



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE INFORMATION TECHNOLOGY SERVICES DIVISION
PUBLIC SAFETY COMMUNICATIONS BUREAU



Steve Bullock
Governor

Mr. Michael R. Bennet
Bennet & Bennet, PLLC
6124 MacArthur Boulevard
Bethesda, MD 20816

Re: Cost Recovery for E911 Service Providers

Dear Mr. Bennet:

I am writing in response to your November 24, 2015 letter to Mr. Quinn Ness on behalf of Mid-Rivers Telephone Cooperative, Inc., Triangle Communications, and Sagebrush Cellular.

There appears to be a misunderstanding regarding the Montana Department of Administration's (Department) position concerning wireless enhanced cost recovery under Montana law. The Department generally agrees with your assessment of the King County ruling. Specifically, the Department concurs that the ruling: (i) determined where in the process of delivering a wireless 911 call responsibilities shifted from the carrier to the PSAP and (ii) does not preclude the State from granting cost recovery under applicable law.

Where the parties diverge in their viewpoint is what actual costs of wireless carriers are recoverable under State law. Section 10-4-101(1), MCA, states: "'Allowable costs' means 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 911 calls and data as set forth in 47 CFR 20.18." The definition on its face does not include the costs of installing fixed infrastructure like cell sites. Under Montana law, words used in statutes are construed according to the context and the approved usage of the language. *1-2-106, MCA*. "Hardware" means the mechanical, magnetic, and electronic design, structure, and devices of a computer or ware made of metal, like fittings, trimming, parts of machines and appliances." *Webster's New World Dictionary*, Third College Ed., p.614; *Webster's Third New International Dictionary*, p. 1033. The accepted definition of hardware does not encompass physical infrastructure.

In turn, 47 CFR 20.18 outlines the requirements for basic 911 services and Phase I and Phase II enhanced 911 services. The rule does draw a distinction between hardware and software on the one hand and fixed infrastructure on the other. For example, under 47 CFR 20.18 (g)(2), which describes the phase-in for handset-based technologies, the licensee is required to "Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced service;" If hardware and software were the same as fixed infrastructure, no need would exist to distinguish, as this provision does, hardware and software from fixed infrastructure. Hardware and software are clearly different from fixed infrastructure like cell sites.

The definition of "allowable costs" was included in HB 27, which ultimately became 10-4-101(1), MCA. The definition was tweaked in 2013 (HB 575) to include the last clause of the current definition—(...for the delivery of 9-1-1 calls and data as set forth in 47 CFR 20.18.) There was



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testimony by a number of individuals on HB 27 and HB 575, but of course the statutory language, if clear, trumps any testimony on the bill.

Most tellingly, on September 8, 2014 the Energy and Telecommunications Interim Committee held a public hearing that discussed, among other things, 911 stranded costs and the possibility of introducing legislation to change the definition of “allowable costs.” Mid-Rivers provided written comments, advocating expanding the definition so as:

to allow more of the provider funds to be spent by providers for improving 9-1-1 access in Montana. This may be as simple as striking some of the existing language from the current definition, such as:

10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Allowable costs” means 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.~~

August 20, 2014 email from Mid-Rivers employee Erin Lutts to Sonja Nowakowski, legislative staff.

These suggested changes show that Mid-Rivers understood that the definition of “allowable costs” did and does not include infrastructure costs. Otherwise, Mid-Rivers would not have suggested expanding the definition. In its written comments, the Montana Independent Telecommunications Systems (since dissolved) also stated the current definition of “allowable costs” was a “major barrier to increasing wireless E911 access. MITS supports the expansion of the definition of allowable costs to increase access to 911 in the unserved frontier and remote areas of the state.” *August 20, 2014 letter from Bonnie Lorang, General Manager, MITS, LLC to Ms. Nowakowski.* Like Mid-Rivers, MITS would not have advocated expanding the definition if it believed infrastructure costs were reimbursable under the existing definition.

The Montana Telecommunications Association also provided written comments, stating that “funding wireless, wireline, or other infrastructure or ‘related expenses’ for communications network facilities or services is not a function of the 911 account. Customers pay into the 911 fund not to build wireless networks...” *September 8, 2014 written statement of Montana Telecommunications Association.* A representative from AT&T also opposed expanding the definition. *September 8, 2014 oral testimony of Mark Baker (AT&T).*

What all these comments have in common was the understanding that the definition of “allowable costs” did not include funding infrastructure like cell towers. Mid-Rivers and MITS supported expanding the definition, while MTA and AT&T advised caution. In the end, legislation was not offered in the 2015 legislative session to change the definition.



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Over the years, Mid-Rivers and Sagebrush Cellular have requested reimbursement for hardware, software and data costs that have been approved by the Department, and these entities are currently receiving reimbursement for these costs consistent with the law and the Department's Cost Recovery Guidelines for Montana Wireless E911 Service Providers. Infrastructure build-out costs, however, are not allowable costs.

The Department looks forward to continuing its partnership with Mid-Rivers Telephone Cooperative, Inc., Triangle Communications, and Sagebrush Cellular. Should you have any questions, please let me know.

Sincerely,

Quinn Ness, Chief
Public Safety Communications Bureau
State Information Technology Services Division
Montana Department of Administration