

Decision No. C23-0540-I

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

**INTERIM COMMISSION DECISION
ADDRESSING INTERVENTIONS AND SOLICITING
ADDITIONAL PUBLIC COMMENT**

Mailed Date: August 16, 2023
Adopted Date: August 9, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission addresses interventions and seeks additional comment on proposals for the allocation of remaining monies in the Colorado Performance Assurance Plan (CPAP) Special Fund.

2. We invite interested persons to submit additional comments no later than September 8, 2023. Reply comments may be filed by September 22, 2023. Comments will be considered by the Commission regardless of whether the commenter has intervened in the proceeding.

B. Background

3. 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

4. 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 The CPAP Special Fund has a remaining balance of \$1,589,067.

5. 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."

6. 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 2010,⁴ and \$200,000 to support a broadband mapping project undertaken by the Governor's Office of Information Technology in 2009.⁵

7. On April 26, 2023, the Commission adopted a Decision opening this Proceeding. The Proceeding included initial proposals for the distribution of the remaining CPAP funds. Interested persons were invited to submit comments and intervention requests by May 26, 2023

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.

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

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

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 within the parameters set forth in the CPAP agreement.

8. Specifically, the initial proposals were as follows:

- a) Provide funding to an organization to implement an education and outreach program to increase enrollment in the federal Lifeline program for low-income individuals in Colorado.
- b) Provide additional funding for the Colorado 9-1-1 Resource Center, Inc., a non-profit entity created to serve as an information clearinghouse and support entity for local 9-1-1 governing bodies and Public Safety Answering Points (PSAPs), which is nearing the end of its existing funding.
- c) Provide funding to PSAPs for the implementation of text-to-911 service or emergency medical dispatch service if they don't already provide those services.
- d) Provide funding to PSAPs for development and improvement of geographic information system data sets necessary for the future deployment of geospatial routing of 9-1-1 calls.
- e) Provide funding to an organization for the purchase of accessible telephony equipment for persons with disabilities.
- f) Provide funding to an organization to implement an education and outreach program regarding already existing accessible telephony programs for persons with disabilities.
- g) Provide funding to the 988 Crisis Hotline Enterprise Board for public education and outreach.
- h) Provide funding to an organization to implement a public outreach program to raise awareness of the Colorado Inmate Communications Services (ICS) program at the Public Utilities Commission, including informing consumers of their right to request remedies by submitting an informal consumer complaint regarding potential predatory practices.

9. 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 911 Authority (Arapahoe), CCOA, BRETSA, the Colorado 9-1-1 Resource Center Board (Resource Center), the Colorado Commission for the Deaf, Hard of Hearing, and Deaf Blind (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).

C. Interventions

10. In its intervention filing, CCOA states that it is a membership-based association open to each governing body as defined in § 29-11-101(16), C.R.S., that pays annual dues to CCOA. Governing bodies are authorized by § 29-11-102 through 104, C.R.S., to receive 9-1-1 funds, including emergency telephone charges, state 9-1-1 surcharges, and prepaid wireless 9-1-1 charges, and spend those funds on specific expenses related to the provision of emergency telephone service and emergency notification service. CCOA states that the allocation of the remaining CPAP funds will affect the legally protected right of governing bodies.

11. In BRETSA's intervention filing, BRETSA states it is a governing body as defined in § 29-11-101(16), C.R.S. and 4 CCR 723-2-2131(s), and as such it has an interest in assuring a minimum level of 9-1-1 service is available statewide. BRETSA also states that some of the CPAP fund distributions proposed by the Commission in the Opening Decision would have a direct impact on BRETSA by reducing its expenses for implementation of Next Generation 9-1-1 (NG911).

12. We decline to determine whether BRETSA or CCOA meet the requirements for intervention as of right set forth in Rule 1401. We find that both CCOA and BRETSA have a

pecuniary or tangible interest that may be substantially impacted by the proceeding. and we grant both motions for permissive intervention.

D. Comments and Proposals

13. Comments were received from seven different parties, each containing one or more proposals for the distribution of the remaining CPAP funds, or supporting proposals made by other parties. Some of these proposals built upon the initial proposals provided by the Commission in Decision C23-0281, while others proposed uses or purposes beyond what the Commission originally proposed. A summary of these proposals follows.

14. *Reimbursement of non-recurring costs of the recent change to the CenturyLink ESInet tariff to include ECATS.* This proposal was supported by the Task Force, Arapahoe, and CCOA. The proposal is to provide funding to the 9-1-1 governing bodies to pay the non-recurring costs for the deployment of ECATS call metrics systems in Public Safety Answering Points (PSAP) statewide.⁶ The recipients for these funds would be the governing bodies themselves, of which there are 58 in the state, although not all governing bodies operate a PSAP and may not all be eligible for funding. The Task Force estimated that the cost for the non-recurring costs of implementing ECATS would be \$44,000. In responsive comments, CCOA estimates the cost at \$74,000.

⁶ See Proceeding 23AL-0133T.

15. *Establishment of a fund to generally assist 9-1-1 governing bodies.* 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. 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 cost of the proposal varied among the commenters, with the Task Force proposing \$520,000 be set aside for the fund, BRETSA proposing \$720,000, and CCOA proposing \$1,350,000.

16. *Funding the Colorado 9-1-1 Resource Center.* Several commenters proposed that a portion of the CPAP funds be used to provide one-time funds to support the continuing operation of the 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 PSAPs. BRETSA, the Resource Center, CCOA, and Arapahoe County all either made this proposal or supported it. The recipient for the funds would be the Resource Center itself, at a cost of \$150,000.

17. *Funding Next Generation 9-1-1 GIS Dataset Development.* 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. This proposal was made by or supported by the Task Force, CCOA, and Arapahoe County, with a similar proposal being made by BRETSA. No recipient was suggested

by the commenters to serve as the holder or distributor of the funds. The amount proposed varied between \$300,000 (BRETSA) and \$500,000 (Task Force, CCOA, and Arapahoe).

18. *Additional Funding for the Communications Technology Program (CTP) administered by the CCDHHDB.* 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. A detailed breakout of the proposed use of the funds was included, namely an additional full-time equivalent employee for the program, the addition of three demonstration centers in rural areas of the state, training to support the new demonstration centers, and in-person application support, demonstration, installation, training, and public education regarding low-income resources such as Lifeline. The funding requested would support this additional enhancement to the program for three years. The cost proposed would be \$439,054, and the recipient would be the CCDHHDB.

19. *Funding Lifeline Program and Affordability Connectivity Program outreach.* The OFW/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 lags the most compared to the eligibility of the population. A detailed breakout of the costs was included in the comments. The recipient for the funds would be the OFW, and the total cost proposed was \$600,000.

E. Request for Additional Comments

20. The Commission appreciates the comments and additional proposals received thus far, but we find additional comment is necessary to receive further input from parties and interested persons.

21. Specifically, with regard to proposals already discussed in Decision No. C23-0281 or in comments in this Proceeding, we note that some proposals failed to identify a recipient, provide a budget for the proposed use, or designate specific uses.⁷ We seek additional comments with this information. We clarify that the Commission does not intend to create funds for unspecified future uses, which would create additional administrative burdens and raise future questions of preferred uses without direct Commission oversight. Another proposal suggested paying non-recurring charges associated with a recent amendment to the ESInet Tariff,⁸ but these costs are also being considered for reimbursement through the state 9-1-1 surcharge in another proceeding.⁹

22. We note that three of the proposals received provided an established entity to serve as the recipient, as well as a budget or sufficient description of the proposed use of the funds. These three proposals are: (1) funding the Colorado 9-1-1 Resource Center; (2) funding the Communications Technology Program (CTP) administered by the CCDHHDB; and (3) funding Lifeline Program and Affordability Connectivity Program outreach. We specifically seek comment on these proposals.

⁷ For instance, proposals to establish a fund to provide general assistance to 9-1-1 governing bodies either did not identify a recipient for the funding or proposed the creation of a Grants Committee within the Commission's 9-1-1 Advisory Task Force. This also applies to proposals to fund NG911 GIS dataset development.

⁸ See Proceeding 23AL-0133T.

⁹ See Proceeding 23M-0385T.

23. We also remain interested in new proposals that have not yet been discussed in this Proceeding. We remind commenters that any proposals must meet the requirements of Section 9.3 of the CPAP and be competitively neutral efforts that do not benefit CenturyLink QC directly. Further, in Decision No. C23-0281, we expressed specific interest in hearing whether proposals benefit disproportionately impacted communities, or public safety or critical needs. We also stated that proposals should be limited to providing funds to non-profits or government entities, should identify any contributing funds for the proposed purpose or opportunities for matching of funds, and should consist of a one-time distribution of funds. Any new proposals should include at least a basic budget for the proposed use.

24. We request that comments addressing our discussion above, including comments containing new proposals, be filed by September 8, 2023. Reply comments may be filed by September 22, 2023.

25. The Commission will consider next steps, including a revised list of proposals or other additional process necessary in this Proceeding, after comments are received and through separate order.

II. ORDER

A. The Commission Orders That:

26. The Motion to Permissively Intervene filed by the Colorado Council of Authorities, Inc., on May 26, 2023, is granted, consistent with the discussion above.

27. The Motion for Permissive Intervention filed by the Boulder Regional Emergency Telephone Service Authority on May 26, 2023 is granted, consistent with the discussion above.

28. Comments responsive to the discussion in this Decision, including for new proposals, may be filed by 5:00 p.m. on September 8, 2023.

29. Reply comments may be filed by 5:00 p.m. on September 22, 2023.

30. Written comments may be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202. Comments may also be submitted via the Commission's online public comment form at <https://docs.google.com/forms/d/e/1FAIpQLSciWDeNS2FCh0NdEijNU4igpUKqRZvTIYwZ8XSA2YYx3LF6qA/viewform>, electronically through the E-Filings system for those with an established account, by email at dora_puc_website@state.co.us, or by calling (303) 869-3490 to leave oral comments. All comments should indicate that the comments are being provided for Proceeding No. 23M-0210T.

31. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 9, 2023**

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ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners