

Decision No. C02-319

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 01R-434T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES CONCERNING THE COLORADO HIGH COST SUPPORT MECHANISM, 4 CCR 723-41, AND THE RULES CONCERNING ELIGIBLE TELECOMMUNICATIONS CARRIERS, 4 CCR 723-42.

RULING ON EXCEPTIONS AND ORDER VACATING STAY

Mailed Date: March 18, 2002

Adopted Date: January 30, 2002

TABLE OF CONTENTS

I. BY THE COMMISSION.....2
Statement.....2

II. DISCUSSION.....3
A. Introduction.....3
B. CTA Exceptions.....4
1. Phase-down of Part II Support.....5
2. Disaggregation Procedures for Rural ILECs.....12
3. Wireless Offerings Entitled to High-Cost Support.....16
4. Service of ILECs' Disaggregation Plans on Competing EPs and ETCs.....16
C. AT&T Exceptions.....17

III. CONCLUSION.....18

IV. ORDER.....19

I. BY THE COMMISSION

Statement

This matter comes before the Commission for consideration of Exceptions to Decision No. R01-1306 ("Recommended Decision"). In that decision, the Administrative Law Judge ("ALJ") recommended adoption of certain amendments to the Commission's Rules Prescribing the High Cost Support Mechanism ("HCSM Rules"), 4 CCR 723-41, and the Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Eligible Telecommunications Carriers ("ETC Rules"), 4 CCR 723-42. Pursuant to § 40-6-109(2), C.R.S., the Colorado Telecommunications Association ("CTA"), and AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Colorado ("AT&T") filed Exceptions to the Recommended Decision. Western Wireless Corporation ("Western Wireless") and N.E. Colorado Cellular, Inc. ("NECC"), filed responses opposing the Exceptions. Additionally, by Decision No. C02-18, we stayed the Recommended Decision on our own motion, in accordance with § 40-6-109(2), C.R.S., to allow for Commission review of the rules recommended by the ALJ. Now being duly advised, we grant the Exceptions by CTA, in part, and deny them, in part; we deny the Exceptions by AT&T; and we vacate the stay issued in Decision No. C02-18.

II. DISCUSSION

A. Introduction

1. We initiated this proceeding by issuing a Notice of Proposed Rulemaking to consider certain amendments to the HCSM Rules and the ETC Rules. See Decision No. C01-977 (Mailed Date of September 26, 2001). The HCSM Rules establish requirements for telecommunications carriers to receive state funds in support of their provision of local exchange telephone service in high-cost areas. Under the rules, in order to receive support under the High Cost Support Mechanism a telecommunications carrier must be designated an Eligible Provider ("EP"). The ETC Rules establish requirements for a telecommunications carrier to be designated an ETC. Such designation enables a telecommunications carrier to receive federal universal service support for its provision of local exchange service in high-cost areas.¹ The Notice of Proposed Rulemaking pointed out that the primary purpose of this proceeding is to modify our rules to make them consistent with new regulations adopted by the Federal Communications Commission ("FCC").

2. In accordance with the Notice of Proposed

¹ Under rules adopted by the Federal Communications Commission (47 C.F.R. § 54.210), state commissions such as the Colorado Public Utilities Commission are responsible for designating carriers as ETCs.

Rulemaking, the ALJ conducted a hearing in this matter. Several parties provided written or oral comment on the proposed rules. After the hearing, the ALJ recommended certain modifications to the rules, and CTA and AT&T now except to those recommendations.

B. CTA Exceptions

CTA argues that the rules recommended by the ALJ require modification for several reasons: (1) the rules improperly retain the phase-down provisions for HCSM support for rural incumbent local exchange carriers ("ILECs") receiving support under Part II of the rules; (2) the rules improperly place the burden upon rural ILECs to initiate proceedings at the FCC to redefine rural service areas; (3) the rules require clarification as to what services provided by wireless EPs will be supported by the HCSM; and (4) the rules improperly require rural ILECs to serve copies of their disaggregation plans upon competitive ETCs and EPs. We agree that the burden of initiating disaggregation proceedings (*i.e.*, proceedings to redefine rural service areas) should not be placed upon the rural ILECs themselves (argument 2), and make appropriate modifications to the ALJ's recommended rules. Otherwise, we reject CTA's arguments.

1. Phase-down of Part II Support

a. Under the HCSM Rules, rural ILECs² receive high-cost support under Part II of the rules. According to Rule 18.6.1, the specific amount of high-cost support (per access line) for each rural ILEC is established by order of the Commission. Once support has been established, the rural ILEC need not reapply for HCSM support. However, Rule 18.6.1.2 establishes a seven-year phase-down period: HCSM support declines from 100 percent (of the amount established by the Commission) in years 1 and 2, to 0 percent in 7 seven. Notably, the Commission, upon request of the rural ILEC, may reestablish the per access line support for that ILEC as part of a general rate proceeding. The reestablished support level will then be effective for a new seven-year period. In effect, unless the rural ILEC submits to a complete review of its financial operations in a general rate case during the seven-year phase down period, HCSM support will decline to 0 percent. The Recommended Decision retains Rule 18.6.1, and CTA objects to that recommendation.

b. CTA argues that the phase-down provision for Part II support should be eliminated for a number of reasons:

² Generally, a rural LEC (or rural telecommunications provider) is a LEC serving exchanges of 10,000 or less access lines. See Rule 2.16 of the HCSM Rules.

CTA notes that in Docket No. 00T-494T (concerning intercarrier compensation) the Commission is considering reform of the switched access charge system. Rural ILECs now receive a significant portion of their revenues from access charges. If the Commission, in Docket No. 00T-494T, eliminates or reduces those charges, an alternate revenue recovery mechanism must be established for the rural ILECs. The principal alternative to access charges is likely to be the HCSM fund. Therefore, CTA suggests, the phase-down rule should be eliminated in this docket.

c. We disagree with CTA's reasoning. What the Commission may do to the access charge system as a result of Docket No. 00T-494T is speculation at this time. Certainly, we are aware of the significance of access charges to all ILECs in the state. Potential changes to the access charge system, and appropriate alternatives to access charges are matters to be addressed in Docket No. 00T-494T, not here. We emphasize that the phase-down requirement for Part II HCSM support ensures that rural ILECs are not over-compensated for their provision of local exchange service in high-cost areas. It accomplishes that purpose without imposing substantial regulatory burdens upon the rural ILECs. Without the phase-down mechanism, the rural ILECs would be required to submit to annual comprehensive reviews of their financial operations to ensure that HCSM monies were being

used for their intended purpose only. The phase-down avoids that.

d. Second, CTA contends that the circumstances in telephone regulation have changed since the phase-down provision was first adopted. For example, CTA refers to the enactment of state (HB 1335) and federal (Telecommunications Act of 1996) laws permitting competition in the local exchange market.

e. None of the changed circumstances cited by CTA supports elimination of the phase-down provision. The phase-down requirement serves an important purpose of easing regulatory burdens on rural ILECs. None of the changed circumstances cited in the Exceptions relates directly to the phase-down requirement itself or to the purposes of that requirement. Therefore, CTA's argument does not support elimination of the rule.

f. CTA then argues that retention of the phase-down scheme for Part II support is unfair and discriminatory because Part I support (Rules 7-16 of the HCSM Rules) is not subject to a phase-down. CTA suggests that the phase-down was adopted for rural ILECs to recognize their monopoly status in their service territories at that time. However, CTA claims, the HCSM Rules were intended to end the phase-down requirement for any ILEC facing competition in its service territory. For

example, the existing HCSM Rules (Rule 4) move a rural ILEC from Part II to Part I support when a competitive EP is certified in that carrier's service territory. CTA notes that rural LECs are now facing competition because Western Wireless and NECC are now certified as EPs in their service territories. It argues that all carriers supported under Part II should be treated the same as Part I carriers with respect to the phase-down requirement.

g. We also reject these arguments. CTA's contentions ignore important differences between Part I and Part II support. In the first place, Part I support is established based upon a proxy cost model. These models use forward-looking costs, not the specific embedded costs of the individual company requesting Part I support. When the HCSM Rules were initially adopted, the Commission determined that support for rural LECs (*i.e.*, Part II) would be based upon **the individual company's embedded, historical** costs. The Commission adopted an embedded cost method for the rural companies to reduce the rural ILECs' burden in obtaining high-cost support. Our prior rules provided that rural ILECs would transition to a proxy cost model by July 1, 2003, or upon the earlier occurrence of one of two events: a competitive EP is certified to provide service in a rural ILEC's service territory, or the Commission adopts a proxy (forward-looking) cost model for the rural ILECs. See Rule 4.2 of the HCSM Rules. We note that the present amendments to the HCSM

Rules eliminate these transition provisions. High-cost support for the rural ILECs will continue to be based upon embedded cost methods. Therefore, Part I support is based upon forward-looking, proxy cost models; Part II support will continue to be based upon each ILEC's embedded costs. This is one reason why Part II contains a phase-down requirement, but Part I does not.

h. Moreover, Part I support as envisioned in the HCSM Rules is, in fact, subject to annual adjustment. High-cost support for Part I carriers is based upon the difference between the calculated proxy costs (per access line) and revenue benchmarks for both residential and business customers (per access line). See Rule 9.4 of the HCSM Rules. According to the rules, each EP certified to receive Part I support is required to provide information by March 31 of each year to reestablish the revenue benchmarks, and the revenue benchmarks are reset annually by the HCSM administrator (Rules 2.15, and 7.2.3 of the HCSM Rules). An increase in revenues by Part I EPs, therefore, would result in decreased HCSM support (assuming no change to the calculated proxy costs).

i. We also emphasize that any rural ILEC that believes it is entitled to support exceeding the phase-down amount can submit to an examination of its financial operations in a rate case. See Rule 18.6.1.2. CTA, however, suggests that the burden associated with a general rate case has discouraged

rural company participation in the HCSM program. As support for this contention, CTA points out that only 5 of the 29 rural ILECs now receive HCSM funding.

j. We find this argument implausible. In our view, the general lack of participation in the HCSM program by rural companies most likely reflects two facts: first, rural ILECs receive the vast majority of high-cost support from the federal universal service fund. Second, that federal support, together with other revenues, covers all costs of providing local exchange service for most rural ILECs; receipt of additional HCSM funds would, contrary to the HCSM Rules, over-compensate the rural companies for the costs of providing local service. No credible evidence exists that the phase-down requirement causes any rural ILEC to forego HCSM support to which it would otherwise be entitled. And, given the Commission's obligation to ensure that no LEC receives high-cost support that, together with other local exchange revenues, exceeds the cost of providing local exchange service (§ 40-15-208(2)(a), C.R.S.), the phase-down provision is appropriate.

k. Finally, CTA suggests simplified procedures to replace the phase-down mechanism, either the annual certification review required by the FCC for receipt of federal support, or a formulaic approach such as that used by the FCC

for the federal high-cost loop program. We reject these suggestions.

1. CTA did not present these suggestions at hearing but only in its Exceptions. The necessary details underlying these suggestions, are, therefore, unknown. As for the merits of these suggestions, we conclude: while the annual certification process requires the rural ILECs to provide some information to the Commission,³ it is certainly not as thorough as a general rate proceeding. The HCSM Rules, even with the phase-down, give the rural ILECs an opportunity to receive substantial amounts of support for a substantial period of time with no formal proceedings to examine support amounts. It is not too much to ask that the rural companies submit to a careful examination of their financial operations at least once every seven years if they wish to retain HCSM support. In addition, we point out that the FCC itself requires comprehensive cost studies from rural LECs for some of the federal support programs (e.g., for switching and long-term support). Therefore, the suggestion that the FCC uses more simplified procedures in its administration of federal support programs is not exactly accurate.

³ Although proposing an annual certification process here, in the last annual certification process for the federal support, CTA complained that the investigation conducted by Commission Staff was unduly burdensome.

m. For the foregoing reasons, we affirm the Recommended Decision to the extent it maintains the phase-down requirement in the HCSM Rules. CTA's Exceptions on this point are denied.

2. Disaggregation Procedures for Rural ILECs

a. In the Fourteenth Report and Order, FCC 01-157 (May 23, 2001), the FCC mandated that rural ILECs disaggregate their service areas and target their high-cost support under one of three designated paths. See 47 C.F.R. § 54.315. The rules recommended by the ALJ are intended to comply with these new disaggregation provisions. For example, proposed Rule 10 of the ETC Rules specifies the three paths available to rural ILECs: no disaggregation (Path 1); disaggregation in accordance with prior Commission order (Path 2); or self-certification of disaggregation to the wire center level, or into no more than two cost zones per wire center(Path 3).⁴ Proposed Rule 11 of the ETC Rules mandates that any disaggregation of support under one of the paths selected under Rule 10 will also be used for purposes of disaggregating the rural ILEC's study area into smaller service areas pursuant to 47 C.F.R. § 54.207. That FCC rule provides that, for a rural ILEC, "service area" means such company's "study area" until both

⁴ Under any path, the Commission retains the authority to order disaggregation in a different manner than that proposed by the rural ILEC.

the FCC and the state commission establish a different definition for such company. Notably, proposed Rule 11.1 requires each rural ILEC disaggregating under Paths 2 or 3 to file a petition with the FCC seeking a redefinition of its service area in accordance with the selected path. CTA objects to the mandate that the rural ILECs themselves file the disaggregation petition with the FCC.

b. In its Exceptions, CTA argues that § 214(e)(5) of the Telecommunications Act of 1996 and FCC Rule 47 C.F.R. § 54.207 place the obligation for disaggregating rural service areas upon the FCC and state commissions, not upon the rural companies. Pursuant to these provisions, a rural ILEC cannot be forced to initiate FCC proceedings to disaggregate its service area, especially when the rural company may not agree with the disaggregation plan adopted by the Commission. CTA also suggests that proposed Rule 11.1 contravenes the Commission's decisions in the Western Wireless and NECC certification dockets--the dockets to certify Western Wireless and NECC as EPs and ETCs in rural service areas--in which the Commission stated that it intended to proceed with disaggregation of rural service areas "only after conducting adjudicative, contested case proceedings." Exceptions, page 9.

c. We grant the Exceptions to the extent CTA opposes the provisions that would compel the rural ILECs to

initiate disaggregation proceedings at the FCC. CTA correctly points out that the Commission may adopt disaggregation plans with which a rural ILEC disagrees. In this circumstance, we should not expect the rural company itself to make a formal filing at the FCC to propose a plan that it, in actuality, opposes. The rules are modified to reflect that the Commission will make any necessary filing with the FCC to redefine service areas.

d. To the extent CTA opposes any disaggregation of service areas except after further "adjudicative, contested cases," we reject that suggestion. As Western Wireless and NECC point out in their responses to the Exceptions, targeting of high-cost support and disaggregation of service areas go hand-in-hand; the disaggregation of service areas must accompany the targeting of high-cost support. Once support has been disaggregated, it would be anti-competitive to defer the redefinition service areas to a new, possibly protracted adjudicative proceeding. Western Wireless' and NECC's operations in rural areas is illustrative of this point. Both companies have been certified as competitive EPs and ETCs in rural exchanges in Colorado, and both companies stand ready to serve rural areas. However, due to limitations on their networks, neither company is able to serve the entirety of all rural ILECs' study areas. This limitation has prevented them

from receiving EP and ETC support in those areas. With high-cost support targeted to specific areas within an ILEC's study area, no reason exists to prevent Western Wireless and NECC from competing in those areas. For example, "cream-skimming" is not possible with support targeted appropriately.

e. Our conclusions here are consistent with our Western Wireless decision. In that case CTA itself opposed the certification of Western Wireless as an EP and ETC prior to disaggregation primarily because, without the targeting of support to truly high-cost customers, Western Wireless could "cream-skim" customers (*i.e.*, selectively serve lower cost customers while drawing non-disaggregated support). See Decision No. C01-476, pages 23 through 24. Under Rule 10, the rural ILECs themselves possess substantial control over the specific Path to be implemented. Therefore, no reason exists to further delay the disaggregation of service areas.

f. For these reasons, we adopt the provisions (*e.g.*, Rule 11 of the ETC Rules) clarifying that the plan for disaggregating high-cost support for a rural ILEC shall also serve as the plan for disaggregating service areas. To address CTA's main objection to the rules, we modify the ALJ's recommendations to provide that the Commission will make any necessary filings with the FCC to redefine rural service areas.

3. Wireless Offerings Entitled to High-Cost Support

a. CTA briefly suggests that the rules should clarify those offerings provided by wireless EPs and ETCs that are entitled to high-cost support. In particular, CTA proposes that only the Basic Universal Service offerings⁵ by Western Wireless and NECC are entitled to such support; the traditional wireless calling plans offered by these wireless carriers would not be eligible for support. Western Wireless and NECC oppose this suggestion.

b. We reject CTA's request. As Western Wireless and NECC point out, the clarification requested by CTA is unnecessary. The proceedings in which Western Wireless and NECC were certified establish the conditions for support and the services to be supported. Moreover, the FCC's rules (47 C.F.R. § 54.101) and the Commission's HCSM Rules (Rule 8) already define the services EPs and ETCs must provide in order to qualify for high-cost support, and, therefore, the services that are eligible for support. No further clarification is needed.

4. Service of ILECs' Disaggregation Plans on Competing EPs and ETCs

a. Finally, CTA objects to proposed Rule 10.2.6 of the ETC Rules, which requires rural ILECs to serve copies of

⁵ The Basic Universal Service offerings were defined in the Stipulations in which, with Commission approval, Western Wireless and NECC were certified as EPs and ETCs.

their Path 2 disaggregation plans upon all competing EPs and ETCs in the study area, when those plans are filed with the Commission. CTA suggests that interested persons, including competitive EPs and ETCs, will receive sufficient notice of such filings from the Commission and the FCC.

b. We adopt the ALJ's recommended rule. The burden of serving proposed disaggregation plans upon competing carriers is slight. On the other hand, competing carriers have an important interest in those filings. It is reasonable to require the rural ILECs to serve copies of disaggregation plans upon competitors to ensure that those companies receive notice of the plans.

C. AT&T Exceptions

1. At hearing, AT&T recommended rules that would provide for audits of the HCSM fund by an independent auditor, that such audits be conducted every other year, and that the outside auditor use a consistent methodology specified by the Commission. For the most part, the Recommended Decision refused to adopt these proposals. Instead, the ALJ recommended a provision calling for periodic audits "at the discretion of the Commission." See Rule 10.14 of the HCSM Rules. We agree with the Recommended Decision.

2. We note that the HCSM fund is now closely administered by the Commission and its Staff, and the Commission

itself sets the annual surcharge which funds the HCSM. In addition, the Commission anticipates that Commission Staff will conduct periodic internal audits of the HCSM fund. These procedures provide substantial assurances that the HCSM fund is operating as intended and that the size of the fund is appropriate. On the other hand, the costs of independent audits could be significant. With these considerations in mind, adopting an inflexible schedule for outside audit by rule would be imprudent. The ALJ's recommendation allows for independent audits at the discretion of the Commission. We agree with that recommendation; therefore, AT&T's Exceptions are denied.⁶

III. CONCLUSION

For the foregoing reasons, we grant the Exceptions by CTA in part only. Otherwise the Exceptions by CTA and AT&T are denied. The rules appended to this decision reflect our determinations in this decision.⁷

⁶ We also observe that, contrary to the argument by AT&T, § 40-15-208(3), C.R.S., does provide that costs for administration of the HCSM, such as costs for outside audit, are subject to appropriation by the General Assembly.

⁷ The rules adopted here, as reflected on the attachment to this order, highlight changes to the rules attached to the Recommended Decision.

IV. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R01-1306 by Colorado Telecommunications Association, Inc., filed on January 10, 2002 are granted in part, and are otherwise denied consistent with the above discussion.

2. The Exceptions to Decision No. R01-1306 by AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Colorado filed on January 10, 2002 are denied.

3. The stay of the Recommended Decision issued in Decision No. C02-18 is vacated.

4. The rules appended to this Decision as Attachment A are adopted. This Order adopting the attached rules shall become final 20 days following the mailed date of this Decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this Order of Adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

5. Within 20 days of final Commission action on the attached Rules, 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.

6. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 30, 2002.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith
Director

JIM DYER

Commissioners

1 THE
2 PUBLIC UTILITIES COMMISSION
3 OF THE
4 STATE OF COLORADO

5 RULES PRESCRIBING
6 THE HIGH COST SUPPORT MECHANISM
7 AND
8 PRESCRIBING THE PROCEDURES FOR
9 THE COLORADO HIGH COST ADMINISTRATION FUND

10 4 CODE OF COLORADO REGULATIONS (CCR) 723-41

11 **BASIS, PURPOSE AND STATUTORY AUTHORITY.**

12 These rules are issued under the general authority of
13 §§ 40-2-108(2) C.R.S., § 40-3-102 C.R.S. and § 40-15-208
14 C.R.S. They establish the process to be used and the
15 information required by the Commission to implement the
16 provisions of § 40-15-208 C.R.S. ~~__(SB 98-177).¹ Pursuant to~~
17 ~~§§ 40-15-502 et seq. C.R.S., the General Assembly of the State~~
18 ~~of Colorado mandated that competition in the local exchange~~
19 ~~telecommunications market be implemented on or before~~
20 ~~July 1, 1996. SB 98-177 requires that, as of July 1, 1998,~~
21 ~~the Colorado High Cost Fund ("CHCF"), as previously~~
22 ~~established in § 40-15-208 is to be abolished, and a new~~
23 ~~mechanism for the support of universal service, to be referred~~
24 ~~to as the "High Cost Support Mechanism" ("HCSM"), shall~~

~~1 Senate Bill 98-177 was signed into law by Governor Roy
Romer on May 18, 1998 at 12:21 p.m.~~

1 ~~operate in accordance with rules adopted by the Commission.~~
2 ~~SB 98-177 also creates the Colorado High Cost Administration~~
3 ~~Fund, ("Fund") which is to be used to reimburse the Commission~~
4 ~~and its contractors for expenses incurred in the~~
5 ~~administration of the HCSM as determined by rules of the~~
6 ~~Commission. SB 98-177 mandates that as of July 1, 1998, any~~
7 ~~unencumbered moneys remaining in the CHCF are to be~~
8 ~~transferred to the Fund.~~

9 Pursuant to Sections 40-15-502 et seq. C.R.S., the
10 General Assembly of the State of Colorado mandated that local
11 exchange telecommunications markets be open to competition
12 while maintaining the goal of affordable and just and
13 reasonably priced basic service. To accomplish that goal the
14 General Assembly directed the Commission to establish a system
15 of universal service support mechanisms to be funded on a
16 nondiscriminatory, competitively neutral basis.

17 ~~The Commission had, as of April 30, 1998, revised Rule 41~~
18 ~~of 4 CCR for the purpose of prescribing the procedures for~~
19 ~~administering the Colorado High Cost Fund. Portions of that~~
20 ~~Rule are now incompatible with SB 98-177. On May 23, 2001 the~~
21 Federal Communications Commission released its Fourteenth
22 Report and Order, Twenty-Second Order on Reconsideration and
23 Further Notice of Proposed Rulemaking in CC Docket No. 96-45.
24 In this Order the FCC modified its rules for providing high-
25 cost universal service support to rural telephone companies
26 for the next five years based upon the proposals made by the
27 Rural Task Force established by the Federal-State Joint Board
28 on Universal Service. These rule are also intended to be
29 consistent with the FCC's May 23, 2001 order. These
30 amendments are necessary to ensure that eligible providers
31 continue to receive support under the HCSM and that the

1 Commission and its contractors are reimbursed for any expenses
2 incurred.

3 **RULE (4 CCR) 723-41-1. APPLICABILITY.**

4 ~~Part I of these rules contain the permanent provisions~~
5 ~~regulating the HCSM, and are applicable to all~~
6 ~~telecommunications service providers in Colorado, except that~~
7 ~~the support mechanism of Rule 9 is applicable to any non-rural~~
8 ~~telecommunications service provider and further, Rule 9 is~~
9 ~~applicable to rural telecommunications service providers only~~
10 ~~by the operation of Rule 4.2. Part II of these rules contain~~
11 ~~the temporary provisions providing for the transition from the~~
12 ~~CHCF mechanism that was in effect prior to July 1, 1996 to the~~
13 ~~HCSM mechanisms in Part I. Part II is applicable to rural~~
14 ~~telecommunications service providers. These rules and~~
15 ~~regulations govern the operation of the Colorado High Cost~~
16 ~~Support Mechanism ("HCSM") and the Colorado High Cost~~
17 ~~Administration Fund and shall apply to all providers of~~
18 ~~intrastate telecommunications services.~~

19

20

21

22 723-41-3.1 The HCSM shall operate on a calendar year
23 basis. The Commission shall, by November 30 of each year,
24 adopt a budget for the HCSM containing:

25 A) the proposed benchmarks;

26 B) the proposed contributions to be collected through a
27 rate element assessment by each telecommunications provider;
28 and

29 C) the proposed total amount of the HCSM from which
30 distributions are to be made for the following calendar year.

1 ~~723-41-3.2~~ The HCSM distributions of support shall
2 not exceed sixty million dollars during each of the calendar
3 years 1998 and 1999; except as provided in ~~§ 40-15-~~
4 ~~208(2)(d)(I)~~.

5 ~~723-41-3.2.1~~ If the total budget amount for
6 support distributions prepared pursuant to Rule 3.1 exceeds
7 the maximum of Rule 3.2, support distributions to non-rural
8 eligible providers shall be reduced accordingly.

9 ~~723-41-3.2.2~~ Rule 3.2, and all its subsections, is
10 repealed effective January 1, 2000.

11 723-41-3.3~~2~~ If the budget prepared pursuant to Rule
12 3.1 and submitted to the General Assembly pursuant to Rule
13 10.16 contains a proposal for an increase in any of the
14 amounts listed in Rule 3.1 A) through C), such increase shall
15 be suspended until March 31 of the following year.

16 **RULE (4 CCR) 723-41-4. TRANSITION RESERVED FOR FUTURE USE.**

17 ~~723-41-4.1~~ The mechanism for making payments into the
18 HCSM established in Rule 7 of Part I shall take effect by
19 ~~further order of the Commission.~~

20 ~~723-41-4.2~~ Rural Telecommunications Service Providers
21 may only continue to draw support in accordance with Part II
22 of this Rule until the earliest occurrence of one of the
23 following three events:

24 ~~723-41-4.2.1~~ July 1, 2003; or

25 ~~723-41-4.2.2~~ When another provider holding a
26 Certificate to Provide Local Exchange telecommunications
27 service and operating authority within the provider's service
28 territory, pursuant to the Commission's Rules Regulating the
29 Authority to Offer Local Exchange Telecommunications Services,

1 ~~4 CCR-723-35, is found by the Commission to be eligible to~~
2 ~~receive support from the HCSM pursuant to Rule 8; or~~
3 ~~————— 723-41-4.2.3 ——— The Commission, by order, has adopted~~
4 ~~a Proxy Cost Model for Rural Telecommunications Service~~
5 ~~Providers, and the Rural Telecommunications Service Provider~~
6 ~~elects into the mechanism established pursuant to Part I of~~
7 ~~this Rule.~~

8 ~~723-41-4.3 ——— Small LECs designated as an Eligible~~
9 ~~Provider as of July 1, 1996, and thus able to draw from the~~
10 ~~HCSM established in Part II of Rule 4 CCR 723-27 and now~~
11 ~~codified in Part II of this Rule, and Rural Telecommunications~~
12 ~~Service Providers who are not receiving HCSM support, may, at~~
13 ~~any time, apply to draw support in accordance with Part II of~~
14 ~~this Rule subject to the time limits delineated in Rule 4.2.~~

15 ~~723-41-4.4 ——— Once a Rural Telecommunications Service~~
16 ~~Provider commences drawing support under Part I of these~~
17 ~~Rules, such provider must comply with the Part I Rules and may~~
18 ~~not return to drawing support under the Part II Rules.~~

19 ~~————— 723-41-4.5 ——— Part II of this Rule is repealed effective~~
20 ~~July 1, 2003.~~

21
22

23
24 723-41-7.2.2 Eligible Provider Reporting
25 Requirements.

26 723-41-7.2.2.1 Each Eligible Provider receiving
27 support pursuant to Rule 9.2 shall provide to the
28 Administrator a verified accounting of: 1) the actual number
29 of Primary Residential and Single-Line Business Access Lines
30 served by such provider in each Geographic Area as of the last
31 day of each month; and 2) the actual amount of contributions

1 collected in the month. ~~For Eligible Providers receiving~~
2 ~~support pursuant to Part I of these Rules, the~~ An appropriate
3 form is to be completed and returned to the Administrator by
4 the 15th day of the subsequent month., ~~and for~~

5 723-41-7.2.2.1.1 In completing the form
6 Eligible Providers shall be guided by the following: An
7 Eligible Provider that is the provider of last resort ("POLR")
8 and is providing service will always receive HCSM support. If
9 a competitive Eligible Provider, wireless or wireline,
10 commences primary line service such that the POLR is no longer
11 providing service, then the support is ported to the
12 Competitive Eligible Provider. If an Eligible Provider that
13 is the POLR, subsequently regains the customer and begins
14 providing service, then only the Eligible Provider that is the
15 POLR will receive the HCSM support.

16 723-41-7.2.2.2 For Eligible Providers receiving
17 support pursuant to ~~Part II~~ Rule 9.3 of these Rules, an
18 appropriate form is to be completed and returned to the
19 Administrator:

20 723-41-7.2.2.2.1 if no competitive
21 Eligible Provider has been designated in the incumbent rural
22 Eligible Provider's study area, as part of that provider's
23 annual report; or

24 723-41-7.2.2.2.2 if one or more Eligible
25 Providers has been designated in a Geographic Support Area, by
26 the 15th day of the subsequent month.

27 723-41-7.2.3 Revenue Benchmark Reporting
28 Requirements. Each Eligible Provider, receiving support
29 pursuant to ~~Part I~~ Rule 9.2 of these Rules, shall provide to
30 the Administrator a verified accounting of such revenues as
31 are determined necessary for establishing the Residential and

1 Business Revenue Benchmarks on a form supplied by the
2 Administrator. This worksheet shall be due March 31, of each
3 year, containing data for the prior calendar year.

4
5
6

7 **RULE (4 CCR) 723-41-9. SUPPORT VIA THE HCSM.**

8 723-41-9.1 The Commission shall establish Geographic
9 Areas for the State by order. Such Geographic Areas may be
10 revised at the discretion of the Commission.

11 723-41-9.1.1 Disaggregation and Targeting of
12 Colorado High-Cost Support by Rural Incumbent Local Exchange
13 Providers.

14 The disaggregation plan selected by a rural incumbent Eligible
15 Provider for targeting Colorado high-cost support shall be the
16 same plan as that selected by the provider and approved by the
17 Commission pursuant to Rule 4 CCR 723-42-10.

18 723-41-9.2 Support via the HCSM applicable to Non-
19 Rural Geographic Areas shall be calculated as follows:

20 723-41-9.2.1 By order, the Commission shall: 1)
21 adopt a Proxy Cost Model; and 2) publish the Intrastate Proxy
22 Cost for each non-rural Geographic Area. The Proxy Cost Model
23 and the resultant Intrastate Proxy Costs shall be updated as
24 necessary. The Commission shall ensure that the HCSM operates
25 such that the basic local exchange service supported bears no
26 more than its reasonable share of the joint and common costs
27 of facilities used to provide those services.

28 723-41-9.2.2 Where the per line Intrastate Proxy
29 Cost exceeds the applicable Revenue Benchmark in that
30 particular non-rural Geographic Area, the Commission shall

1 | designate certain non-rural Geographic Areas as Geographic
2 | Support Areas.

3 | 723-41-9.2.3 Amount of Support: Each Eligible
4 | Provider shall receive support from the HCSM based on the
5 | number of Primary Residential and Single-Line Business Access
6 | Lines it serves in the non-rural high cost Geographic Support
7 | Areas, as designated by the Commission, multiplied by the
8 | difference between the per line Intrastate Proxy Cost in such
9 | Geographic Support Area and the applicable per Access Line
10 | Revenue Benchmark as determined by the Commission. The amount
11 | of support shall be reduced by any other amount of support
12 | received by such provider or for which such provider is
13 | eligible under support mechanisms established by the federal
14 | government and/or this State.

15 | ~~723-41-9.4.1 If the HCSM budget prepared by~~
16 | ~~Commission pursuant to Rule 3.2 exceeds any statutory~~
17 | ~~budgetary cap, the amount of support intended for non-rural~~
18 | ~~eligible providers shall be reduced as necessary by increasing~~
19 | ~~the Revenue Benchmarks. The benchmarks shall be increased~~
20 | ~~equally in each Geographic Support Area and the benchmarks~~
21 | ~~shall be increased so as to maintain the relative relationship~~
22 | ~~between the Residential Benchmark and the Business Benchmark.~~

23 | 723-41-9.2.4 Revenue Benchmarks. Separate Revenue
24 | Benchmarks shall be determined for residential and business
25 | supported Access Lines for each Geographic Area according to
26 | the formulae defined in Rule 2.15.

1 723-41-9.3 Support via the HCSM applicable to Rural
2 Geographic Areas (areas served by incumbent rural
3 telecommunication service providers) shall be calculated as
4 follows:

5 723-41-9.3.1 By order, the Commission shall: 1)
6 determine the amount of support per Access Line as determined
7 by the Commission pursuant to Rule 18 (based upon the filing
8 of the incumbent rural Eligible Provider serving that area and
9 as modified pursuant to Rule 18.6); and 2) publish the support
10 per access line, disaggregated into such Geographic Support
11 Areas as may be designated by the Commission. The Commission
12 shall ensure that the HCSM operates such that the basic local
13 exchange service supported bears no more than its reasonable
14 share of the joint and common costs of facilities used to
15 provide those services.

16 723-41-9.3.2 Amount of Support: Each Eligible
17 Provider shall receive support from the HCSM in an area served
18 by an incumbent Rural Telecommunications Provider based upon
19 the number of Access Lines the Eligible Provider serves in
20 those high cost Geographic Support Areas, as designated by the
21 Commission, multiplied by the applicable support per Access
22 Line.

23 723-41-9.3.3 Additional Procedures Governing the
24 Operation of Disaggregated Support:

25 723-41-9.3.3.1 The disaggregation and targeting
26 plan adopted under Rule 9.1.1 shall be subject to the
27 following general requirements:

28 723-41.9.3.3.1.1 Support available to
29 the rural incumbent local exchange carrier's study area under
30 its disaggregation plan shall equal the total support
31 available to the study area without disaggregation.

1 723-41.9.3.3.1.2 The ratio of per-line
2 support between disaggregation zones for each disaggregated
3 category of support shall remain fixed over time, except as
4 changes are allowed pursuant to Rule 723-42-10.2 and 10.3.

5 723-41.9.3.3.1.3 The ratio of per-line
6 support shall be publicly available.

7 723-41-9.3.3.1.4 Per-line support
8 amounts for each disaggregation zone shall be recalculated
9 whenever the rural incumbent Eligible Provider's total annual
10 support amount changes (including when the support amount is
11 phased-down per Rule 41-18.6.1.2) using the changed support
12 amount and access line counts at that point in time.

13 723-41-9.3.3.1.5 Per-line support for
14 each category of support in each disaggregation zone shall be
15 determined such that the ratio of support between
16 disaggregation zones is maintained and that the product of all
17 of the rural incumbent Eligible Provider's Access Lines for
18 each disaggregation zone multiplied by the per-line support
19 for those zones when added together equals the sum of the
20 rural incumbent Eligible Provider's total support.

21 723-41.9.3.3.1.6 Until a competitive
22 Eligible Provider is designated in a study area, the quarterly
23 payments to the rural incumbent Eligible Provider will be made
24 based on total annual amounts for its study area divided by 4.

25 723-41.9.3.3.1.7 When a competitive
26 Eligible Provider is designated anywhere in a rural incumbent
27 Eligible Provider's study area, the per-line amounts used to
28 determine the competitive Eligible Provider's disaggregated
29 support shall be based on the rural incumbent Eligible
30 Provider's then-current total support levels, lines, and
31 disaggregated support relationships.

1 723-41.9.4 Reserved for future use.

2 723-41-9.5 Reserved for future use.

3 723-41-9.6 Process for Payments. The Administrator
4 will arrange payments to be made to Eligible Providers, which
5 are net recipients from the HCSM, within 30 days of the last
6 calendar day of each quarter.

7 723-41-9.7 Reconciliation. Following receipt of each
8 Eligible Provider's report to the Administrator pursuant to
9 Rule 7.2.2, the Administrator shall reconcile the estimated
10 disbursements previously authorized for such Eligible Provider
11 for the period for which the report provides information to
12 the actual disbursements to which such provider is entitled
13 (as calculated by Rule 723-41-9.42 and 9.3), and shall send a
14 statement of such reconciliation to each Eligible Provider
15 within 60 days after the receipt of the report. The statement
16 shall show if the provider is entitled to additional amounts
17 from the HCSM, or if the Eligible Provider has received more
18 than the amount of its HCSM entitlement. Such reconciling
19 amounts shall be used by the Administrator in setting the
20 Eligible Provider's entitlements in subsequent quarters.

21

22

23

24 723-41-10.14 The Fund and the HCSM records covering
25 both collections and disbursements shall be audited ~~at the end~~
26 ~~of fiscal year 1998-1999~~ periodically at the discretion of the
27 Commission by an independent external auditor chosen by the
28 Commission. The costs for conducting audits shall be included
29 in the computation of HCSM requirements. ~~Thereafter, the Fund~~
30 ~~and the HCSM shall be audited in the same manner at least once~~
31 ~~every other year.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

.

723-41-10.16 A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the General Assembly committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with Section 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 telecommunications service provider which contributes to the HCSM. The Administrator may satisfy the latter requirement by notifying the telecommunications service provider of the availability of the annual report via an e-mail message directing the provider to the report on the Commission's web site. The report shall account for the operation of the HCSM during the preceding calendar year and contain the following information, at a minimum:

.

4 CCR 723-41-PART II

~~[NOTE. Pursuant to Rule 723-41-4.5, Part II is repealed effective July 1, 2003]~~

.

1 **RULE (4 CCR) 723-41-18. ~~TRANSITIONAL~~ CALULATION OF COLORADO**
2 **HIGH COST FUND SUPPORT PER ACCESS LINE FOR INCUMBENT RURAL**
3 **TELECOMMUNICATIONS SERVICE PROVIDERS.**

4 During the transition period, Incumbent Rural
5 Telecommunications Service Providers, who are not Average
6 Schedule Rural Telecommunications Service Providers, shall be
7 eligible, upon proper showing, for support from the HCSM for
8 high costs in three areas: a) loops, b) local switching, and
9 3) exchange trunks. Incumbent Average Schedule Rural
10 Telecommunications Service Providers shall be eligible, upon
11 proper showing, for support from the HCSM for high costs as
12 determined by Rule 18.6.1.

13
14
15

16 **723-41-18-6. COLORADO HIGH COST FUND ADMINISTRATION.**

17 723-41-18-6.1 The Commission, acting as Administrator,
18 and pursuant to this Part II of the Rules, shall determine and
19 establish by Order, for each Rural Telecommunications Service
20 Provider, the HCSM support revenue requirement (support per
21 Access Line) that will be effective for a period of up to six
22 years beginning with the date of the Order.

23 723-41-18.6.1.1 At any time, upon the
24 request and proper support as part of a general rate
25 proceeding by a Rural Telecommunications Service Provider, the
26 Commission, acting as Administrator, may revise the HCSM
27 support revenue requirement that will be effective for a
28 period of up to six years beginning with the date established
29 by order. Further, as a result of a show cause, complaint or
30 other proceeding, the Commission, acting as Administrator, may
31 revise the HCSM support revenue requirement that will be

1 | effective for a period of up to six years beginning with the
2 | date established by order.

3 | 723-41-18.6.1.2 Once established or
4 | revised, no further qualification will be required during the
5 | six-year funding period. During the funding period, the
6 | amount of HCSM support per Access Line will be phased down.
7 | Funding will be fixed for the first two years (any 12 month
8 | period) at 100% of the funding level established. Following
9 | the first two years, the support amount will decline and be
10 | phased out by year seven. The following is the phase out
11 | schedule:

YEAR 1	100%	YEAR 4	65%	YEAR 7	0%
YEAR 2	100%	YEAR 5	40%		
YEAR 3	82.5%	YEAR 6	20%		

14 |
15 | 723-41-18.6.1.3 The Commission may grant a
16 | Rural Telecommunications Service Provider's request for waiver
17 | from these Rules for good cause shown, pursuant to Rule 15 of
18 | these Rules. Any HCSM support amount so granted shall be in
19 | the amounts and for the periods expressly approved by
20 | Commission order.

21 | 723-41-18.6.1.4 Reserved for future use.
22 | ~~During the HCSM funding period, switched access rates for~~
23 | ~~companies receiving HCSM, will be adjusted annually to reflect~~
24 | ~~a sharing of access minute demand growth, which occurred~~
25 | ~~during the most recent 12 month period when compared to the 12~~
26 | ~~month period immediately preceding for which billed demand~~
27 | ~~data is available. The following percentages of sharing will~~
28 | ~~be used:—~~

~~Percentage of Annual Demand Growth~~

~~(to be used in adjusting access rates)~~

~~YEAR 1 N/A YEAR 4 75% YEAR 7 0%~~

~~YEAR 2 75% YEAR 5 50%~~

~~YEAR 3 75% YEAR 6 50%~~

~~For each year of the HCSM funding period, the applicable percentage from the above table will be multiplied by the actual change (increase or decrease) in access minute demand for the most recent 12-month period as compared to the previous 12-month period immediately preceding for which billed demand data is available, to determine the access minute adjustment amount. The amount determined will then be added to or subtracted from the prior 12-month period adjusted switched access minute demand to determine the current period's adjusted access minute demand. The current period's adjusted switched access demand will then be utilized to revise the switched access rate elements using the access revenue requirements for each element, from the base year rate determination. The switched access rate adjustments shall be filed with the Commission with a proposed effective date no later than 60 days following the anniversary of the effective date of the HCSM funding period.~~

~~723-41-18.6.1.5 For each Average Schedule Rural Telecommunications Service Provider, a surrogate switched access revenue requirement will be used as the "frozen switched access revenue requirement" as described in Rule 18.6.1.4. This surrogate revenue requirement will be calculated by taking the base year Average Schedule access rates times the base year access demand.~~

1 ~~These~~ Rules are consistent with 47 U.S.C. 254 and with 47
2 C.F.R., Part 54.

3 On May 23, 2001 the Federal Communications Commission
4 released its Fourteenth Report and Order, Twenty-Second Order
5 on Reconsideration and Further Notice of Proposed Rulemaking
6 in CC Docket No. 96-45. In this Order the FCC modified its
7 rules (Part 54) for providing high-cost universal service
8 support to rural telephone companies for the following five
9 years based upon the proposals made by the Rural Task Force
10 established by the Federal-State Joint Board on Universal
11 Service. These rules are necessary to ensure that eligible
12 telecommunication carriers continue to receive support under
13 the federal universal service program.

14
15
16

17 **RULE (4 CCR) 723-42-1. APPLICABILITY.**

18 These rules are applicable to all telecommunications service
19 providers: 1) who are designated as a Provider of Last Resort
20 or Eligible Telecommunications Carrier; or 2) seeking to be
21 designated as a Provider of Last Resort or Eligible
22 Telecommunications Carrier; or 3) seeking to remove a
23 designation as a Provider of Last Resort or Eligible
24 Telecommunications Carrier.

25
26
27

1 723-42-7.4 State Certification of Support for Federal
2 Support. As required by Federal Communications Commission
3 ("FCC") Universal Service regulations found at 47 CFR 54.313
4 and 54.314, and when appropriate, the Commission will file an
5 annual certification with the Administrator of the federal
6 Universal Service Fund ("USF") and the FCC on behalf of each
7 jurisdictional eligible telecommunications carrier serving
8 lines in the state, stating that all federal high-cost support
9 provided to such carriers within that State will be used only
10 for the provision, maintenance, and upgrading of facilities
11 and services for which the support is intended.

12 723-42-7.4.1 In making its determination that all
13 federal high-cost support provided to a carrier will be used
14 only for the provision, maintenance, and upgrading of
15 facilities and services for which the support is intended, the
16 Commission may require from a carrier such information as it
17 finds necessary and convenient. At a minimum, carriers shall
18 furnish requested information on a form supplied by the
19 Commission as part of the carrier's annual report.

20
21
22

23 **RULE (4 CCR) 723-42-10. DISAGGREGATION AND TARGETING OF**
24 **SUPPORT BY RURAL INCUMBENT LOCAL EXCHANGE CARRIERS.**

25 All rural incumbent local exchange carriers who have selected
26 a disaggregation path pursuant to FCC regulations found at 47
27 CFR Part 54.315 shall file with the Commission as required by
28 subsections 10.1,10.2, or 10.3. In study areas in which a

1 competitive carrier has been designated as a competitive
2 Eligible Telecommunications Carrier prior to the effective
3 date of the FCC's Rule found at 47 CFR Part 54.315, the rural
4 incumbent local exchange carrier may only disaggregate support
5 pursuant to Rule 10.1,10.2, or 10.3.1.3.

6 723-42-10.1 Path 1: Rural Incumbent Local Exchange
7 Carriers Not Disaggregating and Targeting High-Cost Support:

8 723-42-10.1.1 A carrier's election of this path
9 becomes effective upon filing by the carrier with the
10 Commission.

11 723-42-10.1.2 This path shall remain in place for
12 such carrier for at least four years from the date of filing
13 with the Commission except as provided in Rule 10.1.3 below.

14 723-42-10.1.3 The Commission may require, on its
15 own motion, upon petition by an interested party, or upon
16 petition by the rural incumbent local exchange carrier, the
17 disaggregation and targeting of support under Rules 10.2 or
18 10.3.

19 723-42-10.2 Path 2: Rural Incumbent Local Exchange
20 Carriers Seeking Prior Regulatory Approval for the
21 Disaggregation and Targeting of Support.

22 723-42-10.2.1 A carrier electing to disaggregate
23 and target support under this subsection must file a
24 disaggregation and targeting plan with the Commission.

25 723-42-10.2.2 Under this subsection a carrier may
26 propose any method of disaggregation and targeting of support
27 consistent with the general requirements detailed in 47 C.F.R.
28 § 54.315(e) (effective Oct. 1, 2001).

1 723-42-10.2.3 A disaggregation and targeting plan
2 under this Rule becomes effective upon approval by the
3 Commission.

4 723-42-10.2.4 A carrier shall disaggregate and
5 target support under this path for at least four years from
6 the date of approval by the Commission except as provided in
7 Rule 10.2.5 below.

8 723-42-10.2.5 The Commission may require, on its
9 own motion, upon petition by an interested party, or upon
10 petition by the rural incumbent local exchange carrier, the
11 disaggregation and targeting of support in a different manner.

12 723-42-10.2.6 Requests for disaggregation under
13 Path 2 shall be filed in accordance with Commission Rules of
14 Practice and Procedure, 4 CCR 723-1, relating to applications.
15 In addition, such applications shall be served by the
16 applicant upon all carriers that have obtained either ETC or
17 EP status in the carrier's study area at the same time they
18 are filed with the Commission.

19 723-42-10.3 Path 3: Self-Certification of the
20 Disaggregation and Targeting of Support.

21 723-42-10.3.1 A carrier may file a disaggregation
22 and targeting plan with the Commission along with a statement
23 certifying each of the following:

24 723-42-10.3.1.1 It has disaggregated support to
25 the wire center level; or

26 723-42-10.3.1.2 It has disaggregated support
27 into no more than two cost zones per wire center; or

28 723-42-10.3.1.3 That the carrier's
29 disaggregation plan complies with a prior regulatory
30 determination made by this Commission.

1 723-42-10.3.2 Any disaggregation plan submitted
2 pursuant to this Rule 10.3 must meet the following
3 requirements:

4 723-42-10.3.2.1 The plan must be supported by a
5 description of the rationale used, including the methods and
6 data relied upon to develop the disaggregation zones, and a
7 discussion of how the plan complies with the requirements of
8 this Rule 10.3. Such filing must provide information
9 sufficient for interested parties to make a meaningful
10 analysis of how the carrier derived its disaggregation plan.

11 723-42-10.3.2.2 The plan must be reasonably
12 related to the cost of providing service for each
13 disaggregation zone within each disaggregated category of
14 support.

15 723-42-10.3.2.3 The plan must clearly specify
16 the per-line level of support for each category of high-cost
17 universal service support provided pursuant to §§ 54.301,
18 54.303, and/or 54.305 of part 54 of 47 C.F.R., and/or part 36,
19 subpart F of 47 CFR in each disaggregation zone.

20 723-42-10.3.2.4 If the plan uses a benchmark,
21 the carrier must provide detailed information explaining what
22 the benchmark is and how it was determined. The benchmark
23 must be generally consistent with how the total study area
24 level of support for each category of costs is derived to
25 enable a competitive eligible telecommunications carrier to
26 compare the disaggregated costs used to determine support for
27 each cost zone.

28 723-42-10.3.3 A carrier's election of this path
29 becomes effective upon filing by the carrier to the
30 Commission.

31 723-42-10.3.4 A carrier shall disaggregate and
32 target support under this path for at least four years from

1 the date of filing with Commission except as provided in Rule
2 10.3.5 below.

3 723-42-10.3.5 The Commission may require, on its
4 own motion, upon petition by an interested party, or upon
5 petition by the rural incumbent local exchange carrier,
6 modification to the disaggregation and targeting of support
7 selected under this path.

8 723-42-10.4 Carriers failing to select a
9 disaggregation path, as described in Rules 10.1, 10.2 or 10.3
10 above, by the deadline specified in 47 C.F.R. § 54.315, will
11 not be permitted to disaggregate and target federal high-cost
12 support unless ordered to do so by the Commission.

13
14 **RULE (4 CCR) 723-42-11. USES OF DISAGGREGATION PATHS.**

15 The Commission will use the disaggregation plans of each
16 incumbent Eligible Telecommunications Carrier established
17 pursuant to Rule 10 not only for disaggregation of Colorado
18 HCSM support but also for the disaggregation of the study area
19 of the rural incumbent local exchange carrier pursuant to 47
20 CFR Section 54.207 into smaller discrete service areas.

21 723-42-11.1 Filing of Petition. Where necessary the
22 Commission shall submit a petition to the FCC seeking the
23 agreement of the FCC in redefining the service area of each
24 rural incumbent Eligible Telecommunications Carrier as
25 follows:

26 723-42-11.1.1 Path 1: Rural incumbent Eligible
27 Telecommunications Carriers Not Disaggregating and Targeting
28 Support: No filing with the FCC is required.

Shading denotes Commission amendment.

1 723-42-11.1.2 Path 2: Rural incumbent Eligible
2 Telecommunications Carriers Seeking Prior Regulatory Approval
3 for the Disaggregation and Targeting of Support:

4 The Commission shall submit its petition to the FCC within 60
5 calendar days following the issuance of the Commission's final
6 order in the Carrier's Path 2 disaggregation proceeding.

7 723-42-11.1.3 Path 3: Rural incumbent Eligible
8 Telecommunications Carriers Self-Certifying Disaggregation and
9 Targeting of Support: The Commission shall submit its

10 petition to the FCC within 60 calendar days following the
11 Rural incumbent Eligible Telecommunications Carrier's filing
12 of election of this Path with the Commission.

13
14 **RULE (4 CCR) 723-42-~~10~~12. VARIANCE AND WAIVER.**

15 The Commission may permit variance or waiver from these rules,
16 if not contrary to law, for good cause shown if it finds that
17 compliance is impossible, impracticable or unreasonable.
18

19 **RULE (4 CCR) 723-42-~~11~~13. INCORPORATION BY REFERENCE.**

20 References in these Rules to Parts 36 and 54, are rules issued
21 by the FCC and have been incorporated by reference in these
22 Rules. These rules may be found at 47 C.F.R. revised as of
23 October 1, ~~2001-1997 as amended by 12 FCC Red 17469 (1997), 62~~
24 ~~FR 65036 (12/10/97), 63 FR 3830 (01/27/98), and 63 Fr 2094~~
25 ~~(01/13/98)~~. References to Parts 36 and 54 do not include
26 later amendments to or editions of these parts. A certified
27 copy of these parts which have been incorporated by reference
28 are maintained at the offices of the Colorado Public Utilities
29 Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203
Shading denotes Commission amendment.

1 and are available for inspection during normal business hours.
2 Certified copies of the incorporated rules shall be provided
3 at cost upon request. The Director of the Public Utilities
4 Commission, or his designee, will provide information
5 regarding how the incorporated rules may be obtained or
6 examined. These incorporated rules may be examined at any
7 state publications depository library.

8

9 L:\final\C02-0319B_01R-434T.doc