Decision No. C16-0027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15M-0158T

IN THE MATTER OF DISTRIBUTIONS FROM THE COLORADO HIGH COST SUPPORT MECHANISM TO ELIGIBLE PROVIDERS IN ACCORDANCE WITH § 40-15-502(5)(A), C.R.S., AS MODIFIED BY THE 2014 TELECOMMUNICATIONS REFORM LEGISLATION.

PROCEEDING NO. 14M-0947T

IN THE MATTER OF COMMISSION CONSIDERATION OF EFFECTIVE COMPETITION FOR BASIC SERVICE UNDER § 40-14-207, C.R.S., IN CERTAIN AREAS SERVED BY QWEST CORPORATION, DOING BUSINESS AS CENTURYLINK QC, EL PASO COUNTY TELEPHONE COMPANY, CENTURYTEL OF COLORADO, INC., AND CENTURYTEL OF EAGLE, INC.

DECISION FINDING EFFECTIVE COMPETITION FOR BASIC SERVICE IN 46 WIRE CENTERS; GRANTING, IN PART, MOTION TO APPROVE SETTLEMENT; APPROVING SETTLEMENT, WITH MODIFICATIONS; AUTHORIZING HIGH COST SUPPORT MECHANSIM DISTRIBUTIONS; DENYING MOTION FOR WAIVER OF RULE 2213(d)(III); AND CLOSING PROCEEDING WITHOUT PREJUDICE

Mailed Date: January 11, 2016
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I. BY THE COMMISSION

A. Statement

1. Colorado public utilities law authorizes the Commission to establish a high cost support mechanism (HCSM) for the support of universal telecommunications service.[1]

[1] § 40-15-208, C.R.S.

2. In May 2014, Governor Hickenlooper signed into law legislation reforming Article 15 of Title 40 addressing telecommunications services (2014 Telecom Reform Legislation).[2] The 2014 Telecom Reform Legislation established two primary purposes of the HCSM: (a) to provide financial assistance for basic service in rural, high cost geographic support areas;[3] and (b) to provide access to broadband service through broadband networks in unserved areas by providing funds to a Broadband Deployment Board (Broadband Board).[4]

3. Importantly, the 2014 Telecom Reform Legislation eliminated the ability for a provider to receive HCSM support in areas found to have effective competition for basic service.[5] To determine whether effective competition exists in a geographic area, the Commission must consider the factors stated in § 40-15-207, C.R.S. (Section 207).[6] If an area is determined to be subject to effective competition, the Commission may transfer HCSM funds no longer required to support basic service for the development of broadband service.[7] Transferring funds to the Broadband Board fulfills one of the primary purposes of the HCSM.

4. Funding for the HCSM is provided through a surcharge on telecommunications service providers' intrastate revenues. The Commission has the statutory duty to determine the surcharge rate, which has been 2.6 percent of intrastate retail revenues since approximately April 2013. However, the 2014 Telecom Reform Legislation specified that no support can be provided to broadband when the surcharge rate is increased above 2.6 percent.[8]

[2] The bills include: House Bill (HB) 14-1327, HB14-1328, HB14-1329, HB14-1330, and HB14-1331.
[3] § 40-15-208(2)(a)(I)(A), C.R.S.
[4] § 40-15-208(2)(a)(I)(B), C.R.S.
[5] §§ 40-15-208(2)(a)(I)(A), and 502(5)(a), C.R.S.
[6] § 40-15-502(5)(a), C.R.S.
[7] § 40-15-509.5(3), C.R.S.
[8] § 40-15-509.5 (3), C.R.S.

5. These consolidated proceedings implement the statutory changes addressing the HCSM and Commission determinations of effective competition for basic service.

B. Effective Competition for Basic Service, Transfers to the Broadband Board, and HCSM Distributions

6. While the General Assembly was considering the 2014 Telecom Reform Legislation, the Commission determined that 56 wire center serving areas are subject to effective competition in Proceeding No. 13M-0422T. Qwest Corporation, doing business as CenturyLink QC (CenturyLink QC) did not judicially challenge the Commission's determination. On June 13, 2014, we entered a decision applying the 2014 Telecom Reform Legislation by eliminating HCSM funding provided in those 56 wire center serving areas.[9] In decisions issued on October 16, 2014, and December 4, 2014, we directed the HCSM funds previously used to support basic service in the 56 wire centers, estimated to be approximately $3 million, be transferred to the Broadband Board.[10]

7. CenturyLink QC timely filed a petition for judicial review of the Commission's October 16 and December 4, 2014, decisions (Judicial Review Action) with the Denver District Court. The Judicial Review Action challenges the Commission's decisions to provide funding to the Broadband Board. Specifically, CenturyLink QC's Judicial Review Action requests the District Court "[o]rder the Commission to stay any transfer of funds from the high cost support fund until conclusion of the appeal and the lawfulness of the Commissions' decision is conclusively determined by the Colorado Supreme Court."[11] The court issued an Order

[9] Decision No. C14-0642, Proceeding No. 14M-422T, issued June 13, 2014.

[10] Decision C14-1251, Proceeding No. 04M-388T, issued October 16, 2014; Decision No. C14-1424, Proceeding No. 04M-388T, issued December 4, 2014 (Decision denying rehearing, reargument, or reconsideration).

[11] CenturyLink's Petition for Review of Agency Action, Case No. 2015CV030017, filed January 2, 2015, at 4 (subparagraph "e").

permitting the Commission to transfer $200,000 to the Broadband Board; the court has not addressed or approved transfer of other amounts to the Broadband Board challenged by CenturyLink. The remaining amounts are retained by Staff of the Colorado Public Utilities Commission (Staff) as the HCSM Administrator pending the outcome of the Judicial Review Action.[12]

8. In September 2014, the Commission opened Proceeding No. 14M-0947T to determine whether additional areas of Colorado are subject to effective competition for basic local exchange service.[13] We identified 104 additional wire center serving areas where preliminary data indicate that CenturyLink QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., or CenturyTel of Eagle, Inc. (collectively, CenturyLink) serves retail customers as the incumbent provider and where one or more facilities-based providers also offer service. The Administrative Law Judge (ALJ) assigned to Proceeding No. 14M-0947T structured the case into two phases. In Phase I, Staff and other parties[14] would examine 48 wire centers where CenturyLink is the incumbent provider and two or more facilities-based providers offer service. Phase II would examine the remaining 56 wire center serving areas.[15] As discussed below, Staff filed direct testimony in Phase I, recommending that, based on the

[12] *See* Decision No. C15-0208, Proceeding No. 04M-388T, issued March 4, 2015 (directing Staff to transfer $200,000 to the Broadband Deployment Board). On September 1, 2015, the Court suspended all deadlines and administratively closed the case in light of the settlement agreement that will resolve the Judicial Review Action, if approved by the Commission. Order re: Joint Interim Status Report filed November 30, 2015, Case No. 2015CV030017, issued December 1, 2015.

[13] Decision No. C14-1163, Proceeding No. 14M-0947T, issued September 23, 2014.

[14] By Decision No. C14-1163, the Commission designated CenturyLink and Staff as the parties in Proceeding No. 14M-0947T. The following intervened as of right or were granted leave to intervene: AT&T Corp.; Bresnan Broadband of Colorado, LLC; Colorado Office of Consumer Counsel; Comcast Phone of Colorado, LLC; N.E. Colorado Cellular, Inc. doing business as Viaero Wireless; Northern Colorado Communications, LLC; Sprint Communications Company L.P.; Sprint Spectrum L.P., doing business as Spring PCS; and Teleport Communications America, LLC.

[15] Decision No. R15-0084-I, Proceeding No. 14M-0947T, issued January 23, 2015, at ¶¶14-21.

Section 207 criteria, the Commission find 46 of the 48 wire center serving areas to have effective competition. Certain parties subsequently filed answer testimony challenging Staff's recommendation.

9. The Commission opened Proceeding No. 15M-0158T in March of 2015 to determine distributions from the HCSM to eligible providers of basic services consistent with the 2014 Telecom Reform Legislation.

C. Stipulation and Settlement Agreement

10. On August 20, 2015, Staff, CenturyLink, Colorado Telecommunications Association (CTA), and Northern Colorado Communications, LLC (NCC) (Settling Parties) filed a Stipulation and Settlement Agreement in both proceedings. The same parties filed a Corrected Stipulation and Settlement Agreement on October 13, 2015[16] (Settlement).

11. The Settlement proposes HCSM support amounts to be paid to CenturyLink, CTA, NCC, and N.E. Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero) for each year from 2015 to 2018. In general, CenturyLink would receive approximately $30.25 million each year; the CTA companies would receive approximately $1.4 million each year, collectively; and NCC would receive $500,000 in 2015 and no support after 2015.[17] These amounts are based, in part, on proposed findings in Phase I of Proceeding No. 14M-0947T that 46 wire centers are subject to effective competition for basic service effective January 1, 2016, consistent with Staff's direct testimony and attachments in that proceeding.[18] The Settling Parties explain that the Settlement is structured with the intent to maximize the funds available

[16] The Corrected Stipulation and Settlement Agreement noted an error in the calculation of support for CenturyLink.

[17] Settlement, Sections 2 and 3.2.

[18] Settlement, Section 9.1.

for transfer to the Broadband Board, stating that several million dollars will be available in the initial years based on current HCSM contribution projections.[19]

12. While Viaero did not join the Settlement, the Settling Parties propose that Viaero receive $2.2 million of HCSM support annually based on the proposed finding that 46 wire centers are subject to effective competition and on the application of the Commission's "identical support" rule.[20]

13. Upon approval of the Settlement, CenturyLink would seek dismissal of its Judicial Review Action. The Settling Parties explain that this dismissal would permit the HCSM Administrator to transfer the funds to the Broadband Board that the Administrator was required to retain pending outcome of the litigation.[21]

14. In light of the filing of the Settlement, we rescinded our referral of Proceeding No. 14M-0947T to an ALJ; consolidated the proceedings; vacated hearings; stayed response time to the motion to approve the Settlement; re-noticed the proceedings; established an intervention period; and scheduled a prehearing conference.[22]

15. Based on a stipulated proposal made by the parties, including Viaero and Comcast Phone of Colorado, LLC (Comcast), we adopted the parties' procedural schedule and clarified that the scope of the hearings included all relevant issues concerning whether the Commission should approve the Settlement including whether the Commission should find that 46 wire centers are subject to effective competition.[23] Viaero represented that following the stipulated

[19] Settlement, Recital and Introduction.
[20] Settlement, Section 3.2.
[21] Settlement, Section 5.
[22] Decision No. C15-0968-I, issued September 4, 2015.
[23] Decision No. C15-1089-I, issued October 5, 2015, ¶ 19.

schedule satisfied its interest in conducting these proceedings in compliance with the notice and opportunity for hearing required in § 40-15-207(1)(b), C.R.S.[24]

16. Pursuant to the stipulated schedule, the Commission conducted hearings on November 16 and 17, 2015. Hearing Exhibits 1, 1A, 1B, 2, 2A, 3, 3A, 4, 4A, 5-8, 8A, 9, 9A, 10, 10A, 10B, 11-26, 26A, 27-30, 30A, 31-41 were offered and admitted into evidence.

17. The parties filed final Statements of Position on December 4, 2015.

D. Summary of Conclusions and Findings

18. Considering the factors in Section 207, we find that effective competition for basic service exists in the 46 wire center serving areas listed in Attachment A to this Decision. We also find that approving the Settlement, with the modifications detailed below, is in the public interest. We reject Settlement terms that purport to bind future Commissions to policy determinations, including those that would guarantee set amounts to the Settling Parties. Guaranteeing amounts through settlement predetermines policy judgments. The Settling Parties state that, if necessary, the Commission would be required to raise the HCSM surcharge rate in the future if HCSM contributions are insufficient to cover the payments adopted through an unmodified settlement. As explained above, raising the surcharge rate would foreclose HCSM distributions to the Broadband Board. Predetermining these policy determinations through this Settlement is contrary to the public interest. We further modify the Settlement to ensure that providers receiving funds pursuant to the Settlement use those funds consistent with statutory directives and requirements of Article 15 of Title 40.

[24] *Id.*

II. EFFECTIVE COMPETITION FOR BASIC SERVICE

A. Statutory and Other Considerations

19. The 2014 Telecom Reform Legislation revised § 40-15-401, C.R.S., to deregulate basic service, except that the Commission shall continue to regulate providers in areas where the Commission provides HCSM support for basic service.[25] The 2014 Telecom Reform Legislation also revised § 40-15-208, C.R.S. (Section 208), to specify that the HCSM financial assistance to local exchange providers shall be available only "in areas without effective competition…." § 40-15-208(2)(a)(I)(A), C.R.S.

20. Section 207 was unchanged by the 2014 Telecom Reform Legislation and provides, in part:

> (b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:
>
> (I) The extent of economic, technological, or other barriers to market entry and exit;
>
> (II) The number of other providers offering similar services in the relevant geographic area;
>
> (III) The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;
>
> (IV) The ability of any provider of such telecommunications service to affect prices or deter competition; and
>
> (V) Such other factors as the commission deems appropriate.[26]

[25] § 40-15-401(1)(b), C.R.S. Basic emergency service continues to be regulated pursuant to § 40-15-201(2), C.R.S., and switched access continues to be regulated pursuant to § 40-15-301(2), C.R.S.

[26] § 40-15-207(1)(b)(I)-(V), C.R.S.

21. In our decision opening Proceeding No. 14M-0947T,[27] we noted that the Commission adopted rules in Proceeding No. 12R-862T (Rulemaking Proceeding) to establish a framework and a process for determining where effective competition for basic service exists pursuant to Section 207. Under Rule 2213(d)(I) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2, we examine multiple, facilities-based providers offering basic and similar services, and under Rule 2213(d)(II), the wire center serving area serves as the "relevant geographic area" for our consideration.[28]

22. We also stated in our decision opening Proceeding No. 14M-0947T that Proceeding No. 13M-0422T, in which we applied Rules 2213(d)(I) and (II) and found 56 wire center serving areas to have effective competition, would serve as a model. We instructed parties to provide evidence and reasons for the Commission to depart from using the wire center as the relevant geographic areas adopted in the Rulemaking Proceeding, if necessary.[29]

B. Party Positions on Effective Competition

23. In its direct testimony filed in Proceeding No. 14M-0947T on April 30, 2015, and corrected on June 23, 2015,[30] Staff presented an extensive analysis of the Section 207 criteria and recommended that the Commission find 46 of the 48 wire center serving areas to have effective competition. Staff also recommended the Commission find that two of the wire centers, Central City and Coal Creek Canyon, lack effective competition at this time.

[27] Decision No. C14-1163, Proceeding No. 14M-0947T, issued September 23, 2014.
[28] Commission rules are referenced throughout as "Rule XXXX."
[29] Decision No. C14-1163, Proceeding No. 14M-0947T, issued September 23, 2014, ¶ 8.
[30] Decision No. R15-0084-I, Proceeding No. 14M-0947T, issued January 23, 2015, at ¶¶14-21.

24. CenturyLink, Viaero, and NCC filed answer testimony in response to Staff's recommendations on July 31, 2015. CenturyLink agreed with Staff that, if the Section 207 factors are analyzed using the wire center serving area as the relevant geographic area, the 46 wire centers identified by Staff are subject to effective competition per Rule 2213(d)(II). However, CenturyLink challenged the use of the wire center serving area as the basis of any Section 207 analysis. In a motion for waiver of Rule 2213(d)(II), as discussed below, CenturyLink argued that the Commission should use the census block as the relevant geographic area.

25. Viaero argued that Staff relied on unverified data that overstates competition in the 48 wire centers, and that Viaero's tests in at least 10 wire centers contradict Staff's assertion of facilities-based wireline and wireless competition. Viaero recommended that the Commission conduct further verification of signal strength and geographic coverage before determining whether any of the 48 wire centers have effective competition. NCC challenged Staff's conclusion that the Weldona wire center serving area is competitive.

26. On August 20, 2015, prior to the deadline for Staff to file its rebuttal testimony,[31] the Settling Parties filed the Settlement stating that they agree that 46 of the 48 wire centers at issue in Phase I of Proceeding No. 14M-0147E should be "declared" to have effective competition for basic service as of January 1, 2016.[32] They also agree that, consistent with Staff's direct testimony, two of the 48 wire centers, Central City and Coal Creek Canyon, should not be declared to have effective competition for basic service. The Settlement states that the

[31] On August 28, 2015, the ALJ assigned to Proceeding No. 14M-0947T vacated the September 11, 2015 filing deadline for rebuttal testimony. Decision No. R15-0947-I, issued August 28, 2015.

[32] CTA takes no position with respect to effective competition "declarations" in the 46 wire center serving area. Settlement, fn14.

determination of effective competition for the 46 wire centers will apply throughout the four-year term of the agreement and "remain[] in place unless and until the Commission determines otherwise after applying the factors listed in [Section 207]".[33]

27. In accordance with the approved procedural schedule stipulated by the parties in the consolidated proceedings, Viaero and Comcast filed briefs on October 30, 2015 opposing the Settlement. Viaero argues that approving the Settlement would prematurely declare 46 rural wire centers as having effective competition, leaving consumers in the remote parts of these wire centers without competitive options, without a provider of last resort (POLR), without pricing restraints, without service quality standards, and without the safeguards of regulation.[34]

28. At the evidentiary hearing held November 16 and 17, 2015, Staff witnesses described the processes they used to examine each of the statutory requirements for a determination of effective competition.[35] Staff explained that it propounded audit and discovery requests to determine areas of coverage by competitive local exchange carriers (CLECs) and wireless carriers, and also reviewed filings made by the carriers with the Federal Communications Commission (FCC) regarding service territory. Additionally, in an effort to determine the extent of wireless availability in the Coal Creek Canyon and Central City wire centers, Staff described the drive tests they undertook in those areas that confirmed Staff's preliminary conclusions that those two wire centers do not have effective competition.

29. In response to Staff's testimony, Viaero's witness identified concerns with Staff's processes, including alleged insufficiency in the drive tests and the FCC information presented.

[33] Settlement Section 9.3

[34] Viaero provides service in 15 of the 48 rural wire centers considered in Phase I. *See* Attachment C to Decision No. C15-0157-I, issued June 1, 2015, Proceeding No. 15M-0158T.

[35] §§ 40-15-207(1)(b)(I) through (V), C.R.S.

Viaero concluded that a determination of effective competition could not be made without more rigorous tests of wireless signals in the 46 wire centers.

C. Motion to Waive Rule on "Relevant Geographic Area"

30. Section 207 requires the Commission to analyze whether "relevant geographic areas" have effective competition for basic service. The statute does not specify what the "relevant geographic area" is for purposes of determining effective competition, but it does say that it "shall not be unduly restrictive."[36]

31. Prior to filing the Settlement, on July 31, 2015, CenturyLink filed a motion in Proceeding No. 14M-0947T seeking a full waiver from Rule 2213(d)(II) (Motion for Waiver), which establishes that the effective competition analysis is conducted at the wire center serving area geographic level. Through the Settlement, CenturyLink agrees to the use of wire center serving areas as the relevant geographic area, consistent with Rule 2213(d)(II). The Settling Parties also suggest that the Commission deny the Motion for Waiver as moot if it approves the Settlement. However, because Viaero has questioned whether the Commission should apply Rule 2213(d)(II), we will decide the merits of the Motion for Waiver.

32. In the Motion for Waiver, CenturyLink requested the Commission to conduct the analysis at the more "granular" census block level in every wire center under consideration. CenturyLink argued that an examination of effective competition at the wire center level is inconsistent with the public interest. It also argued that use of a wire center for review under Section 207 is inconsistent with the Commission's rules and definitions of "geographic area" and "geographic support area" that govern the HCSM. Upon consideration of the statutes, the filings, and hearing testimony, we determine that the wire center service area is the relevant

[36] § 40-15-207(c), C.R.S.

geographic area for purposes of analyzing effective competition under Section 207 for 48 wire centers at issue in Phase I, consistent with the requirement of Commission Rule 2213(d)(II).

33. The Commission rejected similar requests to use a geographic area that is more granular than the wire center serving area in two prior proceedings. In 2013, the Commission interpreted Section 207 in the Rulemaking Proceeding and concluded that the "relevant geographic area" for purposes of analyzing effective competition is the "wire center serving area." In so doing, the Commission rejected arguments that the census block is the "relevant geographic area." Notably, contrary to its argument in its Motion for Waiver, during the Rulemaking Proceeding, CenturyLink advocated that the Commission adopt the wire center serving area as the relevant geographic area under Section 207. CenturyLink argued that "evaluating 'effective competition' for purposes of market regulation at . . . the census block level would fail the requirement of C.R.S. § 40-15-207(c) that 'the commission shall not be unduly restrictive' in selecting geographic areas for determining effective competition" because there are 201,062 census blocks in Colorado.[37] The Commission agreed with CenturyLink and adopted the wire center service area as the relevant geographic area for analyzing effective competition, as expressed in Rule 2213(d)(II).

34. The Commission again considered and rejected the use of a more granular geographic area than a wire center as the "relevant geographic area" when making its first effective competition determinations in Proceeding No. 13M-0422T.[38] During that proceeding, CenturyLink and Viaero both argued that the Commission should not use the wire center serving

[37] CenturyLink Statement of Position, filed October 26, 2012, p. 15 in Proceeding No. 12R-862T.

[38] Now a party to the Settlement, CenturyLink states that its Motion for Waiver of Commission Rule 2213(d)(II) filed in underlying Proceeding No. 14M-0947T – in which it asked the Commission to conduct the effective competition analysis based on census blocks – was a "litigation position."

area as the relevant geographic area. Instead, they argued that the Commission should use a census block or a more granular area than the wire center serving area. The Commission rejected CenturyLink and Viaero's arguments, and instead followed the standard in Rule 2213(d)(II) to use the wire center serving area as the relevant geographic area in its effective competition analysis. In this proceeding, we see no reason to deviate from our prior decisions that Rule 2213(d)(II)'s standard applies to the effective competition analysis.

35. In addition, as a part of the 2014 Telecom Reform Legislation, the General Assembly amended Section 208, to indicate that a finding of effective competition in a "relevant geographic area" denies the provider HCSM funding in that area, but it did not define the "relevant geographic area" at all. When this change was made, the Commission had already passed Rule 2213(d)(II), defining the "relevant geographic area" as the wire center serving area, and recently used this rule to conclude that 56 wire centers had effective competition pursuant to Section 207. Given that the General Assembly is presumed to "know[s] the pre-existing law when it adopts new legislation or makes amendments to prior acts,"[39] the General Assembly's failure to define "relevant geographic area" while otherwise amending the laws governing effective competition proceedings signifies its acceptance of the Commission's definition of that terminology through Rule 2213(d)(II).

36. Practical considerations resulting from the 2014 Telecom Reform Legislation inform our decision on the Motion for Waiver. The 2014 Telecom Reform Legislation created a new regulatory framework that will take effect on July 1, 2016. Under this new framework, the Commission will have authority to regulate basic service only in those geographic areas "for

[39] *See In Re Questions Submitted by the United States District Court*, 499 P.2d 1169, 1171 (Colo. 1972) (quoting *Cooper Motors, Inc. v. Board of County Commissioners*, 279 P.2d 685, 688 (Colo. 1955))(citations omitted)(applying this presumption to analysis of whether a statute is constitutional).

which the commission provides [HCSM] distributions for basic service." The Commission also has authority to "re-regulate" basic local exchange service after July 1, 2018, if the Commission finds, after notice and a hearing, that it "is necessary to protect the public interest."[40]

37. While the General Assembly did not require the Commission to complete its effective competition determinations by any deadline, these legislative changes evidence the General Assembly's desire that those determinations be made timely (*e.g.*, basic service becomes exempt from regulation on and after July 1, 2016 except in areas where the Commission provides HCSM distributions for basic service). This timeline coincides with the change in the regulatory framework, and would provide as much data as possible upon which the Commission may assess the need to re-regulate basic service starting on July 1, 2018. If the Commission has to analyze effective competition at the census block level, as CenturyLink suggests, the Commission would face significant difficulty completing the effective competition proceedings in a timely manner because census block analysis would require a substantial amount of evidence.[41] Untimely findings of effective competition are contrary to the public interest, particularly given the timeline for the Commission to assess re-regulation after July 1, 2018, as indicated in the statute.

38. We acknowledge that some consumers within a geographic area may become vulnerable when the area considered is a wire center, as opposed to a more granular area like a census block. However, to review the geographic areas on a more granular level in this proceeding would be contrary to the public interest. In addition, due to the revisions in the

[40] § 40-15-401(1)(b)(VI), C.R.S.

[41] CenturyLink's testimony indicates that, within the 46 wire centers proposed to have effective competition in Phase I, there are over 15,000 census blocks. *See* Answer Testimony of Robert Brigham, filed by CenturyLink on July 31, 2015, Proceeding No. 14M-0947T at 16.

2014 Telecom Reform Legislation, including the need to make determinations regarding effective competition timely, we find that for the areas considered in Phase I, the wire center serving area continues to be the appropriate "relevant geographic area" for Section 207 considerations of competition. To review these areas on a more granular level for purposes of Section 207 would be "unduly restrictive," and contrary to § 40-15-207(1)(c), C.R.S., and the public interest.

39. Based on the foregoing, we do not find good cause to waive Commission Rule 2213(d)(II). We therefore deny CenturyLink's motion seeking a full waiver from Rule 2213(d)(II), and reject Viaero's argument that census blocks should be used as the relevant geographic area for purposes of making effective competition determinations in this proceeding. We use the "wire center serving area" as the relevant geographic area to analyze effective competition, as required by Rule 2213(d)(II), to review the wire center serving areas designated for review in Phase I of Proceeding No. 14M-0947T.

D. Effective Competition Considerations, Findings, and Conclusions

40. As set forth in detail below, we find effective competition for each of the 46 wire center serving areas listed in Attachment A. This determination is in the public interest, particularly given the revised statutory language that encourages timely findings and requires decreased regulation and reduced state funding in competitive areas.

1. Barriers to Market Entry and Exit

41. In Proceeding No. 14M-0947T, Staff testified that there are no significant economic, technological, or other barriers to market entry for 46 wire centers listed in

Attachment A.[42] Staff based its conclusion on responses to discovery and audit questions propounded on CLECs and facilities-based and non-facilities-based wireless providers, indicating that telecommunications providers do not perceive barriers to entry or exit.[43] Staff also reviewed CenturyLink's market share and concluded that CenturyLink's ongoing loss of market share[44] to other telecommunications providers is evidence that other providers are not facing significant barriers in the 46 wire centers.[45] CenturyLink agreed with Staff's evaluation.[46]

42. Staff also found that in the Coal Creek Canyon and Central City wire centers CenturyLink's market share is among the highest in the 48 wire centers examined,[47] and that CenturyLink's line loss percentage in those two wire centers is among the lowest in the 48 wire centers.[48] Staff concludes that this indicates some barriers to entry in the Coal Creek Canyon and Central City wire centers.[49]

43. Viaero objects to Staff's finding that there are no barriers to entry and exit in the 46 wire centers, arguing that Staff's discovery and audit questions were directed only to carriers already providing service and, therefore, did not include the possible universe of carriers who

[42] Staff Statement of Position, at 5 (citing Staff Witness Notarianni First corrected Direct Testimony at 18:18-10, Staff Witness Swinnerton First corrected Direct Testimony at 18:21_21-19:5 and Confidential Attachment JVS-01 and Highly Confidential Attachment JVS-04, and Staff Witness Enright First Corrected Direct Testimony at 16:1-8 and Attachment GE-02).

[43] *Id.* (citing Staff witness Enright First Corrected Direct Testimony at 16:1-8,47:3-9, Attachment GE-02; Staff Witness Swinnerton First Corrected Direct Testimony at 5:10-14, Confidential Attachment JVS-01).

[44] Staff's testimony states that CenturyLink has experienced "significant" line loss in the 46 wire centers proposed to have effective competition. *See* November 16, 2015, Hearing Transcript, at 114. *See also,* Confidential Attachment JVS-05, Staff Witness Enright Corrected Confidential Testimony at Confidential Attachment GE-07.

[45] *Id.* (citing Staff Witness Swinnerton First Corrected Confidential Direct Testimony at 18-1-3, Table JVS-01, Confidential Attachment JVS-05, Confidential Attachment JVS-06, Staff Witness Enright Corrected Confidential Testimony at Confidential Attachment GE-07).

[46] CenturyLink Witness Robert Brigham Answer Testimony at 9:1-2.

[47] Staff Statement of Position, at 6 (citing Staff Witness Swinnerton First Corrected confidential Direct Testimony at confidential Attachment JVS-06).

[48] *Id.* (citing Staff Witness Enright First Corrected Confidential Direct Testimony at Confidential Attachment GE-07).

[49] *Id.*

had been precluded from entering the market. Additionally, Viaero maintains that if there were not barriers to entry, all providers would offer a full range of services throughout the geographic area, but this is not the case. [50]

44. We acknowledge that Staff's methodology for identifying respondents to its questions regarding barriers to entry and exit might have overlooked carriers that found insurmountable barriers to entry. However, considering the evidence as a whole, including the presence of multiple providers and CenturyLink's loss of market share throughout the 46 wire centers, we find under Section 207(1)(b)(I) that there are no significant economic, technological, or other barriers to market entry or exit for the provisioning of basic services within the 46 wire centers listed in Attachment A.

2. Service Offered by Multiple Providers

45. Section 207(1)(b)(II) and Rule 2213(d)(I) both require consideration of the number of providers offering "similar services" in the geographic area.[51] In Proceeding No. 13M-0422T, we determined that a "similar service" must perform "at least the same thing as that required of a basic local exchange service provider." [52] "Basic service" is defined by statute as a telecommunications service that "provides: (a) A local dial tone; (b) Local usage necessary to replace or receive a call within an exchange area; and (c) Access to emergency, operator, and interexchange telecommunications services."[53] Therefore, "similar services" provide *at least* a

[50] Viaero Witness Wood Answer Testimony at 6:13-24.

[51] Section 207(1)(b)(II) requires consideration of "[t]he number of other providers offering *similar services* in the relevant geographic area." Rule 2213(d)(I) states that "[t]he Commission shall consider basic services and *similar services* offered by multiple, non-affiliated, facilities-based providers, carriers, or other entities through traditional wireline, cable-based, interconnected voice over internet protocol, and wireless technologies." (emphasis added.)

[52] Decision No. R14-0190 issued February 21, 2014 at 9.

[53] Section 40-15-102(3), C.R.S.

local dial tone, local usage necessary to place or receive a voice call within an exchange area, and access to emergency, operator, and interexchange services. Thus, Rule 2213(d)(I), requires consideration of multiple, facilities-based providers within the relevant wire center serving area, providing similar services, as explained above.

46. Staff presented evidence that multiple facilities-based providers offer similar services in the 46 wire centers listed in Attachment A.[54] This conclusion was based on answers provided by CLECs and wireless carriers in response to discovery and audit questions, which included the carrier's answers to the questions on the FCC's Form 477 that were certified by a corporate officer for each carrier, and discussed in Staff's direct testimony.[55] Form 477 collects information about wireline, wireless, and broadband services in each state. Staff's analysis also showed that in each of the 46 wire centers, the majority of the population had access to three or more telecommunications providers.[56]

47. Staff conducted drive tests in the Central City and Coal Creek Canyon wire centers to determine the extent of wireless coverage. These two wire centers were chosen because they appeared to have no alternative landline options and had limited wireless availability. Additionally, Staff stated that the mountainous geography of each wire center indicated that there could be challenges to deploying facilities-based telecommunications services. Staff's drive tests yielded inconsistent reliability of wireless service, leading Staff to

[54] Staff Witness Notarianni First Corrected Direct Testimony Confidential Attachments LMVN-02 through LMVN-49.

[55] Staff Witness Swinnerton First Corrected Confidential Direct Testimony at 19:8-16, 20:9-10, and Attachment JVS-13.

[56] Staff Witness Swinnerton First Corrected Confidential Direct Testimony Attachment JVS-09.

recommend that the Commission not find the Coal Creek Canyon and Central City wire centers to have effective competition. [57]

48. Viaero disputes Staff's conclusions, arguing that Staff overstated wireless coverage in the 46 wire centers for which it recommended a finding of effective competition. Viaero encouraged the Commission to undertake a more rigorous analysis of wireless coverage before deeming the 46 wire centers to have effective competition.[58]

49. CenturyLink acknowledges that there are multiple providers in each of the 46 wire centers but also cautioned that the availability of "similar services" throughout an area can vary widely because the geography of a wire center can have a negative impact on cable coverage or wireless service.[59]

50. We are concerned that, by finding effective competition in the 46 wire centers, there might be some consumers who would benefit from regulatory protections. However, Section 207(1)(c) specifically requires that, when the Commission considers the factors outlined in Section 207(1)(b) to determine areas subject to effective competition, the Commission "shall not be unduly restrictive." Considerations of competitive offerings for geographic areas on a more granular level than a wire center is administratively impractical. The results of wireless signal tests might never be conclusive and Staff does not have resources that would be required to conduct the type of more rigorous testing of wireless signals in each wire center suggested by Viaero.[60] Consequently, Viaero's suggestions would require the Commission to be "unduly restrictive."

[57] Staff Witness Notarianni First Corrected Confidential Direct Testimony at 27:13-29:11.
[58] Viaero Statement of Position at 5.
[59] CenturyLink Witness Brigham Answer Testimony at 10:11-20.
[60] Staff Witness Notarianni, Hearing Transcript, 12/16/15 at 81:7-9.

51. The General Assembly considered and provided protections for consumers through the statute, including whether re-regulation of basic services is necessary to protect the public interest. Indeed, Section 40-15-401(1)(b)(VI), C.R.S., assures consumers that, after July 1, 2018 the Commission will have the opportunity to reconsider competition throughout the state, including wire centers found to have effective competition.[61]

52. Based on the foregoing, we find under Section 207(1)(b)(II) that basic or similar service is offered by multiple providers in the 46 wire centers in Attachment A. We also direct Staff to monitor these 46 wire centers for competition and, on July 2, 2018, to report to the Commission with an evaluation of effective competition for each of the 46 wire centers.

3. Consumer Ability to Obtain Comparable Service at Comparable Rates

53. Staff presented evidence that services offered by both wireline and wireless competitors in the 46 wire centers are comparable in price, terms, and conditions to similar services offered by CenturyLink as the incumbent local exchange carrier.[62] Comparing CenturyLink's basic service at $17.00/month and basic package of basic service plus features at $35.00/month, Staff found that two CLECs offered basic service at lower rates than CenturyLink.[63] Staff further found that eight CLECs offer packages for $35.00/month or less.[64] Additionally, Staff found that nine wireless providers offered bundles of voice and text at $35.00/month or less.[65]

[61] Section 40-15-401(1)(b)(VI), C.R.S.

[62] Staff Witness Notarianni First Corrected Direct Testimony Confidential Attachments LMVN-02 through LMVN-49.

[63] Staff Witness Swinnerton First Corrected Confidential Direct Testimony Attachment JVS-02.

[64] *Id.*

[65] Staff Witness Enright First Corrected Confidential Direct Testimony Confidential Attachment GE-04.

54. No party disputes the evidence of these various bundles, packages, and service offerings presented by Staff.

55. By the plain meaning of Section 207(1)(b)(III), consumers' ability in the 46 wire center serving areas to obtain basic or similar service from other providers at "reasonable and *comparable* rates, on *comparable* terms, and under *comparable* conditions"[66] does not require that *identical* rates, terms, and conditions be offered.

56. For the 46 wire centers listed in Attachment A, we find under Section 207(1)(b)(III) that consumers have the ability to obtain basic service and other similar service from providers other than CenturyLink at reasonable and comparable rates, on comparable terms, and under comparable conditions.

4. Provider Ability to Affect Prices or Deter Competition

57. Staff contends that because some consumers in the 46 wire centers have chosen providers other than CenturyLink, competition is not deterred in those wire centers.[67] Staff also states that CenturyLink's declining market share and continuing access line loss[68] is further evidence that CenturyLink cannot deter competition in those wire centers. Finally, Staff asserts that the consistency of pricing across telecommunications providers as discussed above is evidence that CenturyLink cannot affect prices in the 46 wire center serving areas.

58. The evidence of CenturyLink's line loss statistics, the substitution of wireless for wireline services, and the numerous, comparable options available to consumers, demonstrates

[66] Section 207(1)(b)(III), C.R.S. (emphasis added).

[67] Staff Statement of Position, at 9 (citing Staff Witness Swinnerton First Corrected Confidential Direct Testimony at Confidential Attachments JVS-02, JVS-05, JVS-06, JVS-11, and JVS-12).

[68] *Id.* (citing CenturyLink Witness Brigham Answer Testimony at 22:6-8 and Staff Witness Swinnerton First Corrected Confidential Direct Testimony at Confidential Attachment JVS-06).

CenturyLink's inability to deter competition or affect prices for basic services through its wholesale services in the 46 wire centers.

59. We agree with Staff that the evidence in the record, including the presence of multiple, facilities-based providers, is compelling. Based on this evidence we find under Section 207(1)(b)(IV) that no one provider has the ability to affect prices or deter competition in the 46 wire center serving areas.

5. Adequate and Reliable Service at Just and Reasonable Rates

60. The Commission must consider whether finding that the 46 wire centers are subject to effective competition "will promote the public interest and the provision of adequate and reliable service at just and reasonable rates."[69]

61. We find that decreasing regulation in the 46 wire centers will promote competition and thereby increase consumer choice. As noted above, the 2014 Telecom Reform Legislation establishes that those wire centers in which there is effective competition will not be subject to the regulation specified at § 40-15-401(1)(b)(IV), C.R.S. Consumer choice will enable adequate and reliable service in the 46 wire centers.

62. In addition, a finding of effective competition in the 46 wire centers will promote the provision of services at just and reasonable rates. Where multiple providers are present and competition exists, consumers benefit from a variety of pricing and service options. If effective competition exists pursuant to the considerations in Section 207(1)(b), as it does here, decreasing

[69] Section 207(1)(a) states that the Commission should find that "regulation under part 3 of this article" will promote the public interest. Under the 2014 Telecom Reform Legislation basic service is regulated as prescribed in the statute, including §§ 40-15-201, 401, and 501, C.R.S., and not moved to Part 3. Nevertheless, we consider a finding of competition, which will change regulatory treatment within the geographic area, including removal of the ability for providers to receive HCSM, is in the public interest.

the costs of regulation will better enable competitive providers to meet consumer needs, including the promotion of adequate and reliable service at just and reasonable rates.\

63. Based on the foregoing, we find under Section 207(1)(a) that effective competition in the 46 wire centers will promote the provision of adequate and reliable service at just and reasonable rates in those wire centers Likewise, § 40-15-502(3)(b)(I), C.R.S., directs the Commission to transition to a fully competitive telecommunications market. Our finding that the 46 wire centers are subject to effective competition is consistent with the General Assembly's directive.

64. We also consider that in 2018, the Commission will have the opportunity to reconsider competition throughout the state and will be able to once again re-assess the dual goals of the HCSM. Consistent with this Decision, Staff will monitor these 46 wire centers for competition and on July 2, 2018, report back to the Commission with an evaluation of effective competition for each of the 46 wire centers. We find this monitoring and review after July of 2018, consistent with the statute, and will continue to protect the public interest in these 46 wire center serving areas.

65. The Commission will continue to maintain important safeguards, regardless of reclassification. For example, a finding of effective competition in the 46 wire centers shall not impact regulation of basic emergency service.

6. Additional Factor Supporting Decision

66. Finally, we conclude that our finding that the 46 wire centers are subject to effective competition is also in the public interest because it is consistent with the General Assembly's intent to make funds available to support the deployment of broadband in

Colorado.[70] Prior to the 2014 Telecom Reform Legislation, the HCSM's sole purpose was to make basic voice service affordable within rural, high-cost areas. In recognition of the fact that increased competition has decreased the need for financial support for basic service, the General Assembly in the 2014 legislation added a second primary purpose of the HCSM – to provide access to broadband service in unserved areas in Colorado. The General Assembly further specified that HCSM support for the deployment of broadband can be provided only if the Commission finds it is no longer required to support basic service.

67. Our decision above that the 46 wire center serving areas are subject to effective competition means that HCSM support is no longer required to support basic service in those areas. It thus may allow the Commission to transfer HCSM funds previously used to support basic service in those 46 wire center serving areas to the Broadband Board. As a result, while our finding of effective competition is based on the extensive evidence provided by Staff, the fact that it may also serve the second primary purpose of the HCSM established by the General Assembly in 2014 provides additional support to our decision.[71]

7. Related Terms of the Settlement

a. Provider of Last Resort Obligations

68. Consistent with §§ 40-15-401(1)(b)(III) and (IV), C.R.S., effective July 1, 2016, we relieve CenturyLink of its POLR obligations in the 46 wire centers with effective competition.

[70] *See* § 40-15-207(1)(b)(V), C.R.S. (stating that, in making its effective competition determinations, the Commission may consider "[s]uch other factors as the commission deems appropriate.").

[71] A determination on whether HCSM funds are no longer required by the HCSM to support universal basic service, and therefore available for disbursement to the Broadband Board, consistent with § 40-15-509.5, C.R.S., shall be determined by a future Commission order.

69. Specifically, §§ 40-15-401(1)(b)(III) and (IV) state:

> (III) Until July 1, 2016, each incumbent local exchange carrier remains subject to any obligations as provider of last resort, as established by the commission under section 40-15-502 (6), throughout its service territory;
>
> (IV) On and after July 1, 2016, throughout each geographic area for which the commission provides high cost support mechanism distributions for basic service under sections 40-15-208 and 40-15-502 (5), the commission retains the authority to:
>
> (A) Designate providers of last resort under section 40-15-502 (6)[.]

70. As a result, CenturyLink's POLR obligations in the 46 wire center serving areas will cease to exist as of July 1, 2016, because the 46 wire center serving areas are subject to effective competition.

71. Consistent with the statute and the terms of the Settlement Section 9.1.1., CenturyLink's POLR obligation shall remain for the 56 wire centers in Phase II of Proceeding No. 14M-0947T and for the remaining wire centers that have not been subject to an effective competition determination. These areas include the Coal Creek Canyon and Central City wire centers; CenturyLink shall maintain its POLR obligation in these wire center serving areas until future order of the Commission.

b. Closing Proceeding No. 14M-0947T Without Prejudice

72. The Settling Parties request that the Commission close Proceeding No. 14M-0947T without prejudice to the determination of effective competition in any of the 56 wire centers in Phase II.[72] In addition, the Settling Parties agree that Staff, no later than January 4, 2018, may petition the Commission, pursuant to Section 207, to initiate a proceeding to make any additional findings regarding the presence of effective competition in the Central

[72] Settlement Section 9.2

City and Coal Creek Canyon wire centers, the 56 wire centers from Phase II of Proceeding No. 14M-0947T, and all remaining wire centers for all incumbent providers in Colorado not yet determined under Section 207 to have effective competition for basic service. Such proceeding would conclude on or before December 31, 2018.[73]

73. We grant the request to close Proceeding No. 14M-0947T, without prejudice, without making effective competition determinations with respect to the 56 wire centers from Phase II, or the Central City and Coal Creek Canyon wire centers. The Commission will make future determinations of effective competition through separate proceedings.

74. As noted above, in passing the 2014 Telecom Reform Legislation the General Assembly expressed a desire that the Commission make timely effective competition determinations, with the understanding that regulation throughout Colorado would significantly change on July 1, 2016. Only the Settling Parties are bound by the terms of the Settlement; the Commission may consider areas for Section 207 determinations pursuant to a filing made consistent with Commission Rules. The Commission will consider effective competition in additional areas as the public interest requires.

III. HCSM DISTRIBUTIONS

75. As discussed below, we find that approving the Settlement with modifications is in the public interest. The Commission will be in a position to transfer funds to the Broadband Board that are no longer required to support basic service in a more expedited fashion than might otherwise be possible. Approval of the Settlement with modifications is also consistent with the intent of the 2014 Telecom Reform Legislation.

[73] Settlement Section 9.4

76. In addition, we find it necessary to protect the public interest by requiring the Settling Parties to provide certain information to the Commission. This information will allow us to monitor fund distributions and to ensure that HCSM monies are used consistent with statutory requirements.

A. Modifications of Settlement Terms

77. The Settling Parties propose, during the four calendar year term of the Settlement from 2015 through 2018, methods for determining HCSM support and the distributions required to support basic universal service to current recipients. The Settling Parties explain that the Settlement is intended to maximize the funds available for potential transfer to the Broadband Board, particularly in the initial years of the Settlement. They argue that the Settlement presents the best and balanced path forward to accomplishing the competing goals of supporting basic service in rural Colorado and access to broadband service in unserved areas of the state. They estimate that millions of dollars would no longer be required to support basic service and could be distributed to the Broadband Board.

78. The Settling Parties agree the HCSM surcharge rate should remain at 2.6 percent during the four-year term of the Settlement, unless that surcharge rate is insufficient to support the distributions in the Settlement. If the 2.6 percent surcharge rate is insufficient to support basic service at the stipulated amounts, the HCSM Administrator would notify the Commission.

79. In response to the Commission's question regarding this particular provision of the Settlement, the Settling Parties state the Settlement obligates the Commission to meet the annual distributions to CenturyLink and the CTA companies because those amounts are

"guaranteed."[74] The Settling Parties also clarify that the Settlement does not contemplate "proportional payouts." The Settling Parties posit that alternatives to increasing the HCSM surcharge rate are to: (1) tap into HCSM funds held in reserve (if any); (2) reduce or eliminate the transfer of HCSM funds to the Broadband Board; or (3) institute appropriate measures to shore up HCSM collections (*e.g.*, a rulemaking to require HCSM contribution from more providers).[75]

80. The Settlement further states that no HCSM rulemaking shall have an impact on the stipulated amounts in the Settlement, but that the Commission may "initiate new rulemakings, and such rules may impact HCSM distributions calculated according to the Agreement only after the Agreement expires."[76]

81. Sprint Communications Company L.P.; Sprint Spectrum L.P., doing business as Spring PCS (collectively, Sprint) takes no position on any issue of fact represented in the Settlement; however, it offers policy and legal comments. Sprint argues that, in the event the current 2.6 percent surcharge rate proves to be insufficient to support the payout obligations under the Settlement, the surcharge rate should not be increased. Indeed, Sprint argues that the surcharge should not be increased under any circumstances. Sprint points out that the Settling Parties agree that the legislative intent of § 40-15-208(2)(a)(B)(III), C.R.S., is to reduce the amount of HCSM fund size over time and to reduce contributions from Colorado telecommunications providers as a whole.[77] Sprint states it would "thwart the intention of the

[74] Joint Response of the Settling Parties to Questions Posed by the Commission in Paragraph 8 of Decision No. C15-0997-I, filed October 13, 2015, at 5-6.

[75] *Id.*

[76] Settlement, ¶ 10.

[77] Comments of Sprint, filed October 30, 2015, at 2 (citing Joint Response of the Settling Parties to Questions Posed by the Commission in Paragraph 8 of Decision No. C15-0997-I (Joint Response), at 10).

Colorado Legislature, and would be poor public policy, to take a step in the wrong direction and increase the surcharge…."[78] Sprint further argues that CenturyLink should be required to invest its HCSM support in areas not supported by federal Connect America Funds (CAF II), and should be accountable to the Commission for the nature and amount of expenditures on which HCSM support is used and in which areas, including providing an accounting to the Commission for its use of HCSM funds.[79]

82. AT&T Corp. (AT&T) states that the Settlement "moves the ball forward on important issues that have been in dispute in Colorado ... [AT&T] recommends that the Commission ensure that the [HCSM] support and [CAF II] support do not provide duplicative support, as that would be an inefficient use of limited public dollars."[80]

83. Comcast argues that the Settlement should be rejected for numerous legal and policy reasons, including that the Settlement improperly binds future Commissions, defers until 2019 fundamental HCSM reforms and guarantees the Settling Parties and Viaero support for their provision of basic service, but requires that no funds go to support broadband access if the HCSM funds prove insufficient.[81] Comcast states that the Settling Parties will not agree to any shared burden in the event that HCSM contributions are lower than forecasted. Comcast argues that "there appears to be no reason, as a matter of *policy*, why the Settling Parties could not agree to proportional payouts in the event of a revenue shortfall."[82] Among its arguments, Comcast

[78] *Id.*, at 3.

[79] *Id.*, at 3-5.

[80] Comments of AT&T, filed October 30, 2015, at 1-2.

[81] Comments of Comcast Phone of Colorado, LLC Regarding Settlement Agreement, filed October 30, 2015, at 12.

[82] Comments of Comcast Phone of Colorado, LLC Regarding Settlement Agreement, filed October 30, 2015, at 10.

also states that CAF II funding should be taken into account to the extent that it supports voice service.

84. We agree that the public interest is served if *both* primary purposes of the fund are met. Specifically, the Commission favors settlement terms that may enable the transfer of additional funds to the Broadband Board. However, settlement terms that prohibit the Commission from acting in the public interest in the future to alter HCSM distributions, restrict effective competition determinations, or limit the Commission's rulemaking abilities, are not in the public interest. The Commission must be able to make determinations freely in future proceedings based on the facts and evidence presented. We will not make determinations in this proceeding that adversely affect parties not subject to the Settlement.

85. While there is no prohibition against raising the HCSM surcharge rate, absent unforeseen circumstances requiring additional funding for basic voice service, the statutory framework evidences the General Assembly's desire that the surcharge rate of 2.6 percent not be increased and, ultimately, should be decreased. As discussed above, the 2014 Telecom Reform Legislation added a second "primary" purpose of the HCSM – to provide access to broadband services through the provision of HCSM funds to the Broadband Board. Yet, the General Assembly also stated that the Commission may fund transfers to the Broadband Board only "through use of the HCSM surcharge and surcharge rate in effect on May 10, 2014…."[83] The surcharge on May 10, 2014, was 2.6 percent. We favor settlement terms that support maintaining a rate at 2.6 percent so that transfers of funds to the Broadband Board remain possible.

[83] § 40-15-509.5(3), C.R.S.

86. Reading these statutes as a whole, the plain language shows that the General Assembly anticipated HCSM funds would be able to support *both* primary purposes at the 2.6 percent surcharge. The language also indicates that, if the surcharge rate is raised above 2.6 percent, no funds can be transferred to the board. As funding broadband through the board is one of the *primary* purposes of the HCSM, raising the rate is not desirable and would not promote the important public interest objectives of "providing universal access to broadband service…" stated in § 40-15-509.5(2), C.R.S.

87. Not only do the statutes indicate an interest in keeping the fund at 2.6 percent so that the fund can accomplish both primary purposes of the HCSM, the statutes also indicate that the fund, including the surcharge, should be *decreased* over time. Section 40-15-208(2)(a)(III), C.R.S., delineates percentage decreases for years 2016 through 2023 in the event funds are distributed to broadband.

88. The Commission finds it is in the public interest for it to maintain discretion to make determinations in effective competition proceedings, rulemakings, and to change the surcharge according to its findings of needs specified for the HCSM. The Commission cannot predict future circumstances that may require a change to the 2.6 percent surcharge. However, the Settling Parties state that, approving the Settlement terms as presented, would require the Commission to raise the surcharge rate if HCSM contributions are lower than forecasted, in order to guarantee amounts to the Settling Parties.[84] Therefore, we make the modifications to the Settlement described below that maintain future Commissions' ability to act in the public interest.

[84] Joint Response of the Settling Parties to Questions Posed by the Commission in Paragraph 8 of Decision No. C15-0997-I, filed October 13, 2015, p. 6.

B. Support to CenturyLink

89. Under the Settlement, CenturyLink would receive $30.25 million in total HCSM distributions for each calendar year of 2015, 2016, 2017, and 2018. The HCSM Administrator would make these distributions quarterly.

90. Staff and CenturyLink explain that they arrived at this figure by making some assumptions and predictions about HCSM support amounts that could be made available in future years. They used the proxy cost model as a tool in their analysis and, in general, they averaged the four-year total support amounts for constant annual distributions over the four-year period.[85]

91. In addition, the Settlement requires CenturyLink to accept the FCC's offer of model-based CAF II support for Colorado. The Settling Parties explain that this provision of the Settlement was reached by taking into account the voice aspects of CAF II support.[86] They argue that, due to its extensive requirements for broadband investment, CAF II support is primarily a support mechanism for broadband Internet access rather than a price support mechanism for basic service. They also state that it is difficult, if not impossible, to make reasonable allocations of CAF II support between support for voice service and support for broadband service, or to make appropriate allocations of the costs of broadband investment. They state that it is likely that CAF II investment will occur in some of the wire centers receiving HCSM support.

[85] Settlement, at 7-8.

[86] Joint Response of the Settling Parties to Questions Posed by the Commission in Paragraph 8 of Decision No. C15-0997-I, filed October 13, 2015, pp. 12-13.

92. We authorize the HCSM Administrator to provide up to $30.25 million annually to CenturyLink for 2015, 2016, 2017, and 2018; however, this amount is not guaranteed and shall be subject to contingencies and assurances from CenturyLink.

93. First, CenturyLink shall file notice in this proceeding that it has submitted the necessary documents to the District Court to dismiss its Judicial Review Action. The HCSM Administrator is prohibited from providing any disbursement from the HCSM Fund to CenturyLink until CenturyLink files the notice. Consistent with previous decisions, we authorize the transfer of $2.6 million[87] from the HCSM Fund to the Broadband Board upon receipt of the filed notice that CenturyLink has filed with the District Court, the documents to dismiss the Judicial Review Action.

94. Second, the disbursement to CenturyLink of $30.25 million each year is contingent on annual collections to the HCSM at the 2.6 percent surcharge rate of at least $36 million. In the event the HCSM Administrator anticipates annual contributions to be less than $36 million, the HCSM Administrator is directed to adjust quarterly disbursements downward so that the annual total disbursements would not exceed the HCSM collections for the year.[88]

95. Third, we direct CenturyLink to file notice in this proceeding attesting that the HCSM support provided each of the four years 2015 to 2018 under the terms of the Settlement, as modified by this Decision, will satisfy CenturyLink's reimbursement under § 40-15-208(2)(a)(I)(A), C.R.S. In such notice, CenturyLink shall also attest that HCSM funds

[87] Joint Response of the Settling Parties to Questions Posed by the Commission in Paragraph 8 of Decision No. C15-0997-I, filed October 13, 2015, p. 8.

[88] The adjusted amount shall be calculated as [(total collections for the year) ÷$36,000,000] X $30,250,000. For example, if annual collections at the 2.6 percent surcharge rate equal $31,000,000, CenturyLink shall receive $26.05 million, or ($31,000,000/$36,000,000) X $30,250,000 = $26,048,611.

will not be used to support voice service in any of the areas the Commission has determined effective competition exists for voice service.[89]

96. Fourth, consistent with the requirement in § 40-15-208(2)(a)(II), C.R.S., we revise the Settlement to require reporting that ensures CenturyLink is not receiving funds in excess of the cost of providing local exchange service to its customers. CenturyLink shall file in this proceeding for each support year 2016 to 2018 all reports filed with the FCC related to CAF II funding and the build out of broadband infrastructure. We have considered the $26.5 million in annual support CenturyLink has accepted from the FCC's CAF II for Colorado and find that CenturyLink will not receive HCSM support that exceeds its cost of providing basic service to consumers. We are satisfied with CenturyLink's testimony that the CAF II funds will not be used to support basic service in coincident areas of federal and HCSM support, but will instead be used for new broadband-oriented investment in those areas, with limited benefit to voice service. The joint response from the Settling Parties also indicates that CenturyLink's receipt of CAF II support results in an overall reduction in federal USF support. Continued reporting on CAF II support used for broadband infrastructure provides assurances that CenturyLink is not receiving funds in excess of its costs for basic service.

97. Fifth, due to the multi-year nature of the Settlement amounts and to ensure compliance with statutes and rules, we direct Staff to review CenturyLink's filings with the Commission. Staff shall supplement such information through audit, as necessary, for the

[89] Currently, areas with findings of effective competition include the initial 56 wire centers considered in Proceeding No. 13M-0422T, plus the 46 wire centers found to have effective competition in this proceeding. In the event the Commission makes future findings of effective competition, consistent with the statute, CenturyLink would attest that HCSM funds are not spent in those geographic areas after the finding made by the Commission.

purposes of monitoring the spending of the annual HCSM support and reviewing continuing compliance with Rules 2848(g) and 2849(j), in addition to the attestations required by this Decision.

98. Finally, CenturyLink shall file notice, as necessary, that it is willing to accept less support than the $30.25 million annually upon a change in the FCC urban rate floor. Consistent with the terms of the Settlement, such filing shall identify the amount of the annual reduction and when quarterly disbursements will be reduced.

99. The Settlement states that, for the 2015 support year, the stipulated amounts to be paid to CenturyLink include and reflect the interim first quarter 2015 support already provided. Under the Settlement, the remaining gross distributions would total approximately $19.4 million, and the timing and amount of each remaining 2015 distribution would be determined by the HCSM Administrator following approval of the Settlement, but made in equal amounts.[90]

100. We modify these terms of the Settlement and instead direct the HCSM Administrator to distribute the balance due to CenturyLink for 2015, relative to the $30.25 million total, as follows. Seventy-five percent of the balance due (approximately $14.55 million) shall be paid no later than January 31, 2016 when the fourth quarter 2015 payment would normally be made. The remaining 25 percent of the balance due for 2015 (approximately $4.85 million) shall be paid with the first quarter 2016 payment no later than April 30, 2016.

[90] Settlement Section 1.1.4

C. Support to Viaero

101. The Settlement explains that the Settling Parties calculated the proposed HCSM distribution of $2.2 million annually for Viaero consistent with the approach used to derive the stipulated amounts for CenturyLink. The Settling Parties take the position that this approach is consistent with the "identical support" rule for HCSM distributions to "competitive EPs."[91]

102. We do not adopt the $2.2 million stipulated annual disbursements to Viaero. Viaero is not a signatory to the Settlement and has not shown willingness to average its support over time in the same manner as CenturyLink. In addition, Viaero has not accepted the per line per wire center amounts that form the basis of the "identical support" calculated under the terms of the Settlement.

103. For 2015, we authorize the HCSM Administrator to calculate HCSM support to Viaero consistent with the per line support amounts by wire center in effect at the time of the enactment of the 2014 Telecom Reform Legislation.[92] Viaero's disbursement shall be calculated based on a verified accounting of actual lines served in each wire center serving area.

104. For 2016 and future years, we authorize the HCSM Administrator to provide to Viaero, HCSM support consistent with the per line support amounts by wire center, except in those geographic areas where the Commission has found effective competition. Viaero's disbursement shall be calculated based on a verified accounting of actual lines served in each wire center serving area. Viaero may apply for future amounts or increases of amounts in areas "without effective competition" consistent with Commission rules and statute.

[91] Settlement Section 3.1

[92] Such per line, per wire center support amounts are set forth in Confidential Attachment C to Decision No. C15-0517-I, issued on June 1, 2015, in Proceeding No. 15M-0158T.

105. On December 7, 2015, Viaero filed a Motion for Interim Third Quarter 2015 Support. Viaero states that it is building new infrastructure and increasing its network capacity for voice service in rural Colorado in areas where it is designated as an Eligible Provider. Viaero states that it budgets for and plans its capital expenditures and business operations with the expectation of receiving HCSM distributions in a timely fashion. Without a third quarter distribution, Viaero states that it will be forced to cancel or delay the construction of several planned new towers. Viaero states that CenturyLink opposes Viaero's request.

106. We grant Viaero's motion. The HCSM Administrator is authorized to provide Viaero a third quarter distribution in the same amount and subject to the same terms as the second quarter distribution provided pursuant to Decision No. C15-1228-I issued November 19, 2015. All quarterly 2015 interim payments should be reconciled with the directives in this Decision by the HCSM Administrator upon providing the fourth quarter 2015 disbursement to Viaero.

D. Support to Rural Incumbent Local Exchange Carriers

107. Under the Settlement, the stipulated amount of rural incumbent local exchange carrier (RLEC) support would remain consistent with the amounts in the Commission's interim first and second quarter distributions in Proceeding No. 15M-0158T. If an RLEC currently receiving HCSM support seeks to reset its HCSM support at a particular amount, it must file a petition with the Commission.[93]

108. Appendix A to the Settlement shows that the CTA eligible companies receive a total of $1.38 million annually.

[93] Settlement Section 2

109. We authorize the HCSM Administrator to disburse funds to eligible RLECs in the same amounts and in the same manner as provided for in the decisions listed in the Settlement.[94] The total of this support is approximately $1.38 million annually. In the event that any RLEC wishes to revise its HCSM support, the RLEC shall follow the requirements of applicable Commission rules to request support in areas without effective competition.

E. Support to NCC

110. The Settlement explains that NCC operates in the Weldona wire center. NCC did not receive HCSM funds in 2014. The Settling Parties stipulate that NCC's support amount would be $500,000 for calendar year 2015 and $0 for 2016, 2017, and 2018.

111. The Settlement explains that the proposed NCC amount represents a compromise between the NCC and Staff positions. Staff proposed a 2015 total support amount, based on actual customer line counts through June 2015 and using June 2015 actual line counts for the remaining months for a total of $204,000, whereas NCC proposed a 2015 total support amount based on lines already constructed (but not yet dedicated to consumers) of approximately $776,000. The $500,000 stipulated amount is an average of the two positions, "rounded up."[95]

112. In addition, on June 10, 2015, NCC filed a motion to receive first quarter 2015 HCSM support. NCC states that while it did not receive any HCSM support in 2014, it qualifies in all respects under the Commission's rules to receive support for the first quarter of 2015.[96]

[94] These amounts are provided in the corrected Settlement, page 8, footnote 9.
[95] Settlement Section 3.2
[96] NCC Motion for Support, filed June 10, 2015.

113. For 2015, the Commission authorizes the HCSM Administrator to disburse to NCC an amount equal to the product of a verified accounting of access lines served for 2015 in Weldona times the 2014 per line amount paid to CenturyLink in that wire center, up to a cap set at the $500,000 amount set forth in the Settlement. Because the Weldona wire center has been found to have effective competition, as of the date of this Decision, no further HCSM support will be provided to NCC in the Weldona wire center.

F. Support to NNTC

114. The Settlement explains that NNTC Wireless, LLC (NNTC) is a wireless provider in the Nucla-Naturita rural serving area and that the stipulated amount for NNTC is $159,365 per year, which is the same gross amount NNTC received for calendar year 2014. The Settlement states that this draw was determined consistent with the methods used to derive identical support under the Commission's Rules.[97]

115. The Commission authorizes a payment of $159,365 per year for each year, 2015 through 2018. This amount is consistent with the manner in which the support for the RLEC has been calculated and conforms with Rules 2847(g) and 2848(d)(VI)(A)(vii).

IV. ADDITIONAL SETTLEMENT PROVISIONS

116. The Settling Parties propose that if the current 2.6 percent surcharge rate is insufficient to support the stipulated distributions, the HCSM Administrator shall notify the Commission as soon as practicable.[98] We direct Staff, in its capacity as the HCSM Administrator, to file notice in this proceeding if it projects collections at the 2.6 percent surcharge to be less than $36 million for the applicable 12-month period. Such notice will alert

[97] Settlement Section 3.3
[98] Settlement Section 6

the Commission of the amount projected to be contributed to the HCSM at the 2.6 percent surcharge rate, explain that it may not be possible to pay the carriers the full annual support amounts set forth in the Settlement, as modified, and suggest adjustments to the disbursements that will be needed, consistent with the modifications to the Settlement made by this Decision.

117. The Settlement requires CenturyLink to remit directly to the HCSM Fund the actual amount of contributions collected from the rate element applied to its end-user consumers.[99] We direct the HCSM Administrator to invoice CenturyLink for direct remittance of its collections, consistent with the terms of the Settlement.

118. The Settlement requests waiver or partial waiver of certain current Commission rules. In its Joint Response, the settling parties explain that these rules include: Rule 2841(k)(I)(A) (defining calculation for the residential revenue benchmark used in calculating HCSM support); Rule 2848(c)(IV) (incorporating business and residential revenue benchmark calculations for HCSM support); Rule2843(c) (requiring sizing the HCSM distributions if the total support amount is above $54,000,000); Rule 2848(c)(III) (requiring calculation of HCSM support for eligible providers (EPs) be based on the number of residential and business access lines the EP in the non-rural high cost support areas); and Rule 2848(d)(II) (calculating HCSM support for rural local exchange carriers using the number of access lines served in an area).

119. We grant the Settling Parties' request for waiver or partial waiver of Commission Rules. Commission Rules, including without limitation those cited by the Settling Parties, are waived to the extent necessary for compliance with this Decision.

[99] Settlement Section 1.1.5

120. Additional findings on the Settlement are unnecessary. We make no explicit findings regarding the components of the Settlement not addressed by this Decision.

IV. ORDER

A. The Commission Orders That:

1. The 46 wire center serving areas identified in Attachment A to this Decision are found to have effective competition for basic service pursuant to § 40-15-207, C.R.S. (Section 207). Consistent with § 40-15-502(5)(a), C.R.S., high cost support mechanism (HCSM) funding is eliminated in the 46 wire center serving areas as of the effective date of this Decision.

2. We direct Staff of the Colorado Public Utilities Commission (Staff) to monitor the 46 wire centers identified in Attachment A for competition and provide us a report on July 2, 2018 with an evaluation of effective competition in each of the wire centers.

3. The Motion to Approve Stipulation and Settlement Agreement and Waive or Vary [From] Certain Commission Rules filed jointly by Staff; Qwest Corporation, doing business as CenturyLink QC, CenturyTel of Eagle Inc., CenturyTel of Colorado, Inc., and El Paso County Telephone Company (collectively CenturyLink); the Colorado Telecommunications Association, and Northern Colorado Communications LLC (NCC) (collectively the Settling Parties) on August 20, 2015 is granted, in part, and denied, in part, consistent with the discussion above.

4. The Stipulation and Settlement filed by the Settling Parties on August 20, 2015, as corrected on October 13, 2015, is approved, with modifications, consistent with the discussion above.

5. The Administrator of the Colorado HCSM shall calculate and distribute payments of high cost support to CenturyLink; NE Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero); NCC; Agate Mutual Telephone Co.; Delta County Tele-Comm;

Nucla-Naturita Telephone Company; Nunn Telephone Company; Peetz Cooperative Telephone Co.; Phillips County Telephone Co.; Pine Drive Telephone Company; Rico Telephone Company; Roggen Telephone Cooperative Company; Willard Telephone Company; and NNTC Wireless, LLC, consistent with this Decision.

6. CenturyLink shall file notice in this proceeding that it has submitted the necessary documents to the Denver District Court (Court) to dismiss Case No. 2015CV030017 no later than ten days following the filing of the dismissal documents with the Court.

7. No later than 60 days following the effective date of this Decision, CenturyLink shall file notice in this Proceeding attesting that the $30.25 million of annual HCSM support provided each of the four years 2015 to 2018, or other lower amounts disbursed according to the requirements of this Decision in the event annual HCSM collections fall below $36 million, satisfy CenturyLink's reimbursement under § 40-15-208(2)(a)(I)(A), C.R.S. In such notice, CenturyLink shall also attest that HCSM funds will not be used to support voice service in any of the areas the Commission has determined effective competition exists for voice service.

8. CenturyLink shall file in this proceeding for each support year 2016 to 2018 all reports filed with the Federal Communications Commission (FCC) related to the Connect America Fund and the build out of broadband infrastructure. Such filings shall be made no later than 30 days after their submittal to the FCC.

9. CenturyLink shall file notice, as necessary, that it is willing to accept less support than the $30.25 million annually upon a change in the FCC urban rate floor. Such filing shall be made no later than 60 days following the FCC's action.

10. The Motion Requesting Distribution of First Quarter 2015 Colorado HCSM Support filed by NCC on June 10, 2015, is granted, consistent with the discussion above.

11. The Motion for Waiver of 4 CCR 723-2-213(d)(II) filed by Qwest Corporation, doing business as CenturyLink QC on July 31, 2015 is denied.

12. The Motion for Third Quarter HCSM Distributions filed by Viaero on December 4, 2015 is granted, consistent with the discussion above.

13. These consolidated proceedings are closed without prejudice. Wire center serving areas where the Commission did not make a finding pursuant to Section 207 in this proceeding shall be addressed by a future proceeding and Commission order.

14. The 20-day period stated in § 40-6-114(1), C.R.S., within which the parties may file applications for rehearing, reargument, or reconsideration, begins on the first day following the mailed date of this Decision.

15. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 16, 2015.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director