

Decision No. C23-0494

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0385T

IN THE MATTER OF ESTABLISHING THE 2024 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.

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

Mailed Date: July 28, 2023

Adopted Date: July 19, 2023

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, 2023, 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 18, 2023. 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 Procedure, 4 CCR 723-1 shall file appropriate notices or motions concurrent with their respective comments by **August 18, 2023. Reply briefs or comments shall be due September 1, 2023.**

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 distribution formulas. We invite interested persons to comment on these proposals and present any arguments supporting alternative amounts or distribution formulas through the briefing and comment period afforded by this Decision.

a) 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, 2023, the authorized threshold amount is \$1.97 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 into account 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 2022 to May of 2023 was 4.0 percent.² Applying this interest rate to the current emergency telephone charge threshold of \$1.97 per 9-1-1 access connection per month yields a new rate of \$2.05.

8. The Commission notes that, in addition to inflation, statute directs the Commission to take into account “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

¹ See Decision No. C22-0562, Proceeding No. 22M-0341T issued September 22, 2022, establishing an emergency telephone charge threshold of \$1.97 per month per 9-1-1 access connection, a statewide 9-1-1 surcharge of \$0.09 per month per 9-1-1 access connection, a prepaid wireless 9-1-1 charge of \$1.71 per retail transaction of prepaid wireless telecommunications service, and a distribution formula consistent with statute.

² See <https://www.bls.gov/opub/ted/2023/consumer-prices-up-4-0-percent-from-may-2022-to-may-2023.htm>.

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.

9. Therefore, we propose that the Emergency Telephone Charge threshold be set by October 1, 2023 at \$2.05, effective January 1, 2024. As stated above, we invite interested persons to provide comments on this proposed threshold.³

b) 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 C22-0562, the Commission set the statewide 9-1-1 surcharge rate at \$0.09 per month per 9-1-1 access connection for the 2023 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. The rate also took into consideration an expected increase to the tariff rate

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.

due to a tariff amendment that at the time had been filed, but not was not yet effective.⁴ 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.⁵

12. For calendar year 2024, 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.⁶ This number, multiplied by the monthly recurring tariff rate provides the total statewide cost for all concurrent sessions per month.

13. On March 17, 2023, the BESP, Qwest Corporation d.b.a. CenturyLink QC (“CenturyLink”) filed an advice letter and tariff pages to add ECaTS call metric services to the ESInet tariff.⁷ This tariff amendment became effective on April 21, 2023. Due to the initial pricing structure of this additional service, the monthly cost paid by governing bodies under the ESInet tariff is not uniform, which complicates the calculation of the total statewide cost. Specifically, the pricing is higher for concurrent sessions serving Public Safety Answering Points (“PSAPs”) that do not currently use ECaTS versus PSAPs that do. As current contracts for ECaTS service expire, eventually all PSAPs will pay the higher rate. The Commission does not have information regarding which governing bodies may be charged the higher rate and which may not, or when those which are charged the lower rate may be subject to the higher rate due to the expiration of existing contracts for ECaTS service. The Commission therefore proposes to calculate the

⁴ See Proceeding No. 22AL-0356T. This tariff amendment was subsequently withdrawn.

⁵ See Proceedings Nos. 17AL-0487T, 18AL-0916T, and 19AL-0238T.

⁶ Attachment A.

⁷ See Proceeding No. 23AL-0133T.

statewide costs based on the higher rates for PSAPs not currently using ECaTS. This will result in some governing bodies receiving distributions higher than the amount that those governing bodies pay each month for 9-1-1 call delivery. However, the Commission also notes that any excess funds must still be spent for purposes enumerated in § 29-11-104, C.R.S., namely for costs associated with the operation of Emergency Telephone Service and Emergency Notification Service. The Commission seeks comment on whether this approach is appropriate or, if it is not, what alternative approaches the Commission may use to determine the statewide tariff costs to the governing bodies.

14. The latest effective version of the CenturyLink ESInet (Basic Emergency Service) tariff also includes non-recurring charges for the implementation of the ECaTS service. Not all of these non-recurring charges may be incurred in 2024. Some of them may be incurred in 2023, or, if for any reason the deployment of the ECaTS service is delayed, in 2025 or beyond. Because no deployment schedule has yet been produced by CenturyLink for the ECaTS service, the Commission has no information regarding when each governing body may incur these non-recurring charges. The Commission therefore proposes to include the non-recurring charges for the implementation of ECaTS service to all PSAPs in this year's annual calculation of the statewide costs for tariff charges to the PSAPs, rather than in the calculation for a later year. Doing so will result in PSAPs that incur the non-recurring charges in 2023 to be reimbursed for those charges over the course of 2024. PSAPs that have not yet incurred those charges by the end of 2024, if any, will have received payment ahead of the implementation of the ECaTS service and the incursion of charges, and would be encouraged to retain those funds to pay those charges at the later date. The Commission seeks comment on whether this approach is appropriate.

15. Consistent with the discussion above, the Commission calculates a statewide tariff cost of \$752.22 per month per concurrent session for ESInet service, \$108.00 per month per concurrent session for ECaTS, and single non-recurring charges of \$80.70 per concurrent session for ECaTS deployment, for a total of $(\$752.22 + \$108.00 + \$80.70/12) \times 617$ concurrent sessions = \$534,905.07 per month that must be raised by the surcharge to fully reimburse all ESInet tariff costs. Adding an additional 4 percent to cover the Commission's allowed administrative retention, we arrive at a total amount of \$556,301.27 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. This is higher than the needs calculated by the Commission for 2022, which was \$482,684.53,⁸ due to the additional non-recurring and monthly recurring charges for the ECaTS service.

16. For May of 2022 through April of 2023, the average number of lines reported monthly to the Commission by providers remitting 9-1-1 surcharge funds was 6,628,755. This is an increase compared to the average line count of 6,250,123 as reported in proceeding 22M-0341T. Based on this, we find that a surcharge rate of \$0.09 per month per 9-1-1 access connection will continue to be sufficient 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 \$0.09 should raise roughly \$596,587.95 per month in 2024, an amount greater than the \$556,301.27 required as described above. This is the same rate set by the Commission for calendar year 2023, which should generate the revenue necessary despite the increase in costs due to the increase in the number of lines.⁹

⁸ See Decision No. C22-0447, Proceeding No. 22M-0341T issued August 1, 2022.

⁹ See Decision No. C22-0562, Proceeding No. 22M-0341T issued September 22, 2022.

17. Based on the above discussion, we propose maintaining the current statewide 9-1-1 surcharge rate at \$0.09, effective January 1, 2024. We invite interested persons to provide comments on this rate.

18. 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 also 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.

c) Prepaid Wireless 9-1-1 Charge

19. 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.

20. The average local Emergency Telephone Charge as of June 1, 2023¹⁰ was \$1.79.¹¹ Taking our proposal of \$0.09 for the statewide 9-1-1 surcharge and adding this to \$1.79 average emergency telephone charge results in per transaction prepaid wireless 9-1-1 charge rate of \$1.88. This is an increase of \$0.17 per transaction, and reflective of both the increase in the average

¹⁰ 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.

¹¹ Attachment B.

emergency telephone charge rate and the state 9-1-1 surcharge rate remaining stable from 2023. We invite interested persons to provide comments on this amount.

**d) Statewide 9-1-1 Surcharge Distribution Formula and Prepaid
Wireless 9-1-1 Charge Distribution Formula**

21. 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 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. 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.

23. 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.¹²

24. 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

¹² Attachment A.

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.¹³

II. FINDINGS AND CONCLUSIONS

25. 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;

26. For these reasons, we find good cause to open this Proceeding for the purpose of establishing by October 1, 2023 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.

27. Taking into account inflation and the needs of the governing bodies, as discussed above, we propose for stakeholder comment that \$2.05 be established as local emergency telephone charge threshold required by § 29-11-102, C.R.S.

28. 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

¹³ Attachment C.

9-1-1 system, as discussed above, we propose for stakeholder comment that \$0.09 is an appropriate rate for the statewide 9-1-1 surcharge required by § 29-11-102.3, C.R.S.

29. 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 \$1.88 is an appropriate amount to propose for the prepaid wireless 9-1-1 charge, per transaction, as required by § 29-11-102.5, C.R.S.

30. 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.

31. 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.

32. This Decision is available for public inspection by accessing the Commission's E-Filing system under the above proceeding number at https://www.dora.state.co.us/pls/efi/EFI_Search_UI.search. **This Decision is the notice that the**

Commission is opening a proceeding to establish by October 1, 2023 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, 2024.

33. The Commission's notice period for this Decision opening this Proceeding shall extend through and include **5:00 p.m. on August 18, 2023.**

34. 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 18, 2023.**

35. 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 18, 2023.**

36. Reply comments may be filed on or before 5:00 p.m. September 1, 2023.

III. 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, 2023 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, 2024: (1) under § 29-11-102, C.R.S., an authorized Emergency Telephone Charge threshold of \$2.05; (2) under § 29-11-102.3, C.R.S., a statewide 9-1-1 surcharge of \$0.09; (3) under § 29-11-102.5, C.R.S., a prepaid wireless 9-1-1 charge of \$1.88; 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 18, 2023.**

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 18, 2023.**

5. Briefing on this matter shall be due by **5:00 p.m. on August 18, 2023.**

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 August 20, 2023, 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 1, 2023.**

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 19, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners