Decision No. C06-1172

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-529T

IN THE MATTER OF THE PROPOSED RULES REGARDING THE HIGH COST SUPPORT MECHANISM AND PRESCRIBING THE PROCEDURES FOR THE COLORADO HIGH COST ADMINISTRATION FUND.

ORDER DENYING APPLICATION FOR REHEARING, REARGUMENT OR RECONSIDERATION AND CLARIFYING DECISION

Mailed Date: October 23, 2006
Adopted Date: October 4, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of an Application for Rehearing, Reargument or Reconsideration (RRR) filed by Staff of the Commission on September 14, 2006. This RRR filing requests clarification and further discussion of Decision No. C06-1005, which adopted permanent Rules Prescribing the Colorado High Cost Support Mechanism (CHCSM) and Procedures for Administration of the CHCSM Fund to implement the provisions of House Bill 05-1203. *See* 4 *Colorado Code of Regulations* (CCR) 723-2-2855(f). In that Decision, the Commission adopted new reporting requirements to help the Commission determine whether carriers are spending CHCSM dollars appropriately, and asked Staff of the Commission (Staff), the Colorado Office of Consumer Counsel (OCC) and the Colorado Telecommunications Association (CTA) to develop a form that would be submitted on an annual basis, and would provide enough

information to allow Staff to determine whether carriers are spending CHCSM dollars in accordance with statute, instead of filing a rate case.

2. In its RRR filing, Staff states that the Commission should discuss the interplay between rule 2855 and rule 2847 in light of the elimination of the general rate proceeding process. In Staff's view, the general rate proceeding that was formerly conducted to establish or revise support revenue for rural ILECs substituted for and was superior to the offsetting rate reduction process required by rule 2847. Rule 2847 requires that a provider that seeks initial or revised support revenue must file to reduce its overall revenue requirements in an amount equal to the initial or revised support revenue it is entitled to receive from the HCSM.

3. Staff requests the Commission to clarify that the elimination of the rate proceeding process as a substitute for rule 2847 requires now that the rule 2847 process be followed by all providers, including rural ILECs. Staff asserts that it would be discriminatory to apply this process to Qwest Corporation (Qwest) and not to other providers. The Commission would also be unable to fulfill its obligations under § 40-15-208(b)(X), C.R.S., namely, the provision of a report detailing "the total amount of distributions made from the high cost fund, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference."

4. Staff requests that the Commission, at a minimum, include discussion in its order that, as a result of the elimination of the general rate proceeding as the required means to establish or revise HCSM support revenue for rural ILECs, rural ILECs must strictly adhere to the processes set forth in rule 2847. Further, Staff believes that the Commission should clarify that a rural ILEC may still file a general rate proceeding in lieu of the process set forth in rule

2847, and that this alternative should be incorporated into the rules if the Commission believes it is helpful.

5. Staff is also concerned with the potentially limiting language of the new rule that states: "The petition is to include all information and data necessary to complete the calculations in paragraphs 2855(a) - (e), as applicable." Staff contends that the calculations in paragraphs (a) – (e) merely provide the level of investments in individual network elements that may be eligible for HCSM support, but do not calculate the revenue requirements for these individual elements.

6. Staff requests that the Commission clarify that the petition shall include the information regarding all data (*e.g.*, factors) and the associated expenses that will translate local loop, local switching, and exchange trunk investment into an intrastate revenue requirement for the local loop, local switching and local transport and other associated general administration of the network.

7. Staff also states that it believes that discrimination has not been removed from the rules because Qwest is still subject to annual revisions of its support level, and has the burden to justify its support level on an annual basis.

8. Staff is troubled that the Commission, with the change in rules, has shifted the burden from the providers to the Staff. Further, Staff is concerned that the Commission may be overly satisfied that a one page form will suffice in this endeavor. A form can be developed that will potentially raise red flags that a company's support level should be looked at, but in order to produce the *prima facie* evidence needed to support a complaint, Staff states that it will have to conduct extensive audits. Staff is concerned that this process will be hindered by companies that

have nothing to gain by cooperating fully and responding to audit in a timely manner, because support will continue regardless, which could allow over-recovery for some time period.

9. Staff requests that the Commission emphasize to providers that the new process requires full and timely disclosure to and cooperation with Staff's attempts to audit a provider's books and records for compliance with the statute.

10. With regard to the annual earnings form to be developed by Staff, CTA and the OCC, Staff seeks clarification that the Commission did not intend to limit the information to "complete investment and expense data for deregulated services to comply with § 40-15-106 and 108" as is implied by paragraph 50 of the Decision. Staff seeks clarification that the minimal information necessary to monitor earnings going forward and compliance with the high cost funding requirements is not only segregated regulated and deregulated data, but also information that separates local exchange services supported by the HCSM.

B. Discussion

11. As mentioned by Staff in its RRR filing, the Commission made no changes to rule 2847 (nor could it because this rule was not part of the notice of this rulemaking docket). Rule 2847 by its terms is applicable to all providers and outlines the application process for designation as an eligible provider and the process for the receipt of initial and the resetting of support. Nowhere in this rule does it exclude rural providers or rate of return regulated providers. In fact, there are special provisions for rate of return regulated providers in (f)(II) and (g)(II) indicating how these providers are to receive support. It is our understanding that this rule was, and will remain, applicable to rural EPs regardless of what has been changed in rule 2855(f). We also decline to provide an option for carriers to file a rate case in place of the rule

2847 requirement. We believe that the requirements of the new rules will be most equitable, and want carriers to use them.

12. We are somewhat confused by Staff's objection to the support information required to be part of a rural ILEC's petition. Staff states that the "calculations in rule 2855 (a) – (e) merely provide the level of investments in individual network elements that may be eligible for HCSM support, but do not calculate the revenue requirements for these individual elements" and that the statement in the adopted rules that the petition shall include "all information necessary to complete the calculations contained in paragraphs (a) though (e) of this rule" is not sufficient. Paragraphs (a), (b) and (c) of rule 2855 **are** the calculations necessary to determine the HCSM **revenue requirement** for high cost loops, high cost local switching and high exchange trunk cost, respectively, of rural providers who are not average schedule rural providers. While we won't set out the language of these rules here, the language plainly states that the HCSM revenue requirement for each element shall be determined as set forth in the rule.

13. We see no need to change the rule language, but do emphasize that a rural ILEC's petition must include all data (including factors) and associated expenses that allow Staff to perform the necessary calculations to translate the local expense information into the revenue requirements for each element.

14. As to Staff's assertion that this adopted rule results in inequitable treatment between rural providers and Qwest because rule 2846(b)(III) requires Qwest to file an annual worksheet with new benchmark revenues to produce a new amount of HCSM support and the rural LECs' support will be frozen indefinitely, we note that our newly adopted rule now requires rural LECs to file earnings information on the form to be developed by the parties on an annual

basis. We believe that this is more equitable than to have one group of providers file for a full rate proceeding every year or even every three years and the other to file an annual worksheet.

15. We disagree with Staff's argument that we have shifted the burden of proceeding to Staff. Under the former process, Staff was required to perform a large amount of audit when a company filed a new rate proceeding to receive HCSM support. The "compromise" solution as advocated by Staff and the OCC was to have all rural companies file these rate cases every three years – that solution would have resulted in a lot of work and audit for Staff as those proceedings generally have taken several months and resulted in settlement agreements on the amount of funding and revenue changes.

16. By changing the process to have Staff continuously monitor the support funding, Staff will only need to initiate audit and possibly a complaint proceeding if there seems to be a problem in the information filed with the Commission.

17. As to a rural ILEC's potential over-recovery during a complaint proceeding, we acknowledge that this might be the case. However, there also remains the potential for a rural ILEC's under-recovery for some time period if local investments have been made and a company is awaiting a decision during the petitioning process. If an individual provider is missing audit response deadlines and not responding to Staff's audit, as is Staff's fear, this would be in violation of the Commission's statutory right to inspect a company's books and records. We emphasize that regulated entities at all times are bound by the Commission's right to inspect their books and records. Ultimately, if companies are being obstructive, we could determine that these new rules are ineffective, and revert to some sort of rate case mechanism.

18. Finally, to Staff's concern regarding the earnings form itself, we did not intend to limit the type of information that can be requested on the form. The language quoted from

paragraph 50 in Staff's RRR filing was taken directly from Staff's July comments as information that it stated would be needed in addition to the information already found in annual reports and as contained in the Nebraska form. The only guidelines that Staff, OCC and CTA should follow when drafting the form are to be sure that the information is not already filed in annual reports, Eligible Telecommunications Carriers' workpapers or other filings at the Commission, and that the requested information is necessary to monitor a provider's investments and earnings for local jurisdictional services. This information should be sufficient, but as limited as possible, and fit one a one-page form.

II. ORDER

A. The Commission Orders That:

1. We deny Staff of the Commission's Application for Rehearing, Reargument or Reconsideration and clarify Decision No. C06-1005 as discussed above.

2. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 4, 2006.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

CARL MILLER

Commissioners

COMMISSIONER POLLY PAGE
ABSENT.

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