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November 24, 2015

Via Email

Quinn Ness, Chief
State of Montana Public Safety Services Bureau
State Information Technology Services Division
Mitchell Building
125 N Roberts
PO Box 200113
Helena, MT 59620-0113

Re: Cost Recovery for E911 Service Providers

Dear Mr. Ness:

I am writing on behalf of three rural independent wireless telecommunications providers in the State of Montana, Mid-Rivers Telephone Cooperative, Inc., Triangle Communications, and Sagebrush Cellular. These carriers cover tens of thousands of square miles of unserved areas in small towns like Ekalaka (population 332), tiny Tribal communities like Hays and Lodgepole, and unincorporated remote areas such as Antelope (an estimated population of 51). They were the first to provide cellular service in these communities where national carriers neglected to provide service, and in large portions of their service area they are the only wireless carrier. These carriers have built sites in small unserved communities and remote rural areas along unserved state highways. They have constructed cell towers and associated infrastructure primarily in Eastern and Central Montana that enable the provision of 911 and Enhanced 911 (“E911”) services in areas of the state that were previously unserved by any wireless telecommunications carrier. These rural carriers have the expertise, switching infrastructure, and desire to provide E911 coverage in additional unserved areas of the State and seek to recover the costs associated with the provision of such service.

While Section 10-4-101 of the Montana Code Annotated authorizes cost recovery for “the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with Federal Communications Commission orders for the delivery of 9-1-1 calls and data as set forth in 47 CFR 20.18,”¹ I understand that the Bureau has expressed concern that the FCC’s *King County*²

¹ See Montana Code Annotated, Section 10-4-101 (defining “allowable costs” that may be recovered by a wireless service provider engaged in the provision of E911 service).

² Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington (May 9, 2001) (“*King County Letter*” or “*King County*”).

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ruling may preclude the State from granting cost recovery to these rural companies. As discussed below, the *King County* ruling in no way precludes the State from granting such cost recovery.

The *King County Letter* addressed the allocation of responsibilities between wireless carriers and public safety answering points (“PSAPs”) in the context of the provision of Phase I E911 service in compliance with Section 20.18 of the Federal Communications Commission’s (“FCC”) rules. Section 20.18 requires certain providers of commercial mobile radio service (“CMRS”) to, among other things, transmit all wireless 911 calls to a PSAP or equivalent local emergency authority and, subject to a PSAP’s request, provide location and other data concerning each wireless 911 call. The *King County Letter* was written in response to a request for clarification by King County, Washington as to “whether the funding of network and database components of Phase I service³, and the interface of these components to the existing 911 system [is] the responsibility of the wireless carriers or the PSAPs.”⁴ The FCC determined that in order for wireless carriers to satisfy their obligation under Section 20.18(d) to provide Phase I information to the PSAP, carriers must deliver that information to the equipment that analyzes and distributes it (i.e., to the input to the 911 Selective Router). The FCC then concluded that “the appropriate demarcation point for allocating responsibilities and costs between wireless carriers and PSAPs” is the input to the 911 Selective Router.⁵

As noted by the FCC, the *King County Letter* “is in the nature of a declaratory ruling concerning the respective *responsibilities* of the parties under the Commission’s regulations governing Phase I of E911 service.”⁶ While the *King County Letter* also referred to an allocation of “responsibilities and costs,” the letter was addressing the allocation of responsibilities and costs between wireless carriers and *PSAPs*, and not an allocation of costs between wireless carriers and State funding sources. The letter simply made the determination of where in the process of delivering a wireless 911 call to a PSAP, responsibility shifted from the wireless carrier to the PSAP. The letter determined that the appropriate demarcation point is the Selective Router. Accordingly, the costs of bringing a 911 call *to* the Selective Router fall on the wireless carrier and the costs of bringing a call *from* the Selective Router to the PSAP fall on the PSAP. The FCC characterized the issue as “whether the wireless carrier or the PSAP *initially* bears a particular set of Phase I costs,” recognizing that “states are free to have a carrier cost recovery mechanism in place if they so choose.”⁷ The FCC’s determination that wireless carriers are *initially* responsible for the costs of delivering a Phase I call to the Selective Router does not mean that those costs may not be recovered pursuant to a State cost recovery mechanism.

Correspondence from your office has indicated that per *King County*, “allowable costs incurred from the mobile switch to the selective router which support 9-1-1 services are

³ Pursuant to Section 20.18(d) of the FCC’s rules, within six months of a valid PSAP request, subject wireless carriers “must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI. This is known as “Phase I” service.

⁴ *King County Letter* at p. 1.

⁵ *King County Letter* at p. 6, p. 2, n. 4.

⁶ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order on Reconsideration, FCC 02-146, CC Docket No. 94-102 (rel. July 24, 2002) at par. 9.

⁷ *King County Letter* at p. 4.

allowable.”⁸ To the extent that your office may interpret *King County* to preclude the recovery of costs incurred for the buildout of additional cell sites, such interpretation would also preclude recovery of *any costs* related to the provision of E911 in direct contravention of the express language of the *King County Letter* as well as the intent of the Montana statute. The FCC does not distinguish between costs incurred for different steps in the process of transmitting a wireless 911 call to the Selective Router. It says only that the PSAP is responsible for delivering such calls from the Selective Router and the associated costs, and that wireless carriers are responsible for all steps necessary to get the call to the Selective Router.

Recovery by rural telecommunications providers of costs incurred in the construction of cell sites necessary to provide E911 service is clearly authorized by Montana law. Cell sites are necessary to comply with the requirements of Section 20.18 of the FCC’s rules. That rule section requires providers to deliver 911 calls to the Selective Router. Accordingly, the costs that these companies seek to recover are “the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with Federal Communications Commission orders for the delivery of 9-1-1 calls and data as set forth in 47 CFR 20.18,” and are therefore recoverable under Section 10-4-101.

Section 10-4-101 was intended to improve public safety through the establishment of a comprehensive wireless 9-1-1 system, and enhanced 9-1-1 system.⁹ The establishment of the Emergency Telephone System Account’s allowance to wireless providers (Section 10-4-301, et. seq., Montana Code Annotated) was specifically designed to offset the costs to wireless providers to “buildout their infrastructure to provide more towers and more coverage” to ensure that individuals throughout the State are able to receive wireless 911 service in the event of an emergency.¹⁰ As the Public Safety Services Bureau is well aware, many remote and low density population areas in Montana remain without any wireless service because the demand for wireless service in these areas simply does not economically justify the decision to incur the costs to buildout a wireless network. By allowing rural wireless carriers to recover the costs of providing E911 service, the State enables carriers like Mid-Rivers, Triangle and Sagebrush to bring E911 and basic wireless telecommunications service to these historically unserved areas. The “allowable costs” definition set forth in the statute is clear and unambiguous. The statutory definition was written broadly to cover all costs associated with the provision of 911 service, and a constrained reading of the statute that would prevent the recovery of actual costs, based on a misinterpretation of an FCC declaratory ruling, would be contrary to the general purpose of the statute.

⁸ Email to Erin Lutts, Mid-Rivers Communications, from Rhonda A. Sullivan, Department of Administration, 911 Program Manager, dated August 4, 2015.

⁹ Mont. H. Comm. on Fed. Rel., Energy, and Telecomm., *Hearing on H. 27*, 60th Legis., Reg. Sess. (Jan. 8, 2007) (testimony of H. Rep. Robyn Driscoll, sponsor of H. 27) (available at http://montanalegislature.granicus.com/MediaPlayer.php?view_id=16&clip_id=10161 from 00:03:09 to 00:05:49).

¹⁰ Mont. H. Comm. on Appropriations, *Hearing on H. 27*, 60th Legis., Reg. Sess. (Mar. 9, 2007) (testimony of Jeff Brandt, Deputy Chief of Administration, Department of Administration) (available at http://montanalegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=9705 from 02:14:17 to 02:15:35).

We trust that this letter will dispel concerns about *King County* and provide the assurance you need to proceed with granting the cost recovery requests submitted by these providers. Should you have any questions, please let me know.

Sincerely,

/s/ Michael R. Bennet

Michael R. Bennet
Counsel for Mid-Rivers, Triangle & Sagebrush