

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. 911-019/PI-118  
Public Service Commission, on )  
its own motion, to implement )  
provisions of LB 1222 [2006] and ) ORDER RELEASING AMENDED MODEL  
to establish a permanent funding ) AND APPLICATION PROCESS FOR  
mechanism for wireless enhanced ) COMMENT AND SETTING HEARING  
911 service. )  
)  
) Entered: December 15, 2009

BY THE COMMISSION:

O P I N I O N     A N D     F I N D I N G S

The Nebraska Public Service Commission (Commission) opened the above-captioned docket, on its own motion, to implement provisions of LB 1222 [2006] and to establish a permanent funding mechanism for wireless enhanced 911 service.

LB 1222 requires that the Commission:

Establish a mechanism for determining the level of funding available to each public safety answering point and wireless service providers for costs determined to be eligible by the commission...

Neb. Rev. Stat. § 86-465(1)(e) (2008).

On July 7, 2009, the Commission released for comment a proposed permanent funding mechanism. Comments on the proposed mechanism were filed by: City of Fremont, Nebraska Association of County Officials (NACO), GeoComm, Nebraska Wireless 911 Advisory Board (Advisory Board), N.E. Colorado Cellular, Inc. dba Viaero Wireless (Viaero), Lincoln-Lancaster County Emergency Communications, and Hall County - Grand Island 911 Mgmt.

In order to implement the funding mechanism, the Commission entered a second order releasing for comment a proposed timeline and application process for the approval and distribution of funding and the verification of the use of the funding. Comments were received regarding both proposals. Comments on the proposed application process were filed by: NACO, Boone County Sheriff's Department, Viaero, and Custer County.

An initial hearing was held on October 7, 2009, during which time, staff provided testimony outlining some changes that it intended to propose to the model and process based upon comments received to date. Staff has further considered comments received during the hearing and feedback provided on

the proposed application process. Also, recently due to state budget constraints approximately \$3.4 million in interest will be removed from the Fund and will therefore impact the mechanism itself, in addition to the proposed timeline and process. Therefore, the following proposal is released for additional comment. It is intended to replace the proposals set forth in the July and September, 2009 orders.

The proposed timeline for implementation and application process assumes that the use of the permanent funding mechanism is implemented effective **July 1, 2010**, with a funding year of July 1st through June 30<sup>th</sup> and that funds are distributed on a monthly basis.

#### **I. Description of the Wireless 911 Support Allocation Model (911-SAM)**

The 911-SAM is proposed as the permanent funding mechanism for wireless enhanced 911 service. The 911-SAM forecasts the future status of the Enhanced Wireless 911 Fund (Fund) and assists in the allocation of annual support amounts to eligible Public Safety Answering Points (PSAPs) and Wireless Service Providers (WSPs).

The 911-SAM includes summaries of the Fund status forecast and Fund support amount allocated to eligible PSAPs and WSPs for the current funding year.

The 911-SAM calculates Fund support amounts for each year forecasted based on the existing balance, reserve levels, pre-existing payment commitments, Fund administration costs, LEC costs paid on behalf of the PSAPs by the Commission, and surcharge remittance levels. Fund support amounts are allocated utilizing cost proxies.

The 911-SAM derives cost proxy amounts, representing the costs incurred for the provision of wireless enhanced 911 service, for three cost categories; PSAP, Geographic Information Systems (GIS), and wireless service provider (WSP). Cost proxy amounts are determined as functions of independent variables and predefined cost inputs. More specifically, PSAP and GIS cost proxy amounts are calculated as functions of population and the WSP cost proxy amount is determined as a function of cellular towers.

Cost category proxy amounts are calculated at a PSAP or county level and aggregated to a statewide level. Statewide cost category proxy amounts are further aggregated to determine a total proxy amount. The 911-SAM then calculates each cost

category's allocation of the Fund support amount, calculated as the cost category's statewide cost proxy amount, relative to the total proxy amount.

The 911-SAM further utilizes cost proxy results, at a PSAP or county level, to allocate cost category support amounts to each eligible PSAP and WSP. Eligible PSAP support amounts include PSAP and GIS. Fund support amounts allocated to eligible PSAPs and WSPs are summarized for the current funding year.

The 911-SAM has been amended since its original release. It has been converted to rely on a fiscal year from July 1 to June 30. Additionally, the LEC cost category has been removed and would be paid directly by the Commission on a statewide basis rather than being allocated to individual PSAPs. It is therefore treated in the same manner as other amounts previously identified and included in the calculation of annual Fund support amounts. A discussion of the LEC proposal will be discussed more fully herein. The 911-SAM also now includes an interest calculation and a cap on the WSP Grant Program. Furthermore, amounts attributable to LEC costs have been separated from other PSAP costs. Finally, the PSAP Equipment Program has been changed to release funds directly to the PSAPs. The amount of available funds for the first funding year has also been reduced by the approximately \$3.4 million in accrued interest removed by the Legislature.

Attached hereto and incorporated herein by this reference as Appendix A, is the E911 Fund Forecast. Also attached hereto and incorporated herein by this reference as Appendix B, is the Summary of E911 Funding Support, which summarizes the allocation of funding support to each cost category. Finally, attached hereto as Appendix C, and incorporated herein by this reference, is a spreadsheet which summarizes the payment to each PSAP after all pre-existing commitments are paid.

#### **A. PSAP Funding**

The approach to funding for PSAPs has been amended. As mentioned above, the LEC costs have been removed as a cost category and will be paid directly by the Commission on a statewide basis rather than through an allocation to individual PSAPs. Therefore, the remaining PSAP funding will relate to the PSAP and GIS cost categories. The Commission would permit the PSAP to retain up to seventy-five percent (75%) of the amount allocated to the PSAP cost category for the future purchase of equipment and software. A more detailed description of the equipment program is included herein.

Additionally, the Commission would continue to pay amounts for intertandem trunking, GIS data development, equipment costs which represent a first request for funding for that PSAP, and equipment and software maintenance contracts approved prior to the implementation of the 911-SAM. These amounts would be paid directly to the appropriate vendor on behalf of the PSAP. Any previously approved amounts being paid on behalf of a PSAP would be deducted from their PSAP allocation. This arrangement would continue until the expiration of any existing contracts. At that time, each PSAP would be responsible for making payments to vendors on their own and the amounts previously deducted by the Commission in order to make the payments would then be paid directly to the PSAP.

Payments for intertandem trunking and the GIS repository will not be allocated to any PSAP but will instead be paid directly by the Commission.

After the above listed adjustments are made, any additional funds would be paid to the PSAP on a monthly basis commencing July, 2010 after receipt of any required application materials.

The Commission would continue to approve funding for no more than one PSAP per county consistent with Neb. Rev. Stat. § 86-465(1)(e). However, under certain circumstances in which costs are shared, payments may be made to multiple PSAPs in one county so long as expenses are not duplicated between the PSAPs. For example, Norfolk PD is the designated PSAP for Madison County; but Madison County funded GIS development. Therefore, the Commission has provided funding to Madison County strictly for the maintenance of the GIS data. If an inter-local agreement exists between multiple governing bodies which necessitates the payment of funding to more than one governing body, the governing bodies are required to submit that information along with their applications so that the proper payments can be made.

PSAPs receiving funding would be required to attest annually and provide supporting documentation demonstrating that funds received were utilized for permissible purposes under the Act, Commission orders, and Commission guidelines and rules and regulations. Additionally, PSAPs would have to certify that they meet certain eligibility requirements and follow application processes and procedures established by the Commission. Failure to comply may result in suspension of funding.

## **1. Prerequisites for PSAP Funding**

The Commission believes that certain minimum prerequisites should be established for PSAPs in order to ensure a complete and reliable statewide enhanced wireless 911 system.

Prior to having access to any cost recovery from the Fund, the governing body of the PSAP must have adopted the maximum allowable landline E911 service surcharge permitted by the Emergency Telephone Communications Systems Act, Neb. Rev. Stat. §§ 86-420 to 86-441.01. The Commission will seek input from the State Auditor's office and the State Treasurer as to whether wireless 911 funds can be, and should be, maintained by PSAPs in a separate account.

All PSAPs must be connected to the selective router; must maintain contracts or the necessary onsite staff for the maintenance of the software and equipment necessary for the provision of enhanced wireless 911 service; and must have contracts or trained personnel in place to ensure that all GIS data is current and accurate.

Furthermore, all PSAPs receiving funding shall provide their GIS data to the statewide GIS repository and provide periodic updates according to policies to be established by the Commission. The Commission will, at a future date, investigate the option of a statewide contract for the maintenance of GIS data. Also, the Commission will no longer pre-approve equipment and software vendors. All PSAPs will be required to certify that they have complied with all applicable state and local bidding requirements for the purchase of goods and services.

## **2. Eligible PSAP Costs**

Neb. Rev. Stat. § 86-465(2) sets forth general costs that may be eligible for funding as prescribed by the Commission.

The Commission staff proposes that the eligible costs for PSAP funding be designated as follows:

- The purchase and installation of equipment and software necessary for the provision of wireless E911 based upon the Commission's wireline/wireless ratio unless the PSAP can produce call volumes demonstrating a higher volume of wireless calls. Such items shall not include any equipment or software used primarily for the provision of landline 911 service or those items such as computer aided dispatch which are not necessary for the provision of enhanced wireless 911 service.

- Costs of upgrades to equipment and software necessary for the provision of wireless E911, including CPE equipment and relevant software, mapping software.
- Maintenance costs for eligible equipment and software.
- Telecommunications services required for the provision of enhanced wireless 911 service including trunking and connection to the selective router. The Fund would provide full funding for a dedicated wireless 911 trunk. However, shared facilities would be subject to the Commission's wireline/wireless ratio unless the PSAP can demonstrate a higher volume of wireless calls.

The Commission is aware that funds provided may not provide full cost recovery for all elements listed above. Additionally, no funding will be provided for costs related to the following: Computer Aided Dispatch; Logging and Recall Recorder Equipment; Community Notification Systems; Time Synchronization; Radio Equipment; and PBX. Additionally, administration, personnel and training costs will not be considered eligible expenses at this time.

### **3. Equipment and Software Program**

As stated previously, the Commission will permit PSAPs to set aside seventy-five percent (75%) of each PSAPs' available funding allocation for equipment and maintenance on an annual basis to be used for future equipment and software purchases. This percentage is based upon per occurrence historical data of equipment and software purchases and the costs of maintenance. PSAPs may set aside these funds for no more than ten (10) years. The funds cannot be held by the PSAP for more than 2 years after the ten year period expires or the funds must be paid back to the fund. An accounting of the funds shall be provided at the time the PSAP verifies use of its allocation at year end.

PSAPs may utilize these funds solely for upgrades and replacements of PSAP equipment and software. Retained funds can be used for up to fifty-five percent (55%) of the cost of the equipment and software based upon the wireless/wireline allocation adopted by the Commission. This allocation factor may be amended as needed. If the PSAP can demonstrate a greater percentage of its call volume is attributable to wireless 911 it can be funded up to the proven call volume percentage.

Prior to expending these funds, PSAPs must submit funding requests to the Commission for approval and a determination of the allocation factor if the PSAP wishes to use the funds to pay for more than amounts determined utilizing the established

wireless/wireline allocation factor. For the initial funding year, applications must be submitted no later than **April 15, 2010**. For funding years beginning on or after July 1, 2011, applications must be submitted no later than **October 15<sup>th</sup>** for the following funding year.

All applications must contain the specifications of such equipment, a certification that the equipment and software meets applicable NENA standards and is IP capable. PSAPs would also have to provide information regarding any other 911 and/or public safety related funds received from other sources (e.g. any stimulus money, other grant funds, etc.) All equipment and software applications will be reviewed by the Enhanced Wireless 911 Advisory Board.

PSAPs are not required to wait to apply for funding until sufficient funds have accumulated to cover the cost of the equipment and software. To the extent that there is an insufficient balance in the PSAP's equipment and software fund, after an accounting is received of the funds the PSAP has available, the Commission would pay the appropriate percentage of the cost of the equipment and software and a deduction would be made from the annual allocation to the PSAP until the expense is reimbursed to the Fund.. At that point, the PSAP will again begin receiving its full allocation.

#### **4. Funding for LEC Costs**

Currently, the Commission receives invoices for PSAPs from each of the three LECs for wireless 911 charges. The manner by which LECs are compensated for telecommunications services provided to PSAPs is dependent upon data filed with the Commission in quarterly reports. We believe it would be more efficient for the Commission to continue to pay LEC costs directly, on behalf of PSAPs, on a statewide basis.

Under the current proposal, LECs would be compensated on a per wireless subscriber rate and paid based upon the number of wireless subscribers reported to the Commission in wireless quarterly reports. Each LEC would be required to file a tariff outlining a per subscriber rate. No specific allocation to each PSAP would be necessary.

#### **B. Wireless Service Provider Funding**

The WSP funding amounts calculated by the 911-SAM would be paid directly to the carriers on a monthly basis commencing July, 2010 after receipt of all required materials. WSPs receiving funding would also be required to attest annually and

provide supporting documentation demonstrating that funds received were utilized for permissible purposes under the Act, Commission orders, and Commission guidelines and rules and regulations. Additionally, WSPs would be required to certify that they meet certain eligibility requirements and would follow application processes and procedures established by the Commission to be proposed in a future order. Failure to comply with all requirements, including the submission of quarterly reports and timely remittances of surcharges, may result in suspension of funding.

### **1. Prerequisites for WSP Funding**

In order to be eligible to receive funding, the Commission believes that certain minimum prerequisites to funding should be established for WSPs in order to ensure a complete and reliable statewide enhanced wireless 911 system. The following prerequisites to funding are proposed:

- WSPs must demonstrate compliance with federally established testing and accuracy standards as set forth in 47 CFR Sec. 20.18(h).
- Prior to receiving funding, WSPs should have to report and account for any additional funding that may support 911 services including, but not limited to, federal or state universal service funds and revenues generated through surcharges imposed by the carrier.
- WSPs must timely file accurate quarterly reports; remittances; and remittance worksheets. Failure to do so may result in a suspension or termination of funding.

### **2. Eligible WSP Costs**

With respect to WSPs, eligible costs may include, but not be limited to, the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any database or database elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service.<sup>1</sup> However, costs for equipment or services used in the WSP's main infrastructure resulting in revenue are not eligible for funding.<sup>2</sup>

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<sup>1</sup> Neb. Rev. Stat. Sec. 86-465(2)(a).

<sup>2</sup> Neb. Rev. Stat. Sec. 86-465(2)(a).

The Commission staff proposes that the eligible costs for WSP funding include database management and upgrade costs necessary to provide enhanced 911 service and costs for transportation and facilities to carry wireless E911 calls to the selective router regardless of whether these costs are Phase I or Phase II. No administration, personnel or training costs will be considered eligible expenses at this time.

Any capital expenses directly related to the provision of enhanced 911 service, including new equipment and software and upgrades will be addressed in connection with the WSP grant program set forth in more detail herein.

### **3. WSP Grant Program**

Currently, several WSPs have chosen not to seek funding. Funding not paid to individual WSPs, would be set aside and made available during that funding year via the WSP Grant Program. The WSP Grant program funding would be available to all wireless service providers, eligible to receive funding, for recovery of other potentially eligible costs incurred in the provision of wireless enhanced 911 service. All grant requests would be subject to Commission approval, subsequent to review. The Commission specifically seeks written comment regarding the parameters of such a program including, but not limited to, permissible purposes for such funds, eligibility criteria, and the application process and standards.

The level of grant funding available will be announced on or before May 31<sup>st</sup>. Carriers seeking grant funding shall submit an application on or before **October 15<sup>th</sup>** for the following funding year. Grant funding can be used for capital expenses directly related to the provision of wireless enhanced 911 service. The Grant application shall include:

- A detailed budget and supporting documentation.
- Information regarding vendors to be used including copies of all contracts and disclosures of any affiliations between the vendor and carrier.
- A statement regarding 911 and/or public safety related funds received from other sources (e.g. any stimulus money, other grant funds, 911 or public safety funds from other states used to support the costs)
- A certification that the money requested is to support costs that are solely to support the Nebraska 911 system and information to support any allocation of costs between different states.

Hearings will be held on all grant fund applications. No more than twenty-five percent (25%) of the total support amount allocated to WSPs may be spent on grant funding. Any amounts in excess of the 25% will be returned to the total funds available for both PSAPs and WSPs and reallocated for the following funding year.

All grant funds will be paid after completion of project based on invoices paid by the WSP.

Funds not awarded in one year will be rolled into available funds for distribution to PSAPs and WSPs the following funding year, however available funds may not exceed the cap set forth above.

## **II. GENERAL PROCESS**

### **A. Requests for General Funding**

All WSPs and Public Safety Answering Points (PSAPs) must file an initial application for funding no later than **April 15, 2010**. Failing to submit an application by the deadline would result in a loss of funding for the 2010-2011 funding year. The Commission will issue a notice of available funding to each applicant on or before **May 31, 2010**.

#### **1. WSP Applications**

WSPs seeking funding would have to identify the eligible costs for which funding would be used during the funding year. Additionally, WSPs are responsible for the accuracy of the quarterly reports on which all payments would be based. Should an error be found in the process of an audit or under other circumstances, a carrier would be required to refund any overpayments made based upon an inaccurate report. However, if it was determined that the number of towers was underreported, a carrier is not entitled to back payment of any additional funds that would have been received had the tower been properly reported.

A WSP's failure to timely file quarterly reports or otherwise fail to comply with Commission orders, rules and regulations or any other statutory requirements, could result in a delay, suspension, termination or refund of funds. WSPs would also be required to submit updated ACH Enrollment and contact information for funding and quarterly reports or verification that information currently on file with the Commission is accurate.

## **2. PSAP Applications**

PSAPs seeking funding would have to provide information regarding their current equipment and software including all specifications; dates of installations and a description and the date of any equipment or software upgrades occurring within the previous twelve (12) months; a copy of any maintenance contracts for equipment and software are in place. The PSAP would also have to verify the current status of the PSAP for both enhanced wireline and wireless 911 services and all areas for which it provides service; the current level of the landline 911 surcharge. Also, the application would include a report of wireless and wireline 911 call volumes for each month for the previous twelve (12) month period or in the alternative a signed release from the PSAP permitting the local exchange carrier (LEC) to release call volume information to the Commission.

PSAPs would also identify the eligible costs for which funding would be used including what percentage the PSAP intended to set aside for the future purchase of equipment and software. If funds are not used appropriately, future funding may be affected. Additionally, funding may fluctuate from year to year based upon the availability of funds. Also, updated ACH enrollment forms, copies of interlocal agreements for 911 service and updated contact information would be required.

### **B. Annual Verification**

Each year, both WSPs and PSAPs will be required to submit all invoices and other supporting documentation to the Commission to demonstrate that all funds for the previous funding year were used for eligible costs. This submission by PSAPs would also include an accounting of the funds set aside for future equipment and software purchases. Additionally, the verification would serve as the application for continued funding. All verifications would be due no later than **October 15<sup>th</sup>**, following the close of the previous funding year. If the Commission determines that any funds were not used appropriately, funding for the remainder of the current funding year would be adjusted to recoup any necessary funds. All WSPs and PSAPs may be subject to audit.

## **III. Comments**

Interested parties wishing to submit written comment shall submit one original and eight (8) copies and one electronic copy via email to [brandy.zierott@nebraska.gov](mailto:brandy.zierott@nebraska.gov) no later than **5:00 p.m. on January 22, 2010.**

#### IV. Hearing

Hearing on this matter will be held on February 9, 2010 at 9:00 a.m. CST in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the timeline and process outlined herein, is released for written comment.

IT IS FURTHER ORDERED that interested parties wishing to submit written comment shall submit one original and eight (8) copies and one electronic copy via email to brandy.zierott@nebraska.gov no later than **5:00 p.m. on January 22, 2010**

IT IS FINALLY ORDERED by the Nebraska Public Service Commission that a hearing is scheduled for **February 1, 2010 at 9:00 a.m. CST**, in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of December, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Vice-Chairman

ATTEST:

Executive Director