

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22M-0341T

IN THE MATTER OF ESTABLISHING THE 2022 EMERGENCY TELEPHONE CHARGE THRESHOLD, STATEWIDE 9-1-1 SURCHARGE, PREPAID WIRELESS 9-1-1 CHARGE, AND SURCHARGE DISTRIBUTION FORMULAS PURSUANT TO §§ 29-11-102 THROUGH 102.5, C.R.S.

**COMMISSION DECISION GRANTING INTERVENTIONS;
AND ESTABLISHING THRESHOLD, SURCHARGE AND
CHARGE AMOUNTS, AND DISTRIBUTION FORMULA**

Mailed Date: September 22, 2022
Adopted Date: September 21, 2022

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I. BY THE COMMISSION**A. Statement**

1. The Commission opened this proceeding through Decision No. C22-0447, adopted July 27, 2022 (Opening Decision) to fulfill the Commission's obligations under §§ 29-11-102 through 102.5, C.R.S., which require the Commission establish by October 1, annually, the local Emergency Telephone Charge threshold, a statewide 9-1-1 surcharge, a prepaid wireless 9-1-1 charge, a formula for distribution of money from the statewide 9-1-1 surcharge to governing bodies, and a formula for distribution of money from the prepaid wireless 9-1-1 charge to governing bodies, each to be effective the following January 1.

2. Through this Decision, we address intervention pleadings and establish the following amounts and formula to be effective January 1, 2023: (1) an authorized Emergency Telephone Charge threshold of \$1.97; (2) a statewide 9-1-1 surcharge of \$0.09; (3) a prepaid wireless 9-1-1 charge of \$1.71; (4) a distribution formula through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding four percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its Public Safety Answering Points (PSAPs) as a percentage of the total number of concurrent sessions in the state; and (5) a distribution formula through which the Colorado Department of Revenue will distribute funds from the prepaid wireless 9-1-1 charge, less administrative costs to be determined by the Department of Revenue but not exceeding three percent, to each 9-1-1 governing body in amounts proportional to the number of wireless 9-1-1 calls received at its PSAPs as a percentage of the total number of wireless 9-1-1 calls received by all PSAPs in the state.

B. Background

3. As described in our Opening Decision, we proposed for participant comment, amounts and formulas required by statute to be established by October 1, 2022, with an effective date of January 1, 2023. The proposed rates and distribution formulas were calculated as prescribed by statute and 4 *Code of Colorado Regulations* (CCR) 723-2-2148 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

4. Interested persons were invited to submit comments or briefing, in addition to intervention requests, by August 19, 2022, and to submit responsive briefs or comments by September 2, 2022.¹

5. Intervention pleadings and comments were timely filed by the following: the Douglas County Emergency Telephone Authority and the El Paso-Teller County Emergency Telephone Service Authority, (collectively, "Douglas and El Paso-Teller"); the Office of Utility Consumer Advocate (UCA); the Arapahoe County 911 Authority and the Jefferson County Emergency Communications Authority, (collectively, "AAJ Authorities"); and the Boulder Regional Emergency Telephone Service Authority (BRESTA). CenturyLink Technologies dba CenturyLink QC (CenturyLink) filed a late intervention on August 22, 2022. Additionally, comments without an intervention were filed by the Colorado Council of Authorities (CCOA).

6. Initial pleadings and comments largely support or remain neutral to the Commission's proposals in its Opening Decision, except for the proposal to reduce the statewide 9-1-1 surcharge rate from \$0.09 to \$0.08 per 9-1-1 access connection per month. CenturyLink noted in their comments that at the time of its comments, it had filed an advice letter and tariff

¹ Decision No. C22-0447, ¶ 3.

pages proposing to increase the monthly recurring charges for its tariffed Basic Emergency Service offering, and as such felt that maintaining the current rate of \$0.09 would be more appropriate. AAJ Authorities, BRETSA, and CCOA concurred with this recommendation, in some cases providing additional justification for maintaining the \$0.09 rate. CCOA also noted that if the Commission agrees to a statewide 9-1-1 surcharge rate of \$0.09, this will also necessitate adjusting the prepaid wireless 9-1-1 charge rate from the proposed rate of \$1.70 to \$1.71, following the formula set forth in statute.

C. Interventions

7. On August 19, 2022, BRETSA filed a notice of intervention as of right pursuant to Rules 1401(a) and (b), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure. BRETSA states that it is a governing body as defined in § 29-11-101(16), C.R.S. As such, it states that it is authorized to impose an Emergency Telephone Charge on service users and will therefore be affected by the threshold amount to be established by the Commission for Emergency Telephone Charge rates. BRETSA further states that it will receive a distribution of the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge, and that the amounts and distribution formulas to be established by the Commission will affect BRETSA's revenues available for meeting costs associated with continued operation of its Emergency Telephone Service.

8. Douglas and El Paso-Teller also filed a motion to intervene as of right or, alternatively, by permissive intervention, on August 19, 2022. Douglas and El Paso-Teller state that they operate emergency telephone services and emergency notification services pursuant to § 29-11-104, C.R.S., for PSAPs within Douglas, El Paso, and Teller Counties, and that they impose Emergency Telephone Charges as well as received distributions from the statewide 9-1-1

surcharge and prepaid wireless 9-1-1 charge. Douglas and El Paso-Teller also state that they currently both impose ETC rates at or above the threshold above which Commission approval is required, following previous Commission approval. For these reasons, Douglas and El Paso-Teller assert that they have an interest in monitoring and providing input into this proceeding.

9. UCA filed a Notice of Intervention of Right and Entry of Appearances on August 19, 2022. UCA states that it is statutorily required to represent the public interest and the specific interests of residential, small business and agricultural consumers in matters that involve provision of utility service and rates.

10. The AAJ Authorities filed a Motion to Intervene on August 19, 2022, pursuant to rules 1400 and 1401(c). The AAJ Authorities state that they are governing bodies as defined in C.R.S. § 29-11-101(16), and that as governing bodies they have a specific interest in the proceeding as it will affect the pecuniary or tangible interests of the AAJ Authorities. The AAJ Authorities impose Emergency Telephone Charges and have an interest in the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge, since the manner in which these charges are remitted and distribute will affect the AAJ Authorities.

11. Finally, CenturyLink filed a “Late-Filed Motion to Intervene” on August 22, 2022. CenturyLink noted that it filed comments on August 19, 2022, but states that it was unable to file a Motion to Intervene at that time due to unforeseen conflicts involving its legal counsel. CenturyLink notes that it is the state’s only active certificated Basic Emergency Service Provider (BESP), and as such no other party or potential party in the proceeding can adequately represent CenturyLink’s interests. CenturyLink also states that no party would be prejudiced by granting its late-filed motion to intervene, stating that the motion is filed only business day after the

deadline set by the Commission, and that CenturyLink's comments were timely filed and already available to all parties.

12. Under Rule 1401(c), 4 CCR 723-1, persons seeking permissive intervention must demonstrate that the proceeding may substantially affect the pecuniary or tangible interests of the movant, and that the movant's interests would not otherwise be adequately represented. The potential intervenors that represent governing bodies (Douglas and El Paso-Teller, the AAJ Authorities, and BRETSA) all have a direct interest in the outcome of the proceeding since they represent entities that will receive distributions from the prepaid wireless 9-1-1 charge and the statewide 9-1-1 surcharge, and they would potentially be impacted by the threshold for Emergency Telephone Charge rates above which Commission approval will be required. Therefore, we find it appropriate to grant permissive intervention in this proceeding filed by Douglas and El Paso Teller, the AAJ Authorities, and BRETSA.

13. We decline to determine whether BRETSA or Douglas and El Paso-Teller meet the requirements for intervention as of right set forth in Rule 1401(b). Douglas and El Paso-Teller requested permissive intervention in the alternative to its notice of intervention as of right. Although BRETSA did not include a request for permissive intervention in the alternative to its notice of intervention as of right, we construe its pleading as such for expediency and instead address this movant's alternative request for permissive intervention.

14. CenturyLink is Colorado's only active certificated BESP, and the statewide 9-1-1 surcharge rate is based, at least in part, on the monthly recurring charges found in the CenturyLink's Basic Emergency Service tariff. Therefore, CenturyLink has a pecuniary or tangible interest that would not otherwise be adequately represented. Rule 1401(a), 4 CCR 723-1, states that "The Commission may, for good cause shown, allow late intervention, subject

to reasonable procedural requirements.” We agree that no party would be prejudiced by the granting of the late-filed motion to intervene, since CenturyLink already provided its comments timely to the deadline. We find cause to grant the motion.

15. Therefore, each pleading seeking intervention is granted, and Douglas and El Paso-Teller, UCA, the AAJ Authorities, BRESTA, and CenturyLink are parties to this proceeding.²

D. Emergency Telephone Charge Threshold

16. Section 29-11-102, C.R.S., requires the Commission to consider inflation and the needs of the governing bodies in setting the authorized Emergency Telephone Charge threshold. This threshold sets the rate above which approval by the Commission is required for a 9-1-1 governing body.³ As required by Rule 2148(a)(I)(A) and (B), 4 CCR 723-2 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, the Commission must consider, at a minimum, historical data, future projections, inflation rates, the rate of increase of the average emergency telephone charge, comments provided to the Commission, and other factors the Commission deems relevant.

17. In our Opening Decision, we proposed for stakeholder comment, an authorized Emergency Telephone Charge threshold of \$1.97. This is an increase of \$0.16 over the current threshold of \$1.81 and reflects the 8.6 percent inflation rate provided by the Bureau of Labor

² Public comments were provided by one other participant; however, no other commenter seeks party status in this proceeding.

³ See § 29-11-102(2)(c), C.R.S. For example, with the 2022 Emergency Telephone Charge Threshold set by the Commission at \$1.81 per 9-1-1 access connection per month, a 9-1-1 governing body has the statutory authority to adopt an Emergency Telephone Charge rate up to and including \$1.81 per 9-1-1 access connection per month. In order to adopt an Emergency Telephone Charge in excess of the threshold, the governing body must first file an application and the application must be approved by the Commission.

Statistics Consumer Price Index for All Urban Consumers from May of 2021 to May of 2022.⁴ The average local Emergency Telephone Charge rate increased from \$1.56 per month in June of 2021 to \$1.62 per month in June of 2022. Granting an increase to the threshold based on the inflationary rate provided by the Bureau of Labor Statistics is therefore the greater adjustment that could be made.

18. Also in our Opening Decision, we requested comment on whether there were other factors that the Commission should consider when setting this threshold. Of the various comments received, only the AAJ Authorities, CCOA, and Douglas and El Paso-Teller commented on the proposed threshold rate, and all three of these commenters supported the threshold proposed by the Commission.

19. Therefore, we find no reason to modify our original proposal established in the Opening Decision and establish an authorized Emergency Telephone Charge threshold of \$1.97, effective January 1, 2023.

E. Statewide 9-1-1 Surcharge

20. Pursuant to § 29-11-102.3, C.R.S., the statewide 9-1-1 surcharge must be reasonably calculated to meet the needs of governing bodies to operate the 9-1-1 system, and the amount may not exceed \$0.50 per month per 9-1-1 access connection. To establish this amount, Rule 2148(a)(II)(B) provides that the Commission consider historical data, costs to the 9-1-1 governing body of basic emergency service tariffs, comments of interested stakeholders, and other factors the Commission deems relevant. Additionally, § 29-11-102.3(3)(c)(III), C.R.S.,

⁴ See <https://www.bls.gov/opub/ted/2022/consumer-prices-up-8-6-percent-over-year-ended-may-2022.htm>.

implies that the purpose of the surcharge is to “reimburse” governing bodies for the concurrent sessions⁵ being purchased from the BESP.

21. In our Opening Decision, we proposed for stakeholder comment on a statewide 9-1-1 surcharge rate of \$0.08 per 9-1-1 access connection per month. This proposed amount was intended to raise enough funding statewide that when distributed to the 9-1-1 governing bodies, the amount will reimburse 9-1-1 governing bodies for the monthly recurring charges they are required under the tariff to pay the BESP for the concurrent sessions at each of the PSAPs funded by the governing body. This represents a decrease from the current surcharge rate of \$0.09. The reason for this decrease, as described in the Opening Decision, is due to an increase in the number of 9-1-1 access connections in the state, as reported by the carriers when remitting the surcharge to the Commission. An increase in the number of 9-1-1 access connections means that the same amount of funding may be raised with a lower surcharge rate, and the number of concurrent sessions has increased only slightly, from 609 in 2021 to 617 in 2022.

22. CenturyLink stated in its comments that it has filed a tariff amendment to add new functionality to the tariffed ESInet service, and that this amendment would increase the monthly recurring charges paid by the governing bodies from \$752.22 to \$816.30 per month per concurrent session. This tariff amendment was filed with the Commission after the Opening Decision in this proceeding was adopted. CenturyLink contends that this increase in the monthly recurring charges to be paid by the governing bodies is enough to justify retaining the current rate of \$0.09. The AAJ Authorities and CCOA’s initial comments and responsive comments reflect agreement with this position.

⁵ A “concurrent session” means a channel for an inbound simultaneous 9-1-1 request for assistance. § 29-11-102.3(3)(c)(III), C.R.S.

23. BRETSA also states in its responsive comments that retaining the \$0.09 surcharge rate would be appropriate, for the same reasons outlined by CenturyLink, but goes on to suggest that there may be other ESInet features in the future, both optional and non-optional, that may justify a higher rate for the statewide 9-1-1 surcharge. BRETSA and CCOA both provided comment that the statewide 9-1-1 surcharge could potentially be used in the future to reimburse governing bodies for dues for membership in CCOA. Because potential costs for potential future ESInet services, beyond the tariff amendment referenced by CenturyLink, are not included in any of the comments by any of the parties, and because the cost of membership dues for CCOA are not included in the comments or presented as a proposal for adjusting the surcharge rate, we interpret these comments as being an indication of changes that may be considered in future years rather than in this proceeding. We also note that based on the mechanism of the statewide 9-1-1 surcharge as established by § 29-11-102.3, C.R.S., the Commission must distribute the same amount of funding to each governing body based on the number of concurrent sessions being purchased by that governing body, regardless of whether the governing body chooses to purchase services that are optional or optional memberships in CCOA or any other organization.

24. BRETSA also suggests in its reply comments that the Commission should adopt policies that govern the use of funds received by governing bodies in excess of what they need to pay tariffed Basic Emergency Service costs. We decline to determine whether this would be appropriate or within the Commission's statutory authority, as it is outside of the scope of this proceeding.

25. Douglas and El Paso-Teller supported the proposed rate in its comments.

26. We note that the tariff amendment referenced by CenturyLink and other commenters is currently before the Commission in a separate proceeding, and may or may not become effective.⁶ However, in the event that it may become effective,⁷ and for the reasons set forth in comments, we find that retaining the current \$0.09 statewide 9-1-1 surcharge rate at this time is most appropriate and sufficient to reimburse the governing bodies for potentially higher monthly recurring charges that would be assessed following the effective date of the proposed tariff amendment. We also note that any revenue from the statewide 9-1-1 surcharge received by the governing bodies in excess of what is strictly required to reimburse their costs under the tariff must still be expended in a manner consistent with § 29-11-104, C.R.S., which establishes the appropriate use of 9-1-1 funds, including money raised from the statewide 9-1-1 surcharge. We therefore agree with BRETSA and CCOA that current advancements in technology and correlating potential costs further support maintaining the \$0.09 statewide surcharge rate at this time such that, even without potential tariff changes, to support statutorily permitted expenditures.

⁶ See Proceeding No. 22AL-0356T.

⁷ Using the monthly recurring charge of \$816.30 per concurrent session found in the tariff amendment proposed by CenturyLink and noting that there are 617 concurrent sessions being reimbursed through the statewide 9-1-1 surcharge, we find that an amount of \$6,043,885.20 must be distributed to the governing bodies annually to reimburse the full monthly recurring costs in the amended tariff. Further considering that service providers may retain one percent of surcharges collected and timely remitted, and that the Commission is authorized to retain up to four percent of surcharges collected for actual administrative costs, the amount that would need to be raised to meet the needs of the governing bodies amounts to \$6,346,079.46 annually. As stated in the Opening Decision, the average number of lines being reported to the Commission by the service providers for the purposes of providing statewide 9-1-1 surcharge remittances is 6,250,123. With this number of lines, a rate of \$0.08 would raise \$6,000,118.08 annually, less than the amount required. A rate of \$0.09 would raise \$6,750,132.84 annually, which would be sufficient to fully reimburse the monthly recurring charges in the proposed tariff amendment.

27. For the reasons outlined above, we modify our original proposal for a statewide 9-1-1 surcharge rate of \$0.08, and instead establish a statewide 9-1-1 surcharge of \$0.09, effective January 1, 2023.

F. Prepaid Wireless 9-1-1 Charge

28. Pursuant to § 29-11-102.5, C.R.S., and Rule 2148, 4 CCR 723-2, the flat rate per transaction prepaid wireless 9-1-1 charge is to be calculated by adding the average of the local Emergency Telephone Charge rates as of July 1 of that year and the amount of the statewide 9-1-1 surcharge amount established by the Commission for the following year. In our Opening Decision, we stated that the average Emergency Telephone Charge as of July 1, 2022, was \$1.62, an assertion supported by data presented in Attachment B to the Opening Decision. Taking our original proposal of \$0.08 for the statewide 9-1-1 surcharge and adding the average Emergency Telephone Charge of \$1.62, we proposed setting the prepaid wireless 9-1-1 charge rate of \$1.70 for calendar year 2023.

29. The AAJ Authorities and Douglas and El Paso-Teller 911 stated in their comments that they support the proposed rate. CCOA noted that since the rate for the prepaid wireless 9-1-1 charge is a sum of the average of the Emergency Telephone Charge rates in the state and the proposed statewide 9-1-1 surcharge rate, then retaining the statewide 9-1-1 surcharge rate of \$0.09 instead of the proposed rate of \$0.08 would necessitate increasing the prepaid wireless 9-1-1 charge rate to \$1.71 per transaction instead of the proposed rate of \$1.70 per transaction.

30. We agree with this analysis and having adopted a statewide 9-1-1 surcharge rate of \$0.09, we also amend our original proposal of a prepaid wireless 9-1-1 charge rate of \$1.70 to

\$1.71. Therefore, under § 29-11-102.5, C.R.S., and Rule 2148, 4 CCR 723-2, we establish a prepaid wireless 9-1-1 charge of \$1.71, effective January 1, 2023.

G. Statewide 9-1-1 Surcharge Distribution Formula

31. Pursuant to § 29-11-102.3(3)(c)(III), C.R.S., and Rule 2148, 4 CCR 723-2, the Commission must establish a formula for distribution of money collected from the statewide 9-1-1 surcharge to the governing bodies. This formula must be based on the number of concurrent sessions maintained by the PSAPs of each governing body, and the Commission may retain up to four percent of the collected surcharges to cover the direct and indirect costs of administering the surcharge.

32. To implement this statutory requirement, through our Opening Decision, we proposed a distribution formula through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding four percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its PSAPs as a percentage of the total number of concurrent sessions. Through the Opening Decision, we provided that the formula proposed would include the 617 concurrent sessions identified in Attachment A to that decision and continued to invite participant comment.

33. Comments provided by the AAJ Authorities, CCOA, and Douglas and El Paso-Teller were supportive of the proposed distribution formula for the statewide 9-1-1 surcharge as presented in the Opening Decision. No other parties commented on this proposal.

34. As there were no comments opposed to the distribution formula as attached to the Opening Decision, we establish a distribution formula as discussed in our Opening Decision and attached to the Opening Decision as Attachment A. The Commission will distribute funds from

the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding four percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its PSAPs as a percentage of the total number of concurrent sessions in the state, effective January 1, 2023.

H. Prepaid Wireless 9-1-1 Charge Distribution Formula

35. Pursuant to § 29-11-102.5(3)(e)(III), C.R.S., and Rule 2148 CCR 723-2, the Commission must establish a formula for distribution of money collected from the prepaid wireless 9-1-1 charge to the governing bodies. This formula must be based on the number of wireless 9-1-1 calls received by the PSAPs of each governing body as a percentage of the total number of wireless 9-1-1 calls received by all PSAPs in the state. The Commission must transmit the formula to the Colorado Department of Revenue by October 1 of each year, to take effect on the following January 1.

36. To implement this statutory requirement, through our Opening Decision, we proposed a distribution formula for transmittal to the Department of Revenue establishing percentages for each 9-1-1 governing body based on wireless 9-1-1 call volume, as reported to Commission Staff by the BESP. We provided a formula as Attachment C to the Opening Decision and invited participant comment.

37. Comments provided by the AAJ Authorities, CCOA, and Douglas and El Paso-Teller were supportive of the distribution formula for the statewide 9-1-1 surcharge as presented in the Opening Decision. No other parties commented on this proposal.

38. As there were no comments opposed to the distribution formula as attached to the Opening Decision, we establish a distribution formula for transmittal to the Colorado Department of Revenue for the prepaid wireless 9-1-1 charge as discussed in our Opening

Decision and attached to the Opening Decision as Attachment C. The effective date of this formula will be January 1, 2023.

II. ORDER

A. The Commission Orders That:

1. The Intervention filing provided by the Boulder Regional Emergency Telephone Service Authority (BRETSA) on August 19, 2022, is granted, consistent with the discussion above.

2. The joint Intervention filing provided by the Douglas County Emergency Telephone Service Authority and the El Paso-Teller County Emergency Telephone Service Authority (collectively, "Douglas and El Paso-Teller") on August 19, 2022, is granted, consistent with the discussion above.

3. The joint Motion to Intervene filed by the Arapahoe County 911 Authority and the Jefferson County Emergency Communications Authority (collectively, "AAJ Authorities") on August 19, 2022, is granted.

4. The Late-Filed Motion to Intervene filed by CenturyLink Technologies dba CenturyLink QC (CenturyLink) on August 22, 2022, is granted, consistent with the discussion above.

5. The following are parties to this proceeding: BRETSA, Douglas and El Paso-Teller, the Office of Utility Customer Advocate, AAJ Authorities, and CenturyLink.

6. Effective January 1, 2023, the authorized Emergency Telephone Charge threshold shall be \$1.97.

7. Effective January 1, 2023, the statewide 9-1-1 surcharge shall be \$0.09.

8. Effective January 1, 2023, the prepaid wireless 9-1-1 charge shall be \$1.71.

9. Effective January 1, 2023, we establish a distribution formula through which the Commission will distribute funds from the statewide 9-1-1 surcharge, less administrative costs to be determined by the Commission but not exceeding four percent, to each 9-1-1 governing body in amounts proportional to the number of concurrent sessions each 9-1-1 governing body maintains at its Public Safety Answering Points as a percentage of the total number of concurrent sessions in the state.

10. We establish a distribution formula for the distribution of prepaid wireless 9-1-1 charge funds, to be transmitted to the Colorado Department of Revenue by October 1, 2022, for an effective date of January 1, 2023

11. The 20-day period provided for in § 40-6-114(1), 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.

12. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners