

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0497T

IN THE MATTER OF RULES IMPLEMENTING HB16-1414 CONCERNING
TELECOMMUNICATION RELAY SERVICES FOR TELEPHONE USERS WITH
DISABILITIES, 4 CODE OF COLORADO REGULATIONS 723-2-2820 THROUGH 2827.

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”) in the Notice of Proposed Rulemaking² that initiated this proceeding to develop amended rules related to Telephone Relay Services (“TRS”), and the fund to support TRS (“TRS Fund”). The proposed rules provided in the NOPR are intended to implement the provisions of HB16-1414.³ CTIA’s comments address a single issue. CTIA seeks to ensure that the Commission’s new audit rule relating to the TRS Fund is appropriately limited to audit authority over records relating to collection of the monthly customer TRS surcharge, and is not misconstrued as general audit authority over Commercial Mobile Radio Service (“CMRS”) providers. That is the limit of

¹ CTIA-The Wireless Association[®] (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 Decision No. C16-0591 (mailed June 30, 2016) (“NOPR”).

³ HB16-1414, *Concerning the Assessment of a Monthly Surcharge on Customers of Voice Telecommunications Providers to Fund Telecommunications Relay Services for Telephone Users with Disabilities, and, in Connection therewith, Making an Appropriation*, was signed into law on May 4, 2016. Per Section 10 of HB 16-1414, the act takes effect September 1, 2016, and applies to surcharges assessed on or after that date. HB16-1414 amended provisions in Titles 24, 26, 29 and 40 of the Colorado Revised Statutes pertaining to TRS.

the specific audit authority conferred on the Commission relating to TRS, pursuant to § 40-17-103(3)(f), C.R.S.

II. HB16-1414 AND CMRS PROVIDERS

HB16-1414 requires “voice service providers” to assess their customers a monthly surcharge to support the TRS Fund. Section 4, HB16-1414, codified at C.R.S. § 40-17-103(3)(b). A voice service provider is defined as a company “that provides ‘telephone access lines’ to members of the general public who are its customers for voice service.” Section 3, HB16-1414, codified at C.R.S. § 40-17-102(5). A “telephone access line” is defined as “each voice grade channel or its equivalent assigned to a residential or commercial end user by a voice provider, regardless of the technology used to provide the service. Section 3, HB16-1414, codified at C.R.S. § 40-17-102(4). Based on these definitions introduced by HB16-1414, CMRS providers will likely be considered “voice service providers,” and will therefore be responsible to assess a monthly surcharge on their customers to support the Colorado TRS Fund.

III. THE COMMISSION SHOULD MAKE CLEAR THAT ITS AUDIT AUTHORITY UNDER THE PROPOSED RULES IS LIMITED TO TRS SURCHARGE RECORDS, CONSISTENT WITH SECTION 40-17-103(3)(f), C.R.S.

On June 15, 2016, prior to issuing the NOPR in this proceeding, the Commission adopted temporary rules to comply with the statutory amendments introduced by HB16-1414.⁴ The temporary rules introduced a new rule “setting the length of time voice service providers must maintain records for audit purposes.” Decision No. C16-0505, at 4. In particular, new temporary rule 2826(c) provides that “[e]ach voice service provider shall maintain a record of the monthly surcharge imposed on each customer and collected by the voice service provider for a period of three years from the date of billing.” Decision No. C16-0505, Attachment A. New temporary rule 2826(d) further provides that “[t]he Commission, at its own expense, may require

⁴ Decision No. C16-0505, Proceeding No. 16R-0451T (mailed June 15, 2016).

an audit of a voice service provider's records." Decision No. C16-0505, Attachment A. On June 30, 2016 the Commission issued the NOPR initiating this proceeding to adopt permanent rules to comply with the statutory amendments introduced by HB 16-1414. The proposed permanent rules include the same provisions related to record-keeping and Commission audit as previously added by the temporary rules. Decision No. C16-0591, Attachment A, proposed rules 2826(c), 2826(d).

The enabling statute that provides the Commission's audit authority in the TRS context makes clear that this audit authority is limited to records necessary to demonstrate compliance with a voice service provider's requirement to collect the specified TRS surcharge from each customer. Specifically, § 40-17-103(3)(f), C.R.S., provides that the Commission shall adopt a TRS funding mechanism that includes:

[a] requirement that each voice service provider maintain a record of the monthly surcharge imposed on each customer and collected by the voice service provider. The record of any monthly surcharge imposed and collected shall be maintained for three years from the date of billing. The commission may require an audit of a voice service provider's records, which audit must be at the commission's expense."

In the statute, the provider's record-keeping obligation and the Commission's associated audit authority are set forth in the same provision, § 40-17-103(3)(f), C.R.S.

By contrast, in proposed rule 2826, the voice service provider's TRS record-keeping obligation is set forth in proposed rule 2826(c), while the Commission's audit authority is separately stated at proposed rule 2826(d), which provides that: "[t]he Commission, at its own expense, may require an audit of a voice service provider's records." CTIA suggests that it would be appropriate to include the language regarding the Commission's audit authority in the same rule that specifies the voice service provider's record-keeping requirement, following the approach in the statute. This will avoid any misinterpretation of proposed rule 2826(d) as

standalone, general audit authority over all of a voice service provider's records. This limitation may well be the intent of proposed rules 2826(c) and 2826(d), read in conjunction with each other, but including the audit authority language in the same rule that specifies the record-keeping requirement will ensure clarity on this point.

This clarity is important to CTIA's members, because CMRS providers are not subject to the Commission's general jurisdiction, and thus not subject to the Commission's general audit authority. 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." Section 40-15-401(1)(c), C.R.S. Articles 1 to 7 of Title 40 represent Colorado's "Public Utilities Law." Section 40-1-101, C.R.S. CMRS providers are therefore not subject to the Commission's general audit authority set forth in Article 6 of Title 40, at § 40-6-106, C.R.S. For this reason it is appropriate to make clear that the Commission's audit authority in its proposed TRS rules is limited to records relating to collection of the monthly TRS surcharge. The Commission can best achieve this clarity by combining proposed rules 2826(c) and 2826(d) into a single rule, mirroring the approach taken under the enabling statute, § 40-17-103(3)(f), C.R.S.

Dated: July 25, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 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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