

Decision No. C23-0800

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.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 5, 2023
Adopted Date: November 29, 2023

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2-2131, 2134, 2136, 2143 (collectively, the Basic Emergency Service Rules) and 2335 (Quality of Service Rule).

2. The changes proposed are intended to (1) clarify the Commission's intent regarding the definition of "basic emergency service (BES) outage" and the related reporting requirements for BES outages, (2) establish a beginning date for the requirement that basic emergency service providers (BESPs) update basic information related to their BESP certifications every two years, (3) provide direction to BESPs regarding the conduct of repairs or maintenance in order minimize disruption to 9-1-1 service, and (4) update terminology and internal references.

3. This rulemaking follows a recent, much more extensive 9-1-1 rulemaking, completed in Proceeding No. 22R-0122T. This rulemaking is primarily intended as a clarification to the rules adopted in that Proceeding by Decision No. R22-0811. The rulemaking in Proceeding No. 22R-0122T covered numerous rule changes regarding Basic Emergency Service network reliability and prescribed a tariff-based mechanism for funding Basic Emergency Service network improvements. As part of that rulemaking, the Commission proposed and eventually adopted rules pertaining to what is considered a BES outage.¹

4. Pre-rulemaking stakeholder engagement included circulating advanced drafts of these proposed rules to the members of the Commission's 9-1-1 Advisory Task Force, as well as a webinar and presentation on October 3, 2023, which described the proposed changes and solicited feedback from stakeholders. The proposed rules attached to this NOPR reflect several modifications made based on the initial input received.

5. The proposed rules are attached to this Decision as Attachment A, the proposed rules in legislative format, and Attachment B, the proposed rules in "clean" format.

B. Background

6. With the implementation of the rules adopted by the Commission in Decision No. R22-0811, Commission staff has begun conducting investigations into basic emergency service outages that meet criteria established by the Commission's 9-1-1 Advisory Task Force, as described in 4 CCR 723-2-2143(k). Staff has been filing the final reports for these investigations in Proceeding No. 23M-0145T.

¹ See Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 11-15.

7. Since the rules established by Proceeding No. 22R-0122T went into effect, it has come to the attention of Commission staff that Colorado's only actively serving BESP, Qwest Corporation dba CenturyLink QC (CenturyLink),² construes the Commission's definition of a "basic emergency service outage" and what outages qualify as BES outages under the Commission's Rules differently than intended. This construal extends into the application of other rules that rely on the definition of basic emergency service outages, such as outage reporting requirements and billing credit requirements.

8. On numerous occasions, CenturyLink has argued in outage investigation responses that outages in facilities that service customers other than Public Safety Answering Point (PSAPs) are originating service provider (OSP) outages, not BES outages, even if those outages also impact a PSAP and prevent the PSAP from being able to receive calls. CenturyLink has also argued in outage investigation responses that if the company reroutes 9-1-1 calls to another, alternate PSAP, then no outage has occurred, since the calls are still being answered, even if they are not being answered by the PSAP originally intended to receive the call. As the Commission explained in the NOPR opening Proceeding No. 22R-0122T and reiterates here, if a PSAP is unable to receive 9-1-1 calls or associated location information, then it is not receiving the basic emergency service it has purchased under the tariff.³ Rerouting calls to an alternate PSAP is a desirable and critical mitigation strategy to lessen the impact of an outage on the public, but the implementation of

² CenturyLink also does business in Colorado as Lumen or Lumen Technologies.

³ See Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 13 ("The proposed definition of Basic Emergency Service Outage is intended to clarify what is or is not considered a Basic Emergency Service Outage for the purposes of Rule 2143. Through this proposed definition, we intend to make clear that: (1) Basic Emergency Service outages still occur if 9-1-1 calls cannot be delivered to their intended Public Safety Answering Point (PSAP) due to a failure in the Basic Emergency Service network, even if those calls have been successfully rerouted to another PSAP; (2) if 9-1-1 calls cannot be delivered, but location information, if available, cannot, then an outage has still occurred; and (3) outages that occur due to a failure in the Basic Emergency Service portion of the network is still an outage, even if that portion of the network also serves a function in the CenturyLink originating service network.)

alternate routing does not mean that the outage did not occur. Governing bodies and PSAPs purchase a service which includes routing of 9-1-1 calls that originate in their service areas to the appropriate PSAP, and when that isn't possible then the service is not, in fact, functioning as intended. Similarly, as the Commission made clear in its previous NOPR, a Basic Emergency Service outage still occurs if 9-1-1 calls cannot be delivered to their intended PSAP due to a failure in the Basic Emergency Service network, even if those calls have been successfully rerouted to another PSAP.⁴

9. The Commission opens this rulemaking and issues this NOPR out of an abundance of caution to ensure that the language of the Commission's Rules related to BES outages matches the Commission's stated understanding in Decision No. C22-0174 and in this NOPR rather than proceed to an enforcement action at this time. We intend for this rulemaking to remove any potential ambiguity contained in the relevant rules prior to taking any enforcement action. The issuance of this NOPR should not be interpreted as an indication that the Commission is unwilling or reluctant to enforce outage reporting and response requirements, but rather it is to ensure that rules are clear and consistent with the Commission's stated guidance as to what is considered a BES outage prior to potential, future enforcement actions.

C. Proposed Rule Changes

10. An overview of the changes proposed by the Commission fall into general categories described in this Decision. We invite interested stakeholders to comment on the proposed rules and provide additional suggested changes.

⁴ See Decision No. C22-0174 issued in Proceeding No. 22R-0122T, para. 11-15.

11. **Rule 2131: Definitions.** Changes to the Definitions of the Basic Emergency Service Rules include the introduction of a definition for “primary designated PSAP” as well as modifications of the definitions for “basic emergency service,” “basic emergency service outage,” and “demarcation point.”

12. A “primary designated PSAP” is defined as “the PSAP designated to the BESP as the primary or first PSAP meant to receive a call for a specific geographic area. This designation is determined by the governing body with jurisdictional authority for the geographic area from which the call originates.

13. Changes to the definitions of “basic emergency service” and “demarcation point” are necessary to incorporate the new terminology of the “primary designated PSAP.” The changes to the definition of “basic emergency service outage” serve the same purpose, as well as to clarify that (1) an outage has still occurred even if 9-1-1 calls are rerouted to an alternate PSAP, and (2) that an outage has occurred any time a PSAP is unable to receive 9-1-1 calls due to an event or incident on the BESP’s side of the demarcation point, even if the facilities involved in the event or incident serve a dual purpose and also provide OSP connectivity. The Commission requests specific comment on whether the proposed changes successfully convey the Commission’s explanation in this NOPR of what is considered a BES outage.

14. Stakeholders have also expressed concern that changes made to these definitions must also reflect the reality that, in some cases, the demarcation point does not exist at the PSAP itself, but sometimes exists at a hosted customer premise equipment site or at a locally provided network that is then used to deliver the 9-1-1 call to the PSAP. Changes to the definitions of “basic emergency service,” “basic emergency service outage,” and “demarcation point,” are intended to

accommodate these situations. The Commission seeks comment on whether the proposed rules successfully reflect this reality.

15. **Rule 2134: Process for Certification of BESP.** Rule 2134(e), as adopted by the Commission in Decision No. R22-0811, requires BESP actively providing BES to file updated information related to its BESP certification ever two years “from the grant of the application.” However, it is not clear what this means in the case of the state’s only active BESP, which has been providing BES since before requirement that BESP obtain certification from the Commission. Therefore, the proposed rules would change “two years from the grant of the application” to “by March 30, 2025, and each two years thereafter.” The date of March 30, 2025, was selected since that date is two years from the effective date of the rules adopted by Decision No. R22-0811. The Commission seeks comment on the appropriateness of this change and specifically if the date of March 30, 2025, is appropriate for the first filing of this required certification information update.

16. **Rule 2136: Obligations of Basic Emergency Service Providers.** Paragraph (l) is also added to this section, which imposes requirements on a BESP to notify potentially affected PSAPs of repair or maintenance being conducted that may have an impact on BES to a primary designated PSAP. Because of the critical nature of 9-1-1 service, when there is an opportunity for a PSAP to prepare itself for a potential outage, that opportunity should be taken in order to mitigate the impact of the outage on the public if it does occur. The intent of this paragraph is to provide PSAPs with that opportunity, when possible.⁵ The Commission seeks comment on whether the obligations imposed here are appropriate and sufficient to meet this purpose.

⁵ Some of the language in this paragraph was adapted from the current CenturyLink “EMERGENCY REPORTING SERVICES TARIFF COLO. P.U.C. NO. 25.”

17. Additionally, the proposed revision of rule 2136 includes a correction to a typographical error in paragraph (a).

18. **Rule 2143: Basic Emergency Service Reliability and Outage Response.** Minor changes to this rule are proposed to clarify the Commission's requirements regarding outage notifications and reporting, both of which are required even if 9-1-1 calls were successfully rerouted to an alternate PSAP.

19. Changes to paragraph (j)(VII) increase billing credit requirements for outages that meet certain criteria if it is discovered by the Commission through a proceeding that the BESP failed to provide a required billing credit. It also clarifies that such billing credits are in addition to, not lieu of potential civil penalties that may be assessed as described in rules 2009 through 2011.

20. The Commission seeks comment on whether the proposed changes to 2143 are clear and effective, and whether the proposed changes to paragraph (j)(VII) are appropriate.

21. **Rule 2335: The Provision of Service During Maintenance or Emergencies.** Proposed changes to this rule are intended to update the cross-reference to Rule 2143 and to update the terminology.

D. Conclusion

22. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 40-2-108; 40-3-101, -102, -103, -107, -110; 40-4-101; 40-15-101, -201, -203.5, and -208, C.R.S.

23. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (Efilings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0577T

24. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

25. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

26. The ALJ will conduct a hearing on the proposed rules and related issues on January 29, 2024. Interested persons may submit written comments on the rules and present these orally at the hearing unless the ALJ deems oral presentations unnecessary.

27. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than January 10, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than January 19, 2024. The Commission prefers that comments be filed using its E-Filing System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the December 25, 2023, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: January 29, 2024

TIME: 11:30 a.m.

PLACE: By video conference: using Zoom at a link the calendar of events on the Commission's website, available at: <https://puc.colorado.gov/puccalendar>.

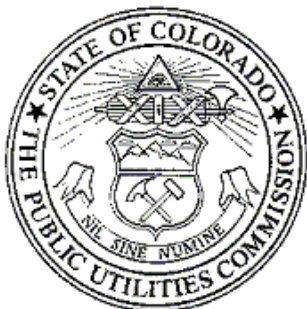
4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 10, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than January 19, 2024. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 29, 2023.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners