

Decision No. C24-0577

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0340T

IN THE MATTER OF TEMPORARY RULES REGARDING THE IMPLEMENTATION OF
HOUSE BILL 24-1234 EXTENDING THE COLORADO HIGH COST SUPPORT
MECHANISM.

**COMMISSION DECISION
ADOPTING TEMPORARY RULES**

Issued Date: August 14, 2024

Adopted Date: August 7, 2024

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to comply with the amendments to §§ 24-34-104 and 40-15-208, C.R.S., pursuant to House Bill (“HB”) 24-1234. The amendments to statute eliminate the September 1, 2024 expiration date of the Colorado High Cost Support Mechanism (“CHCSM”).

2. The Commission is simultaneously issuing a Notice of Proposed Rulemaking (“NOPR”) to make these amendments to the Commission’s rules, as well as other amendments to implement HB 24-1336 and Senate Bill (“SB”) 24-139, but it is unlikely that those permanent rules will be effective prior to the September 1 expiration date currently reflected in the Commission’s rules. Therefore, temporary rules are necessary to allow the Commission to comply with the extension to the CHCSM enacted through the passage of HB 24-1234.

3. These temporary rules mirror the rule updates that are being proposed through a separate proceeding as applied to the limited issue of continuing the administration and distribution of the CHCSM beyond September 1, 2024. These temporary rules are effective for 210 days from the effective date of this Decision or until the Commission's permanent rules implementing HB 24-1234 are effective. *See* § 40-2-108(2), C.R.S.

B. Discussion, Findings, and Conclusions

4. Prior to the passage of HB 24-1234, statute required the sunset of the CHCSM as of September 1, 2024. HB 24-1234 removes the September 1 expiration date and extends the CHCSM indefinitely. The recipients do not change, with the rural telecommunications provider receiving support from the CHCSM as of January 1, 2017, continuing to receive support on a quarterly basis. The payments to these entities are calculated by averaging the payments received by each of those entities for calendar years 2015 and 2016.¹ All remaining CHCSM funds are to be deposited into the broadband deployment account.²

5. Concurrently with this Decision, the Commission is also issuing a NOPR to propose permanent amendments to the Commission's rules that mirror the amendments made through this Decision, as well as to propose amendments to other rules to implement HB 24-1336 and SB 24-139. However, it is unlikely that permanent rules resulting from the NOPR will be effective prior to September 1, 2024, making it necessary to issue temporary rules to allow for the continuation of the CHCSM in compliance with statute. Through this proceeding, we adopt temporary rules narrowly tailored to extending the current September 1, 2024, date currently in

¹ See § 40-15-208(4), C.R.S.

² See § 40-15-208(2)(a)(IV), C.R.S.

rule to fill this gap and avoid any confusion such that the CHCSM will continue to be administered, consistent with HB 24-1234.

6. The statutory authority for adoption of these rules is set forth in §§ 24-4-101 et seq.; 24-34-104; 40-2-108; and 40-15-208, C.R.S., including without limitation as certain of those statutes are amended by HB 24-1234.

7. The Commission may adopt a temporary rule without engaging in the processes required by the Administrative Procedure Act for a permanent rule “only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of [the section to complete a permanent rulemaking] would be contrary to the public interest and makes such a finding on the record.” § 24-4-103(6)(a), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to comply with state law.

8. Section 40-15-208(2)(a)(IV) and (4), C.R.S., require the Commission to continue to receive CHCSM funds from providers and to distribute those funds as dictated in the statute beyond the previous sunset date of September 1, 2024. The amendments implemented by this Decision to adopt Temporary Rules are imperatively necessary to comply with this state statute. Therefore, we immediately adopt temporary rules eliminating the September 1, 2024 deadline from our rules.

9. The temporary rules shall be effective on the issued date of this Decision and shall remain in effect until the permanent rules become effective or for 210 days, whichever period is less.

10. The temporary rules are attached to this Decision as Attachment A, the temporary rules in legislative format, and Attachment B, the temporary rules in final, clean format.

II. ORDER

A. The Commission Orders That:

1. The rules in final format as attached hereto as Attachment B are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be effective on the issued date of this Decision.

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

4. This Decision is effective immediately on its Issued Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING** **August 7, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-2

PART 2

RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES

2846. Support through the HCSM.

- (a) The Commission shall, by order, establish geographic areas throughout the state. Such geographic areas may be revised at the discretion of the Commission.
- (b) ~~Through December 31, 2018,~~ HCSM support amounts shall be provided consistent with prior Commission orders. ~~Beginning on January 1, 2019,~~ support shall be allocated and provided on a quarterly basis and by the end of the month following the previous quarter.
 - (I) Each rural telecommunications provider, both wireline and wireless, that received support as of January 1, 2017, will continue to receive the same level of support on a quarterly basis ~~for the period of January 1, 2019 in each subsequent year through September 1, 2024~~ by averaging the payments received for calendar years 2015 and 2016, consistent with § 40-15-208(4), C.R.S.
 - (II) The Commission shall allocate to the broadband deployment account ~~the following percentages~~ 100 percent of the total amount of HCSM money collected minus the Commission's administrative costs and distributions to rural telecommunications providers, both wireline and wireless, consistent with § 40-15-208(2)(a)(IV), C.R.S. and subparagraph 2846(b)(I):
 - (A) ~~in 2019~~ 60 percent;
 - (B) ~~in 2020~~ 70 percent;
 - (C) ~~in 2021~~ 80 percent;
 - (D) ~~in 2022~~ 90 percent;
 - (E) ~~in 2023~~ 100 percent; and
 - (F) ~~in 2024~~ 100 percent (through September 1, 2024).

~~(III) — The non-rural incumbent local exchange carrier will receive the balance of the remaining quarterly collections after distributions required by § 40-15-208(2)(a)(IV) and (4), C.R.S.~~

- (c) The Administrator will arrange payments to be made within 30 days of the last day of each quarter.
- (d) ~~For years 2019 through 2024, d~~Distributions of HCSM shall not be based on effective competition determinations as defined by rule 2205 or § 40-15-207, C.R.S.

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 - (II) The Commission shall allocate to the broadband deployment account 100 percent of the total amount of HCSM money collected minus the Commission's administrative costs and distributions to rural telecommunications providers, both wireline and wireless, consistent with § 40-15-208(2)(a)(IV), C.R.S. and subparagraph 2846(b)(I).
- (c) The Administrator will arrange payments to be made within 30 days of the last day of each quarter.
- (d) Distributions of HCSM shall not be based on effective competition determinations as defined by rule 2205 or § 40-15-207, C.R.S.