

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22M-0341T

IN THE MATTER OF ESTABLISHING THE 2023 EMERGENCY TELEPHONE CHARGE THRESHOLD, STATEWIDE 9-1-1 SURCHARGE, PREPAID WIRELESS 9-1-1 CHARGE, AND SURCHARGE DISTRIBUTION FORMULAS PURSUANT TO §§ 29-11-102 THROUGH 102.5, C.R.S.

**DECISION OPENING PROCEEDING; SETTING
NOTICE AND INTERVENTION PERIOD; AND
PROPOSING THRESHOLD, SURCHARGE, AND CHARGE
AMOUNTS AND DISTRIBUTION FORMULA**

Mailed Date: August 1, 2022
Adopted Date: July 27, 2022

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TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission begins fulfilling the annual requirements set forth in § 29-11-102, 102.3, and 102.5, C.R.S., which require the Commission to establish by October 1 of each year the local Emergency Telephone Charge threshold, a statewide 9-1-1 surcharge, a prepaid wireless 9-1-1 charge, and formulas for distribution of money from the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge to governing bodies, each to be effective by the following January 1.

2. In accordance with 4 *Code of Colorado Regulations* (CCR) 723-2-2148 of the Commission's Rules Regulating Telecommunications Service and Providers of Telecommunications Service, we open this proceeding to establish the required threshold, surcharges, and formulas by October 1, 2022, and propose amounts for the local Emergency Telephone Charge threshold, statewide 9-1-1 surcharge, and prepaid wireless 9-1-1 charges, and formulas for distribution of revenues from both the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge.

3. We invite interested persons to submit comments or briefing on this matter and the proposed amounts and formula no later than August 19, 2022. Any person desiring to intervene or participate as a party in this proceeding in accordance with the Rule 1401 of the Commission's Rules of Practice and Procedure⁴ *Code of Colorado Regulations* (CCR) 723-1 shall file appropriate notices or motions concurrent with their respective comments by **August 19, 2022. Reply briefs or comments shall be due September 2, 2022.**

B. Discussion

4. §§ 29-11-102 through 102.5, C.R.S. requires the Commission to establish annually, by October 1 of each year: (1) the authorized threshold amount at which applications are required to increase the local Emergency Telephone Charge; (2) a statewide 9-1-1 surcharge; (3) a prepaid wireless 9-1-1 charge; and (4) formulas for distribution of money from the statewide 9-1-1 surcharge and prepaid wireless 9-1-1 charge to the governing bodies. By statute, these items will be effective January 1 of the following year.

5. In accordance with Rule 2148, 4 CCR 723-2, we propose amounts for the required threshold, surcharge, and charge and a distribution formula. We invite interested persons to comment on these proposals and present any arguments supporting alternative amounts or distribution formula through the briefing and comment period afforded by this Decision.

1. Emergency Telephone Charge Threshold

6. Governing bodies may pay for costs for the operation of emergency telephone service as described in § 29-11-104, C.R.S., by imposing an Emergency Telephone Charge on service users. Governing bodies must annually establish the amount of the Emergency Telephone Charge per month per 9-1-1 access connection, and if the amount is greater than the authorized threshold amount, the governing body must obtain prior Commission approval to charge that amount. Currently, and through December 31, 2022, the authorized threshold amount

is \$1.81 per month per 9-1-1 access connection.¹ Section 29-11-102(2)(f)(II), C.R.S., requires the Commission to establish the authorized threshold amount on or before October 1 of each year to be effective January 1 of the following year. Under statute, the Commission must take into account inflation and the needs of the governing bodies in setting the authorized threshold amount. § 29-11-102, C.R.S. Pursuant to Rules 2148(a)(I)(A) and (B), the Commission shall take these considerations by considering, at a minimum, inflation rates, future projections, historical data, and the rate of increase of the average emergency telephone charge, in addition to comments provided.

7. Per the federal Bureau of Labor and Statistics, the inflation rate from May of 2021 to May of 2022 was 8.6 percent.² Applying this interest rate to the current emergency telephone charge threshold of \$1.81 per 9-1-1 access connection per month yields a new rate of \$1.97.

8. The Commission notes that, in addition to inflation, statute directs the Commission to consider “the needs of the governing bodies.” The Commission requests comment on whether there are other increases in costs related to the needs of the governing bodies that may justify consideration of an adjustment in addition to the one being proposed to account for inflation, and what that additional adjustment may be. Prior to consideration of comments, if any, that an additional adjustment may be appropriate, the Commission proposes to adjust the threshold rate for inflation only.

¹ See Decision No. C20-0690, Proceeding No. 20M-0337T, establishing an emergency telephone charge threshold of \$1.72 per month per 9-1-1 access connection, a statewide 9-1-1 surcharge of \$0.10 per month per 9-1-1 access connection, a prepaid wireless 9-1-1 charge of \$1.38 per retail transaction of prepaid wireless telecommunications service, and a distribution formula consistent with statute.

² See <https://www.bls.gov/opub/ted/2022/consumer-prices-up-8-6-percent-over-year-ended-may-2022.htm>.

9. Therefore, we propose that the Emergency Telephone Charge threshold be set by October 1, 2022, at \$1.97, effective January 1, 2023. As stated above, we invite interested persons to provide comments on this proposed threshold.³

2. Statewide 9-1-1 Surcharge

10. Section 29-11-102.3, C.R.S., imposes a statewide 9-1-1 surcharge on service users in an amount to be established by the Commission on or before October 1 of each year to be effective January 1 of the following year. The surcharge amount may not exceed \$0.50 per month per 9-1-1 access connection, and the amount must be reasonably calculated to meet the needs of governing bodies to operate the 9-1-1 system. To establish this calculation, Rule 2148(a)(II)(B) states that the Commission will consider, at a minimum, historical data, costs to the 9-1-1 governing body of basic emergency service tariffs, and comments of interested stakeholders.

11. In Decision C21-0611, the Commission set the statewide 9-1-1 surcharge rate at \$0.09 per month per 9-1-1 access connection for the 2022 calendar year. This rate was calculated by determining the total cost to every 9-1-1 governing body under the Lumen ESInet tariff and setting the surcharge rate at an amount reasonably calculated to reimburse the 9-1-1 governing bodies for those costs. This methodology is enabled by the fact that the unit of pricing for the ESInet tariff is per concurrent session, and the distribution of the statewide 9-1-1 surcharge funds is also based on the number of concurrent sessions at each 9-1-1 governing body.⁴

³ Processes for an Application to set an emergency telephone charge in excess of the threshold established by the Commission are prescribed in Rule 2147, 4 CCR 723-2.

⁴ See Proceeding Nos. 17AL-0487T, 18AL-0916T, and 19AL-0238T.

12. For calendar year 2023, we propose again to set the rate at an amount calculated to reimburse 9-1-1 governing bodies for the cost of paying the monthly recurring ESInet tariff rates. To determine the rate, we find that there are currently 617 concurrent sessions that are being paid by 9-1-1 governing bodies.⁵ This number, multiplied by the monthly recurring tariff rate of \$752.22 per concurrent session, we find a total statewide cost for all concurrent sessions of \$464,119.74 per month. Adding an additional four percent to cover the Commission's allowed administrative retention, we arrive at a total amount of \$482,684.53 that must be raised by the statewide 9-1-1 surcharge each month in order to reimburse 9-1-1 governing bodies for the cost of purchasing basic emergency service.

13. For June of 2021 through May of 2022, the average number of lines reported monthly to the Commission by providers remitting 9-1-1 surcharge funds was 6,250,123. This is an increase compared to the average line count of 5,935,852 as reported in Proceeding No. 21M-0354T. Based on this, we find that a surcharge rate of \$0.08 per month per 9-1-1 access connection will be necessary to raise the required funding to reimburse the 9-1-1 governing bodies for the cost of purchasing basic emergency service. Based on the current average number of lines being reported, we estimate that a surcharge rate of \$0.08 should raise roughly \$500,009.84 per month, an amount greater than the \$482,684.53 required as described above. This is a reduction of the surcharge rate by one penny from the rate set by the Commission for calendar year 2022 and reflects the fact that the number of lines being reported by providers has increased since the decision last year to set the surcharge rate at \$0.09 per line per month.⁶

⁵ Attachment A.

⁶ See Decision No. C21-0611, Proceeding No. 21M-0354T issued September 30, 2021.

14. The Commission notes that § 29-11-102.3(1)(b), C.R.S., does not necessarily limit the use of the state 9-1-1 surcharge to reimbursement of current tariff rates for Basic Emergency Service, and rather states that the amount “must be reasonably calculated to meet the needs of governing bodies to operate the 911 system.” Therefore, the Commission seeks comment on whether there are other expenses that would be appropriate for reimbursement through an adjustment to the 9-1-1 surcharge, noting that the distribution of the surcharge must be based on the number of concurrent sessions being purchased or funded by each of the governing bodies. Prior to consideration of comments, if any, that an additional adjustment may be appropriate, the Commission proposes to adjust the threshold rate only to reimburse governing bodies for the current basic emergency service tariff rates.

15. Based on the above discussion, we propose setting the statewide 9-1-1 surcharge at \$0.08, effective January 1, 2023. We invite interested persons to provide comments on this rate.

3. Prepaid Wireless 9-1-1 Charge

16. Statute requires that the Commission set a per retail transaction prepaid wireless 9-1-1 charge by October 1 of each year to take effect on the following January 1. This rate is transmitted to the Colorado Department of Revenue, which collects the surcharge from retailers. Statute prescribes the method for determining this surcharge rate as the average of the local emergency telephone charges plus the statewide 9-1-1 surcharge rate. § 29-11-102.5, C.R.S.

17. The average local Emergency Telephone Charge as of June 1, 2022, was \$1.62.^{7,8} Taking our proposal of \$0.08 for the statewide 9-1-1 surcharge and adding this to \$1.62 average emergency telephone charge results in per transaction prepaid wireless 9-1-1 charge rate of \$1.70. This is an increase of \$0.07 per transaction, and reflective of both the increase in the average emergency telephone charge rate and the decrease in the state 9-1-1 surcharge rate. We invite interested persons to provide comments on this amount.

4. Statewide 9-1-1 Surcharge Distribution Formula and Prepaid Wireless 9-1-1 Charge Distribution Formula

18. The Commission must establish formulas for distribution of money collected from the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge to the governing bodies by October 1 of each year. For the statewide 9-1-1 surcharge distributions, the formula must be based on the number of concurrent sessions maintained by the Public Safety Answering Points (PSAPs) of each governing body. § 29-11-102.3(3)(c)(III), C.R.S. Additionally, the Commission may retain up to four percent of the collected surcharges to cover the direct and indirect costs of administering the surcharge. § 29-11-102.3(3)(c)(II), C.R.S.

19. For the prepaid wireless 9-1-1 charge distributions, the formula must be based on the number of wireless 9-1-1 calls taken by all the PSAPs of each governing body as a percentage of the total wireless 9-1-1 calls received by all PSAPs in the state. § 29-11-102.5(3)(e)(III), C.R.S.

⁷ Attachment B.

⁸ Governing bodies may only change their emergency telephone charge effective February 1 or June 1 of each year. § 29-11-102(2)(b), C.R.S.

20. To implement this statutory requirement, we propose a distribution formula through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding 4 percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its PSAPs as a percentage of the total number of concurrent sessions in the state. We invite interested persons to provide comments on this formula.⁹

21. Additionally, we propose a distribution formula which will be transmitted to the Colorado Department Revenue for use by that Department in distributing prepaid wireless 9-1-1 charge funds, less administrative costs to be retained by Department, to each 9-1-1 governing body in amounts proportional to the number of wireless 9-1-1 calls received by the PSAPs associated with each 9-1-1 governing body. We invite interested persons to provide comments on this formula.¹⁰

C. Findings and Conclusions

22. Sections 29-11-102 through 102.5, C.R.S. requires the Commission to undertake several actions related to 9-1-1 surcharges and surcharge funds, all of which must be completed by October 1:

- a) Establish an emergency telephone charge threshold above which Commission approval is required;
- b) Establish a statewide 9-1-1 surcharge rate;
- c) Establish a prepaid wireless 9-1-1 charge rate; and
- d) Establish formulas for the distribution of statewide 9-1-1 surcharge funds and prepaid wireless 9-1-1 charge funds to the governing bodies;

⁹ Attachment C.

¹⁰ *Id.*

23. For these reasons, we find good cause to open this Proceeding for the purpose of establishing by October 1, 2022, the required threshold, surcharge, and charge amounts, and to establish formulas for distribution of the statewide 9-1-1 surcharge and prepaid wireless 9-1-1 charge, consistent with §§ 29-11-102 through 102.5, C.R.S.

24. Considering inflation and the needs of the governing bodies, as discussed above, we propose for stakeholder comment that \$1.97 be established as local emergency telephone charge threshold required by § 29-11-102, C.R.S.

25. Considering the requirement that a statewide 9-1-1 surcharge required by § 29-11-102.3, C.R.S., be reasonably calculated to meet the needs of governing bodies to operate the 9-1-1 system, as discussed above, we propose for stakeholder comment that \$0.08 is an appropriate amount to for the statewide 9-1-1 surcharge required by § 29-11-102.3, C.R.S.

26. Applying the formula for the prepaid wireless 9-1-1 charge, and incorporating our proposal for the statewide 9-1-1 surcharge, as discussed above, we propose for stakeholder comment that \$1.70 is an appropriate amount to propose for the prepaid wireless 9-1-1 charge, as required by § 29-11-102.5, C.R.S.

27. Applying the requirement as set forth in § 29-11-102.3(3)(c)(III), C.R.S., we propose for stakeholder comment that it is appropriate to propose a formula for distribution of money from the statewide 9-1-1 surcharge through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding 4 percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its PSAPs as a percentage of the total number of concurrent sessions in the state, as shown in Attachment A.

28. We also propose for stakeholder comment that it is appropriate to propose a formula for distribution of money from the prepaid wireless 9-1-1 charge, which will be transmitted to the Colorado Department of Revenue for use by that department to distribute funds from the prepaid wireless 9-1-1 charge, less administrative costs to be determined by the Department in accordance with statute, to each 9-1-1 governing body in amounts proportional to the number of wireless 9-1-1 calls received by each PSAP associated with each 9-1-1 governing body, as shown in Attachment C.

29. This Decision is available for public inspection by accessing the Commission's E-Filing system under the above proceeding number at Colorado.gov/dora/puc. **This Decision is the notice that the Commission is opening a proceeding to establish by October 1, 2022, the authorized Emergency Telephone Charge threshold, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and formulas for distribution of the statewide 9-1-1 surcharge and prepaid wireless 9-1-1 charge to governing bodies, each to be effective January 1, 2023.**

30. The Commission's notice period for this Decision opening this Proceeding shall extend through and include **5:00 p.m. on August 19, 2022.**

31. We invite interested persons to submit comments or briefing on the amounts proposed for the required threshold, surcharge, and charge, and the formula for distribution of the statewide 9-1-1 surcharge. Comments and briefing shall be filed no later than **5:00 p.m. on August 19, 2022.**

32. Any person desiring to intervene or participate as a party or in this proceeding shall file appropriate notices or motions to become a party concurrent with their respective comments no later than **5:00 p.m. on August 19, 2022.**

33. Reply comments may be filed on or before 5:00 p.m. September 2, 2022.

II. ORDER

A. It Is Ordered That:

1. The Commission opens this Proceeding on its own motion consistent with §§ 29-11-102 through 102.5, C.R.S., and the 4 *Code of Colorado Regulations* (CCR) 723-2-2148 of the Commission's Rules Regulating Telecommunications Service and Providers of Telecommunications Service, to establish by October 1, 2022 the authorized Emergency Telephone Charge threshold, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and formula for distribution of money from the statewide 9-1-1 surcharge to the governing bodies.

2. Consistent with the discussion above, we notify interested persons that we propose the following amounts and formula to be effective January 1, 2023: (1) under § 29-11-102, C.R.S., an authorized Emergency Telephone Charge threshold of \$1.97; (2) under § 29-11-102.3, C.R.S., a statewide 9-1-1 surcharge of \$0.08; (3) under § 29-11-102.5, C.R.S., a prepaid wireless 9-1-1 charge of \$1.70; under § 29-11-102.3(3)(c)(III), C.R.S., a distribution formula through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding four percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its PSAPs as a percentage of the total number of concurrent sessions in the state, as proposed in Attachment A; and under § 29-11-102.5(3)(e)(III), C.R.S., a distribution formula to be transmitted to the Colorado Department of Revenue for use by that department to distribute funds from the prepaid wireless 9-1-1 charge, less administrative costs to be determined by the department in accordance with statute, to each 9-1-1 governing body in amounts proportional to the number of wireless 9-1-1 calls received by the PSAPs associated with each 9-1-1 governing body, as proposed in Attachment C.

3. The notice period for this Decision shall extend through and include **5:00 p.m. on August 19, 2022.**

4. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on August 19, 2022.**

5. Briefing on this matter shall be due by **5:00 p.m. on August 19, 2022.**

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may submit comments through the Commission's comment wizard at <https://puc.colorado.gov> choosing Proceeding No. 22M-0341T or may send written comments on or before August 19, 2022, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202

7. Reply briefs or comments shall be due by **5:00 p.m. on September 2, 2022.**

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 27, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners