

Decision No. C23-0808

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0210T

IN THE MATTER OF ALLOCATING REMAINING FUNDS IN THE CENTURYLINK QC
PERFORMANCE ASSURANCE PLAN SPECIAL FUND

**COMMISSION DECISION ALLOCATING COLORADO
PERFORMANCE ASSURANCE PLAN SPECIAL FUND**

Mailed Date: December 7, 2023
Adopted Date: November 29, 2023

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission allocates the remaining funds in the Colorado Performance Assurance Plan (CPAP) Special Fund.

B. Background

2. The CPAP was created in 2002 by the Commission as part of a performance mechanism resulting from the implementation of the Telecommunications Act of 1996 (Telecom Act). In 2013, the Commission approved modifications to the CPAP through the approval of a Settlement Agreement between Qwest Corporation dba CenturyLink QC (CenturyLink) and several other parties.¹

3. On February 28, 2022, CenturyLink filed a Petition with the Commission requesting that the CPAP be discontinued. CenturyLink stated that the company's most significant competitors have their own networks, and that the CLECs' reliance on the CPAP had declined dramatically. This Petition was granted on October 6, 2022, and the CPAP was eliminated.² In the Opening Decision to this Proceeding, it was stated that the CPAP Special Fund had a remaining balance of \$1,589,067. This has increased to \$1,654,441 due to interest accrual.

4. Section 9 of the CPAP governs the use and distribution of the Special Fund. As relevant to this Proceeding, Section 9.3 states "Upon implementation of the [C]PAP, the Commission shall decide how to use the remainder of this fund. The uses shall be competitively neutral efforts in the telecommunications field that do not benefit CenturyLink QC directly."

5. The Commission has previously approved allocations of the Special Fund. These expenditures included \$1,607,011 to serve as matching funds for federal 9-1-1 technology grants in 2018 and 2019,³ \$180,000 to serve as matching funds for a separate federal 9-1-1 grant in

¹ See Proceeding 02M-259T, Decision C13-0722.

² See Proceeding 22M-0092T, Decision R22-0602.

³ See Proceeding 18M-0612T, Decision C18-0751 and Decision C19-0331.

2010,⁴ and \$200,000 to support a Broadband Mapping Project undertaken by the Governor's Office of Information Technology in 2009.⁵

6. On April 26, 2023, the Commission issued Decision No. C23-0281 to open this Proceeding and distribute the remainder of the Special Fund. The Decision included initial proposals for the remaining funds. Interested persons were invited to submit comments and intervention requests by May 26, 2023, and to submit responsive comments by June 9, 2023. Commenters were encouraged to comment on the initial proposals. The Decision also called on commenters to provide alternate proposals for the use of the funds.

7. On May 26, 2023, the Colorado Council of Authorities (CCOA) and the Boulder Regional Emergency Telephone Service Authority (BRETSA) each filed Notices of Intervention as of Right, or in the alternative, Motions for Permissive Intervention. Comments were provided by the Legislative Committee of the 9-1-1 Advisory Task Force (Task Force), the Arapahoe County 9-1-1 Authority (Arapahoe), CCOA, BRETSA, the Colorado 9-1-1 Resource Center Board (Resource Center), the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind (CCDHHDB). Additional responsive comments were received from CCOA. Late comments were also provided jointly by the Colorado Office of the Future of Work in the Colorado Department of Labor and Employment and the Colorado Broadband Office (OFW/CBO).

8. On August 9, 2023, the Commission issued Interim Decision C23-0540-I, which addressed interventions, discussed the comments that had been received, and set dates for a second round of comments and reply comments.

⁴ See Proceeding 10A-356T, Decision C10-0757.

⁵ See Proceeding 08A-533T, Decision C09-0011.

9. In the Interim Decision, we noted that some of the proposals that had been received did not identify a recipient, or that the identified recipient was not an established entity. We also noted that some of the proposals lacked a budget or sufficient description of the proposed use of the funds, and that some did not designate a specific use apart from establishing a fund for future distribution without direct Commission oversight. We also reminded recipients that in Decision No. C23-0281 opening this Proceeding, we expressed interest in hearing whether proposals benefit disproportionately impacted communities, public safety, or critical needs, and we stated that proposals should be limited to providing funds to non-profits or government entities. We also stated that any new proposals should include a budget for the proposed use.

10. We also noted in the Interim Decision that three of the Commenters' proposals received in the first round of comments provided an established entity to serve as the recipient, as well as a budget or detailed description of the proposed use of the funds, and we specifically sought additional comment on these proposals. These proposals were: (1) funding the Colorado 9-1-1 Resource Center; (2) funding the Communications Technology Program (CTP) administered by the Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind (CCDHHDB), and (3) funding Lifeline Program and Affordable Connectivity Program outreach, to be conducted by the Colorado Office of Future Work (OFW).

C. Additional Comments and Proposals

11. In the second round of comments, comments were received from the Legislative Committee of the Commission's 9-1-1 Advisory Task Force ("the Task Force"), the Boulder Regional Emergency Telephone Service Authority ("BRETSA"), and the Colorado Council of Authorities ("CCOA"). A summary of these proposals follows.

12. *Funding the Colorado 9-1-1 Resource Center.* In the first round of comments, several commenters proposed or supported a proposal that a portion of the CPAP funds be used to provide one-time funds to support the continuing operation of the Colorado 9-1-1 Resource Center (“Resource Center”), a non-profit 501(c)(3) tax-exempt entity that provides support, research, training, and information clearinghouse services for local 9-1-1 governing bodies and Public Safety Answering Points (PSAP). The amount proposed in that first round of comments was \$150,000, which was intended “to keep the Resource Center running at a limited capacity.”⁶ In the second round of comments, the Task Force proposed to provide \$450,000 to the Resource Center intended to “fully fund the [Resource] Center for two years.” This proposal was also supported by BRETSA.

13. *Funding Next Generation 9-1-1 GIS Dataset Development.* In the first round of comments, several commenters proposed using a portion of the funds to pay for the development of Geographic Information System (GIS) datasets necessary for the future deployment of Next Generation 9-1-1 technology throughout the state. The amounts of the proposals for this purpose varied by commenter, and no established recipient was identified. In the second round of comments, the Task Force proposed \$500,000 for this purpose to be provided to the Resource Center “to contract with a 9-1-1 GIS service firm to develop a definitive seamless PSAP boundaries dataset and do one-time projects to develop other required NG9-1-1 GIS data for rural 9-1-1 Authorities.” In support of this proposal, BRETSA, in its reply comments, also provided a quote for services provided by a GIS service firm for the services being proposed.

⁶ Comments from the Legislative Committee of the Commission’s 9-1-1 Advisory Task Force, filed on May 24, 2023.

14. *Establishment of a fund to generally assist 9-1-1 governing bodies.* In the first round of comments, several commenters proposed that a fund be created for the general benefit of the state's 58 local 9-1-1 governing bodies to implement various services that have not been universally implemented or to serve as matching funds for potential future federal 9-1-1 grants. This proposal was first made by the Task Force and supported by Arapahoe. Different but similar proposals were provided by BRETSA and CCOA. The proposals forwarded by the Task Force and BRETSA did not include a recipient or entity that would hold or manage the fund, while CCOA proposed the creation of a Grants Committee of the Task Force that would manage the funds and create rules for the purpose of determining eligibility. The amount of the proposals for this purpose varied among the commenters.

15. In the second round of comments, CCOA renewed its proposal for this funding, and proposed that CCOA (a tax-exempt business league under Internal Revenue Service Code 501(c)(6)) be the initial recipient of the funds, which it would then distribute to the governing bodies through a grant program that it would establish. While CCOA is a membership organization, CCOA asserts that membership in CCOA would not be a requirement for a governing body to receive CPAP funds. CCOA stated that it would encourage grant applications for awards for a new deployments of Emergency Medical Dispatch protocols, new deployments of text-to-911 service, language translation, including American Sign Language, GIS data sets, PSAP phone systems and other equipment purchases and upgrades, and "need-based grants." CCOA proposes that the Commission provide \$1,350,000 to fund the grant program.

16. *Funds for administrative development of CCOA.* In the second round of comments, CCOA proposes that the Commission provide \$20,000 to assist CCOA in retaining

one or more vendors to complete several administrative tasks for the CCOA, including but not limited to website administration and membership coordination.

17. *Additional funding for the Communications Technology Program (CTP) administered by the CCDHHDB.* In the initial round of comments, the CCDHHDB proposed that a portion of the CPAP funds be made available to fund an existing program to distribute equipment to qualifying low-income deaf, hard of hearing, and deafblind customers to allow accessible use of telecommunications services. The funding requested would support this additional enhancement to the program for three years, and cost \$439,054, with CCDHHDB as the recipient.

18. In the second round of comments, BRETSA suggested that this program and the program for which the Office of Future Work (OFW) requested funding should be administered as a joint program.

19. *Funding Lifeline Program and Affordability Connectivity Program outreach.* In the first round of comments, the OFW and the Colorado Broadband Office (CBO) jointly provided comments proposing that a portion of the CPAP distribution be provided to the OFW to fund two part-time employees for three years to conduct advertising and marketing, coordinate local events, and travel to conduct outreach regarding the Lifeline Program and Affordability Connectivity Program (ACP), particularly in areas of the state where enrollment in these programs impedes the most compared to the eligibility of the population. A detailed breakout of the costs was included in the comments. The recipient of the funds would be the OFW, and the total cost proposed was \$600,000.

20. In the second round of comments, BRETSA suggested, as mentioned earlier in this decision, this program and the program proposed by CCDHHDB be administered jointly and suggested that the joint program be operated from a mobile demonstration center vehicle.

21. CCOA reiterated in the second round of comments an assertion made in the first round of comments that providers that participate in the Lifeline program are required to advertise the program, and that such advertisement is or should be sufficient. CCOA also states that the federal Universal Service Fund (USF) and its programs, which includes the Lifeline program, are facing legal challenges, and that commenters to the Federal Communications Commission have alleged that the USF and the ACP are duplicative. CCOA further states that the ACP may exhaust its funding in 2024 and provided an article raising that the ACP may replace the Lifeline program.

D. Discussion

22. The Commission appreciates the comments and proposals received. In Decision No. C23-0540-I, we noted that some proposals in the first round of comments failed to identify a recipient, provide a budget for the proposed use, or designate specific uses. These deficiencies were largely corrected in the second round of comments, and we appreciate the effort that the commenters expended to improve the proposals in this manner.

23. We continue to find that any distributions from the Special Fund should be done for a specified use and must comply with Section 9.3 that requires the “Commission shall decide how to use the remainder of this fund” and that “[t]he uses shall be competitively neutral efforts in the telecommunications field that do not benefit CenturyLink QC directly.”

24. As we stated in Decision No. C23-0540-I, the creation of a fund for uses to be determined in the future, by an entity other than the Commission, would create additional

administrative costs and burdens. Creation of a fund for future allocations as proposed is also inconsistent with Section 9.3 in that the future allocations would not be “decid[ed] by the Commission”, and could, potentially, “benefit CenturyLink QC directly” depending on future criteria. Therefore, we decline to allocate funds to CCOA for future grants to governing bodies.

25. We also decline to allocate funds for the reimbursement of non-recurring costs for a recent change to the CenturyLink ESInet tariff for the deployment of ECaTS call metrics systems, as was proposed in the initial round of comments. Decision No. C23-0641, issued September 27, 2023 in Proceeding No. 23M-0385T, accounts for these costs in the establishment of the statewide 9-1-1 surcharge rate to be effective January 1, 2024. Allocation for this proposed reimbursement is therefore unnecessary.

26. We find it is in the public interest to fully or partially fund the remainder of the proposals received from commenters, as specified below. These proposals represent uses for the funds that benefit public safety, critical needs, or providers of emergency response services in Colorado. Additionally, these proposals designated specific governmental or non-profit recipients and provided a detailed plan or budget for the proposed use. The remaining CPAP Special Fund shall be allocated to the following recipients and proposals:

- a) Funding to the Colorado 9-1-1 Resource Center for GIS dataset development in preparation for geospatial routing of 9-1-1 calls and further deployment of Next Generation 9-1-1 systems and services. We agree with the Task Force, CCOA, BRETSA, and Arapahoe County that providing funds for this use is in the public interest. Among other benefits, GIS dataset development will help to eliminate delays in getting 9-1-1 calls to the correct PSAP, and therefore delays in the arrival of first responders to accident scenes. The amount of \$500,000 shall be apportioned for this use.
- b) Funding to the CCDHHDB for enhancement of the Communications Technology Program. We agree with CCDHHDB that its proposal, focused on outreach efforts to serve additional deaf and hard of hearing Coloradans and provide telephony equipment to persons with disabilities, would provide significant benefits. The amount of \$439,054 shall be apportioned for this

use. This shall be disbursed to the CCDHHDB in annual installments for each of the three years of the proposed length of the program enhancement, consistent with the up-front costs and annual costs provided in CCDHHDB's comments.⁷ Prior to the disbursements expected in December 2025 and December 2026, we require CCDHHDB to provide the Commission with annual updates on CCDHHDB's use of the CPAP funds provided thus far. The annual update should briefly summarize how the funds have been spent and should inform the Commission of any necessary changes to the disbursement schedule or disbursement amounts. The annual updates should be filed in this proceeding no later than November 1, 2025, and November 1, 2026, respectively.

- c) Funding to the Colorado Office of Future Work (OFW) for implementing public education and encouraging enrollment in the Lifeline and Affordable Connectivity Programs. We agree with the comments of OFW that increasing enrollment in these programs, as well as supporting regional collaborations that support digital equity programming, can begin to address the inequities in broadband subscription. The amount of \$600,000 shall be apportioned to the OFW for the proposed use set forth in its comments, provided in annual installments of \$200,000 over three years.⁸ Prior to the disbursements expected in December 2025 and December 2026, we require OFW to provide the Commission with annual updates on OFW's use of the CPAP funds provided thus far. The annual update should briefly summarize how the funds have been spent and should inform the Commission of any necessary changes to the disbursement schedule or disbursement amounts. The annual updates should be filed in this proceeding no later than November 1, 2025, and November 1, 2026, respectively.

With regards to the assertion made by BRETSA that a joint program between CCDHHDB and Colorado Department of Labor and Employment would be efficient, the proposals put forward by CCHHDB and the OFW serve different objectives and specific, vulnerable Colorado communities. Alleged efficiencies on a joint proposal from CCDHHDB and OFW is speculative at best. While the communities served by these groups may overlap in some instances, that is not always the case and funding to both CCDHHDB and OFW serve important policy objectives. Both organizations serve vulnerable populations needing support and access to communications services. Based on the proposals made and separate goals articulated, we find that funding allocations to both endeavors is warranted such that these respective organizations can use funds to better serve deaf and hard of hearing Coloradans, persons with disabilities, *and* qualifying individuals needing access to Lifeline and Affordable Connectivity Programs. Further, regarding the CCOA's argument that the Lifeline

⁷ To the extent that annual installments would prevent the CCDHHDB from implementing its proposal, the CCDHHDB may inform the Commission through an application for rehearing, reargument, or reconsideration pursuant to § 40-6-114, C.R.S.

⁸ To the extent that \$200,000 annual installments would prevent the OFW from implementing its proposal, the OFW may inform the Commission through an application for rehearing, reargument, or reconsideration pursuant to § 40-6-114, C.R.S.

and Affordable Connectivity Programs may be at risk due to legal challenges and congressional action or inaction, both programs are currently being implemented and provide needed benefits to low-income households. Like the funding allocated to any other recipient, any excess funds allocated through this Decision that are not required to fulfill OFW's proposed use shall be returned to the CPAP Special Fund.

- d) Funding to the Colorado Council of Authorities for building administrative capacity of the organization. The amount of \$20,000 shall be apportioned for this use.
- e) Funding to the Colorado 9-1-1 Resource Center to extend ongoing operations of the organization, which provides support and serves as an information clearinghouse for local 9-1-1 agencies across the state. The remaining funds not accounted for above, currently in the amount of \$95,387, shall be apportioned for this use.

27. Prior to receiving funds, recipients will be required to sign an affidavit stating that the funds shall be used for the purposes set forth in the proposals as provided in their comments. Recipients will also agree to publicly publish reports at the end of each funding year providing information regarding the use of the funds and providing appropriate metrics to indicate the effectiveness of the funds in achieving the goals of the program, and to keep this report available to the public for a minimum of one year. If any recipient chooses not to sign the affidavit or otherwise indicates that it is not able or willing to receive the funds and undergo the projects described in its proposal, those funds will be retained in the CPAP fund and distributed by the Commission at a future date.

28. Any CPAP Special Fund allocations that are not needed to fulfill the purposes stated in a recipient's proposal shall be returned to the CPAP Special Fund.

II. ORDER

A. The Commission Orders That:

1. Subject to the requirement that recipients sign the affidavit described in this Decision, the remaining Colorado Performance Assurance Plan (CPAP) funds shall be distributed in the following manner:

- a) The amount of \$500,000 shall be apportioned from the CPAP Special Fund to the Colorado 9-1-1 Resource Center for GIS dataset development in preparation for geospatial routing of 9-1-1 calls and further deployment of Next Generation 9-1-1 systems and services.
- b) The amount of \$439,054 shall be apportioned from the CPAP Special Fund to the Colorado Commission for the Deaf, Heard of Hearing, and DeafBlind (CCDHHDB) for enhancement of, and outreach efforts for, the Communications Technology Program, in three annual installments, consistent with the discussion above.
- c) The amount of \$600,000 shall be apportioned from the CPAP Special Fund to the Colorado Office of Future Work (OFW) for implementing public education and encouraging enrollment in the Lifeline and the Affordable Connectivity Programs, in three annual installments, consistent with the discussion above.
- d) The amount of \$20,000 shall be apportioned from the CPAP Special Fund to the Colorado Council of Authorities for building administrative capacity of the organization.
- e) The remainder of the funds, currently in the amount of \$95,387, shall be apportioned from the CPAP Special Fund to the Colorado 9-1-1 Resource Center to extend ongoing operations of the organization.

2. CPAP Special Fund allocations are to be used by the recipients designated above for only the purposes stated in the recipients' proposals.

3. Any CPAP Special Fund allocations, or part of such an allocation, that are not needed to fulfill the purposes stated in a recipients' proposal shall be returned to the CPAP Special Fund.

4. CCDHHDB and OFW shall provide brief annual updates on their use of the funds on or before November 1, 2025, and November 1, 2026, consistent with the discussion above.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 29, 2023**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners