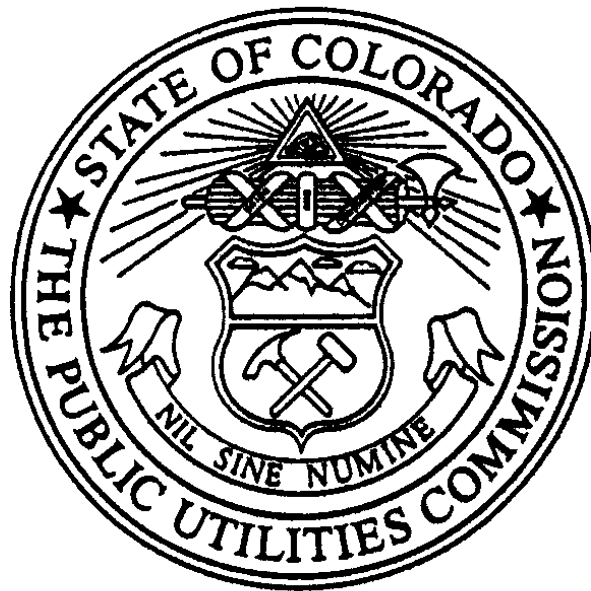


**INVESTIGATION INTO REVISIONS TO
THE DEFINITION OF BASIC LOCAL EXCHANGE SERVICE**



Report of the Colorado Public Utilities Commission

December 16, 2009

**Report of the Colorado Public Utilities Commission
Review of the Definition of Basic Local Exchange Service
Docket No. 09I-493T**

Introduction

The Colorado Public Utilities Commission (Commission) is directed by C.R.S., §40-15-502(2) to regularly review the definition of basic local exchange service¹:

....The commission shall conduct a proceeding when appropriate, but no later than July 1, 1999, and no less frequently than every three years to consider the revision of the definition of basic service, with the goal that every citizen of this state shall have access to a wider range of services at rates that are reasonably comparable as between urban and rural areas.

Accordingly, the Commission conducted investigations into the definition of basic local exchange service in 1999 (Docket No. 98I-213T), 2002 (Docket No. 02I-251T), and 2006 (Docket No. 06I-084T). No material changes were made to the definition through those dockets. The Commission commenced its third triennial review of basic local exchange service through this proceeding, Docket No. 09I-493T, opened on July 1, 2009.

In the present docket, the Commission sought comment from interested persons on a number of questions. Comments and reply comments were received from the Office of Consumer Counsel (OCC), the Colorado Telecommunications Association (CTA), Verizon Business, AT&T, Qwest Corporation, Comcast, and AARP.² In addition to the comments received, Staff of the Commission provided the Commission with information obtained through consumer surveys conducted on behalf of the PUC in 2007.

After consideration of comments received in this docket and consultation with Commission Staff, the Commission determines that at this time, no change is necessary to the definition of basic local exchange service. The Commission further finds that certain questions raised in this docket are more appropriately addressed in the current Colorado High Cost Support Mechanism (CHCSM) Rulemaking, Docket No. 08R-476T; should the outcome of that rulemaking warrant a change in the definition of basic local exchange service, the Commission may open an appropriate docket at that time. Finally, with regard to the question of the future of telecommunications and how social and technological changes will impact telecommunications, Commissioner informational meetings and/or technical workshops are appropriate means to explore this complex subject.

¹ The definition of basic local exchange service is found at 4 CCR 723-2-2308, Exhibit 1 to this report.

² A summary of their comments is found in Exhibit 2.

Discussion

When this docket was opened, the Commission issued a set of questions relevant to the definition of basic local exchange service. Many of these questions had been posed in previous investigations and the Commission asked them once again to determine if there had been any change in the responses over the past three years. A summary of the questions and responses is provided below:

A. Should the Commission's prescribed local calling areas be expanded to include an entire LATA?

B. Should the Commission's prescribed local calling areas be expanded to include the entire state?

No, in both instances. There are several reasons:

- 1) Such an expansion would increase the costs and decrease the access revenues of local exchange carriers, resulting in:
 - a. an increase in basic local rates, requiring customers to pay for additional services which they might not want;
 - b. an increase in the Colorado High Cost Support Mechanism (CHCSM)
- 2) Competition would be adversely impacted as toll resellers, wireless carriers, and VoIP providers saw declines in requests for their services.
- 3) Commission Rule 2309 sets out a specific procedure for expanding a calling area, which includes a "community of interest" test. Docket No. 09M-319T, just completed, does not offer any proof that that calling areas should be expanded.
- 4) Toll service was de-regulated in Docket No. 04A-411T and it is not necessary to bring it back under the Commission's regulatory jurisdiction.

C. Should the definition of basic service apply only to the first access line in a residence or business, to the first and second access lines thereof, or to some other limited number or combination of lines, rather than to every access line as is currently the case?

This issue is more appropriately addressed in the CHCSM rulemaking Docket No. 08R-476T.

D. Should the performance characteristics of basic service be expanded beyond, or made more restrictive than, the standard performance characteristics for customer access lines as found in 4 CCR 723-2-2337, which went into effect August 7, 2007?

There is no evidence that changes are necessary at this time.

E. Should basic service be expanded to include additional elements or features, for example, but not limited to, caller ID, call waiting, etc.?

No. Expanding the definition would increase the cost to consumers, perhaps at the expense of customers who do not wish to have additional elements. A consumer survey conducted by Ciruli and Associates on behalf of the Commission in 2007 showed that 87 percent of respondents stated that they did not favor increasing residential monthly phone bills by “a couple of dollars” in order to provide for advanced features, such as call waiting and caller I.D., in basic local phone service.

F. Should providers that bundle or package basic local exchange service with other features and offerings still be required to furnish basic local exchange service in the package such that it meets the Commission’s definition?

Yes. There is no evidence that suggests consumers would benefit from basic local exchange service that differs from stand-alone service. Several commenters suggested that since customers have the option to subscribe to stand-alone service, requiring that service in a package need not meet the same definition. It is not clear to Staff how a differing requirement would benefit either consumers or providers.

G. Should the ability to place calls to other N-1-1 codes, without additional charges, be included in basic local exchange?

No. Generally these codes are available to consumers now without charge and including them in basic local service would increase costs, which all customers would have to bear. As discussed above, many customers would not want these options, yet would be required to pay for them.

H. Should basic service be expanded to include access to broadband service? If so, should the LITAP discount apply to qualifying low-income customers?

No. There is no evidence that such an expansion would be welcomed by consumers, nor that it is necessary at this time. In a consumer survey conducted by Ciruli and Associates on behalf of the Commission in 2007, 85 percent of respondents indicated that they were unwilling to have their phone bill increased, “by a couple dollars per month”, in order to allow broadband access to all customers throughout the state.

I. Should facsimile and data transmission capability be excluded from local exchange service standards for wireless ETC/EP carriers?

No. A number of wireless providers offer such capability, so there is no reason to exempt these carriers from this requirement.

J. Should all providers currently holding ETC/EP status be grandfathered to the existing basic service definition? Should only competitive ETC/EP providers be grandfathered?

All carriers should be required to provide basic local service as defined.

K. How will technological and social factors shape basic local exchange service over the next three years?

L. What is the future of basic local exchange service?

Both questions are complex and in order to fully answer them, and to prepare the Commission for future investigations into the definition of basic local exchange service, it is appropriate to hold Commissioner informational meetings and/or technical workshops to address these questions.

Conclusion

None of the commenters supported expansion of the definition of basic local exchange, a position that the Commission finds is supported by recent consumer surveys. Generally, any expansion of the definition would mean greater costs to telecommunications providers, which would be passed on to consumers through increases to rates and/or the CHCSM. Several commenters suggested a more constricted definition, but the Commission does not find any evidence that a reduction of the elements of basic local exchange service is appropriate at this time.

The current CHCSM rulemaking (Docket No. 08R-476T) might result in changes that will impact the definition of basic local exchange service, and if so, the Commission may open an additional investigatory docket at the conclusion of Docket No. 08R-476T.

Finally, because technological and social factors continue to impact the future of basic local exchange, the Commission finds that series of Commissioner informational meetings and/or technical workshops on these topics is appropriate.

2308. Local Exchange Service Standards.

- (a) Basic service standard. As part of its obligation to provide adequate basic local exchange service, each LEC shall construct and maintain its telecommunications network so that the instrumentalities, equipment, and facilities within the network shall be adequate, efficient, just, and reasonable in all respects in order to provide the following services or capabilities to each of its customers within its service area:
- (I) Individual line service or its functional equivalent constructed and maintained to meet the general parameters and characteristics of rule 2337;
 - (II) Voicegrade access to the public switched network;
 - (III) Dual tone multifrequency signaling capability (Touchtone) or its functional equivalent on the local access line;
 - (IV) Facsimile and data transmission capability with the public switched network when the customer uses modulation/demodulation devices rated for such capability, in particular, the capability to transmit two-way communications between a person using a telecommunications device or other nonvoice terminal device and a person using other customer premises equipment within the bandwidth of voicegrade access;
 - (V) The local exchange usage necessary to place calls to or receive calls from all local exchange access lines within a Commission approved local calling area;
 - (VI) Access to emergency services;
 - (VII) Access to toll services;
 - (VIII) Customer billing to the extent described in rule 2304;
 - (IX) Public information assistance to the extent described in rule 2306;
 - (X) Access to operator services;
 - (XI) White page directory listing as described in paragraphs 2307(a) and (b);
 - (XII) Access to directory assistance and intercept to the extent described in paragraph 2307(c);
 - (XIII) Provisioning of service during maintenance or emergencies to the extent described in rule 2335; and

- (XIV) Any LEC that has also been designated as a POLR must offer basic local exchange service by itself as a separate tariff offering, however:
- (A) This subparagraph does not preclude the LEC/POLR from also offering basic local exchange service packaged with other services; and
 - (B) If basic local exchange service is packaged with other services, the rate for the bundled package service must be at or below the rate that would be charged if the basic local exchange service and the optional features were charged individually.

Summary of Comments

| | Overall position |
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| OCC | <p>The OCC does not recommend any additions to the definition of basic service, but suggests that the Commission consider a more limited service, such as measured or message service, as a basic service option. A contraction of the currently listed minimum elements in Rule 2308(a)(I) – (XIV) might be appropriate.</p> <p>If the Commission wishes to expand the definition, OCC recommends receiving cost information from facilities-based providers. After receiving cost information, the Commission should determine public opinion of any increased costs through surveys and public meetings.</p> |
| CTA | <p>Definition should not be changed.</p> <p>Concept of integrating broadband into basic local service should be considered, if and when the FCC approves broadband as one of the supported services for ETC purposes.</p> |
| Verizon | Verizon opposes any expansion of the definition of basic local exchange. |
| AT&T | Does not support an expansion of the definition because this is not necessary and could result in negative outcomes. |
| Qwest | Local exchange service should be defined as the umbrella category for all services provided to the consumer for the provisioning of local voice communications; basic service would be a subset of local exchange service. The Commission would continue to regulate rates for basic service, but would regulate service quality for all local exchange services and continue to support all local exchange services through USF. |
| AARP | The definition of basic local exchange service should not be contracted. Arguments for narrowing the scope of basic service do not comply with state law, the goal to maintain affordable basic service, nor the public interest of the state. Affordability of basic service should remain the primary goal of state telecommunications policy and law. |

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| A. | Should the Commission’s prescribed local calling areas be expanded to include an entire LATA? |
| OCC | <p>No. Doing so would 1) reduce customer choice, 2) harm competition, and 3) be anti-consumer, requiring that customers pay for an expanded calling area whether they want it or not</p> <p>An expanded calling area would neither increase or improve access to those services at rates comparable to those being paid by urban customers, and would likely push the price of basic local service up, forcing consumers to bear the increase, or cause rural carriers to seek more assistance from the Colorado High Cost Support Mechanism (“CHCSM”).</p> <p>Competition would be harmed because customers currently choosing toll carriers, wireless, or VoIP would abandon those carriers, reducing competitive options.</p> |
| CTA | <p>No.</p> <ol style="list-style-type: none"> 1. Commission rules require that a “community of interest” be established prior to expanding a local calling area. There is a current docket addressing this, Docket No. 09M-319T, and there does not appear to be any evidence that calling areas should be expanded. 2. Expanding local calling areas would have a negative effect on access revenues, which would affect basic local service rates. Access rate reform should be discussed and resolved in 09R-476T before the Commission considers expanding local calling areas. 3. Expanding local calling areas would likely cause an increase in the CHCSM surcharge as companies’ draw from the fund increased because of loss of access revenues. 4. The Fixed Utilities Fund would likely be adversely impacted. 5. Basic local exchange rates would likely have to be increased. |
| Verizon | <p>No. Criteria already exist for the determination of expanding a local calling area; the Commission should not do so wholesale in this docket. Also, the toll market has been deemed competitive by the Commission (Docket No. 05A-411T), so the Commission should not now re-regulate toll calls as local calls. Additional consequences would be increased local calling rates and lower contributions by carriers to the CHCSM fund (because of lower revenues) and higher surcharges passed on to consumers.</p> |
| AT&T | No. |

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| A. | Should the Commission's prescribed local calling areas be expanded to include an entire LATA? |
| Qwest | No. This type of change is best left to market forces, as opposed to a review of the basic service definition. The costs and benefits of expanding calling areas should be determined on a case-by-case basis. Imposing such changes could further exacerbate competitive and regulatory disadvantages faced by carrier such as Qwest. |

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| B. | Should the Commission's prescribed local calling areas be expanded to include the entire state? |
| OCC | No. See comments in A. |
| CTA | No. See comments in A. |
| Verizon | No. See comments in A. |
| AT&T | No. Providers should be allowed to structure their offerings as they see fit and customers should be given the opportunity to decide for themselves if they want expanded calling abilities and only purchase those they that they want. Expanding calling areas statewide would increase the CHCSM Fund and decrease the Fixed Utilities Fund as long distance providers would be eliminated. |

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| C. | Should the definition of basic service apply only to the first access line in a residence or business? |
| OCC | In the context of universal service, having one line meets the requirement for connectivity, thus only the first line should be considered. However, as long as the CHCSM allows support of all lines of an EP, the definition of basic local service will apply to all lines of an EP. |
| CTA | All lines. |
| Verizon | First line only. Once a customer has access to basic local exchange service on one line, the objective of access has been met. |
| AT&T | If the Commission wishes to limit CHCSM in certain areas, they should limit support for the POLR in those areas. |
| Qwest | Rate regulation should apply only to basic service, but the Commission should support universal service with respect to all local exchange services. |

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| D. | Should the performance characteristics of basic service be expanded beyond, or made more restrictive than, the standard performance characteristics for customer access lines as found in 4 CCR 723-2-2337? |
| OCC | Current requirements are sufficient. |
| CTA | Maintain current requirements because there is no justification for expansion or restriction. |
| Verizon | No. |
| AT&T | Standard performance characteristics are not necessary in environments where there are multiple options for communications (wireline, wireless, VoIP), thus Commission rules in this area are not necessary. |
| Comcast | No. Doing so would inevitably increase costs, which could conflict with the Commission's mandate (C.R.S., 40-15-502(3)(b)(I) to further regulation that allows transition of a fully competitive market while maintaining affordable, just, and reasonably priced service for Colorado's citizens. |
| Qwest | No changes are necessary at this time, except for changing the frequency of which reports are due to the Commission. |

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| E. | Should Basic service be expanded to include additional elements or features, for example, but not limited to, caller ID, call waiting, etc.? 1) Should the capability to initiate caller identification (caller ID) blocking per call using *67, at no additional charge, be part of basic service? |
| OCC | Adding to the definition of basic service is not necessary because caller ID blocking per call is available to consumers free of charge (FCC), and since it is subject to Modified existing regulation (4 CCR 723-2-2203(d)(VIII)(C)) |
| CTA | CTA opposes inclusion of any Part 3 services in the Part 2 definition. Carriers should be allowed to package services and features as they deem appropriate in their individual competitive environments. |

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| E. | Should Basic service be expanded to include additional elements or features, for example, but not limited to, caller ID, call waiting, etc.? 1) Should the capability to initiate caller identification (caller ID) blocking per call using *67, at no additional charge, be part of basic service? |
| Verizon | No. It is not clear that consumers want such features and the Commission does not have data indicating what the cost impact would be. However, the cost to carriers to implement the service would probably result in a need for higher rates. |
| AT&T | No. Customers should be allowed to choose the features they want and providers should be allowed to present features in packages as they believe customers will want. |
| Comcast | No. Doing so would inevitably increase costs, which could conflict with the Commission's mandate (C.R.S., 40-15-502(3)(b)(I) to further regulation that allows transition of a fully competitive market while maintaining affordable, just, and reasonably priced service for Colorado's citizens. |
| Qwest | No additional features should be included in the definition. |

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| E. | (2) Should the capability to initiate caller ID blocking per line, at no additional charge, be part of basic service regardless of the technology used? |
| OCC | It is not necessary at this time to expand the definition of basic service to include caller ID blocking per line, since this is also subject to Modified Regulation. |
| CTA | See comments above. |
| Verizon | No. It is not clear that consumers want such features and the Commission does not have data indicating what the cost impact would be. However, the cost to carriers to implement the service would probably result in a need for higher rates. |
| AT&T | See comments above. |

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| F. | Should providers that bundle or package basic local exchange service with other features and offerings still be required to furnish basic local exchange service in the package such that it meets the Commission’s definition? |
| OCC | <p>Yes. Basic local exchange service bundled or packaged with other features and offerings should provide the same quality, and should include the same minimum elements, as stand-alone service.</p> <p>If bundles and packages are not included, they would presumably fall outside of the requirements for service quality, discontinuance of service, and customer deposits.</p> |
| CTA | Carriers should be required to offer stand-alone basic local service, consistent with the affordability requirements of C.R.S., §40-15-502. |
| Verizon | No. The Commission should revisit its 2006 decision expanding the definition of basic local service to packages and bundles. Customers choosing packages or bundles are purchasing more than just basic local exchange service. Since customers can choose stand-alone service, it is not necessary to expand the definition to include basic local service in bundles and packages. |
| AT&T | No. Providers should be allowed to package and bundle service as they feel the market wants. |
| Comcast | No. Providers should be allowed to create packages without the Commission prescribing what should be in those packages. Customers should be able to choose services that they want, and those wanting basic local service only “should not be required to subscribe to advanced services through the mechanism of changing the definition of basic service.” |

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| G. | <p>Should the ability to place calls to other N-1-1 codes, without additional charges, be included in basic local exchange?</p> <p>2-1-1: Community Information Referral Services; 3-1-1: Non-Emergency Governmental Services; 4-1-1: Directory Assistance and Directory Assistance Call Completion; 5-1-1: Traffic and Transportation Information; 6-1-1: Repair Service; 7-1-1: Telecommunications Relay Service; 8-1-1: Advanced Notice of Excavation Activities.</p> |
| OCC | <p>3-1-1, 7-1-1, and 8-1-1: Yes, because of public safety/special needs implications;</p> <p>2-1-1, 4-1-1 and 5-1-1: No, because these are essentially operator services informational services for which the provider should receive compensation;</p> <p>6-1-1: No, because it has not been designated by the FCC or the Commission as the abbreviated code for repair service. Companies generally provide a toll-free number for repair service, which is sufficient.</p> |
| CTA | <p>No. The costs for N-1-1 codes should continue to be borne by the organizations that support the codes.</p> <p>Furthermore, Colorado law does not allow for the Commission to reclassify Part 3 and Part 4 services as Part 2.</p> |
| Verizon | <p>No. It is not clear that consumers want such features and the Commission does not have data indicating what the cost impact would be. However, the cost to carriers to implement the service would probably result in a need for higher rates.</p> |
| AT&T | <p>No. If the Commission adds more features to the definition of basic local service, the cost of providing that service will necessarily rise and all customers will bear the cost through CHCSM funding.</p> |
| Qwest | <p>These should not be included in basic local service.</p> |

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| H. | Should basic service be expanded to include access to broadband service? If so, should the LITAP discount apply to qualifying low-income customers? |
| OCC | No. 1) Broadband service is not telecommunications service and falls under FCC jurisdiction, and 2) inclusion of broadband runs counter telecommunications policy of the state of Colorado to allow the market to generate increased customer choices and technological advancements rather than to have such imposed upon the customer via regulatory mandate. |
| CTA | CTA supports use of CHCSM for broadband deployment, but recommends that the Commission not address this issue until the FCC takes action on its newly opened GN Docket No. 09-51, <i>National Broadband Plan For Our Future</i> . |
| Verizon | <p>No. The General Assembly anticipated that competition would be sufficient to bring broadband access to customers throughout the state. This has proven to be the case, with regulated and non-regulated providers offering DSL, wireless, cable modem, and satellite access to broadband services.</p> <p>Including broadband access in the definition of basic local service would result in increased costs to carriers, which would then mean higher prices for consumers or increase draws from the CHCSM. Higher rates and surcharges contradict the statutory goal that rates for telecommunications services be just, reasonable, and affordable.</p> |
| AT&T | <p>It is premature to include broadband access in the definition; the Commission should wait for the outcome of the state's broadband mapping project.</p> <p>The issue of LITAP/LinkUp is before the FCC at this time; NARUC has advocated a pilot program at the Federal level. AT&T supports this effort, but believes that for now the issue it best addressed at a national level.</p> |
| Comcast | No. Doing so would inevitably increase costs, which could conflict with the Commission's mandate (C.R.S., 40-15-502(3)(b)(I) to further regulation that allows transition of a fully competitive market while maintaining affordable, just, and reasonably priced service for Colorado's citizens. |
| Qwest | Broadband is not a minimum element of basic service; it is an advanced information service beyond the Commission's jurisdiction. |

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| I. | Should facsimile and data transmission capability be excluded from local exchange service standards for wireless ETC/EP carriers? |
| OCC | Perhaps, but the OCC questions whether this Docket is the correct vehicle to accomplish such or whether such exclusion should be considered in an ETC/EP rulemaking. Furthermore, Viaero's Website lists a number of data transmission plans, indicating that this capability exists for wireless carriers. |
| AT&T | Yes, for all ETC/EP carriers, not just wireless ETC/EPs. |
| Qwest | Fax and data transmission capabilities should be excluded from the definition for all carriers. |

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| J. | Should all providers currently holding ETC/EP status be grandfathered to the existing basic service definition? Should only competitive ETC/EP providers be grandfathered? |
| CTA | All carriers providing basic local service should be required to conform to the current definition unless the Commission grants a waiver. All ETC/EPs should be held to the same requirements. |
| Verizon | There should be no grandfathering because to do so would violate principles of technology neutrality and would be anti-competitive because those carriers that had to comply would face higher costs than those that did not have to comply with the rule. |
| AT&T | There should be no grandfathering of any providers. |
| Qwest | No. Grandfathering would be inappropriate and discriminatory. |

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| K. | How will technological and social factors shape basic local exchange service over the next three years? |
| OCC | Such factors will shape, and are shaping, consumers’ perception of what “basic service” is. For example, many people may only be using traditional landline for limited local calling, or for reliable 9-1-1 service. Thus, the perception of what is adequate for basic service or what are the minimum elements needed for basic service may be regressing (or retracting) rather than progressing (or expanding). |
| CTA | Technological advances will continue, but universal service requirements remain. |
| AT&T | Customers have more choices for communications than ever before, including services from local and long-distance wireline carriers, cable, over-the-topVoIP, wireless, Internet, and messaging. Where communications requirements are being filled by non-traditional methods, the Commission should consider revising its policies regarding “basic local service.” |
| Comcast | <p>As wireless and VoIP providers offer packages that customers see as a better deal than traditional phone service, the migration from traditional landlines will continue.</p> <p>The Commission should be cautious about imposing regulation on new technologies as long as competitive technologies help to achieve universal service goals. Imposing regulatory requirements on the new technologies would be “legally suspect” and could decrease competition and CHCSM contributions. Furthermore, the Commission should not create barriers to entry for new competitive entrants.</p> |

| L. | What is the future of basic local exchange service? |
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| OCC | <p>Although the number of wireline access lines is declining, this does not portend that there is <i>no</i> future for basic local exchange service in the short term (perhaps defined over the next ten years). This is especially true for basic local exchange service – whether wireline or wireless – that is being subsidized by the Federal Universal Service Fund and the CHCSM. Wireless lines that are subject to CHCSM payments are, by definition, local exchange lines and should be regulated under Part 2 (noting that Part 4 precludes Part 2 regulation).</p> |
| CTA | <p>The fundamental requirements for access to high quality basic local exchange service will remain far into the future for reason of public health, safety, and welfare, and national defense require it. It will likely continue its evolution to an IP-based platform. Reliable delivery of basic local service and its pricing should be the consumer protection focus of the Commission.</p> <p>CTA foresees a time, which statute contemplates, in which competition replaces the need for regulatory oversight of basic local exchange service.</p> |
| AT&T | <p>Access lines and toll revenues are declining dramatically. Customers are no longer satisfied with “basic” functionality but are demanding a “broadband any-application infrastructure” for the 21st Century. The Commission should reconsider a fundamental revision of its policies to incent providers to deploy broadband networks. Carriers should be given the freedom to develop business models based on what consumers want and technology can deliver.</p> |
| Qwest | <p>Basic service will continue to evolve into an add-on service; broadband and wireless will lead the way into the future. Wireline voice communications have undergone dramatic changes in the past several years and the environment for how this service is regulated is ripe for change.</p> |

| | Additional Comments |
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| CTA | Change “LEC” to “Telecommunications Service Provider” in Rule 2308. LECs are no longer the only providers of basic local exchange service and are no longer the only carriers eligible for CHCSM support. Changing the terminology will bring the rule into line with the reality of Commission decisions in granting ETC/EP status. |
| Verizon | The definition of basic local exchange service should not apply to business customers because these customers are generally more sophisticated in their purchasing decisions and, large business customers in particular, do not need the protection of the Commission. At a minimum, the Commission should consider exempting businesses with more than five lines from the definition of basic local exchange service. |