

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

#### **4 CODE OF COLORADO REGULATIONS (CCR) 723-2**

#### **PART 2**

### **RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES**

#### **2106. Application to Change Exchange Area Boundaries.**

This rule applies to ILECs that seek to change exchange area boundaries. An applicant shall submit the required information by filing an application with the Commission. If the exchange area boundary change affects more than one provider of telecommunications service, the affected providers shall file a joint application containing the information applicable to each provider.

- (a) The application shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:
  - (I) the information required by paragraph 2002(b);
  - (II) a description and a map or GIS boundary file of the specific boundaries that the applicant proposes to change;

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[indicates omission of unaffected rules]

#### **2148. Process for the Establishment of Annual Emergency Telephone Charge Threshold, State 9-1-1 Surcharge Rate, Wireless Prepaid 9-1-1 Surcharge Rate, and Associated Fund Distribution Schedules.**

- (a) On or before August 1 of each year, the Commission shall initiate a proceeding to be concluded on or before October 1 to establish the emergency telephone charge threshold, a statewide 9-1-1 surcharge, a wireless prepaid 9-1-1 charge, a distribution schedule for the funds raised by the state 9-1-1 surcharge, and a distribution schedule for the funds raised by the wireless prepaid 9-1-1 charge for the following calendar year.
  - (I) The emergency telephone charge threshold:
    - (A) shall take into account inflation through the consideration of historical data and future projections; and

- (B) shall take into account the needs of governing bodies through the consideration of historical data, inflation rates, the rate of increase of the average emergency telephone charge, comments provided under this rule, and other factors the Commission deems relevant.
- (II) The 9-1-1 surcharge:
- (A) shall not exceed fifty cents per month per 9-1-1 access connection;
  - (B) shall be calculated to meet the needs of governing bodies to pay for basic emergency service and provide emergency telephone service by considering historical data, costs to the 9-1-1 governing body of BES tariffs, comments provided under this rule, and other factors the Commission deems relevant;
  - (C) shall include, without limitation, the amount of the 9-1-1 enterprise fee imposed by the 9-1-1 Service Enterprise pursuant to § 29-11-108(8)(a), C.R.S., and an amount necessary to reimburse the governing bodies for the most recently approved improvement amount as described in subparagraph 2137(e)(II); and
  - (D) shall be uniform, regardless of the technology used to provide the 9-1-1 access connection.
- (III) The wireless prepaid 9-1-1 charge shall be calculated by determining the average of all local emergency telephone charges as they existed on July 1 of that year plus the amount of the statewide 9-1-1 surcharge established by the Commission for the upcoming year.
- (IV) The distribution schedule for the funds raised by the state 9-1-1 surcharge, excluding the 9-1-1 enterprise fee funds to be transmitted to the 9-1-1 enterprise services cash fund created pursuant to § 29-11-108(10)(a), C.R.S., shall be based on the number of concurrent sessions at all of the PSAPs associated with a governing body as a percentage of the total number of concurrent sessions statewide.
- (V) The distribution schedule for the funds raised by wireless prepaid 9-1-1 charge shall be based on the wireless 9-1-1 call volume at all of the PSAPs associated with a governing body as a percentage of the total number of wireless 9-1-1 calls received by all PSAPs statewide.
- (b) The decision initiating this proceeding shall be accompanied by proposed amounts and distribution schedules as described in (a) (I) through (V) for comment.
  - (c) The wireless prepaid 9-1-1 charge rate and wireless prepaid 9-1-1 distribution schedule shall be transmitted to the Colorado Department of Revenue on or before October 1.
  - (d) The new rates and distribution schedules established by this proceeding shall take effect on the following January 1.

[indicates omission of unaffected rules]

**2150. Administration of the 9-1-1 Surcharge Trust Cash Fund.**

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[indicates omission of unaffected rules]

- (f) From the remittances of the 9-1-1 surcharges received by the Commission pursuant to this section, the portions comprised of the 9-1-1 enterprise fees as described in § 29-11-108(8)(a), C.R.S., shall be transmitted to the 9-1-1 services enterprise cash fund created pursuant to § 29-11-108(10)(a), C.R.S.
- (g) All remittances of 9-1-1 surcharges, excluding the amounts from them as described in paragraph (f) and transmitted to the 9-1-1 enterprise service cash fund created pursuant to § 29-11-108(8)(a), C.R.S., shall be deposited in the 9-1-1 surcharge trust cash fund established pursuant to § 29-11-102.3(3)(c)(I), C.R.S.

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[indicates omission of unaffected rules]

**2184. Application for Designation as an Additional Provider of Last Resort.**

- (a) A provider of basic local exchange service seeking designation as an additional POLR shall file an application with the Commission requesting designation as such for a specific geographic area in which it receives HCSM.
- (b) The application shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:
  - (I) the information required by paragraph 2002(b);
  - (II) a description of the geographic area for which applicant seeks designation as a POLR including a description of such geographic area and a map displaying the service area or GIS boundary file;

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[indicates omission of unaffected rules]

**2187. Eligible Telecommunications Carrier Designation.**

- (a) The Commission shall, upon application, designate a common carrier that meets the requirements of 47 C.F.R. § 54.201(d) and § 54.202 and paragraph 2187(b) as an ETC for a service area designated by the Commission.
- (b) Upon request and consistent with the public interest, convenience, and necessity, the Commission may, in the case of an area served by a rural telecommunications provider, and

shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission, so long as each additional requesting carrier meets the requirements of 47 C.F.R. § 54.201(d) and § 54.202. Before designating an additional ETC for an area served by a rural telecommunications provider, the Commission shall find that the designation is in the public interest.

- (c) Pursuant to Subpart E of 47 C.F.R., Part 54, as of January 27, 2015, all ETCs shall make available Lifeline service, as defined in § 54.401, to qualifying low-income customers.
- (d) The application for designation as an ETC shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:
  - (I) the information required by paragraph 2002(b);
  - (II) a description of the service area for which the applicant seeks designation as an ETC. The application shall include either a description of such service area by zip codes, census blocks, coverage map, GIS boundary file, or the underlying carrier's exchange area map displaying the applicant's service area;

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[indicates omission of unaffected rules]

#### **2841. Definitions.**

The following definitions apply only in the context of rules 2840 through 2869:

- (a) "Administrator" means the Commission, or a designee employed by the Commission, pursuant to § 40-15-208(3), C.R.S., that performs the administrative functions of the HCSM under the direction of the Commission.
- (b) "Broadband deployment account" means the account held by the Commission for broadband deployment purposes consistent with § 24-37.5-905(2)(b)(I), C.R.S.
- (c) "Broadband network" has the same meaning as set forth in § 40-15-102(3.7), C.R.S.
- (d) "Colorado broadband office" or "office" means the entity created by § 24-37.5-903, C.R.S. for, among other purposes, administration of the broadband deployment grant program as described in § 24-37.5-905, C.R.S.
- (e) "Colorado High Cost Administration Fund" (Fund) means the fund created in the state treasury for the purpose of reimbursing the Commission acting as Administrator for its expenses incurred in the administration of the HCSM.
- (f) "Geographic area" means a Commission-defined area of land which can be smaller than an incumbent provider's wire center serving area included wholly within the incumbent's wire center boundaries.

- (g) "Geographic support area" means a geographic area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the HCSCM.
- (h) "High Cost Support Mechanism" (HCSCM) means the mechanism created by Colorado statute for the support of universal service for basic local exchange service within a rural Colorado, high-cost geographic support area and provide access to broadband service in unserved areas pursuant to §§ 40-15-208 and 24-37.5-905, C.R.S.
- (i) "Intrastate proxy cost" means that portion of proxy cost that is jurisdictionally applicable to the provision of intrastate supported services. Pursuant to § 40-15-108, C.R.S., the intrastate proxy cost is produced by applying the separation factors of 47 C.F.R., Part 36, to the estimated investments and expenses produced by the Commission approved Proxy Cost Model.
- (j) "Proxy cost" means a per access line estimate of the cost required to compensate a provider for the provisioning of specific supported services and features based upon the level of investment calculated by the Commission-approved Proxy Cost Model.
- (k) "Proxy cost model" means a model which produces a per access line estimate of the reasonable, required level of investment and expenses in a particular geographic area (i.e., wire center basis) for a defined set of telephone services and features assuming least-cost efficient engineering and design criteria and technology-neutral deployment of current state-of-the-art technology, and using the current local exchange network topology and the total number of access lines in each area.
- (l) "Retail revenues" means the gross revenues associated with contribution levels to the HCSCM from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services may include, but are not limited to, all types of local exchange service; non-basic, vertical, or discretionary services, also known as advanced features, such as call waiting, call forwarding, and caller identification, or premium services such as voicemail; listing services; directory assistance service; wireless and other cellular telephone and paging services; mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll free service; 900 service and other informational services; toll service; private line service; special access service; special arrangements; special assemblies; CENTREX, Centron, and Centron-like services; ISDN, IAD and other multi-line services; video and/or teleconferencing services; satellite telecommunications service; the resale of intrastate telecommunications services; payphone services; any services regulated by the Commission under § 40-15-305(2), C.R.S.; and such other services as the Commission may by order designate from time to time as equivalent or similar to the services listed above. Revenues associated with the sale of video services other than video conferencing identified in § 40-15-401(1)(a), C.R.S., shall not be considered a part of retail revenues associated with contribution levels.

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[indicates omission of unaffected rules]

**2846. Support through the HCSM.**

- (a) The Commission shall, by order, establish geographic areas throughout the state. Such geographic areas may be revised at the discretion of the Commission.
- (b) HCSM support amounts shall be provided consistent with prior Commission orders. Support shall be allocated and provided on a quarterly basis and by the end of the month following the previous quarter.
  - (I) Each rural telecommunications provider, both wireline and wireless, that received support as of January 1, 2017, will continue to receive the same level of support on a quarterly basis in each subsequent year by averaging the payments received for calendar years 2015 and 2016, consistent with § 40-15-208(4), C.R.S.
  - (II) The Commission shall allocate to the broadband deployment account 100 percent of the total amount of HCSM money collected minus the Commission's administrative costs and distributions to rural telecommunications providers, both wireline and wireless, consistent with § 40-15-208(2)(a)(IV), C.R.S. and subparagraph 2846(b)(I).
- (c) The Administrator will arrange payments to be made within 30 days of the last day of each quarter.
- (d) Distributions of HCSM shall not be based on effective competition determinations as defined by rule 2205 or § 40-15-207, C.R.S.

**2847. Administration.**

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[indicates omission of unaffected rules]

- (k) A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with § 24-1-136, C.R.S., by December 1 of each year. A copy of the Administrator's annual report of the HCSM shall be provided to the Legislative Audit Committee and posted on the Commission's website. The report shall account for the operation of the HCSM during the preceding calendar year and include the following information, at a minimum:
  - (I) the total amount of money the Commission collected through a rate element assessment collected by each provider for which distributions were made;
  - (II) the total amount of money distributed to each provider and to the broadband deployment account from the HCSM;
  - (III) the basis on which the distribution to providers was calculated;

- (IV) as to each provider receiving a distribution, the amount received by geographic support area and the type of customer, the way in which the benefit of the distribution was applied or accounted for; and
- (V) the estimated contributions to be collected through a rate element assessment by each telecommunications provider, and the proposed total amount of the HCSM from which distributions are to be made for the following calendar year.

**2850. Net Neutrality Violation.**

- (a) The Colorado broadband office shall file a petition pursuant to the Commission's Rules of Practice and Procedure 4 CCR 723-1-1304(i) requesting that the Commission initiate a proceeding and issue a written order pursuant to §§ 40-15-209(2)(a) and 24-37.5-905, C.R.S., and notifying the Commission that the office has determined that:
  - (I) a federal agency has issued a final order or entered into a settlement or consent decree regarding, or a court of competent jurisdiction has issued a final judgment against, an internet service provider;
  - (II) the order, settlement consent decree or judgment concludes that the internet service provider has engaged in a net neutrality violation specified in § 40-15-209 (1)(a) through (d), C.R.S.;
  - (III) the internet service provider is not otherwise exempt according to §40-15-209 (3), C.R.S.; and
  - (IV) the internet service provider should be required to fully refund any money that the internet service provider received in the twenty-four months preceding the office's determination from the high cost support mechanism pursuant to a grant awarded by the office under § 24-37.5-905, C.R.S.
- (b) A petition filed by the office pursuant to this rule must include at least the following information:
  - (I) federal agency final order, settlement and consent decree or final judgment from a court of competent jurisdiction and any supporting documentation used by the office to determine the net neutrality violation;
  - (II) documentation of the final determination by the office that the final order, decree, or judgment that the internet service provider engaged in conduct specified in § 40-15-209(1)(a) through (d);
  - (III) affirmation supported by an affidavit or in the final office determination attesting that the office determined exceptions specified in § 40-15-209(3) are inapplicable;
  - (IV) certification of the effective date for the office's final determination;
  - (V) itemized grant award amounts paid to the internet service provider for the 24 months preceding the office's final determination and documentation demonstrating that the payments were made to the internet service provider; and

- (VI) any additional information the office finds relevant.
- (c) The office shall be a necessary party in any proceeding confirming that the office made a decision pursuant to § 40-15-209(2)(a), C.R.S., and that it determined no exceptions apply to the violating activity, and requesting that the Commission fully refund any money that the internet service provider received in the 24 months preceding the office's determination.
- (d) Through proceedings under this rule, the Commission shall confirm that the office made determinations set forth in paragraph (a) of this rule. Upon such confirmation, the Commission shall issue a written order directing the internet service provider to fully refund any money that the internet service provider received in the 24 months preceding the office's determination from the HCSM pursuant to a grant awarded by the office under § 24-37.5-905, C.R.S.
- (e) Any final Commission decision under this rule 2850 shall:
  - (I) include an itemized statement of the amount of money that the internet service provider is required to refund and instructions on how to refund the money; and
  - (II) instruct the HCSM administrator and the third party contractor to return the money to the HCSM account dedicated to broadband deployment.
- (f) An internet service provider required to refund HCSM funding caused by a net neutrality violation pursuant to § 40-15-209, C.R.S. is not relieved of any provider-of-last resort obligations.