

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0335T

IN THE MATTER OF TEMPORARY RULES REGARDING THE PROCESS TO IMPLEMENT HOUSE BILL 20-1293 TO SET THE 2021 9-1-1 THRESHOLD, STATEWIDE 9-1-1 SURCHARGE, AND PREPAID WIRELESS SURCHARGE.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: August 17, 2020
Adopted Date: August 12, 2020

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 at 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 charge; and (4) a formula for distribution of money from the statewide 9-1-1 surcharge to the governing bodies. In order to comply with these statutory requirements by October 1, 2020, thereby protecting the public health, welfare and safety by continuing required 9-1-1 planning 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, 2020.¹ 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 will address permanent rules on the threshold, surcharge, charge and formulas that must be established each year by October 1, and to fulfill the remainder of HB 20-1293's requirements through later proceedings and decisions.²

B. Background

4. On July 10, 2020, the Governor signed HB 20-1293, which requires the Commission to annually establish the authorized threshold amount at 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 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,

¹ Concurrently with this proceeding, the Commission is opening Proceeding No. 20M-0337R to establish the required threshold, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and distribution formula, consistent with the temporary rule processes adopted.

² As directed at the August 12, 2020, Commissioners' Weekly Meeting, stakeholder processes to discuss considerations for a Notice of Proposed Rulemaking shall commence this summer. A Notice of Proposed Rulemaking on full implementation of HB 20-1293 is anticipated for the fall of 2020.

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.

5. 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 on and before December 31, 2020, the authorized threshold amount is \$0.70 per month per 9-1-1 access connection. 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 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. 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 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. 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 on or before December 31, 2020, buyers in prepaid wireless retail transactions are assessed a 1.4 percent prepaid wireless 9-1-1 charge. HB 20-1293 requires the Commission to establish a flat amount for the prepaid wireless 9-1-1 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.

C. Findings and Conclusions

6. The Commission, through the promulgation of rules, develops and implements processes and procedures to establish by October 1, 2020, the threshold, statewide 9-1-1 surcharge, prepaid wireless 9-1-1 charge, and distribution formula³ 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, 2020. We recognize that statutory changes will require further Commission action and additional rules; these will be addressed through later proceedings and decisions. We instruct the Commission 9-1-1 Project Manager to commence stakeholder engagement processes to consider a Notice of Proposed Rulemaking in the fall of 2020 to address the remainder of the statutory changes.⁴

7. 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

³ While the Commission intends to establish the distribution formula for the statewide 9-1-1 surcharge to be effective January 1, 2021 through the same processes and procedures created by the temporary rules, the formula is prescribed by statute. Therefore, no separate rule to establish the distribution formula for the statewide 9-1-1 surcharge is included. *See* § 29-11-102.3(3)(c)(III), C.R.S. HB 20-1293 also requires the Commission to establish a distribution formula for the prepaid wireless 9-1-1 charge by October 1, 2020. The Commission already has a conforming distribution formula in place, and therefore does not need to address processes and procedures to establish the distribution formula for the prepaid wireless 9-1-1 charge through temporary rulemaking.

⁴ Stakeholder processes shall include considerations of the remaining requirements of HB 20-1293, with the exception of the temporary processes adopted through the temporary rules that address establishment of the required threshold, surcharges, and distribution formula by October 1, 2020. Additionally, we note our intent that any rules concerning penalties will be addressed through permanent rulemaking, but that additional temporary rules may be necessary, including for certain remittance or distribution requirements that will take effect in January of 2021.

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.

8. 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.”

9. 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, 2020 so that these items may be in effect by January 1, 2021, thus indicating the General Assembly’s desire that these funding mechanisms quickly begin supporting the state’s emergency telephone service. Additionally, the PSAPs and governing bodies responsible for dispersing funds to PSAPs require time to prepare for the statutory changes that will be effective January 1, 2021. Awaiting competition of a permanent rulemaking under Title 24 would delay the process beyond the October 1, 2020 deadlines, and would prevent the timely implementation of funding mechanisms intended to support basic emergency services and the health, safety, security, and welfare of the public.

10. Through HB 20-1293, the General Assembly recognized that additional funds are needed to support the emergency telephone service beginning January 1, 2021, and selected the Emergency Telephone Charge, a statewide 9-1-1 surcharge, and the prepaid wireless

9-1-1 charge as appropriate funding mechanisms. Adoption of temporary rules would allow the Commission to meet the deadlines imposed by 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.

11. 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, 2020 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.

12. 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 formula for distribution of money from the statewide 9-1-1 surcharge to the governing bodies.

13. 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.

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

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=20R-0335T.

II. **ORDER**

A. **The Commission Orders That:**

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

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

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

4. This Decision is effective upon its Mailed Date.

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, 20R-0335T, in the "Proceeding Number" box and then selecting "Search."

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 12, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners