

Decision No. R01-1306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01R-434T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES CONCERNING THE COLORADO HIGH COST SUPPORT MECHANISM, 4 CCR 723-41, AND THE RULES CONCERNING ELIGIBLE TELECOMMUNICATIONS CARRIERS, 4 CCR 723-42.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: December 21, 2001

I. STATEMENT

A. This proceeding was instituted by the issuance of Decision No. C01-977. In that decision the Commission gave notice of the proposed rulemaking concerning both the Rules Prescribing the High Cost Support Mechanism and Prescribing the Procedures for the High Cost Administration Fund, 4 *Code of Colorado Regulations* ("CCR") 723-41 ("High Cost Support Rules"), and the Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier, 4 CCR 723-42 ("Eligible Telecommunications Carrier Rules" or "ETC Rules").

B. As stated in that decision, the Federal Communications Commission ("FCC") issued its Fourteenth Report and Order, CC Docket Nos. 96-45 and 00-256, FCC 01-157 (May 23, 2001)

("Fourteenth Report and Order"). In that Fourteenth Report and Order, the FCC modified its rules for providing universal service support to rural local exchange carriers ("LECs"). This rulemaking attempts to modify the High Cost Support Rules to make them consistent with the new regulations for federal universal service adopted in the Fourteenth Report and Order. In addition, the proposed rules suggest changes to the High Cost Support Rules to reflect changes in the State statutes related to the HCSM. The rulemaking was also noticed as considering the elimination of certain requirements necessary to obtain support from the Colorado High Cost Support Mechanism ("HCSM").

C. The Eligible Telecommunications Carrier Rules in part establish requirements for telecommunications providers to be established as eligible telecommunications carriers ("ETCs"). The Commission's designation of a provider as an ETC permits it to receive federal universal service support for its provision of service in high cost areas. The Fourteenth Report and Order also establishes new regulations relating to rural LECs that serve as ETCs. For example, the Fourteenth Report and Order requires rural LECs to disaggregate service areas and target high cost universal service support under one of three designated paths. The proposed changes to the ETC rules are an attempt to make them consistent with the new regulations adopted in the Fourteenth Report and Order.

D. In the Notice of the Proposed Rules themselves, Attachment A, the Commission noted that Rule 18.6 of the High Cost Support Rules currently contains provisions establishing a six-year phase down of the support amount and the simultaneous requirement to annually adjust the switched access rates to reflect a sharing of access minute demand growth. The Commission sought comment regarding any necessary changes to Rule 18.6.

E. Comments were received, either in advance of hearing or at the hearing, from WorldCom, Inc. ("WorldCom"); Colorado Telecommunications Association, Inc. ("CTA"); the Colorado Office of Consumer Counsel ("OCC"); Qwest Corporation ("Qwest"); Western Wireless Holding Company, Inc. ("Western Wireless"); AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Colorado ("AT&T"); and N. E. Colorado Cellular ("NECC").

F. Pursuant to notice, the hearing was held on November 13, 2001. At the conclusion of the hearing the undersigned Administrative Law Judge ("ALJ") extended the time period for written comments to November 27, 2001. Additional comments were timely filed by CTA and Western Wireless.

G. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits of this proceeding along with a written recommended decision. Since

many issues were raised by multiple commenters, the following analysis is on an issue basis rather than on a comment basis. To the extent an issue was raised by a commenter but not addressed below, it was deemed to be without merit.

II. DISCUSSION

A. Issue - Audits of the High Cost Support Mechanism

Many commenters suggested the need for a regular schedule of audits, to be performed by an outside auditor. The Commission currently has no money in the high cost administration fund to pay for audits. In order to obtain these funds an appropriation from the Legislature would be necessary.¹ Therefore adopting a rule requiring the audit by an outside auditor without the funds to pay for them appears imprudent. In addition, while the fund is large, the funds are not handled by Commission employees. Rather, the funds are directed to be paid from one telecommunications entity to another on a net basis. This lessens the need for an external audit. It thus appears that an internal auditing procedure on a regular basis should suffice. The OCC suggestion that the High Cost Support Rules contain a requirement that the fund and HCSM records shall be audited periodically incorporates the ALJ's conclusion, and it is adopted.

¹ See § 40-15-208(3), C.R.S.

B. Issue - Codification of Western Wireless Holdings

Several parties sought to have these rules incorporate the holdings of the Commission in Docket No. 00K-255T, In The Matter of Western Wireless Holding Co., Inc., Decisions Nos. C01-476 and C01-629. Those decisions resolved several issues relating to the certification of competitive ETCs and the designation of competitive eligible providers ("EPs").² Despite the clarifications contained in those decisions, there still appears to be some confusion under what circumstances ETCs and EPs may receive support. The rules are modified by this Order to hopefully clarify the following principles under which support may be obtained:

- (1) An ETC and an EP will receive support for all access lines in rural areas. It matters not whether the ETC and EP are incumbent local exchange carriers ("ILECs") or competitive providers nor does it matter whether they are landline or wireless providers.
- (2) ETCs and EPs receive support in non-rural areas for the primary access line only. Any suggestions by commenters that this be expanded to include all lines is beyond the scope of this rulemaking. Again, it matters not whether the ETC and EP are ILECs or competitive providers, landline or wireless.
- (3) In a non-rural area, a provider of last resort ("POLR") providing service will always receive HCSM support. If a competitive provider, wireless or landline, comes in and obtains the

² Designation as an EP is a prerequisite to receiving support from the Colorado High Cost Support Mechanism. There are similar, but not identical, requirements for receiving ETC certification and EP designation.

primary line such that a POLR is no longer providing service, then the support travels to the competitive provider. If the ILEC, which is a POLR, subsequently regains the customer and begins providing service, the POLR will receive support, not the competitive provider.

C. Issue - Phase Down of Support

Some commenters have suggested that the phase down of support found in Rule 18.6.1.2 of the High Cost Support Rules should be eliminated. This provision was put into the rules in the past to relieve the companies receiving funding from having to come in for an annual audit. As the OCC notes in its comments, without the phase down mechanism, assuming the incumbents' high cost funding remain unchanged, an over recovery situation could have occurred. The compromise that was struck years ago appears to remain viable and reasonable today. Should someone receiving support feel a need, it can always come to the Commission and seek an increase in support and a restart of the phase down. This would require something akin to a general rate case. However, the phase down in the first three years allows support at the levels of 100 percent, 100 percent, and 82.5 percent. Thus, a person receiving support is guaranteed almost all of it for at least three years. It does not appear unreasonable to require a person receiving support to come in in subsequent years should the amount of support prove inadequate.

Therefore the request to do away with the phase down contained in Rule 18.6.1.2 will not be adopted.

D. Issue - Access Minute Adjustments

A related but separate adjustment is contained in Rule 18.6.1.4 of the High Cost Support Rules. This rule requires that during a period when a company is receiving HCSM funding, switched access rates will be adjusted annually to reflect the sharing of access minute demand growth. This adjustment, which is almost a ministerial task and not the onerous audit that some commenters have claimed, was put in the rules during a time when access minutes were continuing to increase. Circumstances for many companies have changed and access minutes have leveled off or even decreased. The advent of internet usage may have something to do with this. No commenter suggested that elimination of this requirement would cause any unreasonable harm. It appears that the adjustment for access growth may have outlived its usefulness and therefore the rules adopted by this order eliminate the annual access rate adjustment.

E. Issue - Rural ILEC Option to Draw from Part 1 or Part 2 of the HCSM

1. The rules that are subject to this rulemaking provided in the past that when a competitive carrier was able to provide service in a rural ILEC service territory, the ILEC

would move to Part 1 funding.³ However, the proposed rules would eliminate this and require rural ILECs to remain with Part 2 funding. This is consistent with the FCC's Fourteenth Report and Order, which is based on providing support to rural ILECs on an embedded cost basis. The rules adopted by this order maintain the uniformity between the State and Federal system by requiring rural ILECs to remain in Part 2 for funding purposes, whether or not a competitive provider is also providing service.

2. Related to this issue is the question of how a competitive provider such as Western Wireless gets support. A competitive provider will get support depending upon where the customer it is serving is located. If the customer is located in a non-rural area, support will be based on Part 1 principles. If it serves a customer in a rural area, its support will be based on Part 2 principles. The rules have been redrafted to clarify this.

F. Issue - Purposes of Disaggregation

1. Some commenters were concerned that the proposed rules did not explicitly state that disaggregation by ILECs was not only for support purposes but also for purposes of a

³ Currently, Part 1 sets forth the principles for high cost funding for non-rural areas and Part 2 sets forth funding principles for rural areas. The two parts utilized different methodologies. Part 1 is based on a revenue stream/forward looking cost methodology, and Part 2 is based on an embedded cost of service methodology.

competitive carrier's entry into the market. As stated by Western Wireless in its initial comments:

...In other words, if support is going to be targeted more accurately to high-cost wire centers and, possibly zones within wire centers, then the service area of the telephone company, often referred to as the study area, must be disaggregated in the same manner for purposes of competitive carriers attempting to enter the market in competition with the incumbent providers. ... If disaggregation plans are not for both purposes then disaggregation will only be one-half completed and there will remain a significant barrier to competitive entry in Colorado. ...⁴

2. The ALJ agrees with Western Wireless in that disaggregation must be for both purposes. Therefore the rules have been redrafted in an attempt to clarify that disaggregation for the purposes of receiving support also disaggregates the study area for purposes of competitive entry. Rule 4 C.C.R. 723-42-11, Uses of Disaggregation Paths, does two things. First, it clarifies that disaggregation is for both purposes. Second, it places the burden on the carrier disaggregating to submit a petition to the FCC seeking disaggregation of its study area within 60 days of effective disaggregation for support purposes.⁵

⁴ Initial Comments of Western Wireless, pp. 2-3.

⁵ See 47 C.F.R. § 54.207(c)(1).

G. Issue-Incorporation versus Adoption of Federal Scheme

1. A question arose as to whether the proposed to adopt an identical disaggregation scheme as that set out by the FCC, with all paths and all limitations. This Order clarifies that that is the intent. An attempt has been made to redraft the rules to follow the federal rules exactly. This approach is preferred to incorporation by reference, as the rules are not unnecessarily lengthy and will be contained entirely in this Commission's rules.

2. An issue may arise in some future proceeding as to whether an ILEC is eligible for a certain path. However, the ALJ agrees with CTA that a rulemaking record such as this is not the proper basis to resolve such a question.

H. Issue-Procedural Aspects of Disaggregation Proceedings

1. One commenter suggested that disaggregation proceedings be expedited in some fashion. The ALJ declines to adopt such a suggestion. There are statutory deadlines for application proceedings before the Commission. See § 40-6-109.5, C.R.S. Parties filing a complaint may also request expedited treatment. It may also be that some disaggregation plans will be complex and require extended analysis. The existing framework appears sufficient to deal with the proposed rules.

2. The same commenter suggested the need for draconian sanctions, should a disaggregation plan be filed in bad faith. The Commission has sufficient available sanctions available to deal with bad faith filings. The suggestion is not adopted.

3. NECC suggested that an ILEC filing a disaggregation plan be required to serve it on any competitive carrier who has either applied for or been granted ETC or EP status. The number of such competitive carriers would be small and their identities known. The suggestion is adopted in part, with service required on carriers that have obtained either ETC or EP status. Service will not be required on a carrier seeking such status.

**I. Issue-Automatic Approval of a Disaggregation Plan
Based On Wire Center Boundaries**

1. NECC suggested that any ILEC proposing disaggregation under Path 2 along wire center boundaries be granted immediate approval. It suggests all costs are tracked by ILECs on a wire center basis, and thus such a disaggregation would be easy to implement and audit.

2. It is not clear that all costs are tracked on a wire center basis. There most likely will be more accounting and cost allocation issues than NECC envisions. Therefore its suggestion is not adopted.

J. Miscellaneous Issues

1. Several other drafting changes have been made at the suggestion of the commenters. Rule 41.9.3.2 has been modified as suggested by the OCC. Incorrect references to ETCs have been changed to refer to EPs in Rule 41.9.3.3.1.6 and Rule 41.9.3.3.1.7, as suggested by Western Wireless. Rule 41.9.2.3 has been clarified to address Western Wireless' concerns that it not be precluded from the applicability of the Rule. Some general language has been inserted into the Basis and Purpose paragraph. Rule 41-1 has been substantially modified, and Rule 41-4, Transition, has been deleted in its entirety. Rule 41-9, Support Via the HCSM, has been rewritten to pick up some portions of the deleted Rule 41-4.

2. Western Wireless suggested in its comments that proposed Rule 42-7.4.1 be modified to clarify the treatment of non-jurisdictional ETCs. Rule 42-7-4 deals with certification of jurisdictional carriers only, and Rule 42-7-4.1 applies only to that certification. Thus Rule 42-7-4.1 does not apply to non-jurisdictional ETCs by its own terms. The suggestion of Western Wireless will not be adopted.

3. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Rules Prescribing the High Cost Support Mechanism and Prescribing the Procedures for the Colorado High Cost Administration Fund, 4 Code of Colorado Regulations 723-41, are amended as set forth in Attachment A to this Order.

2. The Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier, 4 Code of Colorado Regulations 723-42, are amended as set forth in Attachment B to this Order.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

1 THE
2 PUBLIC UTILITIES COMMISSION
3 OF THE
4 STATE OF COLORADO

5 RULES PRESCRIBING
6 THE HIGH COST SUPPORT MECHANISM
7 AND
8 PRESCRIBING THE PROCEDURES FOR
9 THE COLORADO HIGH COST ADMINISTRATION FUND

10 4 CODE OF COLORADO REGULATIONS (CCR) 723-41

11 BASIS, PURPOSE AND STATUTORY AUTHORITY.

12 These rules are issued under the general authority of
13 §§ 40-2-108(2) C.R.S., § 40-3-102 C.R.S. and § 40-15-208
14 C.R.S. They establish the process to be used and the
15 information required by the Commission to implement the
16 provisions of § 40-15-208 C.R.S. ~~=(SB 98-177).¹ Pursuant to~~
17 ~~§§ 40-15-502 et seq. C.R.S., the General Assembly of the State~~
18 ~~of Colorado mandated that competition in the local exchange~~
19 ~~telecommunications market be implemented on or before~~
20 ~~July 1, 1996. SB 98-177 requires that, as of July 1, 1998,~~
21 ~~the Colorado High Cost Fund ("CHCF"), as previously~~
22 ~~established in § 40-15-208 is to be abolished, and a new~~
23 ~~mechanism for the support of universal service, to be referred~~
24 ~~to as the "High Cost Support Mechanism" ("HCSM"), shall~~

~~¹ Senate Bill 98-177 was signed into law by Governor Roy
Romer on May 18, 1998 at 12:21 p.m.~~

~~operate in accordance with rules adopted by the Commission.
SB 98 177 also creates the Colorado High Cost Administration
Fund, ("Fund") which is to be used to reimburse the Commission
and its contractors for expenses incurred in the
administration of the HCSM as determined by rules of the
Commission. SB 98 177 mandates that as of July 1, 1998, any
unencumbered moneys remaining in the CHCF are to be
transferred to the Fund.~~

Pursuant to Sections 40-15-502 et seq. C.R.S., the
General Assembly of the State of Colorado mandated that local
exchange telecommunications markets be open to competition
while maintaining the goal of affordable and just and
reasonably priced basic service. To accomplish that goal the
General Assembly directed the Commission to establish a system
of universal service support mechanisms to be funded on a
nondiscriminatory, competitively neutral basis.

~~The Commission had, as of April 30, 1998, revised Rule 41
of 4 CCR for the purpose of prescribing the procedures for
administering the Colorado High Cost Fund. Portions of that
Rule are now incompatible with SB 98 177. On May 23, 2001 the
Federal Communications Commission 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 next five years based upon the proposals made by the
Rural Task Force established by the Federal-State Joint Board
on Universal Service. These rule are also intended to be
consistent with the FCC's May 23, 2001 order.~~ These
amendments are necessary to ensure that eligible providers
continue to receive support under the HCSM and that the

Commission and its contractors are reimbursed for any expenses incurred.

RULE (4 CCR) 723-41-1. APPLICABILITY.

~~Part I of these rules contain the permanent provisions regulating the HCSM, and are applicable to all telecommunications service providers in Colorado, except that the support mechanism of Rule 9 is applicable to any non rural telecommunications service provider and further, Rule 9 is applicable to rural telecommunications service providers only by the operation of Rule 4.2. Part II of these rules contain the temporary provisions providing for the transition from the CHCF mechanism that was in effect prior to July 1, 1996 to the HCSM mechanisms in Part I. Part II is applicable to rural telecommunications service providers. These rules and regulations 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.~~

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723-41-3.1 The HCSM shall operate on a calendar year basis. The Commission shall, by November 30 of each year, adopt a budget for the HCSM containing:

A) the proposed benchmarks;

B) the proposed contributions to be collected through a rate element assessment by each telecommunications provider; and

C) the proposed total amount of the HCSM from which distributions are to be made for the following calendar year.

~~723 41 3.2 The HCSM distributions of support shall not exceed sixty million dollars during each of the calendar years 1998 and 1999; except as provided in § 40 15-208(2)(d)(I).~~

~~723 41 3.2.1 If the total budget amount for support distributions prepared pursuant to Rule 3.1 exceeds the maximum of Rule 3.2, support distributions to non rural eligible providers shall be reduced accordingly.~~

~~723 41 3.2.2 Rule 3.2, and all its subsections, is repealed effective January 1, 2000.~~

723-41-3.3² If the budget prepared pursuant to Rule 3.1 and submitted to the General Assembly pursuant to Rule 10.16 contains a proposal for an increase in any of the amounts listed in Rule 3.1 A) through C), such increase shall be suspended until March 31 of the following year.

RULE (4 CCR) 723-41-4. TRANSITION RESERVED FOR FUTURE USE.

~~723 41 4.1 The mechanism for making payments into the HCSM established in Rule 7 of Part I shall take effect by further order of the Commission.~~

~~723 41 4.2 Rural Telecommunications Service Providers may only continue to draw support in accordance with Part II of this Rule until the earliest occurrence of one of the following three events:~~

~~723 41 4.2.1 July 1, 2003; or~~

~~723 41 4.2.2 When another provider holding a Certificate to Provide Local Exchange telecommunications service and operating authority within the provider's service territory, pursuant to the Commission's Rules Regulating the Authority to Offer Local Exchange Telecommunications Services,~~

1 ~~4 CCR 723 35, is found by the Commission to be eligible to~~
2 ~~receive support from the HCSM pursuant to Rule 8; or~~
3 ~~———— 723 41 4.2.3 ——— The Commission, by order, has adopted~~
4 ~~a Proxy Cost Model for Rural Telecommunications Service~~
5 ~~Providers, and the Rural Telecommunications Service Provider~~
6 ~~elects into the mechanism established pursuant to Part I of~~
7 ~~this Rule.~~

8 ~~723 41 4.3 ——— Small LECs designated as an Eligible~~
9 ~~Provider as of July 1, 1996, and thus able to draw from the~~
10 ~~HCSM established in Part II of Rule 4 CCR 723 27 and now~~
11 ~~codified in Part II of this Rule, and Rural Telecommunications~~
12 ~~Service Providers who are not receiving HCSM support, may, at~~
13 ~~any time, apply to draw support in accordance with Part II of~~
14 ~~this Rule subject to the time limits delineated in Rule 4.2.~~

15 ~~723 41 4.4 ——— Once a Rural Telecommunications Service~~
16 ~~Provider commences drawing support under Part I of these~~
17 ~~Rules, such provider must comply with the Part I Rules and may~~
18 ~~not return to drawing support under the Part II Rules.~~

19 ~~———— 723 41 4.5 ——— Part II of this Rule is repealed effective~~
20 ~~July 1, 2003.~~

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24 723-41-7.2.2 Eligible Provider Reporting
25 Requirements.

26 723-41-7.2.2.1 Each Eligible Provider receiving
27 support pursuant to Rule 9.2 shall provide to the
28 Administrator a verified accounting of: 1) the actual number
29 of Primary Residential and Single-Line Business Access Lines
30 served by such provider in each Geographic Area as of the last
31 day of each month; and 2) the actual amount of contributions

collected in the month. ~~For Eligible Providers receiving support pursuant to Part I of these Rules, the~~ An appropriate form is to be completed and returned to the Administrator by the 15th day of the subsequent month., ~~and for~~

723-41-7.2.2.1.1 In completing the form Eligible Providers shall be guided by the following: An Eligible Provider that is the provider of last resort ("POLR") and is providing service will always receive HCSM support. If a competitive Eligible Provider, wireless or wireline, commences primary line service such that the POLR is no longer providing service, then the support is ported to the Competitive Eligible Provider. If an Eligible Provider that is the POLR, subsequently regains the customer and begins providing service, then only the Eligible Provider that is the POLR will receive the HCSM support.

723-41-7.2.2.2 For Eligible Providers receiving support pursuant to ~~Part I~~ Rule 9.3 of these Rules, an appropriate form is to be completed and returned to the Administrator:

723-41-7.2.2.2.1 if no competitive Eligible Provider has been designated in the incumbent rural Eligible Provider's study area, as part of that provider's annual report; or

723-41-7.2.2.2.2 if one or more Eligible Providers has been designated in a Geographic Support Area, by the 15th day of the subsequent month.

723-41-7.2.3 Revenue Benchmark Reporting Requirements. Each Eligible Provider, receiving support pursuant to ~~Part I~~ Rule 9.2 of these Rules, 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, containing data for the prior calendar year.

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RULE (4 CCR) 723-41-9. SUPPORT VIA THE HCSM.

723-41-9.1 The Commission shall establish Geographic Areas for the State by order. Such Geographic Areas may be revised at the discretion of the Commission.

723-41-9.1.1 Disaggregation and Targeting of Colorado High-Cost Support by Rural Incumbent Local Exchange Providers.

The disaggregation plan selected by a rural incumbent Eligible Provider for targeting Colorado high-cost support shall be the same plan as the that selected by the provider and approved by the Commission pursuant to Rule 4 CCR 723-42-10.

723-41-9.2 Support via the HCSM applicable to Non-Rural Geographic Areas shall be calculated as follows:

723-41-9.2.1 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 basic local exchange service supported bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.

723-41-9.2.2 Where the per line Intrastate Proxy Cost exceeds the applicable Revenue Benchmark in that particular non-rural Geographic Area, the Commission shall

1 | designate certain non-rural Geographic Areas as Geographic
2 | Support Areas.

3 | 723-41-9.2.3 Amount of Support: Each Eligible
4 | Provider shall receive support from the HCSM based on the
5 | number of Primary Residential and Single-Line Business Access
6 | Lines it serves in the non-rural high cost Geographic Support
7 | Areas, as designated by the Commission, multiplied by the
8 | difference between the per line Intrastate Proxy Cost in such
9 | Geographic Support Area and the applicable per Access Line
10 | Revenue Benchmark as determined by the Commission. The amount
11 | of support shall be reduced by any other amount of support
12 | received by such provider or for which such provider is
13 | eligible under support mechanisms established by the federal
14 | government and/or this State.

15 | ~~723-41-9.4.1 If the HCSM budget prepared by~~
16 | ~~Commission pursuant to Rule 3.2 exceeds any statutory~~
17 | ~~budgetary cap, the amount of support intended for non-rural~~
18 | ~~eligible providers shall be reduced as necessary by increasing~~
19 | ~~the Revenue Benchmarks. The benchmarks shall be increased~~
20 | ~~equally in each Geographic Support Area and the benchmarks~~
21 | ~~shall be increased so as to maintain the relative relationship~~
22 | ~~between the Residential Benchmark and the Business Benchmark.~~

23 | 723-41-9.2.4 Revenue Benchmarks. Separate Revenue
24 | Benchmarks shall be determined for residential and business
25 | supported Access Lines for each Geographic Area according to
26 | the formulae defined in Rule 2.15.

1 723-41-9.3 Support via the HCSM applicable to Rural
2 Geographic Areas (areas served by incumbent rural
3 telecommunication service providers) shall be calculated as
4 follows:

5 723-41-9.3.1 By order, the Commission shall: 1)
6 determine the amount of support per Access Line as determined
7 by the Commission pursuant to Rule 18 (based upon the filing
8 of the incumbent rural Eligible Provider serving that area and
9 as modified pursuant to Rule 18.6); and 2) publish the support
10 per access line, disaggregated into such Geographic Support
11 Areas as may be designated by the Commission. The Commission
12 shall ensure that the HCSM operates such that the basic local
13 exchange service supported bears no more than its reasonable
14 share of the joint and common costs of facilities used to
15 provide those services.

16 723-41-9.3.2 Amount of Support: Each Eligible
17 Provider shall receive support from the HCSM in an area served
18 by an incumbent rural telecommunications service provider
19 based upon the number of Access Lines the Eligible Provider
20 serves in those high cost Geographic Support Areas, as
21 designated by the Commission, multiplied by the applicable
22 support per Access Line.

23 723-41-9.3.3 Additional Procedures Governing the
24 Operation of Disaggregated Support:

25 723-41-9.3.3.1 The disaggregation and targeting
26 plan adopted under Rule 9.1.1 shall be subject to the
27 following general requirements:

28 723-41.9.3.3.1.1 Support available to
29 the rural incumbent local exchange carrier's study area under
30 its disaggregation plan shall equal the total support
31 available to the study area without disaggregation.

1 723-41.9.3.3.1.2 The ratio of per-line
2 support between disaggregation zones for each disaggregated
3 category of support shall remain fixed over time, except as
4 changes are allowed pursuant to Rule 723-42-10.2 and 10.3.

5 723-41.9.3.3.1.3 The ratio of per-line
6 support shall be publicly available.

7 723-41-9.3.3.1.4 Per-line support
8 amounts for each disaggregation zone shall be recalculated
9 whenever the rural incumbent Eligible Provider's total annual
10 support amount changes using the changed support amount and
11 access line counts at that point in time.

12 723-41-9.3.3.1.5 Per-line support for
13 each category of support in each disaggregation zone shall be
14 determined such that the ratio of support between
15 disaggregation zones is maintained and that the product of all
16 of the rural incumbent Eligible Provider's Access Lines for
17 each disaggregation zone multiplied by the per-line support
18 for those zones when added together equals the sum of the
19 rural incumbent Eligible Provider's total support.

20 723-41.9.3.3.1.6 Until a competitive
21 Eligible Provider is designated in a study area, the quarterly
22 payments to the rural incumbent Eligible Provider will be made
23 based on total annual amounts for its study area divided by 4.

24 723-41.9.3.3.1.7 When a competitive
25 Eligible Provider is designated anywhere in a rural incumbent
26 Eligible Provider's study area, the per-line amounts used to
27 determine the competitive Eligible Provider's disaggregated
28 support shall be based on the rural incumbent Eligible
29 Provider's then-current total support levels, lines, and
30 disaggregated support relationships.

31 723-41.9.4 Reserved for future use.

723-41-9.5 Reserved for future use.

723-41-9.6 Process for Payments. The Administrator will arrange payments to be made to Eligible Providers, which are net recipients from the HCSM, within 30 days of the last calendar day of each quarter.

723-41-9.7 Reconciliation. Following receipt of each Eligible Provider's report to the Administrator pursuant to Rule 7.2.2, the Administrator shall reconcile the estimated disbursements previously authorized for such Eligible Provider for the period for which the report provides information to the actual disbursements to which such provider is entitled (as calculated by Rule 723-41-9.42 and 9.3), and shall send a statement of such reconciliation to each Eligible Provider 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 Eligible Provider has received more than the amount of its HCSM entitlement. Such reconciling amounts shall be used by the Administrator in setting the Eligible Provider's entitlements in subsequent quarters.

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723-41-10.14 The Fund and the HCSM records covering both collections and disbursements shall be audited~~at the end of fiscal year 1998-1999~~periodically at the discretion of the Commission by an independent external auditor chosen by the Commission. The costs for conducting audits shall be included in the computation of HCSM requirements. ~~Thereafter, the Fund and the HCSM shall be audited in the same manner at least once every other year.~~

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723-41-10.16 A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the ~~General Assembly~~ committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with Section 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 telecommunications service provider which contributes to the HCSM. The Administrator may satisfy the latter requirement by notifying the telecommunications service provider of the availability of the annual report via an e-mail message directing the provider to the report on the Commission's web site. The report shall account for the operation of the HCSM during the preceding calendar year and contain the following information, at a minimum:

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4 CCR 723-41-PART II

~~{NOTE. Pursuant to Rule 723-41-4.5, Part II is repealed effective July 1, 2003}~~

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RULE (4 CCR) 723-41-18. ~~TRANSITIONAL~~ CALULATION OF COLORADO HIGH COST FUND SUPPORT PER ACCESS LINE FOR INCUMBENT RURAL TELECOMMUNICATIONS SERVICE PROVIDERS.

~~During the transition period,~~ Incumbent Rural Telecommunications Service Providers, who are not Average

Schedule Rural Telecommunications Service Providers, shall be eligible, upon proper showing, for support from the HCSM for high costs in three areas: a) loops, b) local switching, and 3) exchange trunks. Incumbent Average Schedule Rural Telecommunications Service Providers shall be eligible, upon proper showing, for support from the HCSM for high costs as determined by Rule 18.6.1.

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723-41-18-6. COLORADO HIGH COST FUND ADMINISTRATION.

723-41-18-6.1 The Commission, acting as Administrator, and pursuant to this Part II of the Rules, shall determine and establish by Order, for each Rural Telecommunications Service Provider, the HCSM support revenue requirement (support per Access Line) that will be effective for a period of up to six years beginning with the date of the Order.

723-41-18.6.1.1 At any time, upon the request and proper support as part of a general rate proceeding by a Rural Telecommunications Service Provider, the Commission, acting as Administrator, may revise the HCSM support revenue requirement that will be effective for a period of up to six years beginning with the date established by order. Further, as a result of a show cause, complaint or other proceeding, the Commission, acting as Administrator, may revise the HCSM support revenue requirement that will be effective for a period of up to six years beginning with the date established by order.

723-41-18.6.1.2 Once established or revised, no further qualification will be required during the six-year funding period. During the funding period, the

amount of HCSM support per Access Line will be phased down. Funding will be fixed for the first two years (any 12 month period) at 100% of the funding level established. Following the first two years, the support amount will decline and be phased out by year seven. The following is the phase out schedule:

YEAR 1	100%	YEAR 4	65%	YEAR 7	0%
YEAR 2	100%	YEAR 5	40%		
YEAR 3	82.5%	YEAR 6	20%		

723-41-18.6.1.3 The Commission may grant a Rural Telecommunications Service Provider's request for waiver from these Rules for good cause shown, pursuant to Rule 15 of these Rules. Any HCSM support amount so granted shall be in the amounts and for the periods expressly approved by Commission order.

723-41-18.6.1.4 Reserved for future use.
~~During the HCSM funding period, switched access rates for companies receiving HCSM, will be adjusted annually to reflect a sharing of access minute demand growth, which occurred during the most recent 12 month period when compared to the 12 month period immediately preceding for which billed demand data is available. The following percentages of sharing will be used:~~

~~Percentage of Annual Demand Growth
(to be used in adjusting access rates)~~

YEAR 1	N/A	YEAR 4	75%	YEAR 7	0%
YEAR 2	75%	YEAR 5	50%		
YEAR 3	75%	YEAR 6	50%		

~~For each year of the HCSM funding period, the applicable percentage from the above table will be multiplied by the actual change (increase or decrease) in access minute demand for the most recent 12 month period as compared to the previous 12 month period immediately preceding for which billed demand data is available, to determine the access minute adjustment amount. The amount determined will then be added to or subtracted from the prior 12-month period adjusted switched access minute demand to determine the current period's adjusted access minute demand. The current period's adjusted switched access demand will then be utilized to revise the switched access rate elements using the access revenue requirements for each element, from the base year rate determination. The switched access rate adjustments shall be filed with the Commission with a proposed effective date no later than 60 days following the anniversary of the effective date of the HCSM funding period.~~

~~723 41 18.6.1.5 For each Average Schedule Rural Telecommunications Service Provider, a surrogate switched access revenue requirement will be used as the "frozen switched access revenue requirement" as described in Rule 18.6.1.4. This surrogate revenue requirement will be calculated by taking the base year Average Schedule access rates times the base year access demand.~~

1 THE
2 PUBLIC UTILITIES COMMISSION
3 OF THE
4 STATE OF COLORADO

5 RULES PRESCRIBING THE PROCEDURES
6 FOR DESIGNATING TELECOMMUNICATIONS SERVICE PROVIDERS
7 AS PROVIDERS OF LAST RESORT
8 OR AS AN
9 ELIGIBLE TELECOMMUNICATIONS CARRIER

10 4 CODE OF COLORADO REGULATIONS (CCR) 723-42

11 **BASIS, PURPOSE AND STATUTORY AUTHORITY.**

12 The basis and purpose of these rules is to establish
13 regulations concerning the designation of providers of last
14 resort and the obligations that attach to such a designation.
15 These rules also establish regulations concerning the
16 designation of providers eligible to receive federal universal
17 service assistance.

18 These rules are clear and simple and can be understood by
19 persons expected to comply with them. They do not conflict
20 with any other provision of law. There are no duplicating or
21 overlapping rules.

22 The Commission is authorized to promulgate rules
23 generally by Section 40-2-108, C.R.S., and specifically for
24 telecommunications services by Sections 40-15-201 and
25 40-15-301. Statutory authority for promulgating these rules is
26 further found in Section 40-15-502(6), C.R.S. Finally,

27 These Rules are consistent with 47 U.S.C. 254 and with 47
28 C.F.R., Part 54.

1 On May 23, 2001 the Federal Communications Commission
2 released its Fourteenth Report and Order, Twenty-Second Order
3 on Reconsideration and Further Notice of Proposed Rulemaking
4 in CC Docket No. 96-45. In this Order the FCC modified its
5 rules (Part 54) for providing high-cost universal service
6 support to rural telephone companies for the following five
7 years based upon the proposals made by the Rural Task Force
8 established by the Federal-State Joint Board on Universal
9 Service. These rules are necessary to ensure that eligible
10 telecommunication carriers continue to receive support under
11 the federal universal service program.

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15 **RULE (4 CCR) 723-42-1. APPLICABILITY.**

16 These rules are applicable to all telecommunications service
17 providers: 1) who are designated as a Provider of Last Resort
18 or Eligible Telecommunications Carrier; or 2) seeking to be
19 designated as a Provider of Last Resort or Eligible
20 Telecommunications Carrier; or 3) seeking to remove a
21 designation as a Provider of Last Resort or Eligible
22 Telecommunications Carrier.

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26 723-42-7.4 State Certification of Support for Federal
27 Support. As required by Federal Communications Commission
28 ("FCC") Universal Service regulations found at 47 CFR 54.313
29 and 54.314, and when appropriate, the Commission will file an
30 annual certification with the Administrator of the federal
31 Universal Service Fund ("USF") and the FCC on behalf of each
32 jurisdictional eligible telecommunications carrier serving

1 lines in the state, stating that all federal high-cost support
2 provided to such carriers within that State will be used only
3 for the provision, maintenance, and upgrading of facilities
4 and services for which the support is intended.

5 723-42-7.4.1 In making its determination that all
6 federal high-cost support provided to a carrier will be used
7 only for the provision, maintenance, and upgrading of
8 facilities and services for which the support is intended, the
9 Commission may require from a carrier such information as it
10 finds necessary and convenient. At a minimum, carriers shall
11 furnish requested information on a form supplied by the
12 Commission as part of the carrier's annual report.

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16 **RULE (4 CCR) 723-42-10. DISAGGREGATION AND TARGETING OF**
17 **SUPPORT BY RURAL INCUMBENT LOCAL EXCHANGE CARRIERS.**

18 All rural incumbent Eligible Telecommunications Carriers who
19 have selected a disaggregation path pursuant to FCC
20 regulations found at 47 CFR Part 54.315 shall file with the
21 Commission as required by subrule 10.1,10.2, or 10.3. In
22 study areas in which a competitive carrier has been designated
23 as a competitive eligible telecommunications carrier prior to
24 the effective date of the FCC's Rule found at 47 CFR Part
25 54.315, the rural incumbent local exchange carrier may only
26 disaggregate support pursuant to Rule 10.1,10.2, or 10.3.1.3.

27 723-42-10.1 Path 1: Carriers Not Disaggregating and
28 Targeting High-Cost Support:

29 723-42-10.1.1 A carrier's election of this path
30 becomes effective upon filing by the carrier with the
31 Commission.

1 723-42-10.1.2 This path shall remain in place for
2 such carrier for at least four years from the date of filing
3 with the Commission except as provided in Rule 10.1.3 below.

4 723-42-10.1.3 The Commission may require, on its
5 own motion, upon petition by an interested party, or upon
6 petition by the rural incumbent local exchange carrier, the
7 disaggregation and targeting of support under Rules 10.2 or
8 10.3.

9 723-42-10.2 Path 2: Carriers Seeking Prior Regulatory
10 Approval for the Disaggregation and Targeting of Support.

11 723-42-10.2.1 A carrier electing to disaggregate
12 and target support under this subsection must file a
13 disaggregation and targeting plan with the Commission.

14 723-42-10.2.2 Under this subsection a carrier may
15 propose any method of disaggregation and targeting of support
16 consistent with the general requirements detailed in 47 C.F.R.
17 § 54.315(e) (effective Oct. 1, 2001).

18 723-42-10.2.3 A disaggregation and targeting plan
19 under this Rule becomes effective upon approval by the
20 Commission.

21 723-42-10.2.4 A carrier shall disaggregate and
22 target support under this path for at least four years from
23 the date of approval by the Commission except as provided in
24 Rule 10.3.5 below.

25 723-42-10.2.5 The Commission may require, on its
26 own motion, upon petition by an interested party, or upon
27 petition by the rural incumbent local exchange carrier, the
28 disaggregation and targeting of support in a different manner.

29 723-42-10.2.6 Requests for disaggregation under
30 Path 2 shall be filed in accordance with Commission Rules of
31 Practice and Procedure, 4 CCR 723-1, relating to applications.
32 In addition, such applications shall be served by the
33 applicant upon all carriers that have obtained either ETC or

1 EP status in the carrier's study area at the same time they
2 are filed with the Commission.

3 723-42-10.3 Path 3: Self-Certification of the
4 Disaggregation and Targeting of Support.

5 723-42-10.3.1 A carrier may file a disaggregation
6 and targeting plan with the Commission along with a statement
7 certifying each of the following:

8 723-42-10.3.1.1 It has disaggregated support to
9 the wire center level; or

10 723-42-10.3.1.2 It has disaggregated support
11 into no more than two cost zones per wire center; or

12 723-42-10.3.1.3 That the carrier's
13 disaggregation plan complies with a prior regulatory
14 determination made by this Commission.

15 723-42-10.3.2 Any disaggregation plan submitted
16 pursuant to this Rule 10.3 must meet the following
17 requirements:

18 723-42-10.3.2.1 The plan must be supported by a
19 description of the rationale used, including the methods and
20 data relied upon to develop the disaggregation zones, and a
21 discussion of how the plan complies with the requirements of
22 this Rule 10.3. Such filing must provide information
23 sufficient for interested parties to make a meaningful
24 analysis of how the carrier derived its disaggregation plan.

25 723-42-10.3.2.2 The plan must be reasonably
26 related to the cost of providing service for each
27 disaggregation zone within each disaggregated category of
28 support.

29 723-42-10.3.2.3 The plan must clearly specify
30 the per-line level of support for each category of high-cost
31 universal service support provided pursuant to §§ 54.301,
32 54.303, and/or 54.305 of part 54 of 47 C.F.R., and/or part 36,
33 subpart F of 47 CFR in each disaggregation zone.

1 723-42-10.3.2.4 If the plan uses a benchmark,
2 the carrier must provide detailed information explaining what
3 the benchmark is and how it was determined. The benchmark
4 must be generally consistent with how the total study area
5 level of support for each category of costs is derived to
6 enable a competitive eligible telecommunications carrier to
7 compare the disaggregated costs used to determine support for
8 each cost zone.

9 723-42-10.3.3 A carrier's election of this path
10 becomes effective upon filing by the carrier to the
11 Commission.

12 723-42-10.3.4 A carrier shall disaggregate and
13 target support under this path for at least four years from
14 the date of filing with Commission except as provided in Rule
15 10.3.5 below.

16 723-42-10.3.5 The Commission may require, on its
17 own motion, upon petition by an interested party, or upon
18 petition by the rural incumbent local exchange carrier,
19 modification to the disaggregation and targeting of support
20 selected under this path.

21 723-42-10.4 Carriers failing to select a
22 disaggregation path, as described in Rules 10.1, 10.2 or 10.3
23 above, by the deadline specified in 47 C.F.R. § 54.315, will
24 not be permitted to disaggregate and target federal high-cost
25 support unless ordered to do so by the Commission.

26 **RULE (4 CCR) 723-42-11. USES OF DISAGGREGATION PATHS.**

27 The Commission will use the disaggregation plans of each
28 incumbent Eligible Telecommunications Carrier established
29 pursuant to Rule 10 not only for disaggregation of Colorado
30 HCSM support but also for the disaggregation of the study area
31 of the Rural incumbent local Exchange Carrier pursuant to 47
32 CFR Section 54.207 into smaller discrete service areas.

1 723-42-11.1 Required Filing. Each rural incumbent
2 Eligible Telecommunications Carrier shall submit a petition
3 seeking the agreement of the FCC in redefining its service
4 area to the FCC as follows:

5 723-42-11.1.1 Path 1: Carriers Not Disaggragating
6 and Targeting Support: No filing with the FCC is required.

7 723-42-11.1.2 Path 2: Carriers Seeking Prior
8 Regulatory Approval for the Disaggregation and Targeting of
9 Support: Such Carriers shall submit their petition to the FCC
10 within 60 calendar days following the issuance of the
11 Commission's final order in the Carrier's Path 2
12 disaggregation proceeding.

13 723-42-11.1.3 Path 3: Carriers Self-Certifying
14 Disaggregation and Targeting of Support: Such Carriers
15 shall submit their petition to the FCC within 60 calendar days
16 following their filing of election of this Path with this
17 Commission.

18 **RULE (4 CCR) 723-42-~~10~~12. VARIANCE AND WAIVER.**

19 The Commission may permit variance or waiver from these rules,
20 if not contrary to law, for good cause shown if it finds that
21 compliance is impossible, impracticable or unreasonable.

22 **RULE (4 CCR) 723-42-~~11~~13. INCORPORATION BY REFERENCE.**

23 References in these Rules to Parts 36 and 54, are rules issued
24 by the FCC and have been incorporated by reference in these
25 Rules. These rules may be found at 47 C.F.R. revised as of
26 October 1, ~~2001-1997 as amended by 12 FCC Red 17469 (1997), 62~~
27 ~~FR 65036 (12/10/97), 63 FR 3830 (01/27/98), and 63 Fr 2094~~
28 ~~(01/13/98).~~ References to Parts 36 and 54 do not include
29 later amendments to or editions of these parts. A certified
30 copy of these parts which have been incorporated by reference

1 are maintained at the offices of the Colorado Public Utilities
2 Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203
3 and are available for inspection during normal business hours.
4 Certified copies of the incorporated rules shall be provided
5 at cost upon request. The Director of the Public Utilities
6 Commission, or his designee, will provide information
7 regarding how the incorporated rules may be obtained or
8 examined. These incorporated rules may be examined at any
9 | state publications depository library.

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11 | G:\ORDER\R01-1306B_01R-434T.doc:W2