

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 16M-0268T

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IN THE MATTER OF TRANSFERS OF COLORADO HIGH COST SUPPORT MECHANISM  
MONEYS TO THE BROADBAND DEPLOYMENT BOARD PURSUANT TO § 40-15-509.5,  
C.R.S.

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**INTERIM DECISION ADDRESSING  
INTERVENTION AND SOLICITING COMMENT**

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Mailed Date: March 31, 2017  
Adopted Date: March 29, 2017

**TABLE OF CONTENTS**

I.	BY THE COMMISSION .....	1
A.	Statement .....	1
B.	Discussion.....	2
C.	Court Proceedings .....	4
D.	Intervention.....	5
E.	Status of HCSM Fund .....	6
F.	Comments.....	7
II.	ORDER.....	9
A.	It Is Ordered That: .....	9
B.	ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 29, 2017.....	10

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**I. BY THE COMMISSION**

**A. Statement**

1. The Commission opened this Proceeding on its own motion to determine:
  - (a) whether funds are no longer required by the High Cost Support Mechanism (HCSM) to

support universal basic service through its findings of effective competition in consolidated Proceeding Nos. 15M-0158T and 14M-0947T (2016 EC Findings); and (b) if the Commission determines funds are no longer necessary to support voice service, the amount of funds to transfer from the HCSM to the Broadband Deployment Board (Broadband Board) pursuant to § 40-15-509.5, C.R.S.

2. This Decision grants the Motion for Intervention filed January 13, 2017, by Northern Colorado Communications, LLC (NCC).<sup>1</sup> We also provide an update on Morgan County District Court (Court) proceedings and HCSM funding amounts, and request additional comment by **April 14, 2017**.

#### **B. Discussion**

3. The 2016 EC Findings include findings for 46 wire center serving areas. In opening this proceeding through Decision No. C16-0327, issued April 18, 2016, we provided information on the status of the HCSM fund as of April 2016 and requested filings for intervention and comment from interested participants.

4. In addition, in the decision opening this proceeding, the Commission included that, on March 30, 2016, Viaero filed a petition in Court seeking review of Decision Nos. C16-0027, C16-0165, and C16-0237 in Consolidated Proceeding Nos. 15M-0158T and 14M-0974T, and that on April 1, 2016, Viaero filed a Motion for Stay “as [the decisions] relate to the Commission’s intended action of removing 46 wire centers from eligibility for state support

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<sup>1</sup> As discussed in Decision No. C16-1161-I, issued December 21, 2016, parties in this proceeding also include Staff of the Colorado Public Utilities Commission (Staff); Qwest Corporation, doing business as CenturyLink QC, CenturyTel of Eagle, Inc., CenturyTel of Colorado, Inc., and El Paso Telephone Company (collectively, CenturyLink); NE Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero); AT&T Corp. and Teleport Communications America, LLC (AT&T); and the Colorado Telecommunications Association (CTA).

from the [HCSM]” (Motion for Stay).<sup>2</sup> At that time, the Court had not decided the Motion for Stay.

5. On or before April 29, 2016, Staff, CenturyLink, AT&T, CTA, and Viaero filed timely notices or requests for intervention in this proceeding. The Broadband Board filed comments, but did not request to intervene as a party. The Broadband Board states that it is aware of Viaero’s appeal regarding the 2016 EC Findings and other matters, and “has concerns about being the recipient of funds that may be encumbered....” Broadband Board comments at 2.

6. The Commission took no action in this proceeding until December 21, 2016. On that date, through Decision No. C16-1161-I (December 2016 Decision), the Commission noted the uncertainty regarding the Court proceedings and recognized that, as a direct consequence of Viaero’s appeal, funding for broadband deployment pursuant to § 40-15-509.5, C.R.S., is harmed. The Commission found it imperative to act in order to prevent further harm caused by the ongoing delay of enforcement of our decisions. Therefore, we continued this proceeding to examine whether HCSM funds may no longer be necessary for basic voice service in this proceeding to ensure timely transfers for Colorado broadband deployment as soon as possible.<sup>3</sup>

7. In its December 2016 Decision, the Commission provided an update of the appeal in the Court; addressed and granted all pending interventions; and provided an update of the status of the HCSM fund. In addition, we expanded the scope of the proceeding to consider whether there are HCSM funds available based on the Commission’s findings of effective competition for 56 wire centers in Proceeding No. 13M-0422T (2014 EC Findings).

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<sup>2</sup> Decision No. C16-0327, ¶¶ 13 and 15.

<sup>3</sup> Decision No. C16-1161-I, issued December 21, 2016, ¶¶ 22-25.

8. We provided additional notice given the expansion of the matters at issue in the case and permitted additional intervention, concurrent with notice, through January 13, 2017. We invited comment or briefing, concurrent with appropriate requests for intervention, on or before January 13, 2017.

9. On January 13, 2017, we received a Motion for Intervention and comment from NCC, and additional comments from Viaero, CenturyLink, and Staff who are parties to this proceeding.

### **C. Court Proceedings**

10. On August 4, 2016, the Court issued an order granting Viaero's Motion to Stay. By subsequent decision, it accepted a \$1,000 bond. The concerns and uncertainty of implementation of the Court's orders through the remainder of 2016 are memorialized in the December 2016 Decision.<sup>4</sup>

11. Through decisions issued in February 1, 2017, the Court dismissed all claims raised by Viaero, with the exception of the findings of effective competition in 15 wire centers where Viaero previously received HCSM support.<sup>5</sup> Through subsequent order, the Court also narrowed the court-ordered suspension to only those findings for the 15 wire centers remaining at issue before the District Court. Briefing on the remaining merits concludes on April 21, 2017.

12. Viaero has indicated that it intends to continue its appeal, including the Court's order dismissing the majority of Viaero's claims,<sup>6</sup> to the Colorado Supreme Court.

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<sup>4</sup> *Id.* ¶¶ 10-21.

<sup>5</sup> These wire centers include: Elizabeth, Fort Morgan, Brighton, Hillrose, Weldona, Alamosa, Ault, Brush, Calhan, Eaton, Greeley, Julesburg, Kiowa, LaSalle, and Ovid.

<sup>6</sup> *See* Petitioner's Motion for Direction of Entry of Final Judgment Pursuant to C.R.C.P. 54(b) Regarding the Order Granting Motion to Dismiss, filed February 15, 2017, 2016CV30023 (denied March 13, 2017).

13. Through pendency of the appeal, or until further court order, the Commission continues to implement suspension of the effective competition decisions for the 15 wire centers. These areas are not eligible for HCSM funding distributions for basic service at this time; however, funding for broadband shall not be transferred through the determinations for these 15 wire center serving areas. Upon conclusion of the appeal, the Commission may determine the appropriate HCSM funding distribution to either voice providers or for broadband deployment, consistent with Court determinations on the Commission's findings and Court direction concluding suspension.

**D. Intervention**

14. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(a) of the Commission's Rules of Practice and Procedure requires that a notice of intervention as of right, unless filed by Staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding.

15. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure states in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

16. Pursuant to Rule 1500, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

17. NCC states in its intervention that it was a participant and, initially, a settling party in the consolidated Proceeding Nos. 15M-0158T and 14M-0947T. NCC provides competitive local exchange service in the Weldon wire center serving area, one of the areas found to have effective competition in the 2016 EC Findings.

18. We find good cause to grant NCC's motions for intervention. NCC demonstrates that this proceeding may substantially affect its pecuniary or tangible interests pursuant to Rule 1401(c). NCC also demonstrates that its interests would not otherwise be adequately represented. NCC is granted intervenor status and is a party to this proceeding.

**E. Status of HCSM Fund**

19. We provide updated calculations and estimates from the HCSM administrator for our continuing consideration of what funds are no longer required to support basic service.

20. Funding for the HCSM is provided through a surcharge on telecommunications service providers' intrastate revenues. In its December 2016 updates in this proceeding, the Commission noted that the surcharge rate has been at 2.6 percent since approximately April 2013 and had not changed since the Commission opened this proceeding.<sup>7</sup> The surcharge remains unchanged since that December update.

21. In the December 2016 Decision, first quarter contributions for 2017 at the 2.6 percent surcharge rate were projected to equal \$9,243,778.<sup>8</sup> Currently, the revised first quarter contributions for 2017 are projected at \$9,594,716. Support payments for the fourth quarter of 2016 were distributed in January of 2017 and total \$8,658,344, which included a payment of \$434,060 to Viaero. First quarter 2017 support payments will be distributed in

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<sup>7</sup> Decision No. C16-1161-I, ¶ 38.

<sup>8</sup> *Id.*, ¶ 39.

April of 2017 and are projected to be approximately the same as the fourth quarter 2016 distributions.

22. In the December 2016 Decision, the Commission projected a fund balance on December 31, 2016, of \$17,535,378. The fund balance is currently \$18,899,161. Assuming no disbursements are made to the Broadband Board, if collections continue at the current 2.6 percent surcharge rate and disbursements are consistent with authorizations of HCSM support amounts to specific providers of basic service for the calendar years 2015, 2016, 2017, and 2018, the projected fund balance at the end of 2017 was anticipated to include over \$20 million. With the same assumptions the balance was anticipated to include over \$20 million at the end of 2018.<sup>9</sup> These projections, based on the same assumptions, remain unchanged.

23. The HCSM Administrator continues to recommend that the HCSM Fund include a reserve to cover administrative expenses of approximately \$400,000 annually, to manage cash flow, and to address unpredictable events. Historically, the target reserve amount has approximated one-fourth of annual HCSM disbursements.

#### **F. Comments**

24. Initial comments were provided in April of 2016. Certain parties provided comments on January 13, 2017, prior to the Court dismissing all issues in the proceeding, with the exception of findings of effective competition for 15 wire centers.

25. We invite interested persons to submit comments or briefing on the amount of funds no longer necessary to support universal basic service, and the amount of HCSM funds to transfer to the Broadband Board. Comments should provide party positions on legal or other

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<sup>9</sup> *Id.*, ¶ 40.

arguments regarding transfer of funds given the updated status of the Court proceeding. In addition, we solicit comments responsive to party positions already provided in this proceeding. Comments should address how updated court proceedings and the HCSM funding status affect party positions.

26. Specifically, we ask that parties address legal or other arguments in response to Staff's proposed calculations. In its January 13, 2017, comments, Staff provides an Excel spreadsheet with assumptions for a reserve that includes: administrative expenses; the traditional reserve; an additional reserve per year to account for uncertainties due to Viaero's appeal; and regarding HCSM contribution decline. Based on these assumptions, Staff projects the Commission could transfer as much as \$5.8 million in July of 2017 and still meet its HCSM obligations through the end of 2018. A projected \$5.8 million transfer is contingent on the Commission reducing its targeted reserve of approximately \$8.4 million maintained in the fund, which historically has approximated one-fourth of annual HCSM disbursements.

27. The Commissioners have an interest in not only reducing this discretionary reserve, but also in transferring funding in 2017 consistent with the statute. Transfer is permitted between July 1 and August 31, 2017. § 40-15-509.5(4)(a), C.R.S. The Commission, therefore, solicits comments specific to Staff's proposal that the Commission transfer \$5.8 million in July of 2017.

28. In addition, pursuant to § 40-15-509.5(3), C.R.S., the Commission may transfer to the Broadband Board "only the moneys that it determines are no longer required by the HCSM to support universal basic service through an effective competition determination." This proceeding includes consideration of whether funds are no longer required for basic service through both the 2014 and 2016 EC Findings, which is inclusive of 56 and 46 areas respectively.



29. As discussed above, the Commission's findings of effective competition for 15 wire centers within the 2016 EC Findings are subject to a court-ordered suspension pursuant to § 40-6-116, C.R.S.; the court-ordered suspension no longer applies to 31 wire centers found to have effective competition in the 2016 EC Findings. Comments shall address the party's position, legal arguments, and transferrable funds that are no longer necessary for basic service, as each argument relates to the groupings of wire centers in this proceeding: 2014 EC Findings; 2016 EC Findings subject to suspension; and 2016 EC Findings that are no longer suspended.<sup>10</sup>

30. Comment shall be filed no later than April 14, 2017.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Motion to Intervene filed on January 13, 2017, by Northern Colorado Communications, LLC (NCC) is granted. NCC is a party in this Proceeding.

2. Comments and briefing shall be filed no later than April 14, 2017, consistent with the discussion above.

3. This Decision is effective upon its Mailed Date.

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<sup>10</sup> Consistent with the discussion above, at this time and until further Court order, the Commission will not transfer funds through the 2016 EC Findings for the 15 areas subject to the Court order on suspension.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
March 29, 2017.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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WENDY M. MOSER

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Commissioners