

CHAPTER 228

PUBLIC UTILITIES

HOUSE BILL 98-1405

BY REPRESENTATIVES Salaz, K. Alexander, Bacon, Epps, Faatz, Gotlieb, Hagedorn, Hefley, Lawrence, Leyba, Mace, McElhany, Musgrave, Nichol, Paschall, Reeser, Takis, Taylor, Tucker, Udall, Veiga, and S. Williams; also SENATORS Dennis, Arnold, Bishop, Chlouber, Congrove, Hernandez, Hopper, J. Johnson, Linkhart, Matsunaka, Norton, Pascoe, Phillips, Powers, Reeves, Rupert, Schroeder, and Wattenberg.

AN ACT

CONCERNING A PROHIBITION ON THE TRANSFER OF A CUSTOMER'S ACCOUNT FROM ONE PROVIDER OF TELECOMMUNICATIONS SERVICES TO ANOTHER WITHOUT THE CUSTOMER'S PRIOR APPROVAL, AND, IN CONNECTION THEREWITH, APPLYING SUCH PROHIBITION TO PERSONS WHO PURCHASE AND RESELL TELECOMMUNICATIONS SERVICES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 15 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

40-15-112. Unauthorized change of telecommunications provider. (1) NO PROVIDER OF TELECOMMUNICATIONS SERVICE SHALL REQUEST THE TRANSFER OF A CUSTOMER'S ACCOUNT, WHOLLY OR IN PART, TO ANOTHER PROVIDER OF THE SAME OR A SIMILAR TELECOMMUNICATIONS SERVICE UNLESS ONE OR MORE OF THE FOLLOWING CONDITIONS HAS BEEN MET:

(a) THE PROVIDER TO WHOM THE CUSTOMER'S ACCOUNT IS TO BE TRANSFERRED HAS OBTAINED FROM THE CUSTOMER A DOCUMENT, SIGNED BY THE CUSTOMER, THAT CONTAINS A CLEAR, CONSPICUOUS, AND UNEQUIVOCAL REQUEST BY THE CUSTOMER FOR A CHANGE OF PROVIDER; OR

(b) THE PROVIDER TO WHOM THE CUSTOMER'S ACCOUNT IS TO BE TRANSFERRED HAS OBTAINED THE CUSTOMER'S ORAL AUTHORIZATION FOR THE TRANSFER AND CAN FURNISH PROOF OF SUCH AUTHORIZATION THROUGH VERIFICATION BY AN INDEPENDENT THIRD PARTY, ELECTRONIC RECORDS, OR ANY OTHER MANNER PRESCRIBED BY THE COMMISSION BY RULE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) (a) IF THE CUSTOMER IS NOT AN INDIVIDUAL, A DOCUMENT, AUTHORIZATION, OR REQUEST REFERENCED IN SUBSECTION (1) OF THIS SECTION SHALL BE VALID ONLY IF GIVEN BY AN AUTHORIZED REPRESENTATIVE OF THE CUSTOMER, WHO SHALL PROVIDE PROOF OF SUCH AUTHORITY.

(b) A DOCUMENT SHALL NOT BE VALID UNDER PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION IF IT IS PRESENTED TO THE CUSTOMER FOR SIGNATURE IN CONNECTION WITH A SWEEPSTAKES OR OTHER GAME OF CHANCE.

(3) A TELECOMMUNICATIONS PROVIDER WHO INITIATES AN UNAUTHORIZED CHANGE IN A CUSTOMER'S TELECOMMUNICATIONS PROVIDER IN VIOLATION OF THIS SECTION IS LIABLE:

(a) TO THE CUSTOMER, THE CUSTOMER'S PREVIOUSLY SELECTED PROVIDER, OR BOTH, AS DETERMINED BY THE COMMISSION, FOR ALL INTRASTATE LONG DISTANCE CHARGES, INTERSTATE LONG DISTANCE CHARGES, LOCAL EXCHANGE SERVICE CHARGES, PROVIDER SWITCHING FEES, THE VALUE OF ANY PREMIUMS TO WHICH THE CUSTOMER WOULD HAVE BEEN ENTITLED, AND OTHER RELEVANT CHARGES INCURRED BY THE CUSTOMER DURING THE PERIOD OF THE UNAUTHORIZED CHANGE; AND

(b) TO THE CUSTOMER'S LOCAL EXCHANGE PROVIDER FOR THE CHANGE FEES FOR THE UNAUTHORIZED CHANGE AND REINSTATING THE CUSTOMER TO THE ORIGINAL PROVIDER.

SECTION 2. Part 3 of article 15 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

40-15-302.5. Resellers of toll services - registration required. (1) TOLL RESELLERS SHALL REGISTER WITH THE COMMISSION IN A FORM SATISFACTORY TO THE COMMISSION. SUCH REGISTRATION SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION UPDATED WITHIN FIFTEEN DAYS AFTER ANY CHANGE:

(a) THE TOLL RESELLER'S NAME AND COMPLETE ADDRESS;

(b) ALL NAMES UNDER WHICH THE TOLL RESELLER DOES BUSINESS;

(c) ALL NAMES AND IDENTIFICATION NUMBERS UNDER WHICH THE TOLL RESELLER HAS REGISTERED WITH THE COLORADO SECRETARY OF STATE OR THE COLORADO DEPARTMENT OF REVENUE;

(d) THE NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF AN AUTHORIZED REPRESENTATIVE TO WHOM THE COMMISSION MAY MAKE INQUIRIES; AND

(e) A TOLL-FREE TELEPHONE NUMBER TO WHICH CONSUMER INQUIRIES OR COMPLAINTS MAY BE MADE.

(2) TOLL RESELLERS WHO REGISTER IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION SHALL BE EXEMPT FROM REGULATION BY THE COMMISSION EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

(3) FOR THE PURPOSE OF ENFORCING SECTION 40-15-112, THE COMMISSION MAY

EXERCISE ANY OF THE POWERS CONFERRED UNDER ARTICLES 1 TO 7 OF THIS TITLE AGAINST A TOLL RESELLER AND, IN CASES OF COMPLAINTS FILED UNDER SECTION 40-6-108, MAY ORDER A TOLL RESELLER TO MAKE DUE REPARATIONS TO THE COMPLAINING PARTY.

(4) PURSUANT TO SECTION 24-50-504 (2) (a), C.R.S., THE COMMISSION SHALL ENTER INTO PERSONAL SERVICES CONTRACTS THAT CREATE AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR THE ADMINISTRATION OF THIS SECTION AND SECTION 40-15-112, C.R.S.

SECTION 3. 40-15-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

40-15-102. Definitions. As used in this article, unless the context otherwise requires:

(30) "TOLL RESELLER" MEANS A PERSON WHO PROVIDES TOLL SERVICES TO END-USE CUSTOMERS BY USING THE TRANSMISSION FACILITIES, INCLUDING WITHOUT LIMITATION WIRE, CABLE, OPTICAL FIBER, OR SATELLITE OR TERRESTRIAL RADIO SIGNALS, OF ANOTHER PERSON. A TOLL RESELLER MAY, BUT NEEDS NOT, POSSESS ITS OWN SWITCHING FACILITIES.

(31) "TOLL SERVICE" MEANS A TYPE OF TELECOMMUNICATIONS SERVICE, COMMONLY KNOWN AS LONG-DISTANCE SERVICE, THAT IS PROVIDED ON AN INTRASTATE BASIS BETWEEN LATAS AND WITHIN LATAS AND THAT IS:

- (a) NOT INCLUDED AS A PART OF BASIC LOCAL EXCHANGE SERVICE;
- (b) PROVIDED BETWEEN LOCAL CALLING AREAS; AND
- (c) BILLED TO THE CUSTOMER SEPARATELY FROM BASIC LOCAL EXCHANGE SERVICE.

SECTION 4. 40-1-103 (1) (b) (III), Colorado Revised Statutes, is amended to read:

40-1-103. Public utility defined. (1) (b) Nothing in articles 1 to 7 of this title shall be construed to apply to:

(III) Hotels, motels, or other lodging-type entities ~~which~~ THAT resell intrastate toll and wide area telephone services to their lodging patrons and not to the general public; ~~or to any other entities which only resell to the general public intrastate long distance telephone services by using the tariff services and facilities of regulated telephone utilities;~~

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the fixed utilities cash fund not otherwise appropriated, to the department of regulatory agencies, public utilities commission, for the fiscal year beginning July 1, 1998, the sum of forty-two thousand eight hundred ninety-one dollars (\$42,891) for contractual services, or so much thereof as may be necessary, for the implementation of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 1998