

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-191T

IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST
SUPPORT MECHANISM REGULATIONS 723-2.

**ORDER ADOPTING COLORADO HIGH COST SUPPORT
MECHANISM RULES**

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I. BY THE COMMISSION

A. Statement

1. Through this rulemaking proceeding, the Colorado Public Utilities Commission (Commission) has re-examined the Colorado High Cost Support Mechanism (HCSM) Rules set forth in our Rules Regulating Telecommunications Providers, Services, and Products,

4 *Colorado Code of Regulations* 723-2. The basis and purpose of this undertaking is to re-examine the HCSM Rules themselves and to accommodate new industry trends, changes in the federal Universal Service Fund (USF) program, and recent dockets that have directly implicated the HCSM Rules. It is apparent that certain developments in the telecommunications industry and potential statutory changes may impact the processes used to carry out the HCSM. More specifically, these developments suggest a need to transition the structure and scope of the HCSM in anticipation of broadband and access reform.

2. The HCSM and its predecessor were originally established so that telecommunications services would be provided with circuit-switched technology. The industry, however, is migrating to internet protocol architecture. With this new technology, consumer expectations and choices such as broadband and wireless services have created the need to re-examine the HCSM and its sustainability. In addition, the industry trend to reform switched access pricing will result in increases in the local exchange rates and/or changes in subsidy funding. Colorado has yet to undertake access reform. Therefore, the Commission believes it is important to position the HCSM in anticipation of these transitions to new technologies and access reform.

3. Currently, HCSM support levels are based on the cost of making basic telecommunications service available even though consumers are migrating to new services enabled by new technology that is not dependent on access lines. The level of HCSM support an Eligible Provider of telecommunications services receives is directly tied to the number of residential and business lines or wireless handsets it serves. Therefore, under the existing rules, carriers' per-line support increases as the number of access lines decrease. As a result, there is a continuing upward pressure on the fund as access lines continue to decrease, providing another motivation to examine the HCSM Rules.

B. Procedural Background

4. In 2005, the Commission opened an investigatory docket (Docket No. 05I-431T) for the purpose of examining the HCSM. Seven workshops were conducted in which interested persons discussed in detail their views on issues. An Administrative Law Judge that attended the workshops issued a report on July 11, 2008 (*see* Decision No. R08-0719-I) to the Commission that outlined the discussions that took place during the workshops.

5. Later in 2008, the Commission opened a rulemaking docket to comprehensively examine the HCSM Rules. Docket No. 08R-476T was terminated in 2009 by operation of law due to rules not being adopted within 180 days after the last public hearing in the matter. This docket was then opened to address the matters discussed above.

6. On April 14, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) by Decision No. C10-0325 setting forth proposed changes in regards to the process used to implement and the provisions of the HCSM. A copy of the proposed rules was included in the NOPR. The NOPR was published in the April 25, 2010, edition of *The Colorado Register*.

7. The Commission issued a Supplemental Notice of Proposed Rulemaking on June 22, 2010 by Decision No. C10-0636 for the purpose of resetting the hearing date based upon a written request joined by several interest persons.

8. The Commission held its originally scheduled June 28, 2010 hearing to clarify that the hearings had been renoticed and reset. The Commission stated that it would receive comments on June 28, 2010 from persons who could not attend. No persons presented oral comments on June 28, 2010.

9. Opening written comments were filed by Commnet Wireless, LLC (Commnet); Progressive 15; Action 22, Inc. (Action 22); Verizon and Verizon Wireless (collectively,

Verizon)¹; Colorado Telecommunications Association, Inc. (CTA); Comcast Phone of Colorado, LLC, doing business as Comcast Digital Phone; the Colorado Office of Consumer Counsel (OCC); Qwest Corporation (Qwest); N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (Viaero).

10. Reply comments were filed by Plains Cooperative Telephone Association, Inc. jointly with the Wiggins Telephone Association; Qwest; CTA; Verizon; OCC; and Viaero.

11. Closing Comments were filed by Verizon, Qwest, CTA, OCC and Viaero.

12. The Commission held hearings on the rules proposed in the NOPR on September 27 and 28, 2010. After receiving oral comments by all persons wishing to give summaries of their respective positions, the Commission directed the formation of “panels” for the parties to present their positions on six thematic areas. The panels addressed: whether the rulemaking should go forward; whether Voice Over Internet Protocol (VoIP) providers should be required to contribute to the HCSM; which access lines should receive HCSM support; whether to repeal the identical support rule for competitive eligible providers; whether to implement a statewide benchmark rate for calculating HCSM support; how/what revenues should be included in calculating HCSM support; what are the appropriate reporting requirements so as to justify the receipt of a certain level of HCSM support; and should the Commission impose a one-year build-out requirement. Each party presented its positions, which positions are summarized in the Discussions and Findings below.

¹ As explained by Verizon, its filing is being made by the following Verizon wireline entities: MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; TTI National Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA; Verizon Select Services Inc.; NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions; and Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance. Similarly, Verizon Wireless refers more particularly to Verizon Wireless (VAW) LLC d/b/a Verizon Wireless.

13. A Commissioners' deliberation meeting was held on December 28, 2010, to discuss the proposed rules, which proposed rules had been drafted to support only residential lines and to set forth changes in revenue and cost calculations. However, during the rulemaking proceeding several alternative proposals to modify the HCSM were presented that would result in fewer specific rule changes. These alternative proposals sparked discussion among the Commissioners at their deliberation meeting, which discussion produced additional alternative proposals. To provide an opportunity for analysis and consideration of these alternative proposals, the Commissioners held a second deliberation meeting on January 6, 2011 at which Staff presented an analysis of the potential impact these proposals, if implemented, would have to the HCSM and its fund. These proposals, which are discussed below, offered an overall reduction of support in lieu of certain specific rule modifications. We have considered these proposals in determining which proposed rule changes to adopt.

C. Discussions And Findings Related To Thematic Areas

1. Should The Rulemaking Move Forward?

14. CTA, Viaero and Qwest filed comments asking the Commission to delay the rulemaking pending action by the Federal Communications Commission (FCC) on its National Broadband Plan (NBP) and USF reform. Qwest believes the NOPR fails to identify any specific statutory changes or other developments that will impact the process used to implement the HCSM (Qwest Initial Comments at 6). Viaero states that there is no evidence that the costs of the CHCSM, or by extension the level of the contribution rate element, is at such a level as to be either unsustainable or to represent a burden to consumers (Viaero Initial Comments at 3). Viaero further states that without a long term mission statement in place, it is difficult to know whether a proposed rule change represents a step forward or two steps backward (Viaero Initial Comments at 5). In its closing comments, CTA largely agrees with Viaero that the Commission

should expand this proceeding or establish a separate one “to examine the steps that need to be taken and to establish a timeline to transition the existing HCSM from a support mechanism that underpins high cost rural multi-use networks to a support mechanism that assists in the deployment of broadband service to high-cost rural areas” (CTA Closing Comments at 3). CTA had also hoped that intrastate access charge reform could be accomplished in this docket as it believes there is a clear linkage between access charge reform and the NBP. Progressive 15 and Action 22 are concerned about changes that would impact the ability of rural customers to have access to affordable telecommunications service.

15. In contrast, the OCC and Verizon are opposed to delaying this rulemaking. Verizon believes that, if the Commission does not eliminate the fund entirely, the HCSM must be reformed and reduced. Verizon believes that because end users have multiple service alternatives available at competitive prices, the traditional assumption that subsidies generated from other services are needed to keep residential rates artificially low may no longer be valid (Verizon Initial Comments at 3). Verizon further states that because universal service goals have been effectively satisfied through market forces, supplemental state universal service support is unnecessary. The OCC believes that proposed rule changes are necessary to reduce the size of the fund so all consumers can afford basic telecommunications services. The OCC states that the rulemaking procedures have had a “gestation period of over five years starting with the investigation docket” (OCC Closing Comments at 5). In addition, the OCC cites the Telephone Advisory Group (TAG) discussions around the transitioning of telecommunications to a more competitive environment that mitigates or obviates the need for HCSM subsidies as it relates to the statutory mandates contained in §§ 40-15-208 and 40-15-502, C.R.S. (OCC Closing Comments at 3-4). Further, the OCC “recommends that the Commission, in its efforts to

significantly reduce the size of the HCSM, should globally consider that the effect of § 40-15-502(3)(b)(I) and (I.5)(A)-(D), C.R.S. in the setting of a provider's maximum price cap expressly includes the recovery of a provider's residential basic service costs under § 40-15-502(3)(b)(I) and (I.5)(A), C.R.S. Thus, when a provider's residential basic service rates are increased under its maximum price cap, there should be a corresponding decrease in HCSM support for such residential basic service access lines" (OCC Initial Comments at 2).

16. The Commission finds that the rulemaking should move forward to the adoption of new rules. The FCC NBP is currently undergoing a series of comment cycles and, no matter the outcome, the NBP will likely be tied up in appellate litigation for many years to come. The Commission initiated this rulemaking reform over five years ago and the FCC has yet to issue an order on USF reform. Thus, waiting for clear direction from the FCC would prevent this Commission from acting on its own volition in a timely manner to address the size and purpose of the HCSM in light of the current impact on it of technological advances, proposed statutory changes to Colorado law and the potential for access reform. Therefore, we believe it is preferable to move forward even if we will need to revisit these rules in the future to account for the final resolution of the FCC's proposed NBP.

2. Rule 2856 - Mechanical Changes To The Rules Versus Other Approaches To Modify The Size Of The Fund

17. As an alternative to many of the proposed rule changes, such as modifying the types or number of lines or handsets from which the support level is calculated, Viaero proposed a simpler solution: each wire center that is eligible for support in the amount of \$10 or below should not get support. The OCC supports Viaero's \$10.00 proposal as an addition to, and not an alternative to, the rule changes proposed by the Commission or the OCC's primary line/primary carrier restriction (OCC Closing Comments at 22-25). On the other hand, Qwest contends that

Viaero's \$10.00 proposal is unfounded and inequitable; however, this opposition must be viewed in the context that Qwest generally opposes any change to the HCSM that would reduce the size of its draw. In addition and in light of Viaero's suggestion, the Commission posited several alternative proposals throughout the rulemaking proceedings that would modify the fund through a reduction in the per line cost support on either a dollar basis or percentage basis.

18. The Commission finds that the HCSM in its present form, with its current funding levels, is not sustainable with the legislative and/or regulatory changes that are evolving at the federal and state level. There will be continued upward pressure on the HCSM fund as access lines decrease and the need to implement access charge reform advances. There will also be continued upward pressure on the HCSM fund with the need to transition to broadband support. Using the Viaero proposal as a starting point, the Commission adopts a phase-down approach to the HCSM. We find that a phase down approach more equitably re-sizes the HCSM fund than Viaero's \$10 proposal. By adopting a phase-down approach to modifying the fund, the Commission finds that the per line cost support, revenue benchmarks, reporting requirements and extraordinary circumstance rules are impacted.

19. To provide time for the affected telecommunications carriers the ability to anticipate the impact of these rule changes on their respective levels of high cost funding, we will not implement this phase-down immediately; rather it shall commence in 2012. We find that the following phase-down should be adopted -- in 2012 the monthly per line support for all carriers receiving high cost support will be reduced by \$1.00. This reduction will be applied to both residential and business line and wireless handset high cost support. Then, for each of the next five years (2013 through 2017), the monthly per line support for all carriers receiving high

cost support will be reduced by an additional \$2.00 each year. These rule changes are reflected in Rule 2856, discussed below.

20. The Commission finds that its adopted phase-down approach should reduce the size of the HCSM fund without crippling any sector of the Colorado telecommunications industry, while at the same time providing significant assistance to telecommunications carriers in the high cost areas they serve. The phase-down approach therefore continues to carry out the 1995 declaration of the General Assembly that “[t]he rural nature of Colorado requires that special rules and support mechanisms be adopted to achieve the goal of ensuring that universal basic local exchange service be available to all residents of the state at reasonable rates.” Section 40-15-501(1)(d), C.R.S. This approach also does so in a manner that is as equitable, nondiscriminatory and competitively neutral as the existing HCSM Rules. Importantly, the HCSM fund, as phased-down by the rules we adopt here will better position this state and its telecommunications carriers to implement the significant impacts that will result upon the final adoption of access reform and some form of a NBP.

3. Rules 2845 And 2855 - Setting Of A Statewide Affordable Residential And Business Rate

21. CTA, OCC, Verizon, and Qwest believe that the Commission should set an affordable residential and business rate for purposes of determining the level of HCSM support. If a statewide benchmark rate were to be adopted it would have the effect of imputing a rate for those providers charging less than the benchmark rate. However, there is little agreement concerning the exact level of the benchmark rate or whether it should be a single rate applicable on a statewide basis. Viaero did not comment on this issue.

22. CTA advocates a single unified benchmark rate be used for both residential and business service. Of the various alternative proposals discussed, CTA believes the adoption of a

reasonable statewide benchmark is the best available choice. CTA suggests the benchmark should either be the current average statewide local service rate of \$16.53 or that established by the Commission in Docket No. 08A-403T, which rate is \$17.00. CTA proposed a definition for “rate benchmark” be included in the proposed rules (CTA Initial Comments at note 24). CTA also states “Commission Staff has calculated that the actual average rural local exchange statewide rates is \$16.53 which provides further support for the establishment of a residential service benchmark at the ‘affordable’ rate of \$16.53” (CTA Initial Comments at 14 (footnotes omitted)). Regardless of the benchmark rate selected, CTA further contends that companies seeking HCSM funding whose basic local service is below the benchmark should be able to increase their rates to the benchmark without a formal rate case.

23. The OCC endorses a statewide residential benchmark rate that uses Qwest’s prevailing rate plus a percentage of 15% or 30% above that rate (OCC Closing Comments at 9). Further, the OCC states: “Simply stated, it is not fair, just or reasonable for one set of ratepayers (i.e., urban and suburban ratepayers) to pay additional or higher CHCSM surcharges on their monthly telephone bill to subsidize below statewide average basic local exchange service rates in high cost serving areas for rural ILECs and their customers” (OCC Initial Comments at 29). The OCC states that given Qwest’s status as the primary business line provider, the Commission should refrain from establishing a benchmark higher than Qwest’s business rates (OCC Initial Comments at 28).

24. Verizon’s advocacy is that if the Commission is unwilling to use the national average or the highest rate currently approved in Colorado, the Commission should use the FCC’s safe harbor rate to determine an affordable rate (Verizon Initial Comments at 14).

25. Qwest supports a company-specific rate, *e.g.*, a rate that a company can actually charge as opposed to a rate than must be imputed. Qwest proposes company-specific benchmarks because the Commission currently sets maximum allowable rates for individual companies (Qwest Initial Comments at 21).

26. All parties commenting on this issue support the adoption of a benchmark rate. The Commission believes that CTA's approach on this issue is the most compelling and we will use it as our guide. Based on the most recently available data, the statewide average rate for residential stand alone service is \$16.59, while the business rate is \$24.21. The weighted statewide average rate is \$16.84 for residential service and for business the rate is \$34.89.² The lowest residential and business rates charged by basic local exchange providers are \$11.77 and \$14.09, respectively. Likewise, the highest residential rate charged by a basic local exchange provider is \$29.98 and the business rate is \$39.98 per month. Both of the highest rates were deemed just, reasonable and in the public interest in previous proceedings conducted by the Commission. While we still believe those high rates were warranted and we believe that setting the statewide rates at the highest rates in the state may be feasible, we will not adopt benchmark rates at these levels at this juncture, but may reexamine this issue at a later date.

27. We agree with the OCC in that setting the statewide benchmark for either residential or business lines below the statewide average rate will lead to HCSM subsidies on a per access line basis greater than necessary (OCC Initial Comments at 29). Because of the other changes to the HCSM Rules that we are adopting here that should reduce the size of the HCSM fund, we do not find it necessary to set the residential benchmark 15-30% higher than the statewide average as advocated by the OCC. We also agree with the OCC that as Qwest is the

² The Staff used the 2007 ILEC Statistical report, updated with rate changes and 2009 access line counts to arrive at these rates.

primary business line provider in Colorado by an overwhelming margin, it is ill-advised to set a business benchmark rate above Qwest's business rate. As such, CTA's suggestion to set one rate (e.g., \$17.00) as the benchmark for both residential and business lines, when the rate applicable to the very vast majority of Colorado's business customers are charged double that rate, will not be adopted.

28. We therefore conclude that the statewide affordable residential benchmark rate for 2012 should be set at \$17.00, and the statewide affordable business rate for 2012 should be set at \$35.02. Both of these rates are above the statewide average rate and the statewide weighted average rate and, therefore, the adoption of these benchmarks will not increase the subsidization of basic local exchange service in high cost areas.

29. Carriers submitting applications for high cost funding in 2011 should utilize the 2012 residential and business rate benchmarks. Further, if a local exchange carrier has tariff rates higher than the benchmark rate we are adopting, then the local exchange carrier shall use its tariffed rate instead of the statewide benchmark rate. The affected Rules 2845 and 2855 are discussed in more specificity below.

4. Rule 2857 - Requirement Of Extraordinary Circumstances (Large Investment) To Qualify For Resetting Of HCSM Support

30. In our proposed rules (Rule 2857), we put out for comment the notion that eligibility for an initial or reset level of HCSM support after December 31, 2010 would require the demonstration by the petitioning telecommunications service provider of "extraordinary circumstances." The heart of this proposed rule was to establish the requirement that the request to reset the current HCSM support level be supported by evidence that EP made a "large investment" necessary to continue to provide basic local exchange service within its certificated territory, which investment was not accounted for in a previous filing.

31. CTA strongly opposed the proposed rule on the ground that it was a *de facto* HCSM cap and that no petitioner would ever be likely to meet the “extraordinary circumstances” requirements of the proposed rule (CTA Opening Comments at 23-25). CTA also believes that the rule as proposed would violate § 40-15-208(2)(a), C.R.S. and the Commission’s lack of authority to impose a cap (CTA Initial Comments page 24). Qwest did not specifically comment but submitted draft rules where it deleted the proposed rule. The OCC, Verizon and Viaero did not comment on this rule.

32. The Commission finds that the extraordinary circumstance rule should be adopted, in part. Adoption of such a rule is a necessary complement to our decision to phase-down the level of high cost support by fixed dollar increments over the next six years. We limit the applicability of the “extraordinary circumstance” requirement to those carriers already receiving HCSM support that submit applications for additional high cost funding. Carriers submitting applications for their initial HCSM support will not be subject to the extraordinary circumstance rule. Further, if a carrier currently receiving HCSM support submits a petition for HCSM support associated with a new service territory for which it is not presently receiving support, the petition will be treated as an initial request for funding. The Commission discerns no legal impediment to its authority to set a higher threshold for petitions to reset the level of HCSM support currently enjoyed by a telecommunications provider when territory expansion is not at issue. Thus, our authority to adopt Rule 2857 is grounded in our broad policymaking authority.

33. Based on our phase-down approach, we find it appropriate to have in place a “backstop” so providers will not continually file to reset their HCSM support simply because their support is being phased down. We adopt the extraordinary circumstance provision to carry

out this backstop, yet allow telecommunications carriers that have made an extraordinary investment in their network such as cable and wire, central office, and transmission systems to seek a change to their HCSM support. This requirement, therefore, does not impose a heightened burden of proof on the carriers, nor does it transform a request for increased HCSM support into a rate case, as CTA proffers. We believe that carriers that have made a significant investment in their network that has not been considered before will have the same opportunity as they have today to seek reimbursement.

5. Rule 2188 - Carriers That Receive ETC/EP Designation Shall Start Offering The Supported Service And Request Funding Within One Year Of Receiving Designation Or Their Designation Becomes Null And Void

34. The proposed rule language requires eligible telecommunications carriers/eligible providers (ETCs/EPs) to request HCSM support within one year of receiving its ETC/EP designation (*see* Rule 2188(h)). OCC supports the new rule and specifically concurs with the insertion of the words “and cancellation” after the word relinquishment in the title of Rule 2188. CTA and Commnet have concerns with the rule as proposed. CTA states that the rule is acceptable to the extent it only applies to newly designated ETCs/EPs and not to existing ETCs/EPs that are not currently receiving HCSM support. Commnet does not have a concern with the proposed rule as long as it clearly requires only the submission of a request for HCSM support and not the actual receipt of funds. Viaero opposes this requirement stating that it would be impossible to build facilities in an entire exchange and is an unrealistically short construction requirement. Viaero urges the Commission to clarify that these proposals are not intended to impose a burdensome and unrealistically short construction requirement.

35. The Commission agrees with the thrust of CTA’s, Viaero’s and Commnet’s recommendations. Thus, we adopt a rule whereby ETCs/EPs must begin offering the supported

services within one year of receiving designation, and we will not adopt the proposed requirement that the ETC/EP must request HCSM support within one year. It would be an unrealistic expectation that a carrier build its network throughout its entire designated service area within the first year of receiving such designation. However, we do not believe that an ETC/EP applicant should receive its designation and then not be committed to serving customers within the service area for which designation was received. Therefore, adopting a rule establishing the requirement that an ETC/EP is qualified, capable and committed to begin offering service within a one-year period is appropriate. This rule applies only to future applicants for ETC/EP designation and does not impact existing providers. Further, the adopted rule is aligned with the Commission's standard requirement that providers receiving a Certificate of Public Convenience and Necessity (CPCN) must offer service and have an effective tariff on file within one year of receiving their CPCN. Adopting this rule ensures that only fully qualified ETCs/EPs capable of and committed to providing the supported services have status.

6. Rule 2187 And Rule 2847 – ETCs/EPs Should Be Required File Reports Demonstrating That Funds Are Being Used For The Intended Purpose And, If A Wireless Carrier, That A Plan With At Least 900 Minutes Of Use Per Month Is Offered

36. The OCC and Verizon support rule modifications that would hold recipients of HCSM funding accountable by eliminating the use of self-certification to demonstrate that funds are being used for the intended purpose. Verizon believes that the Commission must provide its staff the tools to determine the appropriate reimbursable costs for providing local exchange telecommunications service in high cost areas (Verizon Closing Comments at 2). The OCC contends that any reporting requirement without meaningful analysis and review violates § 40-15-201(2)(a)(I) and (II), C.R.S. Verizon believes that the Commission is directed to generally

simplify regulation of rural telecommunication providers³ but that does mean the Commission cannot impose meaningful requirements on carriers. Verizon believes that EPs should be required to report annually the actual dollar amounts expended for supported services, as proposed in Rule 2847(i). According to Verizon, EPs must demonstrate that they operate efficiently (Verizon Initial Comments at 16).

37. On the other hand, CTA, Viaero, and Qwest support rules that permit EP providers to self-certify that the funds received are being used appropriately. According to each of them, to do otherwise would be burdensome and unnecessary. Qwest recommends that the form of affidavit used for the past several years be continued as the requirement for Rule 2187(f) and that telecommunications carriers should not be burdened with the requirements set forth in the proposed rule (Qwest Initial Comments at 20). CTA proffers that the HCSM monitoring report and the annual reports already provide the necessary information to determine continuing HCSM eligibility. CTA believes that new and added reporting requirements for either the receipt of ETC or EP designation are unnecessary in light of the current reporting obligations. In addition, CTA contends that each of its members carries the POLR responsibility and “each rural carrier is entitled to less stringent regulatory treatment than other carriers under Colorado law” (CTA Opening Comments at 19-20). CTA also supports the continuation of the Commission’s current procedures for annual ETC certification, which procedures have been in place for the past two years.

38. Viaero brings yet another perspective to the table. Viaero offers that a map of the underlying carrier’s exchange area is hard to obtain for wireless carriers and suggests the Commission adopt a rule requiring all wireline carriers to submit to the Commission exchange

³ See §40-15-203.5, C.R.S., entitled Simplified Regulation Treatment for Rural Telecommunications Providers.

maps in a consistent format. Reporting requirements such as the build-out plans by wire center is burdensome for wireless carriers due to the fact that its license does not comport to wire center boundaries. Viaero suggests that this Commission should do the same as the FCC's NBP and move away from using wire center boundaries and instead use more traditional census or county boundaries. Finally, Viaero objects to the proposed rule requiring all ETCs/EPs to provide a minimum of 900 minutes of use per month at a rate comparable to the underlying carrier, arguing that regulation of the quantity of service is rate regulation prohibited by 47 U.S.C. § 332(c) and that the FCC has declined to mandate a particular number of minutes of use by any competitive carrier (Viaero Opening Comments at 16).

39. In reviewing the adequacy of the existing procedure, we note that each ETC is currently given a waiver of the reporting rules and self-certifies that the funds are being used for the intended purpose. The Commission finds that the current waiver procedure by which it affords ETCs the opportunity to self certify should cease. We find that the public interest would be better served if there is staff review of ETC/EP documentation before disbursing HCSM funds at the requested levels. We will require ETCs/EPs to submit certain information regarding its network and the use of the high cost support it receives annually.

40. Further, we will adopt a variation of the proposed rule requiring wireless competitors to offer an unlimited local calling plan or at least one plan that consists of at least 900 minutes of use per month. The FCC Report and Order states that an ETC applicant must demonstrate it offers a local usage plan comparable to the one offered by the incumbent LEC and should be considered on a case-by-case basis.⁴ The FCC further states that "although the [Federal Communications] Commission has not set a minimum local usage requirement, there is

⁴ FCC 05-46 Report and Order, released March 17, 2005 at paragraph 34.

nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status." To date, all competitive ETC/EP carriers that have received designation from this Commission have offered a plan with unlimited local usage. We believe the adopted rule will ensure that EPs will make available adequate local usage as a condition precedent to receiving HCSM funding. Viaero's arguments are therefore rejected.

7. Rule 2846 - Interconnected VoIP Providers Should Be Required To Contribute To The HCSM

41. Qwest, OCC, Comcast and Verizon oppose requiring VoIP providers to contribute to the HCSM. Qwest states it is unclear whether VoIP services are properly classified as "telecommunications" services or "information" services. Qwest believes that the Commission should follow the FCC's lead rather than attempt to plow new ground by enacting rules that would likely be challenged (Qwest Initial Comments at 18). OCC opines that VoIP is considered an information service and is exempt from regulation under § 40-15-101, C.R.S. Comcast believes the Commission should be careful not to impose new regulatory requirements on competitive technologies that have traditionally been unregulated by the Commission. Comcast also has concerns with the definition of VoIP because it is broader and inconsistent with § 29-11-101(4.3), C.R.S. The OCC also believes that the inclusion of VoIP funding and potential distribution could also expand the size of the fund contrary to the Commission's intent. Comcast believes that because their interconnected VoIP service is considered an "information service", state regulation is preempted (Comcast Initial Comments at 5). Verizon submitted draft rules where it deleted the proposed rule requiring VoIP providers to contribute to the HCSM.

42. On the other hand, CTA supports a rules requiring VoIP providers to pay into the HCSM fund. CTA believes that the contribution base for the HCSM should be as broad as possible and include all carriers regardless of the technology employed to serve customers.

43. The Commission will not adopt its proposed rule but may revisit this issue if or when a transition to broadband or access reform is initiated. The Commission continues to believe that any VoIP provider that receives a Certificate of Public Convenience (CPCN) should contribute to the HCSM fund. Currently, interconnected VoIP providers pay into the federal USF fund and most recently the FCC, in a Declaratory Ruling released November 5, 2010, ruled that states may require nomadic VoIP service providers to contribute to state universal service funds. The FCC cites policy outlined in 47 U.S.C. § 254(b) that contributions should be equitable and nondiscriminatory. Likewise, § 40-15-208(2)(a), C.R.S., provides that the HCSM shall be supported and distributed equitably and on a nondiscriminatory competitively neutral basis. Because the Commission has modified the size of the fund by adopting a phase down approach instead of making specific rule changes, the Commission will not adopt this rule at this time.

8. Rule 2848 - The Identical Support Rule Should Be Retained

44. Viaero supports the current identical support rule. According to Viaero, cost studies are expensive and would have a negative impact on the EP's ability to build-out and operate its network. Further, regulators would have a difficult time determining the validity of certain costs (*e.g.*, whether they are used and useful). Viaero recommends that a Commission-approved level of support would be appropriate and would allow carriers to compete for that support and for customers. Viaero urges the Commission to reject the proposed "Own Cost Option" in proposed Rule 2848(e)(IV) as "it would be unfair to cap support to a carrier trying to

build a network, while providing uncapped support to a carrier with a mature network and therefore less of a need for support to invest in new facilities” (Viaero Initial Comments at 19).

45. CTA, OCC, Qwest, Verizon and Comcast support elimination of the identical support rule. CTA advocates that all qualifying EPs should have POLR obligations and receive HCSM funding based upon their own costs. Further, CTA is concerned that if the “option two” proposed Rule 2848(e)(IV) (this proposed rule provides that eligible providers will receive the lowest support calculated for that high cost area) were adopted, it would effectively revive the identical support standard. Comcast supports the repeal of the identical cost rule because competitive ETC costs are likely to be different than those of incumbents. The OCC states, and Verizon concurs, that the identical support rule violates § 40-15-208(2)(a)(I), C.R.S. Further, the OCC argues that all USF support should be included, as well as all roaming revenues, and that expenses should be excluded. Qwest states that continuing the identical support rule could result in a windfall for competitive ETCs. Qwest believes that the Commission should require high-cost support be provided to competitive EPs based on their own costs of providing service or the use of a forward-looking model to determine the cost of the landline or wireless technology (Qwest Initial Comments at 16).

46. The Commission finds that competitive EPs should continue to receive support based on the identical support rule. The Commission finds that until an incremental wireless cost study has been developed and fully vetted, it is appropriate to base the high cost support that competitive EPs receive on the identical support rule. The Commission believes that if a competitive EP were to receive HCSM funding based on its own costs, the initial per-line support may be too high until the competitive EP has had sufficient time to establish itself and capture enough customers so as to distribute the per-line support amongst a greater number of

subscribers. Moreover, the competitive EP has little incentive under an “own cost” rule to capture more customers as its actual costs would be fully subsidized by a draw from the HCSM. For these reasons, we are not persuaded that elimination of the current identical support is in the public interest at this time.

9. Rule 2841 - The Proxy Cost (Qwest) Model Should Remain Unchanged And Not Include Revenues From 100% Of Features, UNE Platform, And Relocation

47. The OCC supports the proposal that 100% of feature revenue be included for HCSM calculation purposes. Qwest opposes inclusion of 100% of feature revenues because the feature costs are not included in the HAI model used to determine its support levels. Qwest also believes that inclusion of 100% of feature revenue might be discriminatory as wireless ETCs have always included features as part of their basic service and therefore have essentially been receiving full high cost support for them. Qwest also opposes the inclusion of unbundled network element (UNE) revenues because it contends that to do so would be discriminatory and “is a clear attempt to single out Qwest as no other carrier is required by law to sell UNEs” (Qwest Initial Comments at 22). Lastly, Qwest opposes including relocation surcharge revenue because it does not comport with revenues and cost principles. Verizon believes that the amount of support provided to each rural ILEC should be calculated based on using a market-based approach rather than either a proxy cost model or traditional cost allocation methods and revenue requirement procedures as proposed in Rule 2848(d) (Verizon Initial Comments at 17).

48. The merits of any change to the existing rule have been obviated by our adoption of a phase-down approach to modifying the HCSM Rules. We believe that the effect on the fund of our adopted phase-down approach will be of a sufficient magnitude that a change in the status quo as to the treatment of feature, UNE and relocation surcharge revenues is not warranted.

49. That being said, it is quite likely we would have supported the OCC's recommendation as to feature and UNE revenues had we not decided to adopt the aforementioned phase-down approach. A rule change to include 100% of these revenues in determining the level of HCSM support would be supported by the fact that the rural local exchange carriers already include 100% of their feature revenues in the calculation and feature costs are included in the HAI 5.2 model as discussed in the documentation and the FCC's discussion of the model. On the other hand, we would have supported Qwest as to excluding the relocation surcharge revenues as the HAI model has no assumptions for relocation of facilities caused by either commercial or governmental entities.

50. Finally, the proposed rules also include the provision that federal high cost loop support be included in the calculation. Currently, the rural local exchange carriers must include this federal subsidy in the calculation of their requests for support. Likewise, the Colorado ETCs that are EPs must include the same federal support in determining their need for funding. Currently, Qwest does not receive such support. However, as mentioned above, the FCC is looking at USF reform in the future which may change Qwest's eligibility for high cost loop support. Therefore, Qwest should also include any federal support if, in the future, Qwest receives federal loop support.

10. Rule 2841 - The Proxy Cost Model Should Continue To Use A Separation Factor Of 75% Intrastate And Not Qwest's Actual Separation Factor

51. Qwest opposes using its actual Separation factor that allocates investment and expenses between interstate and intrastate because it believes in a simplified approach of 75%. Qwest states that this factor has been used as an approximation of a composite of all intrastate separations factors since 2001 (Qwest Initial Comments at 20). No other party commented.

52. The merits of any change to the existing rule have been obviated by our adoption of a phase-down approach to modifying the HCSM Rules. We believe that the effect on the fund as a result of the adopted phase-down approach will be of a sufficient magnitude that a change in the status quo as to the Separations Factor used for HSCM purposes is not warranted.

53. However, the Commission is aware that the rural local exchange carriers are required to use their actual Separations factor to allocate investment and expenses between the interstate and intrastate jurisdictions. Qwest's actual Separation factor is approximately 68% as set forth in its FCC ARMIS 43-04 Report. By using the 75% factor for Qwest, the intrastate HCSM is subsidizing interstate costs. We believe that Qwest's receipt of special treatment on this issue should cease and would likely have made this proposed rule change had we not adopted the aforementioned phase-down approach.

11. The Commission Does Not Adopt The OCC'S Proposal To Define "Rural" Versus "Urban"

54. The OCC proposed that the Commission examine the definition of "rural" versus "urban" regarding whether high cost support is "rural" or not. The OCC states that the General Assembly's "direction is clear that the supported area be 'rural'" (OCC's Initial Comments at 15; OCC's Closing Comments at 20). Qwest opposes the OCC's proposal because it contends the HAI cost model objectively determines the level of support.

55. We agree with Qwest in that funding from the HCSM is based first and foremost on costs and not location. The Commission believes that the OCC's request that we invoke a greater emphasis on the word "rural" is somewhat misplaced and that the "urban" versus "rural" issue should be revisited at the time that a new IP (Internet Protocol) cost model can be built and fully vetted. Therefore, the OCC's proposal will not be adopted at this time.

12. The HCSM Should Continue To Support All Residential Access Lines And Handsets

56. Verizon and Comcast support the proposed rule change introduced at Rule 2841 in the definitions stating that the result would potentially reduce the fund and accordingly reduce the surcharge to consumers. Comcast supports the rule change limiting support to a primary residential wireline and primary wireless account because it would reduce the burden on consumers and businesses. Verizon believes that in a geographic area where a household may obtain services from multiple ETCs, only one line should be supported. Verizon also states that high cost support should be available only for residential lines because rates for business services are not subject by law to Commission-approved maximum rates, as residential rates are, and thus additional funding support is inappropriate (Verizon Initial Comments at 12). The OCC advocated for another option whereby support should be limited to only a single subscriber because universal basic service is achieved with one access line per household.

57. CTA, Qwest and Viaero oppose this rule change and want all residential and business lines supported. Viaero opposes this “short term” solution and states that the amount of support received directly influences the rate at which infrastructure is constructed and will harm rural citizens by “retarding the rate of future expansion” (Viaero’s Initial Comments at 12). Viaero further states that if its support was cut, its build out plan would be reduced accordingly (Initial Comments at 12). Qwest states that eliminating business lines from support is ill conceived and contrary to the statutory definition of basic service that includes business lines (*see* § 40-15-502(3), C.R.S.) (Qwest Initial Comments at 11). Qwest believes that if a primary line limitation is implemented it should apply only to residential lines. However, Qwest also states its belief that it would be exceedingly difficult to administer a primary line concept where multiple EPs are serving the same high cost area (Qwest Initial Comments at 14). Qwest also

believes that since wireless carriers do not distinguish between business and residential lines, the elimination of support for business lines would unfairly discriminate against wireline business lines (Qwest Initial Comments at 12). CTA opposes any restriction to a single line and elimination of support for business lines. CTA argues that the General Assembly has not empowered the Commission to cap the fund and states, “The Commission proposes here to exercise legislative powers which it does not possess”. (CTA’s Initial Comments at 21). CTA further states “Nowhere in the law pertaining to the HCSM is there a grant of legislative authority to the Commission to limit, restrict or cap the flow of HCSM support once a carrier has demonstrated HCSM eligibility (CTA Initial Comments at 21). CTA also believes that if the POLR (Provider of Last Resort) requirement is retained, then for those carriers that have the POLR designation they should continue to be provided support for all lines.

58. Having determined that the aforementioned phase-down approach is the best and most viable method to re-size the HCSM fund in anticipation of a transition to broadband and the need for access charge reform, the Commission declines to adopt at this time an alternative that supports only one primary residential wireline/wireless connection.

59. Despite reaching this conclusion, the Commission recognizes that other approaches would achieve a similar resizing of the HCSM fund. The Commission understands that interested participants have the opportunity to file applications for rehearing, reargument or reconsideration to further inform us on the pros and cons of re-sizing the HCSM fund versus modifying the rules to reflect a primary line (residential only or one residential and one business)/wireless account approach.

13. Timing Of Implementation Of The Rule Changes

60. The adopted rule changes create a transition to broadband and access reform by adopting a phase down approach that will effect a re-sizing of the HCSM fund. We recognize that this approach will impact all current and future recipients of support from the HCSM fund, and, therefore, it is appropriate to delay the effective date of these rule changes for approximately six months after they are finalized with the Secretary of State. Additionally, transitioning the HCSM methods at the start of a new calendar year will facilitate the required accounting changes. Thus, the adopted rules shall take effect on January 1, 2012.

61. Staff shall review the HCSM rate element assessed to all telecommunications service providers that contribute to the fund and set at an appropriate level to reflect the contributions and distributions resulting from the rule changes immediately upon implementation.

D. DISCUSSION, FINDINGS AND CONCLUSIONS BY RULE

1. Rule 2187 Eligible Telecommunications Carrier Designation

62. We adopt the rule as discussed above.

2. Rule 2188 Relinquishment and Cancellation of EP or ETC Designation

63. We adopt the rule as discussed above.

3. Rule 2841 Definitions

64. We proposed several new defined terms in the NOPR that were designed with a focused approach to support only residential lines and changes in revenue and cost calculations. Given the phase down approach we have adopted, we strike the proposed definition of "IP-enabled voice service" and do not adopt the proposed changes to "proxy cost model,"

“revenue benchmark,” “primary residential access line,” and “primary residential wireless account.”

65. The introduction of two new definitions, namely “statewide business affordable rate” and “statewide residential affordable rate” are used to explain the phase down approach and will be adopted.

66. We clarify in the definition for “retail revenues” that post-paid, pre-paid, ISDN, and IAD revenues are included in the contribution levels to the HCSM, and that revenues from the sale of video services other than video conferencing shall not be included in the contributions. We will adopt rule 2841(k) as set forth in the attached adopted rules.

4. Rule 2843 General

67. We made minor textual changes. We adopt these changes.

5. Rule 2844 Specific Services and Features Supported by the HCSM.

68. Having determined that a phase down approach is the best method to re-size the HCSM fund, the proposed changes to the rule will not be adopted.

6. Rule 2845 Affordable Standard for Basic Service

69. We adopt the changes as described above.

7. Rule 2846 Contributors

70. Having determined that a phase down approach is the best method to re-size the HCSM fund, the following proposed changes to the rule will not be adopted: Rule 2846(a), (a)(III), and (d)(IV) As discussed above the requirement that VoIP providers contribute to the fund is not adopted. Various textual changes are adopted.

71. Rule 2846(b): The proposed change to the HCSM Worksheet to April 1 is not adopted and will remain as March 31. Various non-impacting textual changes are adopted.

The elimination of the rule that contributors may file confidential information is adopted. The De Minimis exception change for a provider's contribution from to \$5,000 is adopted. We also clarify that, if a reseller qualifies for the de minimis exception, it must notify the underlying carrier that it is not contributing to the HCSM and must be considered an end user by the underlying carrier for HCSM contribution purposes.

8. Rule 2847 Eligible Provider

72. We adopt the reporting requirement to this rule as described above. In addition we have deleted existing Rules 2847(d) and (g), and modified Rule 2847(f).

73. Rule 2847(d) regarding eligibility for a provider through the use of UNEs. The rule was deleted to allow a competitive landline EP to receive HCSM funding based on the underlying carrier's support.

74. Rule 2847(f) required EPs to file an application for initial receipt of support once designated. We believe this requirement was burdensome and have adopted a streamlined process whereby EPs file for designation and initial receipt of support under one application.

75. Rule 2847(g) is no longer required since we decided to put into practice a phase down approach. Any EP seeking to reset their HCSM support amount will make its filing pursuant to Rule 2857, therefore, we will delete this rule.

9. Rule 2851 Base Rate Area Subsidies.

76. We deleted this rule because it is outdated and was used to transition subsidies under old requirements to the HCSM after July 1, 1996.

10. Rule 2854 Calculation of Average Loop, Local Switching, and Exchange Trunk Costs for Fund Support for Rural Telecommunications Service Providers.

77. We made minor textual changes to clarify that this provision does not apply to rural providers that are average schedule companies.

11. Rule 2856 Transitional Colorado High Cost Fund Support For Eligible Providers.

78. The NOPR proposed an entirely new rule implementing the requirements that all EPs receiving HCSM funds would have their support capped through December 2010. We decline to adopt the rule as proposed in light of our adoption of the phase down approach. Instead, the adopted rule provides for the requirement that each EP receiving HCSM funds, shall, after December 31, 2011, have its support phased down as discussed previously. The new rule implements the requirement that any new EP or an EP receiving initial support will be subject to the phase down requirement.

12. Rule 2857 Extraordinary Circumstance.

79. We adopt the rule pursuant to the above discussion.

II. ORDER

A. The Commission Orders That:

1. Staff of the Commission shall estimate the total amount of HCSM support that will be needed for the first quarter 2012 under the adopted rules and shall determine the quarterly factor. The new HCSM rate element shall be effective January 1, 2012

2. The Commission adopts the rules attached to this Order as Attachments A, B, and C consistent with the above discussion.

3. The rules shall be effective January 1, 2012, which date must be at least 20 days after publication in the Colorado Register by the Office of the Secretary of State.

4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

5. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

6. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
January 6, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

Decision No. C11-0524

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-191T

IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST SUPPORT MECHANISM REGULATIONS 723-2.

**ORDER GRANTING APPLICATIONS FOR REHEARING,
REARGUMENT, OR RECONSIDERATION AND
ESTABLISHING ADDITIONAL PROCEDURES**

Mailed Date: May 13, 2011

Adopted Date: May 11, 2011

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (Applications for RRR) filed on April 13, 2011 by Qwest Corporation (Qwest); the Colorado Telecommunications Association, Inc. (CTA); and the Colorado Office of Consumer Counsel (OCC) to Commission Decision No. C11-0232 issued March 3, 2011.

2. By Decision No. C11-0232, the Commission adopted various rule revisions to the Colorado High Cost Support Mechanism (HCSM), which rules are set within the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2. The rule modifications addressed a number of topic areas, including the adoption of a phase down approach to equitably re-size the HCSM fund, the setting of statewide residential and business benchmark rates, the establishment of an extraordinary circumstance requirement for resetting HCSM support levels, temporally linking the designation of HCSM fund eligibility with the commencement of the offering of the supported service, reporting

requirements, contributions by Voice Over Internet Protocol (VoIP) providers, the identical support rule, and other issues relating to the scope and structure of the HCSM.

3. Collectively, the Applications for RRR raised concerns with the following seven issues:

- Phase down approach;
- Contribution requirements applicable to VoIP carriers;
- Legality of the identical support rule for competitive carriers;
- Extraordinary circumstance requirement;
- The rate element applied to “net” revenues;
- Benchmark calculation and revenue setting; and
- Clarification of phase down occurrence (monthly versus annually).

4. CTA and Qwest argue that the phase down approach does not provide for carriers to be fully reimbursed pursuant to § 40-15-208, C.R.S., and that the Commission did not provide proper notice in accordance with Colorado’s Administrative Procedures Act, § 24-4-101, C.R.S., *et seq.* Both parties state that the statutory requirement provides that the HCSM program must allow providers to be *fully reimbursed* for the difference between the costs incurred and the price charged for basic service and that HCSM support be “distributed equitably and on a nondiscriminatory, competitively neutral basis.”

5. According to Qwest, the Commission had two tools to help carriers get “fully reimbursed” for the gap between revenues and costs in high cost areas, HCSM support, or allowing carriers to increase the rate caps, but failed to use either. Qwest states the Order (Decision No. C11-0232) also appears to shift the Commission’s policy to one of positioning the HCSM for broadband support or access reform. Qwest states the Commission is not permitted to

use a phase down approach because the HCSM's objectives are constrained by statute, which is to support "basic service" and not other services.

6. CTA states that the phase down rule is not a logical outgrowth of the notice of proposed rulemaking because the adopted Rule 2856 diminishes or eliminates funding for some rural companies, which outcome CTA contends was beyond the scope of the proposed rules. CTA claims it was prejudiced because there was not an adequate opportunity to provide comments or evidence regarding the phase down approach.

7. In addition, Qwest and CTA argue that the phase down rule was not made available for comment. Qwest and CTA assert that the Commission should reconsider the phase down approach and provide parties the opportunity to be heard.

8. In its Application for RRR, the OCC states its support for the phase down approach. The OCC states that the Commission's decision to reduce the size of the HCSM is consistent with the OCC's advocacy since 2005 in this docket. The OCC believes that the phase down approach improves the affordability of basic service because it will reduce the size of the surcharge imposed on all Colorado customers. The OCC also asserts that the phase down rule adopted by the Commission complies with the current version of § 40-15-208, C.R.S., because it applies to all local exchange carriers, both rural and non-rural.

9. In light of the above-described competing advocacy, as well as the concerns raised by Qwest and CTA concerning a lack of sufficient opportunity to comment on and critique the phase down approach, we find that an opportunity to provide additional comments and data with respect to the phase down approach is warranted. Due to the importance of this issue and the nature of the arguments presented in the various Applications for RRR, we will establish procedures allowing for two rounds of additional comments on it.

10. As we are providing additional opportunity for comment on the major issue in this rulemaking proceeding, we believe that allowing an opportunity for interested persons to comment on the other issues will further enhance the record on those topics as well. However, we believe that only a single round of comments addressing the issues of VoIP carrier contributions, the identical support rule, and the extraordinary circumstance requirement is warranted as these issues were fully developed through the course of the rulemaking.

11. As to the remaining three issues, we believe the record has been fully developed and that the arguments made in the Applications for RRR are more in the way of requests for clarification. Therefore additional comment appears to be unnecessary; however, comments on these topics that are received no later than the first comment deadline established in this Order will be considered.

12. At this point, the Commission does not anticipate the need for further oral comment proceedings in this matter. However, the Commission will reconsider the need for such a proceeding after it has reviewed the written submissions made in response to this Order.

II. ORDER

A. The Commission Orders That:

1. The Applications for Rehearing, Reargument, or Reconsideration filed by Qwest Corporation; the Colorado Telecommunications Association, Inc.; and the Colorado Office of Consumer Counsel to Commission Decision No. C11-0232 are granted for the purpose of allowing additional comment.

2. Additional comments on the phase down issue, the Voice Over Internet Protocol carrier contributions issue, the identical support rule, and the extraordinary circumstance requirement shall be filed no later than June 10, 2011.

3. Reply comments on the phase down issue shall be filed no later than July 1, 2011.
4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 11, 2011.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

MATT BAKER

Commissioners

ATTEST: A TRUE COPY

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

Doug Dean,
Director

CHAIRMAN JOSHUA B. EPEL DID NOT
PARTICIPATE IN THIS DECISION.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-191T

IN THE MATTER OF PROPOSED RULES RELATING TO THE COLORADO HIGH COST SUPPORT MECHANISM REGULATIONS 723-2.

ORDER ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: October 25, 2011
Adopted Date: October 5, 2011

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I. BY THE COMMISSION

A. Statement

1. By Decision No. C11-0232, mailed on March 3, 2011, the Commission adopted new and modified Colorado High Cost Support Mechanism (HCSM) Rules set forth in our Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2. In summary, these rules adopted mechanisms to set the benchmark rates, a phase-down of the HCSM fund, an extraordinary circumstance for additional support,

a retained identical support rule, and no mandatory contribution to the HCSM by Voice over Internet Protocol (VoIP) providers.

2. By Decision No. C11-0290 mailed on March 22, 2011, the deadline for filing the applications for Rehearing, Reargument, or Reconsideration (RRR) was extended.

3. On April 13, 2011, Colorado Telecommunications Association (CTA); Qwest Corporation, doing business as CenturyLink QC (Qwest); and the Colorado Office of Consumer Counsel (OCC) each filed an application for RRR to Decision No. C11-0232.

4. By Decision No. C11-0524 mailed on May 13, 2011, we granted the applications for RRR for purposes of tolling the clock. We also permitted the filing of additional comments on the phase-down issue, the VoIP carrier contributions issue, the identical support rule, and the extraordinary circumstance requirement. In addition, the Commission order authorized reply comments on the phase-down issue.

5. By Decision No. C11-0775 mailed on July 15, 2011, we supplemented the record with additional factual information.

6. Verizon;¹ N.E. Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero); Pine Drive Telephone Company (Pine Drive); Delta County Telephone Company (Delta); Cablevision Systems Corporation (Cablevision); CTA; Qwest; and the OCC filed additional comments on July 29, 2011. Verizon, OCC, CTA, and Qwest filed reply comments on August 19, 2011.

¹ Verizon entities filing these comments include Verizon Wireless, LLC; MCImetro Access Transmission Services, LLC; MCI Communications Services, Inc.; TTI National, Inc.; Teleconnect Long Distance Services and Systems Co.; Verizon Select Services, Inc.; NYNEX Long Distance; and Bell Atlantic Communications, Inc.

7. Being fully advised in the matter and consistent with the discussion below, we address each of the applications for RRR. In doing so, we considered all of the additional and reply comments described above.

8. The Commission has withdrawn the phase-down approach in favor of a more comprehensive approach.

B. Discussion and Findings

1. CTA

9. In its RRR, CTA urges the Commission not to adopt the HCSM Rules in a “vacuum” without looking coextensively at reforming access charges. CTA argues that access reform and the HCSM are linked by funding support.

10. We deny CTA’s RRR based on the prior Commission decision to consider access reform as part of the overall telecommunications reform effort in Docket No. 10M-565T. *See* Decision No. C11-0879 issued on August 15, 2011.

11. CTA argues that the HCSM Rules adopted by Decision No. C11-0232 fail to provide the notice of the proposed rule changes in accordance with § 24-4-103(3)(a), C.R.S. CTA further argues that no supporting analysis has been provided and that the adopted rules are based on erroneous record data or with no supporting record. On July 15, 2011, Decision No. C11-0775 supplemented the record with factual information that was made available to the interested parties. We find that our cautionary step of providing the opportunity to submit additional comments as set forth in Decision No. C11-0524 moots CTA’s argument.

12. CTA argues that in adopting the phase-down rule, Rule 2856, the Commission failed to provide sufficient procedural due process and that the Commission’s decision to “size the fund” is contrary to § 40-15-208(2)(a)(I), C.R.S. CTA argues that the HCSM must allow

providers to be “fully reimbursed” for the difference between its costs and the price charged for basic service in high cost geographic support areas.

13. The Commission, in Docket No. 10M-565T, is undertaking a comprehensive review and reform of telecommunications policies and rules, including but not limited to universal service support. Therefore the Commission believes that implementation of the phase-down rule, Rule 2856, at this time may be inconsistent and premature. Therefore the Commission, on our own motion and not for the reasons CTA presents, will not adopt the phase-down rule. Therefore, CTA’s request that the Commission not adopt the phase-down rule, Rule 2856, is moot.

14. CTA argues that Rule 2857, which requires a showing of an “extraordinary circumstance” for a carrier to “reset” its HCSM support, removes any realistic opportunity for a carrier to apply for additional or replacement support unless it is able to demonstrate a new “large investment”. CTA states that the new rule eliminates the possibility that any current recipient of the HCSM fund will qualify for additional support if its situation changes in a non-extraordinary manner. The Commission believes that carriers that apply to “reset” their level of HCSM support must make a showing that they are investing in the local basic exchange networks and are not seeking reimbursement from the fund for non-plant expenses such as corporate overhead. The Commission believes that a thorough analysis is needed to ensure that an investment is being made in cable and wire, central office, and transmission facilities for basic local exchange service. Therefore, the Commission denies CTA’s RRR and will adopt the extraordinary circumstance rule, Rule 2857.

15. CTA urges the Commission to reconsider its benchmark determinations, and instead, use a single benchmark that, according to it, has actual meaning and effect. In furtherance of its objective, CTA proposes to eliminate the business benchmark rate of \$35.02. CTA further presumes

that this requirement will only apply to wireline carriers and is, therefore, a violation of §§ 40-15-102(19.3) and 40-15-208(2)(a)(II), C.R.S. We deny CTA's RRR on this issue. The Commission has considered all comments filed. The benchmark rates were based on data provided. If the benchmarks are set too low, then the fund would cause per line HCSM subsidies greater than necessary. Further, wireless carriers who are receiving support get the same support per line as the underlying carrier, and by default, will be affected by the benchmark rates set by the Commission.

16. CTA believes that VoIP carriers should be required to contribute to the HCSM fund and urges the Commission to reverse itself and direct nomadic interconnected VoIP carriers to make contributions to the HCSM. We decline to adopt CTA's suggestion that VoIP carriers be explicitly required to contribute to the HCSM at this time with the understanding that this issue will be addressed in the telecommunications reform effort, Docket No. 10M-565T.

2. Qwest

17. In its RRR, Qwest argues that the phase-down rule fails to meet the "primary purpose" for the HCSM as articulated in Colorado Statute § 40-15-208(a)(1), C.R.S., and fails to "fully reimburse" providers for basic local exchange service.

18. According to Qwest, Decision No. C11-0232 rejected options originally proposed in the Notice of Proposed Rulemaking, and instead emphasized that its objective in adopting the phase-down approach was to accomplish "re-sizing" of the fund. Qwest further argues that the rule change designed to re-size the fund is based on erroneous conclusions. Qwest states that while customers are migrating to different technologies, support is still needed to "preserve" basic exchange service.

19. Qwest states that Rule 2856 is unclear as to whether the Commission will continue to adjust costs and revenues after December 31, 2011, and that per line support will be reduced in the years 2013 through 2017.

20. Qwest states that the phase-down rule was never noticed or disclosed to the public and not made available for comment. As with CTA's arguments on the notice issue, we find that our cautionary step of providing the opportunity to submit additional comments as set forth in Decision No. C11-0524 moots Qwest's argument.

21. We deny Qwest's RRR on the phase-down as moot because on our own motion, the Commission will not adopt the phase-down rule.

22. Qwest is concerned that benchmark rates are not included or even referenced in the adopted rules which may cause confusion as to what the "benchmark rates" are for purposes of calculating HCSM support. We deny Qwest's RRR to modify the rules to include the benchmark rates in the rule. We believe a more efficient process to make the benchmark rates known to all concerned would be to issue an order setting forth the benchmark rates. This approach is consistent with the way changes to the rate element or HCSM surcharge is done presently.

23. Qwest next argues that the use of the term "revenue benchmark" is used inconsistently in Rules 2841(k)(I) through (III). We agree with Qwest that the use of the term "revenue benchmark" is not used consistently in Rules 2841(k)(I) through (III). We, therefore, add the following language to Rules 2841(k)(I)(A) and (II)(A):

. . . message services. As provided in Rule 2841(k)(III), the Commission-approved benchmark rates shall be imputed if the Company's existing tariff rates are less than the benchmark rates; plus

and add the following language to Rule 2841(k)(III):

...benchmark rates mean Commission-approved rates for purposes of calculating the HCSM support and shall be used in Rule 2841(k)(I)(A) and (II)(A)

24. Last, Qwest states that Rule 2846(b)(III) which addresses how that rate element is applied to “net” retail revenues is not feasible. Qwest states that carriers do not know what revenues are uncollectible until a customer fails to pay those revenues. We agree with Qwest and therefore, delete the term “net” in the third sentence of Rule 2846(b)(III). The sentence will read:

The appropriate factor shall be converted to a HCSM rate element that shall be applied to the retail revenues of each telecommunications service provider.

3. OCC

25. The OCC agrees with the rules, as adopted by Decision No. C11-0232, but provides an alternative approach to be considered if the phase-down approach is not adopted. As explained above, we are not adopting the phase down rule. Therefore, we must consider the alternative approaches offered in the OCC’s RRR. The OCC’s alternative approaches to be considered include: (1) limiting support to a single primary residential basic local exchange service access line; (2) setting the statewide residential and business benchmark rate using a Wyoming-type approach; (3) including 100 percent of feature revenue for HCSM calculation purposes; (4) eliminating the identical support rule; and (5) examining the definition of “rural” versus “urban” as it pertains to high cost support funding.

26. We decline to adopt the OCC’s alternatives. Decision No. C11-0232 clearly indicated our preference to adopt the phase-down approach. However, upon our reconsideration, we have decided not to adopt the phase-down approach as we believe that changes in the Federal Universal Service Fund (USF) program and access reform that may have an impact on the HCSM is best addressed in the telecommunications reform effort, Docket No. 10M-565T.

27. In addition, we decline to adopt the OCC's suggestion to include 100 percent of feature revenues for HCSM calculation purposes. We believe that this discussion, along with the any methodology used to determine HCSM support amounts, will be addressed in the telecommunications reform effort, Docket 10M-565T.

28. Next, we again decline to adopt the OCC's suggestion to establish a statewide affordable rate that is 130 percent of the statewide weighted average rate. The Commission has adopted the weighted average statewide rate recognizing that these rates may change over time.

29. Finally, we fully considered suggestions from the OCC to eliminate the identical support for competitive eligible carriers and remain disinclined to eliminate such rule until such time as fully vetted incremental cost studies are available for wireless providers. The Commission is not aware of any existing cost studies that would support such elimination.

II. ORDER

A. The Commission Orders That:

1. The application for Rehearing, Reargument, and Reconsideration (RRR) filed by Colorado Telecommunications Association on April 13, 2011 is granted in part, denied in part, and denied in part as moot.

2. The application for RRR filed by Qwest Corporation on April 13, 2011 is granted in part, denied in part, and denied in part as moot.

3. The application for RRR filed by Office of Consumer Counsel on April 13, 2011 is denied.

4. The Commission adopts the rules attached to this Order as Attachments A, B, and C consistent with the above discussion.

5. The benchmark statewide average rate for residential service and business service is set at \$17.00 and \$35.02, respectively.

6. Any Eligible Provider (EP) that is currently seeking initial support shall impute the benchmark rates set forth in this Order for calculation in determining the High Cost Support Mechanism (HCSM) amount it will receive in 2012.

7. Any EP that is currently seeking to reset their HCSM support shall impute the benchmark rates set forth in this Order for calculation in determining the new HCSM amount the EP will receive beginning in 2012.

8. The rules shall be effective at least 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

9. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

10. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

11. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

12. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 5, 2011.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners