

Decision No. C24-0576

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0338T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO 4 CODE OF COLORADO REGULATIONS 723-2 AMENDING THE COMMISSION RULES TO IMPLEMENT HOUSE BILLS (HB) 24-1234 AND 24-1336 AND SENATE BILL (SB) 24-139.

NOTICE OF PROPOSED RULEMAKING

Issued Date: August 14, 2024
Adopted Date: August 7, 2024

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (“Commission”) issues this Notice of Proposed Rulemaking (“NOPR”) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* (“CCR”) 723-2, specifically Rules 2106, 2148, 2150, 2184, 2187, 2841, 2842, 2846, 2847, and 2850.

2. The changes proposed are intended to codify in Commission rules changes to various sections of state statute made through the enactment of House Bills (“HB”) 24-1234 and 1336 as well as Senate Bill (“SB”) 24-139. Additionally, the Commission takes this opportunity to update language regarding the methods by which telecommunications service providers can provide information to the Commission regarding their coverage areas.

3. Specifically, HB 24-1234 removes the previous September 1, 2024 expiration date of the Colorado High Cost Support Mechanism (“CHCSM”). This necessitates change to

Rule 2846, which prescribes the manner in which the Commission shall distribute funds from the CHCSM, to remove the expiration date from our rules.

4. HB 24-1336 sunsets the Colorado Deployment Board (“Board”) and moves all of the responsibilities of the Board to the Colorado Broadband Office. This necessitates changes to Rule 2841, which contains definitions related to CHCSM; and Rule 2850, which describes the Colorado Broadband Office’s (previously the Board’s) role in notifying the Commission of potential net neutrality violations by CHCSM recipients.

5. SB 24-139 creates a 9-1-1 Services Enterprise (“Enterprise”) and makes the Commission responsible for collecting the 9-1-1 enterprise fee established by the Enterprise. This necessitates changes to Rule 2148, which describes the process for the establishment of the state 9-1-1 surcharge rates, among other things; and Rule 2150, which establishes the processes for the Commission to distribute funds raised from the state 9-1-1 surcharge.

6. Finally, the Commission takes this opportunity to update or correct several related sections of Commission rules. Specifically, changes are proposed for Rules 2106, 2184, and 2187, to remove outdated language regarding the manner in which telecommunications providers may provide the Commission with depictions of their service areas. Additionally, Rule 2847 is updated to replace the term “broadband deployment fund” with “broadband deployment account,” since “broadband deployment account” is the defined term in Rule 2841.

7. The proposed rules are attached to this Decision as Attachment A, the proposed rules in legislative format, and Attachment B, the proposed rules in final format. We welcome comments from interested participants. To the extent a participant disagrees with the proposed rules, comments should include suggested rule revisions, in legislative format.

8. Consistent with the discussion below, this matter is set for hearing and referred to an Administrative Law Judge (“ALJ”) for Recommended Decision.

B. Pre-Rulemaking Stakeholder Engagement

9. In accordance with § 24-4-103, C.R.S., Commission staff engaged with stakeholders by sending an email describing the proposed changes to the current CHCSM recipients, the Commission’s 9-1-1 Advisory Task Force, and the Colorado Broadband Office. A copy of the draft proposed rules in redline format was attached to the email. Recipients were requested to provide any input they may have regarding the draft proposed rules by July 16, 2024. Feedback was received from one member of the Commission’s 9-1-1 Advisory Task Force, and those comments have been incorporated into the proposed rules found in Attachments A and B to this NOPR.

C. Proposed Rules

10. An overview of the changes proposed by the Commission fall into general categories described in this Decision. We invite stakeholders to comment on the proposed rules and provide additional suggested changes.

1. Changes to Implement HB 24-1234.

11. The Commission proposes changes to Rule 2846 to mirror changes made to statute by the enactment of HB 24-1234, which eliminates the previous expiration date for the CHCSM of September 1, 2024. The changes delete the September 1, 2024 expiration date¹ and eliminate past annual benchmarks for the amount of CHCSM that must be directed to the broadband

¹ The Commission acknowledges that it is unlikely that this Rulemaking may be completed and new rules effective prior to September 1, 2024. For this reason, concurrent with this permanent rulemaking, we issued temporary rules via a separate Decision (C24-0577 issued in Proceeding No. 24R-0340T) to remove the September 1 deadline until these permanent rules are effective

deployment account for 2019 through 2021. The statute retains and modifies that, for each quarter in 2023, “and for each quarter in each subsequent year” that “one hundred percent” of the total quarterly amount of CHCSM money collected, minus administrative costs and distributions shall be allocated to the CHCSM account dedicated to broadband deployment.²

12. The Commission therefore also takes this opportunity to delete Rule 2846(b)(III), which states that any funds remaining after the providing funds to the CHCSM recipients and the broadband deployment account shall be distributed to the non-rural incumbent local exchange carriers. This measure no longer applies because 100 percent of funds remaining after CHCSM recipients receive their payments are now deposited into the broadband deployment account pursuant to § 40-15-208(2)(a)(IV), C.R.S., leaving no funds to be distributed to non-rural incumbent local exchange carriers.

2. Changes to Implement HB 24-1336.

13. The Commission proposes changes to Rule 2841 to delete the definition found there for the “broadband deployment board,” and to replace it with a definition for the “Colorado broadband office.” Statutory references for the creation of the CHCSM are also updated in the rule as proposed.

14. Additionally, the Commission proposes changes to Rule 2850, which previously described the broadband deployment board’s role in notifying the Commission of potential net neutrality violations by CHCSM recipients and replaces all references to the Board with the Colorado Broadband Office. Again, these changes are proposed to conform with updated statutory references.

² § 40-15-208(2)(a)(IV), C.R.S.

3. Changes to Implement SB 24-139.

15. The Commission proposes changes to Rule 2148 to describe the manner in which the Commission will receive the 9-1-1 enterprise fee as combined with the 9-1-1 surcharge and clarifies that funds raised from the 9-1-1 services enterprise fee are exempted from distribution to the local 9-1-1 governing bodies. Additionally, the Commission takes this opportunity to clarify that the 9-1-1 surcharge will be calculated “to meet the needs of the governing bodies to operate the 9-1-1 system” with the phrase “to meet the needs of the governing bodies to pay for basic emergency service and provide emergency telephone service,” which is more accurately descriptive of the purposes to which 9-1-1 surcharge funds may be applied under § 29-11-104, C.R.S.

16. The Commission proposes changes to Rule 2150 to prescribe the remittance of funds raised from the 9-1-1 services enterprise fee to the 9-1-1 services enterprise fund, and again exempts funds raised from the 9-1-1 services enterprise fee from being distributed to the local 9-1-1 governing bodies along with funds from the 9-1-1 surcharge.

4. Updating Outdated and Incorrect Terminology.

17. The Commission proposes to remove the requirement of telecommunications service providers to describe to the Commission their service areas in “metes and bounds” in Rules 2106, 2184, and 2187. The changes proposed by the Commission replace this methodology with other acceptable formats, such a coverage map or Geographic Information System files.

18. Additionally, the Commission proposes to change the incorrect term “broadband deployment fund” in Rule 2847 with “broadband deployment account,” since that is the defined term in Rule 2841.

D. Conclusion

19. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 24-34-104; 29-11-104; 40-2-108; 40-2-112; and 40-15-101, 107, 201, 208, and 502 C.R.S.

20. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission’s Electronic Filings (“E-Filings”) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0338T.

21. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

22. This matter is referred to an ALJ for the issuance of a Recommended Decision.

23. The ALJ will conduct a hearing on the proposed rules on September 26, 2024. Interested persons may submit written comments on the rules and present these orally at the hearing, unless the ALJ deems oral presentations unnecessary.

24. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than September 12, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than September 19, 2024. The Commission prefers that comments be filed using its E-filing System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B), attached hereto, shall be filed with the Colorado Secretary of State for publication in the August 25, 2024, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge (“ALJ”) for the issuance of a Recommended Decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: September 26, 2024

TIME: 11:00 a.m. until not later than 5:00 p.m.

PLACE: By video conference: using Zoom at a link the calendar of events on the Commission’s website, available at:
<https://puc.colorado.gov/pucalendar>.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

5. Interested parties may file written comments in this matter. Comments shall be filed by September 12, 2024. Reply comments shall be filed by September 19, 2024. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective immediately on its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 7, 2024.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners