

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-1248T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF
COLORADO REGULATIONS 723-2, SECTION 2307.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING ADDITIONAL HEARING,
IDENTIFYING ISSUES TO BE ADDRESSED,
AND ESTABLISHING DATES FOR
FILING ADDITIONAL COMMENTS**

Mailed Date: May 24, 2013

I. STATEMENT

1. On July 13, 2012, Dex Media East, Inc. (Dex Media), filed a Petition for Rulemaking in which Dex Media asked the Commission to open a rulemaking proceeding to modify Rule 4 *Code of Colorado Regulations* (CCR) 723-2-2307.¹ That filing was made pursuant to § 24-2-103, C.R.S., and Rule 4 CCR 723-1-1306² and commenced Docket No. 12M-817T, *In the Matter of the Petition of Dex Media East, Inc., to Open a Rulemaking Docket, Issue a Notice of Proposed Rulemaking, and Amend 4 CCR 723-2, § 2307*. On October 22, 2012, Dex Media filed an Amended Petition for Rulemaking (Amended Petition).

¹ This Rule is found in the Rules Regulating Telecommunications Providers, Service, and Products, Part 2 of 4 *Code of Colorado Regulations* 723.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

2. On December 5, 2012, by Decision No. C12-1402 and as pertinent here, the Commission granted the Amended Petition and stated that it would issue a Notice of Proposed Rulemaking (NOPR) based on the rule language contained in the Amended Petition. By that Decision, the Commission also closed Docket No. 12M-817T.

3. On December 12, 2012, by Decision No. C12-1404, the Commission issued its NOPR regarding proposed amendment of Rule 4 CCR 723-2-2307 (Rule 2307). The proposed amendment in legislative drafting (*i.e.*, red-lined) format was appended to the Order as Attachment A. In that Order, the Commission assigned this rulemaking proceeding to an Administrative Law Judge (ALJ).

4. Decision No. C12-1404 scheduled a January 28, 2013 rulemaking hearing. The Order also included dates for filing written comments on the proposed amendment.

5. Notice of the rulemaking and of the January 2013 hearing was published in *The Colorado Register* in December 2012.

6. The following entities submitted written initial comments on the proposed amendment to Rule 2307: Boulder Regional Emergency Telephone Service Authority (BRETSA); Dex Media; and Qwest Corporation, doing business as CenturyLink QC (CenturyLink).

7. The following entities submitted written reply or response comments addressing the initial comments on the proposed amendment to Rule 2307: BRETSA, Colorado Telecommunications Association (CTA), CenturyLink, and Dex Media.

8. At the time and place noticed, the ALJ called the rulemaking hearing to order. The ALJ heard oral comments from BRETSA, Commission Staff, CenturyLink, CTA, and Dex Media. The ALJ admitted three exhibits into the rulemaking record.

9. On April 16, 2013, Dex Media submitted a Notice of Supplemental Authority.

10. By this Order, the ALJ will schedule a **July 11, 2013** hearing in this rulemaking. At the hearing, the following two issues will be addressed.

11. *First*, in its comments filed on January 9, 2013 at 1, BRETSA recommended that the Commission include in Rule 2307 a requirement that “telephone companies ... include on the first page of the directories (or alternative printed form) non-emergency numbers for public safety agencies[.]” In its response comments filed on January 23, 2013, Dex Media opposed that recommendation because “[s]uch details should be left to the discretion of the publisher” (*id.* at 10); “the First Amendment protects the editorial control over phone books, which are protected speech” (*id.* at 10 n.10 (citation omitted)); and “exercising regulatory power to this level of detail over the content and layout of telephone directories approaches, if not exceeds, the outer boundary of the commission’s regulatory jurisdiction” (*id.* at 10). During the course of the rulemaking hearing, commenters discussed whether there is an impediment, based on the First Amendment to the United States Constitution, to implementing BRETSA’s recommendation.

12. The ALJ wishes additional information on, and discussion of, this issue. In particular, the ALJ would appreciate comment, with an explanation of the rationale for the comment, on whether specifying that *emergency* numbers be placed on the first page of the white pages telephone directories raises First Amendment issues similar to those advanced in opposition to BRETSA’s recommendation.³ Commenters also may elaborate on their initial comments on the placement of *non-emergency* numbers.

³ The ALJ is aware that Dex Media, which is under contract to publish the white pages telephone directories for CenturyLink, has agreed to put emergency numbers on the first page of the white pages telephone directories that it publishes. Rule 2307, however, applies to all telecommunications carriers that publish white pages telephone directories. Thus, Dex Media’s agreement does not moot the issue. As a result, the ALJ seeks a discussion that is more far-reaching than a reiteration of what Dex Media has agreed to do.

13. *Second*, if the Commission decides to amend Rule 2307, a significant issue is whether the Rule should contain an opt-in process (*i.e.*, one does not receive a printed white pages telephone directory unless one requests to receive it) or an opt-out process (*i.e.*, one will receive a printed white pages telephone directory unless one asks not to receive it). Dex Media suggests that one basis for an opt-in process is the environmental benefits of such a process.

14. At page 2 of its January 11, 2013 comments, CenturyLink stated that Dex Media, “as part of a large industry group, has found it appropriate to adopt a voluntary opt-out process for those consumers who do not want to receive the yellow pages[.]” citing <https://www.yellowpagesoptout.com>. The 2012 Sustainability Report available on that website discusses yellow pages directories and their impact on the environment. In addition, there is a “did you know?” section that provides information on these issues.

15. The ALJ has reviewed the 2012 Sustainability Report and the “did you know?” section on that website. Because she has reviewed this information and may put it in the record of this rulemaking, the ALJ gives this notice to commenters and provides them with an opportunity to address/respond to this information within this rulemaking record.

16. The ALJ wishes information on, and discussion of, why one would use an opt-out process for yellow pages directories but an opt-in process for white pages directories.⁴ The ALJ requests that commenters address: (a) whether or not -- and the reasons for the stated opinion -- the 2012 Sustainability Report’s discussion of environmental impacts *vis-à-vis* yellow pages directories applies to white pages directories; (b) whether or not -- and the reasons for the stated

⁴ For example, there may be practical reasons such as differences between the two types of directories with respect to frequency of distribution, size, geographic scope of distribution, or some other characteristic. Of course, there may be no differences that warrant different treatment.

opinion -- the information in the “did you know?” section *vis-à-vis* yellow pages directories applies to white pages directories; and (c) the specific and distinct characteristics of white pages directories, which characteristics are not present in yellow pages directories, that make the opt-in process the correct process for white pages directories.

17. Interested persons may submit written comments on the issues discussed above (including data, views, or arguments) and present them orally at hearing. The Commission will consider all submissions, whether oral or written.

18. The Commission prefers and strongly encourages that interested persons submit written comments through the Commission’s E-Filings System and do so in Docket No. 12R-1248T no later than **June 20, 2013**. Reply comments should be submitted in the same docket and through the Commission’s E-Filings System by **June 27, 2013**.

II. ORDER

A. It Is Ordered That:

1. This Order scheduling an additional hearing date shall be filed with the Colorado Secretary of State for publication in the June 10, 2013 edition of *The Colorado Register*.

2. A hearing on the proposed rules and related materials, including the issues discussed above, shall be held on the following date, at the following time, and in the following location:

DATE:	July 11, 2013
TIME:	10:00 a.m.
PLACE:	Commission Hearing Room 1560 Broadway, Suite 250 Denver, Colorado

3. The Administrative Law Judge may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present comments orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filings System and do so in this Docket, Docket No. 12R-1248T, no later than June 20, 2013.

6. Interested persons may file reply comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filings System and do so in Docket No. 12R-1248T no later than June 27, 2013.

7. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-1248T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF
COLORADO REGULATIONS 723-2, SECTION 2307.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 12, 2012
Adopted Date: December 5, 2012

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding proposed Rule 2307 of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR), 723-2 and any conforming amendments that may be necessary.

2. The statutory authority for the proposed rules is found in §§ 24-4-103, 40-2-108, 40-3-101, 40-15-101, and 40-15-201, C.R.S.

B. Background

3. This docket has its origins in Docket No. 12M-817T. In that docket, Dex Media East, Inc. (Dex) petitioned the Commission to open a rulemaking docket and permanently amend Rule 2307 of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2. That rule relates to the publication and distribution of telephone directories. In Docket No. 12M-817T, Dex generally argued that environmental practices, current customer usage patterns, and customer demand all indicate that

delivery of residential white pages by local exchange carriers (LECs) or their official directory publishers was no longer in the public interest. By this Order we administratively notice Docket No. 12M-817T.

4. The Commission referred Docket No. 12M-817T to an Administrative Law Judge (ALJ) due to practical and public interest concerns that warranted further development before a consideration of the merits. These concerns included possible impacts upon rural LECs whose distribution of white page directories would be impacted by any amendments to Rule 2307 and the concerns related to the provision and availability of emergency and non-emergency contact information.¹

5. On November 27, 2012, the ALJ issued Decision No. R12-1367-I. By that order, the ALJ submitted a report to the Commission containing her recommendations with respect to the rulemaking petition filed by Dex.

6. By Decision No. C12-1402, mailed December 5, 2012, the Commission agreed with the recommendations contained in that report. The Commission granted the Amended Petition for Rulemaking filed by Dex on October 22, 2012 and closed Docket No. 12M-817T. The Commission also agreed to issue a NOPR based upon the Rule 2307 language contained in the Amended Petition. The instant NOPR follows those determinations.

C. Policy Objectives of Proposed Rules

7. In its Amended Petition, Dex observes that there are several trends that have reduced both the use and usefulness of residential white pages. These trends include, without limitation, that consumers are choosing to drop their landline phone in favor of

¹ Decision No. C12-1091-I, mailed September 20, 2012, at ¶¶ 13-14.

other telecommunications platforms, such as cell phones or voice over Internet protocol (VoIP). Not only are cell phone numbers not ordinarily listed in white page directories, but these phones include technology capable of storing large volumes of phone numbers, serving as a substitute for print residential white page directories. Additionally, Dex notes that many consumers have access to online phone directories through the Internet.

8. In an attempt to bring the rules up to date to reflect modern environmental practices, current customer usage patterns, and customer demand, the proposed rules included in the Amended Petition, and attached hereto, modify subsection (a)(III) and (b) of Rule 2307. These proposed revisions are intended to eliminate outdated saturated delivery requirements while retaining pro-consumer provisions of Rule 2307. Proposed revisions are also intended to ensure that all customers will be provided essential emergency calling information and non-emergency numbers to help reduce the number of non-emergency calls placed through Colorado's emergency-911 system.

D. Miscellaneous

9. Rules not specifically discussed in this NOPR do not constitute a portion of this NOPR. The Commission is not proposing any changes to the rules not specifically discussed in this NOPR, other than those conforming amendments that may be necessary (*e.g.*, amendment to references to Rule 2307 that may appear in other rules).

10. The proposed amendments will be published in the December 25, 2012 edition of *The Colorado Register*.

11. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and in final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system homepage at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=12R-1248T

12. The Commission encourages and invites public comment to the proposed updates.

13. The Commission shall refer this matter to an Administrative Law Judge (ALJ). The ALJ will conduct a hearing on the proposed rules and related issues at the below-stated time and place. Interested persons may submit written comments on the proposed rules, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's E-Filings System and do so in Docket No. 12R-1248T no later than January 9, 2013. Reply comments should be submitted in the same docket and through the Commission's E-Filings System by January 23, 2013. The Commission will consider all submissions, whether oral or written.

14. In submitting comments or replies, interested persons are invited to suggest changes that will make the subject rules more efficient and effective. We recognize that regulation imposes costs; therefore, suggestions concerning rules that may be unnecessary or unduly burdensome will be fully considered by the Commission. Interested persons are strongly encouraged to suggest rule language in legislative format.

15. The Commission desires to proceed with this rulemaking in an efficient and effective manner, which requires it to maintain an efficient timeline. Therefore, we request that

commentors include alternate rule language, as necessary with their comments, by the dates and manner specified above.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 25, 2012 edition of *The Colorado Register*.

2. The Commission takes administrative notice of Docket No. 12M-817T in this proceeding.

3. A hearing on the proposed rules and related materials shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: January 28, 2013
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

4. The ALJ may set additional hearings, if necessary.

5. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

6. Interested persons may file written comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filings System and do so in this Docket No. 12R-1248T no later than January 9, 2013.

7. Interested persons may file reply comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filings System and do so in the Docket No. 12R-1248T no later than January 23, 2013.

8. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 5, 2012.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners