

## **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) "Broadband deployment account" means the account held by the Commission for broadband deployment purposes consistent with § 40-15-509.5(3), C.R.S.
- (c) "Broadband deployment board" or "board" means the board created by § 40-15-509.5(5)(a), C.R.S. for purposes of implementing and administering the deployment of broadband service in unserved areas in the state.
- (d) "Broadband network" has the same meaning as set forth in § 40-15-102(3.7), C.R.S.
- (e) "Colorado High Cost Administration Fund" (Fund) means the fund created in the state treasury for the purpose of reimbursing the Commission acting as Administrator for its expenses incurred in the administration of the HCSM.
- (f) "Geographic area" means a Commission-defined area of land which can be smaller than an incumbent provider's wire center serving area included wholly within the incumbent's wire center boundaries.
- (g) "Geographic support area" means a geographic area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the HCSM.
- (h) "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 and provide access to broadband service in unserved areas pursuant to §§ 40-15-208 and 40-15-509.5, C.R.S.
- (i) "Intrastate proxy cost" means that portion of proxy cost that is jurisdictionally applicable to the provision of intrastate supported services. Pursuant to § 40-15-108, C.R.S., the intrastate proxy

cost is produced by applying the separation factors of 47 C.F.R., Part 36, to the estimated investments and expenses produced by the Commission approved Proxy Cost Model.

- (j) "Proxy cost" means a per access line estimate of the cost required to compensate a provider for the provisioning of specific supported services and features based upon the level of investment calculated by the Commission-approved Proxy Cost Model.
- (k) "Proxy cost model" means a model which produces a per access line estimate of the reasonable, required level of investment and expenses in a particular geographic area (i.e., wire center basis) for a defined set of telephone services and features assuming least-cost efficient engineering and design criteria and technology-neutral deployment of current state-of-the-art technology, and using the current local exchange network topology and the total number of access lines in each area.
- (l) "Retail revenues" means the gross revenues associated with contribution levels to the HCSM from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services may include, but are not limited to, all types of local exchange service; non-basic, vertical, or discretionary services, also known as advanced features, such as call waiting, call forwarding, and caller identification, or premium services such as voicemail; listing services; directory assistance service; wireless and other cellular telephone and paging services; mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll free service; 900 service and other informational services; toll service; private line service; special access service; special arrangements; special assemblies; CENTREX, Centron, and Centron-like services; ISDN, IAD and other multi-line services; video and/or teleconferencing services; satellite telecommunications service; the resale of intrastate telecommunications services; payphone services; any services regulated by the Commission under § 40-15-305(2), C.R.S.; and such other services as the Commission may by order designate from time to time as equivalent or similar to the services listed above. Revenues associated with the sale of video services other than video conferencing identified in § 40-15-401(1)(a), C.R.S., shall not be considered a part of retail revenues associated with contribution levels.

#### **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 and § 54 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) estimated quarterly contributions that may be collected through a rate element assessment by each telecommunications provider;
  - (II) estimated quarterly amount of the HCSM money collected from which distributions are to be made for the following calendar year; and

- (III) estimated quarterly amount of administrative costs to administer the HCSM program.

**2844. Specific Services and Features Supported by the HCSM.**

The HCSM supports basic service, as defined in rule 2307, in rural, high cost areas and provides access to broadband service through broadband networks in unserved areas. In addition, the HCSM supports 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. Contributors; Reporting Requirements; Rate Element Calculation; Application of Rate Element to Customer Billings; and Remittance of Contributions.**

- (a) Contributors. The high cost support mechanism shall be supported through a neutral assessment on all telecommunications providers in Colorado.
  - (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.
- (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.
  - (II) Rate element calculation. The HCSM rate element shall be maintained at the existing rate of 2.6 percent until July 1, 2023 and applied through a neutral assessment on all telecommunications providers in Colorado.
  - (III) On or after July 1, 2023, the Commission may reduce the rate element factor so that the amount of money collected shall not exceed \$25 million for calendar year 2024. The Commission shall issue an order reducing the HCSM rate element at least 15 days prior to the reduction's effective date and shall post notice of the rate element on the Commission's website.
- (c) Application of the rate element to telecommunications providers. The HCSM rate element shall be assessed upon all providers in Colorado. Telecommunications 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. 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 telecommunications providers 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.

**2846. Support through the HCSM.**

- (a) The Commission shall, by order, establish geographic areas throughout the state. Such geographic areas may be revised at the discretion of the Commission.
- (b) Through December 31, 2018, HCSM support amounts shall be provided consistent with prior Commission orders. Beginning on January 1, 2019, support shall be allocated and provided on a quarterly basis and by the end of the month following the previous quarter.
  - (I) Each rural telecommunications provider, both wireline and wireless, that received support as of January 1, 2017, will continue to receive the same level of support on a quarterly basis for the period of January 1, 2019 through December 1, 2023 by averaging the payments received for calendar years 2015 and 2016, consistent with § 40-15-208(4), C.R.S.
  - (II) The Commission shall allocate to the broadband deployment account the following percentages of the total amount of HCSM money collected minus the Commission's administrative costs and distributions to rural telecommunications providers, both wireline and wireless, consistent with § 40-15-208(2)(a)(IV), C.R.S. and subparagraph 2846(b)(I):
    - (A) in 2019 – 60 percent;
    - (B) in 2020 – 70 percent;

- (C) in 2021 – 80 percent;
  - (D) in 2022 – 90 percent; and
  - (E) in 2023 – 100 percent.
- (III) The non-rural incumbent local exchange carrier will receive the balance of the remaining quarterly collections after distributions required by § 40-15-208(2)(a)(IV) and (4), C.R.S.
- (c) The Administrator will arrange payments to be made within 30 days of the last day of each quarter.
  - (d) For years 2019 through 2023, distributions of HCSM shall not be based on effective competition determinations as defined by rule 2205 or § 40-15-207, C.R.S.

**2847. Administration.**

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; and
    - (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, including administrative costs incurred in association with broadband service, shall be a cost of the HCSM and shall be paid from the funds contributed to the HCSM, consistent with § 40-15-208(2)(a)(VI)(3)(a), C.R.S.
- (c) The Administrator shall determine the amount each telecommunications provider must pay into the HCSM and determine the disbursement each rural telecommunications provider, both wireline and wireless, may receive from the HCSM.

- (d) 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.
- (e) 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.
- (f) The Administrator will develop appropriate forms to be used by all providers for reporting information as required by rule 2845. Forms will be made available on the Commission's website and at the offices of the Commission.
- (g) 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 rural telecommunications provider, both wireline and wireless, 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.
- (h) The Administrator and the Fund may operate on a fiscal year from July 1 to June 30 of the succeeding year.
- (i) 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.
- (j) 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 be posted on the Commission's website. 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.
- (k) A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with § 24-1-136, C.R.S., by December 1 of each year. A copy of the Administrator's annual report of the HCSM shall be provided to the Legislative Audit Committee and posted on the Commission's website. The report shall account for the operation of the HCSM during the preceding calendar year and include the following information, at a minimum:
  - (I) the total amount of money the Commission collected through a rate element assessment collected by each provider for which distributions were made;
  - (II) the total amount of money distributed to each provider and to the broadband deployment fund from the HCSM;
  - (III) the basis on which the distribution to providers was calculated;

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

**2848. Plan for Elimination of Regulatory Obligations in Unsupported Areas.**

- (a) Consistent with the plan requirement in § 40-15-208(5), C.R.S. and projected HCSM distribution reductions to non-rural incumbent carriers for basic service, for each year listed, effective January 1 of each year through December 31 of the same year, the Commission provides HCSM support for basic service to non-rural incumbent carriers for the following wire center serving areas.
  - (I) 2019 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, Meeker, Elbert, Limon, Minturn, Keenesburg, New Castle, Fairplay, Silverton, Del Norte, Kremmling, and Walsenburg.
  - (II) 2020 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, Meeker, Elbert, Limon, Minturn, Keenesburg, and New Castle.
  - (III) 2021 supported wire center service areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, and Meeker.
  - (IV) 2022 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, and Hot Sulphur Springs.
- (b) The obligations imposed in §§ 40-15-401(1)(b)(IV) and 40-15-502(5)(b) and (6)(a), C.R.S. are not applicable in any wire center serving area not listed for the corresponding year as of January 1 each year.
- (c) The plan described in paragraphs (a) and (b) above is based on a forecast that HCSM surcharge collections will be approximately \$31.5 million for 2019, \$29 million for 2020, \$26.8 million for 2021, and \$24.7 million for 2022.
- (d) No later than September 1 each year, the HCSM Administrator will provide the Commission with an update on actual contributions for the first six months of the year compared to estimated projections. Subject to such reviews, the Administrator may, but need not, recommend any required adjustments to the subsequent year's wire centers defined in subsection(a) above to be implemented through a variance process consistent with 4 CCR 723-1-1003.
- (e) The HCSM administrator shall post actual collection amounts quarterly on the Commission's website no later than 45 days following each quarter. On or before February 15 of each year, the HCSM administrator shall provide actual collection amounts for the preceding year on the Commission website.
- (f) A request for variance, consistent with 4 CCR 723-1-1003, may be filed to revise the supported wire center areas subject to regulation set forth in paragraph (a), provided actual contributions presented by the HCSM Administrator periodically each year, as required in paragraphs (d) and (e), vary from the projections set forth in paragraph (c) by ten percent.

- (g) Effective January 1, 2023, no wire center serving area shall be funded for basic service by the HCSM and obligations imposed in §§ 40-15-401(1)(b)(IV) and 40-15-502(5)(b) and (6)(a), C.R.S. are eliminated.

**2849. 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.

**2850. Net Neutrality Violation.**

- (a) The broadband deployment board (board) shall file a petition pursuant to the Commission's Rules of Practice and Procedure 4 CCR 723-1-1304(i) requesting that the Commission initiate a proceeding and issue a written order pursuant to §§ 40-15-209(2)(a) and 40-15-509.5, C.R.S., and notifying the Commission that the board has determined that:
  - (I) a federal agency has issued a final order or entered into a settlement or consent decree regarding, or a court of competent jurisdiction has issued a final judgment against, an internet service provider;
  - (II) the order, settlement consent decree or judgment concludes that the internet service provider has engaged in a net neutrality violation specified in § 40-15-209 (1)(a) through (d), C.R.S.;
  - (III) the internet service provider is not otherwise exempt according to §40-15-209 (3), C.R.S.; and
  - (IV) the internet service provider should be required to fully refund any money that the internet service provider received in the twenty-four months preceding the board's determination



from the high cost support mechanism pursuant to a grant awarded by the board under § 40-15-509.5, C.R.S.

- (b) A petition filed by the board pursuant to this rule must include at least the following information:
  - (I) federal agency final order, settlement and consent decree or final judgment from a court of competent jurisdiction and any supporting documentation used by the board to determine the net neutrality violation;
  - (II) documentation of the final determination by the board that the final order, decree, or judgment that the internet service provider engaged in conduct specified in § 40-15-209(1)(a) through (d);
  - (III) affirmation supported by an affidavit or in the final board determination attesting that the board determined exceptions specified in § 40-15-209(3) are inapplicable;
  - (IV) certification of the effective date for the board’s final determination;
  - (V) itemized grant award amounts paid to the internet service provider for the 24 months preceding the board’s final determination and documentation demonstrating that the payments were made to the internet service provider; and
  - (VI) any additional information the board finds relevant.
- (c) The board shall be a necessary party in any proceeding confirming that the board made a decision pursuant to § 40-15-209(2)(a), C.R.S., and that it determined no exceptions apply to the violating activity, and requesting that the Commission fully refund any money that the internet service provider received in the 24 months preceding the board’s determination.
- (d) Through proceedings under this rule, the Commission shall confirm that the board made determinations set forth in paragraph (a) of this rule. Upon such confirmation, the Commission shall issue a written order directing the internet service provider to fully refund any money that the internet service provider received in the 24 months preceding the board’s determination from the HCSM pursuant to a grant awarded by the board under § 40-15-509.5, C.R.S.
- (e) Any final Commission decision under this rule 2850 shall:
  - (I) include an itemized statement of the amount of money that the internet service provider is required to refund and instructions on how to refund the money; and
  - (II) instruct the HCSM administrator and the third party contractor to return the money to the HCSM account dedicated to broadband deployment.
- (f) An internet service provider required to refund HCSM funding caused by a net neutrality violation pursuant to § 40-15-209, C.R.S. is not relieved of any provider-of-last resort obligations.

**2851. - 2869. [Reserved].**