

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0099T

IN THE MATTER OF THE PROPOSED RULES REGARDING THE IMPLEMENTATION
OF HOUSE BILL 20-1293 AND THE 9-1-1 STATEWIDE SURCHARGE MECHANISM
PURSUANT TO 4 CODE OF COLORADO REGULATIONS 723-2.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
AMENDING RULES**

Mailed Date: May 20, 2021

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I. **STATEMENT**

1. On March 4, 2021 by Decision No. C21-0118, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* 723-2-2130 through 2159, 2003, 2010, 2011, and 2827 (9-1-1 Rules).

2. The changes proposed were reflective of the changes to the Colorado statute realized by the enactment of House Bill (HB) 20-1293 and were consistent with draft rules developed through informal stakeholder workshops led by Commission Staff (Staff) prior to the issuance of this NOPR. The proposed rules were included as Attachments A and B to that Decision. Comments from interested participants were encouraged.

3. Four initial comments were received. They were from CTIA – the Wireless Association (CTIA); Qwest Corporation, doing business as CenturyLink QC (Lumen); the Boulder Regional Emergency Telephone Service Authority (BRETSA) and the Montrose

Emergency Telephone Service Authority, the Ouray County Emergency Telephone Service Authority, and the San Miguel County Emergency Telephone Service Authority (West Region 9-1-1 Authorities).

4. Three response comments were received. The response comments were from Lumen, BRETSA, and the Colorado Telecommunications Association (CTA).

5. A rulemaking hearing was held on April 19, 2021. At the conclusion of the hearing, additional written comments and replies to comments were allowed.

6. BRETSA and Bresnan Broadband of Colorado, LLC and Time Warner Cable Information Services (Colorado), LLC (collectively, Charter) filed additional comments.

7. BRETSA filed additional reply comments

A. House Bill 20-1293 and Temporary Rules

8. On July 10, 2020, Governor Jared Polis signed HB 20-1293, which provided comprehensive updates to Colorado 9-1-1 funding through changes in §§ 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. In addition to numerous other revisions related to the provision of emergency telephone service, HB 20-1293 provides the Commission with additional authorities and duties in regulating 9-1-1 service funding in the State, and immediately required the Commission to set a new statewide 9-1-1 surcharge by October 1, 2020, to take effect on January 1, 2021.

9. In order to implement HB 20-1293 timely, temporary rules were implemented in Proceeding No. 20R-0335T to establish the process by which the Commission would propose and approve, by October 1, 2020, 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.¹

10. While temporary rules and processes were required to meet the October 1, 2020 statutory deadlines, the Commission at the same time, initiated stakeholder processes to seek input on full implementation of HB 20-1293 going forward, including in anticipation of a NOPR.

11. Through the processes adopted in temporary rules through Proceeding No. 20R-0335T, the Commission established the new State 9-1-1 surcharge before October 1, 2020, at \$0.10 per 9-1-1 access connection per month.² Through subsequent order, while stakeholder processes for full implementation of HB 20-1293 remained ongoing, the Commission moved forward with temporary rules to implement those items required by the statute to take effect on January 1, 2021, including a remittance and distribution procedure, in addition to establishment of procedures 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.³

12. While temporary rules provided processes for the necessary implementations of HB 20-1293 required by October 1, 2020 and January 1, 2021, the Commission noted that full implementation of HB 20-1293 also allows the Commission to promulgate rules to resolve disputes regarding 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. Workshops led by Staff conducted from October of

¹ See Decision No. C20-0599, Proceeding No. 20R-0335T, issued August 17, 2020, and Decision No. C20-0690, Proceeding No. 20M-0337T, issued September 29, 2020.

² See Decision No. C20-0690, Proceeding No. 20M-0337T, issued September 29, 2020.

³ See Proceeding No. 20R-0480T, Decision No. C20-0795, issued November 10, 2020.

2020 through January of 2021⁴ provided stakeholder input on permanent implementation of the processes required for October 1 and January 1 requirements annually going forward, in addition to the processes to resolve disputes, provide audit, and if necessary impose penalties required by HB 20-1293.

13. Stakeholder processes resulted in near-consensus rule proposals on all areas of implementation of HB 20-1293. Those near-consensus rules were the initial starting point for this NOPR.

14. The Administrative (ALJ) would like to commend Mr. Daryl Branson from the Commission and all of the stakeholders who participated in the workshops. It was refreshing for the undersigned ALJ to find that almost all issues had been resolved before the rulemaking hearing. Regulation works when it is a cooperative process that respects and gives voice to all parties.

B. Proposed Rule Changes

15. In initiating the NOPR, the proposed suggested revisions resulted from the joint stakeholder workshops in October of 2020 through January of 2021.

16. An overview of the changes proposed by the Commission fell into general categories. Interested stakeholders were invited to comment on the proposed rule revisions and provide additional suggested changes.

⁴ Workshop participation included diverse stakeholders, including without limitation industry representatives, governing authorities, Public Safety Answer Point representatives, in addition to Commission Staff. Workshop participants and all members of the interested public are encouraged to further propose revisions to and comment on the proposed rules through this NOPR proceeding.

1. Rule 2003 Petitions

17. BRETSA notes that the statute allows governing bodies to petition the Commission to pay for a locally conducted audit of an originating service provider's collection and remittance of emergency telephone charges, but that statute does not require governing bodies to seek permission from the Commission to conduct the audit (see § 29-11-103, C.R.S.).

18. BRETSA is correct that this language is problematic, but incorrect about the solution. BRETSA states that the language must be stricken entirely, but petitions need to come before the Commission for funding of locally conducted audits of providers. Instead of just striking the language entirely, the word "and" will be removed from proposed Rule 2003(a)(VI), so that it reads: "for approval of funding of an audit" instead of "for approval of and funding of an audit."

2. Rule 2131: Definitions

19. BRETSA recommends including a definition of "Emergency Telephone Charge Threshold Amount."

20. Lumen opposes BRETSA's proposal, stating that the meaning of the term is plain, and that adding a definition for this term would "add complexity and decrease the clarity of the rules".."

21. The ALJ agrees with Lumen and declines to include a definition of "Emergency Telephone Charge Threshold Amount."

a. (t) Geographic Area

22. BRETSA recommends changing the definition of "geographic area" to "governing body response area."

23. Lumen opposes BRETSA's proposal, stating that BRETSA fails to explain why the term "geographic area" is problematic.

24. The ALJ disagrees with BRETSA's proposed change since changing this term would require changes in other rules not contemplated in this rulemaking. Also, changing the term to "response area" would be nonsensical since governing bodies don't respond to emergencies, they only fund Public Safety Answer Points (PSAPs).

b. (y) Originating Service Provider

25. BRETSA recommends eliminating the term "originating service provider" in favor of the statutorily defined term, "service supplier".

26. CTIA opposes BRETSA's proposal. "Originating service provider" is a commonly used term in the industry and well understood.

27. Lumen argues that BRETSA's argument is "stylistic" only.

28. The ALJ believes this change is generally unnecessary and it shall not be adopted.

3. Rule 2141: Multi-line Telephone Systems (MLTS) Complaint Portal

29. BRETSA notes that the title of this section, "Obligations of Multi-Line Telephone Systems (MLTS)", no longer accurately describes the contents of the rule and that the phrase "Obligations of" should be removed.

30. Lumen agrees that the header of this section of the rules should be changed consistent with the suggestion of BRETSA.

31. The ALJ agrees. The phrase "Obligations of" shall be removed from the title of Rule 2141. The new title of Rule 2141 shall be Multi-Line Telephone Systems (MTLS) Complaint Portal.

4. Rule 2147: Applications by the Governing Body for Approval of an Emergency Telephone Charge in Excess of the Threshold Established by the Commission

32. BRETSA takes issue with the requirement that documentation of costs for any line item over \$50,000 be provided. They state that: (1) almost every line item will be over \$50,000; and (2) providing documentation of costs may violate some confidentiality agreement with the vendor(s).

33. Regarding (1), the ALJ does not believe that most line items in a 9-1-1 governing body's budget are in excess of \$50,000. It is more likely to be true of the larger 9-1-1 governing bodies, but the majority of the applications received by the Commission have one or two budget lines over \$50,000 for a year. Regarding (2), 9-1-1 governing bodies are public entities. Their budgets are public. It would be unreasonable to expect the Commission to approve increases in the emergency telephone charge if the governing body cannot document its expenses due to a confidentiality agreement with a vendor. Even if confidentiality were required, and allowed under Colorado law, the governing body could file the document in question with the Commission as "confidential". It has not happened, but a governing body has this option.

5. Rule 2148. Process for the Establishment of Annual Emergency Telephone Charge Threshold, State 9-1-1 Surcharge Rate, Wireless Prepaid 9-1-1 Surcharge Rates, and Associated Fund Distribution Schedules

34. BRETSA recommends changing the term "9-1-1 governing body" to the term "governing body", which is defined in 2131 and comports with the statutorily defined term in § 29-11-101, C.R.S.

35. The ALJ finds this recommendation unnecessary and would require changes in other rules not contemplated in this rulemaking.

36. Comcast and Charter recommend adding language that would cap emergency telephone charges applied to multi-line telephone systems at 25 lines. Comcast and Charter argue that it is difficult to determine what the "simultaneous outbound calling" capacity is for an MLTS. They also make the argument that the statute provides the Commission with sufficient authority to modify how emergency telephone charges are assessed on MLTS, pointing primarily to § 29-11-101.5, C.R.S. Finally, they point to several other states that have capped 9-1-1 surcharges at 25 instances on multi-line telephone systems. but do not offer any reasoning as to why 25 was chosen as the "correct number."

37. BRETSA notes that the emergency telephone charge is a liability of the customer, not the provider, and no customers have requested capping MLTS systems at 25 instances of the emergency telephone charge. BRETSA also noted that the statute exempts state and local government customers from paying emergency telephone charges and exempted prepaid wireless telecom customers from paying the Eligible Telecommunications Carrier (ETC) (since they have a separate prepaid surcharge). BRETSA is arguing that if the Colorado Legislature (Legislature) had intended MLTS customers to be exempt from paying the surcharge in the same manner as everyone else, it would have included the exemption in the statute.

38. The statute is prescriptive regarding how the emergency telephone charge is assessed, stating in § 29-11-102(2)(a), C.R.S., that "A governing body is hereby authorized, by ordinance or resolution as appropriate, to impose the charge authorized in subsection (1) of this section per month per 911 access connection...." and the definition for "911 access connection" in § 29-11-101(2), C.R.S., includes a statement that "The number of 911 access connections is determined by the configured capacity for simultaneous outbound calling." This means that for multi-line telephone systems, the number of 9-1-1 access connections equals the number of

simultaneous outbound calls that the system is configured to be capable of making. Arbitrarily capping this number at 25 would be contrary to the statute. Additionally, Comcast and Charter have failed to make a good argument for why 25 lines is the appropriate cap, other than to state that it is the number that some other states have imposed legislatively. Without sufficient reasoning for why 25 lines is the correct number, the ALJ shall deny the recommendation of Comcast and Charter.

6. Rule 2149: Annual Data Collection from 9-1-1 Governing Bodies

39. BRETSA recommends allowing the governing bodies to submit address tables to the Commission and update them on a regular basis, and to make them confidential except for the service providers to use to accurately determine which governing body should be receiving emergency telephone charge remittances.

40. The ALJ does not believe that Staff has the resources or capacity to manage data submissions and access to that data to the degree that BRETSA is proposing and shall therefore reject the recommendation.

a. Rule 2149(a)(II)

41. BRETSA recommends the word "annual" be changed to "mandatory". Instead of the data collection being conducted for the purpose of responding to "annual" data requests, it should be to respond to "mandatory" data requests from the federal government.

42. There are currently no mandatory data requests from the federal government regarding 9-1-1. The Federal Communications Commission (FCC) and the national 9-1-1 program office both issue data requests on an annual basis. The Commission responds so Colorado will be viewed a good community member in the 9-1-1 ecosystem, and because if the Commission does not, the State may be deemed ineligible for future federal grants. BRETSA's

premise for proposing this change is incorrect. Replacing "annual" with the word "mandatory" would render this rule moot and shall be denied.

b. Rule 2149(a)(II)(A)-(K)

43. BRETSA recommends deletion of the data elements required in the annual data collection found in 2149(a)(II)(A)-(K). BRETSA's reasoning for removing these data elements is that they are not required as part of the Commission's annual State of 911 Report to the Legislature, and the federal reports are not mandatory.

44. Lumen takes no position on this proposal, but states that it is inconsistent for BRETSA to "demand that the Commission require information from carriers that they cannot provide while asserting a jurisdictional shield against governing bodies providing information."⁵

45. Section 29-11-102(4), C.R.S., states that governing bodies shall comply with annual reporting requirements from the Commission for the following purposes:

- (1) Federal reporting requirements;
- (2) Federal data requests; and
- (3) The Commission's annual State of 911 Report to the Legislature

46. BRETSA argues that (1) does not exist, which is correct, but fails to note that the statute allows the Commission to collect data for (2). BRETSA also incorrectly argues that the data is unnecessary for the Commission's annual report to the General Assembly, but all of the items listed in § 2149(a)(II), C.R.S., are relevant to funding of 9-1-1 services, which is a required element of our annual report to the Legislature.

47. BRETSA also argues that the State of 911 Report is only intended for the transmission of data to the General Assembly about 9-1-1 service narrowly defined as the

⁵ Lumen's Response Comments at p. 3.

delivery of 9-1-1 calls to the PSAP (otherwise defined as "Basic Emergency Service"). The ALJ believes that § 40-2-131, C.R.S., is clearly requiring information on 9-1-1 service in a wider context, not just Basic Emergency Service, particularly as it relates to § 40-2-131(1)(g), C.R.S., which requires the report to include "A discussion of 911 funding and fiscal outlook, including current funding sources and whether they are adequate for 911 service in the state". Section 40-2-131(2), C.R.S., also requires that the Commission "consult with public safety answering points [and] 911 governing bodies," which would be unnecessary if we were only talking about funding of Basic Emergency Service. Furthermore, if the Legislature meant to restrict the Commission's reporting to only Basic Emergency Service, it would have used that term rather than the more expansive term "9-1-1 services".

48. BRETSA further notes that the Commission has no authority to enforce the provisions of § 29-11-104, C.R.S. This is a strawman argument, because the rules do not do anything to enforce that section of the statute.

49. BRETSA argues that inclusion of data elements from past federal data requests into our rules may be "both over- and under-inclusive". It is possible that future data requests from the FCC may not require all of the data elements listed in proposed Rule 2149, but they would still be necessary for the Commission's annual report to the Legislature, so they cannot be over-inclusive based on potential changes to future data requests. The recommendation of BRETSA is rejected.

50. BRETSA also claims that proposed Rule 2149(a)(II)(K) is improper because it delegates authority to the Task Force.

51. Since Rule 2149(a)(II) says that this list is not exhaustive, then striking any particular item from the list has no actual effect. In order to avoid the appearance of the

Commission improperly delegating authority to the Task Force, the ALJ agrees it would be best to strike this line in the rules.

52. BRETSA recommends allowing governing bodies to voluntarily submit GIS data to the Commission regarding their collection areas.

53. Lumen in its comments states this is unnecessary because the proposed rules already allow it.

54. The ALJ agrees that the rules already allow it.

7. Rules 2150 Administration of the 9-1-1 Surcharge Trust Cash Fund.

55. BRETSA recommends requiring that originating service providers disclose the governing body jurisdictions in which they are supplying service as part of the form that originating service providers are required to use when remitting 9-1-1 surcharges.

56. CTA opposes this proposal, stating that the Commission does not have the authority to require this information, and that it would be burdensome and would require the disclosure of commercially-sensitive information.

57. The ALJ finds that keeping track of this information and keeping it up-to-date would be burdensome and difficult for both the OSPs and Staff. BRETSA's recommendation will be denied.

8. Rule 2151 Use and Distribution of the 9-1-1 Surcharge Trust Cash Fund.

58. BRETSA recommends removing the requirement that Staff obtain the number of concurrent sessions for which each governing body is being invoiced, and instead direct the Basic Emergency Service Provider (BESP) to provide that information.

59. Lumen argues that BRETSA's concern is a "distinction without a difference" and that removing this requirement is unnecessary.

60. The requirement BRETSA is proposing already exists in the proposed modification to Rule 2136 (Obligations of BESPs). The ALJ will remove the statement regarding Staff collecting the number of concurrent sessions from the BESP that is found in 2151(b), but not adding the requirement that the BESP provide that information in 2151 because it would be redundant with 2136.

61. BRETSA recommends that rather than requiring applications for concurrent sessions to be filed by June 1, the Commission should simply state that applications to increase the number of concurrent sessions for which a governing body is receiving distributions must be approved by October 1 in order to be included.

62. The distribution formula for the 9-1-1 surcharge trust cash fund must be established by Commission order by October 1, by statute, meaning that giving applications until October 1 to be approved does not work with the Commission required deadline for approval of the formula. The ALJ does agree that it makes more sense to put a date by which applications must be approved to be considered, rather than a date by which they must be filed, but believes this date needs to be earlier so that Staff has time to make recommendations to the Commission regarding the formula for the Commission to approve by the October 1 deadline. The ALJ will change the rule as recommended by BRETSA, but using an August 1 deadline for applications to be approved rather than October 1.

63. BRETSA objects to the data elements required by the proposed rules in an application to increase the number of concurrent sessions for two reasons: (1) they are not forward thinking, in that it asks for call volume statistics but the application itself may be

requested on the basis of forward-looking projections; and (2) it "invites Commission second-guessing of public safety professionals".⁶

64. The ALJ will not change the proposed rule. Regarding (1), if a governing body wishes to provide *additional* information regarding why they want more concurrent sessions in their application, including forward-looking projections, there is no reason they cannot do so. In fact, the proposed rules call for the inclusion of "any other information that the governing body deems relevant to its request to change its number of concurrent sessions." As such, there is no need to require that forward-looking projections be included in the application. If the governing body believes it helps the application, it already has the ability to include them. Regarding (2), the rule does allow the Commission to second-guess local requests to increase the number of concurrent sessions, but that is how the Legislature intended this to work. If the Commission's judgment were not expected to be applied regarding these applications, the Legislature would not have allowed the Commission to create a process for requesting them in the first place. BRETSA seems to be suggesting that the Commission should simply rubber-stamp requests to increase the number of concurrent sessions at a governing body rather than exercise any sort of analysis. The reason for the application is that if the Commission sets the state 9-1-1 surcharge rate at a high enough level, the distributions to the governing bodies (which are based on the number of concurrent sessions) would be higher than the tariffed price of the concurrent sessions themselves. This would create a perverse incentive for a governing body to purchase more concurrent sessions than they need so they could receive a larger percentage of distributions from the 9-1-1 surcharge trust cash fund. Requiring an application that is reviewed by Staff and approved by the Commission puts a break on that incentive. It should also be noted

⁶ BRETSA Comments at ¶ 45

that there is nothing stopping a 9-1-1 governing body from obtaining additional concurrent sessions even if the Commission denies the application. The application is only to increase the number of concurrent sessions for which the governing body is credited when determining the distribution percentages for the 9-1-1 surcharge trust cash fund.

9. Rule 2152: Audit of Service Providers Regarding Emergency Telephone Charge and 9-1-1 Surcharge Practices

65. BRETSA recommends adding a prohibition against providers "backing into" their line counts by taking the total they collected, dividing that by the surcharge, and reporting it as the number of lines against which the state 9-1-1 surcharge and emergency telephone charge is assessed.

66. CTA opposes BRETSA's proposal stating that this is an observation more than a substantive proposal.

67. Lumen opposes BRETSA's proposal, stating that OSPs would not be able to comply.

68. Comcast and Charter oppose BRETSA's proposal, noting that even BRETSA admits that it does not know if BRETSA's proposed change would yield different results.

69. In follow-up comments, BRETSA appears to reverse its position.

70. The ALJ believes this additional prohibition is unnecessary, since Rule 2152(b)(VI) already states that remittances must be based on the actual number of 9-1-1 access connections within the governing body's jurisdiction.

71. BRETSA proposes a new rule that would create a cyclical audit schedule, in which every provider is audited on a rotating basis.

72. CTA opposes the imposition of an audit cycle, stating that it would be burdensome on both the Commission and the carriers.

73. Lumen also opposes BRETSA's change. They state that mandatory audit cycle would be "massively expensive, intrusive and wasteful".⁷

74. Charter and Comcast oppose BRETSA's change, stating that a mandatory audit cycle would be costly and inefficient, and that there is no evidence of widespread noncompliance. They suggest that targeted audits would yield better results, and that the proposed rules strike the appropriate balance.

75. While Staff may implement an audit rotation cycle for all providers, there does not need to be a rule that allows Staff to do so since there does not need to be a reason to perform an audit under the statute or these proposed rules.

76. Putting it in the rules that Staff must perform audits on a rotating four to eight- year rotation is impractical and unnecessarily burdensome both on Staff and the OSPs.

77. The ALJ agrees with BRETSA's follow-up comments that audits should act as a deterrent against bad behavior by the service providers, but the ALJ believes that this goal is best served by providing Staff with the flexibility to determine when audits take place.

a. Rule 2152(a)(V)

78. BRESTSA States that 2152(a)(V) restricts audits to only reviewing collection and remittance of emergency telephone charges or the state 9-1-1 surcharge, but not both, and that doing so is inefficient.

⁷ Lumen's Response Comments at p. 5.

79. CTA opposes BRETSA's redline "fix" for this rule because it removes the phrase that limits audits to only addressing emergency telephone charges and the 9-1-1 surcharge, and replaces it with "shall include", which implies that other aspects of an OSP's finances could be part of the audit. They also believe that BRETSA's removal of the words "governing body" in their redline revision would essentially allow governing bodies to conduct "unbound audits" of OSPs.

80. Lumen agrees that there are efficiencies to be found in doing emergency telephone charge and 9-1-1 surcharge audits together, but that it should be permissive rather than required.

81. Comcast and Charter interpret that the proposed rules do not intend to limit audits to reviewing only the emergency telephone charge or 9-1-1 surcharge, but never both. They state that while it would make sense to audit both in some circumstances, it should not be required to audit both anytime an audit is performed.

82. BRETSA, in its second-round comments, agreed with Lumen's suggestion that audits be allowed for both ETC remittances and state 9-1-1 surcharge remittances, but not required to cover both.

83. It is not the intent of this proposed rule to limit audits to considering emergency telephone charges or state 9-1-1 surcharges, but not both, but it is an understandable interpretation. The purpose of the rule is to prevent either the Commission or the governing bodies from delving into other aspects of an originating service provider's finances that are unrelated to either the state 9-1-1 surcharge or the emergency telephone charge. Furthermore, the statute gives the Commission authority to audit both the 9-1-1 surcharge and the emergency telephone charge, but only gives governing bodies the authority to audit the emergency telephone

charge. Rather than striking the rule the ALJ will rewrite it into two separate subparagraphs: “(V) Audits initiate the Commission shall be limited to the collection and remittance of emergency telephone charges and state 9-1-1 surcharges.” and “(VI) Audits initiated by one or more governing bodies shall be limited to the collection and remittance of emergency telephone charges.”

b. Rule 2152(e)

84. BRETSA argues that proposed Rule 2152(e) is improper because it requires originating service providers to divulge confidential customer information and suggests alternate language. The language as it currently exists requires originating service providers to provide governing bodies, upon their request, billing examples from a reasonable number of customer addresses randomly selected in a given area. The modified language as proposed by BRETSA would provide the governing body only with the "code" for the governing body associated with each address.

85. Lumen opposes BRETSA's recommended change, stating that it is confusing and does not address the issue of confidentiality that BRETSA states that it is concerned with.

86. In BRETSA's follow-up comments, it says that "for either service providers or the governing body to randomly select the addresses would be inefficient as the service provider wouldn't choose an appropriate sample of the random selection and the governing body doesn't know which addresses to ask for."

87. The language in the proposed rule is taken almost verbatim from the statute, § 29-11-103(7)(a), C.R.S., which states that "[t]he service supplier shall cooperate with governing bodies to provide a reasonable number of randomly selected service addresses for

verification of collection and remittance at no charge". The time to argue for different language would have been during the legislative process.

88. Furthermore, BRETSA is assuming that providers have a "911 governing body code" in their billing systems, which may or may not exist. Concerning BRETSA's concern in the second round comments, no solution is offered, and the rules almost completely mirror the statutory language in § 29-11-103(7)(a), C.R.S.

89. To address the confidentiality issue highlighted by BRETSA above, Lumen proposes an alternate solution of adding the words "without disclosing any customer-identifying information" at the end of proposed Rule 2152(e), between the words "no charge" and the period.

90. The ALJ agrees that this addresses the confidentiality issue and will be adopted.

10. Rule 2153: Governing Body Funding Petition and Petition Requirements

a. Rule 2153(b)

91. BRETSA states that 2153(b), which requires governing bodies to submit petitions to pay the expenses of audits must be submitted 60 days before the commencement of the audit, is improper.

92. Lumen opposes this change, stating that the Commission has a role in the application of its own rules, which would be a necessary part of any audit, and that BRETSA is inappropriately trying to remove the Commission from its necessary role as an arbiter in any audit process.

93. The ALJ believes it makes no sense to allow governing bodies to conduct audits at their own expense and only ask the Commission for permission to reimburse them for the audit

after the fact. If a governing body wishes for the Commission to pay for an audit, it should make that request prior to the audit being conducted. Any change is rejected.

b. Rule 2153(c)(I)

94. BRETSA notes that proposed Rule 2153(c)(I) requires that petitions to fund audits include the service area of the entity that the governing body proposes to audit. The governing body may not have knowledge of the entity's service area.

95. The ALJ agrees and Rule 2153 (c)(I) shall be stricken.

c. Rule 2153(d)

96. BRETSA states that proposed Rule 2153(d) is problematic in that the governing body cannot know which governing bodies are served by a particular originating service provider.

97. The ALJ agrees. The proposed rule would require the governing body filing a petition to provide it to all other governing bodies in the entity's service area and to the 9-1-1 Advisory Task Force. This will be changed to provide it only to the Task Force, which can then distribute it to all of the governing bodies.

11. Rule 2154: Audit Notification Requirements

98. BRETSA argues that the Commission's 9-1-1 Advisory Task Force is not an appropriate body to receive or post notifications concerning audits as described in Rule 2154.

99. Lumen opposes this change. Lumen notes that the Task Force already notifies its participants about ongoing Commission proceedings related to 9-1-1 service and that the addition of information about upcoming or ongoing audits is an incremental change and does not make the Task Force a party to the audit.

100. Charter and Comcast also oppose this change. They support the audit notification and publication requirements in both 2154(a) and (c) because they would create a central repository of audit information, promoting increased transparency and "a more efficient use of government and carrier resources". Interpreting this sentiment, they believe that if a governing body is going to audit a carrier with customers in other governing bodies' territories, they would rather be audited by all of them at once rather than one at a time.

101. The ALJ denies this change. BRETSA states that the Task Force does not have standing to intervene in a petition to fund an audit, but whether this is true or not is irrelevant. The Task Force is not receiving notifications of audits so that it may intervene; it is receiving notifications of audits so that it may serve as a repository of information regarding ongoing or upcoming audits for the benefit of participants in the Task Force.

II. ORDER

A. The Commission Orders That:

1. The Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2, attached to this Recommended Decision in legislative/strikeout format as Attachment A, and in final format attached as Attachment B, are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0099T

2. 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.

3. If this Recommended Decision becomes a Commission Decision, the relevant rules are adopted on the date the Recommended Decision becomes a final Commission Decision.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the participants and the representative group of participants, 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.

5. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director