

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0122T

IN THE MATTER OF PROPOSED AMENDMENTS TO RULES IN 4 CODE OF COLORADO REGULATIONS 723-2 MODIFYING THE COMMISSION RULES REGARDING BASIC EMERGENCY SERVICE NETWORK RELIABILITY.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: March 21, 2022

Adopted Date: March 9, 2022

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2-2130 through 2134, 2136, 2137, 2143, 2148, 2152, 2154, and 2155 (9-1-1 Rules).

2. The changes proposed are primarily intended to improve the Commission’s rules regarding Basic Emergency Service network reliability and to prescribe a tariff-based mechanism for funding Basic Emergency Service network improvements. Additionally, the proposed changes correct typographical errors in Rules 2152, 2154, and 2155. The proposed rules are included as Attachments A and B to this Decision. We welcome comments from interested participants. To the extent a participant disagrees with the proposed rules, comments should include suggested rule revisions, in legislative format.

3. Consistent with the below discussion, this matter is set for hearing and referred to an Administrative Law Judge (ALJ) for a recommended decision.

B. Basic Emergency Service Network Reliability

4. On December 27, 2017, the Commission adopted permanent rules which, among other things, required Basic Emergency Service Providers (BESPs) to file with the Commission, “a 9-1-1 diversity plan for deploying, monitoring, backup power, and physically and geographically diverse redundancy for the provider’s portion of the 9-1-1 system and network where such measures of reliability are lacking.” 4 CCR 723-2-2143(a)(II).¹

¹ See Decision No. C17-1066, Proceeding No. 17R-0488T issued December 27, 2017.

5. The only active BESP providing Basic Emergency Service, Qwest Corporation, doing business as CenturyLink QC (CenturyLink), filed its plan required under this rule on January 9, 2019 in Proceeding No. 19M-0026T.² Attached to its filing as Appendix A, CenturyLink confidentially provided a list of points within its Basic Emergency Service network that lack redundancy, and it roughly estimated it would cost more than \$98 million to complete network improvements that would eliminate potential points of vulnerability. CenturyLink noted its estimate was based on vulnerabilities identified in the company's annual 9-1-1 reliability filing to the Federal Communications Commission (FCC), and that the FCC report "does not examine ingress to the selective routers, PSA/authority networks, or diversity for the 'last mile' of connection from the last serving central office to the PSAP."³

6. Through Decision No. C19-0117-I, issued January 23, 2019 in Proceeding No. 19M-0026T, the Commission directed CenturyLink to enter into a stakeholder workshop process with participants to conduct further review of the Diversity Plan, and to periodically report to the Commission on the status of those stakeholder discussions.

7. By Decision No. C21-0036, issued January 19, 2021, the Commission closed Proceeding No. 19M-0026T. In that decision, we took note of a report submitted by CenturyLink stating that the participants in the stakeholder discussions had determined "that the primary obstacle to solving the diversity problems in rural Colorado remains funding to support the significant financial commitments required to transition from E911 to NextGen 9-1-1 ESInet service."⁴ We also considered a letter filed by Staff of the Commission which represented that the recent creation of a statewide 9-1-1 surcharge through the passage of House Bill 20-1293 was

² See Proceeding No. 19M-0026T.

³ See CenturyLink's Petition in Proceeding No. 19M-0026T at ¶ 7.

⁴ Decision No. C21-0036, issued January 19, 2021, at ¶ 4.

an opportunity to address 9-1-1 diversity funding challenges and suggested that rule changes be considered to apply these funding mechanisms to 9-1-1 diversity planning. We found it appropriate to close the proceeding to pursue potential rule revisions.

8. Following an extensive stakeholder process, we open this rulemaking. The proposed rules include development of processes to enable funding for Basic Emergency Service network improvements in the state without adversely impacting the finances of local 9-1-1 governing bodies. Under the proposed rules, BESP's are required to submit a Basic Emergency Service network reliability improvement plan, which may be considered in the Commission's annual setting of the statewide 9-1-1 surcharge. In addition, proposed rules require BESP's to seek certification to provide Basic Emergency Service every ten years. As proposed, requiring recertification is intended to better enable periodic reviews such that the Commission, customers, and other stakeholder can better ensure that a BESP remains accountable in maintaining and updating its services to support statewide emergency service networks. We intend that these changes, and the others proposed, will support statewide funding, BESP accountability, and improve the diversity and reliability of the 9-1-1 network overall.

C. Proposed Rule Changes

9. An overview of the changes proposed by the Commission fall into general categories described in this Decision. We invite interested stakeholders to comment on the proposed rules and provide additional suggested changes.

1. Introductory Section Preceding Rule 2130 and Applicability

10. The proposed introductory text preceding Rule 2130 is intended to identify the purpose of the 9-1-1 Rules. The proposed Rules will reorder some existing items as well as add items that are newly introduced in this Notice of Proposed Rulemaking.

2. Rule 2131: Definitions

11. We propose creating definitions for “9-1-1 Advisory Task Force” and “Basic Emergency Service Outage.” Additionally, we propose modifying the definition of “Basic Emergency Service.” The 9-1-1 Advisory Task Force is a long-established advisory body of the Commission, created by Rule 2145. The creation of this definition recognizes that the Task Force is mentioned in other rules, as well.

12. The proposed modification of the definition of Basic Emergency Service provides clarifying guidance on the types of text-to-9-1-1 service that would not be considered Basic Emergency Service and deletes the term “interim methods.”

13. The proposed definition of Basic Emergency Service Outage is intended to clarify what is or is not considered a Basic Emergency Service Outage for the purposes of Rule 2143. Through this proposed definition, we intend to make clear that: (1) Basic Emergency Service outages still occur if 9-1-1 calls cannot be delivered to their intended Public Safety Answering Point (PSAP) due to a failure in the Basic Emergency Service network, even if those calls have been successfully rerouted to another PSAP; (2) if 9-1-1 calls cannot be delivered, but location information, if available, cannot, then an outage has still occurred; and (3) outages that occur due to a failure in the Basic Emergency Service portion of the network is still an outage, even if that portion of the network also serves a function in the CenturyLink originating service network.

14. Similarly, the proposed definition is meant to make clear that the following situations are not considered Basic Emergency Service Outages: (1) failures in the originating service provider network, unless the point of failure also falls within the Basic Emergency

Service portion of the 9-1-1 call connection; (2) failure in the PSAP or governing body local systems to receive 9-1-1 calls past the demarcation point with the PSAP or governing body; and (3) routing of calls to an alternate failure that occurs past the point of demarcation point with the PSAP or governing body. The Commission seeks comment on whether the proposed definition of Basic Emergency Service outage meets these objectives, and whether there are other situations that the proposed definition fails to contemplate.

15. The proposed definition of Basic Emergency Service Outage includes that an outage occurs when there is a failure that prevents 9-1-1 calls and associated location information from being delivered to the “appropriate” PSAP or 9-1-1 governing body, “as mutually determined by the PSAP or 9-1-1 governing body and the BESP or governing body.” Currently, the Commission is not notified of the mutual understandings as to which PSAP or 9-1-1 governing body is the “appropriate” receiver of a 9-1-1 call. We seek comment on whether the current practice of having mutual determinations between the BESP and PSAPs or 9-1-1 governing bodies, without any filing made to the Commission, is sufficient, and any other comments on this proposed language.

3. Rule 2134: Process for Certification of Basic Emergency Service Providers

16. The proposed rules modify paragraph (b) and add a new paragraph (e) to require BESP to recertify every ten years. Given the importance of Basic Emergency Service, providers should be required to demonstrate their fitness to serve as a BESP on a recurring basis, but not so frequently that it becomes unduly onerous or fails to serve the public interest. Paragraph (e) requires that existing BESP must recertify no later than January 1, 2030. Following this first

recertification, recertification would be required every ten years after a BESP is initially certified.⁵

17. Paragraph (f) requires that BESP offer Basic Emergency Service on a statewide basis to all PSAPs. The requirement that service be offered on a statewide basis already exists in Rule 2134(c)(XXVI), but this addition is intended to clarify that service must be offered to all PSAPs in the state.

18. Paragraph (g) indicates that persons seeking to provide backup or alternate paths for Basic Emergency Service must apply for Basic Emergency Service certification, but that specific waivers for certain requirements in Rule 2134 may be considered when the applicant demonstrates good cause for any such waiver.

19. The proposed updates are aimed at ensuring accountability through recurring certification, while at the same time providing flexibility for applicants through waiver considerations in individual proceedings. We seek input from stakeholders on these or additional changes to the rules that foster improvements in certification processes.

4. Rule 2137: Required Components of a Basic Emergency Service Tariff

20. This proposed rule outlines specific requirements of a Basic Emergency Service Tariff. Some of the requirements in this rule can currently be found in different sections of the Commission's 9-1-1 rules but are moved here for ease of reference. Other requirements are new. All of the requirements set forth in paragraph (a) are intended to reflect the current state of Basic

⁵ The rules as proposed continue to recognize that more than one BESP may be certified by the Commission through an adjudicated proceeding, and further clarify that provision of backup or alternate paths must be certified as a BESP, but can seek specific waivers of service provision requirements as indicated. *See* Proposed Rule 2134(g).

Emergency Service in Colorado. The inclusion of these items as requirements is meant to ensure that future offerings of Basic Emergency Service do not fall below the current level of service.

21. Paragraph (b) indicates that additional features or services may be offered as part of a Basic Emergency Service tariff if they may reasonably be considered part of Basic Emergency Service, or provide metrics related to that service. This is to allow for the possible evolution of Basic Emergency Service offerings that still meet the statutory and regulatory definitions of Basic Emergency Service but are not currently included in the CenturyLink Basic Emergency Service tariff.

22. Paragraph (c) requires that pricing for Basic Emergency Service, as set forth in a tariff, must be monthly and based on the number of concurrent sessions, and that the amount must be the same per concurrent session for each PSAP purchasing the service. This pricing structure reflects the requirement in § 29-11-102.3(3)(c)(III), C.R.S., that the Commission establish its formula for distribution of the state 9-1-1 surcharge based on the number of concurrent sessions maintained by the PSAPs of each governing body. Paragraph (c) also requires that pricing must be cost-based, a requirement moved here from Rule 2136, and that the tariff include a charge for the Basic Emergency Service network reliability improvement amount described and set via the process found in proposed Rule 2143(b).

23. Paragraph (d) describes how funds derived from the Basic Emergency Service network improvement amount must be handled by the BESP, and states that the Commission may order all unspent funds to be deposited into the state 9-1-1 surcharge trust cash fund, from which it would be distributed back to the 9-1-1 governing bodies.

24. Paragraph (e) indicates that incidental costs to be charged by the BESP, such as for installation of equipment or change orders, must be listed separately in the tariff, unless those

costs are included in the monthly recurring charges for Basic Emergency Service. Paragraph (f) requires that terms of payment and late fees must be stated in the tariff.

25. Paragraph (g) requires that BESP with tariffs already in place shall file an amendment to their tariff by October 1, 2022, in order to comply with this rule.

5. Rule 2143: Obligations of Basic Emergency Service Providers

26. Proposed revisions of paragraph (b) of this rule create a new requirement for each BESP to file a Basic Emergency Service network reliability improvement plan by January 1, 2023. This plan is similar to the 9-1-1 diversity plan required in the existing rules, except that it requires the BESP to propose specific projects in a five-year plan with costs and timeframes for accomplishing the specific improvements proposed. The Commission may approve the plan in whole or in part, and establish a Basic Emergency Service network reliability improvement amount per month per concurrent session to fund the improvements. In conjunction with the requirements found in Rule 2137, it is intended that funds derived from this amount by the BESP may only be spent on approved projects, and that any excess funds may be returned to the state 9-1-1 surcharge trust cash fund for distribution back to the 9-1-1 governing bodies. The BESP may include a profit margin of no more than 10.5 percent over cost, which mirrors the profit margin allowed in CenturyLink's Basic Emergency Service tariff. Quarterly progress reports must be filed by the BESP to ensure compliance with the Commission's rules regarding the use of these funds.

27. It is the Commission's intention to create a funding mechanism that will both require and incentivize the BESP to make improvements to the Basic Emergency Service network, while allowing the costs of those improvements to be reimbursed to the local 9-1-1 governing bodies through the Commission's annual modification of the state

9-1-1 surcharge rate. The Commission seeks comment on whether the approach prescribed in these proposed rules will achieve this goal, or whether there are alternate proposals that may be more likely to result in improvements to the Basic Emergency Service network.

28. Paragraph (d)(V) requires that the BESP include in its annual Basic Emergency Service contingency plan filing, a copy of its most recent 9-1-1 reliability certification report filed with the FCC. This would help the Commission determine if progress is being made towards eliminating or mitigating vulnerabilities in the Basic Emergency Service network.

29. Paragraph (d)(VI) requires that the BESP provide each PSAP in the state with a copy of portions of its annual Basic Emergency Service contingency plan that are relevant to that PSAP. This is intended to ensure that PSAP managers are sufficiently informed regarding vulnerabilities that may exist in the portion of the Basic Emergency Service network that relates to their service area and ensure that information that the BESP has on file for the PSAP is accurate.

30. Paragraph (f) consolidates several requirements found in existing rules regarding actions to be taken by the BESP in the event of a Basic Emergency Service outage. Paragraph (f)(IV) modifies an existing requirement by requiring the BESP to notify a PSAP following a Basic Emergency Service outage whether callback numbers are available for 9-1-1 calls that the network failed to deliver, rather than waiting for the PSAP to request the information. Paragraph (f)(V) requires that the BESP, in the event of Basic Emergency Service outages in excess of 4 hours, or 12 hours if the outage is caused by a fiber cut, shall adjust the next monthly bill to the 9-1-1 governing body or PSAP affected by the outage so that the PSAP is not charged for the outage duration. This requirement is intended to create an additional

incentive for timely resolution of outages, as well as to reduce the situations in which 9-1-1 governing bodies pay for service they did not receive.

6. Rule 2148: Process for the Establishment of Annual Emergency Telephone Charge Threshold, State 9-1-1 Surcharge Rate, Wireless Prepaid 9-1-1 Surcharge Rate, and Associated Fund Distribution Schedules

31. Pursuant to § 29-11-102.3, C.R.S., the state 9-1-1 surcharge must be reasonably calculated to meet the needs of the governing bodies to operate the 9-1-1 system. We propose that the 9-1-1 reliability improvement plan amount approved by the Commission through an adjudicated proceeding, and included in the Basic Emergency Service tariff, would appropriately be considered part of the needs of governing bodies to operate a reliable 9-1-1 system.

32. Therefore, proposed Rule 2148 is modified to clarify that the Commission may include an 9-1-1 reliability improvement plan amount, as approved in Rule 2143(b), when setting the state 9-1-1 surcharge rate each October 1 for the following calendar year.

33. Consistent with CenturyLink's representations "that the primary obstacle to solving the diversity problems in rural Colorado remains funding to support the significant financial commitments required to transition from E911 to NextGen 9-1-1 ESInet service,"⁶ in correlation with the recent creation of a statewide 9-1-1 surcharge through the passage of House Bill 20-1293, we propose that improvement plan amount considerations in annual funding assists in meeting important state goals necessary for the operation of the 9-1-1 system. We seek comment on the proposed process to include approved plans in annual surcharge considerations.

⁶ Decision No. C21-0036, issued January 19, 2021, at ¶ 4.

7. Rules 2152, 2154, and 2155

34. These three rules are included in this proposed rulemaking only to make non-substantive corrections to typographical errors.

D. Conclusion

35. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*; 27-64-103; 40-2-108; 40-3-101, 102, 103, and 110; 40-4-101; 40-15-101, 107, 201, 202; and 29-11-102.3, C.R.S.

36. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0122T

37. The Commission encourages and invites public comment on all proposed rules. We request that commenters propose any changes in legislative redline format.

38. This matter is referred to an ALJ for the issuance of a recommended decision.

39. The ALJ will conduct a hearing on the proposed rules and related issues on May 9, 2022. Interested persons may submit written comments on the rules and present these orally at the hearing, unless the ALJ deems oral presentations unnecessary.

40. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that comments be filed no later than April 22, 2022, and that any pre-filed comments responsive to the initial comments be submitted no later than April 29, 2022. The Commission prefers that comments be filed using its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the April 10, 2022, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE Monday, May 9, 2022

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: In person: Commission Hearing Room 1560 Broadway, 2nd Floor
Denver, Colorado;

And by video conference: using Zoom at a link in the calendar of events on the Commission's website, available at:

<https://puc.colorado.gov/>.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than April 22, 2022, and that any pre-filed comments responsive to the initial comments be submitted no later than April 29, 2022. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 9, 2022.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners