

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through VII pertaining to Public)	PROPOSED ADOPTION
Safety Answering Point certification,)	
Funding and monitoring)	MAR Notice No 2-13-566

Comments of the Montana Telecommunications Association

Introduction

The Montana Telecommunications Association (MTA) is pleased to have an opportunity to comment on proposed rules implementing provisions of HB 61, passed by the 2017 Montana Legislature to enhance Montana’s deployment of emergency 911 system. MTA member companies serve over seventy percent of Montana’s geography and invest nearly \$100 million annually in building and operating advanced telecommunications infrastructure connecting rural citizens and communities throughout the state. These companies are proud of their longstanding and productive relationship with the State of Montana in delivering emergency telecommunications services to Montana’s residents, businesses and visitors.

MTA actively participated in the deliberations leading up to the introduction and ultimate enactment of HB 61. MTA continues to be involved in the development of rules implementing the provisions of HB 61.

The 9-1-1 Advisory Council (Council), of which MTA is a member, is chartered by Governor Steve Bullock to provide representatives of 9-1-1 jurisdictions and 9-1-1 stakeholders with the opportunity to participate in the development, implementation and management of the State of Montana's 911 Program. The Council is tasked with developing a Statewide Plan as provided under Sec. 13 of HB 61 (10-4-315 MCA) and proposing administrative rules to implement HB 61. The Council established two subcommittees: the Administrative Rules of Montana (ARM)

Subcommittee and the Statewide Plan/GIS Subcommittee. The rules will be used to guide the Department of Administration (Department) in administering the state's 911 program.

The Notice captioned above pertains to the first of such implementing rules drafted by the ARM Subcommittee and proposed for public rulemaking by the Council. The proposed rule addresses the provisions of Section 7 of HB 61 (codified as 10-4-305 MCA). Section 7 describes the manner in which public safety answering points (PSAPs) apply for and receive compensation for 911 systems. The Council is developing additional rules, specifically those implementing Sec. 8 (10-4-306 MCA) as well as terms by which the Department will produce the Statewide Plan.

Statewide Plan

Under the guidance of the Statewide Plan/GIS Subcommittee, the Council will recommend to the Department the terms of a contract to develop a Statewide Plan, which among other things will include "priorities for 9-1-1 systems in Montana and plans for next-generation 9-1-1 technology deployment." (10-4-315(4)(a).)

The Statewide Plan is not expected to be adopted until after the rules proposed in this Notice as well as the rules pertaining to the implementation of Sec. 8 are effective. Thus, the rules applying to implementation of Secs. 7 and 8 should reasonably make no reference to the Plan. Indeed, the Sec. 7 rules proposed herein do not refer to the Statewide Plan. If the Statewide Plan, once adopted, includes provisions that should be incorporated into Administrative Rules, the Department at such time may initiate a public rulemaking procedure under Montana Administrative Procedures Act (MAPA).

Continuity of Coverage

The ARM Subcommittee addressed the Sec. 7 (PSAP reimbursement) rules first, given the understanding that reimbursement for authorized PSAP expenses should be continuous as the legal framework for such reimbursement migrates from current law to new law on July 1, 2018. In other words, the Subcommittee determined there should be no gap in coverage for PSAPs while the Department adopted rules to comply with HB 61's effective dates.

Similarly, MTA emphasizes there should be no gap in provider reimbursement as the Department moves from implementing current law to implementing HB 61 in a timely manner.

NEW RULE VII: Allowable uses of funds

Adoption by reference. MTA urges the Department to clarify how rules are adopted by reference and whether such rules, once adopted by reference, are treated any differently than rules not adopted by reference. The ARM Subcommittee considered and approved for recommendation to the 911 Council New Rules I through VII in their entirety. The Council adopted for Notice in the Montana Administrative Register (MAR) the New Rules as recommended by the Subcommittee. Subsequently, NEW RULE VII was segregated in part from the rules as approved and adopted by reference as posted on the Department's web site.

MTA fears that this procedure is confusing to the public and less transparent. For example, will rules codified under the ARM be located in one place (e.g., the Secretary of State's online portal for the Rules of Montana), but separate rules adopted by reference be found on an entirely different web site, (e.g., under the public communications bureau's web portal)?

MTA recommends: 1) that the process by which rules are adopted by reference is made clear prior to such adoption by reference; 2) any rules adopted by reference must be located in the same place as any other related rules adopted (in this case, under ARM Chapter 2, subchapter

3); and 3) any rules adopted by reference must clearly state that they are no different than proposed, and cannot be changed without a separate and distinct public rulemaking proceeding under the Montana Administrative Procedures Act (MAPA). It is particularly confusing when only a portion of a NEW RULE (such as the “allowable uses” portion) appears to be segregated out and posted on a separate web site, while “the rest” of the rule pertaining to the allocation of shared expenses remains.

Separate proceeding. Given the confusion resulting from the process of *ex post* adoption by reference, the Department’s counsel announced at the public rulemaking hearing on January 12, 2018, that the Department would delay publication of NEW RULE VII to allow for separate public comment. Parties also commented, according to counsel at the hearing, that initially it was difficult to locate the web page on which allowable uses were posted. The Department subsequently remedied that situation by locating the allowable uses link on the Public Safety Communications Bureau’s home page.

MTA recommends that any reference in the rules to a web site containing rules adopted by reference clearly and accurately identify the specific URL for such rules adopted by reference especially if they are not located in the same place as the rest of the rules to which they apply. Moreover, should the separate proceeding on allowable uses of funds, as announced by the Department on January 12, extend beyond June 30, 2018—the effective date of Sec. 7 of HB 61—under what rules would PSAPs receive reimbursement?

Additional uses. NEW RULE VII (3) provides that “the department may approve additional uses of funds on a case-by-case basis upon request by a certified PSAP, provided that the use would clearly support operation, maintenance, or enhancement of the 9-1-1 system.” MTA believes this provision runs contrary to the intent of HB 61. One of the policies intentionally adopted by HB 61 was to remove the process by which allowable uses of funds was subject to agency discretion under administrative “guidelines,” as opposed to publicly adopted rules. HB 61, among other things, intended to subject the determination of allowable uses of funds to a

public rulemaking under MAPA. This proposed rule returns the allowable use determination to agency discretion. At the very least, if the Department adopts this rule, MTA urges the addition of a provision that would require any case-by-case determination to be subject to public notice, review and adoption by the 911 Council.

MACo comments. The Montana Association of Counties (MACo) filed comments prior to the January 12 2018 public hearing stating their belief that “the original intent of funds was to be used for capital expenditures and other 9-1-1 related one-time expenditures and not used for ongoing operational expenses.” MTA concurs. Opening up the range of allowable uses of funds to include operational activities substantially expands the kinds of expenses that may only indirectly relate to 911 systems deployment. There was an understanding at least by some, if not most parties that personnel expenses, for example, would be the responsibility of the county hosting a PSAP, while expenditures on hardware and software (capital expenses) would be allowable under the new rules.

Nonetheless, the ARM Subcommittee decided to adopt the more expansive list of allowable uses, giving counties and PSAPs the discretion to use limited funds as they so choose.

Statements of Reasonable Necessity

MTA commends the Department for publishing clear and concise statements of reasonable necessity that describe the intent of the proposed rules. It is not always the case that proposed rules are accompanied by explanations that transparently inform parties regarding agency intent.

Conclusion

MTA appreciates the considerable efforts of the ARM Subcommittee and the Department in developing rules that faithfully implement HB 61 in a transparent and accountable manner. We

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January 19, 2018

look forward to our continued participation on the ARM Subcommittee and Council as they endeavor to develop additional implementing rules for Sec. 8 and a Statewide Plan.

Respectfully submitted,

s/s

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