Decision No. C06-1005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-529T

IN THE MATTER OF THE PROPOSED RULES REGARDING THE HIGH COST SUPPORT MECHANISM AND PRESCRIBING THE PROCEDURES FOR THE COLORADO HIGH COST ADMINISTRATION FUND.

ORDER ADOPTING PERMANENT RULES

Mailed Date: August 25, 2006
Adopted Date: August 16, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the adoption of permanent Rules Prescribing the Colorado High Cost Support Mechanism (CHCSM) and Procedures for Administration of the CHCSM Fund which implement the provisions of House Bill 05-1203 (HB 05-1203) (Concerning the Equitable Distribution by the Public Utilities Commission of High Cost Support Mechanism Funding to Eligible Providers).

2. HB 05-1203 added two statutory definition sections to § 40-15-102, C.R.S., defining the phrases "distributed equitably" in subsection 6.5, and "non-discriminatory and competitively neutral basis" in subsection 19.3. The effect of HB 05-1203 was to eliminate CHCSM provisions contained in Commission rules applicable only to eligible providers serving rural areas.

B. Background

3. By Decision No. C05-1464, we issued a Notice of Proposed Rulemaking (NOPR) to address the implementation of this new statutory language. To that NOPR, we attached proposed rules which eliminated the six-year phase down of HCSM support for rural providers.

4. Because H.B. 05-1203 became effective before we could promulgate permanent rules, we adopted emergency rules by Decision No. C05-1071, and then again by Decision No. C06-0441. These latest emergency rules will expire on November 20, 2006.

5. Subsequent to the issuance of the NOPR, on January 25, 2006, the Colorado Telecommunications Association (CTA), which represents 26 independent telephone companies providing local exchange service to rural Colorado, filed comments on the proposed rules. CTA asserted that the proposed rules discriminated against its members, and were generally unfair; it alleged that the filing of a rate case should not be required or be used to determine CHCSM support levels, and proposed a single page form to determine CHCSM support levels. CTA attached a copy of the earnings adjustment form used by the Nebraska Public Service Commission, the NUSF-EARN form, to support its position.

6. On January 31, 2006, Staff of the Commission (Staff) intervened in this rulemaking docket, stating that it intended to provide replies to comments raised by parties in this docket and that it intended to participate at hearing.[1] Staff filed reply comments on February 8, 2006.[2] Staff asserts that the Commission should find that CTA's comments are unfounded and that it should adopt the proposed rules at least until the CHCSM investigation, which is part of

[1] Staff's decision to intervene as a party in this rulemaking docket precludes it from advising the Commission on the final decision adopting permanent rules.

[2] Staff filed a corrected copy of its reply comments on February 9, 2006.

Docket No. 05I-431T, is concluded. In the meantime, Staff suggests that rural providers may file for a waiver of the permanent rules if it is in their best interest to do so.

7. Also on February 8, 2006, the Office of Consumer Counsel (OCC) filed reply comments. Similar to the Staff, the OCC contends that a general rate case is, in fact, a correct and effective method to ascertain CHCSM support levels for rate-of-return companies, and that an annual rate case is non-discriminatory, is equitable, and places rural local exchange carriers (LECs) on the same schedule and regulatory footing as Qwest Corporation (Qwest), the largest incumbent provider in Colorado.

8. On February 27, 2006, we held a hearing on the proposed rules. Staff, CTA and the OCC participated at the hearing. By Decision No. C06-0207, we set a post-hearing statement of position (SOP) deadline for March 27, 2006.

9. In its SOP, CTA again asserts that the Commission's proposed rules do not eliminate the disparity in treatment between rural LECs and other CHCSM recipients and, instead, actually exacerbate the inequitable treatment. CTA believes that the Commission has interpreted HB 05-1203 to mean only that the rural LECs' phase-down of support should be eliminated. CTA asserts we have failed to eliminate the inequitable regulatory burden which is that rural LEC applicants must request funds as part of a general rate case, unlike other recipients.

10. CTA argues that a rate case is unnecessary because rural LECs' eligibility to receive high cost funding is based on applying its costs and investments to complex algorithms already contained in the rules. The Commission's rate case requirement would be an extra process that would add nothing in determining eligibility. Likewise, the rules governing the

CHCSM distributions are already constructed to ensure that rural LECs do not overdraw from the fund.

11. CTA asserts that the majority of rural LECs in Colorado are eligible for less than $25,000 in annual support, making a full rate case, which may cost the company $25,000 to $30,000, nonsensical.

12. CTA concludes that these proposed rules actually increase the regulatory burden and costs for rural LECs, thereby failing to comply with the requirements of HB 05-1203 that CHCSM funding be distributed equitably and on a non-discriminatory and competitively neutral basis.

13. Staff, in its SOP, states that the disparate processes for establishing CHCSM funding for providers such as Qwest and wireless carriers and the rural LECs are necessary and understandable. The practical reality, according to Staff, is that given the varying degree and method of regulation, the Commission cannot rely on a one process fits all approach. Staff asserts that this disparate treatment is not discriminatory; there are significant differences in service territory, services offered, customers, levels of competition, and regulatory principles that apply to rural LECs.

14. Staff states that CTA's argument that the regulatory costs of rate cases preclude many rural LECs from requesting funds is disingenuous. Staff states that these LECs can recover the regulatory expenses in rate base, either through rates or additional high cost fund support.

15. Staff contends that CTA's proposal to file data in annual reports to support a funding request is not technically feasible. The information includes aggregate data on investments, not classified into proper categories to separate the investments between intrastate and interstate nor regulated from deregulated services.

16. The OCC advocates that a general rate case is the proper way to determine CHCSM levels of support for rural LECs. The OCC states that § 40-15-208(2)(a), C.R.S., requires the Commission to reimburse the difference between the reasonable costs incurred to serve rural high cost customers and the price charged for that service in order to make the service more affordable. The Commission, by statute, must ensure that no LEC is receiving funds (state and federal combined) that, together with its revenues, exceed the cost of providing local exchange service to a customer.

17. The OCC states that it agrees with CTA that the language in the proposed rule would increase the regulatory burden and costs to obtain funding. However, the OCC still believes that a general rate case is the way for the Commission to ensure proper funding. Therefore, the OCC would suggest that the Commission require rural LECs to file a rate case for determining revenue requirements (earning test) every three years rather than every year. The amount of funding would be constant for those three years and at the end of the three years it would stop, pending the filing of another rate case.

18. According to the OCC, there should also be the possibility of changing the amount of funding within the three-year period if the rural LEC's annual report information shows that the company over-earned in the previous year.

19. On June 23, 2006, we held a Commission Deliberations Meeting to discuss the merits of the proposed rules and the parties' comments. At this meeting we determined that neither Staff nor the OCC had specifically addressed the adequacy of the Nebraska PSC process and form presented by CTA in its comments. Therefore, we issued Decision No. C06-0744 requesting further comments on this form and process.

20. On July 14, 2006, all three parties to the docket filed comments in response to our decision. CTA continues to believe that it is unnecessary for the Commission to impose an earnings test or implement the Nebraska Public Service Commission (NPSC) process in order to meet its statutory obligations. CTA argues that the Commission already has ample safeguards in place to satisfy its requirements without resorting to rate case filings, burdensome discovery requests, or even streamlined earnings tests.

21. According to CTA, rule 2855 provides a series of formulae to calculate the amount of high cost loops, switching, and trunk support for which rural LECs are eligible. The company-specific information required for these calculations depend largely on information already provided to the Commission in the companies' annual reports, and in applications for federal Universal Service Funds (USF). CTA asserts that the proper showing required by the Commission for rural LEC eligibility for CHCSM funding should be limited to submitting information indicating whether the application is in compliance with Commission rules; annual rate case filings are unnecessary and should not be required.

22. However, CTA states that, should the Commission require an earnings test in order to receive funds, an NPSC type process is entirely suitable. The NUSF-EARN form allows the NPSC to use a simplified calculation to determine whether each applicant is in compliance with a Commission mandated rate of return limit. Recipients exceeding the threshold must refund the excess. The NUSF-EARN form sets out in advance the specific information required of each applicant, enabling the PSC to complete its application process using information that each company already reports to state and federal regulatory bodies without resorting to a rate case.

23. CTA asserts that the submission of the information in such a form is extensive and detailed enough to allow this Commission to determine whether companies' revenues are exceeding their costs, thereby meeting the requirements of the statute. Nothing in the statute requires this to be completed through a rate case or extensive discovery process.

24. CTA also points out that Qwest and Viaero Wireless apply for and receive CHCSM funding without conducting a rate case or submitting to an earnings test. Combined, these two carriers receive approximately 98 percent of the CHCSM annually. Apparently, data submission meets the statutory requirements for the Commission's review of these companies, according to CTA.

25. Staff, in its July 14, 2006 comments, states that it has two fundamental concerns: scope issues, and adequacy of time to provide a comprehensive review. Staff asserts that addressing the Nebraska process potentially requires broadening the scope of this proceeding to address access rate reductions, a statewide benchmark rate different than the statutory rate cap, payment limitations to one wireline and one wireless provider in each area, and whether the limitation on funding to areas of a particular density is discriminatory. Staff indicates that there may be other aspects of the Nebraska plan that may be just as critical.

26. Staff also asserts that the timeline for providing comments is insufficient for a comprehensive review of the Nebraska process. They state that this process is a better topic for the 05I-431T workshop discussions, which are addressing a broader scope of issues relating to the CHCSM. Staff states that it has had minimal time to perform a complete analysis and cannot offer any firm conclusions at this time. Staff contends that differences in geography and service between Colorado and Nebraska may impact the designs of the high cost funding programs.

27. Staff continues to support the annual filing process for Qwest because of its current form of regulation. Staff believes that its annual review of Qwest's high cost fund model, including the inputs and results, is appropriate. Staff concludes that, by adopting Staff's suggested streamlined approach for the rural LECs, the Commission can be reasonably assured that it has met its statutory requirements without undue burden on the companies.

28. Staff, in its comments, differentiates the Nebraska process with the operation of the CHCSM and concludes that it does not oppose a more streamlined approach to CHCSM funding, as long as it complies with Colorado rules and statutes. Staff points out that the Nebraska PSC requires significant information beyond that of the NUSF-EARN form, including information on their annual reports. Further, the NUSF-EARN form aggregates the intrastate data and, by itself, would not allow the Commission to meet the statutory requirements. Staff believes that the NUSF-EARN form may be sufficient to provide a short-term mechanism to check ongoing compliance with the statute, but Staff does not believe that the form is adequate to set or reset the support amount.

29. The OCC continues to endorse rules that would contain a general rate case filing requirement and opposes a streamlined procedure with a single page form to determine CHCSM support levels. According to the OCC, a general rate case fulfills the requirements of § 40-15-208 and HB 05-1203; a general rate case is non-discriminatory, equitable and does not violate HB 05-1203.

30. The OCC asserts that the Nebraska process is substantially more complicated and sophisticated than CTA leads the Commission to believe. The OCC attaches to its comments an NPSC order demonstrating the NUSF methodology. The OCC contends that the NUSF-EARN

form is actually a document used to determine reductions of NUSF support and is a ceiling or capping device, not the sole determinant for establishing NUSF support amounts.

31. OCC concludes that the appropriate process for rural LEC CHCSM funding is to require general rate cases every three years. The amount of support would remain frozen for those three years, unless the information in a provider's annual report demonstrates that the company over-earned in the previous year. (The OCC states that the annual report form may need some modification to capture the information needed to make this yearly evaluation.) If this three-year approach is adopted, the OCC suggests that Qwest, as a rate-capped company, also be required to file its cost and revenue data every three years rather than every year.

32. On July 28, 2006, the parties filed reply comments on this matter. CTA states that neither Staff nor the OCC address in their comments the CTA proposal and the questions presented by the Commission as to whether the required rate case can be replaced with a simplified earnings test similar to that in Nebraska. Further, CTA states that neither Staff nor the OCC explains how their proposal of rate case filings every three years constitutes non-discriminatory treatment as compared to the requirements of Qwest and wireless eligible providers. According to CTA, both parties also continue to ignore the other CHCSM rules including those for eligibility, and continue to assert that eligibility is determined in a rate case. CTA is encouraged, however, that Staff recognizes that the NUSF-EARN form could enable the Commission to meet its statutory obligations.

33. CTA states that it is important to point out that it in no way is advocating changes to paragraphs 2855(a) – (e), which are not part of this rulemaking. Those portions of the rule concern the calculations to determine the amount of high cost loop, switching and trunking support for which rural ILECs are eligible. This rule, in large part, relies on the federal USF

application process in order to prevent over-recovery, including detailed cost studies that separate costs between intrastate and interstate. These are then reviewed by National Exchange Carriers Association for completeness and accuracy and for comparison with audited financial statements. These filings require verification from the companies.

34. CTA reiterates its position that earnings reviews of any kinds are not necessary for the Commission to meet its statutory obligations and are in fact discriminatory since Qwest and wireless eligible providers do not have similar requirements. However, CTA states that, if the Commission chooses to impose an earnings review, the NUSF-EARN form should be used.

35. Staff, in its reply comments, adamantly disagrees with CTA that the Commission can satisfy its statutory obligations by merely plugging in already available data into the series of formula found in the Commission's rules. Staff states that the result of these calculations is only as good as the inputs. The inputs must be verified. If the Commission were to accept the data at face value, it would not be able to ensure that it had accurately identified the "cost of providing local exchange service" nor the "local exchange service revenues." Therefore, the Commission would not fulfill its statutory requirements.

36. Staff concedes that the NUSF-EARN form does provide more information than the current annual reports, but not in sufficient detail to allow Staff to make its local exchange revenue and cost comparisons. However, Staff also states in its reply comments that a combination of the annual report, currently required Commission forms, and the NUSF-EARN form does provide a more complete analysis of intrastate revenues and expenses than the current annual reports alone. Staff states that it would need more complete investment and expense data for deregulated services to comply with § 40-25-106 and 108.

37. The OCC reiterates its previous comments that CTA fails to adequately explain why the Commission's long standing practice of a general rate case filing requirement should be dismissed out-of-hand for rate-of-return regulated companies, and how a compliance filing will allow the Commission to meet its statutory obligations surrounding CHCSM support determinations.

38. The OCC asserts that CTA advocates a "self-certification" approach which is counter to the Federal Communications Commission's move toward more administrative oversight of its universal service programs and more actual auditing.

39. The OCC disagrees with CTA's discriminatory and inequitable treatment thesis and also disagrees with CTA's argument that a rate case is an improper method for the Commission to determine CHCSM support levels for CTA's constituent members. According to the OCC, an annual rate case filing places a regulatory burden on CTA member companies that is equal to the burden Qwest faces with respect to obtaining HCSF dollars. Further, the OCC asserts that it is in the public interest to decrease the frequency of the rural LEC rate case filings from one year to every three years to the extent that rate-cap companies (Qwest) were also required to submit cost and revenue data every three years.

40. On August 15, 2006, Staff filed a Motion for leave to file a response to CTA's reply comments. In this Motion Staff states that CTA's reply comments mischaracterize Staff's position in this matter and believes it should be afforded the opportunity to describe the mischaracterizations. Additionally, Staff believes that CTA raises assertions for the first time that should be addressed.

41. We deny Staff's motion for leave to respond. A rulemaking proceeding is a quasi-legislative proceeding where we are less concerned that all parties have an opportunity to

respond to every argument proffered by other parties. The goal of the comment period is to allow parties the chance to set forth arguments that will aid the Commission in setting policy. This proceeding is not adversarial in nature, and the due process concerns that typically are involved in a quasi-judicial setting are not present here. We are able to evaluate the parties' positions on their own merits without repeated opportunities to respond. At some point, the comments must stop, and the Commission must enact rules. We therefore deny Staff's motion for leave to respond.

C. Discussion

42. We are not convinced by Staff and the OCC's arguments. We do not believe that there are any issues of scope in adopting a procedure similar to Nebraska's. Commission Staff needs information to determine that support levels are proper, and must be able to verify that the information submitted is correct. We believe this can be accomplished without the burden of a rate case. Section 40-15-208, C.R.S. provides:

> The Commission shall ensure that no local exchange provider is receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to customers of such provider. The high cost support mechanism shall be supported and **distributed equitably** and on a nondiscriminatory competitively neutral basis through a rate element assessed on all telecommunications service providers in Colorado. (emphasis added)

43. House Bill 05-1203 added § 40-15-102 (6.5), C.R.S. to the article 15 definitions:

> "Distributed equitably" means that distribution by the commission of high cost support mechanism funding to eligible providers shall be accomplished using regulatory principles that are neutral in their effect, that do not favor one class of providers over another, and that do not cause any eligible telecommunications provider to experience a reduction in its high cost support mechanism support revenue requirement based upon commission rules that are not applicable to other telecommunications providers.

44. The Commission under the statute must determine levels of HCSM support using regulatory principles that are neutral in their effect, and that do not cause a reduction in HCSM dollars due to rules not applicable to other carriers. We do not believe that adopting Staff and OCC's preferred rules by including a rate case requirement would be legal under the new definition of distributed equitably, even if the rate case were filed every three years, as Staff and the OCC suggest. A rate case is a significant regulatory burden, a burden that is not required of carriers that are not rate-regulated under the proposed rules. Neither Staff nor the OCC has been able to demonstrate that CTA's main assertion is incorrect: Rural carriers might pay more in rate case legal fees than they would receive in HCSM support, and this prevents them from filing for HCSM support.

45. Staff asserts that these costs are recoverable, but that is not guaranteed.[3] Also, a rate case requires significant effort and time, both of which might be better spent on operations. Further, Staff's assertion that rate cases are not burdensome on CTA member companies because they can recover the regulatory costs in rates or in high cost support does not help its position. The very language of subsection 6.5 of the statute requires that "distribution . . . do(es) not cause any eligible telecommunications provider to experience a reduction in its high cost support mechanism support revenue requirement based upon commission rules that are not applicable to other telecommunications providers." Recovering rate case expenses through fund dollars would violate the intent of the statute because it would in effect reduce the available funds for support of high cost service. A rate case requirement and the recovery of those regulatory costs through rates or support is contrary to the language of HB 05-1203.

[3] Parties to rate cases have been known to contest recoupment of rate case costs, and settlements often exclude all or a portion of them.

46. Under the proposed rules supported by the OCC and Staff, eligible wireless carriers and Qwest would not need to file a rate case. The OCC's assertion that an annual or triennial rate case filing puts CTA member companies on the same equitable schedule as Qwest, is not persuasive. Requiring a rate case every three years for both Qwest and rural carriers is no better. We do not believe that the legislative language was meant only to apply to equitable "schedules." The proposed rule is thus not neutral in its effect, and is a rule that for all practical purposes eliminates HCSM support for rural wireline providers. Therefore, we disagree with Staff and the OCC that requiring a rate case to determine the level of support for rural providers, either every year or every three years, is legal under the new statutory language from HB 05-1203.

47. If Qwest and wireless carriers do not need to file a rate case annually, but rather may submit information to Staff through another filing that is satisfactory, then rural carriers should be given the same option.

48. We therefore revamp the proposed rules, and require a petitioning process to determine the initial level of support or to re-set support as a company may request. A petitioning process is more clearly defined within the Commission rules than the previously required "request." The petition is to include all information and data necessary to complete the calculations in paragraphs 2855(a) – (e), as applicable. If this information or data is already on file with the Commission, the petitioning provider may identify this information rather than refile it.

49. We agree with Staff and the OCC that the Commission must monitor the earnings of these rate-of-return regulated companies once support is established. The CHCSM is funded through a surcharge applied to telecommunications customers' bills throughout the state.

It is our obligation to ensure that this money is allocated appropriately to local exchange providers serving high cost areas. This money should not be used as a padding of revenues, but, rather, as the statute requires, to ensure affordable local exchange service throughout the state.

50. Therefore, while we will not require rate cases to be filed, we will require that all rural LECs receiving CHCSM funding file a one-page form with their annual reports to allow Staff and the OCC the ability to monitor investments, revenues and earnings. We are cognizant that Staff has indicated a reluctance to accept the NUSF-EARN form in its entirety, stating that it would need more complete investment and expense data for deregulated services to comply with § 40-25-106 and 108. We ask Staff and the OCC to determine what information to include on the one-page form that is necessary to complete their analysis. This information should be additional information not already contained in a provider's annual report required by rules 2006(a) and 2854, Eligible Telecommunications Carriers' reports required by rule 2187, or information otherwise on file with the Commission.

51. We request that Staff and the OCC work together with CTA to design this form for our approval. The parties shall file this form by November 3, 2006.

52. If Staff or the OCC in their monitoring roles has concerns that the data provided by a rural LEC in its annual report, the HCSM earnings form, or any other documents indicate an over-earnings or under-earnings situation, the Staff may request, or the OCC may file, a formal complaint. After an opportunity for hearing, the outcome of this complaint proceeding may result in the re-setting of CHCSM support.

53. Therefore, we adopt the rules as attached to this decision. We believe that these rules comply with the new legislative language from HB 05-1203, while maintaining the monitoring of the earnings of the rate-of-return regulated ILECs.

II. ORDER

A. The Commission Orders That:

1. We adopt the rules attached to this Decision as Attachment A.

2. Parties shall file a one-page CHCSM earnings form for our approval by November 3, 2006.

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

4. A copy of the rules adopted by this Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*.

5. 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 to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. 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 Commission mails or serves this Order..

7. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 16, 2006.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

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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 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;

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

(i) All interstate activities and Universal Service Fund (USF) support;

(ii) Intrastate network access services;

(iii) Long distance network services;

(iv) All miscellaneous revenues; and

(v) The "imputed local network services revenues".

(e) Local network services 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.

(I) The Commission, acting as Administrator, and pursuant to rules 2854 and 2855, shall determine and establish by order~~, for each rural provider~~, the HCSM support revenue requirement ~~that will remain effective for a period of one year beginning with the date of the order~~ to be received by a rural provider.

(A) At any time, ~~upon the request and proper support as part of a general rate proceeding by a rural provider, the Commission, acting as Administrator, may revise the HCSM support revenue requirement that will be effective for a period of one year beginning with the date established by the Commission order. As a result of a formal complaint or other proceeding, the Commission, acting as Administrator, may revise the HCSM support revenue requirement that will be effective for a period of one year beginning with the date established by the Commission's order~~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.

~~Any HCSM support established through a Commission granted variance from these rules shall be in the amounts and for the time period(s) expressly approved by the Commission's order.~~

2856. – 2869. [Reserved].