

**STAFF REPORT TO THE COLORADO PUBLIC
UTILITIES COMMISSION**

**ON THE COLORADO HIGH COST SUPPORT
MECHANISM WORKSHOPS HELD IN DOCKET NO. 05I-431T**

Report submitted July 11, 2008

**REPORT TO THE COLORADO PUBLIC UTILITIES COMMISSION
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MECHANISM WORKSHOPS**

I. BACKGROUND

1. By Decision No. C05-1239, the Commission opened Docket No. 05I-431T to examine the Colorado High Cost Support Mechanism (CHCSM or Mechanism). By Decision No. C06-0018, the Commission directed that certain issues related to designation of Eligible Telecommunications Carriers also be addressed in this investigation proceeding. This Report is filed in, and addresses, the Docket No. 05I-431T workshops and comments.

2. The following participated in the workshops and/or filed written comments: Alltel Communications, Inc. (Alltel); AT&T Communications of the Mountain States, Inc. (AT&T); CenturyTel of Eagle, Inc., and CenturyTel of Colorado, Inc. (CenturyTel); Colorado Office of Consumer Counsel (OCC); Colorado Telecommunications Association (CTA); Cricket Communications (Cricket), GVNW Consulting, Inc. (GVNW); N.E. Colorado Cellular, Inc., doing business as NECC (NECC); New Cingular Wireless PCS, LLC (Cingular); Qwest Corporation (Qwest); Telecom Consulting Associates; and Verizon Wireless (VAW) LLC (Verizon Wireless).

3. Participants who chose to do so filed written comments in advance of each workshop. Each participant determined for itself the way in which it would participate in this investigation. Thus, some elected to participate only by submitting written comments; some elected to participate only by attending the workshops; and some elected to do both.

4. An Administrative Law Judge served as facilitator. The Staff personnel who participated in, or attended, the workshops and who assisted in the preparation of this report are:

Ms. Ellie Friedman, Ms. Lynn Notarianni, Ms. Pat Parker, Ms. Becky Quintana, and Ms. Susan Travis.

II. CAVEATS AND DISCLAIMERS

5. This report does not discuss or include, except by way of general reference, the statutory changes that have been enacted and events that have occurred since the workshops were concluded and the filings were made in this investigation proceeding. For example, § 27 of House Bill No. 08-1277 eliminates the rate cap on residential service and replaces it with the following language:

the Commission shall structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market with the policy that prices for residential basic local exchange service, including zone charges, if any, do not rise about the levels determined by the Commission.

Section 40-15-502(3)(b)(I), C.R.S. (effective July 1, 2008). The General Assembly listed in § 40-15-502(3)(b)(I.5), C.R.S., three items that the Commission is to consider and one item that the Commission may consider in determining the price levels. The effect that this amendment has on the arguments presented at the workshops is unknown at this time.

6. In addition, during the time that the workshops were being held, the Commission issued Decision No. C06-1005, which changed the process by which rural local exchange carriers (LECs) establish Colorado High Cost Support Mechanism support levels and verify those levels each year. *See also* Decision No. C06-1172, issued in Docket No. 05R-529T. When the workshops began, rural LECs were required to file a rate case to establish CHCSM support levels initially and to verify those support levels each year. In the Docket No. 05R-529T decisions, the Commission streamlined the process by substituting one page annual reports for the general rate case requirement for determination of a rural LEC's on-going CHCSM support levels. The change had been made by the time Workshop No. 6 was held. This report does not attempt to identify the arguments presented by, and positions taken by, participants in the workshops that may have changed as a result of this Commission Decision.

7. The participants' views and positions contained in the report are as of the workshops and filings in this investigation proceeding. It is possible -- even likely -- that some views or positions may change over time due to changed circumstances such as, for example, a change in federal or state law. Similarly, the participants' views or positions may change on further reflection or as additional or new information comes to light. Consequently, the reader should consider the participants' views and positions discussed in this report to be non-binding and subject to change. As pertinent to any rulemaking that the Commission may undertake in the future, views expressed during the course of the rulemaking will be more telling.

8. Staff makes no recommendations in this report. Staff provides, however, additional information on some of the questions discussed during the workshops. The additional information is based on, or provides further information about, discussion during the workshops. If the Commission should decide to commence rulemaking in the future, Staff may make recommendations during the course of that proceeding.

9. This report is offered as but one tool that may be used as the Commission considers whether, and if so how, the rules pertaining to the Colorado High Cost Support Mechanism, the designation of Eligible Providers, and the designation of Eligible Telecommunications Carriers should be changed. Because it presents an overview of the discussion that took place during the workshops conducted in this investigation docket, this report is not, and is not intended to be, the end-all and be-all in the discussion of the Colorado High Cost Support Mechanism, of the pertinent rules, or of the views of the participants.

III. ORGANIZATION OF THE REPORT

10. As an attachment to Decision No. C05-1239, the Commission listed the topics and asked the questions that the participants were asked to explore in the workshops. This report is organized around those questions: for each of the seven workshops, the question to be discussed is stated, followed by a synopsis of the discussion that occurred during the workshop.¹

11. Staff prepared a matrix of the filed comments (both initial and reply) for each of the following: Workshops No. 1, No. 2, No. 3, No. 4, and No. 7.² For these five workshops, this report contains a synopsis of the workshop discussion but not of the written comments. For these workshops, therefore, it is necessary to read both the pertinent comment matrix and the synopsis of the workshop discussion.

12. Staff did not prepare a comment matrix for Workshops No. 5 and No. 6. For these workshops, then, the discussion in the report incorporates both the written comments and a synopsis of the workshop discussion.

13. At the conclusion of the workshops, the participants were invited to submit proposed rule changes. CTA, OCC, and Qwest each submitted proposed rule changes, which are attached as appendices to this report.³

14. Attached as appendices to this report are other documents. Appendix No. 4 contains federal and Colorado statutes (as they existed during the workshops) that are pertinent to the workshop issues and/or were cited by the participants. Appendix No. 5 is the National

¹ Where appropriate, there is an "additional information" section that contains information that Staff has added.

² The comments are filed in the docket and are not appended to this report. The five comment matrices are appendices to this report.

³ The CTA proposed rule changes are Appendix 1. The OCC proposed rule changes are Appendix 2. The Qwest proposed rule changes are Appendix 3.

Regulatory Research Institute report entitled *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey* (July, 2006). Appendix No. 6 is a copy of the Eligible Telecommunications Carrier rules, the Provider of Last Resort rules, the Eligible Provider rules, the Colorado High Cost Support Mechanism rules, and the service quality rules applicable to telecommunications providers as those Commission rules existed in 2006 during the workshops. Other appendices are identified in the body of the report.

IV. **RULES DISCUSSED DURING WORKSHOPS**

15. Prior to April 1, 2006, the Rules Prescribing the High Cost Support Mechanism and Prescribing the Procedures for the Colorado High Cost Administration Fund were found in Rule 4 *Code of Colorado Regulations* (CCR) 723-41. Prior to April 1, 2006, the Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier were found in Rule 4 CCR 723-42.

16. Beginning April 1, 2006 and during the course of the workshops, Rules 4 CCR 723-2-2840 through 2855 and Rule 4 CCR 723-2-2189 governed the CHCSM and designation of Eligible Providers (EPs). Rules 4 CCR 723-2-2180 through 2189 governed designation of Eligible Telecommunications Carriers (ETCs) and of Providers of Last Resort (POLRs). Rule 4 CCR 723-2-2188 governed relinquishment of ETC status.⁴

17. The participants presented comments and had discussions based on the Rules as they existed on April 1, 2006. Doubtless, some of the pertinent rules have changed since the workshop discussions. The discussions and the rule references are as presented during the workshops, with no attempt to update the comments and discussions to reflect the current rules.

⁴ See Appendix 6 (copy of the Commission's 2006 rules).

V. ELIGIBLE TELECOMMUNICATIONS CARRIER AND ELIGIBLE PROVIDER

18. *Eligible telecommunications carriers* are creatures of federal law, created by 47 U.S.C. § 214(e). There can be more than one ETC in a service area.

19. Pursuant to 47 U.S.C. § 214(e)(2) and as relevant here, in an area not served by a rural telephone company, this Commission *must* grant an ETC designation to a common telecommunications carrier that requests the designation and that meets the requirements of 47 U.S.C. § 214(e)(1), provided the Commission finds that granting the ETC status is consistent with the public convenience, necessity, and interest. Pursuant to 47 U.S.C. § 214(e)(2) and as relevant here, in an area served by a rural telephone company, this Commission *may* grant an ETC designation to a common telecommunications carrier that requests the designation and that meets the requirements of 47 U.S.C. § 214(e)(1), provided the Commission finds that granting the ETC status is consistent with the public convenience, necessity, and interest *and* makes a finding that granting the designation is in the public interest.

20. Once designated as an ETC, a carrier must offer the services that are supported by the federal Universal Service Fund throughout the service area⁵ in which it is an ETC; must offer the supported services by means either of its own facilities or of its own facilities and resale of another carrier's services; and is eligible to receive federal USF money. If a service area is served by more than one ETC, an ETC may relinquish its designation if the procedures established in 47 U.S.C. § 214(e)(4) are followed.

21. The FCC rules pertaining to ETCs are found at 47 *Code of Federal Regulations* (CFR) §§ 54.201 - 207. This Commission's rules governing designation of ETCs are found at

⁵ The service area is the "geographic area established by [the Commission] ... for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the [FCC] and the States, ... establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5).

Rule 4 CCR 723-2-2187 (designation, annual report, annual state certification for federal support) and Rule 4 CCR 723-2-2188 (relinquishment of designation).

22. *Eligible providers* are creatures of Colorado state law, created by Rule 4 CCR 723-2-2847. There can be more than one EP within a geographic support area.⁶

23. To be eligible to be an EP, a carrier must be in substantial compliance with rules applicable to the provision of local service; must be either designated as, or be applying for designation as, an ETC; and must offer service by means of its own facilities, by a combination of its own facilities and use of Unbundled Network Elements (UNEs), or solely by the use of UNEs. A provider that offers service by reselling a finished service purchased from a facilities-based provider or that combines that purchased service with other services⁷ is not eligible to be designated as an EP and to receive CHCSM support.

24. If a geographic support area is served by more than one EP, an EP may relinquish its designation if the procedures established in Rule 4 CCR 723-2-2188 are followed.

25. The Commission rules governing EPs are found at Rule 4 CCR 723-2-2847 (eligibility, process for designation) and 723-2-2188 (relinquishment of designation).

⁶ Rule 4 CCR 723-2-2841(e) defines geographic support area as "a geographic area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the" High Cost Support Mechanism.

⁷ This type of carrier is referred to as a pure reseller.

VI. WORKSHOP DISCUSSIONS

A. First Workshop (CHCSM supported services and areas)

26. The comment matrix for this workshop is Appendix 7.

27. **Question 1:** What access lines should be supported, if any? *See* Rule 4 CCR 723-41-2.1 (in effect through March 31, 2006) and Rule 2001(a) (effective on April 1, 2006) for definition of access line. If access lines are to be supported, is it appropriate to support all residential and all business lines? Alternatively, is it appropriate, all things considered, to support only the primary residence and/or business lines?

28. **Areas of agreement:** The participants agreed that access lines should be supported.

29. **Areas of disagreement:** One point of disagreement was the intent of § 40-15-502(3), C.R.S., specifically the definition of universal service. In addition, there was discussion as to whether support should be provided for the network as a whole, for the carriers providing service, or for the access line to the consumer.

30. OCC, Verizon Wireless, and Qwest were in agreement, generally because of the current size of the CHCSM Fund, that only primary business and residential lines should be supported. CTA and NECC were in favor of continuing support on all lines. Cingular Wireless took no position but emphasized that support should not be expanded beyond current services.

31. In CTA's view, the legislative purpose of the CHCSM is to spread and to proliferate service, making service in rural areas comparable in price, availability, and type with service in non-rural areas. In addition, CTA maintained that, if the intent of the General Assembly was to support a primary line rather than the service in general, the Commission would have made that distinction at the time high cost support rules were drafted in 1996. OCC argued that universal service is accomplished when the first line of connectivity is provided; thus, additional lines should not be considered for high cost support. OCC advocated focusing

on the premises address to determine support. Qwest noted that, for non-rural EPs, the Commission has historically interpreted the statute to mean that only one line is supported but that a then-recent Commission decision⁸ ordered that all access lines be supported.

32. **Question 2:** Is the current definition of eligible services appropriate? In either case, please provide rationale and alternative definitions, as needed.

33. **Areas of agreement:** In general, the participants agreed that the current definition is appropriate.

34. **Areas of disagreement:** OCC contended that stand-alone basic service should be a requirement and that there should be a quality of service component to the requirements. NECC suggested that the FCC definition is adequate, with the following modifications: (a) equal access should not be included, but should be replaced with access to interexchange services; (b) billing rules should not be required; and (c) white pages listings should not be required of wireless carriers.

35. **Additional information:** In 2006, the Commission concluded its triennial review of the definition of basic local exchange service. Docket No. 06I-084T. In Decision No. C06-0973, the Commission determined that no change to the definition was necessary. Thus, the Commission determined that it would not expand or restrict the definition. The definition of basic local exchange service is found in Rule 4 CCR 723-2-2308(a).

36. **Question 3:** If the Commission determines that only primary access lines are to be supported, then describe, in detail and with proper documentation, the implementation process for this alteration.

⁸ In Decision No. C02-1250, the Commission amended the CHCSM Rules to allow support of all access lines of non-rural carriers, *i.e.*, Qwest. (Previously, Qwest had received support for only primary residential or business access lines, while rural LECs received support for all lines.) The Commission allowed support for all access lines in the interest of fostering competition.

37. **Areas of agreement:** No agreement was reached during the workshop.

38. **Areas of disagreement:** OCC and Qwest agreed that only primary residential and business lines should be supported. In addition, OCC suggested that the National Association of State Utility Consumer Advocates has appropriate recommendations for implementing a program that supports only primary lines. Further, OCC recommended that all carriers provide a quarterly report containing a count of all eligible telephone accounts and an affidavit attesting to the veracity of the count as representing only one account number per household or business.

39. Maintaining its position that support should not be limited to primary lines, CTA said that, if support is limited as suggested by OCC and Qwest, only the network of the provider of last resort should be supported. NECC maintained its position that limiting support to primary lines is not appropriate and noted that there would be implementation challenges if such a plan were to be adopted.

40. **Question 4:** With reference to the new regulatory formats that derive from Commission Docket No. 04A-411T: Is it advisable or appropriate for services subject to Market Regulation, as discussed by the Commission in Decision No. C05-0802, to receive CHCSM support?

41. **Areas of agreement:** No agreement was reached during the workshop.

42. **Areas of disagreement:** Qwest and CTA appeared to be in agreement. Qwest asserted that, regardless of regulatory treatment, services that are eligible for high cost support should receive support; and CTA noted, without directly referencing Market Regulation, that POLRs should be eligible for support. OCC maintained that, while in principle services subject to Market Regulation should not receive support,. OCC observed that, because Market

Regulation applies only to additional residential and business lines, this question would be moot if support were to be provided only to the primary residential and business lines.

43. **Additional information:** Should the Commission expand Market Regulation to cover additional services, Staff notes that, of the wire centers that are included in zones of competition (ZOCs), the following wire centers were also eligible for CHCSM funding in 2006: Air Force Academy, Aurora-Monaghan, Colorado Springs-Gatehouse, Denver International Airport, Erie, and Niwot.⁹

44. **Question 5:** What is the proper definition of "high-cost" in the context of the CHCSM? Is it either necessary or advisable to modify the current definition of "high cost"? If so, what should the definition of "high-cost" be? What is the definition or description of an access line that is "high cost"?

45. **Areas of agreement:** No agreement was reached during the workshop.

46. **Areas of disagreement:** While there is no specific definition of "high cost" in the Rules, OCC and Qwest agreed that the definition results from applying the rules. Qwest stated that for Qwest this means the lines where the forward-looking cost of service per line exceeds the average revenue per line (as defined by the Commission) on a wire center basis. (Rule 4 CCR 723-2-2855 defines support calculation for Rural ILECs.) Qwest suggested that an "affordability benchmark" be substituted for "average revenue per line." NECC agreed with Qwest in this regard. OCC asserted that what might be a high cost access line for one carrier might not be high

⁹ At present ZOCs include the following: the Denver Metro Exchange: Aberdeen, Arvada, Aurora Main, Capitol Hill, Columbine, Curtis Park, Denver International Airport, Dry Creek, Denver East, Denver Main, Denver North, Denver Northeast, Denver South, Denver Southeast, Denver Southwest, Denver West, Englewood, Golden, Highland Ranch, Lakewood, Littleton, Monaghan, Montbello, Smoky Hill, Sullivan and Westminster; the Boulder Exchange: Boulder Main, Table Mesa and Gun Barrel; the Longmont Exchange: Longmont and Niwot; the Lafayette/Louisville Exchange: Cottonwood; the Broomfield Exchange: Broomfield and Northglenn; Erie; and Parker. The Colorado Springs zone includes the wire centers of: Air Force Academy, Colorado Springs East, Colorado Springs Main, Gatehouse, Fountain, Monument, Pikeview, Security and Stratmoor. Decision No. C05-0802 at ¶ 101.

cost for another, resulting in a "windfall" for such a carrier operating in a Commission-defined high cost area.

47. CTA posited that, because cost is inversely proportional to population density, no matter how the Commission determines what constitutes a high cost area, CTA will be providing service to those areas. OCC asserted that the majority of CTA's membership did not receive CHCSM support in 2005, either because they did not apply or because the area does not meet the requirements for CHCSM funding. CenturyTel stated that, in its opinion, CTA members might not have applied for CHCSM support because the process for applying for support was too expensive and could exceed the CHCSM support that the carrier would receive.

48. **Question 6:** Should a mandatory stand alone basic local exchange service offering be a prerequisite for any carrier seeking CHCSM support? Are there any service offerings that should be mandated as a prerequisite for any carrier seeking CHCSM support? If so, what are those services?

49. **Areas of agreement:** No agreement was reached during the workshop.

50. **Areas of disagreement:** OCC, Qwest, and CTA agreed that stand-alone basic local exchange service should be required for CHCSM support. NECC asserted that requiring EPs to provide a stand-alone basic service offering would violate competitive neutrality as between wireline carriers and wireless provider, in the same way that wireline carriers should not be required to match wireless competitors' wide local calling areas.

51. **Question 7:** What is the appropriate size of the study area for determining a company's high cost support?

52. **Question 8:** In order to better target support to high-cost areas, should a wireline carrier be required to disaggregate their CHCSM support below the study area level in a circumstance in which that carrier's current study area is its service area? If so, and keeping in mind the context of better targeting high-cost support, to what should the disaggregation of support be pegged (*e.g.*, wire center, multiple cost zones within a wire center, population density, some other criterion)?

53. These two questions are inter-related and, thus, are discussed together.

54. **Areas of agreement:** No agreement was reached during the workshop.

55. **Areas of disagreement:** CTA and NECC stated that the appropriate size of the study area is a carrier's service territory, *i.e.*, the area for which the carrier is certificated. Qwest and OCC agreed generally that the service area should be at least at the wire center level. OCC suggested that the wire center should be disaggregated further so that carriers cannot cream skim, thus ensuring that the high cost areas served truly are high cost. Furthermore, OCC suggested that CLECs must commit to serve throughout the geographic area.

56. **Additional information:** Staff notes that most rural LECs' certificated areas are at most two wire centers.

57. **Question 9:** Should broadband service be included in eligible services? If so, what is the authority to do so? What market penetration level by a carrier would trigger the need for CHCSM support?

58. **Question 10:** For carriers: do you offer one or more broadband services in Colorado? If so, what are the offered broadband services?

59. **Question 11:** Should data be considered a basic service need? If so, what is the authority to do so?

60. These three questions are inter-related and, thus, are discussed together.

61. At the time of the workshop and based on information provided by the participants, CTA members and Qwest offered a variety of broadband services, ranging from 256 kbs to 7 Mbs service, by a variety of transmission media. NECC was planning to introduce data services.

62. **Areas of agreement:** No agreement was reached during the workshop.

63. **Areas of disagreement:** Qwest, OCC, and CTA agreed that broadband should not be included in the services eligible for CHCSM support. Qwest noted that broadband is not a telecommunications service and that, as an unregulated service, including broadband as a service eligible for CHCSM support might be impermissible as a matter of law. CTA pointed out that the Commission's authority pursuant to § 40-15-502(4), C.R.S., provides for universal access to advanced services. NECC suggested that CHCSM support should advance the universal service principles of the 1996 Federal Telecommunications Act, which include access to advanced telecommunications services.

64. **Question 12:** Are there inter-regional and intergenerational wealth and income distribution implications of current and proposed funding and disbursement mechanisms? If so, what are they? Should the Commission be concerned with these implications?

65. **Areas of agreement:** No agreement was reached during the workshop.

66. **Areas of disagreement:** Generally, OCC and Qwest agreed that inter-regional wealth redistributions are inherent in the CHCSM. Qwest stated that the inter-regional issues would be addressed adequately through a properly designed CHCSM and that inter-generational issues would be negligible. OCC focused on the inter-regional issues, specifically noting the regressive effects inherent in the CHCSM. In order to minimize these effects, OCC encouraged the Commission to minimize the size of the CHCSM Fund to the extent reasonably possible. OCC also advocated a means test for the CHCSM.

67. CTA felt that this docket was not the appropriate venue to take up these issues, noting that providers and not end-users receive financial assistance through the Mechanism. OCC disagreed with CTA, stating that the Mechanism is not statutorily barred from providing assistance directly to consumers via vouchers, rebates, and/or pre-paid calling cards.

68. **Question 13:** Do the purposes of the CHCSM include, either explicitly or implicitly, the concept that the services supported by CHCSM funds and provided in high-cost areas must be comparable in **type and in quality** to services provided in urban or low cost areas (comparability)? If the CHCSM encompasses the concept of comparability, what is the appropriate definition of "quality"? To what standards, if any, should the Commission look to determine a service's quality? If the CHCSM encompasses the concept of comparability, how should comparability be determined or measured? If a given service is not comparable, should it nonetheless be supported by CHCSM? under what circumstances? for how long?

69. **Question 14:** Do the purposes of the CHCSM include, either explicitly or implicitly, the concept that services supported by CHCSM funds and provided in high-cost areas must be comparable in **type** to services provided in urban or low-cost areas? If the concept of type is to be considered, and assuming that a given service is not comparable in type, should it nonetheless be supported by CHCSM? under what circumstances? for how long?

70. **Question 15:** Do the purposes of the CHCSM include, either explicitly or implicitly, the concept that services supported by CHCSM funds and provided in high-cost areas must be comparable in **quality** to services provided in urban or low-cost areas? If so, what is the appropriate definition of "quality"? To what standards, if any, should the Commission look to determine a service's quality? If the concept of quality is to be considered, and assuming that a given service is not comparable in quality, should it nonetheless be supported by CHCSM? under what circumstances? for how long?

71. These three questions are inter-related and, thus, are discussed together.

72. **Areas of agreement:** Qwest, OCC, CTA, and NECC agreed that both type and quality of service should be comparable between urban/low cost areas and rural/high cost areas.

73. **Areas of disagreement:** Qwest and NECC asserted that service quality should not be considered in this docket. OCC disagreed, stating that the Commission's service quality rules should be applicable to all EPs. OCC took issue with consumer protection requirements for wireless consumers, which NECC said would be covered by the Consumer Code of the Cellular Telecommunications & Internet Association (CTIA). OCC maintained that, because that code is voluntary on the part of providers, it would not provide meaningful protection for consumers. OCC also questioned whether CHCSM support should be made available to all wireless services or only fixed wireless.

B. Second Workshop (types of providers)

74. The comment matrix for this workshop is Appendix 8.

75. **Question 1:** Are the current definitions of "non-rural" and "rural," as applied to providers of regulated telecommunications services, sufficient? Are they correct? Should they be changed; and, if so, how?

76. **Areas of agreement:** The participants generally agreed that the definition of "rural" is sufficient.

77. **Areas of disagreement:** There were no significant areas of disagreement. CTA pointed out that there is a difference between "rural" and "non-rural" in the manner in which each applies for and receives funding, *i.e.*, rural carriers must provide the Commission with actual costs for in order to get CHCSM support.

78. OCC suggested that there should be a definition of non-rural, but was unable to supply a definition. Qwest suggested that there should be no distinction between "rural" and "non-rural" carriers. CTA agreed generally with Qwest that this concept could be explored but cautioned that there might be unintended consequences should the distinction be eliminated.

79. **Additional information:** The definition of "rural" does not appear in Colorado statute or Rule, but a definition of "rural telecommunications provider" is found at § 40-15-102(24.5), C.R.S.; that phrase is defined in terms of geographic area served or access lines provided. *See* Appendix 4.

80. **Question 2:** Is it appropriate for a provider of regulated telecommunication services who is not a Provider of Last Resort (POLR) to receive support from the CHCSM?

81. **Areas of agreement:** The participants addressing this question agreed generally that, in order to receive CHCSM support, a carrier should be a POLR. OCC pointed out that the

requirements of a POLR as described in Rule 4 CCR 723-2-2185(a)¹⁰ are not significantly different from those of an EP, found at Rule 4 CCR 723-2-2847(b)(I)(D).¹¹

82. Furthermore, CTA cited § 40-15-208(2)(a), C.R.S., for the proposition that the legislative intent of the CHCSM was to provide financial assistance to carriers to make basic service available to their customers within a rural, high cost geographic support area.

83. **Areas of disagreement:** While not disagreeing with such a requirement, and noting that it would assume POLR obligations if ordered to do so, NECC questioned whether CLECs can be required to accept the POLR obligation because CLECs are reimbursed on a per-line basis and might not be able to recoup costs if required to undertake special construction projects. This prompted a discussion of whether the CLEC would be allowed support for building out to a customer and when that support would become available. In addition, there was discussion that, generally in Colorado, the institution of a line extension charge for a CLEC is possible. OCC pointed out that the FCC addressed the options open to an ETC when a customer requests service.¹² OCC suggested that the Commission adopt similar guidelines for EPs.

84. **Question 3:** What types of providers (other than POLRs) ought to be able to receive CHCSM support? Under what circumstances ought each type of provider (other than POLR) be able to receive CHCSM support?

¹⁰ That Rule provided in 2006: "A POLR shall offer basic local exchange service to every customer who requests such service within a designated geographic area, regardless of the availability of facilities, unless said customer has an outstanding balance owing to the POLR and no agreement for repayment has been established."

¹¹ That Rule provided in 2006: "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."

¹² Those options are: (a) if the customer is within the carrier's service area, provide service immediately; (b) if the customer is outside the carrier's service area, provide service within a reasonable time and at reasonable cost; or (c) if service cannot be provided by the carrier, submit a report of unfulfilled request within 30 days.

85. **Areas of agreement:** OCC, Qwest, and CTA agreed that only POLRs should receive CHCSM support. NECC stated that support should be available as long as a carrier is willing to provide service upon reasonable request.

86. **Areas of disagreement:** There were no areas of disagreement on this issue.

87. **Question 4:** Should all carriers that use the public switched telephone network (PSTN) be required to contribute to the CHCSM?

88. **Areas of agreement:** The participants agreed that carriers that use the PSTN should be required to contribute to the CHCSM. OCC noted that Rule 4 CCR 723-2-2841(j) requires that only intrastate telecommunications services revenues be subject to CHCSM assessment and, further, that revenues associated with the sale of cable services are exempted from CHCSM assessment.¹³

89. **Areas of disagreement:** While not disagreeing that users of the PSTN should contribute to CHCSM, Verizon Wireless maintained that, since it does not use the PSTN, it should not be required to contribute. Verizon Wireless's reasoning with regard to use of the PSTN was that, because most of its calls are within its own network, it was not using the PSTN.

90. Verizon Wireless also expressed its belief that, because 47 U.S.C. § 332(c)(3)(A) precludes states from regulating rates charged by wireless carriers and because § 40-15-208(2)(b)(II), C.R.S., requires that contributions be assessed as a rate element and, thus, is rate regulation, the Commission does not have jurisdiction over wireless carriers in this regard. Other participants disagreed with Verizon Wireless's position that 47 U.S.C. § 332(c)(3)(A) prohibits a wireless carrier's contribution to the CHCSM.

¹³ The OCC noted that Voice over Internet Protocol (VOIP) revenues are also exempted by the FCC by FCC 06-94 (rel. June 27, 2006), which discusses universal service contributions for interconnected VOIP.

91. **Question 5:** Should the ETC designation and the receipt of federal USF support be restricted to fixed wireless service as opposed to mobile service?

92. **Areas of agreement:** NECC, New Cingular Wireless, and AllTel agreed that ETC designation should not be restricted to fixed wireless service, citing competitive neutrality as the fundamental guidance for the Commission in this matter. Although OCC initially suggested that only fixed wireless should receive support, OCC later stated that CHCSM support should be given to wireless providers, regardless of the technology used, so long as the service offering is comparable in type of service and affordability to the service offering of the underlying LEC. Several participants stated that, as the question addresses federal USF support, the question is out of the jurisdiction of the Commission.

93. **Areas of disagreement:** There were no significant areas of disagreement within the comments of those responding to this question, but there was some discussion as to the Commission's designation of ETCs/EPs in Colorado, specifically with regard to the requirement of a basic universal service wireless offering. OCC requested, as it had previously, that the Commission issue a notice of proposed rulemaking in the matter of ETC/EP designations.

C. Third Workshop (models)

94. The comment matrix for this workshop is Appendix 9.

95. During the workshop, Qwest made a presentation on its CHCSM calculations. This presentation is Appendix 10. During the workshop, two presentations were made on behalf of CTA. Telecom Consulting Associates discussed a simplified residual revenue requirement model; this presentation is Appendix 11. GVNW Consulting discussed rural local exchange carrier support calculated using Total Element Long Run Incremental Cost (the HAI 5.2(a) model); this presentation is Appendix 12.¹⁴

96. **Question 1:** For **non-rural** providers of regulated telecommunications services, is it appropriate to set CHCSM support levels using an embedded cost model? A proxy cost model? Other model? Why is a certain model appropriate, taking into consideration factors such as the types of supported services?

97. **Areas of agreement:** Qwest and OCC were the only participants that commented on this question; they were in agreement that a proxy cost model is appropriate. Qwest pointed to Docket No. 99A-577T as a starting point should the Commission wish to evaluate the forward-looking costs for various wire center specific costs. Without commenting on which, if any, model to be used, NECC stated its belief that there should not be a difference between rural and non-rural carriers in the manner in which costs are calculated.

98. **Areas of disagreement:** There were no stated areas of disagreement.

99. **Question 2:** For **rural** providers of regulated telecommunications services, is it appropriate to set CHCSM support levels using an embedded cost model? A proxy cost model? Other model? Why is a certain model appropriate, taking into consideration factors such as the types of supported services?

100. **Areas of agreement:** Qwest and NECC agreed that there should not be a

¹⁴ The last page of Appendix 12 contains updated information.

difference in modeling method between rural and non-rural carriers. Qwest noted that its position was dependent upon the feasibility of the modeling available. CTA noted that it would not reject a proxy cost model but would want to ensure that the model could be demonstrated to be simple and cost-effective and to provide reasonable costs and sufficient support for all rural wireline carriers.

101. NECC suggested that, although no proxy cost model is currently available, funding rural carriers on embedded costs without analysis of the expenditures would be inefficient.

102. During the workshop, CTA supplied information on a residual revenue model based on Nebraska's procedure; and GVNW presented preliminary information based on application of the HAI 5.2a forward-looking proxy cost model to rural carriers. At a subsequent workshop, GVNW distributed information based on refinements to the original HAI 5.2a model run (*see* last page of Appendix 12); the updated run put the potential rural carrier draws from the CHCSM Fund at approximately \$29 million annually.¹⁵

103. **Areas of disagreement:** There were no areas of direct disagreement.

104. **Additional information:** Development of an appropriate proxy cost model has been before the Commission for a decade. Docket No. 97M-063T was opened to address the cost proxy method; the result was an interim method agreed to by the parties and approved by the Commission. Decision No. C98-0280. By Decision No. C98-0355, the Commission opened Docket No. 98M-147T for the purpose of determining which proxy cost model should be used for the CHCSM. However, a suitable final model was not adopted in that docket. The Commission accepted the agreement of Staff, OCC, Qwest, AT&T, and MCI to use the HAI 5.2a

¹⁵ At the time of the workshop, rural carriers received approximately \$3 million annually.

cost model for the purpose of determining annual high cost distributions, with the stated intent of further exploration of an appropriate model. The Commission noted that any work toward development of a suitable final cost model should include provisions for wireless carriers. Decision No. R04-0692. The Commission then opened Docket No. 04M-388T for the purpose of investigating and developing a permanent proxy model. Decision No. C04-0869.

105. **Question 3:** Assuming the receipt of CHCSM funds for wireless providers is based on a wireless provider's cost of service, what is the appropriate cost model for wireless providers.

106. **Areas of agreement:** None of the participants proposed a model *per se*, but several did endorse the development of a model. CTA noted that commissioners from Nebraska, Vermont, and Maine have proposed to the FCC a "Portability Fund," which the Commission might want to consider. NECC suggested that the Commission open a proceeding to develop a forward-looking proxy cost model.

107. **Areas of disagreement:** There were no areas of direct disagreement.

108. **Question 4:** Assuming that resellers of services are able to receive CHCSM funds, what (if any) is the appropriate cost model for a reseller of services?

109. **Areas of agreement:** Qwest, OCC, CTA, and NECC stated that it is not appropriate for pure resellers to receive CHCSM support. OCC questioned what improvements a pure reseller could make to the network. Qwest noted that, since pure resellers receive a discount on the ILEC's retail rate, the pure reseller does not incur high line costs. OCC noted that, with regard to low-income customers, the FCC allowed a reseller, TracPhone, to provide service and that such arrangement for low-income customers is not out of line.

110. **Areas of disagreement:** There were no areas of disagreement.

111. **Question 5:** Assuming that providers of other types of services (for example, broadband) are able to receive CHCSM funds, what is the appropriate cost model?

112. **Areas of agreement:** The participants had various opinions as to how broadband providers should be treated if they are determined to be eligible to receive CHCSM support. OCC noted that § 40-15-502(4), C.R.S., provides for a fund for advanced services that is separate from the CHCSM.

113. **Areas of disagreement:** CTA stated that, if a broadband provider can provision basic exchange service, then it could be eligible to receive CHCSM support but that the funding should be based on actual costs. OCC and NECC supported some type of forward-looking proxy cost model, should one be employed for advanced services.

114. **Additional information:** Section 40-15-502(4), C.R.S., provides for a separate funding mechanism for advanced services. Neither the statute nor a Commission rule defines advanced services.

115. **Question 6:** Should the model include or recognize in some way payments made by third parties (*e.g.*, Land Developers) used for the construction of customer facilities? If so, for which types of customer facilities? Which type of payments? How should the model include or recognize such payments?

116. **Areas of agreement:** Qwest and CTA agreed that payments made by third parties are included already in CHCSM calculations. Qwest noted that, as a result of the input prices that were determined in Docket No. 99A-577T, there is a concept of "sharing" that includes land developers and multiple providers using common structures. CTA stated that rural carriers have their cost of construction offset by contributions.

117. OCC cited Rule 4 CCR 723-2-2848(c), which requires that support "be reduced by any other amount of support received by such provider," and suggested that a possible solution would be to run the model for other sources of revenue capped by the company's tariffed recovery amounts.

118. **Areas of disagreement:** A land developer present at the workshop questioned the use of a forward-looking proxy cost model to account for payments made and suggested that actual costs would give a better accounting of the payments made. Qwest maintained that the model actually under-recovers compared to actual costs.

119. **Question 7:** Should loop allocation be an explicit component of CHCSM calculations?

120. **Areas of agreement:** Qwest stated that, assuming an affordability benchmark includes federal Subscriber Line charge and federal Universal Service Fund support, there should be no allocation of the loop in the CHCSM calculations.

121. **Areas of disagreement:** There was no disagreement on this question.

D. Fourth Workshop (contributions)

122. The comment matrix for this workshop is Appendix 13.

123. **Question 1:** What is the appropriate basis for determining the providers' contribution to the CHCSM fund (for example, revenues, connections, some other method)? Is the current method working properly? What changes, if any, are necessary?

124. **Areas of agreement:** No agreement was reached at the workshop.

125. **Areas of disagreement:** Qwest, OCC, CTA, NECC, and Cricket agreed that the appropriate basis for providers' contributions is revenues, with several participants suggesting that the Commission adopt any changes that the FCC might make to the federal Universal Service Fund's basis for contribution. Qwest noted that it had recommended to the FCC a telephone numbers and revenues hybrid approach. Cricket recommended that discounts be offered on family plans, prepaid plans, and month-to-month plans.

126. Verizon Wireless maintained that wireless carriers should not have to contribute to the CHCSM Fund because § 40-15-208(2)(b)(II), C.R.S., states that contributions *must* be assessed by a rate element and, according to Verizon Wireless, 47 U.S.C. § 332(c)(3) preempts such a contribution based on rate element. Other participants disagreed with this analysis because § 40-15-502(5), C.R.S., states that the funding of the CHCSM *may* include a rate element. Thus, according to these participants, there is no mandatory rate element and, thus, 47 U.S.C. § 332(c)(3) does not apply.

127. **Question 2:** What is the appropriate basis for collecting CHCSM fees from customers? Is the current method working properly? What changes, if any, are necessary?

128. **Areas of agreement:** With regard to whether changes are necessary, CTA suggested that the Commission outsource the administration of the CHCSM. While this recommendation did not meet with opposition at the workshop, several participants stated their

concerns, particularly with regard to budgeting ramifications should a third party take over the Fund's administration.

129. **Areas of disagreement:** Qwest, OCC, and Cricket agreed that the most appropriate basis for collecting CHCSM fees is the current method, *i.e.*, a surcharge based on the customer's billed amount. OCC noted that a revenues-based method is more robust and equitable than a flat fee because of the regressive nature of the latter, which shifts the burden of payment from high-use customers to low-use or low-income customers. CTA did not endorse a collections method; emphasized that collections should be from the broadest base possible; and noted that, as the FCC is also considering this issue, the Commission should monitor the FCC and adopt an approach similar to that adopted by the FCC.

130. Verizon Wireless maintained that the Commission does not have authority to collect CHCSM surcharges from wireless carriers because 47 U.S.C. § 332(c)(3) preempts state commissions from rate regulation of wireless carriers and § 40-14-208(2)(a), C.R.S., requires that the CHCSM assessment be a rate element. OCC disagreed with Verizon Wireless's analysis based on the permissive language of § 40-15-502(5), C.R.S.

131. **Question 3:** Should the current rule stating that the CHCSM rate element "shall be applied" to an end-user's retail revenues be changed to "may be applied" so as to allow pricing flexibility and to allow the mandatory surcharge to be subjected to competitive forces? See Rule 4 CCR 723-41-7.3 (effective through March 31, 2006) and Rule 2846(c) (effective on April 1, 2006). Would such a change be contrary to the requirements of Rule 4 CCR 723-2-10.1 (effective through March 31, 2006) and Rule 2304(a) (effective on April 1, 2006) and the federal rules that are incorporated by reference? What would be the effect of such a change on the following: (a) total payments into the CHCSM fund; (b) each provider's payments into the CHCSM fund; and (c) rate for any specific retail service to which the CHCSM rate element is applied. Assume a provider applied the CHCSM rate element *only* to retail revenues from residential basic service subject to the residential rate cap (*see* § 40-15-502(3)(b), C.R.S.), would that application violate the rate cap? Why or why not? **NOTE:** Each provider is responsible for paying its assessment into the CHCSM irrespective of whether it collects the monies from its customers. Failure to collect monies for the CHCSM from customers does not relieve a provider of its responsibility.

132. **Areas of agreement:** Qwest, OCC, CTA, NECC, and Verizon Wireless agreed that the wording "shall be applied" should be changed to "may be applied." OCC commented that the change would allow carriers the competitive option of either passing the surcharge on to customers or not, so long as there is a line item informing end users about the surcharge. OCC stated that, if a carrier chose not to pass through the surcharge, customers would benefit. Qwest noted that § 40-15-502(5), C.R.S., requires assessment of telecommunication services *providers* but is silent as to whether or how the providers recover the assessment from *customers*.

133. None of the participants found a conflict with either Rule 4 CCR 723-2-2304(a) or the FCC's Truth in Billing Rules. Furthermore, none of the participants found that the change would violate the residential exchange service rate cap. It was OCC's contention that the surcharge is not a new rate element that would affect basic local exchange and, therefore, that there is no conflict with the rate cap. Qwest maintained that the Commission has independent statutory authority to apply a rate element, so there is no conflict. NECC noted that the concept of "residential exchange service" does not exist for wireless carriers because NECC does not sell residential or business service but rather sells rate plans that include basic service as one service provided in the plan.

134. **Areas of disagreement:** The majority of participants agreed that all types of providers, irrespective of the technology used to provide service, must contribute. Verizon Wireless stated that, pursuant to § 40-15-208(2)(a), C.R.S., the surcharge must be included as a rate element on the customer's bill and that the Commission is pre-empted by 47 U.S.C. § 332(c)(3) from ordering wireless carriers to do so.

135. **Question 4:** How can the Commission ensure that all competitive carriers are treated fairly? Are there contribution or assessment approaches that would be more equitable, efficient, and sustainable in Colorado? How is "equitable" defined? How is

"efficient" defined? How is "sustainable" defined? What are those contribution or assessment approaches?

136. **Areas of agreement:** No agreement was reached during the workshop.

137. **Areas of disagreement:** OCC and Cricket agreed that the current method is generally fair. Cricket suggested that the rate element be lowered because their customers generally have lower incomes and are not able to subsidize services in high cost areas, a point with which OCC also agreed.

138. Verizon Wireless suggested that a per-line contribution would be more appropriate, especially because the bundling of local exchange service, toll service, features, and other services makes it more difficult for providers to determine the intrastate basis for determining contributions. OCC disagreed with Verizon Wireless's suggestion that a numbers-based method be employed because of the regressive effect it would have on low-income customers. While neither supporting nor arguing against a numbers-based method, Cricket also expressed concern about the potential regressive effect that a numbers-based system might have.

139. Qwest and CTA agreed that the Commission should monitor the FCC and mirror any changes in contributions determined at the national level. OCC questioned Qwest's and CTA's assertion that the federal and state funds should be synchronized in terms of contributions.

140. OCC and CTA agreed that contributions should come from as broad a base as possible. Verizon Wireless disagreed, for the reasons already discussed.

141. **Question 5:** Should loop allocation be an explicit component of CHCSM calculations? Why or why not?

142. **Areas of agreement:** Qwest commented that loop allocation should be consistent with the FCC's separations and jurisdictional allocation rules.

143. **Areas of disagreement and additional information:** OCC originally filed comments referencing Decision No. C03-0114 in which the Commission rejected a proposal to implement a new subscriber line charge in the state. At Workshop No. 4, Staff clarified for the participants that this is an element of rural providers' revenue requirements and Qwest's allocation methodology; with that clarification, OCC had no objection.

144. **Question 6:** What is the legal authority for the *de minimis* exemption? Is the Commission required by law to have a *de minimis* exemption; and, if so, where is the requirement found? If the Commission is not required by law to have a *de minimis* exemption, should there be such an exemption? Why or why not? If there should be a *de minimis* exemption, what is the basis or rationale (legal, factual, and/or policy) for such an exemption? If there should be a *de minimis* exemption, what should the appropriate test or criteria for coming within the exemption be? Is the current *de minimis* exemption process, including the criteria for coming within the exemption, working properly? If not, what changes should be made? Should there be a verification process? If so, what should that process be?

145. **Areas of agreement:** Qwest and CTA found implicit legal authority for the *de minimis* exemption in §§ 40-15-502(5) and 40-15-208(3), C.R.S. CTA noted that the Commission's authority arises generally from the mandate to minimize the cost of administering the CHCSM Fund. Although none of the commenting participants found an explicit legal requirement to have a *de minimis* exemption, Qwest, OCC, and CTA agreed that there should be an exemption because the administrative costs for both the Commission and the qualifying provider would outweigh the contribution of the qualifying provider.

146. Qwest found that the process is generally working but had concerns that resellers qualifying as *de minimis* were not filing reports with the Commission as required. As a result, Qwest suggested that the word "exemption" should be replaced with "exception" in Rule 4 CCR 723-2-2846.

147. CTA suggested eliminating the Rule that prohibits EPs from filing *de minimis* because, if a provider qualifies as *de minimis*, it should receive that status. As to the verification

process, CTA suggested that the same test used for the *de minimis* exemption be used for verification (*i.e.*, that the Commission should consider the provider's costs of collecting and remitting the contribution and the amount that the carrier would actually contribute).

148. CTA requested modification to the provision of Rule 4 CCR 723-2-2846(b)(I)(B) that requires eligible providers to remit contributions and to file the entire HCSM worksheet even if they qualify as *de minimis*. CTA asserted that, if a provider qualifies as *de minimis*, it should be afforded that status despite its EP designation.

149. **Areas of disagreement:** There were no areas of disagreement.

150. **Additional information:** In response to questions from the participants, at Workshop No. 4, Staff provided the participants with *de minimis* statistics for 2005: 434 providers filed CHCSM reports. Of these, 347 providers qualified as *de minimis*; these providers accounted for approximately \$8 million in revenues. At the CHCSM contribution factor of 2.9 percent, the CHCSM revenue that would have been collected from the 347 *de minimis* providers was approximately \$232,000. This was about 0.38 percent of the \$60 million total CHCSM Fund. Based on this information, OCC withdrew its comments opposing the *de minimis* exemption.

151. **Question 7:** Should all carriers that use the public switched telephone network (PSTN) be required to contribute to the CHCSM? Why or why not?

152. **Areas of agreement:** No agreement was reached during the workshop.

153. **Areas of disagreement:** Qwest, OCC, CTA, NECC, and Cricket agreed that all providers of intrastate telecommunications services should contribute to the CHCSM, irrespective of their use of the PSTN. CTA, NECC, and Cricket endorsed making the contribution base as broad as possible, with Cricket noting that doing so will make the per

subscriber contribution as small as possible. OCC noted that the FCC had affirmed that providers of Voice over Internet Protocol (VOIP), wireless, and payphone services are required to contribute to the federal USF. OCC also noted that, with regard to VOIP, it is possible that because of the way the current rules are written, contributions from VOIP providers could be incorrectly determined by transmission type: VOIP service over cable would be exempt, but the same VOIP service over digital subscriber line would be subject to assessment.

154. Verizon Wireless stated that wireless carriers do not use the PSTN and, thus, should not have to contribute. In discussions at the workshop, Verizon Wireless stated that a large portion of its minutes of use are within its own network and do not extend into the PSTN. An approximation of those minutes that use the PSTN as a percentage of all Verizon Wireless minutes was not available.

155. **Question 8:** Is it appropriate for the price of wholesale services (for example, unbundled network elements or resale) to be considered as part of any CHCSM method? Why or why not?

156. **Areas of agreement:** Qwest and CTA asserted that it is not appropriate for the price of wholesale services to be considered as a part of the CHCSM method because doing so would result in double assessment: first at the wholesale level, then at the retail level. OCC and NECC agreed with that position.

157. **Areas of disagreement:** There were no areas of disagreement.

158. **Question 9:** What other changes need to be considered in the level and manner of funding of supported services in high-cost areas?

159. **Areas of agreement:** Cricket requested that the Commission minimize the size of the CHCSM Fund, so that the burden on consumers would be as small as possible. OCC agreed with Cricket, with an additional request that the Commission lobby the General Assembly

to broaden the eligibility for low-income telephone assistance to benefit more consumers in need in Colorado.

160. **Areas of disagreement:** There were no areas of disagreement.

E. Fifth Workshop (distributions)

161. There is no comment matrix for this workshop. The entire discussion regarding this workshop is contained here.

162. The questions addressed in this workshop echo and reprise many of the questions raised in the previous workshops, as the participants identified in their written comments. The areas of agreement and disagreement in those workshops are not repeated here. Please refer to the prior discussion of, and the comments filed in, those workshops.

163. Many of the arguments presented and positions taken in this workshop were based on or referred to the residential rate cap. House Bill No. 08-1227 amended § 40-15-502(3)(b)(I), C.R.S., to eliminate the residential rate cap. The impact of this change in law on the arguments and positions of the participants is unknown.

164. **Question 1:** Assume the purposes of the CHCSM include, either explicitly or implicitly, the concept that the services supported by CHCSM funds and provided in high-cost areas must be comparable in type and in quality to services provided in urban or low cost areas (comparability). Should distribution of CHCSM funds to a provider be contingent upon comparability? If so, by what process would the Commission assure, as a prerequisite for distributing CHCSM funds to a provider, that the services supported by the CHCSM funds satisfy the comparability standard? If so, what standard(s) should the Commission apply to assure, as a prerequisite for distributing CHCSM funds to a provider, that the services supported by the CHCSM funds satisfy the comparability standard? If a given service is not comparable, should it nonetheless be supported by CHCSM? under what circumstances? for how long?

165. **Areas of agreement:** CTA, OCC, and Qwest agreed that eligibility for CHCSM support should be contingent upon the supported service's being comparable between low cost (generally urban) areas and high cost (generally rural) areas in at least the following particulars: (a) reasonably comparable prices for reasonably comparable services; (b) comparable types of services offered and comparable quality of those services; and (c) an acceptable level of service quality. In addition, there was general agreement that comparable does not mean identical.

166. NECC agreed, generally speaking, with these concepts, citing 47 U.S.C. § 254(b)(3), which provides that all consumers in all areas

should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonable comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

167. Although the approach to defining comparable service was not agreed upon, there was general agreement that services provided in high cost areas that are not comparable to services provided in low cost areas should not be supported by CHCSM funds. Aside from general conceptual statements, there was little agreement on the method or approach to be used to determine whether a service is comparable.

168. CTA argued that the concept of comparability should apply to rates (there was no disagreement on this point). To do so, CTA suggested that rate comparability should be equated to the affordability of basic local exchange service under the rate cap found in § 40-15-208(2)(a), C.R.S.

169. **Areas of disagreement:** OCC supported the idea that each EP must offer a stand-alone Basic Universal Service (BUS) offering or its equivalent and that this be the service against which costs to serve, price, and comparability are measured. The providers opposed this approach, in part, because it did not let the market determine the service offerings.

170. CTA and OCC agreed that eligibility for CHCSM support should be contingent upon the supported service's having service quality that meets the applicable Commission rules so that the components and capabilities required by those rules are available to all. CTA also posited that the Commission's service quality standards and the rules linking receipt of CHCSM support to meeting service quality standards must be administered and applied equitably and in a

non-discriminatory manner. Qwest took the position that the Commission service quality rules should apply until there is competition, at which point the market should drive the definition of high quality telecommunications service. While agreeing that the supported service should be high quality, NECC argued that the correct quality standards for wireless carriers are those in the CTIA Code, which the FCC has found sufficient under federal law.

171. CTA took the position that, as a precondition to eligibility, a competitive EP should be able to offer service in and to all locations within its requested service area. NECC responded that CTA's approach is not competitively neutral because incumbent carriers receive support while they are constructing their networks and CTA's proposal would deny support to competitive EPs during the construction of their networks. NECC argued that there is no reason to change the current system under which a competitive EP receives support only if a customer chooses to obtain service from the competitive EP.

172. NECC asserted that 47 U.S.C. § 254(b)(3) (quoted above) sets out a desired outcome for, but is not the standard to be applied to, a competitively neutral universal service mechanism. OCC disagreed with this interpretation because, in OCC's view, the statute establishes the applicable test against which such a mechanism is measured.

173. OCC proposed that CHCSM support should be limited to a single, primary access line for residential customers and for business customers. CTA and NECC opposed this proposal.

174. **Question 2:** Should the level of a recipient's CHCSM support take into consideration other funding sources (for example, line extensions and land development agreements) for supported services? If so, what funding sources ought to be taken into consideration when calculating a recipient's CHCSM support?

175. **Areas of agreement:** Generally, the participants agreed that no CHCSM recipient should receive, when revenues and universal support are considered, more than its costs to provide basic service. *See* § 40-15-208(2)(a), C.R.S. (no recipient of CHCSM support to receive more than cost of providing basic service). Generally, the participants agreed that, under both the line extension example and the land development agreement example, the carrier is not incurring network construction costs to the extent that those costs are being recovered from either the customer (line extension policy) or a developer (land development agreement). As a result, the carrier should not receive universal service support to that extent. Generally, there was agreement that the current methods for determining costs implicitly or explicitly account for revenue sources such as line extension charges and land development agreements.

176. **Areas of disagreement:** Generally, the participants agreed that no CHCSM recipient should receive more than its costs to provide basic service. They disagreed, however, about what revenues should be included in that determination. CTA took the position that only revenues from basic local exchange service (*i.e.*, all intrastate revenues that mirror the local bucket at the end of the 47 CFR Part 69 process) and revenues directly linked to basic service (*i.e.*, high cost loop support, safety net funds, and safety valve funds) should be considered. OCC took the position that, when calculating a carrier's CHCSM support, one should take into consideration the revenues from non-basic, vertical, or discretionary services.

177. In conjunction with its position that revenues from non-basic, vertical, or discretionary services should be considered, OCC stated that it is not clear whether this occurs at present with rural providers. In response, CTA pointed to Rule 4 CCR 723-2-2847(g)(II), which requires a rural carrier to file an advice letter adjusting its overall regulated revenues in an amount equal to the level of support for which the carrier is applying. Thus, CTA contended,

non-basic, vertical, and discretionary revenues are considered in calculating CHCSM support for a rate of return regulated rural LEC.

178. **Question 3:** Should loop allocation be an explicit component of CHCSM calculations?

179. This question was addressed in Workshop No. 4.

180. **Areas of agreement:** Generally, there was agreement that the current methods for determining costs implicitly or explicitly account for revenue sources such as line extension charges and land development agreements. There was general agreement that the Commission should continue its present policy that adopted 47 CFR Part 36 and Part 69 and applies those rules to allocation of loop costs.

181. **Areas of disagreement:** There was some discussion, and possible disagreement, about what constitutes the loop for a wireless provider. NECC took the position that Colorado should adopt the FCC approach that the supported service for federal USF consists of the tower, back-haul, and data service-capable facilities because these facilities are analogous to the wireline access line to the customer premise. There was some push-back to the extent that the identified facilities may be used to provide data services, which do not fall within the Commission definition of basic service. In addition, some of the participants noted that the federal USF supports more types of services, including broadband, than does the CHCSM and that, as a result, it is not appropriate to take the federal definition wholesale.¹⁶

182. **Question 4:** What is the appropriate definition of "high-quality telecommunications services" as that term is used in § 40-15-101, C.R.S.? Is that term or concept applicable to supported services? Should receipt of CHCSM funding be contingent upon providing service consistent with Commission quality of service standards? If not, and assuming supported services must be "high-quality telecommunications services," what

¹⁶ The types of services supported by the federal USF are listed in 47 U.S.C. § 254(b)(3), quoted above.

standard(s) should the Commission use to determine whether supported services are high-quality?

183. **Areas of agreement:** Based on Rule 4 CCR 723-2-2844, which ties supported services to the Commission's quality of service rules, there was agreement that the issue of service quality falls within the discussion of high quality telecommunications service. There was agreement that the content of the Commission's service quality rules and of the definition of basic service is not part of this discussion.

184. OCC took the position that, based on its reading of §§ 40-15-101 and 40-15-502(2), C.R.S., the definition of "high-quality telecommunications service" is synonymous with the definition of "basic service." When, pursuant to § 40-15-502(2), C.R.S., the Commission defines basic service, it also defines "high-quality telecommunications service" because that statute defines "basic service" as "the availability of high quality, minimum elements of telecommunications services, as defined by the commission, at just, reasonable, and affordable rates to all people in" Colorado. Thus, OCC concluded that anything that comes within the Commission's definition of basic service should meet the quality standards for "high-quality telecommunications service."

185. CTA stated that eligibility for CHCSM support should be contingent upon the supported service's having service quality that meets the applicable Commission rules so that the components and capabilities required by those rules are available to all. CTA also posited that the Commission's service quality standards and the rules linking receipt of CHCSM support to meeting service quality standards must be administered and applied equitably and in a non-discriminatory manner.

186. NECC took the position that the definition of high quality telecommunications services must take into consideration 47 U.S.C. § 253(b)'s mandate that state universal service support be competitively neutral (*i.e.*, not advantage or disadvantage one competitor over another) and technology neutral (*i.e.*, not favor or disfavor one technology over another).

187. **Areas of disagreement:** OCC advocated the use of the Commission's rules governing service quality and the definition of basic service as the standards to use to determine whether the supported basic service is high quality. NECC objected to the application of wireline-based service quality rules to wireless carriers and noted that the competitive marketplace provides sufficient incentive to improve and to maintain service quality. As appropriate service quality standards for wireless providers, NECC recommended the use of the CTIA Consumer Code, which OCC found unacceptable because it is self-enforcing. NECC observed that some states have adopted the CTIA Consumer Code into their regulations, in which event it becomes enforceable. Qwest took the position that, with the advent of competition, the marketplace, not the Commission rules, should drive the definition of high quality telecommunications services.

188. **Question 5:** What is the definition of "affordable"? Is an "affordable" rate for basic local exchange service the same rate as that in effect under the statutory rate cap for residential services? *See* § 40-15-502(3)(b), C.R.S. If not, by what means (for example, benchmark or some other method) should the Commission determine whether a provider's rate for basic local exchange service is affordable? Is there a different affordable rate depending on the class of customer being discussed (for example, residential and business)?

189. **Areas of agreement:** OCC stated that, for EPs, the definition of affordable is resolved by Rule 4 CCR 723-2-2845, which provides that "the prices in effect for basic local exchange service ... in each geographic area on the effective date of these rules [*i.e.*, April 1, 2006] shall be deemed affordable." Citing the existence of the residential rate cap at § 40-15-

502(3), C.R.S., CTA agreed and stated that both the definition of "affordable" and the establishment of a benchmark are constrained by the rate cap.

190. CTA took the position that, because the focus of CHCSM is on the provider and its costs to provide basic service, it is not appropriate in this investigation docket to establish or to examine a customer means test¹⁷ in connection with affordability. CTA recommended that, if the Commission is interested in a means test, then the issue should be examined in the context of the Lifeline and Link-up services.

191. **Areas of disagreement:** Qwest posited that, because it is customary to establish different affordable rates depending on the class of customer under review, it might be appropriate to have a different affordability level for high cost areas and for low cost areas when one examines the issue of comparability of rates. For example, Qwest suggested that the affordable rate for business service in a high cost area could be established at 125 percent of the low-cost area rate for that service. CTA opposed this idea. It argued, first, that affordability should be uniform for all customers within a given class, irrespective of a customer's location, and that affordability should not be determined in a discriminatory fashion as between high cost areas and low cost areas. Second, it asserted that the affordability question goes to the heart of the CHCSM's purpose: "to make basic local exchange service affordable in high cost areas by providing financial assistance to local exchange providers to allow such providers to be fully reimbursed for the difference between the reasonable costs incurred, and the price charged." CTA Reply Comments for Workshop No. 5 at 2. CTA also stated that affordability should not be determined in a discriminatory fashion as between high cost areas and low cost areas and,

¹⁷ A means test addresses whether an individual customer can or cannot afford reasonably priced basic local service.

therefore, the residential rate cap creates the benchmark for affordability for both high cost and low cost areas.

192. OCC asserted that, as part of the public interest test for designating an ETC and an EP, Colorado has the right to analyze and to determine an applicant's plans and rates to determine affordability. In this context, the OCC suggested that each ETC/EP should have at least one plan that is comparable to the basic service (BUS) plan offered by the underlying ILEC. CTA agreed because, in the absence of a BUS, there is the distinct possibility that CHCSM support will go to services other than basic service. NECC objected to using this analysis and determination as part of the public interest test for ETC. NECC stated that the public interest test as applied by the FCC examines whether basic service is available, not rates *per se*. NECC also stated that, if the Commission attempts to set or to determine "affordable" rates for wireless carriers as a precondition to designation as an EP and receipt of CHCSM support, then the Commission may be in violation of 47 U.S.C. § 332(c)(3), which prohibits state commissions from regulating the rates of wireless carriers. NECC further stated that affordability is presumed in a competitive market and that the appropriate test or analysis is examination of whether consumers in rural Colorado have an array of service plans that is similar to the array available in urban areas.

193. **Additional information:** Rule 4 CCR 723-2-2845 provides that "the prices in effect for basic local exchange service ... in each geographic area on the effective date of these rules [*i.e.*, April 1, 2006] shall be deemed affordable." If and when the Commission determines new rates for *residential* basic service as a result of the 2008 amendment to § 40-15-502(3)(b), C.R.S., the Commission also should re-examine the language of Rule 4 CCR 723-2-2845. In

addition, the Commission may wish to examine the rates for *business* basic service to determine whether the rates in effect on April 1, 2006 continue to be affordable.

194. **Question 6:** What is the definition of "revenue neutrality" in the context of CHCSM funds paid to a provider? Should the principle of revenue neutrality apply in the context of CHCSM funds paid to a provider?

195. **Areas of agreement:** There was no general agreement.

196. **Areas of disagreement:** NECC proposed this definition for revenue neutrality in the context of Colorado state universal service support: any change in the method for paying CHCSM support to EPs should not result in an increase or a decrease in that carrier's total revenues. Qwest proposed this definition for revenue neutrality: a concept that recognizes that, when rates for residential basic service were capped in 1995, those rates were not cost based because not all implicit subsidies had been removed. As a result, according to Qwest, when it receives CHCSM support, an EP must reduce other rates in a revenue neutral way, by eliminating implicit subsidies in those other rates, to assure that the revenues received from customers in high cost areas, the federal USF support, and the CHCSM support together equal the cost to serve customers in high cost areas.

197. Qwest proposed that, to preserve revenue neutrality as it defined it, a recipient of CHCSM support be required to reduce rates to offset the payments received. This proposal was based on the premise that the Commission has not examined the recipient's costs and revenue sources in conjunction with its receipt of CHCSM support. CTA argued that revenue neutrality should not apply to rural ILECs because the purpose of the mechanism is to provide support to a provider whose cost of providing basic service exceeds its revenues associated with basic service. In addition, CTA cited the difference in treatment between Qwest (the basis of funding is forward-looking, and there was no revenue and cost examination prior to approval to

participate in CHCSM and continuously thereafter) and the rural ILECs (the basis for funding is formulaic, and there is a revenue and cost examination prior to approval to participate in CHCSM and continuously thereafter) and, from CTA's perspective, the failure of many rural LECs to receive full reimbursement of costs.

198. OCC and NECC each took the position that CHCSM should not be used as a revenue neutrality mechanism, although the basis for their position differs from that of CTA. They did not view CHCSM as a make-whole subsidy that guarantees either profitability or a certain level of universal service support.

199. **Question 7:** Should recipients of CHCSM funds be required to reduce rates to offset CHCSM payments in order to preserve revenue neutrality?

200. **Areas of agreement:** There was no general agreement given that some participants opposed the idea of revenue neutrality as applied to CHCSM support.

201. **Areas of disagreement:** To the extent this question addressed revenue neutrality, the same areas of disagreement pertain as discussed above.

202. OCC took the position that the CHCSM recipients should not be required to reduce rates to achieve revenue neutrality. Instead, OCC suggested that there be annual audits of CHCSM recipients to assure that there is no over-recovery in violation of § 40-15-208(2)(a), C.R.S., and further suggested that the applicable audit and annual report rules contain language to address the concern about over-recovery. NECC objected to any process that might require a wireless provider to reduce its rates, citing 47 U.S.C. § 332(c)(3)'s preemption of state authority over a wireless carrier's rates.

203. Qwest proposed that, to preserve revenue neutrality as it defines revenue neutrality, a recipient of CHCSM support be required to reduce rates to offset the CHCSM

support received. To the extent Qwest's proposal is based on the premise that the CHCSM should be used to convert implicit subsidies/support mechanisms to explicit subsidies/support mechanisms, CTA agreed that this would be an appropriate use provided rural ILECs first obtain sufficient CHCSM support to comply with Colorado statute. CTA agreed with Qwest that making implicit subsidies explicit should be done on a revenue-neutral basis.

204. **Question 8:** Is it appropriate to eliminate retail and/or wholesale zone charges for rural consumers and to replace the lost revenues with CHCSM funds in order to maintain revenue neutrality?

205. **Areas of agreement:** Qwest stated that it cannot eliminate wholesale zones charges because 47 CFR § 51.507(f) requires at least three defined zones. There was no disagreement.

206. **Areas of disagreement:** Qwest stated that, to maintain revenue neutrality as it defined it, retail zone charges should be eliminated for rural customers and CHCSM support should be used to replace the lost revenues. CTA stated that, assuming the Commission finds that elimination of zone charges is necessary to allow provision of comparable services at reasonably comparable rates, the CHCSM and CHCSM support ought to be used to facilitate that process. OCC disagreed because, in its view, the CHCSM is not a mechanism to recover "lost revenues." It read § 40-15-208(2)(a), C.R.S., to state that the purpose of the CHCSM is to make up the difference between the reasonable cost to provide the high cost service and the price charged to the customer for said high cost service, after factoring in federal subsidies. In OCC's view, this is not the same as lost revenues.

207. **Question 9:** Should the CHCSM be amended so that the Commission establishes an affordable rate for supported services and carriers are permitted to draw from the fund to the extent their costs to provide the supported services exceed the Commission-established affordable rate for those services? If so, what is the definition of "affordable"? By what process would the Commission establish the affordable rate for supported services? Would

the Commission establish one rate covering supported services as a group or a specific rate for each supported service?

208. **Areas of agreement:** There was general agreement that an affordable rate in the context of this question referred to a Commission-established benchmark rate. There was agreement that the only relevant supported service is basic local exchange service.

209. **Areas of disagreement:** CTA did not object to a benchmark rate, provided carriers would be permitted to draw from the Fund to the extent their costs exceed the benchmark. CTA noted that a benchmark rate is constrained by the residential rate cap. NECC noted that, for business customers, affordability of basic service should be measured by telephone penetration rates.

210. OCC took the position that the Commission cannot amend the pertinent CHCSM rules to address the issues raised by this question absent an amendment to § 40-15-208(2)(a), C.R.S., because that statute authorizes CHCSM support for the difference between the *price* charged for a service, and not the *affordable rate* for a service, and the cost to provide that high cost service. NECC objected to imposition of an affordable rate because this approach is rate regulation, is necessary only in a regulated monopoly setting, and is inappropriate in a competitive market where choices made by customers will drive service offerings and their prices.

211. Qwest stated that, because it is customary to establish different affordable rates depending on the class of customer under review, it might be appropriate to have a different affordability level for high cost areas and for low cost areas when one examines the issue of comparability of rates. For example, Qwest suggested that the affordable rate for business

service in a high cost area could be established at 125 percent of the low-cost area rate for that service. CTA opposed this idea as discriminatory.

212. **Question 10:** What should be the level of CHCSM support received, if any, when the qualifying service offering is part of a telecom package? When the qualifying service offering is included in a bundle of communications services?

213. **Areas of agreement:** There was agreement that the terms "telecom package" and "telecom bundle" are marketing terms, that the distinction between the two is blurred, and that a package or a bundle must include basic service to be relevant to the CHCSM discussion.

214. **Areas of disagreement:** CTA took the position that, if basic service is part of a package or bundle, the Commission should develop a method for allocating some portion of the revenues from the package or bundle to basic service. (CTA presumed that the amount allocated to basic service would equal the price of a stand-alone basic service offering.) In addition, CTA stated that there needs to be a method for identifying and allocating to basic service its appropriate share of the costs of providing the bundle or package. In responding to this concept, both OCC and Qwest observed that one should apply regulatory matching principles (*e.g.*, if one allocates 100 percent of the costs to basic service, then one should allocate 100 percent of the revenues to basic service) if this approach is adopted.

215. OCC's position was that the CHCSM should support only that portion of a bundle or a package that is reasonably necessary and actually is used to provision basic local exchange service and that CHCSM support should reflect the difference between the cost to provide basic service within the package and the carrier's rate for its stand-alone basic service (*i.e.*, basic service outside of a package or a bundle).

216. Qwest took the position that, when basic service is part of a bundle or package, CHCSM support should equal the difference between cost to provide basic service and the affordable rate for basic service.

217. NECC took the position that the CHCSM should be focused on supporting networks, not individual service components, and that receipt of CHCSM support should not be based on the nature of individual service offerings because carriers are designated to receive high cost support. NECC noted that carriers with immature networks spend high cost support on building, maintaining, and upgrading telecommunications network infrastructure and that wireless providers require network investment to support access and capacity (that is, to eliminate dead spots and to improve voice quality).

218. **Question 11:** Can the CHCSM be used to eliminate retail and/or wholesale variable zone charges in rural areas by compensating the ILEC for the difference? If it can be used, should it be used for that purpose?

219. **Areas of agreement:** OCC opined that, if done to make basic service more affordable, there is no legal impediment to using CHCSM support to eliminate retail zone charges in rural areas. There was no disagreement.

220. As to whether CHCSM ought to be used to eliminate zone charges in rural areas, OCC suggested a case-by-case approach and recommended balancing helping to make basic service affordable in high cost areas against maintaining the Fund and the accompanying surcharge on all ratepayers at a reasonable level. There was no disagreement.

221. Qwest stated that it cannot eliminate wholesale zones charges because 47 CFR § 51.507(f) requires at least three defined zones. There was no disagreement.

222. **Areas of disagreement:** There were no areas of disagreement.

223. **Question 12:** Should CHCSM payments be "portable"? If so, what is the definition of "portable"? If CHCSM payments are portable, under what circumstances should they be able to be ported?

224. **Areas of agreement:** There was general agreement that portability refers to the concept that the universal service support follows the supported access line. When an ETC/EP gains a supported access line because a customer chooses to receive service from that carrier, the universal support for that access line goes to that provider. When an ETC/EP loses a supported access line because a customer chooses to switch to another provider's service, the ETC/EP that lost the customer also loses the universal support for the access line to serve that customer.

225. There was agreement that permitting portability of CHCSM support could result in stranded facilities/investment for a POLR and, possibly, a reduction in network integrity. There was disagreement, however, as to whether the Commission can consider this aspect under the current statutes governing the CHCSM.

226. There was agreement that ETCs are required by federal law to advertise the availability of their supported services and that Rule 4 CCR 723-2-2185 imposes on POLRs a similar duty to advertise. To the extent that no such obligation clearly applies to EPs, there was agreement that the EP rules should be changed to add that obligation.

227. **Areas of disagreement:** OCC, NECC, and Qwest agreed that support must be portable. They stated that this is necessary to comply with 47 U.S.C. § 253(b)(3), which contains the competitive neutrality requirements for state universal service regulations. In addition, they stated that the FCC has determined that all universal service support must be targeted as well as portable among eligible telecommunications carriers. Further, they referred to § 40-15-502(5), C.R.S., and Rule 4 CCR 723-2-2847(e). They stated that universal service support should be portable so that the carrier providing the service in a high cost area receives

the support for the service. They stated that the CHCSM Fund will grow without portability because both the incumbent EP and the competitive EP will receive support for the same high cost basic service. In addition, OCC stated that § 40-15-208(2)(a), C.R.S., requires that high cost support be portable.

228. CTA opposed portability and argued that Colorado statute neither provides for nor requires CHCSM support to be portable. CTA argued that the reasonable costs incurred to make basic service available to customers are the costs to construct and to maintain a network as a whole, not individual access lines.

229. NECC asserted that basing a competitive EP's CHCSM support on the incumbent EP's costs will enable multiple competitors to compete for customers and the same level of support. CTA opposed the concept that a competitor's costs be based on the incumbent's costs because the statute requires examination of each carrier's own costs to provide basic service.

230. As to the process by which CHCSM support is ported, OCC raised the possibility of a voucher system under which the high cost customer would receive the voucher and use it to pay its basic service provider. CTA opposed this idea because the high cost support belongs to the telecommunications provider and not to the customer.

231. **Question 13:** Should the Commission use the CHCSM to provide credits to resellers? to Qwest? to rural ILECs? If so, under what circumstances? How would the credits be calculated?

232. **Areas of agreement:** There was agreement that providers that do not use their own facilities, at least in part, or UNEs to provide basic service should not receive CHCSM support. There was agreement that a facilities-based provider should be eligible to receive universal service support.

233. **Areas of disagreement:** There was disagreement concerning whether the state universal service support should be portable.

234. **Question 14:** Should the Commission use the CHCSM to provide credits to UNE loop purchasers? If so, under what circumstances?

235. **Areas of agreement:** CTA, OCC, and Qwest agreed that wholesale services (*i.e.*, services sold to another carrier) should not be assessed for contribution to the CHCSM Fund. Instead, assessment should be done at the retail level.

236. There was general agreement that a UNE-Loop purchaser that uses the UNE in conjunction with its own facilities to provide basic service in high cost areas should receive CHCSM support.

237. **Areas of disagreement:** OCC took the position that a carrier that purchases a wholesale UNE loop and that used its own facilities (in part) to provide basic local service should be eligible for CHCSM support for that purchased UNE loop to the extent of the price it paid for the UNE. Qwest stated that the CHCSM support should be the difference between the cost of the UNE and the affordable rate for the basic service that is provided using the UNE. In addition, Qwest stated that the underlying facilities-based carrier should receive CHCSM support for the difference between the cost of providing basic service and the revenue from the sale of the UNE.

238. **Question 15:** Should the Commission re-average UNE rates for purchasers and pay Qwest any revenue shortfall from the CHCSM? If it should, how would the revenue shortfall be calculated? be verified?

239. **Areas of agreement:** Qwest stated that, because 47 CFR § 51.507(f) requires at least three defined zones, the Commission cannot re-average UNE rates. There was no disagreement.

240. **Areas of disagreement:** OCC opposed the concept of paying Qwest from CHCSM funds for the revenue shortfall that is assumed in the question because (a) issues pertaining to UNE rates (and any shortfall that may occur as a result of those rates) should be addressed in a wholesale pricing proceeding where the wholesale rates are established; (b) the Commission-established wholesale rates are presumed to cover Qwest's costs so there should be no shortfall; and (c) Qwest, as the provider of a wholesale product, is not the carrier that provides service to the high cost customer. CTA opposed the idea of re-averaging UNE rates with any shortfall being made up by CHCSM funds because the purpose of the Mechanism is to help make basic service affordable in high cost areas and to allow for carriers that provide that service in high cost areas to obtain full reimbursement of the difference between the reasonable cost to provide basic service and the price charged for that service.

241. CTA took the position that the purpose of the CHCSM is not to stimulate or to facilitate competition in high cost geographic areas. Qwest and NECC disagreed, arguing that at least one purpose of universal service support is to encourage competition in high cost areas.

242. **Question 16:** How can the Commission ensure that CHCSM subsidies are no greater than what is necessary to ensure affordability of basic local exchange service?

243. **Areas of agreement:** There was agreement that, to keep the CHCSM Fund size manageable and to reduce the impact on telecommunications ratepayers statewide, steps should be taken to assure that CHCSM support is no greater than it needs to be.

244. **Areas of disagreement:** OCC advanced the idea that CHCSM support should be given to only one, primary line for residences and businesses. CTA and NECC advocated retention of the present system under which all lines are supported.

245. NECC advocated that the costs for all providers should be based on the costs of the incumbent. CTA and OCC argued that the costs should be based on the costs of each individual provider.

246. OCC took the position that the CHCSM is to support basic local service, and NECC took the position that the CHCSM is to support comparable services. There followed a discussion about requiring a Basic Universal Service (BUS) offering and using it as the point of comparison to address comparability and affordability. NECC agreed with the concept that EPs should provide at least one rate plan that is comparable to the incumbent's BUS but objected to the idea of requiring that such a stand-alone service be provided. NECC suggested that, if a carrier does not provide a BUS, then the burden should be on the carrier seeking designation as an EP to establish that it provides a comparable service.

247. CTA took the position that CHCSM support should be determined by affordability of basic service *and* by allowing carriers that provide that service in high cost areas to obtain full reimbursement of the difference between the reasonable cost to provide basic service and the price charged for that service. It stated that the statutory rate cap on residential service defined the affordable rate and addressed the affordability issue; that it had presented in Workshop No. 3 models that could be used to streamline the process of determining CHCSM support; and that the Commission should jettison the use of rate cases and audits as the means of screening applications from rural rate-regulated LECs. CTA stated that the enforcement methods used should be equitable, should be applied in a non-discriminatory manner, and should be non-discriminatory in their treatment of CHCSM support recipients.

248. NECC and OCC agreed that CHCSM support should not be used to subsidize anything other than building and maintaining network facilities used to support basic local exchange service.

249. Qwest stated that the Commission could set reimbursement to an EP at an amount that equals the difference between the cost to provide basic service and a Commission-established affordable rate for that service.

250. **Question 17:** Should CHCSM support for wireless providers be based on the support level of the incumbent wireline carrier? on the wireless provider's own cost of service? on another metric (if, so, what is the metric)? Do high-cost support mechanisms in other states provide support for wireless providers? If so, please identify each state and describe the basis on which the state determines the high-cost support to be given to wireless providers.

251. **Areas of agreement:** There were no areas of general agreement.

252. **Areas of disagreement:** CTA posited that, in view of the controversy surrounding wireless providers' accountability for their use of federal and state universal service funds, there is a question as to whether providing state universal support funds to wireless carriers is in the public interest. NECC responded that the issue of public interest was settled with the passage of the federal Telecommunications Act of 1996. NECC stated that the amount of support needed to provide consumers with competitive service offerings is not going to be reduced materially until competitors, with the assistance of universal service funding, are able to construct networks that provide consumers with telecommunications service choices.

253. OCC supported the idea, which it found in § 40-15-208(2)(a), C.R.S., that each provider's own costs to serve are to be used to determine that provider's CHCSM support levels

and that this includes wireless providers.¹⁸ CTA agreed. NECC argued that CHCSM support should be portable to a wireless carrier based on the per-line support of the incumbent in the area the wireless carrier serves. Qwest agreed with NECC, at least to the extent that the forward-looking costs of wireless providers should be developed using the ILEC's wire center level basic service costs and the method described by Qwest in Workshop No. 4.

254. **Question 18:** Should there be revenue benchmark calculations? If not, why not? If not, what should be used?

255. **Areas of agreement:** There were no areas of general agreement.

256. **Areas of disagreement:** OCC stated that the present system, under which *revenue* benchmarks are used for non-rural recipients, should be retained. CTA stated that, for rural carriers, the appropriate CHCSM benchmark is a *local rate* benchmark because that type of benchmark advances the purpose of the state universal service fund. In addition, CTA stated that a revenue benchmark is complex to calculate; requires too much data from the LECs; is problematic as carriers move to providing bundled services; and does not produce equitable results. Qwest stated that there should be no revenue benchmarks because of the interaction with revenue neutrality (*i.e.*, mandated reduction in prices for services other than basic service if a carrier receives CHCSM support), a situation which would result in prices being driven by CHCSM support and not by the market.

257. **Question 19:** Assuming revenue benchmark calculations, what ought to be included in the revenue benchmark calculations? Should revenues from other services (such as broadband services) be included in the revenue benchmark calculations?

¹⁸ OCC also suggested a transition approach under which a wireless provider's CHCSM support is based on the ILEC's costs to service and the wireless provider's rates for some specified and finite period of time and then moves to the wireless provider's cost to serve and its rates. There also was a suggestion that the threshold could be established at a percentage of customers served by the competitive EP.

258. **Areas of agreement:** There was no general agreement.

259. **Areas of disagreement:** Qwest opposed revenue benchmarks.

260. OCC recommended retaining the revenue streams listed in Rules 4 CCR 723-2-2841(k)(I) and 723-2-2841(k)(II). In addition, it recommended adding revenues from broadband services in the revenue benchmark calculation under the category "other revenue as the Commission, by order, deems included," citing Rules 4 CCR 723-2-2841(k)(I)(E) and 723-2-2841(k)(II)(E). CTA recommended that if the Commission determines that a benchmark should be adopted or retained, only those revenue sources that are directly linked to providing basic service should be taken into account in the calculation of a revenue benchmark. CTA stated that, in calculating a revenue benchmark, the Commission should follow the FCC's jurisdictional allocation method.

261. **Question 20:** Should the assessment recognize an offset for monies received from third parties (*e.g.*, Land Developers) for construction of customer facilities? If so, for which types of customer facilities? which type of payments?

262. **Areas of agreement:** Generally, there was agreement that the current methods for determining costs implicitly or explicitly account for revenue sources such as line extension charges and land development agreements.

263. **Areas of disagreement:** There was no area of disagreement.

264. **Question 21:** Should there be a process or a method used to ensure payments received from the federal Universal Service Fund and the CHCSM do not result in under- or over-recovery? If so, what should that process or method be? In the event there is over-recovery, should there be a method or process by which the CHCSM administrator recoups CHCSM funds from the provider? If so, what should that method of process be?

265. **Areas of agreement:** There was general agreement that there should be a process or method used to ensure that, considering all revenues and universal support payments, an ETC or an EP neither over-recovered nor under-recovered its costs.

266. **Areas of disagreement:** OCC advanced the idea that limiting support to the primary, single line for residential customers and for business customers would address this issue. CTA and NECC opposed this idea.

267. OCC suggested that a rate-regulated rural provider that seeks to be designated as EP ought to be required to file a general rate case, both at the time it applies for EP designation and thereafter. The frequency of filing rate cases would depend on the residential rate cap and its effect on the individual rural provider. CTA took the position that this regulatory approach and the rules exacerbate under-recovery by rural CHCSM recipients because the rate case requirements are too time-consuming and expensive for small companies.

268. CTA took the position that, for rural CHCSM recipients, the current Commission rules address and preclude over-recovery. Qwest stated that the current process achieves the goal of ensuring that support received from federal USF and CHCSM does not result in over-recovery or under-recovery. At present, for non-rural and rural EPs, the CHCSM uses only intrastate revenues and costs. For rural EPs that use embedded costs, there is no over-recovery because that method explicitly accounts for federal USF support. For Qwest (the only non-rural EP) that uses forward-looking costs, there is no issue because Qwest does not receive federal USF support. Qwest stated that, should a non-rural EP receive federal USF support, adjustments would need to be made to offset the federal support.

269. OCC suggested annual auditing and additions to the annual report as methods to investigate and to prevent (to the extent possible) over- and under-recovery. OCC recommended that the same audit and reporting requirements apply to ETCs and to EPs. NECC agreed that there should be auditing and suggested the approach used by the Universal Service Administrative Company. NECC also agreed that there should be a review of both the support

received and the uses to which the support was put and suggested following the annual reporting process required by the FCC.

270. CTA stated that, assuming a forward-looking proxy cost study was used to determine rural LECs' CHCSM support, it would accept a true-up process similar to that used in Nebraska.

271. As a method to recoup overpayments of CHCSM support to a provider, OCC recommended that the CHCSM administrator withhold support in later years until the overpayment, with interest, is recovered. There was concern about how this process would work and what (if any) adverse impacts there might be.

272. **Question 22:** What are permissible expenditures of federal USF support funds for an ETC designated provider with both fixed and mobile wireless capabilities?

273. **Areas of agreement:** There was agreement that the FCC allows the federal USF to support both fixed and mobile wireless. As to whether expenditures of CHCSM funds should be used to support both fixed and mobile wireless capabilities, there was agreement that CHCSM support should be available to wireless providers, irrespective of whether the technology is fixed or mobile, provided the basic service is comparable as to both affordability and type of service to the underlying LEC's plan.

274. **Areas of disagreement:** There were no areas of disagreement.

F. Sixth Workshop (revenue requirement)

275. There is no comment matrix for this workshop. The entire discussion regarding this workshop is contained here.

276. **Question 1:** Should changes be made to the current calculations for local switching, loop, and transport allocations (*e.g.*, DEMs, SPF) to the CHCSM?

277. **Areas of agreement:** There was agreement that changes might be necessary. The types of changes, however, were the topic of discussion; no agreement was reached.

278. **Areas of disagreement:** CTA took the position that a change should be made and that Rule 4 CCR 723-2-2855(d) could be used. Use of this rule would establish a residual approach for all rural LECs, would allow the CHCSM to be administered in a manner comparable to other state universal service funds, and would reduce the complexity of the current rules. Several aspects of this approach would reduce the regulatory burden on small rural LECs while protecting against discrimination among and between companies. OCC agreed that there was room for change in the approach but opposed the residual approach suggested by CTA because the process would never require rural LECs to raise their basic local service rates as any shortfall would be recovered through the CHCSM. OCC also disagreed with the use of a uniform rate of return because, under the CTA proposal, the rate of return would be guaranteed; would have the effect of encouraging inefficiencies; and would put upward pressure on the CHCSM.

279. **Additional information:** Staff made a presentation to this workshop on the FCC separations and allocation process and how that process is used by the Staff with respect to CHCSM. A copy of the presentation is Appendix 14. Staff would be pleased to make a presentation to the Commissioners on these topics.

280. **Question 2:** Should additional processes and methods be put in place to ensure that deregulated services are not subsidized by regulated services and the CHCSM? If yes, provide a description of the processes and methods, including verification.

281. **Areas of agreement:** There was no agreement.

282. **Areas of disagreement:** CTA stated its position that the focus of the CHCSM is on providing support for the networks that provide basic service and that the current procedures in Rules 4 CCR 723-2-2402 to 2407 provide adequate protection against cross-subsidization. Qwest agreed that the current rules are adequate for this purpose.

283. OCC took the position that the Commission's decision to adopt a streamlined approach (*see* Decision No. C06-1005) to determine CHCSM support levels requires an increased number of audits to assure there is no cross-subsidization (*i.e.*, that regulated services are not supporting non-regulated services through the CHCSM). In addition, OCC pointed out the Commission's oversight responsibilities, citing §§ 40-15-208(2) and 502, C.R.S. Further, OCC noted that the current practice among rural providers is to move non-regulated services to subsidiaries or affiliated companies. As a result, OCC argued that the allocation process for operating expenses may involve multiple jurisdictions and so requires strict attention. Qwest agreed with OCC that providers should make the proper cost allocations and separations in order to avoid cross-subsidization.

284. CTA took the position that, because CHCSM supports network facilities and not the individual service known as basic local service, the fact that the same network facilities support many services (some regulated, some not) in addition to basic service should not reduce CHCSM support. CTA stated that Colorado statutory policy encourages full support of the network, irrespective of the services offered using that network. OCC responded that, when a provider upgrades its network, non-regulated services that use those facilities must be accounted

for through a reduction when calculating the provider's CHCSM support level, citing §§ 40-15-106, 108(2), and 208(2)(a), C.R.S.

G. Seventh Workshop (regulatory process and fund management)

285. The comment matrix for this workshop is Appendix 15.

286. **Question 1:** Is it either advisable or necessary for the CHCSM regulatory process to be modified, in any fashion whatsoever, in its application to small rural telephone providers? in its application to providers other than small rural telephone providers? If so, what are the proposed modifications; and why is each advisable or necessary?

287. **Question 2:** Can the CHCSM regulatory process be streamlined? If it can be streamlined, should it be? How should it be streamlined?

288. **Question 3:** Is it appropriate for the Commission to alter its level of scrutiny of CHCSM disbursements, via audit and other means, to verify that CHCSM support is applied properly to the recipients' networks in the form of investment, maintenance, and other necessary activities? If so, what specific changes should be made and why?

289. These questions are inter-related and, thus, are discussed together.

290. **Areas of agreement:** There was agreement that the focus of the discussion would be on the disbursement of CHSCM support and that, to some extent, Decision No. C06-1005 rendered the questions moot. There was agreement that the Commission should examine the regulatory process and, probably, make changes. The nature and extent of the changes were discussed; no agreement was reached.

291. **Areas of disagreement:** OCC clarified that its suggestion of a separate regulatory category and different treatment for intermediate rural providers based on access line count in Colorado was a "think" concept. CTA stated that the definition of "rural" should not be based on the size of the company that serves the geographic area and that it would be inappropriate to create a separate CHCSM category for one entity. CenturyTel objected to being singled out and to the suggestion that, in this one area, it be treated differently from all other rural LECs.

292. Qwest agreed with CTA that treatment of a rural LEC should be based on the area served. Qwest suggested that the area served should be targeted by wire center; and CTA disagreed.

293. CTA stated that the regulatory process, particularly as it applies to rural LECs as EPs, must be simplified and the regulatory burden lessened. CTA noted that the number and size of the required reports should be reviewed and reduced. OCC disagreed and observed that the Commission had streamlined the regulatory process for rural LECs and that additional reduction of either the amount of information reported to the Commission or the frequency of reporting could impair the Commission's oversight of the CHCSM. Verizon Wireless observed that, from the perspective of a non-recipient carrier that pays into the CHCSM, the most important considerations are the cost/size of the Fund; the costs to administer the Fund; and the assurance that the CHCSM support is being used for the proper purposes.

294. Rural EPs receive CHCSM support based on embedded costs (that is, on investments made and money spent). Non-rural EPs (that is, Qwest) receive CHCSM support based on forward-looking costs with an annual true-up. In large measure, wireless EPs receive CHCSM support based on access lines ported from the incumbent LEC; wireless EPs receive CHCSM support based on the underlying ILECs' costs.¹⁹ There was discussion concerning moving all EPs to a forward-looking proxy cost model. This discussion covered the same perspectives and issues as did Workshop No. 3 on models.

295. OCC inquired as to what regulatory process applies to wireless providers that are EPs. Particularly, it asked (a) whether Rule 4 CCR 723-2-2847(e) trumps or should trump

¹⁹ To be able to port from the rural ILEC, a wireless provider first must have built facilities capable of providing basic local exchange service.

Rule 4 CCR 723-2-2847(g)(I); and (b) in the event neither applies, should one or both apply. This was not resolved. NECC discussed the filings it is required to make as a wireless carrier. As an ETC, NECC must make an annual filing with the FCC regarding the amount of federal USF support received and the investments made. In addition, it must file a report with the FCC on prospective build-outs. To the extent that the Commission considers requiring a report on prospective build-outs, NECC recommended that the report cover no more than 12-18 months into the future.

296. CTA suggested that the Commission allow greater flexibility when considering the appropriate level of support for a small LEC's expenditures for corporate and administrative costs. This was discussed at the workshop, but no resolution was reached.

297. **Additional information:** At the request of the participants, Staff made an oral presentation (a) describing the CHCSM-related audit and review of Qwest, of wireless EPs, and of rural EPs; (b) describing the differences in the approach used by Staff in its review of Qwest, of wireless EPs, and of rural EPs; (c) explaining the reasons for the differences in approach; and (d) describing the differences in the approach toward rural LECs before and after Decision No. C06-1005. Staff would be pleased to make such a presentation to the Commission.

298. **Question 4:** What are the appropriate criteria or standards which a provider should meet to demonstrate its proper use of CHCSM support?

299. **Question 5:** Is there discrimination in the process by which a rural carrier receives CHCSM payments as compared to the process by which a non-rural carrier receives CHCSM payments? If so, identify the discrimination and its source. Explain or describe the steps necessary to eliminate or to reduce the identified discrimination.

300. **Question 6:** How can the Commission ensure that recipients of CHCSM funds correctly account for the costs of their operations? for their retail revenues?

301. **Question 7:** How can the Commission ensure that recipients of CHCSM funds demonstrate, and provide an appropriate accounting of, the amount of subsidy *actually* needed?

302. These questions are inter-related and, thus, were discussed together during the workshop. In addition, many of the subject matter areas were covered extensively in previous workshops.

303. **Areas of agreement:** There was agreement that an EP receiving CHCSM support must be accountable for the use of that support and that the Commission should take reasonable steps to assure itself that an EP used/uses CHCSM support appropriately. In addition, the participants agreed that standards or criteria to establish appropriate use are important and, to the extent they do not exist (either formally or informally), should be developed.

304. CTA and Qwest agreed that incumbents have mature networks. As a result, an incumbent EP recovers costs for maintaining its network, costs for replacing/rebuilding the existing network, and costs for building out the existing network. There was no disagreement with the idea of using CHCSM support for these purposes.

305. **Areas of disagreement:** OCC suggested that a five-year network improvement plan should be adopted as a tool to assist the Commission in determining if an EP used/uses its CHCSM support appropriately. The improvement plan would be presented on a rolling basis. There was some push-back from CTA about the expense of such a process, especially if it required annual submissions. CenturyTel did not endorse OCC's concept but stated that, if the idea is implemented, any plan adopted would need to be flexible enough to address changing circumstances and unforeseen events.

306. CTA took the position that there must be specific and known standards for audits performed by Staff. CTA suggested the following as the basis for a standard: when Staff sees

that the information being sought is or is not there, then the audit should stop. It also suggested that there be some reasonable limit on (a) Staff duplication of NECA, FCC, and USAC efforts during an audit, (b) the duration of an audit, and (c) the number of audits being performed on providers (generally, CTA members) who receive a small percentage of the CHCSM support as compared to the number of audits performed on providers who receive the majority of the CHCSM support. OCC took the position that the Staff should use its audit authority without the suggested restrictions.

307. An issue was discussed concerning whether the current process for non-rural EPs allowed Qwest to use CHCSM support for purposes other than universal service through the provisioning of basic local exchange service. Qwest has used CHCSM funds to keep rates for other services low by means of revenue neutrality and has used CHCSM funds to build network infrastructure designed to provision basic service and broadband. It was noted that the cost model used to calculate Qwest's draw from the CHCSM is designed not to impede the provisioning of advanced services. OCC stated its opposition to revenue neutrality for reasons previously discussed. There was no resolution of the issue concerning the use of CHCSM funds to build network infrastructure that is capable of providing many services, including high speed services (*i.e.*, broadband), in addition to basic local exchange service.²⁰

308. **Additional information:** During the workshop, Staff addressed some questions regarding the audit of telecommunications providers. Staff stated that it performs no audits solely for CHCSM purposes. When Staff performs an audit, it examines the books and records of the company being audited for many purposes.

²⁰ As discussed in earlier workshops, this is an issue for all recipients of CHCSM because all networks in Colorado at this time have the capability of providing services in addition to basic local exchange service.

309. **Question 8:** At present, is the CHCSM fund managed in a manner which keeps transaction costs to a minimum? If not, what changes should be implemented to assure that transaction costs are kept to a minimum?

310. **Question 9:** At present, are sufficient safeguards in place to deter fraud and waste in the management of the CHCSM fund? If not, what changes should be implemented to assure that fraud and waste in the management of the CHCSM fund are deterred?

311. These two related questions were discussed together.

312. **Areas of agreement:** In the main, this discussion was an exchange of information about the functions performed by the Commission in administering the CHCSM Fund and about the functions performed by CenturyTel under contract as the financial manager of the CHCSM Fund.

313. The Commission performs the following functions in administering the CHCSM Fund: (a) sets rate elements annually; (b) determines and disburses support to EPs, which includes reconciliations; (c) determines the amount to invoice contributing companies; (d) audits, tracks, and collects contributions; (e) oversees financial management and contract with custodial receiver of funds from contributing carriers; (f) prepares an annual report to the General Assembly; (g) initiates and litigates formal complaints (*i.e.*, complaint for failure to file appropriate forms and for failure to contribute to CHCSM Fund), as necessary; (h) sets benchmarks; and (i) tracks eligible access lines for support.

314. The cost to administer/manage the CHCSM Fund, exclusive of the contract with the Fund's custodial receiver, was 0.2 percent of the CHCSM disbursements. The custodial receiver's payment is established in the contract, and that payment comes from the Fund's interest and is not included in the cost to administer the Fund.

315. **Areas of disagreement:** There were no areas of disagreement.

316. **Additional information:** Staff would be pleased to make a presentation to the Commission on CHCSM Fund administration and management.

317. **Question 10:** Should the Commission use a third-party administrator to manage the CHCSM? If so, by what process should the Commission select that third-party administrator? How would the Commission monitor the third-party administrator's management of the CHCSM? What would be the fee structure? Would the administrator be paid solely from fund monies? Would the third-party administrator be paid a flat rate versus a percentage of Fund size and how often would payment be made to the administrator?

318. **Areas of agreement:** No agreements were reached during the workshop.

319. **Areas of disagreement:** CTA identified these advantages of using a third-party (*i.e.*, non-Commission) administrator: (a) an independent person handling the Fund; (b) clear separation between the Commission and the third party with functions clearly delineated; and (c) no appearance of impropriety. OCC disagreed and noted these disadvantages of using a third-party administrator: (a) loss of institutional knowledge of recipients; (b) loss of administrative efficiency (for example, loss of ability to combine audit regarding use of CHCSM support with audit for other purposes);²¹ and (c) in the event the third-party administrator fails to file necessary reports or is late in doing so, hampering the Commission in its oversight and ability to take action to ensure payment into the Fund in a timely fashion.

320. **Question 11:** Should the Commission (or anyone else) audit the CHCSM Fund and its administration? the disbursements made? how the CHCSM funds are spent? anything else? If so, what audit processes should be employed? How frequently should audits be conducted? Who should conduct the audit? Does the answer to the questions depend on what is being audited and the purpose of the audit? If so, please explain.

321. **Areas of agreement:** There were no agreements reached during the workshop.

²¹ As discussed above, it is Staff's practice to combine audits.

322. The workshop discussion was an explanation of the current audit practices vis-à-vis the CHCSM Fund. Staff audits or oversees the third-party Fund custodial receiver through monthly monitoring. If and when the CHCSM Administrator changes, there will be a full audit.

323. **Areas of disagreement:** There were no areas of disagreement raised during the workshop.

324. **Additional information:** Staff would be pleased to make a presentation to the Commission concerning audits done with respect to CHCSM Fund administration and management.

325. **Question 12:** Should there be a built-in review process and/or sunset provision for CHCSM? Why or why not?

326. **Areas of agreement:** Aside from noting that Rule 4 CCR 723-2-2850(a) provides for periodic review of the CHCSM, there was no general agreement reached during the workshop.

327. **Areas of disagreement:** CTA took the position that, so long as universal service is the state policy, there should be a CHCSM. CenturyTel and OCC were less certain and stated that regular review of the CHCSM is important to determine (a) how it fits into Colorado telecommunications policy and (b) the appropriate use of CHSCM support. Some participants suggested that the CHCSM should end when the Commission makes a finding of effective competition²² with respect to basic local exchange service; they suggested a transition period would be necessary to allow rates to be adjusted to cover all costs of providing basic service.

²² A finding of effective competition refers to § 40-15-207(1)(a), C.R.S., which contains the standard to be used by the Commission to move a telecommunications service from regulation pursuant to Part 2 to regulation pursuant to Part 3 of article 15. A finding of effective competition is made when the Commission determines that "there is effective competition in the relevant market for such service and that ... regulation under part 3 of [article 15] will promote the public interest and the provision of adequate and reliable service at just and reasonable rates." Section 40-15-207(1)(a), C.R.S.

328. The participants discussed what should happen to the CHCSM in the event the residential rate cap was removed. Some of the participants argued that the Commission should consider ending the CHCSM, and some argued that the Commission should reduce significantly the size of the Fund but that the CHCSM should be retained.

329. **Question 13:** Should there be mandatory consumer education? Why or why not?

330. **Areas of agreement:** At the workshop, the participants generally agreed that there should be consumer education with respect to the CHCSM and that the current rules are sufficient. They suggested using a Website as an educational tool.

331. **Areas of disagreement:** There were no areas of disagreement during the workshop.

332. **Question 14:** What sanction and enforcement powers does the Commission have with respect to Eligible Providers and their receipt of CHCSM support? with respect to their expenditure of CHCSM monies? Should this be addressed in the Commission's CHCSM rules and, if so, how?

333. **Areas of agreement:** No agreements were reached during the workshop.

334. **Areas of disagreement:** No new areas of disagreement were identified or discussed during the workshop.

335. **Question 15:** What investigative, sanction, and enforcement powers, if any, does the Commission have with respect to Eligible Telecommunications Carriers and their receipt of federal Universal Support Fund support? with respect to their expenditure of federal Universal Support Fund monies? Should this be addressed in the Commission's ETC rules and, if so, how?

336. **Areas of agreement:** No agreements were reached during the workshop.

337. **Areas of disagreement:** The OCC stated that, as part of its annual certification of an ETC to the FCC, the Commission should review the use of universal service funds (both

federal USF and CHCSM support) to assure itself that the funds are used for the intended purposes. OCC saw this as minimal, but necessary, oversight. CenturyTel took the position that this additional review was unnecessary because the Commission could review an ETC's or an EP's annual report to the Commission and have the same information.

338. **Question 16:** In Decision No. FCC 05-46, the Federal Communications Commission established its requirements for designation of ETCs and for reporting requirements for ETCs. In that decision the FCC strongly encouraged states, such as the Commission, to adopt the same requirements for ETCs which the states designate.^[NOTE] This investigation proceeding will investigate whether the Commission ought to adopt some or all of the FCC's requirements for designation of ETCs, including the public interest analysis, found in Decision No. FCC 05-46. *See generally* discussion found in that decision at ¶¶ 58-64. Specifically, participants are referred to the requirements and analytical framework which the FCC encourages the states to adopt. *See id.* at ¶¶ 19, 21, 25, 30, 34, 35, 39, 41, 49, 58-64, 65, and 67.

^[NOTE] In Docket No. 05R-537T, the Commission has commenced a rulemaking to address the reporting requirements for ETCs once they have been designated ETCs by the Commission. Thus, reporting requirements will not be addressed in this investigation proceeding. Participants are invited to present comment regarding reporting requirements and related issues in that on-going rulemaking proceeding.

339. **Question 17:** If the Commission should adopt a particular FCC requirement or analytical framework, identify what the Commission should adopt and explain why it should be adopted. If the Commission should not adopt a FCC particular requirement or analytical framework, identify what the Commission should not adopt and explain why it should not be adopted. In responding, the participants may wish to consider the impact, if any, of the proposed rules under consideration in Docket No. 05R-537T (for example, should the requirements be consistent?).

340. These two inter-related questions were discussed together during the workshop. The discussion was about designation of ETCs under federal law and of EPs under Colorado law.

341. **Areas of agreement:** There were no agreements reached during the workshop.

342. **Areas of disagreement:** NECC and OCC discussed the scope of the public interest test established by the FCC for ETCs, about which they disagreed (as set out in the written comments and replies). OCC took the position that the Commission could adopt a

different (and, potentially, more stringent) standard for EP under Colorado statute; NECC questioned that position.

343. NECC stated its position that the purpose of the CHCSM is to encourage competition in high cost areas while leaving some regulation (*e.g.*, service quality and consumer protections) in place in some areas. NECC proffered the CTIA Customer Code as sufficient regulation, so long as an EP promised to abide by that Code. In addition, NECC noted that competitive pressures (that is, that customers could choose to leave an unsatisfactory provider) would serve to assure service quality.

344. OCC disagreed with the premise that the purpose of the Mechanism is to encourage competition. It took the position that the CHCSM's purpose is to recover the difference between the cost to provide basic local exchange service in a high cost area and the reasonable price for that service. In addition, OCC disagreed with the use of the CTIA Consumer Code because there is no enforcement mechanism and because the scope of the Code may be narrower than the scope of the Commission's service quality rules. Finally, OCC disagreed that competitive pressures would motivate a wireless provider to provide and to maintain quality service and noted that a wireless customer may be "captive" due to her having signed a long-term service contract.

LIST OF APPENDICES TO REPORT

1. Colorado Telecommunications Association's Proposed Rules
2. Colorado Office of Consumer Counsel's Proposed Rules
3. Qwest Corporation's Proposed Rules
4. Relevant Federal and Colorado Statutes
5. National Regulatory Research Institute Study Entitled *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey* (July, 2006)
6. Pertinent Commission Rules (effective April 1, 2006)
7. Workshop No. 1 Comment Matrix
8. Workshop No. 2 Comment Matrix
9. Workshop No. 3 Comment Matrix
10. Qwest Corporation's Presentation for Workshop No. 3:
Qwest's CHCSM Calculations
11. Telecom Consulting Associates' Presentation for Workshop No. 3:
Simplified Residual Revenue Requirement Model
12. GVNW Consulting's Presentation for Workshop No. 3:
Rural Local Exchange Carrier Support Calculated Using
Total Element Long Run Incremental Cost (HAI 5.2(a) model)
13. Workshop No. 4 Comment Matrix
14. Staff of the Commission Presentation for Workshop No. 6:
Federal Communications Commission Separations and
Allocation Process and Staff's Use of That Process with
respect to CHCSM
15. Workshop No. 7 Comment Matrix