

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. 911-073/PI-232  
Public Service Commission, on )  
its own motion, to consider ) ORDER ADOPTING FUNDING  
recommendations of the Service ) RECOMMENDATIONS  
System Advisory Committee for )  
creation of a new funding ) Entered: November 17, 2020  
system for Next Generation 911 )

### APPEARANCES:

#### **For United States Cellular Corporation:**

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#### **For the Commission:**

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### BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) opened this docket on May 5, 2020, for the purpose of considering recommendations adopted on April 1, 2020, by the 911 Service System Advisory Committee (Advisory Committee) for the creation of a new funding system for Next Generation 911 in the State of Nebraska.<sup>1</sup>

The Advisory Committee's proposal (Proposal), attached hereto as Appendix A, was developed over several months with the assistance of a subcommittee known as the Funding Working Group. Under the Proposal, 911 surcharges collected from wireline and Voice Over Internet Protocol (VOIP) customers will continue to be remitted directly to local governmental units, to be applied to local costs associated with 911 service, as determined by local authorities. The 911 surcharges collected from wireless customers

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<sup>1</sup> *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider recommendations of the Service System Advisory Committee for creation of a new funding system for Next Generation 911, App. 911-073/PI-232, Order Opening Docket and Seeking Public Comment (May 5, 2020). Next Generation 911 is also commonly referred to as "NG911".*

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will be deposited into the 911 Service System Fund<sup>2</sup> and used to pay 100 percent of the cost to create and maintain a statewide Next Generation 911 system. Chief among these costs are an Emergency Services Internet Protocol Network (ESINet), Next Generation 911 Core Services (NGCS) (consisting of 911 call location and routing functions), text-to-911, and legacy selective routing. Wireless surcharge funds remaining after payment of the forgoing items would be allocated directly to Public Safety Answering Points (PSAPs) and wireless service providers.

The Proposal calls for PSAP funding to be allocated annually, paid in monthly installments and used for 911-related expenses, such as call handling equipment, geographic information systems, regional network costs, training, radio consoles, computer aided dispatch systems, and logging recorders. Under the Proposal, PSAP funding will be determined based on a formula consisting of three components: (i) a base component that will provide an identical amount of funding to each PSAP, (ii) a call volume component reflecting each PSAP's relative share of statewide 911 call volume, and (iii) a population component reflecting each PSAP's relative share of statewide population in its service area. Therefore, although every PSAP will receive the same amount of funding for the base component, PSAPs that handle more calls and serve more people will receive more funding because of the call volume and population components.

The Advisory Committee Proposal calls for 40 percent of available PSAP funding to be allocated to the base component, 40 percent to the call volume component and 20 percent to the population component. Each PSAP will switch to the new funding allocation method at the time that its respective PSAP Region becomes connected to the ESINet and NGCS.

Finally, the Proposal includes a provision for some level of funding to be allocated to wireless service providers for Next Generation 911 cost recovery.

### Issues for Comment

The Commission invited interested parties to provide written public comment on the Advisory Committee's Proposal. In addition to asking for comments on the Proposal in general, we also requested public comment on the following specific topics:

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<sup>2</sup> Neb. Rev. Stat. §86-1028.

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- Is it appropriate for the Commission to base the allocation of wireless surcharge funding to PSAPs on a base amount, call volume and population? If so, should the relative percentages be 40 percent, 40 percent and 20 percent, as recommended by the Advisory Committee, or some other proportion?
- Should the Commission expand the eligible uses of PSAP funding allocations, for example, to include radio equipment or broader coverage of local personnel costs?
- Should the Commission's audit procedures with respect to PSAP use of 911 surcharge funds also cover expenditures of wireline and VOIP remittances?
- Should any portion of wireless surcharge funds be allocated directly to PSAP regions, in addition to individual PSAPs?
- Is it appropriate for the Commission to continue to allocate a portion of wireless surcharge remittances to wireless service providers? Should it make a difference if the wireless service provider is already imposing a regulatory charge or similar fee on its customers? If a continued allocation to wireless service providers is appropriate, what should be the eligible uses of such funds? Finally, how should wireless service providers' use of such funding allocations be audited?
- Is there a minimum level of funding that should be annually allocated by the Commission to PSAPs and wireless service providers, even if such a requirement may require periodic increases in the wireless 911 surcharge?
- Is it appropriate for the Commission to retain some amount of wireless surcharge remittances as a reserve fund? If so, what is the appropriate reserve fund balance?

### Summary of Comments

The Commission received written comments from the following 15 entities: Buffalo County Board of Commissioners (Buffalo County Commission); Buffalo County Sheriff's Office (Buffalo County Sheriff); CTIA-The Wireless Association (CTIA); Dawson County Sheriff's Office (Dawson County Sheriff); Douglas County 911 Director; Fillmore County Emergency Manager (Fillmore County); Grand Island-Hall County Emergency Management Communications

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(Grand Island PSAP); McCook Police Department (McCook Police); NE Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero); Omaha City Council; Region 26 Council Emergency Management & 911 Communications Center (Region 26 Council); Sarpy County Emergency Communications Center (Sarpy County PSAP); Scotts Bluff County Consolidated Communications (Scotts Bluff PSAP); United States Cellular Corporation (U.S. Cellular); and York County Communications Center (York County PSAP).

Ten of the above commenters are local government entities that operate public safety answering points. Two of the commenters are other local government entities, consisting of a county board<sup>3</sup> and the city council of the state's largest city. The remaining three commenters are two wireless carriers and a trade association for wireless carriers.

### ***Allocation Percentages***

The Advisory Committee's Proposal calls for the pool of funding available to PSAPs to be allocated according to the 40 percent/40 percent/20 percent formula described above. Under this approach, 40 percent of PSAP funding would be divided equally among all PSAPs regardless of size (Base Allocation), 40 percent of the total PSAP allocation would be apportioned according to each PSAP's share of annual 911 call volume, and the remaining 20 percent would be allocated to each PSAP according to the PSAP's share of statewide population. Eight of the commenters, consisting of seven PSAP operators and one county commission, provided specific input on the Advisory Committee's PSAP funding formula.

The Buffalo County Sheriff, Buffalo County Commission, York County PSAP, and Grand Island PSAP all support the 40%/40%/20% proposal.<sup>4</sup> The Douglas County 911 Director supports the Advisory Committee's proposed ratios, but urges that future funding levels for the Douglas County PSAP be increased.<sup>5</sup>

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<sup>3</sup> The Grand island-Hall County comments were also signed by both the Chair of the Hall County Board of Commissioners and the Mayor of the City of Grand Island.

<sup>4</sup> Buffalo County Sheriff Comments at 1; Buffalo County Commission Comments at 1; York County PSAP Comments at 1; Grand Island PSAP Comments at 1. Unless otherwise noted all citations to comments in this Order refer to the comments filed in the above-captioned proceeding and made part of the record at the hearing on September 2, 2020. Comments were filed between May 21, 2020 and June 5, 2020.

<sup>5</sup> Douglas County 911 Director Comments at 1.

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Three commenters argued that the PSAP allocations should be based on different percentages than those proposed by the Advisory Committee. McCook Police advocated for 50 percent of the money available for PSAP funding to be used for the Base Allocation, with 30 percent for call volume and 20 percent for population.<sup>6</sup> The Sarpy County PSAP and Region 26 Council each favored 40 percent for Base Allocation, 30 percent for call volume and 30 percent for population.<sup>7</sup>

The Omaha City Council did not comment on the particular percentages, but stated that the use of call volume and service area population is a "positive step forward towards a more equitable funding methodology."<sup>8</sup>

### ***Expansion of Eligible Uses of Funding, for example radios and personnel costs***

Eleven Commenters were supportive of expanding the eligible uses of 911 funds for PSAPs to include additional items, especially radio equipment. Buffalo County Sheriff, Buffalo County Commission, and Douglas County 911 Director urged that all PSAP costs be eligible expenditures for 911 funding allocated by the Commission.<sup>9</sup> The Dawson County Sheriff commented that eligible expenditures should include radio equipment, personnel costs and "any other" PSAP expense.<sup>10</sup> York County advocated for the inclusion of radio equipment and "other PSAP related costs."<sup>11</sup> Region 26 Council stated its enthusiastic support for "allowing funds to cover radio/paging equipment or any expenses that are necessary in a 911 center to complete the service to a 911 caller."<sup>12</sup> Grand Island PSAP mentioned "personnel benefits for call takers/dispatchers, plus operating and maintenance costs for PSAP radio equipment and software."<sup>13</sup> McCook Police opined that both more personnel costs and radio consoles should be allowed.<sup>14</sup> Sarpy County PSAP supported the use of wireless funding for "radio

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<sup>6</sup> McCook Police Comments at 1.

<sup>7</sup> Sarpy County PSAP Comments at 1; Region 26 Council Comments at 1.

<sup>8</sup> Omaha City Council Comments at 1.

<sup>9</sup> Buffalo County Sheriff Comments at 1; Buffalo County Commission Comments at 1; Douglas County 911 Director Comments at 1.

<sup>10</sup> Dawson County Sheriff Comments at 1.

<sup>11</sup> York County Comments at 1.

<sup>12</sup> Region 26 Council at 1.

<sup>13</sup> Grand Island PSAP Comments at 2.

<sup>14</sup> McCook Police Comments at 1.

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purchases."<sup>15</sup> The Fillmore County Emergency Manager's entire comments were devoted to funding "mobile and portable radios."<sup>16</sup>

CTIA stated its opposition to funding "public safety radio systems" on the grounds that such expenditures would be a diversion of 911 funding to ineligible purposes according to the federal communications commission.<sup>17</sup> CTIA argued that funding must be "narrowly tailored" to ensure that funds are used only for the state NG911 system or to "compensate wireless carriers for E911 deployment expenses."<sup>18</sup> CTIA further stated: "The Commission should not allow 911 funding to be diverted for non-911 purposes, such as public safety radio systems," because public safety funding needs must be met through "lawful funding options."<sup>19</sup>

### ***Audit of PSAP Expenditures of Wireline and VOIP Funding***

PSAPS were almost unanimous in their opposition to any suggestion that their use of 911 wireline and VOIP surcharge revenues should be subject to audit by the Commission. Only the York PSAP allowed that Commission audits might provide for consistency, while questioning whether there had ever been a need for such an audit of wireline and VOIP surcharge dollars.<sup>20</sup>

The Buffalo County Sheriff and Buffalo Commission both stated that such audits are a local government responsibility and asserted that county attorneys have differing opinions on what costs are eligible to be paid for by wireline and VOIP funds.<sup>21</sup> McCook Police, Region 26 Council, Grand Island PSAP and Scotts Bluff PSAP also agreed that wireline/VOIP audits are a local responsibility, with the Scotts Bluff PSAP adding that Commission audits would be a duplication of effort.<sup>22</sup> The Dawson County Sheriff indicated that Dawson County's wireline/VOIP funds were audited by the state auditor at the county's request.<sup>23</sup> The Douglas County 911 Director commented: "Absolutely not," adding: "Implementing and directing

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<sup>15</sup> Sarpy County PSAP Comments at 1.

<sup>16</sup> Fillmore County Emergency Manager Comments at 1.

<sup>17</sup> CTIA Comments at 1-3.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> York PSAP Comments at 1.

<sup>21</sup> Buffalo County Sheriff Comments at 1; Buffalo County Commission Comments at 1.

<sup>22</sup> McCook Police Comments at 1; Region 26 Council Comments at 1; Grand Island PSAP Comments at 2; Scotts Bluff PSAP Comments at 1.

<sup>23</sup> Dawson County Sheriff Comments at 1.

911 service is a local government requirement and therefore should be audited as such."<sup>24</sup>

***Allocation of Wireless Surcharge Funding to PSAP Regions***

Ten commenters responded to the question about providing funding directly to the PSAP regions from the 911 Service Fund. McCook Police, Sarpy County PSAP, Grand Island PSAP, Douglas County 911 were each opposed to direct funding of PSAP regions.<sup>25</sup> The Buffalo County Sheriff, Buffalo County Commission, and the Dawson County Sheriff were each in favor of providing some regional funding.<sup>26</sup> York PSAP stated regional funding may be a viable option to mitigate regionalization costs that are split among the PSAPs.<sup>27</sup> Region 26 Council stated that direct funding of PSAP regions would be worthwhile if it removed some of the financial burden of regionalization from the PSAPs.<sup>28</sup> The Scotts Bluff PSAP commented that it did not understand the purpose of regional funding.<sup>29</sup>

***Allocation of 911 Surcharge Funds to Wireless Service Providers (WSPs)***

Thirteen commenters responded to this question. Nine governmental agencies, including eight PSAP operators provided comments, six of which were in favor of continued funding to wireless service providers. Three PSAP operators were opposed to WSP funding. All commenters from the wireless industry were in favor of continued funding to WSPs.

The Buffalo County Sheriff and Buffalo County Commission provided parallel comments in supporting some WSP funding for "new" NG911 expenses, with amounts to be based on the number of Nebraska customers, and urged that any unclaimed WSP funding be paid to PSAP regions or to the reserve fund.<sup>30</sup> The McCook Police stated it would support WSP funding only for costs directly related to the provision of 911 service, so long as no funding is allocated to towers and funding is subject to Commission audit.<sup>31</sup> Sarpy

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<sup>24</sup> Douglas County 911 Director Comments at 1.

<sup>25</sup> McCook Police Comments at 1; Sarpy County PSAP Comments at 1; Grand Island PSAP Comments at 2; Douglas County 911 Director Comments at 1.

<sup>26</sup> Buffalo County Sheriff Comments at 1, Buffalo County Commission Comments at 1; Dawson County Sheriff Comments at 1.

<sup>27</sup> York PSAP Comments at 2.

<sup>28</sup> Region 26 Council Comments at 2.

<sup>29</sup> Scotts Bluff PSAP at 1.

<sup>30</sup> Buffalo County Sheriff Comments at 2; Buffalo County Commission Comments at 1-2.

<sup>31</sup> McCook Police Comments at 2.

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County PSAP noted that the Commission had historically allocated some level of funding to WSPs, thereby contributing to their "full participation in 911 system improvements."<sup>32</sup> Grand Island PSAP stated support for "project-based" WSP funding to meet gaps in 911 service across the state.<sup>33</sup>

The York County PSAP questioned the need to provide funding support for WSPs, and stated concern over what the funds are being used for if not to build towers in underserved areas and "further collaborate with the Enhanced 9-1-1 era."<sup>34</sup> York County PSAP further states that WSPs should justify use of funds to the PSC, and adds if funding for WSPs is cut in order to support NG911 implementation, "WSPs won't suffer a huge loss, they are still able to receive funds from wireless service customers."<sup>35</sup>

Scotts Bluff PSAP opposes WSP funding, stating that wireless companies "already pay themselves for the service."<sup>36</sup> The Douglas County 911 Director questions whether it is appropriate to provide funding to carriers for a service that the FCC already requires them to provide in the interest of public safety.<sup>37</sup> However, the Director would find it acceptable to provide WSP funding for the purpose of improving overall statewide location accuracy.<sup>38</sup> Region 26 Council is opposed to providing funding to WSPs, noting that WSPs have the ability to charge their customers for cost of the services they provide, adding "We have seen that they show no mercy with rent on their towers."<sup>39</sup>

In contrast, wireless industry representatives' comments are unanimously in favor of providing funding to WSPs. CTIA urges the Commission to continue to allocate wireless surcharge remittances to wireless providers as a way to support 911 in Nebraska.<sup>40</sup> CTIA asserts that 911 funds are "an important source for wireless providers in Nebraska to implement and improve their enhanced 911 service capabilities."<sup>41</sup> CTIA argues that "wireless consumers are by far the largest contributors to the Fund, [so] it is sound

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<sup>32</sup> Sarpy County PSAP Comments at 2.

<sup>33</sup> Grand Island PSAP Comments at 2.

<sup>34</sup> York County PSAP Comments at 2.

<sup>35</sup> *Id.*

<sup>36</sup> Scotts Bluff PSAP Comments at 1.

<sup>37</sup> Douglas County 911 Director Comments at 1-2.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> Region 26 Council Comments at 2.

<sup>40</sup> CTIA Comments at 3-4.

<sup>41</sup> *Id.* at 3-4.

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policy for the Commission to promote improvements to 911 capabilities both for PSAPs and wireless providers."<sup>42</sup>

Viaero also supports continued funding for WSPs, stating that it is "appropriate and necessary" to allocate a portion of surcharge remittances to WSPs.<sup>43</sup> Viaero argues that WSP access to 911 funds is essential to achieving the goal of deploying a robust statewide wireless 911 system, and WSPs should receive an allocation of such funds, including companies that already impose a regulatory surcharge on their customers.<sup>44</sup> Although Viaero agrees that WSP use of wireless funds should be subject to audit, the permitted uses of 911 funds for wireless carriers should be expanded to "Reflect the Evolving Requirements of WSPs to Provide E-911 Services."<sup>45</sup>

The comments of U.S. Cellular express gratitude for past WSP funding and urge that such funding continue, arguing that it is "a vital component in the delivery of quality 911 services for Nebraskans."<sup>46</sup> U.S. Cellular notes that the "vast majority" of funding goes to PSAPs and local exchange carriers<sup>47</sup>, but asserts WSP funding is "significant and integral to the maintaining a robust, dependable 911 network."<sup>48</sup> U.S. Cellular states that because they are a smaller, rural-focused carrier, they would need to either increase customer rates, or absorb higher costs, which would put them at a competitive disadvantage against bigger carriers serving "densely concentrated population centers."<sup>49</sup>

U.S. Cellular asserts that it does not use its regulatory fee to pay for 911 costs.<sup>50</sup> They argue that unlike big carriers, small independent wireless carriers such as U.S. Cellular must contract with third-party vendors to provide 911 operations, at a significant cost.<sup>51</sup>

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<sup>42</sup> *Id.* at 4 (emphasis in original).

<sup>43</sup> Viaero Comments at 2.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> U.S. Cellular Comments at 2-3.

<sup>47</sup> Presumably, this reference to local exchange carriers refers to the approximately \$2.5 million paid annually to CenturyLink and Windstream from the 911 Service System Fund for selective routing and database services via tariff.

<sup>48</sup> *Id.*

<sup>49</sup> U.S. Cellular Comments at 3.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 4.

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***Minimum level of funding that should be allocated to PSAPs and WSPs, even if surcharge increases are necessary***

Eleven commenters provided a response to this question. The Buffalo County Sheriff would support an increase in the wireless surcharge, if system costs outpace wireless surcharge revenue, and would also support legislation to raise the statutory cap on the surcharge rate.<sup>52</sup> The Buffalo County Commission provides similar comments, but also notes that a surcharge increase would help avoid a property tax increase.<sup>53</sup> The McCook Police favors increasing the surcharge periodically to provide more PSAP funding.<sup>54</sup> The Douglas County 911 Director comments support increasing the wireless 911 surcharge if needed to cover increased costs of NG911 service.<sup>55</sup>

The York County PSAP suggested that a floor for PSAP funding be maintained at the average of the previous five years, and stated that if a surcharge increase is necessary to maintain this funding level during NG911 implementation, "it will be worth it."<sup>56</sup> Similarly, the Grand Island PSAP suggests that a minimum level of funding be established "using the current allocations as a framework."<sup>57</sup> The Grand Island PSAP also suggested that funding should be adjusted as needed after NG911 implementation, including adjustments for inflation.<sup>58</sup>

The Sarpy County PSAP comments support a minimum level of funding for PSAPs and NG911 implementation, but do not provide a recommendation for the amount of such funding.<sup>59</sup> However, Sarpy County PSAP does not support a guaranteed minimum funding level for WSPs, observing that such companies have the ability to set their own customer rates.<sup>60</sup>

Region 26 Council suggests that no 911 funding be allocated to any WSPs, and also suggests a surcharge increase of 50 cents per month would allow PSAPs to meet the rising cost of required upgrades "to serve their communities with **minimal financial impact to the consumer.**"<sup>61</sup> Finally, Scotts Bluff PSAP opposes minimum

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<sup>52</sup> Buffalo County Sheriff Comments at 2.

<sup>53</sup> Buffalo County Commission Comments at 2.

<sup>54</sup> McCook Police Comments at 2.

<sup>55</sup> Douglas County 911 Director Comments at 2.

<sup>56</sup> York PSAP Comments at 2.

<sup>57</sup> Grand Island PSAP Comments at 3.

<sup>58</sup> *Id.*

<sup>59</sup> Sarpy County PSAP Comments at 2.

<sup>60</sup> *Id.*

<sup>61</sup> Region 26 Council Comments at 2 (emphasis in original).

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funding levels, concerned that "[t]his might tip the table to the east side of the state with population density advantages."<sup>62</sup>

U.S. Cellular comments that "if adjustments are considered as it relates to WSP funding, an increase in allocated support should also be explored," due to the potential for higher costs due to NG911.<sup>63</sup> However, recognizing that PSAPs also face increasing costs, U.S. Cellular recommends maintaining the current level of funding to WSPs "until it can be determined if an increase in WSP funding is feasible."<sup>64</sup>

Viaero argues that "historic funding levels, as a percentage of the available 911 fund, should continue to be the basis of minimum funding levels to WPPS [sic] and PSAPs."<sup>65</sup> Viaero also argues that the Commission's current funding mechanism, known as the 911-SAM, is intrinsically flawed because it has no relationship to actual costs, but instead "utilizes for its allocation process only numbers derived from the amount of support funding the Commission has historically distributed to WSPs and PSAPs during the development of the current wireless 911 system."<sup>66</sup> Therefore, Viaero concludes, the minimum funding for both PSAPs and WSPs should be no less than current funding levels, until completion of a "comprehensive cost study."<sup>67</sup>

### ***Need to Maintain a Reserve Fund and, If So, at what Level?***

Nine commenters, all PSAP operators or other governmental entities, responded to this question. All of those commented in favor of maintaining a reserve fund, with some variety in recommendations about how to determine the size of the reserve.

The Buffalo County Sheriff recommends a reserve fund balance equal to six months of wireless surcharge revenue be built up over time and then maintained at that level.<sup>68</sup> Grand Island PSAP favors a reserve fund to cover three months of 911 system costs.<sup>69</sup> The Buffalo County Commission agrees that a reserve balance should be maintained, but also states they are not sure what the amount of

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<sup>62</sup> Scotts Bluff PSAP Comments at 1.

<sup>63</sup> U.S. Cellular Comments at 4.

<sup>64</sup> *Id.*

<sup>65</sup> Viaero Comments at 5.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 5-6.

<sup>68</sup> Buffalo County Sheriff Comments at 2.

<sup>69</sup> Grand Island PSAP Comments at 3.

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the reserve should be.<sup>70</sup> Similarly, Region 26 Council supports maintaining a reserve fund for unforeseen costs, is unsure of the proper amount, but recommends that it be "a percentage of the funds expended."<sup>71</sup>

McCook Police also favors maintaining a reserve fund, at a level that the Commission deems appropriate.<sup>72</sup> Scotts Bluff PSAP would rely on the judgment of "the board."<sup>73</sup> The Sarpy County PSAP also favors maintaining a reserve fund for unanticipated contingencies, but cautions that accumulating an excessive amount of reserves "can only cause public concern."<sup>74</sup> The York County PSAP comments that a reserve fund is "a viable option worth considering," especially if NG911 costs are expected to increase in future years.<sup>75</sup> The Douglas County 911 Director also supports maintaining a reserve fund for emergency expenses.<sup>76</sup>

***Other Comments: Wireless Industry Representatives are Critical of the Working Group Process.***

U.S. Cellular takes issue with the operation of the Funding Working Group.<sup>77</sup> They argue that not having public meetings of the Funding Working group meetings is contrary to the "openness and transparency [that] are cornerstones of governmental integrity."<sup>78</sup> U.S. Cellular "asks that going forward such meetings be public, and that agendas and minutes be publicly available."<sup>79</sup>

CTIA complains that the Advisory Committee funding recommendations materially impact the WSPs, but were created without their input.<sup>80</sup> CTIA notes that although recommendations focus directly involve wireless surcharges, "it does not appear that any wireless provider feedback was gathered prior to the recommendations being issued."<sup>81</sup> CTIA also complains that "no mobile wireless providers were a part of the Advisory Committee, nor were the Advisory Committee's meetings open to the public, and

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<sup>70</sup> Buffalo County Commission Comments at 2.

<sup>71</sup> Region 26 Council Comments at 2.

<sup>72</sup> McCook Police Comments at 2.

<sup>73</sup> Scotts Bluff PSAP Comments at 1.

<sup>74</sup> Sarpy County PSAP Comments at 2.

<sup>75</sup> York County PSAP Comments at 2.

<sup>76</sup> Douglas County 911 Director Comments at 2.

<sup>77</sup> U.S. Cellular Comments at 5.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> CTIA Comments at 4.

<sup>81</sup> *Id.*

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minutes of the group's meetings were not made publicly available."<sup>82</sup>

While we respect these comments, we do not think they should go unremarked upon. The Funding Working Group is not a public body, it was created as subcommittee of the Advisory Committee, which is a public body.<sup>83</sup> Therefore, the Funding Working Group is not subject to the Nebraska Open Meetings Act.<sup>84</sup>

However, the Funding Working Group's recommendations to the Advisory Committee—which is a public body—were delivered in public meetings with public agendas that were fully subject to the Nebraska Open Meetings Act. Public comment is invited at all Advisory Committee meetings. At the public meeting where the Funding Working Group first made its funding proposal to the Advisory Committee, the Advisory Committee declined to adopt the original proposal and requested changes, which were presented, and adopted, at a later public meeting. In addition, representatives of the wireless industry were invited to a non-public meeting of the Funding Working Group. U.S. Cellular attended this meeting and—along with other industry representatives—made presentations to the Funding Working Group, advocating for the importance of wireless carrier funding. Except for the wireless industry, no other outside persons or groups requested or were given the opportunity to attend any working group meeting.

Finally, the Commission has reviewed the Advisory Committee's recommendations via our typical public process—in this case, consisting of two opportunities for written public comment, one public hearing and a public vote taken during a regularly scheduled and noticed public meeting of the Commission. In short, we do not find the wireless industry's comments regarding the openness of the process to be persuasive.

### Public Hearing

A public hearing was held on September 2, 2020, in Lincoln, Nebraska, with remote participation made available for those who wished to take advantage of it. All comments and reply comments were made part of the record.<sup>85</sup> Appearances were entered by Matt

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<sup>82</sup> *Id.*

<sup>83</sup> See Neb. Rev. Stat. § 84-1409.

<sup>84</sup> Neb. Rev. Stat. §§ 84-1407 to 84-1414.

<sup>85</sup> See Exhibit Nos. 3 through 19.

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Effken, on behalf of the Commission staff and Deonne Bruning for U.S. Cellular.<sup>86</sup>

State 911 Director Dave Sankey provided testimony describing the process by which the Proposal was developed by a subcommittee of the Advisory Committee, known as the Funding Working Group.<sup>87</sup> Director Sankey testified that members of the Funding Working Group included a county commissioner, a PSAP director, a representative of the Nebraska Association of Public Officials, a representative of the League of Nebraska Municipalities, the executive director of the Douglas County Commission, and accounting and finance staff from the Commission.<sup>88</sup> The Commission's 911 consultant, Mission Critical Partners, provided assistance to the Working Group.<sup>89</sup> Director Sankey stated that the Funding Working Group spent many hours deliberating the details of the Proposal for the new funding mechanism.<sup>90</sup> Director Sankey testified that he believed the Advisory Committee had proposed a good foundation on which to build a solid funding mechanism for Next Generation 911 and the Nebraska 911 service system.<sup>91</sup>

John Rosenlund, Director of the Grand Island-Hall County Emergency Management Communications, was the next to testify.<sup>92</sup> Mr. Rosenlund is a member of the Advisory Committee and served as chair of the Funding Working Group.<sup>93</sup>

Mr. Rosenlund testified that an important goal of the Proposal is to reduce the complexity of the PSAP funding system.<sup>94</sup> He stated that the new mechanism is intended to be an "easily understood, transparent method of predicting and reporting an accounting for how the allocation would be divided out to the PSAPs."<sup>95</sup>

Mr. Rosenlund noted that under the Proposal, 911 wireless surcharge funds would first pay for 100 percent of statewide 911 system costs including the ESINet network, regional PSAP host connections to the ESINet, and the Next Generation 911 core services that will route 911 calls to the appropriate PSAP in the

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<sup>86</sup> Hearing Transcript (TR) at 9:9-25 and 10:1-3.

<sup>87</sup> TR at 13:19 to 17:17.

<sup>88</sup> TR at 15:13-21.

<sup>89</sup> TR at 15:21-22.

<sup>90</sup> TR at 16:3-5.

<sup>91</sup> TR at 16:8-14.

<sup>92</sup> TR at 18:7 to 45:25.

<sup>93</sup> TR at 16:20-23.

<sup>94</sup> TR at 20:24-25; 21:1-2.

<sup>95</sup> TR at 20:20-24.

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NG911 environment.<sup>96</sup> Wireless surcharge funds would also continue to cover 100 percent of text-to-911 costs and legacy selective router costs (until the routers were completely replaced by NG911 core services).<sup>97</sup> Funds remaining after paying statewide system costs would be allocated directly to PSAPs and wireless carriers.<sup>98</sup>

Mr. Rosenlund testified that three components would be used to allocate funding to PSAPs.<sup>99</sup> He stated the first component is a base amount that would be the same for each PSAP in the state.<sup>100</sup> Forty percent of the total PSAP allocation would be distributed equally to each PSAP in the state under this component.<sup>101</sup> Mr. Rosenlund testified that the second component of PSAP funding would be an amount reflecting each PSAP's share of total statewide 911 call volume.<sup>102</sup> Forty percent of the total PSAP allocation would be divided among all the PSAPs, according to each PSAP's percentage of overall call volume.<sup>103</sup> Mr. Rosenlund noted that this component is "directly tied to the activity and the workload that 911 creates" for each individual PSAP.<sup>104</sup> Mr. Rosenlund stated the third component of PSAP funding would be an amount reflecting each PSAP's share of the total state population within such PSAP's service area.<sup>105</sup> Twenty percent of wireless funds for PSAPs would be distributed to each PSAP under this component, according to the percentage of the overall population in the PSAP's service area.<sup>106</sup>

Mr. Rosenlund testified that a key point of discussion, both at the working group level and for the Advisory Committee, was the relative percentages of wireless surcharge funds to be allocated to each of the three categories.<sup>107</sup> He stated that both the Funding Working Group and the Advisory Board had "quite a bit of conversation regarding the 40-40-20 ratios."<sup>108</sup> He said both the Funding Working Group and the Advisory Committee concluded "that this 40-40-20 split would be a good and equitable way to ensure

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<sup>96</sup> TR at 20:2-7.

<sup>97</sup> TR at 20:7-13.

<sup>98</sup> TR at 20:14-17.

<sup>99</sup> TR at 21:3-20.

<sup>100</sup> TR at 21:4-7.

<sup>101</sup> TR at 21:7-9.

<sup>102</sup> TR at 21:10-15.

<sup>103</sup> TR at 21:15-17.

<sup>104</sup> TR at 21:12-15.

<sup>105</sup> TR at 21:18-20.

<sup>106</sup> *Id.*

<sup>107</sup> TR at 21:21 to 22:1.

<sup>108</sup> TR at 21:21-25.

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that statewide 911 service could be well managed and well-funded in a very responsible way."<sup>109</sup>

Mr. Rosenlund acknowledged that some PSAPs will see reductions in the amount of wireless funding distributed directly to them on a monthly basis.<sup>110</sup> However, he noted that such reductions would be offset by the elimination of certain costs that PSAPs currently pay out of their allocations, such as 911 trunks and ALI databases, which are not part the Next Generation 911 system.<sup>111</sup> Mr. Rosenlund stated that based on an estimated per trunk cost of \$5,000, most PSAPs would be near the "break-even point" under the new funding model.<sup>112</sup> In addition, PSAPs would be encouraged to use legacy set-aside funds retained under the 911-SAM to ease the transition during their first three years under the new funding model.<sup>113</sup>

Mr. Rosenlund noted that it would continue to be important for PSAPs to carry over a portion of their allocated funding from year to year in order to have money on hand to pay for new call handling equipment every five to ten years.<sup>114</sup> While call-handling equipment is the first priority, remote PSAPs would also be responsible for the cost of regional connectivity to their respective regional host PSAPs, as well as local GIS costs for mapping caller locations.<sup>115</sup> Mr. Rosenlund also emphasized that it will be important for PSAPs to "plan for the future so that they can cover their own costs between wireless, general fund and the landline surcharges that they collect today."<sup>116</sup>

The only other testimony at the hearing was provided by Buffalo County Sheriff Neil Miller.<sup>117</sup> Sheriff Miller is chair of the Advisory Committee.<sup>118</sup>

Sheriff Miller testified that PSAP funding is a contentious issue and inevitably not everyone will be happy with the new funding model.<sup>119</sup> He stated that one of the flaws of the current 911-SAM model was that it under-funded larger PSAPs, in particular

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<sup>109</sup> TR at 22:3-7.

<sup>110</sup> TR at 23:14-16.

<sup>111</sup> TR at 23:7-10.

<sup>112</sup> TR at 34:5, 23-24; 36:9-13.

<sup>113</sup> TR at 27:7-10; 28:4-7.

<sup>114</sup> TR at 25:20 to 26:6.

<sup>115</sup> TR at 24:17 to 25:5.

<sup>116</sup> TR at 29:11-14.

<sup>117</sup> TR at 46:7 to 60:12.

<sup>118</sup> TR at 46:13-15.

<sup>119</sup> TR at 47:5-8.

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Douglas, Sarpy, Lancaster and Hall Counties.<sup>120</sup> However, he testified that the new model will provide about a 280 percent increase in funding to Douglas County, while approximately 65 PSAPs would receive less in direct wireless funding.<sup>121</sup> Despite this, he noted, the Advisory Committee--"a group of 13 people representing different size communities and different disciplines"--voted to support the proposed model.<sup>122</sup>

Sheriff Miller testified that an important advantage of the new funding model is that it is easier to understand than the legacy 911-SAM model:

the beauty of what you see in front of you is that under the old SAM, it was so difficult, I'm not sure anybody understood exactly how it was set up or how funding was allocated to the PSAPs. This new funding model is totally transparent to anyone who wants to see into it and see how the funding is being determined for each PSAP.<sup>123</sup>

Sheriff Miller also testified that wireless surcharge funding, while of critical importance, provides less than 10 percent of the total funding necessary to operate the 911 center in Buffalo County.<sup>124</sup> He stated that the wireless funds provide approximately \$109,000 to the Buffalo County PSAP, while wireline funds provide another \$110,000.<sup>125</sup> Sheriff Miller testified that the remaining cost, over \$1.26 million, is funded by local property taxes.<sup>126</sup>

Responding to questions about the fact that Douglas County wireless subscribers remit approximately \$2.6 million each year to the 911 Service System Fund, while the Douglas County PSAP receives only about \$458,000 annually under the current 911-SAM funding model, Sheriff Miller observed that the wireless 911 surcharge is "intended to fund a statewide system of wireless 911. It was never meant to fund dollar for dollar back to Douglas County."<sup>127</sup> In addition, he stated, "it was meant to fund so that we could have

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<sup>120</sup> TR at 47:9-11, 15-18; 48:13-15.

<sup>121</sup> TR at 47:12-15.

<sup>122</sup> TR at 47:19-24.

<sup>123</sup> TR at 48:2-11.

<sup>124</sup> TR at 49:2-5.

<sup>125</sup> TR at 49:19-20.

<sup>126</sup> TR at 49:13 to 50:4.

<sup>127</sup> TR at 55:7 to 56:17; 56:23 to 57:1.

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a seamless Next Generation 911 system for the safety of all the citizens of Nebraska."<sup>128</sup>

Sheriff Miller stated that he recognized that there are differing and contentious opinions on PSAP funding.<sup>129</sup> But, he testified, the Advisory Committee Proposal is a good start.<sup>130</sup>

It's a good way for us to get Next Gen 911 moving across Nebraska to make sure that it's being deployed and . . . sometime down the road, we [can] visit this funding model and look at this and see whether or not it is fair to all. . . . Certainly it has . . . room for improvement on and certainly someone to someone to have a different opinion about. But it's a good start in my opinion.<sup>131</sup>

## Post-Hearing Comments

At the close of the Hearing, the Hearing Officer invited interested parties to submit post-hearing comments.<sup>132</sup> The only interested party to file such comments was U.S. Cellular.

U.S. Cellular's post-hearing comments reiterated its prior statements regarding the importance of maintaining funding to WSPs for "ensuring the delivery of high-quality 911 services in Nebraska."<sup>133</sup> U.S. Cellular also restated its earlier comment that WSP funding is of particular importance to smaller wireless carriers, contrasting itself with the largest national carriers which enjoy greater efficiencies of scale due to more extensive 911 infrastructure.<sup>134</sup>

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

The 911 Service System Act<sup>135</sup> (Act), establishes "the Public Service Commission as the statewide implementation and coordinating authority to plan, implement, coordinate, manage, maintain, and provide funding assistance for a 911 service system

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<sup>128</sup> TR at 57:2-5.

<sup>129</sup> TR at 59:7-13.

<sup>130</sup> TR at 59:14 to 60:1.

<sup>131</sup> *Id.*

<sup>132</sup> TR at 64:17 to 65:16.

<sup>133</sup> U.S. Cellular Post Hearing Comments, Sept. 10, 2020, p. 1.

<sup>134</sup> *Id.*

<sup>135</sup> Neb. Rev. Stat. §§86-1001 to 86-1029.03.

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consistent and compatible with national public safety standards advanced by recognized standards and development organizations."<sup>136</sup>

The Act also creates the 911 Service System Advisory Committee to "advise the commission concerning the implementation, coordination, operation, management, maintenance, and funding of the 911 service system and provide input on technical training and quality assurance."<sup>137</sup> Among other things, the Advisory Committee is tasked under the Act to "make any recommendations to the commission regarding the exercise of the commission's duties administering the 911 service system."<sup>138</sup>

In furtherance of its duties under the Act, the Advisory Committee has provided the Commission with recommendations regarding funding of the Nebraska 911 service system in the Next Generation 911 environment.<sup>139</sup> The Advisory Committee was assisted by a subcommittee known as the Funding Working Group which was established by the Advisory Committee at a public meeting held April 17, 2019.<sup>140</sup>

At a public meeting held November 20, 2019, the Funding Working Group presented a preliminary report to the Advisory Committee.<sup>141</sup> The Advisory Committee did not take formal action on this preliminary report, but members provided feedback to the Funding Working Group and encouraged changes to be made to the report.<sup>142</sup> At a public meeting held February 12, 2020, the Advisory Committee considered how to divide PSAP funding among the base amount, call volume category and population-based categories, and voted to adopt the 40%-40%-20% allotment described above.<sup>143</sup> Finally, at a public meeting April 1, 2020 the Advisory Committee considered the Proposal attached to this Order as Appendix A, and adopted the Proposal by an unanimous vote.<sup>144</sup>

The Proposal submitted to the Commission by the Advisory Committee, and attached hereto as Appendix A, has been developed over a period of many months with input from numerous stakeholders

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<sup>136</sup> Neb. Rev. Stat. §86-1002.

<sup>137</sup> Neb. Rev. Stat. §86-1025.01(1).

<sup>138</sup> Neb. Rev. Stat. §86-1025.01(3).

<sup>139</sup> Appendix A to this Order.

<sup>140</sup> 911 Service System Advisory Committee Minutes, Apr. 17, 2019.

<sup>141</sup> 911 Service System Advisory Committee Minutes, Nov. 20, 2019.

<sup>142</sup> *Id.*

<sup>143</sup> 911 Service System Advisory Committee Minutes, Feb. 12, 2020. The vote was seven to five, with one excused.

<sup>144</sup> 911 Service System Advisory Committee Minutes, Apr. 1, 2020.

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who have an interest in an effective and cost efficient 911 service system for the State of Nebraska.

Accordingly, we find that the Advisory Committee Proposal, attached hereto as Appendix A, should be adopted as the framework for providing wireless surcharge funding to the 911 service system in the Next Generation 911 environment. We further find that 911 Department staff should be directed to create a plan for implementation of the Proposal.

In addition, after considering the commenters' responses to the questions posed in our prior Order and the testimony received at the public hearing, we find the following:

- Total annual funding to PSAPs from the 911 Service System Fund should be allocated to PSAPs according the 40 percent/40 percent/20 percent formula described herein, whereby 40 percent of total annual PSAP funding is divided equally among all PSAPs, 40 percent of total annual PSAP funding is divided according to each PSAP's share of annual 911 call volume, and 20 percent of total annual PSAP funding is divided according to each PSAP's share of statewide population.
- The eligible uses of PSAP funding allocations should be expanded to include radio consoles and radio equipment used in PSAPs by 911 telecommunicators for dispatch and communication with emergency responders. However, such funding shall not be used to pay for other radio equipment, such as vehicle radios or portable radios.
- Funding allocated to PSAPs from the 911 Service System Fund will continue to be audited to confirm that 911 funds are being used for eligible costs and are not subject to diversion. In addition, PSAPs will have the responsibility to manage their funding allocations between audits without the need to file an application or waiting for a funding order. However, PSAPs are strongly encouraged to carry over a portion of their annual funding allocations to plan for future capital costs, such as call handling equipment replacement. There will be no excess dollars available to make special funding allocations for capital expenses from the 911 Service System Fund.

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- The Commission will not provide direct funding to PSAP regions, however, costs incurred by a PSAP as a member of a region--for example, costs required to establish and maintain a connection to a regional PSAP network--should be considered eligible costs.
- The Commission will maintain a minimum reserve balance in a reserve fund that is not less than three months of 911 service system expenses.
- The Proposal recommends that funding be provided to wireless carriers for "NG911 Cost Recovery," but includes no details on how such funding should be calculated or applied for. Therefore, we find that a new docket should be opened in order to explore the appropriate level of wireless 911 surcharge funding to be provided to wireless carriers in the Next Generation 911 environment and how such funding should be allocated.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the opinions and findings herein be, and they are hereby, adopted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 17<sup>th</sup> day of November, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
  


  
Chair

ATTEST:  
  
Deputy Director

**APPENDIX A**

## Advisory Committee Funding Working Group Recommendations

### PSAPs Will Continue to Receive All Wireline and VOIP 911 Surcharge Funds

### Public Service Commission Will Use Wireless 911 Funds to pay the following costs of Next Generation 911 Deployment and Operation

- 100% of the cost to provide the ESInet
- 100% of the cost to connect host PSAPs to the ESInet
- 100% of Next Generation Core Services for the PSAPs
- 100% of Text-to-911 costs
- 100% of Legacy Selective Router costs
- Annual Funding Allocation to PSAPs
- Wireless Service Provider Cost Recovery

### New PSAP Funding Allocation Model

- The new PSAP allocation model for wireless 911 funds will be transparent and based on measurable data.
- PSAP Allocations based on three simple components:
  - An Equal Distribution Base Amount
  - PSAP Call Volume
  - PSAP Service Area Population

### Proposed Allocation Model Percentages

Allocation Percentage	Description	Details
<b>40 Percent</b>	Equal Distribution Base Amount	40% of the total annual PSAP allocation will be divided into equal shares and distributed to each PSAP.

<b>40 Percent</b>	Call Volume	40% of the total annual PSAP allocation will be distributed to each PSAP based on its share of statewide 911 call volume determined via ECaTS.
<b>20 Percent</b>	Service Area Population	20% of the total annual PSAP allocation will be distributed to each PSAP based on its share of statewide population determined via [annually revised] census data.

### When a PSAP Joins the NG911 System:

- The New PSAP Allocation Model will take effect.
- The wireless/wireline ratio will no longer apply.
- PSAP costs for 911 trunks and ALI Database services will end
  - Helps PSAPs adjust to the New Allocation Model
- New rules for use of legacy set aside funds will take effect
- Each PSAP will continue to be audited annually to confirm 911 Service System funds were used for eligible purposes according to legal requirements

### PSAP Use of 911 Service System Funds

- After transition to NG911, each PSAP will be able to use its annual funding allocation and any legacy set-aside fund balance for the following eligible expenses:
  - Call Handling Equipment (Top Priority; Five year replacement schedule)
  - GIS
  - Regional Connectivity, including last mile costs
  - Training
  - Radio Consoles
  - Computer Aided Dispatch
  - Logging Recorders
- PSAPs will be strongly encouraged to carry over a portion of their annual funding allocation from year to year, to prepare for future capital equipment costs and unexpected events.

### PSAP Use of Legacy Set-Aside Funds

- When a PSAP joins the NG911 system:
  - Legacy set aside funds may be used for any eligible expense without seeking PSC approval.
  - PSAPs are encouraged to use Legacy set-aside funds to cover PSAP costs of adjusting to the new Funding Allocation Model.
  - The requirement that legacy set-aside funds be used or returned within 10 years will be eliminated.
  - PSAPs will have three years to use any legacy set-aside balance held on the date of transition.

- Legacy Set-Aside Funds may not be used for personnel costs. PSAPs are encouraged to use other funds, such as wireline, VOIP or local general funds for personnel expenses.
- Each PSAP should develop a plan to spend all of its legacy set aside balance within three years after the date of transition.
- Funding Requests and Public Service Commission Orders will no longer be necessary to use legacy set-aside funds or PSAP allocation dollars that are carried over from one year to the next.

## Planning for Future Expenditures

- PSAPs will need to include the five year replacement schedule of Call Handling Equipment in their annual budgeting process.
- Each year, all wireless funds collected by the PSC will be distributed as follows:
  - (i) Statewide system costs;
  - (ii) Distributed to PSAPs via the Allocation Model; and
  - (iii) Distributed to Wireless Carriers for NG911 Cost Recovery.

Because all 911 Service System Funds will be distributed on a yearly basis, there will be no special/additional funding distributions to pay for five year replacement of PSAP Call Handling Equipment.

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Commissioners Schram and Watermeier, concurring:

Nebraska has 93 counties, 77,000 square miles of land area, and 68 Public Service Answering Points (PSAPs), serving a population of over 1.9 million people. More than half of Nebraskans live in our three largest counties, while over 606,000 Nebraskans live in rural areas.<sup>145</sup> But no matter where our fellow citizens live or travel our State, they count on 911 to help them in the event of an emergency. The funding recommendations the Commission is adopting today will advance the adoption of Next Generation 911 service for the benefit of all Nebraskans.

This is why the Legislature created the 911 Service System Act<sup>146</sup> by adopting LB 938 in 2016 and LB 993 in 2018. The Act calls for the Commission to coordinate statewide 911 service, while recognizing that the dispatch and delivery of emergency service is the responsibility of local governing bodies.<sup>147</sup>

The Act directs the Commission to “[b]e responsible for statewide planning, implementation, coordination, funding assistance, deployment, and management and maintenance of the 911 service system to ensure that coordinated 911 service is provided to all residents of the state at a consistent level of service in a cost-effective manner.”<sup>148</sup> Each of these responsibilities is important, but funding assistance is especially vital.

A sound funding mechanism helps assure a consistent level of statewide 911 service, as the Act requires. These funding recommendations have been presented to the Commission by 911 Service System Advisory Committee, a statewide body that includes representatives of large, medium and small Nebraska PSAPs, the Nebraska Association of County Officials, the League of Nebraska Municipalities, plus local law enforcement, fire, and emergency medical personnel. After several months of hard work, the 911 Service System Advisory Committee unanimously adopted these funding recommendations.

The Advisory Committee’s recommendations offer a simple, transparent and easy to understand funding mechanism for PSAPs in the Next Generation 911 environment. They provide a substantial

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<sup>145</sup> <https://www.nebraska-demographics.com/counties-by-population>;  
<https://www.ruralhealthinfo.org/states/nebraska>

<sup>146</sup> Neb. Rev. Stat. §§ 86-1001 to 86-1029.03.

<sup>147</sup> Neb. Rev. Stat. § 86-1003.

<sup>148</sup> Neb. Rev. Stat. § 86-1025(2).

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funding increase to the State's largest PSAP while continuing to deliver needed funds to PSAPs serving smaller counties. Therefore, we join the majority of our fellow Commissioners in voting to adopt these funding recommendations and support the adoption of Next Generation 911 to serve all Nebraskans.



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Tim Schram  
Commissioner, District 3



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Dan Watermeier  
Commissioner, District 1