

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14A-0147T

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IN THE MATTER OF THE APPLICATION OF THE CHAFFEE COUNTY EMERGENCY TELEPHONE SERVICE AUTHORITY TO ASSESS AN EMERGENCY TELEPHONE SURCHARGE RATE OF ONE DOLLAR AND FIFTY CENTS (\$1.50) PER SERVICE USER PER MONTH PURSUANT TO § 29-11-102(2)(B), C.R.S.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
APPROVING STIPULATION AND  
GRANTING APPLICATION AS AMENDED**

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Mailed Date: July 10, 2014

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

**A. Procedural Background.**

1. On February 18, 2014, the Chaffee County Emergency Telephone Service Authority (Chaffee County) filed a verified application to assess an emergency telephone surcharge rate of \$1.50 per service user per month pursuant to § 29-11-102(2)(b), C.R.S. (Application) with testimony and exhibits.

2. Also on February 18, 2014, Chaffee County filed a “Motion Requesting the PUC Shorten Intervention/Response Period to Application” (Motion to Shorten) and a “Motion for Waiver of Statutory Notice Provisions of § 40-3-104, C.R.S. and for Authorization to Give an Alternative Form of Notice Pursuant to 4 CCR 723-1 PUC Rules of Practice and Procedure Rule 1003” (Motion for Waiver).

3. On February 26, 2014, the Commission granted the Motion to Shorten and the Motion for Waiver. Decision No. C14-0213-I. The Decision provided notice of the Application,

shortened the intervention period to March 12, 2014, and required Chaffee County to publish notice of the Application in the legal notice section of both *The Mountain Mail* and the *Chaffee County Times* for two consecutive weeks prior to the expiration of the notice period. *Id.*

4. Commission Staff (Staff) and the Colorado Office of Consumer Counsel (the OCC) timely intervened of right.

5. On March 19, 2014, by Minute Order, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ) for disposition.

On March 24, 2014, Chafee County filed an “Affidavit in Support of Certification of Notice of Publication” (Affidavit). The Affidavit attests that Chaffee County provided notification to its customers of its Application by publication in two newspapers of general circulation in Chaffee County, *The Mountain Mail* and the *Chaffee County Times*. In support of the Affidavit, Chaffee County attached copies of Proofs of Publication along with tear sheets verifying that notice was published in display ad format on March 3 and 10, 2014 in *The Mountain Mail* and on March 6 and 13, 2014 in the *Chaffee County Times* once per week for two consecutive weeks.

6. By Decision No. R14-0323-I, the ALJ scheduled a prehearing conference.

7. On April 7, 2014, the Commission Staff submitted an “Unopposed Motion to Vacate Prehearing Conference” based upon the parties’ submission of an agreed-upon proposed procedural schedule and hearing date.

8. On April 8, 2014, the ALJ vacated the prehearing conference (Decision No. R14-0371-I), scheduled a hearing, and established procedural deadlines (Decision No. R14-0372-I).

9. On April 22, 2014, Staff filed an unopposed “Motion to Extend Deadline for Filing Supplemental Direct Testimony” (first Motion). On April 23, 2014, by Decision

No. R14-0427-I, the ALJ granted the first Motion and extended the deadline for Chaffee County to file supplemental direct testimony.

10. Chaffee County filed Supplemental Direct Testimony and Exhibits on April 29, 2014 and on April 30, 2014.

11. On April 30, 2014, Staff filed an “Unopposed Motion to Extend Deadline for Filing Answer, Cross-Answer and Rebuttal Testimony” (second Motion). On May 1, 2014, by Decision No. R14-0459-I, the ALJ granted the second Motion and extended the deadlines as requested.

12. On May 14, 2014, Staff filed an “Unopposed Motion to Modify Procedural Schedule” (third Motion). On May 15, 2014, the ALJ granted the third Motion, suspending all deadlines and vacating the June 18, 2014 hearing. Decision No. R14-0526-I. However, the ALJ ordered that the parties file any settlement reached by June 9, 2014. *Id.*

13. On June 2, 2014, Staff filed a “Joint Motion to Approve Stipulation and Settlement Agreement and for Waiver of Response Time” (Joint Motion). A Stipulation and Settlement Agreement (Stipulation) was filed as Exhibit 1 to the Joint Motion. The ALJ issued Decision No. R14-0653-I, which required the parties to answer several questions concerning their Stipulation.

14. The parties submitted a joint filing responding to Decision No. R14-0653-I on June 19, 2014.

**B. Stipulation and Settlement Agreement.**

15. The parties’ Stipulation is intended to resolve all issues in this proceeding. The parties submit that the agreements reached by their Stipulation is reasonable and necessary

in order to provide continued and adequate telephone emergency service within Chaffee County's jurisdiction, and therefore, that their Stipulation should be approved.

16. Chaffee County is an emergency telephone service authority formed in September 1989 pursuant to an intergovernmental agreement by and between the County of Chaffee, City of Salida, Town of Buena Vista, Town of Poncha Springs, Chaffee County Fire Protection District, South Arkansas Fire Protection District, and Salida Hospital District. As a result, Chaffee County is responsible for administering the operation of the emergency telephone service program serving the exchange access facilities, wireless telecommunications services, and interconnected voice-over-internet-protocol service in those areas.

17. Chaffee County serves a geographical area of approximately 1,100 square miles. Much of the area is extremely rugged and communities are isolated. The Chaffee County Communications Center, located in Salida, Colorado, is the Public Safety Answering Point (PSAP) for emergency calls and provides communications services to all emergency responders that serve Chaffee County.

18. Chaffee County has previously sought and received Commission approval of 911 surcharge increases on two occasions: (a) an increase to \$1.00 per user per month surcharge in Proceeding No. 06A-477T, (Decision No. C06-1146, issued September 27, 2006); and (b) an increase in the surcharge to \$1.25 per user per month in Proceeding No. 10A-241T (Decision No. R10-0975, issued September 3, 2010).

19. Chaffee County's users of exchange telephone, wireless, wireline, and voice-over-internet-protocol telecommunications services were provided notice of the proposed surcharge increase as described. *Supra*, ¶ 6. The notices advised affected users how to protest, object, or comment upon the proposed surcharge increase and how to intervene

in this proceeding. No protests, objections, comments or requests to intervene were filed in this proceeding by any affected users.

20. Pursuant to § 29-11-102(2)(b), C.R.S., the Commission has jurisdiction over the subject matter of this proceeding. The Commission also has jurisdiction over the parties to this proceeding.

21. Section 29-11-102(1)(a), C.R.S., allow a governing body to impose a surcharge in an amount not to exceed \$0.70 per user per month per exchange access facility (wireline), per wireless communications access, and per interconnected voice-over-internet-protocol service in those portions of a governing body's jurisdiction for emergency telephone service. In addition, § 29-11-102(1)(a), C.R.S., also allows a governing body to incur equipment, installation, and other directly related costs for the continued operation of emergency telephone services.

22. When a governing body wishes to charge more than \$0.70 per user per month, the body shall seek approval from the Commission. § 29-11-102(1)(b), C.R.S. The Commission may approve the increased charges if it determines it is necessary to provide continued and adequate emergency telephone service in the areas served by the subject applicant.

23. Chaffee County's Application seeks approval of an emergency telephone charge increase from \$1.25 to \$1.50 per user per month. Per the Stipulation, the parties have agreed to an increase to \$1.40 per user per month for Chaffee County's administration and operation of an emergency telephone service. The parties further agree that if approved, the \$1.40 per user per month will be implemented on October 1, 2014, rather than July 1, 2014 as originally projected in the Application.

24. The parties reached agreements as to Chaffee County's burdens of proof to:  
(a) demonstrate that the proposed increase of the 911 surcharge is reasonable for personnel

expenses incurred for persons employed to take emergency telephone calls and dispatch them and persons employed to maintain the computer database of the PSAP; and (b) demonstrate that Chaffee County's projected increase of expenses and capital outlay warrants the requested increase in the surcharge. Appendix A, ¶¶ 12-13. The parties agreed to adjustments resulting in overall lower projected personnel expenses to the information contained in the Application and other adjustments to the information contained in the Application, as stated in the Stipulation (Appendix A), at ¶¶ 12-13 and Attachment A to the Stipulation. Based on these adjustments (stated in Appendix A, ¶¶ 12-13), the parties agreed that a surcharge of \$1.40 per user per month, an increase of \$0.15 per user per month, is sufficient in order to maintain a reasonable level of reserve balance for future expenditures and further that the increased surcharge will be assessed on exchange access facility (wireline), wireless, and voice-over-internet protocol users per line on a monthly basis.

25. The parties also agreed to a mechanism to ensure that Chaffee County manages its sinking fund (referred to in the budget as capital reserve fund) in accordance with the figures in Attachment A to the Stipulation. Paragraph 16 of the Stipulation sets out the details of this mechanism, with one addition set forth in the parties' joint filing in response to Decision No. R14-0653-I. Appendix A, ¶ 16.

26. In particular, Decision No. R14-0653-I required the parties to submit a proposed time-frame for Chaffee County to file a motion to reopen the settlement agreement to obtain Commission approval before spending monies in the capital reserve or sinking fund for an unforeseen expense, in the event that Staff and the OCC object to the expenditure. Per the Stipulation, Chaffee County must first provide the OCC and Staff with 30 days' advanced notice of the unforeseen capital expenditure; Staff and the OCC have 30 days to object in writing

to the expenditure. Appendix A, ¶ 16. The Stipulation did not provide for a time-frame for Chaffee County to file a motion to reopen the settlement agreement should they receive such an objection. The parties' June 19, 2014 joint filing indicates that they intentionally did not identify such a time-frame, to allow time for them to resolve their disputes without Commission intervention.

27. The ALJ finds that a timely resolution to such disputes should be sought; without a firm deadline to file a motion to reopen, a timely resolution is less likely. Moreover, the parties may continue to work on dispute resolution after such a motion is filed. The ALJ will approve the proposed time-frame in their June 19, 2014 joint filing. Chaffee County shall file its motion to reopen the settlement agreement within 60 days of the date that it is served with Staff's or the OCC's written objection, whichever is later received.

28. The parties agreed that Chaffee County may implement the \$1.40 surcharge per user per month no sooner than 60 days after the date this Decision becomes final, after notifying every emergency telephone service supplier in accordance with § 29-11-103(3)(a), C.R.S.

29. Based on examination of the Application, the Stipulation and its Attachments, the ALJ finds that the \$1.40 surcharge is just, reasonable, and in the public interest. The funds realized from the increase in the emergency telephone service surcharge will be used to pay for costs, investments, expenses, and services as permitted by § 29-11-104(2), C.R.S. The increase is necessary to fund the investments and to pay the costs that are required to allow Chaffee County to continue to provide adequate and reasonable emergency telephone service (*i.e.*, to take emergency telephone calls and to dispatch them appropriately).

30. The ALJ will approve the Stipulation and will grant the Application, as amended by the Stipulation. Chaffee County will be given approval to increase the emergency telephone

service surcharge in its service area to \$1.40 per month per service user, but may not implement the increased monthly emergency telephone service surcharge approved by this Decision earlier than 60 days following the date of a final Commission order approving the Stipulation.

31. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The “Joint Motion to Approve Stipulation and Settlement Agreement and for Waiver of Response Time” executed by the Chaffee County Emergency Telephone Service Authority (Chaffee County), the Commission Staff, and the Office of Consumer Counsel is granted, with the addition stated in ¶ 28 above.

2. The parties’ Stipulation and Settlement Agreement (Stipulation) and the attachment thereto are approved and ordered, and are incorporated by reference and attached hereto as Appendix A.

3. The parties shall comply with the terms and conditions of the Stipulation, Appendix A to this Decision.

4. Consistent with, and as amended herein and by the Stipulation, the Verified Application filed by Chaffee County on February 18, 2014, is granted.

5. Chaffee County is granted approval to increase the emergency telephone service surcharge in Chaffee County’s service area to \$1.40 per month per service user.

6. Chaffee County may not implement the increased monthly emergency telephone service surcharge approved by this Decision earlier than 60 days following the date of a final Commission order approving the Stipulation attached to this Decision as Appendix A.

7. 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.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, 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.

9. If exceptions to this Recommended 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

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director