

Decision No. R24-0263-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0577T

IN THE MATTER OF THE PROPOSED AMENDMENTS TO 4 CODE OF COLORADO REGULATIONS 723-2 MODIFYING THE COMMISSION RULES REGARDING BASIC EMERGENCY SERVICE OUTAGE PREVENTION, RESPONSE, AND REPORTING.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
TAKING ADMINISTRATIVE NOTICE OF FILING AND
ESTABLISHING DEADLINE FOR
ADDITIONAL PUBLIC COMMENT**

Mailed Date: April 23, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision takes administrative notice of a filing that the 9-1-1 Advisory Task Force (Task Force) made in Proceeding No. 17M-0276T on March 14, 2023 at 2:38 p.m. titled in the Commission's E-Filing System, "Adopted Criteria for Informal Investigations of BES Outages" (Filing Adopting Criteria); invites public comment on the same and potential changes to Rule 2143(k), 4 *Code of Colorado Regulations* (CCR) 723-2; and establishes a deadline by which such public comments must be submitted.¹

¹ The Task Force made numerous filings on March 14, 2023. This Decision takes administrative notice only of the filing made at 2:38 p.m. on March 14, 2024. In addition, to ensure clarity and in compliance with Rule 1501 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, this Decision directs that the relevant filing be added to the record contemporaneous with this Decision's issuance.

B. Procedural History²

2. During its weekly meeting held on November 29, 2023, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 CCR 723-2 (the Rules).³ That NOPR initiated this Proceeding and referred this matter to an Administrative Law Judge (ALJ), among other matters.⁴

3. Since this Proceeding was initiated, two public comment hearings have been held and members of the public have filed numerous public comments.

II. DISCUSSION AND CONCLUSIONS

4. The Commission may take administrative notice of documents in its files per Rule 1501, 4 CCR 723-1.

5. Among other matters, public comments raise issues relating to Commission investigations into Basic Emergency Service (BES) outages.⁵ Such investigations are performed consistent with Rule 2143(k), 4 CCR 723-2. Although the NOPR does not suggest changes to Rule 2143(k), comments include suggestions to modify that Rule.⁶

6. Rule 2143(k) mandates that the Commission commence an informal investigation into each apparent BES outage meeting the criteria established by the Task Force.⁷ Although the referenced criteria is not identified in the Commission's Rules, it is included in the filing that the

² Only the procedural history necessary to understand this Decision is included.

³ Decision No. C23-0800 (mailed December 5, 2023).

⁴ *Id.* at 8-9.

⁵ See e.g., Qwest Corporation, doing business as CenturyLink QC's (CenturyLink) 2/12/24 Comments at 9-10; CenturyLink's 2/21/24 Comments at 3; Comments filed on 2/12/24 by the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County 911 Authority, and the Jefferson County Emergency Communications Authority (collectively, the AAJ Authorities) (the AAJ Authorities' 2/12/24 Comments) at 2; AAJ Authorities' 1/11/24 Comments at 2; Boulder Regional Emergency Service Authorities' (BRETSA) 2/27/24 Comments at 4-5; Colorado Council of Authorities' (CCOA) 2/21/24 Comments at 5-7.

⁶ BRETSA's 2/27/24 Comments at 4-5; CenturyLink's 2/12/24 Comments at 9-10; CCOA's 2/21/24 Comments at 5.

⁷ Rule 2143(k), 4 CCR 723-2.

Task Force made on March 14, 2023 at 2:38 p.m. (Filing Adopting Criteria) in Proceeding No. 17M-0276T. The criteria are relevant to understanding suggested changes to Rule 2143(k); other proposed Rule changes; and many public comments. For example, some comments speak to the alleged burdensome nature of Commission investigations into BES outages; suggest that certain types of BES outages should not trigger an investigation; suggest changes to Rule 2143(k) to make investigations discretionary (rather than mandatory); and make other suggestions to modify the same Rule.⁸

7. What is more, some of CenturyLink's comments relating to proposed changes to the definitions of BES and BES outages (proposed Rule 2131(i) and (l)) require context to fully evaluate. That context includes considering the circumstances under which the Commission is required to initiate an investigation into a BES outage. For example, CenturyLink asserts that proposed changes to these definitions would require investigation into BES outages that do not involve a network failure, which would be unnecessary and an inefficient use of resources.⁹ To accurately evaluate this and related concerns, it is important to understand the circumstances under which the Commission is required to investigate a BES outage. As noted, Rule 2143(k) mandates an investigation when a BES outage meets the Task Force's criteria, which is identified in the Filing Adopting Criteria. That criteria are not otherwise included in the record in this Proceeding.

8. For the reasons discussed, the ALJ finds that to properly evaluate comments and suggested changes to the Rules, including changes proposed in the NOPR and comments suggesting changes to Rule 2143(k) and other Rules, it is necessary to take administrative notice of the Filing Adopting Criteria. As such, the ALJ takes administrative notice of the referenced

⁸ See CenturyLink's 2/12/24 Comments at 9-10; CenturyLink's 2/21/24 Comments at 3; the AAJ Authorities' 2/12/24 Comments at 2; the AAJ Authorities' 1/11/24 Comments at 2; BRETSA 2/27/24 Comments at 4-5.

⁹ CenturyLink's 2/21/24 Comments at 3.

document, as authorized under Rule 1401(c), 4 CCR 723-1. The Filing Adopting Criteria will be contemporaneously added to the record in this Proceeding.

9. Interested members of the public are invited to submit comment relevant to the Filing Adopting Criteria by May 1, 2024, including potential changes to Rule 2143(k), 4 CCR 723-2.¹⁰

III. METHODS TO SUBMIT PUBLIC COMMENTS

10. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

11. Interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage> or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Anyone using the latter option should ensure that their comments include Proceeding No. 23R-0577T.

12. Verbal comments can be provided during the scheduled public comment hearings, or by leaving a voice mail message at 303-869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

IV. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the Administrative Law Judge takes administrative notice of the 9-1-1 Advisory Task Force's March 14, 2023, 2:38 p.m. filing, titled in the Commission's E-Filing System, "Adopted Criteria for Informal Investigations of BES

¹⁰ As implied, for the reasons discussed above, the ALJ finds that potential changes to Rule 2143(k), 4 CCR 723-2, are consistent with the subject-matter in the NOPR, and as such, the Commission may modify that Rule without running afoul of § 24-4-103, C.R.S. See § 24-4-103(4)(c), C.R.S.

Outages” in Proceeding No. 17M-0276T (Filing Adopting Criteria), which is added to the record contemporaneously herewith.

2. Anyone wishing to submit public comment on the Filing Adopting Criteria, and potential changes to Rule 2143(k) of the Commission’s Rules Regulating Telecommunications Services and Providers of Telecommunication Services, 4 *Code of Colorado Regulations* 723-2 must submit such comments by 5:00 p.m. on May 1, 2024.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director