

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. 911-002  
Public Service Commission, on )  
its own motion, seeking to ) ORDER SETTING SURCHARGE  
determine the surcharge for )  
the Enhanced Wireless 911 Fund. ) Entered: October 19, 2021

BY THE COMMISSION:

Pursuant to the 911 Service System Act<sup>1</sup> (the "Act"), the Public Service Commission ("Commission") is the "statewide implementation and coordinating authority"<sup>2</sup> for 911 Service in Nebraska, with responsibility to "allocate the 911 Service System Fund in order to facilitate the planning, implementation, coordination, operation, management, and maintenance of the 911 service system."<sup>3</sup> The 911 Service System Fund (the "Fund") consists primarily of Enhanced Wireless 911 Surcharge ("Wireless Surcharge") amounts collected from wireless service customers by wireless carriers.<sup>4</sup>

Pursuant to the Enhanced Wireless 911 Services Act<sup>5</sup>, the Commission annually determines the rate of the Wireless Surcharge for the following year after a public hearing.<sup>6</sup>

Pursuant to an Order entered July 27, 2021<sup>7</sup>, the Commission scheduled a hearing in this docket to determine the monthly rate of Wireless Surcharge for calendar year 2022.<sup>8</sup> Notice of the hearing was published in the Omaha World Herald, the Lincoln Journal Star, and The Daily Record, on August 3, 2021 and August 17, 2021.

The hearing was held on August 24, 2021. Matt Effken appeared as counsel on behalf of the Commission staff. There were no other appearances entered by counsel.

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<sup>1</sup> Neb. Rev. Stat. §§ 86-1001 to 86-1029.03.

<sup>2</sup> Neb. Rev. Stat. §§ 86-1002.

<sup>3</sup> Neb. Rev. Stat. §§ 86-1025(5).

<sup>4</sup> See, Neb. Rev. Stat. §§ 86-456, 86-456.01, 86-457, 86-459, 86-466, 86-904 and 86-1028.

<sup>5</sup> Neb. Rev. Stat. §§ 86-442 to 86-470.

<sup>6</sup> Neb. Rev. Stat. § 86-458.

<sup>7</sup> *In the Matter of the Commission, on its own motion, seeking to determine the surcharge for the Enhanced Wireless 911 Fund*, Application No. 911-002, ORDER SCHEDULING HEARING (Jul. 27, 2021).

<sup>8</sup> Neb. Rev. Stat. §§ 86-457 & 86-458.

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### E V I D E N C E

David Sankey, State 911 Director, testified on behalf of Commission staff. Director Sankey provided an overview of the status of the Fund and testified that 911 Department staff, the Enhanced Wireless 911 Advisory Board and the 911 Service System Advisory Committee each recommended that Commission increase the monthly Enhanced Wireless 911 Surcharge from the current statewide rate of 45 cents to the statutory limit of 50 cents in Douglas County and 70 cents in the remaining 92 counties for calendar year 2022.

Director Sankey testified that the balance in the Fund as of July 31, 2021 was approximately \$7.8 million. Director Sankey stated that approved expenditures for the current fiscal year to support the legacy 911 system, provide funding support to public safety answering points ("PSAPs") and wireless carriers, pay for 911 call routing via selective routers and provide text-to-911 service total approximately \$8.7 million dollars, with additional projected operational and administrative costs expected to bring the total amount expended from the Fund to approximately \$10 million.

Director Sankey also testified that various multi-year contracts are in place that relate to Next Generation 911 implementation, including GIS quality control, consultant services, and statewide call data analytics. He stated that such contracts obligated the Fund to pay over \$1.8 million dollars in the current fiscal year. The Director also stated that the five-year contract with Lumen to provide an Emergency Services Internet Protocol Network and NG911 Core Services will cost about \$814,899 for the first year and \$1.8 million per year thereafter. Director Sankey noted that there is a federal grant in place to help offset a portion of these costs until March 31, 2022.

Director Sankey stated that the current statewide monthly rate of 45 cents would generate approximately \$8.7 million for the 2021-2022 fiscal year. In contrast, revenues from the proposed increase would result in remittances of about \$12 million annually. Director Sankey also testified that financial projections show that maintaining the current 45 cent Wireless Surcharge rate would cause the Fund to cross below the Commission's four-month reserve fund requirement in September 2022, with the Fund projected to reach a zero balance in September 2024. However, projections show

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the proposed rate increase would cause the Fund to reach the four-month reserve floor around the beginning of 2024 and maintain the Fund at approximately that level thereafter.

Director Sankey recommended that the Wireless Surcharge be set at 50 cents in Douglas County and 70 cents in the remaining 92 counties of Nebraska for calendar year 2022. In addition, Director Sankey informed the Commission that the Enhanced Wireless 911 Advisory Board had met on July 14, 2021 and voted to recommend that the Commission set the Wireless Surcharge rate at 50 cents in Douglas County and 70 cents in the remaining 92 counties of Nebraska for calendar year 2022. Likewise, the 911 Service System Advisory Committee met on August 11, 2021 and voted to recommend that the Commission set the Wireless Surcharge at 70 cents per month, subject to the statutory limitation of 50 cents applicable to wireless customers in Douglas County. Each of the Enhanced Wireless 911 Advisory Board and 911 Service System Advisory Committee also provided the Commission with letters supporting the proposed increase.

The Commission also heard testimony from Buffalo County Sheriff Neil Miller. Sheriff Miller is Chair of the 911 Service System Advisory Committee and a member of the Enhanced Wireless 911 Advisory Board.

Sheriff Miller noted that he had been involved with law enforcement since 1976 and a member of the Enhanced Wireless 911 Advisory Board for almost 20 years. He commended the Commission on its responsible stewardship of the Fund over the years and noted that other states had been less careful and at times had struggled to pay 911 system costs.

Sheriff Miller stated that the conversion from the legacy 911 system to Next Generation 911 will require supporting both systems for a period of time, resulting in higher costs during transition. He observed that under the Commission's new funding model, local PSAPs would be able to use set-aside funds to help pay for their own costs of transitioning to Next Generation 911, which will be helpful for local jurisdictions.

He encouraged the Commission to continue to review the Wireless Rate and roll it back if it appeared too high if necessary, to avoid overcharging wireless customers. Finally, he reiterated the support of both the Enhanced Wireless 911 Advisory

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Board and the 911 Service System Advisory Committee for setting the Wireless Surcharge rate at 50 cents in Douglas County and 70 cents in the remaining 92 counties of Nebraska for calendar year 2022.

No other witnesses provided testimony at the hearing.

### F I N D I N G S     A N D     C O N C L U S I O N S

The Wireless Surcharge was created in 2001, with the passage of LB585.<sup>9</sup> At that time, statute provided that the maximum rate was "50 cents per month per access line."<sup>10</sup> In 2006, the legislature changed the maximum rate of the Wireless Surcharge to 70 cents in all counties, except Douglas County, where the maximum monthly rate remains 50 cents.<sup>11</sup>

After a hearing held May 31, 2001, the Commission set the first Wireless Surcharge rate at the maximum allowable rate of 50 cents on June 5, 2001.<sup>12</sup> The rate remained at 50 cents until it was lowered to 45 cents by Commission Order effective January 1, 2013.<sup>13</sup> Since then, the Commission has maintained the Wireless Surcharge rate at 45 cents per month, via annual order entered after public hearings, most recently on December 8, 2020.<sup>14</sup>

Pursuant to Neb. Rev. Stat. § 86-457, the Commission may set the Wireless Surcharge no higher than \$0.70 per month for each active wireless telephone number or functional equivalent, except in Douglas County, where the maximum Wireless Surcharge is \$0.50.

The Commission has been assigned the statutory responsibility of bringing next generation 911 to Nebraska. As reflected in the record, there are substantial costs associated with making the

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<sup>9</sup> LB 585, § 2 [2001].

<sup>10</sup> *Id.*

<sup>11</sup> LB 1222 [2006]; Neb. Rev. Stat. § 86-457(1).

<sup>12</sup> *In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, by adding new sections and to adopt rules in accordance with the provisions of LB 585 [2001], Rule and Regulation No. 149, ORDER SETTING WIRELESS E911 SURCHARGE FOR JULY 1, 2001 THROUGH JUNE 30, 2002 (Jun. 5, 2001).*

<sup>13</sup> *See, In the Matter of the Commission, on its own motion, seeking to determine the surcharge for the Enhanced Wireless 911 Fund, Application No. 911-002, ORDER SETTING SURCHARGE (Oct. 23, 2012).*

<sup>14</sup> *See, In the Matter of the Commission, on its own motion, seeking to determine the surcharge for the Enhanced Wireless 911 Fund, Application No. 911-002, ORDER SETTING SURCHARGE (Dec. 8, 2020).*

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transition from the current legacy 911 system to the implementation of next generation 911 technology. The Commission finds, based upon the testimony and financial projections presented in the record, the proposed monthly Wireless Surcharge rate of 50 cents in Douglas County and 70 cents in the other 92 counties of Nebraska is necessary to support the continued deployment of NG911 in Nebraska while maintaining a reasonable four-month contingency reserve.

The Commission will reconsider the Wireless Surcharge rate annually, as required by the Enhanced Wireless 911 Services Act. The Commission also will continue to monitor funding needs, revenue projections and the Fund balance, and will make adjustments in the future should it be necessary.




### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the monthly Enhanced Wireless 911 Surcharge, per active wireless telephone number or functional equivalent, be set at 50 cents in Douglas County and 70 cents in the remaining 92 counties in Nebraska, effective January 1, 2022.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 19<sup>th</sup> day of October, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Deputy Director

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Commissioner Rhoades, dissenting:

I dissent. Before imposing a 55 percent surcharge increase on wireless telephone customers in 92 Nebraska counties, we should first make use of the millions of unused 911 surcharge dollars sitting idle in local PSAP accounts across the state. Late-Filed Exhibit No. 8 which I requested to be added the record in this proceeding shows the results of our most-recently completed statewide audit. It reveals that \$11,689,685.90 of wireless 911 surcharge money languishes unused in PSAP set-aside accounts. This money should fund the transition to Next Generation 911.

Set-aside accounts have been part of the Commission's funding plan for local PSAPs since 2010. The record from the creation of that funding model--including two Commission hearings--is replete with references to Next Generation 911, which at that time was thought to be just over the horizon. In the record, when testimony refers to "future equipment and software," it is clear that the future being referred to is Next Generation 911. The money in PSAP set-aside accounts was collected from wireless customers with the transition to Next Generation 911 in mind. Therefore, it should be used for that purpose before we demand more from Nebraska ratepayers.

Current rules allow PSAPs to stockpile up to 75 percent of their annual 911 funding allocations in set-aside accounts to pay these future costs. In practice, however, this has allowed many PSAPs to amass huge sums of money that somehow never get spent on anything.

Some of the biggest offenders are our smallest PSAPs. For example, each of the PSAPs in Chase, Cherry, Dundy, Hitchcock, and Howard counties is sitting on over \$200,000 in unused set-aside funds. On average, each of these PSAPs answers fewer calls in an entire day than the Douglas County PSAP handles in ten minutes. Yet, at last count, these five PSAPs are collectively sitting on over \$1.1 million in set-aside funds that could be used to implement Next Generation 911. And they not alone. Based on the record in this proceeding, there are a total of 18 PSAPs with set-aside balances over \$200,000 and a further 31 PSAPs with set-aside balances above \$100,000. This is money that was collected from Nebraska ratepayers over several years but so far has been used for absolutely nothing.

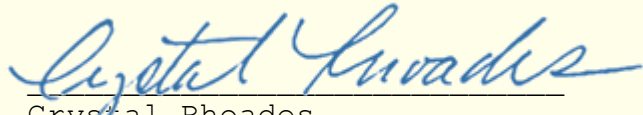
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It is wrong to increase the burden on ratepayers at a time when these set-aside funds are available but not being used. According to the record, the almost \$12 million dollars locked away in PSAP set-aside accounts would just about cover the state's total estimated 911 costs, including NG911 transition costs, for calendar year 2022. We should make sure this excess set-aside money is used first before we consider any increase in the wireless 911 surcharge.



Crystal Rhoades  
Commissioner

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Commissioners Schram and Ridder, concurring:

I support this surcharge increase, which is the equivalent of \$3.00 per year per wireless telephone line in all counties, except Douglas County, where the increase is only 60 cents per line per year. In exchange, the statewide 911 service system is being upgraded to Next Generation technology, with an enhanced ability to identify indoor and outdoor caller locations, greater reliability through enhanced resiliency and redundancy, and new ways to communicate with first responders, such as real time imagery from a crash scene or fire.

The Commission has long held the line on the wireless 911 surcharge rate at 45 cents per line per month. In fact, the only time we've previously changed the rate has been to lower it. We were able to lower the rate from 50 cents to 45 cents in 2013 because Enhanced Wireless 911 ("E911") was well on the way to full implementation and the fund had developed a more than sufficient contingency reserve.

Now, with the adoption of the 911 Service System Act, the Commission has been assigned the task of bringing Next Generation 911 ("NG911") to Nebraska. This long-term project is already underway, but it will take years to fully complete. The changeover process brings with it certain additional costs, such as for upgrading equipment, creating GIS maps, and the need to operate both the legacy and NG911 systems during the transition period. However, local cost sharing and efficiencies made possible by PSAP regionalization should provide, in the long run, savings to the local property taxpayer.

It has been suggested that the Commission should take away unspent wireless 911 surcharge money that has already been distributed to local PSAPs, but this is not the answer. To begin with, it is unclear how we could confiscate money that is on deposit in local government accounts. Second, local PSAPs are also facing their own NG911 implementation costs. Under the funding system adopted by the Commission in Docket No. 911-073/PI-232 on November 17, 2020, PSAPs can use their set-aside accounts to help defray their own costs of making the transition to NG911. Not only will there be PSAP costs for new equipment, GIS data and local connectivity, many PSAPs will be facing lower monthly allocations of wireless surcharge funds. PSAPs will



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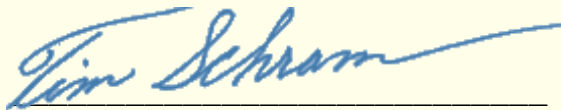
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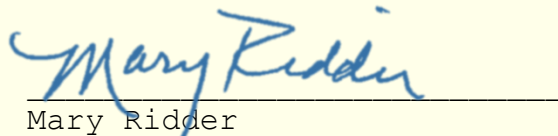
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have three years in which to use their set-aside funds to help make that adjustment.

The Commission has never raised the wireless 911 surcharge before, and we don't relish doing so now. But we've also never had to undertake the task of replacing Nebraska's entire 911 system with new technology. In the end we will have a more reliable, robust, and accurate 911 system to enhance the safety of Nebraskans statewide.



Tim Schram  
Commissioner



Mary Ridder  
Commissioner