

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
DENYING PETITION FOR
DECLARATORY ORDER AND
ADOPTING FINAL RULES**

Mailed Date: March 11, 2016

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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 Rules 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 was considering revisions to its 911 rules in response to recent legislation, and in response to recent events which affected 911 network reliability in Colorado, including recent catastrophic fires and floods. Additionally, the potential and actual entry into the market for 911 services by new and different providers to Public Safety Answering Points (PSAP), as well as significant technological advancements 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. On May 27, 2015, Qwest Corporation, doing business as, CenturyLink QC (CenturyLink) filed a request with the Colorado Department of Regulatory Agencies (DORA) and with the Commission, pursuant to § 24-4-103(2.5), C.R.S. requesting that DORA and the Commission prepare and distribute a cost analysis for each and every rule proposed in this proceeding. On that same date, CenturyLink filed a separate request with the Commission requesting that the Commission prepare and issue a regulatory analysis for each and every rule proposed in this proceeding pursuant to § 24-4-103(4.5), C.R.S.

5. The cost-benefit analysis performed by DORA, as well as the Regulatory Analysis performed by the Commission were filed in this proceeding and made available to the parties to this proceeding.

6. 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.

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

8. 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 some of the parties, were interested in continuing discussions in order to reach a level of consensus on basic emergency service rules.

9. 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 a series of workshops on the issues surrounding the proposed 911 rules, while preserving any party's objection to the issue of jurisdiction.

10. 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: 911 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, 911 Task Force, Application for Surcharges and other Miscellaneous Areas;

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

11. For each workshop, Staff provided a set of detailed questions for the participants to consider and discuss. 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.

12. 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 any revised rules emerging from the workshops. By Interim Decision No. R15-0897-I, an additional hearing was scheduled for February 4, 2016.

13. On January 15, 2016, Interim Decision No. R16-0038-I issued amended rules and scheduled an additional hearing date to take public comment on those amended rules. The amended rules took into account the issues and concerns raised by those parties attending and actively participating in the discussions at the workshops. Additionally, written comments submitted by the parties during the course of this rulemaking were taken into consideration in amending the proposed rules.

14. By Interim Decision No. R16-0057-I, issued January 22, 2016, the deadline for parties to file written comments regarding the amended rules was extended to January 29, 2016.

15. Written comments on the amended rules issued subsequent to the workshops were filed by AT&T, Colorado Telecommunications Association, Inc. (CTA), CTIA, the Boulder Regional Emergency Telephone Service Authority (BRETSA), CenturyLink, Comcast Phone of Colorado, LLC, doing business as Comcast Digital Phone (Comcast), MCIMetro Access Transmission Services LLC, doing business as Verizon Access Transmission Services (Verizon), Intrado, Bresnan Broadband of Colorado, LLC (Bresnan), and Larimer Emergency Telephone Authority (LETA).

16. The public comment hearing on the amended rules was held on February 4, 2016. Comments were offered at the hearing by the American Association of Retired Persons (AARP),

Verizon, CenturyLink, Commission Telecommunications Staff, and the Police Communication Service Support for the City of Lakewood, County of Jefferson, Colorado. Exhibit Nos. 1 through 8 were admitted into the rulemaking record.

17. Pursuant to § 24-4-103(4)(d), C.R.S., the Commission is required to adopt rules pursuant to the rule-making proceeding within 180 days after the last public hearing on the proposed rules.

18. At the conclusion of the rulemaking hearing, the Administrative Law Judge (ALJ) took the matter under advisement. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, as well as a recommended decision.

II. DISCUSSION, FINDINGS AND CONCLUSIONS

A. 911 Network Architecture

19. In order to fully understand these 911 rules and the purpose for their promulgation, it is important to understand the function and architecture of a 911 network. The Federal Communications Commission (FCC) provided an excellent description of a 911 system in its 2013 Report and Order on Improving 911 Reliability.¹ There, the FCC described a 911 network architecture as follows:

The primary function of the 911 network is to route emergency calls to the geographically appropriate PSAP based on the caller's location. When a caller dials 911 on a wireline telephone, the call goes to the local switch serving that caller, as is typical with any other call. The local switch then sends the call to an aggregation point called a selective router, which uses the caller's phone number and address to determine the appropriate PSAP to which the call should be sent.

¹ *In the Matter of Improving 911 Reliability, Reliability and Continuity of Communications Networks, Including Broadband Technologies*, FCC 13-158; PS Docket Nos. 13-75 and 11-60; Report and Order, Released December 12, 2013. (2013 Report and Order), adopting rules to improve the reliability and resiliency of 911 communications networks nationwide by requiring that 911 service providers take reasonable measures to provide reliable 911 service, as evidenced by an annual certification. Providers can comply with this requirement by either implementing certain industry-backed best practices, the FCC adopted, or by implementing alternative measures that are reasonably sufficient to ensure reliable 911 service. The FCC also required 911 service providers to provide PSAPs with timely and actionable notification of 911 outages.

Calls to 911 from wireless phones flow through a switch called a mobile switching center before reaching the selective router. For wireless calls, the sector of the cell tower serving the call provides the approximate location of the caller and is used to determine to which PSAP the call is sent. To complete the call, a connection is set up between the selective router and the appropriate PSAP, typically through a central office serving that PSAP.²

20. The FCC's description goes on to state that:

Once a 911 call reaches the appropriate PSAP, the PSAP queries an automatic location information (ALI) database to determine the location of the caller. For wireline calls, ALI is based on the address associated with the caller's phone number. For wireless calls, providers use various technologies to determine the caller's location.³

The FCC stated that this 911 network architecture was evolving from a circuit-switched network to a Next Generation 911 (NG911) network based on IP technology with some advantages over legacy technologies such as greater redundancy and reliability, as well as the ability to provide more useful information for first responders, and wider public accessibility, especially to those with disabilities.⁴ That description of a typical 911 network architecture provides the backdrop for the promulgation of the rules in this rulemaking proceeding.

21. Throughout the course of this rulemaking, a constant theme advanced by the telecommunications providers was the claim that the Commission has no jurisdiction to promulgate these rules. Generally, those parties take umbrage with the proposed basic emergency service rules arguing that they impose new obligations on Commercial Mobile Radio Services (CMRS), Voice over Internet Protocol (VoIP), IP-Enabled and NG911 providers (collectively, Telecom Providers). Those Telecom Providers take the position that the

² *Id.* at ¶7.

³ *Id.* at ¶8.

⁴ *Id.* at ¶9.

Commission has no jurisdiction to enact rules imposing obligations on them pursuant to § 40-15-401(1) C.R.S since they are not regulated by the Commission.

22. According to the Telecom Providers, the Commission has no jurisdiction to regulate them or the services they provide since they are not public utilities, in addition to their exempt status under § 40-15-401, C.R.S. Further, the Telecom Providers warn that the rules as proposed are intrusive and unnecessary and would lead to increased costs of providing 911 services in Colorado, which would ultimately be borne by consumers.

23. Referring to the nucleus of their position, § 40-15-401(4), C.R.S., the Telecom Providers argue that this savings clause was intended only to preserve the Commission's existing 911 jurisdiction as that jurisdiction is defined by the Telecom Providers. The Telecom Providers take the position that nothing in that statute suggests that the Commission may regulate CMRS, VoIP or IP-Enabled services. Rather, those Telecom Providers characterize their services as "new" and "evolving" technology, significantly different from circuit-switched telephone service and therefore exempt from jurisdiction, even when they provide basic emergency services.

24. The Telecom Providers maintain that because Commission jurisdiction is limited to regulation only of public utilities under Article XXV of the Colorado Constitution and the Public Utilities Law; and because CMRS, VoIP, and IP-Enabled providers and services are not categorized as public utilities and have not been since § 40-15-401 was enacted in 1987 they are therefore exempt from regulation as a service and as a provider. The Telecom Providers conclude that based on that statutory interpretation, the Commission does not have jurisdiction over them now, whether in the emergency services sphere or otherwise.

25. The Telecom Providers also oppose the proposed rules based on the argument that they violate Federal law and FCC requirements. The Telecom Providers cite to the

Federal Telecommunications Act of 1996 (the Act),⁵ in particular to 47 U.S.C. § 332(c)(3)(A), which the Telecom Providers argue leaves states with only a minor role and limited jurisdiction with regard to wireless service providers.

26. In addition, the Telecom Providers argue that the proposed rules violate 47 U.S.C. § 615a-1(d) since the rules are inconsistent with Federal law and FCC regulations and requirements. The Telecom Providers take the position that the proposed rules conflict with FCC rules governing outage reporting, that requires a level of reporting, information sharing, staffing, and coordination that conflicts with FCC requirements. The Telecom Providers are of the opinion that the proposed rules are potentially more onerous and expensive for providers to comply with than FCC rules.

27. The Telecom Providers offering legal analysis on the Commission's jurisdiction to promulgate these rules as they relate to VoIP, CMRS, and IP-Enabled providers appear to take the position that the question of jurisdiction is an all-or-nothing proposition. The commenters cite to state and federal law in an attempt to support their stance that the Commission possesses no jurisdiction whatsoever over them in this rulemaking, seemingly assured that no room remains for a dissimilar position. Nevertheless, based on the analysis below, it is determined that the Commission does indeed possess jurisdiction to promulgate these rules which are applicable to VoIP, CMRS, and IP-Enabled providers.

B. Findings on Jurisdiction

1. Statutory Interpretation

28. As the question of Commission jurisdiction turns on the interpretation of applicable statutory language, an analysis logically begins with a systematic examination of the

⁵ See, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 United States Code (U.S.C.) §§ 151-170.

rules of statutory interpretation. As oft stated by this Commission and by the courts, the canons of statutory construction have been cited and recited so often as to be nearly axiomatic.⁶

29. In construing a statute, the court must ascertain and give effect to the intent of the General Assembly. *Copeland v. People*, 2 P.3d 1283, 1286 (Colo.2000), and must refrain from rendering judgments that are inconsistent with that intent. *Farmers Ins. Exchange v. Bill Boom, Inc.*, 961 P.2d 465, 469 (Colo.1998). A statute must be construed to further the legislative intent evidenced by the entire statutory scheme. *Martinez v. Cont'l. Enters.*, 730 P.2d 308 (Colo. 1986). When construing statutes, determination and effect must be given to the intent of the legislature, and a statutory construction must be adopted that best effectuates the purposes of the legislative scheme. *City and County of Denver v. Gonzales*, 17 P.3d 137 (Colo. 2001).

30. To determine legislative intent, the tribunal must look first to the plain language of the statute. *Vaughn v. McMinn*, 945 P.2d 404, 408 (Colo.1997); *City of Westminster v. Dogan Construction Co.*, 930 P.2d 585, 590 (Colo. 1997). If the tribunal can give effect to the ordinary meaning of words used by the legislature, the statute should be construed as written, giving full effect to the words chosen, as it is presumed that the General Assembly meant what it clearly said. *Askew v. Industrial Claim Appeals Office*, 927 P.2d 1333, 1337 (Colo.1996); *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542, 545 (Colo.1995); *see also* § 2-4-101, C.R.S. (“Words and phrases shall be read in context and construed according to ... common usage. Words and phrases that have acquired a technical or particular meaning whether by legislative definition or otherwise, shall be construed accordingly.”). If the statutory language is clear and unambiguous, courts need not look further. *Town of Superior v. Midcities Co.*, 933 P.2d 596, 600 (Colo.1997); *Boulder County Bd. Of Equalization v. M.D.C. Construction Co.*, 830 P.2d 975, 980 (Colo.1992).

⁶ See, Decision No. R15-0209 in Proceeding No. 14AL-0816T Consolidated, issued March 5, 2015.

31. In order to reasonably effectuate legislative intent, a statute must be read and considered as a whole and “should be interpreted so as to give consistent, harmonious, and sensible effect to all its parts. *People v. District Court*, 713 P.2d 918, 921 (Colo.1986); *see also Martinez v. Cont’l. Enters.*, 730 P.2d 308, 315 (Colo.1986); *Colorado Dep’t of Soc. Servs. v. Board of County Comm’rs*, 697 P.2d 1, 23 (Colo.1985).

32. A statute must also be construed to further the legislative intent represented by the entire statutory scheme. *Allen v. Charnes*, 674 P.2d 378, 381 (Colo.1984); *Public Employees Retirement Ass’n v. Green*, 580 P.2d 385, 387 (1978). It is presumed that “[t]he entire statute is intended to be effective” and “[a] just and reasonable result is intended.” § 2-4-201(1)(b), (c).

a. Legislative History

33. Amendments to statutory language pursuant to two 2014 House Bills are at the center of the Telecom Providers’ arguments and of this analysis and discussion. HB 14-1329 *Concerning the Exemption of Certain Internet-Protocol-Enabled Services from Oversight by the Public Utilities Commission, and, in Connection Therewith, Making an Appropriation*; and HB 14-1331 *Concerning the Regulation of Basic Local Exchange Service as it Affects Effective Competition, and, in Connection Therewith, Making an Appropriation*.

34. HB 14-1329 through amendments to § 40-15-401, C.R.S. identifies certain Telecommunications services as exempt from regulation such as VoIP, CMRS, and IP-Enabled services. However, § 40-15-401(4) states that the Commission retains jurisdiction over the wholesale market and basic emergency service.⁷ HB 14-1331 modified the statutory framework for the remaining limited regulation of basic service, and allowed the Commission to re-regulate

⁷ Schartz, Alex, Vanderberg, Erin, Colorado Legislative Council Staff, Issue Brief, *Telecommunications Modernization*, No. 14-06, July 2014.

basic service again under certain circumstances.⁸ New language at § 40-15-401(4) states that “[n]othing in this Part 4 shall be construed to affect, modify, limit, or expand the Commission’s authority to regulate basic emergency service.”

35. HB 14-1331 enacted certain changes relevant to this discussion under § 40-15-201, regarding regulation by the Commission. While some changes to the language of the statute were made, the essence of § 40-15-201(2), in place since 1987 remains intact. That section reads as follows: “Basic emergency service is declared to be subject to regulation under this part 2 and subject to potential reclassification under section 40-15-207.” *Id.*

36. As discussed above, the Telecom Providers take the position that § 40-15-401 exempts them from regulation under article 15 or any provision of Colorado’s Public Utilities Law under articles 1 through 7 of Title 40. As a result, the Telecom Providers maintain that the Commission has no jurisdiction to regulate VoIP, CMRS, or IP-Enabled services. The Telecom Providers emphasize that § 40-15-401 unequivocally excludes any Commission authority over them.

37. It is found that the position of the Telecom Providers is unavailing. Their analyses, which is in derogation of proper statutory interpretation standards, focuses on a narrow reading of a single statutory provision, and fails to consider the entire statutory scheme. (*People v. District Court; Martinez v. Cont’l. Enters.; Colorado Dep’t of Soc. Servs. v. Board of County Comm’rs, supra*). When reviewed in its entire context and given full consideration, the entire statutory scheme reveals a conclusion much different from that urged by the Telecom Providers. While the Telecom Providers argue that their analysis is properly limited to a discussion of § 40-15-401, that section is only one facet in the analysis. The limited arguments

⁸ *Id.*

of the Telecom Providers result in an illogical conclusion as it relates to the sphere of Commission jurisdiction over basic emergency service.

38. Rather, it is found that the legislation amending Colorado's telecommunications statutes expressly maintained the Commission's authority over basic emergency services. *See*, § 40-15-401(1)(b) and (i), C.R.S. That legislation, however, expressly reserved Commission jurisdiction over 911 by stating that "[n]othing in this part 4 shall be construed to affect, modify, limit, or expand the Commission's authority to regulate basic emergency service." *See* § 40-15-401(4), C.R.S.

39. It is apparent that the legislature meant to preserve the Commission's jurisdiction over basic emergency service, "regardless of the technology used."⁹ It is self-evident that this is the case, otherwise, interpreting that statute as urged by the Telecom Providers would result in an illogical and incomplete reading of § 40-15-401, and render other statutory language related to basic emergency service superfluous, which is prohibited by the laws regarding statutory interpretation.

40. In conformance with the strictures of statutory interpretation, a determination of Commission jurisdiction necessarily incorporates an analysis of §§ 40-12-102(24), 40-15-201, as well as 40-15-401. The language of § 40-15-102(24) and § 40-15-201 cannot be ignored for convenience sake. Reading those statutes together and giving them their full and unambiguous meaning, one can only conclude that the Commission retains jurisdiction over basic emergency service. This makes sense since to do otherwise would render § 40-15-201 superfluous and result in piecemeal and asymmetrical regulation over basic emergency service.

⁹ CTIA attempts to minimize the importance of this phrase in the legislative history. However, it is important to note that the phrase "regardless of the technology used" appears in three separate occasions during the 2014 Legislative Session – by each of the bill's sponsors during separate testimony, and by the Governor in his signing letter enacting HB 14-1329 and HB 14-1331, as discussed in more detail below.

The FCC determined that the various providers such as wireless, VoIP and IP-Enabled providers all incorporate different technologies for the functions they provide in 911 networks.¹⁰ The Legislature carefully crafted the language contained in HB 14-1329 and HB 14-1331 to ensure the continued functionality and reliability of 911 into the future. It is illogical to assume that the legislative amendments were to be applicable only to basic local exchange carriers and not to other providers regardless of the technology utilized, given the important public interest considerations related to the public safety, health and welfare of Colorado citizens.

41. The General Assembly determined “basic emergency service” to be subject to regulation under § 40-15-201(2), C.R.S. Consequently, it is presumed that the Legislature, after careful deliberation and with knowledge of the existing statutory scheme addressing basic emergency service, passed HB 14-1329 and HB 14-1331 with the intent to maintain the Commission’s regulatory authority over basic emergency service regardless of the technology used.¹¹ Based on that legislative history, the Commission is bound to accept that interpretation and assert its jurisdiction over this rulemaking.

42. This conclusion is supported by the language contained in Governor John W. Hickenlooper’s signing letter of May 9, 2014 that echoed other statements unequivocally that “the testimony in both chambers by the sponsors of this bill reinforce the

¹⁰ See, 2013 Report and Order).

¹¹ See *In Re Questions Submitted by the United States District Court*, 499 P.2d 1169, 1171 (Colo. 1972) (quoting *Cooper Motors, Inc. v. Board of County Commissioners*, 279 P.2d 685, 688 (Colo. 1955)) (Citations omitted) (applying presumption to analysis of whether a statute is constitutional).

intent of this legislation is to maintain the PUC's authority to regulate basic emergency services, regardless of technology.”¹²

b. Review of Entire Statutory Scheme

43. It is well established that the Commission has broad constitutional and statutory authority to regulate public utilities under Article XXV of the Colorado Constitution. *Miller Brothers, Inc. v. Pub. Utils. Comm'n*, 525 P.2d 443, 451 (Colo. 1974); *O'Bryant v. Pub. Utils. Comm'n*, 778 P.2d 648, 655 (Colo. 1989). “Article XXV endows a broad delegation of legislative power to the PUC....” *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 763 P.2d 1020 (Colo. 1988), (citing *Miller Bros., Inc.*). “[T]he PUC's authority under article XXV is not narrowly confined but extends to incidental powers which are necessary to enable it to regulate public utilities.” *Id.* “Article XXV of the Colorado Constitution vests in such agency as the General Assembly may designate all power to regulate the facilities, service, rates, and charges of every public utility operating within Colorado.” *Public Service Company of Colorado v. Trigen-Nations Energy Co.*, 982 P.2d 316, 322 (Colo. 1999).

44. In order to verify that determination of legislative intent, it is important to review the entire basic emergency service statutory scheme. Such an analysis necessarily begins at § 40-15-102(24), C.R.S. which defines “regulated telecommunications services as, “telecommunications services treated as public utility services subject to the jurisdiction of the

¹² On December 11, 2015, immediately subsequent to the conclusion of the final scheduled workshop, a letter on Colorado General Assembly letterhead and signed by the Honorable Mark Sheffel, Senate Majority Leader, the Honorable Andy Kerr, Senator, the Honorable Angela Williams, State Representative, and the Carole Murray, former State Representative was filed in this proceeding. The letter was purportedly filed in order to explain both the intent of HB 14-1329 and its scope as applicable to 911 service. However, case law is clear that such statements may not be considered. *Williams c. Dep't of Public Safety*, 2015 COA 180 (citing, *Francen v. Colo. Dep't of Revenue*, 2012 COA 110, ¶ 32 (“[W]hat a later General Assembly thinks a statute does or should mean says little, if anything about what the General Assembly that enacted it intended it to mean.”) *aff'd*, 2014 CO 54); *Minto v. Sprague*, 124 P.3d 881, 885 (Colo.App. 2005) (“[T]he ‘interpretation placed upon an existing statute by a subsequent group of [legislators] who are promoting legislation and who are unsuccessful has no persuasive significance.’”) (quoting, *United States v. Wise*, 370 U.S. 405, 411 (1962)).

commission.”¹³ Of further relevance, in defining Part 2 regulated telecommunications services, § 40-15-201(2), C.R.S. provides in relevant part that, “[b]asic emergency service is declared to be subject to regulation under this part 2 ...” It then logically follows that because basic emergency service is subject to regulation and therefore Commission jurisdiction under Part 2, it is a telecommunications service that is required to be treated as a public utility service under § 40-15-102(24). This interpretation gives further meaning and consideration to the entire basic emergency service statutory regime.

45. Continuing the analysis, under § 40-15-401, CMRS, IP-Enabled Services and VoIP services are exempt from regulation. That section goes on to provide at subsection (4), however, that “[n]othing in this part 4 shall be construed to affect, modify, limit, or expand the commission’s authority to regulate basic emergency service.” *Id.*

46. While not explicitly stated in their comments and briefs, the line of reasoning asserted by the Telecom Providers appears to be that the language of § 40-15-401 renders all other relevant statutory language, including the language of § 40-15-102(24) and § 40-15-201 meaningless. However, such a reading is clearly in contravention of the standards of statutory construction and interpretation. The Telecom Providers’ narrow reading § 40-15-401(4) is somewhat self-serving. As stated previously, it is illogical to reach this conclusion given the legislative history of HB 14-1329, and giving full meaning and consideration to the entire statutory scheme addressing basic emergency service.

47. The Legislature left basic emergency services in Part 2, while adding a subsection to Part 4 that clarified that the deregulation resulting from the 2014 Telecom legislation did not “affect, modify, limit, or expand the commission’s authority to regulate basic emergency

¹³ *Id.*

service,” § 40-15-401(4). However, since continually increasing numbers of consumers use deregulated telecommunication services to make 911 calls, the Commission is unable to meet its statutory charge to ensure continued safe and reliable basic emergency services without requiring those carriers to affirmatively take certain actions, such as interconnect with the basic emergency service providers (BESPs) that route 911 calls to the appropriate PSAP (Rule 2136), or to report outages (Rule 2139). As such, it is logical that the General Assembly intended that the Commission retain jurisdiction over the deregulated telecommunications services that enable end users to make 911 calls.¹⁴

48. Further, the requirements imposed on deregulated services through Rules 2136 and 2139 are not in the manner of traditional public utilities regulation. The Commission is not requiring any sort of registration or certificate of public convenience and necessity. Rather, the Commission is merely asserting its legislatively provided jurisdiction over basic emergency services under § 40-15-201(2), in order to ensure the efficient identification, restoration, and prevention of 911 failures and outages. *See*, § 40-4-101, C.R.S. (the Commission may adopt rules necessary to ensure safe and reliable service).

49. Despite the assertions of the Telecom Providers to the contrary, the Commission has no interest in expanding its authority without legislative approval. Rather, the Commission here, merely exercises the authority it always possessed, to ensure that 911 calls are completed from the end user to the PSAP, over the technologies of all providers, including CMRS, VoIP, and IP-Enabled providers. Consumers use these technologies more than they use basic local exchange service to make 911 calls. It is impossible for the Commission to ensure the reliability

¹⁴ *Bd of Cnty Comm'rs v. Pub. Utils. Comm'n.*, 157 P.3d 1083, 1091 (Colo. 2007). (“When we look to Colorado’s Public Utilities law as a whole, we should give it a consistent, harmonious and sensible reading.”)

of the 911 network without requiring all originating service providers to interconnect with the basic emergency service network through the promulgation of these rules.

50. It is clear that a full consideration of the basic emergency service statutory scheme, in conjunction with the legislative history of HB 14-1329 and HB 14-1331 can only lead to the conclusion that the Commission possesses jurisdiction over basic emergency service, regardless of the technology utilized.

C. Federal Law Analysis

51. The Telecom Providers argue that the rules also violate Federal law, specifically at 47 U.S.C. § 332(c)(3)(A) and § 47 U.S.C. § 615a-1(d). According to the Telecom Providers, 47 U.S.C. § 332(c)(3)(A) provides the states with a limited jurisdiction over wireless providers because it limits state commissions from regulating the rates, as well as the terms for market entry of wireless providers. The argument is that because the Commission would require compliance with rules that require reporting and network management requirements imposed on Originating Service Providers, those rules conflict with FCC rules, as well as 47 U.S.C. § 615a-1(d). Particularly, the Telecom Providers take issue with Rule 2139, which they argue, would impose a reliability standard on OSPs regarding network management and staffing, despite findings from the FCC that OSPs are excluded from its reliability rules.

52. Wireless Telecom Providers express concern that the requirements of Rule 2139 would improperly give the Commission jurisdiction to regulate market entry of wireless OSPs in Colorado. Additionally, the Telecom Providers argue that the interconnection requirements for OSPs under the rules would violate 47 U.S.C. §§ 615a-1(d) and 332(c)(3)(A). The Telecom Providers maintain that the provision of Rule 2134 would set requirements inconsistent with 47 U.S.C. §§ 251 and 252 that deal with the negotiation, arbitration, and filing of interconnection agreements between carriers.

53. Despite the arguments of the Telecom Providers, 47 U.S.C. § 332(c)(3)(A) of the Telecom Act does not impose the monolithic barrier to state regulation over wireless carriers the Telecom Carriers claim. In 2005, the FCC held that while § 332(c)(3)(A) preempts states from regulating the rates and entry of wireless providers, the Telecom Act allows states to regulate other terms and conditions of wireless providers, including competitively neutral requirements that do not regulate rates or entry.¹⁵ The rules adopted here do not cause a barrier to entry to any providers, including wireless providers.

54. Under the Telecom Act, the FCC is charged with certain regulatory authority over mobile services, even to the extent they have intrastate components.¹⁶ While the FCC has exclusive jurisdiction to regulate the rates and conditions of market entry of mobile services under 47 U.S.C. § 332(c)(3)(A), states are nonetheless expressly permitted to regulate the “other terms and conditions” of commercial mobile services.¹⁷

55. Further, under 47 U.S.C. § 253(b), Congress stated that “[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of customers.”¹⁸

56. Additionally, in 2008, Congress enacted the *New and Emerging Technologies 911 Improvement Act of 2008*. Under that Act, Congress enacted Title I-911 Services and IP-Enabled Voice Service Providers 47 U.S.C. § 615a-1(d) which, requires IP-Enabled voice service

¹⁵ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, rel. March 17, 2005.

¹⁶ *WWC Holding Co., Inc., v. Sopkin, et al.*, 488 F.3d 1262, 1271 (10th Cir. 2007), *citing* 47 U.S.C. §§ 152(b), 332.

¹⁷ *Id.*

¹⁸ *Id.*

providers to provide 911 service and enhanced 911 service to its subscribers in accordance with the requirements of the FCC. Notably, subsection (c) of that statute provides that,

The [FCC] may delegate authority to enforce the regulations issued under subsection (c) to State commissions ... with jurisdiction over emergency communications. Nothing in this section is intended to alter the authority of State commissions ... with jurisdiction over emergency communications, provided that the exercise of such authority is not inconsistent with Federal law or [FCC] requirements.

It is readily apparent that the promulgation of these 911 rules does not impede on, or is inconsistent with Federal law of FCC requirements regarding CMRS or IP-Enabled providers.

57. It is apparent that the Federal statutory scheme and the FCC have left ample room for State commissions to regulate wireless carriers regarding basic emergency service. As discussed in more detail below, compelling reasons to allow State regulation in this area exist in order to ensure that states have the ability to guarantee the health, safety, and welfare of its citizens through the regulation of basic emergency services.

58. Nor do the outage reporting rules adopted here run afoul of Federal law or FCC regulations, because those rules (or the other rules adopted here) are not inconsistent with the FCC's rules. The FCC stated in relevant part as follows:

With respect to the issue of potential duplication of the efforts of the states, we emphasize that we do understand the potential value of having one outage template instead of 50 different templates. Individual states, however, may have their own unique needs that could necessitate their collection of outage-reporting data that may differ from that needed by the [FCC]. For example, South Dakota requires many more outage reports than [the FCC's] criteria would generate. But since South Dakota is a small state, it may need tighter criteria in order to generate more than a handful of useful outage reports. It is, however, possible that our reporting requirements may provide a common framework that will be of assistance to state, commonwealth and territorial governments; and

which may, therefore, serve to reduce the number of outage reports that might otherwise be required by those jurisdictions.¹⁹

59. The FCC further found that “[i]n the absence of routine access to [Network Outage Reporting System (NORS)] data, many states independently require communications providers to file network outage reports with their public utility commissions or similar agencies.”²⁰ In addition, the FCC state that “[g]ranteeing states access to NORS data on a confidential basis could advance compelling state interest in protecting public health and safety in an efficient manner.”²¹

60. As the FCC emphasized, it has generally approached 911 communications reliability issues by working with service providers to develop voluntary best practices and by measuring the effectiveness of those best practices through outage reporting.²² However, the FCC found that 911 and “other problems could and would have been avoided if providers had followed industry best practices and available guidance.”²³ The FCC concluded that it could no longer rely solely on the implementation of best practices on a voluntary basis since such reliance failed to produce the intended outcome of improving 911 reliability.²⁴

¹⁹ *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830 (2004) at ¶ 158.

²⁰ *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket No. 151-80; ET Docket No. 04-35, Notice of Proposed Rulemaking, Second Report and Order on Reconsideration, 30 FCC Rcd 3206 (2015).

²¹ *Id.* At 3224.

²² *New Part 4 of the FCC’s Rules Concerning disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830 (2004); *The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, *Report and Order*, 27 FCC Rcd 2650 (2012).

²³ *2013 Report and Order* at ¶24.

²⁴ *Id.*, at ¶28.

61. Yet, here, the Telecom Providers take the position that the Commission's reporting rules are oppressive and fail to mirror the FCC's outage reporting rules. However, the Telecom Providers' arguments regarding this issue are unavailing. It is agreed with BRETSA that the record in this rulemaking proceeding demonstrates that OSPs still fail to properly report outages, or seem to be unaware of their own network outages.²⁵

62. For example, Mr. Scott Rose, of the Police Communication Service Support for the City of Lakewood, County of Jefferson provided public comment at the February 4, 2016 public comment hearing on the amended rules regarding a 911 outage that affected the City of Lakewood on January 18, 2016. Mr. Rose indicated that the outage lasted in excess of three hours and it was the PSAP that contacted Verizon approximately 45 minutes after the commencement of the outage. Verizon failed to notify the PSAP of the outage because it did not determine that the Lakewood PSAP was affected by the outage. As a result of the outage, Mr. Rose testified that at least two 911 calls were not received. The Lakewood PSAP was made aware of the outage by one of the 911 callers unable to get through with their Verizon cell phone.

63. Verizon filed a reply brief on February 24, 2016 in which it provides various reasons why the outage was not its fault. Nevertheless, as BRETSA points out, the claim by Verizon that the outage occurred in the facilities of another provider raises the question whether redundant and diverse facilities could have avoided the outage.

64. In adopting its rules on 911 outage reporting requirements, the FCC expressly noted that while some commenters in that rulemaking expressed concern regarding the appropriate demarcation between Federal and State authority with respect to 911 service,

²⁵ See e.g., Hearing Exhibit No. 4 *Report on the Waldo Canyon Fire ...* Gary Klug from the February 4, 2016 Public Comment Hearing on the Amended 911 Rules, that details outages during that disaster, as well as reverse 911 failures that also occurred.

the FCC adopted rules were “not intended to preempt state and local actions so long as they do not operate to frustrate the implementation of the [adopted FCC rules].”²⁶ Further, the Telecom Providers’ argument that the outage reporting rules would be oppressive and costly, are also found to be without merit. There is no evidence that this is the case as those arguments are speculative at best.

65. As such, it is reiterated that there is no violation of Federal law or FCC regulations regarding the Commission’s reporting, network management, and interconnection rules, or the remainder of the rules adopted here.

D. CONCLUSION ON JURISDICTION

66. Based on the analysis above, it is determined that the Commission possesses jurisdiction to promulgate these 911 emergency rules. The arguments of the Telecom Providers will not be adopted. Rather, based on legislative history surrounding the enactment of HB 14-1329 and HB 14-1331, coupled with a full reading of the entire basic emergency service statutory scheme, it is concluded that the Commission possesses jurisdiction to promulgate these rules.

E. CTIA Petition for Declaratory Ruling

67. On January 29, 2016, CTIA filed its Petition for Declaratory Ruling, seeking a declaratory order from the Commission that the amended proposed 911 rules exceed the Commission’s jurisdiction to act on CMRS and CMRS providers.

68. As indicated at the public comment hearing on February 4, 2016, the Petition will be denied. The jurisdiction analysis above directly addresses the issues raised in CTIA’s Petition and provides a conclusion that the Commission possesses jurisdiction in this

²⁶ 2013 *Report and Order* at ¶150.

rulemaking proceeding. Therefore, there is no reason to separately address CTIA's issues raised in its Petition. As a result, CTIA's Petition for Declaratory Ruling will be denied.

F. Rules

69. 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. In various rules, the term "Automatic Number Identification (ANI) service" or "ANI provider" was removed, since ANI is generally not offered as a separate service, but rather is part of the 911 call.

70. Regarding proposed Rule 2008(a), 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.

1. Rule 2131 - Definitions

71. Based on written comments, as well as comments provided during the workshops, the definitions contained in Rule 2131 have been amended substantially.

72. Rule 2131(a) was re-worded to make it more readable and to more closely align with the NENA definition of 911.

73. Since the definition of "911 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. It was also clarified that 911 calls do not include interim text-to-911

solutions or other types of information that are not sent to the PSAP via selective routing process and a dedicated network.

74. The definition of 911 System and Network in rule 2131(e) was truncated to remove unnecessary language and help define “911 service.”

75. Pursuant to Rule 2131 (c) that defines “911 failure” or “911 outage,” the definition was bifurcated to denote two situations: 1.) an outage of what is typically thought of as the “core 911 network,” and, 2.) a description of other types of outages that might affect 911 service. The latter portion of the definition closely mirrors the description adopted by the FCC, including the 900,000 user-minute threshold. Subsection (III) of the Rule provides for a review process of the threshold to determine whether it is necessary to make adjustments as necessary. Subsection (IV) clarifies that the inability to deliver calls outside of the BESP network does not constitute a failure.

76. The revised definition, in concert with revised Rule 2131(b) makes it clear that interim text-to-911 solutions and anything delivered to the PSAP via routes other than the BESP are not 911 calls and failure to deliver them does not constitute a failure for purposes of this rulemaking. Further, including the threshold of 900,000 user-minutes makes the burden of reporting 911 failures no greater than that already imposed by the FCC, and including Subsection (I), maintains the *status quo* of the Commission’s current oversight of outages in the core 911 network.

77. Additionally, it is determined that Emergency Notification Systems (ENS) should not be included in the definition of “911 system” and it is therefore removed from the definition. Further, it is determined that the definition of “911 failure or outage” in proposed Rule 2131(c)

could be interpreted to include when a single user is unable to call 911. Therefore, the definition is amended to utilize a similar threshold as the Federal Communications Commission.

78. The definition of “911 tandem” was removed in favor of the more current term “selective router.”

79. Under Rule 2131(g) that defines “ALI provider,” terminology was added to clarify that originating service providers that build location information dynamically for each 911 call are not considered ALI providers. This is true today for a number of wireless and VoIP providers, and would be true for all OSPs in a fully-developed i3 Next Generation 911 environment.

80. Additional language was added to Rule 2131(h) defining “ALI service” to clarify that ALI service does not include supplemental location information services that PSAPs may subscribe to, such as Smart 911 which is currently in use in Jefferson County and several other locations in Colorado.

81. The definition of ANI under Rule 2131(i) was simplified for clarity.

82. The definition of Basic Emergency Service Provider (BESP) under Rule 2131(k) was added to substitute for the term “TARP” originally utilized in the proposed rules.²⁷

83. The definition of “Demarcation point” at Rule 2131(l) was also added. During the first workshop, it was evident that much of the confusion over the proposed rules centered on whether certain rules applied to certain parts of the network. This term has been added to be used elsewhere in the rules to better define these areas of responsibility.

²⁷ Several commenters argued against the use of the term BESP since under §29-11-105, C.R.S., BESP's enjoy immunity in several circumstances.

84. The definition of “Emergency notification service” or “ENS” pursuant to Rule 2131(m) was edited and clarified, removing “reverse 911” as an alternate term (since that is a brand name), and replacing it with “mass notification system” which is a term similar in meaning as ENS. Language was also incorporated to differentiate between ENS systems that use a database of Telecommunications customers in a given area to distribute emergency messages, and “WEA,” which distributes messages to any mobile user currently registered to a particular cell tower or set of towers.

85. Rule 2131(n) which defines “Emergency telephone charge” was edited and refined by including the statutory reference to § 29-11-104, C.R.S.

86. Rule 2131(o) defining “Enhanced 911 Service” was edited to make it clear that selective routing is not an option part of E911 service, but rather required to be considered E911 service.

87. Rule 2131(q) defining “Governing body” was re-worded in order for it to more accurately reflect the role of 911 governing bodies.

88. Rule 2131(r) defining “Intermediary aggregation service” was edited to make it more technologically neutral.

89. Rule 2131(x) defining “P-ANI” was shortened and simplified to make it better-defined to more accurately reflect the user of P-ANI in the 911 system.

90. Rule 2131(y) definition of “PSAP” was also modified. There was concern from PSAPs participating in the workshops that they would now be required to take text-to-911 calls, video, or pictures even if they hadn’t requested them. Wording was added to the rule to make it clear that PSAPs do not have to accept media that they haven’t requested merely because it falls under the definition of “911 call”

91. Rule 2131(z) which defines “Selective routing” was reworded to remove the reference to 7- or 10-digit numbers to allow for other methods of receiving 911 calls than the PSTN, and to remove the obsolete term, “dialing”.

92. The definition of “Service end user” under Rule 2131(aa) was edited to make it more consistent with other rules based on comments received from the parties.

2. Rule 2132 - Process for Certification

93. Rule 2132(a) addresses who is required to obtain certification. Subsection (III) was deleted to avoid ambiguity.

94. Based on comments from the parties at the workshops, subsection (c)(IV)(E), addressing what an application for certification must contain, was amended to clarify that it applies only to 911 interconnections.

95. Rule 2132(d) refers to the authorization requirements for changes to ALI service. This rule was originally placed under 2144; however, commenters indicated the rule should be incorporated with Rule 2132 since both address certification requirements.

3. Rule 2133 – Uniform System of Accounts, Cost Segregation and Collection

96. This rule was reworded to make clear that a carrier may propose an alternative method of accounting other than the method prescribed under Rules 2400 through 2459.

4. Rule 2134 – Obligations of BESP

97. Rule 2134(a), which requires a BESP to deliver all 911 calls in formats as requested by PSAP, was added in order to address concerns raised in the workshops that PSAPs may be liable for delivering text messages, pictures, video, or other media to the PSAP under the more inclusive definition of “911 call,” even if the PSAP doesn’t want calls in those formats.

98. Rule 2134(b) defining the demarcation point between the BESP and the governing body or PSAP was added to respond to concerns and confusion expressed by parties during the workshops as to where the responsibility of the BESP ends and where the responsibility of the governing body begins.

99. Rule 2134(d) requires a BESP to interconnect, switch and transport 911 calls from the originating service provider to the demarcation point. The rule was edited to harmonize it with Rule 2134(b).

100. Rule 2134(d)(III) defines the interconnection location. The phrase “or functional equivalent” was deleted as unnecessary since the definition of selective router is technology neutral. A typo was also corrected.

101. Rules 2134(g) and (h) provide that BESP’s shall develop and file with the Commission, cost-based tariffs for basic emergency service. The last sentence of (g) was added to allow for other forms of pricing mechanisms to be approved by the Commission, rather than only per-record pricing. In a fully developed NG911 system, the number of records in the BESP’s 911 database is irrelevant since OSPs build location information and attach it to calls in the PIDF-LO.

102. Rule 2134(h) which addresses billing to the PSAP was amended to be compatible with Rule 2134(g).

103. Rules 2134(g) (h) and (i) that indicate that PSAPs are not to be billed for non-working phone records, was amended to read more clearly.

104. Rule 2134(k) providing minimum network availability for BESP’s was amended to clarify that a BESP is only responsible for network availability to the demarcation point of the governing body or PSAP.

105. Rule 2134(l) requires that a BESP is to designate a 24-hour line for communicating problems and outages. The Rule was amended so that the term “potential and actual” was removed in response to comments that the term was ambiguous and confusing. The requirement of specific personnel that should staff the line was also deleted. Commenters had objected to the term “immediate corrective action”, and alternatives considered were too vague.

106. Rule 2134(n) that requires Confidentiality of customer telephone numbers, customer locations, and line counts was reworded for simplicity, and to make clear that customer information may be used for compiling an ENS database.

5. Rule 2135 – Obligations of ALI Providers

107. Rule 2135(b) requires ALI providers to supply information to BESP. The reference to the geographic area served by the BESP was deleted, since BESP service bases may not be geographically determined in the future.

6. Rule 2136 – Obligations of Originating Service Providers and Intermediary Aggregation Service Providers

108. Rule 2136(b) requires customer information to be provided to BESP and ALI providers by OSPs. This requirement was eliminated for IASPs however, since IASPs do not have access to end-user customer information. Additionally, the term for p-ANI was used in place of the description of a p-ANI. The reference to emergency notification services was deleted because BESP and ALI providers are not responsible for the development of ENS databases.

109. Rule 2136(c) was deleted because the statutory authority to collect surcharges lies with the governing bodies, not to the Commission.

110. Rule 2136(d) (now Rule 2136(c)) provides that 911 calls shall be delivered via the BESP's network. The Rule was amended to indicate that this is not intended to prohibit interim, off-network solutions for delivery of advanced services, such as text-to-911, or for routing of 911 calls to an administrative line in the event of a 911 outage.

111. 2136(e) (now Rule 2136(d)) that requires OSPs and IASPs to maintain a 24-hour outage information line was amended in order to comport with changes made to Rule 2134(l).

112. Rule 2136(f) provides that OSPs are to coordinate on ENS Operation upon Request. This subsection was added in lieu of a requirement in the proposed rules that PSAPs notify the BESP prior to activating the ENS system. The purpose of the rule is to prevent the phone system from being overwhelmed with a large influx of calls from the ENS. Concern was expressed by some commenters that the rule could result in delays in the activation of ENS during an emergency. Additionally, some commenters stated that it is the OSP, not the BESP that may experience congestion due to a large influx of calls from an ENS system. However, the rule requires OSPs to work with the governing body, if requested to do so, to configure ENS ahead of time to avoid overwhelming their network upon activation.

113. Rule 2136(g) addressing OSP obligations regarding payphone providers was replaced with language found in 47 CFR 64.1330(b).

114. Rule 2136(h) was deleted as duplicative.

7. Rule 2137 – Obligations of Multi-line Telephone Systems (MLTS)

115. Under Rule 2137(a) which provides MLTS-specific definitions, subsection (a)(I) was deleted since "911 service" is already defined under Rule 2131.

116. Rule 2137(c) providing for notice of dialing instructions, was amended to replace ETS with the already-defined term "911 service".

8. Rule 2138 – Nondisclosure of Name, Number, and Address Information

117. Rules 2138(a) and (b) that address customer privacy requirements were deleted. Commenters stated that the rules caused confusion as it appeared that the rules would restrict providers from providing ALI information to PSAPs unless a non-disclosure agreement was on file for the PSAP. A new Rule 2138(a) was added in place of prior Rules 2138(a) and (b) that refers to compliance with Federal statute 47 U.S.C. § 222, as well as Commission Rules 4 CCR 723-1-1104 and 1105, 4 CCR 723-2-2360, 2361 and 2362.

118. Rule 2138(b) sets forth the allowable uses of ALI information. Prohibited disclosures of ALI information, as well as the use of ALI information were included in the rule. Additionally, “911” was removed to indicate that the emergency was not required to be initiated by a 911 call. The term “periodic” was removed as unnecessary. The last sentence of the rule was removed as duplicative

9. Rule 2139 – 911 Reliability, Resiliency, and Contingency Planning and Service Restoration

119. Originally proposed Rules 2139(a), (b), and (c) required that all TARP, ALI, and IASP Networks are to be redundant and diverse unless a waiver is approved. Those rules were deleted and replaced by new Rules 2139(a) and (b).

120. 2139 (a) addresses Diversity of 911 circuits. Subsection (a)(I) defines physical and geographical diversity for the purposes of Subsection (a)(II).

121. Subsection (a)(II) is based upon suggested language provided in comments by CenturyLink. Rather than required diversity at all points unless a waiver is approved, as the original proposed rules would have required, Subsection (a)(II) 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 and their prioritization within all other diversity deployments. The rule also allows other stakeholders, such as 911 governing bodies, PSAPs, and other carriers to participate.

122. Subsection (a)(III) requires a new tariff to be filed or a current tariff to be amended to include the costs of the diversity plan approved by the Commission in Subsection (a)(II).

123. Subsection (a)(IV) requires quarterly updates on progress regarding the plan approved by the Commission in Subsection (a)(II).

124. Rule 2139(b) requires BESP and ALI providers to develop contingency plans. This new rule is a restatement of proposed Rules 2139(e), (f), and (g) in a simplified form. Rule 2139(b) clarifies that it only applies to BESP and ALI providers (if offering service separately from a BESP).

125. Rule 2139(c) requires BESP and ALI providers to notify PSAPs of changes to 911 reliability and contingency plans. This rule was added to ensure that contingency plans are harmonized between the PSAP and BESP or ALI provider.

126. Rule 2139(d) requires BESP and ALI Providers to inventory their 911 circuits. This rule was amended to apply only to BESP and ALI providers as they are the only providers that are likely to have 911-specific circuits.

127. Original Rules 2139 (e), (f), and (g) are deleted and restated in Rule 2139(b) as indicated above.

128. New Rule 2139(e) requires PSAPs to notify BESP of 911 outages. The latter portion of the rule, requiring OSPs, IASPs, and other providers to work cooperatively with PSAPs to manage 911 outages was deleted and repositioned to a stand-alone rule.

129. Original Rule 2139(i) that required providers to notify a governing body of outages, and for the governing body to notify the BESP prior to ENS activation. The first portion of the rule was deleted as duplicative given other outage notification rules. The latter portion of the rule was deleted and replaced with Rule 2136(f).

130. Original Rules 2139(j) and (k) addressing actions to be taken when an outage occurs were deleted as duplicative and confusing with subsequent outage notification rules.

131. Rule 2139(f) requires a service technician to resolve 911 outages expeditiously. The phrase “qualified service technician”, which commenters felt was too vague, was replaced with the term “technician(s) trained and qualified to resolve 911 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,” in order to clarify that this rule applies to any outage the provider becomes aware of, rather than only those outages the provider is notified of by the PSAP. The last sentence was added to clarify the meaning of the term “on site,” in response to written comments and comments at the workshops.

132. Proposed Rule 2139(g) is amended by removing the threshold from the rule since a threshold is now included in the definition of 911 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.

133. This modification of the initial notification rule also removes notification to the Commission. Notification to the Commission is now a separate rule at Rule 2139(i), since the urgency to notify the Commission of an outage is less than the need to notify the PSAP, and the information for the Commission and the PSAP varies slightly.

134. Additionally, Rule 2139(g) Subsection (IV), Subsection (VII), Subsections (IX), (X), (XI), (XII), (XIII) and (XIV) and Subsection (XVI) were deleted. Further, the term “date and time of end of the outage or failure” was removed based on workshop comments that these items were either not likely to be known at the time of initial notification or were not necessary for initial notification.

135. Rule 2139(g) Subsection (VII) was added as a more logical replacement for Subsection (IV). Subsection (VIII) was added as a more logical replacement for Subsection (XI). Subsection (IX) was included to address concerns expressed through comments as to how Telecommunications outages may affect the operation of ENS. Subsection (X) was included as a logical necessity for follow-up of information.

136. Rule 2139(g) Subsection (XI) was amended to include notifications to the media so that the PSAP is able to plan accordingly.

137. Rule 2139(h) addresses the activation of contingency plans and monitoring of ongoing outages. This rule replaces Rules 2139(j) and 2139(h), merging them into a more logical and chronological order. Rule 2139(h) also removes the specific contingency planning steps that commenters argued were unnecessary because they should already be listed in existing contingency plans, and may not always be applicable.

138. Regarding outage notifications pursuant to proposed Rule 2139, subsection (i) is added which separates notification to the Commission from notification to the PSAP

(now in 2139 (g)). By positioning the reporting requirement to the Commission subsequent to the activation of contingency plans and by maintaining the current two-hour deadline for initial notification, the rule allows the PSAP and BESP to focus on initial contingency operations prior to notifying the Commission of outages.

139. Several parties at the workshops indicated that they found the proposed outage reporting rules to be cumbersome and confusing. As a result, the proposed rules relating to outage reporting were significantly re-ordered, re-worded, and streamlined.

140. Rule 2139(j) requires providers to provide call-back numbers of failed 911 calls to PSAPs. Subsection (j)(I) was added in response to comments filed by a 911 governing body. The rule requires the provider responsible for an outage to provide call-back numbers for 911 callers who failed to get through due to an outage, if the provider is capable of providing those numbers. Subsection (j)(II) was added to inform the Commission when an outage has concluded.

141. Rule 2139(k) requires providers to file a final report to the Commission regarding outages or failures. The term “written report” was amended to “final report” to give the Commission the option to use the format it prefers for final reporting of outages. The rule amends the proposed 10-day timeframe for final reporting to the current 30-day timeframe, as several providers expressed concern that 10 days may not be enough time to gather the information required. Subsections (I) through (VIII) provide the additional information required in the final report, and incorporates some of the information that was removed from the initial notification requirement.

142. Rule 2139(l) provides for an alternate, director-requested report. Wording was added to the rule to make clear that the director-requested 5-day outage report may be requested in lieu of or in addition to the final report.

10. Rule 2140 – Reports

143. Rule 2140(a), which required BESPs to provide a report to the Commission regarding 911 failures and outages was deleted as duplicative with other reporting rules.

144. Rule 2140(b) which requires providers to furnish the Commission with outage reports filed with the FCC’s Network Outage Reporting System and Disaster Information Reporting System, includes additional language that the Commission will treat such reports as confidential.

11. Rule 2141 – 911 Advisory Task Force

145. Rule 2141(b) defines the activities of the 911 Advisory Task Force. The word “future” was removed as unnecessary from Subsection (b)(I). In addition, Subsection (b)(I) was updated to include the phrase “continued improvement and advancement of 911 service” in Colorado, as an additional concern for the Task Force.

12. Rule 2142 – National Emergency Number Association (NENA) Data Standards

146. Several commenters opined that the NENA standards table was found to be problematic. The table was replaced with language developed at the fourth workshop. Rule 2008(a) was also updated.

13. Rule 2143 – Applications by the Governing Body for Approval of a 911 Charge in Excess of Seventy Cents per Month

147. Rule 2143(a) addresses applications for a surcharge increase. The reference to Rule 2002(d) is removed from reference in this rule due to changes made to Rule 2143(d).

The rule also specifies that the Commission can use a specific form for 911 authorities to apply for surcharge increases.

148. Rule 2143(b) requires an attestation that the applicant has not used 911 surcharge funds for unauthorized purposes. This is a new rule that requires that an application for a 911 surcharge increase should include an attestation that surcharge funds have been and will be used in accordance with statute and that the applicant will post their audits online. This rule was included to make it possible to provide a streamlined process for those applying for surcharges under seventy cents in 1990 dollars as adjusted to 2016 dollars.

149. Rule 2143(c) requires additional documentation in certain circumstances. Additional wording restricts the need for additional documentation to those governing bodies that are applying for surcharge rates greater than seventy cents in 1990 dollars (approximately \$1.30). The rule language allows for a more streamlined application process for those applying for less than \$1.30, which comports with comments made at the fourth workshop.

150. Rule 2143(d) sets forth notice requirements for governing bodies applying for a 911 surcharge above seventy cents per month. The amendments to the rule make it clear that the notice requirement in 2002(d) does not apply. This rule describes the notice requirement for 911 governing bodies, which is necessary because currently, 911 authorities are required to file a motion for waiver of notice requirement with every surcharge increase requested. Amendments were also made to require one publication of the notice in the local newspaper, rather than for two weeks. Additionally, the notice must also be published online. This change is intended to more realistically reflect how most people would be more likely to find the notice.

14. Rule 2144 – ALI Services

151. This entire rule was removed and incorporated into Rule 2132.

152. The parties commented that the proposed rules prohibited delivering 911 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-911 calls. In order to resolve this issue, language was added to the rules to clarify that this is not the case.

153. 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.

G. Conclusions

154. The rules promulgated here will set the basis to further the technology related to 911 emergency service in Colorado. The rules are within the Commission's jurisdiction as determined by legislative history and by a thorough analysis of the statutory scheme related to basic emergency service.

155. It is noted that the Commission meticulously interprets and acts on the legislative mandates assigned to it. The Commission, despite comments to the contrary has no agenda to assert unnecessary regulation or unmandated jurisdiction over any Telecom Provider. In this instance, the Commission acts to promulgate these rules based only on its understanding of the legislative intent of HB 14-1329 and HB 14-1331.

156. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Commission Rules pertaining to Basic Emergency Service pursuant to 4 *Code of Colorado Regulations* 723-2-2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, and 2143, of the Rules Regulating Telecommunications Providers, Services, and Products, contained in Attachment A to this Decision are adopted consistent with the discussion above, 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.

2. The rules adopted by this Decision shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules adopted by this Decision.

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*.

5. The Petition of CTIA for a Petition for Declaratory Ruling is denied consistent with the discussion above.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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