

Decision No. C14-0642

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13M-0422T

IN THE MATTER OF COMMISSION CONSIDERATION OF EFFECTIVE COMPETITION
AREAS AND THE CLASSIFICATION OF BASIC LOCAL EXCHANGE SERVICE
PURSUANT TO 4 CCR 723-1-2213.

**DECISION: (1) APPLYING RECENTLY
ENACTED STATUTES TO 56 WIRE CENTER
SERVING AREAS; (2) VACATING CERTAIN
COMMISSION DETERMINATIONS; AND
(3) CLOSING THE PROCEEDING**

Mailed Date: June 13, 2014
Adopted Date: June 11, 2014

I. BY THE COMMISSION

A. Statement

1. By Decision Nos. R14-0190 issued February 21, 2014 and C14-0434, issued April 28, 2014, the Commission found 56 wire center serving areas to have effective competition for basic service pursuant to § 40-15-207, C.R.S. (Section 207), in addition to making other findings.

2. On May 9, 2014, Governor Hickenlooper signed into law House Bill (HB) 1331, revising Article 15, Title 40, of the Colorado Revised Statutes.¹ By this Decision, we apply these enacted statutes to the effective competition findings made in this proceeding, vacate certain determinations that are no longer relevant, and close the proceeding.

¹ In May 2014, Governor Hickenlooper signed four bills in addition to HB1331 that affect Article 15, Title 40, of the Colorado Revised Statutes: HB14-1327, HB14-1328, HB14-1329, and HB14-1330.

B. Procedural History

3. By Decision No. C13-0522 issued May 6, 2013, the Commission opened a proceeding to begin an adjudicatory process to effectuate the revisions to the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2 that were approved in Proceeding No. 12R-862T (Basic Service Competition Rules). Among other initiatives, those rules provide a framework and process for the Commission to make findings as to whether certain wire center serving areas have effective competition for basic service pursuant to Section 207.

4. In addition, the Basic Service Competition Rules state that, in areas where basic service is subject to effective competition and satisfy the standards under Section 207, basic service and other related services are reclassified as Part 3 services.² Basic services within the scope of Part 3 are subject to lightened regulation.³ The rules state that providers requesting continuation of high cost support mechanism (HCSM) funding in areas with effective competition must file an application with the Commission; if no application is filed, HCSM funding is eliminated in the area found to have effective competition.⁴

5. By Decision No. R14-0190 (Recommended Decision), Hearing Commissioner Joshua Epel found 56 wire centers, identified in Attachment A appended to this Decision, to have effective competition for basic service.⁵ By Decision No. C14-0434, the Commission denied exceptions to the Recommended Decision. Decision No. C14-0434, upholding the

² See Rule 2213, 4 CCR, 723-2.

³ See Rule 2214, 4 CCR, 723-2.

⁴ See Rule 2215, 4 CCR, 723-2.

⁵ Decision, pp. 8-19 (listing and considering factors of Section 207(1)(b)).

Recommended Decision, was enforceable when issued on April 28, 2014; no party filed an application for rehearing, reargument, or reconsideration.

6. HB14-1331, signed into law May 9, 2014, amends regulation of basic service in Colorado. HB14-1331 revises § 40-15-208, C.R.S. (Section 208), to limit distributions from the high cost support mechanism to local exchange providers “in areas without effective competition...” Consistent with this revision in Section 208, § 40-15-502(5)(a), C.R.S. (Section 502), 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. The criteria listed in Section 207 to determine whether effective competition exists in a given area remain unchanged by the recently enacted legislation.

C. Conclusions and Findings

8. The language in revised Sections 208 and 502 limit HCSM funding only to areas “without effective competition.” Further, funding in a geographic area is “not affected until the Commission makes a finding applying the factors listed in section 40-15-207.”⁶ In this proceeding, the Commission has made a finding applying the Section 207 factors to 56 wire center serving areas. These areas do not meet the statutory requirement of “without effective competition” for purposes of receiving HCSM funding. HCSM funding in these areas shall be eliminated pursuant to the new statutes. We therefore find that funding shall be eliminated in the

⁶ Section 40-15-502(5)(a), C.R.S. (revised May 9, 2014).

56 wire center serving areas deemed to have effective competition pursuant to Section 207 as of the day HB14-1331 was signed into law, May 9, 2014.

9. In addition, due to other revisions in HB14-1331, certain orders and Commission rules are no longer relevant and shall be vacated as moot. Rule 2215(a), 4 CCR 723-2, provides:

Distribution of HCSM funds will be eliminated in an ECA 180 days after the effective date of a Commission order designating the area as an ECA, unless within that 180 days after the effective date of the Commission order, the provider receiving funds from the HCSM files an application pursuant to paragraph 2215(b).

10. In the Recommended Decision, the Hearing Commissioner clarified that determination of HCSM distributions in the 56 wire centers shall be addressed in a separate proceeding pursuant to Rule 2215 and Commission order.⁷ Further, ordering paragraph no. 4 states:

Consistent with Rule 2215, 4 CCR 723-2, unless a provider files an application in a separate proceeding requesting high cost support mechanism funding within an area identified in Attachment A, high cost support mechanism funds distributed to the provider for that area will be eliminated.

11. Consistent with HB14-1331, the application process contemplated in Rule 2215 no longer applies in areas found to have effective competition pursuant to Section 207. Ordering paragraph no. 4 of the Recommended Decision is therefore vacated. The Commission shall not accept an application for HCSM in the 56 wire center serving areas listed in Attachment A.

12. Recommended Decision ordering paragraph no. 3 sets forth that basic service and other services, with the exception of basic emergency service and white page directories, within the 56 wire center serving areas shall be governed by part 3 and Rule 2214. However, HB14-1331, reclassifies basic services into part 4, subject to exceptions. Consistent with

⁷ Decision, ¶¶61-62

HB14-1331, we vacate Recommended Decision ordering paragraph no. 3. Services in the 56 wire centers shall not be reclassified under part 3 as designated by Rule 2214, but shall be classified as directed by statute.

13. Finally, we close this proceeding. Wire center serving areas where the Commission did not make a finding pursuant to Section 207 in this proceeding shall be addressed by future proceeding and Commission order.

II. ORDER

A. The Commission Orders That:

1. Basic service in the 56 wire center serving areas listed in attachment A of this Decision are subject to effective competition pursuant to § 40-15-207, C.R.S., as determined in Decision No. R14-0190, mailed February 21, 2014, and adopted by the Commission in Decision No. C14-0434, mailed April 28, 2014.

2. High cost support mechanism (HCSM) funding is eliminated in the 56 wire center serving areas listed in Attachment A to this Decision as of May 9, 2014.

3. Orders set forth in Decision No. R14-0190, including reclassification of certain services to part 3 of Article 15, Title 40, C.R.S., and application processes pursuant to Rule 2215, 4 *Code of Colorado Regulations* 723-2, for continuation of HCSM in areas found to have effective competition, are vacated as discussed above.

4. This proceeding is closed.

5. The 20-day period stated in § 40-6-114(1), C.R.S., within which the parties may file applications for rehearing, reargument, or reconsideration, begins on the first day following the mailed date of this Decision.

6. This Decision is effective upon 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