

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0996T

IN THE MATTER OF THE APPLICATION OF THE CITY OF AURORA, COLORADO, TO
INCREASE THE EMERGENCY TELEPHONE SURCHARGE RATE

**STIPULATION AND SETTLEMENT AGREEMENT
IN RESOLUTION OF PROCEEDING**

This Stipulation and Settlement Agreement in Resolution of Proceeding (“Stipulation”) dated March 12, 2015, is entered into by and among the City of Aurora, Colorado (the “City”), and the Staff of the Public Utilities Commission of the State of Colorado (“Staff”), collectively “the Parties,” for the purpose of resolving by settlement the application filed by the City (the “Application”) with the Public Utilities Commission of Colorado (the “Commission”) in Proceeding No. 14A-0996T to increase the monthly emergency telephone surcharge rate (the “Surcharge”) as more fully set out herein below:

RECITALS

WHEREAS, § 29-11-102(1)(a), C.R.S. allows a governing body to incur equipment, installation, and other directly-related costs for the continued operation of emergency telephone service as further described in § 29-11-104, C.R.S., and pay for the costs of such service by imposing a Surcharge in those portions of the governing body’s jurisdiction for which emergency telephone service will be provided if the governing body can demonstrate to the Commission it is necessary in order to provide continued and adequate emergency telephone service in the areas served by the subject applicant; and

WHEREAS, § 29-11-102(2)(a), C.R.S. allows a governing body to impose a Surcharge in an amount not to exceed seventy cents (\$0.70) per exchange access facility (wireline), per

wireless communications access, and per interconnected voice-over-internet protocol service in those portions of a governing body's jurisdiction for emergency telephone service; and

WHEREAS, § 29-11-102(2)(b), C.R.S. allows a governing body to seek approval from the Commission for a Surcharge rate in excess of seventy cents (\$0.70) per month if the governing body can demonstrate to the Commission it is necessary in order to provide continued and adequate emergency telephone service in the areas served by the subject applicant; and

WHEREAS, on October 2, 2014, the City, pursuant to § 29-11-102(2)(b), C.R.S., filed its Application seeking the Commission's approval of an increase in the Surcharge assessed on exchange access facility (wireline), wireless and voice-over-internet-protocol users ("Users") from seventy cents (\$0.70) to one dollar and twenty cents (\$1.20) per User; and

WHEREAS, the City provides police, fire and E-911 services to Aurora citizens. The City does not have any agreements with any other jurisdictions to provide emergency dispatching of 911 calls. The City's boundaries cover 154 square miles within Arapahoe County, Adams County and the extreme southeastern portion of Douglas County, and

WHEREAS, the audited financial reports may be viewed on the City's webpage at <https://www.auroragov.org/CityHall/CityFinancesAndBudget/FinancialManagement/index.htm>, and

WHEREAS, the Commission deemed the Application complete and assigned this matter to an Administrative Law Judge ("ALJ") on November 20, 2014; and

WHEREAS, on November 17, 2014, the City filed its Proof of Public Notice in this proceeding along with copies of the notices attached to the filing. The residents of the City and potential users were provided notification of a proposed surcharge increase to \$1.20 per user per month affecting all persons with exchange access facility (wireline), wireless communications

access and interconnected voice-over-internet-protocol (“VoIP”) telecommunications services through publication on October 16 and 23, 2014 in the *Denver Post*, on October 23 and 30, 2014 and on November 6 and 13, 2014 in the *Aurora Sentinel*, and beginning October 16 through November 13, 2014 on the City of Aurora webpage (www.auroragov.org). The notices advised affected residents and potential users how to protest, object or comment upon the proposed surcharge increase, and how to intervene in this proceeding. The notices further advised that the application was available for inspection at the City Clerk at the Aurora Municipal Building located at 15151 E. Alameda Parkway, Aurora, Colorado and at the Commission’s office; and

WHEREAS, § 29-11-104(2)(a)(I), C.R.S. provides that funds collected from a surcharge imposed shall be spent solely to pay for, among other things, “costs of equipment directly related to the receipt and routing of emergency calls and installation thereof” (hereinafter “Technology and Capital Costs”) and “other costs directly related to the continued operation of the emergency telephone service and the emergency notification service.” Among the other related costs, § 29-11-104(2)(b), C.R.S. specifies that funds collected from a surcharge imposed may be spent for certain personnel expenses, more specifically “persons employed to take emergency telephone calls and dispatch them appropriately” and “persons employed to maintain the computer data base of the public safety answering point” (hereinafter “Personnel Costs”); and

WHEREAS, on January 23, 2015, the City filed its First Amended Application (“Amended Application”) seeking the Commission’s approval of an increase in the Surcharge assessed on exchange access facility (wireline), wireless and voice-over-internet-protocol users (“Users”) from seventy cents (\$0.70) to one dollar and twenty cents (\$1.20) per User; and

WHEREAS, on February 3, 2015, the ALJ established the current procedural schedule in this Proceeding by Decision No. R15-0116-I; and

WHEREAS, the Parties have now reached a settlement described herein below concerning the matters raised in this Proceeding and believe that this Stipulation, reflecting the terms of the settlement, is reasonable and necessary in order for the City to provide continued and adequate emergency telephone service within the City and, therefore, that this Stipulation should be presented to and approved by the Commission.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, and in consideration of the Recitals, which are hereby incorporated into the terms of this Stipulation, the Parties hereby agree and stipulate as follows:

1. This Stipulation governs the Surcharge increase the City seeks pursuant to § 29-11-102(2)(b), C.R.S., which allows a governing body to seek approval from the Commission to increase the statutorily-allowed seventy cents (\$0.70) per month for the provision of continued and adequate emergency telephone service. The Parties concur and recommend that the Commission approve, in accordance with the terms and conditions of this Stipulation, the requested Surcharge of One Dollar Twenty cents (\$1.20) per user per month within the City for its administration and operation of emergency telephone service.
2. Based on the City's recent wireline, wireless, and interconnected VoIP access line counts, the City receives Surcharge Revenue from approximately 340,000 telephone numbers. *See Amended Application at Exhibit 9.* For purposes of this Stipulation, the Parties project annual Surcharge and other E-911 revenue (Total Revenue) of approximately \$5.2 million by 2016 if the \$1.20 Surcharge were in place for an entire year. *See Attachment 1 hereto.*

3. The City has proposed, and Staff agrees, that it will move certain personnel expenses incurred for employees who take and dispatch emergency telephone calls from the General Fund to the E-911 Fund. In the past, the City has paid for and accounted for these costs as part of its General Fund rather than its E-911 Fund. As set forth on Attachment 1, the Parties agree that the categories of costs that comprise the Stipulated Personnel Costs are directly related to the continued operation of the emergency telephone service and the emergency notification service. The Parties further agree that the categories of costs that comprise the Stipulated Technology and Capital Costs set forth on Attachment 1 are also directly related to the continued operation of the emergency telephone service and the emergency notification service.
4. For purposes of this Stipulation, the Parties have agreed to an adjusted amount of \$5,994,356 in Stipulated Personnel Costs which is based upon historic costs with reasonable estimates of future cost of living adjustments.
5. For purposes of this Stipulation, the Parties agree that the job categories displayed on Attachment 1 hereto and the projected costs for each category that comprise the Stipulated Personnel Costs of \$5,994,356 for 2015 are reasonable to support the City's requested Surcharge.
6. Technology and Capital Costs: As noted previously, "costs of equipment directly related to the receipt and routing of emergency calls and installation thereof" are allowable costs under the statute. The Parties agree for purposes of this Stipulation that the City has demonstrated at least \$2 million dollars of Technology and Capital Costs directly related to the continued operation of the emergency telephone service.

7. The City has proposed, and the Parties agree, that the City will credit the funds collected from the Surcharge and other E-911 revenue, *i.e.*, Total Revenue, to a cash fund separate from its General Fund (hereinafter the “City’s E-911 Fund”).
8. The City agrees to first use the Total Revenue described in paragraph 2 above to pay for Stipulated Personnel Costs. In the event that Total Revenue exceeds Stipulated Personnel Costs, the City is authorized to pay up to \$2 million for the Stipulated Technology and Capital Costs.¹ In the unlikely event that Total Revenue exceeds the Stipulated Personnel Costs plus the Stipulated Technology and Capital Costs, the City will inform Staff and the Parties will work in good faith to agree to other categories of costs that can be paid from such revenue and to jointly request from the Commission approval of an appropriate modification to this Stipulation.
9. Before the City implements the \$1.20 surcharge, it will have filed an affidavit in this Proceeding signed by an appropriate City official that attests to the fact that all necessary approvals have been obtained and the budget and accounting processes are in place to ensure compliance with this Stipulation.
10. The Parties agree that the approximately \$5.9 Million in Stipulated Personnel Costs combined with the \$2 Million of Stipulated Technology and Capital Costs are sufficient to grant the City’s requested increase to its emergency telephone surcharge to \$1.20 per month, subject to the terms of this Stipulation, including any conditions contained herein. Thus, the Parties stipulate and agree that the City has met its burden to establish that the \$1.20 Surcharge is necessary in order to provide continued and adequate emergency telephone service in the areas served by the City.

¹ The Parties recognize the actual amount of annual Personnel Costs and annual Technology and Capital Costs are likely to vary from the projections for any number of legitimate reasons and the City is nonetheless authorized to pay such costs so long as they fall within the stipulated categories of costs.

11. The Parties also acknowledge and agree that based upon its 2014 projected pro forma, the City has existing Funds Available in its E-911 Fund as of January 1, 2015 of approximately \$4.6 million. Based upon the City's 2014 year end records the unaudited Funds Available are approximately \$5.1 million (Surplus Funds). The Parties agree that based on current information, it is likely that the annual Total Revenue received by the City will be less than the total of Stipulated Personnel Costs. Therefore, the City, at its discretion, is authorized to pay any remaining Stipulated Personnel Costs and any Stipulated Technology and Capital Costs from such Surplus Funds. Ultimately, the City is afforded the discretion to manage the Surplus Funds in any manner that does not conflict with this Settlement.
12. The City represents that it has significant total E-911 related costs in excess of the amount that it will receive in Total Revenue if this Stipulation is approved. Therefore, these remaining costs will be paid from what the City refers to as a General Fund Subsidy. Nonetheless, the City is only requesting a Surcharge of \$1.20. In furtherance of this Stipulation, the City has no intention to seek any further increase to its authorized Surcharge rate any sooner than 4 years from the effective date of the Surcharge approved in this Proceeding, unless the City can identify an unforeseen or extraordinary circumstance that renders the City unable to provide continued and adequate emergency telephone service without an earlier increase. If a request is made to increase the Surcharge prior to the end of the 4 year period, the Commission will determine at such time whether the City has demonstrated good cause to relieve it of its above commitment and Staff is free to take any position at such time.

13. After a final Commission order approving this Stipulation, and after any conditions contained in such order have been satisfied, the City may implement the Surcharge, consistent with statutory requirements.
14. This Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle directly or indirectly incorporated in this Stipulation. No binding precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning this Stipulation, shall attach to any principle contained in this Stipulation.
15. The Parties will support all aspects of this Stipulation embodied within this document in any hearing conducted to determine whether the Commission should approve this Stipulation, and/or in any other hearing, proceeding, or judicial review relating to this Stipulation or the implementation of its terms and conditions.
16. Each party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Stipulation.
17. Nothing in this Stipulation shall constitute a waiver by a Party with respect to any matter not specifically addressed in this Agreement.
18. This Stipulation shall not become effective and shall be of no force and effect until the issuance of a final Commission order approving this Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties.

19. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party may withdraw from this Stipulation and shall so notify the Commission and the other Parties to this Stipulation in writing within ten (10) days of the date of the Commission order.
20. In the event a Party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect and no force in these or any other proceedings, and a hearing shall be set on the merits of the Application.
21. In the event this Stipulation becomes null and void or in the event the Commission does not approve this Stipulation, this Stipulation, as well as the negotiations or discussion undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.
22. The Parties state they have reached this Stipulation by means of a negotiated process and that the increase in the Surcharge is necessary in order to provide continued and adequate emergency telephone service within the City, and that the results reflected in this Stipulation are just, reasonable, and in the public interest.
23. The Parties agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations to the extent necessary to permit all provisions of this Stipulation to be carried out and effectuated.
24. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of either Party to the Agreement.
25. This Stipulation may be signed in counterparts, each of which shall be deemed an original.

26. This Stipulation may be executed and delivered by facsimile or by e-mail and the Parties agree that such facsimile or scanned e-mail execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile or scanned signatures as evidence of the execution and delivery of this Stipulation by the Parties to the same extent that an original signature could be used.

Entered and Agreed Effective the Date First Written Above.

CITY OF AURORA, COLORADO

/s/ **Christine McKenney**

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REVIEWED AND APPROVED BY:

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