

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. 911-042.50
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: October 16, 2018
Chase County.)

BY THE COMMISSION:

On or about July 9, 2018, the Chase County ("Chase County") Public Safety Answering Point (PSAP) filed a request with the Public Service Commission ("Commission") to use enhanced wireless 911 set-aside funds to purchase new call-handling equipment, related software and connectivity services, at a stated total cost of \$82,878.63. The proposed expenditure would enable Chase County to join the South Central Region, which is a multi-node 911 system consisting of several PSAPs that achieve cost savings and provide mutual failover support by sharing equipment through an internet protocol network.¹ Chase County requests that "100% funding" for its costs be paid from set-aside funds, which means that this funding request would be paid entirely out of enhanced wireless 911 surcharge funds that Chase County has retained-or "set-aside"-over several years to pay for future equipment and software upgrades and replacements.²

B A C K G R O U N D

Pursuant to funding standards adopted by the Commission in 2007 in response to the adoption of LB 1222 [2006], PSAP expenses that support both wireless and landline 911 service are subject to the wireless/wireline ratio. Under this approach, the funding available to pay for handling 911 calls is categorized based on

¹ See, *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: Buffalo County*, Application No. 911-042.10, ORDER APPROVING FUNDING (September 20, 2016).

² See, *In the Matter of the Nebraska Public Service Commission, on its own motion, to establish interim policies for the Administration of the Enhanced Wireless 911 Fund pending Implementation of LB 1222 [2006]*, Application No. 911-017/PI-116, PROGRESSION ORDER No. 1 (February 13, 2007).

the type of service that the caller uses to contact the PSAP. The current funding standards provide that enhanced wireless 911 surcharge funds may only be used to pay for expenses that relate to the handling of wireless 911 calls.³ Conversely, the funding standards provide that expenses relating to wireline 911 calls must be paid from other funds, primarily the locally-controlled service surcharge imposed on landline telephone numbers⁴ or local government general funds. The mechanism that is used to allocate funding responsibility between wireless and landline 911 calls is called the wireless/wireline ratio.

Because funds expended to join the South Central Region would be used to respond to both wireless 911 calls and landline 911 calls, the Commission's traditional funding standards would require the wireless/wireline ratio to be applied to Chase County's regionalization costs. However, Chase County has specifically requested that these costs be paid entirely out of enhanced wireless 911 surcharge set-aside funds, without applying the wireless/wireline ratio.⁵

The Enhanced Wireless 911 Advisory Board ("Advisory Board") considered the Chase County funding request on July 23, 2018, and recommended the request be approved and paid solely from enhanced wireless 911 set-aside funds. Board members concluded that allowing such 100 percent funding would encourage PSAPs to regionalize, resulting in cost savings to both individual PSAPs and the entire 911 system. Board members also stated that the wireless/wireline ratio prevents some PSAPs from using their set-aside funds, because local governments may not have enough money from other sources to pay the landline portion of the cost. If a PSAP is unable to pay the landline share of costs, set-aside funds are stranded monies that cannot be used for their intended purpose of providing 911 service.

On August 21, 2018, the Commission issued an Order requesting comments from interested parties on whether regionalization costs incurred by Chase County and other PSAPs should be subject to the

³ See, *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, PROGRESSION ORDER NO. 1 (April 6, 2010).

⁴ See, Emergency Telephone Communications Systems Act, Neb. Rev. Stat. §§ 86-420 to 86-441.01.

⁵ Chase County reports that its current set-aside fund balance is \$189,693.94.

wireless/wireline ratio.⁶ Timely comments were received from CTIA-The Wireless Association ("CTIA"), the Buffalo County Sheriff, Cheyenne County 911, Dodge County 911, Sarpy County Emergency Communications, Scotts Bluff County Consolidated Communications and the NE Association of 911 Managers.

All of the commenters, with the exception of CTIA, expressed support for permitting PSAPs to use set-aside funds to pay for 100 percent of regionalization costs. For example, the Buffalo County Sheriff stated that adopting this proposal would achieve two goals:

The first is ensuring that PSAPs will be given an incentive to join a region or develop a region. The second is that we will ensure that 911 equipment is next gen ready and up to date, so that when we roll the next gen service out we are not creating islands of non-next gen ready PSAPs in the state.⁷

Likewise, CTIA stated that it supported initiatives to incentivize PSAP regionalization as a means to realize efficiency and cost savings. However, CTIA argued that current Nebraska law does not allow the Commission to allocate wireless funds in a way that would benefit landline 911 service:

[T]he legislature has not granted the Commission authority to use enhanced wireless 911 surcharges for any other purpose than to pay for costs to implement enhanced wireless 911 service. * * * While the Commission may authorize use of enhanced wireless 911 funds for the limited purposes indicated in Section 86-465 (equipment and services "required for the provision of enhanced wireless 911 service"), authorizing expenditures of enhanced wireless 911 funds for any other purpose would violate Sections 86-435 and 86-465.⁸

⁶ 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: Chase County, Application No. 911-042.50, ORDER REQUESTING COMMENTS (August 21, 2018).

⁷ Buffalo County Office of the Sheriff, Comment Letter (September 6, 2018).

⁸ COMMENTS OF CTIA IN RESPONSE TO THE ORDER REQUESTING COMMENTS, Application No. 911-042.50 (September 11, 2018)

OPINION AND FINDINGS

The funding standards presently used by the Commission were adopted on February 23, 2010, and provide that PSAP equipment and software costs are subject to the wireless/wireline ratio.⁹ This standard reflected provisions of the Enhanced Wireless 911 Services Act¹⁰ (the "Wireless Act") requiring that wireless surcharge funds be used "solely to process the data elements of enhanced wireless 911 service," and to pay for telecommunications equipment and services "required for the provision of enhanced wireless 911 service."¹¹

Although the Wireless Act, with revisions, remains in place, the Commission's responsibilities with respect to 911 services have been supplemented by the 911 Service System Act¹², which was adopted by the legislature in 2016¹³ and revised in 2018 with the passage of LB 993.¹⁴

Pursuant to the 911 Service System Act, the Commission's duties extend beyond the limited role of allocating surcharge funds exclusively for enhanced wireless 911 service. Instead, the Commission's responsibilities extend to the whole of the "911 Service System", which is defined by statute to include not only enhanced wireless 911 service, but also basic 911 service, enhanced-911 service, next-generation 911 service, and "any emerging technologies, networks, and systems that allow access to 911 service."¹⁵ The 911 Service System Act further designates the Commission as the "statewide coordinating authority for the implementation of the 911 service system," with responsibility 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

⁹ *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).*

¹⁰ Neb. Rev. Stat. §§ 86-442 to 86-470

¹¹ Neb. Rev. Stat. § 86-465(2)(b) & (c).

¹² Neb. Rev. Stat. §§ 86-1001 to 86-1029.03.

¹³ LB938 [2016].

¹⁴ LB993 [2018].

¹⁵ Neb. Rev. Stat. § 86-1019.

the state at a consistent level of service in a cost-effective manner."¹⁶

Although CTIA acknowledges the existence of LB 993 and the 911 Service System Act, CTIA's comments overlook some of the legislation's key provisions. LB 993 made important changes to both the Wireless Act and the 911 Service System Act. For example, wireless surcharges are now credited to the "911 Service System Fund," instead of the Enhanced Wireless 911 Fund ("E911 Fund").¹⁷ In addition, the 911 Service System Act required all money in the Enhanced Wireless 911 Fund to be transferred to the 911 Service System Fund on July 1, 2018.¹⁸ More importantly, LB 993 repealed the statute which formerly governed the use of fund monies under the Wireless Act¹⁹ and moved those provisions to the 911 Service System Act.²⁰

Prior to the passage of LB 993, the use of monies in the former E911 Fund was expressly limited to costs of fund administration and those purposes specified in section 86-465 of the Wireless Act. However, effective on July 1, 2018, the 911 Service System Act provides that monies in the 911 Service System Fund "shall be used for the costs of administering the fund, for the purposes specified in section 86-465 . . . **and for the purposes specified in the 911 Service System Act.**"²¹ Moreover, the 911 Service System Act provides:

Money in the 911 Service System Fund may be used to pay for costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service that are **determined by the commission to be eligible for funding.**²²

The 911 Service System Act also describes the purposes for which the Commission may disburse monies from the 911 Service System Fund.²³ Such permitted disbursements are in no way limited only to enhanced wireless 911 service. The Act empowers the Commission to "allocate the 911 Service System Fund in order to facilitate the planning, implementation, coordination, operation, management, and maintenance of the 911 service system."²⁴ Costs

¹⁶ Neb. Rev. Stat. § 86-1025(2).

¹⁷ Neb. Rev. Stat. § 86-1028(1).

¹⁸ Neb. Rev. Stat. § 86-1028(4).

¹⁹ LB 993 [2018], § 20 (repealing Neb. Rev. Stat. § 86-463).

²⁰ Neb. Rev. Stat. § 86-1028(3); LB 993 [2018], § 18.

²¹ Neb. Rev. Stat. § 86-1028(1) (emphasis added).

²² Neb. Rev. Stat. § 86-1028(3) (emphasis added).

²³ Neb. Rev. Stat. § 86-1025.

²⁴ Neb. Rev. Stat. § 86-1025(5) (a).

that are explicitly made eligible to be paid for out of the 911 Service System Fund include:

(i) Costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service, including, but not limited to, (A) acquisition of new equipment and related maintenance costs and license fees, (B) upgrades and modifications, (C) delivering next-generation 911 core services, and (D) training personnel used to provide 911 services; and

(ii) Costs incurred by or on behalf of governing bodies or public safety answering points for the acquisition, installation, maintenance, and operation of telecommunications equipment and telecommunications service required for the provision of 911 service.²⁵

To the extent that CTIA's comments address the funding provisions of the 911 Service System Act, they urge the Commission to construe the statutes "harmoniously," by interpreting the Wireless Act to limit the Commission's authority under the 911 Service System Act.²⁶

CTIA appears to find support for this approach in State v. Raatz²⁷, a criminal case where the appellant urged the Nebraska Supreme Court to apply a more lenient sentencing statute that had been adopted after the date of his offense. The Raatz case expresses the rule that "components of a series or collection of statutes pertaining to a certain subject matter are *in pari materia* and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious and sensible."²⁸ We note that Raatz also includes language essentially identical to an earlier case in which the Nebraska Supreme Court affirmed a decision by the Commission involving a grain warehouse bond. In Nebraska PSC v. Roberts Cattle Co.,²⁹ the court stated "a court must give effect to all parts of a statute, and if it can be avoided, no word, clause or sentence will be rejected as superfluous or meaningless; it is not

²⁵ Neb. Rev. Stat. § 86-1025(5). The term "911 Service" also has a broad statutory definition that is not limited to enhanced wireless 911 service: "911 service means the service a public safety answering point uses to receive and process 911 calls over a 911 service system. Neb. Rev. Stat. § 1018.

²⁶ CTIA Comments, 3, 5.

²⁷ 294 Neb. 852, 885 N.W.2d 38 (2016).

²⁸ Raatz, at 857-59.

²⁹ 268 Neb. 598, 685 N.W.2d 477 (2004).

within the province of a court to read anything plain, direct or unambiguous out of a statute.³⁰

Here, CTIA would have us harmonize the Wireless Act and the 911 Service System Act by ignoring LB 993 and reading the plain, direct and unambiguous language governing the use of the 911 Service System Fund entirely out of the statutes. This is directly contrary to the rules expressed in both Raatz and Roberts Cattle. By adopting LB 993, the legislature has unambiguously declared and directed that the money in 911 Service System Fund is available to support the 911 Service System as a whole and "may be used to pay for costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service that are determined by the commission to be eligible for funding."³¹ Contrary to the CTIA's argument, if the Commission were to limit the use of such funds solely for the benefit of enhanced wireless 911 service, we would be ignoring plain, direct and unambiguous language of the legislature.

Based on the foregoing, including, without limitation, the recommendation of the Advisory Board, the Commission acting in its capacity as statewide coordinating authority for the implementation of the 911 Service System and in the exercise of its statutory responsibility for statewide planning, implementation, coordination, funding assistance, deployment, and management and maintenance of the 911 service system in a cost-effective manner, hereby determines, pursuant to Neb. Rev. Stat. § 86-1028, that 100 percent of costs incurred by a PSAP in order to join a region are eligible for funding from monies in the 911 Service System Fund, including but not limited to funds held in any such PSAP's set-aside account.

The Commission further finds that use of set-aside funds by Chase County should be approved in the amount of up to **\$82,878.63**.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that 100 percent of costs incurred by a PSAP in order to join a region are eligible for funding from monies in the 911 Service System Fund, including but not limited to funds held in any such PSAP's set-aside account.

³⁰ Roberts Cattle, at 605.

³¹ Neb. Rev. Stat. § 86-1028(3).

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IT IS THEREFORE ORDERED that use of set-aside funds by Chase County is hereby approved in the amount of up to \$82,878.63.

By ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 16th day of October, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Crystal Knudsen *Mary Ridder*
Chair

ATTEST:

Michael H. ...
Executive Director

Frank E. Landis
//s//Frank E. Landis
//s//Mary Ridder