BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0337T

IN THE MATTER OF IMPLEMENTING HB 20-1293 TO ESTABLISH THE 2021 EMERGENCY TELEPHONE CHARGE THRESHOLD, STATEWIDE 9-1-1 SURCHARGE, PREPAID 9-1-1 WIRELESS CHARGE, AND STATEWIDE 9-1-1 SURCHARGE DISTRIBUTION FORMULA.

INITIAL COMMENTS OF CTIA

I. INTRODUCTION AND BACKGROUND

CTIA\(^1\) hereby provides its initial comments, as directed by Decision No. C20-0601 (mailed August 17, 2020) opening the above-captioned proceeding (“Opening Order”),\(^2\) regarding the Colorado Public Utilities Commission’s (“Commission”) implementation of HB 20-1293 relating to 9-1-1 funding in the state of Colorado.\(^3\) In particular, pursuant to HB 20-1293, the Commission,

\(^1\) CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

\(^2\) The Opening Order also provided that any person desiring to intervene or participate as a party and provide comments in this proceeding should “file appropriate notices or motions” pursuant to Commission Rule 1401 (4 Code of Colorado Regulations (CCR) 723-1-1401). Opening Order at 2 ¶ 3. While a notice of intent to participate has been sufficient in past Commission Miscellaneous Docket proceedings, given the guidance in the Opening Order and the express reference to Commission Rule 1401, CTIA has filed this same day its Motion to Intervene (requesting that it be treated as a Notice of Participation, if appropriate).

\(^3\) On July 10, 2020, the Governor signed HB 20-1293, which requires the Commission to establish annually, by October 1 of each year: (1) the authorized threshold amount for the local Emergency Telephone Charge that a governing body may not exceed absent Commission approval; (2) a statewide 9-1-1 surcharge; (3) a prepaid wireless 9-1-1 charge; and (4) formulas for distribution of money from the statewide 9-1-1 surcharge and prepaid wireless 9-1-1 charge to the governing bodies. See Opening Order at 3 ¶ 4. CTIA’s initial comments address only the Emergency Telephone Charge.
by October 1 each year, must establish the authorized threshold amount (for the upcoming year) for the local Emergency Telephone Charge. Governing bodies must annually establish the amount of the Emergency Telephone Charge to be collected in their respective jurisdictions per month, per 9-1-1 access connection, and a governing body may set its Emergency Telephone Charge at or below the Commission-established threshold amount, but may not exceed the threshold amount absent Commission approval.4 While CTIA reserves the right to comment on other issues during the course of this proceeding and in future rulemaking proceedings, CTIA’s initial comments here focus on the proposal in the Opening Order to set the Emergency Telephone Charge initial threshold amount (for 2021) at $1.72 per 9-1-1 access connection.

CTIA well understands the vital importance of 9-1-1. CTIA’s members, as Originating Service Providers, play a critical role in supporting 9-1-1 service in Colorado, as they assess and collect the local Emergency Telephone Charge from wireless customers. CTIA emphatically supports appropriate funding for 9-1-1 services. That said, CTIA believes that an initial $1.72 threshold amount, as proposed in the Opening Order, would be too high. CTIA respectfully suggests that a lower initial threshold amount is warranted, for the reasons set forth herein.

II. THE INITIAL EMERGENCY TELEPHONE SURCHARGE THRESHOLD AMOUNT SHOULD BE SET LOWER THAN THE $1.72 PROPOSED IN THE OPENING ORDER

a. The threshold amount established by the Commission should be closer to the $0.70-per-access-connection presumptive Emergency Telephone Charge set forth by statute.

Prior to the passage of HB 20-1293, the Commission considered requests from 9-1-1 governing bodies to increase the Emergency Telephone Charge in a given jurisdiction beyond the $0.70 per access connection specified by statute on an individual case basis. Now, pursuant to HB 20-1293, the Commission considered requests from 9-1-1 governing bodies to increase the Emergency Telephone Charge in a given jurisdiction beyond the $0.70 per access connection specified by statute on an individual case basis.

4 See Opening Order at 4 ¶ 7.
20-1293, governing bodies may establish an Emergency Telephone Charge no greater than the threshold amount established annually by the Commission, or at a higher amount if approved by the Commission. Because this is the Commission’s first consideration of a potential Emergency Telephone Charge threshold increase pursuant to HB 20-1293, and because this threshold will effectively establish a ceiling for the charge that all 9-1-1 jurisdictions may assess without any showing of need, CTIA believes that the Commission should proceed on a more measured basis in departing from the threshold $0.70 charge per 9-1-1 connection still referenced by the statute.\(^5\)

End-user customers are required to pay the Emergency Telephone Charge, and, particularly in the 17 jurisdictions that still have not exceeded the $0.70 threshold amount specified by statute, allowing jurisdictions to increase surcharges by more than a $1.00 per month—from $0.70 to $1.72—without any oversight could be significantly impactful and burdensome. This is particularly so as the economic impacts of the COVID-19 pandemic continue to challenge Coloradans. Such a threshold is more than a 145 percent increase above the current Emergency Telephone Charge threshold, which is also the amount paid by customers in those jurisdictions.

Further, given that there is no Commission involvement or process associated with a governing body’s decision to increase its Emergency Telephone Charge up to the established threshold amount,\(^7\) the threshold amount should hew closer to the $0.70 presumptive charge set

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\(^5\) C.R.S. § 29-11-102(2)(f)(I)(A) provides that the presumptive Emergency Telephone Charge shall remain $0.70 through December 31, 2020. Subsection (2)(f)(I) is then repealed effective July 1, 2021, and beginning with calendar year 2021, the Commission is charged with establishing the threshold Emergency Telephone Charge for the upcoming year, by October 1 of the preceding year. C.R.S. § 29-11-102(2)(f)(II).

\(^6\) See Attachment A to Opening Order, which sets forth the history of the Emergency Telephone Charge imposed by each 9-1-1 jurisdiction by year since 1998. At present, 17 of Colorado’s 58 9-1-1 governing bodies still impose a $0.70-per-access-connection Emergency Telephone Charge.

\(^7\) See Opening Order at 4 ¶ 7 (“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
forth by statute. This is particularly so given that the existing $0.70 presumptive charge remains adequate for 17 of Colorado’s 58 governing bodies, all of which maintain a charge of $0.70 per access connection.

Indeed, Attachment A to the Opening Order shows that some governing bodies only very recently increased their Emergency Telephone Charges to $0.70, even though they could have done so much earlier, without Commission approval, had there been a need (e.g., per Attachment A, San Luis Valley County increased from $0.50 to $0.70 effective January 1, 2020; Larimer County increased from $0.45 to $0.70 in 2019; and Arapahoe County increased from $0.43 to $0.70 in 2018). The Commission’s processes have surely not overly burdened applicants, with requests for increases to Emergency Telephone Charges almost always approved, and typically in a very short timeframe. There is no basis to conclude that governing bodies now need flexibility to unilaterally increase the charge by another 145 percent to $1.72.

The Opening Order proposes an increase of the threshold amount from $0.70 to $1.72 based on two primary considerations: (1) inflation, and (2) an increase in the average charges across all 58 governing bodies, particularly in the period from 2016-2020. CTIA respectfully suggests that closer scrutiny of these justifications, and the data included in Attachment A with the Opening Order, actually weighs in favor of a lower initial threshold amount.

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8 See, e.g., Proceeding No. 20A-0175T (Application of Archuleta County to increase surcharge from $1.25 to $2.25), filed April 22, 2020, granted by Decision No. C20-0397 (mailed May 28, 2020); Proceeding No. 20A-0145T (Application of Clear Creek County for 9-1-1 surcharge increase from $1.25 to $2.40), filed April 2, 2020, granted by Decision No. C20-0362 (mailed May 15, 2020); Proceeding No. 20A-0087T (Application of Montezuma County to increase surcharge from $0.70 to $1.40), filed March 5, 2020, granted by Decision No. C20-0230 (mailed April 10, 2020). While such applications are required to include a number of attachments supporting the requested increase, the actual process following the applications is very limited, and these applications are almost always granted, as submitted, in a matter of weeks.
b. **Increase of threshold charge from the presumptive statutory amount ($0.70) to $1.72 as proposed by the Opening Order is not warranted by inflation.**

The statute provides that “[i]n setting the amount of the [threshold] charge, the Commission shall take into account inflation and the needs of the governing bodies.” C.R.S. §29-11-102(f)(II). “Tak[ing] into account” inflation does not, however, require that the Commission must set the threshold amount to keep pace with, or even exceed, the inflation rate. This is so because the statute *equally* requires that the Commission take into account “the needs of the governing bodies.” The total 9-1-1 surcharges collected by governing bodies to meet their respective 9-1-1 funding needs is a function not just of the amount of the Emergency Telephone Charge, but also the total number of access connections upon which the surcharge is imposed.

The Opening Order notes that the Emergency Telephone Charge threshold set forth by statute has remained constant at $0.70 since 1990, seemingly suggesting that for this reason alone it is stale and not sufficient to allow governmental bodies to meet their 9-1-1 funding needs. Opening Order at 4 ¶ 8. It then observes that, based on Consumer Price Index (“CPI”) adjustments, $0.70 in 1990 would equate to $1.39 as of June 2020. *Id.* On that basis, it assumes that $1.39 should be the *starting point* for consideration of an appropriate threshold (and it actually proposes an even higher threshold charge of $1.72 per access connection). But the Emergency Telephone Charge itself is only half of the equation. The other half is the number of connections (lines) on which the charge is assessed. And while the Emergency Telephone Charge may have remained constant since 1990, the number of connections on which that charge is assessed has not.

Per Attachment 1 hereto, total Colorado 9-1-1 connections (wireline, including VoIP, plus wireless) have increased from roughly 4.5 million in December 1999 to nearly 8 million by December 2018. In light of this significantly increased base to which the surcharge is applied, it
cannot be assumed that inflation reflexively warrants an increase of the threshold amount for all jurisdictions to $1.39 (the CPI-adjusted number), let alone to $1.72.

The data that the Commission annually reports to the Federal Communications Commission ("FCC") regarding total 9-1-1 surcharges collected necessarily tells the same story, even focusing only on more recent years where this data has been reported. In 2015 Colorado reported to the FCC total 9-1-1 collections of $52,257,085.9 In 2019, Colorado reported to the FCC total 9-1-1 collections of $74,243,804.10 While the presumptive statutory Emergency Telephone Charge threshold has remained at $0.70 for many years, total Colorado 9-1-1 surcharge collections have increased, further demonstrating that it should not be presumed that the $0.70 threshold must now be adjusted upward to offset inflation. Significant line growth has obviated the need, at least for many jurisdictions, to increase the charge beyond $0.70 per access connection.

The Opening Order further observes that the gap between the average approved Emergency Telephone Charge (across 58 jurisdictions in Colorado) and the statutory presumptive $0.70 threshold charge, as adjusted annually for inflation, held relatively steady until 2016. Opening Order at 4-5 ¶ 8. Thereafter that gap began shrinking, as what the Opening Order describes as the “average” Emergency Telephone Charge increased. Id. The Opening Order states that “[t]he reason for this increase in the average Emergency Telephone Charge between 2016 and 2020 is not certain. Id. at 5 ¶ 9. It goes on to assume, nonetheless, that “[t]he heightened rate of increase in average Emergency Telephone Charge indicates that the funding needs of the 9-1-1 governing

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bodies are growing faster than inflation, and therefore simply adjusting the $0.70 threshold to $1.39 to account for inflation may not be sufficient.” *Id.* at 5-6 ¶10. In other words, the Opening Order relies on the trajectory of the “average” Emergency Telephone Charge to justify an increase of the threshold amount even beyond the $0.70 CPI-adjusted number ($1.39), to $1.72. To buttress that conclusion, the Opening Order further observes that “22 of the 58 governing bodies already have Emergency Telephone Charge rates above $1.39.” *Id.*

On these bases, the Opening Order proposes an initial threshold Emergency Telephone Charge of $1.72, to be effective January 1, 2021. CTIA respectfully suggests that an increase of the threshold amount to even $1.39 is not warranted based simply on taking into account inflation, as noted above. A further increase to $1.72 based on the “average” Emergency Telephone Charge across all governing bodies is particularly unwarranted, for several additional reasons.

c. The statute requires that the Commission consider the needs of governing bodies in setting the threshold amount, but these needs vary by jurisdiction. Because the threshold amount applies to all jurisdictions, the Commission should set the initial threshold amount closer to the current statutory amount of $0.70.

Another fact evident from Attachment A to the Opening Order is the great diversity in the Emergency Telephone Charge across jurisdictions. For many, the presumptive $0.70 statutory amount remains in place, and therefore appears to be sufficient to meet the needs of those governing bodies. Other jurisdictions require, and have had the Commission approve, significantly higher charges. That just underscores the point, however, that each jurisdiction is different, and while some governing bodies may require a charge greater than $0.70, others do not. Maintaining the current threshold amount of $0.70 strikes the right balance—it already accommodates the needs of many governing bodies, while the Commission remains available to approve higher
amounts if justified. By contrast, utilizing a one-size-fits-all “average” charge analysis to justify a 145 percent increase to the threshold charge applicable to every jurisdiction is unwarranted.

By way of illustration, the Commission recently approved an increase in the Emergency Telephone Charge for Las Animas County from $1.50 to $3.00, effective March 1, 2020. See Attachment A to Opening Order. But Las Animas County is not as densely populated as Arapahoe County or Douglas County, which have much broader customer bases across which to impose the surcharge, and where the surcharge remains at $0.70 per access connection. While Attachment A is a helpful data source on many levels, what it is missing is the number of connections on which the surcharge is imposed across each jurisdiction. Averaging the surcharges for sparsely populated counties with the surcharges for heavily populated counties risks subjecting the majority of Coloradans, without oversight, to surcharge increases that are based on the costs of rural governing bodies’ 9-1-1 needs that are not relevant to the needs of governing bodies in more urbanized areas. Just as considering inflation alone does not address the actual discrete needs of each governing body as discussed above, considering only the surcharge amount in isolation, and not the collection base for that surcharge, fails to consider the total amounts that will be collected to meet the actual 9-1-1 needs of each governing body.

Thus, a simple mathematical “average” charge calculation, as calculated in Attachment A, is not meaningful. The “average” Emergency Telephone Charge in Colorado is $1.28, as per Attachment A, only because the $3.00 charge in Las Animas County is given the same weight as the $0.70 charge in Arapahoe County. But Las Animas County has a population of 14,506, while Arapahoe County has a population of 656,590.11 It does not make sense to use a very high charge

11 See Attachment 2 hereto, showing Colorado population by county, prepared from data provided at: https://www.colorado-demographics.com/counties_by_population.
in Las Animas County to bootstrap up to $1.72 the threshold charge for all jurisdictions, including much larger population centers like Arapahoe County where the costs of 9-1-1 service are presumably significantly lower on a per-person basis. A weighted average Emergency Telephone Charge would be much more instructive, and presumably would be much lower than the $1.28 arithmetical average shown in Attachment A.

Similarly, there is no logic to setting an initial threshold charge above the inflation-adjusted $1.39 amount simply based on the fact that 22 of the 58 governing bodies—fewer than half—already have Emergency Telephone Charge rates above $1.39 per access connection. First, as previously noted, the fact that some governmental bodies have a charge higher than $1.39 per access connection does not mean that all governmental bodies need a charge that high to meet their needs. If they did, they would have presumably made the necessary filings to increase their charges.

Demonstrating this fact, as reflected in Attachment A to the Opening Order, the Commission approved increases to Emergency Telephone Charges for some governing bodies effective this year (e.g., Jefferson County, from $1.15 to $1.30; and Montezuma County, from $0.70 to $1.40). If these jurisdictions had a need for a higher charge (like $1.72) in these very recent proceedings, they would presumably have requested a higher charge. The fact that they did not is the best evidence that they, like the majority of counties in the state (all with charges currently below $1.39) do not believe their needs as 9-1-1 governing bodies warrant a higher charge at this time.

In addition, analyzing Attachment A to the Opening Order reveals that the jurisdictions with charges higher than $1.39 per access connection are almost all less populous jurisdictions. Amid the six-county metropolitan Denver area, only Adams County has a charge higher than $1.39
Arapahoe ($0.70), Boulder ($0.75), Denver ($1.20), Douglas ($0.70), and Jefferson ($1.30) Counties are all below $1.39. Colorado’s other two most populous counties, El Paso ($1.35; but El Paso County is combined with Teller County), and Larimer ($0.70) Counties, also have charges lower than $1.39. In fact, when one compares the 22 governmental bodies with charges greater than $1.39 per access connection from Attachment A to the Opening Order to Colorado’s 2019 population by county as shown in Attachment 2 hereto, only one of Colorado’s most populous 14 counties—Adams County ($1.50)—has a charge higher than $1.39 per access connection. This is particularly significant given that, per Attachment 2, Colorado’s 14 most populous counties (Denver, El Paso, Arapahoe, Jefferson, Adams, Larimer, Douglas, Boulder, Weld, Pueblo, Mesa, Broomfield, Garfield, and La Plata Counties) account for 5,072,628 of Colorado’s 5,758,736 total population in 2019: roughly 88 percent in all. The Commission’s proposed threshold increase effectively threatens to subject 88 percent of Coloradans to a surcharge increase without oversight on account of the needs of the other 12 percent.

A more incremental approach to increasing the threshold amount is warranted. The data shows that governmental bodies providing 9-1-1 services to roughly 88 percent of Colorado residents have Emergency Telephone Charges less than $1.39 per access connection (and in many cases well below $1.39 per access connection), and these charges are presumably meeting the 9-1-1 needs of those governing bodies. There is no justification to increase the threshold amount to $1.39, let alone $1.72.

It is important for the Commission to take a more measured and incremental approach here, and as a practical matter, it will be easier for the Commission to increase the threshold over time, if that is warranted, rather than reduce the threshold amount once it has been increased. Jurisdictions that already have an approved charge greater than $0.70 will still be able to assess
that higher charge, as will jurisdictions that in the future are later approved to assess a higher charge. At the same time, maintaining the current threshold, or increasing it only incrementally, allows the Commission to honor its legislatively assigned oversight function.

d. The Commission’s legislatively assigned oversight role to approve charges above the threshold amount, and to ensure that fees collected to support 9-1-1 are used to support only 9-1-1, further warrants a lower initial threshold amount.

9-1-1 is of course essential, but it is also important to ensure that fees assessed to support 9-1-1 are used for that purpose only. The Legislative Declaration accompanying HB 20-1293 was emphatic on this point, providing that 9-1-1 fees: “do not raise revenue for the general expenses of government.”\textsuperscript{12} And federal law, pursuant to the New and Emerging Technologies 911 Improvement Act of 2008,\textsuperscript{13} while recognizing state authority over 9-1-1 fees, requires “that the [9-1-1] fee or charge is obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.”\textsuperscript{14} The FCC has been charged with ensuring that 9-1-1 consumer fees are used for their intended purpose.

Despite such clear statutory mandates, in many states fees collected for 9-1-1 have been inappropriately used for unrelated purposes. Each year, the FCC reports to Congress on states’ collection and distribution of 9-1-1 and enhanced 9-1-1 fees and charges. According to the FCC’s most recent report issued last December, states and territories collected more than $2.6 billion in

\begin{footnotesize}
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\item \textsuperscript{12} C.R.S. § 29-11-100.2(b)(II).
\item \textsuperscript{14} 47 U.S.C. § 615a-1(f).
\end{itemize}
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9-1-1 fees, and $197.9 million of that funding was diverted for uses other than 9-1-1. Ending 9-1-1 fee diversion continues to be a focus of FCC leadership and Congress.

In a statement accompanying the last report to Congress, FCC Chairman Ajit Pai stated “some states are diverting the money they collect away from 911-related services. This is unacceptable. When Americans pay 911 fees on their phone bills, they expect that money to fund 911-related services. Instead, more than 7% of the fees collected went to other purposes.” Just last week the FCC released a draft notice of inquiry indicating its intent to seek comment on the effects of states’ diversion of 9-1-1 fees and on the most effective ways to dissuade states and jurisdictions from diverting 9-1-1 fees. Members of Congress have echoed the FCC’s concerns.

There is no evidence suggesting that fee diversion has been a problem in Colorado, and hopefully no such problem will arise, but given the regulatory model in Colorado where governing bodies can set their Emergency Telephone Charge up to the threshold amount determined by the Commission without the need for Commission approval, it is important to set that threshold lower than the $1.72 proposed by the Opening Order. This will not deny any jurisdiction the ability to request approval for a charge that they deem necessary to meet their particular needs, but it will guard against over-collection of 9-1-1 fees, and minimize the possibility that 9-1-1 fees could be


16 See 9-1-1 Public Notice.

inappropriately used for other purposes. The Legislature has assigned the Commission the duty to ensure that 9-1-1 fund collections are warranted, and were the Commission to set the Emergency Telephone Charge threshold 145 percent above the current threshold, CTIA respectfully submits that the Commission would not be discharging that duty.

III. CONCLUSION

For all of these reasons, CTIA suggests a more measured and incremental approach to setting the Emergency Telephone Charge threshold, particularly given that this is the Commission’s first time considering these issues. An out-of-the-gate 145 percent increase over the presumptive threshold charge set forth by statute is too big a first step, and is not warranted based on the data presented in the Opening Order. While CTIA has limited its initial comments here to the Emergency Telephone Charge issue, should initial comments from other parties address other issues, CTIA reserves the right to address those issues in reply comments. CTIA looks forward to remaining engaged in these matters in any workshops established to address these issues, and in any formal rulemaking proceeding that may follow.

Respectfully submitted this 16th day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2020, the foregoing Initial Comments of CTIA was filed with the Colorado Public Utilities Commission via E-Filing and served on those parties shown on the Commission’s Certificate of Service accompanying such filing.

/s/ Kristin Lewis/