

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. 911-074/PI-239
Public Service Commission, on)
its own motion, to consider) ORDER OPENING DOCKET AND
the appropriate level of) SEEKING PUBLIC COMMENT
wireless 911 surcharge funding)
for wireless service)
providers.) Entered: July 27, 2021

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") initiates this proceeding to consider the appropriate level of wireless 911 surcharge funding for wireless service providers ("WSPs").

WSP FUNDING PURSUANT TO STATE LAW

Enhanced Wireless Services Act

By Order issued February 23, 2010, the Commission adopted the Wireless 911 Support Allocation Model ("911-SAM") for the purpose of allocating enhanced wireless 911 surcharge funds to WSPs and public safety answering points ("PSAPs").¹ The Commission created the 911-SAM to implement the requirements of LB 1222 [2006] which established the Enhanced Wireless 911 Services Act (the "E911 Act").²

The E911 Act provides that the following purposes may be eligible for funding with respect to WSPs:

Costs incurred or to be incurred by [WSPs] to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs may include, but not be limited to, the portion of 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. The portion of the costs of

¹ *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. 911-019/PI-118, FINAL ORDER ADOPTING MODEL AND APPLICATION PROCESS (February 23, 2010).

² Neb. Rev. Stat. §§ 86-442 to 86-471.

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equipment or services used in the {WSP's} main infrastructure resulting in revenue to the [WSP] is not eligible for funding.³

Since the adoption of the 911-SAM, the Commission has allocated by annual order a total of \$10,711,929.78 in wireless 911 surcharge funding to WSPs.⁴

911 Service System Act

On April 18, 2016, the 911 Service System Act became law and, among other things, established the Commission as Nebraska's

³ ³ Neb. Rev. Stat. § 86-465(2)(a).

⁴ *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. 911-019/PI-118, PROGRESSION ORDER NO. 4 (Aug.23, 2011); 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. 911-019/PI-118, ORDER ADOPTING PROPOSAL AND RELEASING ADJUSTED PAYMENTS (Sept. 18, 2012); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 21, 2013); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (April 29, 2014); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (April 28, 2015); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 3, 2016); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 2, 2017); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 1, 2018); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 7, 2019); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 5, 2020); 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. 911-019/PI-118, ORDER AUTHORIZING PAYMENTS (May 11, 2021).*

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"statewide coordinating authority for the implementation of the 911 service system," including next generation 911 ("NG911").⁵ The Act was revised on April 4, 2018, with the adoption of LB 993, which, among other things, directed the Commission to:

(a) Determine how to allocate the 911 Service System Fund in order to facilitate the planning, implementation, coordination, operation, management, and maintenance of the 911 service system;

(b) Create a mechanism for determining the level of funding available to or for the benefit of local governing bodies, public safety answering points, and third-party service or infrastructure providers for costs determined to be eligible by the commission; and

(c) Establish standards and criteria concerning disbursements from the 911 Service System Fund for the planning, implementation, coordination, operation, management, and maintenance of the 911 service system.⁶

LB 993 also established the 911 Service System Advisory Committee, (Advisory Committee) to "make recommendations to the Commission regarding the exercise of the commission's duties administering the 911 service system."⁷

On November 17, 2020, the Commission entered an order adopting recommendations of the Advisory Committee for a new funding methodology for the Next Generation 911 environment.⁸ The Advisory Committee's recommendations ("Proposal") focused primarily on funding for a statewide ESInet, NG911 core services, and PSAPs. However, with regard to WSP funding, the Order states:

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

⁵ LB938 [2016], section 25.

⁶ LB993 [2018], Section 12 (revising Neb. Rev. Stat. § 86-1025).

⁷ LB993 [2018], Section 12 (codified at Neb. Rev. Stat. § 86-1025.01).

⁸ *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).

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Generation 911 environment and how such funding should be allocated.⁹

NEW FEDERAL REGULATIONS GOVERNING USE OF 911 FEES AND CHARGES

In the meantime, the federal government has taken action to prohibit the diversion of 911 fees and charges to non-911 purposes. On December 27, 2020, Congress passed the "Don't Break Up the T-Band Act of 2020, ("T-Band Act") which provides among other things that 911 fees and charges may only be used for "the support and implementation of 9-1-1 services" and "operational expenses of public safety answering points."¹⁰

In addition, the T-Band Act directed the Federal Communications Commission ("FCC") to adopt new federal rules "designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable."¹¹ The T-Band Act further directed the FCC to "consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and functions for their 911 fees or charges, and 'determine whether such purposes and functions directly support providing 9-1-1 services.'"¹²

The FCC adopted its new 911 fee diversion rules on June 24, 2021, such rules to be effective 60 days after publication in the federal register.¹³ A copy of the newly-adopted rules are attached as Appendix A to this Order.

The new rules state that the acceptable uses of 911 fees and charges will be "limited to: (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and (2) Operational expenses of public safety answering points within such State or taxing jurisdiction."¹⁴

⁹ *Id.*, at 21.

¹⁰ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902); 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

¹¹ 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

¹² *In the Matter of 911 Fee Diversion, New and Improved Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 20-291 & PS Docket No. 09-14, REPORT AND ORDER (June 24, 2021) ("REPORT AND ORDER") at ¶ 4, (quoting 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C)).

¹³ *Id.* at ¶¶ 88-89.

¹⁴ REPORT AND ORDER, Appendix A, § 9.23(a).

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The new regulations also provide non-exhaustive lists of acceptable expenditures and unacceptable expenditures of 911 fees and charges. One example of an expressly unacceptable use for 911 fees and charges is: "Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks)."¹⁵

In commentary discussing this provision, the FCC states that "construction of commercial cellular towers to expand cellular coverage is not 911 related." The FCC further explains that, "although expanding cellular coverage 'enhances the public's ability to call 911,' the [applicable federal statute] focuses on funding the elements of the 911 call-handling system that are operated and paid for by state and local 911 authorities."¹⁶ However, the FCC commentary also states that "expenditures to provide redundancy, backup, or resiliency in components of the 911 network (e.g., components that provide path diversity to PSAPs or support rerouting of 911 traffic in the event of an outage) would not be deemed unacceptable under this rule."¹⁷

REQUEST FOR PUBLIC COMMENT

Accordingly, the Commission enters this Order to seek public comment on both (i) the recommendation of the Advisory Committee that the Commission continue to provide wireless 911 surcharge funding to WSPs and (ii) the impact of the new federal rules referenced above. In addition to any general observations that commenters may wish to offer, the Commission seeks comment on the following specific issues:

1. Is it appropriate for the Commission to continue to allocate a portion of wireless 911 surcharge remittances to WSPs? If so, how should the amount of such funding allocations be determined?
2. In light of the forthcoming federal regulations expressly forbidding the use of 911 surcharges for "[e]quipment or infrastructure for constructing or expanding . . . commercial cellular networks,"¹⁸ and the federal statutory focus that 911 fees and charges be used for "funding the elements of the 911 call-handling system that are operated and paid for by state and local 911 authorities,"¹⁹ what specific purposes and

¹⁵ Id. at § 9.23(c)(2).

¹⁶ REPORT AND ORDER, ¶ 47 (citing the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (NET 911 Act)).

¹⁷ REPORT AND ORDER, ¶ 48.

¹⁸ REPORT AND ORDER, ¶ 47.

¹⁹ Id.

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functions of WSPs, if any, could be funded by the Commission from wireless 911 surcharges without risking a violation of federal law?

3. Do WSPs incur any "expenditures to provide redundancy, backup, or resiliency in components of the 911 network (e.g., components that provide path diversity to PSAPs or support rerouting of 911 traffic in the event of an outage)?"²⁰ If so, please provide specific examples of such expenditures.
4. What new and/or different costs, if any, will WSPs incur as a result of the implementation or operation of NG911, as compared to the implementation or operation of enhanced wireless 911? If such costs are the result of FCC or other federal mandates, please identify the statute, rule, regulation, guideline or similar directive that imposes each such cost.

The Commission requests that interested parties and members of the public provide written comments to the issues described above on or before **AUGUST 27, 2021**. Commenters should file (1) paper copy and (1) electronic copy of their comments with the Commission. Electronic copies should be sent to matt.effken@nebraska.gov and jacki.synhorst@nebraska.gov.

Finally, given the present uncertainty regarding whether and to what extent wireless 911 surcharge funding can continue to be allocated to WSPs without violating the new FCC rules on 911 fee diversion, the Commission concludes that all such payments to WSPs from the 911 Service System Fund should be suspended, until such time as such questions are resolved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be opened.

IT IS FURTHER ORDERED that comments responsive to the foregoing questions may be filed on or before August 27, 2021, in the manner described herein.

IT IS FURTHER ORDERED that all payments of 911 surcharge funding allocated to WSPs from the 911 Service System Fund pursuant to Commission Docket No. 911-019/PI-118 are hereby suspended until further notice.

²⁰ REPORT AND ORDER, ¶ 48.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 27th day of July, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Swader
Mary Keddin
Tim Schram

Don Watson
Chair

ATTEST:

Michael S. Hyatt
Executive Director

APPENDIX A

PART 9 – 911 Requirements

1. The authority citation for part 9 is revised to read as follows: Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a-1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.
2. Add subpart I, consisting of §§ 9.21 through 9.26, to read as follows:

Subpart I – 911 Fees

Sec.

9.21 Applicability.

9.22 Definitions.

9.23 Designation of acceptable obligations or expenditures for purposes of section 902 of Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, section 902(c)(1)(C).

9.24 Petition regarding additional purposes and functions.

9.25 Participation in annual fee report data collection.

9.26 Advisory committee participation.

§ 9.21 Applicability.

The rules in this subpart apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

§ 9.22 Definitions.

For purposes of this subpart, the terms in this section have the following meanings set forth below. Furthermore, where the Commission uses the term “acceptable” in this subpart, it is for purposes of Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, section 902(c)(1)(C).

911 fee or charge. A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

Diversion. The obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23.

Other emergency communications services. The provision of emergency information to a public safety answering point via wire or radio communications and may include 911 and E911 service.

State. Any of the several States, the District of Columbia, or any territory or possession of the United States.

State or taxing jurisdiction. A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

§ 9.23 Designation of acceptable obligations or expenditures for purposes of section 902 of Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, section 902(c)(1)(C).

- (a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges for purposes of section 902 are limited to:
 - (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
 - (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.
- (b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:
 - (1) PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG911, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs include technological innovation that supports 911;
 - (2) PSAP personnel costs, including telecommunicators' salaries and training;
 - (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
 - (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and
 - (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.
- (c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of section 902 include, but are not limited to, the following:
 - (1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;
 - (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
 - (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.
- (d) If a State or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes that include the support or implementation of 911

services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:

- (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;
- (2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and
- (3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

§ 9.24 Petition regarding additional purposes and functions.

- (a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.
- (b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
 - (1) Supports public safety answering point functions or operations; or
 - (2) Has a direct impact on the ability of a public safety answering point to:
 - (i) Receive or respond to 911 calls; or
 - (ii) Dispatch emergency responders.

§ 9.25 Participation in annual fee report data collection.

- (a) If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a-1(f)(2)).
- (b) Each state or taxing jurisdiction subject to paragraph (a) of this section must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau.
- (c) Paragraph (b) of this section contains information collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the *Federal Register* announcing that compliance date and revising this paragraph accordingly.

§ 9.26 Advisory committee participation.

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a-1(f)(2)), as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission.