Decision No. C14-0893

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0804T

IN THE MATTER OF COMMISSION ADOPTION OF EMERGENCY RULES GOVERNING AUTOMATIC LOCATION IDENTIFICATION SERVICE

DECISION ADOPTING EMERGENCY RULES GOVERNING AUTOMATIC LOCATION IDENTIFICATION SERVICE

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I. INTRODUCTION

1. In this Decision, the Commission adopts emergency rules to ensure the continued reliability and affordability of a critical component of 911 communication services: the location of the caller requesting urgent assistance from police, fire, ambulance, and other emergency responders. Currently, Qwest Corporation, doing business as CenturyLink (CenturyLink), provides this integral component, known as Automatic Location Identification (ALI) service, as part of its tariffed enhanced 911 (E911) service delivered to public safety answering points (PSAPs). CenturyLink has subcontracted with Intrado Communications, Inc. (Intrado), to provide location identification through Intrado's ALI database and database management processes. CenturyLink and Intrado are terminating their subcontracting relationship for the ALI database in Colorado, and CenturyLink is transitioning to a self-provisioned ALI service. Intrado is offering to provide a separate ALI service directly to PSAPs in Colorado.

2. Information received by the Commission demonstrates an immediate risk of unreliable ALI services to PSAPs and a threat to our current statewide average pricing mechanism guaranteeing affordable ALI services to urban and rural PSAPs. To mitigate these risks, the Commission invokes its authority and abides by its mandated duty under Colorado law to adopt emergency rules. These emergency rules require CenturyLink, Intrado, or any other provider of ALI services to prove the reliability and affordability of their ALI services prior to transitioning to a different ALI service or database system, which may include self-provisioning, or providing a separate ALI service to PSAPs.

3. Subsequent to issuing these emergency rules, we will commence a permanent rulemaking proceeding by issuing a notice of proposed rulemaking and receiving comments from providers, PSAPs, local 911 authorities, and other interested stakeholders.

The permanent rulemaking will address the issues underlying the emergency rules we adopt today and others related to basic emergency service to ensure PSAPs, 911 authorities, and the public receive reliable and affordable 911 services.

II. FACTUAL BACKGROUND

A. 911, E911, and ALI services

4. When a caller dials 9-1-1, communications carriers transmit the call to the local PSAP, which in turn forwards the caller's request for emergency assistance to police, fire, ambulance, and other first responders. Legacy 911 services allowed only voice communications between the caller and the PSAP, thus requiring the caller to inform the PSAP of his or her location. Relying upon the caller to provide location information orally increases the risk emergency personnel may not be able to respond. Verbalizing one's location consumes time, is subject to human error, and simply may not occur due to the inability of the caller or the exigency of the circumstances. "Enhanced 911," known as "E911," resolves these problems by automatically providing the PSAP with the caller's location and other critical information. The PSAP is connected to an ALI database, which has been populated with the caller's address and other information. Another E911 feature is the Automatic Numbering Identification (ANI) service, which provides the PSAP with the caller's telephone number and allows the PSAP to place a return call.

5. In 1993, the Commission authorized the provisioning of E911 services through the state's BESP tariff and in conjunction with our rules governing ALI and other components of E911 services. All Colorado PSAPs and governing bodies currently receive E911 services.

B. ALI constitutes a communication between the caller and the PSAP of the caller's location.

6. The ALI service enables a caller dialing 911 to communicate automatically his or her location to the PSAP and emergency responders. Location information is not simply

a feature or accessory to the voice component of a 911 call; rather, the caller's location is critical to the caller's request for an emergency response. Due to the circumstances, such as the caller's physical condition or inability to speak, the caller's location may be the only information he or she is able to impart to the emergency responder.

7. Location identification is a communication between the caller and the PSAP. When subscribing for voice service, generally, a customer provides residential or business address information to the service provider. One of the purposes of a customer providing location information is to have it placed in the ALI database to enable a PSAP to know the caller's location through the dialing of 9-1-1. A customer may not understand the engineering complexities of how location information is transmitted among carriers, stored in the ALI database, or communicated and accessed during a 911 call; however, it is the actual, or at least reasonable, expectation of customers and callers that the act of dialing 9-1-1 communicates location information to the PSAP. For the purposes of these emergency rules, the transmittal of location information between the caller and the PSAP is the communication at issue.

C. E911 and ALI Service Providers in Colorado

1. CenturyLink

8. CenturyLink is authorized to provide telephone and other regulated services in Colorado. CenturyLink is the statewide basic emergency service provider (BESP) and, through its tariff approved by the Commission, provides E911 services to governing bodies, 911 authorities, and PSAPs. CenturyLink provides an integrated E911 service, which includes the aggregation of calls from any point within the state and transport of 911 calls to the correct PSAP corresponding with the location of the caller dialing 911.

9. CenturyLink's E911 services include ALI services. CenturyLink's tariff defines ALI and the ALI Database as features and services related to E911 that store information to assist

in identifying and forwarding the originating caller's address and other information to the PSAP. Qwest Corporation, Exchange and Network Services Tariff, Colo. P.U.C. No 23, Section 9.2.1.B, Sheet 2, and Section 9.2.1.D.1.a.(1), Original Sheet 19. The CenturyLink Tariff also establishes the terms and conditions of ALI services in Section 9.2.1.D.1.b, and the rates for ALI in Section 9.2.1.E.9. Historically, CenturyLink has delivered ALI services to PSAPs through its subcontract with Intrado. *See* Reporter's Transcript, Commissioner Information Meeting, 9-1-1 ALI Data Provisioning, February 26, 2014 ("Transcript") at 8.

2. Intrado

10. In 2000, Intrado applied for a Certificate of Public Convenience and Necessity to provide "basic emergency service as a basic emergency service provider." *Application of SCC Communications Corp.*, Docket No 00A-468T, filed August 14, 2000, at 1-2. Intrado's application incorporates the definition contained in the Commission's rules that "basic emergency service 9-1-1 includes enhanced 9-1-1 service…." *Id.*, at n2. Intrado sought certification to provide "basic emergency service" within Colorado, and "[Intrado] will be the ALI database provider in the provision of basic emergency service." *Id.*, at 15, 20. Intrado's proposed tariff filed with its application defined E911 as "[a]n emergency telephone service that includes ANI, ALI (including non-listed and non-published numbers and addresses), and (optionally) selective routing, to facilitate public safety response." *Id.*, Exhibit I, Section 2, Original Sheet 6 (parentheticals in original). The Commission granted Intrado's application for a CPCN to provide "basic emergency services." *In the Matter or SCC Communications Corp. for a Certificate to Provide Basic Emergency Services*, Docket No. 00A-468T; mailed October 5, 2000.

11. Intrado's approved tariff supports our finding above that the caller and the PSAP, not Intrado or its equipment, are the parties engaged in an ALI communication:

"The Company does not transmit messages but offers the use of its facilities, when available, for communications between parties, each of whom is present at a telephone or communications device." Intrado Communications, Inc., Emergency Services Tariff, Colorado P.U.C. No. 2; Section 2.4.1.2.1, filed May 15, 2003.

12. Intrado presently is the ALI service subcontractor to CenturyLink's tariffed provisioning of E911 services to PSAPs. Intrado has been CenturyLink's and its predecessors' ALI provider for the last 20 years. Transcript, at 8. Intrado also plans to offer and provide an ALI service directly to PSAPs and 911 authorities in the state, not as a subcontractor but as a competitor to CenturyLink's ALI service. Transcript, at 15-16, 37-38, 41-42.

D. Facts Demonstrating Need for Emergency Rules

13. On February 11, 2014, Intrado informed Commission Staff of the possibility its subcontract with CenturyLink may terminate. After inquiring into the matter, Commission Staff learned the CenturyLink-Intrado ALI subcontract would terminate as soon as February 28, 2014. Staff also learned of Intrado's intention to offer its own ALI service directly to PSAPs and 911 authorities. Before February 11, 2014, neither CenturyLink nor Intrado had informed the Commission or its Staff of the alteration in the structure of ALI provisioning to Colorado PSAPs. Thus, on February 20, 2014, the Commission sent letters to CenturyLink and Intrado directing them to attend a Commission Information Meeting (CIM) on February 24, 2014, and explain the manner in which E911 and ALI services would be provided to PSAPs and the public. CenturyLink and Intrado cooperated fully in the CIM. They appeared and participated upon short notice and were responsive to the Commission's inquiries.

14. At the CIM, CenturyLink confirmed its subcontract with Intrado was due to expire by its terms on February 28, 2014, subject to a transition period. Transcript, at 6, 31. For several months prior to the CIM, CenturyLink had been negotiating with Intrado to either

renew their agreement or extend the transition period to the end of 2015, after which CenturyLink would self-provision its ALI service. Transcript, at 7, 23.

15. The Commissioners discussed with CenturyLink and Intrado the need for the carriers to communicate, interact, and cooperate with other carriers, PSAPs, and 911 authorities to complete the transition to self-provisioned ALI services. Transcript, at 19-20. A successful transition requires: conversion of trunk switching; notification to other service providers to transmit subscriber data to a new location; communications with PSAPs and 911 authorities; and, testing of the system. Transcript, at 19-20, 24-25. Communications with PSAPs are necessary to ensure proper connections to new or different databases, correct formatting of ALI records, and coordination of the transition plan. Transcript, at 20, 25. Both CenturyLink and Intrado provided assurances of their commitment to public safety and to reliable provisioning of ALI services. Transcript, at 8, 30-31.

16. The Boulder Regional Emergency Telephone Service Authority (BRETSA) stated at the CIM that the status of negotiations between CenturyLink and Intrado may pose risks to entities other than CenturyLink and Intrado. Transcript, at 34. The termination of the CenturyLink-Intrado subcontract had not been discussed at any of the 911 Task Force meetings attended by carriers, PSAPs, 911 authorities, and governing bodies. Transcript, at 34-35.

17. After the CIM, the Commission Staff learned, through attendance at presentations by Intrado and CenturyLink to potential customers and through discussions with PSAPs and 911 authorities, of several uncertainties over the reliability of a transition to either CenturyLink's self-provisioned or Intrado's separate ALI offering. Commission Staff identified the following unresolved items critical to a reliable transition of ALI services to PSAPs: accuracy of the ALI databases; operational reliability of different ALI services and connections; pricing and affordability for less populated jurisdictions; coordination among service providers to allow

input of customers' names and addresses into the databases; adequacy of communications among CenturyLink or Intrado and the PSAPs and 911 authorities for the operational transition to a different ALI database or ALI provider; and, adequacy of testing of new or transitioned systems. CenturyLink also announced its intention to deactivate its use of Intrado's ALI service and begin its self-provisioning of ALI services in August, 2014.

18. To gather additional information of the reliability and affordability of CenturyLink's self-provisioned and Intrado's separate ALI service, the Commission Staff issued audit requests to CenturyLink and Intrado on May 8, 2014. Under § 40-15-107(2)(a), C.R.S., all information and documents provided by CenturyLink or Intrado to the Commission in connection with this audit shall be given confidential treatment, subject to their consent to disclose or a court order under § 24-72-204(5), C.R.S.

III. ADOPTION OF EMERGENCY RULES

A. The Commission's Authority and Duty to Issue Emergency Rules to Protect Public Safety

19. The Commission may adopt an emergency rule without conducting a permanent rulemaking "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 this 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.

20. The Commission is also *mandated* by statute to ensure safe and adequate utility services: "Whenever the commission…finds that the…equipment, facilities, or service of any public utility…are unjust, unreasonable, *unsafe*, improper, *inadequate*, or insufficient, the commission *shall* determine the just, reasonable, *safe*, proper, *adequate*, or

sufficient…practices, equipment, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed and *shall fix the same* by its order, rule, or regulation." §40-4-101(1), C.R.S. (Emphasis added). Section 40-3-101(2), C.R.S., imposes upon every utility the requirement to ensure public safety: "Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees and the public, and as shall in all respects be adequate, efficient, just, and reasonable."

B. Commission Adoption of Emergency ALI Service Rules

21. Section 24-4-103(6), C.R.S. authorizes the adoption in this proceeding of emergency rules to address an immediate need to preserve the health, safety, and welfare of Colorado citizens and visitors to our state. In support of invoking § 24-4-103(6), C.R.S., we find that CenturyLink's self-provisioning of ALI and Intrado's separate ALI offering create an unreasonable risk to the health and safety of the public, absent a formal showing to the satisfaction of the Commission of their services' reliability, statewide availability, and affordability.

22. Based upon the Staff's investigation, we find an immediate risk to reliable ALI services in Colorado, because CenturyLink and Intrado have not demonstrated the following:

a) The databases to be used by either CenturyLink or Intrado contain accurate and updated location information;

b) CenturyLink and Intrado have coordinated and communicated with other service providers to ensure input of accurate location information into the ALI databases;

c) The connections and other operational functions necessary for the provisioning of ALI services to PSAPs are reliable;

d) The offering of separate ALI services to highly-populated jurisdictions, the revenues from which have subsidized E911 services to other areas, will not damage the current statewide-average pricing structure for E911 services or result in unreasonably high rates to rural and less-populated jurisdictions;

e) CenturyLink and Intrado have communicated and provided adequate instructions to PSAPs and 911 authorities to ensure operational transition to a different ALI database or ALI provider; and,

f) CenturyLink's and Intrado's new or different ALI systems and connections have been tested adequately and demonstrate a sufficient level of reliability.

23. The risks of unreliable ALI services and resulting outages are not theoretical; Colorado and other states experienced dangerous outages of ALI services in recent months.[1] These outages exemplify the critical nature of ALI services to emergency 911 services and the imperative nature of ensuring reliable ALI services in Colorado. In addition, the marketing and offering of separate ALI services to individual 911 jurisdictions place at risk the statewide average pricing structure and E911 affordability.

24. We also find that the Commission is unable to complete all of the necessary procedures for a permanent rulemaking under § 24-4-103, C.R.S., before CenturyLink's planned launch of its self-provisioned ALI service in August, 2014. Similarly, Intrado at present is marketing and offering its separate ALI services to Colorado PSAPs and 911 authorities.

[1] *See, for example*, Public Notice, "Public Safety And Homeland Security Bureau Announces Inquiry Into Circumstances Of Major 911 Outage Centered In Washington State On April 9-10, 2014," Federal Communications Commission, PS Docket No. 14-72, Released May 16, 2014, at 1 ("On April 9-10, 2014, an extensive 911 outage occurred, centered in Washington state, but also affecting large areas of Oregon and portions of California, Pennsylvania, Minnesota, Florida, North Carolina and South Carolina. Press reports and preliminary data submitted to the Federal Communications Commission's Network Outage Reporting System (NORS) indicate that in Washington alone, over 4,500 911 calls to public safety answering points ("PSAPs" or 911 call centers) did not get through during a six-hour period beginning just before midnight on April 9, 2014.")

Awaiting the completion of a permanent rulemaking to establish and then apply the substantive and procedural standards necessary for reliable ALI services would not be timely to protect public safety and thus would be contrary to the public interest.

25. The emergency rules we adopt today define "ALI service" and revise the definition of "basic emergency service" to include "ALI service" expressly. Adoption of these definitional rules does not represent any change to our oversight of ALI service as a component of basic emergency service or result in any new incursion into a previously unregulated area; the Commission historically has regulated ALI services through its rules and through CenturyLink's integrated E911 tariff. We adopt these definitional rules due to recent events, recognizing the potential of ALI as a separate offering from the integrated E911 service offered by CenturyLink and to authorize Commission review and consideration of the reliability, statewide availability, and affordability of separate ALI functionality, either from a provider such as Intrado or from CenturyLink through its planned self-provisioning. Thus, we add to and amend Rule 2131 as follows:

> (f) "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.
>
> * * *
>
> (i) "Basic emergency service" means the Part II telecommunications service (§ 40-15-201(2)~~(b)~~, C.R.S.) permitting the use of the basic local exchange network and the 9-1-1 abbreviated dialing code for reporting police, fire, medical, or other emergency situations to a PSAP and referral to a public agency. The offering or providing of ALI service to a PSAP or governing body by any person is a basic emergency service.

26. We also adopt an emergency rule to require any provider self-provisioning an ALI service, deploying an ALI service as part of an integrated E911 service, or offering a separate

ALI service, to show the Commission through evidence that its ALI service will be reliable and affordable statewide. Thus, we add new Rule 2148, which states as follows:

> 2148. ALI Service.
>
> If any person provides an ALI service to a PSAP or governing body as a separate service or in combination with other components or functionalities of a 9-1-1 service, or if any BESP transitions to or uses an ALI database system or ALI service, including self-provisioning, different from any ALI database system or ALI service used by the BESP in the providing of 9-1-1 services to any PSAP or governing body as of June 1, 2014, then that person or BESP must file an application for and obtain prior authorization from the Commission. The authorization may be subject to terms and conditions as the Commission may prescribe to promote the public interest and will be based upon the following criteria:
>
> (a) accuracy of the ALI database during the provisioning of the ALI service;
>
> (b) reliability of the ALI service, including, without limitation, compliance with the obligations placed upon BESPs in rule 2143;
>
> (c) non-discriminatory, statewide averaged, and affordable pricing of 9-1-1 services;
>
> (d) processes and mechanisms required by service providers for the furnishing and management of the names, addresses, telephone numbers, and other necessary information for all customers for the ALI database;
>
> (e) adequacy of information exchanged with the PSAP or governing body;
>
> (f) adequacy of information exchanged and sufficient testing with other service providers to ensure the accuracy and reliability of the ALI service;
>
> (g) adequacy of the testing of the ALI service, including testing of the delivery of ALI service to each subscribing PSAP; and
>
> (h) any other matter affecting public safety, reliability, pricing, and the public interest.

27. The current ALI systems and connectivity serving PSAPs through CenturyLink's integrated E911 services tariff, which uses Intrado's ALI database and other services through a subcontract, have demonstrated their reliability and affordability over the past several years. Commission approval to maintain the status quo is not required. We add, therefore, the following to new Rule 2148:

> Commission authorization under this rule is not required for a BESP to continue providing a PSAP or governing body the same ALI service, database, database management service, connectivity, and functionality, and using the same subcontractors as part of an integrated E9-1-1 service as of June 1, 2014, or for the updating of the ALI database in the normal course of business.

28. Our emergency rules are tailored narrowly to address only the matters requiring our immediate attention and creating an imperative necessity. These emergency rules do not address other important, but less pressing, issues arising from the provisioning of separate ALI or other basic emergency services through a structure different from the current CenturyLink integrated E911 tariff. These issues include, for example, whether Colorado's interest in statewide average pricing necessitates a single-provider structure or allows multiple providers of E911 services. Providers and customers of E911 services, such as PSAPs, 911 authorities, and governing bodies, should be aware that future permanent rules addressing reliability, pricing, and the market structure for ALI and E911 services may be different from existing rules and these emergency rules.

29. The public policies underlying basic emergency service support our adoption today of emergency rules. It is of the utmost importance to ensure continuity in the provision of enhanced 911 basic emergency service for all citizens in Colorado. This includes, without limitation, ensuring that there is no disruption of service due to any revision or termination of contractual relationships resulting in changes to hardware or software components or to processes used to provide basic emergency service. "[P]ublic safety agencies increasingly rely on enhanced 9-1-1 to provide dependable and precise information about the 9-1-1 caller's location and an accurate telephone number to reach the caller." § 29-11-100.5(2), C.R.S. "Inadequate location information can be life threatening if the caller is unable to verbalize the correct location. Not knowing an accurate location for a caller can result in a delay in service."

Id. It is beyond dispute that E911 services in general and ALI services in particular are critical to public safety for Coloradans and visitors to our state. *See* Transcript, at 4-5.[2]

IV. COMMISSION AUTHORITY TO REGULATE BASIC EMERGENCY SERVICES

A. The Commission has constitutional and statutory authority to regulate the provisioning of telephone, E911, and ALI services.

30. The PUC has broad constitutional and statutory authority to regulate public utilities. Unless the General Assembly restricts Commission regulation through a statute, the PUC has as much authority over public utilities as did the legislature prior to the adoption of Article XXV of the Colorado Constitution. *Miller Brothers, Inc. v. Pub. Utils. Comm'n*, 525 P.2d 443, 451 (Colo. 1974); *O'Bryant v. Pub. Utils. Comm'n*, 778 P.2d 648, 655 (Colo. 1989). "Article XXV effectuates a broad delegation of legislative power to the PUC…." *Mountain States Tel.& Tel. Co. v. Pub. Utils. Comm'n*, 763 P.2d 1020 (Colo. 1988), (citing *Miller Bros., Inc. v. Pub. Utils. Comm'n*, 525 P.2d 443, 451 (1974)). "[T]he PUC's authority under article XXV is not narrowly confined but extends to incidental powers which are necessary to enable it to regulate public utilities." *Id.* "Article XXV of the Colorado Constitution vests in such agency as the General Assembly may designate all power to regulate the facilities, service, rates, and charges of every public utility operating within Colorado." *Pub. Serv. Co. v. Trigen-Nations Energy Co.*, 982 P.2d 316, 322 (Colo. 1999).

31. Telephone corporations are defined as public utilities under § 40-1-103(1)(a)(I), C.R.S. CenturyLink and Intrado are telephone corporations and thus are subject to the

[2] The FCC has cited a 2002 study of 911 calls in Pennsylvania finding that, when E911 location information was provided contemporaneously with a 911 call, response time was notably shortened and correlated with a 34-percent reduction in mortality rates from cardiac arrest within the first 48 hours following the incident. *In the Matter of Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 13-75, PS Docket No. 11-60, Report and Order, Released: December 12, 2013.

PUC's constitutional authority. Indeed, Intrado's application for a CPCN to operate in Colorado defined E911 as "[a]n emergency *telephone* service that includes ANI, ALI (including non-listed and non-published numbers and addresses), and (optionally) selective routing, to facilitate public safety response." *Application of SCC Communications Corp.*, Docket No 00A-468T, filed August 14, 2000, Exhibit I, Original Sheet 5 (emphasis added). The General Assembly also has declared "basic emergency service" to be subject to regulation under part 2 of article 15, title 40. § 40-15-201(2), C.R.S. (2014).

32. The Commission historically has regulated ALI through its rules. "ALI" and "ALI database provider" are defined within the Commission's rules, and "'E911 features' means the ANI, ALI, and selective routing capabilities and all other components of an E911 system, not including the transport and switching facilities." Rule 3121, (e), (f), (k). Under our rules, "ALI database service is integral to the provision of E9-1-1 services." Rule 2133(b). The Commission also has regulated terms, conditions, and statewide averaged rates of E911 and its components through tariffs. Rule 2136(c).

33. The recent legislation amending Colorado's telecommunications statutes expressly maintained the Commission's authority over emergency services. This legislation reformed regulation of telephone companies in several areas, the most relevant of which was to define "information services" in accordance with the federal Communications Act and place those and other services, including basic local exchange services, into deregulated status under part 4. § 40-15-401(1)(b) and (i), C.R.S.[3] The legislative bill, however, expressly reserved Commission jurisdiction over 911 and ALI services: "Nothing in this part 4 shall be construed to

[3] The legislation provided for several exceptions to the deregulated status of basic local exchange services, thus allowing for Commission regulation under specified circumstances. *See* § 40-15-401(1)(b), C.R.S.

affect, modify, limit, or expand the Commission's authority to regulate basic emergency service." § 40-15-401(4), C.R.S. (2014)

34. In addition to this unambiguous statutory language, the amendments' legislative history leaves no doubt of the General Assembly's intent to maintain Commission authority over 911 services, without regard to the technology used by a service provider. The Honorable Angela Williams, lead sponsor of the bill in the House of Representatives, stated during the key House Committee meeting:

> Committee, if you look in the IP bill, on page 5, it's clear there that nothing in Part 4 shall be construed to affect, modify, limit, or expand the Commission's authority to regulate Basic Emergency Service. As we have talked about, how do we maintain the status quo. The intent there is also, regardless of technology, we have had conversations with the AG's office, the PUC, the Gov's office, and we have talked to some professionals, who have been in the telecommunications industry for over 30 years. And we believe that the language in House Bill 1329 maintains that status quo, and the PUC will still have authority over 9-1-1, regardless of technology.

Transcript of Testimony of Representative Williams before the House Business, Labor, Economic and Workforce Development Committee, March 25, 2014. *See also* Testimony of Senator Kerr before Senate Business Labor Committee, April 16, 2014 ("I would like to state, for the record, that the intent of the legislation is to maintain the PUC's regulatory oversight of Basic Emergency Service, regardless of technology."). The Governor's signing letter echoed the statements of Representative Williams and Senator Kerr. *See* Letter of John W. Hickenlooper, Governor, dated May 9, 2014 ("Testimony in both chambers by the sponsors of this bill reinforce that the intent of this legislation is to maintain the PUC's authority to regulate basic emergency services, regardless of technology.").

35. This Commission may presume that the Legislature passed HB 14-1329 with deliberation and full knowledge of all existing law dealing with the same subject.

See In Re Questions Submitted by the United States District Court, 499 P.2d 1169, 1171 (Colo. 1972) (quoting *Cooper Motors, Inc. v. Board of County Commissioners*, 279 P.2d 685, 688 (Colo. 1955)) (Citations omitted) (applying this presumption to analysis of whether a statute is constitutional). The Legislature thus was aware of the Commission's historic regulation of E911 and ALI services when it passed the statutory provision stating that the PUC's regulatory authority over basic emergency service was unaffected, without regard to the technology used.

B. The ALI Component of 911 Service is an Intrastate Communication

36. The end to end geographic locations of a communication determine whether it is intrastate or interstate in nature. *Minnesota Pub. Utils. Comm'n v. Federal Comm. Comm'n*, 483 F.3d 570, 574 (8th Cir. 2007). Because the E9-1-1 calls and their ALI component over which we assert jurisdiction in this emergency rulemaking are placed by persons located within the state and delivered locally to a PSAP or an emergency service provider also located within Colorado, this Commission may excise its intrastate regulatory jurisdiction over such calls.

37. The service provider's network configuration and location of facilities inside or outside Colorado used to transport or switch the calls are immaterial to the jurisdictional question of the geographic location of the calls' end points. This Commission historically has exercised jurisdiction over basic, toll, and switched access services for calls originating and terminating within the state without regard to the location of the service providers' equipment and facilities used to deliver the call. For example, the use of a switch located outside the state to route a call originating and terminating within the state does not alter its jurisdictional nature. Therefore, despite a BESP's or ALI provider's location of any transport, switching, routing, or database facilities outside Colorado that are used for E911 calls and ALI information delivered within the state, an E911 call placed in Colorado and delivered to a PSAP or emergency service

provider located in Colorado is an intrastate communication within the Commission's jurisdiction.

38. In-state funding supports the provisioning of E911 and ALI services. Colorado law authorizes cities, towns, counties, and other localities to impose an emergency telephone charge upon service users located within the jurisdiction providing emergency telephone service. § 29-11-102(1), and (3), C.R.S. These charges pay for the localities' equipment, installation, and other directly related costs of the continued operation of an emergency telephone service. § 29-11-104(2), C.R.S. The local governing bodies use these funds to pay basic emergency service providers such as CenturyLink for its provisioning of voice, ANI, and ALI services to the PSAPs. § 29-11-104(2)(a)(I)(B), C.R.S. Surcharges greater than seventy cents are subject to approval from the Commission. § 29-11-102(2)(b), C.R.S. Thus, services providers such as CenturyLink and Intrado derive their revenues from intrastate surcharges.

C. Information Services Used To Provision E911 Are Subject To Regulation

39. During the CIM, Intrado contested the Commission's assertion of jurisdiction over ALI services on the basis of its purported classification as an "information service."[4] As background, federal and state commissions have avoided regulating emerging computing and data services to promote their growth and development. The General Assembly codified this regulatory prohibition in H.B. 14-1329, defining information services and placing them into deregulated status under part 4. § 40-15-102(10) and -401(1)(i), C.R.S. (2014).

40. The General Assembly in H.B. 14-1329, however, affirmed the Commission's regulatory oversight of basic emergency services regardless of the deregulated status of any

[4] We acknowledge that Intrado may have additional and more comprehensive analyses of the Commission's jurisdiction in future Commission proceedings, including the forthcoming permanent rulemaking addressing 911 issues.

service under part 4. § 40-15-401(4), C.R.S. (2014). Thus, to the extent any of the services or products listed in § 40-15-401(1), C.R.S., including an information service, is used to provide basic emergency service, it is within the Commission's regulatory authority.

41. The FCC discards the policy to not regulate an information service if it is used to provide E911 or emergency services. In support of its order requiring providers of voice over internet protocol (VoIP) services to provide E911 capabilities to their retail customers, the FCC stated:

> Although the Commission is committed to allowing these services to evolve without undue regulation in accord with our nation's policies for Internet services, we are, at the same time, aware of our obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.
>
> * * *
>
> Our actions today are not in conflict or otherwise inconsistent with any other provision of the Act. We acknowledge that section 230 of the Act provides that "it is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." *47 U.S.C. § 230*(b)(2). We do not, however, believe that this policy statement precludes us from adopting E911 rules for interconnected VoIP providers here.

In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, WC Docket No. 04-36; WC Docket No. 05-196, 20 FCC Rcd 10245, June 3, 2005, Released, ¶¶ 4, 29, n95. We agree with the policies articulated by the FCC and conclude that the state's interest to ensure the reliability of ALI and E911 services to Coloradans and its visitors overrides any interest in protecting IP-enabled and information services from regulation.

42. Intrado's challenge to Commission jurisdiction, purportedly that "information services" are under the jurisdiction of the FCC, impliedly raises a federal preemption objection.[5]

The preemption doctrine is premised upon the Supremacy Clause of the United States Constitution, declaring that the laws of the United States "shall be the supreme Law of the Land; ...any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *U.S. Const. art. VI, cl. 2*. The Supreme Court has recognized three types of preemption: express preemption, field preemption, and implied conflict preemption. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985).

43. Field preemption arises by implication when state law occupies a "field reserved for federal regulation." *United States v. Locke, 529 U.S. 89, 111 (2000)*. A congressional intent to occupy a field can be inferred when "[t]he scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)*. Conflict preemption occurs when "the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000). The court must look to "'the entire scheme of the statute'" and determine "'[i]f the purpose of the [federal] act cannot otherwise be accomplished –

[5] Because of the immediate and imperative nature of these emergency rules, we have not conducted yet a proceeding complete with legal briefing of all interested parties; but, because Intrado registered objections to the Commission's jurisdiction over ALI services, we will be responsive to its position and address these issues to provide Intrado and other interested persons with our analysis of the Commission's authority over ALI services and these emergency rules.

if its operation with its chosen field [would] be frustrated and its provisions be refused their natural effect.'" *Id.* (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)).

44. No Congressional statute or FCC rule expressly preempts the states from regulating E911 services. Further, no federal provision reflects a congressional purpose to occupy the entire field of emergency services regulation, and no federal regulatory scheme is so pervasive to infer an intent to exclude the states from exercising authority over 911.

45. The federal Communications Act not only allows state regulation of E911 services, but also *requires* the FCC to support state deployment of E911. Section 615 of the Communications Act says:

> The Federal Communications Commission shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 9-1-1 service. In encouraging and supporting that deployment, the Commission shall consult and cooperate with State and local officials responsible for emergency services and public safety….
>
> 47 U.S.C. § 615.

46. In a recent order adopting rules requiring providers to certify compliance with 911 network reliability standards, the FCC expressly rejected the notion that federal law preempts state regulation of 911 services, provided a state's action does not frustrate the FCC's regulatory framework:

> Moreover, the state public utilities commissions filing comments in this proceeding have uniformly endorsed our proposals, which do not extend to matters of state or local jurisdiction such as tariff conditions and the internal operation of PSAPs. Indeed, as noted above, we have specifically declined to include PSAPs within our definition of Covered 911 Service Providers or otherwise to regulate the reliability of their own internal operations. To the extent that commenters express concern about the appropriate line between federal and state authority with respect to 911 service, we emphasize that the Commission's actions here will be undertaken, consistent with past practice, in partnership with such authorities and in light of their unique interest in the delivery of reliable

> 911 service. *The rules we adopt today are not intended to preempt state and local actions so long as they do not operate to frustrate the implementation of the Commission rules adopted here*.

In the Matter of Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket No. 13-75, PS Docket No. 11-60, Report and Order, Released: December 12, 2013, ¶ 150. (Emphasis added) (Footnote deleted).

47. Another recent FCC order acknowledges and supports the states' interests and regulation over 911 services, in contrast to any expression of federal preemption:

> The availability of this critical service is due largely to the efforts of state and local authorities and telecommunications carriers, who have used the 911 abbreviated dialing code to provide access to increasingly advanced and effective emergency service capabilities. Indeed, absent appropriate action by, and funding for, states and localities, there can be no effective 911 service. Responsibility for establishing and designating PSAPs or appropriate default answering points, purchasing customer premises equipment (CPE), retaining and training PSAP personnel, purchasing 911 network services, and implementing a cost recovery mechanism to fund all of the foregoing, among other things, falls squarely on the shoulders of states and localities.

In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, WC Docket No. 04-36; WC Docket No. 05-196, 20 FCC Rcd 10245, June 3, 2005, Released, ¶ 7 (Citations to footnotes omitted). *See also In the Matters of Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934*, CC Docket No. 96-149; 13 FCC Rcd 2627, Released February 6, 1998, at ¶ 44 ("[t]he prices, terms and conditions of E911 services are subject to state regulation.").

48. The emergency rules we adopt today do not frustrate in any manner the implementation of FCC policies or rules regulating 911 services. Our rules promote and ensure public safety within the state by requiring providers deploying new methods of ALI provisioning to show the reliability and affordability of their services. These state policies and rules correspond with the FCC's recent rulemaking adopting "rules to improve the reliability and

resiliency of 911 communications networks nationwide by requiring that 911 service providers take reasonable measures to provide reliable 911 service, as evidenced by an annual certification." *In the Matter of Improving 911 Reliability*, at ¶ 1. Because Colorado is not interfering with FCC policies or with implementation of its rules, our emergency rules are not preempted by federal law.

49. The emergency rules adopted today 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.

50. The emergency rules in legislative and final version format are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=14R-0804T.

V. 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 emergency rules consistent with the above discussion.

2. The emergency 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.

B. ADOPTED IN DELIBERATIONS' MEETING July 23, 2014.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners