

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0458T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES, 4 CODE OF COLORADO REGULATIONS 723-2-2840, REGARDING SENATE BILL 19-078.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADOPTING RULES**

Mailed Date: November 8, 2019

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I. STATEMENT

A. Summary.

1. This Decision adopts amendments to the Commission’s Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2 (Telecom Rules) with minor modifications to the rules proposed in the Commission’s Notice of Proposed Rulemaking in Decision No. C19-0704.¹

II. BACKGROUND, ANALYSIS, DISCUSSION, AND CONCLUSIONS.

A. Background.

2. During its weekly meeting held August 21, 2019, the Colorado Public Utilities Commission (Commission) adopted a Notice of Proposed Rulemaking (Notice) seeking to amend the Telecom Rules to implement aspects of Senate Bill (SB) 19-078 which involve the Commission. *See* Decision No. C19-0704, ¶ 2. At the same time, the Commission referred this matter to an Administrative Law Judge (ALJ) to hold a hearing and issue a recommended decision on the proposed rules. *Id.* at Ordering ¶ 2.

3. Before the Commission issued the Notice, consistent with § 24-4-103(2), C.R.S., it established representative groups of participants with an interest in the subject of this rulemaking; those groups submitted views and informally participated “on the proposal under consideration.” Decision No. C19-0704, ¶ 6. As additional outreach, before the Notice was issued, Commission Staff presented proposed Rule 2850 to the Broadband Deployment Board (the Board) and its participants, (including internet service providers), at the Board’s regular

¹ In reaching this Decision, the Administrative Law Judge has considered the entire record in this proceeding, including all aspects of the proposed rules, the relevant law, and all public comments in this proceeding, even if not specifically discussed.

public meeting on June 27, 2019; no one provided any changes, revisions, or comments on the proposed Rule 2850. *Id.* Commission Staff also requested input on the proposed rule throughout July of 2019. *Id.*

4. The Commission's Notice (Decision No. C19-0704) and a copy of the proposed amended rules in redlined form was published in the September 10, 2019 edition of *The Colorado Register*. *Id.* at Ordering ¶ 1. The Notice informs the public that interested persons may file written comments in this proceeding, and requests that initial written comments be provided by September 20, 2019, with responsive written comments to be filed by October 4, 2019. *Id.* at Ordering ¶ 5.

5. The Notice states that a hearing on the proposed rules will be held on October 21, 2019 at 9:00 a.m. in a Commission hearing room (and includes the address for the hearing location). *Id.* at Ordering ¶ 3. The Notice explains that interested persons may submit written or verbal comments at the hearing. *Id.* at Ordering ¶ 4.

6. The ALJ convened a hearing as noticed on October 21, 2019 at 9:00 a.m. Mr. Brian Martin, Interim Director for the Broadband Fund, provided verbal comments during the hearing. One other person appeared but did not offer comments. After Mr. Martin finished providing comments, the ALJ took a 15-minute recess to allow interested persons additional time to appear. The ALJ reconvened the hearing at 9:30 a.m., and held the hearing until 9:45 a.m. No one else appeared to provide public comments. Given that no one else appeared to provide comment by 9:45 a.m., the ALJ determined that further hearings were unnecessary and adjourned the hearing. At the same time, the ALJ held the record open until close of business on October 21, 2019 for any additional written comments to be submitted.

7. No written comments were submitted at any point.

B. Analysis, Discussion, and Conclusions.**1. Relevant Statutes and Proposed Rule.**

8. The impetus behind this rulemaking is SB 19-078; that bill became effective on May 17, 2019, and, as relevant here, is codified at §§ 40-15-209 and 509.5, C.R.S. Section 40-15-509.5(8.3)(a), C.R.S. (2019), requires the Board to periodically review the federal trade and communication commissions' websites to determine whether either agency has issued a final order or entered into a consent decree involving an internet service provider who has received broadband deployment grant money from the Board. The statute requires the Board to inform the Commission "pursuant to section 40-15-209 (2)(a) about any internet service provider awarded broadband deployment grant money that is subject to such an order or decree." § 40-15-509.5(8.3)(b), C.R.S.

9. In turn, § 40-15-209(2)(a), C.R.S., requires the Commission to issue a written order requiring an internet service provider to fully refund any money that it received in the prior 24 months from the high cost support mechanism (HSCM) pursuant to a grant the Board awarded under § 40-15-509.5, C.R.S., when the Commission learns from the Board that it determined from a final order, decree, or judgment that the provider has engaged in conduct specified in § 40-15-209(1), C.R.S.² As relevant here, § 40-15-209(1), C.R.S., bars internet service providers from receiving grants from the Board if it: blocks lawful internet content, application, services, or devices; engages in paid content prioritization; regulates network traffic by throttling bandwidth or otherwise impairs or degrades lawful internet traffic on the basis of

² Grants awarded under § 40-15-509.5, C.R.S. are funded, at least in part, by money the Commission collects for the Colorado high cost support mechanism (HSCM). §§ 40-15-509.5(3), (4)(a) and (8); 40-15-208, C.R.S.

content, application, service, or use of a non-harmful device; or fails or refuses to disclose its network management practices.

10. Section 40-15-209(2)(d), C.R.S., provides that a Commission order requiring an internet service provider to refund Board grant money does not alleviate providers from fulfilling any obligations they may have as a provider-of-last-resort under article 15 of Title 40. The statute includes other requirements, such as minimum content of a Commission order to refund grant money. *See* § 40-15-209(2)(b) and (c), C.R.S.

11. The most significant aspect of the proposed rules is the process that must be followed before the Commission may issue an order requiring an internet service provider to refund HCSM grant money. Proposed Rule 2850 directs the Board to file a petition with the Commission that notifies the Commission that the Board has made a final determination that: a federal agency has issued a final order or entered into a settlement or consent decree regarding an internet service provider, or a court has issued a final judgment against an internet service provider who received HSCM grant funds; the order, settlement consent decree, or judgment concludes that the provider has engaged in violations specified in § 40-15-209(1)(a) through (d), C.R.S.; the provider is not exempt under § 40-15-209(3), C.R.S., and that the Board seeks an order requiring the provider to refund grant money to the HCSM. *See* Attachment A at 8-9 to Decision No. C19-0704 (Proposed Rule 2850). Thus, consistent with the plain language in § 40-15-209(2)(a), C.R.S., the proposed rule focuses on establishing that the Board made the required determinations, but does not require the Commission to make its own determination that an internet service provider has violated a net neutrality provision in § 40-15-209, C.R.S.

12. Proposed Rule 2850 also requires the Board's petition to provide: its written determinations; supporting documentation for its written determinations; an affirmation or

attestation that the Board determined that the exceptions in § 40-15-209(3), C.R.S., do not apply; the itemized grant award amounts paid to the internet service provider in the 24 months preceding the Board's final determination; and any other information the Board deems relevant. *Id.* at 9.

13. Under proposed Rule 2850(a), petitions seeking an order to refund HSCM money must be filed "pursuant to the Commission's Rules of Practice and Procedure, 4 CCR 723-1-1304(i)."

2. Statutory Authority.

14. The Commission has authority to promulgate such rules as are necessary for the proper administration and enforcement of Title 40, Colorado Revised Statutes. § 40-2-108(1), C.R.S. The proposed rules are necessary to implement requirements in § 40-15-209, C.R.S., and facilitate compliance with § 40-15-509.5(8.3)(a), C.R.S. For these reasons, the ALJ concludes that the Commission has statutory authority to promulgate the proposed rules.

3. Public Comment.

15. No written comments were submitted in this proceeding. Mr. Brian Martin, Interim Director of the Broadband Fund, presented the only public comments in this proceeding during the rulemaking hearing. Mr. Martin explained that the Broadband Fund oversees the funds obligated by the Board and that the Board still does not have a process or policy in place for the Board's determinations under SB 19-078.³ He stated that he expects the Board to review a possible process or policy in November 2019, and that the process or policy will be published on the Board's website once it has been approved. Mr. Martin also stated that since the summer of

³ When it noticed the proposed rules, the Commission remarked that the Board did not have a process or policy in place to guide its determinations under SB 19-078. Decision No. C19-0704 at ¶ 8.

2019, the Board's new grant agreements with internet service providers to receive HSCM grant funds include language acknowledging net neutrality requirements. Mr. Martin offered no suggestions or other comments concerning the proposed rules.

4. Minor Changes to Proposed Rule 2850.

16. The ALJ finds that a few minor clean-up changes are necessary to ensure the proposed rules are unambiguous, clear, and consistent with § 40-15-209, C.R.S. *See* § 24-4-103(4)(b)(III) and (IV), C.R.S. (2019). Specifically, proposed Rule 2850(a) states, in pertinent part:

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 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) . . .

(II) the order, settlement consent decree or judgment concludes that the internet service provider has engaged in net neutrality violations specified in § 40-15-209(1)(a) through (d), C.R.S.;

(III) . . . and

(IV) the board requests the Commission issue a written order to the internet service provider requiring the internet service provider 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 pursuant to § 40-15-509.5, C.R.S.

Attachment A at 8 to Decision No. C19-0704. Subsection (a)(II)'s reference to "violations" in the plural implies that the Board must determine that an internet service provider has engaged in all of the violations identified in § 40-15-209(1)(a) through (d), C.R.S. This creates a potential ambiguity, and may be inconsistent with § 40-15-209(1), C.R.S., which treats the four violations in subparagraphs (a) through (d) as independent alternative violations. That is because the statute uses "or" as the conjunction for the violations listed in paragraphs (a) through (d).

§ 40-15-200(1), C.R.S. To eliminate the potential ambiguity and ensure consistency with § 40-15-209(1), C.R.S., the ALJ will modify the referenced language to change it from plural to singular.⁴ In addition, as drafted, subsection (a)(IV) is confusing, which may create an unnecessary ambiguity. The ALJ will modify Rule 2850(a) to eliminate this ambiguity. With the changes highlighted, Rule 2850(a) will read:

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) . . .

(II) the order, settlement consent decree or judgment concludes that the internet service provider has engaged in a net neutrality violations specified in § 40-15-209(1)(a) through (d), C.R.S.;

(III) . . . and

(IV) ~~the board requests the Commission issue a written order to the internet service provider~~ should be required to the internet service provider 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 ~~pursuant to~~ § 40-15-509.5, C.R.S.

17. Proposed Rule 2850(b) sets the minimum requirements for petitions; it states that a "petition filed . . . should include at least . . ." the items listed in proposed Rule 2850(b)(I) through (VI). Attachment A at 9 to Decision No. C19-0704. Though the context implies these are mandatory minimum requirements, the ALJ finds that substituting "must" for "should" in the quoted language will appropriately eliminate potential ambiguity, and will modify the language accordingly.

⁴ This change makes the Rule internally consistent given that proposed Rule 2850(f) references "a net neutrality violation pursuant to § 40-15-209, C.R.S. . . ." This also indicates that proposed Rule 2850(a)(II)'s use of the plural was unintentional.

18. Proposed Rule 2850(d) states that “[t]hrough this proceeding, the Commission shall confirm that the board made determinations set forth in subsections (a)(II) and (III) of this rule.” The ALJ finds that the language “[t]hrough this proceeding” may be ambiguous or confusing, particularly if referenced or quoted separate from other provisions in Rule 2850. The ALJ will modify the language to eliminate this ambiguity. In addition, as drafted, the language implies that the Commission will not confirm that the Board has made all the determinations required by Rule 2850(a). This is inconsistent with subsection (a), and thus, creates an ambiguity. The ALJ will modify the rule accordingly. Doing so does not expand the Commission’s overarching role to confirm that the Board made the necessary determinations. With the changes highlighted, the relevant portions of Rule 2850(d) will read, “[t]hrough ~~this~~ proceedings under this rule, the Commission shall confirm that the board made determinations set forth in subsections~~paragraph~~ (a)(I) and (III) of this rule.”

19. The ALJ finds that the minor changes to proposed Rule 2850 will help eliminate ambiguities and ensure consistency with the relevant statutes.⁵ See § 24-4-103(4)(b)(III) and (IV), C.R.S. The ALJ also finds that the changes are consistent with the scope and subject of the Notice of Proposed Rulemaking.

5. Proposed Rule 2850’s Due Process Protections.

20. When it noticed the proposed rules, the Commission suggested that comments address whether the process in proposed Rule 2850 is efficient and effective to meet the needs of

⁵ The ALJ considered that proposed Rule 2850(f) reiterates the statutory mandate that internet service providers required to refund grant money are not relieved of their obligations as providers-of-last resort, but does not define those obligations or the meaning of “provider-of-last-resort.” Given that § 40-15-209(2)(d), C.R.S., specifically explains that internet service providers ordered to refund grant money are not relieved from “any provider-of-last-resort obligations that the . . . provider otherwise has pursuant to this article 15,” it is unnecessary to identify those obligations in Rule 2850. In addition, other Commission rules fill any potential gaps. See e.g., Rules 2001(fff), 2183, 2184, and 2185, 4 CCR 723-2.

SB 19-078, or if another process would better meet flexibility and due process needs in the circumstances. Decision No. C19-0704, ¶ 8. The Commission also asked the ALJ to consider and address the proposed petition process. *Id.* As explained below, the ALJ has considered these issues, and concludes that proposed Rule 2850 provides appropriate due process protections while offering the Commission flexibility appropriate to the circumstances.

21. Significantly, because proposed Rule 2850(a) requires that petitions be filed pursuant to the Commission's Rules of Practice and Procedure, (4 CCR 723-1), those rules apply to the petitions under proposed Rule 2850. As a result, the extensive due process protections in the Rules of Practice and Procedure apply to a petition filed under proposed Rule 2850. For example, the Rules of Practice and Procedure provide for notice of a petition, the opportunity to object to a petition, and the opportunity to be heard by an impartial administrative tribunal. Rules 1206, 1401, and 1404, 4 CCR 723-1. As the proponent of an order under proposed Rule 2850, the Board will carry the burden of proof by a preponderance of the evidence. Rule 1500, 4 CCR 723-1. In addition, the Rules of Practice and Procedure allow parties to request rehearing, reargument, or reconsideration of a recommended decision on a petition; appeal a recommended decision by filing exceptions to the Commission; and seek judicial review of the Commission's final decision. Rules 1505(a), 1506(a), and 1507, 4 CCR 723-1.

22. Proposed Rule 2850 includes other procedural protections. For example, proposed Rule 2850(b) requires the Board to include certain information and supporting documentation with a petition. These requirements build upon and enhance the procedural protections afforded through the Commission's Rules of Practice and Procedure because it provides

information up-front as to the basis and evidentiary support for the petition. This ensures that entities or individuals potentially impacted by a decision granting or denying a petition have the opportunity to review the petition's supporting information and materials early in the process, and object to the petition and intervene based on that information.

23. In addition, proposed Rule 2850(b) sets the minimum information and documents that a petition should include; because the rule sets the floor, and not the ceiling, it preserves the Commission's discretion to require the Board to provide additional information. This provides appropriate flexibility so that the Commission may require additional information or materials when appropriate in the circumstances.

24. For the reasons discussed above, the ALJ concludes that the proposed petition process, with the minor changes outlined above, provides appropriate due process protections. *See Babi v. Colorado High School Activities Ass'n*, 722 P.3d 916, 922 (Colo. App. 2003) (due process is flexible and calls for procedural protections the particular situation demands; notice and an opportunity for a hearing appropriate to the nature of the case are essential due process elements).⁶ The ALJ also finds that the proposed petition process affords flexibility appropriate to the circumstances of each given case, while also ensuring that the Commission's process is consistent with statutory mandates in § 40-15-209, C.R.S., and procedural due process.

25. The ALJ recommends that the Commission approve the proposed rules with the minor modifications discussed above.

⁶ It is worth noting that petitions under proposed Rule 2850 may only be brought after another tribunal, *i.e.*, a federal agency or court of competent jurisdiction, has made a final determination that an internet service provider has engaged in conduct identified in § 40-15-209(1), C.R.S. Thus, when a petition under proposed Rule 2850 is filed, it is highly likely that the effected internet service provider received extensive due process in the underlying adjudication before a federal agency or a court of competent jurisdiction. Even so, the Commission's process provides significant due process protections, as discussed above.

26. A redlined version of the proposed rules with the minor changes is included as Attachment A and a clean version of the proposed rules with the minor modifications is included as Attachment B.

27. Being fully advised in this matter and consistent with the above discussion, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with the written recommended decision and attachments.

III. ORDER

A. The Commission Orders That:

1. The Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2-2841 through 2851 contained in final format attached to this Recommended Decision as Attachment B are adopted.

2. The rules in final format and redline (Attachments A and B), are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0458T

3. This Recommended Decision will 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 will be served upon the parties, who may file exceptions to it.

5. 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 will become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. 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.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director

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.
- (~~cd~~) "Broadband network" has the same meaning as set forth in § 40-15-102(3.7), C.R.S.
- (~~de~~) "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.
- (~~ef~~) "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.
- (~~fg~~) "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.
- (~~gh~~) "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.
- (~~hi~~) "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.

- (i) "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.
- (j) "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.
- (k) "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~~a record of the total cost of administration of the HCSM; and
 - (II) ~~T~~he 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].

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].