

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

**COMMISSION DECISION ON APPLICATIONS FOR REHEARING,
REARGUMENT AND RECONSIDERATION AND ADOPTING RULES**

Mailed Date: April 26, 1996
Adopted Date: April 25, 1996

I. **BY THE COMMISSION:**

A. Background and Procedural Matters.

1. On April 1, 1996 the Commission issued Decision No. C96-352 adopting the rules attached to the decision as Attachments A and B and repealing Rules 16, 17 and 19 of the *Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers*, 4 CCR 723-27. On April 22, 1996, pursuant to 40-6-114(1), C.R.S. and Rule 92 of the *Rules of Practice and Procedure*, applications for rehearing, reargument or reconsideration of Decision No. C96-352 were filed by AT&T Communications of the Mountain States, Inc. ("AT&T"), Colorado Independent Telephone Association ("CITA"), MCI Telecommunications Corporation ("MCI") and US West Communications, Inc. ("USWC").

2. On April 24, 1996, at 4:00 p.m., CITA filed a document entitled "Amendment to Application for Rehearing, Reargument and Reconsideration of Decision No. C96-352." In its "Amendment" CITA objects to

the inclusion of the clause "including, but not limited to Federal USF, low interest Rural Utility Service loans, rent compensation, and Yellow Page Directory compensation" in Rule 723-41-9.4. The issue raised by CITA in its "Amendment" is not an amendment to its application, but a wholly new issue, and therefore is not an amendment, but an addition to its application. Inasmuch as the "Amendment" was not filed within the time period prescribed by statute and our rule, nor a motion for an extension of time filed within that period of time, the "Amendment" was not timely filed. However, since the issue raised by CITA was also raised by USWC, the issue will be considered hereinafter by us in this decision.

II. **DISCUSSION.**

A. USWC's Application for Rehearing, Reargument or Reconsideration.

1. USWC raises a number of issues in its application for rehearing, reargument or reconsideration. USWC first states that it supports the Commission's decision to create the CHCF Task Force, but objects to the time frame for filing the interim and final reports. USWC suggests dates of August 15, 1996 and September 31, 1996, respectively. USWC suggested dates are unrealistically short. We have referred 11 issues to the Task Force for consideration and recommendation. The Commission's dates will require the Task Force to complete its work by the end of 1996. As we stated in Decision No. C96-352, the Task Force should forward its recommendations to the Commission for action as it completes work on any given issue. We will deny this request of USWC and adhere to the time frame prescribed in Decision No. C96-352.

2. USWC next requests that the Commission clarify that a member of the Task Force will be able to present its views to the Commission as a part of the Task Force's report if it disagrees with the majority report. For clarification, the report should contain a "majority report" and any "minority report(s)" on any issue referred to it wherein there is not complete consensus. This request of USWC will be granted.

3. When the Commission rejected the Benchmark Cost Model proposed by USWC and the Hatfield Model recommended by AT&T, the Commission was under the impression that both models were proprietary cost models. However, we understand from USWC's application that the Benchmark Cost Model is nonproprietary. USWC recommends that the Commission adopt the nonproprietary Benchmark Cost Model based on census block groups as proposed by USWC. We will not in this decision adopt the nonproprietary Benchmark Cost Model, nor census block groups. However, we instruct the Task Force to consider the Benchmark Cost Model to determine whether it can be used or modified to make it a Colorado specific proxy cost model. We have previously stated that the Task Force should consider census block groups in its consideration of what the Commission should order as the reasonably compact, competitively neutral geographic support areas. Using or considering the Benchmark Cost Model certainly could give the Task Force a running start at creating a Colorado specific proxy cost model.

4. USWC next suggests that the third sentence of the statement of basis, purpose and statutory authority section should include the word "fully" to make it accurately reflect 40-15-208, C.R.S., as amended by House Bill No. 95-1335 ("HB 95-1335"). We have reviewed the amendments to 40-15-208

that were made by HB 95-1335, and agree with USWC that the word "fully" should be added to the third sentence to make it read consistent with 40-15-208, as amended by HB 95-1335.

5. USWC next makes a series of suggested word changes to some of the definitions appearing in Rule 723-41-2. First, USWC suggests that the word "basic" in Rule 723-41-2.7 concerning the definition of "Geographic Support Area" be deleted so that the rule would refer "universal service" rather than "universal basic service" and be consistent with Rule 723-41-2.13, which defines "Universal Service." Rather than delete the word "basic" in Rule 723-41-2.7, we will add the terms "Universal Basic Service" and "Universal Basic Local Exchange Service" as terms being defined in Rule 723-41-2.13 along with the term "Universal Service." As modified, rule 723-41-2.13 would read as follows:

723-41-2.13. Universal Service, Universal Basic Service and Universal Basic Local Exchange Service. The goal that basic local exchange service be available and affordable to all citizens of the State of Colorado.

USWC next suggests new wording for the definition of the term "Proxy Cost" and wording changes for the term "Proxy Cost Model." The Commission will make the changes recommended by USWC. The wording suggested by USWC is preferable to the wording in the proposed rules. As changed, Rules 723-41-2.9 and 723-41-2.10 will read as follows:

723-41-2.9 Proxy Cost. The estimate of the reasonably required level of investment per access line as generated by the proxy cost model.

723-41-2.10. Proxy Cost Model. A model which produces an estimate of the reasonable required level of investment per access line in a particular Geographic Area. The proxy cost model produces an estimate of the required investment for a defined set of telephone services or features assuming efficient engineering and design criteria and deployment of current state-of-the-art technology

using the current national local exchange network topology. The proxy cost model will not favor one type of technology over another.

USWC recommends adding language to Rule 723-41-2.11 defining the term "Retail Revenues". USWC argues that the definition as written is ambiguous, pointing out that unless modified the first sentence could be read to exclude private line revenues. The Commission disagrees that the definition is ambiguous; the Commission intended to exclude private line revenues, since private line customers do not interconnect with and utilize the public switched network and therefore do not benefit from interconnection with the public switched network. It is the provider's interconnection with the public switched network that will serve as the basis on which the provider will pay or not pay into the Colorado High Cost Fund ("CHCF"). Specifically, with respect to USWC's suggested changes to Rule 723-41-2.11 we will not substitute the words "these Rules" for the words "this Rule" since the Commission uses the words "this rule" to reference all of the individual rules under the major rule 723-41. The Commission will not add the words "including those" because it changes the meaning of the definition. However, the Commission will make the changes suggested by USWC in the last sentence because they make the sentence read correctly. As modified, Rule 723-41-2.11 will read as follows:

723-41-2.11. Retail Revenues. For purpose of this Rule, retail revenues are those revenues derived from the sale of intrastate telecommunication services which benefit from interconnection with the public switched telecommunications network. They include only revenues received from end-users and not other telecommunications providers. A service is considered to have benefited from interconnection with the public switched telecommunications network if it is offered by a telecommunications provider which interconnects with the public switched telecommunications network in a manner such that the providers's end-users of the service can access the general public.

Lastly, USWC suggests that in Rule 723-41-2.13 concerning the definition of "Universal Service" we add the words "widely" and "generally" and delete the words "who desire it." We have examined 40-15-502(3), C.R.S., from which the language in Rule 723-41-2.13 was taken and do not find the words "widely," "generally," nor the words "who desire it." Consequently, we will not add the words "widely" and "generally" and will delete the words "who desire it" as we have done above.

6. USWC suggests that we strike the words "on or before July 1, 1997" at the end of Rule 723-41-4 in keeping with its recommendation that the new CHCF be implemented as soon as possible, and definitely before July 1, 1997. Rule 723-41-4 clearly contemplates that the new CHCF may be implemented prior to July 1, 1997. The July 1, 1997 date in the rule acts as a deadline for the implementation of the new CHCF. Deleting that date would leave the implementation date open, which would be inconsistent with USWC's desires. We will deny this request of USWC.

7. USWC argues that Rule 723-41-6 relating to affordable price standard for basic service is arbitrary and capricious and must be deleted. USWC states that no rationale has been given to support this rule, nor any evidence in the record to support a determination of "affordability" of basic service prices, excluding zone charges. It should be remembered that the Rule we adopt today implements a statutory directive wherein the Commission has been charged with assuring that rates are not only just and reasonable, but also affordable. See 40-15-502(3), C.R.S. Rule 723-1-6 is our statement that we deem the prices in effect for basic service, excluding zone charges, are affordable. We will deny this request of USWC and will not delete this

rule.

8. USWC recommends substantial wording and conceptual changes to Rule 723-41-7. The rule as written would set a telecommunications providers financial obligations to the CHCF based on the ratio of that provider's intrastate retail revenues to all intrastate retail revenues earned in Colorado by all providers. USWC recommends that a percentage be developed by dividing the total annual amount needed to fund the CHCF by the total annual intrastate revenues earned by all providers in Colorado. This percentage would be the same for all providers and would be multiplied by a providers monthly revenues to determine the providers monthly assessment. The Commission considered these two alternatives initially and decided that a provider's obligation to the CHCF should be based on that provider's retail revenue share of the total intrastate retail market, i.e., if the provider's share of the market was 11 percent, then its obligation to the fund would be 11 percent. USWC argues that the concept expressed in Rule 723-41-7 would allow new entrants a one year lag in paying into the fund. We recognize that this may prove to be a deficiency when the new CHCF is implemented. However, this is one of the items that the Task Force is to consider and make a recommendation to the Commission. If it becomes a problem when the new CHCF is implemented, the Commission may need to revisit it. In the meantime, we believe our action is sanctioned by the General Assembly's statements in 40-15-503(2)(a), C.R.S., that

[s]aid rules shall be designed to foster and encourage the emergence of a competitive telecommunications marketplace and may include more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider.

For the time being we will adhere to the rule as written and will deny the request by USWC.

9. USWC states that Rule 723-41-7.1.2 does not read as clearly as it might. USWC suggests a language change. We agree with USWC that the rule does not read as clearly as it might. Rather than adopting USWC's suggested changes, Rule 723-41-7.1.2 will be changed to read as follows:

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

Rule 723-41-7.1.2 has been included in this Rule to specifically address the concerns of wireless telecommunication providers, and any other similarly situated telecommunications provider.

10. USWC objects to Rule 723-41-8.1, which requires a provider to be in compliance with the Commission's rules applicable to the provision of basic local exchange service as a prerequisite to eligibility to receive CHC funding, arguing that it makes no sense to endanger the very source of support which will be needed to improve or maintain service quality because of service quality. We have considered USWC's arguments seriously, but are inclined not to change the rule. As a minimum, a provider should not expect to receive monetary support or to expect the customers of other providers to provide monetary support for its provision of basic local exchange service unless the provider is in compliance with the rules applicable to the provision of basic local exchange service. USWC's request will be denied.

11. USWC suggest that the Commission should clarify when a provider

who is a combination reseller and facilities-based provider may be eligible to receive CHCF support. USWC suggests additional language to Rule 723-41-8.4.

We discussed this issue at length during our prior open meeting deliberation on this rule. At that time the proposed rule included the word "would." We decided to change the word "would" to "may" because we cannot anticipate all future possible circumstances and did not want to decide the issue at this time in this rule. Consequently, we will not make the changes suggested by USWC and will deny its request.

12. USWC argues that Rule 723-41-9.4,¹ concerning disbursements from the CHCF, is "incomprehensible." USWC recommends that the rule be deleted, or at a minimum, rewritten to clarify the confusion. We do not believe the rule should be deleted; however, we do agree with USWC that it should be rewritten and will accept USWC's suggested rewrite of the rule, with the exception of the word "explicit." Rather than using the word "explicit," we will use the word "other." As rewritten, Rule 723-41-9.4 will read as follows:

723-41-9.4. Each Eligible Provider shall receive monthly support from the CHCF based on the number of access lines it serves in high cost geographic support areas, as designated by the Commission, multiplied by the difference between the per line proxy cost and the price received for basic local exchange service, unless the Commission determines a benchmark price should be substituted. This support may be adjusted for any other support amounts received by such providers under support mechanisms established by the Federal Government and by this State.

13. USWC requests that the Commission set a timeframe in which the Administrator should make disbursements to providers and suggests additional language for Rule 723-41-9.5.2. The Commission will deny this suggestion by

¹ USWC references Rule 723-41-9.3 twice. We have determined that USWC was actually referring to Rule 723-41-9.4.

USWC. The suggestion goes to the administration of the CHCF. It is too early to make such a change. If the timing of disbursements becomes a problem in the future under the new CHCF, then we will address the problem at that time.

There does not appear to be any necessity to address the issue now. USWC's request will be denied.

14. The last issue raised by USWC in its application concerns the issue discussed at length in Decision No. C96-352 relating to what should be reflected on end-users bills. In the discussion on this issue leading up to Decision No. C96-352 the Commission voted 2-1 (Commissioner Majkowski dissenting) not to require providers to list the CHCF assessment on the bills of customers, whether those customers be reimbursing providers making payments into the CHCF or those customers of providers receiving payments from the CHCF. USWC believes that the Commission's determination expressed in Decision No. C96-352 is contrary to current CHCF practice. In our prior discussion on this issue we considered all of the benefits and detriments of listing or not listing CHCF payments or receipts on end-users bills. At the special open meeting on April 25, 1996 at which we considered USWC's and other parties applications for rehearing, reargument or reconsideration the Commission voted 1-1 on this issue. Without an affirmative vote of at least two Commissioners, this change in the rules adopted by Decision No. C96-352 may not be made.

B. AT&T's Application for Rehearing, Reargument or Reconsideration.

1. As a preliminary matter, AT&T asks that the Commission revise its decision to give additional direction to the Task Force on important policy issues. For example, AT&T asks the Commission to define "high cost area," to order use of wire centers as the relevant geographic area, and to specify that

the proxy-cost model the Task Force has been directed to develop be a TSLRIC cost model. While all parties hoped to have a comprehensive CHCF mechanism in place by July 1, 1996, the complexity of the issues, combined with the short time frame for rulemaking, necessitated deferring certain issues to a task force. We believe that we have provided adequate guidance regarding the Task Force's mission. We are unwilling to make any declarations which might foreclose consideration of any particular approach, issue, or model. Accordingly, we decline to issue the directives requested by AT&T. AT&T will be entitled to be heard on these issues as a participating member of the Task Force.

2. AT&T also seeks reconsideration of our rejection of the Hatfield Model. We are unwilling to mandate the use of a proprietary model for the estimation of proxy costs in Colorado. However, we assume that in developing a proxy cost model for the state of Colorado, the Task Force will consider the strengths and weaknesses of cost models available for review.

3. AT&T asks the Commission to revise the definition of Geographic Area in Rule 723-41-2.6 so as not to "preclude" the use of an existing provider's wire center as the high cost area. As currently drafted, Rule 723-41-2.6 does not "preclude" the possibility of using wire centers. However, we are concerned that existing wire centers, which may include both high cost and low cost areas, are too large to produce meaningful and fair proxy cost estimates. We therefore deny AT&T's request to amend Rule 723-41-2.6.

4. AT&T next objects to the definition of Retail Revenues found in Rule 723-41-2.11. We addressed our rationale for this definition in our original decision and will not belabor it here. Section 40-15-502(5), C.R.S.,

provides that the CHCF will be funded by assessments on "all telecommunications service providers." The statute does not exempt wireless providers. By limiting Retail Revenues to those revenues flowing from services which benefit from the provider's interconnecting with the public switched network, and by allowing wireless providers to apply for alternative methods of assessment (See Rule 723-41-7.1.2), we have ensured that the assessment on Retail Revenues is competitively neutral and non-discriminatory as to providers of services exempt from Commission jurisdiction pursuant to C.R.S. 40-15-401, *et seq.*

5. AT&T asks the Commission to limit CHCF support to a single residential line. For the reasons articulated in Decision No. C96-352, we decline to exclude business service from the services supported by the Colorado High Cost Fund or to exclude multiple lines.

6. Like USWC, AT&T also objects to Rule 723-41-6, which deems affordable existing rates, excluding zone charges. For the reasons discussed in Part II.A, above, we deny AT&T's request to delete this rule.

7. AT&T next references section 254(e) of the Telecommunications Act of 1996² in asking us to reconsider requiring that CHCF funding assessments be reflected on customer bills. We have addressed this issue above in Part II.A.

If the FCC requires listing surcharges or subsidies on customer bills under the Federal Act,³ we may revisit this question and adopt an approach consistent with any such decision by the FCC.

² "(e) UNIVERSAL SERVICE SUPPORT Any such support should be explicit and sufficient to achieve the purposes of this section."

³ The Federal Communications Commission ("FCC") is just beginning its rulemaking under the Federal Act. Under the Federal Act, the FCC is required to adopt rules implementing Section 254 of the Federal Act to provide universal service.

8. AT&T urges the Commission to clarify Rule 723-41-7.2.3 regarding CHCF assessments to compensate for uncollectible revenues. Because the administrative mechanism is not yet operational, we believe it is too early to set specific directives regarding the administrative handling of uncollectible revenues. We are willing to revisit this issue once the administrative mechanism is up and running if uncollectible revenues become a problem. For now, however, we deny AT&T's request.

9. Next, AT&T asks the Commission to revise Rule 723-41-8.2.1.4 to impose an affirmative burden on Eligible Providers to demonstrate that all internal support or cross-subsidization has been removed from their basic local exchange rates. Pursuant to Section 254(k) of the Federal Act, "a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition." Moreover, Rule 8.2.1.4, as drafted, prohibits providers from recovering more than their reasonable costs of providing service through a combination of high cost funds, local exchange service revenues, and "other sources." We believe that these protections are adequate, without placing an affirmative burden on LECs to specifically prove the removal of sources of support (i.e., prove a "negative").

10. As a related matter, AT&T asks the Commission to add subscriber line charges to the list of those support sources which Rule 723-41-9.4 identifies as factors for determining each provider's CHCF eligibility. As we discussed above in Part II.A, we have revised Rule 723-41-9.4 to delete the list of specific sources of support. Accordingly, this request of AT&T will be denied.

11. Finally, AT&T asks the Commission to revise Rule 723-42-3 to amend the date for determining which carriers are automatically designated as Providers of Last Resort ("POLR"). Specifically, AT&T is concerned that if it or any other new entrant obtains certification to provide basic local exchange service prior to July 1, 1996, it will automatically assume the responsibilities of a POLR. Given that applications for certification are handled pursuant to our *Rules of Practice and Procedure*, 4 C.C.R. 723-1, including a 30-day notice period, a possible hearing, and a need for final Commission action, it is unlikely that any new entrant will be certificated prior to July 1, 1996. If any carrier finds itself saddled with an unwanted POLR designation, it can apply to relinquish the designation pursuant to Rule 723-42-6. Accordingly, we deny AT&T's request.

C. MCI's Application for Rehearing, Reargument, or Reconsideration.

MCI raises only two issues for rehearing, reargument, or reconsideration. First, it asks the Commission to limit CHCF support to a single residential line. See Rule 723-41-5. Next, MCI, like AT&T, asks us to direct that the Task Force recommended adoption of a TSLRIC-based proxy cost model. For the reasons already stated, we affirm our original decisions on these issues and deny MCI's request.

D. CITA's Application for Rehearing, Reargument, or Reconsideration.

1. CITA first addresses the establishment of the Task Force. Because most of its members draw from the CHCF and may participate in the new mechanism when it is activated, CITA seeks "additional votes" in the Task Force. We deny this request. If individual small LECs wish to participate as voting members of the Task Force, they may petition the Commission to do so as

provided in Decision No. C96-352. See Decision No. C96-352 at 8. Moreover, as discussed in Part II.A above, we are permitting Task Force participants to file majority and minority reports. In the event that CITA takes issue with the majority view of the Task Force, it may submit a minority report to the Commission at that time.

2. CITA asks the Commission to reconsider several definitions adopted in Attachment A to Decision No. C96-352. Specifically, it asks that the designation of Eligible Provider (i.e., those eligible to receive CHCF funding) be limited to those also designated as POLRs. We will deny this request. Subsection 40-15-502(5), C.R.S., provides, in part: "A provider's eligibility to receive support under the support mechanisms shall be conditioned upon the provider's offering basic service throughout an entire support area." It does not also require that the provider be designated a POLR. It was not by accident that we did not equate "eligible providers" with "POLRs."⁴ However, both Eligible Providers and POLRs are obligated to offer basic local exchange service to all customers within the geographic support area. Accordingly, those drawing from the CHCF risk loss of funding if they engage in the "cherry picking" envisioned by CITA.

3. Like USWC, CITA noted the ambiguity in Rule 7.1.1, which allows certain providers (such as wireless providers) to seek disparate treatment. We are revising the Rule to clarify our intentions. See Part II.A, *supra*.

4. Next, CITA addresses the method by which the Commission will enforce CHCF assessment obligations. CITA asks that the rules be amended so

⁴ Under the Federal Act, the Commission was obligated to create yet a third designation, that of Eligible Telecommunications Carrier."

that any Commission ordered action (such as directing LECs to terminate interconnection agreements) will be labeled "state action," thus limiting interconnecting carriers' liability. Under the Federal Act, this Commission lacks authority to order disconnection. Moreover, in Rule 723-41-13, we have set forth the methods the Commission will use to enforce the CHCF assessment mechanism, which methods do not include ordering action by interconnecting carriers. Accordingly, CITA's request on this issue will be denied.

5. CITA next asks that the Commission add a provision grandfathering incumbent LECs as Eligible Telecommunications Providers, so that the LECs will not be required to file written applications under Rule 723-42-7 (regarding designation as an ETC). Consistent with HB 95-1335's directive to ease the regulatory burden on small LECs where appropriate, we agree that the public interest is served by avoiding a full-blown application process for those carriers who are already certificated and otherwise eligible for federal universal service funding. Accordingly, we will grant CITA's request for an amendment on this issue, and create a new Rule 723-42-7.1, renumbering former Rules 723-42-7.1 through 723-42-7.2. Rule 723-42-7 will accordingly read as follows:

723-42-7.1. Designation of ETC. A telecommunications service provider who holds a certificate of public convenience and necessity (CPCN) to offer basic local exchange service in a Geographic Area on or before July 1, 1996 shall be considered a ETC in those Geographic Areas.

6. Finally, CITA proposes amending Rule 18.5 of Attachment A⁵ to delete the existing language regarding the local network services tariff cap.

CITA proposes that we then substitute language taken from 40-15-503(2),

⁵ The Application mistakenly references Attachment C.

C.R.S., (regarding the statutory rate cap for local exchange service increases under HB 95-1335). In Decision No. C96-352, we repealed the existing CHCF rules, Rules 16, 17 and 19 of 4 C.C.R. 723-27, and inserted them as Part II of our new CHCF rules. CITA's substantial revision to the existing CHCF mechanism is beyond the scope of our Notice of Proposed Rulemaking in this docket. Moreover, since the rate cap for local exchange service rate increases is already included in statute, it is not necessary that it be repeated in our rules. CITA's request for a revision of Rule 723-41-18.5 is accordingly denied.

III. **ORDER**

A. **The Commission Orders That:**

1. "U S West Communications, Inc.'s Application for Rehearing , Reargument, or Reconsideration of the Colorado High Cost Fund Rules," filed by U S West Communications, Inc., on April 22, 1996 is granted in part and denied in part as discussed above in Part II.A of this decision.

2. "Application for Reconsideration, Rehearing or Reargument by AT&T on the Proposed rules Relating to the Colorado High Cost Fund," filed by AT&T Communications of the Mountain States, Inc., on April 22, 1996 is denied as discussed above in Part II.B of this decision.

3. "Application for Rehearing, Reargument, or Reconsideration of MCI Telecommunications Corporation," filed by MCI Telecommunications Corporation on April 22, 1996 is denied as discussed in Part II.C of this decision.

4. "Application for Rehearing, Reargument and Reconsideration

of Decision No. C96-352," filed by the Colorado Independent Telephone Association on April 22,1996 is granted in part and denied in part as discussed in Part II.D of this decision.

5. The "Amendment to Application for Rehearing, Reargument and Reconsideration of Decision No. C96-352," filed by the Colorado Independent Telephone Association on April 24, 1996 at 4:00 p.m., is stricken as being untimely filed.

6. The rules attached to Decision No. C96-352 as Attachments A and B, which were adopted by Decision No. C96-352, are revised and adopted as set forth in Attachments A and B to this decision.

7. This Decision shall become final 20 days following its Mailed Date in the absence of filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this Decision Granting, in Part, and Denying, in Part, Applications for Rehearing, Reargument, or Reconsideration shall become final upon a Commission ruling denying any such application, in the absence of further order of the Colorado Public Utilities Commission ("Commission").

8. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

9. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

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

11. This Order is effective upon its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING April 25, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
RESIGNED EFFECTIVE APRIL 5, 1996.

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES PRESCRIBING THE
PROCEDURES FOR ADMINISTERING THE
COLORADO HIGH COST FUND

4 CCR 723-41

BASIS, PURPOSE AND STATUTORY AUTHORITY.

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

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

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

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

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

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

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

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

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

functions of the CHCF under the direction of the Commission.

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

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

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

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

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

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

723-41-2.9 Proxy Cost. The estimate of the reasonably required level of investment per access line as generated by the Proxy Cost Model.

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

723-41-2.11 Retail Revenues. For the purpose of this Rule, retail revenues are those revenues derived from the sale of intrastate telecommunications services which benefitted from interconnection with the public switched telecommunications network. They include only revenues received from end-users and not other telecommunications providers. A

service is considered to have benefitted from interconnection with the public switched telecommunications network if it is offered by a telecommunications provider which interconnects with the public switched telecommunications network in a manner such that the provider's end-users of the service can access the general public.

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

723-41-2.13 Universal Service, Universal Basic Service, Universal Basic Local Exchange Service. The goal that basic local exchange service be available and affordable to all citizens of the State of Colorado.

RULE 4 CCR 723-41-3. GENERAL. Toward the ultimate goal of universal service, the Colorado High Cost Fund shall be coordinated with the Federal Communications Commission (FCC) Universal Service Fund, (USF) found at 47 CFR 36.601 to 36.641 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by Section 101 of the "Telecommunications Act of 1996".

RULE 4 CCR 723-41-4. TRANSITION.

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

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

723-41-4.1.2 After Rule 7 becomes effective, Rules 18.6.2

through 18.6.5 of Part II of this Rule are repealed.

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

723-41-4.2.1 July 1, 2003; or

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

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

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

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

RULE 4 CCR 723-41-6. AFFORDABLE PRICE STANDARD FOR BASIC SERVICE. For the purpose of this Rule, the prices in effect for basic service, excluding outside base rate area zone charges, if any, in each Geographic Area on the effective date of this Rule shall be deemed affordable. Pursuant to 40-

15-502(3) C.R.S., a different level may be set by the Commission and designated as a benchmark price.

4 CCR 723-41-PART I

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

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

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

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

723-41-7.2 Process.

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

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

723-41-7.2.3 The Administrator may increase each assessment by an amount necessary to compensate for uncollectible

assessments. Such increase shall generally not exceed 5% of each month's assessment.

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

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

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

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

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

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

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

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

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

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

723-41-8.2.2 Process.

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

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

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

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

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

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

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

723-41-9.1 The Commission shall establish Geographic Areas for the State by order. Such Geographic Areas may be revised.

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

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

723-41-9.4 Each Eligible Provider shall receive monthly support from the CHCF based on the number of access lines it serves in high cost geographic support areas, as designated by the Commission, multiplied by the difference between the per line proxy cost and the price received for basic local exchange service, unless the Commission determines a benchmark price should be substituted. This support may be adjusted for any other sources of support amounts received by such providers under support mechanisms established by the federal government and by this State.

723-41-9.5 Process.

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

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

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

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

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

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

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

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

723-41-10.6 The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.

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

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

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

723-41-10.9.1 a statement of CHCF collections and disbursements,

723-41-10.9.2 a record of the total cost of administration

of the CHCF, and

723-41-10.9.3 the most recent audit report.

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

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

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

RULE 4 CCR 723-41-13. ENFORCEMENT.

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

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

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

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

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

4 CCR 723-41-PART II

RULE 4 CCR 723-41-17. CALCULATION OF AVERAGE LOOP, LOCAL SWITCHING, AND EXCHANGE TRUNK COSTS FOR FUND SUPPORT.

723-41-17.1 The averages used in calculating CHCF support in this

Part II will be computed on the basis of the data reported per this Rule 17 for the preceding calendar year which may be updated at the option of the Small LEC pursuant to 47 CFR 36.612(a).

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

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

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

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

723-41-17.6 The State average unseparated local switching equipment investment per working loop shall be calculated by dividing the sum of the local switching equipment investments in the State, as reported pursuant to Rule 17.4, for all LECs, except Small LECs as determined by the Staff of the Commission, by the sum of the working loops in the State, as reported in Rule 17.4, and for all LECs, except Small LECs as determined by the Staff of the Commission. The State average unseparated exchange trunk equipment investment per working loop shall be calculated by dividing the sum of the exchange trunk equipment investments in the State, as reported pursuant to Rule 17.5, and for all LECs, except Small LECs as determined by the Staff of the Commission, by the sum of the working loops in the State,

as reported in Rule 17.4, and for all LECs, except Small LECs as determined by the Staff of the Commission.

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

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

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

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

723-41-18.1 SUPPORT FOR HIGH LOOP COSTS.

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

723-41-18.1.1.1 For Small LECs reporting an average unseparated loop cost per working loop less than or equal to 115 percent of the national average for this cost, the CHCF revenue requirement for high loop costs shall be the sum of: a) zero (0); and b) the difference between 0.265 and twice the Small LEC's intrastate interexchange SLU, (if

greater than zero), times the LEC's average unseparated loop cost per working loop for this cost.

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

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

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

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

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

723-41-18.2.1.2 For Small LECs reporting an average unseparated local switching equipment investment per working loop in excess

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

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

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

723-41-18.3.1.1 For Small LECs reporting an average unseparated exchange trunk investment per working loop less than or equal to the Colorado average as determined by Rule 17.6, for this investment, the CHCF revenue requirement for exchange trunk cost support shall be zero (0).

723-41-18.3.1.2 For Small LECs reporting an average

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

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

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

723-41-18.4.1.1 First, the total company revenue requirement for the Average Schedule Small LEC shall be determined;

723-41-18.4.1.2 Next, a value known as the "imputed

local network services revenues" is calculated by the Administrator, as the average of the local network services revenues, 47 CFR 32.5000 through 32.5069 for all Small LECs who are not Average Schedule Small LECs, but not including any CHCF revenues;

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

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

723-41-18.6 COLORADO HIGH COST FUND ADMINISTRATION.

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

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

723-41-18.6.1.2 Once established or revised, no further

qualification will be required during the six-year funding period. During the funding period, the amount of CHCF support will be phased down. Funding will be fixed for the first two years (any 12 month period) at 100% of the funding level established. Following the first two years, the support amount will decline and be phased out by year seven. The following is the phase out schedule:

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

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

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

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

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

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

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

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

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

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

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

723-41-18.6.4.1 Intrastate IXCs: One-half of the fund requirement as determined pursuant to Rule shall be funded by a bulk bill

to each intrastate IXC. Each IXC's CHCF bulk bill amount will be based upon the percentage relationship of each IXC's appropriate minutes of use for all intrastate interexchange switched services.

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

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

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

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

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 6.4 above shall contain the information in Form A.

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

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

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

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

723-42-7.1 Designation of ETC. A telecommunications service provider who holds a certificate of public convenience and necessity (CPCN) to offer basic local exchange service in a Geographic Area on or before July 1, 1996 shall be considered a ETC in those Geographic Areas.

723-42-7.2 Contents of Application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

723-42-7.2.1 A statement identifying the decision(s) of this Commission and/or the Federal Communications Commission (FCC) authorizing the applicant to provide telecommunications service.

723-42-7.2.2 A statement describing the Geographic Area for which applicant seeks designation as an ETC. If designation for a

specific Geographic Area, rather than a statewide designation, is sought, the application shall contain a description of such Geographic Area by metes and bounds and a map displaying the service area;

723-42-7.2.3 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to demonstrate that it has the managerial, financial and technical ability to provide basic local exchange service throughout that relevant Geographic Area notwithstanding whether there are other providers in that area;

723-42-7.2.4 An affirmative statement that the applicant will offer the services that are supported by the Federal universal service support mechanisms under 47 U.S.C. 254(c);

723-42-7.2.5 An affirmative statement that the applicant is a Common Carrier; and,

723-42-7.2.6 An affirmative statement that the applicant will advertise the availability of such service and the charges therefore using media of general distribution. At a mini-mum, an ETC must have customer guide pages in the White Pages Directory within the ETC's Geographic Area. Such customer guide pages shall indicate that the provider will offer basic local exchange service to all who request such service within that area.

723-42-7.3 Processing of Applications. The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

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

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

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

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

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

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

Attachment B

Decision No. C96-451

DOCKET NO. 95R-558T

4 CCR 723-42

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

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

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

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

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

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

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

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

by: [name, title and address of officer]