

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES)
REGARDING IMPLEMENTATION OF)
40-15-101 ET. SEQ. --REQUIREMENTS) DOCKET NO. 95R-558T
RELATING TO THE COLORADO HIGH COST)
FUND.)

DECISION ADOPTING RULES

Mailed Date: April 1, 1996
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I. **BY THE COMMISSION:**

A. **Background and Procedural Matters.**

1. This matter is before the Commission for the adoption of new rules applicable to the administration of the Colorado High Cost Fund (often referred to herein by the acronym "CHCF"). Pursuant to House Bill No. 95-1335 ("HB 95-1335"), codified as Part 5 of Article 15 of Title 40, Colorado Revised Statutes, the Commission has been delegated the responsibility of establishing a system of support mechanisms to assist in the provision of universal basic service and universal access to advanced service in high-cost areas. See 40-15-502(5), C.R.S. The CHCF is one of the mechanisms for achieving the above goals. In enacting HB 95-1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. See 40-15-501, C.R.S. Consistent with that policy goal, HB 95-1335 directs the Commission to encourage competition in the basic local exchange market by the adoption and implementation of regulatory mechanisms to replace the existing regulatory framework. Specifically, the Commission has been directed to adopt rules governing:

1. cost-based, unbundled, nondiscriminatory carrier interconnection to essential facilities or functions;
2. cost-based number portability and the competitively neutral administration of telephone numbering plans;
3. cost-based, open network architecture;
4. terms and conditions for resale of services that enhance competition;
5. assessment, collection and distribution of contributions to the Colorado High Cost Fund created by 40-15-208, C.R.S., and any other financial support mechanisms created pursuant to 40-15-502(4), C.R.S. and
6. access to Emergency 911 service.

See 40-15-503(2)(b), C.R.S.

2. The Commission has been given the responsibility to open local exchange telecommunications markets to competition and to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To that end, the Commission has been directed to establish the terms and conditions under which competition will occur,¹ including the process by which a potential provider of basic local exchange service applies for a certificate of public convenience and necessity ("CPCN"), as a precondition to providing service.²

3. HB 95-1335 contains an equally important, and somewhat counterbalancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service. "Basic service" is

the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S.

4. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the

¹ See 40-15-502(1) and (3)(b), C.R.S.

² See 40-15-503(2)(e), C.R.S.

economic conditions of urban and rural areas of the state. *Id.* Furthermore, the Commission must adopt rules which allow simplified regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

5. The Working Group established pursuant to 40-15-503 and 40-15-504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 95-1335. These proposals are contained in the Report of the HB 95-1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated November 30, 1995 (the "November report"), and in the Supplemental Report of the HB 95-1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "December report").

6. Attached to the November report as Appendix E, the Working Group transmitted to the Commission proposed rules entitled "Colorado Universal Support Mechanisms." These proposed rules were attached to our notice of proposed rulemaking in this docket, Decision No. C95-1304, mailed December 22, 1995.

7. In accordance with our notice of proposed rulemaking, an oral hearing on the proposed rules was held on February 15 and 16, 1996, at which time oral comments were taken from the public and from persons representing associations, firms and corporations that had previously filed written comments and reply comments.

8. The following participants submitted written and oral comments on the proposed rules prior to the hearing: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&TW"); Colorado

Independent Telephone Association ("CITA"); Colorado Office of Consumer Counsel ("OCC"); Competitive Telecommunications Association ("Comptel"); ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Warren L. Wendling of the Staff of the Commission ("Staff"); TCI Communications, Inc., Teleport Communications Group, Inc., Sprint Telecommunications Venture, and Sprint Communications Company, L.P. ("TCI, et al"); University of Colorado and Colorado State University ("Universities"); and U S WEST Communications, Inc. ("USWC").

9. During the hearing the Commission requested supplemental comments on certain questions posed by individual commissioners. Post-hearing supplemental comments and supplemental reply comments were filed by the following: AT&T, AT&TW, CITA, Commnet Cellular, Inc., MCI, MFS, OCC, Staff and USWC.

10. In adopting the attached rules the Commission has considered all written and oral comments that have been submitted in this docket, including the written comments that were filed after the date specified by the Commission for filing.

11. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission has taken administrative notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995³. These reports are filed in

³ This report summarizes the comments (both oral and written) received during 16 public outretings which the Commission held throughout the state in September and October, 1995, to solicit on competition to provide local telephone service and on a proposed "Telecommunicati

Docket No. 95M-560T, the repository docket regarding implementation of 40-15-501, *et seq.*, C.R.S.

II. DISCUSSION.

A. **Structure of Rules.**

1. At the outset we have decided to take the proposed "Colorado Universal Support Mechanisms" rules attached to the November report as Appendix E and to adopt them as two separate sets of rules. One set of rules will include rules applicable to Providers of last Resort ("POLR") and to Eligible Telecommunications Carriers ("ETC") under the Telecommunications Act of 1996, Pub. L. No. 104-104, Feb. 8, 1996, 110 Stat. 56. ("Federal Act"). The second set of rules will specifically address the operation of the CHCF.

2. Although the legislature has authorized the Commission to "create a **system of support mechanisms** to assist in the provision of such services [universal basic service, advance service and any future revisions to the definition of basic service] in high cost areas" 40-15-502(5), C.R.S. (emphasis added), the rules adopted at this time will be applicable only to the CHCF. The CHCF rules will be in two parts, preceded by definitions and general provisions: Part I (Rules 7 - 16) will be applicable to the CHCF and contains the new rules implementing HB 95-1335. It also takes into

sumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboats, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a cross-section of the public.

consideration the provisions of the Federal Act. Part II of the rules (Rules 17 and 18) will apply to small local exchange companies ("Small LECs"), effective July 1, 1996, either until July 1, 2003, or until another telecommunications provider holding authority from the Commission to provide basic service in the Small LEC'S service territory is declared eligible to draw CHCF support under Part I, or until a Small LEC elects to be subject to Part I, whichever of these three events occurs first. Part II essentially is a readoption of the existing CHCF rules found in the *Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers*, 4 CCR 723-27, Part 2, Rules 16, 17 and 19, with reference changes necessitated by their readoption in Part II of these rules. To avoid duplication, existing Rules 16, 17 and 19 will be repealed, effective July 1, 1996.

B. Colorado High Cost Fund Task Force.

1. We have decided also to separate out certain of the non-consensus issues for further consideration by an interim task force to be created by this decision. Specifically, in this decision we will create a Colorado High Cost Fund Task Force ("Task Force") to be chaired by the Commission's Staff. Parties, such as AT&T, AT&TW, CITA, OCC, MCI, TCI and USWC will be asked by the Commission to participate as voting members of the Task Force. Other parties to this docket and other persons, firms and corporations interested in participating may petition the Commission for membership on the Task Force. Meetings of the Task Force shall be open to the public. The Task Force will be required to file with the Commission an interim report on the issues referred to it by this decision no later than October 31, 1996, and a final report no later than December 31, 1996. The

Commission would urge the Task Force to forward to the Commission its recommendations as they are finalized, rather than waiting for the October 31 and December 31 deadlines. As ordered hereinafter, the Task Force should consider and make recommendations on the following issues:

1. a mechanism to determine whether a particular geographic support area is a high cost area;
2. the metes and bounds of geographic support areas in the state of Colorado;
3. a non-proprietary proxy cost model that approximates a reasonable level of investment per access line and that converts the estimated investment into a reasonable recurring cost;
4. a mechanism that reflects a decrease in the CHCF subsidy over time to reflect increases in technology, productivity, efficiency and depreciation in plant and equipment;
5. a mechanism to ensure portability of support;
6. a mechanism to account for the presence of, and removal of, internal subsidies;
7. whether a benchmark price is appropriate and, if so, what the benchmark price should be;
8. a mechanism for funding unserved customer;
9. a mechanism to monitor progress toward the goal of universal service;
10. an implementation process for the post 1997 CHCF with a corresponding time line containing milestone dates. The implementation process should consider the timing needed to allow for:
 - a. finalizing the designation of geographic support areas;
 - b. finalizing the runs of the proxy cost model;
 - c. publishing the amount of support per access line in each support area;
 - d. establishing reporting forms for providers to report their retail revenues;
 - e. the transition from the existing source of CHCF funding to

the new source of CHCF funding; and

- f. the transition to the new CHCF disbursal mechanism to new recipients; and
11. a mechanism for determining the level of contribution into the CHCF which does not rely solely on revenues, e.g., other perspectives on market share, such as minutes of use.

2. As guidance we neither endorse nor reject the use of census block groups as the "reasonably compact, competitively neutral geographic support areas" referred to in 40-15-502(5), C.R.S. The Task Force, however, may start with the census block group concept in its deliberations.

3. Also, we reject using either the proprietary Benchmark Cost Model or the Hatfield Model as a proxy model for Colorado. Instead, the Task Force should consider a nonproprietary cost model which approximates a reasonable level of investment per access line in a geographic support area and which converts that reasonable level of investment into a reasonable recurring charge.

C. Consensus and "substantial deference." The rules proposed by the Working Group were not totally "consensus" rules. Subsection 40-15-503(1) and paragraph 40-15-503(2)(a), C.R.S., require that we give "substantial deference" to the proposed rules submitted by the Working Group with respect to issues on which the Working Group reported that it has reached consensus prior to January 1, 1996.

1. The statute does not define "substantial deference." Thus, in the course of this HB 95-1335 rulemaking proceeding, we have developed and applied our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the

public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

2. In implementing our understanding of "substantial deference," we have taken the following into consideration:⁴ our constitutional and statutory obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rules with all provisions of 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rules with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rules and the processes described therein; the ability of the Commission to enforce the proposed consensus rules; the ability of the proposed consensus rules to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rules to all telecommunications service providers, existing and prospective. We examined each proposed consensus rule in light of these considerations.

3. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary and in the public interest. The intervening federal Act also forces us to deviate from some consensus

⁴ This listing is not a definitive statement of the considerations relied upon by the Commission.

proposals. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale supporting any decision by this Commission to reject a consensus rule will be clearly articulated.

D. Comments of the Universities. The Universities filed comments in this docket incorporating by reference the comments filed by the Universities in Docket Nos. 95R-553T, 95R-554T and 95R-555T. In those dockets, the Universities argued that the requirements of the rules mandated to be adopted pursuant to HB 95-1335 should not apply to institutions of higher education⁵ which own or lease and operate their own telecommunications systems for the purpose of providing communications within their systems and local exchange access services to administration, faculty, staff, government and/or university-affiliated non-profit corporation employees at their work locations, and to students residing in institution-affiliated housing.

1. The Universities rely on this Commission's April 11, 1984, Decision No. R84-428, in support of their position. In that decision, the Commission determined that Colorado State University's ("CSU") telephone system did not constitute public utility service.⁶

2. In the discussion section of Decision No. R84-428, the administrative law judge wrote:

CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above

⁵ Section 24-113-102(2), C.R.S. (1988), defines an "institution of higher education" as te-supported college, university, or community college."

⁶ Decision No. R84-428 is expressly limited in its applicability to the telephone system of described in that decision.

described, is not a public utility since it is not offering service to the general public indiscriminately.

* * *

The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service.

* * *

The Commission has ... in Decisions No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

Decision No. R84-428 at 5.

3. With the advent of HB 95-1335, the local exchange telecommunications service market in Colorado will be changed radically. For example, in Docket No. 95R-557T, *In the Matter of Proposed Rules Regarding Implementation of 40-15-101, et seq. -- Resale of Regulated Telecommunications Services*, there are proposals to change the definition of "resale" adopted by the Commission in 1982. Further, HB 95-1335 speaks in terms of "multiple providers of local exchange service"⁷ and contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort.⁸ The obligation of a local exchange service provider to serve all members of the public indiscriminately, and thus its status as a public utility as defined in Decision No. R84-428, has been affected by the enactment of HB 95-1335.

⁷ Section 40-15-501(3)(c), C.R.S.

⁸ Section 40-15-502(6), C.R.S.

lines in the CHCF rules attached to the November report. Some of the parties urged the Commission to limit Colorado High Cost funding to a single residential line. Other parties urged the Commission to maintain the current practice of funding all access lines of a high cost provider.

2. The Commission's existing rules applicable to the CHCF, 4 CCR 723-27, Part II, provides CHCF funding for all access lines to both businesses and residences in a high cost area. This has been the practice since the Commission first created the CHCF by rule. See Decision No. C90-932, dated July 11, 1990, in Docket No. 89R-608T. Subsequent to the creation of the CHCF by the Commission, the General Assembly added 40-15-208, to Part 2 of Article 15 of Title 40, Colorado Revised Statutes in 1992. See 1992 Colo. Sess. Laws at 2126. By 40-15-208, C.R.S, the General Assembly created, by statute, the current Colorado High Cost Fund. In 40-15-208, the General Assembly specifically ratified the CHCF previously created by rule by the Commission:

Any fund created prior to April 16, 1992
[the effective date of 40-15-208], for a
similar purpose by the commission pursuant
to rule is hereby validated.

In HB 95-1335, the General Assembly amended 40-15-208, C.R.S. to take into consideration provisions of the newly enacted 40-15-502, C.R.S.

3. There is nothing in the amendments to 40-15-208, C.R.S., or in the newly enacted 40-15-502, C.R.S. that would lead the Commission to conclude the General Assembly intended to modify or reject the current practice of applying Colorado High Cost funding to all access lines in a high cost area. Restricting funding to only one residential access line at this

time would be a drastic change from the Commission's current practice. The Commission is concerned that some of the small companies currently receiving support under the current rules for investments in plant would be at serious risk if future funding were restricted to only a single residential access line. Also, the Commission does not have sufficient information in this docket to make a determination as to how restricting funding to a single residential line would affect rates to customers in high cost areas. The Commission is mindful of the legislature's directive to adopt rules that further universal basic service at rates that are just, reasonable and affordable and that are reasonably comparable between urban and rural areas. See Section 40-15-502, C.R.S.

4. Those parties urging that funding be limited to only a single residential line expressed concern that the new CHCF under HB 95-1335 would be substantially larger than the current CHCF. At this time, the Commission is of the opinion that the CHCF under HB 95-1335 will be larger than the current CHCF, mainly because USWC, which currently does not draw from the CHCF, will be eligible to draw from the new CHCF. However, the Commission does not have sufficient information in this docket to make a reasonable assessment of the size of the new CHCF. If the size of the fund becomes a burden to customers of telecommunications providers making payments into the fund, there is nothing to prevent the Commission from reconsidering this issue. However, without hard evidence, the Commission is unwilling to make such a drastic change in the application of the CHCF.

F. "Basic Service."

1. There was not consensus by the Working Group on the definition of "basic service" to which Colorado High Cost funding should be applied. Most parties filing comments proposed that the basic service standards expressed in Rule 17.1 of the Commission's *Rules Regulating Telecommunications Service Providers and Telephone Utilities*, 4 CCR 723-2, plus access to 911 service, should be used as the definition of "basic service" for purposes of this rule. A few parties took the position that Rule 17.1 and access to 911 service do not include all of the requirements comprising basic service currently found in the Commission's rules. These parties recommended a definition of "basic services" that contained a laundry list of features, services and customer rights.

2. In HB 95-1335 the General Assembly defined "basic service" in very general terms:
Basic service is the availability of high quality, minimum elements of telecommunications services, as defined by the commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S. As can be seen from the above definition, the General Assembly has delegated to the Commission the responsibility of defining what are "high quality, minimum elements of telecommunications services."

Throughout the Commission's current rules applicable to telecommunications services there are numerous functions, services and features that a basic local exchange service provider must provide and certain technical standards that it must meet in providing basic local exchange service. While

Rule 17.1 contains some of these functions, services, features, and standards, it does not contain all of them. Thus, it would not be consistent with what the Commission currently considers "basic service" to limit basic service to Rule 17.1, plus 911 service. We also are rejecting the recommendation to include a laundry list of functions, services, features, and standards in the standards for "basic service".

3. We have not included a definition of "basic service" in the rules we adopt today. Instead, we have included a description of the standards encompassed in the concept of "basic service." Any description of the standards encompassed in the concept of "basic service" should include language indicating clearly that the concept of "basic service" is an evolving concept that will change with time. The description of the standards encompassed in the concept of "basic service" we fashion in the rules adopted by this decision emphasizes that "basic service" is an evolving concept to be updated periodically, taking into consideration advances in telecommunications and information technologies and services. It recognizes that Rule 17.1 and 911 service, together with other elements, functions, services, and standards for quality service prescribed by the legislature by statute, or by this Commission by rule or order, comprise "basic service."

G. Payments into the Colorado High Cost Fund.

There also was not consensus on the issue of which providers should make payments into the CHCF. In 40-15-502(3)(a), C.R.S., the General Assembly wrote with respect to universal basic service:

The Commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado.

The General Assembly concluded paragraph 40-15-502(3)(a) with the following empowerment to the Commission:

The commission shall have the authority to regulate providers of telecommunications services to the extent necessary to assure that universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.

Again in 40-15-502(5)(a), C.R.S., on universal service support mechanisms, the General Assembly wrote:

In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of such services in high-cost areas.

In order to accomplish the above goals, the General Assembly wrote in 40-15-502(5)(a):

These support mechanisms shall be funded equitably and on a nondiscriminatory, competitively neutral basis **through assessments on all telecommunications service providers in Colorado**

(Emphasis added.) The Commission views the above as a legislative mandate that **all** companies in Colorado providing intrastate telecommunications services must pay into the CHCF and as empowering the Commission to regulate such providers to the extent necessary to assure that all such providers pay into the fund on an equitable, nondiscriminatory, and competitively neutral basis. In light of the fact that the General Assembly used the word "all," we do not have discretion to exempt individual telecommunications providers or classes of telecommunications providers from paying into the CHCF.

1. Prior to the enactment of HB 95-1335, the Congress of the United States preempted states from regulating commercial mobile service and private mobile service in the two areas of entry and rates. See 47 U.S.C.

332(c)(3). The Commission must look to federal law to determine whether wireless telecommunications providers utilizing the public switched network to provide intrastate telecommunications service would be exempt from HB 95-1335's mandate to pay into the CHCF. In 47 U.S.C. 254(b), titled "Universal Service," Congress listed a number of universal service principles that the Federal-state Joint Board and the FCC are required to consider in designing policies for the preservation and advancement of universal service in the United States. One such principle is that: "**All providers of telecommunications services** should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." (Emphasis added.) 47 U.S.C. 254(b). That Congress meant to include all providers of telecommunications services, both interstate providers and intrastate providers, can be seen later in subsection 254(d), applicable to interstate providers, and subsection 254(f), applicable to intrastate providers. In subsection 254(d), Congress wrote:

Every telecommunications carrier that provides **interstate** telecommunications service shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission [FCC] to preserve and advance universal service.

(Emphasis added.) In subsection 254(f) Congress wrote the same language with respect to telecommunications carriers providing intrastate telecommunications services:

Every telecommunications carrier that provides **intrastate** telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State, to the preservation and advancement of universal service in that State.

(Emphasis added.) Earlier in Section 3 of the Federal Act, Congress defined

the terms: "Telecommunications," "Telecommunications carrier" and "Telecommunications service." In defining "Telecommunications carrier" Congress exempted only aggregators of telecommunications services defined in 47 U.S.C. 226, and delegated to the FCC discretion to determine whether the provision of fixed and mobile satellite services should be treated as common carriage. All other telecommunications carriers were included in the definition. Congress defined the term "Telecommunications service" in the following language:

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, **regardless of the facilities used.**

(Emphasis added.) It is clear to this Commission that all telecommunications carriers providing intrastate telecommunications service may be required by a state to pay into that state's fund for the advancement and promotion of universal service, so long as payments into the fund are "on an equitable and nondiscriminatory basis."

2. There also was not consensus on the issue of whether a service provider's payment into the CHCF should be calculated based on that service provider's intrastate retail revenues or based on both its intrastate retail revenues and interstate retail revenues if it also provided interstate telecommunications services. Congress, in subsection 254(f) of the Federal Act, wrote:

Every telecommunications carrier that provides intrastate telecommunications services shall contribute, **on an equitable and nondiscriminatory basis**, in a manner determined by the State to the preservation and advancement of universal service in that State.

(Emphasis added.) Under the Federal Act, every carrier providing interstate telecommunications service is required to pay into the Federal Universal Service Fund. See 47 U.S.C. 254(d). It would not be equitable for the interstate revenues of telecommunications carriers to support the Federal Universal Service Fund and also support, in part, this state's CHCF. Only intrastate retail revenues will be used as the basis for calculating payments into the CHCF. Until the new mechanism for making payments into the CHCF is ordered by this Commission, the current mechanism will remain in effect. The rules we adopt today comply with the federal requirements of equity and nondiscrimination.

3. In the rules we adopt today, only the revenues associated with the sale of cable services identified in 40-15-401(1)(a), C.R.S., will be exempt from assessment for the support of the CHCF. However, we have included in the CHCF rules a provision whereby a telecommunications service provider of other exempt services identified in Part 4 of Article 15 of Title 40, Colorado Revised Statutes, may petition for an alternate method of calculating revenues upon which payments may be calculated.

H. Provider of Last Resort.

1. Proposed Rule 5 recommended by the Working Group was consensus, except for Rule 5.4.2 concerning notice to customers when a POLR applies to discontinue providing basic local exchange service and/or its designation as a POLR. See Attachment A to Decision No. C95-1304 in this docket or Appendix E to the November report of the Working Group for the rules on Provider of Last Resort. As we stated above, the proposed rules applicable to POLRs have been severed from the proposed rules applicable to the CHCF and

will be adopted as a separate set of rules. See Attachment B to this decision. Inasmuch as Congress has placed the burden on states to designate common carriers as "Eligible Telecommunications Carriers" ("ETC") for purposes of the federal Universal Service Fund, we have incorporated corresponding designation provisions applicable to ETCs in the POLR rules.

2. With respect to the Working Group's Rule 5.4.2, there was consensus on part of Rule 5.4.2 and nonconsensus on part. All participants agreed that written notice should be mailed or delivered at least 30 days before the effective date of discontinuance to all presently served customers or subscribers, all interconnecting telecommunications providers, all boards of county commissioners of affected counties and all mayors of affected cities, towns and municipalities. Disagreement centered on the additional notice desired by certain participants. These participants recommended that additional notice should be given by publication for four consecutive weeks in a publication or publications distributed in the area certificated to the POLR.

3. We have elected to require a POLR which desires to relinquish its designation as a POLR and/or its basic local exchange service to give the additional notice recommended by certain participants of the Working Group.

4. The Commission, also, has added to the consensus rules on discontinuance of basic local exchange service and/or its designation as a POLR separate rules on relinquishment of universal service by ETCs under 47 U.S.C. 214(e)(4). Notice to relinquish designation as an ETC will be the same as for POLRs.

I. Eligibility to Receive CHCF Support.

1. There also was not consensus on the issue of which service providers should be eligible to receive Colorado High Cost funding.

2. The Working Group forwarded three different recommendations relative to when a telecommunications service provider would be eligible to receive CHCF support in a geographic high cost support area. One recommendation would require that a service provider be willing to provide basic service in a geographic support area **and** be designated a POLR in that area as a condition of receiving CHCF support. The second recommendation would require only that the service provider be willing to offer basic local exchange service in the geographic support area to all who request it. The third recommendation linked CHCF support to high cost customers, as opposed to high cost areas.

3. The rules adopted by this decision will require only that a telecommunications service provider (referred to in the rules as an "Eligible Provider") be certificated to provide basic local exchange service to all residential and business customers in a geographic support area in order to be eligible to receive Colorado High Cost funding. The service provider need not be, but also may be, designated a POLR. We read paragraph 40-15-502(5)(b), C.R.S. as delegating to the Commission discretion to require either that a service provider be certificated to provide basic service in a geographic support area or be certificated to provide basic service in a geographic support area and be designated a POLR in that same support area. We think our approach better advances HB 95-1335's goal of promoting competition in the provision of basic service--there may be service providers which may wish to be certificated to provide basic local exchange service in a geographic sup-

port area, but may not wish to be designated a POLR.

4. We have rejected, also, the third recommendation referred to above, i.e., that Colorado High Cost funding be targeted to high cost customers, as opposed to high cost areas. HB 95-1335 speaks of promoting and advancing universal basic service in high cost areas. See, for example,

40-15-502(5)(a), C.R.S., which provides in part:

In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of such services in **high cost areas**. . . . For purposes of administering such support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral **geographic support areas**. A provider's eligibility to receive support under the support mechanisms shall be conditioned upon the provider's offering basic service throughout an **entire support area**.

(Emphasis added.)

5. All of the parties agreed that the CHCF rules should be designed to prevent double recovery by Eligible Providers. However, some parties recommended that a provider should be required to demonstrate that it had removed all support, both explicit and implicit, for basic service from its prices for other services before it would be eligible to receive Colorado High Cost funding. We agree with the parties that the rules should be designed to prevent, to the extent possible, double recovery by Eligible Providers.

6. We have decided to address this issue in two ways: first, in the rules we adopt today an Eligible Provider will be required to present, in its application to be designated as an eligible provider, evidence that the funds to be received from the CHCF and other sources, together with local

exchange service revenues will not exceed the **reasonable cost of providing local exchange service**. Second, one of the issues referred to the Task Force for consideration and recommendation is a mechanism to account for the presence of, and removal of, internal subsidies. Together with the rules we adopt today, a properly designed mechanism should go a long way toward insuring against double recovery by Eligible Providers.

7. On the issue of resellers of basic service, the Commission has conformed its rules to the requirement in 47 U.S.C. 214(e)(1)(E). That is, in order for a telecommunications carrier to be eligible to receive Federal Universal Service support, it must offer services under 47 U.S.C. 254(c) either using its own facilities or a combination of its own facilities and resale of another carrier's services. Under the rules we adopt today, a pure reseller will not be eligible to receive either Colorado High Cost funding or Federal Universal Service funding. The facilities-based provider, reseller could be eligible to receive both.

J. Disclosure of Colorado High Cost Assessments and Funding on Customers Bills.

1. There also was not consensus on the issue of whether the CHCF assessment should be disclosed on the bills of customers of service providers making payments into the CHCF and on the bills of customers of service providers receiving payments from the CHCF.

2. A number of the Working Group participants recommended that the CHCF subsidy should be disclosed to both paying and receiving customers. Not unexpectedly, those participants receiving or anticipating receiving funds from the CHCF opposed this recommendation, while those participants

anticipating paying into the fund for the first time supported the recommendation. Strong arguments can be made supporting both points of view.

3. In support of disclosure it can be argued that customers have a right to know and should be informed of the various charges included in their bills, especially when those charges are the result of government action--such charges should not be hidden in a customer's overall total bill.

Customers have a right to know when government action increases their cost for the benefit of other customers. Also, disclosure of the CHCF payment on customers' bills may act as a limitation of, or control against, ever increasing assessments.¹²

4. Equally persuasive arguments can be made supporting a decision not to disclose CHCF assessments and receipts. Arguments supporting not disclosing CHCF payments or subsidies on customers' bills are that the CHCF is simply a cost of doing business for service providers paying into the fund similar to other costs that are not itemized on customers' bills, such as wages, salaries, benefits, rents, insurance, income taxes, property taxes, etc.

5. Although the Commission has the discretion to require it, *City of Montrose v. Public Utilities Commission*, *supra* at 624-625, we have elected not to require telecommunications providers, both those providers making payments into the CHCF and those providers receiving payments from the CHCF, to disclose the subsidy amount on the bills of their customers. Since disclosure or non-disclosure has not been mandated in HB 95-1335, it is a

¹² This was the rationale of the Commission in requiring that municipal charges be disclosed on customers' bills. See *City of Montrose v. Public Utilities Commission*, 629 P.2d 619 (Colo. 1981).

matter within our discretion. *City of Montrose v. Public Utilities Commission, supra.* CHCF payments are assessed against the provider on the basis of intrastate retail revenues, and as such are simply a cost of doing business for the right to complete calls by interconnecting with the public switched network. The payments should not be itemized on a customer's bill any more than other costs of doing business are.

6. We are aware that certain subsidies, charges and taxes currently are disclosed to customers on the bills they receive, while other subsidies, charges and taxes are not. These disclosures are required either by statute or required by prior decisions of this Commission. Of necessity, the decision we make today will be consistent with some of those decisions and inconsistent with others. However, this Commission is not bound by the judicial doctrine of *stare decisis*. *B & M Service, Inc., v. Public Utilities Commission* 163 Colo. 228, 429 P.2d 293 (1967). Also, when two equally reasonable courses of action are open to the Commission, it is within the Commission's discretion to select the appropriate alternative. *Colorado-Ute Electric Association v. Public Utilities Commission*, 760 P.2d 627, 641 (Colo. 1988). We are convinced that a decision either way would be legally defensible, but as a matter of policy we are of the opinion that not disclosing CHCF payments or receipts is the prudent course. This Commission should not do anything that may frustrate HB 95-1335's stated goal of promoting and advancing universal basic service to all people of the state.

III. **ADOPTION OF RULES.**

The *Rules Prescribing the Procedures for Administering the Colorado High Cost Fund*, attached to this decision as Attachment A and the *Rules Prescribing the Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier*, attached to this decision as Attachment B, are consistent with the mandate of the General Assembly in HB 95-1335 that special rules and support mechanisms be adopted by this Commission to achieve the goal of ensuring the availability of universal basic local exchange service to all residents of the state at reasonable rates. The rules appended to this Decision as Attachment A and Attachment B are appropriate for adoption.

IV. **ORDER**

A. **The Commission Orders That:**

1. The *Rules Prescribing the Procedures for Administering the Colorado High Cost Fund*, attached hereto as Attachment A and the *Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier*, attached hereto as Attachment B are hereby adopted.

2. Rules 16, 17 and 19 of Part 2 of the *Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers*, 4 CCR 723-27, are hereby repealed.

3. There is hereby created the Colorado High Cost Fund Task Force discussed above in Part II.B of this decision. The Task Force shall consist of the following members, which shall be voting members: AT&T Communications

of the Mountain States, AT&T Wireless Services, Colorado Independent Telephone Association, Colorado Office of Consumer Counsel, MCI Telecommunications Corporation, Staff of the Commission, TCI Communications, Inc., and US West Communications, Inc. The Staff of the Commission shall preside as the chair of the Task Force. Other persons, firms, corporations and associations may be granted membership in the Task Force upon petition to the Commission. The Task Force shall consider and make recommendations to the Commission on the issues set forth in Part II.B of this decision. The Task Force shall file with the Commission an interim report containing its recommendations on the issues set forth in Part II.B on or before October 31, 1996, and a final report on or before December 31, 1996.

4. This order adopting the rules attached hereto as Attachments A and B and repealing Rules 16, 17 and 19 contained in Attachment C hereto shall become effective 20 days following the Mailed Date of this decision in the absence of the filing of an application for rehearing, reargument, or reconsideration. In the event an application for rehearing, reargument, or reconsideration of this decision is timely filed, and in the absence of further order of this Commission, this order of adoption shall become final upon a Commission ruling denying any such application.

5. Within 20 days after final action of the Commission adopting the rules attached hereto as Attachments A and B, and repealing Rules 16, 17 and 19 contained in Attachment C hereto, the adopted and repealed rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Colorado Attorney General regarding the constitutionality and legality of the adoption and repeal of the

rules.

6. Within 20 days following the issuance by the Colorado Attorney General of her opinion on the adoption of the rules attached hereto as Attachments A and B, and the repeal of Rules 16, 17 and 19 contained in Attachment C hereto, the adopted and repealed rules shall be filed with the Office of Legislative Legal Services.

7. The 20-day period provided for in 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this order.

8. This Order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES PRESCRIBING THE
PROCEDURES FOR ADMINISTERING THE
COLORADO HIGH COST FUND

4 CCR 723-41

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to provide procedures and regulations to administer the Colorado High Cost Fund (CHCF). The CHCF is intended to further the goal of ensuring that basic local exchange service shall be available and affordable throughout the State of Colorado. The CHCF allows providers to be reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high-cost geographic support area and the price charged for such service. These Rules shall ensure that no local exchange provider receives funds from the CHCF or any other source that, together with local exchange service revenues, exceeds the reasonable cost of providing local exchange service. The CHCF shall be equitable, competitively neutral, and non-discriminatory in its funding, distribution, and administration. No provider shall gain a competitive advantage from the support obtained from this fund.

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

The Commission is authorized to promulgate rules generally by 40-2-108 C.R.S., and specifically for telecommunications services by 40-15-

201 and 40-15-301 C.R.S. The statutory authority for promulgating these Rules is further found in 40-15-208, 40-15-501(2)(b) and (d), 40-15-502(2),(3), (4), (5) and (6), 40-15-503(2) C.R.S. By 40-15-502(3)(a) C.R.S., the Commission has the authority to regulate all providers of telecommunications services to the extent necessary to assure that universal service is provided to all consumers in the State at fair, just, and reasonable rates.

Finally, these Rules are consistent with 47 U.S.C. 254.

RULE 4 CCR 723-41-1. APPLICABILITY. Part I of these rules contain the permanent provisions regulating the CHCF, and are applicable to all telecommunications service providers in Colorado. Part II of these rules contain the temporary provisions providing for the transition from the CHCF mechanism that was in effect prior to July 1, 1996 to the mechanisms in Part I. Part II is applicable to those providers that were Small LECs on or before July 1, 1996.

RULE 4 CCR 723-41-2. DEFINITIONS. The meaning of terms used within these Rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this Rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this Rule conflict with statutory definitions, the statutory definitions control. As used in these Rules, unless the context indicates otherwise, the following definitions shall apply:

723-41-2.1 Access line. The connection of the end-user customer to the public switched network. This definition is not limited to wireline or to any other technology.

723-41-2.2 Administrator. The Commission, or a designee employed by the Commission pursuant to 40-15-208 C.R.S. to perform the

administrative functions of the CHCF under the direction of the Commission.

723-41-2.3 Average Schedule Small LECs. Small LECs who are average schedule companies as defined and used in 47 CFR 69.605 to 69.610.

723-41-2.4 Commission. The Colorado Public Utilities Commission.

723-41-2.5 Eligible Provider. A basic local exchange provider who has been designated by the Commission pursuant to Rule 8 to receive disbursements from the CHCF.

723-41-2.6 Geographic Area. A Commission-defined geographic unit usually smaller than an existing provider's wire center serving area.

723-41-2.7 Geographic Support Area. A Geographic Area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the CHCF.

723-41-2.8 Provider of Last Resort (POLR). A Commission-designated telecommunications provider that carries the responsibility to offer basic local exchange service to all consumers who request it within a Geographic Area.

723-41-2.9 Proxy Cost. The estimate, produced by the use of factors, of the monthly recurring revenue requirement necessary to support the estimated investment per access line generated by the Proxy Cost Model.

723-41-2.10 Proxy Cost Model. A model which produces an estimate of the reasonable required level of investment per access line in a particular Geographic Area. The proxy telephone services or features assuming efficient engineering cost model produces an estimate of the required investment for a defined set of telephone services or features assuming efficient engineering and design criteria and deployment of current state-of-the-art technology using the current national local exchange network topology. The proxy cost model will not favor one technology over another, perhaps more efficient, technology.

723-41-2.11 Retail Revenues. For the purpose of this Rule, retail revenues are those revenues derived from the sale of intrastate telecommunications services which benefitted from interconnection with the

public switched telecommunications network. They include only revenues received from end-users and not other telecommunications providers. A service is considered to have benefitted from interconnection with the public switched telecommunications network if it interconnects with the public switched telecommunications network in a manner that the user of the service can access the general public.

723-41-2.12 Small LEC. A local exchange carrier (LEC) or provider who was certified before July 1, 1996 and who serves a total of fewer than fifty thousand access lines in the State. This is a cumulative statewide total, and therefore not all basic local exchange providers that serve only rural exchanges of ten thousand or fewer access lines are Small LECs. Rural providers that serve a total of more than fifty thousand access lines statewide are not considered Small LECs.

723-41-2.13 Universal service. The goal that basic local exchange service be available and affordable to all citizens of the State of Colorado who desire it.

RULE 4 CCR 723-41-3. GENERAL. Toward the ultimate goal of universal service, the Colorado High Cost Fund shall be coordinated with the Federal Communications Commission (FCC) Universal Service Fund, (USF) found at 47 CFR 36.601 to 36.641 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 Section 101 of the "Telecommunications Act of 1996".

RULE 4 CCR 723-41-4. TRANSITION.

723-41-4.1 The mechanism for making payments into the CHCF established in Rule 7 of Part I shall not take effect until further order of the Commission on or before July 1, 1997.

723-41-4.1.1 Until Rule 7 is effective, the mechanism for making payments into the CHCF established in Rules 18.6.2 through 18.6.5 of Part II of this Rule shall remain in effect.

723-41-4.1.2 After Rule 7 becomes effective, Rules 18.6.2 through 18.6.5 of Part II of this Rule are repealed.

723-41-4.2 Small LECs eligible, as of July 1, 1996, to draw from the CHCF established in Part II of 4 CCR 723-27 and now codified in Part II of this Rule, may only continue to draw support in accordance Part II of this Rule until the first of the following three events occurs:

723-41-4.2.1 July 1, 2003; or

723-41-4.2.2 another provider holding an operating authority within the provider's service territory, pursuant to the Commission's Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, 4 CCR-723-35, is found by the Commission to be eligible to receive support from the CHCF pursuant to Rule 8; or

723-41-4.2.3 the provider elects into the mechanism established pursuant to Part I of this Rule.

723-41-4.3 Part II of this Rule is repealed effective July 1, 2003.

RULE 4 CCR 723-41-5. SPECIFIC SERVICES AND FEATURES SUPPORTED BY THE CHCF. The services and features supported by the CHCF are an evolving level of telecommunications services established by the Commission and periodically updated under 40-15-502(2) C.R.S., to take into account advances in telecommunications and information technologies and services. Until revised, the CHCF will support such services as are defined in Rule 17.1 of the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-2, plus access to 911 service and such other elements, functions, services, standards or levels for quality of service, or criteria that are currently established pursuant to statute or Commission rule.

RULE 4 CCR 723-41-6. AFFORDABLE PRICE STANDARD FOR BASIC SERVICE. For the purpose of this Rule, the prices in effect for basic service, excluding outside base rate area zone charges, if any, in each Geographic Area on the

effective date of this Rule shall be deemed affordable. Pursuant to 40-15-502(3) C.R.S., a different level may be set by the Commission and designated as a benchmark price.

4 CCR 723-41-PART I

RULE 4 CCR 723-41-7. PAYMENTS INTO THE COLORADO HIGH COST FUND.

723-41-7.1 Each telecommunications service provider shall be assessed a percentage of the total CHCF equal to the provider's percentage of the total intrastate Retail Revenues.

723-41-7.1.1 Revenues associated with the sale of cable services identified in 40-15-401(1)(a) C.R.S. shall not be considered when determining a provider's assessment.

723-41-7.1.2 A provider of a service, exempt from regulation pursuant to Part 4 of Article 15 of Title 40 Colorado Revised Statutes (C.R.S.), may apply for approval of an alternative method for calculating the revenues associated with the sale of that service. The Commission shall grant such application for disparate treatment if the Commission determines that such payment under Rule 7.1 would be discriminatory, inequitable and not in the public interest.

723-41-7.2 Process.

723-41-7.2.1 As part of its Annual Report filed pursuant to 4 CCR 723-1, Rule 25, each telecommunications service provider shall provide to the Commission, an audited accounting of its Retail Revenues for the previous calendar year.

723-41-7.2.2 The Administrator shall determine the annual assessment percentage appropriate for each telecommunications provider. The Commission shall issue an order establishing the appropriate assessment percentage for each telecommunications provider before the first day of each fiscal year.

723-41-7.2.3 The Administrator may increase each

assessment by an amount necessary to compensate for uncollectible assessments. Such increase shall generally not exceed 5% of each month's assessment.

723-41-7.2.4 Monthly, the Administrator shall send to each provider a notice of the provider's net assessment (assessment less disbursement). Each provider so notified shall remit, if applicable, the monthly net assessment to the Administrator within the period of time designated by the Administrator.

RULE 4 CCR 723-41-8. ELIGIBILITY TO RECEIVE SUPPORT FROM THE COLORADO HIGH COST FUND.

723-41-8.1 A provider shall be in compliance with the Commission's rules applicable to the provision of basic local exchange service as a prerequisite for eligibility to receive support from the CHCF.

723-41-8.2 To be designated an Eligible Provider within a Geographic Support Area, a provider must file an application with the Commission.

723-41-8.2.1 Contents of Application. The application must provide evidence sufficient to establish that:

723-41-8.2.1.1 The provider is certified by the Commission to offer basic local exchange service within the Geographic Support Area;

723-41-8.2.1.2 The provider will offer basic local exchange service to all customers within the Geographic Support Area;

723-41-8.2.1.3 The provider has the managerial qualifications, financial resources, and technical competence to provide basic local exchange service throughout the specified support area regardless of the availability of facilities or the presence of other providers in the area;

723-41-8.2.1.4 The provider is not receiving funds from the CHCF or any other source that together with local exchange service revenues, exceed the reasonable cost of providing local exchange service to

customers of such provider; and

723-41-8.2.1.5 The granting of the application serves the public convenience and necessity, as defined in 40-15-101, 40-15-501, and 40-15-502 C.R.S.

723-41-8.2.2 Process.

723-41-8.2.2.1 The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

723-41-8.2.2.2 An application filed pursuant to Rule 8.2 may be filed contemporaneously with an application for certification, operating authority, or alternative regulation.

723-41-8.3 A reseller may not receive support from the CHCF for customers which are served entirely through resale. Rather, the facilities-based provider may be eligible to receive any applicable CHCF support.

723-41-8.4 If a provider serves a customer *via* a combination of its facilities and another s unbundled facilities which the provider purchased at full cost, the provider may be eligible to receive the CHCF support for that customer.

723-41-8.5 CHCF support shall be portable between any Eligible Provider chosen by the end-user. The level of the support per access line paid to any Eligible Provider shall be determined pursuant to Rule 8.2.1.4.

723-41-8.6 Providers certified as a Provider of Last Resort who, on the effective date of these Rules, served only rural exchanges with ten thousand or fewer access lines shall be deemed to have met the application requirements in Rules 8.2.1.1, 8.2.1.2, 8.2.1.3, and 8.2.1.5 for the geographic support areas within their service territories as of the effective date of these Rules.

RULE 4 CCR 723-41-9. DISBURSEMENTS FROM THE COLORADO HIGH COST FUND.

723-41-9.1 The Commission shall establish Geographic Areas for the

State by order. Such Geographic Areas may be revised.

723-41-9.2 The Commission shall: 1) adopt a Proxy Cost Model; and 2) publish the Proxy Cost for each Geographic Area. The Proxy Cost Model and the resultant Proxy Costs shall be updated as necessary. The Commission shall ensure that the Proxy Cost associated with basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.

723-41-9.3 The Commission shall, based upon the Proxy Costs, designate certain Geographic Areas of the State as Geographic Support Areas.

723-41-9.4 Each Eligible Provider shall receive monthly support from the CHCF based on: 1) the number of access lines it serves in high cost geographic support areas, as designated by the Commission; 2) multiplied by the difference between the revenues received for basic local exchange service, unless the Commission determines a benchmark price should be substituted, and all other sources of support, including, but not limited to Federal USF, low interest Rural Utility Service loans, rent compensation, and Yellow Page Directory compensation; and, 3) a per line proxy cost, as determined by the Commission.

723-41-9.5 Process.

723-41-9.5.1 Each month, on or before the 15th, each Eligible Provider shall provide the Administrator with an accounting of the number of residential access lines and the number of business access lines that the provider served in each Geographic Support Area as of the last day of the preceding month.

723-41-9.5.2 The Administrator shall make monthly disbursements from the CHCF after receipt of the monthly net assessments pursuant to Rule 7.2.4.

RULE 4 CCR 723-41-10. ADMINISTRATION. The CHCF shall be under the direction of an Administrator.

723-41-10.1 The Commission, or its designee, shall be the Administrator of the CHCF.

723-41-10.2 The reasonable expenses incurred in the administration of the fund shall be recovered from the CHCF.

723-41-10.3 The Administrator shall determine the assessment each telecommunications provider must pay into the CHCF and determine the disbursement each Eligible Provider may withdraw from the CHCF.

723-41-10.4 The Administrator shall net each provider's assessment and disbursement prior to receipt or disbursement of actual funds.

723-41-10.5 To the extent the funding received from providers in any one fiscal year exceeds: 1) the disbursements required for the CHCF, plus 2) the cost of administering the CHCF (including such reserve as may be necessary for the proper administration of the CHCF), any unexpended and unencumbered moneys shall remain in the CHCF and shall be credited against the assessment each telecommunications service provider must pay in the succeeding fiscal year.

723-41-10.6 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.

723-41-10.7 The Administrator shall operate on a fiscal year which runs from July 1 to June 30 of the succeeding year.

723-41-10.8 The CHCF records covering both collections and disbursements shall be audited at the end of fiscal year 1997-1998 by an independent external auditor chosen by the Commission. The costs for conducting audits shall be included in the computation of CHCF requirements. Thereafter, the CHCF shall be audited in the same manner at least once every other year.

723-41-10.9 An annual report prepared by the Administrator shall be filed with the Commission by October 1 of each year. This report shall summarize the preceding fiscal year's activity and contain the following:

723-41-10.9.1 a statement of CHCF collections and

disbursements,

723-41-10.9.2 a record of the total cost of administration of the CHCF, and

723-41-10.9.3 the most recent audit report.

723-41-10.10 A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and to each telecommunications service provider who contributes to the CHCF.

RULE 4 CCR 723-41-11. REVIEW OF THE COLORADO HIGH COST FUND. The CHCF will be evaluated and reviewed no later than July 1, 1999, and at least every three years thereafter, for the purpose of determining whether the CHCF should be adjusted.

RULE 4 CCR 723-41-12. BASE RATE AREA SUBSIDIES. If there are areas, as of July 1, 1996, that are receiving subsidies within a provider's base rate area, as determined by the Commission, such areas may continue, at the Commission's discretion, to receive subsidies or be eligible for funding under the CHCF after July 1, 1996.

RULE 4 CCR 723-41-13. ENFORCEMENT.

723-41-13.1 Holder of a Certificate. A telecommunications service provider holding a certificate issued by this Commission that fails to pay, in a timely manner, an assessment due and payable under these Rules may, after notice and opportunity for hearing, have its certificate revoked as provided in Article 6 of Title 40 of the Colorado Revised Statutes (C.R.S.).

723-41-13.2 Uncertificated Provider. A telecommunications service provider that: 1) does not hold a certificate from this Commission and 2) fails to pay its assessment when it is due and payable under these Rules may be subject to a Commission action including but not limited to a complaint: 1) to the Federal Communications Commission (FCC) seeking an

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order directing the delinquent provider to make the payment; or 2) for damages in a Colorado District Court.

RULE 4 CCR 723-41-14. SOCIAL PROGRAMS. These Rules are not intended to limit or conflict with the Rules for Telecommunications Relay Service for the Disabled Telephone Users (4 CCR 723-28) or the Procedures for Administering the Low Income Telephone Assistance Fund (4 CCR 723-13).

RULE 4 CCR 723-41-15. VARIANCE AND WAIVER. The Commission may permit variance or waiver from these Rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable or unreasonable.

RULE 4 CCR 723-41-16. INCORPORATION BY REFERENCE. References in these Rules to Parts 32, 36, 64, and 69, are rules issued by the FCC and have been incorporated by reference in these Rules. These rules may be found at 47 CFR Parts 32, 36, 64, and 69, revised as of October 1, 1995. References to Parts 32, 36, 64, and 69 do not include later amendments to or editions of those parts. A certified copy of these parts which have been incorporated by reference are maintained at the offices of the Colorado Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and are available for inspection during normal business hours. Certified copies of the incorporated rules shall be provided at cost upon request. The Director of the Public Utilities Commission, or his designee, will provide information regarding how the incorporated rules may be obtained or examined. These incorporated rules may be examined at any state publications depository library.

4 CCR 723-41-PART II

RULE 4 CCR 723-41-17. CALCULATION OF AVERAGE LOOP, LOCAL SWITCHING, AND

EXCHANGE TRUNK COSTS FOR FUND SUPPORT.

723-41-17.1 The averages used in calculating CHCF support in this Part II will be computed on the basis of the data reported per this Rule 17 for the preceding calendar year which may be updated at the option of the Small LEC pursuant to 47 CFR 36.612(a).

723-41-17.2 Each basic local exchange provider shall calculate and report its average unseparated loop cost per study area per working loop as prescribed by 47 CFR 36.621, and 36.622 in its Annual Report as required by Rule 25 of the Commission's Rules of Practice and Procedure (4 CCR 723-1) (Annual Report).

723-41-17.3 The national average unseparated loop cost per working loop shall be as calculated by the National Exchange Carrier Association, as prescribed by 47 CFR 36.622(a)(1).

723-41-17.4 Each Small LEC shall calculate and report, in its Annual Report, its unseparated investment per study area for: 1) local switching equipment (Central Office Equipment, Category 3, [47 CFR 36.125]), and 2) its average number of working loops.

723-41-17.5 Each Small LEC shall calculate and report, in its Annual Report, its unseparated investment per study area for exchange trunk equipment (Cable and Wire Facilities, Category 2, Exchange Trunk, [47 CFR 36.155], and Category 4.12, Exchange Trunk Circuit Equipment [47 CFR 36.126(c)(2)]).

723-41-17.6 The State average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the State, as reported pursuant to Rule 17.4, for all LECs, except Small LECs as determined by the Staff of the Commission, by the sum of the working loops in the State, as reported in Rule 17.4, and for all LECs, except Small LECs as determined by the Staff of the Commission. The State average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the State, as reported

pursuant to Rule 17.5, and for all LECs, except Small LECs as determined by the Staff of the Commission, by the sum of the working loops in the State, as reported in Rule 17.4, and for all LECs, except Small LECs as determined by the Staff of the Commission.

723-41-17.7 In its Annual Report, each Small LEC shall report to the Administrator of the CHCF the count for each month of access lines for that twelve month period that were subject to the surcharge of Rule 18.6.4.2 and the amounts collected. The count shall include all residential, business, concession and paystations access lines. Special access, private or dedicated circuits, and company official lines shall be excluded from the count.

723-41-17.8 In its Annual Report each Small LEC shall report to the Administrator of the CHCF the estimated average number of working loops for the next year.

723-41-17.9 Further reporting requirements may be determined by the Commission.

RULE 4 CCR 723-41-18. TRANSITIONAL COLORADO HIGH COST FUND SUPPORT FOR SMALL LECs. During the transition period, Small LECs, who are not Average Schedule Small LECs, shall be eligible, upon proper showing, for support from the CHCF for high costs in three areas: a) loops, b) local switching, and 3) exchange trunks. Average Schedule Small LECs shall be eligible, upon proper showing, for support from the CHCF for high costs as determined by Rule 18.6.1.

723-41-18.1 SUPPORT FOR HIGH LOOP COSTS.

723-41-18.1.1 The CHCF revenue requirement for high loop costs of Small LECs who are not Average Schedule Small LECs shall be determined as follows:

723-41-18.1.1.1 For Small LECs reporting an average unseparated loop cost per working loop less than or equal to 115 percent of the national average for this cost, the CHCF revenue requirement for high

loop costs shall be the sum of: a) zero (0); and b) the difference between 0.265 and twice the Small LEC's intrastate interexchange SLU, (if greater than zero), times the LEC's average unseparated loop cost per working loop for this cost.

723-41-18.1.1.2 For Small LECs reporting an average unseparated loop cost per working loop in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost, the CHCF revenue requirement for high loop costs will be the sum of: a) the difference between the Small LEC's average unseparated loop cost per working loop and 115 percent of the national average for this cost, times 0.10; and b) the difference between 0.265 and twice the Small LEC's intrastate interexchange SLU, (if greater than zero), times 115 percent of the national average for this cost.

723-41-18.1.1.3 For small LECs reporting an average unseparated loop cost per working loop greater than 150 percent of the national average for this cost, the CHCF revenue requirement for high loop costs will be the sum of: a) the difference between 150 percent of the national average unseparated loop cost per working loop and 115 percent of the national average for this cost, times 0.10; and b) the difference between 0.265 and twice the Small LEC's intrastate interexchange SLU, (if greater than zero) times 115 percent of the national average for this cost.

723-41-18.2 SUPPORT FOR HIGH LOCAL SWITCHING COSTS.

723-41-18.2.1 Small LECs, who are not Average Schedule Small LECs, shall be eligible for support for high local switching costs. The CHCF revenue requirement for high local switching cost support shall be determined as follows:

723-41-18.2.1.1 For Small LECs reporting an average unseparated local switching equipment investment per working loop less than or equal to the Colorado average as determined by Rule 17.6, for this investment, the CHCF revenue requirement for local switching cost support shall be zero (0).

723-41-18.2.1.2 For Small LECs reporting an average unseparated local switching equipment investment per working loop in excess of the Colorado average as determined in Rule 17.6, for this investment, the revenue requirement for high local switching cost support will be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following Part 36, CFR. The service category for the CHCF high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment. The percentage of Category 3 allocated to the CHCF service category shall be known as the Colorado High Local Switching Allocation Factor and shall be calculated as one minus the sum of: (a) the Interstate factor(s), (b) the Intrastate factor(s) of Rule 18.2.2, and (c) the local exchange factor. The local exchange factor for each Small LEC shall be calculated as the: (1) Colorado State average unseparated local switching equipment Category 3 investment per working loop as determined by Rule 17.6, for this investment, (2) multiplied by the Small LEC's local DEM percentage, (3) divided by the Small LEC's average investment per working loop for this investment. In no event shall the Colorado High Local Switching Allocation Factor be less than zero. If, by the application of the formula of this Rule 18.2.1.2, the Colorado High Local Switching Allocation Factor is less than zero, the factors of Rule 18.2.1.2. (b) and (c) above shall be reduced proportionally.

723-41-18.3 SUPPORT FOR HIGH EXCHANGE TRUNK COSTS.

723-41-18.3.1 Small LECs, who are not Average Schedule Small LECs, shall be eligible for support for high exchange trunk costs. The CHCF revenue requirement for high exchange trunk cost support shall be determined as follows:

723-41-18.3.1.1 For Small LECs reporting an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average as determined by Rule 17.6, for this investment, the CHCF revenue requirement for exchange trunk cost support shall be zero

(0).

723-41-18.3.1.2 For Small LECs reporting an average unseparated exchange trunk equipment investment per working loop in excess of the Colorado average as determined in Rule 17.6, for this investment, the revenue requirement for high exchange trunk cost support will be calculated by apportioning the costs of the Small LEC to the CHCF service category, as established in Rule 18.2, of the Small LEC's separations study following 47 CFR Part 36, as modified by the Rules found in Part 2 of Rule 4 CCR 723-27. The service category for the CHCF shall be assigned a portion of Cable and Wire Facilities, Category 2 Exchange Trunk [47 CFR 36.155], and a portion of Category 4.12, Exchange Trunk Circuit Equipment [47 CFR 36.126(c)(2)] investment. The percentage allocated to the CHCF service category shall be calculated separately for each as one minus the sum of (a) the interstate factor(s), for exchange trunk, (b) the intrastate factor(s) for exchange trunk, and (c) the local factor for exchange trunk. The local factor for Category 2 exchange trunk of Cable and Wire Facilities, for each Small LEC shall be calculated as the Colorado State average unseparated investment per working loop as determined by Rule 18.6, for this investment, times the Small LEC's local relative number of minutes of use percentage divided by the Small LEC's average investment per working loop for this investment. The local transport allocation factor for Category 4.12 Exchange Trunk Circuit Equipment, for each Small LEC shall be calculated as the Colorado State average unseparated investment per working loop as determined by Rule 17.6, for this investment, times the Small LEC's local relative number of minutes of use percentage divided by the Small LEC's average investment per working loop for this investment.

723-41-18.4 SUPPORT FOR HIGH COSTS OF AVERAGE SCHEDULE SMALL LECs.

723-41-18.4.1 The CHCF support requirement for high cost support for Average Schedule Small LECs shall be determined as the remainder, if positive, of the following process:

723-41-18.4.1.1 First, the total company revenue

requirement for the Average Schedule Small LEC shall be determined;

723-41-18.4.1.2 Next, a value known as the "imputed local network services revenues" is calculated by the Administrator, as the average of the local network services revenues, 47 CFR 32.5000 through 32.5069 for all Small LECs who are not Average Schedule Small LECs, but not including any CHCF revenues;

723-41-18.4.1.3 Then, from the revenue requirement of Rule 18.4.1.1 shall be subtracted the revenues derived from each of the following: 1) all interstate activities and USF support; 2) intrastate network access services; 3) long distance network services; 4) all miscellaneous revenues; and 5) the "imputed local network services revenues".

723-41-18.5 LOCAL NETWORK SERVICES TARIFF CAP. In no event shall the local network services revenue requirement, as defined in 47 CFR 32.5000 through 32.5069 (1995), of Small LECs, be in excess of 130 percent of the average, of such revenue requirement for local exchange providers which are not Small LECs. Such excess shall be considered as a part of the Small LECs CHCF support revenue requirement.

723-41-18.6 COLORADO HIGH COST FUND ADMINISTRATION.

723-41-18.6.1 The Commission, acting as Administrator, and pursuant to this Part II of the Rules, shall determine and establish by Order, for each Small LEC, the CHCF support revenue requirement that will be effective for a period of six years beginning with the date of the Order.

723-41-18.6.1.2 At any time, upon the request and proper support as part of a general rate proceeding by a Small LEC, the Commission, acting as Administrator, may revise the CHCF support revenue requirement that will be effective for a period of six years beginning with the date established by order. Further, as a result of a show cause, complaint or other proceeding, the Commission, acting as Administrator, may revise the CHCF support revenue requirement that will be effective for a

period of six years beginning with the date established by order.

723-41-18.6.1.2 Once established or revised, no further qualification will be required during the six-year funding period. During the funding period, the amount of CHCF support will be phased down. Funding will be fixed for the first two years (any 12 month period) at 100% of the funding level established. Following the first two years, the support amount will decline and be phased out by year seven. The following is the phase out schedule:

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

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

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

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

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

For each year of the CHCF funding period, the applicable percentage from the above table will be multiplied by the actual change (increase or decrease) in access minute demand for the most recent 12-month period as

compared to the previous 12-month period immediately preceding for which billed demand data is available, to determine the access minute adjustment amount. The amount determined will then be added to or subtracted from the prior 12-month period adjusted switched access minute demand to determine the current period's adjusted access minute demand. The current period's adjusted switched access demand will then be utilized to revise the switched access rate elements using the access revenue requirements for each element, from the base year rate determination. The switched access rate adjustments shall be filed with the Commission with a proposed effective date no later than 60 days following the anniversary of the effective date of the CHCF funding period.

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

723-41-18.6.2 Each intrastate interexchange carrier (IXC) shall report to the Administrator of the CHCF by May 1st of each calendar year its intrastate interexchange switched minutes of use for the previous calendar year. "Intrastate interexchange carrier" includes intrastate interexchange carriers which are also local exchange service providers. "Switched minutes of use" shall include such services as, but is not limited to: message toll service, WATS, 800 service, but would exclude traffic placed over dedicated private line facilities (i.e. special access arrangements). Further reporting methods will be determined by the Administrator of the CHCF.

723-41-18.6.3 The total fund requirements for all Small LECs combined with such fund administration costs and such reserve requirements will be determined by the Administrator.

723-41-18.6.4 The fund requirements of the CHCF will be provided from two sources:

723-41-18.6.4.1 Intrastate IXCs: One-half of the fund requirement as determined pursuant to Rule shall be funded by a bulk bill to each intrastate IXC. Each IXC's CHCF bulk bill amount will be based upon the percentage relationship of each IXC's appropriate minutes of use for all intrastate interexchange switched services.

723-41-18.6.4.2 Access lines: One-half of the fund requirement as determined pursuant to Rule shall be funded by a uniform charge per access line. CHCF payments will be based upon the percentage relationship of each LEC's working loops.

723-41-18.6.5 The Commission after determining the CHCF requirement, shall, by appropriate order, impose the uniform charge on each access line, and shall establish the bulk bill amount of each IXC. The Commission, as Administrator, shall endeavor to issue such orders so that the amounts and uniform charge can be adjusted, if necessary, effective July 1 of each year.

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES PRESCRIBING THE PROCEDURES
FOR DESIGNATING TELECOMMUNICATIONS SERVICE PROVIDERS
AS PROVIDERS OF LAST RESORT
or as an
ELIGIBLE TELECOMMUNICATIONS CARRIER,
4 CCR 723-42

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

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

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

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

Finally, these Rules are consistent with 47 U.S.C. 254.

RULE 4 CCR 723-42-1. APPLICABILITY. These rules are applicable to all telecommunications service providers: 1) designated as a Provider of Last Resort or Eligible Telecommunications Carrier, 2) seeking to be designated as a Provider of Last Resort or Eligible Telecommunications Carrier, or 3)

seeking to remove a designation as a Provider of Last Resort or Eligible Telecommunications Carrier.

RULE 4 CCR 723-42-2. DEFINITIONS. The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. If the general usage of terms in the telecommunications industry or the definitions in this rule conflict with statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions shall apply:

723-42-2.1 Common Carrier. For the purpose of the designation of an Eligible Telecommunications Carrier (ETC), a Common Carrier is a telecommunications provider that offers basic local exchange service to the public on a nondiscriminatory basis.

723-42-2.2 Eligible Telecommunications Carrier. A telecommunications provider that is authorized by this Commission, pursuant to Rule 7, to receive federal universal service support as required by 47 U.S.C 214(e)(2).

723-42-2.3 Geographic Area. A Commission-defined geographic unit usually smaller than an existing provider's wire center serving area.

723-42-2.4 Provider of Last Resort (POLR). A telecommunications provider that is designated by the Commission, pursuant to this Rule, to have the responsibility to offer basic local exchange service to all consumers who request it within a Geographic Area.

723-42-2.5 Rural Telecommunications Provider. A telecommunications provider which meets one of the following five criteria:

723-4exchange carrier study area that does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (b) any territory, incorporated or unincorporated, included

in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; or

723-42-2.5.3 provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; or

723-42-2.5.4 provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

723-42-2.5.5 has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

RULE 4 CCR 723-42-3. DESIGNATION OF PROVIDERS OF LAST RESORT.

723-42-3.1 A telecommunications service provider who holds a certificate of public convenience and necessity (CPCN) to offer basic local exchange service in a Geographic Area on or before July 1, 1996 shall be considered a POLR in those Geographic Areas.

723-42-3.2 Upon application by a provider, the Commission: 1) may, in the case of an area served by a rural telecommunications provider; and 2) shall, in the case of all other areas, permit more than one POLR in a Geographic Area.

723-42-3.3 The Commission shall, upon request by a person within an unserved Geographic Area, or upon its own motion, designate a POLR for that unserved Geographic Area, based upon a determination of the provider best able to provide basic local exchange service to the area.

RULE 4 CCR 723-42-4. APPLICATION FOR DESIGNATION AS AN ADDITIONAL PROVIDER OF LAST RESORT.

A telecommunication provider seeking designation as a Provider of Last Resort shall file an application with the Commission requesting designation as a POLR for a specific Geographic Area.

723-42-4.1 Contents of Application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified, attached exhibits:

723-42-4.1.1 Applicant's name and complete address (street, city, state, and zip code), and the name(s) under which the applicant is, or shall be, providing telecommunications service in Colorado;

723-42-4.1.2 A statement identifying the decision(s) of this Commission authorizing the applicant to provide basic local exchange service;

723-42-4.1.3 A statement describing the Geographic Area for which applicant seeks designation as a POLR. If designation for a specific Geographic Area, rather than a statewide designation, is sought, the application shall contain a description of such Geographic Area by metes and bounds and a map displaying the service area;

723-42-4.1.4 An affirmative statement that the applicant will accept the responsibilities identified in Rule 5;

723-42-4.1.5 A statement of the facts (not t relevant Geographic Area notwithstanding whether there are other providers in that area);

723-42-4.1.6 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to establish that the POLR designation for that Geographic Area serves the public interest by demonstrating that such designation is consistent with the legislative statements of intent in 40-15-101, 40-15-501 and 40-15-502(7) C.R.S.;

723-42-4.1.7 A statement that the applicant agrees to: (a) answer all questions propounded by the Commission or any authorized member of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application; and (b) permit the Commission or any authorized member of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application;

723-42-4.1.8 A statement indicating, if the application is assigned for hearing by the Commission, the town or city where the

applicant prefers the hearing to be held and any alternative choices;

723-42-4.1.9 A statement that the applicant understands that the filing of the application does not, by itself, constitute designation as a POLR;

723-42-4.1.10 A statement that, if a designation is granted, applicant understands that such designation is conditional upon compliance with applicable Commission rules and any conditions established by Commission order; and

723-42-4.1.11 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

723-42-4.2 Processing of Applications. The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

RULE 4 CCR 723-42-5. OBLIGATIONS OF PROVIDERS OF LAST RESORT.

723-42-5.1 A POLR has the obligation to:

723-42-5.1.1 Offer basic local exchange service to every customer who requests such service within a designated Geographic Area, regardless of the availability of facilities;

723-42-5.1.2 Be subject to the evolving definition of basic service developed by the Commission pursuant to 40-15-502(2); and

723-42-5.1.3 Advertise the availability of such service and the charges therefore using media of general distribution. At a minimum, a POLR must have customer guide pages in the White Pages Directory within the POLR's Geographic Area. Such customer guide pages shall indicate that the provider will offer basic local exchange service to all who request such service within that area.

RULE 4 CCR 723-42-6. REMOVAL OF PROVIDER OF LAST RESORT DESIGNATION.

723-42-6.1 Application to be Filed with the Commission. When there are multiple POLRs in a Geographic Area, telecommunications service providers seeking to relinquish designation as a Provider of Last Resort shall file with the Commission, at least 30 days before the effective date of the proposed relinquishment, an application containing a complete explanation of the proposed relinquishment. The application shall contain an affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

723-42-6.2 If the POLR proposes to discontinue the provision of basic local exchange service, the POLR shall file a plan for transition of its customers to another provider.

723-42-6.2.1 The transition plan filed by the POLR shall include sufficient notice to permit the purchase or construction of adequate facilities by a remaining POLR or other provider.

723-42-6.2.2 The Commission shall establish a time, not to exceed one year after the approval of the discontinuance, within which such purchase or construction shall be completed.

723-42-6.2.3 During this transition period, the POLR must ensure that customers do not experience a break in service as a result of the POLR discontinuing service.

723-42-6.3 Notice to Customers. In addition to filing an application with the Commission, the POLR shall prepare a written notice stating the proposed discontinuance, and its proposed effective date, and shall mail or deliver the notice at least 30 days before the effective date to all presently served customer or subscribers, including all interconnecting telecommunications providers. The POLR shall separately provide notice to all potentially affected notice shall be mailed to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town or municipality.

723-42-6.3.1 Form of Notice. The notice required by

Rule 6.4 above shall contain the information in Form A.

723-42-6.3.2 Proof of Public Notice. Within 15 days before the date of the proposed discontinuance, the POLR shall file with the Commission a written affidavit stating its compliance with this rule. The affidavit shall state the date notice was completed and the method used to give notice. A copy of the notice shall accompany the affidavit.

723-42-6.4 No hearing needs to be held if no objection, pro-test or intervention is filed. If a hearing is to be held on an application, the Commission shall endeavor, within its operating constraints, hold the hearing, or a portion thereof, at a location within the local calling area of the affected community.

723-42-6.5 No proposed discontinuance shall be effective until a Commission order approving it has been entered.

RULE 4 CCR 723-42-7. ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC) DESIGNATION. Telecommunications providers seeking designation as an Eligible Telecommunications Carrier (ETC) shall file an application with the Commission requesting designation as an ETC for a Geographic Area.

723-42-7.1 Contents of Application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

723-42-7.1.1 A statement identifying the decision(s) of this Commission and/or the Federal Communications Commission (FCC) authorizing the applicant to provide telecommunications service.

723-42-7.1.2 A statement describing the Geographic Area for which applicant seeks designation as an ETC. If designation for a specific Geographic Area, rather than a statewide designation, is sought, the application shall contain a description of such Geographic Area by metes and bounds and a map displaying the service area;

723-42-7.1.3 A statement of the facts (not in the form of

conclusory statements) relied upon by the applicant to demonstrate that it has the mahere are other providers in that area;

723-42-7.1.4 An affirmative statement that the applicant will offer the services that are supported by the Federal universal service support mechanisms under 47 U.S.C. 254(c);

723-42-7.1.5 An affirmative statement that the applicant is a Common Carrier; and,

723-42-7.1.6 An affirmative statement that the applicant will advertise the availability of such service and the charges therefore using media of general distribution. At a mini-mum, an ETC must have customer guide pages in the White Pages Directory within the ETC's Geographic Area. Such customer guide pages shall indicate that the provider will offer basic local exchange service to all who request such service within that area.

723-42-7.2 Processing of Applications. The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

RULE 4 CCR 723-42-8. RELINQUISHMENT OF ETC DESIGNATION.

723-42-8.1 Application to be Filed with the Commission. When there are multiple ETCs in a Geographic Area, providers seeking to relinquish designation as an ETC shall file with the Commission, at least 30 days before the effective date of the proposed relinquishment, an application containing a complete explanation of the proposed relinquishment. The application shall contain the same information as required in Rule 6.1.

723-42-8.2 Processing of Applications. Applications to relinquish an ETC designation shall be processed in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

723-42-8.3 The Commission shall permit an ETC to relinquish its designation as an ETC in any area served by more than one ETC when the Commission concludes that the requirements of Rule 8.1 have been met.

RULE 4 CCR 723-42-9. COMBINED APPLICATIONS. Applicants may file to be designated as a POLR and to be designated as an ETC in a combined application. Similarly, applicants may file to relinquish designation as a POLR and to relinquish designation as an ETC in a combined application. In a combined application, the applicant shall follow the application process and must provide all information required for each separate component of the combined application.

RULE 4 CCR 723-42-10. VARIANCE AND WAIVER. The Commission may permit variance or waiver from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable or unreasonable.

Attachment B

Decision No. C96-352

DOCKET NO. 95R-558T

4 CCR 723-42

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4 CCR 723-42-FORM A - Notice of a discontinuance or curtailment of basic local exchange service by a POLR or discontinuance of POLR designation

NOTICE OF [NAME OF PROVIDER]'S INTENT TO [STOP OFFERING BASIC LOCAL TELEPHONE SERVICE IN YOUR AREA or REMOVE PROVIDER OF LAST RESORT DESIGNATION]

[Name of provider] has asked the Colorado Public Utilities Commission (PUC) for approval to [stop offering basic local telephone service or remove its provider of last resort designation] in your area effective on [date]. [Name of provider] proposes to [stop offering local telephone service or remove its provider of last resort designation] in your area as follows: [provide details of proposal here including the list of alternative providers].

Anyone may object to this proposal by sending a letter to the Colorado Public Utilities Commission, 1580 Logan St., OL2, Denver, CO 80203. You may also object to this proposal by calling the PUC at [phone numbers].

Your written objection by itself does not allow you to participate as a party in any proceeding before the PUC on this proposal. If you want to actively participate as a party to any proceeding, you must submit a written request to the PUC at the above address at least 10 calendar days before the proposed effective date of [date]. Your written request to intervene must follow Rules 20, 21, and 22 of the Commission's Rules of Practice and Procedure and any other rules that apply. You can request a copy of these rules from the Commission.

The PUC may hold hearings on [name of provider]'s proposed actions. If the Commission holds hearings, it will decide what actions, if any, are allowed. Members of the public may attend any hearing and make a statement under oath about the proposed action even if they did not submit a written objection or intervention.

If you want to know if and when hearings are held, please submit a written request to the PUC at the above address. Your written request for hearing notice must be submitted to the PUC calendar days before the proposed effective date of [date].

Please be assured that basic local telephone service will still be available to you whatever the outcome of [name of provider]'s requested action. If [name of provider]'s request to stop offering local telephone service is granted, another telephone company will offer service to you.

by: [name, title and address of officer]

4 CCR 723-27-PART 2

RULES PRESCRIBING THE STANDARD PROCEDURES
FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS,
REVENUES, EXPENSES TAXES AND RESERVES
FOR ACCESS CHARGES OF SMALL EXCHANGE
TELECOMMUNICATION SERVICE PROVIDERS
AND THE
COLORADO HIGH COST FUND

RULE 4 CCR 723-27-15. APPLICABILITY. Rule 18 is applicable to Small LECs who are not average schedule companies as defined in 47 CFR 69.605 to 69.610, (average schedule small LEC) except as otherwise specifically noted. Rule 20 is applicable to all small LECs.

~~RULE 16: GENERAL~~

~~16.1 The Colorado High Cost Fund (CHCF) shall be coordinated with the Federal Communications Commission (FCC) Universal Service Factor, (USF) found at 47 CFR 36.601 to 36.641 so as to guarantee the affordability of basic local telephone service.~~

~~16.2 The CHCF shall promote competition and guarantee the affordability of basic telephone service by providing assistance for three components of the cost of basic local service: 1) high loop costs, 2) high local switching costs, and 3) high exchange trunk costs.~~

~~RULE 17: CALCULATION OF AVERAGE LOOP, LOCAL SWITCHING,
AND EXCHANGE TRUNK COSTS FOR FUND SUPPORT~~

~~17.1 The averages used in calculating CHCF support will be computed on the basis of the data reported per this Rule 17 for the preceding calendar year which may be updated at the option of the small LEC pursuant to 47 CFR 36.612(a).~~

- ~~17.2 Each local exchange provider shall calculate and report its average unseparated loop cost per study area per working loop as prescribed by 47 CFR 36.621, and 36.622 in its Annual Report as required by Rule 25 of the Commission's Rules of Practice and Procedure (4 CCR 723-1) ("Annual Report").~~
- ~~17.3 The national average unseparated loop cost per working loop shall be as calculated by the National Exchange Carrier Association, as prescribed by 47 CFR 36.622(a)(1).~~
- ~~17.4 Each small LEC shall calculate and report in its Annual Report its unseparated investment per study area for local switching equipment (Central Office Equipment, Category 3, 47 CFR 36.125), and its average number of working loops.~~
- ~~17.5 Each small LEC shall calculate and report in its Annual Report its unseparated investment per study area for exchange trunk equipment [Cable and Wire Facilities, Category 2, Exchange Trunk, 47 CFR 36.155, and Category 4.12, Exchange Trunk Circuit Equipment 47 CFR 36.126(c)(2)].~~
- ~~17.6 The state average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the state as reported pursuant to Rule 17.4 and for all LECs, except small LECs as determined by the Staff of the Commission, by the sum of the working loops in the state as reported in Rule 17.4 and for all LECs, except small LECs as determined by the Staff of the Commission. The state average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the state as reported pursuant to Rule 17.5 and for all LECs, except small LECs as determined by the Staff of the Commission, by the sum of the working loops in the state as reported in Rule 17.4 and for all LECs, except small LECs as determined by the Staff of the Commission.~~
- ~~17.7 In its Annual Report each small LEC shall report to the Administrator of the fund the count for each month of access lines~~

~~for that twelve month period that were subject to the surcharge of Rule 19.6.5.2 and the amounts collected. The count shall include all residential, business, concession and paystations access lines. Special access, private or dedicated circuits, and company official lines shall be excluded from the count.~~

~~17.8 In its Annual Report each small LEC shall report to the Administrator of the fund the estimated average number of working loops for the next year.~~

~~17.9 Further reporting requirements may be determined by the Commission.~~

RULE 4 CCR 723-27-18. COLORADO INTRASTATE ACCESS COSTS SHALL BE SEPARATED.

723-27-18.1 Pursuant to 40-15-108(1) C.R.S., each small LEC which provides facilities or equipment for use by interstate users or providers of telecommunications services shall separate all investments and expenses associated therewith according to applicable federal separation procedures and agreements. Prior to separating intrastate costs, each provider shall segregate its intrastate investments and expenses in accordance with Sections 1 through 14 of these Rules.

723-27-18.2 Colorado Intrastate Access Costs shall be separated from other jurisdictional costs using the separation procedures of 47 CFR 36, with the following exceptions:

723-27-18.2.1 **COMMON LINE ALLOCATION.** As provided in Rules 18.2.1.1 and 18.2.1.2, the lesser of 26.5 percent or twice the subscriber line usage (SLU) (as measured by the

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ratio of intrastate interexchange holding time minutes of use to total holding time minutes of use applicable to traffic originating and terminating in the study area, as defined in 47 CFR 36, shall be allocated to Colorado switched access and this allocation factor shall be known as the "basic allocation factor".

723-27-18.2.1.1 The basic allocation factor specified in Rule 18.2.1 shall be modified by multiplying it by a weighting factor which results in the "Colorado basic allocation factor".

723-27-18.2.1.1.1 For small LECs reporting an average unseparated loop cost per working loop less than or equal to 115 percent of the national average for this cost, the weighting factor shall be: one (1).

723-27-18.2.1.1.2 For small LECs reporting an average unseparated loop cost per working loop in excess of 115 percent of the national average for this cost, the weighting factor shall be: 115 percent of the national average unseparated loop cost per working loop divided by the small LEC's average unseparated loop cost per working loop.

723-27-18.2.1.2 The Colorado basic allocation factor shall be used for allocating subcategory 1.3 of Exchange Line Cable and Wire facilities, Category 4.13 of Exchange Line Circuit equipment excluding Wideband, and Category 1 of Other Information Origination/Termination Equipment.

723-27-18.2.2 **LOCAL SWITCHING ALLOCATION.** Except as provided in Rule 18.2.2.1, the allocation of Category 3 of Local Switching Equipment shall follow 47 CFR 36.125 using Colorado relative dial equipment minutes of use (DEM), (which are the minutes of holding time of the originating and terminating local switching equipment, as defined in 47 CFR 36) for InterLATA and IntraLATA switched access. The Colorado DEM factors shall be weighted by a factor of 1.5.

723-27-18.2.2.1 In no event shall the sum of all the interstate and the intrastate allocation factors be greater than 0.85. If the arithmetic sum exceeds 0.85, the Intrastate allocation factor(s) shall be reduced accordingly.

~~**RULE 19: COLORADO HIGH COST FUND**~~

~~The support from the CHCF will be determined in three parts.~~

~~19.1 SUPPORT FOR HIGH LOOP COSTS~~

~~19.1.1 The CHCF revenue requirement for high loop costs of small LECs who are not average schedule small LECs shall be the following:~~

~~19.1.1.1 For small LECs reporting an average unseparated loop cost per working loop less than or equal to 115 percent of the national average for this cost, the CHCF revenue requirement for high loop costs shall be the sum of: a) zero (0); and b) the difference between 0.265 and twice the small LEC's intrastate interexchange SLU, (if greater than zero) times the LEC's average unseparated loop cost per working loop for this cost.~~

~~19.1.1.2 For small LECs reporting an average unseparated loop cost per working loop in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost, the CHCF revenue requirement for high loop costs will be the sum of: a) the difference between the small LEC's average unseparated loop cost per working loop and 115 percent of the national average for this cost, times 0.10; and b) the difference between 0.265 and twice the small LEC's intrastate interexchange SLU, (if greater than zero) times 115 percent of the national average for this cost.~~

~~19.1.1.3 For small LECs reporting an average unseparated loop cost per working loop greater than 150 percent of the national average for this cost, the CHCF revenue requirement for high loop costs will be the sum of: a) the difference between 150 percent of the national average unseparated loop cost per working loop and 115 percent of the national average for this cost, times 0.10; and b) the difference between 0.265 and twice the small LEC's intrastate interexchange SLU, (if greater than zero) times 115 percent of the national average for this cost.~~

~~19.2 SUPPORT FOR HIGH LOCAL SWITCHING COSTS~~

~~19.2.1 Small LECs who are not average schedule small LECs and who have been certified as providing a level of local exchange service which encompasses a community of interest standard, shall be eligible for support for high local switching costs. The CHCF revenue requirement for high local switching cost support shall be determined as follows:~~

~~19.2.1.1 For small LECs reporting an average unseparated local switching equipment investment per working loop less than or equal to the Colorado average~~

~~as determined by Rule 17.6, for this investment, the CHCF revenue requirement for local switching cost support shall be zero (0).~~

~~19.2.1.2 For small LECs reporting an average unseparated local switching equipment investment per working loop in excess of the Colorado average as determined in Rule 17.6, for this investment, the revenue requirement for high local switching cost support will be calculated by creating a new service category in the separations study and apportioning the costs of the provider to this service generally following Part 36, CFR. The service category for the CHCF high local switching cost support shall be assigned a portion of Category 3 of local switching equipment investment. The percentage of Category 3 allocated to the CHCF service category shall be known as the Colorado High Local Switching Allocation Factor and shall be calculated as one minus the sum of (a) the Interstate factor(s), (b) the Intrastate factor(s) of Rule 18.2.2, and (c) the local exchange factor. The local exchange factor for each small LEC shall be calculated as the Colorado state average unseparated local switching equipment Category 3 investment per working loop as determined by rule 17.6, for this investment, times the small LEC's local DEM percentage divided by the small LEC's average investment per working loop for this investment. In no event shall the Colorado High Local Switching Allocation Factor be less than zero. If, by the application of the formula of this rule 19.2.1.2, the Colorado High Local Switching Allocation Factor is less than zero, the factors of Rule 19.2.1.2. (b) and (c) above shall be proportionally reduced.~~

~~19.3 SUPPORT FOR HIGH EXCHANGE TRUNK COSTS~~

~~19.3.1 Small LECs who are not average schedule small LECs and who have been certified as providing a level of local exchange service which encompasses a community of interest standard, shall be eligible for support for high exchange trunk costs. The CHCF revenue requirement for high exchange trunk cost support shall be determined as follows:~~

~~19.3.1.1 For small LECs reporting an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average as determined by Rule 17.6, for this investment, the CHCF revenue requirement for exchange trunk cost support shall be zero (0).~~

~~19.3.1.2 For small LECs reporting an average unseparated exchange trunk equipment investment per working loop in excess of the Colorado average as determined in Rule 17.6, for this investment, the revenue requirement for high exchange trunk cost support will be calculated by apportioning the costs of the small LEC to the CHCF service category, as established in Rule 19.2, of the small LEC's separations study following 47 CFR Part 36, as modified by these rules. The service category for the CHCF shall be assigned a portion of Cable and Wire Facilities, Category 2 exchange trunk 47 CFR 36.155, and a portion of Category 4.12, Exchange Trunk Circuit Equipment 47 CFR 36.126(c)(2) investment. The percentage allocated to the CHCF service category shall be calculated separately for each as one minus the sum of (a) the interstate factor(s), for exchange trunk, (b) the intrastate factor(s) for exchange trunk, and (c) the local factor for exchange trunk. The local factor for Category 2 exchange trunk of Cable and Wire Facilities, for each small LEC shall be calculated as the Colorado state average unseparated investment per working loop as determined by Rule 17.6, for this investment, times the small LEC's local relative~~

~~number of minutes of use percentage divided by the small LEC's average investment per working loop for this investment. The local transport allocation factor for Category 4.12 Exchange Trunk Circuit Equipment, for each small LEC shall be calculated as the Colorado state average unseparated investment per working loop as determined by Rule 17.6, for this investment, times the small LEC's local relative number of minutes of use percentage divided by the small LEC's average investment per working loop for this investment.~~

~~19.4 SUPPORT FOR HIGH COSTS OF AVERAGE SCHEDULE SMALL LECs~~

~~19.4.1 Average schedule small LECs who have been certified as providing a level of local exchange service which encompasses a community of interest standard, shall be eligible for support for high costs. At such time as an average schedule small LEC requests High Cost support, the CHCF revenue requirement for high cost support for these small LECs shall be determined as follows:~~

~~19.4.1.1 The total company revenue requirement for the average schedule small LEC shall be determined.~~

~~19.4.1.2 From the revenue requirement of Rule 19.4.1.1 shall be subtracted the revenues derived from each of the following: 1) all interstate activities and USF support; 2) intrastate network access services; 3) long distance network services; 4) all miscellaneous revenues; and 5) the imputed local network services.~~

~~19.4.1.3 The imputed local network services revenues of Rule 19.4.1.2 shall be calculated, by the Administrator, as the average of the local network services revenues, 47 CFR 32.5000 through 32.5069 for all small LECs who are not average schedule small LECs, but shall not include any~~

~~CHCF revenues.~~

~~19.4.2 Average schedule small LECs who have not been certified as providing a level of local exchange service which encompasses a community of interest standard, shall be partially eligible for support for high costs. The CHCF revenue requirement for high cost support for these small LECs shall be determined in accordance with Rule 19.1.1.~~

~~19.5 LOCAL NETWORK SERVICES TARIFF CAP~~

~~*In no event shall the local network services revenue requirement, as defined in 47 CFR 32.5000 through 32.5069 (1992), of small LECs, who have been certified as providing a level of local exchange service which encompasses a community of interest standard, be in excess of 130 percent of the average, of such revenue requirement for local exchange providers which are not small LECs. Such excess shall be considered as a part of the small LECs CHCF revenue requirement.*~~

~~19.6 COLORADO HIGH COST FUND ADMINISTRATION~~

~~19.6.1 The CHCF shall be under the direction of an Administrator.~~

~~19.6.1.1 The Commission, as Administrator, shall engage and determine the compensation of such professional and technical assistance as may, in its judgment, be necessary for proper administration of the fund.~~

~~19.6.1.2 Costs of administration of the CHCF shall be borne by the CHCF as established by this rule.~~

~~19.6.1.3 Such periodic reports of the administration of the fund in such form and frequency as determined by~~

~~the Commission, consistent with the need for confidentiality of proprietary information relating to the operations of the fund participants shall be made.~~

~~19.6.2 The Commission, acting as Administrator, shall determine pursuant to these rules, for each small LEC the CHCF support revenue requirement that will be effective for a period of six years beginning with the date established by order.~~

~~19.6.2.1 At any time, upon the request and proper support as part of a general rate proceeding by a small LEC, the Commission, acting as Administrator, may revise the CHCF support revenue requirement that will be effective for a period of six years beginning with the date established by order. Further, as a result of a show cause, complaint or other proceeding, the Commission, acting as Administrator, may revise the CHCF support revenue requirement that will be effective for a period of six years beginning with the date established by order.~~

~~19.6.2.2 Once established or revised, no further qualification will be required during the six-year funding period. During the funding period, the amount of CHCF support will be phased down. Funding will be fixed for the first two years at 100% of the funding level established. Following the first two 12 month periods, the support amount will decline and be phased out by year seven. The following is the phase out schedule:~~

65%	YEAR 1	100%	YEAR	4
	YEAR 2	100%	YEAR	5

40%	YEAR 3	82.5%	YEAR	6
20%		YEAR 7		0%

~~19.6.2.3 The Commission may grant a small LEC's request for waiver from these rules for good cause shown, pursuant to Rule 21 following. Any CHCF support amount so granted shall be in the amounts and for the periods expressly approved by Commission order.~~

~~19.6.2.4 During the CHCF funding period, switched access rates for companies receiving CHCF, will be adjusted annually to reflect a sharing of access minute demand growth, which occurred during the most recent 12 month period when compared to the 12 month period immediately preceding for which billed demand data is available. The following percentages of sharing will be used:~~

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

Year 1	n/a	Year 4	75%
Year 2	75%	Year 5	50%
Year 3	75%	Year 6	50%
	Year 7		0%

~~For each year of the CHCF funding period, the applicable percentage from the above table will be multiplied by the actual change (increase or decrease) in access minute demand for the most recent 12-month period as compared to the previous 12-month period immediately preceding for which~~

~~**billed demand date is available, to determine the access minute adjustment amount. The amount determined will be added to or subtracted from the prior 12-month period adjusted switched access minute demand to determine the current period's adjusted access minute demand. The current period's adjusted switched access demand will then be utilized to revise the switched access rate elements using the access revenue requirements for each element, from the base year rate determination.**~~

~~**The switched access rate adjustments shall be filed with the Commission with a proposed effective date no later than 60 days following the anniversary of the effective date of the CHCF funding period.**~~

~~**19.6.2.5 For each average schedule small LEC, a surrogate switched access revenue requirement will be used as the "frozen switched access revenue requirement" as described in Rule 19.6.2.4. This surrogate revenue requirement will be calculated by taking the base year average schedule access rates times the base year access demand.**~~

~~**19.6.3 Each intrastate interexchange carrier (IXC) shall report to the Administrator of the fund by May 1st of each calendar year its interexchange switched minutes of use for the previous calendar year. "Intrastate interexchange carrier" includes intrastate interexchange carriers which are also local exchange service providers. "Switched minutes of use" shall include such services as but is not limited to: message toll service, WATS, 800 service, but would exclude traffic placed over dedicated private line facilities (i.e. special access arrangements). Further reporting methods will be determined by the Administrator of the CHCF.**~~

- ~~**19.6.4** The total fund requirements for all small LECs combined with such fund administration costs and such reserve requirements will be determined by the Administrator.~~
- ~~**19.6.5** Funding for the CHCF will be accomplished from two sources.~~
- ~~**19.6.5.1** One-half of the fund requirement as determined pursuant to rule shall be funded by a bulk bill to each intrastate IXC. CHCF payments will be based upon the percentage relationship of each IXC's appropriate minutes of use for all intrastate interexchange switched services.~~
- ~~**19.6.5.2** One-half of the fund requirement as determined pursuant to rule shall be funded by a uniform charge per access line. CHCF payments will be based upon the percentage relationship of each LEC's working loops.~~
- ~~**19.6.6** The Commission after determining the fund requirements, shall by appropriate order, impose the uniform charge on each access line, and shall establish the bulk bill amount of each IXC. The Commission, as Administrator, shall endeavor to issue such orders so that the amounts and uniform charge can be adjusted, if necessary, effective July 1 of each year.~~

RULE 4 CCR 723-27-20. COLORADO INTRASTATE ACCESS CHARGE ELEMENTS.

723-27-20.1 The rate elements contained in the access tariffs of small LECS who are not average schedule small LECs, shall be based upon an application of 47 CFR, part 69.1 to 69.502, to the intrastate access revenue requirement of the small LEC.

723-27-20.2 The intrastate access charge elements in the tariffs of average schedule small LECs shall be set at the average, as determined by the Administrator, of the access rate elements of the small LECs who are not average schedule LECs which exists at the time that the average schedule small lec's tariff rate elements are established. Average schedule small lecs are not required to modify their access charge elements each time the administrator redetermines the average of the access charge elements, but each shall comply with the provisions of rule 19.6.2. When modified access charge elements are to be established, through request by the LEC, show cause, complaint or other proceeding, the access charge elements shall set at the then-current average.

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4 CCR 723-27-PART 3
WAIVERS FROM RULES
AND INCORPORATION OF RULES OF THE
FEDERAL COMMUNICATIONS COMMISSION BY REFERENCE

RULE 4 CCR 723-27-21. WAIVER FROM RULES. The Commission may permit variance from these rules for good cause shown if it finds compliance to be impossible, impracticable, or unreasonable, if not otherwise contrary to law.

RULE 4 CCR 723-27-22. INCORPORATION BY REFERENCE. References in these rules to Parts 32, 36, 64, and 69 and Federal Communications Commission CC Docket 86-111, are rules issued by the FCC and have been incorporated by reference in these rules. These rules may be found at 47 CFR Parts 32, 36, 64, and 69, revised as of October 1, 1995. References to Parts 32, 36, 64, and 69 do not include later amendments to or editions of those parts. A certified copy of these parts which have been incorporated by reference are maintained at the Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and may be obtained through the Director during normal business hours. Certified copies shall be provided at cost upon request.