

Decision No. R22-0811

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

PROCEEDING NO. 22R-0122T

---

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

---

**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
ADOPTING RULES AND CLOSING PROCEEDING**

---

---

Mailed Date: December 22, 2022

**I. STATEMENT**

**A. Background**

1. The Colorado Public Utilities Commission issued Decision No. C22-0174, which was a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regarding Basic Emergency Service Network Reliability (Basic Emergency Network Reliability Rules), on March 21, 2022. The NOPR initiated this proceeding. The NOPR proposed significant changes to the Basic Emergency Network Reliability Rules, described those changes in detail and the justification therefor, attached the Rules in legislative (*i.e.*, strikeout/underline) format and in a clean version, established deadlines of April 22, 2022 and April 29, 2022 for initial comments and response comments concerning the proposed rules, respectively, and scheduled a hybrid hearing for May 9, 2022 at 9:00 a.m. for oral comments regarding the proposed rules.<sup>1</sup> The NOPR also

---

<sup>1</sup> A hybrid hearing is one in which the ALJ conducts the hearing from a hearing room at the Commission and the participants appear either in-person or remotely via the Zoom web conferencing platform.

referred this proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. Boulder Regional Telephone Service Authority (BRETSA), Colorado Council of Authorities (CCOA), CTIA – The Wireless Association, Lumen, doing business as CenturyLink QC (CenturyLink), Intrado Safety Communications, Inc. (Intrado), and the Office of the Utility Consumer Advocate (UCA) submitted initial comments and response comments. BRETSA, CenturyLink, Intrado, and UCA filed response comments.

**B. Hybrid Public Comment Hearing**

3. At 9:00 a.m. on May 9, 2022, the ALJ held the hearing noticed in the NOPR. The ALJ discussed the proposed rules and the initial and response comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ proposed a workshop process in which the commenters would more clearly identify areas of consensus and differences and work towards submitting to the Commission revised proposed rules that reflect areas of consensus. The participants at the hearing agreed with the ALJ that, due to the wide diversity of views regarding the proposed rules expressed in the initial and response comments, a workshop process open to all participants would be the most efficient method of reaching the end result of the final rules. The ALJ and the participants thus agreed to continue the hybrid public comment hearing until June 9, 2022 at 11:30 a.m. to provide time for the workshop process to take place.

4. On May 13, 2022, Decision No. R22-0297-I issued that memorialized the decisions made at the May 9, 2022 hybrid public comment hearing. Specifically, Decision No. R22-0297-I continued the hybrid public comment hearing to June 9, 2022 at 11:30 a.m. and

ordered a status report to be filed by June 6, 2022 informing the ALJ of the results of the workshop process as of that date.

5. On June 6, 2022, the participants in the workshop process filed the requested Status Report, which stated that the parties: (a) had met four times to that point; (b) had made good progress but needed more time to complete the process; (c) believed there is a possibility that they will complete the workshop process and be able to file a final report by the week of July 12; and (d) requested that this hybrid public comment hearing be continued until no earlier than July 18, 2022.

**C. First Continued Hybrid Public Comment Hearing**

6. On June 9, 2022, the ALJ held the first continued hybrid public comment hearing. After discussion with the participants, the ALJ ordered a status report be filed by July 15, 2022, and continued the hybrid public comment hearing until August 5, 2022 at 11:30 a.m.

7. On July 6, 2022, the ALJ issued Decision No. R22-0404-I that memorialized the decisions made at the June 9, 2022 continued hybrid public comment hearing and formally scheduled the second continued hybrid public comment hearing for August 5, 2022 at 11:30 a.m.

8. On July 15, 2022, the participants in the workshop process filed the second status report, which stated that the parties: (a) had met an additional six times since the last status report; (b) continued to make good progress but needed more time to complete the process; and (c) believed there is a possibility that they will complete the workshop process and be able to file a final report before the continued hybrid public comment hearing on August 5, 2022.

**D. Second Continued Hybrid Public Comment Hearing**

9. On August 5, 2022, the ALJ held the second continued hybrid public comment hearing. The participants in the workshop process reported that they were close to completing the process and filing a Final Report, but they needed more time. After discussion with the participants, the ALJ ordered the workshop participants to file a final report by September 7, 2022, established deadlines for initial and response comments concerning the Final Report and the rules appended thereto of September 19 and 30, 2022, respectively, and continued the hybrid public comment hearing until October 13, 2022 at 11:30 a.m.

10. On August 11, 2022, the ALJ issued Decision No. R22-0467-I that memorialized the decisions made at the second continued hybrid public comment hearing by formally scheduled the third continued hybrid public comment hearing and establishing the deadlines for the Final Report and the final initial and response comments that had been orally communicated at the second continued hybrid public comment hearing.

11. On September 6, 2022, the participants in the workshop process filed the Final Report and two attachments, which included a redlined version of the proposed rules issued with the NOPR showing the changes proposed by the workshop participants to the proposed rules, and a clean version of the proposed rules containing the same revisions (Consensus Rules). The Final Report stated that the workshop participants had met fourteen times (May 17, 24, and 31; June 7, 21, and 28; July 5, 6, 12, and 26; and August 9, 16, 23, and 30, 2022) to discuss the rules, with most meetings being scheduled for several hours. The State 911 Program Manager (Daryl Branson) facilitated the meetings, as directed by the ALJ. Lumen, CCOA, BRETSA, CTIA, UCA, and Intrado attended most or all of the meetings. While the Consensus Rules filed with the Final Report included “significant changes . . . to nearly every section. . . the workshop

participants were able to resolve all issues of major disagreement” and “[t]here were no adamant objections by any of the participants to any portion of the consensus rules.”<sup>2</sup>

12. On September 19, 2022, Lumen filed Initial Comments Regarding the Consensus Rules in which it proposed changes to Consensus Rules 2143(k)(I)(A) and 2143(k)(1)(C). Otherwise, Lumen “commend[ed] the workshop process [and] supports generally the Consensus Rules.”<sup>3</sup>

13. On September 30, 2022, CCOA and UCA filed separate Response Comments. CCOA opposes Lumen’s suggested changes to Consensus Rules 2143(k)(I)(A) and 2143(k)(1)(C) and UCA “has no objection to Lumen’s proposed changes.”<sup>4</sup>

#### **E. Third Continued Hybrid Public Comment Hearing**

14. On October 13, 2022, the ALJ held the third continued hybrid public comment hearing starting at 11:30 a.m. The workshop participants discussed the changes proposed by Lumen and the response thereto by CCOA. The ALJ also gave any participant in the third continued hybrid public comment hearing the opportunity to comment about any other proposed change to the Basic Emergency Network Reliability Rules. At the end of the hearing, the ALJ adjourned the public comment hearing and stated that a Recommended Hearing addressing the proposed changes to the Basic Emergency Network Reliability Rules would be forthcoming.

---

<sup>2</sup> Final Report at 3-4 (¶¶ 11, 12).

<sup>3</sup> Initial Comments Regarding the Consensus Rules at 4.

<sup>4</sup> UCA’s Response Comments at 1.

## II. DISCUSSION

### A. Introduction

15. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment made, or every nuance of each comment.

### B. Analysis

#### 1. Consensus Rule 2143

16. Lumen proposes to make the following changes to consensus Rule 2143(k):

(k) Commission staff shall commence an informal investigation regarding each apparent basic emergency service outage meeting criteria established by the 9-1-1 Advisory Task Force, despite the dispute resolution process set forth in the BESP's tariff, if any. The 9-1-1 Advisory Task Force may participate in the investigation.

(I) Each informal investigation under this paragraph should be handled as follows:

(A) Commission staff ~~shall~~ may refer an informal investigation form to the BESP for its written response on a standardized form developed by Commission staff for that purpose. This form shall include questions developed by and solicited from the affected governing body or PSAP and the 9-1-1 Advisory Task Force. The BESP shall respond in writing with complete responses within thirty days, or such lesser or greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. The ~~response request as appropriate to the circumstances may shall~~ include (i) the NOC call log entries and, if requested, (ii) copies of e-mails and transcripts or recordings of phone calls between the NOC and other parties related to the outage.

(B) The BESP's responses shall fairly meet the substance of each request. The BESP may not provide an incomplete response citing a lack of information or knowledge unless it states it has made diligent and reasonable inquiry and requests that Commission staff allow a reasonable

extension of time not to exceed fourteen days. Additional reasonable extensions of time may be granted upon request. Requests for any extensions shall be accompanied with estimates of when information may be provided.

- (C) Commission staff, the affected governing bodies or PSAPs, or the 9-1-1 Advisory Task Force may also request a meeting with the BESP, which may be recorded; provided that the recording cannot be used by any person for any purpose in subsequent litigation in any forum. The BESP should arrange for appropriate staff to participate in the meeting, including technical support, service, and management with relevant knowledge and sufficient level of authority or supervision.
- (II) During the pendency of an informal investigation, communications shall be in writing and copied to the BESP, Commission staff, the affected governing body or PSAP, and the Chair of the 9-1-1 Advisory Task Force or his or her designee. Commission staff shall maintain a complete file related to each informal investigation, including all communications and recordings, and access to and use of the file is subject to applicable Commission rules regarding information claimed to be confidential or highly confidential.
- (III) Commission staff will document in a report the closure of each informal investigation within sixty days of the outage, or such greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. The report should include whether the outage was a BES outage, whether the BESP handled the BES outage in a timely manner with the appropriate personnel, and whether the BESP has taken or committed to taking corrective action to prevent or mitigate a similar outage from occurring in the future, specifying the corrective action and the timeframe, if applicable. The report shall also document any non-compliance with Commission rules or the BESP's tariff, including the BESP's service quality plan. Within fourteen days, the 9-1-1 Advisory Task Force, the affected governing body or PSAP, or the BESP may submit to Commission staff written comments, which Commission staff shall append to the report and preserve in the informal investigation file.

(IV) At any time, Commission staff, the 9-1-1 Advisory Task Force, or the affected governing body or PSAP may commence a proceeding before the Commission, at which time the informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report. If the affected governing body or PSAP seeks relief in an alternative forum, then the informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report.<sup>5</sup>

17. The changes to each subsection are addressed in turn.

**a. Consensus Rule 2143(k)(I)(A)**

**(1) Lumen's Proposed Changes**

18. Lumen asserts that the purpose of its proposed change is to "mak[e] the process less rigid."<sup>6</sup> Lumen further believes that the change "will maintain the purpose behind investigating outages while allowing for adaptability and reducing burden both on the [Basic Emergency Service Provider] and the commission staff where appropriate."<sup>7</sup> In response to the potential concern voiced at the third continued hybrid public comment hearing that Lumen's proposed change would inject the opportunity for a BESP to object to the referral of the informal investigation standardized form to the BESP, thereby delaying (at a minimum) the informal investigation, Lumen states that a BESP always has the legal right to object to Commission requests for information and its proposed change thus will not increase the likelihood that a BESP will object to any request within an informal investigation.

**(2) Response**

19. CCOA opposes Lumen's proposed changes to Proposed Rule 2143(k)(I)(A). CCOA states that the new rule is designed to formalize a heretofore less formal process for

---

<sup>5</sup> Lumen's Initial Comments Regarding Consensus Rules at 3 (filed on September 19, 2022).

<sup>6</sup> *Id.* at 2.

investigating outages. CCOA believes that requiring a BESP to provide at least the NOC call log entries for every outage that satisfies the criteria for an informal investigation would be beneficial to understanding and correcting the outage and preventing future outages. CCOA also does not believe that requiring BESP's to provide such information in an informal investigation is burdensome.

20. BRETSA supports allowing Staff to have discretion in determining whether to request NOC call logs. BRETSA believes that such discretion is necessary to ensure that unnecessary costs are not imposed on BESP's, which BRETSA believes may be transferred to ratepayers. However, BRETSA believes that any Staff decision not to initially request NOC call logs should not prohibit Staff from subsequently requesting the logs if Staff deems them necessary.

21. UCA stated at the third continued hybrid public comment hearing that it does not oppose changing "shall" to "may" in the first sentence of Proposed Rule 2143(k)(I)(A). UCA also supports language in the last sentence that provides discretion to Commission Staff to determine whether to request the NOC call logs. Finally, UCA does not support using language that provides discretion to the BESP to determine whether to provide the information if requested.

### (3) Analysis

22. The ALJ will incorporate the following change to Consensus Rule 2143(k)(1)(A):

Commission staff shall refer an informal investigation form to the BESP for its written response on a standardized form developed by Commission staff for that purpose. This form shall include questions developed by and solicited from the affected governing body or PSAP and the 9-1-1 Advisory Task Force. The BESP shall respond in writing with complete responses within thirty days, or such lesser

---

<sup>7</sup> *Id.*

or greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. **If requested,** ~~the~~ response shall include: (1) the NOC call log entries; and, ~~if requested,~~ (2) copies of e-mails and transcripts or recordings of phone calls between the NOC and other parties related to the outage.

23. The ALJ finds and concludes that the changes noted above balances the concerns of the parties that submitted comments regarding Proposed Rule 2143(k)(I)(A). It provides flexibility to Commission Staff to request both NOC call log entries and copies of e-mails and transcripts or recordings of phone calls between the NOC and other parties related to an outage when Commission Staff decides in its sole judgment that such information is necessary. It does not provide BESP with Commission Rule-based discretion to decide whether providing such information is necessary under the circumstances of the outage that is the subject of an informal investigation. The change adopted by the ALJ allows Commission Staff to consider and balance the need for such information under the circumstances of a particular outage versus the burdensomeness of the request on the BESP.

**b. Consensus Rule 2143(k)(1)(C)**

**(1) Lumen's Proposed Change**

24. Lumen states that “the use of any recordings made during the informal process should be limited to the confines of the informal investigation to ensure prompt, open and robust communication.”<sup>8</sup> At the third continued hybrid public comment hearing, Lumen conceded that it is unlikely the Commission has the authority to preclude state and federal courts from using any recorded conversation as evidence in their cases. Lumen thus advocated for a restriction on at least the Commission's use of such a recording in its proceedings.

---

<sup>8</sup> *Id.* at 2-3.

25. Lumen's understanding of the purpose of using a recording device is to allow participants who cannot attend a meeting to listen to the recorded discussion. Lumen fears that the presence of a recording device in meetings with a BESP will inhibit and/or alter the conversation because participants (and particularly participants on behalf of BESPs) will fear that such recordings could be used against them in subsequent Commission proceedings. Lumen does not want the presence of a recording device to turn such meetings into depositions in which participants are focused not on solving problems, but on the legal consequences of what they say.

**(2) Response**

26. CCOA contends that:

Recordings should be available for any use - in that particular informal investigation, in any future informal investigations, and outside the informal investigation process. The BESP should be forthcoming and provide complete and accurate information and explanations about its network or an outage at all times in any setting. Others should be able to rely upon and learn from the BESP. Colorado's migration to the BESP's ESInet is still relatively new. Recordings aid better understanding of the BESP's ESInet and basic emergency service. Candid communication by the BESP, both orally and in writing, during an informal investigation or an outage is expected and encouraged. Oral statements should not be treated any differently than written statements, and any necessary qualification can be made at the time of an oral statement that is recorded. CCOA disagrees with CenturyLink that, if the use of recordings is not limited to the confines of the informal investigation, there will not be prompt, open, and robust communication.

27. BRETSA believes that recording meetings in informal investigations may inhibit robust communication, which is vital to understanding and fixing a problem that led to the information investigation. BRETSA thus understands the motivation behind Lumen's proposed change. But BRETSA also fears that not being able to use recordings in subsequent proceedings may encourage a lack of candor in those meetings. BRETSA thus recommends that the

recordings be available for impeachment purposes, disciplinary proceedings, and other actions for material and intentional misrepresentations.

### (3) Analysis

28. The ALJ will incorporate the following change to Consensus Rule 2143(k)(1)(C):

Commission staff, the affected governing bodies or PSAPs, or the 9-1-1 Advisory Task Force may also request a meeting with the BESP, which may be recorded; provided that the recording may not be used by any person for any purpose in subsequent proceedings before the Commission. The BESP should arrange for appropriate staff to participate in the meeting, including technical support, service, and management with relevant knowledge and sufficient level of authority or supervision.

29. The ALJ finds and concludes that the foregoing changes balance the interests of all involved and provides the greatest likelihood that communications in meetings in the context of informal investigations will be as fulsome and informative as possible. Such communication is important because it will allow the participants to correct any problems that led to the informal investigation in the first place and ensure that such problems do not recur. If a lack of candor at one or more such meetings is alleged in a subsequent Commission proceeding, it is likely that there will be multiple witnesses who can testify regarding the allegation. As a result, not being able to use a recording in a subsequent Commission proceeding should not encourage a lack of candor in meetings concerning informal investigation and/or prevent the Commission from determining whether any communication in such a meeting strayed from the truth.

30. The changes proposed by the ALJ also recognize the limits of the authority of the Commission. The rule thus does not seek to impose evidentiary restrictions on the use of recordings outside of the Commission. The parties appear to agree that the Commission has no such authority.

31. Lumen is correct that a prosecutorial environment in such informal investigations could lead representatives of BESPs to be more reticent in their communications. Such reticence inhibits communication and could serve as an impediment to the understanding of the problem and its cause(s) that led to the informal investigation. Placing the foregoing restriction on the use of recordings will hopefully decrease the likelihood of the development of a prosecutorial environment and correspondingly increase the likelihood of robust and fulsome communication by all participants.

32. Accordingly, based on the foregoing, the ALJ finds and concludes that the changes shown above are consistent with the Commission's authority, will encourage honest and robust communication, and will not unduly hamstring the Commission in carrying out its duties to the public.

**c. Consensus Rules 2143(b) and 2143(b)(VII)**

33. Consensus Rule 2143(b) states in part: "On or before January 15, 2023, and each two years thereafter, each BESP shall file an improvement plan application or amendment." Similarly, Consensus Rule 2143(b)(VII) states: "On or before January 15 every two years following the filing of the original improvement plan, unless otherwise approved by the Commission, the BESP shall file a proposed amendment to the improvement plan extending it for an additional two years or a new proposed improvement plan for a two-year period, including additional projects." Because it is unclear whether these Rules will go into effect before January 15, 2023, the deadline for filing the initial improvement plan application or amendment application and the deadline for filing the subsequent proposed amendments thereto or new proposed plans will be moved to February 15.

**III. RECOMMENDED DECISION**

34. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

**IV. ORDER**

**A. The Commission Orders That:**

1. The Rules Regarding Basic Emergency Service Network Reliability attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to current rules) are attached to this Recommended Decision as Attachment A. The rules in final format are attached to this Recommended Decision as Attachment B. They are also available in the Commission's E-Filings system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=22R-0122T](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0122T).

3. Proceeding No. 22R-0122T is closed.

4. 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.

5. 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.

6. If exceptions to this 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-2

#### PART 2

### RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES

#### Basic Emergency Service

##### Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to: (1) define and describe basic emergency service as regulated by § 40-15-201, C.R.S.; (2) prescribe ~~multi-line telephone system (MLTS) operator requirements regarding disclosure to end users of the proper method/process for accessing 9-1-1 service, and regarding the capability of the MLTS to transmit end users' telephone numbers and location information;~~ (3) ~~prescribe the interconnection environment and relationships between certification of~~ basic emergency service providers ~~(BESPs) and originating and outline the obligations of basic emergency service providers;~~ (3) prescribe the required components of a basic emergency service providers and other BESPs; (4) ~~tariff;~~ (4) prescribe reporting and response requirements regarding basic emergency service outages; (5) establish a tariff-based funding mechanism for basic emergency service network reliability improvements; (6) permit use of 9-1-1 databases for outbound wide area notifications in times of emergency; (5) ~~prescribe reporting times of 9-1-1 outages and interruptions;~~ (6) ~~establish the 9-1-1 Advisory Task Force;~~ (8) explicitly recognize the potential for multiple BESPs in Colorado; (7) ~~establish the process by which governing bodies may apply for approval to impose an emergency telephone charge rate in excess of a threshold established by the Commission;~~ (10) prescribe the process for the establishment of the annual threshold, surcharge, and prepaid wireless 9-1-1 charge amounts; (8) ~~establish annual reporting requirements for 9-1-1 governing bodies;~~ (12) prescribe the processes for the collection and distribution of 9-1-1 surcharge funds; (9) ~~and (13)~~ establish procedures for the conducting of audits of service providers' practices regarding the collection, payment, and remittance of emergency telephone charges and 9-1-1 surcharges; ~~and (10) establishing annual reporting requirements for 9-1-1 governing bodies.~~

The statutory authority for the promulgation of these rules is found at §§ 29-11-101.5; 29-11-102; 29-11-102.3; 29-11-102.5(2)(c); 29-11-102.7(2); 29-11-103; 29-11-106(3); 40-2-108; 40-3-102; 40-3-103; 40-4-101(1) and (2); 40-15-201; 40-15-301; and 40-15-503(2)(g), C.R.S.

#### 2130. Applicability.

- (a) Except as otherwise provided, rules 2130 through 2159 apply to BESPs.

(b) Rules 2136, 2137, and 2143 apply to BESPs actively providing service to a governing body or PSAP.

~~(c) Rules 2147, 2151, 2153, and 2154, and 2156~~ apply to 9-1-1 governing bodies.

~~(ed)~~ Rules 2152 and 2155 apply to originating service providers.

### 2131. Definitions.

The following definitions apply only in the context of rules 2130 through 2159:

(a) "9-1-1" means a three-digit abbreviated dialing code used to report an emergency situation requiring a response by a public agency such as a fire department or police department.

(b) "9-1-1 access connection" means any communications service including wireline, wireless cellular, interconnected voice-over-internet-protocol, or satellite in which connections are enabled, configured, or capable of making 9-1-1 calls. The term does not include facilities-based broadband services. The number of 9-1-1 access connections is determined by the configured capacity for simultaneous outbound calling.

~~(c) "9-1-1 Advisory Task Force" means the representative group established in accordance with rule 2145, which provides oversight of the statewide implementation and provision of basic emergency service, and periodically reports to the Commission on matters related to 9-1-1 service delivery in the state of Colorado.~~

~~(ed)~~ "9-1-1 call" means a request for emergency assistance from the public by dialing 9-1-1 or addressing the E911 regardless of the technology used, and may include voice, text, images, and video, whether originated by wireline, wireless, satellite, or other means.

~~(d) "9-1-1 facilities" means the facilities (e.g., trunks or transmission paths) that connect from the central office serving the individual telephone that originates a 9-1-1 call to the 9-1-1 selective router or functional equivalent and subsequently connects to a Public Safety Answering Point (PSAP). These may include, but are not limited to, point-to-point private line facilities owned, leased or otherwise acquired by a BESP. Common or shared facilities also may be used. These facilities may include private network facilities and governmental facilities (if available) obtained for alternative routing of E9-1-1 calls for temporary use during service interruptions.~~

~~(e) "9-1-1 outage" means a situation in which 9-1-1 calls cannot be transported from the end users to the PSAP responsible for answering the 9-1-1 emergency calls. 9-1-1 failures also include the inability to deliver location information to the PSAP from the 9-1-1 Automatic Location Identification (ALI) database or a loss of the 9-1-1 ALI functionality.~~

~~(f) "9-1-1 selective router" means the telecommunications switch or functional equivalent dedicated to aggregation of 9-1-1 call traffic from public networks and proper routing of 9-1-1 call traffic to PSAPs.~~

~~(ge)~~ "9-1-1 service" means the service by which a 9-1-1 call is routed and transported from the end user placing a 9-1-1 call to the governing body or PSAP serving the caller's location. 9-1-1 service also includes any related caller location information routed to the PSAP, if any.

- (hf) "9-1-1 surcharge" or "state 9-1-1 surcharge" means the surcharge established pursuant to § 29-11-102.3, C.R.S.
- (ig) "Automatic Location Identification" (ALI) means the automatic provision to a PSAP for display, on equipment at the PSAP, of the telephone number and location of the caller. ALI data includes non-listed and non-published numbers and addresses, and other information about the caller's location.
- ~~(j) "ALI provider" means any person or entity that, on a for-profit or not-for-profit basis, provides ALI to basic emergency service providers and the governing body for a specific geographic area.~~
- ~~(k) "ALI service" means all the services, features, and functionalities of elements and components used to provide ALI, including the applications, databases, management processes and services, selective routing, aggregation, and transport, without regard to the technology used, provided to the governing body or PSAP or a specific geographic area. ALI service does not include the provision of ALI by originating service providers, PSAPs, 9-1-1 governing bodies, or local governments.~~
- (lh) "Automatic Number Identification" (ANI) means the automatic provision to a PSAP for display of the caller's telephone number at the PSAP.
- (im) "Basic emergency service" (BES) means the aggregation and transportation of a 9-1-1 call directly to a demarcation point of interconnection with a governing body or PSAP, regardless of the technology used to provide the service. The aggregation of calls means the collection of 9-1-1 calls from one or more ~~originating service providers~~OSPs or ~~intermediary aggregation service providers~~IASPs for the purpose of selectively routing and transporting 9-1-1 calls directly to a demarcation point of interconnection with a governing body or PSAP. The offering or providing of ALI servicelocation information or selective routing directly to a governing body or PSAP ~~by any person~~ is also a basic emergency service. Basic emergency service does not include:
- ~~(I) the portion of a 9-1-1 call provided by an OSP;~~
  - ~~(II) the portion of a 9-1-1 call provided by an originating service provider;~~
  - ~~(II) the or services provided by an intermediary aggregation service provider; IASP;~~
  - (III) the delivery portion of a 9-1-1 call from the ~~originating service provider or an intermediary aggregation service provider~~OSP or an IASP to a demarcation point of interconnection with the BESP;
  - (IV) the delivery portion of a 9-1-1 call ~~from after~~ the demarcation point of interconnection between the BESP and a the governing body or PSAP to the PSAP facility that receives and processes the 9-1-1 call; or
  - (V) the delivery of text ~~to~~ messages to a governing body or PSAP via networks or connections separate from the basic emergency service network.
- ~~(j) "Basic emergency service facilities" or "BES facilities" means the lines, wires, cables, conduit, ducts, poles, cross-arms, equipment, supporting structures, and other infrastructure used by the~~

BESP to provide basic emergency service. "Facilities" has the same meaning, unless the context requires otherwise.

- (k) "Basic emergency service network" or "BES network" means the portion of the 9-1-1 call path that begins at the demarcation point between an OSP or IASP and a BESP and ends at the demarcation point between a BESP and a governing body or PSAP to provide basic emergency service.
- (l) "Basic emergency service outage" or "BES outage" means a failure of basic emergency service that prevents or would prevent 9-1-1 calls, ANI, or location information from being delivered from the demarcation point between the OSP or IASP and the BESP to the demarcation point between the BESP and the governing body or PSAP.
- (~~am~~) "Basic Emergency Service Provider" (BESP) means any person certificated by the Commission to provide basic emergency service.
- (~~en~~) "Concurrent session" means a channel for an inbound simultaneous 9-1-1 call.
- (~~po~~) "Demarcation point" means ~~the~~ physical point of interconnection where the responsibility ~~effor~~ a portion of ~~a network~~ 9-1-1 service changes from one party to another. It includes the point of interconnection between BESP and the OSP, IASP, or other BESP for the purpose of selectively routing and transporting 9-1-1 calls directly to a demarcation point with a governing body or PSAP. It includes the point of interconnection mutually agreed upon in writing by the BESP and each governing body or PSAP with primary responsibility for dispatching first responders to the callers' locations.
- (~~ep~~) "Emergency notification service" (ENS) means a public alerting service in which that, upon activation by a public ~~safety~~ agency:
- (I) ~~the 9-1-1 database or a database which may be derived in whole or in part from the 9-1-1 database is searched to identify all stations located, rapidly distributes notifications within a specified geographic area;~~
- (II) ~~a call is placed to all such stations or all of a certain class of stations within the geographic area (e.g., to exclude calls to facsimile machines, Internet/data access lines, etc.); and~~
- (III) ~~a recorded message is played upon answer to alert the public to a of hazardous conditionconditions or emergency event in the area (e.g., flood, fire, hazardous material incident, etc.);~~
- (IV) ~~ENS may also include emergent events that threaten the transmission of messages to individuals by other meanshealth or lives of people or threatens damage or destruction of property, including text messages, e-mail, facsimile, or other mass alerting method or system, without limitation, floods, fires, and hazardous materials incidents.~~
- (~~fq~~) "Emergency telephone charge" means a charge established by a governing body pursuant to § 29-11-102(2)(a), C.R.S., ~~or established by § 29-11-102.5(2)(a), C.R.S.,~~ to pay for the expenses authorized in § 29-11-104, C.R.S.

- ~~(s)~~ ~~"Enhanced 9-1-1" (E9-1-1) means 9-1-1 service that includes the association of ANI and ALI (including non-listed and non-published numbers and addresses), and selective routing.~~
- (tr) "Geographic area" means the area such as a city, municipality, county, multiple counties or other areas defined by a governing body or other governmental entity for the purpose of providing public agency response to 9-1-1 calls.
- ~~(us)~~ "Governing body" means the organization responsible for establishing, collecting, and disbursing the emergency telephone charge in a specific geographic area, pursuant to §§ 29-11-102, 103, and 104, C.R.S.
- ~~(t)~~ ~~"Improvement amount" means the amount approved by the Commission as described in subparagraph 2137(e)(II).~~
- ~~(u)~~ ~~"Improvement plan" means the plan proposed by a BEP or approved by the Commission as described in paragraph 2143(b).~~
- (v) "Intermediary aggregation service provider" (IASP) means a person that aggregates and transports 9-1-1 calls for one or more ~~originating service providers~~ OSPs for delivery to a demarcation point with a BEP selective router.
- ~~(w)~~ ~~"Location information" means ALI or theits functional equivalent of such a router associated with a 9-1-1 call and provided by a BEP pursuant to its BES tariff.~~
- ~~(wx)~~ "Multi-line telephone system" (MLTS) means a system comprised of common control units, telephones, and control hardware and software providing local telephone service to multiple customers in businesses, apartments, townhouses, condominiums, schools, dormitories, hotels, motels, resorts, extended care facilities, or similar entities, facilities, or structures. Multi-line telephone system includes:
- (I) ~~N~~network and premises-based systems such as Centrex, PBX, and hybrid-key telephone systems; and
  - (II) ~~S~~systems owned or leased by governmental agencies, nonprofit entities, and for-profit businesses.
- ~~(xy)~~ "Multiple-line telephone system operator" means the person that operates an MLTS from which an end user may place a 9-1-1 call through the public switched network.
- ~~(z)~~ ~~"Network Operations Center" (NOC) or "Basic Emergency Service Network Operations Center" means a 24x7, 365 days a year single point of contact for Basic Emergency Service (BES). The NOC is responsible for monitoring the BES network, notifying PSAPs of BES outages, initiating repairs, troubleshooting, and resolving BES network issues.~~
- ~~(aay)~~ "Originating service provider" (OSP) means a local exchange carrier, wireless carrier, Voice-over-Internet-Protocol service provider, or other provider of functionally equivalent services supplying the ability to place 9-1-1 calls.

- (zbb) "Public Safety Answering Point" (PSAP) means a facility equipped and staffed to receive and process 9-1-1 calls from a BESP.
- (aacc) "Selective routing" means the ~~capability of routing of~~ a 9-1-1 call to the demarcation point with a designated governing body or PSAP based upon the location ~~of the end user, information or other factors~~ as indicated agreed upon by the ~~ten-digit telephone number of the fixed location subscriber dialing 9-1-1, the p-ANI (ESRK or ESQK), or otherwise permitted by FCC rule, regulation, governing body or order~~ PSAP.

**2132. -2133. [Reserved].**

**2134. Process for Certification of Basic Emergency Service Providers (BESPs).**

- (a) The Commission finds and declares that the public convenience and necessity require the availability, and, when requested, the provision of basic emergency service throughout Colorado, and further that such basic emergency service is vital to the public health and safety and shall be provided solely by properly certificated BESP.
- ~~(b) The Commission may certify additional or different BESP to offer basic emergency service if such certification is in the public interest. Each application for certification shall be considered on a case-by-case basis.~~
- ~~(b) A party shall not offer to provide BES in Colorado until it has applied for and been granted a certificate of public convenience (CPCN) and necessity by the Commission to provide BES. An application for CPCN to provide BES shall demonstrate that the applicant is technically, managerially, and financially qualified to provide the service, and if certificated, the applicant will (1) maintain a NOC staffed 24 hours per day, 365 days per year, and (2) have adequate personnel, equipment, spares and supplies to expediently restore service after an outage. The Commission may certify multiple BESP to offer BES if it finds such certification is in the public interest.~~
- (c) Notwithstanding paragraphs 2103(a) and 2002(b), an application for ~~authority~~ CPCN to provide ~~basic emergency service~~ BES shall include ~~the following information~~ in the following order ~~and~~, specifically identified ~~the following information, either~~ in the application or ~~in appropriately identified attachments~~ thereto:
- (I) the name and address of the applicant;
  - (II) the name(s) under which the applicant ~~is, or will be,~~ providing telecommunications service BES in Colorado;
  - (III) the name, address, telephone number, and e-mail address of the applicant's representative to whom all inquiries concerning the application should be made ~~;~~
  - (IV) the name, address, telephone number, and e-mail address of the applicant's contact person for customer inquiries concerning the application, if that contact person is different from the person listed in subparagraph (III);

- (V) a statement indicating the town or city, and any alternate town or city, where the applicant prefers any hearings be held (if not at the Commission's offices in Denver, the town or city and any alternate town or city shall be within applicant's proposed initial service area);
- (VI) a statement that the applicant agrees to respond to all questions propounded by the Commission or Commission staff concerning the application;
- (VII) a statement that the applicant shall permit the Commission or Commission staff to inspect the applicant's books and records as part of the investigation into the application;
- (VIII) a statement that the applicant understands that if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted may be revoked upon Commission order;
- (IX) acknowledgment that, by signing the application, applicant understands that:
  - (A) the filing of the application does not by itself constitute approval of the application;
  - (B) if the application is granted, the applicant shall not commence the requested action until the applicant complies with applicable Commission rules and with any conditions established by Commission order granting the application;
  - (C) if a hearing is held, the applicant shall present evidence at the hearing to establish its qualifications to undertake provide BES, and ~~its right to undertake, that grant of~~ the requested action application is in the public interest; and
  - (D) in lieu of the statements contained in subparagraphs (b)(IX)(A) through (C) of this rule, an applicant may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(IX)(A) through (C) of this rule.
- (X) An attestation which is made under penalty of perjury; which is signed by an officer, a partner, an owner, an employee of, an agent for, or an attorney for the applicant, as appropriate, who is authorized to act on behalf of the applicant; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant;
- (XI) the applicant's proposed notice to the public and its customers, if such notice is required;
- (XII) name, mailing address, toll free telephone number, and e-mail address of applicant's representative responsible for responding to customer disputes;
- (XIII) name, mailing address, telephone number, and e-mail address of applicant's representative responsible for responding to the Commission concerning customer informal complaints;

- (XIV) the applicant's applicable organizational documents, e.g., Articles of Incorporation; Partnership Agreement; Articles of Organization, etc.;
- (XV) if the applicant is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the applicant to transact business in Colorado;
- (XVI) name and address of applicant's Colorado agent for service of process;
- (XVII) a description of the applicant's affiliation, if any, with any other company and the name and address of all affiliated companies;
- (XVIII) the applicant's most recent audited balance sheet, income statement, and statement of retained earnings;
- (XIX) if the applicant is a newly created company that is unable to provide the audited financial information requested in subparagraph ~~(VIII)~~(XVIII): detailed information on the sources of capital funds that will be used to provide ~~telecommunications services~~BES, including the amount of any loans, lines of credit, or equity infusions that have been received or requested, and the names of each source of capital funds;
- (XX) the names, business addresses, and titles of all officers, directors, partners, agents and managers who will be responsible for the provisioning of ~~basic-emergency service~~BES in Colorado;
- (XXI) any management contracts, service agreements, marketing agreements or any other agreements between the applicant and any other entity, including affiliates of the applicant, that relate to the provisioning of ~~jurisdictional telecommunications services~~BES in Colorado;
- (XXII) an applicant which has contracted with, or is otherwise relying upon one or more unaffiliated service providers to provide a major component of ~~basic-emergency service~~BES under its certificate shall identify all such contractors or unaffiliated service providers and which services they are providing. For the purposes of this section, a "major component" means call aggregation, transport, routing, location information, and database services.;
- (XXIII) identification of any of the following actions by any court~~-of,~~ regulatory body, agency or official within the last five years regarding the provisioning of regulated ~~telecommunications~~communications services by the applicant, by any of applicant's agents, officers, board members, managers, partners, or management company personnel, or by any of applicant's affiliates that resulted in:
  - (A) assessment of fines or civil penalties;
  - (B) assessment of criminal penalties;
  - (C) injunctive relief;
  - (D) corrective action;

- (E) reparations;
  - (F) a formal complaint proceeding brought by any regulatory body;
  - (G) initiation of or notification of a possible initiation of a disciplinary action by any regulatory body, including but not limited to any proceeding to limit or to place restrictions on any authority to operate any CPCN or any service offered;
  - (H) refusal to grant authority to operate or to provide a service;
  - (I) debarment from providing services in any other jurisdiction or bidding on state or federal contracts;
  - (J) limitation, de-certification, or revocation of authority to operate or to provide a service; or
  - (K) any combination of the above.
- (XXIV) For each item identified in subparagraph (XXIII) of this paragraph: an identification of the jurisdiction, summary of any applicable notification of a possible initiation or pending procedure, including the docket, case, or file number, and, upon the request of the Commission or its Staff, a copy of any written decision; ~~and~~
- (XXV) a description and a visual representation of the major components of, and 9-1-1 call flow through, the applicant's proposed BES network;
- (XXVI) acknowledgment that by signing the application, the applicant:
- (A) certifies that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide the ~~telecommunications services~~ BES for which it is applying;
  - (B) understands that:
    - (i) the filing of the application does not by itself constitute authority to operate;
    - (ii) a Commission finding that the application is complete is not a ruling on the merits of the application;
    - (iii) if the application is granted, the applicant shall not provide service until:
      - (a) the applicant complies with applicable Commission rules and any conditions established by Commission order granting the application;
      - and (b) has an effective tariff on file with the Commission; ~~and (c) the Commission approves its Declaration of Intent to Serve, if seeking to provide local exchange service in the service territory of a rural telecommunications provider;~~

- (C) agrees to respond in writing, within ten days, to all customer informal complaints made to the Commission;
- (D) agrees to contribute, in a manner prescribed by federal or state statute, rule, or administrative order establishing an explicit subsidy mechanism or other fund to which ~~basic-emergency-service providers~~BESPs are required to contribute;
- (E) certifies that, pursuant to the tariff under which its service is offered, it will not unjustly discriminate among customers in the same class of service; and
- (F) certifies that the applicant will not permit any other person or entity to ~~operate~~provide BES under its ~~Commission-granted authority~~BESP certification without explicit Commission approval.

(XXVI)I) The BESP's service area shall be the state of Colorado, but the applicant shall identify the geographic area it initially intends to serve;

(XXVII)I) ~~if~~ the applicant has previously filed with the Commission current reports or material that include the information required in subparagraph (I) and (II), it may confirm this by filing an attestation of completeness and accuracy with proper citation of title and date of the other filed material; and

(~~XXVIII~~XXIX) a detailed statement describing the means by which it will provide basic emergency service. This statement shall include, but is not ~~be~~-limited to:

- (A) the technical specifications for the system that will be used to provide ~~the basic emergency service~~BES, including information on emergency restoration of the system;
- (B) all inter-company agreements used to implement and operate the service;
- (C) a list of all interconnection agreements between the BESP and ~~basic~~ local exchange carriers, wireless carriers, other BESPs, and other telecommunications providers; ~~and~~
- (D) a proposed schedule for testing, monitoring, maintaining, and replacing all equipment and electronics that will be used to provide BES; and

(~~ED~~) proposed tariffs.

(~~XXXd~~) An acknowledgment that the applicant will provide ~~basic-emergency-service~~BES in accordance with these rules and all applicable quality of service rules.

(~~ed~~) While the application is pending, the ~~application~~applicant shall amend its application to report any changes to the information provided within five business days of any such change, so as to keep its application current.

(~~e~~) Two years from the grant of the application, and each two years thereafter, each BESP actively providing BES shall file with the Commission updates regarding any changes to the following

required information in paragraph (c): items (I)-(IV), (XII)-(XVIII), (XX)-(XXV), and (XXIX)(A)-(C). Additionally, the BESP shall include with this filing an attestation that the information provided is true, accurate, and correct, and that the BESP remains financially and administratively sound and capable of providing the BES offered in its current tariff(s).

- (f) BESPs that have not actively provided BES for a period of five years prior to the filing of a proposed tariff as described in rule 2137 must include in that filing an update to their certification information regarding paragraph (c): items (I)-(IV), (XII)-(XVIII), (XX)-(XXV), (XXIX), and (XXX). Additionally, the BESP shall include with this filing an attestation, which is made under penalty of perjury, that the information provided is true, accurate, and correct, and that the BESP remains financially and administratively sound and capable of providing the BES offered in its proposed tariff(s). The Commission will consider this information when considering approval of the advice letter and proposed tariff pages. The Commission will also determine whether the BESP must file an improvement plan as described in paragraph 2143(b) along with its proposed tariff.
- (g) Each BESP must offer BES on a statewide basis to all governing bodies or PSAPs.
- (h) Persons seeking to offer services that provide backup BES outside of a BESP's BES tariff must apply for BESP certification. Applications for backup BES must meet requirements in rule 2134 or seek waiver of specific rule requirements and demonstrate good cause for any waiver requested.
- (i) In any order approving the certification of a BESP, the Commission will also determine whether the BESP shall be required to file an improvement plan application as described in paragraph 2143(b) and set a deadline for filing the application.

\* \* \* \*

[indicates omission of unaffected rules]

### **2136. Obligations of Basic Emergency Service Providers.**

- (a) A BESP certificated by the Commission, shall ~~obtain facilities from or~~ interconnect with all ~~originating service providers telecommunications providers~~ OSPs and IASPs who have customers in areas served by the BESP. BESPs shall interconnect with all other BESPs for the purpose of transferring 9-1-1 calls to PSAPs served by the other BESPs.
- (b) The BESP shall provide geographically diverse demarcation points for aggregating 9-1-1 calls and location information from OSPs and IASPs. At the request of an ~~originating service provider, intermediary aggregation service provider, or other BESP~~OSP or IASP, a BESP shall provide and/or arrange for the necessary facilities to interconnect, route with the request for the purpose of aggregating and transporttransporting 9-1-1 calls and ~~ALL~~location information from ~~originating service provider, intermediary aggregation service provider, or other BESP~~the requestor to the demarcation point with the governing body or PSAP that is responsible for answering the 9-1-1 calls. Interconnection shall be accomplished in a timely manner, generally not more than 30 days from the time the BESP receives a written order. Interconnection facilities shall generally be engineered as follows:

- (I) dedicated facilities for connecting ~~originating service provider or intermediary aggregation service provider~~ OSPs and IASPs to a BESP shall be based on the requirements established by the BESP to serve the customers within that local exchange; or
  - (II) if shared or common facility groups are used to transport calls from ~~the originating service provider or intermediary aggregation service provider~~ an OSP or IASP to a BESP, they shall be sized to carry the additional call volume requirements. Additionally, common or shared groups shall be arranged to provide 9-1-1 calls on a priority basis where economically and technically feasible.
- (c) A BESP shall develop and file with the Commission tariffs that ~~establish cost-based rates for basic emergency service. These rates shall be averaged over the entire geographic areas the BESP is certificated to serve, except as otherwise provided in subparagraph 2143(a)(III), comply with the requirements set forth in rule 2137.~~
- (d) A BESP shall render to each governing body a single monthly bill for its tariffed services ~~provided to the appropriate governing body~~. The monthly bill shall be sufficiently detailed to allow the governing body to determine that it is being billed properly based on the billing increments as approved by the Commission.
- ~~(e) The BESP shall coordinate with the 9-1-1 Advisory Task Force to establish a process for ensuring units used for tariff pricing are accurate and up-to-date.~~
- (fe) BESPs shall ensure, to the extent possible and in the most efficient manner, that ~~telecommunication services are~~ basic emergency service is available for transmitting 9-1-1 calls from deaf, hard of hearing, and persons with speech impairments to the appropriate PSAP.
- (gf) A BESP shall ensure that all ~~basic emergency service~~ BES facilities, and interconnections between it and the ~~originating service providers~~ OSPs and ~~intermediary aggregation service providers~~ IASPs are engineered, installed, maintained, and monitored in order to provide a minimum of two circuits and a minimum P.01 grade of service (one percent or less blocking during the busy hour), or such other minimum grade of service requirements approved by the Commission.
- (hg) Where a BESP obtains BES facilities from a basic local exchange carrier ~~for delivery of 9-1-1 calls to a PSAP~~, the rates for such facilities shall be reflected in a tariff or agreement filed for approval with the Commission. Such tariffs or agreements shall ensure that such facilities are engineered, installed, maintained, and monitored to provide a minimum of two circuits and a grade of service that has one percent (P.01) or less blocking. The basic local exchange carrier providing such facilities shall not be considered a BESP. The provisions of this rule shall not apply to routing arrangements implemented pursuant to paragraph 2143(~~di~~)(II).
- (ih) To expedite the restoration of service following a 9-1-1 outage, each BESP shall designate a telephone number for governing bodies, PSAPs, IASPs, and ~~originating service providers~~ OSPs to report trouble. Such telephone number shall be staffed seven days a week, 24 hours a day, by personnel capable of processing calls to initiate immediate corrective action.
- (ji) A BESP shall keep on file with the Commission its contingency plan as described in paragraph 2143(~~de~~).

- (k) BESPs shall identify service providers supplying service within a governing body or PSAP's service area, or statewide, to the extent that the BESP possesses such information, in response to a request from a governing body, PSAP, or the Commission.
- (l) A BESP shall report to the Commission a list of every PSAP serviced by the BESP with the number of concurrent sessions provided to each PSAP. This report shall be updated and filed annually with the Commission by June 1 of each year.

**2137. ~~Reserved~~. Required Components of a Basic Emergency Service Tariff.**

- (a) At a minimum, a BES tariff must include the following services:
  - (I) delivery of 9-1-1 calls to the demarcation point with the governing body or PSAP with primary responsibility for dispatching first responders to the caller's location unless otherwise directed by the PSAP or governing body;
  - (II) delivery of location information to the governing body or PSAP receiving the 9-1-1 call;
  - (III) the ability to automatically route 9-1-1 calls to one or more alternate PSAPs, as designated by the governing body or PSAP, in the event of a call overflow, outage, or PSAP abandonment, including split contingent routing of 9-1-1 calls to multiple alternate PSAPs if feasible;
  - (IV) the ability to transfer 9-1-1 calls to other Colorado governing bodies or PSAPs with location information;
  - (V) when feasible, the ability to transfer 9-1-1 calls to 10-digit lines without additional long distance charges;
  - (VI) if feasible, the ability to transfer 9-1-1 calls to a PSAP in another state with location information without additional long distance charges;
  - (VII) processes or tools that a governing body or PSAP and the BESP may use to pre-validate location information and routing information associated with specific telephone numbers and to correct such information or to report telephone numbers that do not have associated location information;
  - (VIII) minimum quality of service metrics that the BES will meet (examples: service availability percentage, jitter, packet loss, mean opinion score, latency, successful call delivery percentage, and call delivery accuracy percentage);
  - (IX) a description of the internal schedules for testing, monitoring, maintaining, and replacing all equipment and electronics that will be used to provide BES;
  - (X) the provision of technical support 24 hours per day, every day of each year;
  - (XI) reporting tools for access to service metrics, call processing, call status, and other call and service data;

- (XII) nonrecurring charges for one-time costs, such as installation of equipment or change orders related to the delivery of BES must be listed separately in the tariff, unless those costs are included in the monthly recurring charges provided for in the tariff; and
- (XIII) terms of payment for invoices for BES must be stated, including late fees.
- (b) BESP's with BES tariffs in place as of March 1, 2022 shall file an advice letter and tariff pages within 180 days of the effective date of this rule to comply with paragraph (a) of this rule.
- (c) All of the requirements listed in paragraph (a) shall be provided in conformity with the relevant standards of the National Emergency Number Association, to the extent feasible.
- (d) Additional features or services may be offered as part of a BES tariff, if they may reasonably be considered part of BES, or provide metrics related to that service.
- (e) The pricing and rates for BES shall be set forth on the BESP's BES tariff.
- (I) Rates for BES must be established per concurrent session per month. The rate for all services and features included with the BES offering, as approved by the Commission, must be the same, per concurrent session, for all governing bodies or PSAPs purchasing service under the tariff. Such pricing must be based on actual costs plus a proposed profit margin. The BESP shall describe the methodology it used to determine the proposed pricing in the advice letter or tariff pages. Additional features or services may be offered in the tariff on an optional or individual case basis, provided:
- (A) the additional features or services may reasonably be considered part of BES or monitoring and metrics for such service; and
- (B) the offering of the additional features or services on an optional or individual case basis will not create differences in the uniformity of BES availability statewide.
- (II) The tariff must include, as a separate line item, the improvement amount approved pursuant to paragraph 2143(b), if any. Within 45 days of the Commission's approval of the improvement amount, the BESP shall file an advice letter and tariff pages to reflect the approved improvement amount, with an effective date of the following March 1, unless otherwise directed by the Commission in its approval of the improvement amount. The improvement amount shall be assessed per concurrent session per month to every governing body or PSAP receiving service from the BESP.
- (III) The tariff must state that the improvement amount described in subparagraph (II) above may be temporarily or permanently suspended by Commission decision.

\* \* \* \*

[indicates omission of unaffected rules]

**2143. Diverse Routing and Priority Basic Emergency Service Restoration Reliability and Outage Response.**

(a) ~~Diversity of 9-1-1 circuits.~~

~~(I) — All BESPs providing 9-1-1 service to a governing body or PSAP's demarcation point BES shall take reasonable measures to provide reliable basic emergency service with respect to BES including circuit diversity, central-office backup power, and diverse network monitoring. Where feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.~~

~~(A) Circuits or equivalent data paths are physically diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not physically diverse even if they are logically diverse for purposes of transmitting data.~~

~~(B) Circuits or equivalent data paths are geographically diverse if they take different paths from endpoint to endpoint, not following the same geographic route.~~

~~(II) — On a date six months from adoption of this rule, and at such other times as may be deemed necessary by the Commission, each BESP and ALI provider (if offering service separately from a BESP) shall develop and file confidentially, in an appropriate proceeding 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. Information confidentially filed with this diversity plan shall include:~~

~~(A) — maps depicting the provider's basic emergency service architecture;~~

~~(B) — a list and description, including geographic location, of every point within the provider's portion of the 9-1-1 system and network where monitoring, backup power, and/or physical and geographically diverse redundancy are not present;~~

~~(C) — a description of which items from subparagraph (a)(II)(B) of this rule the provider proposes to improve, how the provider proposes to improve the items, and a proposed timetable for deploying these improvements;~~

~~(D) — a description of which items from subparagraph (a)(II)(B) of this rule the provider proposes to not improve, and an explanation of why it proposes to not improve them; and~~

~~(E) — the costs, averaged statewide, associated with each improvement listed in subparagraphs (a)(II)(C) and (D) of this rule.~~

~~(III) — Following Commission approval of the diversity plan, or portions thereof, the provider shall file a new tariff or modify an existing tariff for implementation of the plan, as directed by the Commission. A 9-1-1 governing body or PSAP may submit a request to a BESP for diversity not included in the approved diversity plan. Following negotiation, the BESP~~

~~shall file an application requesting Commission approval of the proposed prices, terms, and conditions responsive to the request.~~

- ~~(IV) Pursuant to subparagraph (a)(II) of this rule, after the effective date of the tariff each provider shall file quarterly updates with the PUC on its efforts to meet the deployment schedule required by subparagraph (a)(II)(C).~~
- ~~(b) BESP~~s shall work cooperatively with the PSAPs to ensure an effective way of tracking the status of 9-1-1 outages (e.g., issuance of trouble ticket). ~~Originating service providers should work cooperatively with the PSAPs and the BESP to track the status of 9-1-1 outages. Each provider should provide to the 9-1-1 governing body or PSAP and the BESP a telephone number that the PSAPs or BESP~~s can use to report trouble. ~~Such telephone number should be staffed seven days a week, 24 hours a day by personnel capable of processing the call to initiate immediate corrective action.~~
- ~~(c) A BESP~~s shall notify the responsible parties designated by the governing bodies regarding a present or potential 9-1-1 outage. These notifications shall include the nature and extent of the 9-1-1 outages and the actions taken to correct them, to the extent known by the BESP. In the event the PSAP detects a failure in the 9-1-1 system, the PSAP should notify the BESP which provide 9-1-1 service in the geographic area affected by the outage. These notifications shall be made as soon as is practicable.
- ~~(d) Beginning in 2018, each BESP and ALI provider (if offering service separately from a BESP) shall develop a 9-1-1 reliability and~~(b) On or before February 15, 2023, and each two years thereafter, each BESP shall file an improvement plan application or amendment. This application or amendment shall be subject to rule 2002.
- (I) The improvement plan shall consist of the following, at a minimum:
- (A) a list of service reliability items including, but not limited to, items reported to the FCC in its annual 9-1-1 reliability submission;
- (B) a list of projects to improve the reliability of the BES network that the BESP proposes to implement over the course of a twenty-four month period. For each proposed project listed, the BESP shall include the following information:
- (i) the proposed beginning and completion date of the project, along with any proposed intermediate milestones for phases of the project;
- (ii) firm estimated costs for the project(s) or, for multi-phase projects, for the individual phases of the project to be completed within the improvement plan term, including a proposed profit margin of no more than 10.5 percent;
- (iii) the portion of the cost of the project or project phase the BESP requests to be funded through the improvement plan;
- (iv) an explanation of different technological options and contractual arrangements considered by the BESP for this project, including, as

appropriate, fiber, microwave, satellite, and third party facilities, and the reasons the BESP has selected the options included in its improvement plan for this project, including considerations of cost effectiveness and effectiveness at improving reliability;

(v) a statement describing whether the benefit of the improvement will be exclusive to BES, and, if not, the estimated percentage of the benefit to BES versus other uses of the improvement, such as commercial uses; and

(vi) a statement describing the expected impact of each proposed project, including what benefit the project may have for BES network reliability and which PSAP(s) may be expected to benefit from the project, and the reasons the BESP chose this project over other potential projects. Projects to be included in the application should be proposed based on the following categories, following informal consultation with stakeholders:

(1) projects that have the potential to reduce the likelihood of outages based on past patterns of outages in the BES network and based on the existence of points in the network, equipment, or software that represent a lack of redundancy or diversity;

(2) projects that have the potential to reduce the duration or scope of outages;

(3) projects that have the potential to improve reliability for more than one PSAP;

(4) projects that, when implemented with other projects proposed in the improvement plan application, balance improvements to portions of the network serving both urban and rural communities; and

(5) other projects that the BESP determines would be beneficial to the overall reliability and resiliency of the BES network.

(C) Other changes that the BESP anticipates occurring in Colorado in the next two years that may impact BES.

(D) A statement attesting that the BESP understands that it is responsible for the ongoing maintenance and operations of any improvement made in accordance with an approved improvement plan and funded through an approved improvement amount, unless otherwise approved by the Commission, and that the BESP understands that it may not discontinue the maintenance and operation of any approved and funded improvement without express permission of the Commission.

- (E) A proposed improvement amount, as described in subparagraph 2137(e)(II). This improvement amount shall be calculated to reimburse the BESP for its costs, including its proposed profit margin, for all proposed projects in the two-year improvement plan. The BESP may propose different improvement amounts for each of the two years.
- (II) As part of its decision to approve the improvement plan, the Commission shall also approve an improvement amount. Thereafter, but no more than annually, the BESP or Commission staff may request an adjustment to the improvement amount. The improvement amount shall be calculated to provide reimbursement to the BESP for all approved expenditures already incurred and all expenditures anticipated pursuant to an approved improvement plan. If approved prior August 1, the improvement amount shall be effective the following March 1. If approved after August 1, the improvement amount shall be effective March 1 of the year following the next August 1. The Commission will take the improvement amount into consideration when setting the 9-1-1 surcharge rate as described in subparagraph 2148(a)(II).
- (III) The Commission may approve the improvement plan application, in full or as modified by the Commission.
- (IV) Following a Commission decision approving an improvement plan application, the BESP shall:

  - (A) provide notice within 30 days of its intent to accept funds and implement the improvement plan, in full or in part; and
  - (B) file quarterly reports containing the following information:

    - (i) a description of all work completed pursuant to the improvement plan since the last quarterly report and cumulatively;
    - (ii) a list and total of all expenditures incurred by the BESP in completion of the work since the last quarterly report and cumulatively, and expenses expected to be incurred in the following quarter;
    - (iii) the funding obtained from the improvement amount since the last quarterly report and cumulatively;
    - (iv) anticipated expenses for the following quarter; and
    - (v) any actual or anticipated project delays that are expected to affect the dates of any project completion or milestone date as described in the approved improvement plan.
- (V) Following approval of the improvement plan, the BESP may file proposed amendments to the improvement plan for approval by the Commission for any significant unforeseen changes to the approved improvement plan.

- (VI) Following each quarterly report, if improvement amount revenues significantly exceed current and anticipated expenditures, following notice and comment by interested parties, the Commission may suspend the improvement amount until such time that future quarterly reports demonstrate that the approved expenditures exceed total revenue received by the BESP, or take other actions as appropriate.
- (VII) On or before February 15 every two years following the filing of the original improvement plan, unless otherwise approved by the Commission, the BESP shall file a proposed amendment to the improvement plan extending it for an additional two years or a new proposed improvement plan for a two-year period, including additional projects.
- (VIII) The Commission may, with cause, revoke approval of the improvement plan and terminate the BESP's authority to charge the improvement amount. The BESP shall be allowed to continue charging the improvement amount until any approved expenditures already made by the BESP have been reimbursed through the improvement amount.
- (c) Each BESP shall maintain contact information for each PSAP as specified by the governing body or PSAP served by the BESP for notification of actual or potential BES outages. No less than annually, the BESP shall contact each PSAP that is served by the BESP to verify the notification information on file.
- (d) The BESP shall obtain from each governing body or PSAP its preferred alternative method(s) for the governing body or PSAP and the BESP to communicate during a BES outage.
- (e) ~~Beginning in 2018, each BESP and ALI provider (if offering service separately from a BESP) shall develop a 9-1-1 reliability and~~ Beginning in 2023 and each year thereafter, each BESP shall develop a BES contingency plan in collaboration with all affected BESPs, basic local exchange carriers which provide final delivery of 9-1-1 calls to a PSAP, ALI providers, intermediary aggregation service providers, originating service providers from which the BESP obtains BES facilities, governing bodies, and PSAPs, to be confidentially filed annually with the Commission no later than April 30. ~~A 9-1-1 reliability and~~ The contingency plan shall include:
- (I) identification and location of all primary and backup facilities, equipment, and databases or any and all other components related to ~~basic emergency service~~ BES;
  - (II) an identification and description of all demarcation points with ~~BESPs, ALI providers, and governing bodies or PSAPs, or other BESPs;~~
  - (III) all contingency processes and information from BESP, ~~originating service providers, intermediary aggregation service providers,~~ PSAPs, and governing bodies necessary for public safety operations until ~~9-1-1 service~~ BES is restored;
  - (IV) ~~the most current version of the contact information for designated representatives for each PSAP and/or governing body; and~~ collected by the BESP pursuant to paragraph 2143(c), and an indication of whether the information has been updated or confirmed since the previous contingency plan filing;
  - (V) ~~the results of the BESP's most recent 9-1-1 reliability certification report filed with the Federal Communications Commission pursuant to 47 CFR § 9.19, including, where~~

applicable, reference regarding which PSAP(s) would potentially be impacted by an outage of an item in the report, for use by governing bodies and PSAPs to plan for each PSAP and/or governing body; and mitigate potential outages and continuity of operations;

- (VI) any other details deemed relevant ~~as determined~~ by the ~~relevant parties~~ BESP or reasonably requested by the Commission;
- (VII) All providers required to file a 9-1-1 reliability and contingency plan pursuant to this paragraph (d) shall notify affected PSAPs of any known changes that may require an update to the 9-1-1 reliability and contingency plan; alternate communications plans as described in paragraph (g); and
- (VIII) a template non-disclosure agreement that may be completed by governing bodies and PSAPs and filed in the proceeding.
- (f) The BESP shall meet with each governing body or PSAP, upon request, to review the information contained in the most recent contingency plan as it relates to the governing body or PSAP.
- (g) Where feasible, the BESP should develop plans for its technicians to communicate with the NOC in the event of an isolation of a central office serving a PSAP in a manner that will allow for expeditious resolution of the outage.
- (h) Each BESP shall provide each PSAP that it serves with a telephone number that the PSAP can use to report to the BESP technical issues regarding BES. The telephone number should be staffed at all times, including nights, weekends, and holidays, by personnel capable of processing the call to initiate immediate corrective action. The BESP shall log all calls and communications between the NOC and PSAPs or governing bodies by date, time, PSAP, party placing the call or sending the message, and individuals participating in the call and subject, with a summary of the call including any instructions provided the PSAP.
- (i) All call recordings and messages transmitted or received by the BESP regarding an outage shall be retained for at least 24 months. All logs, call recordings and messages concerning a specific outage shall be assigned a unique trouble ticket number.
- (j) In the event of a confirmed or potential BES outage, the following shall occur.
  - (I) The BESP shall notify each affected governing body or PSAP via the contacts previously provided in accordance with paragraph (c). Such notifications shall be made as soon as is practical, and shall include a trouble ticket number, the nature and extent of the BES outage, if known, and the actions being taken to correct the outage. If applicable, the notice shall include interim measures being taken to route 9-1-1 calls to alternate PSAPs or other locations. If known, the notification shall also include an estimated time of repair.
  - (IIe) If the BES outage ~~if a 9-1-1 failure~~ exceeds or is anticipated to exceed 15 minutes from the time a BESP becomes aware of the outage ~~and after notification to the PSAP~~, the BESP shall implement the appropriate contingency plan ~~required by~~ established in paragraph 2143 ~~(e)~~ or provide temporary solutions so that 9-1-1 calls can be answered until 9-1-1 service BES is restored, ~~as mutually agreed upon.~~

- ~~(f) A BESP shall have qualified service technicians on site, when necessary, within two hours of discovering a 9-1-1 outage, or their best effort. The BESP shall coordinate any alternate solutions with the contact(s) provided in accordance with paragraph (c) for the affected governing body or PSAP.~~
- ~~(gIII) If a disruption of basic emergency service BES exceeds 30 minutes, the responsible BESP or the responsible basic local exchange carrier providing facilities pursuant to paragraph 2136(i) shall inform the Commission within two hours of the time that the BESP becomes aware of the outage. Such notification shall be made in a manner prescribed by the Commission, outlining the nature and extent of the outage, and actions taken to restore service and any interim measures taken to mitigate the outage prior to resolution. The BESP shall notify the Commission of restoration of service by the beginning of the next business day. This notification shall be followed within 30 days of such outage by a report with to the Commission, which follows. The report shall follow Commission reporting format and guidelines within 30 days of such outage. As an alternative to or in addition to the 30-day written report, the Director, or the Director's designee, and shall include a statement of whether call back numbers for 9-1-1 calls, which could not be connected, were provided to the PSAP pursuant to subparagraph 2143(j)(V). Commission staff may request, on a case-by-case basis, a separate written report within five days from the time of the request, outlining the nature, cause and extent of the outage, and corrective action taken. An update regarding an ongoing outage at any time.~~
- ~~(IV) All 9-1-1 calls received by the BESP shall be routed to the PSAP with primary responsibility for dispatching first responders to the caller's location, or in accordance with the alternate solutions described in paragraph (j)(II) of this rule, or, if unavailable, to another PSAP if possible.~~
- ~~(Vh) Following the restoration of 9-1-1 service BES, the BESP shall, at the request of a PSAP or notify each affected governing body, provide to the affected PSAPs the or PSAP whether call back phone numbers of any are available for calls that were made to 9-1-1 by were unable made to 9-1-1 but could not be delivered due to the 9-1-1 outage, if. If available to the BESP. This information, these call back numbers shall be provided to each governing body or PSAP within two hours of the restoration of 9-1-1 service or as soon as possible under the circumstances. When possible, this information should also include associated All location information.~~
- ~~(VI) In the event of a BES outage of more than four hours duration, or 12 hours in duration if the outage is due to a fiber cut, the BESP shall provide a credit equal to the ratio of hours of the duration of the outage in hours to the total number of hours in the billing cycle. The credit shall be provided within no more than two billing cycles.~~
- ~~(k) Commission staff shall commence an informal investigation regarding each apparent basic emergency service outage meeting criteria established by the 9-1-1 Advisory Task Force, despite the dispute resolution process set forth in the BESP's tariff, if any. The 9-1-1 Advisory Task Force may participate in the investigation.~~
- ~~(l) Each informal investigation under this paragraph should be handled as follows.~~

- (A) Commission staff shall refer an informal investigation form to the BESP for its written response on a standardized form developed by Commission staff for that purpose. This form shall include questions developed by and solicited from the affected governing body or PSAP and the 9-1-1 Advisory Task Force. The BESP shall respond in writing with complete responses within thirty days, or such lesser or greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. If requested, the response shall include: (1) the NOC call log entries; and (2) copies of e-mails and transcripts or recordings of phone calls between the NOC and other parties related to the outage.
- (B) The BESP's responses shall fairly meet the substance of each request. The BESP may not provide an incomplete response citing a lack of information or knowledge unless it states it has made diligent and reasonable inquiry and requests that Commission staff allow a reasonable extension of time not to exceed fourteen days. Additional reasonable extensions of time may be granted upon request. Requests for any extensions shall be accompanied with estimates of when information may be provided.
- (C) Commission staff, the affected governing bodies or PSAPs, or the 9-1-1 Advisory Task Force may also request a meeting with the BESP, which may be recorded, provided that the recording may not be used by any person for any purpose in subsequent proceedings before the Commission. The BESP should arrange for appropriate staff to participate in the meeting, including technical support, service, and management with relevant knowledge and sufficient level of authority or supervision.
- (II) During the pendency of an informal investigation, communications shall be in writing and copied to the BESP, Commission staff, the affected governing body or PSAP, and the Chair of the 9-1-1 Advisory Task Force or his or her designee. Commission staff shall maintain a complete file related to each informal investigation, including all communications and recordings, and access to and use of the file is subject to applicable Commission rules regarding information claimed to be confidential or highly confidential.
- (III) Commission staff will document in a report the closure of each informal investigation within sixty days of the outage, or such greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. The report should include whether the outage was a BES outage, whether the BESP handled the BES outage in a timely manner with the appropriate personnel, and whether the BESP has taken or committed to taking corrective action to prevent or mitigate a similar outage from occurring in the future, specifying the corrective action and the timeframe, if applicable. The report shall also document any non-compliance with Commission rules or the BESP's tariff, including the BESP's service quality plan. Within 14 days, the 9-1-1 Advisory Task Force, the affected governing body or PSAP, or the BESP may submit to Commission staff written comments, which Commission staff shall append to the report and preserve in the informal investigation file.
- (IV) At any time, Commission staff, the 9-1-1 Advisory Task Force, or the affected governing body or PSAP may commence a proceeding before the Commission, at which time the

informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report. If the affected governing body or PSAP seeks relief in an alternative forum, then the informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report.

- (f) Nothing in rule 2143 shall be construed to impose any obligation on any provider other than BESPs.

\* \* \* \*

[indicates omission of unaffected rules]

**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.**

- (a) On or before August 1 of each year, the Commission shall initiate a proceeding to be concluded on or before October 1 to establish the emergency telephone charge threshold, a statewide 9-1-1 surcharge, a wireless prepaid 9-1-1 charge, a distribution schedule for the funds raised by the state 9-1-1 surcharge, and a distribution schedule for the funds raised by the wireless prepaid 9-1-1 charge for the following calendar year.
- (I) The emergency telephone charge threshold:
- (A) shall take into account inflation through the consideration of historical data and future projections; and
  - (B) shall take into account the needs of governing bodies through the consideration of historical data, inflation rates, the rate of increase of the average emergency telephone charge, comments provided under this rule, and other factors the Commission deems relevant.
- (II) The 9-1-1 surcharge:
- (A) shall not exceed fifty cents per month per 9-1-1 access connection;
  - (B) shall be calculated to meet the needs of governing bodies to operate the 9-1-1 system by considering historical data, costs to the 9-1-1 governing body of ~~basic emergency service~~BES tariffs, comments provided under this rule, and other factors the Commission deems relevant; including without limitation, the most recently approved improvement amount as described in subparagraph 2137(e)(II); and
  - (C) shall be uniform, regardless of the technology used to provide the 9-1-1 access connection.
- (III) The wireless prepaid 9-1-1 charge shall be calculated by determining the average of all local emergency telephone charges as they existed on July 1 of that year plus the

amount of the statewide 9-1-1 surcharge established by the Commission for the upcoming year.

- (IV) The distribution schedule for the funds raised by the state 9-1-1 surcharge shall be based on the number of concurrent sessions at all of the PSAPs associated with a governing body as a percentage of the total number of concurrent sessions statewide.
  - (V) The distribution schedule for the funds raised by wireless prepaid 9-1-1 charge shall be based on the wireless 9-1-1 call volume at all of the PSAPs associated with a governing body as a percentage of the total number of wireless 9-1-1 calls received by all PSAPs statewide.
- (b) The decision initiating this proceeding shall be accompanied by proposed amounts and distribution schedules as described in (a) (I) through (V) for comment.
  - (c) The wireless prepaid 9-1-1 charge rate and wireless prepaid 9-1-1 distribution schedule shall be transmitted to the Colorado Department of Revenue on or before October 1.
  - (d) The new rates and distribution schedules established by this proceeding shall take effect on the following January 1.

\* \* \* \*

[indicates omission of unaffected rules]

**2152. Audit of Service Providers Regarding Emergency Telephone Charge and 9-1-1 Surcharge Practices.**

- (a) Either the Commission or one or more governing bodies may conduct an audit of an ~~originating service provider's~~OSP's books and records regarding collection and remittance of emergency telephone charges. Audits of ~~originating service provider's~~OSP's books regarding the collection and remittance of state 9-1-1 surcharges may only be initiated by the Commission.
  - (I) Unless otherwise approved for Commission funding of the audit, as described in rule 2153, the governing body or bodies initiating the audit shall pay all expenses related to the audit.
  - (II) All expenses related to audits initiated by the Commission shall be paid for by the Commission from the administrative retention fund authorized by § 29-11-102.3(3)(c)(II), C.R.S.
  - (III) ~~Originating service providers~~OSP's shall make relevant records available to auditors at no charge.
  - (IV) Governing bodies conducting audits pursuant to this section must have an audit and appeals procedure in place, adopted by ordinance or resolution, as appropriate.
  - (V) Audits initiated by the Commission shall be limited to the collection and remittance of emergency telephone charges and state 9-1-1 surcharges.

- (VI) Audits initiated by governing bodies shall be limited to the collection and remittance of emergency telephone.
  - (VII) Any delinquent remittance of state 9-1-1 surcharges received by the Commission, including penalties and interest, shall be deposited into the 9-1-1 surcharge trust cash fund and distributed as prescribed in rule 2151.
- (b) All ~~originating service providers~~OSPs must collect and remit properly established emergency telephone charges.
- (I) A properly established emergency telephone charge is one that is set at a rate that is no greater than the threshold established pursuant to rule 2148 or approved by the Commission in response to an application, as described in rule 2147.
    - (A) Changes to a local emergency telephone charge must have an effective date of either February 1 or June 1.
    - (B) Governing bodies must notify carriers of any change to the emergency telephone charge at least 60 days in advance of the effective date of the change.
  - (II) ~~Originating service providers~~OSPs shall not bill or collect emergency telephone charges from 9-1-1 access connections purchased by state or local government entities.
  - (III) ~~Originating service providers~~OSPs must remit emergency telephone charges to the appropriate ~~9-1-1~~ governing bodies no later than the last day of the month following the month in which the charges were collected. Each governing body may establish payment procedures and schedules that vary from these rules, in which case the originating service provider must follow those procedures and schedules.
  - (IV) ~~Originating service providers~~OSPs must include with their remittance to the appropriate governing bodies a report in such form as required by each governing body.
  - (V) ~~Originating service providers~~OSPs may retain no more than two percent of each emergency telephone charge collected.
  - (VI) Emergency telephone charge remittances must be based on the actual number of 9-1-1 access connections within the governing body's jurisdiction.
  - (VII) Failure to bill a customer for a properly established emergency telephone charge does not relieve the ~~originating service provider~~OSP from the obligation to remit the surcharge. An ~~originating service provider~~OSP is only responsible for remittance of emergency telephone charges successfully collected from a customer.
- (c) ~~Originating service providers~~OSPs shall bill, collect, and remit the state 9-1-1 surcharge in accordance with rule 2150.
- (d) ~~Originating service providers~~OSPs must list separately the emergency telephone charge and state 9-1-1 surcharge on the customer's bill if fees and charges are listed on the customer's bill.

- (e) ~~Originating service providers~~OSP shall provide governing bodies billing examples from a reasonable number of randomly selected addresses for verification of collection and remittance, and these billing examples shall be provided at no charge without disclosing any customer-identifying information.
- (f) ~~Originating service providers~~OSP shall maintain a record of the amount of each emergency telephone charge and state 9-1-1 surcharge collected and remitted by service user address for three years after the time that it was remitted.
- (g) If an ~~originating service provider~~OSP fails to file a report and remit emergency telephone charges in a timely manner, the governing body or the Commission may assess the ~~originating service provider~~OSP for the delinquent remittance in the following manner.
- (I) The governing body or the Commission shall estimate delinquent remittance based on available information.
  - (II) The governing body or the Commission shall issue notice of assessment to the ~~originating service provider~~OSP within three years of the original due date of the remittance, unless the three-year period is extended, in writing, in accordance with this rule.
  - (III) Before the expiration of the three-year period, the governing body or the Commission, and the ~~originating service provider~~OSP may extend the period for assessment by agreement, in writing. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The governing body and ~~originating service provider~~OSP shall provide the Commission the written notice of extension prior to the expiration of the initial three-year period or any prior ~~extension~~extension. Any party seeking extension from the Commission shall do so by filing a petition.
  - (IV) The governing body or the Commission shall impose an additional 15 percent penalty in addition to the estimated amount of the delinquent remittance.
  - (V) The governing body or the Commission shall assess an additional one percent interest monthly, assessed against the original principal owed, from the original due date until the delinquent remittance has been paid by the ~~originating service provider~~OSP.
  - (VI) If the assessment was properly noticed within three years of the original due date of the remittance, or prior to the expiration of the period of time agreed to by the Commission and ~~originating service provider~~OSP in writing, the governing body or the Commission may file a lien, issue a distraint warrant, institute a suit for collection, or take other action to collect the amount up to one year after the expiration of said time period.
- (h) As an alternative to initiating an audit, a governing body or bodies may request that the Commission engage in informal mediation with the ~~originating service provider~~OSP, as described in rule 1301. Such requests shall be directed to the Commission's 9-1-1 program manager or other staff member designated for this purpose.

[indicates omission of unaffected rules]

**2154. Audit Notification Requirements.**

- (a) Governing bodies shall provide written notice to the staff of the Commission and to the 9-1-1 Advisory Task Force of any audits initiated pursuant to these rules no later than 15 days from the initiation of the audit.
- (b) Governing bodies shall provide written notice to the staff of the Commission and to the 9-1-1 Advisory Task Force of any extension agreed to in writing.
- (c) The 9-1-1 Advisory Task Force shall publish the following:
  - (I) identification of audits conducted by staff of the Commission or a governing body, including whether the audit is ongoing, complete, and the outcome;
  - (II) identification of any Commission proceedings regarding notices of assessment or civil penalty ~~assiselements~~assessments; and
  - (III) identification of individual entities subject to audit and the timeline of any audit periods, including whether extensions have been agreed to in writing either directly with a governing body, or as granted by the Commission.

**2155. Disputes Regarding the Emergency Telephone Charge and 9-1-1 Surcharge.**

- (a) Notice of Assessment.
  - (I) The director of the Commission, or his or her designee shall have the authority to issue a notice of assessment under this rule and for delinquent remittance or other violations as provided in § 29-~~711~~-103, C.R.S., alone or in combination with civil penalties as provided in rule 2010 and paragraph (b) of this rule. Additional penalties for other violations of this rule or rule 2150 may incur additional penalties as outlined in rule 2011.
  - (II) The notice of assessment shall include all penalty and interest calculations.
  - (III) The ~~originating service provider~~OSP cited in the notice of assessment may either admit the assessed calculations or may contest the calculations within 30 days of the notice of assessment. Any notice of assessment not admitted within the 30-day period shall be immediately referred to an Administrative Law Judge for hearing. At any hearing contesting an alleged assessment, the designee of the director of the Commission shall have the burden of demonstrating the accuracy of the calculated amounts by a preponderance of the evidence.
  - (IV) Unless a proceeding has commenced through a notice of assessment or show cause proceeding as discussed in this rule, an ~~originating service provider~~OSP may seek revisions to any final audit report directly with the director of the ~~commission~~Commission or his or her designee by providing information warranting the correction in writing. If the director or his or her designee reject the requested revision, the operating service provider may file a petition under rule 2003. The petition shall include, at a minimum, the

audit report in question, the requested revisions, and supporting information regarding the requested change. The designee of the director of the ~~commission~~Commission shall be a necessary party to any such petition.

- (b) Civil penalties for delinquent or miscalculated payments.
- (I) No civil penalty assessment notice shall be issued in addition to a notice of assessment for the first instance of delinquent or miscalculated payments in any 12-month period if there are no other violations alleged.
  - (II) In the event the ~~originating service provider~~OSP is issued more than one assessment notices in any 12-month period, the director of the ~~commission~~Commission, or his or her designee may request that the Commission issue a decision to show cause under the rules of practice and procedure, in addition to any civil penalty assessment notice in conjunction with the second notice of assessment in the 12-month period.
  - (III) In the event the ~~originating service provider~~OSP is issued three or more assessment notices in any 24-month period, the director of the ~~commission~~Commission, or his or her designee shall request that the Commission issue a decision to show cause under the rules of practice and procedure, in addition to any civil penalty assessment notice in conjunction with the notice of assessment in the 24-month period.
  - (IV) The request that the Commission issue a decision to show cause provided with any notice of assessment shall include all penalty and interest calculations, and information relied on, along with separate statements for each alleged violation, if any, and the maximum penalty amount provided. If civil penalties are included in the assessment, information included shall also comply with rule 2010.
  - (V) The ~~originating service provider~~OSP cited in the notice of assessment, and any accompanying request for the Commission to issue a decision to show cause, may either admit the assessed calculations or may contest the calculations within 30 days of the notice of assessment. At any hearing contesting an alleged assessment, the designee of the director of the ~~commission~~Commission shall have the burden of demonstrating the accuracy of the calculated amounts by a preponderance of the evidence.

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

#### **4 CODE OF COLORADO REGULATIONS (CCR) 723-2**

#### **PART 2**

### **RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES**

#### **Basic Emergency Service**

##### **Basis, Purpose, and Statutory Authority**

The basis and purpose of these rules is to: (1) define and describe basic emergency service as regulated by § 40-15-201, C.R.S.; (2) prescribe the process for certification of basic emergency service providers and outline the obligations of basic emergency service providers; (3) prescribe the required components of a basic emergency service tariff; (4) prescribe reporting and response requirements regarding basic emergency service outages; (5) establish a tariff-based funding mechanism for basic emergency service network reliability improvements; (6) permit use of 9-1-1 databases for outbound wide area notifications in times of emergency; (7) establish the 9-1-1 Advisory Task Force; (8) explicitly recognize the potential for multiple BESPs in Colorado; (9) establish the process by which governing bodies may apply for approval to impose an emergency telephone charge rate in excess of a threshold established by the Commission; (10) prescribe the process for the establishment of the annual threshold, surcharge, and prepaid wireless 9-1-1 charge amounts; (11) establish annual reporting requirements for 9-1-1 governing bodies; (12) prescribe the processes for the collection and distribution of 9-1-1 surcharge funds; and (13) establish procedures for the conducting of audits of service providers' practices regarding the collection, payment, and remittance of emergency telephone charges and 9-1-1 surcharges.

The statutory authority for the promulgation of these rules is found at §§ 29-11-101.5; 29-11-102; 29-11-102.3; 29-11-102.5(2)(c); 29-11-102.7(2); 29-11-103; 29-11-106(3); 40-2-108; 40-3-102; 40-3-103; 40-4-101(1) and (2); 40-15-201; 40-15-301; and 40-15-503(2)(g), C.R.S.

##### **2130. Applicability.**

- (a) Except as otherwise provided, rules 2130 through 2159 apply to BESPs.
- (b) Rules 2136, 2137, and 2143 apply to BESPs actively providing service to a governing body or PSAP.
- (c) Rules 2147, 2151, 2153, and 2154 apply to 9-1-1 governing bodies.
- (d) Rules 2152 and 2155 apply to originating service providers.

**2131. Definitions.**

The following definitions apply only in the context of rules 2130 through 2159:

- (a) "9-1-1" means a three-digit abbreviated dialing code used to report an emergency situation requiring a response by a public agency such as a fire department or police department.
- (b) "9-1-1 access connection" means any communications service including wireline, wireless cellular, interconnected voice-over-internet-protocol, or satellite in which connections are enabled, configured, or capable of making 9-1-1 calls. The term does not include facilities-based broadband services. The number of 9-1-1 access connections is determined by the configured capacity for simultaneous outbound calling.
- (c) "9-1-1 Advisory Task Force" means the representative group established in accordance with rule 2145, which provides oversight of the statewide implementation and provision of basic emergency service, and periodically reports to the Commission on matters related to 9-1-1 service delivery in the state of Colorado.
- (d) "9-1-1 call" means a request for emergency assistance from the public by dialing 9-1-1 or addressing the ESInet regardless of the technology used, and may include voice, text, images, and video, whether originated by wireline, wireless, satellite, or other means.
- (e) "9-1-1 service" means the service by which a 9-1-1 call is routed and transported from the end user to the governing body or PSAP serving the caller's location. 9-1-1 service also includes location information routed to the PSAP.
- (f) "9-1-1 surcharge" or "state 9-1-1 surcharge" means the surcharge established pursuant to § 29-11-102.3, C.R.S.
- (g) "Automatic Location Identification" (ALI) means the automatic provision to a PSAP for display, on equipment at the PSAP, of the telephone number and location of the caller. ALI data includes non-listed and non-published numbers and addresses, and other information about the caller's location.
- (h) "Automatic Number Identification" (ANI) means the automatic provision to a PSAP for display of the caller's telephone number at the PSAP
- (i) "Basic emergency service" (BES) means the aggregation and transportation of a 9-1-1 call directly to a demarcation point with a governing body or PSAP, regardless of the technology used to provide the service. The aggregation of calls means the collection of 9-1-1 calls from one or more OSPs or IASPs for the purpose of selectively routing and transporting 9-1-1 calls directly to a demarcation point with a governing body or PSAP. The offering or providing of location information or selective routing directly to a governing body or PSAP is also a basic emergency service. Basic emergency service does not include:
  - (I) the portion of a 9-1-1 call provided by an OSP;
  - (II) the portion of a 9-1-1 call or services provided by an IASP;

- (III) the portion of a 9-1-1 call from the OSP or an IASP to a demarcation point with the BESP;
  - (IV) the portion of a 9-1-1 call after the demarcation point between the BESP and the governing body or PSAP; or
  - (V) the delivery of text messages to a governing body or PSAP via networks or connections separate from the basic emergency service network.
- (j) "Basic emergency service facilities" or "BES facilities" means the lines, wires, cables, conduit, ducts, poles, cross-arms, equipment, supporting structures, and other infrastructure used by the BESP to provide basic emergency service. "Facilities" has the same meaning, unless the context requires otherwise.
  - (k) "Basic emergency service network" or "BES network" means the portion of the 9-1-1 call path that begins at the demarcation point between an OSP or IASP and a BESP and ends at the demarcation point between a BESP and a governing body or PSAP to provide basic emergency service.
  - (l) "Basic emergency service outage" or "BES outage" means a failure of basic emergency service that prevents or would prevent 9-1-1 calls, ANI, or location information from being delivered from the demarcation point between the OSP or IASP and the BESP to the demarcation point between the BESP and the governing body or PSAP.
  - (m) "Basic Emergency Service Provider" (BESP) means any person certificated by the Commission to provide basic emergency service.
  - (n) "Concurrent session" means a channel for an inbound simultaneous 9-1-1 call.
  - (o) "Demarcation point" means a physical point of interconnection where the responsibility for a portion of 9-1-1 service changes from one party to another. It includes the point of interconnection between BESP and the OSP, IASP, or other BESP for the purpose of selectively routing and transporting 9-1-1 calls directly to a demarcation point with a governing body or PSAP. It includes the point of interconnection mutually agreed upon in writing by the BESP and each governing body or PSAP with primary responsibility for dispatching first responders to the callers' locations.
  - (p) "Emergency notification service" (ENS) means a public alerting service that, upon activation by a public agency, rapidly distributes notifications within a specified geographic area of hazardous conditions or emergent events that threaten the health or lives of people or threatens damage or destruction of property, including, without limitation, floods, fires, and hazardous materials incidents.
  - (q) "Emergency telephone charge" means a charge established by a governing body pursuant to § 29-11-102(2)(a), C.R.S., to pay for the expenses authorized in § 29-11-104, C.R.S.
  - (r) "Geographic area" means the area such as a city, municipality, county, multiple counties or other areas defined by a governing body or other governmental entity for the purpose of providing public agency response to 9-1-1 calls.

- (s) "Governing body" means the organization responsible for establishing, collecting, and disbursing the emergency telephone charge in a specific geographic area, pursuant to §§ 29-11-102, 103, and 104, C.R.S.
- (t) "Improvement amount" means the amount approved by the Commission as described in subparagraph 2137(e)(II).
- (u) "Improvement plan" means the plan proposed by a BESP or approved by the Commission as described in paragraph 2143(b).
- (v) "Intermediary aggregation service provider" (IASP) means a person that aggregates and transports 9-1-1 calls for one or more OSPs for delivery to a demarcation point with a BESP.
- (w) "Location information" means ALI or its functional equivalent associated with a 9-1-1 call and provided by a BESP pursuant to its BES tariff.
- (x) "Multi-line telephone system" (MLTS) means a system comprised of common control units, telephones, and control hardware and software providing local telephone service to multiple customers in businesses, apartments, townhouses, condominiums, schools, dormitories, hotels, motels, resorts, extended care facilities, or similar entities, facilities, or structures. Multi-line telephone system includes:
  - (I) network and premises-based systems such as Centrex, PBX, and hybrid-key telephone systems; and
  - (II) systems owned or leased by governmental agencies, nonprofit entities, and for-profit businesses.
- (y) "Multiple-line telephone system operator" means the person that operates an MLTS from which an end user may place a 9-1-1 call through the public switched network.
- (z) "Network Operations Center" (NOC) or "Basic Emergency Service Network Operations Center" means a 24x7, 365 days a year single point of contact for Basic Emergency Service (BES). The NOC is responsible for monitoring the BES network, notifying PSAPs of BES outages, initiating repairs, troubleshooting, and resolving BES network issues.
- (aa) "Originating service provider" (OSP) means a local exchange carrier, wireless carrier, Voice-over-Internet-Protocol service provider, or other provider of functionally equivalent services supplying the ability to place 9-1-1 calls.
- (bb) "Public Safety Answering Point" (PSAP) means a facility equipped and staffed to receive and process 9-1-1 calls from a BESP.
- (cc) "Selective routing" means the routing of a 9-1-1 call to the demarcation point with a governing body or PSAP based upon the location information or other factors as agreed upon by the governing body or PSAP.

**2132. -2133. [Reserved].**

**2134. Process for Certification of Basic Emergency Service Providers (BESPs).**

- (a) The Commission finds and declares that the public convenience and necessity require the availability, and, when requested, the provision of basic emergency service throughout Colorado, and further that such basic emergency service is vital to the public health and safety and shall be provided solely by properly certificated BESPs.
- (b) A party shall not offer to provide BES in Colorado until it has applied for and been granted a certificate of public convenience (CPCN) and necessity by the Commission to provide BES. An application for CPCN to provide BES shall demonstrate that the applicant is technically, managerially, and financially qualified to provide the service, and if certificated, the applicant will (1) maintain a NOC staffed 24 hours per day, 365 days per year, and (2) have adequate personnel, equipment, spares and supplies to expediently restore service after an outage. The Commission may certify multiple BESPs to offer BES if it finds such certification is in the public interest.
- (c) Notwithstanding paragraphs 2103(a) and 2002(b), an application for CPCN to provide BES shall include the following information in the following order, specifically identified in the application or attachments thereto:
  - (I) the name and address of the applicant;
  - (II) the name(s) under which the applicant will be providing BES in Colorado;
  - (III) the name, address, telephone number, and e-mail address of the applicant's representative to whom all inquiries concerning the application should be made;
  - (IV) the name, address, telephone number, and e-mail address of the applicant's contact person for customer inquiries concerning the application, if that contact person is different from the person listed in subparagraph (III);
  - (V) a statement indicating the town or city, and any alternate town or city, where the applicant prefers any hearings be held (if not at the Commission's offices in Denver, the town or city and any alternate town or city shall be within applicant's proposed initial service area);
  - (VI) a statement that the applicant agrees to respond to all questions propounded by the Commission or Commission staff concerning the application;
  - (VII) a statement that the applicant shall permit the Commission or Commission staff to inspect the applicant's books and records as part of the investigation into the application;
  - (VIII) a statement that the applicant understands that if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted may be revoked upon Commission order;
  - (IX) acknowledgment that, by signing the application, applicant understands that:

- (A) the filing of the application does not by itself constitute approval of the application;
  - (B) if the application is granted, the applicant shall not commence the requested action until the applicant complies with applicable Commission rules and with any conditions established by Commission order granting the application;
  - (C) if a hearing is held, the applicant shall present evidence at the hearing to establish its qualifications to provide BES, and that grant of the application is in the public interest; and
  - (D) in lieu of the statements contained in subparagraphs (c)(IX)(A) through (C) of this rule, an applicant may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (c)(IX)(A) through (C) of this rule.
- (X) An attestation which is made under penalty of perjury; which is signed by an officer, a partner, an owner, an employee of, an agent for, or an attorney for the applicant, as appropriate, who is authorized to act on behalf of the applicant; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant;
  - (XI) the applicant's proposed notice to the public and its customers, if such notice is required;
  - (XII) name, mailing address, toll free telephone number, and e-mail address of applicant's representative responsible for responding to customer disputes;
  - (XIII) name, mailing address, telephone number, and e-mail address of applicant's representative responsible for responding to the Commission concerning customer informal complaints;
  - (XIV) the applicant's applicable organizational documents, e.g., Articles of Incorporation; Partnership Agreement; Articles of Organization, etc.;
  - (XV) if the applicant is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the applicant to transact business in Colorado;
  - (XVI) name and address of applicant's Colorado agent for service of process;
  - (XVII) a description of the applicant's affiliation, if any, with any other company and the name and address of all affiliated companies;
  - (XVIII) the applicant's most recent audited balance sheet, income statement, and statement of retained earnings;
  - (XIX) if the applicant is a newly created company that is unable to provide the audited financial information requested in subparagraph (XVIII): detailed information on the sources of capital funds that will be used to provide BES, including the amount of any loans, lines of credit, or equity infusions that have been received or requested, and the names of each source of capital funds;

- (XX) the names, business addresses, and titles of all officers, directors, partners, agents and managers who will be responsible for the provisioning of BES in Colorado;
- (XXI) any management contracts, service agreements, marketing agreements or any other agreements between the applicant and any other entity, including affiliates of the applicant, that relate to the provisioning of BES in Colorado;
- (XXII) an applicant which has contracted with or is otherwise relying upon one or more unaffiliated service providers to provide a major component of BES under its certificate shall identify all such contractors or unaffiliated service providers and which services they are providing. For the purposes of this section, a “major component” means call aggregation, transport, routing, location information, and database services;
- (XXIII) identification of any of the following actions by any court, regulatory body, agency or official within the last five years regarding the provisioning of regulated communications services by the applicant, by any of applicant's agents, officers, board members, managers, partners, or management company personnel, or by any of applicant's affiliates that resulted in:
  - (A) assessment of fines or civil penalties;
  - (B) assessment of criminal penalties;
  - (C) injunctive relief;
  - (D) corrective action;
  - (E) reparations;
  - (F) a formal complaint proceeding brought by any regulatory body;
  - (G) initiation of or notification of a possible initiation of a disciplinary action by any regulatory body, including but not limited to any proceeding to limit or to place restrictions on any authority to operate any CPCN or any service offered;
  - (H) refusal to grant authority to operate or to provide a service;
  - (I) debarment from providing services in any other jurisdiction or bidding on state or federal contracts;
  - (J) limitation, de-certification, or revocation of authority to operate or to provide a service; or
  - (K) any combination of the above.
- (XXIV) For each item identified in subparagraph (XXIII) of this paragraph: an identification of the jurisdiction, summary of any applicable notification of a possible initiation or pending procedure, including the docket, case, or file number, and, upon the request of the Commission or its Staff, a copy of any written decision;

- (XXV) a description and a visual representation of the major components of, and 9-1-1 call flow through, the applicant's proposed BES network;
- (XXVI) acknowledgment that by signing the application, the applicant:
- (A) certifies that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide the BES for which it is applying;
  - (B) understands that:
    - (i) the filing of the application does not by itself constitute authority to operate;
    - (ii) a Commission finding that the application is complete is not a ruling on the merits of the application;
    - (iii) if the application is granted, the applicant shall not provide service until:
      - (a) the applicant complies with applicable Commission rules and any conditions established by Commission order granting the application;
      - and (b) has an effective tariff on file with the Commission;
  - (C) agrees to respond in writing, within ten days, to all customer informal complaints made to the Commission;
  - (D) agrees to contribute, in a manner prescribed by federal or state statute, rule, or administrative order establishing an explicit subsidy mechanism or other fund to which BESP's are required to contribute;
  - (E) certifies that, pursuant to the tariff under which its service is offered, it will not unjustly discriminate among customers in the same class of service; and
  - (F) certifies that the applicant will not permit any other person or entity to provide BES under its BESP certification without explicit Commission approval.
- (XXVII) The BESP's service area shall be the state of Colorado, but the applicant shall identify the geographic area it initially intends to serve;
- (XXVIII) if the applicant has previously filed with the Commission current reports or material that include the information required in subparagraph (I) and (II), it may confirm this by filing an attestation of completeness and accuracy with proper citation of title and date of the other filed material; and
- (XXIX) a detailed statement describing the means by which it will provide basic emergency service. This statement shall include, but is not limited to:
- (A) the technical specifications for the system that will be used to provide BES, including information on emergency restoration of the system;
  - (B) all inter-company agreements used to implement and operate the service;

- (C) a list of all interconnection agreements between the BESP and basic local exchange carriers, wireless carriers, other BESPs, and other telecommunications providers;
  - (D) a proposed schedule for testing, monitoring, maintaining, and replacing all equipment and electronics that will be used to provide BES; and
  - (E) proposed tariffs.
- (XXX) An acknowledgment that the applicant will provide BES in accordance with these rules and all applicable quality of service rules.
- (d) While the application is pending, the applicant shall amend its application to report any changes to the information provided within five business days of any such change, so as to keep its application current.
  - (e) Two years from the grant of the application, and each two years thereafter, each BESP actively providing BES shall file with the Commission updates regarding any changes to the following required information in paragraph (c): items (I)-(IV), (XII)-(XVIII), (XX)-(XXV), and (XXIX)(A)-(C). Additionally, the BESP shall include with this filing an attestation that the information provided is true, accurate, and correct, and that the BESP remains financially and administratively sound and capable of providing the BES offered in its current tariff(s).
  - (f) BESP that have not actively provided BES for a period of five years prior to the filing of a proposed tariff as described in rule 2137 must include in that filing an update to their certification information regarding paragraph (c): items (I)-(IV), (XII)-(XVIII), (XX)-(XXV), (XXIX), and (XXX). Additionally, the BESP shall include with this filing an attestation, which is made under penalty of perjury, that the information provided is true, accurate, and correct, and that the BESP remains financially and administratively sound and capable of providing the BES offered in its proposed tariff(s). The Commission will consider this information when considering approval of the advice letter and proposed tariff pages. The Commission will also determine whether the BESP must file an improvement plan as described in paragraph 2143(b) along with its proposed tariff.
  - (g) Each BESP must offer BES on a statewide basis to all governing bodies or PSAPs.
  - (h) Persons seeking to offer services that provide backup BES outside of a BESP's BES tariff must apply for BESP certification. Applications for backup BES must meet requirements in rule 2134 or seek waiver of specific rule requirements and demonstrate good cause for any waiver requested.
  - (i) In any order approving the certification of a BESP, the Commission will also determine whether the BESP shall be required to file an improvement plan application as described in paragraph 2143(b) and set a deadline for filing the application.

\* \* \* \*

[indicates omission of unaffected rules]

**2136. Obligations of Basic Emergency Service Providers.**

- (a) A BESP certificated by the Commission shall interconnect with all OSPs and IASPs who have customers in areas served by the BESP. BESP shall interconnect with all other BESP for the purpose of transferring 9-1-1 calls to PSAPs served by the other BESP.
- (b) The BESP shall provide geographically diverse demarcation points for aggregating 9-1-1 calls and location information from OSPs and IASPs. At the request of an OSP or IASP, a BESP shall interconnect with the request for the purpose of aggregating and transporting 9-1-1 calls and location information from the requestor to the demarcation point with the governing body or PSAP. Interconnection shall be accomplished in a timely manner, generally not more than 30 days from the time the BESP receives a written order. Interconnection facilities shall generally be engineered as follows:
  - (I) dedicated facilities for connecting OSPs and IASPs to a BESP shall be based on the requirements established by the BESP to serve the customers within that local exchange; or
  - (II) if shared or common facility groups are used to transport calls from an OSP or IASP to a BESP, they shall be sized to carry the additional call volume requirements. Additionally, common or shared groups shall be arranged to provide 9-1-1 calls on a priority basis where economically and technically feasible.
- (c) A BESP shall develop and file with the Commission tariffs that comply with the requirements set forth in rule 2137.
- (d) A BESP shall render to each governing body a single monthly bill for its tariffed services. The monthly bill shall be sufficiently detailed to allow the governing body to determine that it is being billed properly based on the billing increments as approved by the Commission.
- (e) BESP shall ensure, to the extent possible and in the most efficient manner, that basic emergency service is available for transmitting 9-1-1 calls from deaf, hard of hearing, and persons with speech impairments to the appropriate PSAP.
- (f) A BESP shall ensure that all BES facilities, and interconnections between it and the OSPs and IASPs are engineered, installed, maintained, and monitored in order to provide a minimum of two circuits and a minimum P.01 grade of service (one percent or less blocking during the busy hour), or such other minimum grade of service requirements approved by the Commission.
- (g) Where a BESP obtains BES facilities from a basic local exchange carrier, the rates for such facilities shall be reflected in a tariff or agreement filed for approval with the Commission. Such tariffs or agreements shall ensure that such facilities are engineered, installed, maintained, and monitored to provide a minimum of two circuits and a grade of service that has one percent (P.01) or less blocking. The basic local exchange carrier providing such facilities shall not be considered a BESP. The provisions of this rule shall not apply to routing arrangements implemented pursuant to paragraph 2143(j)(II).
- (h) To expedite the restoration of service following a 9-1-1 outage, each BESP shall designate a telephone number for governing bodies, PSAPs, IASPs, and OSPs to report trouble. Such

telephone number shall be staffed seven days a week, 24 hours a day, by personnel capable of processing calls to initiate immediate corrective action.

- (i) A BESP shall keep on file with the Commission its contingency plan as described in paragraph 2143(e).
- (j) BESP's shall identify service providers supplying service within a governing body or PSAP's service area, or statewide, to the extent that the BESP possesses such information, in response to a request from a governing body, PSAP, or the Commission.
- (k) A BESP shall report to the Commission a list of every PSAP serviced by the BESP with the number of concurrent sessions provided to each PSAP. This report shall be updated and filed annually with the Commission by June 1 of each year.

**2137. Required Components of a Basic Emergency Service Tariff.**

- (a) At a minimum, a BES tariff must include the following services:
  - (I) delivery of 9-1-1 calls to the demarcation point with the governing body or PSAP with primary responsibility for dispatching first responders to the caller's location unless otherwise directed by the PSAP or governing body;
  - (II) delivery of location information to the governing body or PSAP receiving the 9-1-1 call;
  - (III) the ability to automatically route 9-1-1 calls to one or more alternate PSAPs, as designated by the governing body or PSAP, in the event of a call overflow, outage, or PSAP abandonment, including split contingent routing of 9-1-1 calls to multiple alternate PSAPs if feasible;
  - (IV) the ability to transfer 9-1-1 calls to other Colorado governing bodies or PSAPs with location information;
  - (V) when feasible, the ability to transfer 9-1-1 calls to 10-digit lines without additional long distance charges;
  - (VI) if feasible, the ability to transfer 9-1-1 calls to a PSAP in another state with location information without additional long distance charges;
  - (VII) processes or tools that a governing body or PSAP and the BESP may use to pre-validate location information and routing information associated with specific telephone numbers and to correct such information or to report telephone numbers that do not have associated location information;
  - (VIII) minimum quality of service metrics that the BES will meet (examples: service availability percentage, jitter, packet loss, mean opinion score, latency, successful call delivery percentage, and call delivery accuracy percentage);
  - (IX) a description of the internal schedules for testing, monitoring, maintaining, and replacing all equipment and electronics that will be used to provide BES;

- (X) the provision of technical support 24 hours per day, every day of each year;
  - (XI) reporting tools for access to service metrics, call processing, call status, and other call and service data;
  - (XII) nonrecurring charges for one-time costs, such as installation of equipment or change orders related to the delivery of BES must be listed separately in the tariff, unless those costs are included in the monthly recurring charges provided for in the tariff; and
  - (XIII) terms of payment for invoices for BES must be stated, including late fees.
- (b) BESP's with BES tariffs in place as of March 1, 2022 shall file an advice letter and tariff pages within 180 days of the effective date of this rule to comply with paragraph (a) of this rule.
  - (c) All of the requirements listed in paragraph (a) shall be provided in conformity with the relevant standards of the National Emergency Number Association, to the extent feasible.
  - (d) Additional features or services may be offered as part of a BES tariff, if they may reasonably be considered part of BES, or provide metrics related to that service.
  - (e) The pricing and rates for BES shall be set forth on the BESP's BES tariff.
    - (I) Rates for BES must be established per concurrent session per month. The rate for all services and features included with the BES offering, as approved by the Commission, must be the same, per concurrent session, for all governing bodies or PSAPs purchasing service under the tariff. Such pricing must be based on actual costs plus a proposed profit margin. The BESP shall describe the methodology it used to determine the proposed pricing in the advice letter or tariff pages. Additional features or services may be offered in the tariff on an optional or individual case basis, provided:
      - (A) the additional features or services may reasonably be considered part of BES or monitoring and metrics for such service; and
      - (B) the offering of the additional features or services on an optional or individual case basis will not create differences in the uniformity of BES availability statewide.
    - (II) The tariff must include, as a separate line item, the improvement amount approved pursuant to paragraph 2143(b), if any. Within 45 days of the Commission's approval of the improvement amount, the BESP shall file an advice letter and tariff pages to reflect the approved improvement amount, with an effective date of the following March 1, unless otherwise directed by the Commission in its approval of the improvement amount. The improvement amount shall be assessed per concurrent session per month to every governing body or PSAP receiving service from the BESP.
    - (III) The tariff must state that the improvement amount described in subparagraph (II) above may be temporarily or permanently suspended by Commission decision.

[indicates omission of unaffected rules]

**2143. Basic Emergency Service Reliability and Outage Response.**

- (a) All BESP's providing BES shall take reasonable measures to provide reliable BES including circuit diversity, central-office backup power, and diverse network monitoring. Where feasible, 9-1-1 circuits within the BES network shall be physically and geographically diverse.
  - (I) Circuits or equivalent data paths are physically diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not physically diverse even if they are logically diverse for purposes of transmitting data.
  - (II) Circuits or equivalent data paths are geographically diverse if they take different paths from endpoint to endpoint, not following the same geographic route.
- (b) On or before February 15, 2023, and each two years thereafter, each BESP shall file an improvement plan application or amendment. This application or amendment shall be subject to rule 2002.
  - (I) The improvement plan shall consist of the following, at a minimum:
    - (A) a list of service reliability items including, but not limited to, items reported to the FCC in its annual 9-1-1 reliability submission;
    - (B) a list of projects to improve the reliability of the BES network that the BESP proposes to implement over the course of a twenty-four month period. For each proposed project listed, the BESP shall include the following information:
      - (i) the proposed beginning and completion date of the project, along with any proposed intermediate milestones for phases of the project;
      - (ii) firm estimated costs for the project(s) or, for multi-phase projects, for the individual phases of the project to be completed within the improvement plan term, including a proposed profit margin of no more than 10.5 percent;
      - (iii) the portion of the cost of the project or project phase the BESP requests to be funded through the improvement plan;
      - (iv) an explanation of different technological options and contractual arrangements considered by the BESP for this project, including, as appropriate, fiber, microwave, satellite, and third party facilities, and the reasons the BESP has selected the options included in its improvement plan for this project, including considerations of cost effectiveness and effectiveness at improving reliability;

- (v) a statement describing whether the benefit of the improvement will be exclusive to BES, and, if not, the estimated percentage of the benefit to BES versus other uses of the improvement, such as commercial uses; and
- (vi) a statement describing the expected impact of each proposed project, including what benefit the project may have for BES network reliability and which PSAP(s) may be expected to benefit from the project, and the reasons the BESP chose this project over other potential projects. Projects to be included in the application should be proposed based on the following categories, following informal consultation with stakeholders:
  - (1) projects that have the potential to reduce the likelihood of outages based on past patterns of outages in the BES network and based on the existence of points in the network, equipment, or software that represent a lack of redundancy or diversity;
  - (2) projects that have the potential to reduce the duration or scope of outages;
  - (3) projects that have the potential to improve reliability for more than one PSAP;
  - (4) projects that, when implemented with other projects proposed in the improvement plan application, balance improvements to portions of the network serving both urban and rural communities; and
  - (5) other projects that the BESP determines would be beneficial to the overall reliability and resiliency of the BES network.
- (C) Other changes that the BESP anticipates occurring in Colorado in the next two years that may impact BES.
- (D) A statement attesting that the BESP understands that it is responsible for the ongoing maintenance and operations of any improvement made in accordance with an approved improvement plan and funded through an approved improvement amount, unless otherwise approved by the Commission, and that the BESP understands that it may not discontinue the maintenance and operation of any approved and funded improvement without express permission of the Commission.
- (E) A proposed improvement amount, as described in subparagraph 2137(e)(II). This improvement amount shall be calculated to reimburse the BESP for its costs, including its proposed profit margin, for all proposed projects in the two-year improvement plan. The BESP may propose different improvement amounts for each of the two years.

- (II) As part of its decision to approve the improvement plan, the Commission shall also approve an improvement amount. Thereafter, but no more than annually, the BESP or Commission staff may request an adjustment to the improvement amount. The improvement amount shall be calculated to provide reimbursement to the BESP for all approved expenditures already incurred and all expenditures anticipated pursuant to an approved improvement plan. If approved prior August 1, the improvement amount shall be effective the following March 1. If approved after August 1, the improvement amount shall be effective March 1 of the year following the next August 1. The Commission will take the improvement amount into consideration when setting the 9-1-1 surcharge rate as described in subparagraph 2148(a)(II).
- (III) The Commission may approve the improvement plan application, in full or as modified by the Commission.
- (IV) Following a Commission decision approving an improvement plan application, the BESP shall:
  - (A) provide notice within 30 days of its intent to accept funds and implement the improvement plan, in full or in part; and
  - (B) file quarterly reports containing the following information:
    - (i) a description of all work completed pursuant to the improvement plan since the last quarterly report and cumulatively;
    - (ii) a list and total of all expenditures incurred by the BESP in completion of the work since the last quarterly report and cumulatively, and expenses expected to be incurred in the following quarter;
    - (iii) the funding obtained from the improvement amount since the last quarterly report and cumulatively;
    - (iv) anticipated expenses for the following quarter; and
    - (v) any actual or anticipated project delays that are expected to affect the dates of any project completion or milestone date as described in the approved improvement plan.
- (V) Following approval of the improvement plan, the BESP may file proposed amendments to the improvement plan for approval by the Commission for any significant unforeseen changes to the approved improvement plan.
- (VI) Following each quarterly report, if improvement amount revenues significantly exceed current and anticipated expenditures, following notice and comment by interested parties, the Commission may suspend the improvement amount until such time that future quarterly reports demonstrate that the approved expenditures exceed total revenue received by the BESP, or take other actions as appropriate.

- (VII) On or before February 15 every two years following the filing of the original improvement plan, unless otherwise approved by the Commission, the BESP shall file a proposed amendment to the improvement plan extending it for an additional two years or a new proposed improvement plan for a two-year period, including additional projects.
  - (VIII) The Commission may, with cause, revoke approval of the improvement plan and terminate the BESP's authority to charge the improvement amount. The BESP shall be allowed to continue charging the improvement amount until any approved expenditures already made by the BESP have been reimbursed through the improvement amount.
- (c) Each BESP shall maintain contact information for each PSAP as specified by the governing body or PSAP served by the BESP for notification of actual or potential BES outages. No less than annually, the BESP shall contact each PSAP that is served by the BESP to verify the notification information on file.
- (d) The BESP shall obtain from each governing body or PSAP its preferred alternative method(s) for the governing body or PSAP and the BESP to communicate during a BES outage.
- (e) Beginning in 2023 and each year thereafter, each BESP shall develop a BES contingency plan in collaboration with all affected BESPs, basic local exchange carriers from which the BESP obtains BES facilities, governing bodies, and PSAPs, to be confidentially filed annually with the Commission no later than April 30. The contingency plan shall include:
- (I) identification and location of all primary and backup facilities, equipment, and databases or any and all other components related to BES;
  - (II) an identification and description of all demarcation points with governing bodies or PSAPs, or other BESP;
  - (III) all contingency processes and information from BESP, PSAPs, and governing bodies necessary for public safety operations until BES is restored;
  - (IV) the most current version of the contact information collected by the BESP pursuant to paragraph 2143(c), and an indication of whether the information has been updated or confirmed since the previous contingency plan filing;
  - (V) the results of the BESP's most recent 9-1-1 reliability certification report filed with the Federal Communications Commission pursuant to 47 CFR § 9.19, including, where applicable, reference regarding which PSAP(s) would potentially be impacted by an outage of an item in the report, for use by governing bodies and PSAPs to plan for and mitigate potential outages and continuity of operations;
  - (VI) any other details deemed relevant by the BESP or reasonably requested by the Commission;
  - (VIII) alternate communications plans as described in paragraph (g); and
  - (VIII) a template non-disclosure agreement that may be completed by governing bodies and PSAPs and filed in the proceeding.

- (f) The BESP shall meet with each governing body or PSAP, upon request, to review the information contained in the most recent contingency plan as it relates to the governing body or PSAP.
- (g) Where feasible, the BESP should develop plans for its technicians to communicate with the NOC in the event of an isolation of a central office serving a PSAP in a manner that will allow for expeditious resolution of the outage.
- (h) Each BESP shall provide each PSAP that it serves with a telephone number that the PSAP can use to report to the BESP technical issues regarding BES. The telephone number should be staffed at all times, including nights, weekends, and holidays, by personnel capable of processing the call to initiate immediate corrective action. The BESP shall log all calls and communications between the NOC and PSAPs or governing bodies by date, time, PSAP, party placing the call or sending the message, and individuals participating in the call and subject, with a summary of the call including any instructions provided the PSAP.
- (i) All call recordings and messages transmitted or received by the BESP regarding an outage shall be retained for at least 24 months. All logs, call recordings and messages concerning a specific outage shall be assigned a unique trouble ticket number.
- (j) In the event of a confirmed or potential BES outage, the following shall occur.
  - (I) The BESP shall notify each affected governing body or PSAP via the contacts previously provided in accordance with paragraph (c). Such notifications shall be made as soon as is practical, and shall include a trouble ticket number, the nature and extent of the BES outage, if known, and the actions being taken to correct the outage. If applicable, the notice shall include interim measures being taken to route 9-1-1 calls to alternate PSAPs or other locations. If known, the notification shall also include an estimated time of repair.
  - (II) If the BES outage exceeds or is anticipated to exceed 15 minutes from the time a BESP becomes aware of the outage, the BESP shall implement the appropriate contingency plan as established in paragraph (e) or provide temporary solutions so that 9-1-1 calls can be answered until BES is restored. The BESP shall coordinate any alternate solutions with the contact(s) provided in accordance with paragraph (c) for the affected governing body or PSAP.
  - (III) If a disruption of BES exceeds 30 minutes, the responsible BESP shall inform the Commission within two hours of the time that the BESP becomes aware of the outage. Such notification shall be made in a manner prescribed by the Commission, outlining the nature and extent of the outage and actions taken to restore service and any interim measures taken to mitigate the outage prior to resolution. The BESP shall notify the Commission of restoration of service by the beginning of the next business day. This notification shall be followed within 30 days of such outage by a report to the Commission. The report shall follow Commission reporting format and guidelines and shall include a statement of whether call back numbers for 9-1-1 calls, which could not be connected, were provided to the PSAP pursuant to subparagraph 2143(j)(V). Commission staff may request an update regarding an ongoing outage at any time.
  - (IV) All 9-1-1 calls received by the BESP shall be routed to the PSAP with primary responsibility for dispatching first responders to the caller's location, or in accordance

with the alternate solutions described in paragraph (j)(II) of this rule, or, if unavailable, to another PSAP if possible.

- (V) Following the restoration of BES, the BESP shall notify each affected governing body or PSAP whether call back phone numbers are available for calls that were made to 9-1-1 but could not be delivered due to the outage. If available, these call back numbers shall be provided to each governing body or PSAP within two hours of the restoration of service. When possible, this information should also include location information.
  - (VI) In the event of a BES outage of more than four hours duration, or 12 hours in duration if the outage is due to a fiber cut, the BESP shall provide a credit equal to the ratio of hours of the duration of the outage in hours to the total number of hours in the billing cycle. The credit shall be provided within no more than two billing cycles.
- (k) Commission staff shall commence an informal investigation regarding each apparent basic emergency service outage meeting criteria established by the 9-1-1 Advisory Task Force, despite the dispute resolution process set forth in the BESP's tariff, if any. The 9-1-1 Advisory Task Force may participate in the investigation.
- (l) Each informal investigation under this paragraph should be handled as follows.
    - (A) Commission staff shall refer an informal investigation form to the BESP for its written response on a standardized form developed by Commission staff for that purpose. This form shall include questions developed by and solicited from the affected governing body or PSAP and the 9-1-1 Advisory Task Force. The BESP shall respond in writing with complete responses within thirty days, or such lesser or greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. If requested, the response shall include: (1) the NOC call log entries; and (2) copies of e-mails and transcripts or recordings of phone calls between the NOC and other parties related to the outage.
    - (B) The BESP's responses shall fairly meet the substance of each request. The BESP may not provide an incomplete response citing a lack of information or knowledge unless it states it has made diligent and reasonable inquiry and requests that Commission staff allow a reasonable extension of time not to exceed fourteen days. Additional reasonable extensions of time may be granted upon request. Requests for any extensions shall be accompanied with estimates of when information may be provided.
    - (C) Commission staff, the affected governing bodies or PSAPs, or the 9-1-1 Advisory Task Force may also request a meeting with the BESP, which may be recorded, provided that the recording may not be used by any person for any purpose in subsequent proceedings before the Commission. The BESP should arrange for appropriate staff to participate in the meeting, including technical support, service, and management with relevant knowledge and sufficient level of authority or supervision.

- (II) During the pendency of an informal investigation, communications shall be in writing and copied to the BESP, Commission staff, the affected governing body or PSAP, and the Chair of the 9-1-1 Advisory Task Force or his or her designee. Commission staff shall maintain a complete file related to each informal investigation, including all communications and recordings, and access to and use of the file is subject to applicable Commission rules regarding information claimed to be confidential or highly confidential.
- (III) Commission staff will document in a report the closure of each informal investigation within sixty days of the outage, or such greater period as Commission staff may require if such period is reasonable under the circumstances of the informal investigation. The report should include whether the outage was a BES outage, whether the BESP handled the BES outage in a timely manner with the appropriate personnel, and whether the BESP has taken or committed to taking corrective action to prevent or mitigate a similar outage from occurring in the future, specifying the corrective action and the timeframe, if applicable. The report shall also document any non-compliance with Commission rules or the BESP's tariff, including the BESP's service quality plan. Within 14 days, the 9-1-1 Advisory Task Force, the affected governing body or PSAP, or the BESP may submit to Commission staff written comments, which Commission staff shall append to the report and preserve in the informal investigation file.
- (IV) At any time, Commission staff, the 9-1-1 Advisory Task Force, or the affected governing body or PSAP may commence a proceeding before the Commission, at which time the informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report. If the affected governing body or PSAP seeks relief in an alternative forum, then the informal investigation process shall terminate, if not yet closed, other than Commission staff's preparation of the report.
- (I) Nothing in rule 2143 shall be construed to impose any obligation on any provider other than BESP's.

\* \* \* \*

[indicates omission of unaffected rules]

**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.**

- (a) On or before August 1 of each year, the Commission shall initiate a proceeding to be concluded on or before October 1 to establish the emergency telephone charge threshold, a statewide 9-1-1 surcharge, a wireless prepaid 9-1-1 charge, a distribution schedule for the funds raised by the state 9-1-1 surcharge, and a distribution schedule for the funds raised by the wireless prepaid 9-1-1 charge for the following calendar year.
  - (I) The emergency telephone charge threshold:
    - (A) shall take into account inflation through the consideration of historical data and future projections; and

- (B) shall take into account the needs of governing bodies through the consideration of historical data, inflation rates, the rate of increase of the average emergency telephone charge, comments provided under this rule, and other factors the Commission deems relevant.
- (II) The 9-1-1 surcharge:
  - (A) shall not exceed fifty cents per month per 9-1-1 access connection;
  - (B) shall be calculated to meet the needs of governing bodies to operate the 9-1-1 system by considering historical data, costs to the 9-1-1 governing body of BES tariffs, comments provided under this rule, and other factors the Commission deems relevant, including without limitation, the most recently approved improvement amount as described in subparagraph 2137(e)(II); and
  - (C) shall be uniform, regardless of the technology used to provide the 9-1-1 access connection.
- (III) The wireless prepaid 9-1-1 charge shall be calculated by determining the average of all local emergency telephone charges as they existed on July 1 of that year plus the amount of the statewide 9-1-1 surcharge established by the Commission for the upcoming year.
- (IV) The distribution schedule for the funds raised by the state 9-1-1 surcharge shall be based on the number of concurrent sessions at all of the PSAPs associated with a governing body as a percentage of the total number of concurrent sessions statewide.
- (V) The distribution schedule for the funds raised by wireless prepaid 9-1-1 charge shall be based on the wireless 9-1-1 call volume at all of the PSAPs associated with a governing body as a percentage of the total number of wireless 9-1-1 calls received by all PSAPs statewide.
- (b) The decision initiating this proceeding shall be accompanied by proposed amounts and distribution schedules as described in (a) (I) through (V) for comment.
- (c) The wireless prepaid 9-1-1 charge rate and wireless prepaid 9-1-1 distribution schedule shall be transmitted to the Colorado Department of Revenue on or before October 1.
- (d) The new rates and distribution schedules established by this proceeding shall take effect on the following January 1.

\* \* \* \*

[indicates omission of unaffected rules]

**2152. Audit of Service Providers Regarding Emergency Telephone Charge and 9-1-1 Surcharge Practices.**

- (a) Either the Commission or one or more governing bodies may conduct an audit of an OSP's books and records regarding collection and remittance of emergency telephone charges. Audits of OSP's books regarding the collection and remittance of state 9-1-1 surcharges may only be initiated by the Commission.
- (I) Unless otherwise approved for Commission funding of the audit, as described in rule 2153, the governing body or bodies initiating the audit shall pay all expenses related to the audit.
  - (II) All expenses related to audits initiated by the Commission shall be paid for by the Commission from the administrative retention fund authorized by § 29-11-102.3(3)(c)(II), C.R.S.
  - (III) OSPs shall make relevant records available to auditors at no charge.
  - (IV) Governing bodies conducting audits pursuant to this section must have an audit and appeals procedure in place, adopted by ordinance or resolution, as appropriate.
  - (V) Audits initiated by the Commission shall be limited to the collection and remittance of emergency telephone charges and state 9-1-1 surcharges.
  - (VI) Audits initiated by governing bodies shall be limited to the collection and remittance of emergency telephone.
  - (VII) Any delinquent remittance of state 9-1-1 surcharges received by the Commission, including penalties and interest, shall be deposited into the 9-1-1 surcharge trust cash fund and distributed as prescribed in rule 2151.
- (b) All OSPs must collect and remit properly established emergency telephone charges.
- (I) A properly established emergency telephone charge is one that is set at a rate that is no greater than the threshold established pursuant to rule 2148 or approved by the Commission in response to an application, as described in rule 2147.
    - (A) Changes to a local emergency telephone charge must have an effective date of either February 1 or June 1.
    - (B) Governing bodies must notify carriers of any change to the emergency telephone charge at least 60 days in advance of the effective date of the change.
  - (II) OSPs shall not bill or collect emergency telephone charges from 9-1-1 access connections purchased by state or local government entities.
  - (III) OSPs must remit emergency telephone charges to the appropriate governing bodies no later than the last day of the month following the month in which the charges were collected. Each governing body may establish payment procedures and schedules that

vary from these rules, in which case the originating service provider must follow those procedures and schedules.

- (IV) OSPs must include with their remittance to the appropriate governing bodies a report in such form as required by each governing body.
  - (V) OSPs may retain no more than two percent of each emergency telephone charge collected.
  - (VI) Emergency telephone charge remittances must be based on the actual number of 9-1-1 access connections within the governing body's jurisdiction.
  - (VII) Failure to bill a customer for a properly established emergency telephone charge does not relieve the OSP from the obligation to remit the surcharge. An OSP is only responsible for remittance of emergency telephone charges successfully collected from a customer.
- (c) OSPs shall bill, collect, and remit the state 9-1-1 surcharge in accordance with rule 2150.
  - (d) OSPs must list separately the emergency telephone charge and state 9-1-1 surcharge on the customer's bill if fees and charges are listed on the customer's bill.
  - (e) OSPs shall provide governing bodies billing examples from a reasonable number of randomly selected addresses for verification of collection and remittance, and these billing examples shall be provided at no charge without disclosing any customer-identifying information.
  - (f) OSPs shall maintain a record of the amount of each emergency telephone charge and state 9-1-1 surcharge collected and remitted by service user address for three years after the time that it was remitted.
  - (g) If an OSP fails to file a report and remit emergency telephone charges in a timely manner, the governing body or the Commission may assess the OSP for the delinquent remittance in the following manner.
    - (I) The governing body or the Commission shall estimate delinquent remittance based on available information.
    - (II) The governing body or the Commission shall issue notice of assessment to the OSP within three years of the original due date of the remittance, unless the three-year period is extended, in writing, in accordance with this rule.
    - (III) Before the expiration of the three-year period, the governing body or the Commission, and the OSP may extend the period for assessment by agreement, in writing. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The governing body and OSP shall provide the Commission the written notice of extension prior to the expiration of the initial three-year period or any prior extension. Any party seeking extension from the Commission shall do so by filing a petition.

- (IV) The governing body or the Commission shall impose an additional 15 percent penalty in addition to the estimated amount of the delinquent remittance.
  - (V) The governing body or the Commission shall assess an additional one percent interest monthly, assessed against the original principal owed, from the original due date until the delinquent remittance has been paid by the OSP.
  - (VI) If the assessment was properly noticed within three years of the original due date of the remittance, or prior to the expiration of the period of time agreed to by the Commission and OSP in writing, the governing body or the Commission may file a lien, issue a distraint warrant, institute a suit for collection, or take other action to collect the amount up to one year after the expiration of said time period.
- (h) As an alternative to initiating an audit, a governing body or bodies may request that the Commission engage in informal mediation with the OSP, as described in rule 1301. Such requests shall be directed to the Commission's 9-1-1 program manager or other staff member designated for this purpose.

\* \* \* \*

[indicates omission of unaffected rules]

**2154. Audit Notification Requirements.**

- (a) Governing bodies shall provide written notice to the staff of the Commission and to the 9-1-1 Advisory Task Force of any audits initiated pursuant to these rules no later than 15 days from the initiation of the audit.
- (b) Governing bodies shall provide written notice to the staff of the Commission and to the 9-1-1 Advisory Task Force of any extension agreed to in writing.
- (c) The 9-1-1 Advisory Task Force shall publish the following:
  - (I) identification of audits conducted by staff of the Commission or a governing body, including whether the audit is ongoing, complete, and the outcome;
  - (II) identification of any Commission proceedings regarding notices of assessment or civil penalty assessments; and
  - (III) identification of individual entities subject to audit and the timeline of any audit periods, including whether extensions have been agreed to in writing either directly with a governing body, or as granted by the Commission.

**2155. Disputes Regarding the Emergency Telephone Charge and 9-1-1 Surcharge.**

- (a) Notice of Assessment.
  - (I) The director of the Commission or his or her designee shall have the authority to issue a notice of assessment under this rule and for delinquent remittance or other violations as

provided in § 29-11-103, C.R.S., alone or in combination with civil penalties as provided in rule 2010 and paragraph (b) of this rule. Additional penalties for other violations of this rule or rule 2150 may incur additional penalties as outlined in rule 2011.

- (II) The notice of assessment shall include all penalty and interest calculations.
  - (III) The OSP cited in the notice of assessment may either admit the assessed calculations or may contest the calculations within 30 days of the notice of assessment. Any notice of assessment not admitted within the 30-day period shall be immediately referred to an Administrative Law Judge for hearing. At any hearing contesting an alleged assessment, the designee of the director of the Commission shall have the burden of demonstrating the accuracy of the calculated amounts by a preponderance of the evidence.
  - (IV) Unless a proceeding has commenced through a notice of assessment or show cause proceeding as discussed in this rule, an OSP may seek revisions to any final audit report directly with the director of the Commission or his or her designee by providing information warranting the correction in writing. If the director or his or her designee reject the requested revision, the operating service provider may file a petition under rule 2003. The petition shall include, at a minimum, the audit report in question, the requested revisions, and supporting information regarding the requested change. The designee of the director of the Commission shall be a necessary party to any such petition.
- (b) Civil penalties for delinquent or miscalculated payments.
- (I) No civil penalty assessment notice shall be issued in addition to a notice of assessment for the first instance of delinquent or miscalculated payments in any 12-month period if there are no other violations alleged.
  - (II) In the event the OSP is issued more than one assessment notices in any 12-month period, the director of the Commission, or his or her designee may request that the Commission issue a decision to show cause under the rules of practice and procedure, in addition to any civil penalty assessment notice in conjunction with the second notice of assessment in the 12-month period.
  - (III) In the event the OSP is issued three or more assessment notices in any 24-month period, the director of the Commission, or his or her designee shall request that the Commission issue a decision to show cause under the rules of practice and procedure, in addition to any civil penalty assessment notice in conjunction with the notice of assessment in the 24-month period.
  - (IV) The request that the Commission issue a decision to show cause provided with any notice of assessment shall include all penalty and interest calculations, and information relied on, along with separate statements for each alleged violation, if any, and the maximum penalty amount provided. If civil penalties are included in the assessment, information included shall also comply with rule 2010.
  - (V) The OSP cited in the notice of assessment, and any accompanying request for the Commission to issue a decision to show cause, may either admit the assessed

calculations or may contest the calculations within 30 days of the notice of assessment. At any hearing contesting an alleged assessment, the designee of the director of the Commission shall have the burden of demonstrating the accuracy of the calculated amounts by a preponderance of the evidence.