

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13M-0877T

IN THE MATTER OF POSSIBLE RULE REVISIONS TO THE COMMISSION'S RULES
RELATING TO THE HIGH COST SUPPORT MECHANISM.

**INTERIM DECISION: (1) MODIFYING DECISION
NO. C13-0958; (2) VACATING AND MODIFYING
INSTRUCTIONS TO ADMINISTRATIVE LAW
JUDGE; AND (3) SETTING DEADLINES FOR
COMMENTS AND RECOMMENDED DECISION**

Mailed Date: June 13, 2014

Adopted Date: June 11, 2014

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I. BY THE COMMISSION**A. Statement**

1. Decision No. C13-0958 (Decision) issued August 16, 2013, opened this proceeding concerning the provisions governing the Colorado High Cost Support Mechanism (HCSM) within our Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2 (Telecommunications Rules). We instructed an Administrative Law Judge (ALJ) to consider rule amendments: (1) in anticipation of applications for HCSM funding in areas deemed to be subject to effective competition for basic services;¹ and (2) pursuant to the triennial review contemplated in Rule 2850².

2. By this Decision we: (1) vacate certain instructions from the Decision; (2) revise instructions to the ALJ; and (3) set a schedule for additional comments and a recommended decision.

B. Background

3. In Proceeding No. 12R-862T, the Commission revised its Telecommunications Rules by establishing a framework and process for determining the geographic areas in Colorado where there is effective competition for basic service pursuant to § 40-15-207, C.R.S. Rule 2215(a) provides that distribution of HCSM funds will be eliminated in an area found to have effective competition, unless a provider receiving HCSM funding files an application to continue funding within 180 days of the Decision. Rule 2215(b) further allows providers in areas with effective competition to submit an application for Commission consideration to establish, continue, or restore HCSM funding for specified areas or access lines.

¹ See Proceeding No. 13M-0422T.

² The last review of the HCSM rules pursuant to Rule 2850 occurred within Proceeding No. 10R-191T.

4. As set forth in the Decision, the ALJ would recommend to the Commission whether our current HCSM rules provide sufficient guidance for applicant filings pursuant to Rule 2215 for the continuation or reinstatement of HCSM funding in areas found to have effective competition. If additional rules are necessary, the ALJ would recommend rules for a potential issuance of a Notice of Proposed Rulemaking (NOPR).

5. By Decision No. R14-0308-I, issued March 20, 2014, ALJ Mana Jennings-Fader vacated the procedural schedule in this proceeding and placed the triennial review in abeyance until the conclusion of the then-current session of the General Assembly. The introduction of telecommunications bills “to varying degrees, have the potential to affect (directly or indirectly) the [HCSM].” The ALJ further stated that an abeyance would allow the Commission and the participants in this proceeding³ “to consider, as part of the triennial review, any statutory changes made in the current legislative session; will avoid work on [HCSM] rules that may be inconsistent with statutory changes; and, thus, is administratively efficient and is resource-conserving for both the Commission and the [p]articipants.”⁴

6. In May 2014, Governor Hickenlooper signed into law five bills revising Article 15, Title 40, of the Colorado Revised Statutes governing telecommunications services in

³ The participants include the following who either intervened as of right or were granted leave to intervene in this proceeding: CenturyTel of Colorado, Inc.; CenturyTel of Eagle, Inc.; El Paso County Telephone Company, doing business as CenturyLink; Qwest Corporation, doing business as CenturyLink QC; the Colorado Office of Consumer Counsel; the Colorado Telecommunications Association; Comcast Phone of Colorado, LLC, doing business as Comcast Digital Phone; N.E. Colorado Cellular, Inc., doing business as Viaero Wireless; Sprint Communications Company L.P.; Sprint Spectrum L.P., doing business as Sprint PCS; Trial Staff of the Commission; tw telecom of colorado, llc; Bell Atlantic Communications, Inc., doing business as Verizon Long Distance; MCI Communications Services, Inc., doing business as Verizon Business Services; MCIMetro Access Transmission Services LLC, doing business as Verizon Access Transmission Services; NYNEX Long Distance Company, doing business as Verizon Enterprise Solutions; Teleconnect Long Distance Services and Systems Co., doing business as Telecom USA; TTI National, Inc.; and Verizon Select Services Inc.

⁴ Decision No. R14-0308-I, ¶ 8.

the state.⁵ HB14-1331 places basic service into part 4 of Article 15, subject to certain exceptions, which include Commission regulation of providers in areas where the Commission provides high cost support for basic service.⁶ In addition, HB14-1331 revises § 40-15-208, C.R.S., (Section 208) to limit HCSM funding to local exchange providers “in areas without effective competition....” Consistent with this revision in Section 208, § 40-15-502(5)(a), C.R.S., is revised as follows:

In order to accomplish the goals of universal basic service... the commission shall create a system of support mechanisms to assist in the provision of basic service in high-cost areas *that are without effective competition for basic service, applying the factors stated in Section 40-15-207; except that support provided in a particular geographic support area is not affected until the commission makes a finding applying the factors listed in Section 40-15-207.*

[Emphasis Added]

7. Implementation of these revised statutes requires revision of our HCSM rules. We also find it necessary to vacate certain requirements in the Decision and to repurpose this proceeding.

C. HCSM Rule Review

8. By the Decision, we instructed the ALJ to review: (a) the current HCSM rules, including but not limited to Rules 2840 through 2855; and (b) the interrelationship of the HCSM rules with other Commission rules. To assist in this process, we provided examples of topic areas.⁷ The ALJ’s focus is revised to focus on rules and policy revisions necessary due to the recent change in law; to the extent practicable, we revise, vacate, and add to the topic areas discussed in the Decision.

⁵ Bills include: House Bill (HB) 14-1327, HB14-1328, HB14-1329, HB14-1330, and HB14-1331.

⁶ Section 40-15-401(1)(b), C.R.S. (revised May 9, 2014).

⁷ Decision, at ¶¶ 12-24.

1. Funding in Areas with Effective Competition

9. Due to the enactment of the bills discussed above, the ALJ shall no longer consider rule and policy revisions necessary for HCSM applications pursuant to Rule 2215 in areas found to have effective competition. The new statutes state that HCSM funding shall be eliminated in areas found to have effective competition.

2. Legacy Costs and Timing of Reduction or Elimination

10. By the Decision, we requested that participants comment upon whether certain legacy costs should be considered when determining funding eligibility in areas found to have effective competition. An example of costs within this category includes investments or expenditures into infrastructure with the reasonable expectation that funding would continue in an area subsequently deemed an area of effective competition. We similarly requested that participants consider if reduction to and elimination of HCSM support should be phased out over a particular timeframe. Because the new statutes eliminated HCSM funding in areas found to have effective competition for basic service, these topics no longer need to be addressed by the ALJ.

3. Company-Wide Revenues; Allocation of Costs; Federal Funding; Rural and Non-Rural Treatment; and Identical Support Rule

11. Participant comments and ALJ recommendations are still relevant under the revised statutes regarding: (a) how the Commission should account for company-wide revenues of providers requesting HCSM funding; (b) how the Commission should allocate loop and network costs and revenues among supported and non-supported services when making HCSM distribution determinations; (c) considerations of federal funding for purposes of Section 208, including federal distributions for the provisioning of broadband; (d) rural and non-rural treatment; and (e) applicability of Rule 2848, the “Identical Support Rule,” which authorizes the

distribution of funds to a carrier that acquires a customer previously served by a funded carrier. The ALJ is instructed to recommend whether these issues are best addressed by rule changes or within the context of adjudication; if by rule, we also request the ALJ to propose new rules.

4. Modeling Review

12. In Proceeding No. 12R-862T, the Commission received comments and presentations related to the modeling of costs to determine eligibility for HCSM support. By the Decision, the Commission directed the ALJ to evaluate proposed modeling assumptions and computations against the Commission's statutory obligations in establishing HCSM support. The ALJ shall make recommendations to the Commission regarding the applicability of, and concerns regarding, different proposed models and their underlying principles and assumptions. Recommendations should include specific rules, if rules are suggested, or a discussion of whether modeling should be addressed through adjudicated proceedings.

5. Benchmark Rate and Maximum Price

13. As revised, § 40-15-208, C.R.S., requires, in part, providers to be "fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and a *reasonable benchmark rate for basic service, as determined by the commission....*" [Emphasis Added] In addition, § 40-15-401(1)(b)(V)(B), C.R.S., requires that, after July 1, 2016, in each geographic area receiving HCSM distributions for basic service, the Commission retains the authority to "determine a maximum price for basic service under section 40-15-502(3)(b)."

14. We instruct the ALJ to receive comment on and provide recommendations of the benchmark rate and maximum price set forth in these revised statutes.

D. Additional Comments

15. We invite comment from participants on the matters addressed in this Decision. Initial comments are due no later than **July 11, 2014**. Reply comments are due no later than **July 25, 2014**.

E. Recommended Decision

16. We request the ALJ provide a recommended decision no later than **October 31, 2014**. The recommended decision shall include: (1) proposed rule changes for the Commission's consideration for the issuance of a NOPR concerning the Commission's HCSM rules; (2) recommendations on rules or adjudication processes for the topic areas listed above; (3) recommendations on setting the benchmark rate and maximum price required by statute; and (4) any additional recommendations on rules or Commission procedures.

II. ORDER**A. The Commission Orders That:**

1. Consistent with the discussion above, the Commission vacates certain directives in Decision No. C13-0958.

2. The directions to the Administrative Law Judge (ALJ) assigned to this matter pursuant to Decision No. C13-0958 are modified as set forth above. The ALJ is requested to provide a recommended decision no later than October 31, 2014.

3. Comments from participants in this proceeding shall be filed no later than **July 11, 2014**, with reply comments filed no later than **July 25, 2014**, consistent with the discussion above.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 11, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners