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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

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IN THE MATTER OF	)	
	)	
THE FEDERAL-STATE	)	CC DOCKET NO. 96-45
JOINT BOARD ON	)	
UNIVERSAL SERVICE	)	

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**COMMENTS OF  
THE COLORADO PUBLIC UTILITIES COMMISSION STAFF**

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April 11, 1996

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## **I. INTRODUCTION**

1. The Staff of the Colorado Public Utilities Commission ("Colorado PUC") respectfully submits these comments before the Federal Communications Commission ("FCC") regarding Universal Service. Because of the extensive nature of the notice of proposed rulemaking ("NOPR") in this docket, the Colorado PUC will not address each portion of the NOPR separately. Instead, the Colorado PUC submits its adopted, but not yet effective, rules concerning to universal service and the associated support mechanisms. These rules are being promulgated by the Colorado PUC in response to the opening of the market for basic local exchange service in Colorado to competition.

## **II. TREATMENT OF UNIVERSAL SERVICE AND ITS ASSOCIATED SUPPORT MECHANISMS IN COLORADO**

2. In 1995, the Colorado legislature passed House Bill No. 95-1335 ("HB 95-1335"). HB 95-1335 opened the market for basic local exchange service to competition. This bill specifically addressed the issues of universal service and the associated support mechanisms. Pursuant to HB 95-1335, the Colorado PUC has written rules prescribing (1) the procedures for administering the Colorado High Cost Fund and (2) the procedures for designating telecommunications service providers as providers of last resort or eligible telecommunications carriers. These rules were adopted by the Colorado PUC on April 1, 1996 and should take effect on or before July 1, 1996.<sup>1</sup> The decision adopting these rules (Decision No. C96-352 in Docket No. 95R-558T), and the rules themselves, are attached to these comments as Exhibit 1.

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<sup>1</sup> It is possible that the rules will be amended between now and July 1, 1996 because they are still subject to rehearing, reargument of reconsideration.

3. The Colorado PUC believes that its rules should be used by the FCC as a model in those areas at issue in both the Colorado and this rulemaking docket. The Colorado PUC urges the FCC to adopt the Colorado PUC's standards because of the similarity between the pertinent provisions of the Telecommunications Act of 1996 and HB 95-1335. The Colorado rules address the following issues identified in § 254(b) of the Telecommunications Act of 1996: quality and rates, access to advanced services, access in rural and high cost areas, equitable and nondiscriminatory contributions, and specific and predictable support mechanisms. The Colorado PUC has not yet addressed issues relating to access to advanced telecommunications services for schools, health care facilities, and libraries.

4. Specifically, the Colorado PUC suggests that the FCC adopt rules whereby basic service, access to 911 service, and access to operator services are the services and features supported by universal service. The Colorado PUC has adopted by rule the following standards as defining basic service:

17.1 Basic Service Standard. As part of its obligation to provide adequate basic telephone service, each LEC shall construct and maintain its telecommunications network so that the instrumentalities, equipment and facilities within the network shall be adequate, efficient, just and reasonable in all respects in order to provide each customer within its jurisdictional service area with the following services or capabilities:

17.1.1 Individual line service on the local access line;

17.1.2 Dual tone multifrequency signaling capability on the local access line;

17.1.3 Facsimile and data transmission capability of at least 2400 bits per second on analog access lines served from the public switched network when the customer uses modulation/demodulation devices rated for such capability;

17.1.4 A local calling area that reflects the community of interest of the area in which the customer is located;

17.1.5 Access to toll services, *i.e.*, any telecommunications service provider granted authority to serve in an area in which the incumbent telecommunications service provider has provided the capability for a customer to presubscribe to different MTS providers for the use of 1+ dialing capability shall also provide that capability to all customers served in such area;

17.1.6 Customer billing, public information assistance, directory listing, directory assistance and intercept to the extent described in Rules 10, 11, 12 of these Rules Regulating Telecommunications Service Providers and Telephone Utilities, (4 CCR 723-2);

17.1.7 In the event of a commercial power failure, the telecommunications service provider shall continue to provide, through the local access line, power from the telecommunications service provider's power source to the network interface in landline (coaxial, fiber, copper, etc.) applications in order to support existing basic service to lines that utilize a traditional ringer; and

17.1.8 At a minimum, all telecommunications service providers shall offer basic telephone service (as defined in this Rule) by itself as a separate tariff offering. This provision does not preclude the telecommunications service provider from also offering basic telephone service packaged with other services.

17.2 Universal Service Availability Standard. In order to maintain a reasonable uniformity between all localities in the state for adequate basic telephone service in the ordinary course of its business pursuant to its certificate of public convenience and necessity, each LEC shall construct and maintain its telecommunications network so as to provide for universal (*i.e.* ubiquitous) availability of the following services or capabilities when requested by a customer within its jurisdictional serving area:

17.2.1 The basic service standard defined in Rule 17.1 (17.1.1 through 17.1.8); and

17.2.2 E911 service, either by providing the necessary facilities and identification (name/number, etc.) information to a basic emergency service provider or as provided by the LEC under Rules Prescribing the Provisions of Emergency Reporting Services for Emergency Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-29 shall be available to any governing body upon request; and

17.2.3 Services to which the customer may voluntarily subscribe that deny access to MTS or other information service providers.

17.3 Local Calling Area Standards. Local Calling areas as established by the Commission shall be considered to meet the community of interest standard. Any telecommunications service provider that is granted authority to offer basic local exchange service in an area included within an exchange for which the Commission has previously established a Local Calling Area shall provide that same calling area to its customers, unless modified by order of the Commission.

Rule 17 of the Colorado PUC's Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 Colo. Code Regs § 723-2.

5. The Colorado PUC urges the FCC to adopt rules which enable a telecommunications service provider to receive support if the telecommunications service provider provides the above listed elements of basic service. It should also be noted, however, that the Colorado PUC recognizes that the above elements and services should be considered as a starting point and that this list is an evolving definition. See Rule 5 of the Colorado PUC's Rules Prescribing the Procedures for Administering the Colorado High Cost Fund, 4 Colo. Code Regs § 723-41, on Page 5 of Attachment A to Exhibit 1.

6. The Colorado PUC believes that the FCC should take into account the concept of local calling areas and their impact on the need of certain telecommunications service providers to draw from a support fund. The Colorado PUC has faced this issue and has made the provision of service within a local calling area, as defined by the relevant community of interest, a requirement for providing adequate basic local exchange service. The FCC should do likewise as the size, population density and geography of a certain local calling area bears directly on a provider's ability to provide universal service.

7. The Colorado PUC also wishes to point out that it believes that funding should be applied to all access lines (business and residential) in rural and high cost areas. The Colorado PUC came to this conclusion when faced with the same legislative directive as is present in Section 254(b) of the Telecommunications Act of 1996. Namely, that its rules must further universal basic service at rates that are just, reasonable, and affordable and that are reasonably comparable between urban and rural areas. *See* § 40-15-502, C.R.S. (Supp. 1995).

8. The Colorado PUC suggests that access in rural and high cost areas be supported by equitable and nondiscriminatory contributions from **all** providers of telecommunications services, without exception. The Colorado PUC further suggests that the geographic support area be set by the state regulatory agency and not the FCC. This is because of the varied topography and population distribution among the various states. The Colorado PUC believes that an agency such as itself is in a much better position to determine the extent of a given geographic support area. Moreover, the Colorado PUC did not adopt the census block group methodology *carte blanche* but has used it as a starting point from which it intends to make necessary modifications.

9. With respect to specific and predictable support mechanisms, the Colorado PUC has decided that the most appropriate way to preserve and advance universal service is to require an explicit surcharge on all telecommunications revenues. As such, each provider's intrastate revenues would be used to support the Colorado High Cost Fund, and the Colorado PUC would urge that the FCC utilize the interstate revenues to support a federal universal service fund. This method is both predictable and specific and should be adopted by the FCC.

10. The funds generated from these support mechanism should only be made available to eligible telecommunications carriers. The Colorado PUC has decided that an eligible provider

must provide basic local exchange service to all residential and business customers in a geographic support area in order to be eligible to receive Colorado High Cost funding. As such, the Colorado PUC does not require an eligible provider to also be designated as a provider of last resort. The Colorado PUC believes that its methodology best advances the goal of promoting competition in the provision of basic service.

11. With respect to fund administration, the Colorado PUC wishes to stress its strong belief that local regulatory agencies are in the best position to fairly and economically administer universal service type funds. The Colorado PUC continues to be the administrator for the Colorado High Cost Fund. Therefore, it will be easy for us to take on the additional responsibility of administering a federal universal service fund. It is important for a government agency not interested in its own profits to be the administrator of such funds. This is especially true as it prevents any opportunity for a telecommunications service provider to enter into some sort of special and symbiotic relationship which could easily happen if the administrator was a private entity. This type of relationship cannot exist in Colorado because the Colorado PUC currently requires that it review for reasonableness costs submitted by telecommunications service providers before permitting the provider to receive a reimbursement from the Colorado High Cost Fund. *See* Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier, 4 Colo. Code Regs § 723-42 (Attachment B to Exhibit 1). The Colorado PUC would recommend that the FCC adopt the same procedure with respect to the administration of a federal universal service fund, including the designation of the local regulatory agency as the administrator.

12. Finally, the Colorado PUC urges the FCC to adopt rules akin to Rules 17 and 18 of the Colorado PUC's Rules Prescribing the Procedures for Administering the Colorado High Cost Fund, 4 Colo. Code Regs § 723-41, on Page 12-20 of Attachment A to Exhibit 1. These rules provide for a transition from the old mechanism to the new mechanism which will exist after promulgation of these rules. This transition assists small basic local exchange service providers because it enables them to delay participation in the new mechanism until July 1, 2003.

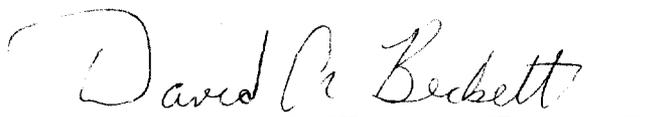
13. In all other respects, the Colorado PUC suggests that the FCC fully consider the rules and the discussion in the attached decision (Exhibit 1) which have been adopted by the Colorado PUC.

### **III. CONCLUSION**

14. The Colorado PUC urges the FCC to adopt rules in accordance with those set forth in Exhibit 1 to these opening comments. Notably, this includes tying support to the provision of Basic Service, as defined in these comments, and providing support to all access lines.

Dated at Denver, Colorado this 11th day of April, 1996.

Respectfully submitted,

A handwritten signature in cursive script that reads "David A. Beckett". The signature is written in dark ink and is positioned above a horizontal line.

David A. Beckett, Esq.  
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RECEIVED  
APR 12 1996

(Decision No. C96-352)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED )  
R U L E S R E G A R D I N G )  
IMPLEMENTATION OF §§ 40-15-101 )  
ET. SEQ. --REQUIREMENTS RELATING )  
TO THE COLORADO HIGH COST )  
FUND.

DOCKET NO. 95R-558T

**DECISION ADOPTING RULES**

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Mailed Date: April 1, 1996  
Adopted Date: March 29, 1996  
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**I. BY THE COMMISSION:**

**A. Background and Procedural Matters.**

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

1. cost-based, unbundled, nondiscriminatory carrier interconnection to essential facilities or functions;
2. cost-based number portability and the competitively neutral administration of telephone numbering plans;
3. cost-based, open network architecture;
4. terms and conditions for resale of services that enhance competition;

5. assessment, collection and distribution of contributions to the Colorado High Cost Fund created by § 40-15-208, C.R.S., and any other financial support mechanisms created pursuant to § 40-15-502(4), C.R.S. and

6. access to Emergency 911 service.

See § 40-15-503(2)(b), C.R.S.

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

3. HB 95-1335 contains an equally important, and somewhat counterbalancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service. "Basic service" is the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

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

4. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one

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<sup>1</sup> See §§ 40-15-502(1) and (3)(b), C.R.S.

<sup>2</sup> See § 40-15-503(2)(e), C.R.S.

provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the economic conditions of urban and rural areas of the state. *Id.* Furthermore, the Commission must adopt rules which allow simplified regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

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

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

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

firms and corporations that had previously filed written comments and reply comments.

8. The following participants submitted written and oral comments on the proposed rules prior to the hearing: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&TW"); Colorado Independent Telephone Association ("CITA"); Colorado Office of Consumer Counsel ("OCC"); Competitive Telecommunications Association ("Comptel"); ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Warren L. Wendling of the Staff of the Commission ("Staff"); TCI Communications, Inc., Teleport Communications Group, Inc., Sprint Telecommunications Venture, and Sprint Communications Company, L.P. ("TCI, *et al*"); University of Colorado and Colorado State University ("Universities"); and U S WEST Communications, Inc. ("USWC").

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

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

11. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission has taken administrative

notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995<sup>3</sup>. These reports are filed in Docket No. 95M-560T, the repository docket regarding implementation of §§ 40-15-501, *et seq.*, C.R.S.

## II. DISCUSSION.

### A. Structure of Rules.

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

2. Although the legislature has authorized the Commission to "create a system of support mechanisms to assist in the provision of such services [universal basic service, advance service and any future revisions to the definition of basic service] in high cost areas" § 40-15-502(5), C.R.S. (emphasis added), the rules

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<sup>3</sup> This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

adopted at this time will be applicable only to the CHCF. The CHCF rules will be in two parts, preceded by definitions and general provisions: Part I (Rules 7 - 16) will be applicable to the CHCF and contains the new rules implementing HB 95-1335. It also takes into consideration the provisions of the Federal Act. Part II of the rules (Rules 17 and 18) will apply to small local exchange companies ("Small LECs"), effective July 1, 1996, either until July 1, 2003, or until another telecommunications provider holding authority from the Commission to provide basic service in the Small LEC'S service territory is declared eligible to draw CHCF support under Part I, or until a Small LEC elects to be subject to Part I, whichever of these three events occurs first. Part II essentially is a readoption of the existing CHCF rules found in the *Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers*, 4 CCR 723-27, Part 2, Rules 16, 17 and 19, with reference changes necessitated by their readoption in Part II of these rules. To avoid duplication, existing Rules 16, 17 and 19 will be repealed, effective July 1, 1996.

**B. Colorado High Cost Fund Task Force.**

1. We have decided also to separate out certain of the non-consensus issues for further consideration by an interim task force to be created by this decision.

Specifically, in this decision we will create a Colorado High Cost Fund Task Force ("Task Force") to be chaired by the Commission's Staff. Parties, such as AT&T, AT&TW, CITA, OCC, MCI, TCI and USWC will be asked by the Commission to participate as voting members of the Task Force. Other parties to this docket and other persons, firms and corporations interested in participating may petition the

Commission for membership on the Task Force. Meetings of the Task Force shall be open to the public. The Task Force will be required to file with the Commission an interim report on the issues referred to it by this decision no later than October 31, 1996, and a final report no later than December 31, 1996. The Commission would urge the Task Force to forward to the Commission its recommendations as they are finalized, rather than waiting for the October 31 and December 31 deadlines. As ordered hereinafter, the Task Force should consider and make recommendations on the following issues:

1. a mechanism to determine whether a particular geographic support area is a high cost area;
2. the metes and bounds of geographic support areas in the state of Colorado;
3. a non-proprietary proxy cost model that approximates a reasonable level of investment per access line and that converts the estimated investment into a reasonable recurring cost;
4. a mechanism that reflects a decrease in the CHCF subsidy over time to reflect increases in technology, productivity, efficiency and depreciation in plant and equipment;
5. a mechanism to ensure portability of support;
6. a mechanism to account for the presence of, and removal of, internal subsidies;
7. whether a benchmark price is appropriate and, if so, what the benchmark price should be;
8. a mechanism for funding unserved customer;
9. a mechanism to monitor progress toward the goal of universal service;

10. an implementation process for the post 1997 CHCF with a corresponding time line containing milestone dates. The implementation process should consider the timing needed to allow for:
  - a. finalizing the designation of geographic support areas;
  - b. finalizing the runs of the proxy cost model;
  - c. publishing the amount of support per access line in each support area;
  - d. establishing reporting forms for providers to report their retail revenues;
  - e. the transition from the existing source of CHCF funding to the new source of CHCF funding; and
  - f. the transition to the new CHCF disbursal mechanism to new recipients; and
11. a mechanism for determining the level of contribution into the CHCF which does not rely solely on revenues, e.g., other perspectives on market share, such as minutes of use.

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

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

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

1. The statute does not define "substantial deference." Thus, in the course of this HB 95-1335 rulemaking proceeding, we have developed and applied our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

2. In implementing our understanding of "substantial deference," we have taken the following into consideration:<sup>4</sup> our constitutional and statutory obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rules with all provisions of §§ 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rules with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rules and the processes described therein; the ability of the Commission to enforce the proposed consensus rules; the ability of the proposed consensus rules to accomplish or to assist in the transition to a fully competitive

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

telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rules to all telecommunications service providers, existing and prospective. We examined each proposed consensus rule in light of these considerations.

3. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary and in the public interest. The intervening federal Act also forces us to deviate from some consensus proposals. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale supporting any decision by this Commission to reject a consensus rule will be clearly articulated. (a) **Comments of the Universities.** The Universities filed comments in this docket incorporating by reference the comments filed by the Universities in Docket Nos. 95R-553T, 95R-554T and 95R-555T. In those dockets, the Universities argued that the requirements of the rules mandated to be adopted pursuant to HB 95-1335 should not apply to institutions of higher education<sup>5</sup> which own or lease and operate their own telecommunications systems for the purpose of providing communications within their systems and local exchange access services to administration, faculty, staff, government and/or university-affiliated non-profit corporation employees at their work locations, and to students residing in institution-affiliated housing.

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

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

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

**CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately.**

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

\* \* \*

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

Decision No. R84-428 at 5.

6. With the advent of HB 95-1335, the local exchange telecommunications service market in Colorado will be changed radically. For example, in Docket

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<sup>6</sup> Decision No. R84-428 is expressly limited in its applicability to the telephone system of CSU as described in that decision.

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

7. For the purpose of this rulemaking proceeding, we reject the argument of the Universities that institutions of higher learning should be exempted from the application of these rules. In light of the evolving responsibilities of local exchange service providers under HB 95-1335,<sup>9</sup> the broad statutory definition of "public utility" (*see* § 40-1-103, C.R.S.)<sup>10</sup>, and the inclusive definition of "person"

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<sup>7</sup> Section 40-15-501(3)(c), C.R.S.

<sup>8</sup> Section 40-15-502(6), C.R.S.

<sup>9</sup> "Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens[.]" Section 40-15-501(2)(a), C.R.S.

"A provider that offers basic local exchange service through use of its own facilities or on a resale basis may be qualified as a provider of last resort, . . . . Resale shall be made available on a nondiscriminatory basis[.]" Section 40-15-502(5)(b), C.R.S.

<sup>10</sup> As relevant here, this section defines a "public utility" as "every common carrier, . . . telephone corporation, telegraph corporation, . . . person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest[.]" This definition is subject to exemptions found in § 40-1-103(1)(b).

(see § 40-1-102(5), C.R.S.)<sup>11</sup>, we find that the record in this proceeding does not support the adoption of the Universities' proposed language.

8. We also find that the Universities' proposed language may create an exemption from the application of these rules that is overly broad. We believe that the issues raised by the Universities are more appropriately considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed, and so decline to exempt the Universities by rule.

#### **D. Funding for Access Lines.**

1. There was not consensus on the issue of funding for access lines in the CHCF rules attached to the November report. Some of the parties urged the Commission to limit Colorado High Cost funding to a single residential line. Other parties urged the Commission to maintain the current practice of funding all access lines of a high cost provider.

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

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<sup>11</sup> This section defines "person" as "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity."

C.R.S, the General Assembly created, by statute, the current Colorado High Cost Fund. In § 40-15-208, the General Assembly specifically ratified the CHCF previously created by rule by the Commission:

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

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

3. There is nothing in the amendments to § 40-15-208, C.R.S., or in the newly enacted § 40-15-502, C.R.S. that would lead the Commission to conclude the General Assembly intended to modify or reject the current practice of applying Colorado High Cost funding to all access lines in a high cost area. Restricting funding to only one residential access line at this time would be a drastic change from the Commission's current practice. The Commission is concerned that some of the small companies currently receiving support under the current rules for investments in plant would be at serious risk if future funding were restricted to only a single residential access line. Also, the Commission does not have sufficient information in this docket to make a determination as to how restricting funding to a single residential line would affect rates to customers in high cost areas. The Commission is mindful of the legislature's directive to adopt rules that further universal basic service at rates that are just, reasonable and affordable and that are reasonably comparable between urban and rural areas. See Section 40-15-502, C.R.S.