

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0486T

IN THE MATTER OF ADVICE LETTER NO. 3168 FILED BY QWEST CORPORATION DBA CENTURYLINK QC TO REVISE ITS EMERGENCY REPORTING SERVICES TARIFFS COLORADO P.U.C. NO. 25, TO BECOME EFFECTIVE OCTOBER 16, 2023.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING MOTION FOR LATE INTERVENTION,
GRANTING MOTIONS TO INTERVENE, AND
SETTING PREHEARING CONFERENCE**

Mailed Date: December 7, 2023

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I. STATEMENT

1. On September 29, 2023, Qwest Corporation doing business as CenturyLink QC (CenturyLink) filed Advice Letter No. 3168 (AL 3168).

2. The Advice Letter and Tariff pages modify CenturyLink’s Emergency Reporting Services Tariff Colo. P.U.C. No. 25, sections 1.1, 2.1, and 9.2, by adding two definitions and a statement regarding network maintenance and testing.

3. CenturyLink states that the purpose of this filing is to comply with Rule 2137 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR), 723-2, which was adopted in Decision R22-0811, issued December 22, 2022, and which became effective on March 30, 2023.¹

4. On October 6, 2023, Protest Letters were independently filed by the Larimer Emergency Telephone Authority (LETA) and Commission Staff (Staff), requesting that the tariff sheets filed under AL 3168 be set for a hearing and their proposed effective date be suspended.

5. On October 13, 2023, the Commission issued Decision No. C23-0699 suspending the tariff sheets for 120 days, up to and including February 8, 2024. The Commission further ordered that any entities wishing to intervene in this Proceeding must move for or file notice of their interventions within thirty (30) days of the Commission’s decision, or by November 13, 2023.

6. Four entities moved or noticed their interventions by that deadline:

On November 6, 2023, LETA moved to permissively intervene;

Also on November 6, 2023, the Colorado Council of Authorities, Inc. (CCOA) moved to permissively intervene;

¹ See Proceeding 22R-0122T.

On November 10, 2023, the Boulder Regional Emergency Telephone Service Authority (BRETSA) filed its notice of intervention of right or, in the alternative, moved for permissive intervention; and

On November 13, 2023, the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County 911 Authority, and the Jefferson County Emergency Communications Authority (collectively the AAJ Authorities) collectively moved for permissive intervention; and,

7. Subsequently, on November 21, 2023, Commission Staff filed an Unopposed Motion for Late-Filed Intervention, explaining that Staff's deadline to file an intervention had expired the day before but that Staff had not met that deadline. Contemporaneously with its Unopposed Motion for Late-Filed Intervention, Staff also filed its Notice of Intervention, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

II. COMMISSION STAFF'S MOTION FOR LATE-FILED INTERVENTION

8. Decision No. C23-0699 established a deadline of November 13, 2023, for outside entities to file notices of intervention or motions to permissively intervene. Pursuant to Rule 1401(e), 7 CCR Rule 723-1, Staff "is permitted to intervene by right" in any Commission proceeding. Under Rule 1401(e), Staff's notice of intervention is due "within seven days after the time otherwise specified." Thus, Staff's deadline to file a notice of intervention expired on November 20, 2023.

9. However, as Staff admits in its Unopposed Motion for Late-Filed Intervention, Staff filed its Notice of Intervention a day late.

10. Rule 1401(a), 7 CCR 723-1, permits the Commission "for good cause shown, [to] allow late intervention, subject to reasonable procedural requirements."

11. In its Unopposed Motion for Late-Filed Intervention, Staff contends that good cause exists to accept its late-filed notice of intervention because its presence will "assist the

Commission with the important task of reviewing the Advice Letter and its associated tariff pages for compliance with the Commission’s rules.”² Staff also indicates that because 911 services “are a highly critical component of public safety,” permitting it to intervene will enable it to work with Applicant CenturyLink to ensure that the latter’s “emergency services meet the minimum qualifications set forth by the Commission.”³ Accordingly, it contends, its participation in this Proceeding is in the public interest.⁴

12. Commission Trial Staff argues that Rule 1401(e), which permits Commission Trial Staff to intervene in any Commission proceedings, exemplifies the Commission’s recognition of Staff’s “unique purpose and importance to Commission proceedings.”⁵

13. Commission Trial Staff states that good cause exists to permit its late-filed intervention because “[m]issing the deadline was inadvertent.” It notes that it has acted “expeditiously and in good faith” by filing its Unopposed Motion for Late-Filed Intervention only one day after the expiration of the deadline.

14. Further, it notes, that because this Proceeding is in its early stages, no procedural schedule has yet been established nor has an evidentiary hearing been set. Thus, no party will be prejudiced by the granting of its Unopposed Motion.

15. And, importantly, CenturyLink, the only other current party to this Proceeding, has indicated it does not oppose Commission Trial Staff’s inclusion in this Proceeding.

16. Although parties are granted 14 days to respond to a motion, Rule 1308(c), 4 CCR 723-1, allows the time period to respond to be waived. Here, given that

² Unopposed Motion for Late-Filed Intervention by Trial Staff of the Commission, ¶ 10, p. 3.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at ¶ 11, p. 3.

CenturyLink does not oppose Commission Trial Staff's Motion, good cause has been shown to waive the response time for the Unopposed Motion for Late-Filed Intervention.

17. The ALJ finds and concludes that Commission Trial Staff has established good cause for the late filing of its notice of intervention. Further, the ALJ finds and concludes that it is in the public interest for Commission Trial Staff to appear as an Intervenor in this Proceeding.

18. Accordingly, Commission Trial Staff's Unopposed Motion for Late-Filed Intervention will be granted.

19. Commission Trial Staff's notice of intervention is acknowledged.

III. MOTIONS TO INTERVENE

20. Four other entities have moved to intervene in this Proceeding: LETA; CCOA; the AAJ Authorities; and, BRETSA. Each of their motions will be addressed in turn.

A. Law Governing Interventions

21. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1; see § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985) ("This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.").

22. Commission Rule 1401(c), 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. . . . The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

23. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

B. Colorado Council of Authorities, Inc. (CCOA)

24. CCOA filed its motion to permissively intervene in this Proceeding on November 6, 2023. CCOA is a Colorado nonprofit organization composed of 21 dues-paying governing bodies.⁶ CCOA's purpose "is to share information and provide a collective voice for Governing Bodies to provide input on and to advocate for or against matters affecting emergency telephone service in Colorado."⁷

25. In support of its motion to intervene, CCOA asserts that its member Governing Bodies all purchase basic emergency services (BES) under CenturyLink's Tariff 25, which is at issue in this Advice Letter Proceeding.⁸ The outcome of this Proceeding will therefore "directly impact [the] operational and pecuniary interests" of CCOA's members.⁹ Because not all of CCOA's members have appeared in this Proceeding, CCOA seeks to protect and advocate on their behalf.

26. No party or interested entity has objected to CCOA's participation in this Proceeding or to CCOA's intervention as party. Where no party or interested entity has objected to or responded to a motion, the motion is deemed confessed under Commission rules.¹⁰

27. Accordingly, for the reasons stated above, the ALJ finds and concludes that

⁶ Motion to Permissively Intervene by Colorado Council of Authorities, Inc., ¶¶ 13-15, p. 4, filed Nov. 6, 2023.

⁷ *Id.* at ¶ 17, p. 4.

⁸ *Id.* at ¶ 22, p. 5.

⁹ *Id.*

¹⁰ Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR), 723-1.

CCOA has established adequate grounds for permissively intervening in this Proceeding. CCOA's motion to permissively intervene will be granted.

C. Larimer Emergency Telephone Authority (LETA)

28. LETA filed its motion to permissively intervene in this Proceeding on November 6, 2023. LETA is responsible for “the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service in Larimer County and Jackson County.”¹¹ It pays for the costs associated with these activities “by establishing and collecting the emergency telephone charge in its jurisdiction.”¹²

29. Under Section 9.2.5 of Tariff 25 — which is as issue in this Proceeding — LETA pays “monthly recurring charges” to basic emergency service providers (BESPs) for basic emergency services (BES). LETA asserts that any changes made to Tariff 25 through this Proceeding “will directly impact the operational and pecuniary interests of LETA.”¹³ Further, it states that although it is a member of CCOA, its interests may diverge from those of CCOA and it “may want to voice its dissent” to CCOA's position “or separately articulate and advocate” for its own position.

30. No party or interested entity has objected to LETA's participation in this Proceeding or to LETA's intervention as party. Where no party or interested entity has objected to or responded to a motion, the motion is deemed confessed under Commission rules.¹⁴

¹¹ Motion to Permissively Intervene by Larimer Emergency Telephone Authority, ¶ 8, p. 2, filed Nov. 6, 2023.

¹² *Id.* at ¶ 9, p. 2.

¹³ *Id.* at ¶ 15, p. 4.

¹⁴ Rule 1401(b), 4 CCR 723-1.

31. Accordingly, for the reasons stated above, the ALJ finds and concludes that LETA has established adequate grounds for permissively intervening in this Proceeding. LETA's motion to permissively intervene will be granted.

D. Adams County E-911 Emergency Telephone Service Authority, Arapahoe County 911 Authority, and Jefferson County Emergency Communications Authority (The AAJ Authorities)

32. The AAJ Authorities moved to permissively intervene in this Proceeding on November 13, 2023. The AAJ Authorities "combined service area includes Adams, Arapahoe, Broomfield, and Jefferson Counties, but does not include the Cities of Aurora, Federal Heights, or Thornton."¹⁵ Like LETA, the AAJ Authorities pay the tariff costs incurred by the public safety answering points in their respective jurisdictions.¹⁶ Those payments could be affected by the outcome of this Proceeding in which CenturyLink proposes to make changes to its Tariff Sheet No. 25. This Proceeding thus "affects the AAJ Authorities' pecuniary and tangible interests."¹⁷ Further, the AAJ Authorities assert, amendments to the Tariff could also impact the services they provide and "operational aspects of" basic emergency services in their jurisdictions.

33. Neither Adams County E-911 Emergency Telephone Service Authority or Jefferson County Emergency Communications Authority appear to be members of CCOA.¹⁸ Accordingly, as the AAJ Authorities assert, other parties to this Proceeding may not "adequately represent the AAJ Authorities' interests."¹⁹

34. No party or interested entity has objected to the AAJ Authorities' participation in this Proceeding or to their intervention as collective party. Where no party or interested entity

¹⁵ AAJ Authorities' Motion for Permissive Intervention, ¶ 1, p. 1, filed Nov. 13, 2023.

¹⁶ *Id.* at ¶ 6, p. 2.

¹⁷ *Id.* at ¶ 7, p. 2.

¹⁸ See Appendix A to Motion to Permissively Intervene by Colorado Council of Authorities, Inc.

¹⁹ AAJ Authorities' Motion for Permissive Intervention, ¶ 7, p. 2.

has objected to or responded to a motion, the motion is deemed confessed under Commission rules.²⁰

35. Accordingly, for the reasons stated above, the ALJ finds and concludes that the AAJ Authorities have established adequate grounds for permissively intervening in this Proceeding. The AAJ Authorities' motion to permissively intervene will be granted.

E. Boulder Regional Emergency Telephone Service Authority (BRETSA)

36. BRETSA filed its notice of intervention, or in the alternative, its motion to intervene in this Proceeding on November 10, 2023.

37. A notice to intervene as of right "shall state the basis for the claimed legally protected right that may be affected by the proceeding."²¹

38. BRETSA states that it was one of two governing bodies that participated in Proceeding No. 22R-0122T, the Commission Rulemaking Proceeding that amended the rules governing emergency telephone service that precipitated this Proceeding. It notes that Staff and LETA dispute that the Advice Letter filed by CenturyLink in this Proceeding adequately and fully complies with the amended rule requirements. It asserts an intervention as of right to ensure that the Tariff Sheets eventually approved in this Proceeding "fully and fairly reflect the consensus rules adopted in Decision No. R22-0811," issued December 22, 2022, in Proceeding No. 22R-0122T. BRETSA further asserts that it seeks to intervene in this Proceeding "to advocate for and protect its individual interests," but does not state specifically what those interests are.²²

²⁰ Rule 1401(b), 4 CCR 723-1.

²¹ Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR), 723-1.

²² The Boulder Regional Emergency Telephone Service Authority's Notice of Intervention as of Right, or in the Alternative, Motion for Permissive Intervention, and Request for Hearing, ¶¶ 3-4, p. 2, filed Nov. 13, 2023.

39. The ALJ finds that BRETSA's notice of intervention does not clearly set forth the "legally protected interest" it seeks to protect. Although BRETSA certainly has an interest in ensuring that the rules it helped formulate are fairly and fully implemented and enforced, that concern does not equate to a "legally protected interest." Based on BRETSA's notice, the ALJ cannot find that it has asserted an intervention as of right in this Proceeding.

40. However, BRETSA's notice also stated its intent to move for permissive intervention in the alternative. It has stated its basis for intervening, indicated that other parties or potential parties to this Proceeding would not adequately protect BRETSA's interests, and established that its interests will be affected by this Proceeding. Moreover, it has established that its tangible or pecuniary interests could be affected by changes to CenturyLink's Tariff No. 25 wrought by this Proceeding.

41. Importantly, no party or entity has objected to BRETSA's participation in this Proceeding. A failure to respond to a motion is deemed "a confession of the motion," under Commission Rules.²³

42. The ALJ finds and concludes that BRETSA has established sufficient grounds for permissively intervening in this Proceeding and no opposition to BRETSA's motion has been filed. The ALJ will therefore grant BRETSA's motion to permissively intervene in this Proceeding.

F. Parties to this Proceeding

43. Pursuant to the above findings and conclusions, the parties to this Proceeding are CenturyLink, Commission Trial Staff, CCOA, LETA, the AAJ Authorities, and BRETSA.

²³ Rule 1400(d), 4 CCR 723-1.

IV. REMOTE PREHEARING CONFERENCE

44. To move this matter forward, and in anticipation of a hearing on the Advice Letter, the ALJ is scheduling a fully remote prehearing conference per Rule 1409(a), 4 CCR 723-1 for **Friday, December 15, 2023, at 11:00 a.m.**

45. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

46. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.²⁴

47. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates that a fully remote evidentiary hearing will be held via Zoom. Alternatively, the parties may choose to hold a hearing fully in person at the Commission's offices in Denver, Colorado, or at another location agreed to by the parties and approved by the ALJ, or a hybrid hearing which accommodates both in-person and remote participation in the evidentiary hearing. The Commission has suspended CenturyLink's Tariff Sheets until February 8, 2024, but that date can be extended an additional

²⁴ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this proceeding. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

130 days, or up to and including June 17, 2024.²⁵ The undersigned ALJ anticipates extending the deadline. Nevertheless, to ensure a final Commission decision can be issued by June 17, 2024, the ALJ anticipates that an evidentiary hearing in this matter should best be held by early March 2024. The participants should keep this in mind when preparing for the prehearing conference. Other issues relevant to this proceeding may be raised or addressed at the prehearing conference, including whether the parties have met the requirements of this Decision and relevant Commission rules.

48. *All parties are on notice* that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

49. In the alternative, if the parties reach a consensus procedural schedule, hearing format, and proposed evidentiary date(s), the parties are encouraged to contact the undersigned ALJ informally by email (alenska.han@state.co.us) with their proposed procedural schedule. In the event that a proposed procedural schedule can be accommodated by the Commission, the undersigned ALJ will vacate the prehearing conference.

V. **ORDER**

A. **It Is Ordered That:**

1. The Unopposed Motion for Late-Filed Intervention filed by Trial Staff of the Commission on November 21, 2023, is granted.

²⁵ See § 40-6-111(b), C.R.S.

2. Response time to Commission Trial Staff’s Unopposed Motion for Late-Filed Intervention is waived.

3. The intervention as of right filed by Commission Trial Staff is acknowledged.

4. The Motion to Permissively Intervene filed by Colorado Council of Authorities, Inc., on November 6, 2023, is granted.

5. The Motion to Permissively Intervene filed by Larimer Emergency Telephone Authority on November 6, 2023, is granted.

6. The AAJ Authorities’ Motion for Permissive Intervention, filed November 13, 2023, is granted.

7. The Boulder Regional Emergency Telephone Service Authority’s Notice of Intervention as of Right, or in the Alternative, Motion for Permissive Intervention, and Request for Hearing, filed November 10, 2023, is granted.

8. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Friday, December 15, 2023

TIME: 11:00 a.m.

PLACE: Join by video conference using Zoom

9. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

10. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

11. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director