

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0364T

IN THE MATTER OF TEMPORARY RULES REGARDING THE PROCESS TO IMPLEMENT HOUSE BILL 20-1293 TO SET THE 2022 9-1-1 EMERGENCY TELEPHONE CHARGE THRESHOLD, 9-1-1 SURCHARGE, AND PREPAID WIRELESS 9-1-1 CHARGE, AND FORMULAS FOR DISTRIBUTION OF THE 9-1-1 SURCHARGE AND PREPAID WIRELESS 9-1-1 SURCHARGE.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: July 29, 2021

Adopted Date: July 21, 2021

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to comply with the additions of or amendments to §§ 24-33.5-2103, 25-3.5-903, 29-11-100 to -107, 39-21-113 and 119.5, and 40-2-131, C.R.S., pursuant to House Bill (HB) 20-1293. Among its requirements, §§ 29-11-100.2 through 102.5, C.R.S., include that the Commission, by October 1, 2020, and each October 1 thereafter, must establish: (1) the authorized threshold amount above which applications are required to increase the local Emergency Telephone Charge; (2) a statewide 9-1-1 surcharge; (3) a prepaid wireless 9-1-1 surcharge; and (4) formulas for the distribution of money from the statewide 9-1-1 surcharge and the wireless prepaid 9-1-1 charge. In order to comply with these statutory requirements by October 1, 2021, thereby protecting the public health, welfare, and safety by continuing required 9-1-1 service provision statewide, we find it imperatively necessary to adopt temporary rules.

2. These temporary rules set forth processes and procedures to allow the Commission to establish the items listed above, on or before October 1, 2021.¹ These temporary rules are effective for the earlier of 210 days from the effective date of this Decision, or until the Commission issues permanent rules to implement HB 20-1293. *See* § 40-2-108(2), C.R.S. For the reasons set forth in this Decision, we have the authority to adopt temporary rules under § 24-4-103(6), C.R.S.

3. The Commission is currently addressing permanent rules to implement HB 20-1293, including permanent rules for the Commission's determination of charges and formulas each year by October 1, through the rulemaking in Proceeding No. 21R-0099T opened March 3, 2021. However, permanent rules are not expected to be effective in time for the Commission to use permanent rules to establish the required charges and formulas by October 1, 2021.²

4. The Commission previously issued temporary rules to allow it to meet the statutory deadline of October 1, 2020. However, those rules have now expired, thus necessitating the need for a second set of temporary rules until the permanent rulemaking is complete.³

¹ Subsequent to the issuance of these temporary rules, the Commission will open a proceeding to establish the required threshold, the 9-1-1 surcharge rate, the prepaid wireless 9-1-1 surcharge rate, and the distribution formulas, consistent with the temporary rule processes adopted.

² See Proceeding No. 21R-0099T. While the permanent proposed rules are nearly complete, including a majority of provisions that were proposed through consensus stakeholder processes, Boulder Regional Emergency Telephone Service Authority (BRETSA) filed exceptions to the Recommended Decision No. R21-0297, issued May 20, 2021. The Commission addressed the exceptions through a separate order in Proceeding No. 21R-0099T. However, given the processes required in § 40-6-109, C.R.S. in conjunction with rulemaking processes in Title 24, the permanent rules are not yet final. BRETSA does not challenge the proposed rule processes to establish required findings by October 1, and no other participant filed exceptions.

³ *See* Decision No. C20-0599, Proceeding 20R-0335T issued August 17, 2020.

B. Background

5. On July 10, 2020, the Governor signed HB 20-1293, which requires the Commission to annually establish the authorized threshold amount above which applications are required to increase the local Emergency Telephone Charge, a statewide 9-1-1 surcharge, a prepaid wireless 9-1-1 charge, and formulas for distribution of money from the statewide 9-1-1 surcharge and prepaid wireless 9-1-1 charge to the governing bodies. HB 20-1293 also allows the Commission to promulgate rules to resolve disputes regarding the collection, payment, remittance, and audit of the Emergency Telephone Charge and the statewide 9-1-1 surcharge, and to impose penalties for noncompliance with certain statutory provisions and Commission rules. HB 20-1293 adds §§ 29-11-100.2, 29-11-101.5, 29-11-102.3, 29-11-107, 39-21-113, C.R.S., repeals §§ 29-11-100.5, 29-11-106, C.R.S., repeals and reenacts, with amendments, §§ 29-11-101, 29-11-102, 29-11-103, C.R.S., and amends §§ 24-33.5-2103, 25-3.5-903, 29-11-102.5 through 102.7, 29-11-104 through 105, 39-21-119.5, and 40-2-131, C.R.S. The statutory changes took effect immediately upon enactment but impose requirements by various dates.

6. A summary of the statutory changes to be implemented through the temporary rules adopted by this Decision are as follows:

- a) Governing bodies may pay for costs for the operation of emergency telephone service as described in § 29-11-104, C.R.S., by imposing an Emergency Telephone Charge on service users. Governing bodies must annually establish the amount of the Emergency Telephone Charge per month per 9-1-1 access connection, and if the amount is greater than the authorized threshold amount, the governing body must obtain prior Commission approval. Currently and through December 31, 2021, the authorized threshold amount is \$1.72 per month per 9-1-1 access connection.⁴ HB 20-1293 requires the Commission to establish the authorized threshold amount on or before October 1 of each year to be effective January 1 of the

⁴ See Decision No. C20-0690, Proceeding 20M-0337T issued September 29, 2020.

following year. The Commission must take into account inflation and the needs of the governing bodies in setting the authorized threshold amount. § 29-11-102, C.R.S.

- b) HB 20-1293 imposes a statewide 9-1-1 surcharge on service users in an amount to be established by the Commission on or before October 1 of each year to be effective January 1 of the following year. Currently and through December 31, 2021, the surcharge is set at \$0.10 per month per 9-1-1 access connection. The surcharge amount may not exceed \$0.50 per month per 9-1-1 access connection, and the amount must be reasonably calculated to meet the needs of the governing bodies to operate the 9-1-1 system. § 29-11-102.3, C.R.S.
- c) The Commission must establish a formula for distribution of money collected from the statewide 9-1-1 surcharge to the governing bodies by October 1 of each year to take effect on the following January 1. The formula must be based on the number of concurrent sessions maintained by the public safety answering points (PSAPs) of each governing body. § 29-11-102.3(3)(c)(III), C.R.S.
- d) Currently and through December 31, 2021, buyers in prepaid wireless telecommunications services retail transactions are assessed a \$1.38 per transaction wireless prepaid 9-1-1 charge. HB 20-1293 requires the Commission to establish the charge on or before October 1 of each year to be effective January 1 of the following year. The prepaid wireless 9-1-1 charge is to be calculated by adding the average of the local Emergency Telephone Charge amounts as of July 1 of that year and the amount of the statewide 9-1-1 surcharge amount established by the Commission for the following year. § 29-11-102.5, C.R.S.
- e) The Commission must establish a formula for the distribution of money collected from the prepaid wireless 9-1-1 charge to the governing bodies by October 1 of each year to take effect the following January 1. The formula must be based on the number of wireless 9-1-1 calls received by the PSAPs of each governing body. § 29-11-102.5(3)(e)(III), C.R.S.

C. Findings and Conclusions

7. The Commission, through the promulgation of rules, develops and implements processes and procedures to establish by October 1, 2021, the emergency telephone charge threshold, 9-1-1 surcharge rate, prepaid wireless 9-1-1 charge rate, and distribution formulas required by HB 20-1293. The processes and procedures set by this Decision are limited to those items that must be established by October 1, 2021. We recognize that statutory changes require

further Commission action and additional rules, and these are being addressed through a concurrent permanent rulemaking.

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

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

10. The portions of HB 20-1293 relating to the Emergency Telephone Charge threshold amount, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and distribution formulas require Commission action by October 1 of each year so that these items may be in effect by January 1 of the following year. Additionally, the telecommunications service providers and retailers responsible for collecting and remitting the emergency telephone charge,

9-1-1 surcharge, and prepaid wireless 9-1-1 charge require time to make modifications to their internal systems to comply with the changes in these rates. Awaiting completion of the permanent rulemaking already underway under Title 24 would delay the process beyond the October 1, 2021 deadlines, and would prevent timely implementation of any necessary changes to the funding mechanisms intended to support basic emergency services and the health, safety, security, and welfare of the public.

11. Through HB 20-1293, the General Assembly established the mechanisms by which appropriate and necessary funds needed to support the emergency telephone service may be generated. Adoption of temporary rules would allow the Commission to meet the deadlines imposed by the statute and will timely address the need for additional funds to support the emergency telephone service for the benefit of all users of the system.

12. We find that these matters require our immediate and continuing attention to comply with state law and to protect the health, safety, and welfare of the public, which uses the emergency telephone system “as the most effective and familiar way... of seeking emergency assistance.” We also find that the time that will transpire before completing a permanent rulemaking on these issues would prevent fulfillment of HB 20-1293’s October 1 deadlines and would risk the health, safety, and welfare of the public which depends on an adequately-funded emergency telephone system. Thus, we immediately adopt temporary rules addressing the establishment of certain funding mechanisms that are imperatively necessary to timely comply with state law and to preserve public health, safety, and welfare.

13. By this Decision, we adopt temporary rules that accomplish the following:
- a) set forth the processes and procedures by which the Commission will establish the authorized threshold amount;

- b) set forth the processes and procedures by which the Commission will establish the statewide 9-1-1 surcharge amount;
- c) set forth the processes and procedures by which the Commission will establish the prepaid wireless 9-1-1 charge; and
- d) set forth the processes and procedures by which the Commission will establish the formulas for distribution of money from the statewide 9-1-1 surcharge and the prepaid wireless 9-1-1 charge to the governing bodies.

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

15. The temporary rules in legislative (strikeout and underline) format, Attachment A, and the temporary rules in final version format, Attachment B, and a copy of HB 20-1293 are available through the Commission's E-Filing system⁵ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0364T

II. ORDER

A. The Commission Orders That:

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

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

⁵ From the Electronic Filings (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number, 21R-0364T, in the "Proceeding Number" box and then selecting "Search."

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 21, 2021.**

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ATTES2T: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners