: (1) ensure that line extensions in a competitive marketplace are still available in a manner that is not unduly discriminatory by class of service; and (2) provide for construction credits to end-use customers requiring a line extension, in amounts not to exceed supported costs, that the

telecommunications service provider receives from the Colorado High Cost Fund (the "CHCF").

2. In Rule 5.4 as originally proposed in Attachment A to the Notice of Proposed Rulemaking (Decision No. C95-1286), discrimination among "applicants" by class of service was prohibited. The Commission, as a result of a suggestion received from at least one of the commenters, has clarified this statement to make it clear that the prohibition against discrimination applies specifically to the provision of services and rates to prospective end-use customers. Additionally, in concurring with the position proposed by several commenters, the Commission finds that a prohibition against tariffs which are "not unduly discriminatory" is sufficient to protect the public interest, see § 40-3-101, C.R.S., and, therefore, the rule as attached to this Decision includes this proposal.

3. With respect to the issue surrounding construction credits, the Commission's proposed rule is intended to express a general statement against double recovery of benefits by telecommunications service providers from the CHCF while ensuring that the end-user receives some credit, if applicable, toward the cost of extending a telephone line. The rule amendment also limits capital investment of the telecommunications service provider to an amount which is supported by revenue received from the customer revenue stream, the CHCF and all other price support mechanisms established by the federal government and by this state for that area (*i.e.*, the "supported cost"). Thus, there is no need to set

forth a dollar figure in this Rule 5.4 as suggested by CITA. By using the supported cost as the amount of the credit received by the end-user, the Commission hopes that the universal service goal will be fostered.

4. Several commenters raised questions concerning the procedures to be used with respect to the construction credit portion of the rule and claimed that this specific amendment is premature. The Commission finds that it is in the public interest to promulgate this rule amendment at this time in order approximately to reflect the rules being promulgated in other dockets pursuant to HB 95-1335. The Commission finds that its general goal is best accomplished by the language set forth in Attachment A to this Decision and that the specific "how to" issues are more appropriately addressed by the Universal Service Task Force. In short, this construction credit statement is not an amendment that subsidizes telecommunications service providers. This portion of the rule amendment simply creates a general prohibition against double recovery by telecommunications service providers while providing for full recovery by the end-user of the supported costs paid to the telecommunications service provider.

**D. Recording of Telephone Conversations by End-Users  
(Rule 7.0 of the Telephone Rules)**

1. This Rule as originally proposed had its origins in the tariffs of USWC. The majority of the commenters, both in writing and orally, expressed concern that this rule was problematic and possibly preempted by federal and/or other state law. Because we will reject this rule for other reasons, we will

not address at this time the preemption issues raised by the commenters. We find that, in addition to the criticisms leveled, the proposed rule appears to reach beyond the scope of our authority in that it arguably attempts to regulate the conduct of end-users. As discussed below, the Commission will reject proposed Rule 7.0 and all its parts in their entirety.

2. The Commission finds that Colorado wiretapping law and federal communications law sufficiently protect end-users from having their conversations inappropriately recorded. The Colorado wiretapping statute states that recording of a conversation is lawful if one of the parties to the conversation consents to the recording. Section 18-9-303(1)(a), C.R.S.; *People v. Morton*, 539 P.2d 1255 (1975). This is also the federal standard. See 18 U.S.C.S. § 2511 (1993 & Supp. 1995). The Commission finds that these laws set forth the appropriate level of protection to be afforded end-users in this State, and, therefore the Commission will not adopt Rules 7.0.1.1 and 7.0.1.2 as proposed.

3. Next, the Commission finds that the rule promulgated by the Federal Communications Commission ("FCC") with respect to recordings by broadcast licensees is sufficiently thorough so as to offer the necessary protection to the people of this State. See 47 C.F.R. § 73.1206. Thus, there is no need to adopt a similar rule in this docket and we, therefore, will reject proposed Rule 7.0.1.4.

4. Lastly, the enforcement section, Rule 7.0.3, imposes the burden of protecting end-users against improper recording of

telephone conversations on the telecommunications service provider. Compliance with this rule could potentially expose such companies to substantial legal liability as a result of improper suspension of a subscriber's telephone service. Rule 7.0.3 would also require the telecommunications service provider to become aware of an improper recording in order to enforce this proposed rule. This is only possible if the provider is told of the violation by a third party or if the provider monitors the telephone message. These two circumstances are not workable, and therefore, the Commission will not adopt Rule 7.0.3. However, the Commission urges telecommunications service providers to include, in their tariffs and regulations, provisions governing the need for law enforcement agencies to record conversations and the right to suspend telecommunications service upon notification by a law enforcement agency.

5. In sum, while not all portions of proposed Rule 7.0 were objected to, the Commission believes that it should refrain from adopting any rules on this subject matter at this time. The Commission finds that the relevant state and federal law adequately provide the end-user with the appropriate protections against the improper recording of telephone conversations. Proposed Rule 7.0 will be rejected.

**E. Purchase of Indebtedness (Rule 9.3.3 of the Telephone Rules)**

1. The Commission has amended this rule to address the effect of competition in the local exchange telephone market and to take into account that it is now technically feasible to deny

access to interLATA toll service without simultaneously cutting off local and intraLATA toll service.

2. The rule amendment will insure that an end-user will not be denied the right to change telecommunications service providers because of an unpaid or contested bill with its previously selected telecommunications service provider. Thus, if the customer's newly selected telecommunications service provider agrees to purchase that customer's outstanding indebtedness from the customer's previous telecommunications service provider, the provision of telecommunications service to that customer cannot be contingent upon payment of that amount. Moreover, the telecommunications service provider cannot base a deposit decision on its voluntary decision to purchase the accounts receivable of a new customer's previous provider. The commenters generally supported this notion.

3. The Commission believes that its own rules adequately protect all concerned and, therefore, rejects the OCC's recommendation that it adopt a partial payment rule similar to that adopted by the New York Public Service Commission. Additionally, the Commission finds that the ability of a telecommunications service provider to obtain a deposit from a subscriber in compliance with Rule 8 of the Telephone Rules serves the public interest better than denying or discontinuing service to an end-user who has failed to pay its bills.

4. However, the Commission, as a result of the written and oral comments, has clarified this rule amendment to make it

clear that this prohibition does not prevent the customer's selected telecommunications service provider from requiring the customer to pay a deposit as a result of obtaining other information in accordance with Rule 8 of the Telephone Rules.

**F. Construction Standards (Rule 14 of the Telephone Rules)**

Since Rule 14.1 of the Telephone Rules was last published, the National Electric Safety Code and Part 68 of Title 47 of the Code of Federal Regulations have been revised. The proposed amendments simply update the references to these items. It is good public policy to refer to current standards in our rules. Therefore, we will adopt the proposed amendments to this rule.

**G. Basic Telephone Service Standards (Rule 17 of the Telephone Rules)**

1. Amendments to this rule, which is contained in the quality of service section of the Telephone Rules, were required to ensure that end-users in this State were offered quality and reliable telephone service by their chosen telecommunications service provider.

2. The first amendment to Rule 17 consists of further explaining what it means to provide access to toll services as part of a subscriber's basic telephone service. As originally proposed, this rule amendment referred to the granting of authority to a new entrant in the local exchange telecommunications market after July 1, 1996, which is the latest date by which the Commission must have rules pursuant to HB 95-1335. Reference to this date has been removed to avoid any potential conflict with the federal

legislation popularly known as the Telecommunications Act of 1996 (codified at 47 U.S.C. § 151 et seq.) which was signed into law on February 8, 1996. This change in the amendment from that originally proposed as part of Decision No. C95-1286 comports with the position advocated by MCI and AT&T. Additionally, the purpose behind the amendment is to ensure that new entrants to the telecommunications market offer presubscription for Message Telecommunication Service (MTS) in the same manner as the incumbent telecommunications service provider. The Commission finds that this requirement serves the public interest and will adopt Rule 17.1.5 as contained in Attachment A to this Decision.

3. Next, we have proposed an additional requirement relating to the provision of power to customer telephones. As a result of the comments, the Commission finds that Rule 17.1.7. as originally proposed in Decision No. C95-1286 was vague and possibly overly burdensome. The Commission carefully considered alternative suggestions and now finds that the proposal offered by USWC provides a level of telecommunications service during a power failure which adequately serves the public's interest. The rule as now adopted simply requires that a telecommunications service provider, in the event of a commercial alternating current power failure, shall provide up to eight hours of back up power to its subscribers' network interfaces in landline applications in order to support existing basic service to lines that utilize a traditional ringer.

4. The Commission has also added a requirement of providers of basic local exchange service, contained in Rule 17.1.8 as set forth in Attachment A to this Decision, that they offer basic telephone service by itself as a separate tariff offering. The Commission interprets this rule as having no bearing on a new entrant's ability to provide niche marketing of telecommunications service. As a result, the opposition to the rule by OCC, MCI & AT&T is unfounded. The Commission finds that requiring basic telephone service to be offered by itself as a separate tariff offering furthers the goal of competition in the basic local exchange market and is, therefore, in the public's interest.

5. Decision No. C95-1986 also proposed changes to the universal service availability standard of Rule 17.2. These changes are essentially housekeeping changes. Rule 17.2.1 will be amended to include reference to the two new subparagraphs of Rule 17.1, an obsolete portion of Rule 17.2.2 is deleted, and Rule 17.2.3 is added due to improvements in technology. No negative comments were received on these amendments/additions.

6. Lastly, a change to the introduction of Rule 17.3 which pertains to the standards for local calling areas was proposed in Decision No. C95-1286. USWC's recommended clarification is unnecessary given that a local calling area serves a community of interest. Thus, if a community of interest changes, then all providers serving that local calling area will, at present time, be required to offer the identical local calling area. This is the only plausible interpretation of Rule 17.3 under

§ 40-15-206(2), C.R.S. Moreover, AT&T's suggestion that modifications to local calling areas be accomplished by tariff filings runs afoul of § 40-15-206, C.R.S., which places a determination of the public interest exclusively with the Commission in conjunction with a hearing. Therefore, this rule must be rejected. The Commission has also amended the first sentence to update the language in light of the introduction of competition to the local exchange telecommunications market.

**H. Regulation of Changes to Telephone Presubscription (Rule 25 to the Telephone Rules)**

1. As a direct result of competition in the local exchange telecommunications market, it is in the public interest for the Commission to promulgate rules protecting end-user subscribers from the unauthorized switching of their selected telecommunications service provider (also known as "slamming"). The Commission disagrees with those commenters who contend that § 258 of the Telecommunications Act of 1996 preempts the Commission from promulgating rules on this topic prior to rules being promulgated by the FCC. The Commission finds that, in the absence of FCC rules on local exchange providers and intrastate intraLATA interexchange carriers and in light of the provisions contained in § 261 of the Telecommunications Act, it has jurisdiction to adopt the following rules. Thus, we will adopt rules on the topic of changing provider/carrier presubscription.

2. As originally proposed in Decision No. C95-1286, the rule took a conservative approach to this issue by only permitting confirmation of a requested change in the presubscribed

provider/carrier through the most burdensome method -- that of a written letter of authorization. The commenters, while all supporting the need for rules on this topic, opposed this rule as proposed because it impeded a consumer's ability to change presubscribed providers/carriers and negatively impacted competition contrary to the legislative policy expressed in § 40-15-501, C.R.S.

3. The commenters suggested that the Commission adopt a rule akin to that promulgated by the FCC with respect to interLATA interexchange carriers (IXCs). The FCC permits a change in a customer's presubscribed IXC to be confirmed through any one of four methods: (1) written letter of authorization; (2) electronic authorization via a toll-free telephone number; (3) third party verification of an end-user's oral authorization; or (4) mailing an information package which will result in the customer's selected IXC being changed if the customer does not cancel the change order by returning a prepaid postcard. See *In the Matter of Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, *Report and Order*, 7 FCC Rcd. 1038, 1048, Appendix B (1992); see also *In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Decision No. FCC 95-225 (1995); 47 C.F.R. §§ 64.1100, 64.1150.

4. Based upon the review of the relevant FCC orders and the comments received in this docket, the Commission finds that a combination of the existing FCC rules on changing presubscribed

providers and the rules as originally proposed in Decision No. C95-1286 best serves the interests of the public. Additionally, this rule as attached to this Decision contains new terminology which better describes the types of market participants it governs rather than using the generic term "carrier" as used by the FCC in its anti-slamming rules. These market participants are referred to as customer-selected basic local exchange providers (CSBLEPs) and customer-selected intrastate intraLATA interexchange carriers (CSIIIXCs). Discussion of the specific rule parts now follows.

5. Rule 25.1 as attached to this Decision sets forth four procedures for confirming a customer's requested CSBLEP and/or CSIIIXC change. Our rule relies in significant part on the FCC's four options concerning changes to one's long distance carrier; however, it differs in one material respect. The Commission views the FCC's fourth option (information package designating a carrier change unless a postcard cancelling the change is returned) as a negative option. The Commission does find some merit in this option and, therefore, retains the concept while converting it to a positive option. We adopt as our fourth option a method involving an information package but requiring the potential subscriber to return a postpaid postcard in order to effect the change in CSBLEP and/or CSIIIXC.

6. Like the FCC, the Commission has proposed a rule (Rule 25.2 as set forth in Attachment A to this Decision) which explains the form and content required in a letter of authorization. No substantive changes to this rule were suggested

by the commenters. The Commission will adopt it as proposed with the aforementioned changes in terminology.

7. Rule 25.3 as set forth in Attachment A to this Decision differs significantly from that originally proposed in Decision C95-1286 as a result of the comments. First, the Commission has struck the first portion of the proposed rule (Rule 4.1 as set forth in Attachment A to Decision C95-1286). The Commission finds that this portion of the proposed rule would have been unworkable in a competitive environment because it placed the incumbent local exchange company in the position of having the final word as to whether one of its present customers had in fact asked to be switched to a new basic local exchange provider (BLEP) and/or intrastate intraLATA interexchange carrier (IIIXC). Second, the Commission has clarified the term "freeze" and withdrawn any indication that the rule requires telecommunications service providers to actively seek to have customers freeze their accounts. These amendments comport, for the most part, with the recommendations of USWC and OCC. Third, the Commission's education requirement expressed in Rule 25.3.2, as opposed to that originally proposed in Decision No. C95-1286, limits the frequency that such programs should be conducted. The Commission finds that education upon service initiation alone adequately serves the public interest.

8. The Commission has also provided for the enforcement of the anti-slamming rules in Rule 25.4 as set forth in Attachment A to this Decision. Through Rule 25.4.1, the Commission intends to

penalize, to the extent permitted by law, provider/carriers who engage in unauthorized switching of subscribers' selected BLEP and/or IIIXC. The Commission finds that the procedures described in Rule 25.4.2 for returning a customer to the CSBLEP and/or CSIIIXC best serve the public interest because they create a disincentive for telecommunications service providers to make unauthorized switches of an end-user's CSBLEP and/or CSIIIXC and ensure that the end-user will not be held responsible for the provider/carrier change fee. Rule 25.4.3 furthers the protection of the end-user by requiring the offending BLEP and/or IIIXC to refund to the end-user the amount of the end-user's current month telephone charges attributable to intrastate telephone service provided by that BLEP/IIIXC. Additionally, the Commission finds that Rule 5.4 as proposed in Decision 95-1286 is unnecessary and confusing, and therefore, will not be adopted.

9. Finally, if necessary, the Commission will revisit the issues contained in this Rule 25 following the FCC's promulgation of rules on this subject matter in accordance with § 258 of the Telecommunications Act of 1996.

#### **I. Adoption of Rules**

In general, we are convinced that the above amendments and additions to the Telephone Rules are in the public interest. The adopted rules ensure that a high quality of telecommunications service will be provided to all end-users in this State and that such service will be provided in a manner that is not unduly discriminatory either between end-users or between competing