

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. 911-042.23
Public Service Commission, on)
its own motion, seeking to)
administer funding for public) ORDER APPROVING FUNDING
safety answering points for the)
implementation and provision of)
Enhanced Wireless 911 service:) Entered: March 16, 2021
Perkins County

BY THE COMMISSION:

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

On or about March 30, 2010, the Nebraska Public Service Commission (Commission) opened this docket on its own motion¹, to administer funding for public safety answering points (PSAPs) to implement and provide Enhanced Wireless 911 Service pursuant to the funding mechanism approved under Docket No. 911-019/PI-118 on February 23, 2010.²

From at least January 13, 2004, until October 1, 2015, pursuant to this docket and its predecessor dockets, the Commission provided enhanced wireless 911 surcharge funding to a PSAP located in and serving Perkins County.³

On October 1, 2015, Perkins County officially closed its PSAP and consolidated 911 services with Keith County.⁴ Commencing on

¹ *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer funding for public safety answering points for the implementation and provision of Enhanced Wireless 911 service*, App. No. 911-042, ORDER OPENING DOCKET (Mar. 30, 2020).

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement provisions of LB 1222 [2006] and to establish a permanent funding mechanism for wireless enhanced 911 service*, Application No. 911-019/PI-118, FINAL ORDER ADOPTING MODEL AND APPLICATION PROCESS (Feb. 23, 2010).

³ See, e.g., *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer funding for public safety answering points for the implementation and provision of Enhanced Wireless 911 service: Perkins County*, Application No. 911-042.23, ORDER APPROVING FUNDING (June 29, 2010); *In the Matter of Perkins County, Grant, seeking funding approval for recurring and non-recurring costs associated with Wireless E911 implementation*, App. No. PSAP-032, GRANTED (Jan. 13, 2004).

⁴ *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to administer funding for public safety answering points for the implementation and provision of Enhanced Wireless 911 service: Perkins County*, Application No. 911-042.23, ORDER TO CEASE FUNDING (October 27, 2015).

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that date, all 911 calls originating in Perkins County were answered and dispatched by the Keith County PSAP. As a result, on October 27, 2015, the Commission entered an Order ceasing wireless 911 funding to Perkins County and transferring the net amount of Perkins County's remaining funding allocation for the 2015-2016 fiscal year and any Perkins County set-aside fund balance to Keith County.⁵

Since October 2015, the Commission has provided no further 911 funding to Perkins County. A final audit review of enhanced wireless 911 funding provided to Perkins County was completed on July 1, 2016.⁶

On or about June 29, 2020, Perkins County Sheriff James D. Brueggeman filed a "PSAP Application for Annual Funding" with the State 911 Department, seeking an allocation of wireless 911 funding for a new PSAP located in, and providing 911 service to, Perkins County. The application states that Perkins County is purchasing new call handling equipment and connectivity from CenturyLink, and geographic information services from GeoComm. The application also states that Perkins County expects to employ five full-time call takers and one part-time call taker.

It appears that the question of whether and under what circumstances 911 funding should be resumed to a county that has closed its PSAP and consolidated services with another county has not previously been addressed by the Commission. Although several PSAPs have ceased operation since the Commission began the process of allocating wireless surcharge funding for 911 services in 2001⁷, we have not identified any other new PSAP that has been established during that time, nor have we identified any other county that has resumed providing 911 service from a formerly closed PSAP.

PUBLIC HEARING

A public hearing was held on December 16, 2020, in Lincoln, Nebraska. Perkins County's Sheriff Brueggeman provided testimony via video conference. Sheriff Brueggeman stated that Perkins County had closed its PSAP in 2015 primarily as a budgetary measure to reduce personnel costs.⁸ Effective October 21, 2015, the Keith

⁵ *Id.*

⁶ Memo to File from Joan Rafferty, Re: Perkins County 2015-2016 Audit Review (July 1, 2016).

⁷ See, *In the Matter of the Commission, on its own motion, seeking to establish guidelines for the administration of the Enhanced Wireless 911 Fund*, Application 911-001/PI-52, ORDER OPENING DOCKET (September 19, 2001).

⁸ Hearing Transcript (TR) at 11-12.

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County PSAP, located in Ogallala, began taking 911 calls for Perkins County pursuant to a contract between the two counties.⁹ Sheriff Brueggeman testified that Perkins County had chosen to end this arrangement for two reasons. First, Perkins County was dissatisfied with the level of service provided by Keith County.¹⁰ Second, a county grand jury-investigating a 2019 Sheriff's department pursuit of a drug suspect who died after driving his vehicle into a tree stump at 109 miles per hour-returned a report suggesting that Perkins County should reestablish its local communications center in the sheriff's department.¹¹

Sheriff Brueggeman testified that as of the Hearing date, Perkins County had already begun operating its PSAP, with 911 calls being manually transferred to Perkins County from the Keith County PSAP.¹² The actual cut over of 911 trunk lines to the Perkins County PSAP was expected on the day following the hearing, December 17, 2020.¹³ Sheriff Brueggeman stated that the PSAP was staffed with five full-time employees, and himself as a part-time 911 call taker.¹⁴ Staff training was provided using classes from the Association of Public Safety Communications Officials ("APCO") and by equipment vendors.¹⁵

Sheriff Brueggeman stated that local tax revenue and wireline 911 surcharge dollars were used to re-establish and operate the Perkins County PSAP for the 2020-2021 fiscal year.¹⁶ In addition to staffing costs, those funds were used to purchase new call handling equipment, a computer aided dispatch ("CAD") system and geographic information system ("GIS").¹⁷ Sheriff Brueggeman indicated that Perkins County was committed to operation of the PSAP whether or not wireless funding were to be provided by the Commission.¹⁸ He further acknowledged that Perkins County did not discuss their plans to reopen their PSAP with the Public Service Commission until after the county's decision had already been made.¹⁹

Sheriff Brueggeman testified that the Perkins County's final wireless allocation from the Commission for the 2015-2016 fiscal

⁹ TR at 12.

¹⁰ TR at 13-14; 38-40.

¹¹ TR at 15-17.

¹² TR at 18-19.

¹³ *Id.*

¹⁴ TR at 23-24.

¹⁵ TR at 27-28.

¹⁶ TR at 21-22.

¹⁷ TR at 25-28.

¹⁸ TR at 23

¹⁹ TR at 37-38.

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year prior to closing their PSAP was \$39,883.29.²⁰ At that time, according to Sheriff Brueggeman, the Perkins County wireless/wireline ratio was 78 percent wireless and 22 percent wireline.²¹ He also stated that the number of 911 calls transferred from the Keith County PSAP to the reestablished Perkins County PSAP between July 1, 2020 and the day prior to the hearing, December 15, 2020, was 1,476.²²

DISCUSSION

There are three primary statutory schemes governing 911 service in Nebraska. First is the Emergency Telephone Communications Systems Act²³, (the "Wireline Act") which, in general terms, empowers local governing bodies to operate PSAPs and impose a monthly surcharge on landline and VOIP telephone bills. The wireline surcharge is collected by landline and VOIP companies and then remitted directly to local governing bodies to be used exclusively to help defray local jurisdiction costs of providing 911 service.²⁴ With regard to the Wireline Act, the Commission primarily has a reporting function with respect to wireline funding information provided by 911 service suppliers.²⁵

Second is the Enhanced Wireless 911 Services Act²⁶ (the "Wireless Act"), which, in general terms, empowers the Commission to impose a monthly surcharge on wireless telephone bills and establish a funding mechanism to help pay the cost of enhanced wireless 911 service.²⁷ The wireless surcharge is collected by wireless carriers and then remitted to the Commission and used via the Commission's adopted funding mechanism to provide funding for PSAPs and wireless carriers to implement and provide enhanced wireless 911 service.²⁸

Third, is the 911 Service System Act²⁹, the stated purpose of which "is to establish the Public Service Commission as the

²⁰ TR at 49.

²¹ TR at 42.

²² TR at 24.

²³ Neb. Rev. Stat. §§ 86-420 to 86-441.01.

²⁴ See, Neb. Rev. Stat. §§ 86-435 to 86-439.

²⁵ Neb. Rev. Stat. § 86-437. The Commission also is empowered to "administratively fine pursuant to section 75-156 any person who violates the Emergency Telephone Communications Systems Act." Neb. Rev. Stat. § 86-437(5).

²⁶ Neb. Rev. Stat. §§ 86-442 to 86-470.

²⁷ See, Neb. Rev. Stat. §§ 86-457 & 86-465.

²⁸ See, Neb. Rev. Stat. §§ 86-457 & 86-465. The Wireless Act is supplemented by the Prepaid Wireless Surcharge Act, Neb. Rev. Stat. §§ 86-901 to 86-905.

²⁹ Neb. Rev. Stat. §§ 86-1001 to 86-1029.03.

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statewide implementation and coordinating authority to plan, implement, coordinate, manage, maintain, and provide funding assistance for a 911 service system consistent and compatible with national public safety standards advanced by recognized standards and development organizations.”³⁰ In general terms, the 911 Service System Act is the vehicle through which the legislature has directed the Commission to bring statewide next-generation 911 service to Nebraska.³¹

Although each of the Wireline Act, the Wireless Act and the 911 Service System Act (together, the “911 Acts”) includes a role for the Commission, one of the most important 911 responsibilities of the Commission is the directive to “provide funding assistance for a 911 service system consistent and compatible with national public safety standards,” as stated in the 911 Service System Act.³²

The Commission provides both direct and indirect funding assistance to Nebraska PSAPs. The Commission provides direct funding assistance via an annual order authorizing the payment of monthly allocations to PSAPs from the 911 Service System Fund.³³ The Commission provides indirect funding assistance to PSAPs by various means, including by paying vendors \$2.6 million annually for routing 911 calls to the correct PSAP based on each caller’s location.³⁴

Significantly, although the Commission has statutory responsibility to allocate wireless funding to PSAPs, the 911 Acts do not provide the Commission any authority to determine where PSAPs should be located and only very limited authority to determine which PSAPs are entitled to receive 911 funding.

Pursuant to the 911 Service System Act, local governing bodies are responsible for the dispatch and provision of emergency

³⁰ Neb. Rev. Stat. § 86-1003.

³¹ See, e.g., Neb. Rev. Stat. §§ 86-1003(5), 86-1019, 86-1025 & 86-1027.

³² Neb. Rev. Stat. § 86-1002.

³³ See, e.g., *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement provisions of LB 1222 [2006] and to establish a permanent funding mechanism for wireless enhanced 911 service*, App. No. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 5, 2020).

³⁴ Under the current funding system, the Commission pays approximately \$2.6 million annually for call routing and related services pursuant to a tariff established pursuant to Commission Order. *Supra*, Note 2. In the next generation 911 (“NG911”) environment, the Commission will pay for a statewide IP network connecting PSAP regions to NG911 caller location and call routing services.

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services.³⁵ Such responsibility would appear to carry with it the authority to decide whether or not to operate a local PSAP.

Pursuant to the Wireline Act, wireline surcharge dollars are entirely under the control of local jurisdictions, subject to the restriction that such funds "shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service."³⁶

The Wireless Act states that a PSAP must file a written application in order to receive a disbursement of wireless funds.³⁷ Under the 911 Service System Act, the Commission's only express authority to deny wireless surcharge funding to a PSAP is the statement that "The commission is not required to provide funding from the 911 Service System Fund to more than one public safety answering point in any county."³⁸

The Commission has promulgated regulations providing certain PSAP eligibility standards to receive wireless funding. Such requirements include the filing of a funding application, maintaining a separate account for wireless funds, connecting to the selective router, and arranging for proper equipment, software and GIS data maintenance.³⁹

In summary, the Commission is not authorized to decide where a PSAP can be located or to deny wireless funding to a county's sole PSAP, if a valid funding application has been submitted and the PSAP complies with regulatory requirements. Perkins County has made the decision to establish and operate a single PSAP within its borders, filed an application for funding with the Commission, and, based on the testimony of Sheriff Brueggeman, complied with the regulatory prerequisites for wireless funding mentioned above. Therefore, we conclude it is appropriate for the Commission to provide an allocation of wireless funding from the 911 Service System Fund to the Perkins County PSAP.

The Commission is making the transition from the so-called "permanent funding mechanism" adopted for the Enhanced Wireless 911 environment in 2010⁴⁰, as revised, to a new funding mechanism

³⁵ Neb. Rev. Stat. § 86-1003(3).

³⁶ Neb. Rev. Stat. § 86-435(5). See, also, Neb. Rev. Stat. § 86-439.

³⁷ Neb. Rev. Stat. § 86-466. See, also, *Id.*

³⁸ Neb. Rev. Stat. § 86-1028(3).

³⁹ 291 N.A.C. § 15-006.

⁴⁰ *Supra*, Note 2.

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adopted for the Next Generation 911 environment in 2020.⁴¹ Perkins County has joined the Southeast/Panhandle Region of PSAPs and will make the transition to Next Generation 911 with the rest of its Region. In the meantime, we further conclude that funding should be provided to the Perkins County PSAP at the level determined according to the mechanism adopted in 2010, as revised to date, retroactive to December 1, 2020. Commission staff has calculated the pro-rata amount of such funding for Perkins County for the remainder of the 2020-2021 Funding Year to be \$21,690.00, which is equivalent to \$39,765.00 for a full funding year. Such funding shall be paid in monthly installments of \$3,615.00 according to the normal delivery schedule for PSAP funding, with an additional \$10,845 included in the March 2020 payment, representing funding for the months of December 2020 through February 2021.

O R D E R





IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that wireless 911 funding be provided to Perkins County for the remainder of the 2020-2021 Funding Year, retroactive December 1, 2020 in the amount of \$21,690.00.

IT IS FURTHER ORDERED THAT such funding shall be paid in monthly installments of \$3,615.00 according to the normal delivery schedule for PSAP funding, with an additional \$10,845 included in the March 2021 payment, representing funding for the months of December 2020 through February 2021.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 16th day of March, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Executive Director

⁴¹ 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. No. 911-073/PI-232, ORDER ADOPTING FUNDING RECOMMENDATIONS (Nov. 17, 2020).