

Decision No. C17-1066

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17R-0488T

IN THE MATTER OF PROPOSED AMENDMENTS TO TELECOMMUNICATIONS
RULES 4 CODE OF COLORADO REGULATIONS 723-2-2130 THROUGH 2159 AND
2008(a).

**DECISION DENYING EXCEPTIONS
AND ADOPTING FINAL RULES**

Mailed Date: December 27, 2017
Adopted Date: November 29, 2017

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 28, 2017, that initiated this Proceeding.¹ Through its

¹ See Decision No. C17-0575 issued August 1, 2017.

NOPR, the Commission proposed revisions to Rules 4 *Code of Colorado Regulations* (CCR) 723-2-2130 through 2150 and 2008(a) (9-1-1 Rules) in response to a Petition for Rulemaking² filed by the Commission's 9-1-1 Advisory Task Force (Task Force).³

2. In Decision No. R17-0821 (Recommended Decision) issued October 13, 2017, the assigned Administrative Law Judge recommends this Commission adopt rules agreed to by an almost unanimous consensus of participants in this proceeding that modernize the Commission's 9-1-1 Rules.⁴

3. We deny exceptions to the Recommended Decision filed on October 30, 2017, by the Larimer Emergency Telephone Authority (LETA). The questions raised by LETA in its exceptions are best addressed through future adjudications or diversity planning proceedings that are facilitated through the recommended 9-1-1 Rules. We adopt the recommended rules with minor clerical revisions as discussed below.

B. Procedural History and Related Proceedings

4. On May 6, 2015, the Commission issued a NOPR in Proceeding No. 15R-0318T regarding rules regulating basic emergency service, which included revisions to the 9-1-1 Rules.⁵ In the NOPR, the Commission recognized that legislative reform deregulated certain aspects of telecommunications service. The Commission retained jurisdiction over "basic emergency service" as set forth in § 40-15-201, C.R.S. The Commission also noted that, through rulemaking, it hoped to address network diversity concerns raised by certain events that had

² Decision No. C17-0561, Proceeding No. 17M-0319T issued July 13, 2017.

³ The Task Force is a body created by 4 CCR 723-2-2145 for the purpose of advising the Commission broadly on issues related to 9-1-1 service delivery.

⁴ The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 40-2-108; 40-3-101, 102, 103, and 110; 40-4-101; 40-15-101, 107, 108(2), 201, 202, 302, 401, 501, 502, 503, and 503.5; and 40-17-103(2), C.R.S.

⁵ See Decision No. C15-0453, Proceeding No. 15R-0318T, issued May 13, 2015.

affected 9-1-1 network reliability in Colorado. In addition, the Commission aimed to address technological advancements in the provision of basic emergency services.⁶

5. Proceeding No. 15R-0318T was assigned to an Administrative Law Judge (ALJ) who conducted hearings and workshops throughout 2015 and, ultimately, issued his Recommended Decision on March 11, 2016 (2016 Recommended Decision).⁷ As evident in the 2016 Recommended Decision⁸ and subsequent exceptions from numerous participants to the rulemaking, positions on potential rule revisions were exceedingly contentious. This contentiousness was evident throughout the entire rulemaking process and was the reason the ALJ set a series of “on the record” and webcast workshops, which resulted in more consistent statements and positions from the parties regarding their issues with the rulemaking.⁹

6. Prior to the Commission ruling on exceptions or adopting the 2016 Recommended Decision, on April 25, 2016, Jacki Cooper Melmed, Chief Legal Counsel for Governor John Hickenlooper, filed a letter in the proceeding asking the Commission to suspend the rulemaking indefinitely “while the Commission and other stakeholders [engaged] in a forward-looking process focused on the future of Colorado’s 9-1-1 system.” The next day, on April 26, 2016, the Commission held a Commission Deliberations Meeting to discuss the rulemaking proceeding.

7. The Commission discussed the Melmed letter, the exceptions filed by participants, and avenues towards progress. The Commission found good cause to allow for

⁶ *Id.*, ¶¶ 2-4.

⁷ Decision No. R16-0201, Proceeding No. 15R-0318T, issued March 11, 2016.

⁸ *See Id.*, at ¶¶ 21-27, and 67-68 (describing participant positions and disagreements over rule proposals, in addition to a request for a declaration that the Commission exceeded its authority).

⁹ Transcripts of each workshop are available through the Commission’s electronic filing system in Proceeding No. 15R-0318T.

additional stakeholder discussions with the goal of protecting public safety and addressing challenges posed by emerging technologies.¹⁰ The Commission, therefore, suspended the rulemaking. To allow continued stakeholder efforts, the Commission issued a decision on August 3, 2016, terminating the rulemaking without adopting final rules, and without regard to the findings of fact and conclusions of the assigned ALJ in his 2016 Recommended Decision.¹¹

8. Through the end of 2016 and early 2017, Commission Staff initiated a series of informal workshops through the Task Force to develop a consensus revision of the 9-1-1 Rules. Under current rules, the Task Force has a mandate “to provide oversight of the statewide implementation of basic emergency service.”¹² The Task Force is also required to investigate various topics related to 9-1-1 service in the state and report its findings to the Commission.¹³ Consistent with its duties set forth in the Commission rule, the Task Force regularly continued workshops with diverse stakeholder groups until May 2017.

9. Thirty-seven stakeholders participated in approximately 14 workshops, including, without limitation, industry representatives and representatives of local 9-1-1 governing bodies and public safety answering points (PSAPs) that had participated in the rulemaking proceeding initiated in 2015.¹⁴ The Task Force and participating stakeholders endeavored to create compromise and consensus rule revisions to update the 9-1-1 Rules.

¹⁰ See Decision No. C16-0429, Proceeding No. 15R-0318T, issued April 26, 2017, ¶ 8.

¹¹ See Decision No. C16-0719, Proceeding No. 15R-0318T, issued August 3, 2017, ¶ 10.

¹² Rule 4 CCR 723-2-2145(a).

¹³ Rule 4 CCR 723-2145(b).

¹⁴ A full list of participants to the workshops is identified in Exhibit C to the petition for rulemaking filed May 24, 2017, Proceeding No. 17M-0319T.

10. Culminating its efforts in these workshops, on May 24, 2017, the Task Force filed a petition for rulemaking for the Commission's consideration.¹⁵ In its petition, the Task Force recommended the Commission commence rulemaking to consider specific rule proposals and an extensive revision to the Commission's 9-1-1 Rules. Stakeholders filed comments supporting the proposed rules and petition. The Commission received no filings in opposition to the proposed rules or the Task Force recommendation to commence a rulemaking to revise the 9-1-1 Rules. The Commission granted the petition through its order issued July 13, 2017,¹⁶ and quickly commenced this rulemaking proceeding through its NOPR issued August 1, 2017.¹⁷ The rulemaking was noticed to all telecommunications stakeholders, including industry and PSAP representatives.

11. The Commission assigned the rulemaking to an ALJ, who received comments and held a public hearing on September 18, 2017. After comment and hearing, the rules adopted in the Recommended Decision, issued October 13, 2017, are largely unchanged from the consensus rules agreed to by the diverse stakeholder groups participating in the Task Force workshops. The adopted rules do, however, include corrections based on comments filed by interested participants in this rulemaking proceeding.

C. Exceptions

12. On October 30, 2017, LETA filed exceptions in response to the Recommended Decision. No other parties filed exceptions.

¹⁵ See Proceeding No. 17M-0319T.

¹⁶ See Decision No. C17-0561, Proceeding No. 17M-0319T.

¹⁷ Decision No. C17-0575, Proceeding No. 17R-0488T.

13. First, LETA describes the amended definition of Basic Emergency Service Provider (BESP) in the Adopted Rules. LETA does not state a specific problem with the definition or propose rule language. Rather, LETA seeks answers to two questions: (1) who would be responsible for implementing conditional rerouting of 9-1-1 calls in the event of an outage; and (2) what remedy a governing body or PSAP has if rerouting is not implemented timely.¹⁸

14. Second, LETA discusses other definitions that it believes are unclear or overlap. Specifically, LETA states that “feasible” is undefined and asks if the adopted rules are “clear enough” that the BESP is required to have geographic and physical diversity.

15. Third, LETA objects to the deletion of a definition for the term “9-1-1 facilities”. LETA states that the definition “should not be lost” and that its substance should be included in the definition of “9-1-1 facilities,” which definition is being retained.

16. On November 13, 2017, replies to LETA’s exceptions were filed by CTIA – The Wireless Association® (CTIA); Qwest Corporation, doing business as CenturyLink QC (CenturyLink); and the Colorado Telecommunications Association. These replies note that the adopted rules proposed through the Recommended Decision are based largely on the result of several months of intensive workshops, including a wide array of participants. CenturyLink asserts that LETA has pointed out no “error of law, fact or policy made by the [R]ecommended [D]ecision.” CenturyLink and CTIA also noted that LETA’s Exceptions include no alternative language for the Commission to consider. Responses also point out that LETA had both the

¹⁸ Condition 4 routing is the conditional rerouting of 9-1-1 calls to a local ten-digit telephone number when a local switch becomes isolated, preventing 9-1-1 calls from reaching the BESP’s selective router.

opportunity to participate and in fact participated in the Task Force efforts and rulemaking process that resulted in the adopted rules.

D. Discussion

17. LETA's exceptions raise worthwhile questions that can and should be addressed through other Commission processes rather than this rulemaking proceeding. For example, LETA's concerns about who is responsible for contingency routing is appropriately addressed as part of the newly expanded contingency plans required by the adopted 9-1-1 Rules. Likewise, the degree of diversity and redundancy required of the BESP is the type of topic to be addressed by the new 9-1-1 diversity planning process required by the adopted 9-1-1 Rules. Other concerns raised by LETA seek a degree of specificity within the rules that cannot reasonably be accommodated, especially when there is rapidly changing technology. Such specificity is appropriately included in a basic emergency service tariff, which is specific to a particular set of service offerings and provider.

18. Stakeholders interested in addressing these issues of specific applicability are encouraged to participate as appropriate in tariff proceedings, BESP application proceedings, and the 9-1-1 network diversity planning proceeding called for in the adopted rules to ensure that these important questions are raised in the discussion.

19. Regarding LETA's third area of concern, we find that a definition of "E9-1-1 facilities" is unnecessary, since the term is not used anywhere in the adopted rules. The existing definition of "E9-1-1 facilities" is also technologically specific; thus, keeping it or incorporating the substance of it into another definition would be counter to the goal of making the definitions more "technology neutral" and generally applicable. We deny LETA's request to

revise the rule. The adopted 9-1-1 Rules in the Recommended Decision, accomplish the following:

- (a) Delete obsolete and unnecessary rules;
- (b) Modify definitions to be more technology neutral and in line with current usage;¹⁹
- (c) Revise and clarify the certification process for basic emergency service providers (BESPs), sparing applicants from having to compare and combine the requirements of three different sections of the Commission's rules governing applications;²⁰
- (d) Update rules regarding the BESP's billing to local 9-1-1 governing bodies to match current practices and provide the Commission with flexibility in the future, in addition to creating a relationship between the BESP and the Commission's 9-1-1 Advisory Task Force to help ensure that future billing practices are accurate;²¹
- (e) Clarify comprehensive annual 9-1-1 contingency planning requirements for the BESP;²²
- (f) Establish a process by which the 9-1-1 community and the BESP will work together, within the structure of a Commission proceeding, to identify, prioritize, and plan for the improvement of basic emergency service network redundancy and diversity, statewide;
- (g) Remove outdated technical standards that were previously incorporated by reference but have now been removed in order that the 9-1-1 Advisory Task Force can develop and keep an updated list of standards that it will recommend the Commission consider when applying its rules, allowing the Commission to account for the rapidly changing nature of 9-1-1 technology and operational practices;²³ and
- (h) Update the role and responsibilities of the Commission's 9-1-1 Advisory Task Force to be more relevant to the current technology and areas in need of consideration.²⁴

¹⁹ Proposed Rule 2131.

²⁰ Proposed Rule 2134.

²¹ Proposed Rules 2136(d) and (e).

²² Proposed Rule 2143(d).

²³ *See, generally*, Proposed Rule 2143.

²⁴ Proposed Rule 2145.

20. We find that the rules, as adopted by the ALJ, move Colorado forward towards modernizing basic emergency service networks, including processes to ensure continued reliability of this critical network.

21. We adopt the rules as set out in the Recommended Decision with the minor revisions discussed below. As indicated above, we find that LETA's questions are best addressed through Commission proceedings outside of this rulemaking, including the processes established through the rules adopted by this Decision.

E. Final Edits

22. Two non-substantive errors in the adopted rules will also be corrected: (1) The word "and" will be inserted between the words "PSAPs" and "originating" in Rule 2136(i); and (2) the word "operator" will be deleted from Rule 2141(c).

23. The adopted rules with these minor revisions are attached to this Decision, as Attachment A, written in legislative format, and attached as Attachment B, written in final form.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed October 30, 2017, by the Larimer Emergency Telephone Authority (LETA) to Recommended Decision No. R17-0821 (Recommended Decision) are denied consistent with the discussion above.

2. The rules set out in the Recommended Decision are hereby adopted, including rule revisions with minor clerical edits, consistent with the discussion above.

3. Rules 4 *Code of Colorado Regulations* 723-2-2130 through 2159 and 2008(a) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, contained in Attachment A to this Decision and shown in final format in Attachment B,

are adopted consistent with the discussion above, and are available through the Commission's Electronic Filing (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=17R-0488T

4. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. 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.

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 29, 2017.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners