

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-191T

IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST
SUPPORT MECHANISM REGULATIONS 723-2.

**ORDER ADOPTING COLORADO HIGH COST SUPPORT
MECHANISM RULES**

Mailed Date: March 3, 2011

Adopted Date: January 6, 2011

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I. BY THE COMMISSION

A. Statement

1. Through this rulemaking proceeding, the Colorado Public Utilities Commission (Commission) has re-examined the Colorado High Cost Support Mechanism (HCSM) Rules set forth in our Rules Regulating Telecommunications Providers, Services, and Products,

4 *Colorado Code of Regulations* 723-2. The basis and purpose of this undertaking is to re-examine the HCSM Rules themselves and to accommodate new industry trends, changes in the federal Universal Service Fund (USF) program, and recent dockets that have directly implicated the HCSM Rules. It is apparent that certain developments in the telecommunications industry and potential statutory changes may impact the processes used to carry out the HCSM. More specifically, these developments suggest a need to transition the structure and scope of the HCSM in anticipation of broadband and access reform.

2. The HCSM and its predecessor were originally established so that telecommunications services would be provided with circuit-switched technology. The industry, however, is migrating to internet protocol architecture. With this new technology, consumer expectations and choices such as broadband and wireless services have created the need to re-examine the HCSM and its sustainability. In addition, the industry trend to reform switched access pricing will result in increases in the local exchange rates and/or changes in subsidy funding. Colorado has yet to undertake access reform. Therefore, the Commission believes it is important to position the HCSM in anticipation of these transitions to new technologies and access reform.

3. Currently, HCSM support levels are based on the cost of making basic telecommunications service available even though consumers are migrating to new services enabled by new technology that is not dependent on access lines. The level of HCSM support an Eligible Provider of telecommunications services receives is directly tied to the number of residential and business lines or wireless handsets it serves. Therefore, under the existing rules, carriers' per-line support increases as the number of access lines decrease. As a result, there is a continuing upward pressure on the fund as access lines continue to decrease, providing another motivation to examine the HCSM Rules.

B. Procedural Background

4. In 2005, the Commission opened an investigatory docket (Docket No. 05I-431T) for the purpose of examining the HCSM. Seven workshops were conducted in which interested persons discussed in detail their views on issues. An Administrative Law Judge that attended the workshops issued a report on July 11, 2008 (*see* Decision No.. R08-0719-I) to the Commission that outlined the discussions that took place during the workshops.

5. Later in 2008, the Commission opened a rulemaking docket to comprehensively examine the HCSM Rules. Docket No. 08R-476T was terminated in 2009 by operation of law due to rules not being adopted within 180 days after the last public hearing in the matter. This docket was then opened to address the matters discussed above.

6. On April 14, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) by Decision No. C10-0325 setting forth proposed changes in regards to the process used to implement and the provisions of the HCSM. A copy of the proposed rules was included in the NOPR. The NOPR was published in the April 25, 2010, edition of *The Colorado Register*.

7. The Commission issued a Supplemental Notice of Proposed Rulemaking on June 22, 2010 by Decision No. C10-0636 for the purpose of resetting the hearing date based upon a written request joined by several interest persons.

8. The Commission held its originally scheduled June 28, 2010 hearing to clarify that the hearings had been renoticed and reset. The Commission stated that it would receive comments on June 28, 2010 from persons who could not attend. No persons presented oral comments on June 28, 2010.

9. Opening written comments were filed by Commnet Wireless, LLC (Commnet); Progressive 15; Action 22, Inc. (Action 22); Verizon and Verizon Wireless (collectively,

Verizon)¹; Colorado Telecommunications Association, Inc. (CTA); Comcast Phone of Colorado, LLC, doing business as Comcast Digital Phone; the Colorado Office of Consumer Counsel (OCC); Qwest Corporation (Qwest); N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero).

10. Reply comments were filed by Plains Cooperative Telephone Association, Inc. jointly with the Wiggins Telephone Association; Qwest; CTA; Verizon; OCC; and Viaero.

11. Closing Comments were filed by Verizon, Qwest, CTA, OCC and Viaero.

12. The Commission held hearings on the rules proposed in the NOPR on September 27 and 28, 2010. After receiving oral comments by all persons wishing to give summaries of their respective positions, the Commission directed the formation of “panels” for the parties to present their positions on six thematic areas. The panels addressed: whether the rulemaking should go forward; whether Voice Over Internet Protocol (VoIP) providers should be required to contribute to the HCSM; which access lines should receive HCSM support; whether to repeal the identical support rule for competitive eligible providers; whether to implement a statewide benchmark rate for calculating HCSM support; how/what revenues should be included in calculating HCSM support; what are the appropriate reporting requirements so as to justify the receipt of a certain level of HCSM support; and should the Commission impose a one-year build-out requirement. Each party presented its positions, which positions are summarized in the Discussions and Findings below.

¹ As explained by Verizon, its filing is being made by the following Verizon wireline entities: MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; TTI National Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA; Verizon Select Services Inc.; NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions; and Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance. Similarly, Verizon Wireless refers more particularly to Verizon Wireless (VAW) LLC d/b/a Verizon Wireless.

13. A Commissioners' deliberation meeting was held on December 28, 2010, to discuss the proposed rules, which proposed rules had been drafted to support only residential lines and to set forth changes in revenue and cost calculations. However, during the rulemaking proceeding several alternative proposals to modify the HCSM were presented that would result in fewer specific rule changes. These alternative proposals sparked discussion among the Commissioners at their deliberation meeting, which discussion produced additional alternative proposals. To provide an opportunity for analysis and consideration of these alternative proposals, the Commissioners held a second deliberation meeting on January 6, 2011 at which Staff presented an analysis of the potential impact these proposals, if implemented, would have to the HCSM and its fund. These proposals, which are discussed below, offered an overall reduction of support in lieu of certain specific rule modifications. We have considered these proposals in determining which proposed rule changes to adopt.

C. Discussions And Findings Related To Thematic Areas

1. Should The Rulemaking Move Forward?

14. CTA, Viaero and Qwest filed comments asking the Commission to delay the rulemaking pending action by the Federal Communications Commission (FCC) on its National Broadband Plan (NBP) and USF reform. Qwest believes the NOPR fails to identify any specific statutory changes or other developments that will impact the process used to implement the HCSM (Qwest Initial Comments at 6). Viaero states that there is no evidence that the costs of the CHCSM, or by extension the level of the contribution rate element, is at such a level as to be either unsustainable or to represent a burden to consumers (Viaero Initial Comments at 3). Viaero further states that without a long term mission statement in place, it is difficult to know whether a proposed rule change represents a step forward or two steps backward (Viaero Initial Comments at 5). In its closing comments, CTA largely agrees with Viaero that the Commission

should expand this proceeding or establish a separate one “to examine the steps that need to be taken and to establish a timeline to transition the existing HCSM from a support mechanism that underpins high cost rural multi-use networks to a support mechanism that assists in the deployment of broadband service to high-cost rural areas” (CTA Closing Comments at 3). CTA had also hoped that intrastate access charge reform could be accomplished in this docket as it believes there is a clear linkage between access charge reform and the NBP. Progressive 15 and Action 22 are concerned about changes that would impact the ability of rural customers to have access to affordable telecommunications service.

15. In contrast, the OCC and Verizon are opposed to delaying this rulemaking. Verizon believes that, if the Commission does not eliminate the fund entirely, the HCSM must be reformed and reduced. Verizon believes that because end users have multiple service alternatives available at competitive prices, the traditional assumption that subsidies generated from other services are needed to keep residential rates artificially low may no longer be valid (Verizon Initial Comments at 3). Verizon further states that because universal service goals have been effectively satisfied through market forces, supplemental state universal service support is unnecessary. The OCC believes that proposed rule changes are necessary to reduce the size of the fund so all consumers can afford basic telecommunications services. The OCC states that the rulemaking procedures have had a “gestation period of over five years starting with the investigation docket” (OCC Closing Comments at 5). In addition, the OCC cites the Telephone Advisory Group (TAG) discussions around the transitioning of telecommunications to a more competitive environment that mitigates or obviates the need for HCSM subsidies as it relates to the statutory mandates contained in §§ 40-15-208 and 40-15-502, C.R.S. (OCC Closing Comments at 3-4). Further, the OCC “recommends that the Commission, in its efforts to

significantly reduce the size of the HCSM, should globally consider that the effect of § 40-15-502(3)(b)(I) and (I.5)(A)-(D), C.R.S. in the setting of a provider's maximum price cap expressly includes the recovery of a provider's residential basic service costs under § 40-15-502(3)(b)(I) and (I.5)(A), C.R.S. Thus, when a provider's residential basic service rates are increased under its maximum price cap, there should be a corresponding decrease in HCSM support for such residential basic service access lines" (OCC Initial Comments at 2).

16. The Commission finds that the rulemaking should move forward to the adoption of new rules. The FCC NBP is currently undergoing a series of comment cycles and, no matter the outcome, the NBP will likely be tied up in appellate litigation for many years to come. The Commission initiated this rulemaking reform over five years ago and the FCC has yet to issue an order on USF reform. Thus, waiting for clear direction from the FCC would prevent this Commission from acting on its own volition in a timely manner to address the size and purpose of the HCSM in light of the current impact on it of technological advances, proposed statutory changes to Colorado law and the potential for access reform. Therefore, we believe it is preferable to move forward even if we will need to revisit these rules in the future to account for the final resolution of the FCC's proposed NBP.

2. Rule 2856 - Mechanical Changes To The Rules Versus Other Approaches To Modify The Size Of The Fund

17. As an alternative to many of the proposed rule changes, such as modifying the types or number of lines or handsets from which the support level is calculated, Viaero proposed a simpler solution: each wire center that is eligible for support in the amount of \$10 or below should not get support. The OCC supports Viaero's \$10.00 proposal as an addition to, and not an alternative to, the rule changes proposed by the Commission or the OCC's primary line/primary carrier restriction (OCC Closing Comments at 22-25). On the other hand, Qwest contends that

Viaero's \$10.00 proposal is unfounded and inequitable; however, this opposition must be viewed in the context that Qwest generally opposes any change to the HCSM that would reduce the size of its draw. In addition and in light of Viaero's suggestion, the Commission posited several alternative proposals throughout the rulemaking proceedings that would modify the fund through a reduction in the per line cost support on either a dollar basis or percentage basis.

18. The Commission finds that the HCSM in its present form, with its current funding levels, is not sustainable with the legislative and/or regulatory changes that are evolving at the federal and state level. There will be continued upward pressure on the HCSM fund as access lines decrease and the need to implement access charge reform advances. There will also be continued upward pressure on the HCSM fund with the need to transition to broadband support. Using the Viaero proposal as a starting point, the Commission adopts a phase-down approach to the HCSM. We find that a phase down approach more equitably re-sizes the HCSM fund than Viaero's \$10 proposal. By adopting a phase-down approach to modifying the fund, the Commission finds that the per line cost support, revenue benchmarks, reporting requirements and extraordinary circumstance rules are impacted.

19. To provide time for the affected telecommunications carriers the ability to anticipate the impact of these rule changes on their respective levels of high cost funding, we will not implement this phase-down immediately; rather it shall commence in 2012. We find that the following phase-down should be adopted -- in 2012 the monthly per line support for all carriers receiving high cost support will be reduced by \$1.00. This reduction will be applied to both residential and business line and wireless handset high cost support. Then, for each of the next five years (2013 through 2017), the monthly per line support for all carriers receiving high

cost support will be reduced by an additional \$2.00 each year. These rule changes are reflected in Rule 2856, discussed below.

20. The Commission finds that its adopted phase-down approach should reduce the size of the HCSM fund without crippling any sector of the Colorado telecommunications industry, while at the same time providing significant assistance to telecommunications carriers in the high cost areas they serve. The phase-down approach therefore continues to carry out the 1995 declaration of the General Assembly that “[t]he rural nature of Colorado requires that special rules and support mechanisms be adopted to achieve the goal of ensuring that universal basic local exchange service be available to all residents of the state at reasonable rates.” Section 40-15-501(1)(d), C.R.S. This approach also does so in a manner that is as equitable, nondiscriminatory and competitively neutral as the existing HCSM Rules. Importantly, the HCSM fund, as phased-down by the rules we adopt here will better position this state and its telecommunications carriers to implement the significant impacts that will result upon the final adoption of access reform and some form of a NBP.

3. Rules 2845 And 2855 - Setting Of A Statewide Affordable Residential And Business Rate

21. CTA, OCC, Verizon, and Qwest believe that the Commission should set an affordable residential and business rate for purposes of determining the level of HCSM support. If a statewide benchmark rate were to be adopted it would have the effect of imputing a rate for those providers charging less than the benchmark rate. However, there is little agreement concerning the exact level of the benchmark rate or whether it should be a single rate applicable on a statewide basis. Viaero did not comment on this issue.

22. CTA advocates a single unified benchmark rate be used for both residential and business service. Of the various alternative proposals discussed, CTA believes the adoption of a

reasonable statewide benchmark is the best available choice. CTA suggests the benchmark should either be the current average statewide local service rate of \$16.53 or that established by the Commission in Docket No. 08A-403T, which rate is \$17.00. CTA proposed a definition for “rate benchmark” be included in the proposed rules (CTA Initial Comments at note 24). CTA also states “Commission Staff has calculated that the actual average rural local exchange statewide rates is \$16.53 which provides further support for the establishment of a residential service benchmark at the ‘affordable’ rate of \$16.53” (CTA Initial Comments at 14 (footnotes omitted)). Regardless of the benchmark rate selected, CTA further contends that companies seeking HCSM funding whose basic local service is below the benchmark should be able to increase their rates to the benchmark without a formal rate case.

23. The OCC endorses a statewide residential benchmark rate that uses Qwest’s prevailing rate plus a percentage of 15% or 30% above that rate (OCC Closing Comments at 9). Further, the OCC states: “Simply stated, it is not fair, just or reasonable for one set of ratepayers (i.e., urban and suburban ratepayers) to pay additional or higher CHCSM surcharges on their monthly telephone bill to subsidize below statewide average basic local exchange service rates in high cost serving areas for rural ILECs and their customers” (OCC Initial Comments at 29). The OCC states that given Qwest’s status as the primary business line provider, the Commission should refrain from establishing a benchmark higher than Qwest’s business rates (OCC Initial Comments at 28).

24. Verizon’s advocacy is that if the Commission is unwilling to use the national average or the highest rate currently approved in Colorado, the Commission should use the FCC’s safe harbor rate to determine an affordable rate (Verizon Initial Comments at 14).

25. Qwest supports a company-specific rate, *e.g.*, a rate that a company can actually charge as opposed to a rate than must be imputed. Qwest proposes company-specific benchmarks because the Commission currently sets maximum allowable rates for individual companies (Qwest Initial Comments at 21).

26. All parties commenting on this issue support the adoption of a benchmark rate. The Commission believes that CTA's approach on this issue is the most compelling and we will use it as our guide. Based on the most recently available data, the statewide average rate for residential stand alone service is \$16.59, while the business rate is \$24.21. The weighted statewide average rate is \$16.84 for residential service and for business the rate is \$34.89.² The lowest residential and business rates charged by basic local exchange providers are \$11.77 and \$14.09, respectively. Likewise, the highest residential rate charged by a basic local exchange provider is \$29.98 and the business rate is \$39.98 per month. Both of the highest rates were deemed just, reasonable and in the public interest in previous proceedings conducted by the Commission. While we still believe those high rates were warranted and we believe that setting the statewide rates at the highest rates in the state may be feasible, we will not adopt benchmark rates at these levels at this juncture, but may reexamine this issue at a later date.

27. We agree with the OCC in that setting the statewide benchmark for either residential or business lines below the statewide average rate will lead to HCSM subsidies on a per access line basis greater than necessary (OCC Initial Comments at 29). Because of the other changes to the HCSM Rules that we are adopting here that should reduce the size of the HCSM fund, we do not find it necessary to set the residential benchmark 15-30% higher than the statewide average as advocated by the OCC. We also agree with the OCC that as Qwest is the

² The Staff used the 2007 ILEC Statistical report, updated with rate changes and 2009 access line counts to arrive at these rates.

primary business line provider in Colorado by an overwhelming margin, it is ill-advised to set a business benchmark rate above Qwest's business rate. As such, CTA's suggestion to set one rate (e.g., \$17.00) as the benchmark for both residential and business lines, when the rate applicable to the very vast majority of Colorado's business customers are charged double that rate, will not be adopted.

28. We therefore conclude that the statewide affordable residential benchmark rate for 2012 should be set at \$17.00, and the statewide affordable business rate for 2012 should be set at \$35.02. Both of these rates are above the statewide average rate and the statewide weighted average rate and, therefore, the adoption of these benchmarks will not increase the subsidization of basic local exchange service in high cost areas.

29. Carriers submitting applications for high cost funding in 2011 should utilize the 2012 residential and business rate benchmarks. Further, if a local exchange carrier has tariff rates higher than the benchmark rate we are adopting, then the local exchange carrier shall use its tariffed rate instead of the statewide benchmark rate. The affected Rules 2845 and 2855 are discussed in more specificity below.

4. Rule 2857 - Requirement Of Extraordinary Circumstances (Large Investment) To Qualify For Resetting Of HCSM Support

30. In our proposed rules (Rule 2857), we put out for comment the notion that eligibility for an initial or reset level of HCSM support after December 31, 2010 would require the demonstration by the petitioning telecommunications service provider of "extraordinary circumstances." The heart of this proposed rule was to establish the requirement that the request to reset the current HCSM support level be supported by evidence that EP made a "large investment" necessary to continue to provide basic local exchange service within its certificated territory, which investment was not accounted for in a previous filing.

31. CTA strongly opposed the proposed rule on the ground that it was a *de facto* HCSM cap and that no petitioner would ever be likely to meet the “extraordinary circumstances” requirements of the proposed rule (CTA Opening Comments at 23-25). CTA also believes that the rule as proposed would violate § 40-15-208(2)(a), C.R.S. and the Commission’s lack of authority to impose a cap (CTA Initial Comments page 24). Qwest did not specifically comment but submitted draft rules where it deleted the proposed rule. The OCC, Verizon and Viaero did not comment on this rule.

32. The Commission finds that the extraordinary circumstance rule should be adopted, in part. Adoption of such a rule is a necessary complement to our decision to phase-down the level of high cost support by fixed dollar increments over the next six years. We limit the applicability of the “extraordinary circumstance” requirement to those carriers already receiving HCSM support that submit applications for additional high cost funding. Carriers submitting applications for their initial HCSM support will not be subject to the extraordinary circumstance rule. Further, if a carrier currently receiving HCSM support submits a petition for HCSM support associated with a new service territory for which it is not presently receiving support, the petition will be treated as an initial request for funding. The Commission discerns no legal impediment to its authority to set a higher threshold for petitions to reset the level of HCSM support currently enjoyed by a telecommunications provider when territory expansion is not at issue. Thus, our authority to adopt Rule 2857 is grounded in our broad policymaking authority.

33. Based on our phase-down approach, we find it appropriate to have in place a “backstop” so providers will not continually file to reset their HCSM support simply because their support is being phased down. We adopt the extraordinary circumstance provision to carry

out this backstop, yet allow telecommunications carriers that have made an extraordinary investment in their network such as cable and wire, central office, and transmission systems to seek a change to their HCSM support. This requirement, therefore, does not impose a heightened burden of proof on the carriers, nor does it transform a request for increased HCSM support into a rate case, as CTA proffers. We believe that carriers that have made a significant investment in their network that has not been considered before will have the same opportunity as they have today to seek reimbursement.

5. Rule 2188 - Carriers That Receive ETC/EP Designation Shall Start Offering The Supported Service And Request Funding Within One Year Of Receiving Designation Or Their Designation Becomes Null And Void

34. The proposed rule language requires eligible telecommunications carriers/eligible providers (ETCs/EPs) to request HCSM support within one year of receiving its ETC/EP designation (*see* Rule 2188(h)). OCC supports the new rule and specifically concurs with the insertion of the words “and cancellation” after the word relinquishment in the title of Rule 2188. CTA and Commnet have concerns with the rule as proposed. CTA states that the rule is acceptable to the extent it only applies to newly designated ETCs/EPs and not to existing ETCs/EPs that are not currently receiving HCSM support. Commnet does not have a concern with the proposed rule as long as it clearly requires only the submission of a request for HCSM support and not the actual receipt of funds. Viaero opposes this requirement stating that it would be impossible to build facilities in an entire exchange and is an unrealistically short construction requirement. Viaero urges the Commission to clarify that these proposals are not intended to impose a burdensome and unrealistically short construction requirement.

35. The Commission agrees with the thrust of CTA’s, Viaero’s and Commnet’s recommendations. Thus, we adopt a rule whereby ETCs/EPs must begin offering the supported

services within one year of receiving designation, and we will not adopt the proposed requirement that the ETC/EP must request HCSM support within one year. It would be an unrealistic expectation that a carrier build its network throughout its entire designated service area within the first year of receiving such designation. However, we do not believe that an ETC/EP applicant should receive its designation and then not be committed to serving customers within the service area for which designation was received. Therefore, adopting a rule establishing the requirement that an ETC/EP is qualified, capable and committed to begin offering service within a one-year period is appropriate. This rule applies only to future applicants for ETC/EP designation and does not impact existing providers. Further, the adopted rule is aligned with the Commission's standard requirement that providers receiving a Certificate of Public Convenience and Necessity (CPCN) must offer service and have an effective tariff on file within one year of receiving their CPCN. Adopting this rule ensures that only fully qualified ETCs/EPs capable of and committed to providing the supported services have status.

6. Rule 2187 And Rule 2847 – ETCs/EPs Should Be Required File Reports Demonstrating That Funds Are Being Used For The Intended Purpose And, If A Wireless Carrier, That A Plan With At Least 900 Minutes Of Use Per Month Is Offered

36. The OCC and Verizon support rule modifications that would hold recipients of HCSM funding accountable by eliminating the use of self-certification to demonstrate that funds are being used for the intended purpose. Verizon believes that the Commission must provide its staff the tools to determine the appropriate reimbursable costs for providing local exchange telecommunications service in high cost areas (Verizon Closing Comments at 2). The OCC contends that any reporting requirement without meaningful analysis and review violates § 40-15-201(2)(a)(I) and (II), C.R.S. Verizon believes that the Commission is directed to generally

simplify regulation of rural telecommunication providers³ but that does mean the Commission cannot impose meaningful requirements on carriers. Verizon believes that EPs should be required to report annually the actual dollar amounts expended for supported services, as proposed in Rule 2847(i). According to Verizon, EPs must demonstrate that they operate efficiently (Verizon Initial Comments at 16).

37. On the other hand, CTA, Viaero, and Qwest support rules that permit EP providers to self-certify that the funds received are being used appropriately. According to each of them, to do otherwise would be burdensome and unnecessary. Qwest recommends that the form of affidavit used for the past several years be continued as the requirement for Rule 2187(f) and that telecommunications carriers should not be burdened with the requirements set forth in the proposed rule (Qwest Initial Comments at 20). CTA proffers that the HCSM monitoring report and the annual reports already provide the necessary information to determine continuing HCSM eligibility. CTA believes that new and added reporting requirements for either the receipt of ETC or EP designation are unnecessary in light of the current reporting obligations. In addition, CTA contends that each of its members carries the POLR responsibility and “each rural carrier is entitled to less stringent regulatory treatment than other carriers under Colorado law” (CTA Opening Comments at 19-20). CTA also supports the continuation of the Commission’s current procedures for annual ETC certification, which procedures have been in place for the past two years.

38. Viaero brings yet another perspective to the table. Viaero offers that a map of the underlying carrier’s exchange area is hard to obtain for wireless carriers and suggests the Commission adopt a rule requiring all wireline carriers to submit to the Commission exchange

³ See §40-15-203.5, C.R.S., entitled Simplified Regulation Treatment for Rural Telecommunications Providers.

maps in a consistent format. Reporting requirements such as the build-out plans by wire center is burdensome for wireless carriers due to the fact that its license does not comport to wire center boundaries. Viaero suggests that this Commission should do the same as the FCC's NBP and move away from using wire center boundaries and instead use more traditional census or county boundaries. Finally, Viaero objects to the proposed rule requiring all ETCs/EPs to provide a minimum of 900 minutes of use per month at a rate comparable to the underlying carrier, arguing that regulation of the quantity of service is rate regulation prohibited by 47 U.S.C. § 332(c) and that the FCC has declined to mandate a particular number of minutes of use by any competitive carrier (Viaero Opening Comments at 16).

39. In reviewing the adequacy of the existing procedure, we note that each ETC is currently given a waiver of the reporting rules and self-certifies that the funds are being used for the intended purpose. The Commission finds that the current waiver procedure by which it affords ETCs the opportunity to self certify should cease. We find that the public interest would be better served if there is staff review of ETC/EP documentation before disbursing HCSM funds at the requested levels. We will require ETCs/EPs to submit certain information regarding its network and the use of the high cost support it receives annually.

40. Further, we will adopt a variation of the proposed rule requiring wireless competitors to offer an unlimited local calling plan or at least one plan that consists of at least 900 minutes of use per month. The FCC Report and Order states that an ETC applicant must demonstrate it offers a local usage plan comparable to the one offered by the incumbent LEC and should be considered on a case-by-case basis.⁴ The FCC further states that "although the [Federal Communications] Commission has not set a minimum local usage requirement, there is

⁴ FCC 05-46 Report and Order, released March 17, 2005 at paragraph 34.

nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status." To date, all competitive ETC/EP carriers that have received designation from this Commission have offered a plan with unlimited local usage. We believe the adopted rule will ensure that EPs will make available adequate local usage as a condition precedent to receiving HCSM funding. Viaero's arguments are therefore rejected.

7. Rule 2846 - Interconnected VoIP Providers Should Be Required To Contribute To The HCSM

41. Qwest, OCC, Comcast and Verizon oppose requiring VoIP providers to contribute to the HCSM. Qwest states it is unclear whether VoIP services are properly classified as "telecommunications" services or "information" services. Qwest believes that the Commission should follow the FCC's lead rather than attempt to plow new ground by enacting rules that would likely be challenged (Qwest Initial Comments at 18). OCC opines that VoIP is considered an information service and is exempt from regulation under § 40-15-101, C.R.S. Comcast believes the Commission should be careful not to impose new regulatory requirements on competitive technologies that have traditionally been unregulated by the Commission. Comcast also has concerns with the definition of VoIP because it is broader and inconsistent with § 29-11-101(4.3), C.R.S. The OCC also believes that the inclusion of VoIP funding and potential distribution could also expand the size of the fund contrary to the Commission's intent. Comcast believes that because their interconnected VoIP service is considered an "information service", state regulation is preempted (Comcast Initial Comments at 5). Verizon submitted draft rules where it deleted the proposed rule requiring VoIP providers to contribute to the HCSM.

42. On the other hand, CTA supports a rules requiring VoIP providers to pay into the HCSM fund. CTA believes that the contribution base for the HCSM should be as broad as possible and include all carriers regardless of the technology employed to serve customers.

43. The Commission will not adopt its proposed rule but may revisit this issue if or when a transition to broadband or access reform is initiated. The Commission continues to believe that any VoIP provider that receives a Certificate of Public Convenience (CPCN) should contribute to the HCSM fund. Currently, interconnected VoIP providers pay into the federal USF fund and most recently the FCC, in a Declaratory Ruling released November 5, 2010, ruled that states may require nomadic VoIP service providers to contribute to state universal service funds. The FCC cites policy outlined in 47 U.S.C. § 254(b) that contributions should be equitable and nondiscriminatory. Likewise, § 40-15-208(2)(a), C.R.S., provides that the HCSM shall be supported and distributed equitably and on a nondiscriminatory competitively neutral basis. Because the Commission has modified the size of the fund by adopting a phase down approach instead of making specific rule changes, the Commission will not adopt this rule at this time.

8. Rule 2848 - The Identical Support Rule Should Be Retained

44. Viaero supports the current identical support rule. According to Viaero, cost studies are expensive and would have a negative impact on the EP's ability to build-out and operate its network. Further, regulators would have a difficult time determining the validity of certain costs (*e.g.*, whether they are used and useful). Viaero recommends that a Commission-approved level of support would be appropriate and would allow carriers to compete for that support and for customers. Viaero urges the Commission to reject the proposed "Own Cost Option" in proposed Rule 2848(e)(IV) as "it would be unfair to cap support to a carrier trying to

build a network, while providing uncapped support to a carrier with a mature network and therefore less of a need for support to invest in new facilities” (Viaero Initial Comments at 19).

45. CTA, OCC, Qwest, Verizon and Comcast support elimination of the identical support rule. CTA advocates that all qualifying EPs should have POLR obligations and receive HCSM funding based upon their own costs. Further, CTA is concerned that if the “option two” proposed Rule 2848(e)(IV) (this proposed rule provides that eligible providers will receive the lowest support calculated for that high cost area) were adopted, it would effectively revive the identical support standard. Comcast supports the repeal of the identical cost rule because competitive ETC costs are likely to be different than those of incumbents. The OCC states, and Verizon concurs, that the identical support rule violates § 40-15-208(2)(a)(I), C.R.S. Further, the OCC argues that all USF support should be included, as well as all roaming revenues, and that expenses should be excluded. Qwest states that continuing the identical support rule could result in a windfall for competitive ETCs. Qwest believes that the Commission should require high-cost support be provided to competitive EPs based on their own costs of providing service or the use of a forward-looking model to determine the cost of the landline or wireless technology (Qwest Initial Comments at 16).

46. The Commission finds that competitive EPs should continue to receive support based on the identical support rule. The Commission finds that until an incremental wireless cost study has been developed and fully vetted, it is appropriate to base the high cost support that competitive EPs receive on the identical support rule. The Commission believes that if a competitive EP were to receive HCSM funding based on its own costs, the initial per-line support may be too high until the competitive EP has had sufficient time to establish itself and capture enough customers so as to distribute the per-line support amongst a greater number of

subscribers. Moreover, the competitive EP has little incentive under an “own cost” rule to capture more customers as its actual costs would be fully subsidized by a draw from the HCSM. For these reasons, we are not persuaded that elimination of the current identical support is in the public interest at this time.

9. Rule 2841 - The Proxy Cost (Qwest) Model Should Remain Unchanged And Not Include Revenues From 100% Of Features, UNE Platform, And Relocation

47. The OCC supports the proposal that 100% of feature revenue be included for HCSM calculation purposes. Qwest opposes inclusion of 100% of feature revenues because the feature costs are not included in the HAI model used to determine its support levels. Qwest also believes that inclusion of 100% of feature revenue might be discriminatory as wireless ETCs have always included features as part of their basic service and therefore have essentially been receiving full high cost support for them. Qwest also opposes the inclusion of unbundled network element (UNE) revenues because it contends that to do so would be discriminatory and “is a clear attempt to single out Qwest as no other carrier is required by law to sell UNEs” (Qwest Initial Comments at 22). Lastly, Qwest opposes including relocation surcharge revenue because it does not comport with revenues and cost principles. Verizon believes that the amount of support provided to each rural ILEC should be calculated based on using a market-based approach rather than either a proxy cost model or traditional cost allocation methods and revenue requirement procedures as proposed in Rule 2848(d) (Verizon Initial Comments at 17).

48. The merits of any change to the existing rule have been obviated by our adoption of a phase-down approach to modifying the HCSM Rules. We believe that the effect on the fund of our adopted phase-down approach will be of a sufficient magnitude that a change in the status quo as to the treatment of feature, UNE and relocation surcharge revenues is not warranted.

49. That being said, it is quite likely we would have supported the OCC's recommendation as to feature and UNE revenues had we not decided to adopt the aforementioned phase-down approach. A rule change to include 100% of these revenues in determining the level of HCSM support would be supported by the fact that the rural local exchange carriers already include 100% of their feature revenues in the calculation and feature costs are included in the HAI 5.2 model as discussed in the documentation and the FCC's discussion of the model. On the other hand, we would have supported Qwest as to excluding the relocation surcharge revenues as the HAI model has no assumptions for relocation of facilities caused by either commercial or governmental entities.

50. Finally, the proposed rules also include the provision that federal high cost loop support be included in the calculation. Currently, the rural local exchange carriers must include this federal subsidy in the calculation of their requests for support. Likewise, the Colorado ETCs that are EPs must include the same federal support in determining their need for funding. Currently, Qwest does not receive such support. However, as mentioned above, the FCC is looking at USF reform in the future which may change Qwest's eligibility for high cost loop support. Therefore, Qwest should also include any federal support if, in the future, Qwest receives federal loop support.

10. Rule 2841 - The Proxy Cost Model Should Continue To Use A Separation Factor Of 75% Intrastate And Not Qwest's Actual Separation Factor

51. Qwest opposes using its actual Separation factor that allocates investment and expenses between interstate and intrastate because it believes in a simplified approach of 75%. Qwest states that this factor has been used as an approximation of a composite of all intrastate separations factors since 2001 (Qwest Initial Comments at 20). No other party commented.

52. The merits of any change to the existing rule have been obviated by our adoption of a phase-down approach to modifying the HCSM Rules. We believe that the effect on the fund as a result of the adopted phase-down approach will be of a sufficient magnitude that a change in the status quo as to the Separations Factor used for HSCM purposes is not warranted.

53. However, the Commission is aware that the rural local exchange carriers are required to use their actual Separations factor to allocate investment and expenses between the interstate and intrastate jurisdictions. Qwest's actual Separation factor is approximately 68% as set forth in its FCC ARMIS 43-04 Report. By using the 75% factor for Qwest, the intrastate HCSM is subsidizing interstate costs. We believe that Qwest's receipt of special treatment on this issue should cease and would likely have made this proposed rule change had we not adopted the aforementioned phase-down approach.

11. The Commission Does Not Adopt The OCC'S Proposal To Define "Rural" Versus "Urban"

54. The OCC proposed that the Commission examine the definition of "rural" versus "urban" regarding whether high cost support is "rural" or not. The OCC states that the General Assembly's "direction is clear that the supported area be 'rural'" (OCC's Initial Comments at 15; OCC's Closing Comments at 20). Qwest opposes the OCC's proposal because it contends the HAI cost model objectively determines the level of support.

55. We agree with Qwest in that funding from the HCSM is based first and foremost on costs and not location. The Commission believes that the OCC's request that we invoke a greater emphasis on the word "rural" is somewhat misplaced and that the "urban" versus "rural" issue should be revisited at the time that a new IP (Internet Protocol) cost model can be built and fully vetted. Therefore, the OCC's proposal will not be adopted at this time.

12. The HCSM Should Continue To Support All Residential Access Lines And Handsets

56. Verizon and Comcast support the proposed rule change introduced at Rule 2841 in the definitions stating that the result would potentially reduce the fund and accordingly reduce the surcharge to consumers. Comcast supports the rule change limiting support to a primary residential wireline and primary wireless account because it would reduce the burden on consumers and businesses. Verizon believes that in a geographic area where a household may obtain services from multiple ETCs, only one line should be supported. Verizon also states that high cost support should be available only for residential lines because rates for business services are not subject by law to Commission-approved maximum rates, as residential rates are, and thus additional funding support is inappropriate (Verizon Initial Comments at 12). The OCC advocated for another option whereby support should be limited to only a single subscriber because universal basic service is achieved with one access line per household.

57. CTA, Qwest and Viaero oppose this rule change and want all residential and business lines supported. Viaero opposes this “short term” solution and states that the amount of support received directly influences the rate at which infrastructure is constructed and will harm rural citizens by “retarding the rate of future expansion” (Viaero’s Initial Comments at 12). Viaero further states that if its support was cut, its build out plan would be reduced accordingly (Initial Comments at 12). Qwest states that eliminating business lines from support is ill conceived and contrary to the statutory definition of basic service that includes business lines (*see* § 40-15-502(3), C.R.S.) (Qwest Initial Comments at 11). Qwest believes that if a primary line limitation is implemented it should apply only to residential lines. However, Qwest also states its belief that it would be exceedingly difficult to administer a primary line concept where multiple EPs are serving the same high cost area (Qwest Initial Comments at 14). Qwest also

believes that since wireless carriers do not distinguish between business and residential lines, the elimination of support for business lines would unfairly discriminate against wireline business lines (Qwest Initial Comments at 12). CTA opposes any restriction to a single line and elimination of support for business lines. CTA argues that the General Assembly has not empowered the Commission to cap the fund and states, “The Commission proposes here to exercise legislative powers which it does not possess”. (CTA’s Initial Comments at 21). CTA further states “Nowhere in the law pertaining to the HCSM is there a grant of legislative authority to the Commission to limit, restrict or cap the flow of HCSM support once a carrier has demonstrated HCSM eligibility (CTA Initial Comments at 21). CTA also believes that if the POLR (Provider of Last Resort) requirement is retained, then for those carriers that have the POLR designation they should continue to be provided support for all lines.

58. Having determined that the aforementioned phase-down approach is the best and most viable method to re-size the HCSM fund in anticipation of a transition to broadband and the need for access charge reform, the Commission declines to adopt at this time an alternative that supports only one primary residential wireline/wireless connection.

59. Despite reaching this conclusion, the Commission recognizes that other approaches would achieve a similar resizing of the HCSM fund. The Commission understands that interested participants have the opportunity to file applications for rehearing, reargument or reconsideration to further inform us on the pros and cons of re-sizing the HCSM fund versus modifying the rules to reflect a primary line (residential only or one residential and one business)/wireless account approach.

13. Timing Of Implementation Of The Rule Changes

60. The adopted rule changes create a transition to broadband and access reform by adopting a phase down approach that will effect a re-sizing of the HCSM fund. We recognize that this approach will impact all current and future recipients of support from the HCSM fund, and, therefore, it is appropriate to delay the effective date of these rule changes for approximately six months after they are finalized with the Secretary of State. Additionally, transitioning the HCSM methods at the start of a new calendar year will facilitate the required accounting changes. Thus, the adopted rules shall take effect on January 1, 2012.

61. Staff shall review the HCSM rate element assessed to all telecommunications service providers that contribute to the fund and set at an appropriate level to reflect the contributions and distributions resulting from the rule changes immediately upon implementation.

D. DISCUSSION, FINDINGS AND CONCLUSIONS BY RULE

1. Rule 2187 Eligible Telecommunications Carrier Designation

62. We adopt the rule as discussed above.

2. Rule 2188 Relinquishment and Cancellation of EP or ETC Designation

63. We adopt the rule as discussed above.

3. Rule 2841 Definitions

64. We proposed several new defined terms in the NOPR that were designed with a focused approach to support only residential lines and changes in revenue and cost calculations. Given the phase down approach we have adopted, we strike the proposed definition of “IP-enabled voice service” and do not adopt the proposed changes to “proxy cost model,”

“revenue benchmark,” “primary residential access line,” and “primary residential wireless account.”

65. The introduction of two new definitions, namely “statewide business affordable rate” and “statewide residential affordable rate” are used to explain the phase down approach and will be adopted.

66. We clarify in the definition for “retail revenues” that post-paid, pre-paid, ISDN, and IAD revenues are included in the contribution levels to the HCSM, and that revenues from the sale of video services other than video conferencing shall not be included in the contributions. We will adopt rule 2841(k) as set forth in the attached adopted rules.

4. Rule 2843 General

67. We made minor textual changes. We adopt these changes.

5. Rule 2844 Specific Services and Features Supported by the HCSM.

68. Having determined that a phase down approach is the best method to re-size the HCSM fund, the proposed changes to the rule will not be adopted.

6. Rule 2845 Affordable Standard for Basic Service

69. We adopt the changes as described above.

7. Rule 2846 Contributors

70. Having determined that a phase down approach is the best method to re-size the HCSM fund, the following proposed changes to the rule will not be adopted: Rule 2846(a), (a)(III), and (d)(IV) As discussed above the requirement that VoIP providers contribute to the fund is not adopted. Various textual changes are adopted.

71. Rule 2846(b): The proposed change to the HCSM Worksheet to April 1 is not adopted and will remain as March 31. Various non-impacting textual changes are adopted.

The elimination of the rule that contributors may file confidential information is adopted. The De Minimis exception change for a provider's contribution from to \$5,000 is adopted. We also clarify that, if a reseller qualifies for the de minimis exception, it must notify the underlying carrier that it is not contributing to the HCSM and must be considered an end user by the underlying carrier for HCSM contribution purposes.

8. Rule 2847 Eligible Provider

72. We adopt the reporting requirement to this rule as described above. In addition we have deleted existing Rules 2847(d) and (g), and modified Rule 2847(f).

73. Rule 2847(d) regarding eligibility for a provider through the use of UNEs. The rule was deleted to allow a competitive landline EP to receive HCSM funding based on the underlying carrier's support.

74. Rule 2847(f) required EPs to file an application for initial receipt of support once designated. We believe this requirement was burdensome and have adopted a streamlined process whereby EPs file for designation and initial receipt of support under one application.

75. Rule 2847(g) is no longer required since we decided to put into practice a phase down approach. Any EP seeking to reset their HCSM support amount will make its filing pursuant to Rule 2857, therefore, we will delete this rule.

9. Rule 2851 Base Rate Area Subsidies.

76. We deleted this rule because it is outdated and was used to transition subsidies under old requirements to the HCSM after July 1, 1996.

10. Rule 2854 Calculation of Average Loop, Local Switching, and Exchange Trunk Costs for Fund Support for Rural Telecommunications Service Providers.

77. We made minor textual changes to clarify that this provision does not apply to rural providers that are average schedule companies.

11. Rule 2856 Transitional Colorado High Cost Fund Support For Eligible Providers.

78. The NOPR proposed an entirely new rule implementing the requirements that all EPs receiving HCSM funds would have their support capped through December 2010. We decline to adopt the rule as proposed in light of our adoption of the phase down approach. Instead, the adopted rule provides for the requirement that each EP receiving HCSM funds, shall, after December 31, 2011, have its support phased down as discussed previously. The new rule implements the requirement that any new EP or an EP receiving initial support will be subject to the phase down requirement.

12. Rule 2857 Extraordinary Circumstance.

79. We adopt the rule pursuant to the above discussion.

II. ORDER

A. The Commission Orders That:

1. Staff of the Commission shall estimate the total amount of HCSM support that will be needed for the first quarter 2012 under the adopted rules and shall determine the quarterly factor. The new HCSM rate element shall be effective January 1, 2012

2. The Commission adopts the rules attached to this Order as Attachments A, B, and C consistent with the above discussion.

3. The rules shall be effective January 1, 2012, which date must be at least 20 days after publication in the Colorado Register by the Office of the Secretary of State.

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

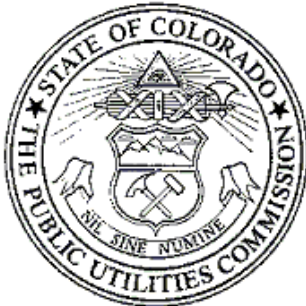
5. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
January 6, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-2

PART 2

RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS

* * * * *

[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 1, 1998 all ETCs shall make available Lifeline service, as defined in § 54.401, to qualifying low-income customers.
- (d) Contents. 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 attached exhibits:
 - (I) The information required by paragraph 2002(b).
 - (II) A statement identifying the decision(s) of the Commission and/or the FCC authorizing the applicant to provide telecommunications service.
 - (III) A description of the service area for which the applicant seeks designation as an ETC. ~~If designation for a specific service area, rather than a statewide designation, is sought,~~ The application shall include either both a description of such service area by metes and bounds or the underlying carrier's exchange area ~~a~~ map displaying the applicant's service area.

- (IV) The facts (not in the form of conclusory statements) relied upon by the applicant to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d) and § 54.202.
- (V) An affirmative statement that the applicant will offer the services that are supported by the federal universal service support mechanisms under 47 U.S.C. § 254(c).
- (VI) An affirmative statement that the applicant is a common carrier.
- (VII) An affirmative statement that the applicant (ETC) will advertise the availability of such service and charges using media of general distribution pursuant to 47 U.S.C. § 214(e)(1)(B) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996. To meet the requirements of 47 U.S.C. § 214(e)(1)(B), the Commission establishes as guidelines that an ETC shall advertise in media of general distribution and shall place customer guide pages in the "White Pages" directory within the ETC's service area. Such customer guide pages shall indicate that the ETC offers the supported services identified by federal law within its ETC service area to all who request such service within that area.
- (VIII) An affirmative statement that the applicant will make available Lifeline service, as defined in 47 C.F.R. § 54.401, to qualifying low-income customers.
- (IX) An affirmative statement that the applicant is in compliance with the Commission's rules.
- (X) A demonstration of the applicant's ability to remain functional in emergency situations.
- (XI) A demonstration that the applicant will satisfy consumer protection and service quality standards.
- (XII) An affirmative statement that the applicant will offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC). A local usage plan offered must include:
 - (A) Unlimited calling or a plan with not less than 900 minutes of use per month;
 - (B) A month-to-month term; and
 - (C) A rate comparable to the underlying LEC's basic residential local exchange rate.
- (XIII) A two-year build-out plan demonstrating how high-cost universal service support will be used to improve the applicant's coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support. If a wire center is not part of the build-out plan and the applicant does not have existing facilities in the service area, a detailed explanation of how the applicant will provide service to a requesting customer in the service area for which it is seeking designation.

- (e) State certification for federal support. As required by the FCC's universal service regulations found at 47 C.F.R. §§ 54.313 and 54.314, and when appropriate, the Commission shall file an annual certification with the Administrator of the federal Universal Service Fund (USF) and the FCC on behalf of each jurisdictional ETC serving access lines in the state, stating that all federal high-cost support provided to such carriers within that state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission may require a carrier to provide the information it finds necessary and convenient to make such a certification. At a minimum, carriers shall furnish requested information on a form supplied by the Commission as part of the carrier's annual report.
- (f) Annual Reporting Requirements for Eligible Telecommunication Carriers.
 - (I) In order for an Eligible Telecommunication Carrier (ETC) previously designated by the Commission, or previously designated by the Federal Communications Commission (FCC), to be certified to receive federal support for the following calendar year, or to retain its ETC designation, it shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. ETCs failing to meet these annual report filing requirements and deadlines may not be certified by the Commission to the FCC and the Universal Service Administrative Company (USAC) as eligible to receive federal support for the following calendar year.
 - (II) Every ETC shall submit the following information in its report:
 - (A) The number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and a written explanation detailing how the ETC attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).
 - (B) The number of complaints per 1,000 access lines or handsets.
 - (C) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users in a service area, or that could affect access to 9-1-1. An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. The ETC must report the following information regarding each outage: date and time of outage; description of the outage and resolution; specific service(s) affected; specific geographic area(s) affected; steps taken to prevent it from happening again; and number of customers affected by the outage.
 - (D) Certification that the ETC is complying with the applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service.
 - (E) Certification that the ETC is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).

- (F) Certification that the ETC acknowledges the FCC may require it to provide customers with equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.
- (G) The total amount of all federal high cost support received in the previous calendar year and year-to-date through June 30 for the current calendar year.
- (H) For the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC. An explanation regarding any network improvement targets that have not been fulfilled. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.
- (I) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service offerings, Lifeline, and Linkup programs throughout the service areas in Colorado where the carrier has been designated an ETC. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.
- (J) Documentation that a competitive ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas.
- (K) A map of the service areas where the carrier has ETC designation showing the locations of facilities or for wireless providers, maps showing the location of all cellular towers and the coverage area of these towers. Maps shall be submitted in 2007 and at least once every three years thereafter.
- (L) Through June 30 of the current calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for any local exchange service within the service areas in Colorado where the carrier has been designated an ETC. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information shall be submitted at the wire center level or at the authorized service area.
- (M) A copy of cost study filing made on July 31st to NECA for current year. If an ETC is not required to file cost study to NECA, then a copy of the line count filing made to the FCC and USAC Administrator shall be submitted.

- (N) A copy of the company's Colorado-specific trial balance for previous year.
- (O) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule is true and correct. The affidavit must also state that the ETC is aware of the purpose of the support for the federal high-cost support and it is complying with the requirement set forth by the FCC in 47 U.S.C. § 254(e). An officer, director, partner, or owner of the company must sign the affidavit.
- (P) If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may refrain from certifying the carrier to the FCC or revoke the carrier's designation as an ETC. In addition, ~~carriers~~ ETCs must submit their reports on a timely basis.

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[indicates omission of unaffected rules]

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[indicates omission of unaffected rules]

2188. Relinquishment and Cancellation of EP or ETC Designation.

- (a) Application to be filed with the Commission. When there are multiple EPs or ETCs in a service area, providers seeking to relinquish designation as an EP or ETC shall file an application with the Commission, at least 45 days before the effective date of the proposed relinquishment. In addition, if the applicant seeks to discontinue service, the requirements of rule 2108 must also be met.
- (b) Contents. The application shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:
 - (I) The information required by paragraph 2002(b); and
 - (II) A complete explanation of the proposed relinquishment.
- (c) The Commission shall establish a time, not to exceed one year after the approval of the relinquishment, within which such purchase or construction of adequate facilities by a remaining EP or ETC or other provider shall be completed.
- (d) Notice to customers. In addition to filing an application with the Commission, the EP or ETC shall prepare a written notice regarding the proposed relinquishment and shall mail or deliver the notice at least 30 days before the effective date to all currently served customers or subscribers, including all interconnecting telecommunications providers. The EP or ETC shall separately provide notice all potentially affected customers through publication once each week for four consecutive weeks in a publication or publications of general circulation in the affected designated area. A notice shall be mailed to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town, or municipality.
 - (I) The notice shall, in addition to the requirements of paragraph 2002(d):
 - (A) Explain that basic local telephone service will continue to be available regardless of the outcome of the Commission's determination on the application;
 - (B) Be signed by an authorized agent or officer of the provider; and
 - (C) Include said agent or officer's title and address.
 - (II) Proof of public notice. Within 15 days before the date of the proposed relinquishment, the EP or ETC shall file with the Commission a written affidavit stating its compliance with this paragraph. The affidavit shall state the date notice was completed and the method used to give notice. A copy of the notice shall accompany the affidavit.

- (e) No hearing needs to be held if no objection, protest, or intervention is filed. If a hearing is to be held on an application, the Commission shall endeavor, within its operating constraints, to hold the hearing, or a portion thereof, at a location within the local calling area of the affected community.
- (f) No proposed relinquishment shall be effective until the Commission issues an order approving it.
- (g) The Commission shall permit an EP or ETC to relinquish its designation as an EP or ETC in any area served by more than one EP or ETC when the Commission concludes that the requirements of paragraphs (a) through (d) have been met.
- (h) Within one year of the effective date of the Commission's decision approving an application for ETC/EP designation, the ETC/EP shall offer the supported services. If the ETC/EP does not offer the supported services within one year, its ETC/EP designation shall be cancelled and deemed null and void.

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[indicates omission of unaffected rules]

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[indicates omission of unaffected rules]

High Cost Support Mechanism and High Cost Administration Fund

Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to establish the process used by the Commission to implement and the provisions of the high cost support mechanism while remaining consistent with the relevant rules and orders of the FCC.⁴

The statutory authority for the promulgation of these rules is found at §§ 40-3-102, 40-15-208(2)(a), 40-15-502, and 40-2-108, C.R.S.

2840. Applicability.

Rules 2840 through 2869 govern the operation of the Colorado High Cost Support Mechanism (HCSM) and the Colorado High Cost Administration Fund and shall apply to all providers of intrastate telecommunications services.

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) "Average-schedule rural provider" means a rural telecommunications service provider that is an average-schedule company as defined and used in 47 C.F.R. §§ 69.605 through 69.610.
- (c) "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.
- (d) "Geographic area" means a Commission-defined area of land usually smaller than an incumbent provider's wire center serving area included wholly within the incumbent's wire center boundaries.

⁴ On May 23, 2001 the FCC released its Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45. In this Order the FCC modified its rules for providing high-cost universal service support to rural telephone companies for the following five years based upon the proposals made by the Rural Task Force established by the Federal State Joint Board on Universal Service.

- (e) "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 HCSM.
- (f) "High Cost Support Mechanism" (HCSM) 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.
- (g) "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.
- (h) "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.
- (i) "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 national local exchange network topology and the total number of access lines in the each area.
- (j) "Retail revenues" means the gross revenues associated with contribution levels to the HCSM means those revenues collected from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services include, but are not limited to, all types of local exchange service; non-basic, vertical, or discretionary services, also known as advanced features or premium services, 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, telex; telegraph; 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 cablevideo 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.
- (k) "Revenue benchmark" means a calculated amount of intrastate revenues per access line. A separate revenue benchmark shall be established for residential service and for business service for each geographic area according to the following formulae:
 - (l) "Residential revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the provider that serves the relevant geographic area as of January 1 of the previous year:

- (A) The weighted average monthly revenues per residential line for all types of residential basic local exchange service in that geographic area including, but not limited to flat, measured or message services; plus
 - (B) One-half of the average residential revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus
 - ~~(C) Zone or mileage charges; plus~~
 - ~~(DC)~~ The average intrastate residential carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
 - ~~(D) Support from the Federal High Cost Loop Support; plus~~
 - (E) Such other revenues as the Commission, by order, deems included.
- (II) "Business revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the ILEC that serves the relevant geographic area as of January 1 of the previous year:
- (A) The weighted average monthly revenues per business line for all types of business basic local exchange service in that geographic area including, but not limited to, flat, measured or message services; plus
 - (B) One-half of the average business revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus
 - ~~(C) Zone or mileage charges; plus~~
 - ~~(DC)~~ The average intrastate business carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
 - ~~(D) Support from the Federal High Cost Loop Support; plus~~
 - (E) Such other revenues as the Commission, by order, deems included.
- ~~(III) The statewide residential and business revenue benchmark rates as defined in subparagraphs (I)(A) and (II)(A) above mean Commission-approved rates for purposes of calculating the HCSM support.~~

2842. Incorporation by Reference.

References in rules 2840 through 2869 to Parts 32, 36, 54, 64, and 69, are references to rules issued by the FCC and have been incorporated by reference, as identified in rule 2008.

2843. General.

The HCSM shall be coordinated with the ~~Federal Universal Service Fund~~ FCC Universal Service Fund (USF), as described by regulations found at 47 C.F.R. §§ 36.601 to 36.641 and §§ 54.1 to 54.707 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by § 101 of the Telecommunications Act of 1996.

- (a) The HCSM shall operate on a calendar-year basis. The Commission shall, by November 30 of each year, adopt a budget for the HCSM including the:
 - (I) Proposed benchmarks;
 - (II) Proposed contributions ~~to be~~ that may be collected through a rate element assessment by each telecommunications provider; and
 - (III) Proposed total amount of the HCSM fund from which distributions are to be made for the following calendar year.
- (b) If the budget prepared pursuant to paragraph (a) and submitted to the General Assembly pursuant to paragraph 2849(p) includes a proposal for an increase in any of the amounts listed in paragraph (a), such increase shall be suspended until March 31 of the following year.

2844. Specific Services and Features Supported by the HCSM.

The services and features supported by the HCSM are an evolving level of telecommunications services established by the Commission and periodically updated under § 40-15-502(2), C.R.S., to recognize advances in telecommunications and information technologies and services. Until revised, the HCSM will support such services as defined in rule 2308. In addition, the HCSM will support access to 9-1-1 service and such other elements, functions, services, standards or levels necessary to attain Commission-prescribed service-quality standards or other criteria established pursuant to statute or Commission rule.

2845. Affordable Price Standard for Basic Service.

For the purpose of rules 2840 through 2869, ~~the benchmark rates as determined by the Commission~~ the prices in effect for residential and business basic local exchange service, excluding outside base rate area zone charges, if any, in each geographic area on the effective date of these rules shall be deemed affordable. If the current tariff rates are higher than the benchmark rates set by the Commission for HCSM purposes, those rates are deemed affordable. Pursuant to § 40-15-502(3), C.R.S., a different level may be set by the Commission and designated as a benchmark price.

2846. Contributors; Reporting Requirements; Rate Element Calculation; Application of Rate Element to Customer Billings; and Remittance of Contributions.

- (a) Contributors. Every provider of intrastate telecommunications service to the public, or to such classes of users as to be effectively available to the public, every provider of intrastate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators not falling within the de minimis exemption of subparagraph (b)(I)(B) must contribute to the HCSM.

- (I) Revenues associated with the sale of cable services identified in § 40-15-401(1)(a), C.R.S. other than video conferencing, shall not be considered when determining a provider's assessment.
 - (II) The provider who falls within the de minimis exemption of subparagraph (b)(I)(A) is not required to contribute to the HCSM. Any provider that falls within the de minimis exemption must notify their underlying carrier that they should be considered end users for reporting purposes.
- (b) Process for determining the HCSM rate element.
- (I) Contributor reporting requirements. Each provider shall provide to the Administrator a verified accounting of its gross retail revenues, and such other revenues, and uncollectibles as the Administrator shall request for purposes of determining contributions and disbursements under these rules. The accounting shall be submitted using the form identified as the HCSM Worksheet and available from the Commission or on its website. The completed HCSM Worksheet shall be submitted to the Administrator twice a year. The HCSM Worksheet shall be due March 31, of each year, containingincluding data for the prior calendar year. The HCSM Worksheet shall be due September 1, of each year, containingincluding data for the six-month period from January 1 through June 30 for the current calendar year.
 - (A) —Contributors may file confidential information in accordance with the Commission's Rules Regulating Practice and Procedure.
 - (AB) De minimis exemption. If a provider's contribution to the HCSM in any given year is calculated to be less than \$10,000-5,000, that contributor is not required to submit a contribution. Providers falling within this de minimis exemption are required to file with the Administrator only that portion of the HCSM Worksheet for that period that certifies their de minimis status. Such de minimis certification shall be accompanied by an affidavit of an officer of the provider attesting to the veracity of its self-certification. However, each provider exempt from contributing because of its de minimis revenues shall retain complete documentation (including, but not limited to the information required in the HCSM Worksheet) and shall make such documentation available to the Administrator upon request. Notwithstanding the de minimis exemption of this subparagraph (I)(AB), all EPs are required to remit contributions and to file the entire HCSM Worksheet.
 - (II) Reporting requirements.
 - (A) Each EP receiving support pursuant to paragraph 2848(e) shall provide to the Administrator, a verified accounting of: (1) the actual number of residential and business access lines served by such provider in each geographic area as of the last day of each month; and (2) the actual amount of contributions collected in the month if the provider applies the rate element to its end user customer. Theis data form shall be completed and returned-submitted to the Administrator by the 15th day of the subsequent quartermonth.

- (B) ~~Each wireless EP receiving support pursuant to rule 2848 shall provide to the Administrator a verified accounting of: (1) the actual number of residential and business wireless handsets served by such provider in each geographic area (i.e., the underlying local exchange carrier's geographic area) as of the last day of each month; and (2) if the provider applies the rate element to its end user customer then it shall report the actual amount of contributions collected in the month. The data shall be submitted to the Administrator by the 15th day of the subsequent quarter.~~
- (B) ~~For EPs receiving support pursuant to paragraph 2848(d), an appropriate form, available from the Commission on its website, shall be completed and returned to the Administrator:~~
- (i) ~~As part of that provider's annual report if no competitive EP has been designated in the incumbent rural EP's study area; or~~
- (ii) ~~By the 15th day of the subsequent month if one or more EPs have been designated in the EP's geographic support area.~~
- (III) ~~Revenue benchmark reporting requirements. Each EP receiving support pursuant to paragraph 2848(c), shall provide to the Administrator a verified accounting of such revenues as are determined necessary for establishing the residential and business revenue benchmarks on a form supplied by the Administrator. This worksheet shall be due March 31, of each year, including data for the prior calendar year~~
- (III~~V~~) Rate element calculation. The Administrator shall estimate the total amount of **HCSM high cost** support that will be needed for the next quarter (including support needed under rules 2846 through 2855 and administrative expenses) and shall determine the quarterly factor. This estimate shall be based on the information provided to the Administrator by providers, EPs, ILECs, ~~information available from the cost proxy model,~~ and other information that the Administrator may gather from the Commission and providers. The factor shall be equal to the ratio of total statewide HCSM requirement to total statewide net (gross revenues minus uncollectibles) retail revenues for the period. The appropriate factor shall be converted to a HCSM rate element that shall be applied to the net retail revenues of each telecommunications service provider. The Commission shall issue an order establishing the appropriate HCSM rate element at least 15 days prior to the first day of each quarter and shall post notice of the setting of such rate element on the Commission's website. ~~Such HCSM rate element shall be collected and contributed by each telecommunications provider as specified in these rules.~~
- (IV) The Commission may increase the rate element factor by an amount it reasonably estimates to be necessary to compensate the HCSM fund for any qualified contributors who fail to pay the uncollectible assessments. Such increase shall generally not exceed five percent of the total statewide HCSM requirement.
- (VI) ~~EP's net contribution. The Administrator shall send a notice to each EP specifying that the Administrator has determined that either the EP is:~~

~~(A) — An estimated net contributor (estimated contribution is greater than its estimated support) for the quarter; each provider so notified shall remit its actual net contribution as specified in paragraph (d); or~~

~~(B) — An estimated net recipient (estimated contribution is less than its estimated support) for the quarter; each provider so notified shall receive support as specified in paragraph 2848(ed).~~

- (c) Application of the rate element to providers, to customer billings. ~~The HCSM rate element shall be applied to the assessed upon all providers in Colorado. Providers may, at their option, apply the rate element to the retail revenues of~~ each provider's end user s as a line item on the monthly bill except that providers falling within the de minimis exemption of subparagraph (b)(I)(A) shall not apply the HCSM rate element nor collect such contribution from their end users. For those telecommunications providers opting to apply the rate element to their end user customers, tThe location of the telecommunication service delivery shall be used to determine whether the HCSM rate element applies where an end user service location receiving the bill and an end user service location receiving the service differ.
- (d) Remittance of contributions. All providers not falling within the de minimis exemption of subparagraph (b)(I)(A) shall be responsible for ~~collecting and~~ remitting quarterly to the HCSM ~~rate element receipts~~ according to the following procedure:
- (I) Each quarter, or as necessary, the Administrator shall issue an invoice instructing each contributor to remit its HCSM contribution to the HCSM escrow account. ~~The Commission may direct that certain providers remit their HCSM receipts to the Administrator who will forward the funds thus remitted to the Colorado State Treasurer's Office for deposit to the Fund account.~~
- (II) The HCSM ~~revenues billed by the provider, net of the amount estimated to be owing to the provider from the HCSM, if any contributions,~~ shall be remitted as directed by the Administrator no more than 30 days after the end of each quarter. If the amount ~~or net amount~~ owed is not remitted by that date, the Administrator shall bill the provider a late payment charge equal to one percent per month of the late amount. If the provider establishes a history of making late contributions, the Commission may initiate an appropriate process to ascertain and implement proper corrective measures including, but not limited to, withholding future support from the HCSM and/or penalties pursuant to §§ 40-7-101, C.R.S., et seq.
- (III) Reconciliation. The Administrator shall review each EP's HCSM account transactions. The review shall reconcile HCSM contributions, receipts, and other projected account transactions to the actual HCSM entitlement, as provided in paragraph 2848(f). The Administrator shall analyze any deviation between the estimated amount and the verifiably accurate collections and receipts contribution amount. Adjustments to the standard quarterly transaction amount or any other reconcilable adjustments will be performed in the next subsequent quarter.

- (e) Continuing customer education. For those telecommunications service providers opting to apply the rate element to their end user customers, in the first billing cycle of the third quarter of each calendar year, each rate jurisdictional provider that is collecting the rate element (also known as the "Colorado Universal Service Charge") from its end users shall provide to each of its customers, by message directly printed on the bill, by bill insert, or by separate first-class mail, or any combination of these alternatives, the continuing customer education material as may be ordered by the Commission.

2847. Eligible Provider-Designation.

- (a) As a prerequisite for designation and eligibility to receive support from the HCSM, a provider shall be in ~~substantial~~ compliance with the Commission's rules applicable to the provision of basic local exchange service.
- (b) Upon request and consistent with the public interest, convenience, and necessity, the Commission may designate more than one common carrier as an EP in a service area designated by the Commission, so long as each additional requesting carrier meets the requirements of Commission rules. The Commission shall find that the designation is in the public interest.
- (c) All EPs shall make available, collect and remit the LITAP surcharge, and advertise LITAP as defined in rules 2800 through 2819, to qualifying low-income customers.
- (d) The EP shall agree to certify that it is complying with the Commission's service quality standards and consumer protection rules, and shall agree to submit to the Commission's enforcement and sanction authority with regard to violations of such service quality standards and/or consumer protection rules.
- (be) Application. A provider shall file an application with the Commission to be designated as an EP within a geographic support area and eligible to receive support from the HCSM.
- (I) Contents. In addition to complying with the requirements of paragraph 2002(b), the application must provide evidence sufficient to establish that:
- (A) The provider is, or is applying to be, qualified-designated as an ETC under rule 2187 for purposes of being eligible to receive federal universal service support;
- (B) The provider agrees to provide such basic local exchange service as described in Sections 214(e) and 254 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996;
- (C) The provider will offer basic local exchange service throughout the entire geographic support area;
- (D) The provider has the managerial qualifications, financial resources, and technical competence to provide basic local exchange service throughout the specified support area regardless of the availability of facilities or the presence of other providers in the area;

- (E) The provider is not receiving funds from the HCSM or any other source that together with revenues, ~~as defined by the Commission adopted revenue benchmark,~~ exceed the reasonable cost of providing basic local exchange service to customers of such provider; ~~and~~
 - (F) The granting of the application serves the public convenience and necessity, as defined in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.; ~~and~~
 - ~~(G) The provider acknowledges that it will offer basic local exchange service within one year of the effective date of the Commission order approving such application for EP designation or its designation will become null and void.~~
- (II) Process for determining eligibility.
- (A) The Commission processes applications in accordance with the Rules of Practice and Procedure.
 - (B) An application filed pursuant to paragraph (be) may be filed contemporaneously with an application for a CPCN, LOR, or an alternative form of regulation. In addition, an application to be ~~certified~~designated as an EP may be filed in a combined application to be designated a POLR or an ETC pursuant to rules 2183 and 2187.
- (ef) Reseller ineligibility. A provider which provisions its service to end users solely through purchase of a finished service from a facilities-based provider, and then sells that same service or that service combined with other services is not eligible to receive support from the HCSM. ~~Rather, the facilities based provider may be eligible to receive any applicable HCSM support upon request.~~
- ~~(d) Eligibility of a provider through the use of UNEs. An EP that serves a customer using a combination of its facilities and another provider's unbundled facilities or solely through the use of unbundled network elements, shall be eligible to receive HCSM support, not to exceed the cost of the unbundled elements used to provide the supported services. If an EP provides an unbundled element to another EP that is used to provide supported services, the EP of the unbundled element shall be eligible to receive HCSM support for the difference between the amount it is receiving for the unbundled element and the element's proxy cost.~~
- (ge) Portability of support. HCSM support shall be portable between any EP chosen by the end user.
- ~~(f) Each EP, prior to the initial receipt of support from the HCSM shall, as appropriate:~~
- ~~(I) If the provider is not subject to Commission rate regulation, the provider shall file an application with the Commission providing evidence sufficient to establish that the provider is not receiving funds from the HCSM or any other source that together with revenues, as defined by the Commission adopted revenue benchmark, exceed the reasonable cost of providing basic local exchange service to customers of such provider.~~
 - ~~(II) If the provider is subject to Commission rate regulation and its rates are filed at the Commission in a tariff, or if the provider has been granted an alternative form of~~

~~regulation that includes price ceilings, the provider shall simultaneously file two advice letters, and, if the provider has been granted an alternative form of regulation, a transmittal letter proposing price changes. Each filing shall propose rates or prices that will lower its overall regulated revenues in an amount equal to the sum of: (1) the initial support from the HCSCM; plus (2) the amount of support from any federal program supporting universal service not previously accounted for in setting filed tariff rates, if any. This sum shall be referred to as the "Initial Support".~~

~~(A) The first advice letter filed by such EP shall include a general rate reduction percentage rider (rate rider) applicable, to the extent possible, to all rates for regulated service, excluding services receiving support in order to reduce jurisdictional revenues in the amount of the initial support. The amount and distribution of the rate reduction(s) produced by this rate rider may be adjusted or modified by separate Commission order in other proceedings. Generally, the tariffs proposed in this rate rider advice letter shall become effective without suspension simultaneous with the initial receipt of support from the HCSCM, and shall remain in effect until the permanent rate proposal becomes effective.~~

~~(B) The second advice letter filed by the EP shall include proposals for permanent specific service rates that will reduce jurisdictional revenues in the amount of the "initial support". Generally, the rates proposed in this advice letter shall be suspended and shall not become effective without notice and opportunity for hearing.~~

~~(III) If the EP is subject to rate regulation, has been granted an alternative form of regulation by the Commission that does not include price ceilings, and its rates are included in price lists, the provider shall file a transmittal letter proposing price changes that will reduce jurisdictional revenues in the amount of the initial support.~~

~~(g) Each EP, prior to the effective date of a resetting of the HCSCM support per access line by the Administrator, shall, as appropriate:~~

~~i.(I) If the provider is not subject to Commission rate regulation, the provider shall file an application with the Commission providing evidence sufficient to establish that the provider is not currently receiving funds from the HCSCM or any other source that together with revenues, as defined by the Commission-adopted revenue benchmark, exceed the reasonable cost of providing basic local exchange service to customers of such provider.~~

~~(II) If the provider is subject to Commission rate regulation and its rates are filed at the Commission in a tariff, or if the provider has been granted an alternative form of regulation that includes price ceilings, the EP shall file an advice letter.~~

~~(A) The filing shall adjust its overall regulated revenues in an amount equal to the sum of: (1) the current support from the HCSCM, less the amount received by the EP from the HCSCM for the previous 12 months, if any; plus (2) the current support from any federal program supporting universal service, less the amount received by the EP from these federal programs for the previous twelve months, if any. This sum shall be referred to as the "new support".~~

~~(B) The filing by such EP shall include proposals for permanent specific service rate changes that will decrease jurisdictional revenues in the amount of the new support.~~

~~(III) If the EP is subject to rate regulation, has been granted an alternative form of regulation by the Commission, and its rates are included in price lists, the EP shall file a transmittal letter proposing price changes that will reduce jurisdictional revenues in the amount of the "new support" to be effective upon the implementation of the "new support". Any adjustments in prices other than reductions shall be done in accordance with the EP's alternative form of regulation.~~

(h) Annual Reporting Requirements for Eligible Providers.

(I) Each EP shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. EPs failing to meet these annual reporting requirements may not be eligible to receive high cost support and are subject to Commission enforcement and sanction with regard to failure to comply.

(A) For the previous calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an EP. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.

(B) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service (BUS) offerings and LITAP program throughout the service areas in Colorado where the carrier has been designated an EP. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.

(C) Documentation that a competitive EP is offering an unlimited local usage plan or a plan with at least 900 minutes of use per month that is comparable to that offered by the incumbent LEC in the relevant service areas.

(D) If a review of the data submitted by an EP indicates that the EP is no longer in compliance with the Commission's criteria for EP designation, the Commission may refrain from authorizing CHCSM support to the carrier until the carrier is in compliance with the Commission's criteria for EP designation. In addition, EPs must submit their reports on a timely basis.

(E) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule is true and correct. An officer, director, partner, or owner of the company must sign the affidavit.

2848. 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) Disaggregation and targeting of Colorado High-Cost Support by rural ILECs. The disaggregation plan selected by a rural incumbent EP for targeting Colorado high-cost support shall be the same plan as that selected by the provider under rule 2190 and approved by the Commission under those rules unless another EP or ETC provider, or the Commission request a different disaggregation plan.
- (c) Support through the HCSM applicable to non-rural geographic areas shall be calculated as follows:
 - (I) By order, the Commission shall: ~~(1) adopt a proxy cost model; and (2)~~ publish the intrastate proxy cost for each non-rural geographic area. The proxy cost model and the resultant intrastate proxy costs shall be updated as necessary. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.
 - (II) When the per-line intrastate proxy cost exceeds the applicable benchmark in a particular non-rural geographic area, the Commission shall designate that non-rural geographic area as a geographic support area.
 - (III) Amount of Support: Each EP shall receive support from the HCSM based on a verified accounting of the actual number of residential and business access lines it serves in the non-rural high cost geographic support areas, as designated by the Commission, multiplied by the difference between the per line intrastate proxy cost in such geographic support area and the applicable per access line revenue benchmark as determined by the Commission. The amount of support shall be reduced by any other amount of support received by such provider or for which such provider is eligible under support mechanisms established by the federal government and/or this state.
 - (IV) Revenue benchmarks. Separate revenue benchmarks shall be determined for residential and business supported access lines for each geographic area according to the formulae defined in subparagraph 2841(k).
- (d) Support through the HCSM applicable to rural geographic areas (areas served by rural ILECs) shall be calculated as follows:
 - (I) Revenue requirement shall be calculated on a ~~By order, the Commission shall: (1) determine the amount of support per access line basis as determined by the Commission pursuant to rules 2400, 2854 and 2855 (based upon the filing of the incumbent rural EP serving that area and as modified pursuant to paragraph 284855(hf)); and (2) publish the~~

support per access line, disaggregated into such geographic support areas as may be designated by the Commission. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.

- (II) Amount of support: Each EP shall receive support from the HCSM in an area served by a rural ILEC based upon the number of access lines or the EP serves in those high cost geographic support areas, as designated by the Commission, multiplied by the applicable support per access line.
- (III) Total local revenues shall include, but not be limited to, local revenues, feature revenues, and federal high cost loop support. If the tariff residential or business rate is less than statewide residential or business benchmark rate, then the EP shall impute the statewide residential or business benchmark rate. If the tariff residential or business rate exceeds the statewide residential benchmark rate or the statewide business benchmark rate, then actual revenues shall be used.
- (IV) The total local revenue deficiency shall equal total local revenues minus total local revenue requirement.
- (V) Per-line support amounts shall equal the total local revenue deficiency divided by the total number of access lines (i.e., residential and business).
- (~~VII~~) Additional procedures governing the operation of disaggregated support:
 - (A) The disaggregation and targeting plan adopted under rule 2190 shall be subject to the following general requirements:
 - (i) Support available to the rural ILEC's study area under its disaggregation plan shall equal the total support available to the study area without disaggregation.
 - (ii) The ratio of per line support between disaggregation zones for each disaggregated category of support shall remain fixed over time, except as changes are allowed pursuant to rule 2190.
 - (iii) The ratio of per line support shall be publicly available.
 - (iv) Per-line support amounts for each disaggregation zone shall be recalculated whenever the rural ILEC EP's total annual support amount changes using the changed support amount and total access line counts at that point in time.
 - (v) Per-line support for each category of support in each disaggregation zone shall be determined such that the ratio of support between disaggregation zones is maintained and that the product of all of the rural ILEC EP's access lines for each disaggregation zone multiplied by the per-line support for those zones when added together equals the sum of the rural ILEC EP's total support.

- (vi) Until a competitive EP is designated in a study area, the quarterly payments to the rural ILEC EP will be made based on total annual amounts for its study area divided by four.
 - (vii) When a competitive EP is designated anywhere in a rural ILEC EP's study area, the per-line amounts used to determine the competitive EP's disaggregated support shall be based on the rural ILEC EP's then-current total support levels, lines, and disaggregated support relationships.
 - (viii) Each EP shall receive support from the HCSM based on the number of access lines or wireless handsets it serves in the designated high cost geographic support areas.
 - (ix) The support received shall be based on actual number of access lines or the actual number of wireless handsets reported to the administrator as a verified accounting for each geographic area as of the last day of each month.
- (e) Process for payments. The Administrator will arrange payments to be made to EPs, which are net recipients from the HCSM, within 30 days of the last day of each quarter.
- (f) Reconciliation. ~~Following receipt by the Administrator of each EP's report pursuant to subparagraph 2846(b)(II),~~ the Administrator shall reconcile the estimated disbursements previously authorized for each EP for the period for which the report provides information to the actual disbursements to which such provider is entitled, and shall send a statement of such reconciliation to each EP within 60 days after the receipt of the report. The statement shall show if the provider is entitled to additional amounts from the HCSM, or if the EP has received more than the amount of its HCSM entitlement. The Administrator shall use these reconciling amounts when setting the EP's support in subsequent quarters.
- (g) Colorado High Cost Fund Administration. The Commission, acting as Administrator, shall determine and establish by order, the HCSM support to be received by an EP.
- (I) Once the Commission, by order, has established the appropriate HCSM support amount, the Commission will monitor to ensure that the provider is not receiving funds from the HCSM or any other source that together with revenues do not exceed the reasonable cost of providing basic local exchange service on an annual basis. The Administrator will develop the appropriate form to be used for such monitoring. The monitoring form shall be available from the Commission's website.
 - (II) The monitoring forms and related information shall be filed with the Administrator and the Office of Consumer Counsel by August 15th of each year.

(III) If the information contained in a provider's HCSM monitoring form, annual report, or other filed document indicates that HCSM support for that provider should be adjusted, Staff of the Commission may request that the Commission issue, or the Office of Consumer Counsel may file, a formal complaint. The Commission, acting as Administrator and following an opportunity for hearing, may revise the provider's HCSM support as a result of the complaint proceeding.

2849. Administration.

The HCSM shall operate under the direction of an Administrator, which shall be the Commission or its designee.

- (a) The Commission may engage a third-party entity who meets the criteria in this rule to perform such duties of the Administrator as the Commission may, from time to time, deem necessary or convenient. The Commission shall select the entity using Colorado State Government contracting procedures. Until such time as an entity has been engaged, or during times when the entity is not available to fulfill its duties, the Commission shall act as the Administrator.
 - (I) The third-party entity shall meet all of the following criteria:
 - (A) Be neutral and impartial.
 - (B) Not be a party in any matter before the Commission, nor advocate specific positions before the Commission in any telecommunications service matter.
 - (C) Not be a member in a trade association that advocates positions before the Commission.
 - (D) Not be an affiliate of any provider of telecommunications services.
 - (E) Not issue a majority of its debt to, nor derive a majority of its revenues from, nor hold stock in any provider(s) of telecommunications services. This prohibition also applies to any affiliates of the third-party entity.
 - (F) Not have a Board of Directors that includes members with direct financial interests in entities that contribute to or receive support from the HCSM.
- (b) The reasonable expenses incurred in the administration of the HCSM shall be a cost of the HCSM and shall be paid from the funds contributed to the HCSM.
- (c) The Administrator shall determine the amount each telecommunications provider must pay into the HCSM and determine the disbursement each EP may receive from the HCSM.
- (d) The Administrator shall net each EP's assessment and support prior to receipt of actual funds.
- (e) To the extent the funding received from providers in any one fiscal year exceeds the cost of administering the HCSM (including such reserve as may be necessary for the proper administration of the HCSM), any unexpended and unencumbered monies shall remain in the

Fund and shall be credited against the assessment each provider must pay in the succeeding fiscal year.

- (f) The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.
- (g) If the Commission has delegated such duties, the third-party entity shall have access to the books of accounts of all providers to the limited extent necessary to verify the intrastate retail revenues and other information used in determining contributions and disbursements from the HCSM.
- (h) The Administrator shall maintain a database that tracks eligible access lines for support based on the method through which service is provisioned and the identity of each carrier providing that service in each geographic area.
- (i) The Administrator will develop appropriate forms to be used by all providers and all EPs for reporting information as required by rule 2846. Copies of the forms will be made available on the Commission's website and at the offices of the Commission.
- (j) The Commission shall perform an annual review of HCSM fund recipients. One purpose of this review shall be a verification of continued eligibility. Another purpose shall be a verification of the receipt by each EP of the funds to which each provider is entitled and is projected to receive from the HCSM. Subject to such reviews, the Administrator will recommend any required adjustments to HCSM contribution methods, distributions, necessary rule changes and other relevant items that shall be considered in connection with the HCSM.
- (k) The quarterly reconciliations under subparagraph 2846(d)(III) and paragraph 2848(f) shall be the principal source for such annual reviews.
- (l) Supplemental and forecast information that may be requested by the Administrator to assure a complete review shall be provided by all providers to the Administrator, as formally requested, within ten days of the Administrator's written request. If those persons do not provide the data required within ten days of the request, the Commission may initiate a formal complaint proceeding for remedies, including withholding future support from the HCSM and/or penalties as provided in § 40-7-101, C.R.S., et seq.
- (m) The Administrator and the Fund ~~shall~~ may operate on a fiscal year from July 1 to June 30 of the succeeding year.
- (n) An independent external auditor chosen by the Commission shall periodically, at its discretion, audit the Fund and associated HCSM records, including both collections and disbursements from the Fund. The costs for conducting audits shall be included in the computation of HCSM requirements.
- (o) An annual report of the Fund prepared by the Administrator shall be filed with the Commission by December 1 of each year. A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and to each provider that contributes to the HCSM. This report shall summarize the preceding fiscal year's activity and include the following:

- (I) A record of the total cost of administration of the HCSM; and
 - (II) The most recent audit report.
- (p) 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 to each provider that contributes to the HCSM. The Administrator may satisfy the latter requirement by notifying the provider of the availability of the annual report using an e-mail message directing the provider to the report 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 that the Commission determined shall constitute the HCSM from which distributions would be made;
 - (II) The total amount of money ordered to be contributed through a rate element assessment collected by each provider;
 - (III) The basis on which the contribution of each provider was calculated;
 - (IV) The benchmarks used and the basis on which the benchmarks were determined;
 - (V) The total amount of money that the Commission determined shall be distributed from the HCSM;
 - (VI) The total amount of money distributed to each provider from the HCSM;
 - (VII) The basis on which the distribution to providers was calculated;
 - (VIII) 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;
 - (IX) The proposed benchmarks, the proposed 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; and
 - (X) The total amount of distributions made from the HCSM, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference.

2850. Review of the HCSM.

- (a) For the purpose of determining whether the HCSM should be reformed, modified, or adjusted, the HCSM will be evaluated and reviewed at the discretion of the Commission. The time period

between reviews shall usually not exceed three years, and at least every three years thereafter, for the purpose of determining whether the HCSM should be adjusted.

- (b) The Commission shall consider opening a docket to consider any changes to these rules that may be necessary as a result of the conclusion of every proceeding, conducted pursuant to § 40-15-502(2), C.R.S., to review the definition of basic service.

2851. ~~Base Rate Area Subsidies.~~[Reserved]

~~If there are areas, as of July 1, 1996, that are receiving subsidies within a provider's base rate area, as determined by the Commission, such areas may continue, at the Commission's discretion, to receive subsidies or be eligible for funding under the HCSM after July 1, 1996.~~

2852. Enforcement.

- (a) Holder of a CPCN. A provider holding a CPCN issued by the Commission that fails to make timely reports or to pay, in a timely manner, its contribution when it is due and payable under these rules, may, after notice and opportunity for hearing, have its CPCN revoked as provided in Article 6, Title 40, C.R.S., be denied interconnection to the public switched network, and/or have other appropriate remedies imposed upon them by the Commission.
- (b) Uncertificated provider. If a provider does not hold a CPCN from the Commission and fails to make timely reports or payment of its contribution, the provider may be subject to a Commission action including but not limited to a formal complaint:
 - (I) To the FCC seeking an order directing the delinquent provider to make the payment or for further appropriate remedies;
 - (II) For an action for damages in an appropriate court; or
 - (III) For other appropriate remedies.
- (c) Any provider that disputes the requirement that it pay into the HCSM shall:
 - (I) Post a bond in an amount determined by the Commission pending the resolution of that dispute; and
 - (II) Repay all other providers with interest (at a rate determined by the Commission) in the event the Commission determines that the provider should have been paying into the fund.

2853. Other.

These rules are not intended to limit the programs in rules 2800 through 2819 and 2820 through 2839.

2854. Calculation of Average Loop, Local Switching, and Exchange Trunk Costs for Fund Support for Rural Telecommunications Service Providers.

- (a) The averages used in calculating HCSM support in rules 2854 and 2855 will be computed on the basis of the data reported per this rule for the preceding calendar year unless updated at the option of the rural provider pursuant to 47 C.F.R. § 36.612(a).
- (b) Each basic local exchange provider, that is not an average schedule rural company, shall calculate and report its average unseparated loop cost per study area per working loop as prescribed by 47 C.F.R. §§ 36.621 and 36.622 in its request for HCSM for the preceding calendar year annual report to the Commission as required by paragraph 2006(a).
- (c) The national average unseparated loop cost per study area per working loop shall be calculated as prescribed by the National Exchange Carrier Association (NECA), 47 C.F.R. § 36.622(a)(1) for the preceding year.
- (d) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for:
 - (I) Local switching equipment (Central Office Equipment, Category 3, 47 C.F.R. § 36.125); and
 - (II) Its average number of working loops.
- (e) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for exchange trunk equipment (Cable and Wire Facilities, Category 2, Exchange Trunk, 47 C.F.R. § 36.155, and Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2)).
- (f) The state average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the state, as reported pursuant to paragraph (d) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (g) The state average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the state, as reported pursuant to paragraph (e) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (h) Each rural ILEC, in its annual report filed with the Commission, shall include any additional HCSM reporting requirements as requested by the Commission.

2855. Calculation of Support per Access Line for Rural ILECs.

Incumbent rural providers, who are not average schedule rural providers, shall be eligible for support from the HCSM for high costs in three areas: loops; local switching; and exchange trunks, upon a proper showing. Incumbent average schedule rural providers shall be eligible for support from the HCSM for high costs as determined by subparagraph (f)(I), upon a proper showing.

- (a) Support for high loop costs. The HCSM revenue requirement for high loop costs of rural providers who are not average schedule rural providers shall be determined as follows:
- (I) For rural providers with an average unseparated loop cost per working loop less than or equal to 115 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) Zero; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange subscriber line usage (SLU) multiplied times the provider's average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
 - (II) For rural providers with an average unseparated loop cost per working loop in excess of 115 percent but not greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) The difference between the rural provider's average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
 - (III) For rural providers with an average unseparated loop cost per working loop greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) The difference between 150 percent of the national average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
- (b) Support for high local switching costs. Rural providers who are not average schedule rural providers shall be eligible for support for high local switching costs. The HCSM revenue requirement for high local switching cost support shall be determined as follows:
- (I) For rural providers with an average unseparated local switching equipment investment per working loop less than or equal to the Colorado average unseparated local switching investment per working line as determined by paragraph 2854(f), the HCSM revenue requirement for local switching cost support shall be zero.

- (II) For rural providers with an average unseparated local switching equipment investment per working loop in excess of the Colorado average unseparated local switching equipment investment per working loop as determined in paragraph 2854(f), the revenue requirement for high local switching cost support shall be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following 47 C.F.R., Part 36. The service category for the HCSM high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment.
 - (A) The percentage of Category 3 allocated to the HCSM service category shall be known as the "Colorado High Local Switching Cost Allocation Factor" and shall be calculated as one minus the sum of:
 - (i) The interstate factor(s);
 - (ii) The intrastate factor(s) of subparagraph 2415(b)(I)(C); and
 - (iii) The local exchange factor.
 - (B) The local exchange factor for each rural provider shall be calculated as the:
 - (i) Colorado average unseparated local switching equipment Category 3 investment per working loop, as determined by paragraph 2854(f);
 - (ii) Multiplied by the rural provider's local DEM percentage;
 - (iii) Divided by the rural provider's average investment per working loop.
 - (C) The Colorado High Local Switching Cost Allocation Factor shall not be less than zero. If, by the application of the formula of subparagraph (b)(II), the Colorado High Local Switching Cost Allocation Factor is less than zero, the factors (ii) and (iii) of subparagraph (II)(A) shall be reduced proportionally.
- (c) Support for high exchange trunk costs. Rural providers who are not average schedule rural providers shall be eligible for support for high exchange trunk costs. The HCSM revenue requirement for high exchange trunk cost support shall be determined as follows:
 - (I) For rural providers with an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average unseparated exchange truck investment per working loop, as determined by paragraph 2854(f), the HCSM revenue requirement for exchange trunk cost support shall be zero.
 - (II) For rural providers with an average unseparated exchange trunk equipment investment per working loop in excess of the Colorado average unseparated exchange truck investment per working loop, as determined in paragraph 2854(f), the revenue requirement for high exchange trunk cost support shall be calculated by apportioning the costs of the rural provider to the HCSM service category as established in paragraph (b) of the rural provider's separations study following 47 C.F.R., Part 36, as modified by the rules found in rule 2415. The HCSM service category shall be assigned a portion of the

investments of Cable and Wire Facilities, Category 2 Exchange Trunk, 47 C.F.R. § 36.155 and a portion of Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2).

- (A) The percentage allocated to the HCSM service category shall be calculated separately for each of these types of investments as one minus the sum of:
 - (i) The interstate factor(s), for exchange trunk
 - (ii) The intrastate factor(s) for exchange trunk; and
 - (iii) The local factor for exchange trunk.
- (B) The local factor for Category 2 exchange trunk for Cable and Wire Facilities for each rural provider shall be calculated as the Colorado average unseparated investment per working loop as determined by paragraph (f) of this rule, times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.
- (C) The local transport allocation factor for Category 4.12 Exchange Trunk Circuit Equipment, for each rural provider shall be calculated as the Colorado average unseparated investment per working loop, as determined by paragraph 2854(f), times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.

(d) Support for high costs of average schedule rural providers.

(I) The HCSM support requirement for high cost support for average schedule rural providers shall be determined as the remainder, if positive, of the following process:

- (A) First, the total company revenue requirement (i.e., costs) for the average schedule rural provider shall be determined;
- (B) Next, a value known as the "imputed local network services revenues" shall be calculated by the Administrator as the average of the local network services revenues, 47 C.F.R. §§ 32.5000 through 32.5069 for all rural providers who are not average schedule rural providers, excluding any HCSM revenues, the local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:
 - (i) Residential revenue calculation:
 - (a) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariff rate for residential basic local exchange service is less than the statewide residential benchmark rate.

(b) If the existing tariff rate for residential basic local exchange service is equal or greater than the statewide residential benchmark rate, then the existing residential basic local exchange service rate shall be used.

(c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

(ii) Business revenue calculation:

(a) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariff rate for business basic local exchange service is less than the statewide business benchmark rate.

(b) If the existing tariff rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.

(c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

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

(i) All interstate ~~revenues~~~~activities~~ and ~~Federal~~ Universal Service Fund (~~F~~USF) support;

(ii) Intrastate network access services;

(iii) Long distance network services;

(iv) All miscellaneous revenues; and

(v) The ~~imputed~~ local network services revenues adjusted in accordance with (d)(I)(B).

(D) Support per access line: The support as calculated in subparagraph (d)(I)(C), shall be divided by the number of access lines to determine the support per access line.

(e) Support for high costs of rural cost companies.

(I) The local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:

(A) Residential revenue calculation:

- (i) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariff rate for residential basic local exchange service is less than the statewide residential benchmark rate.
- (ii) If the existing tariff rate for residential basic local exchange service is equal or greater than the statewide residential benchmark rate, then the existing residential basic local exchange service rate shall be used.
- (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

(B) Business revenue calculation:

- (i) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariff rate for business basic local exchange service is less than the statewide business benchmark rate.
- (ii) If the existing tariff rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.
- (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.

~~(e)~~(f) Local network services ~~T~~tariff cap. In no event shall the local network services revenue requirement, as defined in 47 C.F.R. §§ 32.5000 through 32.5069 (1995) for rural providers exceed 130 percent of the average of such revenue requirement for local exchange providers that are not rural providers. Such excess shall be considered as a part of the rural provider's HCSM support revenue requirement.

~~(f)~~ Colorado High Cost Fund Administration:

~~(f)~~ The Commission, acting as Administrator, and pursuant to rules 2854 and 2855, shall determine and establish by order, the HCSM support revenue requirement to be received by a rural provider.

~~(A)~~ At any time, a rural provider designated as an eligible provider pursuant to rule 2847 may request that the Commission establish or revise its HCSM support revenue. Such request shall take the form of a petition and include the information required in paragraph 2003(b) as well as all information necessary to complete the calculations contained in paragraphs (a) through (e) of this rule, as applicable. If this information is already on file with the Commission, the petitioner must identify when and in what form the information relied on was filed.

- ~~(B) — Once the Commission, by order, has established the HCSM support revenue amount, or revised that amount, the Commission will monitor the rural provider's earnings on an annual basis. A rural provider receiving HCSM support revenue must file with its annual report, required by rule 2006(a), its earnings information on a HCSM earnings form available from the Commission's website.~~
- ~~(C) — If the information contained in a rural provider's HCSM earnings form, annual report, or other filed document indicates that HCSM support revenue for that rural provider should be adjusted, Staff of the Commission may request that the Commission issue, or the Office of Consumer Counsel may file, a formal complaint. The Commission, acting as Administrator and following an opportunity for hearing, may revise the rural provider's HCSM support revenue as a result of the complaint proceeding.~~

2856. Transitional Colorado High Cost Fund Support For Eligible Providers.

Beginning January 1, 2011, each EP shall receive the per access line support it received as of December 31, 2010 from the HCSM based the number of access lines or wireless handsets per household it serves in the high cost geographic support area multiplied by the applicable support per access line. Thereafter, each EP's HCSM support will be decreased as follows:

- (a) — On August 15, 2011, each EP receiving support pursuant to paragraph 2848(c), shall file with the Administrator an update of the proxy cost model using the most recent line counts and operating expense factors and investment allocations, verification of the revenues as are determined necessary for establishing the applicable support per line.
- (b) — Each EP receiving support as of December 31, 2011 from the HCSM shall have its per access line support phased down for a period of six years beginning January 1, 2012. Each EP's support amount shall be reduced by \$1.00 per access line supported for the year 2012, and reduced by an additional \$2.00 per access line supported for each year for the next five years until the end of year 2017. Thereafter the per access line support will remain constant unless the provider relinquishes CHCSM support or files to reset its HCSM support or the Commission orders otherwise.
- (c) — Any EP that is designated as eligible for initial receipt of HCSM support after December 31, 2011, including any currently designated EP with a request for support in a new study area(s), shall have its per access line support reduced by \$1.00 in the first year and reduced by an additional \$2.00 per access line support each year thereafter for the next five years until the end of year six from Commission order. Thereafter the per access line support will remain constant unless the provider relinquishes CHCSM support or files to reset its HCSM support, or the Commission orders otherwise.
- (d) — Any HCSM support established through a Commission-granted variance from these rules shall be in the amounts and for the time period(s) expressly approved by the Commission's order.

2857. Extraordinary Circumstance.

A company that currently receives HCSM support and wants to reset its HCSM support amount may file a petition to demonstrate extraordinary circumstances. Bankruptcy or tax liens will not be considered as an

extraordinary circumstance. To qualify for the extraordinary circumstance, the petitioner must include the following information in its petition:

- (a) A demonstration that the provider is not receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to the customers of such provider;
- (b) A demonstration that a large investment was necessary for the continued operation of basic local exchange service;
- (c) A demonstration that Pro forma adjustments were made for known and measurable changes;
- (d) Support that granting the petition is in the public interest;
- (e) The information required by paragraph 2003(b), as well as all information necessary to complete the calculations contained in paragraphs (a) through (e) of rule 2848, as applicable;
- (f) A statement that the company will submit to a full audit to ensure compliance with §§ 40-15-106, 40-15-108 and 40-15-208 (2), if necessary and applicable; and
- (g) If §§ 40-15-106 and 40-15-108 are not applicable, a statement that the petitioner will submit to a full audit to ensure compliance with § 40-15-208(2), if necessary. If this information is already on file with the Commission, the petitioner must identify when and in what form the information relied on was filed.

285~~86~~. – 2869. [Reserved].

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[indicates omission of unaffected rules]

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[indicates omission of unaffected rules]

High Cost Support Mechanism and High Cost Administration Fund

Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to establish the process used by the Commission to implement and the provisions of the high cost support mechanism while remaining consistent with the relevant rules and orders of the FCC.

The statutory authority for the promulgation of these rules is found at §§ 40-3-102, 40-15-208(2)(a), 40-15-502, and 40-2-108, C.R.S.

2840. Applicability.

Rules 2840 through 2869 govern the operation of the Colorado High Cost Support Mechanism (HCSM) and the Colorado High Cost Administration Fund and shall apply to all providers of intrastate telecommunications services.

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) "Average-schedule rural provider" means a rural telecommunications service provider that is an average-schedule company as defined and used in 47 C.F.R. §§ 69.605 through 69.610.
- (c) "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.
- (d) "Geographic area" means a Commission-defined area of land usually smaller than an incumbent provider's wire center serving area included wholly within the incumbent's wire center boundaries.
- (e) "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 HCSM.
- (f) "High Cost Support Mechanism" (HCSM) 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.
- (g) "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.(h) "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.

- (i) "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.
- (j) "Retail revenues" means the gross revenues associated with contribution levels to the HCSM means those revenues from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services 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, telex; telegraph; 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.
- (k) "Revenue benchmark" means a calculated amount of intrastate revenues per access line. A separate revenue benchmark shall be established for residential service and for business service for each geographic area according to the following formulae:
 - (l) "Residential revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the provider that serves the relevant geographic area as of January 1 of the previous year.
 - (A) The weighted average monthly revenues per residential line for all types of residential basic local exchange service in that geographic area including, but not limited to flat, measured or message services; plus
 - (B) One-half of the average residential revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus

- (C) The average intrastate residential carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
 - (D) Support from the Federal High Cost Loop Support; plus
 - (E) Such other revenues as the Commission, by order, deems included.
- (II) "Business revenue benchmark", for each geographic area is calculated as the sum of the following types of revenues received by the ILEC that serves the relevant geographic area as of January 1 of the previous year:
- (A) The weighted average monthly revenues per business line for all types of business basic local exchange service in that geographic area including, but not limited to, flat, measured or message services; plus
 - (B) One-half of the average business revenues per line in that geographic area from non-basic, vertical, or discretionary services including, but not limited to, package and bundled features, call waiting, call forwarding, and caller identification; plus
 - (C) The average intrastate business carrier common line access charges and imputed carrier common line access charges in intrastate toll services in a geographic area; plus
 - (D) Support from the Federal High Cost Loop Support; plus
 - (E) Such other revenues as the Commission, by order, deems included.
- (III) The statewide residential and business revenue benchmark rates as defined in subparagraphs (I)(A) and (II)(A) above mean Commission-approved rates for purposes of calculating the HCSM support.

2842. Incorporation by Reference.

References in rules 2840 through 2869 to Parts 32, 36, 54, 64, and 69, are references to rules issued by the FCC and have been incorporated by reference, as identified in rule 2008.

2843. General.

The HCSM shall be coordinated with the Federal Universal Service Fund (USF), as described by regulations found at 47 C.F.R. §§ 36.601 to 36.641 and §§ 54.1 to 54.707 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by § 101 of the Telecommunications Act of 1996.

- (a) The HCSM shall operate on a calendar-year basis. The Commission shall, by November 30 of each year, adopt a budget for the HCSM including the:
 - (I) Proposed benchmarks;

- (II) Proposed contributions that may be collected through a rate element assessment by each telecommunications provider; and
 - (III) Proposed total amount of the HCSM fund from which distributions are to be made for the following calendar year.
- (b) If the budget prepared pursuant to paragraph (a) and submitted to the General Assembly pursuant to paragraph 2849(p) includes a proposal for an increase in any of the amounts listed in paragraph (a), such increase shall be suspended until March 31 of the following year.

2844. Specific Services and Features Supported by the HCSM.

The services and features supported by the HCSM are an evolving level of telecommunications services established by the Commission and periodically updated under § 40-15-502(2), C.R.S., to recognize advances in telecommunications and information technologies and services. Until revised, the HCSM will support such services as defined in rule 2308. In addition, the HCSM will support access to 9-1-1 service and such other elements, functions, services, standards or levels necessary to attain Commission-prescribed service-quality standards or other criteria established pursuant to statute or Commission rule.

2845. Affordable Price Standard for Basic Service.

For the purpose of rules 2840 through 2869, the benchmark rates as determined by the Commission for residential and business basic local exchange service shall be deemed affordable. If the current tariff rates are higher than the benchmark rates set by the Commission for HCSM purposes, those rates are deemed affordable. .

2846. Contributors; Reporting Requirements; Rate Element Calculation; Application of Rate Element to Customer Billings; and Remittance of Contributions.

- (a) Contributors. Every provider of intrastate telecommunications service to the public, or to such classes of users as to be effectively available to the public, every provider of intrastate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators not falling within the de minimis exemption of subparagraph (b)(I)(B) must contribute to the HCSM.
- (I) Revenues associated with the sale of cable services identified in § 40-15-401(1)(a), C.R.S. other than video conferencing, shall not be considered when determining a provider's assessment.
 - (II) The provider who falls within the de minimis exemption of subparagraph (b)(I)(A) is not required to contribute to the HCSM. Any provider that falls within the de minimis exemption must notify their underlying carrier that they should be considered end users for reporting purposes.
- (b) Process for determining the HCSM rate element.
- (I) Contributor reporting requirements. Each provider shall provide to the Administrator a verified accounting of its gross retail revenues, and such other revenues, and uncollectibles as the Administrator shall request for purposes of determining contributions

and disbursements under these rules. The accounting shall be submitted using the form identified as the HCSM Worksheet available from the Commission or on its website. The completed HCSM Worksheet shall be submitted to the Administrator twice a year. The HCSM Worksheet shall be due March 31, of each year, containing data for the prior calendar year. The HCSM Worksheet shall be due September 1, of each year, containing data for the six-month period from January 1 through June 30 for the current calendar year.

- (A) De minimis exemption. If a provider's contribution to the HCSM in any given year is calculated to be less than \$5,000, that contributor is not required to submit a contribution. Providers falling within this de minimis exemption are required to file with the Administrator only that portion of the HCSM Worksheet for that period that certifies their de minimis status. Such de minimis certification shall be accompanied by an affidavit of an officer of the provider attesting to the veracity of its self-certification. However, each provider exempt from contributing because of its de minimis revenues shall retain complete documentation (including, but not limited to the information required in the HCSM Worksheet) and shall make such documentation available to the Administrator upon request. Notwithstanding the de minimis exemption of this subparagraph (I)(A), all EPs are required to remit contributions and to file the entire HCSM Worksheet.
- (II) Reporting requirements.
 - (A) Each EP receiving support pursuant to paragraph 2848 shall provide to the Administrator, a verified accounting of: (1) the actual number of residential and business access lines served by such provider in each geographic area as of the last day of each month; and (2) the actual amount of contributions collected in the month if the provider applies the rate element to its end user customer. This data shall be submitted to the Administrator by the 15th day of the subsequent quarter.
 - (B) Each wireless EP receiving support pursuant to rule 2848 shall provide to the Administrator a verified accounting of: (1) the actual number of residential and business wireless handsets served by such provider in each geographic area (i.e., the underlying local exchange carrier's geographic area) as of the last day of each month; and (2) if the provider applies the rate element to its end user customer then it shall report the actual amount of contributions collected in the month. The data shall be submitted to the Administrator by the 15th day of the subsequent quarter.
- (III) Rate element calculation. The Administrator shall estimate the total amount of high cost support that will be needed for the next quarter (including support needed under rules 2846 through 2855 and administrative expenses) and shall determine the quarterly factor. This estimate shall be based on the information provided to the Administrator by providers, EPs, ILECs, and other information that the Administrator may gather from the Commission and providers. The factor shall be equal to the ratio of total statewide HCSM requirement to total statewide net (gross revenues minus uncollectibles) retail revenues for the period. The appropriate factor shall be converted to a HCSM rate element that shall be applied to the net retail revenues of each telecommunications

service provider. The Commission shall issue an order establishing the appropriate HCSM rate element at least 15 days prior to the first day of each quarter and shall post notice of the setting of such rate element on the Commission's website.

- (IV) The Commission may increase the rate element factor by an amount it reasonably estimates to be necessary to compensate the HCSM fund for any qualified contributors who fail to pay the assessments. Such increase shall generally not exceed five percent of the total statewide HCSM requirement.
- (c) Application of the rate element to providers. The HCSM rate element shall be assessed upon all providers in Colorado. Providers may, at their option, apply the rate element to the retail revenues of each provider's end users as a line item on the monthly bill except that providers falling within the de minimis exception of subparagraph (b)(I)(A) shall not apply the HCSM rate element nor collect such contribution from their end users. For those telecommunications providers opting to apply the rate element to their end user customers, the location of the telecommunication service delivery shall be used to determine whether the HCSM rate element applies where an end user service location receiving the bill and an end user service location receiving the service differ.
- (d) Remittance of contributions. All providers not falling within the de minimis exemption of subparagraph (b)(I)(A) shall be responsible for remitting quarterly to the HCSM according to the following procedure:
 - (I) Each quarter, or as necessary, the Administrator shall issue an invoice instructing each contributor to remit its HCSM contribution to the HCSM escrow account.
 - (II) The HCSM contributions shall be remitted as directed by the Administrator no more than 30 days after the end of each quarter. If the amount owed is not remitted by that date, the Administrator shall bill the provider a late payment charge equal to one percent per month of the late amount. If the provider establishes a history of making late contributions, the Commission may initiate an appropriate process to ascertain and implement proper corrective measures including, but not limited to, withholding future support from the HCSM and/or penalties pursuant to §§ 40-7-101, C.R.S., et seq.
 - (III) Reconciliation. The Administrator shall review each EP's HCSM account transactions. The review shall reconcile HCSM contributions, receipts, and other projected account transactions to the actual HCSM entitlement, as provided in paragraph 2848(f). The Administrator shall analyze any deviation between the estimated amount and the verifiable contribution amount. Adjustments to the standard quarterly transaction amount or any other reconcilable adjustments will be performed in a subsequent quarter.
- (e) Continuing customer education. For those telecommunications service providers opting to apply the rate element to their end user customers, in the first billing cycle of the third quarter of each calendar year, each provider that is collecting the rate element (also known as the "Colorado Universal Service Charge") from its end users shall provide to each of its customers, by message directly printed on the bill, by bill insert, or by separate first-class mail, or any combination of these alternatives, the continuing customer education material as may be ordered by the Commission.

2847. Eligible Provider.

- (a) As a prerequisite for designation and eligibility to receive support from the HCSM, a provider shall be in compliance with the Commission's rules applicable to the provision of basic local exchange service.
- (b) Upon request and consistent with the public interest, convenience, and necessity, the Commission may designate more than one common carrier as an EP in a service area designated by the Commission, so long as each additional requesting carrier meets the requirements of Commission rules. The Commission shall find that the designation is in the public interest.
- (c) All EPs shall make available, collect and remit the LITAP surcharge, and advertise LITAP as defined in rules 2800 through 2819, to qualifying low-income customers.
- (d) The EP shall agree to certify that it is complying with the Commission's service quality standards and consumer protection rules, and shall agree to submit to the Commission's enforcement and sanction authority with regard to violations of such service quality standards and/or consumer protection rules.
- (e) Application. A provider shall file an application with the Commission to be designated as an EP within a geographic support area and eligible to receive support from the HCSM.
 - (l) Contents. In addition to complying with the requirements of paragraph 2002(b), the application must provide evidence sufficient to establish that:
 - (A) The provider is, or is applying to be, designated as an ETC under rule 2187 for purposes of being eligible to receive federal universal service support;
 - (B) The provider agrees to provide such basic local exchange service as described in Sections 214(e) and 254 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996;
 - (C) The provider will offer basic local exchange service throughout the entire geographic support area;
 - (D) The provider has the managerial qualifications, financial resources, and technical competence to provide basic local exchange service throughout the specified support area regardless of the availability of facilities or the presence of other providers in the area;
 - (E) The provider is not receiving funds from the HCSM or any other source that together with revenues, exceed the reasonable cost of providing basic local exchange service to customers of such provider;
 - (F) The granting of the application serves the public convenience and necessity, as defined in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.; and

- (G) The provider acknowledges that it will offer basic local exchange service within one year of the effective date of the Commission order approving such application for EP designation or its designation will become null and void.
- (II) Process for determining eligibility.
 - (A) The Commission processes applications in accordance with the Rules of Practice and Procedure.
 - (B) An application filed pursuant to paragraph (e) may be filed contemporaneously with an application for a CPCN, LOR, or an alternative form of regulation. In addition, an application to be designated as an EP may be filed in a combined application to be designated a POLR or an ETC pursuant to rules 2183 and 2187.
- (f) Reseller ineligibility. A provider which provisions its service to end users solely through purchase of a finished service from a facilities-based provider, and then sells that same service or that service combined with other services is not eligible to receive support from the HCSM.
- (g) Portability of support. HCSM support shall be portable between any EP chosen by the end user.
- (h) Annual Reporting Requirements for Eligible Providers.
 - (I) Each EP shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. EPs failing to meet these annual reporting requirements may not be eligible to receive high cost support and are subject to Commission enforcement and sanction with regard to failure to comply.
 - (A) For the previous calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an EP. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.
 - (B) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service (BUS) offerings and LITAP program throughout the service areas in Colorado where the carrier has been designated an EP. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.

- (C) Documentation that a competitive EP is offering an unlimited local usage plan or a plan with at least 900 minutes of use per month that is comparable to that offered by the incumbent LEC in the relevant service areas.
- (D) If a review of the data submitted by an EP indicates that the EP is no longer in compliance with the Commission's criteria for EP designation, the Commission may refrain from authorizing CHCSM support to the carrier until the carrier is in compliance with the Commission's criteria for EP designation. In addition, EPs must submit their reports on a timely basis.
- (E) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule is true and correct. An officer, director, partner, or owner of the company must sign the affidavit.

2848. 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) Disaggregation and targeting of Colorado High-Cost Support by rural ILECs. The disaggregation plan selected by a rural incumbent EP for targeting Colorado high-cost support shall be the same plan as that selected by the provider under rule 2190 and approved by the Commission under those rules unless another EP or ETC provider, or the Commission request a different disaggregation plan.
- (c) Support through the HCSM applicable to non-rural geographic areas shall be calculated as follows:
 - (I) By order, the Commission shall publish the intrastate proxy cost for each non-rural geographic area. The proxy cost model and the resultant intrastate proxy costs shall be updated as necessary. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.
 - (II) When the per-line intrastate proxy cost exceeds the applicable benchmark in a particular non-rural geographic area, the Commission shall designate that non-rural geographic area as a geographic support area.
 - (III) Amount of Support: Each EP shall receive support from the HCSM based on a verified accounting of the actual number of residential and business access lines it serves in the non-rural high cost geographic support areas, as designated by the Commission, multiplied by the difference between the per line intrastate proxy cost in such geographic support area and the applicable per access line revenue benchmark as determined by the Commission. The amount of support shall be reduced by any other amount of support received by such provider or for which such provider is eligible under support mechanisms established by the federal government and/or this state.

- (IV) Revenue benchmarks. Separate revenue benchmarks shall be determined for residential and business supported access lines for each geographic area according to the formulae defined in subparagraph 2841(k).
- (d) Support through the HCSM applicable to rural geographic areas (areas served by rural ILECs) shall be calculated as follows:
 - (I) Revenue requirement shall be calculated on a per access line basis pursuant to rules 2400, 2854 and 2855 (based upon the filing of the incumbent rural EP serving that area and as modified pursuant to paragraph 2848(h)); and (2) publish the support per access line, disaggregated into such geographic support areas as may be designated by the Commission. The Commission shall ensure that the HCSM operates such that the supported basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.
 - (II) Amount of support: Each EP shall receive support from the HCSM in an area served by a rural ILEC based upon the number of access lines or the EP serves in those high cost geographic support areas, as designated by the Commission, multiplied by the applicable support per access line.
 - (III) Total local revenues shall include, but not be limited to, local revenues, feature revenues, and federal high cost loop support. If the tariff residential or business rate is less than statewide residential or business benchmark rate, then the EP shall impute the statewide residential or business benchmark rate. If the tariff residential or business rate exceeds the statewide residential benchmark rate or the statewide business benchmark rate, then actual revenues shall be used.
 - (IV) The total local revenue deficiency shall equal total local revenues minus total local revenue requirement.
 - (V) Per-line support amounts shall equal the total local revenue deficiency divided by the total number of access lines (*i.e.*, residential and business).
 - (VI) Additional procedures governing the operation of disaggregated support:
 - (A) The disaggregation and targeting plan adopted under rule 2190 shall be subject to the following general requirements:
 - (i) Support available to the rural ILEC's study area under its disaggregation plan shall equal the total support available to the study area without disaggregation.
 - (ii) The ratio of per line support between disaggregation zones for each disaggregated category of support shall remain fixed over time, except as changes are allowed pursuant to rule 2190.
 - (iii) The ratio of per line support shall be publicly available.

- (iv) Per-line support amounts for each disaggregation zone shall be recalculated whenever the rural ILEC EP's total annual support amount changes using the changed support amount and total access line counts at that point in time.
 - (v) Per-line support for each category of support in each disaggregation zone shall be determined such that the ratio of support between disaggregation zones is maintained and that the product of all of the rural ILEC EP's access lines for each disaggregation zone multiplied by the per-line support for those zones when added together equals the sum of the rural ILEC EP's total support.
 - (vi) Until a competitive EP is designated in a study area, the quarterly payments to the rural ILEC EP will be made based on total annual amounts for its study area divided by four.
 - (vii) When a competitive EP is designated anywhere in a rural ILEC EP's study area, the per-line amounts used to determine the competitive EP's disaggregated support shall be based on the rural ILEC EP's then-current total support levels, lines, and disaggregated support relationships.
 - (viii) Each EP shall receive support from the HCSM based on the number of access lines or wireless handsets it serves in the designated high cost geographic support areas.
 - (ix) The support received shall be based on actual number of access lines or the actual number of wireless handsets reported to the administrator as a verified accounting for each geographic area as of the last day of each month.
- (e) Process for payments. The Administrator will arrange payments to be made to EPs, which are net recipients from the HCSM, within 30 days of the last day of each quarter.
- (f) Reconciliation. The Administrator shall reconcile the estimated disbursements previously authorized for each EP for the period for which the report provides information to the actual disbursements to which such provider is entitled, and shall send a statement of such reconciliation to each EP within 60 days after the receipt of the report. The statement shall show if the provider is entitled to additional amounts from the HCSM, or if the EP has received more than the amount of its HCSM entitlement. The Administrator shall use these reconciling amounts when setting the EP's support in subsequent quarters.
- (g) Colorado High Cost Fund Administration. The Commission, acting as Administrator, shall determine and establish by order, the HCSM support to be received by an EP.
 - (l) Once the Commission, by order, has established the appropriate HCSM support amount, the Commission will monitor to ensure that the provider is not receiving funds from the HCSM or any other source that together with revenues do not exceed the reasonable cost of providing basic local exchange service on an annual basis. The Administrator will

develop the appropriate form to be used for such monitoring. The monitoring form shall be available from the Commission's website.

- (II) The monitoring forms and related information shall be filed with the Administrator and the Office of Consumer Counsel by August 15th of each year.
- (III) If the information contained in a provider's HCSM monitoring form, annual report, or other filed document indicates that HCSM support for that provider should be adjusted, Staff of the Commission may request that the Commission issue, or the Office of Consumer Counsel may file, a formal complaint. The Commission, acting as Administrator and following an opportunity for hearing, may revise the provider's HCSM support as a result of the complaint proceeding.

2849. Administration.

The HCSM shall operate under the direction of an Administrator, which shall be the Commission or its designee.

- (a) The Commission may engage a third-party entity who meets the criteria in this rule to perform such duties of the Administrator as the Commission may, from time to time, deem necessary or convenient. The Commission shall select the entity using Colorado State Government contracting procedures. Until such time as an entity has been engaged, or during times when the entity is not available to fulfill its duties, the Commission shall act as the Administrator.
 - (I) The third-party entity shall meet all of the following criteria:
 - (A) Be neutral and impartial.
 - (B) Not be a party in any matter before the Commission, nor advocate specific positions before the Commission in any telecommunications service matter.
 - (C) Not be a member in a trade association that advocates positions before the Commission.
 - (D) Not be an affiliate of any provider of telecommunications services.
 - (E) Not issue a majority of its debt to, nor derive a majority of its revenues from, nor hold stock in any provider(s) of telecommunications services. This prohibition also applies to any affiliates of the third-party entity.
 - (F) Not have a Board of Directors that includes members with direct financial interests in entities that contribute to or receive support from the HCSM.
- (b) The reasonable expenses incurred in the administration of the HCSM shall be a cost of the HCSM and shall be paid from the funds contributed to the HCSM.
- (c) The Administrator shall determine the amount each telecommunications provider must pay into the HCSM and determine the disbursement each EP may receive from the HCSM.

- (d) The Administrator shall net each EP's assessment and support prior to receipt of actual funds.
- (e) To the extent the funding received from providers in any one fiscal year exceeds the cost of administering the HCSM (including such reserve as may be necessary for the proper administration of the HCSM), any unexpended and unencumbered monies shall remain in the Fund and shall be credited against the assessment each provider must pay in the succeeding fiscal year.
- (f) The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.
- (g) If the Commission has delegated such duties, the third-party entity shall have access to the books of accounts of all providers to the limited extent necessary to verify the intrastate retail revenues and other information used in determining contributions and disbursements from the HCSM.
- (h) The Administrator shall maintain a database that tracks eligible access lines for support based on the method through which service is provisioned and the identity of each carrier providing that service in each geographic area.
- (i) The Administrator will develop appropriate forms to be used by all providers and all EPs for reporting information as required by rule 2846. Copies of the forms will be made available on the Commission's website and at the offices of the Commission.
- (j) The Commission shall perform an annual review of HCSM fund recipients. One purpose of this review shall be a verification of continued eligibility. Another purpose shall be a verification of the receipt by each EP of the funds to which each provider is entitled and is projected to receive from the HCSM. Subject to such reviews, the Administrator will recommend any required adjustments to HCSM contribution methods, distributions, necessary rule changes and other relevant items that shall be considered in connection with the HCSM.
- (k) The quarterly reconciliations under subparagraph 2846(d)(III) and paragraph 2848(f) shall be the principal source for such annual reviews.
- (l) Supplemental and forecast information that may be requested by the Administrator to assure a complete review shall be provided by all providers to the Administrator, as formally requested, within ten days of the Administrator's written request. If those persons do not provide the data required within ten days of the request, the Commission may initiate a formal complaint proceeding for remedies, including withholding future support from the HCSM and/or penalties as provided in § 40-7-101, C.R.S., et seq.
- (m) The Administrator and the Fund may operate on a fiscal year from July 1 to June 30 of the succeeding year.
- (n) An independent external auditor chosen by the Commission shall periodically, at its discretion, audit the Fund and associated HCSM records, including both collections and disbursements from the Fund. The costs for conducting audits shall be included in the computation of HCSM requirements.

- (o) An annual report of the Fund prepared by the Administrator shall be filed with the Commission by December 1 of each year. A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and to each provider that contributes to the HCSM. This report shall summarize the preceding fiscal year's activity and include the following:
 - (I) A record of the total cost of administration of the HCSM; and
 - (II) The most recent audit report.
- (p) 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 to each provider that contributes to the HCSM. The Administrator may satisfy the latter requirement by notifying the provider of the availability of the annual report using an e-mail message directing the provider to the report 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 that the Commission determined shall constitute the HCSM from which distributions would be made;
 - (II) The total amount of money ordered to be contributed through a rate element assessment collected by each provider;
 - (III) The basis on which the contribution of each provider was calculated;
 - (IV) The benchmarks used and the basis on which the benchmarks were determined;
 - (V) The total amount of money that the Commission determined shall be distributed from the HCSM;
 - (VI) The total amount of money distributed to each provider from the HCSM;
 - (VII) The basis on which the distribution to providers was calculated;
 - (VIII) 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;
 - (IX) The proposed benchmarks, the proposed 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; and
 - (X) The total amount of distributions made from the HCSM, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference.

2850. Review of the HCSM.

- (a) For the purpose of determining whether the HCSM should be reformed, modified, or adjusted, the HCSM will be evaluated and reviewed at the discretion of the Commission. The time period between reviews shall usually not exceed three years, and at least every three years thereafter, for the purpose of determining whether the HCSM should be adjusted.
- (b) The Commission shall consider opening a docket to consider any changes to these rules that may be necessary as a result of the conclusion of every proceeding, conducted pursuant to § 40-15-502(2), C.R.S., to review the definition of basic service.

2851. [Reserved].

2852. Enforcement.

- (a) Holder of a CPCN. A provider holding a CPCN issued by the Commission that fails to make timely reports or to pay, in a timely manner, its contribution when it is due and payable under these rules, may, after notice and opportunity for hearing, have its CPCN revoked as provided in Article 6, Title 40, C.R.S., be denied interconnection to the public switched network, and/or have other appropriate remedies imposed upon them by the Commission.
- (b) Uncertificated provider. If a provider does not hold a CPCN from the Commission and fails to make timely reports or payment of its contribution, the provider may be subject to a Commission action including but not limited to a formal complaint:
 - (I) To the FCC seeking an order directing the delinquent provider to make the payment or for further appropriate remedies;
 - (II) For an action for damages in an appropriate court; or
 - (III) For other appropriate remedies.
- (c) Any provider that disputes the requirement that it pay into the HCSM shall:
 - (I) Post a bond in an amount determined by the Commission pending the resolution of that dispute; and
 - (II) Repay all other providers with interest (at a rate determined by the Commission) in the event the Commission determines that the provider should have been paying into the fund.

2853. Other.

These rules are not intended to limit the programs in rules 2800 through 2819 and 2820 through 2839.

2854. Calculation of Average Loop, Local Switching, and Exchange Trunk Costs for Fund Support for Rural Telecommunications Service Providers.

- (a) The averages used in calculating HCSM support in rules 2854 and 2855 will be computed on the basis of the data reported per this rule for the preceding calendar year unless updated at the option of the rural provider pursuant to 47 C.F.R. § 36.612(a).
- (b) Each basic local exchange provider, that is not an average schedule rural company, shall calculate and report its average unseparated loop cost per study area per working loop as prescribed by 47 C.F.R. §§ 36.621 and 36.622 in its request for HCSM for the preceding calendar year to the Commission as required by paragraph 2006(a).
- (c) The national average unseparated loop cost per study area per working loop shall be calculated as prescribed by the National Exchange Carrier Association (NECA), 47 C.F.R. § 36.622(a)(1) for the preceding year.
- (d) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for:
 - (I) Local switching equipment (Central Office Equipment, Category 3, 47 C.F.R. § 36.125); and
 - (II) Its average number of working loops.
- (e) Each rural provider shall calculate and report in its annual report to the Commission its unseparated investment per study area for exchange trunk equipment (Cable and Wire Facilities, Category 2, Exchange Trunk, 47 C.F.R. § 36.155, and Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2)).
- (f) The state average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the state, as reported pursuant to paragraph (d) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (g) The state average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the state, as reported pursuant to paragraph (e) for all LECs except rural providers, by the sum of the working loops in the state, as reported in paragraph (d) for all LECs except rural providers.
- (h) Each rural ILEC, in its annual report filed with the Commission, shall include any additional HCSM reporting requirements as requested by the Commission.

2855. Calculation of Support per Access Line for Rural ILECs.

Incumbent rural providers, who are not average schedule rural providers, shall be eligible for support from the HCSM for high costs in three areas: loops; local switching; and exchange trunks, upon a proper showing. Incumbent average schedule rural providers shall be eligible for support from the HCSM for high costs as determined by subparagraph (f)(I), upon a proper showing.

- (a) Support for high loop costs. The HCSM revenue requirement for high loop costs of rural providers who are not average schedule rural providers shall be determined as follows:
 - (I) For rural providers with an average unseparated loop cost per working loop less than or equal to 115 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) Zero; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange subscriber line usage (SLU) multiplied times the provider's average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
 - (II) For rural providers with an average unseparated loop cost per working loop in excess of 115 percent but not greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) The difference between the rural provider's average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
 - (III) For rural providers with an average unseparated loop cost per working loop greater than 150 percent of the national average unseparated loop cost per working loop, the HCSM revenue requirement for high loop costs shall be the sum of:
 - (A) The difference between 150 percent of the national average unseparated loop cost per working loop and 115 percent of the national average unseparated loop cost per working loop, times 0.10; and
 - (B) The difference between 0.265 and twice the rural provider's intrastate interexchange SLU times 115 percent of the national average unseparated loop cost per working loop, provided the difference between 0.265 and twice the provider's SLU is greater than zero.
- (b) Support for high local switching costs. Rural providers who are not average schedule rural providers shall be eligible for support for high local switching costs. The HCSM revenue requirement for high local switching cost support shall be determined as follows:
 - (I) For rural providers with an average unseparated local switching equipment investment per working loop less than or equal to the Colorado average unseparated local switching investment per working line as determined by paragraph 2854(f), the HCSM revenue requirement for local switching cost support shall be zero.

- (II) For rural providers with an average unseparated local switching equipment investment per working loop in excess of the Colorado average unseparated local switching equipment investment per working loop as determined in paragraph 2854(f), the revenue requirement for high local switching cost support shall be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following 47 C.F.R., Part 36. The service category for the HCSM high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment.
 - (A) The percentage of Category 3 allocated to the HCSM service category shall be known as the "Colorado High Local Switching Cost Allocation Factor" and shall be calculated as one minus the sum of:
 - (i) The interstate factor(s);
 - (ii) The intrastate factor(s) of subparagraph 2415(b)(I)(C); and
 - (iii) The local exchange factor.
 - (B) The local exchange factor for each rural provider shall be calculated as the:
 - (i) Colorado average unseparated local switching equipment Category 3 investment per working loop, as determined by paragraph 2854(f);
 - (ii) Multiplied by the rural provider's local DEM percentage;
 - (iii) Divided by the rural provider's average investment per working loop.
 - (C) The Colorado High Local Switching Cost Allocation Factor shall not be less than zero. If, by the application of the formula of subparagraph (b)(II), the Colorado High Local Switching Cost Allocation Factor is less than zero, the factors (ii) and (iii) of subparagraph (II)(A) shall be reduced proportionally.
- (c) Support for high exchange trunk costs. Rural providers who are not average schedule rural providers shall be eligible for support for high exchange trunk costs. The HCSM revenue requirement for high exchange trunk cost support shall be determined as follows:
 - (I) For rural providers with an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average unseparated exchange truck investment per working loop, as determined by paragraph 2854(f), the HCSM revenue requirement for exchange trunk cost support shall be zero.
 - (II) For rural providers with an average unseparated exchange trunk equipment investment per working loop in excess of the Colorado average unseparated exchange truck investment per working loop, as determined in paragraph 2854(f), the revenue requirement for high exchange trunk cost support shall be calculated by apportioning the costs of the rural provider to the HCSM service category as established in paragraph (b) of the rural provider's separations study following 47 C.F.R., Part 36, as modified by the rules found in rule 2415. The HCSM service category shall be assigned a portion of the

investments of Cable and Wire Facilities, Category 2 Exchange Trunk, 47 C.F.R. § 36.155 and a portion of Category 4.12, Exchange Trunk Circuit Equipment, 47 C.F.R. § 36.126(c)(2).

- (A) The percentage allocated to the HCSM service category shall be calculated separately for each of these types of investments as one minus the sum of:
 - (i) The interstate factor(s), for exchange trunk
 - (ii) The intrastate factor(s) for exchange trunk; and
 - (iii) The local factor for exchange trunk.
 - (B) The local factor for Category 2 exchange trunk for Cable and Wire Facilities for each rural provider shall be calculated as the Colorado average unseparated investment per working loop as determined by paragraph (f) of this rule, times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.
 - (C) The local transport allocation factor for Category 4.12 Exchange Trunk Circuit Equipment, for each rural provider shall be calculated as the Colorado average unseparated investment per working loop, as determined by paragraph 2854(f), times the rural provider's local relative number of minutes of use percentage divided by the rural provider's average investment per working loop.
- (d) Support for high costs of average schedule rural providers.
- (I) The HCSM support requirement for high cost support for average schedule rural providers shall be determined as the remainder, if positive, of the following process:
 - (A) First, the total company revenue requirement (i.e., costs) for the average schedule rural provider shall be determined;
 - (B) Next, the local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:
 - (i) Residential revenue calculation:
 - (a) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariff rate for residential basic local exchange service is less than the statewide residential benchmark rate.
 - (b) If the existing tariff rate for residential basic local exchange service is equal or greater than the statewide residential

benchmark rate, then the existing residential basic local exchange service rate shall be used.

- (c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.
- (ii) Business revenue calculation:
 - (a) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariff rate for business basic local exchange service is less than the statewide business benchmark rate.
 - (b) If the existing tariff rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.
 - (c) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.
- (C) Then, the following revenues shall be subtracted from the revenue requirement of subparagraph (d)(I)(A):
 - (i) All interstate revenues and Federal Universal Service Fund (FUSF) support;
 - (ii) Intrastate network access services;
 - (iii) Long distance network services;
 - (iv) All miscellaneous revenues; and
 - (v) The local network services revenues adjusted in accordance with (d)(I)(B).
- (D) Support per access line: The support as calculated in subparagraph (d)(I)(C), shall be divided by the number of access lines to determine the support per access line.
- (e) Support for high costs of rural cost companies.
 - (I) The local network services revenues shall be calculated and subtracted from the total company revenue requirement. The local network services revenues shall include amounts booked to 47 C.F.R. §§ 32.5000 through 32.5069. Except the local network services revenues shall be adjusted as follows:
 - (A) Residential revenue calculation:

- (i) The statewide residential benchmark rate shall be imputed to determine the residential revenues if the existing tariff rate for residential basic local exchange service is less than the statewide residential benchmark rate.
 - (ii) If the existing tariff rate for residential basic local exchange service is equal or greater than the statewide residential benchmark rate, then the existing residential basic local exchange service rate shall be used.
 - (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.
- (B) Business revenue calculation:
 - (i) Statewide business benchmark rate shall be imputed to determine the business revenues if the existing tariff rate for business basic local exchange service is less than the statewide business benchmark rate.
 - (ii) If the existing tariff rate for business basic local exchange service is equal or greater than the statewide business benchmark rate, then the existing business basic local exchange service rate shall be used.
 - (iii) The imputed residential revenues shall be calculated on a monthly basis to determine the yearly revenues.
- (f) Local network services tariff cap. In no event shall the local network services revenue requirement, as defined in 47 C.F.R. §§ 32.5000 through 32.5069 (1995) for rural providers exceed 130 percent of the average of such revenue requirement for local exchange providers that are not rural providers. Such excess shall be considered as a part of the rural provider's HCSM support revenue requirement.

2856. Transitional Colorado High Cost Fund Support For Eligible Providers.

Beginning January 1, 2011, each EP shall receive the per access line support it received as of December 31, 2010 from the HCSM based the number of access lines or wireless handsets per household it serves in the high cost geographic support area multiplied by the applicable support per access line. Thereafter, each EP's HCSM support will be decreased as follows:

- (a) On August 15, 2011, each EP receiving support pursuant to paragraph 2848(c), shall file with the Administrator an update of the proxy cost model using the most recent line counts and operating expense factors and investment allocations, verification of the revenues as are determined necessary for establishing the applicable support per line.
- (b) Each EP receiving support as of December 31, 2011 from the HCSM shall have its per access line support phased down for a period of six years beginning January 1, 2012. Each EP's support amount shall be reduced by \$1.00 per access line supported for the year 2012, and reduced by

an additional \$2.00 per access line supported for each year for the next five years until the end of year 2017. Thereafter the per access line support will remain constant unless the provider relinquishes CHCSM support or files to reset its HCSM support or the Commission orders otherwise.

- (c) Any EP that is designated as eligible for initial receipt of HCSM support after December 31, 2011, including any currently designated EP with a request for support in a new study area(s), shall have its per access line support reduced by \$1.00 in the first year and reduced by an additional \$2.00 per access line support each year thereafter for the next five years until the end of year six from Commission order. Thereafter the per access line support will remain constant unless the provider relinquishes CHCSM support or files to reset its HCSM support, or the Commission orders otherwise.
- (d) Any HCSM support established through a Commission-granted variance from these rules shall be in the amounts and for the time period(s) expressly approved by the Commission's order.

2857. Extraordinary Circumstance.

A company that currently receives HCSM support and wants to reset its HCSM support amount may file a petition to demonstrate extraordinary circumstances. Bankruptcy or tax liens will not be considered as an extraordinary circumstance. To qualify for the extraordinary circumstance, the petitioner must include the following information in its petition:

- (a) A demonstration that the provider is not receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to the customers of such provider;
- (b) A demonstration that a large investment was necessary for the continued operation of basic local exchange service;
- (c) A demonstration that Pro forma adjustments were made for known and measurable changes;
- (d) Support that granting the petition is in the public interest;
- (e) The information required by paragraph 2003(b), as well as all information necessary to complete the calculations contained in paragraphs (a) through (e) of rule 2848, as applicable;
- (f) A statement that the company will submit to a full audit to ensure compliance with §§ 40-15-106, 40-15-108 and 40-15-208 (2), if necessary and applicable; and
- (g) If §§ 40-15-106 and 40-15-108 are not applicable, a statement that the petitioner will submit to a full audit to ensure compliance with § 40-15-208(2), if necessary. If this information is already on file with the Commission, the petitioner must identify when and in what form the information relied on was filed.

2858. – 2869. [Reserved].

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[indicates omission of unaffected rules]