BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0453T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO TELECOMMUNICATIONS RULES IMPLEMENTING HB14-1329, HB14-1330 AND HB14-1331, 4 CODE OF COLORADO REGULATIONS 723-2**.**

COMMENTS OF CTIA

I. INTRODUCTION

CTIA – The Wireless Association® ("CTIA")[1] appreciates the opportunity to comment on the proposed rules issued by the Colorado Public Utilities Commission ("Commission") to amend the Commission's Rules Regulating Telecommunications Providers, Services, and Products contained in 4 *Code of Colorado Regulations* 723-2 ("Telecommunications Rules") implementing House Bills 14-1329, 14-1330, and 14-1331 ("2014 Telecom Reform Legislation").[2] The proposed Telecommunications Rules amendments issued along with the NOPR are intended to effectuate the changes made by the 2014 Telecom Reform Legislation, which deregulated the majority of telecommunication services. NOPR, ¶ 7.

CTIA's comments primarily seek clarification on an important threshold issue concerning the scope and applicability of the amended Telecommunications Rules. The amended rules should impose obligations only on services and providers that are subject to the Commission's

[1] CTIA (www.ctia.org) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America's competitive and world-leading mobile ecosystem. The association also coordinates the industry's voluntary best practices and initiatives and convenes the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] *See* Notice of Proposed Rulemaking, Decision No. C16-0508 (mailed June 10, 2016) ("NOPR").

jurisdiction. Indeed, the primary reason for updating the Commission's Telecommunications Rules is to ensure that they are consistent with the broad deregulation of telecommunications services effectuated by the 2014 Telecom Reform Legislation. NOPR at ¶¶ 3, 10. In that regard, in a number of instances the proposed rules appropriately specify that various obligations apply to providers of telecommunications services *subject to Commission jurisdiction*. In other instances, however, the proposed rules impose obligations on "providers of telecommunication services," without delimiting language regarding the Commission's jurisdiction.

These inconsistencies should be harmonized in the rules to make clear that the rules impose obligations, as must be the case, only where the Commission has the jurisdiction to regulate a service or service provider. This was presumably the intent of the proposed amendments provided in the NOPR, and it is therefore important to ensure that the amended rules accomplish this goal.

In addition, CTIA would support a series of workshops to address the proposed significant revisions to the Commission's Telecommunication Rules, and to ensure that appropriate jurisdictional boundaries are in place either globally or in each subsection of the proposed amended rules. Workshops may be particularly appropriate regarding more complex rules relating to, for instance, numbering and interconnection. The amended rules should ensure that the Commission has the ability to address issues that it appropriately must address, or has the authority to address through a delegation of authority under federal law, while staying within the confines of its limited general jurisdiction over telecommunications services and providers.

II. THE PROPOSED AMENDED TELECOMMUNICATIONS RULES SHOULD MAKE CLEAR THAT OBLIGATIONS IN THE RULES APPLY ONLY TO REGULATED SERVICES AND REGULATED SERVICE PROVIDERS.

The "Basis, Purpose and Statutory Authority" introduction to the Commission's current Telecommunications Rules states that "[t]he basis and purposes of these rules is generally to:

regulate jurisdictional telecommunications services…." The proposed amendments would revise this introductory statement to provide that the basis and purpose of the rules is generally to "regulate providers of telecommunications services…." NOPR, Attachment A, p. 9 ("Basis, Purpose, and Statutory Authority"). The word "jurisdictional" has been struck.

As a preliminary matter, CTIA believes it is inadvisable to delete the word "jurisdictional" from the introductory statement explaining the basis, purpose, and statutory authority for the rules. Expression of the "jurisdictional" limitation is important to ensure that rules imposing obligations on providers of "telecommunications services" are understood at all times to impose those obligations *only* on services and service providers that the Commission has jurisdiction to regulate. In light of the fact that the 2014 Telecom Reform Legislation was broadly deregulatory, and eliminated Commission jurisdiction over most services, it is particularly important to retain the "jurisdictional" limitation when introducing and defining the scope of the Commission's amended Telecommunications Rules.[3] In addition, retaining the global "jurisdictional" limitation in the introductory statement explaining the basis and purpose of the amended rules is also important because the amended rules establishing the scope and applicability of various rules series, and associated requirements, do not consistently include an appropriate jurisdictional limitation.

To illustrate, in some sections of the proposed amended rules an introductory rule or statement appropriately explains the limited jurisdictional reach of a given rules series. For

[3] NOPR at ¶¶ 7, 10. For the same reason, the Commission should reject the proposed amendment to rule 2001(tt), which would define "jurisdictional service" to now include Part 4 services. Part 4 services are not "jurisdictional" services, at least as that term is commonly understood to mean that the Commission has jurisdiction to regulate such services. While Article 15 of Section 40 of the Colorado Revised Statutes does address deregulated services in Part 4, it provides that those services are all expressly "exempt from Commission jurisdiction," and therefore not jurisdictional to the Commission. C.R.S. § 15-40-401. The proposed amendment to rule 2001(tt) including Part 4 services as "jurisdictional," should be rejected for this reason, as it will only serve to breed confusion.

instance, proposed amended Rule 2100 explains that the rules regarding operating authority in Rules 2100 through 2110 apply only to Part II and Part III services over which the Commission retains jurisdiction. Proposed amended Rule 2120 explains that the rules regarding tariffing and advice letters at Rules 2120 through 2129 "are applicable only to providers of regulated services…." Proposed amended Rule 2300 explains that the rules governing relationships between customers and providers "apply to all providers of telecommunication services subject to the jurisdiction of the Commission." Other applicability/scope provisions include this same language (e.g., proposed amended Rule 2330 (Quality of Service Rules) and proposed amended Rule 2360 (Collection and Disclosure of Personal Information)).

Inconsistently, other rule sections apply to "providers of telecommunication services," without any language limiting the obligations imposed within these rule sections to regulated services or regulated service providers. For instance, the amended scope and applicability rules for the rule sections addressing General Provisions (proposed amended Rule 2000), Interconnection and Unbundling (proposed amended Rule 2500), Numbering Administration (proposed amended Rule 2700) and Local Number Portability (proposed amended Rule 2720) all specify that those rules series apply to "providers of telecommunications services," without any words like "regulated" or "jurisdictional" included to limit the obligations imposed by those rules on regulated service providers.

Focusing on the Interconnection and Unbundling Rules, CTIA recognizes that the Commission has limited delegated authority to fulfill certain federal mandates specific to Section 251/252 interconnection agreements.[4] However, use of the inclusive term "provider of

[4] *See, e.g.*, 47 U.S.C. § 251(f) (detailing state role in dealing with exemptions, suspensions and modifications regarding interconnection requirements imposed on rural telephone companies); 47 U.S.C. § 252(e) (detailing state commission processes for approval of Section 251 interconnection agreements).

telecommunications services" in the Commission's proposed amended Interconnection and Unbundling Rules impermissibly broadens, relative to 47 U.S.C. §§ 251 and 252, application of the rules beyond the intent of HB 14-1329, and beyond the scope of the federal statutes under which they arise.[5] There are limited instances, however, where use of the term "providers of telecommunications services" may be appropriate.[6] Thus, use of the terms "provider of telecommunications services" and "provider of *regulated* telecommunications services" throughout the proposed amended Interconnection and Unbundling Rules must be carefully examined, and CTIA suggests that workshops to examine use of these terms may be appropriate.

Regarding numbering administration (proposed amended Rule 2700, *et. seq.*), although the Commission here also has limited delegated authority to fulfill certain federal mandates,[7] this again does not confer general jurisdiction to impose obligations on non-jurisdictional service providers, including interconnected VoIP providers. For instance, proposed amended Rule 2702(h) would require all interconnected VoIP providers to provide and maintain accurate contact information and update contact information within 30 days of a change. While this requirement seems innocuous, it is inconsistent with the Colorado legislature's pronouncement

[5] An example of a problem arising from the use of the term "providers of telecommunications services" is easily highlighted. For instance, proposed amended Rule 2505(g), which provides that "[a]ll Commission quality of service rules shall apply to the provision of interconnection facilities, unless the provider of telecommunications service has opted into a Performance Assurance Plan mechanism," cannot literally apply to all "providers of telecommunications services," as many providers of telecommunications services, including CMRS providers, are exempt from Commission jurisdiction pursuant to § 40-15-401, C.R.S.

[6] For instance, proposed amended Rule 2502(b)(IV) would "permit all competing providers of telecommunications service to have non-discriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays," and CTIA is certainly not suggesting that only providers of regulated telecommunications services should be permitted such equal access.

[7] *See, e.g.,* Report and Order, *Numbering Policies for Modern Communications, et al.*, 30 FCC Rcd 6839 (2015), and subsequent Wireline Competition Bureau Public Notice (Feb. 4, 2016), (discussing application requirements for interconnected VoIP providers to obtain numbering authorization under the prescribed FCC process, including requirements to provide notice to state commissions 30 days in advance of requesting numbers).

that interconnected VoIP services are exempt from any Commission regulation pursuant to C.R.S. § 40-15-401(1)(q) (Internet-protocol-enabled services) and C.R.S. § 40-15-401(1)(r) (Voice-over-internet-protocol service). Proposed amended rule 2702(g) appears to essentially restate the FCC requirement for interconnected VoIP providers to provide 30-day advance notice of number requests to state commissions. If the federal requirement changes, however, Rule 2702(g) would immediately be inconsistent with the governing federal standard. Because the Commission has no independent Colorado statutory authority to impose any obligation on interconnected VoIP service, and because proposed rule 2702(g) is superfluous and could become inconsistent with the advance notice period for numbering requests specified by the FCC, the two proposed rules in this section dealing with interconnected VoIP providers, proposed Rules 2702(g) and (h), should not be adopted.

CTIA also notes the sometimes inconsistent use of terms differentiating "telecommunications services" from "regulated telecommunications services" even within a rule or rules series. For instance, the heading for proposed amended Rule 2005 indicates that it pertains to "Records for Regulated Providers and Services." Proposed amended Rule 2005(a) provides that "all regulated providers" shall make requested records available to the Commission. But proposed amended Rule 2005(b) then establishes the record retention period for "providers of telecommunications services" and proposed amended Rule 2005(c) similarly establishes the records to be maintained by "each provider of telecommunications services." Similarly, the 2460 series of rules are introduced by the heading "Costing and Pricing of Regulated Telecommunications Service," but proposed amended Rule 2460, articulating the scope and applicability of those rules, then states that they "apply to all providers of all telecommunication services…."

CTIA believes that the amended rules, including rules series that lack limiting language like "regulated" or "jurisdictional," were intended to impose obligations only on services and service providers subject to the Commission's jurisdiction. But clarity and consistency is important here. As written, many of these rule sections, which impose significant obligations, could be construed to apply to CMRS providers, as commercial mobile radio services are "telecommunications services."[8] In addition, mobile broadband services are also now considered "telecommunications services" based on the FCC's Open Internet Order and the D.C. Circuit's decision upholding that determination.[9] Because commercial mobile radio service and mobile broadband service are telecommunications services under federal law, they are equally telecommunications services as defined by Colorado law, as Title 40 of the Colorado statutes incorporates the federal definition of telecommunication service.[10]

The Commission's Telecommunications Rules, however, cannot impose obligations on either CMRS or mobile broadband service, as both are exempt from Commission regulation. Pursuant to § 40-15-401(1)(c), CMRS providers are not public utilities, and "are exempt from regulation under [Article 15 of Title 40] or under the 'Public Utilities Law' of the state of Colorado."[11] The 2014 Reform Legislation also added § 40-15-401(3), C.R.S., which states: "If a telecommunications service or product is not defined in part 1 of this article and is not

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[8] *See* First Report and Order and Notice of Further Proposed Rulemaking, *In the Matter of Telephone Number Portability Core Terms*, 11 FCC Rcd 8352, 8357, ¶ 8 (1996).

[9] *See* Report and Order on Remand, Declaratory Ruling, and Order, *In re Protecting and Promoting the Open Internet,* 30 FCC Rcd 5601, 5778, ¶ 388 ("we conclude that broadband Internet access service, whether provided by fixed or mobile providers, is a telecommunications service"), *aff'd sub nomine United States Telecomm Ass'n v. FCC*, __ F.3d ___ (D.C. Cir. June 14, 2016). The FCC's order also preempted state regulation of broadband, "reaffirm[ing] the [FCC]'s longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes." 30 FCC Rcd at 5803.

[10] *See* § 40-15-102(29), C.R.S. (incorporating the federal definition at 47 U.S.C. § 153(53)).

[11] As provided in § 40-1-101, C.R.S., Articles 1 to 7 of Title 40 comprise Colorado's "Public Utilities Law."

classified under part 2 or 3 of this article, the telecommunications service or product is classified as a deregulated telecommunications service under this part 4." NOPR, ¶ 10. Mobile broadband is not defined in Part 1 and not classified as a Part 2 or Part 3 service, and thus is equally a fully deregulated Part 4 service, like CMRS.

CTIA expansively briefed these jurisdictional issues in Proceeding No. 15R-0318T, relating to proposed amendments to the Commission's Basic Emergency Services rules,[12] and therefore does not repeat that extensive briefing here. However, one issue regarding Basic Emergency Services does merit mention. The NOPR in this proceeding stated that the Commission is not proposing any changes to its Basic Emergency Service rules. NOPR, ¶ 2. CTIA notes, however, that the proposed amendments here do propose to amend and update certain NENA standards incorporated in the Basic Emergency Service Rules by reference. *See* Attachment A, p. 29, proposed amended rule 2008(a). The Commission should reject the proposed changes to Rule 2008(a), as implementing such changes will, in fact, have the effect of amending the Basic Emergency Service Rules—specifically Rule 2146, which incorporates the NENA standards set forth in Rule 2008(a).

III. CONCLUSION

CTIA appreciates that the amended rules are not intended to impose obligations on deregulated services such as CMRS or mobile broadband services, but to ensure there is no future misunderstanding on this point, each rules series, in the scope and applicability section, should specify that the rules therein impose obligations only as to regulated services. In addition, the introduction to the Telecommunications Rules stating their basis, purpose and

[12] Proceeding No. 15R-0318T was recently closed by Decision No. C16-0719 (mailed August 3, 2016).

statutory authority should retain the word "jurisdictional," to make clear that the obligations imposed in the rules only apply to jurisdictional services.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2016, the foregoing Comments of CTIA were filed, and served by the Colorado Public Utilities Commission solely via its electronic filing system.

/s/ *Philip J. Roselli*
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