Decision No. C02-1458

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-278T

IN THE MATTER OF PROPOSED AMENDMENTS TO RULES 7.2.1.2 AND 9.4 OF THE RULES CONCERNING THE COLORADO HIGH COST SUPPORT MECHANISM, 4 CCR 723-41.

DECISION DENYING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION AND ADOPTING RULES

Mailed Date: December 26, 2002
Adopted Date: December 11, 2002

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Applications for Rehearing, Reargument, or Reconsideration (RRR) filed by Verizon Wireless, and by Qwest Corporation and WorldCom, Inc. jointly. The applications for RRR address our rulings in Decision No. C02-1250 (Mailed Date of November 8, 2002). In that decision we adopted, subject to applications for RRR, amendments to the Rules Concerning the Colorado High Cost Support Mechanism, 4 CCR 723-41. Those amendments, in pertinent part, modify the High Cost Support Mechanism (HCSM) Rules to provide high cost support to all access lines, instead of to primary residential and single business lines only. For various reasons, Verizon and Qwest/WorldCom object to our decision to provide high cost support to all access lines. Now being duly advised, we deny the applications for RRR. The rules attached to Decision No. C02-1250 are now adopted.

B. Discussion

2. Verizon first argues that high cost support for all access lines violates Colorado statutes, in particular those statutes directing support for "basic service." According to Verizon, §§ 40-15-502(2) and (3), C.R.S., mandate high cost support for "basic service," and "basic service" is defined as the telecommunications service which provides "*a* local dial tone and local usage necessary to place or receive *a* call...", (*see* 40-15-102(3), C.R.S.) (emphasis added). Furthermore, Verizon argues, these statutes specify that "basic service" is provided by "minimum" elements of telecommunications services, and that basic service be provided in a manner that is "affordable" to all residents of the state. More than one supported access line at a customer's premises is not the minimum necessary for basic service. Moreover, support for multiple lines increases the cost of the HCSM fund to all ratepayers and is inconsistent with the requirement that basic service remain affordable for all customers.

3. We reject these arguments. In the first place, the Legislature has not determined that "basic service" means only one access line at a customer's premises. In § 40-15-102(3) ("basic service" is "a local dial tone line and local usage necessary to place or receive a call"), the Legislature simply defined "basic service" *in the singular.* Definitions of the singular include the plural. *See* § 2-4-102, C.R.S. Therefore, there is no legal significance to the fact that "basic service" was defined as "*a* dial tone line." The Legislature has not addressed whether the HCSM may support more than one access line at a customer's premises. Notably, § 40-15-502(2) states that "basic service" is the availability of telecommunications services "as defined by the commission." The Commission has not limited "basic service" to a single access line to a customer's premises.

4. The Legislature at § 40-15-501(1), C.R.S. has directed the Commission to encourage competition in the market for local exchange service for all ratepayers of the state, including those in rural, high-cost areas. In Decision No. C02-1250 (pages 7-8), we explained that HCSM support for all access lines would promote competition consistent with the Legislature's intent. Verizon suggested that we could promote competition in the local service market by clarifying that HCSM is portable from one eligible provider to another. In fact, this argument misses the point of our ruling. HCSM support is already portable under existing rules. Our prior decisions (discussed in Decision No. C02-1250) addressed the circumstance where a Provider of Last Resort (POLR) (*i.e.* Qwest) and a new entrant both provide service to a premises. In this circumstance, we ruled that the POLR should always receive HCSM support because of its legal obligation to serve. Nothing in this record indicates that this determination should be changed. Therefore, without the amendments to the rules adopted in Decision No. C02-1250, new entrants would still be competitively disadvantaged when they provide service to a premises served by a POLR.

5. Support for all access lines promotes competition in the telecommunications markets in another way. Without high cost support for all lines, telecommunications providers must recover unsupported costs through rates for other services.[1] In this event, the rates for those other services would include implicit subsidies to cover the costs for unsupported, high cost access lines. Making implicit subsidies explicit promotes the goal of competition for all affected telecommunications services.

[1] This assumes that providers would not recover their costs from high cost end-users directly. If they did so, this would mean that rural, high cost ratepayers would pay more for second and additional access lines than urban ratepayers. This result would be contrary to the Legislative intent (§ 40-15-502(3)) that rates for rural and urban areas be reasonably comparable.

6. In short, we conclude that the Commission possesses the legal discretion to provide high cost support for more than one line to a customer's premises. Verizon argues that such support would impede the goal of maintaining affordable rates for basic service. We addressed this contention in Decision No. C02-1250. There, we recognized that support for all lines would increase the HCSM surcharge by .5 percent (from 2.8 to 3.3 percent). However, we concluded--we now affirm that conclusion--that the benefits of supporting all lines outweigh the increase in the surcharge.

7. The above discussion addresses many of the arguments in Qwest's and WorldCom's application for RRR. However, Qwest and WorldCom suggest an alternative to supporting all access lines. They suggest that the HCSM support the first line for each eligible provider offering service at a high cost location. This alternative would promote competition in high cost areas, but would limit the increase in the HCSM fund and the resulting surcharge.

8. While this suggestion does address our goal of promoting competition in high cost areas in one respect, it does not address the goal of making subsidies explicit. We will not adopt it at this time. This present record does not indicate the precise effects of this alternative on the HCSM fund. Obviously, this alternative would increase the HCSM surcharge less than our decision to support all lines. The above discussion notes that supporting all access lines will increase rates by only .5 percent. However, the record does not indicate whether the suggested alternative would significantly reduce that .5 percent increase. Without knowing the effects of Qwest and WorldCom's proposed alternative on the HCSM surcharge, we are unable to determine whether the benefits of that alternative outweigh the benefits of supporting all lines.

9. For the foregoing reasons, we deny the applications for RRR. The rules attached to Decision No. C02-1250 are now adopted.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration by Verizon Wireless is denied.

2. The Application for Rehearing, Reargument, or Reconsideration by Qwest Corporation and WorldCom, Inc. is denied.

3. The rules appended to Decision No. C02-1250 as Attachment 1 are adopted. Within twenty days of the effective date of this order, the adopted Rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the Rules.

4. This Order is effective immediately upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 11, 2002.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

JIM DYER

Commissioners

COMMISSIONER POLLY PAGE
DISSENTING.

ATTEST: A TRUE COPY

Bruce N. Smith
Director

III. COMMISISONER POLLY PAGE DISSENTING:

1. I would grant the application for RRR by Qwest and WorldCom. As explained in Decision No. C02-1250, the Commission's primary reason for changing the HCSM Rules to support all access lines was to address the competitive disadvantage faced by new eligible providers, when they provide basic local service to a premises in competition with a POLR. In Decision No. C02-1250, I agreed that we should amend the rules to eliminate this competitive disadvantage. However, Decision No. C02-1250 did not address Qwest's and WorldCom's alternative proposal. That proposal does address the Commission's primary concern in amending the rules to support all lines.

2. While we do not know the precise effects of that proposal on the HCSM fund, we do know that it would reduce the size of the increase needed in the HCSM fund and the resulting surcharge. Since Qwest's and WorldCom's proposal eliminates the competitive disadvantage faced by new eligible providers when they provide service to high cost lines, and it results in a lower HCSM surcharge, I find it preferable to supporting all high cost access lines. Therefore, I would grant the application for RRR by Qwest and WorldCom and would adopt their proposed alternative.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

COMMISSIONER POLLY PAGE

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Commissioner

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