

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-476T

IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST
SUPPORT MECHANISM.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: October 29, 2008

Adopted Date: October 29, 2008

I. BY THE COMMISSION

A. Statement

1. The Commission hereby issues this Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2, in regards to the process used to implement and the provisions of the high cost support mechanism.

2. Certain developments and statutory changes have been enacted that will impact the processes used to implement the high cost support mechanism. Due to the complexity of the high cost support mechanism and the number of issues, the need to reexamine all impacted rules and the implications on the high cost support mechanism is evident.

3. The Commission adopted its first explicit support mechanism in 1990. The Commission adopted rules prescribing the standard procedures for Separating Telecommunications Property Costs, Revenues, Expenses and Reserves for Access Charges for Small Local Exchange Telecommunications Service Providers and established the Colorado High Cost Fund (CHCF).

4. In 1992, Article 15 of Title 40, Colorado Revised Statutes, was amended by adding a new section, § 40-15-208, C.R.S.. This new section created the Colorado High Cost Support Mechanism (CHCSM) and authorized the Commission administration of the fund.

5. In 1995, the Colorado Telecommunications Act was enacted and provided, among other things, for local exchange service competition. A new section to Article 15 of Title 40, § 40-15-502, was added. The Commission conducted rulemakings in Docket Nos. 95R-558T and 97R-032T regarding the CHCSM to implement this new statute.

6. In 1997, Docket No. 96M-063T was initiated to investigate cost models to be employed in furnishing State universal service support to telecommunications carriers providing local exchange service in high cost areas. A Stipulation and Settlement Agreement provided for the use of an interim proxy cost model until December 31, 1998. The Stipulation and Settlement Agreement also provided that the Commission would initiate a new proceeding to establish a permanent proxy cost model upon conclusion of Docket No. 96M-063T but no later than January 1, 1999.

7. In 1998, the Commission adopted interim rules in Docket No. 98R-334T to implement legislation that modified § 40-15-208(2)(d)(I) to change the name of the program to the current name and required that the CHCSM not exceed \$60 million during calendar years 1998 and 1999. The Commission adopted the interim rules as permanent rules in Docket No. 99R-028T. The Commission also initiated a docket (Docket No. 98M-147T) to establish a permanent proxy cost model for purposes of furnishing state universal service support

8. In 2003, the Commission adopted rules which extended CHCSM support to all residential and business lines of non-rural providers in the state.

9. In 2004, the Commission continued its investigation into the adoption of the high cost proxy model (Docket No. 98M-147T). This docket was closed and a new docket was opened to consider future cost methodologies. Docket No. 04M-388T was opened and is ongoing to consider further development of Proxy Cost Models used to establish Qwest Corporation's yearly CHCSM draw.

10. In 2005, the Commission in response to statutory changes to § 40-15-102, C.R.S., adopted emergency rules in Docket No. 05R-381T to ensure that high cost support is made in a nondiscriminatory manner and regulatory requirements are not imposed on one set of carriers without having them imposed on all. The emergency rules eliminated the phase-down provision for rural carriers. The Commission adopted permanent rules in 2006.

11. In 2005, the Commission also opened Docket No. 05I-431T to examine the CHCSM. Seven workshops were conducted. The Administrative Law Judge issued a report to the Commission that presented an overview of the discussions that took place during the workshops in August 2008. Since then this Commission has decided to undertake a rulemaking.

12. The basis and purpose of the proposed rules is to re-examine the high cost support rules to accommodate new regulatory schemes¹, changes in the federal Universal Service Fund (USF) program, and recent dockets that have direct implications on the high cost support mechanism rules.

13. Rules Regulating Telecommunications Providers, Services, and Products, 4 CCR 723-2 that the Commission will review and may propose changes to are: Rules 2840 – 2869 (High Cost Support Mechanism And The Colorado High Cost Administration Fund),

¹ See Commission Decision No. C05-0802, Docket No. 04A-411T and Docket No. 04D-440T, paragraph 173 (4), Adopted June 6, 2005, mailed June 28, 2005.

2187 (Eligible Telecommunications Carrier Designation), 2188 (Relinquishment of EP or ETC Designation), 2400 – 2459 (Costing and Rates), and 2460-2499 (Costing and Pricing of Regulated Telecommunications Services).

14. The statutory authority for the proposed rules is found in §§ 40-2-108; 40-3-101; 40-3-102; 40-3-103; 40-3-110; 40-3.4-106; 40-4-101; 40-15-101; 40-15-108(2); 40-15-201; 40-15-203.5; 40-15-208(2)(a); 40-15-301; 40-15-302; 40-15-305; 40-15-404; 40-15-502; 40-15-503; C.R.S.

15. The Commission *en banc* will conduct a technical conference on related issues at the below-stated time and place. At the technical conference interested persons should come prepared to discuss the following topics: 1) has the Colorado High Cost Support Mechanism met the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado and, if so, whether is it still legally required; 2) if the CHCSM is no longer legally required, whether is it still necessary and why; 3) if the CHCSM is still necessary, how should the CHCSM structure be improved, what are the key components and why are they important; 4) should the Commission consider in this rulemaking any other related issues, including but not limited to, rate rebalancing, broadband funding, and federal funding programs, (*e.g.*, USF), and, if so, why.

16. Interested persons are encouraged to present comments, including data, analyses, or arguments and present these to the Commission at the technical conference. Each person will be given 15 minutes to present to the Commission. The Commission encourages interested persons to submit written comments in this matter. The Commission requests that such comments be filed no later than November 26, 2008, at noon. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic

format. While not required, the Commission also prefers that interested persons submitting suggested language changes do so in legislative format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions, whether oral or written.

17. In submitting comments or replies, interested persons are invited to suggest changes that will make the subject rules more efficient, rational, or meaningful. We recognize that regulation imposes costs; therefore, suggestions concerning rules that may be unnecessary or unduly burdensome will be fully considered by the Commission.

II. ORDER

A. The Commission Orders That:

1. A technical conference on the issues and related matters shall be held before the Commission *en banc* as follows:

DATE: December 1, 2008
TIME: 9:00 a.m.
PLACE: Commission Hearing Room A
1560 Broadway, Suite 250
Denver, Colorado

2. The Commission may set additional technical conferences, if necessary.

3. At the time set for the technical conference in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary. Interested persons may file written comments in this matter before technical conference. The Commission prefers that such pre-filed comments be submitted in both paper and, when possible, electronic format no later than November 26, 2008, at noon.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 29, 2008.**

(SEAL)



ATTEST: A TRUE COPY



**Doug Dean,
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.