**9-1-1 ARM-Rule Making Subcommittee Meeting**

 **Thursday, April 5, 2018**

**Conference Call Minutes**

**Present**

Geoff Feiss, MTA, Subcommittee Chair

Adriane Beck, Missoula Co.

Liz Brooks, Flathead 9-1-1

Kim Burdick, Chouteau Co.

Steve Hadden, Jefferson Co.

Jennie Stapp, MSL

**Absent**

Denis Pitman, Yellowstone Co.

Bill Nyby, Sheridan Co.

**Staff**

Don Harris, DOA Quinn Ness, PSCB

Wing Spooner, PSCB Rhonda Sullivan, PSCB

**Guests**

Sandra Barrows, Barrows Consulting

Rep. Frank Garner, Montana Legislature

Dorothy Gremaux, Central MT 9-1-1

Lisa Kelly, CenturyLink

Chuck Lee, Fallon County 9-1-1

Kerry O’Connell, The Sales Group

Shantil Siaperas, MACo

Remi Sun, Sagebrush Cellular

**Call to Order**: Geoff Feiss called the meeting to order. A roll call was taken. A quorum was present.

**Adoption of Meeting Minutes:** The minutes from the March 22, 2018 meeting were not available to be approved.

**Review of DRAFT Administrative Rules: 9-1-1 Grant Program** – Geoff indicated we have essentially two versions of the rules. He, Quinn and Don met and incorporated the subcommittee discussion from the last conference call. Discussion took place on how to best review the two versions. Quinn’s preference was to go over Rules I, II and III from the department’s draft (March 28, 2018 #2) and get concurrence on those. Recommended changes in this draft are based on discussion Don Harris had with Deputy Director and Chief Legal Counsel, Mike Manion. Quinn said the comments section on the department draft show areas where they were trying to specifically implement requirements that are in statute.

**NEW RULE I: GRANT PROGRAM DEFINITIONS** – Quinn explained that the department draft includes changes approved by the subcommittee at its last meeting. No additional concerns or comments were expressed.

**NEW RULE II: ELIGIBILITY REQUIREMENTS FOR GRANTS** – Quinn noted the comment, which stated that rules for grant funding must include eligibility requirements for entities applying for grants. NEW RULE II (1) describes eligible applicants as follows:

“The following are eligible to apply for grants as provided for in 10-4-306, MCA:”

(a) private telecommunications providers; and

(b) local government entities that host a certified public safety answering point.

Quinn explained that the language in (2) was requested by wireless providers. It states:

“(2) For grant awards made during State Fiscal Year 2019, expenditures incurred by a grant recipient between July 1, 2018 and the grant award date are eligible for reimbursement with 9-1-1 grant program funding.”

Adrianne clarified that this eligibility also applies to PSAPs.

**Motion:** Jennie made a motion to approve NEW RULE 1 and II for submission to the Council. The motion was seconded by Adrianne. Chuck Lee asked for clarification. From July 1, 2018 through when the grants are awarded, when is the amount of available money known? Quinn said in September, the department will post how much is in the grant account. Applications will be received by December, and grant awards will be made in January. Then any expenses incurred between July 1, 2018 through January 2019 could be allowable for reimbursement with grant funds.

The motion carried.

**NEW RULE III APPLICATION FOR GRANTS** – This was previously proposed as NEW RULE IV but was re-numbered because NEW RULE III was combined with NEW RULE II. This department draft (March 28, #2) includes proposed changes discussed at the last meeting.

* Geoff noted that references to “in conjunction” were changed to “in consultation,” which mirrors language used in statute.
* Geoff inquired as to why NEW RULE II was not referenced in “(a) a description of the applicant's eligibility, per the definitions in NEW RULE I.” Don Harris explained that it was not referenced because it does not contain any definitions. The thinking is that NEW RULE II applies on its own terms. It establishes the eligibility for grants.
* There were no changes to item (b).
* NEW RULE III (c) had been revised slightly to read: “an indication of allowable uses provided in 10-4-306(2) MCA, for which grant funds will be expended.” Geoff compared this language to language he proposed in March 28 draft #3, which read: (c) indication of the use(s) described in 10-4-306(2) for which the applicant is applying. It was suggested that this sentence be revised to read “for which grant funds will be applied for and expended.” Quinn noted that “allowable uses” usually indicates the expenditure of. But, the two terms could be tied together. The applicant is applying for the same allowable uses, and that’s what would be approved and that’s what the funds would have to be expended for.
	+ Adrianne suggested simplifying the rule by saying, the form shall include such information as the department deems necessary to process the application. All of this information will have to be listed on the application anyway, so it may not need to be in rule.
	+ Geoff thinks there should be some sort of common standard outlining what information is expected from applicants rather than saying “whatever the department wants.” It should be more predictable for applicants to know what is expected of them on a standard application form.
	+ Dorothy Gremaux said this has never been an issue in the past. PSAPs generally know what needs to be provided on grant applications and they usually know what to expect from the 9‑1‑1 Program office. She doesn’t see why it has to be written in rule especially because things change.
	+ Geoff explained that part of the intention is to provide some predictability in the application process at least for the providers, who may not have had the same amount of predictability that PSAPs have had. The intent is to provide a more predictable process that has certain minimal information that everybody can concur with. This will limit the flexibility or discretion to change the rules in mid-stream. Moreover, further down on the application form, it asks for information that will distinguish applications that are from providers, PSAPs, or PSAPs working with providers. Geoff believes it is important that we have some expectation in the application that provides the information that the Council and department will need to evaluate grants. He thinks that the more information that is specified in the rules for applications, will provide a process by which later in the rules we can prioritize funding. We should be sure to collect the kind of information needed to make those decisions. So, he would argue that some sort of general skeleton of information needs to be collected, and he said that such guidelines appear in other rules used by the FCC and the PSC to provide guidance on what is expected of applicants. For the purposes of implementing this law, a list of expectations should be developed. Information to enable clear priorities should be in the application for grants.
	+ Kerry O’Connell thinks PSAPs also want to make sure they are solving problems, and when Geoff brings up that the rules are changing mid-stream, she doesn’t believe that PSAPs have experienced that. She asked him to expound on this. Geoff explained that providers are concerned when they apply for reimbursement under current rules that they are uncertain if they will be reimbursed. That uncertainty doesn’t seem to exist in the PSAP world. PSAPs don’t have to apply to the department to receive permission to spend the money they receive. That is different in the provider world. Providers actually apply for reimbursement. Kerry clarified that this seems to be the issue that Geoff is trying to solve, and asked members to consider as they look through the draft materials to see if this solves the problem.
	+ Quinn affirmed Kerry’s comments and said that he believes abolishing the cost recovery program and replacing it with the grant program resolves this issue. The difference is that in the existing cost recovery program, providers incur those expenses and then submit documentation to be reimbursed for the expenditures, which creates uncertainty. The department has had to determine whether those expenses are allowable under statute. In the case of a grant, they will apply before the expenditures are incurred and a grant award will be made. The determination of whether it is for an allowable use has already been made. Plus, there will be a grant contract, so there will be a legal obligation for the department to reimburse the provider for those allowable costs that were approved in the application. The change in the two programs should eliminate this concern.
	+ Rhonda noted that the 9-1-1 Program has been consistent in its guidelines and rules since the wireless cost recovery program started in 2007. The Program has never changed any rules on what is or is not allowable. Quinn agreed and said that the only change was when the legislature amended the definition of allowable costs for cost recovery in statute. This was not a change in the guidelines, it was a change in law. The request for the change did not come from the 9-1-1 Program.
	+ Dorothy expressed her concern that putting too many rules in a document like this will create time delays. PSAPs don’t have time to wait months and months for the grant to be awarded.

Quinn asked if NEW RULE III (1) should be stricken. In the absence of this rule, Geoff asked what would guide the department? Quinn said the department will still develop and publish an application form and put it on the website. The difference here is whether the subcommittee wants to specially prescribe the content of the application form, or if members want to let the 9-1-1 Program come up with a form that will satisfy the statute and rules. Adrianne agreed and said what will prescribe the content of the application is what is in statute and the rules. She doesn’t think we need to get too prescriptive on how that is accomplished. Dorothy agreed.

Shantil suggested that the department come up with a draft application form and let the Council review it. Don Harris said that a draft application form is necessary. The rules cannot be presented to the Council without a sample application form. Some type of document is needed to be available when the rules go out for public comment. Quinn explained that the reason Appendix A is not attached to this draft is that so many changes have been made to the draft rules since it was first presented back in January, that it was becoming unmanageable. The intent was to give the subcommittee the opportunity to make final decision on the draft rules and then the of the application form would be produced. Don said information in (a) through (d) will be asked for regardless if those items are included on an application form. He doesn’t see taking them out as beneficial, nor does he believe that leaving them in is required. Ultimately, once a final draft of application form emerges from the subcommittee, it will need to be approved by the Council and department.

Jennie asked if everyone would be more comfortable if the rule stated more simply that the grant application form is approved by the department in consultation with the 9-1-1 Advisory Council for every grant application cycle. Quinn proposed this language: “The department, in consultation with the 9-1-1 Advisory Council, shall develop and post to the department’s website an application form on an annual basis before each grant cycle.”

Geoff brought up adopting the application form by reference. Quinn explained the logistics. In order to adopt by reference in rule, the form has to be completed and posted on the website before the rules are officially issued. The subcommittee is discussing having a directive in rule that the department shall develop an application form in consultation with the Advisory Council and post it to the website. If the form were adopted by reference, each year on an annual basis the department would have to enter into an administrative rules process to amend the rule. Geoff proposed removing the words, “on an annual basis” so the application form could be adopted by reference.

Don indicated that there is a need to specify in rule the kinds of questions that will be asked so as to provide some certainty. The way the rule is written now already shows the application questions that have been approved by the department in consultation with the Advisory Council, and everybody knows what will be asked. The application form will be approved and won’t be changed it until we go through a rule-making cycle. If an annual process is adopted, the greater the need to spell out in rule the kinds of things you are asking for in the application form. If the subcommittee wants to avoid putting a lot of prescriptive language in rule, perhaps (1) could simply say “The form shall require the applicant to provide such information as the department deems necessary to process the application.”

Geoff said the application form either needs to be adopted in rule by reference, (but it doesn’t have to be annually), or the rules must list what is needed in the application. A public vetting of the application form needs to be accommodated somewhere. Don thinks this is beneficial so that people know what to expect.

Steve Hadden believes that the rules should have at least some reference to what it is the department will be looking at with respect to vetting an application, which will provide the applicant with guidance. Otherwise, the department may end up with incomplete applications or applications being submitted that are not for a qualified purpose. These potential problems could be eliminated with a detailed application form. Without some guidance in rule, there may be a vacuum.

Adrianne said that the application form itself needs to be pretty detailed and specific. A potential applicant is unlikely to seek additional clarification in rule beyond what the applicant would find on the application form.

Geoff asked if Steve is comfortable with adopting the application form by reference. Steve is comfortable with that however, he expressed concern over possibly creating a situation where the application process becomes too cumbersome. Quinn pointed out that the 9-1-1 Program does not want an overly bureaucratic process. Anything the Program requests on the application form will be directly relevant to requirements that are in statute and rule. For example, the applicant will declare that it is an eligible applicant and the grant is for an allowable use. Once the criteria are established for how the application will be reviewed, then for each criterion, a request for relevant information would need to be included. Based on his experience with grant management, he believes that none of the applicants will consult the rules or the statute to interpret what they have to put in the application. An application form and instructions for filling it out will have to be part of the process. The department will engage with and be in consultation with the 9-1-1 Advisory Council. It would never develop and adopt an application form without concurrence from the Advisory Council because this is the Council’s program. Quinn suggested the following wording: “(1) An applicant for grant funds shall submit an application on a form approved by the department in consultation with the 9-1-1 Advisory Council.” The rest of what is in (1) and the declarations in (2) will all be part of the form that the 9‑1-1 Advisory Council will review and approve.

Geoff believes greater predictability is needed, and the application form should be adopted in rule by reference. This will give applicants a more tangible, predictable process. Geoff recommended retaining the following verbiage: “(1) An applicant for grant funds shall submit an application on a form approved by the department in consultation with the 9-1-1 Advisory Council and adopted by reference in this rule. Application forms may be found on the department's website. The form shall require the applicant to provide such information as the department deems necessary to process the application.”

**Motion:** Liz moved to amend NEW RULE III to keep the text of (1) and insert a period after the word “application.” Adrianne seconded. The motion carried.

To clarify, paragraphs (a) through (e) are being removed as well as subsection (2). Geoff also noted that Don will be developing an application form for the subcommittee to review and approve.

**NEW RULE III: (3)** – Geoff said that these items will be discussed in the context of reviewing an application. However, Quinn believed that Geoff had specifically wanted information about submitting a trade secret confidentiality affidavit as part of the rule. Geoff believed that this would be in the application that will be adopted by reference.

Adrianne asked if the grant funds are for a 9-1-1 purpose, what possible trade secrets could there be? Also, as a government entity subject to Freedom of Information Act (FOIA) requests, is it even possible? Quinn explained that for local government applicants, this provision would not apply. It was specifically requested by telecommunications providers. Adrianne reiterated the question of what trade secrets would apply to a telco for a 9-1-1 purpose. Geoff said the answer is not so much in the application, but more so to the post award process, for example, if there is an audit. Providers sign non-disclosure agreements and are sometimes not allowed to reveal specific details about certain products or services that they incorporate. The right to trade secrets is in the constitution and there is a trade secrets law. So, a notice that confidentiality will be honored should be part of the process.

Steve said that under a FOIA request the standard is does the public’s right to know outweigh the corporation’s right to privacy. Patented material, trademarked material, processes used in the computer world, etc. may be trade secrets, so the argument is going to be that the provider’s right to privacy outweighs the public’s right to know.

Quinn noted that (3) applies to the application process, while NEW RULE V: GRANT REPORTING, MONITORING AND RECORDKEEPING (5) addresses the subject again with this sentence: “A grant award recipient may request protection from public disclosure of information subject to trade secret confidentiality pursuant to Montana’s Trade Secrets Act by submitting a trade secret confidentiality affidavit in the form found on the department's website.”

The reason Quinn pointed this out was because Geoff made the comment that providers were more specifically interested in potentially getting trade secret confidentiality on the documentation submitted to the department for reimbursement of funds. If members do not want this provision to apply to the application, then it can be stricken. Adrianne said she agreed with striking it from the application area because if the Council is going to be transparent about how it is prioritizing and allocating money and there is a notion that there is some confidential information that is not being shared, it would raise eyebrows. Liz agreed completely, noting that transparency is essential in government transactions. Trade secret confidentiality is adequately covered in NEW RULE V and is not needed in this section.

Geoff asked for providers to weigh in. Sandra Barrows does not see that there would be an issue with removing this language from the application process. More of the concern is focused on the documentation provided later in the process. Geoff said that was his understanding too, unless the application asks for confidential information.

**Motion:** Steve Hadden moved to delete NEW RULE III (3). Liz seconded. The motion carried.

**NEW RULE III: (4) –** Geoff switched this item into a separate rule. Quinn reminded Geoff of a previous discussion that recommended consolidating rules with the goal of having fewer rules and more sub-sections. Don said it makes sense to do this. Is September 30 an arbitrary date or is this when you know what the fund balance is. Quinn explained the department needs through July and August to make fiscal year-end transactions, so it would not know what the account balance is until September of that year. The Program is comfortable with this date.

**Motion:** Adrianne moved to adopt sub-part (4). Kimberly seconded. The motion passed.

**NEW RULE III: (5) –** Quinn pointed out that providers and PSAPs are given 60 days to develop and submit an application and asked if this was an adequate amount of time. Adrianne said it is a reasonable amount of time. Geoff did not hear back from providers that there was a problem with 60 days.

**Motion:** Steve moved to adopt sub-part (5) as written. Adrianne seconded. The motion carried.

**NEW RULE III: (6)** – Here is the wording from the department draft Version # 2 - (6) The department will make final grant awards within 60 days of receiving the 9‑1-1 Advisory Council's recommendations regarding application eligibility, preference provided in 10-4-306(3) MCA, criteria scoring and grant awards.

Geoff pointed out the process outlined in draft Version #3 in which the applicant has the ability to remedy a deficiency on an application. He said he did not think the subcommittee decided to reject an opportunity for redress by an applicant. Quinn noted that the subcommittee actually did take action on the process and struck items (3), (4) and (5). Geoff did not remember the conversation in the same way. He agreed that members discussed the applicant not having the opportunity to take a “second bite of the apple” if the application is incomplete or not responsive. But he did not recall the subcommittee disallowing the ability for redress on applications that were rejected for reasons other than incompleteness. This would be a situation where the department decided for one reason or another that an application doesn’t pass muster. There should be an opportunity for the applicant to talk to the department to determine what is wrong and how it can be fixed.

Quinn said that the term “pass muster” would directly apply to eligibility criteria, i.e. is the application from an eligible applicant and is it for an eligible use. He is not sure what else the term could apply to. Geoff asked how “eligible use” will be determined, and Quinn indicated that it would be made by the 9-1-1 Advisory Council. The applicant will have to describe in their application their proposed use of funds and these need to be allowable as defined in statute. Quinn clarified “(6) The department will make final grant awards within 60 days of receiving the 9-1-1 Advisory Council’s recommendations. . .” The sentence continues with the following text: “regarding application eligibility, preference provided in 10-4-306(3) MCA, criteria scoring and grant awards.” So, the Advisory Council provides recommendations based on eligibility, preference, criteria scoring and the grant award itself. After receiving the recommendation, the department has 60 days to make final grant awards.

Adrianne said she likes the way the rule is proposed. From a transparency perspective, if the 9-1-1 Advisory Council is looking at just those things that Quinn described, then a chance to go directly to the department to plead your case would circumvent the process.

Kerry asked how the timing was arrived at and whether it conflicts with the earlier proposal (in NEW RULE II: ELIGIBILITY REQUIREMENTS FOR GRANTS) where expenditures incurred by a grant recipient between July 1, 2018 and the grant award date are eligible for reimbursement.

Quinn responded by saying they aren’t contradictory because they are two separate parts of the process. What is being discussed here is submission of an application, review of the application, recommendations from the Advisory Council, and the final grant award by the department. Once an award is made, then expenditures incurred by a grant recipient would be allowable. Grant funds could be used to reimburse an expense that was incurred from July 1 until that award date. So, the 60-day time frames don’t have any impact on the July 1 rule. If a grant is not awarded, then the July 1 date is irrelevant.

Geoff summarized that it appears the subcommittee is not adopting a remedy process or opportunity for redress. Geoff read the following text “the department will review all submitted applications for completeness and eligibility,” and asked how that will work. Quinn indicated that this is carry-over language from a previous draft rule that Geoff proposed.

Members discussed several different wording options to describe the application process and eliminate concerns about the department reviewing applications for completeness and eligibility. Steve suggested the following language: “The department shall review all grant requests in accordance with MCA 10-4-306.” Quinn said this would be a viable option, and also suggested striking the last sentence in section (5), as follows:

(5) Applications for grants must be received by the department annually within 60 days of posted notice that the department is accepting applications. Notice of the application deadline shall be posted on the department's website. ~~After the application period ends, the department will~~ ~~review all submitted applications for completeness and eligibility.~~

Geoff clarified that the department receives all the applications, and all the applications go to the Advisory Council for review. Geoff said that after the deadline ends, the rule should say that the department will submit all applications to the Advisory Council for review. This step is missing.

Quinn questioned whether this step needs to be prescribed in rule since it is an inherent part of the process. Geoff clarified that the department receives all the applications and all the applications go to the Council for review. There is no intermediary screening process. Steve suggested adding the following additional wording at the end of paragraph (6) . . . grant awards “for all applications received by the department.” Steve said that the statute does not contemplate that the department will pick and choose which applications go to the Advisory Council. That is just not contained within the law.

Don Harris said perhaps sub-section (6) should say: “the department will review all applications and make final grants awards within 60 days of receiving the Advisory Council’s recommendations. . .” Geoff clarified that the final sentence in sub-section (5) will be deleted. Geoff indicated that the criteria scoring will be discussed next.

Jennie asked if the department’s review comes after receiving Advisory Council recommendations? Jennie would hope the department would review applications at least for eligibility prior to sending them to Advisory Council members so the Council is not reviewing ineligible applications. Geoff agreed and expressed support for Steve’s wording.

Quinn explained that the 9-1-1 Program does not want to make initial decisions regarding eligibility, because this seems so contentious. Naturally, the department will have to review the applications because the chairman of the 9-1-1 Advisory Council is the Department Director or the Director’s designee. The department will review them as a member of the Advisory Council. If the Advisory Council wants staff’s opinion, it can ask for it, but Quinn is not comfortable with the 9-1-1 Program making eligibility decisions or removing applications from consideration by the Council. Hence, he supports removing the step that says the department will review applications for completeness and eligibility.

Geoff said that he is comfortable with removing the last sentence in sub-section (5) because that removes the department from any prior approval process. Thereby his concern about having some sort of remedy or redress would be addressed if the window closes, the department submits all applications to the Council and then the Council has a public meeting process where there is some sort of ability or prior notice for all applicants to present their application to the Council. So, there isn’t a pre-Council screening of applications and there is a pre-Council notice to all applicants to give them plenty of time to participate.

**Motion:** Adrianne moved to adopt revised sub-section (5) as follows: “Applications for grants must be received by the department annually within 60 days of posted notice that the department is accepting applications. Notice of the application deadline shall be posted on the department's website. Liz seconded. The motion carried.

Geoff reiterated that it is implied a meeting of the Council where all applications are being considered by the Council and all applicants have an opportunity for notice of the Council meeting and discussion of their application.

Quinn said this is correct with a caveat. The Council will have an open and transparent review of the applications. Members of the public and applicants can attend Advisory Council meetings. The Council needs to decide if applicants can present their applications or provide clarification on their applications during the meeting. From his prior experience serving on grant review councils, you have to make sure that this opportunity is open to everyone and that you provide adequate notice that they can attend the meeting and make comment on their applications. On the current Council that Quinn serves on, applicants can attend the meeting, but they cannot make comment on the application. He thinks the subcommittee will need to have this discussion with the Advisory Council. Do you want applicants to present their applications in person, do you want them to answer questions? This must be clarified ahead of time.

Jennie was asked for her opinion. She personally believes that the application form is the process where the applicants have to make their best case for funding. She, too, would welcome Council discussion on the topic. She doesn’t think there is a need for—and thinks it would unfairly advantage applicants who could be there to provide additional comment about their application. Of course, these are open public meetings, and applicants would be welcome to attend. Since public meetings have to have an opportunity for public comment, but she would not be in favor of having an open comment period as part of the Council’s deliberations. Dorothy total concurred with Jennie. It’s a bad idea.

Adrianne stated that if applicants are allowed to give presentations on their applications, it would be overly burdensome for Advisory Council members. When the Council is deliberating and making recommendations to fund or not fund an application, she believes that if that is an action on the Advisory Council, the Council has to take comments. She will defer to Don or Steve on this.

Don said, yes, the Council would have to be open to receiving some comment, but the Council wouldn’t necessarily be making decisions based on comments. From a legal standpoint, Don concurs with the prior comments about the danger inherent to basically changing an application as it sits before the 9-1-1 Advisory Council. Problems could arise. Geoff does not envision a public comment period that would change the application, but it certainly would enable applicants to explain their applications. If all applications are presented to the Council for review, the public comment period would be sufficient for applicants to provide such an explanation. Jennie indicated that her hope would be that the application and how it is presented is sufficient for an applicant to explain their application. If it isn’t, then there is something wrong with the application process or deficiencies in the application itself. Liz agreed.

Geoff said there are two things the Council needs to be careful about: problematic sub-text as written toward the end of version #2 and we need to be really clear on what’s in the application in that it provides the Council with sufficient information to make determinations. The subcommittee hasn’t gotten to how the council makes those determinations, which means we need to get really clear rules on how the Council makes its determinations.

Geoff re-directed the group to the topic that the subcommittee was discussing: “(6) The department will make final grant awards within 60 days of receiving the 9-1-1 Advisory Council's recommendations regarding application eligibility, preference provided in 10-4-306(3) MCA, criteria scoring and grant awards.”

Geoff is uncomfortable with the “criteria scoring” and the “grant awards” language. So, for purposes right now, he would suggest ending the sentence after “MCA.”

Quinn suggested adding a period after the word “recommendation,” so it reads: “(6) The department will make final grant awards within 60 days of receiving the 9-1-1 Advisory Council's recommendations.” Then, a description of how the 9-1-1 Advisory Council makes its recommendations can be addressed in the next section.

Members discussed whether the 60-day time period is even needed. Geoff would like to see a deadline by which the awards will be granted. Quinn asked Don for his opinion on number of days needed to issue the grant award letter and to negotiate and execute the grant contract. Members also discussed the terminology of “making a final grant award” to ensure shared agreement that it entails the department making grant award decisions and issuing grant award letters. After much discussion, the subcommittee decided on a 90-day time frame to make the award and notify the applicant.

**Motion:** Steve Hadden moved to adopt Paragraph 6 as amended: “(6) The department will make final grant awards and provide notification to the applicant within 90 days of receiving the 9-1-1 Advisory Council's recommendations.” Jennie seconded. The motion carried.

**NEW RULE IV: APPLICATION PROCESS -**

Geoff explained that Version # 2, the department’s draft, has scoring criteria. Geoff’s version #3 does not. He believes more clarifying language is needed to explain the difference between a PSAP seeking funds on its own for essentially procurement purposes versus a PSAP collaborating with a provider for funds to deliver some sort of network solution for NG911. The issue is how do we distinguish between a provider application (Priority 1), PSAP working with a provider (Priority 1.5) vs. just a PSAP (Priority 2). Geoff disagreed with the scoring mechanism on version #2.

Quinn provided some background for proposing NEW RULE IV APPLICANT PREFERENCE AND CRITERIA FOR AWARDING GRANTS in the department draft, Version #2, found on page 9. Sub-section (1) reads: “The department, in consultation with the 9-1-1 advisory council, shall apply the applicant preference provided in 10-4-306(3).” This reference to statute states that preference must be given to applications in the following order of priority: “(a) requests by private telecommunications providers or by local government entities that host public safety answering points by working with a private telecommunications provider; and (b) requests by local government entities that host public safety answering points.” This preference is in law. It was the legislature’s intent that applications from private telecommunications providers are equal in preference to applications from PSAPs working with a private telecommunications provider because the word “or” was used in sub-section (a). They have equal preference.

Clarification is needed on the term, “working with.” Quinn and Don have had several discussions on this issue, and one proposition they’ve considered is if a grant award is made to a PSAP working with a provider, it would be a conditional award. The PSAP would have to engage in a contract for services/execute a procurement with a provider. Geoff disagrees. He believes there is a distinction in statute between a PSAP

carrying on what the PSAP does with 75% of the funds that are collected for 9-1-1 versus a PSAP working with a provider. The implication is that a PSAP working with a provider is different than a procurement. A procurement by definition means working with a provider. He strongly believes that the legislature did not mean for 75¢ of 9-1-1 funds to go to PSAPs and that 25¢ goes to PSAPs, too. The grant fund is intended to go to providers for purposes of meeting section 10-4-306 and to providers and PSAPs working together in the same vein to deliver NG911 network-based solutions as distinct from Priority 2, which is just PSAPs.

Quinn pointed out two relevant items from 10-4-306 if you look at it in its entirety: 1) Eligible applicants and eligible grant recipients are providers and local governments that host certified PSAPs. The legislature decided that providers and local governments that host certified PSAPs are eligible to receive money from the grant account. On July 1, 2018, the 25¢ goes to the grant account. 2) What can they use the grant money for? This is outlined in 10-4-306 (2). There is no specific mention of NG911. Grants are for 9-1-1 systems. Quinn cited statute to clarify that there is no discretion to add additional recipients and that the statute provides equal weight to providers and to providers “working with” PSAPs.

Once applications are in, the first step is to apply the preference in 10-4-306 (3). All applications from providers and PSAPs working with providers will be placed in one separate tier. The remaining applications from PSAPs would be placed in the other tier. The statute 10-4-108(1)(b)(2) directs the department to adopt rules for criteria for awarding grants. Then criteria need to be applied to both tiers. Moving forward, the subcommittee needs to clarify the terminology “working with” and adopt rules for “criteria.” Criteria is not a preference or a priority, because that is already been established in statute. Criteria is what would be applied to all those applications in making a grant award decision. Quinn proposed typical criteria just as examples, and that is what the subcommittee is tasked to do: to establish grant award criteria.

Geoff asked if some applications – should have criteria for NG911 and develop a new function vs. a PSAP has identified that it is not getting sufficient location identification, so wants to work with that provider to fix it, and another PSAP says it wants to buy some more desks for the call center. Liz – first, the PSAP looking for desks goes into the second stack. NG911 may not be the greatest need. Say I want to bring in video streaming? Should that be a higher priority than a smaller PSAP that is just trying to get to wireless Phase II – better location information is far more important even if it’s not NG911.

Typically, criteria relate to the impact of the proposed project. What is the purpose of the grant program? To improve 9-1-1 systems and service. The Advisory Council has to make a determination about which project has a greater impact.

Shantil said the Advisory Council would be doing that with the second tier of applications also. The Advisory Council has to rank the applications and decide which will have the greatest impact. Geoff eschews the word “impact.” He doesn’t like this term because an improvement to a rural 9-1-1 communications system that serves three customers has just as much weight as a multi-dispatch center.

Jennie it will be challenging, especially in the absence of the statewide 9-1-1 plan. In the future we will have good guidance in the plan.

Chuck Lee said he is in the process of a $45,000-$50,000 project to identify borders and GIS-related issues. In the Next Generation software programming, geo-coded addresses based on rooftops will be needed. Currently, that address is based on the location of the driveway. Updating all this data to transition to NG911 will be quite costly, and it doesn’t necessarily relate to equipment that the PSAP is going to buy nor is it a telco-type service. Geoff said that providers are looking at this too because it is a new FCC rule that will require a significant step up in technology and investment for both PSAPs and providers.

Quinn clarified that early in the process, the subcommittee and Advisory Council made the determination that we will move forward with implementing the grant program in the first biennium before the statewide 9‑1-1 plan is completed. In future cycles, this criterion will be amended to make reference to the statewide 9-1-1 plan. That’s why it wasn’t included in the examples.

The example presented of “Improving 9-1-1 services” was just provided as an example. The words “local, statewide, regional impact” could be replaced with “significant impact.” It will come down to is a discussion with the Advisory Council as to how individual members feel about the level of impact an application might have. Quinn sits on another Advisory Council that make grant determinations. Each member scores the application’s impact; individual scores are added together and then averaged to get a final score.

Geoff believes the word “quality” of an application is too subjective as well. He also expressed concern about equity for PSAPs that might be improving a 9-1-1 system for 100 people vs. a PSAP application that affects 1,000 people.

Quinn reiterated that these sample criteria have been suggested to facilitate discussion. But when any criterion is scored, it can’t be anything other than subjective. Another term for “impact” that is commonly used is “need.” Need is often looked at in terms of resources that the applicant has available to it. For example, should an application from a small PSAP in a county with a small tax base be scored differently than one from a large county with a large tax base? Potentially. However, the problem is that just because the PSAP is from a large county with a large tax base, doesn’t mean that there isn’t need or significant need there. A county with a larger population also has a larger volume of 9-1-1 calls. All criteria are subjective.

Liz asked if this could be solved by giving more flexibility to the Council in scoring instead of being so specific? The Council can look at each application on the basis of merit, i.e. the PSAP is still not on Phase II; a major highway comes through the area and/or they get a lot of tourists coming through, etc.

Quinn described an example of how applications could be ranked, which gives the council discretion to look at all applications submitted for that one cycle and compare them to each other. This is commonly done.

Liz said that the burden falls on the applicant to plead its case. It is the Council’s duty to develop the applications. One year, it may be that a small PSAP presents the best case for their need. The next year, it could be the larger agency that has a better case or plan. Look at the merit of the case put forth. Geoff said it makes him nervous if the subcommittee doesn’t give the Council any direction.

Geoff is worried about a 14 to 3 majority of counties and PSAPs versus providers represented on the Council and asked what protects a provider’s application from being outvoted simply because it is a provider seeking money vs. a PSAP seeking money. Can we have rules that prevent that kind of biased outcome? The priority order should take care of this. Geoff argued that it doesn’t if providers are given equal weight to PSAPs working with providers.

Dorothy said everyone has to have trust and faith in the department and Advisory Council to make good decisions about the grant process and that everyone is working together as a whole. The subcommittee will not be able to write a rule for every condition. Liz agreed. She also stated that as a PSAP representative, she wants the infrastructure provided by telecoms to where it needs to be in terms of technology. – redundant fiber example.

Quinn stated that the criteria could just be listed as quality of the application, improving 9-1-1 services, and support for the project. We do have to establish criteria, but the detail isn’t needed. The criteria needs to be equally and fairly applied to all applications.

Liz said that the word “quality” goes hand-in-hand with completeness. It may represent a smaller score, but if a section is not completed, if the application is sloppily put together, or if there is handwriting that isn’t legible, these attributes can be judged. The application needs to be complete and responsive. Responsiveness in the application can be judged by answering the questions, did the applicant provide adequate information and detail for the Advisory Council to make a determination as to what the impact was on 9-1-1 services. Geoff prefers substantive words like responsive and complete rather than words such as “quality.”

Geoff believes a criterion could be to what extent does the application improve 9-1-1 systems? Quinn asked if there a difference between improving 9-1-1 systems vs. improving 9-1-1 services and should they be separate criteria? The statute directs the department to adopt rule for criteria. Are two separate criteria needed or are they redundant? Steve does not believe it is redundant. Liz indicated that the system is the hardware. By doing that, you also show you are improving 9‑1-1 services. Telecoms can still improve service. Applications could be scored on 9-1-1 systems as well as a score for 9-1-1 services. Lisa Kelly views systems as tangible items and services as non-tangible items.

Geoff stated he is struggling with who is to say what is more important. Should we have scoring criteria at all? Liz said we have to. Each category is scored on its own merit, so not comparing each category against each other.

Quinn gave a hypothetical example of an application from a provider requesting funds to upgrade its network to an IP-capable network to a PSAP. This is tangible. But upgrading to an IP network and then being able to deliver not just voice calls, but also, say, video, also improves 9-1-1 services to citizens. It behooves the applicant to translate whatever the applicant is doing with tangible upgrades into service improvements, too. Everything that is eligible is described in statute, and it is abundantly clear that it applies to 9-1-1 systems.

**NEW RULE IV**

1. The department, in consultation with the 9-1-1 advisory council, shall apply the applicant preference provided in 10-4-306(3).
2. The department, in consultation with the 9-1-1 advisory council, shall score all eligible applications using the following criteria:
3. ~~quality~~ completeness of the application (10 points maximum)
4. improving 9-1-1 systems: (30 points maximum);
5. improving 9-1-1 services: (30 points maximum);

**Letters of Support Discussion**: Geoff questioned how support can be determined if it is an application from a provider only. A provider can get letters of support from PSAPs and emergency services agencies. If there is going to be a big impact on improving 9-1-1 services, then it would be likely that PSAPs and emergency response agencies would be in support of a provider’s application. Letters of support demonstrate that there is support for a project.

Quinn indicated that the basis of the grant program is a partnership between providers and PSAPs. Letters of support illustrate that providers and PSAPs are engaging localy and paying attention to what their priorities and needs are. Letters also provide a good indication of political support.

Geoff doesn’t think that is consistent with the law, but also doesn’t see it as a problem. Liz said based on her experience letters of support are pretty standard in grants. Quinn agreed. Requiring letters of support helps alleviate the problem of funding a project that hasn’t been discussed or doesn’t have local support. Providers can upgrade its network, but what if the PSAP doesn’t want IP connectivity? If a grant were awarded to a provider to upgrade to an IP network, but the PSAP doesn’t want to migrate to NG911 or receive video, the provider could conceivably be building a network improvement to nowhere, a bridge to nowhere. Many PSAPs are not ready for NG911 or even text-to 9-1-1 capability. Providers have to have text-to-9-1-1 ability.

Providers and PSAPs have to work together. Letters of support would demonstrate they are communicating with each other, they are working together, and they support each other. Geoff doesn’t see a problem with getting support and he suggested striking the word “and” and change to “or.” and striking the second half of the sentence and put a period after the word “support.”

1. The department, in consultation with the 9-1-1 advisory council, shall score all eligible applications using the following criteria:
2. support for the project that is demonstrated with letters of support~~. from private telecommunications providers, local governments, public safety answering points and emergency services agencies (30 points maximum).~~

**Task Item:** Send Quinn recommended words to substitute for “quality” and recommended changes to New Rule IV.

Geoff said the subcommittee still needs to address what happens if the grant program runs out of money. All applications would be scored with the criteria and there would be a total score for each application. Applications can be listed with those scoring the highest on down. One way to do it is to fund the highest to lowest until the money runs out or conditional or partial grant awards can be made. The subcommittee also needs to discuss monitoring and procedures for repayment.

Jennie said everyone did a great job wrestling with some difficult issues.

**Meeting Schedule:** The next meeting is scheduled for April 26 from 10:00 am to 1:00 pm. Jennie will be out of the country and won’t be available. She will try to send comments ahead of time.

**Public Comment:** None

**Adjournment**: **Motion:** Steve moved to adjourn. Liz seconded. The meeting was adjourned at 1:33 PM.