

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0337T

IN THE MATTER OF IMPLEMENTING HB 20-1293 TO ESTABLISH THE 2021 EMERGENCY TELEPHONE CHARGE THRESHOLD, STATEWIDE 9-1-1 SURCHARGE, PREPAID WIRELESS 9-1-1 CHARGE, AND STATEWIDE 9-1-1 SURCHARGE DISTRIBUTION FORMULA.

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

Mailed Date: August 17, 2020
Adopted Date: August 12, 2020

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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 implementation of House Bill (HB) 20-1293, which requires the Commission to establish by October 1, 2020, the local Emergency Telephone Charge threshold, a statewide 9-1-1 surcharge, a prepaid wireless 9-1-1 charge, and a formula for distribution of money from the statewide 9-1-1 surcharge to governing bodies, each to be effective by January 1, 2021.¹

2. In accordance with the temporary rules adopted in Decision No. C20-0599, issued August 17, 2020 in Proceeding No. 20M-0335T, we open this proceeding to establish the required threshold, surcharges, and formula by October 1, 2020, and propose amounts for the local Emergency Telephone Charge threshold, statewide 9-1-1 surcharge, and prepaid wireless 9-1-1 charge and a formula for distribution. The Commission will address additional implementation of HB 20-1293 through later proceedings and decisions.

3. We invite interested persons to submit comments or briefing on this matter and the proposed amounts and formula no later than **September 16, 2020**. Any person desiring to intervene or participate as a party in this proceeding in accordance with Rule 1401 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 shall file appropriate notices or motions concurrent with their respective comments by **September 16, 2020**. Reply briefs or comments shall be due **September 21, 2020**.

¹ §§ 29-11-100.2 through 102.5, C.R.S.

B. Discussion

4. On July 10, 2020, the Governor signed HB 20-1293, which 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. HB 20-1293 also allows the Commission to promulgate rules to resolve disputes regarding the collection, payment, remittance, and audit of the Emergency Telephone Charge and statewide 9-1-1 surcharge, and to impose penalties for noncompliance with certain statutory provisions and Commission rules. Through this proceeding, we will establish only those items that require Commission action by October 1, 2020, specifically the local Emergency Telephone Charge threshold, a statewide 9-1-1 surcharge, a prepaid wireless 9-1-1 charge, and a formula for distribution of money from the statewide 9-1-1 surcharge to governing bodies.²

6. In accordance with Rules 2148 and 2149, 4 CCR 723-2 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services,³ 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.

² The Commission already has a conforming formula in place for the distribution of the prepaid wireless 9-1-1 charge, and therefore does not need to establish such a formula by October 1, 2020.

³ Through Decision No. C20-0599, issued August 17, 2020, the Commission found it imperatively necessary to adopt temporary Rules 2148 and 2149, 4 CCR 723-2, providing the process to establish the required threshold and surcharges by October 1, 2020.

1. Emergency Telephone Charge Threshold

7. 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, 2020, the authorized threshold amount is \$0.70 per month per 9-1-1 access connection. HB 20-1293 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 the 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(I)(B) and (C), the Commission shall take these considerations into account by considering, at a minimum, historical data, future projections, inflation rates, the rate of increase of the average emergency telephone charge, in addition to comments provided.

8. The Emergency Telephone Charge threshold has been set at \$0.70 since 1990. Per the Bureau of Labor Statistics Consumer Price Index Calculator,⁴ \$0.70 in June of 1990 would equal \$1.39 as of June of 2020, which is the most recent comparison available. In reviewing the Emergency Telephone Charge rates in the state compared to what \$0.70 in 1990 would be year-by-year if adjusted for inflation, the average Emergency Telephone Charge has risen at a rate that is nearly parallel to inflation, with the exception of the years 2016 through

⁴ CPI Inflation Calculator, U.S. Bureau of Labor Statistics:
https://www.bls.gov/data/inflation_calculator.htm
(last visited August 14, 2020).

2020. The difference between what \$0.70 would be, adjusted for inflation, each year and the average Emergency Telephone Charge held steady between \$0.35 and \$0.39 until 2016, at which time the average Emergency Telephone Charge rate began to increase at a rate that was greater than inflation. The gap between the inflation-adjusted threshold and the average Emergency Telephone Charge was \$0.31 in 2016, \$0.29 in 2017, \$0.30 in 2018, \$0.25 in 2019, and is now at \$0.12 in 2020.

9. The reason for this increase in the average Emergency Telephone Charge between 2016 and 2020 is not certain, but we can look to the Emergency Telephone Charge applications received by the Commission. Historically, governing bodies requesting large increases to their Emergency Telephone Charge rates do so to replace outdated equipment,⁵ but also to pay for an increasing share of the personnel and equipment costs of the Public Safety Answering Point (PSAP),⁶ previously paid for out of county and municipal general funds. The ongoing migration of the PSAPs of the state from the legacy 9-1-1 network to the Emergency Services IP-Network have also prompted a number of PSAPs to replace equipment now in order to be able to take full advantage of the migration.⁷

10. The heightened rate of increase in average Emergency Telephone Charge indicates that the funding needs of the 9-1-1 governing bodies are growing faster than inflation, and therefore simply adjusting the \$0.70 threshold to \$1.39 to account for inflation may not be

⁵ See, e.g., Proceeding Nos. 20A-0175T, 20A-0145T, and 20A-0087T.

⁶ See, e.g., Proceeding Nos. 19A-0674T, 19A-0539T, and 19A-0494T.

⁷ See, e.g., Proceeding Nos. 19A-0674T, 19A-0539T, and 19A-0494T.

sufficient. It should be noted that 22 of the 58 governing bodies already have Emergency Telephone Charge rates above \$1.39.⁸

11. Therefore, in addition to inflation, our proposal takes into account the historic data indicating that, after 2016, the rate of increase in Emergency Telephone Charge outstripped inflation, indicating a greater need by the 9-1-1 governing bodies. That rate of increase in average Emergency Telephone Charge was, on average, 7.7 percent per year. Starting with \$1.28 in 2016 and adding 7.7 percent per year, a rate of 2020 of \$1.72 is reached.

12. Therefore, we propose that the Emergency Telephone Charge threshold be set by October 1, 2020 at \$1.72, effective January 1, 2021. As stated above, we invite interested persons to provide comments on this proposed threshold.⁹

2. Statewide 9-1-1 Surcharge

13. HB 20-1293 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. § 29-11-102.3, C.R.S. To establish this calculation, Rule 2148(II)(B)

⁸ Current listings of Emergency Telephone Charge Rates and Historic Surcharge rates are available online. See Colorado 9-1-1 Program, Emergency Telephone Charges:

<https://sites.google.com/state.co.us/colorado911program/emergency-telephone-charges>

(last visited August 14, 2020). Average Emergency Telephone Charge Rates by Year, and the spreadsheet indicating current rates as of August 12, 2020, is summarized and provided as Attachment A to this Decision.

⁹ As discussed in Decision No. C20-0599, issued August 17, 2020, adopting temporary rules, through this process we establish only the threshold amount, effective January 1, 2020. Processes for governing bodies to apply, if necessary, for an amount greater than the threshold amount shall be considered through ongoing stakeholder processes and anticipated future rulemaking. Prior to more specific rules being established, application processes under the current rules continue to apply.

includes 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.

14. This surcharge will be applied to every telephone bill in the state, with the exception of prepaid telephone services and phone bills for exempt entities, including local and state governments. These surcharges will be remitted by telecommunications providers directly to the Commission or its agent. The Commission will then distribute the funds (minus up to 4 percent for administrative costs) to the 9-1-1 governing bodies.

15. To determine an amount for this surcharge, we propose to set it at an amount that will raise enough funding statewide that when distributed to the 9-1-1 governing bodies, the amount will reimburse 9-1-1 governing bodies for the monthly recurring charges they are required under the tariff to pay to Qwest Corporation, doing business as CenturyLink QC, serving as the Basic Emergency Service Provider.¹⁰

16. To determine the rate that would need to be set to accomplish this, it must be determined how much funding would be raised per penny of statewide 9-1-1 surcharge. Taking data from past surveys of 9-1-1 governing bodies, comparing the amount they reported to have received from their emergency telephone charge rate, divided by the population served by that governing body, to estimate a base amount per person raised per penny of 9-1-1 surcharge, and multiplying this by the state population, provides an estimate of approximately \$648,477 per year per penny of surcharge assessed statewide.

17. The monthly recurring charge for Basic Emergency Service in the ESInet Tariff is \$752.22 per month per concurrent session (defined by statute as “a channel for an inbound

¹⁰ See Proceeding Nos. 17AL-0487T, 18AL-0916T, and 19AL-0238T.

simultaneous 911 request for assistance”¹¹) at each PSAP. We also know that there are currently 599 concurrent sessions either installed or planned for installation at all of the PSAPs in Colorado. This provides an annual statewide cost of $\$752.22 \times 599 \times 12 \text{ months} = \$5,406,957.36$. In order to raise that amount, using the estimate of \$648,477 per year per penny of surcharge statewide, the Commission would need to set the surcharge rate at 8.3 cents.

18. Given the uncertainty in some of the information available to make these calculations, and the fact that the Commission may use up to 4 percent of the surcharge for administrative costs, we propose setting the statewide 9-1-1 surcharge at \$0.10 by October 1, 2020, effective January 1, 2021. We invite interested persons to provide comments on this amount.

3. Prepaid Wireless 9-1-1 Charge

19. Currently, and on or before December 31, 2020, buyers of prepaid wireless retail transactions are assessed a 1.4 percent prepaid wireless 9-1-1 charge. HB 20-1293 requires the Commission to establish a flat rate for the prepaid wireless 9-1-1 charge on or before October 1 of each year to be effective January 1 of the following year. The prepaid wireless 9-1-1 charge is to be calculated by adding the average of the local Emergency Telephone Charge amounts as of July 1 of that year and the amount of the statewide 9-1-1 surcharge amount established by the Commission for the following year. § 29-11-102.5, C.R.S.

20. The average local Emergency Telephone Charge as of July 1, 2020 was \$1.28.¹² Taking our proposal of \$0.10 for the statewide 9-1-1 surcharge and adding this to \$1.28 results in

¹¹ § 29-11-102.3(3) (c) (III), C.R.S.

¹² Attachment A

a per transaction prepaid 9-1-1 surcharge rate of \$1.38. We invite interested persons to provide comments on this amount.

4. Statewide 9-1-1 Surcharge Distribution Formula

21. The Commission must establish a formula for distribution of money collected from the statewide 9-1-1 surcharge to the governing bodies by October 1 of each year. The formula must be based on the number of concurrent sessions maintained by the PSAPs of each governing body. § 29-11-102.3(3)(c)(III), C.R.S. Additionally, the Commission may retain up to 4 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.

22. 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.

C. Findings and Conclusions

23. HB 20-1293 requires the Commission to establish the authorized threshold amount at which Applications are required to increase the local Emergency Telephone Charge, 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 prepaid wireless 9-1-1 charge to the governing bodies, each by October 1, 2020.

24. We find good cause to open this Proceeding for the purpose of establishing by October 1, 2020 the required threshold, surcharge, and charge amounts, and to establish a

formula for distribution of the statewide 9-1-1 surcharge, consistent with §§ 29-11-102 through 102.5, C.R.S. The Commission already has a conforming distribution formula in place for the prepaid wireless 9-1-1 charge.

25. Taking into account inflation and the needs of the governing bodies, as discussed above, we propose for stakeholder comment that \$1.72 is an appropriate amount to propose for the local Emergency Telephone Charge threshold required by § 29-11-102, C.R.S.

26. Taking into account 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 \$0.10 is an appropriate amount to propose for the statewide 9-1-1 surcharge required.

27. 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 \$1.38 is an appropriate amount to propose for the prepaid wireless 9-1-1 charge, as discussed above.

28. 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.

29. This Decision is available for public inspection at the Commission office located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m.,

excluding weekends and state holidays, or 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 begin implementation of HB 20-1293 and establish by October 1, 2020, the authorized Emergency Telephone Charge threshold, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and formula for distribution of the statewide 9-1-1 surcharge to governing bodies, each to be effective January 1, 2021.**

30. The Commission's notice period for this Decision opening this Proceeding shall extend through and include **5:00 p.m. on September 16, 2020.**

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 September 16, 2020.**

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 September 16, 2020.**

33. Reply comments may be filed on or before 5:00 p.m. September 21, 2020.

II. ORDER

A. The Commission Orders That:

1. The Commission opens this Proceeding on its own motion consistent with §§ 29-11-102 through 102.5, C.R.S., and the temporary rules adopted by Decision No. C20-0599, issued August 17, 2020, to establish by October 1, 2020, 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, 2021: (1) under § 29-11-102, C.R.S., an authorized Emergency Telephone Charge threshold of \$1.72; (2) under § 29-11-102.3, C.R.S., a statewide 9-1-1 surcharge of \$0.10; (3) under § 29-11-102.5, C.R.S., a prepaid wireless 9-1-1 charge of \$1.38; and 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 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.

3. The notice period for this Decision shall extend through and include **5:00 p.m. on September 16, 2020.**

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 September 16, 2020.**

5. Briefing on this matter shall be due by **5:00 p.m. on September 16, 2020.**

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments on or before September 16, 2020, 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 21, 2020.**

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 12, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners