COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2023 Sunset Review

High Cost Support Mechanism

October 13, 2023

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 13, 2023

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the High-Cost Support Mechanism. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2024 legislative committee of reference.

The report discusses the question of whether there is a need for the program provided under Section 208 of Article 15 of Title 40, C.R.S. The report also discusses the effectiveness of the Public Utilities Commission in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director

Sunset Review: High Cost Support Mechanism

Background

What is the High Cost Support Mechanism?

The High Cost Support Mechanism (HCSM) serves as a source of additional capital funding to assist broadband deployment in unserved or underserved areas of Colorado as well as providing funds to certain rural telecommunications providers. The HCSM is a fund, where the money collected by the Public Utilities Commission (PUC) via a surcharge to retail telecommunications consumers is passed on to others to support basic telecommunications and separately, broadband investment.

How is the HCSM funded?

The HCSM is funded through a 2.6 percent surcharge assessed on Colorado intrastate services that include telecommunications pre-paid and post-paid services and all types of local exchange services including wireless/cellular services. The surcharge is most typically passed along to consumers and identified in a line item on their bills. Importantly, the surcharge is assessed on the total retail revenues portion of a consumer's bill, and it does not include any data charges, including, but not limited to internet access, video services or streaming or texting.

What does it cost?

In fiscal year 21-22, the PUC expended $284,450 and allotted 1.4 full-time equivalent employees to implement the program.

How much HCSM funds were disbursed?

In calendar year 2022, $12,191,358 were disbursed to the Broadband Deployment Board for broadband deployment. Also in calendar 2022, $8,784,239 were allocated to rural telecommunication providers.

Key Recommendations

- **Continue the HCSM and remove it from the sunset schedule.**
- **Continue the allocation of HSCM funds to rural telecommunications providers.**

Table of Contents

Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion--whether conditions that led to the initial creation of the program have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency's board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Table 1
Application of Sunset Criteria

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	• Profile of the Program • History of the High Cost Support Mechanism • Recommendation 2
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	• History of the High Cost Support Mechanism
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	• Legal Framework
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	• Legal Framework
(V) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.	• Legal Framework • Program Description and Administration • Recommendation 1
(VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.	• Program Description and Administration
(VII) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.	• Not Applicable
(VIII) Whether regulatory oversight can be achieved through a director model.	• Not Applicable
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	• Not Applicable

Sunset Criteria	Where Applied
(X) If reviewing a regulatory program, whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession or regulated entity.	• Not Applicable
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	• Not Applicable
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	• Not Applicable
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	• Not Applicable
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	• Not Applicable

Sunset Process

Programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The High Cost Support Mechanism (HCSM) and the related functions of the Public Utilities Commission (PUC), as enumerated in Section 208 of Article 15 of Title 40, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2024, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the HCSM pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the HCSM should be continued and to evaluate the performance of the PUC. During this review, the PUC must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed PUC staff, representatives of telecommunications carriers, Broadband Deployment Board staff and officials with state and national professional associations, and reviewed Colorado statutes and rules.

The major contacts made during this review include, but are not limited to:

- American Association of Retired Persons (AARP)
- Colorado Telecommunications Association
- Governor's Office of Information and Technology
- Lumen (Qwest Corporation dba CenturyLink QC)
- Public Utilities Commission staff

Profile of the Program

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for the High Cost Support Mechanism (HCSM), it is first necessary to recognize what it does.

The HCSM serves as a source of additional capital funding source to assist broadband deployment in unserved or underserved areas of Colorado as well as providing funds to certain rural telecommunications providers. The HCSM is a fund, where the money collected by the Public Utilities Commission (PUC) via a surcharge to retail telecommunications consumers is passed on to others to support basic telecommunications and separately, broadband investment. PUC staff is responsible for, among other things, serving as the administrator for billing, collection and disbursement of HCSM funds.[2] PUC staff also utilizes a third-party administrator to, among other things, assist with invoices, payments and transfers of HCSM funds.

The HCSM is funded through a 2.6 percent surcharge assessed on Colorado intrastate services that include telecommunications pre-paid and post-paid services and all types of local exchange services including wireless/cellular services (Retail revenues are defined in PUC Rule 4 CCR § 723-2-2841(l)). The surcharge is most typically passed along to consumers and identified in a line item on their bills. Importantly, the surcharge is assessed on the total retail revenues portion of a consumer's bill, and it does not include any data charges, such as internet access, video services or streaming or texting.

Additionally, Colorado's statute and rules related to the HCSM do not specifically address whether voice over internet protocol (VoIP) or broadband internet access services are included and required to pay the surcharge. The PUC's definition of retail revenues subject to the HCSM surcharge are technology neutral. However, some VoIP service companies have been voluntarily paying the surcharge, which contributes to the HCSM fund.

[2] Colorado Public Utilities Commission. *2022 Annual Report of the Colorado High-Cost Support Mechanism*. Retrieved June 27, 2023, from https://drive.google.com/file/d/1TFCbdVVfr8X1W0IessS4sKzGtbGh8dLU/view

Currently, the HCSM serves two functions:

- It provides support for the universal service funding for basic telecommunications service in certain rural areas of Colorado, and
- It provides capital funds for broadband deployment through the Broadband Deployment Board, which is located at the Colorado Broadband Office (CBO) in the Governor's Office of Information Technology.

The HCSM currently provides funds to 12 rural telecommunication service providers in Colorado. From 2018 through 2022, the HCSM provided more than $27 million to these rural telecommunication service providers.

Since 2015, through the third quarter in calendar year 2022, the PUC allocated over $67.7 million of HCSM funds to the broadband account for broadband capital deployment.

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.

Broadband service delivers positive economic outcomes to individuals and businesses. In fact, researchers have concluded that higher levels of broadband adoption in communities lead to economic growth, higher incomes and lower unemployment.[3]

[3] Brookings. *Digital Prosperity: How Broadband Can Deliver Health and Equity to All Communities*. Retrieved August 16, 2023, from https://www.brookings.edu/articles/digital-prosperity-how-broadband-can-deliver-health-and-equity-to-all-communities/

Legal Framework

History of the High Cost Support Mechanism

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset and second sunset criteria question:

> Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and
>
> Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

House Bill 95-1335 originally created the Colorado High Cost Support Mechanism (HCSM), to be administered by the Colorado Public Utilities Commission (PUC). The initial purpose of the HCSM was to create a funding system to assist in providing universal telecommunications services at affordable rates to all Coloradans. All telecommunications providers that generate intrastate retail revenues pay into the HSCM. Telecommunications service providers, in turn, assess a monthly surcharge to their customers (2.6 percent of intrastate retail revenues).

House Bill 16-1184 required a portion of the HCSM to be transferred to the Broadband Fund, which is administered by the Broadband Deployment Board (Board) in the Governor's Office of Information Technology (Office of Information Technology). The Board awards grants for investment in projects aimed at deploying broadband service in unserved or underserved areas of the state. From 2016 to 2023, the HCSM surcharge was statutorily reduced by a percentage of the amount of contributions that were allocated to the broadband fund in the previous year.

Additionally, the General Assembly passed Senate Bill 18-002 (SB 002), which substantially altered the HCSM. Senate Bill 002, among other things, kept the surcharge at 2.6 percent, and it gradually increased the amount of HCSM funds that are transferred to the broadband fund.

House Bill 21-1109, among other things, transferred the Board from the Department of Regulatory Agencies' Executive Director's Office to the Office of Information Technology.

Funding for the twelve rural telecommunications providers via the HCSM, pursuant to Senate Bill 18-002, was scheduled to end on December 1, 2023. However, House Bill

23-1051, which was passed by the General Assembly, continues funding at the current level to the 12 rural telecommunications providers until September 1, 2024, which coincides with the sunset date of the HCSM.

Legal Summary

The third, fourth and fifth sunset criteria question:

> Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;
>
> Whether agency rules enhance the public interest and are within the scope of legislative intent; and
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether statutory requirements are set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Section 40-15-208, C.R.S., creates the HCSM, which is housed in the PUC within the Department of Regulatory Agencies. The primary purpose of the HCSM is to provide financial assistance in order to:[4]

- Assist in making basic local exchange service affordable and allow for reimbursement to rural telecommunications providers, and
- Provide access to broadband service in unserved areas.

The HCSM is required to be supported through an assessment (surcharge) from all telecommunications providers' intrastate retail revenues in Colorado.[5] The surcharge is currently 2.6 percent. The surcharge applies to intrastate retail revenues, which are defined, in part, as, [6]

> . . . the gross revenues associated with contribution levels to the HCSM from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. . .

[4] § 40-15-208(2)(a)(I), C.R.S.
[5] § 40-15-208(2)(a)(II), C.R.S., and 4 CCR § 723-2-2845(b and c), Public Utilities Commission: Rules Regulating Telecommunications Services and Providers of Telecommunications Services.
[6] 4 CCR § 723-2-2841(l), Public Utilities Commission: Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

Distribution of HCSM funds is a relatively complicated matter, with three types of entities receiving differing levels of funding over time.

First, rural telecommunications providers are to receive the same level of support as the average of what they received in 2015 and 2016, through September 1, 2024.[7]

The nonrural incumbent (CenturyLink QC) received a decreasing share of collections of the HCSM surcharge over a four-year period, from 2019 through 2022. This funding decreased over this period of time in conjunction with a decrease in the number of telephone exchange areas where HCSM funds were to be used by CenturyLink QC to support basic services. Support from the HCSM to CenturyLink QC ended on January 1, 2023, as the last six exchange areas receiving HCSM support were dropped.

Next, any remaining funds are distributed to the Board for broadband deployment, according to the following schedule:[8]

- 2019-60 percent,
- 2020-70 percent,
- 2021-80 percent,
- 2022-90 percent, and
- 2023-100 percent.

Finally, any HCSM funds that were not distributed to local telecommunications carriers and the Board are then distributed to the "nonrural incumbent local exchange carrier."[9]

Additionally, the PUC is required to submit a written report on or before December 1 each year, to the committees of reference in the Senate and House of Representatives that hear telecommunications issues. The written communication must include an accounting of the operation of the HCSM during the preceding calendar year.[10] The report must include the following:[11]

- The total amount of money that the PUC determined should constitute the HCSM from which distributions would be made;
- The total amount of money ordered to be contributed through a neutral assessment collected by each telecommunications service provider;
- The basis on which the contribution of each telecommunications service provider was calculated;
- The benchmarks used and the basis on which the benchmarks were determined;
- The total amount of money that the PUC determined should be distributed from the HCSM;

[7] § 40-15-208(4), C.R.S.
[8] § 40-15-208(2)(a)(IV), C.R.S.
[9] § 40-15-208(2)(a)(V), C.R.S.
[10] § 40-15-208(2)(b), C.R.S.
[11] § 40-15-208(2)(b), C.R.S.

- The total amount of money distributed to each telecommunications service provider from the HCSM;
- The basis on which the distribution to telecommunications service providers was calculated;
- The amount of money received by each telecommunications service provider by geographic support area and type of customer;
- The proposed benchmarks and the proposed contributions to be collected through a neutral assessment on each telecommunications provider, and the proposed total amount of the HCSM from which distributions are to be made in the following calendar year; and
- The total amount of distributions made from the HCSM, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period of time and a full accounting of and justification for any difference.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth and sixth sunset criteria question:

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The High Cost Support Mechanism (HCSM), which is the sole focus of this sunset review, is administered by the Colorado Public Utilities Commission (PUC), housed within the Department of Regulatory Agencies.

The Director of the PUC (Director) is charged with managing the operations of the agency in order to carry out, among other things, the public utilities law, and to carry out and implement policies, procedures, and decisions made by the PUC. The Director is supported by the Deputy Director of Public Safety, the Deputy Director of Fixed Utilities, and the Deputy Director of Policy and External Affairs.

The PUC's Fiscal Officer, within the Executive Office of the PUC, is responsible for compiling, among other things, financial data into agency reports, making policy and programmatic decisions, overseeing and monitoring revenue and expenditures and ensuring statutory and regulatory compliance.

Table 2 illustrates the total expenditures for the PUC related to the HCSM, the total expenditures and full-time equivalent (FTE) employees dedicated to HCSM administration.

Table 2
Agency Fiscal Information

Fiscal Year	Total Program Administration Expenditures	FTE
17-18	$450,000	Not Available
18-19	$285,580	Not Available
19-20	$300,518	3.3
20-21	$302,600	1.7
21-22	$284,450	1.4

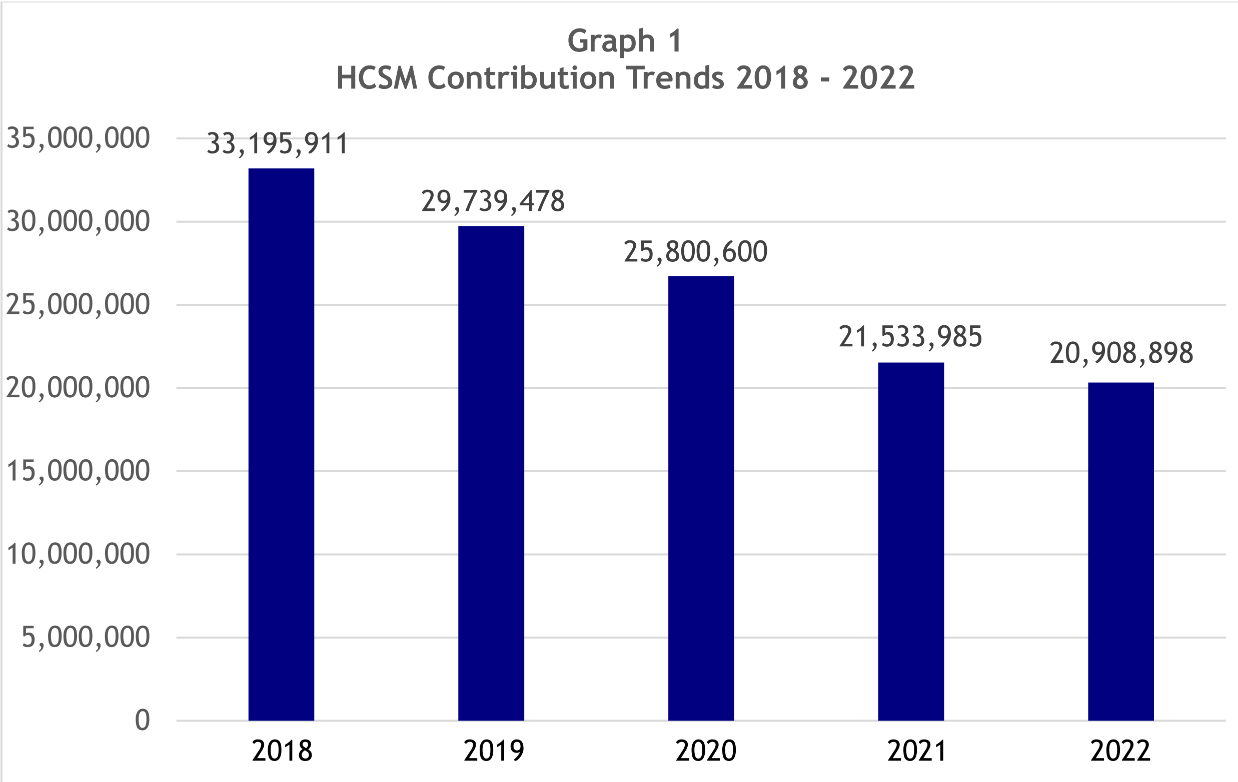
The PUC devoted the equivalent of 1.4 FTE across 16 positions in the PUC to fulfill its duties for administration of the HCSM, including fund management and system support, the deliberative process for proceedings, and executive leadership. The PUC was unable to provide a complete breakdown of the positions related to the FTE for the administration of the HCSM.

Notably, the PUC was not able to provide any detail of FTE in fiscal years 17-18 and 18-19. The decrease in FTE and total program expenditures in subsequent years is attributable to the declining burden and duties related to the administration of the HCSM. The declining burden is attributable to the utilization of a third-party administrator.

The purpose of the HCSM is to provide funds to the Broadband Deployment Board (Board) for broadband deployment in unserved areas in Colorado, as well as provide funds to rural telecommunications providers. There is currently a 2.6 percent HCSM surcharge assessed on wireless/cellular services. The surcharge is most typically passed along to consumers. Importantly, the surcharge is assessed on the voice portion of a consumer's bill, and it does not include any data charges, such as internet usage and texting.

Additionally, Colorado's statute and rules related to the HCSM do not specifically address whether voice over internet protocol (VoIP) services are required to pay the surcharge. However, some VoIP service companies have been voluntarily paying the surcharge, which contributes to the HCSM fund.

Graph 1 provides the total amount of funds contributed to the HCSM in calendar years 2018 through 2022.



As Graph 1 indicates, funds contributed to the HCSM have declined in each of the last five calendar years. Generally, PUC staff indicates that the decline in HSCM funds is attributable, at least in part, to consumers moving to data-based internet protocol services on their cell phones, which results in less voice usage. Since the HCSM surcharge is based on the telecommunications portion and not the data component of a customer's bill, this has resulted in lower HCSM contributions.

Table 3 highlights the HCSM funds that have been disbursed to the Board for broadband deployment in unserved areas of Colorado.

Table 3
HCSM Broadband Fund Disbursements

Transfer Date	Amount
2018	$10,800,000
2019	$11,789,347
2020	$12,183,720
2021	$11,225,760
2022	$12,191,358
Total Disbursements	**$58,190,185**

As Table 3 indicates, the amount of HCSM funds distributed to the Board in the past five calendar years has remained fairly constant. Importantly, COPRRR is currently conducting sunset review of the Board, and additional information related to those disbursements can be found in that report.

Table 4 shows the HCSM funds allocated to rural telecommunications carriers, including wireless carriers, in calendar years 2019 through 2022. Importantly, there was one non-rural telecommunications carrier that provided services to consumers in high-cost areas, and, as of 2023, that telecommunications carrier no longer receives HCSM funds.

Table 4
HCSM Funds Allocated to Rural Telecommunication Providers

Rural Carrier	2019	2020	2021	2022	Total Support
Agate Mutual Tel Co	$17,135	$16,941	$16,941	$16,941	$67,958
Delta County Tel Co	$170,789	$165,721	$165,721	$170,789	$678,088
Nucla-Naturita Tel	$322,387	$321,867	$321,867	$321,867	$1,287,988
Nunn Tel Co	$47,175	$47,485	$47,485	$47,485	$189,630
Peetz Coop Tel Co	$26,441	$26,441	$26,441	$26,441	$105,764
Phillips County Tel	$30,847	$30,847	$30,847	$30,847	$123,388
Pine Drive Tel Co	$680,488	$681,059	$681,059	$681,059	$2,723,665
Rico Tel Co	$13,015	$13,015	$13,015	$13,015	$52,060
Roggen Tel Coop Co	$51,675	$51,614	$51,675	$51,675	$206,578
Willard Tel Co	$29,042	$29,042	$29,042	$29,042	$116,168
Non-Rural Carrier	2019	2020	2021	2022	Total Support
Qwest Corp*	$11,198,370	$7,372,244	$4,061,506	$1,910,386	$22,508,740
Wireless Carriers	2019	2020	2021	2022	Total Support
N.E. Colorado Cellular, Inc., Dba Viaero	$3,174,268	$3,174,268	$3,174,268	$3,174,268	$12,697,072
NNTC Wireless, LLC	$159,365	$159,365	$159,365	$159,365	$637,460
Total Disbursements	**$6,633,180**	**$13,887,231**	**$12,089,909**	**$8,784,239**	**$41,394,559**

As Table 4 indicates, HCSM funds have provided more than $41 million to rural, one non-rural and wireless carriers in the past five four calendar years.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 — Continue the High Cost Support Mechanism and remove it from the sunset schedule.

Section 40-15-208, Colorado Revised Statutes, (C.R.S.), creates the High Cost Support Mechanism (HCSM), which is housed in the Public Utilities Commission (PUC) within the Department of Regulatory Agencies. The primary purpose of the HCSM is to provide financial assistance in order to:[12]

- Assist in making basic local exchange service affordable and allow for reimbursement to rural telecommunications providers, and
- Provide access to broadband service in unserved areas.

The HCSM is required to be supported through an assessment (surcharge) from all telecommunications providers' intrastate retail revenues in Colorado.[13] The surcharge is currently 2.6 percent. Payments are made on retail revenues, which are defined, in part, as,[14]

> . . . the gross revenues associated with contribution levels to the HCSM from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. . .

The first sunset criterion asks whether the program under review is necessary to protect the public health, safety and welfare.

As the data in Tables 3 and 4 of this sunset report indicate, the HCSM has allocated more than $58 million for broadband deployment to the Broadband Deployment Board (Board) and more than $41 million to rural telecommunication providers in the past five calendar years.

The disbursement of available HCSM funds is important to the public safety and welfare because it provides access to critical broadband services through disbursements from the Board in unserved areas of Colorado, as well as provides necessary funds to rural telecommunication providers to continue to maintain critical telecommunications

[12] § 40-15-208(2)(a)(I), C.R.S.
[13] § 40-15-208(2)(a)(II), C.R.S., and 4 CCR § 723-2-2845(b and c), Public Utilities Commission: Rules Regulating Telecommunications Services and Providers of Telecommunications Services.
[14] 4 CCR § 723-2-2841(l), Public Utilities Commission: Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

infrastructure in rural areas to ensure connectivity. Thus, the HCSM is necessary to protect the public health, safety and welfare.

The fifth sunset criterion asks whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively. As mentioned earlier, the Board has allocated approximately $58 million in HCSM funds for broadband deployment in unserved areas since calendar year 2018. During this period of time, approximately 29,000 households benefited from the fund allocations and received broadband access. Also, HCSM funds have allocated more than $41 million to rural telecommunication providers since 2019. The HCSM has been effective at achieving its intended purpose.

Additionally, the HSCM statute should be removed from the sunset review schedule. The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is scheduled to conduct a sunset review of the entire PUC in 2025. The HSCM statute is located within the PUC statute and would, therefore, be included in the PUC sunset review. As such, it is unnecessary for the HSCM to receive its own standalone sunset review.

Therefore, the General Assembly should continue the HSCM as it currently exists and remove it from the sunset schedule.

Recommendation 2 — Continue the allocation of HCSM funds to rural telecommunications providers.

Prior to the passage of House Bill 23-1051 (HB 1051), the HCSM statute stated, in part, in section 40-15-208(4), C.R.S.,

> . . . rural telecommunication providers receiving support from the [HCSM] as of January 1, 2017, will continue to receive support, on a quarterly basis . . . at the same level of reimbursement established by averaging the payments received for calendar years 2015 and 2016 . . . through December 1, 2023. . .

Under this provision, some, but not all, rural telecommunications service providers were to receive HCSM payments through December 2023.

However, HB 1051 extended the timeframe such that those providers would continue to receive HCSM payments through September 1, 2024, which coincides with the sunset date of the HCSM itself.

Although the Board receives the vast majority of HSCM funds for broadband deployment, interviews with stakeholders for this sunset review indicate that some but not all rural telecommunications providers rely on available HCSM funds to ensure that rural telecommunications infrastructure is maintained, so that rural consumers can access telecommunication services at a reasonable cost. It is more resource intensive to maintain and serve rural telecommunication customers because they typically reside in remote areas that are relatively expensive to serve and service.

The first sunset criterion asks whether the program under review is necessary to protect the public health, safety and welfare. Ensuring that rural customers continue to receive telecommunication services at a reasonable cost is necessary for public safety and welfare.

Additionally, although not subject to this sunset review, in 2021, Congress passed the Infrastructure Investment and Jobs Act (Act), which among other things, provides funds for broadband infrastructure. The State of Colorado will receive more than $800 million for broadband deployment. It is unclear if the allotment from the Act will achieve the Governor's goal to connect 99 percent of households to high-speed internet by 2027. If the allotment is sufficient to achieve this goal, then perhaps HCSM distributions to the Board will be no longer necessary, but to date, it is unclear whether the means will achieve the intended goal.

As such, the General Assembly should continue funding to the current rural telecommunication providers that receive funds through the HCSM. Doing so will ensure that rural consumers are able to access critical telecommunications services at a reasonable cost. Importantly, COPRRR will conduct a sunset review of the PUC, which includes the HCSM statute, in 2025. Therefore, COPRRR will conduct another analysis at that time to determine whether funding should continue.