Decision No. C12-1442

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-862T

IN THE MATTER OF THE PROPOSED RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF COLORADO REGULATIONS 723-2.

ORDER ADOPTING RULES

Mailed Date: December 17, 2012
Adopted Date: November 20, 2012

INTRODUCTION

The Commission adopts these new rules and regulations to achieve the statutory directive to "bring telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry."[1] With these rules the Commission is reducing regulatory requirements where effective competition exists and continuing to provide high cost support in rural, underserved areas.

The Decision by the Commission is driven by key principles: the rules adopted are technology-neutral; the presence of multiple competitors indicates the existence of "effective competition"; and, where multiple carriers do not compete, we will maintain high cost support. The Commission notes that in Docket No. 10M-565T the Staff compiled data reflecting the number of competitors by exchange area, and this type of information can serve as the basis for the adjudications of effective competition for basic local exchange services.

[1] § 40-15-101, C.R.S.

The rules contain significant "due process protections" to assure the determinations of effective competition are accurate and comply with the statutory provisions of § 40-15-207, C.R.S. We will initiate an adjudicatory process in which an ALJ will determine, by exchange area, where multiple competitors provide effective competition for basic services. For those areas deemed to have effective competition, all providers in these exchanges will be subject to substantially reduced regulation under Part 3, removing traditional tariffing, service quality and rate setting requirements. However, to provide all Coloradoans with access to 9-1-1 services, we exclude basic emergency services from any reduced regulatory treatment, and we will continue to regulate these services under Part 2.

A determination to reclassify basic services based upon a finding of effective competition and other relevant factors will have an impact upon continued receipt of subsidies from the Colorado High Cost Support Mechanism (HCSM). However, we also account for the situation in which a provider's costs are higher than revenues even in areas of effective competition. Our adopted rules provide an additional adjudicatory process for determining whether HCSM support should be continued, reduced, or possibly phased out in areas with effective competition.

Therefore, upon a reclassification of basic service under Section 207 in the initial adjudicatory process, HCSM subsidies will be eliminated 180 days after the Commission's order. However, a provider receiving support may file an application asserting that the provider's reasonable costs of providing basic local services exceed revenues from such services and that other relevant criteria compel continued distribution of HCSM funds. The Commission will adjudicate such applications by considering costs, revenues, affordability, availability, the extent of competition, the interest of increasing competition through reducing subsidies to individual providers, and other policies delineated in our statutes and relevant to the public interest.

Support will continue until the Commission rules upon the application and determines future treatment under the HCSM.

Additionally, the adjudicatory process will allow for a determination that effective competition exists in areas served only by an incumbent and a single wireline provider. An incumbent seeking regulatory relief in such an area may apply for a designation of effective competition. A competitor seeking to eliminate high cost support received by a provider can similarly submit an application to determine that an area is subject to effective competition.

To assure that citizens in underserved rural Colorado are provided basic service, we will maintain for the foreseeable future existing provider of last resort (POLR) regulation in areas of reclassified basic services, absent a showing through an application process that all customers in the subject area will be served adequately.

Today we also promote continued innovation of Internet-based services by not establishing potentially restrictive definitions or creating regulatory oversight of Internet protocol (IP) enabled services. The Commission is simply affirming the status quo in which we do not place any regulatory barriers on IP enabled services and continue to exercise authority to ensure high quality basic emergency services and require contributions to vital state support funds from carriers on a technologically-neutral basis. Finally, we make certain emergency rules permanent to cap the HCSM and to promote the Federal Communication Commission's (FCC) recent reform of intercarrier compensation.

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I. BY THE COMMISSION

A. Statement

1. On August 6, 2012, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) regarding proposed Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR), 723-2.

2. The Commission proposed amendments to the existing rules in response to significant technological and marketplace changes that have occurred in the telecommunications industry and to further the policy goals set forth in § 40-15-101, C.R.S., which include encouraging the continued emergence of a competitive telecommunications environment while protecting and maintaining a wide availability of high-quality and affordable telecommunications services.

3. The amended rules were proposed as a first step in telecommunications reform. The basis and purpose of the proposed rules in the instant docket were to set forth a regulatory framework for determining the existence of effective competition areas[2] for basic services; eliminate or reduce funding from the HCSM in such areas; address limited treatment of IP enabled and Interconnected VoIP services; and, make permanent certain emergency rules set forth in Rules 2202, 2203, 2843, and 2856.

4. The statutory authority for the proposed rules is found in §§ 24-4-103, 40-2-108, 40-3-110, 40-4-101, 40-15-101, 40-15-201, 40-15-207, 40-15-208, 40-15-301, 40-15-307, 40-15-501, and 40-15-503(5), C.R.S.

[2] Prior orders and proposed rules in this docket referred to these as "effectively competitive areas."

5. Within its NOPR the Commission also took administrative notice of Docket No. 10M-565T, a miscellaneous docket that established a Telecom Advisory Group (TAG). TAG consists of a broad cross section of telecommunications stakeholders, and its role is to study and inform the Commission on technological and marketplace advancements in telecommunications. TAG members include representatives of incumbent and competitive wireline and wireless providers from rural and urban areas, cable-telephony providers, public safety organizations, the Office of Consumer Counsel, consumer organizations, local governments, the Governor's Office of Information Technology, and others. Through Docket No. 10M-565T, the Commission requested information from these broad stakeholders to aid the Commission in determining the policies necessary to meet its statutory role of promoting a competitive telecommunications marketplace while protecting and maintaining adequate, available, and affordable basic telecommunications services.

6. To collect additional input to the proposed rule changes, the Commission issued Decision No. C12-0960-I scheduling public comment hearings in various Colorado communities. These hearings were held at Ft. Morgan on September 6, 2012, in Montrose and Rifle on September 19 and September 20, 2012, respectively, and in Denver on October 1, 2012. Nearly 30 officials and citizens of those areas offered comments on the proposed rules and their concerns regarding telecommunications and broadband. Many additional public written comments were filed in the docket and taken into consideration during the deliberative process.

7. On October 1 and 2, 2012, the Commission convened a hearing on the proposed rules. Statements of position were filed by interested participants on October 26, 2012.

8. The Commission held a Deliberations Meeting on November 20, 2012, to reach its decisions on the proposed rules.

9. Based on consideration of the comments and information provided in this proceeding,[3] including the administratively noticed Docket No. 10M-565T, we adopt the rules set forth in Attachments A and B and as discussed below.

10. This Order discusses the adoption of specific rules included in the Rules Regulating Telecommunications Providers Services, and Products. Rule numbers and statutory Sections of Title 40, Article 15, C.R.S., governing Intrastate Telecommunications Services, may appear in abbreviated form; *e.g.* Rule 2001 of the Rules Regulating Telecommunications Providers Services, 4 CC4 723-4, may appear as Rule 2001; Section 40-15-207, C.R.S., may appear as Section 207.

11. Because the Commission declines to adopt proposed Rule 2213, and because the rules' numbering should remain as sequential as possible, the final rules as adopted are re-numbered in comparison to the proposed rules in the NOPR. For example, proposed Rule 2214, which is adopted, is re-numbered as Rule 2213. In this Order, references to a "proposed rule" are cited using numbers as stated in the NOPR; whereas citations to the final or adopted rules are numbered as stated in Attachments A and B.

[3] The instant docket solicited comments, reply comments and statements of position from a large number of industry, government, and association parties. The following interested participants in this docket filed comments, reply comments, or statements of position: Staff of the Commission (Staff), the Colorado Office of Consumer Counsel (OCC), Qwest Corporation d/b/a Century Link QC (CenturyLink), the Colorado Telephone Association (CTA), AT&T Corp. (AT&T), Boulder Regional Emergency Telephone Service Authority (BRETSA), Cablevision Systems Corporation (Cablevision), Comcast Phone of Colorado LLC (Comcast), Eschelon Telecom of Colorado, Inc., doing business as Integra Telecom (Eschelon), Intrado Communications, Inc. (Intrado), N.E. Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero), Northern Colorado Communications, Inc. (NCCI), Sprint Communications Company LP (Sprint), tw telecom of Colorado llc, (tw telecom), and Verizon and Verizon Wireless LLC (Verizon). Comments from other interested participants were filed by Club 20, the Colorado Farm Bureau, the Colorado House of Representatives, Amigo.Net, Chafee County Economic Development Corp., Voice on the Net (VON) Coalition, the Morgan County Economic Development Corporation, and the County of Rio Blanco.

B. Reclassification of Basic Local Exchange Services in Effective Competition Areas

1. Proposed Rule

12. The Commission proposed a rule generally providing that, if the Commission reclassifies basic service in an area per § 40-15-207, C.R.S., and that area has three or more providers of basic services and similar services, that area would be considered an "effective competition area" as long as other requisite criteria are met. The rules we adopt today and this Order will identify an area where basic local exchange service has been reclassified pursuant to § 40-15-207, C.R.S., in accordance with the adopted rules as an "effective competition area," or "ECA."

13. The consequence of this designation is that the carrier's offering of basic local service in that area, except for basic emergency services, would be moved from Part 2 to Part 3 for regulatory treatment.[4] Carriers would no longer be required to file tariffs for basic local service or for other Part 2 services that have been reclassified as Part 3 services, and the Commission would allow those carriers to change rates without a formal filing. In addition, we proposed new rules allowing incumbent carriers in ECAs to petition the Commission to relinquish their Provider of Last Resort (POLR) obligations in those areas.

14. Further, the proposed rules set forth a process by which a triennial review would inform the Commission on whether to update ECAs as competition grows into new areas.

[4] Other Commission requirements, such as numbering, reports, other programs, and interconnection responsibilities, would still be applicable.

2. Participant Positions

15. Staff recommends that the Commission not adopt the proposed rules at this time. Instead, it recommends that the Commission open an adjudicatory docket to ascertain the level of competition in geographically disaggregated areas as well as the impact of competition in areas with few, if any, alternative providers. Staff also recommends that a docket begin to look at the definition of basic local service per § 40-15-502(2), C.R.S. Staff disagrees with the proposed rules, arguing that service quality and consumer complaint regulation should remain in place even where there is effective competition for basic services. Also, Staff recommends the extension of Commission authority to other types of providers in addition to LECs. Staff states the Commission has great latitude with respect to POLR requirements, but does not take a particular position.

16. CenturyLink recommends initiating a contested case proceeding to determine the appropriate level of market regulation, with the following phases: first, determine the appropriate geographic areas for examining the effects of competition; and, second, evaluate the extent of competition in each area selected against statutory standards and adopt regulatory reforms appropriate to the level of competition demonstrated by the evidence.

17. The OCC generally favors the rules as proposed by the Commission on ECAs; however, it goes further and states that the entire state could be deemed competitive for service deregulation, or at a minimum ECAs can be determined in areas with "multiple providers," as opposed to requiring three or more.

18. Participants such as AT&T, CenturyLink and CTA suggest that the market for telecom services is essentially the entire state – firms do not market to geographical sub-segments, but rather they advertise and implement their competitive marketing strategies

through state-wide, if not region-wide, offerings. They argue, therefore, that pricing is competitive regardless of whether the area is rural or urban. Further, they contend that, for the purposes of retail rate reclassification, the state can be declared as having effective competition for basic services, avoiding an area-by-area measure of whether three or more providers offer basic services.

19. Participants such as Sprint and Cablevision suggest a disaggregate approach to the measurement of competition, in that the Commission should consider smaller geographic areas, such as census blocks, when evaluating competition for basic services.[5]

20. With respect to the form of regulation in ECAs, the Commission issued proposed rules regarding reclassification of basic local service from Part 2 to Part 3 and other regulatory issues such as elimination of POLR obligations, removal of price cap and rate of return regulation, review of customer complaints, and retention of certain other Commission rules. Very few comments were made to these proposed rules except for POLR obligations and, to an extent, service quality and customer protection. CenturyLink, CTA and Staff suggest not requiring an application and Commission approval to relinquish POLR; rather, they propose a simple notice filing in ECAs where high cost support has been eliminated. Staff asserts that basic local service should continue to be subject to current regulation for service quality, white pages listings, and customer complaints.

[5] Sprint and Cablevision's primary argument is to minimize the size of the HCSM, discussed in the next subsection, and reclassification or deregulation of retail services appears secondary.

3. Commission Findings and Conclusions

a. Determinations Pursuant to Section 207

21. Section 40-15-207(1)(b), C.R.S., establishes the procedures, factors, and findings necessary to determine that a service in a given area is subject to effective competition. Pursuant to § 40-15-207(1)(b), C.R.S.:

> In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:
>
> I. The extent of economic, technological, or other barriers to market entry and exit;
>
> II. The number of other providers offering similar services in the relevant geographic area;
>
> III. The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;
>
> IV. The ability of any provider of such telecommunications service to affect prices or deter competition; and
>
> V. Such other factors as the commission deems appropriate.

22. The ultimate findings to be made for a determination of reclassification under Section 207 are that "there is effective competition in the relevant market for such service and that such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates." § 40-15-207(1)(a), C.R.S. Our rules and our Order today do not change these requisites for potential reclassification of basic services in an ECA.

23. Basic and similar services provided over wireline, wireless, cable-telephony, and interconnected voice over Internet protocol (VoIP) technologies shall be included in adjudications of basic services under Section 207.[6] Accordingly, each of these listed technologies for providing voice services shall be included when we consider the factors under Section 207(1)(b) and when making findings of whether "such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates."[7]

24. An exchange area shall be the relevant geographic area for determining an ECA under Section 207. Commenters have suggested areas ranging from state-wide to exchange areas to census blocks. The comments asserting that the entire state should be the relevant area argue that carriers market their voice services on a state-wide and even region-wide basis. While we do not contest that marketing efforts may be state or region-wide, the statutes addressing reclassification and effective competition place primary importance upon the perspective of the customer, not the carrier. Though a carrier may market its voice services on a state-wide basis, we must examine whether customers within certain areas have access to viable alternatives at affordable rates. Given the varied accessibility to services in several rural areas across the state, we decline to designate the entire state as the relevant geographic area for basic services absent a showing that multiple carriers are providing adequate services across the entire state.

[6] The record supports including these technologies. See, for example: CenturyLink, Initial Comments, at 18 (wireline, wireless, and VoIP market voice services in the state); AT&T, Comments, at 3 (all competitive alternatives, regardless of the technologies relied upon to deliver such services, should be considered in determining the level of competition in any given area); Comcast, Comments, at 2 (in many geographic areas consumers have numerous communications choices such as wireless, landline, and VoIP); Sprint, Comments, at 11 (wireless and cable provide competitive alternatives); Sprint, Reply Comments, at 10-11 (customers find wireless to be a reasonable alternative to incumbent local exchange carrier voice service); Verizon, Comments, at 2 (“There can be no dispute that consumers in Colorado have access to basic local exchange service at affordable rates from a number of competing carries and alternative technologies, including landline, wireless, and VoIP.”).

[7] We find that the record does not support including voice services provided by satellite technologies at this time.

25. Many carriers, particularly incumbents and competitive carriers, manage their operations by exchange area, and Commission tracking and monitoring of regulatory conditions and obligations would be more efficient on an exchange area basis.[8] Further, under Section 207 the subject area is not to be "unduly restrictive," and this geographic area satisfies this requirement.[9]

26. We address proposed Rule 2214(c)[10] and, in particular, whether the existence of at least three non-affiliated providers should be a necessary condition to reclassification of basic services. Although several comments agree with a numeric threshold, including as few as one unsubsidized provider, other comments, in particular from the OCC, recommend use of the word "multiple" instead of "three."[11] Other participants, including CenturyLink, comment that effective competition could exist in areas where only two wireline providers are offering basic services.[12]

27. We modify our proposed rule to say "multiple" non-affiliated providers to allow for flexibility in the adjudication of the factors under Section 207.

28. We also clarify proposed Rule 2214 so that only facilities-based providers with separate networks should be considered. Therefore, competitors for purposes of a Section 207 analysis will not include competitive local exchange carriers (CLECs) offering basic services

[8] See also AT&T, Comments, at 6 (findings based upon exchange areas would facilitate implementation and compliance by affected carriers; adopting smaller areas such as census blocks or zip codes would complicate the process).

[9] Another reason we decline participants' invitation to designate the entire state as subject to effective competition for basic service is because an adjudication to determine the existence of effective competition must follow the procedures and must consider the factors listed in Section 207, which has not been part of this docket.

[10] The final, adopted version of this rule is re-numbered as 2213.

[11] Colorado Office of the Consumer Counsel, Comments, at 2-3.

[12] CenturyLink, Initial Comments, at 16 ("Effective competition can exist with one competitive provider, or may not exist with four.").

over a platform of unbundled network elements provided by an incumbent local exchange carrier and also will not include resellers of basic services.

29. Not including CLEC services offered over platforms or resellers ensures that only carriers with separate physical networks are counted as competitors. It also enables the Commission to judge more precisely the barriers to entry and adequacy of service under Section 207.

30. These exclusions also safeguard the connection between a reclassification of basic services under Section 207 and its effect upon reductions in HCSM support. One of the reasons for this connection is that, if another facilities-based provider is offering basic services through a separate network, then the reasonable costs of the providing basic services should be at or below the price charged for such service.[13]

31. As stated in the NOPR,[14] we are conducting a three-phase process to update and reform our telecommunications rules, and this Order completes Phase I. In Phase II, the Commission will shortly open adjudications under Section 207 to determine areas subject to effective competition for basic services. The Commission anticipates using data showing the number of competitors offering basic and similar services in the state's exchange areas, similar to the data reflected in Staff's Exhibit 2, to support its motions to open these adjudications.

b. Part 3 Regulation of Basic Services in Effective Competition Areas

32. Proposed Rule 2215(a) defines how basic services will be regulated under Part 3 upon a determination to reclassify under Section 207. This proposed rule was broadly supported

[13] See Section I.C of this Decision, below.

[14] See Notice of Proposed Rulemaking, Docket No. 12R-862T, Decision No. C12-0898, at ¶¶ 11-13.

by the comments, and the Commission is not aware of any disagreement with Rule 2215(a). It is authorized expressly by § 40-15-302, C.R.S., which says, in part:

> The commission shall promulgate rules as may be appropriate to regulate services and products provided pursuant to this part 3. In promulgating such rules, the commission shall consider such alternatives to traditional rate of return regulations as **flexible pricing, detariffing**, and other such manner and methods of regulation as are deemed consistent with the general assembly's expression of intent pursuant to section 40-15-101. (Emphasis added).

In turn, Section 40-15-101, C.R.S., declares that "flexible regulatory treatments are appropriate for different telecommunications services."

33. Proposed Rule 2215(a) complies with § 40-15-502(b)(I), C.R.S., which directs the Commission to "structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market with the policy that prices for residential basic local exchange service, including zone charges, if any, do not rise above the levels determined by the commission." Here, after a finding of effective competition under the Section 207 factors that include barriers to entry, the number of alternative providers, the ability of customers to obtain service under comparable rates, terms and conditions, and the ability of a provider to affect prices or deter competition,[15] in addition to rulings on other Section 207 criteria that include adequacy and reliability of service at just and reasonable rates and the public interest, the "price level" for residential basic service is hereby determined as that set through market forces.

[15] Section 40-15-207(b)(I) – (IV), C.R.S.

The record demonstrates the high level of competition in areas where multiple providers are offering service,[16] including, but not limited to, the data showing that, by year end 2011, 31.6 percent of American households were wireless only.[17] These data and a determination under the factors considered under Section 207 support our approval of lightened regulatory treatment and of prices set by the market, and we hereby adopt proposed Rule 2215(a). [18][19]

34. Adjudications under Section 207 shall also consider whether prices and price levels should be transitioned gradually to avoid the potential for rate shock.

35. Importantly, providers in areas in which effective competition for basic services does not exist will continue to be regulated under Part 2.

36. Proposed Rule 2215(e) required, in areas deemed ECAs, the Commission to "accept customer complaints or billing–related questions" and to "assist customers in resolving complaints regarding such disputes." Commenters argued that this proposed rule could be interpreted as authorizing the Commission to formally resolve customer complaints and thus

[16] See, for example, Comcast, Comments, at 2 ("…in many geographic areas consumers have numerous communication choices such as wireless, traditional landline, and interconnected VoIP provided over broadband-enabled platforms. In these areas, market competition adequately disciplines pricing, service quality, and customer service of voice communication providers."); Sprint, Reply comments, at 10 ("It is common knowledge that wireless companies as well as wireline companies, such as cable companies, have been attracting voice telephone users and that many of these voice telephone customers have dropped incumbent local exchange company service."); Verizon, Comments, at 2 ("There can be no dispute that consumers in Colorado have access to basic local exchange service at affordable rates form a number of competing carries and alternative technologies, including landline, wireless, and VoIP."); CenturyLink, Initial Comments at 18 ("As the Commission Staff's preliminary research has demonstrated, most if not all areas in Colorado are served by multiple providers of some sort of voice service.").

[17] Sprint, Reply Comments, at 11 (citing 50 Wireless Quick Facts, http://www.ctia.org/advocacy/researc/index.cfm/aid/10313 (last viewed Sept. 6, 2012)). See also footnote 3.

[18] We also adopt proposed Rule 2215(d), which states: "The Commission will regulate providers offering service in effective competitive areas pursuant to the following rules: Reports (paragraphs 2006(a), (b), (f), (g), (h), (i), and (j)), Application for LOR (rule 2103), Numbering Administration (rules 2700-2741), Programs (rules 2800-2895), Provider Obligations to Other Providers (rules 2500-2588), and Collection and Disclosure of Personal Information (rules 2360-2362).

[19] Proposed Rule 2215 as adopted is re-numbered as Rule 2214. See Attachments A and B.

extend Part 2-type regulatory authority over reclassified services.[20] We agree, and thus we do not adopt proposed Rule 2215(e).

37. In addition to basic local exchange services, other Part 2 services, with the exception of basic emergency services, will also move to Part 3 regulation as described in proposed Rule 2215(a). These services, such as white pages directory listing, listed telephone number service, dual tone multifrequency signaling, and operator services necessary for the provision of basic local exchange service, are closely linked to the offering and provisioning of basic services, and thus findings resulting in reclassification of basic services translate into reclassification of these services as well.

c. Regulation of Emergency Services in Effective Competition Areas

38. Under proposed Rule 2215(b), providers of basic service in ECAs will continue to be bound by the rules governing regulated basic emergency service. Currently, basic local exchange service is listed separately from basic emergency service as services subject to Part 2 regulation.[21] Thus, reclassification of basic local exchange services to Part 3 after a determination that these services are provided within an ECA does not necessarily affect the regulatory treatment of another distinct category of Part 2 services. Section 40-15-503(2)(b)(VI), C.R.S., requires the Commission to have rules governing access to emergency 9-1-1 service. Continuing regulation of emergency services is also supported by the legislative declarations and statutory provisions of Title 29, Article 11, Part 1, governing Emergency Telephone Service. Further, emergency services are inherently of high importance, and, in times of emergency,

[20] See AT&T, Comments, at 6.

[21] Compare §§ 40-15-201(2)(a) and (b), C.R.S.

the competitive market may not provide a resident or business with reasonable or timely alternatives. Accordingly, we approve proposed Rule 2215(b).

C. Effect of Effective Competition Areas upon High Cost Support Mechanism Funding

1. Proposed Rule

39. Proposed Rule 2216 states that, when an area has been determined to be an ECA, any HCSM funds will be eliminated for providers in that area upon the decision's effective date. Certain emergency procedures were provided in the event continued support was necessary in an ECA.

2. Participant Positions

40. Interested participants that currently receive HCSM and Staff generally argue that, while the Commission can use the ECA concept to reclassify retail service from Part 2 to Part 3, the Commission must examine embedded costs or proxy costs to determine the amount of HCSM to be distributed to carriers. Other participants, such as the OCC, Sprint, and others argue that the presence of unsubsidized competitors requires that no HCSM funds be distributed in those areas.

41. CenturyLink's and others' principle argument is that the level of competition in an area cannot be used to determine the level of HCSM, arguing that the key evaluation in the HCSM is the cost to serve customers in comparison to prices and revenues. CenturyLink asserts that it is proper to look at competition as a metric to move Part 2 services to Part 3 services, but costs – not competition – are the key components of the HCSM. CenturyLink and CTA recommend following Staff's proposal to deregulate retail offerings and use the CenturyLink proxy Economic Cost Model (ECM) to calculate high cost support in areas without two wireline providers.

42. CenturyLink, CTA, and to an extent Staff, argue that the presence of wireless carriers provides a significant competitive impact upon basic service, as demonstrated by the increasing number of wireline customers who "cut the cord" and substitute wireless service. However, for the purposes of distribution of the HCSM funds these parties argue that wireless coverage is not as uniform or reliable as wireline coverage, particularly in out-of-town areas. As a general principle, they state that wireless coverage is relatively available in towns and along major highways and thoroughfares, but not beyond.

43. CenturyLink also asserts that, contrary to the OCC's position, the HCSM is not meant to be an interim mechanism. It says that support for continuation of HCSM funding is found in C.R.S. § 40-15-208(2)(a), stating that:

> [T]he primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to local exchange providers to help make basic local exchange service affordable and allow such providers to be fully 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.

44. Generally, CenturyLink, CTA, and Staff support a process in which the Commission would not adopt any rules regarding the HCSM at this time, but rather pursue an adjudicatory docket that would analyze certain geographic areas to determine the level of costs a subsidized carrier may face and the level of support required to align revenues with costs. These participants suggest the use of the CenturyLink Economic Cost Model (ECM) to determine high cost areas and to increase retail price caps in high cost areas. CTA also argues that its members should be receiving increases in subsidies, for a variety of reasons, including changes in federal support levels and other issues related to recent Federal Communications Commission (FCC) orders on access charges.

45. The OCC suggests that HCSM funds for incumbents be eliminated or reduced in ECAs.[22] The OCC appears to support use of CenturyLink's proxy ECM but suggests the need to investigate and verify the inputs, revenues, and allocations of network costs and investments among basic local exchange service and all other services using the same facilities.

46. Sprint argues that the presence of an unsubsidized facilities-based competitor in an ECA means there should be no HCSM receipts for the incumbent, as the HCSM should not be used to subsidize a competitor. Any continuing support in these areas should be based on the cost of providing basic voice service after allocating costs based on the relative capacity required for providing voice, data, and video services. Sprint also asserts that, if the presence of more than one unsubsidized provider is a condition for reduction or elimination of HCSM support, potential providers lack an incentive to enter markets with a subsidized competitor, because a subsidy to one provider lowers the costs of service in favor of the subsidized provider. Sprint also takes the position that CenturyLink should not receive subsidies for customers with access to a cable provider.

47. Cablevision also believes the Commission should eliminate HCSM subsidies in any area served by a single unsubsidized facilities-based competitor within a census block.

3. Commission Findings and Conclusions

a. Background

48. Reclassifying an area to be an ECA means that consumers in the subject area have access to multiple service providers offering similar services at comparable and competitive rates and terms. As addressed above, one consequence is that competitive forces should govern the

[22] The OCC also argues that the HCSM fund should not be repurposed as a broadband deployment fund as Viaero recommends in its comments. Comcast and Verizon also argue that the HCSM should not be used for broadband subsidy. As discussion in Section I.F, repurposing the fund for broadband is beyond the scope of this rulemaking.

market, and thus providers of basic services in that area should receive reclassification and a reduced level of regulatory treatment.

49. Another potential consequence is the satisfaction of many if not all of the regulatory objectives that otherwise provide the reasons for distributing HCSM support. Competitive alternatives are also indicative of the availability of basic services in the area and of market forces to keep prices affordable. The existence of facilities-based competitors also reflects that the reasonable costs of providing basic services are at or below the prices charged for basic services. The information and comments filed in this docket provide strong support that, if unsubsidized carriers are able to compete in an area for basic services, then the state should not be subsidizing another provider in the same area.[23] Therefore, as a matter of policy, a provider should not continue to receive support from the HCSM in areas deemed ECAs.

b. Connection Between Competition, Reclassification, and High Cost Support Mechanism Funding

50. Proposed Rule 2216(a)[24] establishes a connection between a determination of an ECA, which includes findings of reclassification and effective competition under Section 207, and the ability to obtain distributions from the HCSM pursuant to Section 208. This connection drew considerable comment from the participants, both supporting and criticizing the proposal to reduce or eliminate HCSM in ECAs.

51. The supporters agree with the rationale that the existence of competition, particularly from multiple, facilities-based providers, means that basic services are available and

[23] See Cablevision, Comments, at 4 (presence of unsubsidized competitor is sufficient evidence that incumbent provider does not need a government subsidy); Sprint Reply, at 11-13 ("With unsubsidized competitive entry, at least one other carrier has determined it can provide service that will attract customers with an unsubsidized price."); Verizon, Comments, at 2 ("There can be no dispute that consumers in Colorado have access to basic local exchange service at affordable rates form a number of competing carries and alternative technologies, including landline, wireless, and VoIP. As a result, the original purpose of the CHCSM has been achieved.").

[24] This rule as adopted is re-numbered to 2215. See Attachments A and B.

affordable to consumers in the area. The supporters also comment that, if unsubsidized providers are able to cover their costs through revenues, then the provider receiving high cost fund support should be able to as well. In the language of Section 208, supporters of the proposed rule argue that the presence of multiple carriers offering basic services shows that the "reasonable costs" of providing basic services are below competitive prices being charged, and thus HCSM support should be eliminated.

52. Other participants, specifically Staff, CenturyLink and CTA, recommend that the Commission not adopt the proposed rule. They contend that there should be no connection between reclassification of competitive services and the ability to receive funds under the HCSM. They argue that the words "effective competition" are not within Section 208, and that a determination of effective competition is not a criterion for whether a provider should receive support under Section 208; rather, the Commission's inquiry should be limited to whether there is a difference between the reasonable costs incurred in making the service available and the price charged for such service, citing the language of Section 208(2)(a)(I).[25]

53. By this Decision and as detailed below, we amend the proposed rule such that the elimination or reduction of support from the HCSM in areas found to be ECAs shall be subject to an application process showing that a provider should continue to receive HCSM funds to support basic local voice service. We still must address whether a determination of reclassification and findings of effective competition for basic services under Section 207

[25] See, for example, Staff, Comments, at 13 ("However, Staff strongly advises the Commission against directly correlating a determination of 'effective competition' for purposes of retail services regulatory reclassification to the receipt of CHCSM funds."); CenturyLink, Initial Comments at 4 ("the [proposed] rules continue the improper combination of market regulation policy and high cost support policy when they are separate and distinct objectives."); CTA, Comments, at 14 ("It is illogical and contrary to statute to make high-cost fund decisions based on a finding of effective competition. The approach is illogical because there is no direct link between the cost of serving an area and the existence of competition. An area where the cost of service exceeds the revenue generated by the service remains a high-cost area whether or not there is competition in the general area.")

may trigger a change in the ability of a carrier to receive funds from the HCSM under Section 208, and for the reasons stated below, we rule in the affirmative.

54. The Legislative declaration set forth in § 40-15-101, C.R.S., confirms the interplay between competition and mechanisms to support the availability of telecommunications services in the state:

> The general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Such goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry. The general assembly further finds that the technological advancements and increased customer choices for telecommunications services generated by such market competition will enhance Colorado's economic development and play a critical role in Colorado's economic future. However, the general assembly recognizes that the strength of competitive force varies widely between markets and products and services. Therefore, to foster, encourage, and accelerate the continuing emergence of a competitive telecommunications environment, the general assembly declares that flexible regulatory treatments are appropriate for different telecommunications services.

In Part 5, §§ 40-15-501(1) and (3), C.R.S., the Legislature provided further direction on policies underlying competition, specifically as to basic local exchange services:

> (1) **The general assembly hereby finds, determines, and declares that competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service.** Accordingly, it is the policy of the state of Colorado to encourage competition in this market and strive to ensure that all consumers benefit from such increased competition. **The commission is encouraged, where competition is not immediately possible, to utilize other interim marketplace mechanisms wherever possible, with the ultimate goal of replacing the regulatory framework established in part 2 of this article with a fully competitive telecommunications marketplace statewide as contemplated in this part 5.**
>
> * * *

(3) This part 5 is enacted for the following purposes:

(c) **To adapt the regulatory structure of parts 2, 3, and 4 of this article to accommodate multiple providers of local exchange service** and to permit alternate forms of regulation for providers of local exchange service. (Emphasis added).

Section 501 thus acknowledges the premise that competition has the result of increasing availability and reducing the costs of basic services. This section also states that the "ultimate goal" is "replacing the regulatory framework established in Part 2 of this article with a fully competitive telecommunications marketplace statewide." Thus, the legislative objective in Section 501 to replace regulation under Part 2 upon the emergence of competition authorizes the replacement of the HCSM under Section 208.

55. Further, the statutes direct us to adapt the regulations governing basic service in Parts 2 and 3 to accommodate the existence of "multiple providers" of basic service, again demonstrating the linkage between the existence of competition from multiple providers and the application or removal of regulation pursuant to Part 2.

56. Additional legislative direction is found in § 40-15-502(3), C.R.S., for the Commission to "transition" regulation of basic services to a competitive, market-based structure:

Universal basic service - affordability of basic service.

(b) (I) Consistent with the public interest goal of maintaining affordable and just and reasonably priced basic local telecommunications service for all citizens of the state, **the commission shall structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market** with the policy that prices for residential basic local exchange service, including zone charges, if any, do not rise above the levels determined by the commission. (Emphasis added).

57. Certain participants argue that the express language "effective competition" is not within Section 208 and thus should not be relevant to the distribution of HCSM funds.[26] We are persuaded, however, that there is some commonality of the factors and policies relevant to whether a provider should receive funds from the HCSM with the factors we consider under a Section 207 analysis of effective competition. Under Sections 501[27] and 502,[28] the principles underlying universal service include availability of basic services at affordable and reasonable rates. Under Section 208, the Commission is to examine the reasonableness of the provider's costs of service in comparison to price and revenues.[29] These universal service principles supporting the HCSM correspond with the examination of several of the factors under a Section 207 analysis. One Section 207 factor is the number of other providers offering similar services in the relevant geographic area, which reflects the availability of basic service. Another factor is the ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions, which addresses the universal service policies of the availability, affordability, and reasonableness of rates. A third Section 207 factor is the ability of

[26] CTA, Comments, at 14 ("It is illogical and contrary to statute to make high-cost fund decisions based on a finding of effective competition. The approach is illogical because there is no direct link between the cost of serving an area and the existence of competition."); CenturyLink, Statement of Position, at 3 ("None of the statutes that govern the CHCSM mention "effective competition" as a criterion for judging whether high cost support is required.").

[27] Section 40-15-501(d) states: "The rural nature of Colorado requires that special rules and support mechanisms be adopted to achieve the goal of ensuring that universal basic local exchange service be available to all residents of the state at reasonable rates."

[28] Similarly, section 40-15-502(3)(a), entitled "Universal basic service - affordability of basic service," states: "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 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."

[29] Section 40-15-208 states, in part: "The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to local exchange providers to help make basic local exchange service affordable and allow such providers to be fully 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…."

any provider of telecommunications service to affect prices or deter competition, which also speaks to the existence of competitors and market forces that keeps prices at reasonable levels. The Commission also considers economic, technological, or other barriers to market entry and exit, which addresses the reasonableness of costs to construct facilities and offer services. Finally, the Commission is to make determinations of the adequacy of service, which also speaks to availability.

58. We conclude that, regardless of whether the term "effective competition" resides in the statutory provisions addressing universal service and the HCSM, there is a connection between the factors and principles governing effective competition and reclassification and those addressing universal service and the HCSM.

59. Further, although some participants argue against tying an "effective competition" determination to changes in HCSM support, they appear to agree that, under certain circumstances, HCSM support should not be distributed in areas where other facility-based carriers are offering basic services. For example, CenturyLink commented that HCSM support is not appropriate in areas where another unsubsidized, facilities-based carrier, such as cable telephony, serves the same customers: CenturyLink commented as follows in reference to its ECM:

> High cost areas are those locations where the costs to serve exceed revenue benchmarks. But the ECM can also be used to recognize that the investment of other providers demonstrates that certain customers or GSAs [geographic support areas] are not high-cost and need no support. It is reasonable to assume that the costs to provide service do not exceed expected revenues if another carrier is providing voice service to a customer location without a subsidy. Using the ECM, the areas where an unsubsidized wireline provider is offering voice service can be located and excluded from support eligibility."[30]

[30] Initial Comments of CenturyLink, at 6-7.

60. CenturyLink also noted that "[e]xcluding areas served by unsubsidized wireline providers is not an evaluation of the competitive impact or viability of such services, but rather a conclusion that the costs to provide basic service in these specific areas are likely not higher than reasonably anticipated revenues…."[31] CenturyLink further stated, "[n]onetheless, CenturyLink accepts that it is reasonable for the Commission to exclude support for areas served by cable telephony on a cost basis."[32]

61. Thus, CenturyLink seems to agree with the ultimate conclusion that the presence of a viable, facilities-based competitor indicates that a carrier's reasonable costs of offering basic service in that area are likely at or below its revenues, which under Section 208 precludes support from the HCSM.[33] A finding of effective competition and reclassification results from an analysis of the presence of viable, facilities-based competitors. Though CenturyLink contends that its conclusion is based upon costs, and not competition, the factual predicate for the conclusion that the Commission should not provide HCSM support – the presence of a facilities-based competitor – is the same.

62. Another reason reclassification of basic services permits us to reduce HCSM support is that a Section 207 determination affects continued regulation under Part 2. Section 207(1)(a) states:

> Notwithstanding any other provision of this title, upon its own motion or upon application by any person, **the commission shall regulate, pursuant to part 3 of this article, specific telecommunications services regulated under this part 2 upon a finding that there is effective competition in the relevant market for such service** and that such regulation under part 3 of this article will promote the

[31] Initial Comments of CenturyLink, at 12

[32] Id., at footnote 8.

[33] CenturyLink also argues that only wireline carriers should be considered when reducing HCSM support; but, its argument is that wireless or other technologies are not as ubiquitous, which is different from the Commission's ruling that the presence of a facilities-based competitor, however it is defined, means that HCSM support should not be distributed.

> public interest and the provision of adequate and reliable service at just and reasonable rates. (Emphasis added).

Thus, reclassification permits the Commission to regulate a provider of basic service under Part 3; yet, the regulatory mechanism for the HCSM is in Part 2. This statutory structure authorizes the Commission to no longer apply the regulatory mechanisms of Part 2, including the HCSM, upon a finding of reclassification for basic services under Section 207.

63. Finally, we agree with the comments of Sprint highlighting the language of Section 208 that "The commission is hereby **authorized** to establish a mechanism for the support of universal service, also referred to in the section as the 'high cost support mechanism', which shall operate in accordance with the rules adopted by the commission." § 40-15-208(2)(a)(I), C.R.S. (Emphasis added). Because the statutes authorize the Commission to create the HCSM, but do not require us to do so, the Legislature granted the Commission discretion and flexibility in the creation and management of the HCSM. Further, it follows that, if the Commission is not required to establish the HCSM, it likewise has the ability reduce and even eliminate it.

64. Thus, as authorized under the Colorado statutes and as supported by the record[34] in this docket, deeming an area an ECA and thereby reclassifying basic services per Section 207 may result in the reduction of support from the HCSM.

65. We make clear, however, that providers in areas in which basic services have not been reclassified under Section 207 will continue to receive pre-existing HCSM support.

[34] As noted above, numerous commenters indicate that the presence of an unsubsidized, facilities based provider is evidence that services within the area are available and affordable. See footnote 23.

c. Applications for HCSM Support in Areas Deemed Effective Competition Areas

66. We now turn to the principles that will govern the reduction of HCSM support and the application process by which a provider may request the continuation of HCSM support in areas deemed to be ECAs. Proposed Rule 2216(a) would have eliminated HCSM support in any area deemed to be an ECA. For the reasons stated below, we modify the proposed rule to permit providers in ECAs to apply for continued HCSM support.

67. Participants, including Staff, CenturyLink, and the CTA, argue against the proposed rule primarily upon the grounds addressed above – that the statutes do not permit a connection between a finding of effective competition and regulation of the HCSM. They also contend that, though multiple carriers are offering basic services in a given area, and basic services in that area could be reclassified to Part 3, the reasonable costs of providing basic service may still be higher than local exchange revenues. These participants also cite to the statutes addressing universal service and high cost support and argue that the HCSM should continue to be distributed even in ECAs.[35]

68. For the reasons stated above, we have the authority to reduce support from the HCSM upon reclassification of basic service in a given area. However, we also agree that we must be mindful of the policies governing universal service and the high cost support mechanisms intended to promote availability and affordability of basic services across the state.

69. We find authority in the statutes for balancing the interests of availability and affordability with the interests of competition. As stated above, the legislative declaration in § 40-15-101, C.R.S., provides: "[t]he general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications

[35] See footnotes 25 and 26.

marketplace while protecting and maintaining the wide availability of high-quality telecommunications services.…" Also, § 40-15-502(3), C.R.S., states: "[t]he 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" and "[t]he 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." *Id*.

70. We also determine that we may utilize the HCSM in Part 2 to support the availability and affordability of basic services, though a provider's basic services have been reclassified for regulatory treatment under Part 3. Section 40-15-302(1)(a), C.R.S., which outlines the manner of regulation under Part 3, states:

> The commission shall promulgate rules as may be appropriate to regulate services and products provided pursuant to this part 3. In promulgating such rules, the commission shall consider such alternatives to traditional rate of return regulations as flexible pricing, detariffing, **and other such manner and methods of regulation as are deemed consistent with the general assembly's expression of intent pursuant to section 40-15-101**. (Emphasis added).

As quoted above, Section 101 intends to protect and maintain "the wide availability of high-quality telecommunications services." Further, Section 502(5) says, "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**." (Emphasis added).

71. Pursuant to this authority, the rules we promulgate today provide that a reclassification of basic service in a designated geographic area results in the elimination of

support from the HCSM. However, the elimination of support is subject to the filing of an application by the affected provider requesting the continuation of support from the HCSM within 180 days after the issuance of the order deeming the area an ECA.

72. During the 180-day period within which a provider may file an application, support under the HCSM shall continue at the level that existed prior to the reclassification of basic services in the area.[36] If no application is filed timely, then HCSM support shall be eliminated for those areas and access lines within the area deemed an ECA.

73. If an application is filed, then HCSM support shall continue at the level existing prior to reclassification for the areas or access lines that are the subject of the application, until a final Commission decision is issued.[37] This continuation of support is consistent with "the public interest goal of maintaining affordable and just and reasonably priced basic local telecommunications service for all citizens of the state," and the directive that "the commission shall structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market."[38]

74. We now turn to the issues, principles, policies, and standards for adjudication of the application.[39] Also, we need to define the requisites for the application and the analysis that should govern these adjudications. We will commence a docket for the purpose of providing the necessary legal and policy direction for these adjudications and to promote consistency across all providers and areas of the state.

[36] See Rule 2215(a).
[37] *Id*.
[38] § 40-15-502(3), C.R.S.
[39] In response to Staff's comment, this Commission has authority over distribution of funds from the HCSM; we do not intend to affect the distribution of federal universal service funds to any provider or for any area in the state.

75. Among the important issues to be addressed is a comparison of the provider's reasonable costs incurred in making basic service available in support areas and the price charged for such service. § 40-15-208(2)(a)(I), C.R.S. Also, the Commission is to ensure that no local exchange provider is receiving funds from the HCSM and any other source that, together with local exchange service revenues, exceed the cost of providing local exchange service. § 40-15-208(2)(a)(II), C.R.S. These elements require further definition, and this new docket will consider whether and how costs should be allocated to basic services, as compared to other services that may be provided over the provider's facilities. We will consider the scope of revenues and whether to include revenues from all services, regulated or unregulated, offered by the provider or its affiliates over the facilities used to provide basic service. We will also determine whether to establish a revenue benchmark against which the provider's costs should be compared and, if so, whether the benchmark should be based upon revenue benchmarks established by the FCC, or some other amount. Further, the docket will consider whether reductions or elimination of HCSM support should be transitioned gradually. This docket will also consider recommendations for other standards and guidance as may be proposed by the Commission and interested persons.

76. As to procedure, an application shall identify the geographic locations or access lines that are the subject of the request for continued HCSM support in the areas deemed ECAs. The application shall allege facts showing that the costs of providing basic service to those areas or access lines are above the revenues received from local exchange service, according to the standards determined in the docket discussed directly above. Also, because our rules provide for the continuation of HCSM support during adjudication of the application, it must be supported

by an affidavit signed by an officer of the provider affirming the veracity of the facts alleged based upon reasonable inquiry.

77. The adjudication of the application must examine the evidentiary basis upon which the applicant alleges that its costs of providing basic service exceed revenues. If the applicant bases its costs upon a model, the assumptions and factors supporting the model shall be subject to discovery and examination.

78. The adjudication shall include the record from the docket in which the Commission deemed the relevant area an ECA. Using this record and other admissible evidence, the adjudication shall examine whether the applicant's alleged costs are "reasonable" when viewed in comparison to the existence of competing facilities-based carriers. The adjudication also shall weigh the degree to which the applicant's reasonable costs exceed revenues or a revenue benchmark against other principles stated in Title 40, Article 15, which may include, but are not limited to, affordability, availability and adequacy of alternative offerings, the number of competitive carriers and the extent of competition, the ability of the market to provide adequate and affordable service, the extent to which competition could increase if HCSM support were reduced or eliminated, and other factors relevant to the public interest. A provider may also assert that a specific construction project or upgrade was initiated upon the reasonable expectation of receiving support from the HCSM, or that past investments undertaken with the reasonable expectation of HCSM support would be stranded. The adjudication may also evaluate a multitude of support alternatives, such as continuation at the existing level, reduction, a phasing-out, or elimination of all support. An applicant has the burden of showing that support from the HCSM is necessary under the standards for adjudicating the application.

79. To the extent the Commission denies the application, HCSM support will be eliminated for the locations or access lines that were the subject of the application.

80. To the extent an application is granted, HCSM support shall continue as determined by the Commission. Further, the granting of an application for continued HCSM support will not alter the regulatory treatment of basic service providers under Part 3 and Rule 2214; that is, the lightened regulatory treatment outlined in Rule 2214 will apply to the applicant and all other carriers in ECAs even if an application for continued support is granted. And, the rules governing the HCSM including any required reporting will apply to the provider that continues to receive HCSM support.[40]

81. The rules we adopt today are not intended to alter or diminish the ability of any provider from filing an application requesting initial or increased HCSM support for any area, an ECA or non-ECA, or from filing an application for renewed support beyond the 180-day period after an area is deemed an ECA. However, a provider must demonstrate an extraordinary change in circumstances to overcome a previous determination of the Commission that the provider is not entitled to HCSM support.

82. Further, any person or entity may file a pleading with the Commission requesting the reduction or elimination of HCSM support under Section 208 and other provisions of Title 40, Article 15. The Commission recognizes that reasons for reducing or eliminating HCSM support include a showing that competition would increase as a result of the reduction or elimination of HCSM support and that the universal service principles of availability and affordability would otherwise be satisfied.

[40] See, in general, Rules 2840 through 2869.

d. Provider of Last Resort

83. Proposed Rules 2215(f) and (g) stated that a provider of basic service within an area deemed an ECA will be relieved of its Provider of Last Resort (POLR) status if the Commission approves the provider's application. Several comments, including those from Staff, CenturyLink, and the CTA, argue that, if basic service is reclassified to Part 3 and if HCSM support is not provided in that area, then the provider should be relieved of its POLR obligations.[41]

84. We are guided by statutory directives that "it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services,"[42] that "[t]he 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,"[43] and that "[t]he 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."[44]

85. We decline the recommendation of participants to terminate a provider's POLR obligations immediately upon the finding of reclassification for basic service and the elimination

[41] See CenturyLink, Initial Comments, at 25-26 ("A finding that a relevant market is effectively competitive necessarily means that 'customers currently served by the [ILEC] can continue to be served by other providers,' and there is no need to impose POLR obligations on one provider….CenturyLink proposes to streamline this process by stating that the Commission shall terminate POLR obligations in any area not supported by the CHCSM."); Staff, Comments, at 12-13 ("Staff believes that the 'relevant geographic area' for eliminating POLR obligations be consistent with the 'geographic area' defined to be 'effectively competitive'."); CTA, Comments, at 13 ("Where the Commission determines the existence of effective competition, the Commission should contemporaneously relieve the affected carrier(s) of the following regulatory requirements: the POLR obligation….").

[42] § 40-15-101, C.R.S.

[43] § 40-15-502(3)(a), C.R.S.

[44] Id.

of high cost support. The statutory language quoted above directs us to ensure the availability of basic services to all customers in the state. If a provider's basic service has been reclassified with the potential consequence of no longer receiving high cost support, our rules and the Order issued today authorize that provider to make a showing as described above, which includes evidence that costs of providing basic service are greater than revenues and that the provider is entitled to HCSM support.

86. Further, maintaining POLR obligations will protect rural customers from any gaming of the rules. A carrier may seek a determination to deem an area an ECA and pass up its opportunity to apply for continuing HCSM in such areas, all to accomplish the ultimate objective of terminating its POLR status and withdrawing from providing basic service, even in areas where continued HCSM funding may be available. Maintaining POLR obligations will promote the integrity of the process in areas deemed ECAs and will provide the proper incentives for carriers to seek HCSM support where necessary.

87. We also note that our decision on POLR is not a break from the status quo. Today, there are many areas in Colorado in which a provider is not receiving HCSM support; yet, it has a POLR obligation to serve all customers within its certificated area.

88. We also decide not to adopt proposed Rules 2215(f) and (g), and instead modify our existing Rule 2186. Amended Rule 2186 will permit an application for relinquishment of POLR status in areas deemed ECAs, thus expanding the ability of a provider to apply in comparison to the previous rule in which relinquishment could be sought only where another designated POLR is or will be offering basic service. We also amend Rule 2186 to account for situations in which facilities-based basic service providers exist as of the filing of the application for relinquishment.

89. A provider demonstrating the requisites for relinquishment as stated in our rules will be released from its POLR obligations, and certainly the evidence and the Commission's determinations in proceedings finding effective competition under Section 207 will be entitled to considerable weight.

D. Internet Protocol-Enabled and Voice over Internet Protocol Services

1. Proposed Rule

90. The proposed rules, Rules 2001(ww) and 2213, first define IP-enabled services and then state that IP-enabled and VoIP services are deregulated except when used to provide emergency services. Our proposed rules also note that customers may contact the Commission for assistance in determining company contacts to resolve complaints regarding billing or service quality. The proposed rule also requires IP-enabled and VoIP providers to pay into the following programs: 9-1-1, Low Income Telephone Assistance Program, Telephone Relay Service, the HCSM and Fixed Utility Fund.

2. Participant Positions

91. Cablevision states that VoIP and IP-Enabled services should not be subjected to new requirements and the Commission should avoid imposing new regulations on unregulated services. It also reiterates the need for Commission oversight over IP-related wholesale interconnection. CenturyLink also believes that no IP-related rules should be instituted at this time.

92. Comcast claims that the proposed rules treat VoIP as a telecommunications service, based upon the language in proposed Rule 2213(a). Comcast states it favors a legislative approach to define the imposition of fees, complaint resolution, and 911 emergency service regulation upon VoIP services. Comcast points out that, if the Commission accepts

proposed Rule 2213, it effectively finds that VoIP-based local service is under Part 2 regulation, and the Commission could not move VoIP services to Part 4 without the requisite proceedings and hearings required under Section 207. Verizon, AT&T, and Sprint concur that it would not be appropriate for the Commission to adopt proposed Rule 2213 at this time.

93. The OCC asserts that the limited regulation of VoIP and IP-Enabled Service in Commission's proposed Rule 2213 is not preempted by the FCC and is entirely consistent with FCC orders that would allow state regulation of fixed VoIP. Additionally, proposed Rule 2213 is a narrowly focused regulation of services that already are within the Commission's jurisdiction according to the OCC. It further asserts that codifying limited and narrowly focused regulation in a technology neutral fashion on all providers of basic local exchange service or 9-1-1 service is in the public and social interest and is reasonable, fair, equitable, and nondiscriminatory.

94. Staff suggests that the Commission decline to adopt proposed Rule 2213(a) and to modify it to state that: Interconnected VoIP service as defined in § 29-11-101(4.3), C.R.S., excepting the delivery of E9-1-1 calls to the Basic Emergency Service Provider (BESP), is a deregulated telecommunications service pursuant to § 40-15-102(6), C.R.S.

3. Commission Findings and Conclusions

95. Today, we decline to adopt the proposed definitions and rules, but, in so doing, we neither accept nor reject the comments or arguments filed in this docket on these issues.

96. The Commission decides that IP and Internet related services should not be subject to a definition that can change with technological advances. We also will not adopt rules that could be interpreted as impeding the type of innovation and growth recently experienced in the industry.

97. However, this decision should not be interpreted as a change in the status quo. The Commission has the authority to protect the viability of certain state programs, such as emergency services and the HCSM fund. Finally, not adopting any IP related rules allows the Commission to address unanticipated issues that may arise in the future, through legislative or regulatory directives from either our Legislature or the federal government.

E. Making Permanent Certain Emergency Rules

1. Proposed Rule

98. The proposed rules make permanent the emergency rules from Docket No. 12R-148T that capped access rates at January 2012 amounts, capped the HCSM at $54 million annually and $13.5 million quarterly, and retained Commission Rule 2856, the extraordinary circumstance rule that requires carriers seeking to reset their HCSM funding or carriers seeking original HCSM funding to demonstrate extraordinary circumstances though an application process.

99. Proposed changes in Rules 2202 and 2203 make permanent the emergency rules that cap intrastate switched access rates for Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). These caps were established so that ILECs and CLECs would not increase intrastate switched access charges in order to recover amounts lost from recent federal intercarrier compensation reform.

2. Participant Positions

100. CenturyLink and CTA both protest the continued cap on the HCSM, arguing that it is an arbitrary cap and that, with the changes to the federal support mechanisms, carriers may need new or increased support from the HCSM.

101. CTA argues against making the cap permanent on originating access, and Sprint and others argue for a rate element level cap, suggesting that an overall revenue cap could allow ILECs to game the system by modifying individual rate elements.

102. CTA asks the Commission to eliminate the entire extraordinary circumstances rule, as it is too broad and vague and can be used indiscriminately to deny funds. It argues the proposed rules will stymie deployment of multi-use networks and lead to rate-case type proceedings.

103. Staff suggests using only an annual cap for the HCSM, rather than both an annual cap and a quarterly cap, to provide for greater flexibility.

3. Commission Findings and Conclusions

104. For the most part, we adopt the proposed rules making permanent certain rules that we had implemented on an emergency basis. First, we adopt the annual cap on the HCSM fund at $54,000,000 and the language providing for a sizing factor if the calculated support amount is more than the cap. We decline to adopt a quarterly cap in order to allow for increased flexibility in the distribution of funds over the course of a year.

105. We also decline to adopt proposed changes to Rule 2856, and indeed we eliminate existing Rule 2856, because the application process we adopt today satisfies the objective of ensuring that support under the HCSM will be provided when necessary in ECAs and other areas.

106. We also adopt the proposed provision in Rules 2202(f)(III) and 2203(a)(II)(C) that caps each ILEC and CLEC's switched access charges by rate element. These caps ensure that ILECs and CLECs will not seek to offset switched access revenue reductions required under federal law by increasing intrastate switched access charges, and to avoid any gaming of this rule

through modification of individual rate elements. Finally, we adopt the recommendation of Staff and CenturyLink in the last sentence of Rules 2202(f)(III) and 2203(a)(II)(C) to allow for "changes" in switched access rates as required under federal law.

F. Topics Beyond the Scope of this Rulemaking

107. Participants provided input on issues that are beyond the scope of the proceeding. One area of concern to interested participants dealt with information the Commission heard in the public comment hearings, and from other interested participants, regarding the state of broadband deployment in the rural areas of Colorado. Participants in the underserved and unserved areas of the state stressed the importance of broadband deployment as it relates to and facilitates economic development, education, and health care. Another issue raised was the request to re-purpose the HCSM to support broadband.

108. While these are important issues, the scope of the current rulemaking generally relates to reclassification of basic services and use of HCSM funding for basic service, which does not include the type of services provided over broadband. Further, the proposed rules did not address or relate to repurposing the fund in any way beyond what is statutorily directed. Therefore, we do not adopt rules related to these topic areas that are beyond the scope of the current rulemaking.

II. ORDER

A. The Commission Orders That:

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

2. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

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

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

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

6. The effective date of this Order is December 24, 2012. This effective date will result in providing the participants additional time to consider and prepare the filing of applications for rehearing, reargument, or reconsideration, and is also mindful of the upcoming holiday season. Thus, the deadline for filing an application for rehearing, reargument, or reconsideration is January 14, 2013.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING, November 20, 2012.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners

ATTEST: A TRUE COPY

Doug Dean,

Director

Decision No. C13-0203

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-862T

IN THE MATTER OF THE PROPOSED RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF COLORADO REGULATIONS 723-2.

DECISION DENYING REQUEST FOR WAIVER; GRANTING, IN PART, AND DENYING, IN PART, REHEARING, REARGUMENT, OR RECONSIDERATION; AND ADOPTING REVISED RULES

Mailed Date: February 12, 2013
Adopted Date: January 30, 2013

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of Applications for Rehearing, Reargument, or Reconsideration (RRR) filed on January 14, 2013, by the Colorado Telecommunications Association (CTA); Staff of the Colorado Public Utilities Commission (Staff); the Office of Consumer Counsel (OCC); and Qwest Corporation dba Century Link QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. (collectively CenturyLink).

2. The Applications for RRR challenge aspects of the Commission's Order Adopting Rules, Decision No. C12-1442 issued December 17, 2012, with an effective date of December 24, 2012 (Decision). The Decision adopts certain Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR), 723-2, that were proposed with the basis and purpose of setting forth a regulatory framework for determining the existence of effective competition areas (ECA) for basic services; setting a relaxed regulatory scheme for ECAs; eliminating or reducing funding from the High Cost Support Mechanism (HCSM) in such areas; addressing limited treatment of Internet Protocol (IP) enabled and Interconnected Voice over IP (VoIP) services; and making permanent certain emergency rules.

3. The RRR filings from CTA, CenturyLink, Staff, and OCC request the following, generally: (1) waiver of the proposed rules for rural local exchange carriers (RLECs) and a rulemaking specific to RLECs; (2) clarifications and reconsideration of ECA regulation, including expansion or clarification of the scope of competitors considered; (3) request for automatic elimination of Provider of Last Resort (POLR) requirements upon a determination that an area is an ECA; (4) reconsideration of adopting proposed rules related to VoIP and IP-enabled

services; (5) clarification of applicability of certain rules not explicitly addressed in this rulemaking; (6) wording terminology clarifications; and, (7) clarification of certain procedural matters.

4. As discussed below, we deny the request for waiver, grant RRR, in part, and deny RRR, in part. Additionally, we revise and clarify the rules as set forth in Attachments A and B, and adopt the revised rules as amended.

B. Request for Waiver

5. CTA requests a temporary waiver from the entirety of the proposed rules for all RLECs. CTA contends that it would be a financial burden on its members to take part in each of the dockets that may result from the rules, including proceedings related to ECA determinations and, in areas deemed ECAs, subsequent proceedings related to HCSM funding and potential POLR relinquishment.

6. In support of its waiver request, CTA cites § 40-15-203.5, C.R.S., which states, in part, that the Commission, in issuing rules applicable to rural telecommunications providers, should consider the cost of regulation in relation to the benefit derived from such regulation. CTA further notes that RLECs are eligible for regulatory treatment different from other providers if sound public policy support such a result.

7. CTA's request does not specify which of the rural providers may be impacted, what these providers' specific costs of regulation may be, or how these costs may compare to potential benefits of the proposed regulations. CTA also does not suggest for what period of time a waiver is required, but requests that, in lieu of applying the currently proposed rules to RLECs, the Commission should conduct a rulemaking specific to RLECs.

8. Until finalized, the proposed rules are not subject to motion or petition for waiver pursuant to Rule 1003 of the Commission Rules of Practice and Procedure, 4 CCR 723-4. Thus, CTA's request for a waiver through RRR during the rulemaking process is procedurally premature.

9. Additionally, because the request is not specific to any carrier, does not indicate a requested timeframe for waiver, and is not supported by data of any specific carrier's costs and benefits, a waiver of the entirety of the proposed rules for all RLECs would be overbroad.

10. We therefore deny CTA's request for a waiver for all rural providers at this time. We will endeavor to administer the processes and proceedings resulting from the proposed rules efficiently, including consideration of the RLECs' particular circumstances. We also will consider any request for waiver filed at the appropriate time and with the appropriate supporting information from individual carriers.

11. As relevant here, the proposed rules create a framework for consideration of effective competition, subsequent regulatory treatment in ECAs, and review of HCSM support. Whether any specific area of Colorado will be reviewed for effective competition pursuant to Section 207 and the proposed rules has yet to be determined. The costs and benefits of the proposed rules are contingent on future proceedings, and on a provider's specific circumstances and interests. These proceedings may not impact rural providers or, if there were an impact, such impact would differ among rural providers.

C. Effective Competition Areas

1. Request for Clarification that "Wire Center Serving Areas" are the Relevant Geographic Areas

12. Both Staff and CenturyLink note that the phrases "exchange area" and "wire center" were used interchangeably during this docket; yet the geographic scope of a

"wire center" could differ from an "exchange area." A wire center serving area describes the area served by a provider's central office network; whereas, an exchange area may encompass one or more wire center serving areas. Staff Exhibit 2, which analyzes the presence of competitors, and HCSM cost models both use data specific to wire center serving areas.

13. We agree with both Staff and CenturyLink that the intended relevant geographic area for ECA determinations should be a "wire center serving area." We therefore clarify the Decision and correct language in our rules to state "wire center serving area" as opposed to "exchange area."

2. Clarification of Scope of Competitors

14. Staff and CenturyLink seek clarification or reconsideration of three issues related to the scope of competitors that shall be considered in ECA adjudications under § 40-15-207 and new Rule 2213.

15. First, CenturyLink argues that the Commission should include all voice service competitors in the marketplace and not limit the analysis to only facilities-based providers. CenturyLink requests inclusion of satellite telephony, all competitive local exchange carriers (CLECs), and "over-the top" VoIP providers without regard to whether the voice services are provided through unbundled network elements or broadband connections.

16. Second, Staff seeks clarification of whether wireless resellers are excluded from consideration of effective competition.

17. Third, Staff and CenturyLink seek clarification of the phrase "CLECs offering basic service through a *platform of unbundled network elements*" as used in Rule 2213(d)(I) to exclude such providers from our effective competition analysis. A CLEC can provide basic services by leasing one or more unbundled network elements from an incumbent.

These elements include transport, switching, and loops. CenturyLink explains that the phrase "platform of unbundled elements" in the context of wholesale unbundling obligations means a combination using all three of these elements, and it is not clear whether the new rules incorporate this meaning. Staff contends that a "platform of unbundled network elements" could be construed to be two or more of these elements. Staff believes, correctly, that the Commission intended not to consider CLEC offerings when all three elements are leased from an incumbent; however, given the potential for alternative meanings, we agree that further clarification is warranted.

18. The policies underlying Rule 2213 and the factors listed in Section 207 guide our ruling on these three issues.[1] As stated in the Decision: "[n]ot including CLEC services offered over platforms or resellers ensures that only carriers with separate physical networks are counted as competitors. It also enables the Commission to judge more precisely the barriers to entry and adequacy of service under Section 207."[2] Section 207 directs the Commission to make findings that regulation of a service under part 3 will promote adequate and reliable service at just and reasonable rates, consider the extent of economic, technological, or other barriers to market entry and exit, and, consider the ability of consumer in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions.[3] Also, Colorado statutes direct the Commission to "protect and maintain wide availability of high-quality telecommunications services."[4] The Commission also

[1] This clarification and the use of these terms in Rule 2213 apply only to Rule 2213 and do not impact any definition of "facilities based" or "platform" as those terms may be used in the interconnection or some other context.

[2] Decision, ¶ 29.

[3] § 40-15-207(1)(a) and (b), C.R.S.

[4] § 40-15-101, C.R.S.

has the authority to "regulate providers of telecommunications services to the extent necessary to assure that universal basic service is available to all citizens at fair, just, and reasonable rates."[5]

19. These policies support the requirement that only carriers providing basic services over a substantial portion of their own last-mile or loop facilities, without regard to technology,[6] should be considered under a Section 207 analysis of effective competition for basic services. Providing services over a carrier's own last-mile or loop facilities demonstrates that the carrier has cleared the requisite barriers to entry and is not subject to the risk of its wholesale carrier exiting the market.

20. In addition, statutory directives regarding reliability and adequacy of service require the Commission to consider the state of competition and adequacy of service not only presently or for a small window of time, but also for a period long after the Section 207 proceedings have concluded. Connectivity to the end user through its own last-mile or loop reflects a provider's investment in and commitment to providing basic services for the long-term.

21. Applying these principles, we reiterate that providers must be facilities-based to be considered as competitors in an effective competition analysis of basic services under Section 207; thus, we deny CenturyLink's request to include consideration of all CLECs and "over-the-top" VoIP providers in Rule 2213. We clarify that wireless resellers also are not included. Further, we clarify that, to be facilities-based under Rule 2213, a provider must offer

[5] § 40-15-502(3)(a), C.R.S.

[6] Technology neutral means that the last mile or loop facilities could be provided through wireline, wireless, cable telephony, or other technologies. We continue to exclude services provided over satellite technology from our ECA analysis at this time, for reasons stated in our Decision.

basic services by using a substantial portion[7] of its own last mile or loop facilities, without regard to the technology utilized.

3. Competition through Wireless Telephony

22. CTA contends that the Commission should not include wireless telephony as a competitor to landline service as included in proposed Rule 2213(d)(I). CTA argues that wireless service is not a substitute for wireline service in "sprawling but sparsely populated rural areas in Colorado."[8] Further, it states that there is some, or even substantial, wireless presence in parts of the service territories served by CTA members; however, where a wireless carrier's map shows 100 percent coverage in an RLEC service territory, experience shows that actual coverage and quality can be unreliable.

23. The Commission recognizes CTA's concerns related to ensuring that rural areas of Colorado have competitive options prior to determining if an area has effective competition. However, the Commission fully reviewed the issue of considering a wireless carrier as a competitor to wireline service and determined that, where wireless coverage exists, it is a competitive alternative to wireline. The extent that wireless service is available, reliable, and thus a substitute for basic service in a given wire center serving area in Colorado will be reviewed when the Commission makes findings regarding effective competition, including whether it is within the public interest to reclassify basic services to a part 3 service in that area per § 40-15-207, C.R.S. We therefore deny RRR on this issue.

[7] A provider that provides services over its own last mile or loop facilities may be required to lease some portions of the loop, for example the network interface device ("NID") or other sub-loop facilities, to access the end user; we consider such providers to be facilities-based for purposes of this Rule.

[8] Application for RRR, filed by CTA (January 14, 2013), at 12.

4. Request for Deregulation of Area Deemed an ECA

24. CTA contends that the Commission should eliminate regulation for any carrier in areas deemed to have effective competition, except as related to switched access and basic emergency service. In its filing, CTA notes that unregulated competitors such as wireless and cable are not subject to requirements the Commission maintains over providers of basic service when they are re-classified in ECAs as a part 3 service. At a minimum, CTA requests that the rules be modified to delete the requirement that companies in an effective competition area post their rates and terms of service online and dispense with all reporting requirements not applicable to all carriers in the marketplace.

25. CTA raises no new argument in RRR on this issue. The Commission fully considered lightened regulation of basic service in effective competition areas. Also, reclassification under Section 207 allows services to move only to part 3. Subsequent proceedings under Section 305 are necessary to move services to part 4 and eliminate regulation. Therefore, we deny RRR on this issue.

5. Maintaining White Page Listings in Part 2

26. Rule 2213(e) retains basic emergency service as a Part 2 service throughout the state, even in wire center serving areas determined to be ECAs. Staff's Application for RRR recommends that the requirement to publish and provide white pages directory listings pursuant to Rule 2307 also be retained as a Part 2 service in ECAs. Staff asserts that white page directory listings are essential offerings to basic local exchange service both within and outside of an ECA, and retaining the white page directory listings as a Part 2 service also would allow the

pending rulemaking docket related to directory publication to proceed.[9] Staff also contends that, absent this proposed modification, the directory rulemaking docket would appear to be directly impacted if non-ECAs retain white page directory listings while ECAs would no longer be required to offer directories to customers.

27. Section 40-15-201(d) identifies "white pages directory listing" as subject to Part 2. Neither the statutes nor rules define the phrase "white pages directory listing," but our rules addressing directories describe a customer's name, address, and telephone number as a "listing."[10] Though the subject of Staff's RRR request is the *publication* of white pages directories, not necessarily the white page directory *listings* (*i.e.*, the term identified in part 2), we agree that basic service providers in an ECA will continue to be obligated to publish white page directories pursuant to Rule 2307.[11]

28. We agree that white pages directory listings will remain in part 2 throughout the state regardless of an ECA determination. The ability of customers to list their name, address, and phone number in the white pages directory is an essential service for customers. Our rules require LECs to publish annually telephone directories that provide listings of all basic local exchange customers served by that exchange, a requirement that is not affected by an ECA determination.[12] Further, our rules require, regardless of ECA designations, all basic local exchange carriers to furnish the name, address and telephone number information for all of

[9] *See* In the Matter of the Proposed Amendments to Rules Regulating Telecommunications Providers, Services, and Products, 4 Code of Colorado Regulations 723-2-2307 (Docket No. 12R-1248T).

[10] Regarding publication and distribution of directories, Rule 2307(a)(I) states: A LEC shall cause telephone directories to be published annually to include each exchange served by that LEC, listing the name, address, and telephone number of all basic local exchange customers served by that exchange except for those requesting omission of their listing from the directory. Each directory shall include a list of all exchanges in the local calling area.

[11] While we determine to retain white page directory listings in part 2 for areas deemed ECAs, as discussed herein, we clarify that all Commission rules applicable to part 2 or part 3 services, respectively, continue to apply to services regulated by the commission. This includes, without limitation, Rule 2307.

[12] This requirement may be effected by the outcome of Docket No. 12R-1248T.

its customers, including non-published or non-listed customers, to the Automatic Location Identification (ALI) database providers for the provision of 9-1-1 services and emergency notification services.[13] Retaining white pages directory listings in part 2 therefore corresponds with keeping basic emergency services in part 2. Thus, we agree with Staff that our rules should state that "white pages directory listings" remain under Part 2, even in ECA designated areas, and that LECs in ECAs are obligated under Rule 2307 to publish and distribute directories. We therefore grant RRR on this matter and revise the proposed rules accordingly.

D. Provider of Last Resort

29. CenturyLink and CTA repeat their arguments that, if the Commission determines an area to be an ECA, POLR obligations in that area automatically should be eliminated. The Decision declined to implement an automatic elimination of POLR obligations upon an ECA determination, supported by statutory language directing the Commission to ensure the availability of basic services to all customers in the state. The providers objecting to this ruling again raise the contention that requiring carriers to be a POLR in areas where they are not receiving high cost support may constitute an illegal taking; but, this argument lacks foundation. If carriers can show that, even in ECAs, their costs of providing basic service exceed basic service revenues, they will continue to receive HCSM support. CenturyLink and CTA also do not challenge other rationales supporting the Commission's Decision regarding POLR, such as ensuring universal service, promoting the integrity of the process in areas deemed ECAs, and providing the proper incentives for carriers to seek HCSM support where necessary.

30. CenturyLink and CTA contend that continuing the application of POLR obligations in ECAs is not consistent with Commission determinations that the existence of

[13] Rule 2138(b).

effective competition warrants reduced regulation and elimination of HCSM support. CenturyLink and CTA, however, advocate for *automatic* POLR relinquishment in ECAs; whereas, the Decision ensures though an application and evidentiary process that areas warranting POLR treatment are not overlooked. We reiterate our statement from the Decision that: "[a] provider demonstrating the requisites for relinquishment as stated in our rules will be released from its POLR obligations, and certainly the evidence and the Commission's determinations in proceedings finding effective competition under Section 207 will be entitled to considerable weight." We decline CenturyLink's and CTA's application for RRR on this issue.

E. Proposed Rules Related to VoIP and IP-Enabled Services

31. In its RRR, the OCC states that the Commission erred by failing to adopt proposed Rules 2001(ww) and 2213 relating to regulation of VoIP and IP-enabled services. The OCC argues that adoption of these proposed rules would meet the Commission's key principle to remain technology-neutral. Also, while the OCC notes that the Commission states in the Decision that declining to adopt proposed rules should not be interpreted as a change in the *status quo*, the OCC contends that adoption of these rules would clarify that standard.

32. The OCC adds no new information or argument on this issue. We considered comments both for and against inclusion of the proposed rules, and declined to include these rules for the reasons articulated in the Decision. We therefore deny RRR on this issue.

F. Rule and Statute Applicability

33. Staff requests that Rule 2214(c) expressly include additional rules to clarify that all such rules govern basic services reclassified to part 3.[14] Staff also requests clarification or

[14] Staff cites this rule in its RRR as "proposed rule 2214(e)" in its RRR filing at 3, but as 2214(c) elsewhere. Attachment A and B of the Decision include listings of applicable rules relevant to regulation in offering service in ECAs in proposed rule 2214(c).

reconsideration of certain rules relating to POLR requirements; applications for certificate of public convenience and necessity (CPCN) and letters of registration (LOR); non-optional operator services; and Lifeline only eligible telecommunications carrier (ETC) designation.

34. We note that the proposed rules address only certain aspects of telecommunications regulation, as set forth in the Notice of Proposed Rulemaking, issued by Decision No. C12-0898-I on August 6, 2012 in this docket. Unless explicitly addressed as relevant to the proposed rules related to ECA designation and reclassification of basic service, rules not explicitly amended continue to apply in relation to services as classified per part 2 or part 3, as further discussed below.

35. Staff requests that the Commission include paragraphs 2006(c) and (d) in Rule 2214(c). These paragraphs regard the reporting of held local exchange service orders exceeding 90 days and not subject to any applicable exceptions in Rule 2310, and the reporting of service orders exceeding certain thresholds.

36. In proposed Rule 2214(c), the Commission lists particular paragraphs within rule 2006 that it found applicable to regulate providers offering service in ECAs. The Commission fully considered the applicability of Rule 2006 to providers offering service in ECAs, including the exclusion of certain requirements contained in Rules 2006(c) and (d). We excluded 2006(c) and (d) from Rule 2214(c) because they impose regulatory reporting burdens that are incompatible and not necessary with the existence of effective competition. If a provider fails to offer services with acceptable levels of service quality, customers in a competitive market have the option of switching providers. We therefore deny RRR on this issue.

37. Staff lists additional rules not explicitly addressed in this rulemaking, requesting that they be included in Rule 2214(c), including: Records (Rule 2005);

Incorporations by Reference (Rule 2008); Civil Penalties – Definitions (Rule 2009); Application to Change Exchange Area Boundaries (Rule 2105); and Expanding a Local Calling Area (Rule 2309). Regarding POLR requirements specifically, Staff requests that the following rules be included as well: Designation of Providers of Last Resort (Rule 2183); Application for Designation as an Additional Provider of Last Resort (Rule 2184); Obligations of Providers of Last Resort (Rule 2185); Relinquishment of Designation as a Provider of Last Resort (Rule 2186); Eligible Telecommunications Carrier Designation (Rule 2187); and Availability of Services – Adequacy of Facilities (Rule 2310).

38. We clarify that, in addition to the rules explicitly enumerated in the proposed rules, all rules applicable to services regulated pursuant to part 3 shall apply to basic service as reclassified pursuant to an ECA determination. Likewise, all rules applicable only to part 2 services shall not apply to basic service in areas designated as ECAs. Further, we note that federal and statutory requirements continue to apply. We therefore deny RRR on this issue, but will add clarifying language to Rule 2214(c):

> The Commission will regulate providers offering service in ECAs pursuant to all Commission rules applicable to part 3 services and, including without limitation, the following substantive rules: Reports (paragraphs 2006(a), (b), (f), (g), (h), (i), and (j)), Application for LOR (rule 2103), Numbering Administration (rules 2700 through 2741), Programs (rules 2800 through 2895), Provider Obligations to Other Providers (rules 2500 through 2588), and Collection and Disclosure of Personal Information (rules 2360 through 2362).

39. Staff also requests clarification on the process related to application for CPCN or LOR. Proposed Rule 2214(c) states that the Commission will regulate providers under a series of existing Commission rules, including Rule 2103, which currently includes a LOR and a CPCN. Staff seeks clarification regarding the implementation of this proposed rule in ECAs for providers that currently hold a CPCN (issued to provide part 2 services) and not a LOR

(issued for part 3 services) and any new providers that enter the market following implementation of the proposed rules.

40. Per Staff's request, consistent with our intent that all rules shall apply to part 2 and part 3 services respectively, and except as explicitly indicated in the proposed rules, we clarify that CPCN and LOR processes under the current rules shall apply to providers of basic service as applicable depending on whether the provider offers service in an area where such service is classified as a part 2 service (*e.g.*, in an area not deemed an ECA, CPCN processes would apply for new applicants) or part 3 (*e.g.*, in an areas deemed an ECA, LOR processes would apply for new applicants; applicants who have a currently valid CPCN that was issued prior to reclassification of basic services as a part 3 service would retain the valid CPCN). A provider will not be required to relinquish valid CPCN authority or request an LOR if an area is designated as an ECA and basic service is reclassified to part 3.

41. Staff notes that § 40-15-302(5), C.R.S., requires the Commission to set rates for non-optional operator services and that Rules 2164 and 2165 establish benchmark maximum rates for these services and additional requirements, respectively. Similar to the argument above, Staff contends that, because these rules are not explicitly listed in Rule 2214(c), such rules may be inapplicable in ECAs. We clarify that, consistent with our discussion above, regulation of part 2 and part 3 services, including regulation of non-optional operator services by statute and rule, still applies.

42. Staff further requests clarification that the Commission is retaining its authority to designate any provider seeking ETC designation in ECAs that meets the requirements of 47 C.F.R. § 54.201(d) and Rule 2187. Staff recommends modification of the rule to note that ETC or EP designation may be affected by relinquishment of its POLR obligation. We clarify that

rules and requirements, including those for ETC designation generally and as they relate to POLR obligations, that are not addressed in the proposed rules are still applicable and shall be enforced by the Commission.

G. Terminology Clarifications

43. The OCC requests that the Commission revise paragraph no. 17 of the Decision summarizing the OCC's position as "the OCC … states that the entire state could be deemed competitive for service *deregulation*…." (emphasis added). The OCC objects to the use of "deregulation" and states that the term should be "reclassification." We agree and therefore grant RRR that the term "deregulation" should be replaced with "reclassification" in paragraph no. 17 of the Decision.

44. Staff requests that the term "local service" in proposed Rule 2213(d)(III) should be labeled "basic local exchange service" or "basic service." We agree with Staff and update the rule accordingly.

45. Staff requests that the Commission delete the term "restoration" in proposed Rule 2215(b), which allows a provider to file an application for HCSM funding in an ECA either by requesting the establishment, continuation, or restoration of HCSM funding. Staff states that there is no definition for "restoration." We clarify that this term was used intentionally to indicate a scenario where a provider in an ECA may reestablish funding where such funding was not received for a period of time. As with other applications for HCSM fund establishment (*i.e.*, providers who receive HCSM funding for the first time) or continuation (*i.e.*, providers who receive funding at the time of the application), restoration of funds would be based on the application of the provider, which may be denied or granted, in part or in full.

46. Staff further requests that the Decision should use the term "rules" instead of "paragraphs" when referring to "paragraphs 2006(a), (b), (f), (g), (h), (i)…" We disagree as these are subsections of the rule and "paragraph" is used as the standard reference throughout this and other Commission rules to indicate subsections of particular Commission rules.

H. Request for Clarifications on Process

47. Paragraph nos. 74 and 75 of the Decision state the intent of the Commission to commence a docket for the purpose of providing the necessary legal and policy direction for HCSM adjudications and to promote consistency across all providers in areas of the state (HCSM Application Policy Docket). CenturyLink notes that it is possible that the HCSM Application Policy Docket may be finalized after an ECA docket is completed; however, the HCSM applications will be determined by the HCSM Application Policy Docket. CenturyLink therefore requests clarification that applications for HCSM support in areas deemed ECAs pursuant to proposed Rule 2215 be due 180 days following a determination of effective competition in a given area, or 60 days following the completion of the HCSM Application Policy Docket, whichever is later.

48. We agree with CenturyLink that, in the event the HCSM Application Docket is completed after a finding of effective competition, additional time for filing of such an application may be warranted. We therefore clarify that HCSM applications in areas deemed ECAs will be due the later of 180 days following a determination of effective competition in a given area, or 60 days following the completion of the HCSM Application Policy Docket.

49. Staff requests clarification regarding treatment of HCSM identical support. Staff notes that, of the over 115 wire center serving areas where there are multiple competitive eligible

providers (EPs), only two competitive EPs are currently receiving HCSM funding. As contemplated, the rules allow for any provider to file an application for continued HCSM support in an area deemed an ECA. Therefore, both the underlying carrier and the competitive EP are eligible to file an application. To continue to receive HCSM support, a carrier must file on its own behalf.

50. CenturyLink suggests that workshops may be beneficial in identifying efficiencies for the administration of ECA and HCSM dockets resulting from our rules. We appreciate CenturyLink's suggestion for workshops, but regard the request as outside the scope of RRR.

II. ORDER

A. The Commission Orders That:

1. Decision No. C12-1442 is affirmed and clarified, consistent with the discussion above.

2. The Commission denies the request by Colorado Telecommunications Association (CTA) in its Application for Rehearing, Reargument, or Reconsideration (RRR), filed January 14, 2013, for waiver of the proposed rules for all rural telecommunications providers, consistent with the discussion above.

3. The Application for RRR filed on January 14, 2013, by CTA is denied, consistent with the discussion above.

4. The Application for RRR filed January 14, 2013, by Staff of the Colorado Public Utilities Commission is granted, in part, and denied, in part, consistent with the discussion above.

5. The Application for RRR filed January 14, 2013, by Qwest Corporation dba Century Link QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and

CenturyTel of Eagle, Inc. is granted, in part, and denied, in part, consistent with the discussion above.

6. The Application for RRR filed January 14, 2013, by the Office of Consumer Counsel is granted, in part, and denied, in part, consistent with the discussion above.

7. Any request for RRR not explicitly addressed herein is denied.

8. The Commission adopts the rules attached to this Decision as Attachments A and B, consistent with the above discussion.

9. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

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

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

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

13. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEELY MEETING
January 30, 2012.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners

ATTEST: A TRUE COPY

Doug Dean,

Director

Decision No. C13-0317

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-862T

IN THE MATTER OF THE PROPOSED RULES REGULATING TELECOMMUNICATIONS PROVIDERS, SERVICES, AND PRODUCTS, 4 CODE OF COLORADO REGULATIONS 723-2.

DECISION DENYING SECOND REQUEST FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: March 13, 2013
Adopted Date: March 13, 2013

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of CenturyLink's Second Request for Reconsideration, Reargument, or Rehearing, filed March 4, 2013 (Second Request for RRR). The Second Request for RRR was filed on behalf of Qwest Corporation, doing business as CenturyLink QC, El Paso County Telephone Company, CenturyTel of Colorado, Inc., and CenturyTel of Eagle, Inc. (collectively, CenturyLink). The Second Request for RRR challenges the Commission's ruling in Decision No. C13-0203, issued February 12, 2013, to retain Part 2 regulation for white page directory listing services, even in areas of effective competition for basic local exchange services.[1]

2. In our initial Order Adopting Rules, Decision No. C12-1442, issued December 17, 2012, the Commission addressed whether, in areas in which effective competition exists for

[1] Parts of CenturyLink's Second Request for RRR reference Commission Decision No. C12-1442 as the source for the Commission's ruling to retain white page directory listing services in Part 2 in ECAs. See Second Request for RRR, pp. 1, 2. We understand and interpret CenturyLink's Second Request for RRR as challenging Decision No. C13-0203, issued February 12, 2013.

basic local exchange services (ECAs), other Part 2 services listed in § 40-15-201(2), C.R.S., also should be reclassified and subject to Part 3, as described in proposed Rule 2215(a).[2] We ruled that Part 2 services listed in § 40-15-201(2) linked closely to the offering and provisioning of basic services also should be reclassified as Part 3 services in ECAs. White pages directory listing was identified as one of those services.[3]

3. On January 14, 2013, Staff of the Commission (Staff) filed its Request for Reconsideration, Reargument or Rehearing (RRR) of Decision No. C12-1442 asking the Commission to reconsider reclassification of white page directory listings as a Part 3 service in ECAs. [4]

4. In Decision No. C13-0203, we described "white page directory listings" as identifying a customer's name, address, and telephone number.[5] We stated that the ability to list this information in the white page directory is an essential service for customers and that our rules require local exchange carriers (LECs) to publish white page listings.[6] Further, we noted that our rules require, regardless of ECA designations, all basic local exchange carriers to furnish the information comprising white page directory listings to the Automatic Location Identification (ALI) database providers for the provision of 9-1-1 services and emergency notification services.[7] Because white page directory listings correlate with emergency services and are essential, we ordered that "our rules should state that 'white pages directory listings' remain under Part 2, even in ECA designated areas, and that LECs in ECAs are obligated under

[2] Proposed Rule 2215(a) was renumbered in our final rules as Rule 2214(a).

[3] Order Adopting Rules, Decision No. C12-1442, issued December 17, 2012, at ¶ 37.

[4] Staff's Request for Reconsideration, Reargument or Rehearing, at pp. 3, 10-11.

[5] Decision Denying Request for Waiver; Granting, in Part, and Denying, in Part, Rehearing, Reargument, or Reconsideration; and Adopting Revised Rules; Decision No. C13-0203, issued February 12, 2013; at ¶ 27.

[6] *Id.*, at ¶ 28.

[7] *Id.*

Rule 2307 to publish and distribute directories."[8] We therefore granted Staff's Request for RRR on this matter and revised the rules accordingly.

5. In its Second Request for RRR, CenturyLink argues that maintaining Part 2 regulation over any aspect of telephone service, including white page listings, is discriminatory and inconsistent with Commission policy. CenturyLink contends that the alternative providers to be considered in the ECA dockets will include wireless and cable providers, which CenturyLink argues are not regulated by the Commission and not required to comply with white page listing rules. CenturyLink states that thousands of customers choose wireless or cable telephony providers every year even though those providers are not required to offer traditional white page listings. CenturyLink opines that white page directory listing is not an essential service associated with local telephone service, but rather a "competitive feature" that carriers may offer to differentiate their service. In conclusion, CenturyLink claims that providers can market white page directory listings as a competitive advantage, and that the market, not Part 2 regulation, should determine whether listings have value and are essential.[9]

6. We deny CenturyLink's Second Request for RRR. We disagree with CenturyLink's threshold premise that maintaining regulation over "any" aspect of telephone service is discriminatory and inconsistent with Commission policy. Basic emergency service is an aspect of telephone service and is enumerated as a Part 2 service in § 40-15-201(2), C.R.S.; and it is Commission policy and consistent with the public interest to ensure the public's ready access to emergency services by retaining Part 2 authority over them, even in ECAs. As we found in Decision No. C13-0203, the information constituting white page directory listing—a customer's name, address, and telephone number—is correlated to emergency services

[8] *Id.*

[9] CenturyLink's Second Request for RRR, at pp. 2-3.

due to its necessity to the Automatic Location Identification (ALI) database providers for the provision of 9-1-1 services and emergency notification services. Emergency and related services are more than "competitive features." They are vital to the public interest, and market forces cannot ensure the availability of basic emergency services, including 9-1-1 services, in time of need.

7. We also disagree with CenturyLink's characterization of white page directory listing as a competitive feature of basic services that differentiates providers' offerings. Sub-sections 40-15-201(2)(a) and (d), C.R.S., itemize basic service separately from white page directory listing; accordingly, the Legislature confers a regulatory significance upon white page directory listing that is independent of basic service. We decided in our Order Adopting Rules that some of the services listed in § 40-15-201(2), C.R.S., such as dual tone multifrequency signaling, were closely aligned with basic services, and determinations of effective competition of basic service should apply to those services as well. We further determined in that Order that basic emergency services have a separate public interest importance and should not be reclassified based on a showing of effective competition for basic service. We applied this same reasoning in Decision C13-0203 for white page directory listing. For the Commission to make findings based on the considerations set forth in § 40-15-207, C.R.S., to reclassify white page listings, additional or alternative information than that considered for basic services may be appropriate. Absent a specialized showing that the elements of § 40-15-207, C.R.S., justify a determination of effective competition for such services, white page listings will not be reclassified as a Part 3 service in ECAs.

8. New Rule 2213(d)(III) authorizes the Commission to make additional findings of effective competition and reclassify telecommunications services other than basic service in the relevant geographic area. Thus, a provider may join white page directory listing as a service to be considered under § 40-15-207, C.R.S., along with basic service in an ECA proceeding.

II. ORDER

A. The Commission Orders That:

1. CenturyLink's Second Request for Rehearing, Reargument, or Reconsideration filed March 4, 2013, by Qwest Corporation dba Century Link QC, El Paso County Telephone Company, Century Tel of Colorado, Inc., and Century Tel of Eagle, Inc., is denied.

2. The Commission affirms that the rules adopted in Decision No. C13-0203 shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

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

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

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEELY MEETING March 13, 2013.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

JOSHUA B. EPEL

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JAMES K. TARPEY

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ATTEST: A TRUE COPY

PAMELA J. PATTON

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Commissioners

Doug Dean,

Director