

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 10R-191T

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IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST SUPPORT MECHANISM REGULATIONS 723-2.

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**ORDER ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION**

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Mailed Date: October 25, 2011  
Adopted Date: October 5, 2011

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**I. BY THE COMMISSION**

**A. Statement**

1. By Decision No. C11-0232, mailed on March 3, 2011, the Commission adopted new and modified Colorado High Cost Support Mechanism (HCSM) Rules set forth in our Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2. In summary, these rules adopted mechanisms to set the benchmark rates, a phase-down of the HCSM fund, an extraordinary circumstance for additional support,

a retained identical support rule, and no mandatory contribution to the HCSM by Voice over Internet Protocol (VoIP) providers.

2. By Decision No. C11-0290 mailed on March 22, 2011, the deadline for filing the applications for Rehearing, Reargument, or Reconsideration (RRR) was extended.

3. On April 13, 2011, Colorado Telecommunications Association (CTA); Qwest Corporation, doing business as CenturyLink QC (Qwest); and the Colorado Office of Consumer Counsel (OCC) each filed an application for RRR to Decision No. C11-0232.

4. By Decision No. C11-0524 mailed on May 13, 2011, we granted the applications for RRR for purposes of tolling the clock. We also permitted the filing of additional comments on the phase-down issue, the VoIP carrier contributions issue, the identical support rule, and the extraordinary circumstance requirement. In addition, the Commission order authorized reply comments on the phase-down issue.

5. By Decision No. C11-0775 mailed on July 15, 2011, we supplemented the record with additional factual information.

6. Verizon;<sup>1</sup> N.E. Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero); Pine Drive Telephone Company (Pine Drive); Delta County Telephone Company (Delta); Cablevision Systems Corporation (Cablevision); CTA; Qwest; and the OCC filed additional comments on July 29, 2011. Verizon, OCC, CTA, and Qwest filed reply comments on August 19, 2011.

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<sup>1</sup> Verizon entities filing these comments include Verizon Wireless, LLC; MCImetro Access Transmission Services, LLC; MCI Communications Services, Inc.; TTI National, Inc.; Teleconnect Long Distance Services and Systems Co.; Verizon Select Services, Inc.; NYNEX Long Distance; and Bell Atlantic Communications, Inc.

7. Being fully advised in the matter and consistent with the discussion below, we address each of the applications for RRR. In doing so, we considered all of the additional and reply comments described above.

8. The Commission has withdrawn the phase-down approach in favor of a more comprehensive approach.

**B. Discussion and Findings**

**1. CTA**

9. In its RRR, CTA urges the Commission not to adopt the HCSM Rules in a “vacuum” without looking coextensively at reforming access charges. CTA argues that access reform and the HCSM are linked by funding support.

10. We deny CTA’s RRR based on the prior Commission decision to consider access reform as part of the overall telecommunications reform effort in Docket No. 10M-565T. *See* Decision No. C11-0879 issued on August 15, 2011.

11. CTA argues that the HCSM Rules adopted by Decision No. C11-0232 fail to provide the notice of the proposed rule changes in accordance with § 24-4-103(3)(a), C.R.S. CTA further argues that no supporting analysis has been provided and that the adopted rules are based on erroneous record data or with no supporting record. On July 15, 2011, Decision No. C11-0775 supplemented the record with factual information that was made available to the interested parties. We find that our cautionary step of providing the opportunity to submit additional comments as set forth in Decision No. C11-0524 moots CTA’s argument.

12. CTA argues that in adopting the phase-down rule, Rule 2856, the Commission failed to provide sufficient procedural due process and that the Commission’s decision to “size the fund” is contrary to § 40-15-208(2)(a)(I), C.R.S. CTA argues that the HCSM must allow

providers to be “fully reimbursed” for the difference between its costs and the price charged for basic service in high cost geographic support areas.

13. The Commission, in Docket No. 10M-565T, is undertaking a comprehensive review and reform of telecommunications policies and rules, including but not limited to universal service support. Therefore the Commission believes that implementation of the phase-down rule, Rule 2856, at this time may be inconsistent and premature. Therefore the Commission, on our own motion and not for the reasons CTA presents, will not adopt the phase-down rule. Therefore, CTA’s request that the Commission not adopt the phase-down rule, Rule 2856, is moot.

14. CTA argues that Rule 2857, which requires a showing of an “extraordinary circumstance” for a carrier to “reset” its HCSM support, removes any realistic opportunity for a carrier to apply for additional or replacement support unless it is able to demonstrate a new “large investment”. CTA states that the new rule eliminates the possibility that any current recipient of the HCSM fund will qualify for additional support if its situation changes in a non-extraordinary manner. The Commission believes that carriers that apply to “reset” their level of HCSM support must make a showing that they are investing in the local basic exchange networks and are not seeking reimbursement from the fund for non-plant expenses such as corporate overhead. The Commission believes that a thorough analysis is needed to ensure that an investment is being made in cable and wire, central office, and transmission facilities for basic local exchange service. Therefore, the Commission denies CTA’s RRR and will adopt the extraordinary circumstance rule, Rule 2857.

15. CTA urges the Commission to reconsider its benchmark determinations, and instead, use a single benchmark that, according to it, has actual meaning and effect. In furtherance of its objective, CTA proposes to eliminate the business benchmark rate of \$35.02. CTA further presumes

that this requirement will only apply to wireline carriers and is, therefore, a violation of §§ 40-15-102(19.3) and 40-15-208(2)(a)(II), C.R.S. We deny CTA's RRR on this issue. The Commission has considered all comments filed. The benchmark rates were based on data provided. If the benchmarks are set too low, then the fund would cause per line HCSM subsidies greater than necessary. Further, wireless carriers who are receiving support get the same support per line as the underlying carrier, and by default, will be affected by the benchmark rates set by the Commission.

16. CTA believes that VoIP carriers should be required to contribute to the HCSM fund and urges the Commission to reverse itself and direct nomadic interconnected VoIP carriers to make contributions to the HCSM. We decline to adopt CTA's suggestion that VoIP carriers be explicitly required to contribute to the HCSM at this time with the understanding that this issue will be addressed in the telecommunications reform effort, Docket No. 10M-565T.

## 2. Qwest

17. In its RRR, Qwest argues that the phase-down rule fails to meet the "primary purpose" for the HCSM as articulated in Colorado Statute § 40-15-208(a)(1), C.R.S., and fails to "fully reimburse" providers for basic local exchange service.

18. According to Qwest, Decision No. C11-0232 rejected options originally proposed in the Notice of Proposed Rulemaking, and instead emphasized that its objective in adopting the phase-down approach was to accomplish "re-sizing" of the fund. Qwest further argues that the rule change designed to re-size the fund is based on erroneous conclusions. Qwest states that while customers are migrating to different technologies, support is still needed to "preserve" basic exchange service.

19. Qwest states that Rule 2856 is unclear as to whether the Commission will continue to adjust costs and revenues after December 31, 2011, and that per line support will be reduced in the years 2013 through 2017.

20. Qwest states that the phase-down rule was never noticed or disclosed to the public and not made available for comment. As with CTA's arguments on the notice issue, we find that our cautionary step of providing the opportunity to submit additional comments as set forth in Decision No. C11-0524 moots Qwest's argument.

21. We deny Qwest's RRR on the phase-down as moot because on our own motion, the Commission will not adopt the phase-down rule.

22. Qwest is concerned that benchmark rates are not included or even referenced in the adopted rules which may cause confusion as to what the "benchmark rates" are for purposes of calculating HCSM support. We deny Qwest's RRR to modify the rules to include the benchmark rates in the rule. We believe a more efficient process to make the benchmark rates known to all concerned would be to issue an order setting forth the benchmark rates. This approach is consistent with the way changes to the rate element or HCSM surcharge is done presently.

23. Qwest next argues that the use of the term "revenue benchmark" is used inconsistently in Rules 2841(k)(I) through (III). We agree with Qwest that the use of the term "revenue benchmark" is not used consistently in Rules 2841(k)(I) through (III). We, therefore, add the following language to Rules 2841(k)(I)(A) and (II)(A):

*. . . message services. As provided in Rule 2841(k)(III), the Commission-approved benchmark rates shall be imputed if the Company's existing tariff rates are less than the benchmark rates; plus*

and add the following language to Rule 2841(k)(III):

*...benchmark rates mean Commission-approved rates for purposes of calculating the HCSM support and shall be used in Rule 2841(k)(I)(A) and (II)(A)*

24. Last, Qwest states that Rule 2846(b)(III) which addresses how that rate element is applied to “net” retail revenues is not feasible. Qwest states that carriers do not know what revenues are uncollectible until a customer fails to pay those revenues. We agree with Qwest and therefore, delete the term “net” in the third sentence of Rule 2846(b)(III). The sentence will read:

The appropriate factor shall be converted to a HCSM rate element that shall be applied to the retail revenues of each telecommunications service provider.

### 3. OCC

25. The OCC agrees with the rules, as adopted by Decision No. C11-0232, but provides an alternative approach to be considered if the phase-down approach is not adopted. As explained above, we are not adopting the phase down rule. Therefore, we must consider the alternative approaches offered in the OCC’s RRR. The OCC’s alternative approaches to be considered include: (1) limiting support to a single primary residential basic local exchange service access line; (2) setting the statewide residential and business benchmark rate using a Wyoming-type approach; (3) including 100 percent of feature revenue for HCSM calculation purposes; (4) eliminating the identical support rule; and (5) examining the definition of “rural” versus “urban” as it pertains to high cost support funding.

26. We decline to adopt the OCC’s alternatives. Decision No. C11-0232 clearly indicated our preference to adopt the phase-down approach. However, upon our reconsideration, we have decided not to adopt the phase-down approach as we believe that changes in the Federal Universal Service Fund (USF) program and access reform that may have an impact on the HCSM is best addressed in the telecommunications reform effort, Docket No. 10M-565T.

27. In addition, we decline to adopt the OCC's suggestion to include 100 percent of feature revenues for HCSM calculation purposes. We believe that this discussion, along with the any methodology used to determine HCSM support amounts, will be addressed in the telecommunications reform effort, Docket 10M-565T.

28. Next, we again decline to adopt the OCC's suggestion to establish a statewide affordable rate that is 130 percent of the statewide weighted average rate. The Commission has adopted the weighted average statewide rate recognizing that these rates may change over time.

29. Finally, we fully considered suggestions from the OCC to eliminate the identical support for competitive eligible carriers and remain disinclined to eliminate such rule until such time as fully vetted incremental cost studies are available for wireless providers. The Commission is not aware of any existing cost studies that would support such elimination.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The application for Rehearing, Reargument, and Reconsideration (RRR) filed by Colorado Telecommunications Association on April 13, 2011 is granted in part, denied in part, and denied in part as moot.

2. The application for RRR filed by Qwest Corporation on April 13, 2011 is granted in part, denied in part, and denied in part as moot.

3. The application for RRR filed by Office of Consumer Counsel on April 13, 2011 is denied.

4. The Commission adopts the rules attached to this Order as Attachments A, B, and C consistent with the above discussion.



5. The benchmark statewide average rate for residential service and business service is set at \$17.00 and \$35.02, respectively.

6. Any Eligible Provider (EP) that is currently seeking initial support shall impute the benchmark rates set forth in this Order for calculation in determining the High Cost Support Mechanism (HCSM) amount it will receive in 2012.

7. Any EP that is currently seeking to reset their HCSM support shall impute the benchmark rates set forth in this Order for calculation in determining the new HCSM amount the EP will receive beginning in 2012.

8. The rules shall be effective at least 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

9. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

10. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

11. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

12. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 5, 2011.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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JAMES K. TARPEY

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MATT BAKER

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Commissioners

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[indicates omission of unaffected rules]

**2187. Eligible Telecommunications Carrier Designation.**

- (a) The Commission shall, upon application, designate a common carrier that meets the requirements of 47 C.F.R. § 54.201(d) ~~and § 54.202 and paragraph 2187(b)~~ as an ETC for a service area designated by the Commission.
- (b) Upon request and consistent with the public interest, convenience, and necessity, the Commission may, in the case of an area served by a rural telecommunications provider, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission, so long as each additional requesting carrier meets the requirements of 47 C.F.R. § 54.201(d) and § 54.202. Before designating an additional ETC for an area served by a rural telecommunications provider, the Commission shall find that the designation is in the public interest.
- (c) Pursuant to Subpart E of 47 C.F.R., Part 54, as of January 1, 1998 all ETCs shall make available Lifeline service, as defined in § 54.401, to qualifying low-income customers.
- (d) Contents. The application for designation as an ETC shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) The information required by paragraph 2002(b).
  - (II) A statement identifying the decision(s) of the Commission and/or the FCC authorizing the applicant to provide telecommunications service.
  - (III) A description of the service area for which the applicant seeks designation as an ETC. ~~# designation for a specific service area, rather than a statewide designation, is sought,~~ ~~T~~the application shall include ~~either both~~ a description of such service area by metes and bounds ~~or the underlying carrier's exchange area~~ a map displaying the ~~applicant's~~ service area.
  - (IV) The facts (not in the form of conclusory statements) relied upon by the applicant to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d) ~~and § 54.202~~.
  - (V) An affirmative statement that the applicant will offer the services that are supported by the federal universal service support mechanisms under 47 U.S.C. § 254(c).
  - (VI) An affirmative statement that the applicant is a common carrier.
  - (VII) An affirmative statement that the applicant (ETC) will advertise the availability of such service and charges using media of general distribution pursuant to ~~47 U.S.C. § 214(e)(1)(B) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996~~. To meet the requirements of ~~47 U.S.C. § 214(e)(1)(B)~~, the Commission establishes as guidelines that an ETC shall advertise in media of general distribution and shall place customer guide pages in the "White Pages" directory within the ETC's service area. Such customer guide pages shall indicate that the ETC

offers the supported services identified by federal law within its ETC service area to all who request such service within that area.

(VIII) An affirmative statement that the applicant will make available Lifeline service, as defined in 47 C.F.R. § 54.401, to qualifying low-income customers.

(IX) An affirmative statement that the applicant is in compliance with the Commission's rules.

(X) A demonstration of the applicant's ability to remain functional in emergency situations.

(XI) A demonstration that the applicant will satisfy consumer protection and service quality standards.

(XII) An affirmative statement that the applicant will offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC). A local usage plan offered must include:

(A) Unlimited calling or a plan with not less than 900 minutes of use per month;

(B) A month-to-month term; and

(C) A rate comparable to the underlying LEC's basic residential local exchange rate.

(XIII) A two-year build-out plan demonstrating how high-cost universal service support will be used to improve the applicant's coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support. If a wire center is not part of the build-out plan and the applicant does not have existing facilities in the service area, a detailed explanation of how the applicant will provide service to a requesting customer in the service area for which it is seeking designation.

(e) State certification for federal support. As required by the FCC's universal service regulations found at 47 C.F.R. §§ 54.313 and 54.314, and when appropriate, the Commission shall file an annual certification with the Administrator of the federal Universal Service Fund (USF) and the FCC on behalf of each jurisdictional ETC serving access lines in the state, stating that all federal high-cost support provided to such carriers within that state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission may require a carrier to provide the information it finds necessary and convenient to make such a certification. At a minimum, carriers shall furnish requested information on a form supplied by the Commission as part of the carrier's annual report.

(f) Annual Reporting Requirements for Eligible Telecommunication Carriers.

(I) In order for an Eligible Telecommunication Carrier (ETC) previously designated by the Commission, or previously designated by the Federal Communications Commission (FCC), to be certified to receive federal support for the following calendar year, or to retain its ETC designation, it shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. ETCs failing to meet these annual report filing requirements and deadlines may not be certified by the Commission to the FCC and the Universal Service Administrative Company (USAC) as eligible to receive federal support for the following calendar year.

(II) Every ETC shall submit the following information in its report:

- (A) The number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and a written explanation detailing how the ETC attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).
- (B) The number of complaints per 1,000 access lines or handsets.
- (C) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users in a service area, or that could affect access to 9-1-1. An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. The ETC must report the following information regarding each outage: date and time of outage; description of the outage and resolution; specific service(s) affected; specific geographic area(s) affected; steps taken to prevent it from happening again; and number of customers affected by the outage.
- (D) Certification that the ETC is complying with the applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service.
- (E) Certification that the ETC is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).
- (F) Certification that the ETC acknowledges the FCC may require it to provide customers with equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.
- (G) The total amount of all federal high cost support received in the previous calendar year and year-to-date through June 30 for the current calendar year.
- (H) For the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC. An explanation regarding any network improvement targets that have not been fulfilled. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.
- (I) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service offerings, Lifeline, and Linkup programs throughout the service areas in Colorado where the carrier has been designated an ETC. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.

- (J) Documentation that a competitive ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas.
- (K) A map of the service areas where the carrier has ETC designation showing the locations of facilities or for wireless providers, maps showing the location of all cellular towers and the coverage area of these towers. Maps shall be submitted in 2007 and at least once every three years thereafter.
- (L) Through June 30 of the current calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for any local exchange service within the service areas in Colorado where the carrier has been designated an ETC. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information shall be submitted at the wire center level or at the authorized service area.
- (M) A copy of cost study filing made on July 31<sup>st</sup> to NECA for current year. If an ETC is not required to file cost study to NECA, then a copy of the line count filing made to the FCC and USAC Administrator shall be submitted.
- (N) A copy of the company's Colorado-specific trial balance for previous year.
- (O) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule is true and correct. The affidavit must also state that the ETC is aware of the purpose of the support for the federal high-cost support and it is complying with the requirement set forth by the FCC in 47 U.S.C. § 254(e). An officer, director, partner, or owner of the company must sign the affidavit.
- (P) If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may refrain from certifying the carrier to the FCC or revoke the carrier's designation as an ETC. In addition, ~~carriers-ETCs~~ must submit their reports on a timely basis.

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[indicates omission of unaffected rules]

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[indicates omission of unaffected rules]

**2188. Relinquishment and Cancellation of EP or ETC Designation.**

- (a) Application to be filed with the Commission. When there are multiple EPs or ETCs in a service area, providers seeking to relinquish designation as an EP or ETC shall file an application with the Commission, at least 45 days before the effective date of the proposed relinquishment. In addition, if the applicant seeks to discontinue service, the requirements of rule 2108 must also be met.
- (b) Contents. The application shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
  - (I) The information required by paragraph 2002(b); and
  - (II) A complete explanation of the proposed relinquishment.
- (c) The Commission shall establish a time, not to exceed one year after the approval of the relinquishment, within which such purchase or construction of adequate facilities by a remaining EP or ETC or other provider shall be completed.
- (d) Notice to customers. In addition to filing an application with the Commission, the EP or ETC shall prepare a written notice regarding the proposed relinquishment and shall mail or deliver the notice at least 30 days before the effective date to all currently served customers or subscribers, including all interconnecting telecommunications providers. The EP or ETC shall separately provide notice all potentially affected customers through publication once each week for four consecutive weeks in a publication or publications of general circulation in the affected designated area. A notice shall be mailed to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town, or municipality.
  - (I) The notice shall, in addition to the requirements of paragraph 2002(d):
    - (A) Explain that basic local telephone service will continue to be available regardless of the outcome of the Commission's determination on the application;
    - (B) Be signed by an authorized agent or officer of the provider; and
    - (C) Include said agent or officer's title and address.
  - (II) Proof of public notice. Within 15 days before the date of the proposed relinquishment, the EP or ETC shall file with the Commission a written affidavit stating its compliance with this paragraph. The affidavit shall state the date notice was completed and the method used to give notice. A copy of the notice shall accompany the affidavit.

- (e) No hearing needs to be held if no objection, protest, or intervention is filed. If a hearing is to be held on an application, the Commission shall endeavor, within its operating constraints, to hold the hearing, or a portion thereof, at a location within the local calling area of the affected community.
- (f) No proposed relinquishment shall be effective until the Commission issues an order approving it.
- (g) The Commission shall permit an EP or ETC to relinquish its designation as an EP or ETC in any area served by more than one EP or ETC when the Commission concludes that the requirements of paragraphs (a) through (d) have been met.
- (h) Within one year of the effective date of the Commission's decision approving an application for ETC/EP designation, the ETC/EP shall offer the supported services. If the ETC/EP does not offer the supported services within one year, its ETC/EP designation shall be cancelled and deemed null and void.

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[indicates omission of unaffected rules]



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[indicates omission of unaffected rules]

## **High Cost Support Mechanism and High Cost Administration Fund**

### **Basis, Purpose, and Statutory Authority**

The basis and purpose of these rules is to establish the process used by the Commission to implement and the provisions of the high cost support mechanism while remaining consistent with the relevant rules and orders of the FCC.<sup>4</sup>

The statutory authority for the promulgation of these rules is found at §§ 40-3-102, 40-15-208(2)(a), 40-15-502, and 40-2-108, C.R.S.

### **2840. Applicability.**

Rules 2840 through 2869 govern the operation of the Colorado High Cost Support Mechanism (HCSM) and the Colorado High Cost Administration Fund and shall apply to all providers of intrastate telecommunications services.

### **2841. Definitions.**

The following definitions apply only in the context of rules 2840 through 2869:

- (a) "Administrator" means the Commission, or a designee employed by the Commission, pursuant to § 40-15-208(3), C.R.S., that performs the administrative functions of the HCSM under the direction of the Commission.
- (b) "Average-schedule rural provider" means a rural telecommunications service provider that is an average-schedule company as defined and used in 47 C.F.R. §§ 69.605 through 69.610.
- (c) "Colorado High Cost Administration Fund" (Fund) means the fund created in the state treasury for the purpose of reimbursing the Commission acting as Administrator for its expenses incurred in the administration of the HCSM.
- (d) "Geographic area" means a Commission-defined area of land usually smaller than an incumbent provider's wire center serving area included wholly within the incumbent's wire center boundaries.
- (e) "Geographic support area" means a geographic area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the HCSM.

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<sup>4</sup> On May 23, 2001 the FCC released its Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45. In this Order the FCC modified its rules for providing high cost universal service support to rural telephone companies for the following five years based upon the proposals made by the Rural Task Force established by the Federal State Joint Board on Universal Service.

- (f) "High Cost Support Mechanism" (HCSM) means the mechanism created by Colorado statute for the support of universal service for basic local exchange service within a rural Colorado, high-cost geographic support area.
- (g) "Intrastate proxy cost" means that portion of proxy cost that is jurisdictionally applicable to the provision of intrastate supported services. Pursuant to § 40-15-108, C.R.S., the intrastate proxy cost is produced by applying the separation factors of 47 C.F.R., Part 36, to the estimated investments and expenses produced by the Commission approved Proxy Cost Model.
- (h) "Proxy cost" means a per access line estimate of the cost revenue required to compensate a provider for the provisioning of specific supported services and features based upon the level of investment calculated by the Commission-approved Proxy Cost Model.
- (i) "Proxy cost model" means a model which produces a per access line estimate of the reasonable, required level of investment and expenses in a particular geographic area (i.e., wire center basis) for a defined set of telephone services and features assuming least-cost efficient engineering and design criteria and technology-neutral deployment of current state-of-the-art technology, and using the current national-local exchange network topology and the total number of access lines in the each area.
- (j) "Retail revenues" means the gross revenues associated with contribution levels to the HCSM means those revenues collected from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services include, but are not limited to, all types of local exchange service; non-basic, vertical, or discretionary services, also known as advanced features or premium services, such as call waiting, call forwarding, and caller identification; or premium services such as voicemail; listing services; directory assistance service; wireless and other cellular telephone and paging services; mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll free service; 900 service and other informational services; toll service; private line service; special access service; special arrangements; special assemblies; CENTREX, Centron, and Centron-like services; ISDN, IAD and other multi-line services; telex; telegraph; video and/or teleconferencing services; satellite telecommunications service; the resale of intrastate telecommunications services; payphone services; any services regulated by the Commission under § 40-15-305(2), C.R.S.; and such other services as the Commission may by order designate from time to time as equivalent or similar to the services listed above. Revenues associated with the sale of cable video services other than video conferencing identified in § 40-15-401(1)(a), C.R.S., shall not be considered a part of retail revenues associated with contribution levels.
- (k) "Revenue benchmark" means a calculated amount of intrastate revenues per access line. A separate revenue benchmark shall be established for residential service and for business service for each geographic area according to the following formulae:
- (l) "Residential revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the provider that serves the relevant geographic area as of January 1 of the previous year:

- (A) The weighted average monthly revenues per residential line for all types of residential basic local exchange service in that geographic area including, but not limited to flat, measured or message services; as provided in subparagraph 2841(k)(III), the Commission-approved benchmark rates shall be imputed if the company's existing tariff rates are less than the benchmark rates; plus
  - (B) One-half of the average residential revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus
  - ~~(C) Zone or mileage charges; plus~~
  - ~~(DC)~~ The average intrastate residential carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
  - ~~(D) Support from the Federal High Cost Loop Support; plus~~
  - (E) Such other revenues as the Commission, by order, deems included.
- (II) "Business revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the ILEC that serves the relevant geographic area as of January 1 of the previous year:
- (A) The weighted average monthly revenues per business line for all types of business basic local exchange service in that geographic area including, but not limited to, flat, measured or message services; as provided in subparagraph 2841(k)(III), the Commission-approved benchmark rates shall be imputed if the company's existing tariff rates are less than the benchmark rates; plus
  - (B) One-half of the average business revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus
  - ~~(C) Zone or mileage charges; plus~~
  - ~~(DC)~~ The average intrastate business carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
  - ~~(D) Support from the Federal High Cost Loop Support; plus~~
  - (E) Such other revenues as the Commission, by order, deems included.
- ~~(III) The statewide residential and business revenue benchmark rates are the Commission-approved rates for purposes of calculating the HCSM support and shall be used in subparagraphs 2841(k)(I)(A) and (II)(A).~~

#### **2842. Incorporation by Reference.**

References in rules 2840 through 2869 to Parts 32, 36, 54, 64, and 69, are references to rules issued by the FCC and have been incorporated by reference, as identified in rule 2008.

#### **2843. General.**

The HCSM shall be coordinated with the ~~Federal Universal Service Fund-FCC Universal Service Fund~~ (USF), as described by regulations found at 47 C.F.R. §§ 36.601 to 36.641 and §§ 54.1 to 54.707 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by § 101 of the Telecommunications Act of 1996.

- (a) The HCSM shall operate on a calendar-year basis. The Commission shall, by November 30 of each year, adopt a budget for the HCSM including the:
  - (I) Proposed benchmarks;
  - (II) Proposed contributions ~~to be~~that may be collected through a rate element assessment by each telecommunications provider; and
  - (III) Proposed total amount of the HCSM fund from which distributions are to be made for the following calendar year.
- (b) If the budget prepared pursuant to paragraph (a) and submitted to the General Assembly pursuant to paragraph 2849(p) includes a proposal for an increase in any of the amounts listed in paragraph (a), such increase shall be suspended until March 31 of the following year.

#### **2844. Specific Services and Features Supported by the HCSM.**

The services and features supported by the HCSM are an evolving level of telecommunications services established by the Commission and periodically updated under § 40-15-502(2), C.R.S., to recognize advances in telecommunications and information technologies and services. Until revised, the HCSM will support such services as defined in rule 2308. In addition, the HCSM will support access to 9-1-1 service and such other elements, functions, services, standards or levels necessary to attain Commission-prescribed service-quality standards or other criteria established pursuant to statute or Commission rule.

#### **2845. Affordable Price Standard for Basic Service.**

For the purpose of rules 2840 through 2869, ~~the benchmark rates as determined by the Commission~~the ~~prices in effect~~ for residential and business basic local exchange services, ~~excluding outside base rate area zone charges, if any, in each geographic area on the effective date of these rules~~ shall be deemed affordable. If the current tariff rates are higher than the benchmark rates set by the Commission for HCSM purposes, those rates are deemed affordable. ~~Pursuant to § 40-15-502(3), C.R.S., a different level may be set by the Commission and designated as a benchmark price.~~

**2846. Contributors; Reporting Requirements; Rate Element Calculation; Application of Rate Element to Customer Billings; and Remittance of Contributions.**

- (a) Contributors. Every provider of intrastate telecommunications service to the public, or to such classes of users as to be effectively available to the public, every provider of intrastate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators not falling within the de minimis exemption of subparagraph (b)(I)(B) must contribute to the HCSM.
- (I) Revenues associated with the sale of cable services identified in § 40-15-401(1)(a), C.R.S., other than video conferencing, shall not be considered when determining a provider's assessment.
- ~~(II) The provider who falls within the de minimis exemption of subparagraph (b)(I)(A) is not required to contribute to the HCSM. Any provider that falls within the de minimis exemption must notify their underlying carrier that they should be considered end users for reporting purposes.~~
- (b) Process for determining the HCSM rate element.
- (I) Contributor reporting requirements. Each provider shall provide to the Administrator a verified accounting of its gross retail revenues, and such other revenues, and uncollectibles as the Administrator shall request for purposes of determining contributions and disbursements under these rules. The accounting shall be submitted using the form identified as the HCSM Worksheet ~~and~~ available from the Commission or on its website. The completed HCSM Worksheet shall be submitted to the Administrator twice a year. The HCSM Worksheet shall be due March 31, of each year, ~~containing~~including data for the prior calendar year. The HCSM Worksheet shall be due September 1, of each year, ~~containing~~including data for the six-month period from January 1 through June 30 for the current calendar year.
- ~~(A) Contributors may file confidential information in accordance with the Commission's Rules Regulating Practice and Procedure.~~
- ~~(AB)~~ De minimis exemption. If a provider's contribution to the HCSM in any given year is calculated to be less than \$~~10,000~~5,000, that contributor is not required to submit a contribution. Providers falling within this de minimis exemption are required to file with the Administrator only that portion of the HCSM Worksheet for that period that certifies their de minimis status. Such de minimis certification shall be accompanied by an affidavit of an officer of the provider attesting to the veracity of its self-certification. However, each provider exempt from contributing because of its de minimis revenues shall retain complete documentation (including, but not limited to the information required in the HCSM Worksheet) and shall make such documentation available to the Administrator upon request. Notwithstanding the de minimis exemption of this subparagraph (I)~~(AB)~~, all EPs are required to remit contributions and to file the entire HCSM Worksheet.
- (II) Reporting requirements.

- (A) Each EP receiving support pursuant to ~~paragraph rule 2848(c)~~ shall provide to the Administrator, a verified accounting of: (1) the actual number of residential and business access lines served by such provider in each geographic area as of the last day of each month; and (2) the actual amount of contributions collected in the month if the provider applies the rate element to its end user customer. ~~Theis data form shall be completed and returned submitted~~ to the Administrator by the 15th day of the subsequent quartermonth.
- ~~(B) Each wireless EP receiving support pursuant to rule 2848 shall provide to the Administrator a verified accounting of: (1) the actual number of residential and business wireless handsets served by such provider in each geographic area (i.e., the underlying local exchange carrier's geographic area) as of the last day of each month; and (2) if the provider applies the rate element to its end user customer then it shall report the actual amount of contributions collected in the month. The data shall be submitted to the Administrator by the 15th day of the subsequent quarter.~~
- ~~(B) For EPs receiving support pursuant to paragraph 2848(d), an appropriate form, available from the Commission on its website, shall be completed and returned to the Administrator:~~
- ~~(i) As part of that provider's annual report if no competitive EP has been designated in the incumbent rural EP's study area; or~~
- ~~(ii) By the 15th day of the subsequent month if one or more EPs have been designated in the EP's geographic support area.~~
- ~~(III) Revenue benchmark reporting requirements. Each EP receiving support pursuant to paragraph 2848(c), shall provide to the Administrator a verified accounting of such revenues as are determined necessary for establishing the residential and business revenue benchmarks on a form supplied by the Administrator. This worksheet shall be due March 31, of each year, including data for the prior calendar year~~
- (III~~V~~) Rate element calculation. The Administrator shall estimate the total amount of HCSM high cost support that will be needed for the next quarter (including support needed under rules 2846 through 2855 and administrative expenses) and shall determine the quarterly factor. This estimate shall be based on the information provided to the Administrator by providers, EPs, ILECs, ~~information available from the cost proxy model~~, and other information that the Administrator may gather from the Commission and providers. The factor shall be equal to the ratio of total statewide HCSM requirement to total statewide net (gross revenues minus uncollectibles) retail revenues for the period. The appropriate factor shall be converted to a HCSM rate element that shall be applied to the net retail revenues of each telecommunications service provider. The Commission shall issue an order establishing the appropriate HCSM rate element at least 15 days prior to the first day of each quarter and shall post notice of the setting of such rate element on the Commission's website. ~~Such HCSM rate element shall be collected and contributed by each telecommunications provider as specified in these rules.~~

- (IV) The Commission may increase the rate element factor by an amount it reasonably estimates to be necessary to compensate the HCSM fund for any qualified contributors who fail to pay the uncollectible assessments. Such increase shall generally not exceed five percent of the total statewide HCSM requirement.
- ~~(VI) EP's net contribution. The Administrator shall send a notice to each EP specifying that the Administrator has determined that either the EP is:~~
- ~~(A) An estimated net contributor (estimated contribution is greater than its estimated support) for the quarter; each provider so notified shall remit its actual net contribution as specified in paragraph (d); or~~
- ~~(B) An estimated net recipient (estimated contribution is less than its estimated support) for the quarter; each provider so notified shall receive support as specified in paragraph 2848(e).~~
- (c) Application of the rate element to providers, to customer billings. The HCSM rate element shall be applied to the assessed upon all providers in Colorado. Providers may, at their option, apply the rate element to the retail revenues of each provider's end users as a line item on the monthly bill except that providers falling within the de minimis exemption of subparagraph (b)(I)(A) shall not apply the HCSM rate element nor collect such contribution from their end users. For those telecommunications providers opting to apply the rate element to their end user customers, the location of the telecommunication service delivery shall be used to determine whether the HCSM rate element applies where an end user service location receiving the bill and an end user service location receiving the service differ.
- (d) Remittance of contributions. All providers not falling within the de minimis exemption of subparagraph (b)(I)(A) shall be responsible for collecting and remitting quarterly to the HCSM rate element receipts according to the following procedure:
- (I) Each quarter, or as necessary, the Administrator shall issue an invoice instructing each contributor to remit its HCSM contribution to the HCSM escrow account. The Commission may direct that certain providers remit their HCSM receipts to the Administrator who will forward the funds thus remitted to the Colorado State Treasurer's Office for deposit to the Fund account.
- (II) The HCSM revenues billed by the provider, net of the amount estimated to be owing to the provider from the HCSM, if any contributions; shall be remitted as directed by the Administrator no more than 30 days after the end of each quarter. If the amount or net amount owed is not remitted by that date, the Administrator shall bill the provider a late payment charge equal to one percent per month of the late amount. If the provider establishes a history of making late contributions, the Commission may initiate an appropriate process to ascertain and implement proper corrective measures including, but not limited to, withholding future support from the HCSM and/or penalties pursuant to §§ 40-7-101, C.R.S., et seq.
- (III) Reconciliation. The Administrator shall review each EP's HCSM account transactions. The review shall reconcile HCSM contributions, receipts, and other projected account transactions to the actual HCSM entitlement, as provided in paragraph 2848(f).

The Administrator shall analyze any deviation between the estimated amount and the verifiably ~~accurate collections and receipts~~ contribution amount. Adjustments to the standard quarterly transaction amount or any other reconcilable adjustments will be performed in ~~the next~~ subsequent quarter.

- (e) Continuing customer education. For those telecommunications service providers opting to apply the rate element to their end user customers, ~~in~~ in the first billing cycle of the third quarter of each calendar year, each ~~rate jurisdictional~~ provider that is collecting the rate element (also known as the "Colorado Universal Service Charge") from its end users shall provide to each of its customers, by message directly printed on the bill, by bill insert, or by separate first-class mail, or any combination of these alternatives, the continuing customer education material as may be ordered by the Commission.

**2847. Eligible Provider ~~Designation~~.**

- (a) As a prerequisite for designation and eligibility to receive support from the HCSM, a provider shall be in ~~substantial~~ compliance with the Commission's rules applicable to the provision of basic local exchange service.
- ~~(b) Upon request and consistent with the public interest, convenience, and necessity, the Commission may designate more than one common carrier as an EP in a service area designated by the Commission, so long as each additional requesting carrier meets the requirements of Commission rules. The Commission shall find that the designation is in the public interest.~~
- ~~(c) All EPs shall make available, collect, and remit the LITAP surcharge, and advertise LITAP as defined in rules 2800 through 2819, to qualifying low-income customers.~~
- ~~(d) The EP shall agree to certify that it is complying with the Commission's service quality standards and consumer protection rules, and shall agree to submit to the Commission's enforcement and sanction authority with regards to violations of such service quality standards and/or consumer protection rules.~~
- ~~(e)~~ Application. A provider shall file an application with the Commission to be designated as an EP within a geographic support area and eligible to receive support from the HCSM.
- (l) Contents. In addition to complying with the requirements of paragraph 2002(b), the application must provide evidence sufficient to establish that:
- (A) The provider is, or is applying to be, ~~qualified-designated~~ as an ETC under rule 2187 for purposes of being eligible to receive federal universal service support;
- (B) The provider agrees to provide such basic local exchange service as described in Sections 214(e) and 254 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996;
- (C) The provider will offer basic local exchange service throughout the entire geographic support area;



- (D) The provider has the managerial qualifications, financial resources, and technical competence to provide basic local exchange service throughout the specified support area regardless of the availability of facilities or the presence of other providers in the area;
  - (E) The provider is not receiving funds from the HCSM or any other source that together with revenues, ~~as defined by the Commission-adopted revenue benchmark,~~ exceed the reasonable cost of providing basic local exchange service to customers of such provider; ~~and~~
  - (F) The granting of the application serves the public convenience and necessity, as defined in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.; ~~and~~
  - ~~(G) The provider acknowledges that it will offer basic local exchange service within one year of the effective date of the Commission order approving such application for EP designation or its designation will become null and void.~~
- (II) Process for determining eligibility.
- (A) The Commission processes applications in accordance with the Rules of Practice and Procedure.
  - (B) An application filed pursuant to paragraph (be) may be filed contemporaneously with an application for a CPCN, LOR, or an alternative form of regulation. In addition, an application to be ~~certified~~ designated as an EP may be filed in a combined application to be designated a POLR or an ETC pursuant to rules 2183 and 2187.
- (ef) Reseller ineligibility. A provider which provisions its service to end users solely through purchase of a finished service from a facilities-based provider, and then sells that same service or that service combined with other services is not eligible to receive support from the HCSM. ~~Rather, the facilities-based provider may be eligible to receive any applicable HCSM support.~~
- ~~(d) Eligibility of a provider through the use of UNEs. An EP that serves a customer using a combination of its facilities and another provider's unbundled facilities or solely through the use of unbundled network elements, shall be eligible to receive HCSM support, not to exceed the cost of the unbundled elements used to provide the supported services. If an EP provides an unbundled element to another EP that is used to provide supported services, the EP of the unbundled element shall be eligible to receive HCSM support for the difference between the amount it is receiving for the unbundled element and the element's proxy cost.~~
- (ge) Portability of support. HCSM support shall be portable between any EP chosen by the end user.
- ~~(f) Each EP, prior to the initial receipt of support from the HCSM shall, as appropriate:~~
- ~~(I) If the provider is not subject to Commission rate regulation, the provider shall file an application with the Commission providing evidence sufficient to establish that the provider is not receiving funds from the HCSM or any other source that together with~~

~~revenues, as defined by the Commission-adopted revenue benchmark, exceed the reasonable cost of providing basic local exchange service to customers of such provider.~~

~~(II) — If the provider is subject to Commission rate regulation and its rates are filed at the Commission in a tariff, or if the provider has been granted an alternative form of regulation that includes price ceilings, the provider shall simultaneously file two advice letters, and, if the provider has been granted an alternative form of regulation, a transmittal letter proposing price changes. Each filing shall propose rates or prices that will lower its overall regulated revenues in an amount equal to the sum of: (1) the initial support from the HCSM; plus (2) the amount of support from any federal program supporting universal service not previously accounted for in setting filed tariff rates, if any. This sum shall be referred to as the "Initial Support".~~

~~(A) — The first advice letter filed by such EP shall include a general rate reduction percentage rider (rate rider) applicable, to the extent possible, to all rates for regulated service, excluding services receiving support in order to reduce jurisdictional revenues in the amount of the initial support. The amount and distribution of the rate reduction(s) produced by this rate rider may be adjusted or modified by separate Commission order in other proceedings. Generally, the tariffs proposed in this rate rider advice letter shall become effective without suspension simultaneous with the initial receipt of support from the HCSM, and shall remain in effect until the permanent rate proposal becomes effective.~~

~~(B) — The second advice letter filed by the EP shall include proposals for permanent specific service rates that will reduce jurisdictional revenues in the amount of the "initial support". Generally, the rates proposed in this advice letter shall be suspended and shall not become effective without notice and opportunity for hearing.~~

~~(III) — If the EP is subject to rate regulation, has been granted an alternative form of regulation by the Commission that does not include price ceilings, and its rates are included in price lists, the provider shall file a transmittal letter proposing price changes that will reduce jurisdictional revenues in the amount of the initial support.~~

~~(g) — Each EP, prior to the effective date of a resetting of the HCSM support per access line by the Administrator, shall, as appropriate:~~

~~i.(I) — If the provider is not subject to Commission rate regulation, the provider shall file an application with the Commission providing evidence sufficient to establish that the provider is not currently receiving funds from the HCSM or any other source that together with revenues, as defined by the Commission-adopted revenue benchmark, exceed the reasonable cost of providing basic local exchange service to customers of such provider.~~

~~(II) — If the provider is subject to Commission rate regulation and its rates are filed at the Commission in a tariff, or if the provider has been granted an alternative form of regulation that includes price ceilings, the EP shall file an advice letter.~~

~~(A) — The filing shall adjust its overall regulated revenues in an amount equal to the sum of: (1) the current support from the HCSM, less the amount received by the~~

~~EP from the HCSM for the previous 12 months, if any; plus (2) the current support from any federal program supporting universal service, less the amount received by the EP from these federal programs for the previous twelve months, if any. This sum shall be referred to as the "new support".~~

~~(B) The filing by such EP shall include proposals for permanent specific service rate changes that will decrease jurisdictional revenues in the amount of the new support.~~

~~(III) If the EP is subject to rate regulation, has been granted an alternative form of regulation by the Commission, and its rates are included in price lists, the EP shall file a transmittal letter proposing price changes that will reduce jurisdictional revenues in the amount of the "new support" to be effective upon the implementation of the "new support". Any adjustments in prices other than reductions shall be done in accordance with the EP's alternative form of regulation.~~

~~(h) Annual reporting requirements for eligible providers.~~

~~(I) Each EP shall submit the reporting information specified below no later than August 15<sup>th</sup> of each calendar year to the Commission. EPs failing to meet these annual reporting requirements may not be eligible to receive high cost support and are subject to Commission enforcement and sanction with regard to failure to comply.~~

~~(A) For the previous calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an EP. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.~~

~~(B) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service (BUS) offerings and LITAP program throughout the service areas in Colorado where the carrier has been designated an EP. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.~~

~~(C) Documentation that a competitive EP is offering an unlimited local usage plan or a plan with at least 900 minutes of use per month that is comparable to that offered by the incumbent LEC in the relevant service areas.~~

~~(D) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule is true and correct. An officer, director, partner, or owner of the company must sign the affidavit.~~

(II) If a review of the data submitted by an EP indicates that the EP is no longer in compliance with the Commission's criteria for EP designation, the Commission may refrain from authorizing HCSM support to the carrier until the carrier is in compliance with the Commission's criteria for EP designation.

**2848. Support through the HCSM.**

- (a) The Commission shall, by order, establish geographic areas throughout the state. Such geographic areas may be revised at the discretion of the Commission.
- (b) Disaggregation and targeting of Colorado High-Cost Support by rural ILECs. The disaggregation plan selected by a rural incumbent EP for targeting Colorado high-cost support shall be the same plan as that selected by the provider under rule 2190 and approved by the Commission under those rules unless another EP or ETC provider, or the Commission requests a different disaggregation plan.
- (c) Support through the HCSM applicable to non-rural geographic areas shall be calculated as follows:
  - (I) By order, the Commission shall: ~~(1) adopt a proxy cost model; and (2)~~ publish the intrastate proxy cost for each non-rural geographic area. The proxy cost model and the resultant intrastate proxy costs shall be updated as necessary. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.
  - (II) When the per-line intrastate proxy cost exceeds the applicable benchmark in a particular non-rural geographic area, the Commission shall designate that non-rural geographic area as a geographic support area.
  - (III) Amount of Support: Each EP shall receive support from the HCSM based on a verified accounting of the actual number of residential and business access lines it serves in the non-rural high cost geographic support areas, as designated by the Commission, multiplied by the difference between the per line intrastate proxy cost in such geographic support area and the applicable per access line revenue benchmark as determined by the Commission. The amount of support shall be reduced by any other amount of support received by such provider or for which such provider is eligible under support mechanisms established by the federal government and/or this state.
  - (IV) Revenue benchmarks. Separate revenue benchmarks shall be determined for residential and business supported access lines for each geographic area according to the formulae defined in paragraph 2841(k).
- (d) Support through the HCSM applicable to rural geographic areas (areas served by rural ILECs) shall be calculated as follows:

- (I) ~~Revenue requirement shall be calculated on a~~ ~~By order, the Commission shall:~~ (1) ~~determine the amount of support~~ per access line ~~basis as determined by the Commission~~ pursuant to rules ~~2400, 2854 and~~ 2855 (based upon the filing of the incumbent rural EP serving that area and as modified pursuant to paragraph 28~~4855(hf)~~); and (2) publish the support per access line, disaggregated into such geographic support areas as may be designated by the Commission. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.
- (II) Amount of support: Each EP shall receive support from the HCSM in an area served by a rural ILEC based upon the number of access lines or the EP serves in those high cost geographic support areas, as designated by the Commission, multiplied by the applicable support per access line.
- (III) ~~Total local revenues shall include, but not be limited to, local revenues, feature revenues, and federal high cost loop support. If the tariffed residential or business rate is less than statewide residential or business benchmark rate, then the EP shall impute the statewide residential or business benchmark rate. If the tariffed residential or business rate exceeds the statewide residential benchmark rate or the statewide business benchmark rate, then actual revenues shall be used.~~
- ~~(IV) The total local revenue deficiency shall equal total local revenues minus total local revenue requirement.~~
- ~~(V) Per-line support amounts shall equal the total local revenue deficiency divided by the total number of access lines (i.e., residential and business).~~
- (~~VII~~) Additional procedures governing the operation of disaggregated support:
  - (A) The disaggregation and targeting plan adopted under rule 2190 shall be subject to the following general requirements:
    - (i) Support available to the rural ILEC's study area under its disaggregation plan shall equal the total support available to the study area without disaggregation.
    - (ii) The ratio of per line support between disaggregation zones for each disaggregated category of support shall remain fixed over time, except as changes are allowed pursuant to rule 2190.
    - (iii) The ratio of per line support shall be publicly available.
    - (iv) Per-line support amounts for each disaggregation zone shall be recalculated whenever the rural ILEC EP's total annual support amount changes using the changed support amount and total access line counts at that point in time.

- (v) Per-line support for each category of support in each disaggregation zone shall be determined such that the ratio of support between disaggregation zones is maintained and that the product of all of the rural ILEC EP's access lines for each disaggregation zone multiplied by the per-line support for those zones when added together equals the sum of the rural ILEC EP's total support.
- (vi) Until a competitive EP is designated in a study area, the quarterly payments to the rural ILEC EP will be made based on total annual amounts for its study area divided by four.
- (vii) When a competitive EP is designated anywhere in a rural ILEC EP's study area, the per-line amounts used to determine the competitive EP's disaggregated support shall be based on the rural ILEC EP's then-current total support levels, lines, and disaggregated support relationships.
- (viii) Each EP shall receive support from the HCSM based on the number of access lines or wireless handsets it serves in the designated high cost geographic support areas.
- (ix) The support received shall be based on actual number of access lines or the actual number of wireless handsets reported to the administrator as a verified accounting for each geographic area as of the last day of each month.
- (e) Process for payments. The Administrator will arrange payments to be made to EPs, which are net recipients from the HCSM, within 30 days of the last day of each quarter.
- (f) Reconciliation. ~~Following receipt by the Administrator of each EP's report pursuant to subparagraph 2846(b)(II),~~ the Administrator shall reconcile the estimated disbursements previously authorized for each EP for the period for which the report provides information to the actual disbursements to which such provider is entitled, and shall send a statement of such reconciliation to each EP within 60 days after the receipt of the report. The statement shall show if the provider is entitled to additional amounts from the HCSM, or if the EP has received more than the amount of its HCSM entitlement. The Administrator shall use these reconciling amounts when setting the EP's support in subsequent quarters.
- (g) Colorado High Cost Fund Administration. The Commission, acting as Administrator, shall determine and establish by order, the HCSM support to be received by an EP.
  - (I) Once the Commission, by order, has established the appropriate HCSM support amount for an EP, the Commission will monitor to ensure that no provider is receiving funds from the HCSM or any other source that together with revenues do exceed the reasonable cost of providing basic local exchange service on an annual basis. The Administrator will develop the appropriate form to be used for such monitoring. The monitoring form shall be available from the Commission's website.

(II) The monitoring forms and related information shall be filed with the Administrator and the Office of Consumer Counsel by August 15<sup>th</sup> of each year.

(III) If the information contained in a provider's HCSM monitoring form, annual report, or other filed document indicates that HCSM support for that provider should be adjusted, Staff of the Commission may request that the Commission issue, or the Office of Consumer Counsel may file, a formal complaint. The Commission, acting as Administrator and following an opportunity for hearing, may revise the provider's HCSM support as a result of the complaint proceeding.

**2849. Administration.**

The HCSM shall operate under the direction of an Administrator, which shall be the Commission or its designee.

- (a) The Commission may engage a third-party entity who meets the criteria in this rule to perform such duties of the Administrator as the Commission may, from time to time, deem necessary or convenient. The Commission shall select the entity using Colorado State Government contracting procedures. Until such time as an entity has been engaged, or during times when the entity is not available to fulfill its duties, the Commission shall act as the Administrator.
  - (I) The third-party entity shall meet all of the following criteria:
    - (A) Be neutral and impartial.
    - (B) Not be a party in any matter before the Commission, nor advocate specific positions before the Commission in any telecommunications service matter.
    - (C) Not be a member in a trade association that advocates positions before the Commission.
    - (D) Not be an affiliate of any provider of telecommunications services.
    - (E) Not issue a majority of its debt to, nor derive a majority of its revenues from, nor hold stock in any provider(s) of telecommunications services. This prohibition also applies to any affiliates of the third-party entity.
    - (F) Not have a Board of Directors that includes members with direct financial interests in entities that contribute to or receive support from the HCSM.
- (b) The reasonable expenses incurred in the administration of the HCSM shall be a cost of the HCSM and shall be paid from the funds contributed to the HCSM.
- (c) The Administrator shall determine the amount each telecommunications provider must pay into the HCSM and determine the disbursement each EP may receive from the HCSM.
- (d) The Administrator shall net each EP's assessment and support prior to receipt of actual funds.

- (e) To the extent the funding received from providers in any one fiscal year exceeds the cost of administering the HCSM (including such reserve as may be necessary for the proper administration of the HCSM), any unexpended and unencumbered monies shall remain in the Fund and shall be credited against the assessment each provider must pay in the succeeding fiscal year.
- (f) The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.
- (g) If the Commission has delegated such duties, the third-party entity shall have access to the books of accounts of all providers to the limited extent necessary to verify the intrastate retail revenues and other information used in determining contributions and disbursements from the HCSM.
- (h) The Administrator shall maintain a database that tracks eligible access lines for support based on the method through which service is provisioned and the identity of each carrier providing that service in each geographic area.
- (i) The Administrator will develop appropriate forms to be used by all providers and all EPs for reporting information as required by rule 2846. Copies of the forms will be made available on the Commission's website and at the offices of the Commission.
- (j) The Commission shall perform an annual review of HCSM fund recipients. One purpose of this review shall be a verification of continued eligibility. Another purpose shall be a verification of the receipt by each EP of the funds to which each provider is entitled and is projected to receive from the HCSM. Subject to such reviews, the Administrator will recommend any required adjustments to HCSM contribution methods, distributions, necessary rule changes and other relevant items that shall be considered in connection with the HCSM.
- (k) The quarterly reconciliations under subparagraph 2846(d)(III) and paragraph 2848(f) shall be the principal source for such annual reviews.
- (l) Supplemental and forecast information that may be requested by the Administrator to assure a complete review shall be provided by all providers to the Administrator, as formally requested, within ten days of the Administrator's written request. If those persons do not provide the data required within ten days of the request, the Commission may initiate a formal complaint proceeding for remedies, including withholding future support from the HCSM and/or penalties as provided in § 40-7-101, C.R.S., et seq.
- (m) The Administrator and the Fund ~~shall~~may operate on a fiscal year from July 1 to June 30 of the succeeding year.
- (n) An independent external auditor chosen by the Commission shall periodically, at its discretion, audit the Fund and associated HCSM records, including both collections and disbursements from the Fund. The costs for conducting audits shall be included in the computation of HCSM requirements.



- (o) An annual report of the Fund prepared by the Administrator shall be filed with the Commission by December 1 of each year. A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and to each provider that contributes to the HCSM. This report shall summarize the preceding fiscal year's activity and include the following:
  - (I) A record of the total cost of administration of the HCSM; and
  - (II) The most recent audit report.
  
- (p) A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with § 24-1-136, C.R.S., by December 1 of each year. A copy of the Administrator's annual report of the HCSM shall be provided to the Legislative Audit Committee and to each provider that contributes to the HCSM. The Administrator may satisfy the latter requirement by notifying the provider of the availability of the annual report using an e-mail message directing the provider to the report on the Commission's website. The report shall account for the operation of the HCSM during the preceding calendar year and include the following information, at a minimum:
  - (I) The total amount of money that the Commission determined shall constitute the HCSM from which distributions would be made;
  - (II) The total amount of money ordered to be contributed through a rate element assessment collected by each provider;
  - (III) The basis on which the contribution of each provider was calculated;
  - (IV) The benchmarks used and the basis on which the benchmarks were determined;
  - (V) The total amount of money that the Commission determined shall be distributed from the HCSM;
  - (VI) The total amount of money distributed to each provider from the HCSM;
  - (VII) The basis on which the distribution to providers was calculated;
  - (VIII) As to each provider receiving a distribution, the amount received by geographic support area and the type of customer, the way in which the benefit of the distribution was applied or accounted for;
  - (IX) The proposed benchmarks, the proposed contributions to be collected through a rate element assessment by each telecommunications provider, and the proposed total amount of the HCSM from which distributions are to be made for the following calendar year; and
  - (X) The total amount of distributions made from the HCSM, 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.

**2850. Review of the HCSM.**

- (a) For the purpose of determining whether the HCSM should be reformed, modified, or adjusted, the HCSM will be evaluated and reviewed at the discretion of the Commission. The time period between reviews shall usually not exceed three years, and at least every three years thereafter, for the purpose of determining whether the HCSM should be adjusted.
- (b) The Commission shall consider opening a docket to consider any changes to these rules that may be necessary as a result of the conclusion of every proceeding, conducted pursuant to § 40-15-502(2), C.R.S., to review the definition of basic service.

**2851. ~~Base Rate Area Subsidies.~~[Reserved].**

~~If there are areas, as of July 1, 1996, that are receiving subsidies within a provider's base rate area, as determined by the Commission, such areas may continue, at the Commission's discretion, to receive subsidies or be eligible for funding under the HCSM after July 1, 1996.~~

**2852. Enforcement.**

- (a) Holder of a CPCN. A provider holding a CPCN issued by the Commission that fails to make timely reports or to pay, in a timely manner, its contribution when it is due and payable under these rules, may, after notice and opportunity for hearing, have its CPCN revoked as provided in Article 6, Title 40, C.R.S., be denied interconnection to the public switched network, and/or have other appropriate remedies imposed upon them by the Commission.
- (b) Uncertificated provider. If a provider does not hold a CPCN from the Commission and fails to make timely reports or payment of its contribution, the provider may be subject to a Commission action including but not limited to a formal complaint:
  - (I) To the FCC seeking an order directing the delinquent provider to make the payment or for further appropriate remedies;
  - (II) For an action for damages in an appropriate court; or
  - (III) For other appropriate remedies.
- (c) Any provider that disputes the requirement that it pay into the HCSM shall:
  - (I) Post a bond in an amount determined by the Commission pending the resolution of that dispute; and
  - (II) Repay all other providers with interest (at a rate determined by the Commission) in the event the Commission determines that the provider should have been paying into the fund.

**2853. Other.**

These rules are not intended to limit the programs in rules 2800 through 2819 and 2820 through 2839.

**2854. Calculation of Average Loop, Local Switching, and Exchange Trunk Costs for Fund Support for Rural Telecommunications Service Providers.**

- (a) The averages used in calculating HCSM support in rules 2854 and 2855 will be computed on the basis of the data reported per this rule for the preceding calendar year unless updated at the option of the rural provider pursuant to 47 C.F.R. § 36.612(a).
- (b) Each basic local exchange provider, that is not an average schedule rural company, shall calculate and report its average unseparated loop cost per study area per working loop as prescribed by 47 C.F.R. §§ 36.621 and 36.622 in its request for HCSM for the preceding calendar year annual report to the Commission as required by paragraph 2006(a).
- (c) The national average unseparated loop cost per study area per working loop shall be calculated as prescribed by the National Exchange Carrier Association (NECA), 47 C.F.R. § 36.622(a)(1) for the preceding year.
- (d) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for:
  - (I) Local switching equipment (Central Office Equipment, Category 3, 47 C.F.R. § 36.125); and
  - (II) Its average number of working loops.
- (e) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for exchange trunk equipment (Cable and Wire Facilities, Category 2, Exchange Trunk, 47 C.F.R. § 36.155, and Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2)).
- (f) The state average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the state, as reported pursuant to paragraph (d) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (g) The state average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the state, as reported pursuant to paragraph (e) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (h) Each rural ILEC, in its annual report filed with the Commission, shall include any additional HCSM reporting requirements as requested by the Commission.

**2855. Calculation of Support per Access Line for Rural ILECs.**

Incumbent rural providers, who are not average schedule rural providers, shall be eligible for support from the HCSM for high costs in three areas: loops; local switching; and exchange trunks, upon a proper showing. Incumbent average schedule rural providers shall be eligible for support from the HCSM for high costs as determined by subparagraph (f)(I), upon a proper showing.

- (a) Support for high loop costs. The HCSM revenue requirement for high loop costs of rural providers who are not average schedule rural providers shall be determined as follows:
- (I) For rural providers with an average unseparated loop cost per working loop less than or equal to 115 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
    - (A) Zero; and
    - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange subscriber line usage (SLU) multiplied times the provider's average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
  - (II) For rural providers with an average unseparated loop cost per working loop in excess of 115 percent but not greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
    - (A) The difference between the rural provider's average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
    - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
  - (III) For rural providers with an average unseparated loop cost per working loop greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
    - (A) The difference between 150 percent of the national average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
    - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
- (b) Support for high local switching costs. Rural providers who are not average schedule rural providers shall be eligible for support for high local switching costs. The HCSM revenue requirement for high local switching cost support shall be determined as follows:
- (I) For rural providers with an average unseparated local switching equipment investment per working loop less than or equal to the Colorado average unseparated local switching investment per working line as determined by paragraph 2854(f), the HCSM revenue requirement for local switching cost support shall be zero.

- (II) For rural providers with an average unseparated local switching equipment investment per working loop in excess of the Colorado average unseparated local switching equipment investment per working loop as determined in paragraph 2854(f), the revenue requirement for high local switching cost support shall be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following 47 C.F.R., Part 36. The service category for the HCSM high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment.
  - (A) The percentage of Category 3 allocated to the HCSM service category shall be known as the "Colorado High Local Switching Cost Allocation Factor" and shall be calculated as one minus the sum of:
    - (i) The interstate factor(s);
    - (ii) The intrastate factor(s) of subparagraph 2415(b)(I)(C); and
    - (iii) The local exchange factor.
  - (B) The local exchange factor for each rural provider shall be calculated as the:
    - (i) Colorado average unseparated local switching equipment Category 3 investment per working loop, as determined by paragraph 2854(f);
    - (ii) Multiplied by the rural provider's local DEM percentage;
    - (iii) Divided by the rural provider's average investment per working loop.
  - (C) The Colorado High Local Switching Cost Allocation Factor shall not be less than zero. If, by the application of the formula of subparagraph (b)(II), the Colorado High Local Switching Cost Allocation Factor is less than zero, the factors (ii) and (iii) of subparagraph (II)(A) shall be reduced proportionally.
- (c) Support for high exchange trunk costs. Rural providers who are not average schedule rural providers shall be eligible for support for high exchange trunk costs. The HCSM revenue requirement for high exchange trunk cost support shall be determined as follows:
  - (I) For rural providers with an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average unseparated exchange truck investment per working loop, as determined by paragraph 2854(f), the HCSM revenue requirement for exchange trunk cost support shall be zero.
  - (II) For rural providers with an average unseparated exchange trunk equipment investment per working loop in excess of the Colorado average unseparated exchange truck investment per working loop, as determined in paragraph 2854(f), the revenue requirement for high exchange trunk cost support shall be calculated by apportioning the costs of the rural provider to the HCSM service category as established in paragraph (b) of the rural provider's separations study following 47 C.F.R., Part 36, as modified by the rules found in rule 2415. The HCSM service category shall be assigned a portion of the

investments of Cable and Wire Facilities, Category 2 Exchange Trunk, 47 C.F.R. § 36.155 and a portion of Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2).

- (A) The percentage allocated to the HCSM service category shall be calculated separately for each of these types of investments as one minus the sum of:
    - (i) The interstate factor(s), for exchange trunk
    - (ii) The intrastate factor(s) for exchange trunk; and
    - (iii) The local factor for exchange trunk.
  - (B) The local factor for Category 2 exchange trunk for Cable and Wire Facilities for each rural provider shall be calculated as the Colorado average unseparated investment per working loop as determined by paragraph (f) of this rule, times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.
  - (C) The local transport allocation factor for Category 4.12 Exchange Trunk Circuit Equipment, for each rural provider shall be calculated as the Colorado average unseparated investment per working loop, as determined by paragraph 2854(f), times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.
- (d) Support for high costs of average schedule rural providers.
- (I) The HCSM support requirement for high cost support for average schedule rural providers shall be determined as the remainder, if positive, of the following process:
    - (A) First, the total company revenue requirement (i.e., costs) for the average schedule rural provider shall be determined;
    - (B) Next, a value known as the "imputed local network services revenues" shall be calculated by the Administrator as the average of the local network services revenues, 47 C.F.R. §§ 32.5000 through 32.5069 for all rural providers who are not average schedule rural providers, excluding any HCSM revenues, the local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:
      - (i) Residential revenue calculation:
        - (a) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariffed rate for residential basic local exchange service is less than the statewide residential benchmark rate.

(b) If the existing tariffed rate for residential basic local exchange service is equal or greater than the statewide residential benchmark rate, then the existing residential basic local exchange service rate shall be used.

(c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

(ii) Business revenue calculation:

(a) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariffed rate for business basic local exchange service is less than the statewide business benchmark rate.

(b) If the existing tariffed rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.

(c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

(C) Then, the following revenues shall be subtracted from the revenue requirement of subparagraph (d)(I)(A):

(i) All interstate ~~revenues~~~~activities~~ and Federal Universal Service Fund (FUSF) support;

(ii) Intrastate network access services;

(iii) Long distance network services;

(iv) All miscellaneous revenues; and

(v) The ~~imputed~~ local network services revenues adjusted in accordance with subparagraph (d)(I)(B).

(D) Support per access line: The support as calculated in subparagraph (d)(I)(C), shall be divided by the number of access lines to determine the support per access line.

(e) Support for high costs of rural cost companies.

(I) The local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:

(A) Residential revenue calculation:

- (i) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariffed rate for residential basic local exchange service is less than the statewide residential benchmark rate.
- (ii) If the existing tariffed rate for residential basic local exchange service is equal or greater than the statewide residential benchmark rate, then the existing residential basic local exchange service rate shall be used.
- (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

(B) Business revenue calculation:

- (i) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariffed rate for business basic local exchange service is less than the statewide business benchmark rate.
- (ii) If the existing tariffed rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.
- (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

~~(ef)~~ Local network services ~~T~~tariff cap. In no event shall the local network services revenue requirement, as defined in 47 C.F.R. §§ 32.5000 through 32.5069 (1995) for rural providers exceed 130 percent of the average of such revenue requirement for local exchange providers that are not rural providers. Such excess shall be considered as a part of the rural provider's HCSM support revenue requirement.

~~(f) Colorado High Cost Fund Administration:~~

~~(l) The Commission, acting as Administrator, and pursuant to rules 2854 and 2855, shall determine and establish by order, the HCSM support revenue requirement to be received by a rural provider.~~

~~(A) At any time, a rural provider designated as an eligible provider pursuant to rule 2847 may request that the Commission establish or revise its HCSM support revenue. Such request shall take the form of a petition and include the information required in paragraph 2003(b) as well as all information necessary to complete the calculations contained in paragraphs (a) through (e) of this rule, as applicable. If this information is already on file with the Commission, the petitioner must identify when and in what form the information relied on was filed.~~



- ~~(B) — Once the Commission, by order, has established the HCSM support revenue amount, or revised that amount, the Commission will monitor the rural provider's earnings on an annual basis. A rural provider receiving HCSM support revenue must file with its annual report, required by rule 2006(a), its earnings information on a HCSM earnings form available from the Commission's website.~~
- ~~(C) — If the information contained in a rural provider's HCSM earnings form, annual report, or other filed document indicates that HCSM support revenue for that rural provider should be adjusted, Staff of the Commission may request that the Commission issue, or the Office of Consumer Counsel may file, a formal complaint. The Commission, acting as Administrator and following an opportunity for hearing, may revise the rural provider's HCSM support revenue as a result of the complaint proceeding.~~

**2856. Extraordinary Circumstance.**

A company that currently receives HCSM support and wants to reset its HCSM support amount may file a petition to demonstrate that extraordinary circumstances exist. Bankruptcy or tax liens will not be considered as an extraordinary circumstance. To qualify for the extraordinary circumstance, the petitioner must include the following information in its petition:

- (a) A demonstration that the provider is not receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to the customers of such provider;
- (b) A demonstration that a large investment was necessary for the continued operation of basic local exchange service;
- (c) A demonstration that pro forma adjustments were made for known and measurable changes;
- (d) Support that granting the petition is in the public interest;
- (e) The information required by paragraph 2003(b), as well as all information necessary to complete the calculations contained in paragraphs (a) through (e) of rule 2848, as applicable;
- (f) A statement that the company will submit to a full audit to ensure compliance with §§ 40-15-106, 40-15-108 and 40-15-208 (2), C.R.S., if necessary and applicable; and
- (g) If §§ 40-15-106 and 40-15-108, C.R.S. are not applicable, a statement that the petitioner will submit to a full audit to ensure compliance with § 40-15-208(2), C.R.S., if necessary. If this information is already on file with the Commission, the petitioner must identify when and in what form the information relied on was filed.

**28576. – 2869. [Reserved].**

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[indicates omission of unaffected rules]