

Decision No. R16-0038-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15R-0318T

IN THE MATTER OF THE PROPOSED RULES REGARDING BASIC EMERGENCY
SERVICE, 4 CODE OF COLORADO REGULATIONS 723-2.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ISSUING AMENDED RULES
AND SCHEDULING ADDITIONAL HEARING DATE**

Mailed Date: January 15, 2016

I. STATEMENT

1. The Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on May 13, 2015 by Decision No. C15-0453, regarding rules regulating basic emergency service, currently Rules 2130 through 2159 of the Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2.

2. The purpose of the NOPR was to provide notice that the Commission is considering revisions to its 9-1-1 rules in response to recent legislation and in response to recent events which affected 9-1-1 network reliability in Colorado, including recent catastrophic fires and floods. The potential and actual entry into the market for 9-1-1 services by new and different providers to Public Safety Answering Points, as well as the addition of significant technological advancements also led the Commission to consider revisions to its rules.

3. Pursuant to the NOPR, the Commission set a schedule for the filing of comments, replies and a date for a public hearing on the proposed rules. The Commission requested that initial comments be filed no later than June 5, 2015. The Commission also requested that reply comments be submitted no later than June 19, 2015. The Commission established a public hearing date of June 26, 2015.

4. By Interim Decision No. R15-0530-I, issued June 5, 2015, a Supplemental NOPR was issued that extended the date of the public comment hearing to August 17, 2015; the deadline to file written comments was extended to June 25, 2015; and, the deadline to file responsive comments was extended to July 17, 2015.

5. On August 17, 2015, the public comment hearing was convened. Several parties, including CTIA – The Wireless Association; Intrado Communications, Inc.; AT&T Corp.; and Qwest Corporation, doing business as, CenturyLink QC (CenturyLink) provided comments at the hearing.

6. Based on the comments at the public hearing, as well as the written comments received by the various parties, it was evident that consensus on proposed rules regarding basic emergency service had not been achieved. However, it was also determined that the Commission, as well as the parties, were interested in continuing discussions in order to reach a level of consensus on basic emergency service rules.

7. While it was apparent that the legal issue of Commission jurisdiction and authority to promulgate these rules could not be resolved, it was found to be in the public interest to hold the workshops, while preserving any party's objection to the issue of jurisdiction.

8. By Interim Decision No. R15-0897-I, issued August 17, 2015, a series of workshops was scheduled beginning in September in order to attempt to arrive at consensus rules that could be adopted by the Commission. Staff provided the parties at the public hearing with a proposed schedule of workshops, and no party objected to the proposed timeline. Four workshops were scheduled as follows:

September 22-23, 2015 – Workshop 1: 9-1-1 Call Processing and Infrastructure;

October 20, 2015 – Workshop 2: Reliability, Diversity & Contingency Planning;

November 17, 2015 – Workshop 3: Outage and Other Reporting;

December 11, 2015 – Workshop 4: NENA Standards, 9-1-1 Task Force, Application for Surcharges and other Miscellaneous Areas;

January 25, 2016 – Written comments due on revised rules.

9. At the conclusion of the final workshop, it was indicated to the parties that amended rules based on the discussions at the workshops would be issued on or about January 11, 2016. It was further indicated that parties would have until January 25, 2016 to file written comments regarding the amended rules.

10. As a result of adopting the workshop schedule, it was found necessary to schedule an additional public hearing in order to discuss and take public comment on the revised rules emerging from the workshops. By Interim Decision No. R15-0897-I, an additional hearing was scheduled for February 4, 2016.

11. Attached to this Decision are amended rules that take into account the issues and concerns raised by the parties attending and participating in the discussions at the workshops. In addition, written comments submitted by the parties during the course of this rulemaking were also taken into consideration in amending the proposed rules.

12. Because the amendments to the proposed rules are self-evident, a detailed discussion as to the rationale for each and every amendment will not be enumerated here; rather, an overview of the basis for the amendments is provided below.

13. Generally, based on comments, the term Transport, Aggregation, or Routing Provider (TARP) has been replaced with Basic Emergency Service Provider (BESP) in proposed rule 2131(j) and the remainder of the proposed rules, as in the original rules. In addition, the term “BESP” is preferable as that is the term used in statute.

14. Regarding proposed Rule 2008, based on comments received at the workshops, the table to National Emergency Number Association (NENA) standards referenced in proposed Rule 2142 has been stricken and replaced with a reference to NENA standards already referenced in Rule 2008(a). Further, the rules referenced in Rule 2008(a) have also been updated. Standards already referenced in current rules have been updated to current versions and language developed during the workshops was included.

15. The definitions contained in Rule 2131 have been amended substantially. For example, since the definition of “9-1-1 call” in proposed Rule 2131(b) could be interpreted to include any communication, this has been clarified to only include communication delivered by the BESP network. Additionally, it is determined that Emergency Notification Systems (ENS) should not be included in the definition of “9-1-1 system” and it is therefore removed from the definition. Further, it is determined that the definition of “9-1-1 failure or outage” in proposed Rule 2131(d) could be interpreted to include when a single user is unable to call 9-1-1. Therefore, the definition is amended to utilize a similar threshold as the Federal Communications Commission.

16. The definition of Automatic Location Identification (ALI) Provider” contained in proposed Rule 2131(f) is clarified to specifically exclude originating service providers, since the proposed Rule could be interpreted to include some wireless and Voice over Internet Providers, which would require them to obtain certification from the Commission. In addition, the definition of Automatic Number Identification (ANI) is simplified for clarity.

17. Rule 2131(l) is added which defines “demarcation point.” During the course of the workshops, it was evident that much of the confusion regarding the proposed rules centered on whether certain rules applied to certain portions of the network. This definition is included in order to make clearer, the areas of responsibility over the network and clarify that BESP rules are not applicable to local networks owned by governing bodies.

18. Regarding the Process for Certification pursuant to Rule 2132, subsection (a)(III) is removed to avoid ambiguity. Subsection 2132(c)(IV)(E) is clarified to apply only to 9-1-1 interconnections, rather than “any” interconnection, based on comments from workshops that this is ambiguous. Additionally, subsection (d) is added here. This subsection was originally contained under Rule 2144, but parties indicated that it should be included with Rule 2132 since both sections address certification requirements.

19. Rule 2133 was amended to clarify that a carrier can propose to the Commission an alternate method of accounting.

20. Rule 2134, which addresses the obligations of BESP is amended as follows. Subsection (a) is amended to address concerns raised in the workshops that Public Safety Answering Points (PSAPs) may be liable for delivering text messages, pictures, video, or other media to the PSAP under the more inclusive definition of “9-1-1 call”, even if the PSAP doesn’t want calls in those formats. Subsection (b) is added to respond to concerns and confusion in

workshops over where the responsibility of the BESP ends and where the responsibility of the governing body begins. Subsection (d) is amended to coordinate it with proposed Rule 2134(b). Subsection (f) is amended by changing the word “number” to the more technology-neutral “designator. “9-1-1” was added before “calls” to make it clear that this does not apply to other types of calls received by the PSAP through their administrative or other lines. A sentence at the end was added to allow for other forms of pricing mechanisms to be approved by the Commission, not just per-record pricing. In a fully developed Next Generation 9-1-1 (NG9-1-1) system, the number of records in the BESP’s 9-1-1 database is irrelevant since Originating Service Providers (OSPs) build location information and attach it to calls in the Presence Information Data Format Location Object.

21. Rule 2135(b) is amended by removing the reference to the geographic area served by the BESP, since BESP service bases may not be geographically determined in the future.

22. Several amendments are made to Rule 2136, addressing obligations of OSPs and Intermediary Aggregation Service Providers (IASPs). Subsection (b) is amended by removing the requirement of providing customer information to BESP and ALI providers by IASPs, since IASPs don’t have access to end-user customer information. The term for pseudo Automatic Number Identification (p-ANI) was used in place of the description of a p-ANI. The reference to emergency notification services was removed since BESP and ALI providers aren’t responsible for the development of emergency notification service (ENS) databases.

23. Based on comments received, it is determined that PSAPs should not be required to notify BESP prior to activating the ENS. As a result, this requirement is removed from the proposed rules and replaced with a more collaborative approach. Proposed Rule 2136(f) was added in lieu of a requirement in the proposed rules that the PSAP notify the BESP prior to

activating their ENS system. The purpose of the proposed rule was to prevent the phone system from being overwhelmed with a large influx of calls from the ENS. Based on written comments and comments in workshops, this rule was a concern because it delayed the activation of ENS during an emergency, and it is the OSP, not the BESP, that may experience congestion due to a large influx of calls from an ENS system. This rule requires OSPs to work with the governing body, if requested to do so, to configure ENS ahead of time so that it will not overwhelm their network upon activation.

24. Regarding amendments to proposed Rule 2139 which addresses 9-1-1 reliability, contingency planning, and service restoration, subsection (a) focuses on diversity of 9-1-1 circuits. Subsection (a)(I) defines physical and geographical diversity for the purposes of (a)(II). Subsection (a)(II) is based upon suggested language provided in comments by CenturyLink. Rather than require diversity everywhere unless a waiver is approved, as the proposed rules would have required, this subsection creates a process by which the entire network can be considered, and the development of redundancy can be considered in terms of the potential costs of those deployments, as well as their prioritization within all other diversity deployments. It also allows other stakeholders, such as 911 governing bodies, PSAPs and other carriers to be party to this consideration.

25. Proposed Rule 2139(f) addresses resolving 9-1-1 outages through a service technician. The phrase “qualified service technician,” which commenters felt was too vague, is replaced with the phrase “technician(s) trained and qualified to resolve 9-1-1 failures or outages.” The phrase “within two hours or their best effort” was replaced with “or as soon as safely possible.” The term “after being notified by the PSAP” was replaced with the phrase “after becoming aware” to clarify that this rule applies to any outage the provider becomes aware

of, not just those they are notified of by the PSAP. The last sentence was added to clarify what “on site” means, in response to written comments and comments at workshops.

26. Proposed Rule 2139(g) is amended by removing the threshold from the rule since a threshold is now included in the definition of 9-1-1 failure or outage. The term “Office of Emergency Management” was replaced with the more appropriate “Colorado State Emergency Operations Center” (CSEOS) and wording was added to make it clear that notification of the CSEOC should only take place if the CSEOC is activated for a related event. The last phrase “based on the best information available at the time of the notification,” is added to acknowledge that not all information may be known certainty at the time of notification.

27. Regarding outage notifications pursuant to proposed Rule 2139, subsection (i) is added which separates notification of the Commission from notification of the PSAP (now in 2139 (g)). By placing this requirement subsequent to the activation of contingency plans and maintaining the current two-hour deadline for initial notification, the rule allows the PSAP and BESP to provide for initial contingency operations prior to notifying the Commission of outages.

28. Several parties at the workshops indicated that they found the proposed outage reporting rules to cumbersome and confusing. Therefore, the proposed rules relating to outage reporting were significantly re-ordered, re-worded, and clarified.

29. The parties commented that the proposed rules prohibited delivering 9-1-1 calls by methods other than the BESP’s network. The parties were of the opinion that this could be interpreted as prohibiting conditional routing during outages or routing of text-to-9-1-1 calls. In order to resolve this issue, language was added to the rules to clarify that this is not the case.

30. As indicted previously, this is not intended to be an exhaustive chronicle of the amendments to the proposed rules, but rather is to serve as a general guide for the parties since many of the rules are self-explanatory, especially to those parties that participated in the workshops. Staff will provide a more detailed explanation of the proposed changes at the public comment hearing scheduled for February 4, 2016.

II. ORDER

A. It Is Ordered That:

1. Attached to this Interim Decision are the amended rules to the proposed rules attached the Notice of Proposed Rulemaking issued on May 13, 2015 by Commission Decision No. C15-0453 and published in the May 25, 2015 edition of *The Colorado Register*.

2. The amended proposed rules attached as Attachment A are also available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=15R-0318T.

3. Parties may file written comments regarding the amended rules. Comments should be submitted no later than 5:00 p.m. on Monday, January 25, 2016. No responsive comments will be accepted.

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

5. A further hearing on the proposed rules shall be held as follows:

DATE: February 4, 2016

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado 80202

6. Notice of this hearing on the amended rules shall be filed with the Colorado Secretary of State for publication in the January 25, 2016, edition of *The Colorado Register*.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director