

Decision No. C21-0490

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0376T

IN THE MATTER OF TEMPORARY RULES REGARDING THE PROCESS TO
IMPLEMENT HOUSE BILL 20-1293 TO ESTABLISH PROCESSES FOR THE
REMITTANCE AND DISTRIBUTION OF STATE 9-1-1 SURCHARGE FUNDS.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: August 11, 2021
Adopted Date: August 4, 2021

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to comply with the additions of, or amendments to, §§ 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., pursuant to House Bill (HB) 20-1293. Among its requirements, § 29-11-100.2 through 102.5, C.R.S., include that: (1) the Commission, by January 1, 2021, be prepared to receive remittances from originating service providers from the state 9-1-1 surcharge, created by § 29-11-102.3, C.R.S.; (2) the Commission establish procedures for the distribution of those funds to the 9-1-1 governing bodies; and (3) the Commission promulgate rules concerning changes to the number of concurrent sessions for which a governing body is reimbursed.¹ In order to comply with these statutory requirements, thereby protecting the public health, welfare, and safety by continuing required 9-1-1 service provisions statewide, we find it imperatively necessary to adopt temporary rules.

¹ § 29-11-102.3(3)(c)(III), C.R.S.

2. These temporary rules set forth processes and procedures governing the continued remittances made to the Commission of state 9-1-1 surcharge funds, the continued distribution of such funds to 9-1-1 governing bodies, and applications for a 9-1-1 governing body to change the number of concurrent sessions for which it is reimbursed. These temporary rules are effective for 210 days from the effective date of this Decision, or until the Commission issues permanent rules to implement HB 20-1293. *See* § 40-2-108(2), C.R.S.

3. The Commission is currently addressing permanent rules to implement HB 20-1293, including permanent rules for the remittance and distribution of 9-1-1 surcharge funds and changes to the number of concurrent sessions, through the rulemaking in Proceeding No. 21R-0099T opened March 3, 2021.

4. The Commission previously issued temporary rules on the processes for remittance and distribution of state 9-1-1 surcharge funds, as well as the process governing an Application by a 9-1-1 governing body to increase the number of concurrent sessions to be considered in the distribution schedule for the state 9-1-1 funds.² However, those rules have now expired, thus necessitating a second set of temporary rules until the permanent rulemaking is complete.

B. Discussion, Findings, and Conclusions

5. On July 10, 2020, the Governor signed HB 20-1293, which, in addition to numerous other revisions related to the provision of emergency telephone service, required the Commission to set a new statewide 9-1-1 surcharge by October 1, 2020, to take effect on January 1, 2021. HB 20-1293 required that beginning on January 1, 2021, the 9-1-1 surcharge must be remitted to the Commission on a monthly basis in a manner established by the

² *See* Decision No. C20-0795, Proceeding No. 20R-0480T issued November 10, 2020.

Commission and distributed to 9-1-1 governing bodies according to a formula based on the number of concurrent sessions maintained by the public safety answering points of each governing body. Additionally, HB 20-1293 directed the Commission to promulgate rules concerning changes to the number of concurrent sessions for which a governing body is reimbursed.

6. In order to implement HB 20-1293 timely, temporary rules were implemented in Proceeding No. 20R-0335T to establish, by October 1, 2020, the process by which the Commission proposed and approved 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.³ Temporary rules were implemented in Proceeding No. 20R-0480T to set forth the processes for remittance and distribution of state 9-1-1 surcharge funds, as well as the process governing an Application by a 9-1-1 governing body to increase the number of concurrent sessions to be considered in the distribution schedule for the state 9-1-1 funds.

7. Both sets of temporary rules expired. Through Proceeding No. 21R-0364T, the Commission adopted a second set of temporary rules to replace those initially adopted in Proceeding No. 20R-0335T. However, the Commission did not re-establish the remittance procedure, nor did it re-establish the procedure by which the Commission distributes those funds to the state's 9-1-1 governing bodies, nor the process by which 9-1-1 governing bodies may apply to change the number of concurrent sessions they have for the purposes of the distribution

³ See Decision Nos. C20-0599 issued on August 17, 2020 in Proceeding No. 20R-0335T and C20-0690 issued September 29, 2020 in Proceeding No. 20M-0337T.

schedule. For the continued implementation of HB 20-1293, these remittance and distribution processes must be in place. Through this proceeding, we adopt a second set of temporary rules to replace those initially adopted in Proceeding No. 20R-0480T. We recognize that statutory changes require further Commission action and additional rules, and these are being addressed through a concurrent permanent rulemaking.

8. The Commission may adopt a temporary rule without engaging in the processes required by the Administrative Procedure Act for a permanent rule “only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of [the section to complete a permanent rulemaking] would be contrary to the public interest and makes such a finding on the record.” § 24-4-103(6)(a), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

9. Section 29-11-100.2(1), C.R.S., states that “dialing 911 is the most effective and familiar way the public has of seeking emergency assistance,” that “[b]asic emergency service... is fundamentally a government concern and the exercise of police powers for the protection and betterment of the health, safety, security, and welfare of the public,” and that HB 20-1293 “is intended to provide funding mechanisms for the continued technological advancement of emergency telephone service for all users of the system.” In § 19 of HB 20-1293, the General Assembly found that the act is “necessary for the immediate preservation of the public peace, health, or safety.”

10. The portions of HB 20-1293 dealing with the implementation of the state 9-1-1 surcharge and the distribution of those funds, require that service suppliers remit state

9-1-1 surcharges to the 9-1-1 surcharge trust cash fund on a monthly basis, and that the Commission distribute those funds within 60 days of receipt of those funds. With the distribution of those funds, it is also necessary for the Commission to have a process in place by which a 9-1-1 governing body may request to change the number of concurrent sessions it is being credited for the purposes of the distribution schedule. Awaiting completion of a permanent rulemaking already underway under Title 24 would leave the Commission, service suppliers, and 9-1-1 governing bodies without effective rules to govern ongoing remittances and distributions and requests to change the number of concurrent sessions for which a governing body is reimbursed. This would prevent the continued implementation of a funding mechanism intended to support basic emergency services and the health, safety, security, and welfare of the public.

11. Through HB 20-1293, the General Assembly recognized that additional funds are needed to support the emergency telephone service beginning January 1, 2021, and among other remedies outlined in the bill, chose a statewide 9-1-1 surcharge as an appropriate funding mechanism. Adoption of temporary rules allows the Commission to continue to meet the deadlines imposed by the statute and timely address the need for additional funds to support the emergency telephone service for the benefit of all users of the system.

12. We find that these matters require our immediate and continuing attention to comply with state law and to protect the health, safety, and welfare of the public, which uses the emergency telephone system “as the most effective and familiar way... of seeking emergency assistance.” We also find that the time that will transpire before completing a permanent rulemaking on these issues would prevent fulfillment of HB 20-1293’s deadlines and would risk the health, safety, and welfare of the public which depends on an adequately-funded emergency telephone system. Thus, we immediately adopt temporary rules addressing the establishment of

certain funding mechanisms that are imperatively necessary for the continued compliance with state law and to preserve public health, safety, and welfare.

13. As we determined in Proceeding No. 20R-0480T, in implementing these provisions, we find modifications to the Commission's existing rules regarding the remittance of Telecommunications Relay Service surcharges are warranted in these temporary rules. The goal of these changes is to continue to permit originating service providers to register with the Commission for the remittance of both state 9-1-1 surcharge funds and TRS surcharge funds using combined forms for both surcharges.

14. By this Decision, we adopt temporary rules that accomplish the following:
- a. set forth the processes and procedures by which service suppliers, also referred to in the rules as originating service providers, will continue to remit state 9-1-1 surcharge funds to the 9-1-1 trust cash fund;⁴
 - b. set forth processes and procedures by which the Commission will continue to distribute funds remitted to the 9-1-1 trust cash fund, excepting funds retained for actual administrative costs of up to 4 percent, to the 9-1-1 governing bodies of the State of Colorado;⁵
 - c. set forth processes and procedures by which 9-1-1 governing bodies may continue to apply to increase the number of concurrent sessions for which they are credited as part of the distribution schedule for funds from the 9-1-1 trust cash fund;⁶ and
 - d. synchronizes and combines the processes for the remittance of state 9-1-1 surcharge funds and the telecommunications relay service surcharges.⁷

⁴ See § 29-11-102.3(3)(a), C.R.S.

⁵ See § 29-11-102.3(3)(c)(I), C.R.S.

⁶ See § 29-11-102.3(3)(c)(III), C.R.S.

⁷ With the adoption of temporary rules on November 10, 2020, requirements for TRS surcharge remittances were changed from quarterly to monthly beginning in January of 2021. These temporary rules continue this change. See Decision No. C20-0795, Proceeding No. 20R-0480T.

15. The temporary rules shall be effective on the mailed date of this Decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

16. The temporary rules in legislative (strikeout and underline) format, Attachment A, the temporary rules in final version format, Attachment B, and a copy of HB 20-1293 are available through the Commission's E-filing system⁸ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0376T

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding through the Commission's E-Filings system are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be effective on the mailed date of this Decision.

3. The 20-day period provided in § 40-6-114, 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.

4. This Decision is effective upon its Mailed Date.

⁸ From the Electronic Filings (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number, 21R-0376T, in the "Proceeding Number" box and then selecting "Search."

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 4, 2021.**

(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

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners