

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0480T

IN THE MATTER OF TEMPORARY RULES REGARDING THE PROCESS TO
IMPLEMENT HOUSE BILL 20-1293 TO ESTABLISH PROCESSES FOR THE
REMITTANCE AND DISTRIBUTION OF STATE 9-1-1 SURCHARGE FUNDS.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: November 10, 2020

Adopted Date: November 4, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to comply with the additions of, or amendments to, §§ 24-33.5-2103, 25-3.5-903, 29-11-100 to -107, 39-21-113 and 119.5, and 40-2-131, C.R.S., pursuant to House Bill (HB) 20-1293. Among its requirements, §§ 29-11-100.2 through 102.5, include that: (1) the Commission, by January 1, 2021, be prepared to receive remittances from originating service providers from the state 9-1-1 surcharge, created by § 29-11-102.3, C.R.S., and authorized at \$0.10 per 9-1-1 access connection per month established by the Commission;¹ (2) the Commission establish procedures for the distribution of those funds to the 9-1-1 governing bodies; and (3) the Commission promulgate rules concerning changes to the number of concurrent sessions for which a governing body is reimbursed.²

2. By this Decision, the Commission finds it imperatively necessary to adopt temporary rules to continue timely implementation of HB 20-1293 for statutory requirements

¹ See Decision No. C20-0690, Proceeding 20M-0337T issued September 29, 2020.

² § 29-11-102.3(3)(c)(III), C.R.S.

that begin January 1, 2021. Specifically, these temporary rules set forth processes and procedures to allow for the commencement of remittances to be made to the Commission of state 9-1-1 surcharge funds beginning on January 1, 2021, and shall be effective for 210 days from the effective date of this Decision, or until the Commission issues permanent rules to implement HB 20-1293. *See* § 40-2-108(2), C.R.S.

3. The Commission will address permanent rules on the processes for the remittance and distribution of state 9-1-1 surcharge funds, as well as the process for making Application by a 9-1-1 governing body to increase the number of concurrent sessions to be considered in the distribution schedule for the state 9-1-1 funds, and to fulfill the remainder of HB 20-1293's requirements through later proceedings and decisions.

B. Discussion, Findings, and Conclusions

4. On July 10, 2020, the Governor signed HB 20-1293, which, in addition to numerous other revisions related to the provision of emergency telephone service, required the Commission to set a new statewide 9-1-1 surcharge by October 1, 2020, to take effect on January 1, 2021. The January 1 effective date of the new statewide 9-1-1 surcharge necessitates the temporary rules made effective by this Decision.

5. In order to implement HB 20-1293 timely, temporary rules were implemented in Proceeding No. 20R-0335T to establish, by October 1, 2020, the process by which the Commission proposed and approved the threshold at which Applications are required for increasing Emergency Telephone Charges by a governing body; the rate of the state 9-1-1 surcharge; the wireless prepaid 9-1-1 charge; and a distribution schedule for the disbursement of state 9-1-1 surcharge funds to the 9-1-1 governing bodies.³

³ *See* Decision Nos. C20-0599 (issued in Proceeding No. 20R-0335T on August 17, 2020) and C20-0690.

6. While temporary rules and processes were required to meet October 1, 2020, statutory deadlines, the Commission also initiated stakeholder processes to seek input on full implementation of HB 20-1293 going forward, including in anticipation of a Notice of Proposed Rulemaking in the near future. Informal stakeholder proceedings remain ongoing.^{4,5}

7. Temporary rules enacted in Proceeding No. 20R-0335T established a process to establish the rate of the new state 9-1-1 surcharge by October 1, 2020, which the Commission ultimately established at \$0.10 per 9-1-1 access connection per month.⁶ However, the Commission did not establish the remittance procedure, nor did it establish the procedure by which the Commission would distribute those funds to the state's 58 9-1-1 governing bodies, nor the process by which 9-1-1 governing bodies could apply to change the number of concurrent sessions they have for the purposes of the distribution schedule. In order to implement HB 20-1293, these remittance and distribution processes must be in place.

8. While stakeholder workshops continue, we find that temporary rules must be in place to direct the remittance and distribution of state 9-1-1 surcharge funds by January 1, 2021. Through this proceeding, we therefore establish only those items that require Commission action by January 1, 2021,⁷ specifically the receipt of remittances to the Commission of the state 9-1-1 surcharge, the method for distributing those funds to the 9-1-1 governing bodies, and the

⁴ As indicated herein, stakeholder processes are ongoing in anticipation of the Commission initiating a comprehensive Notice of Proposed Rulemaking addressing implementation of HB 20-1293. To be included in notifications of future stakeholder workshops and informal processes, please contact the Commission's 9-1-1 Program Manager at 303-894-2871, or by email at daryl.branson@state.co.us.

⁵ Participants in the ongoing informal stakeholder process in anticipation of a Notice of Proposed Rulemaking were consulted regarding the temporary rules being issued by this Decision.

⁶ See Proceeding No. 20M-0337T, Decision No. C20-0690.

⁷ For example, HB 20-1293 also allows the Commission to promulgate rules to resolve disputes regarding the collection, payment, remittance, and audit of the Emergency Telephone Charge and statewide 9-1-1 surcharge, and to impose penalties for noncompliance with certain statutory provisions and Commission rules. These and other processes will be addressed through future rule consideration.

establishment of a process by which 9-1-1 governing bodies may apply to change the number of concurrent sessions for which they are credited in the distribution schedule for the collected state 9-1-1 funds.

9. We recognize that statutory changes will require further Commission action and additional rules. These changes will be addressed through later proceedings and decisions.

10. The Commission may adopt a temporary rule without engaging in the processes required by the Administrative Procedure Act for a permanent rule “only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of [permanent rulemaking] would be contrary to the public interest and makes such a finding on the record.” § 24-4-103(6)(a), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

11. Section 29-11-100.2(1), C.R.S., states that “dialing 911 is the most effective and familiar way the public has of seeking emergency assistance,” that “[b]asic emergency service... is fundamentally a government concern and the exercise of police powers for the protection and betterment of the health, safety, security, and welfare of the public,” and that HB 20-1293 “is intended to provide funding mechanisms for the continued technological advancement of emergency telephone service for all users of the system.” In § 19 of HB 20-1293, the General Assembly found that the act is “necessary for the immediate preservation of the public peace, health, or safety.”

12. The portions of HB 20-1293 dealing with the implementation of the state 9-1-1 surcharge and the distribution of those funds, requires that service suppliers begin

remitting state 9-1-1 surcharges to the 9-1-1 surcharge trust cash fund beginning January 1, 2020, and that the Commission begin distribution of those funds within 60 days of receipt of those funds, thus indicating the General Assembly's desire that these funding mechanisms quickly begin supporting the state's emergency telephone service. With the distribution of those funds, it is also necessary for the Commission to have a process in place by which a 9-1-1 governing body may request to change the number of concurrent sessions it is being credited for the purposes of the distribution schedule. Awaiting completion of a permanent rulemaking under Title 24 would delay the process beyond the January 1, 2021 deadline, would prevent the timely implementation of the funding mechanism intended to support basic emergency services and the health, safety, security, and welfare of the public.

13. The Commission is also aware that implementing a new surcharge and new remittance procedures may take additional efforts on the part of the service suppliers remitting said surcharges, and wishes to provide those service suppliers with ample opportunity to make necessary changes to their systems to comply.

14. Through HB 20-1293, the General Assembly recognized that additional funds are needed to support the emergency telephone service beginning January 1, 2021, and among other remedies outlined in the bill, chose a statewide 9-1-1 surcharge as an appropriate funding mechanism. Adoption of temporary rules allows the Commission to meet the deadlines imposed by statute and will timely address the need for additional funds to support the emergency telephone service for the benefit of all users of the system.

15. We find that these matters require our immediate and continuing attention to comply with state law and to protect the health, safety, and welfare of the public, which uses the emergency telephone system "as the most effective and familiar way ... of seeking emergency

assistance.” We also find that the time that will transpire before completing a permanent rulemaking on these issues would prevent fulfillment of HB 20-1293’s January 1, 2021 deadlines and would risk the health, safety, and welfare of the public which depends on an adequately-funded emergency telephone system. Thus, we immediately adopt temporary rules addressing the establishment of certain funding mechanisms that are imperatively necessary to timely comply with state law and to preserve public health, safety, and welfare.

16. In implementing these revisions, we find modifications to the Commission’s existing rules regarding the remittance of Telecommunications Relay Service surcharges are warranted in these temporary rules. The goal of these changes is to permit originating service providers to register with the Commission for the remittance of both state 9-1-1 surcharge funds and TRS surcharge funds using combined forms for both surcharges.

17. By this Decision, we adopt temporary rules that accomplish the following:

- a. set forth the processes and procedures by which service suppliers, also referred to in the rules as originating service providers, will remit state 9-1-1 surcharge funds to the 9-1-1 trust cash fund;⁸
- b. set forth processes and procedures by which the Commission will distribute funds remitted to the 9-1-1 trust cash fund, excepting funds retained for actual administrative costs up to four percent, to the 9-1-1 governing bodies of the State of Colorado;⁹
- c. set forth processes and procedures by which 9-1-1 governing bodies may apply to increase the number of concurrent sessions for which they are credited as part of the distribution schedule for funds from the 9-1-1 trust cash fund;¹⁰ and

⁸ See § 29-11-102.3(3)(a), C.R.S.

⁹ See § 29-11-102.3(3)(c)(I), C.R.S.

¹⁰ See § 29-11-102.3(3)(c)(III), C.R.S.

- d. synchronizes and combines the processes for the remittance of state 9-1-1 surcharge funds and the telecommunications relay service surcharges.¹¹

18. The temporary rules shall be effective on the mailed date of this Decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

19. The temporary rules in legislative (strikeout and underline) format, Attachment A, the temporary rules in final version format, Attachment B, and a copy of HB 20-1293 are available through the Commission's E-filing system¹² at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=20R-0480T

II. **ORDER**

A. **The Commission Orders That:**

1. The rules in final version format are available in this proceeding through the Commission's E-Filings system are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be effective on the mailed date of this Decision.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

¹¹ Note: TRS surcharge remittances are currently required on a quarterly basis. With the changes implemented by these temporary rules, TRS surcharges for the last quarter of 2020 shall be due by January 31, 2021, and TRS surcharges remitted in January of 2021 shall be due by February 28, 2021. Thereafter, all TRS surcharge remittances will be due by the last day of the following month.

¹² From the Electronic Filings (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number, 20R-0480T, in the "Proceeding Number" box and then selecting "Search."

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 4, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners