

Decision No. C14-1127

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0804T

IN THE MATTER OF COMMISSION ADOPTION OF EMERGENCY RULES GOVERNING
AUTOMATIC LOCATION IDENTIFICATION SERVICE.

**DECISION DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: September 16, 2014

Adopted Date: September 10, 2014

I. BY THE COMMISSION

A. Statement

1. In this Decision, the Public Utilities Commission (Commission or PUC) considers the Application for Rehearing, Reargument, or Reconsideration (Application for RRR) filed August 18, 2014, by Qwest Corporation, doing business as CenturyLink QC (CenturyLink) to the Commission's July 28, 2014, Decision Adopting Emergency Rules Governing Automatic Location Identification Service (ALI Rules Decision).

2. Automatic Location Identification (ALI) service provides Public Safety Answering Points (PSAPs) and local 911 authorities with the location of a caller requesting emergency assistance from police, fire, ambulance, and other emergency responders. Currently, CenturyLink provides ALI to PSAPs as part of its Basic Emergency Service Provider tariff through a subcontract with Intrado Communications, Inc. (Intrado). CenturyLink and Intrado are terminating their subcontract; CenturyLink plans to offer a self-provisioned ALI service to PSAPs, and Intrado is offering a separate ALI service directly to PSAPs.

3. On February 26, 2014, the Commission conducted a Commission Informational Meeting (CIM) at which CenturyLink and Intrado provided assurances of continued provisioning of reliable ALI services. After the CIM, the Commission Staff learned through discussions with PSAPs and local 911 authorities of several uncertainties over the reliability of a transition to either CenturyLink's self-provisioned or Intrado's separate ALI offering. Commission Staff identified the following reliability and safety issues if the status quo changes and either CenturyLink offers a self-provisioned ALI service or Intrado offers a separate ALI service: accuracy of the ALI databases; operational reliability of different ALI services and connections; pricing and affordability for less populated jurisdictions; sufficient coordination among service providers to allow input of customers' names and addresses into the databases; adequacy of communications between CenturyLink or Intrado and the PSAPs and 911 authorities for the operational transition to a different ALI database or ALI provider; and, adequacy of testing of new or transitioned systems.

4. The ALI Rules Decision invoked the Commission's authority under § 40-4-101(1), C.R.S., and § 40-3-101(2), C.R.S., to protect the public from any unsafe or inadequate practice or service, and to adopt emergency rules under § 24-4-103(6), C.R.S. The emergency ALI rules require any provider of ALI services to obtain Commission approval of their services' reliability and safety before the provider offers its service to PSAPs or local agencies administering emergency responder services. The emergency rules exempted from the approval requirement the current provisioning of ALI by CenturyLink through its Intrado subcontract.

5. CenturyLink's Application for RRR characterizes the ALI Rules Decision as regulating a provider's vendor relationships, going beyond the typical regulation of a utility

at the service level. CenturyLink says the Commission regulates prices, terms and conditions, and quality of service of a regulated service, but may not prescribe the manner in which a service is provided, and it may not regulate the relationship between a service provider and its vendors, equipment suppliers, or employees. CenturyLink quotes the Colorado Supreme Court's (Supreme Court) ruling in *Colorado-Ute Elec. Ass'n. v. Pub. Utils. Comm'n*, 760 P.2d 627, 640 (Colo. 1988): "The PUC may not, under the guise of rate regulation, take over the management of the company. As to matters specifically entrusted to management, the PUC may not assert itself absent an abuse of managerial discretion."

6. CenturyLink's Application for RRR faults the Commission for the timing of the ALI Rules Decision and accuses the Commission of interfering with its vendor relationships "after the fact." CenturyLink says: "[h]ad the rules been in place sooner, CenturyLink and Intrado could have made different plans or negotiated any extension to the agreement differently." Application for RRR at 2. CenturyLink characterizes the Commission's emergency rule adoption as a "delay" that "will come at a significant cost to CenturyLink." *Id.* at 3.

7. Despite these criticisms of the Commission's emergency ALI rules, "CenturyLink *does not object to demonstrating its reliability and experience in managing ALI databases*: CenturyLink has transitioned from external to internal ALI database management before, with no failures. CenturyLink looks forward to quickly proving its case to the Commission." Application for RRR, at 3 (emphasis added). CenturyLink's Application for RRR offers no suggested revisions to the emergency rules, but "urges" the Commission to "fashion rules that are not unnecessarily intrusive into carrier management and vendor relationships while preserving the affordability and reliability of all basic emergency services for all Coloradans." *Id.*, at 4.

II. DISCUSSION

8. We deny CenturyLink's Application for RRR. CenturyLink does not contest the facts underlying the adoption of emergency rules. These uncontested facts include reports from PSAPs and 911 authorities of the operational uncertainties if CenturyLink self-provisions ALI services or if Intrado offers a separate ALI product. CenturyLink does not challenge the Commission's assessment of the risks to the safety and reliability of ALI and 911 services if these operational problems remain unresolved.

9. CenturyLink also does not question the Commission's authority under § 40-4-101(1), C.R.S., to protect the public from any unsafe or inadequate practice or service, or CenturyLink's duty under § 40-3-101(2), C.R.S., to provide services and facilities to promote the safety and health of the public. Further, CenturyLink offers no challenge to the Commission's adoption of emergency rules under § 24-4-103(6), C.R.S., "to address an immediate need to preserve the health, safety, and welfare of Colorado citizens and visitors to our state." Decision No. C14-0893 ¶ 21.

10. CenturyLink does not object to the core provisions underlying the emergency ALI rules: a process by which CenturyLink must demonstrate the reliability of its ALI service. CenturyLink also does not challenge any of the rules' criteria for Commission approval, such as the accuracy of the ALI database, coordination with other service providers to ensure accurate input of location information, operational reliability of circuit connections, the preservation of the current statewide-average price structure for 911 services, the provision of adequate instruction and guidance to PSAPs and 911 authorities, and adequate testing of new or different ALI systems and connections.

11. The Commission's emergency ALI rules do not interfere with CenturyLink's vendor contracts or their terms and conditions, and CenturyLink cites no provision or language

from the emergency rules that does so. The emergency rules are agnostic to whether CenturyLink self-provisions or subcontracts its ALI service through a vendor; the Commission's approval requirement ensures the safety and reliability of new, different, or untested provisioning of ALI service by any provider. Because CenturyLink's current ALI services through Intrado have a proven track record, there is no necessity for requiring CenturyLink to obtain Commission approval of its continued provisioning. The rules, therefore, comply with any requirement that the Commission must regulate at the service level.

12. The case cited by CenturyLink, *Colorado-Ute Elec. Ass'n. v. Pub. Utils. Comm'n*, 760 P.2d 627, 640 (Colo. 1988), does not preclude the Commission from adopting the emergency ALI rules; indeed, the Supreme Court's opinion provides further support for the Commission's ALI Rules Decision. In *Colorado-Ute*, the Commission ruled that a cooperative association's setting of an all-energy electricity rate design failed to account for capacity costs. The Supreme Court rejected an argument contending that the Commission's ruling constituted an unauthorized intrusion into the cooperative's management: "Both statutory and case law demonstrate that rate-making, both as to charge and design, is a vital part of the Commission's area of responsibility." *Colorado-Ute*, 760 P.2d at 638. "[I]t has never been the law in Colorado that rate-making is solely a matter within the domain of management, such that PUC involvement is triggered only following an abuse of that discretion." *Id.*, at 639.

13. Here, the Commission's authority over the safe and reliable provisioning of 911 services parallels its authority over a cooperative's rate-setting. The ALI Rules Decision describes the Commission's constitutional and statutory powers over facilities and basic emergency services, and its duty under § 40-4-101(1), C.R.S., to determine safe and adequate practices.

14. CenturyLink's contentions over the timing of the Commission's issuance of the emergency ALI rules are factually incorrect. CenturyLink is wrong to contend the Commission should have issued its rules soon after the February 2014 CIM to allow CenturyLink to make different plans or negotiate a different transition agreement with Intrado. As explained in the ALI Rules Decision, the following describes CenturyLink's and Intrado's actions, and inactions, and the timing of the Commission's responses:

- a. On February 11, 2014, Intrado informed Commission Staff of the possibility its subcontract with CenturyLink may terminate, and the Commission Staff learned the CenturyLink-Intrado ALI subcontract would terminate as soon as February 28, 2014. Before February 11, 2014, neither CenturyLink nor Intrado had informed the Commission or its Staff of the alteration in the structure of ALI provisioning to Colorado PSAPs. For several months prior to the CIM, CenturyLink had been negotiating with Intrado to either renew their agreement or extend the transition period to the end of 2015, after which CenturyLink would self-provision its ALI service.
- b. At the CIM, the Commission, CenturyLink, and Intrado discussed the requisites of a successful transition to either CenturyLink's self-provisioned service or Intrado's separate ALI offering. Both CenturyLink and Intrado provided assurances of their commitment to public safety and reliable provisioning of ALI services.
- c. After the CIM, the Commission Staff learned, through attendance at presentations by Intrado and CenturyLink to potential customers and through discussions with PSAPs and 911 authorities, of several uncertainties over the reliability of a transition to either CenturyLink's self-provisioned or Intrado's separate ALI offering. As a result, the Staff issued audit requests to CenturyLink and Intrado on May 8, 2014, to gather additional information. The staff received CenturyLink's responses on May 19, and Intrado's on May 27, 2014. The Commission analyzed these responses, developed emergency rules, and issued its ALI Rules Decision on July 28, 2014.

15. These facts demonstrate CenturyLink's fallacy in ascribing blame for the timing of the Commission's ALI Rules Decision. CenturyLink failed to inform the Commission or the PSAPs of the imminent termination of its subcontractor relationship with Intrado or of its plan to

self-provision until the CIM on February 26, 2014. At the CIM, CenturyLink assured the Commission of its commitment to provide safe and adequate ALI services; therefore, no basis existed at that time for the Commission to develop and issue emergency rules. Not until the Commission Staff learned of CenturyLink's and Intrado's failure to provide PSAPs and 911 authorities with an adequate transition to their respective ALI services did the Commission have a factual basis to act contrary to CenturyLink's assurances. It defies reason for CenturyLink to provide assurances to the Commission at the CIM of an adequate transition to its ALI services yet fault the Commission for not issuing emergency rules at the time of, or soon after, those assurances.

16. Independent of these facts, Colorado law authorizes the Commission to take action and safeguard the public “[w]henver the commission...finds that the...equipment, facilities, or service of any public utility...are unjust, unreasonable, unsafe, improper, inadequate, or insufficient.” § 40-4-101(1), C.R.S. (emphasis added).

III. ORDER

A. The Commission Orders That:

1. CenturyLink's Application for Rehearing, Reargument, or Reconsideration filed August 18, 2014, is denied.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 10, 2014.**

(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

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners