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

 **Thursday, March 22, 2018**

**Conference Call Minutes**

**Present**

Geoff Feiss, MTA, Subcommittee Chair

Adriane Beck, Missoula Co.

Liz Brooks, Flathead 9-1-1

Steve Hadden, Jefferson Co.

Bill Nyby, Sheridan Co.

Jennie Stapp, MSL

**Absent:**

Kim Burdick, Chouteau Co.

Denis Pitman, Yellowstone Co.

**Staff**

Don Harris, DOA Quinn Ness, PSCB

Wing Spooner, PSCB Rhonda Sullivan, PSCB

**Others**

Pete Callahan, Helena 9-1-1 Center

Rep. Frank Garner

Peggy Glass, Livingston/Park Co. 9-1-1 Director

Dorothy Gremaux, Central Montana Dispatch Center

Chuck Lee, Fallon County 9-1-1

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

**Adoption of Meeting Minutes:**

**Motion**: Bill Nyby made a motion to approve the minutes from the Feb 8 meeting. Steve Hadden seconded. The motion carried.

**Motion:** Jennie Stapp made a motion to approve the minutes from the Feb 22 meeting. Adrianne Beck seconded. The motion carried.

**Introductory Comments:** Geoff thanked Quinn and Don Harris for their time spent working on the revised rules. He also noted how fortunate we are to have a bill that provides some funding for migration to NG911 which also promotes partnerships between local government PSAPs and private telecommunications providers for delivering emergency communications to Montanans and guests traveling through our state.

Rep. Frank Garner reiterated his appreciation for the work of this committee, stakeholders, and Quinn and his staff for responding to the challenges of putting together a complicated policy. He also offered his assistance.

Chuck Lee, Fallon County 9-1-1, expressed his concern about the direction the rules are taking and indicated he will be asking a lot of questions during the call. Pete Callahan, Helena 9-1-1 Center, echoed Chuck’s concerns. Liz Brooks, Flathead 9-1-1, concurred along with Dorothy Gremaux, Central Montana Dispatch.

Geoff stated that the statute says funding first goes to telecommunications providers and then to local government PSAPs working with a private telecommunications provider. He was working on the assumption that there might not be grant money available for PSAPs to apply for.

**Review of DRAFT 9-1-1 Grant Program Guidelines**

**NEW RULE I: GRANT PROGRAM DEFINITIONS** -The definition of a 9-1-1 system is redundant and not needed.

Jennie brought up the fact that there is another use of the term “Joint Applicant” in statute. MCA 10-4-306-(4)(b) uses “joint grant application” to refer to a local government entity that hosts a PSAP collaborating with another local government entity. If the term “join applicant” is defined in this manner in the rules, it may preclude or override two PSAPs from submitting a join application.

The definition of “Local government entity that hosts a certified PSAP” means a local government as defined in 7-11-1002(2) MCA, that hosts a public safety answering point certified by the Department pursuant to ARM 2.13.304. Quinn clarified that a certified PSAP is one that first receives a 9-1-1 call. An eligible applicant is a certified PSAP. Participants concurred on this definition.

The definition of a “private telecommunications provider” is not defined in statute, but the term “Provider” is [MCA 10-4-101(15)]. There is no requirement to clarify this term. Quinn proposed removing it. Geoff thinks it could cause confusion if the definition is not included. Don wants to look more closely. **Task Item:** Don, Quinn and Geoff agreed to work offline on this definition.

Quinn indicated that the rules should not just re-state the statute. The rules need to provide clarification, but they can’t supersede what is in statute.

**NEW RULE II: ELIGIBILITY REQUIREMENTS FOR GRANTS -** Eligibility for grants is provided for in MCA 10-4-306 (1), which states that “grants must be awarded to telecommunications providers, local government entities that host public safety answering points or both.” Don Harris clarified that this set of draft rules was not intended to stand on its own. The intention was to adopt two sets of rules: one for PSAPs and this set of rules which is intended to be for telecommunications providers and joint applicants. Once again, participants questioned the use of the term, “joint applicant.” It would be a PSAP working with a private provider.

The formal relationship between the PSAP and the provider would need to appear on the application form along with an explanation of who is the recipient of the funds. MCA 10-4-306(3) addresses award preference and priority. Two eligible applicants are given the same preference and priority: private telecommunications providers and local government entities that host PSAPs by working with a private telecommunications provider.

Chuck Lee pointed out that it appears a joint applicant would just get a price from the private telecommunications provider with no competitive bidding. He indicated that PSAPs also need to be included as an eligible grant recipient. Excluding them from the rules raises concerns and confusion. Liz does not understand the necessity of having two sets of rules, and said it creates confusion. The consensus was to slow things down and get it right the first time. Jennie supports the proposal to simplify things.

Quinn clarified with Lisa that if CenturyLink were working with a local government, the contract for services would be between CenturyLink and the local government. He asked if corporate attorneys would allow for a joint contract for a grant. Lisa indicated that CenturyLink would submit a grant application if it felt that those expenses would be outside current tariffs. The company can’t both submit a grant for reimbursement and collect those same costs in its tariff. She cannot envision a time when they would enter into a joint proposal.

The phrase “by working with” is problematic. How would we identify that a local government hosting a PSAP is “working with” a private telecommunications provider?

* In the past, PSAPs were required to submit a plan to the State on what they are doing. There is not a plan requirement anymore.
* Would it be a letter or a proposal?
* Would the purchase of equipment and other PSAP services qualify?

**Task Item:** Lisa will review this and will get back to the subcommittee.

**Preference:** If there are limited funds, the rules spell out the order of preference in awarding grants. The rules also clearly state that a PSAP is totally eligible to apply. The term “Joint applicant” should be struck. Don Harris agreed that this term was an unfortunate choice of words and should be changed because of possible conflict with statute. Regardless of what term is used, the intent of the statute is to give a preference to private telecommunications providers and to PSAPs who are working with private telecommunications providers.

Members were asked for ideas on how to implement this preference. Don Harris said the challenge with drafting the rules is being careful not to infringe on those entities who have a higher priority. The statute clarifies the prioritization.

Liz said her concern with this prioritization of applicants is that merit does not appear to be a factor at all. The prioritization is based simply upon the source of the request, regardless of the merit of the request. It seems that the telecoms have priority, but that shouldn’t be the only factor. The application could simply be a commercial request not even related to 9-1-1. That doesn’t make a lot of sense.

Geoff said that is what the law says. Geoff said that if the total of applications is less than or equal to the amount of funding available, the Council and department don’t have to worry about prioritization. It is prudent to build the rules around the worst-case scenario. He would like to see fewer rules rather than more.

Geoff indicated that the draft NEW RULE V defines merit by defining the rank order of prioritization. NEW RULE V (3) states: “The department, in conjunction with the 9-1-1 Advisory Council, shall prioritize the following categories of funding requests in the order listed below:

(a) requests for implementation, operation, maintenance and purchase of circuits, services, software and hardware that support 9-1-1 systems, equipment, devices and data for the initiation and delivery of 9-1-1 emergency communications to a certified public safety answering point;

(b) requests for emergency telecommunications systems plans;

(c) requests for project feasibility studies or project plans; and

(d) requests for the purchase of services that support 9-1-1 emergency communications to or from a certified public safety answering point to or from emergency service units.

Adrianne emphasized that the Council should not be taken out of the decision making. Chuck Lee agreed with Adrianne. According to **MCA 10-4-106. 9-1-1 advisory council duties -- consultation by department**. “The 9-1-1 advisory council shall: (2) provide recommendations to the department in determining grants awarded in accordance with 10-4-306.” The department makes the final decision on who is awarded a grant, but it is based on recommendations from the Council.

Adrianne questioned if NEW RULE II is needed since grant eligibility is clearly defined in statute. Quinn pointed out that the statute states that eligible grant recipients include “local government entities that host public safety answering points,” while the rule clarifies that grant recipients include “local government entities that host a certified public safety answering point.”

If the subcommittee is not recommending two different sets of rules, NEW RULE II is not needed. The consensus was to adopt one set of rules.

**NEW RULE III**: The list of allowable uses should be dropped because allowable uses are already outlined in 10-4-306(2). As discussed on Feb. 22, grants may be awarded for an exclusive list of purposes that cannot be added to, which is why administrative costs were not included.

**Cost Recovery for Wireless Providers During Gap Period:** The wireless provider cost recovery account expires on July 1, 2018. Once transferred to the grant program, funds from this account will not be available to reimburse wireless providers until the grant program is up and running. Geoff’s concern is about timing, and he reiterated that there is a gap period for reimbursable expenses incurred during the last quarter of fiscal year 2018, from March through June and the time when grants are first awarded, which could take months. What happens to legitimate expenditures by providers during this gap period? He believes that expenses incurred by wireless providers from July 1 to the date of the grant award should be covered retroactively for wireless providers that are currently receiving cost recovery.

Chuck Lee asked if is this grant program or an entitlement program? He has worked with a lot of different grant programs, and you can NEVER incur costs prior to approval of a grant. He explained that you can’t even apply for a grant, because it would constitute supplanting. Geoff asked how Chuck would propose a transition to recover expenses that are eligible during the gap period? Chuck indicated that he understood the question and the issue, but he pointed out that the companies involved are for-profit companies. Geoff said the earliest a provider could be funded with the grant program would be about seven months. However, that delay also applies to PSAPs. Furthermore, HB 575 goes away on July 1, so PSAPs are losing money, too.

The majority of subcommittee members were not comfortable with providing grant funds for expenses incurred before the grant program even begins. Those expenses would typically be ineligible. The language should be struck. Geoff disagreed and said it should be kept.

**Allowable Uses of Funds:**Geoff again proposed adopting the allowable uses of funds list associated with the wireless cost recovery account in statute. He drafted the following text for consideration:

“NEW RULE III GRANT FUNDING CRITERIA AND ALLOWABLE USES (2) Funds awarded to an eligible entity may be used by the eligible entity for purposes set forth in 10-4-306(2), MCA, and for such allowable uses, adopted by reference in this rule, and effective July 1, 2018. [TO BE SUBMITTED SEPARATELY] The list of allowable uses is available on the department's website.”

Geoff believes that since a list of allowable uses was adopted in rule for the PSAPs, providers should also have an exclusive list of uses. Quinn again pointed out that there wasn’t anything in the statute that addressed allowable uses for PSAPs; however, HB 61 clearly spells out a prescriptive list of allowable uses for the grant program. Don believes the list from the statute should not be expanded.

Subcommittee members discussed using items on the allowable use of funds list associated with the wireless cost recovery account as representative examples that would provide additional detail to applicants of what could be allowed. However, members agreed that the list of allowable use expenditures should only be provided as examples and not be adopted in the rules. They can be included in the instructions, not the rules. NEW RULE III sub-part (2) will be struck.

Members discussed the need to change the title associated with NEW RULE III because there is a limited time frame for which the rule applies. Here is the relevant text:

NEW RULE III GRANT FUNDING CRITERIA AND ALLOWABLE USES (1) 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.

This rule has a sunset in it because it will no longer be applicable after June 30, 2019. It will be combined with NEW RULE II.

**NEW RULES IV and V:** Chuck expressed concern about the use of the term “in conjunction with” when the statute clearly says, “in consultation with.” This wording should be changed in the draft NEW RULES.

Members asked that the wording “in conjunction with” be changed to “in consultation with.”

Minor tweaks might be needed in these sections as well as in NEW RULES III and VI. For example, the numbering system is off in NEW RULE III. It jumps from sub-section (1) to (3). References to “joint applicant” need to be deleted. These changes could be discussed at the next meeting.

Anything the subcommittee agrees should be a criterion in NEW RULE V, must be included in information asked for on the application form. **Task Item:** Quinn asked everyone to think about the phrase “working with” and what kind of documentation would constitute “working with.” He asked for suggestions that can be included in the next draft to be sent to him.

Don also requested input on whether there should be a separate application process for a PSAP acting on its own without working with a provider. **Task Item:** He asked for recommendations for how the preference should be applied.

**NEW RULE IV: APPLICATION FOR GRANTS** – Geoff doesn’t believe that a separate application or separate application process is needed. Everyone agreed. The application form should make it obvious as to what is being requested. There should be one set of rules, one application form and one application process.

Don Harris said he is trying to put himself in the position of the Advisory Council. In that position, he doesn’t see how all application requests can be considered at the same time. Two rounds of review will be needed. In the first round, all applications from priority groups would be considered. During the second round, applications from PSAPs would be reviewed. Also, the phrase “working with” must be defined.

It was explained that on or before September 30, a public notice will be issued on how much money is available in the grant account. Applications will be accepted within 60 days after a notice of funding availability is issued. Within 30 days after the application deadline, a public notice will be posted of complete applications. Applicants whose applications are deficient will be given an explanation of specific reasons and they will have 30 days to remedy deficiencies. Thirty days after this re-submittal deadline, the department will post a notice of all complete and eligible applications.

Geoff said that since PSAPs have an opportunity to correct deficiencies on their applications for certification, grant applicants should also have the opportunity to address deficiencies. Adrianne expressed her view that correcting deficiencies on a certification process is different than being able to take multiple bites at the grant apple. She is not comfortable with having 30 days to remedy deficiencies. Jennie agrees. Applicants should have just one shot at the grant application. Jennie said the MSL grant program allows applicants to correct deficiencies, and it is not efficient. It increases the length of time of the grant process and creates delays.

Geoff complained that not only do PSAPs have the opportunity to correct deficiencies or demonstrate compliance with PSAP certification requirements, but they also have 30 days to correct the mis-appropriation of funds. There are two appeals processes in the PSAP certification rules

**State Funding Processes**: Quinn explained that the State frequently collects and holds funds collected on behalf of local governments. The funds collected for 9-1-1 allowable costs are simply distributed. Local government do not have to apply for them as part of a grant program. They simply receive funds and are authorized to expend them. The 9-1-1 Program is required to monitor expenditure of funds. If it determines a deficiency during the monitoring process, then that deficiency can be corrected, or the PSAP can pay the unauthorized expenditure back to the 9-1-1 Program.

With a grant program, you’re granting money for an expenditure that has not occurred. In the grant award, the expenditure is being approved for a specific purpose. Documentation for the expenditure is submitted, funds are drawn down and the applicant receives a grant fund payment.

The way the cost recovery program was structured in law, providers did not receive a grant. Everything they submitted had to be reviewed and decisions made on those expenditures. In the case of a grant program, for an allowable cost to an eligible entity, the department pays them the grant funds. The only dispute would be if documentation was submitted that was not in the grant award.

Geoff said he doesn’t see the difference in statutory requirements and compared the 9-1-1 quarterly distribution program to the grant program. Quinn explained that with the PSAPs, the funds have already been expended. The department “monitors” the expenditure of these funds, which is why allowable expenditures had to be defined in rule.

With the grant program, Quinn said the department will award funds that go into the grant contract, so when the terms and conditions in the grant contract are outlined, there will be recourse. Once a contract is negotiated and signed, Quinn doesn’t see what could be in dispute. A grant contract is signed, documentation for expenditures is submitted and the invoice can be paid. The grant recipient is reimbursed at the time of expenditure.

Geoff said in the past some invoices for cost recovery have been denied, and he is concerned that this will happen again if there isn’t an appeals process. Geoff said the department will have 100 percent of the bargaining authority. Liz said Geoff is comparing apples and oranges. These are two totally different programs. With a grant program, it is not appropriate for there to be an appeal. The applicant can re-apply the following year to get the application correct. The Advisory Council would never be able to rank and prioritize applications because it would constantly be receiving revised grant applications. Adrianne agreed and said an applicant shouldn’t have a second chance if it messes up its application.

Quinn has more than 25 years of managing grants and grant programs. Applications are received and reviewed by a committee. The first thing they look at is if the application is complete. Is it an eligible applicant for an eligible use? If not, the application is removed from consideration. He is not aware of ever having an appeals process as part of a grant program. After the grant is awarded, and there is a grant contract that is executed, a reimbursement process is used. The applicant submits an invoice for the awarded purpose, and then the department awards the funds. In a few cases, an invoice might be submitted for something that wasn’t what their grant award was for, say, due to human error. It that were to occur, the applicant would simply be asked to send the correct invoice. If the applicant submits documentation that isn’t relevant, it won’t be reimbursed.

**Grant Application Process**: The Council and the department can request additional information on a case-by-case basis at their discretion or can request that an applicant present their application on a face-to-face basis. Both of those suggestions were removed. Face-to-face presentation lengthens the application process considerably. By taking these two considerations out of the rules, everything is black and white.

Geoff may be skeptical, but there will be a grant contract with standard terms and conditions. The department must act in good faith. Wing said that she recently worked on a grant program with several local governments to reimburse them for extended warranty contracts. All had contracts executed by the department. Terms and conditions were included in the contracts using boilerplate language. Local governments submitted copies of their paid invoices and were reimbursed for expenses. She offered to send Geoff a copy of one of these contracts.

The task of evaluating and authorizing grant applications is up to the Council; it will be a public process and any applicant can witness the meeting with the opportunity for public comment. Geoff still can’t see why PSAPs are allowed redress and appeals but grant applicants aren’t.

The 9-1-1 Program does not have authority to make grant awards. It will just manage the contracts. The department director makes the decision. He has not delegated the award of grants to Quinn. Previously, Quinn has seen that authority delegated to a Deputy Director. Quinn’s approval authority for expenditures is only up to $25,000. The director usually works with a small committee, but the department director makes the final decision. The final decision is not made at the program level.

In the past, if program staff believed a requested cost-recovery item was not for an allowable use, they have always offered to have the provider re-submit the request through the Advisory Council. They also have encouraged and accepted legal opinions. To say the 9-1-1 Program has denied cost-recovery requests without providing any recourse, is not believable. Providers should embrace the grant program. It eliminates all interpretation of what is allowable and what isn’t. The purpose of the application is placed in the contract, and it is approved and processed for that amount of money.

**Meeting Schedule:** The next meeting is scheduled for April 26. It was suggested that another subcommittee meeting be scheduled for April 5. The morning works best, so the conference call will be from 10 am to 1:00 pm.

Quinn reported that some subcommittee members indicated to him that they were not given enough time to review materials in advance of today’s meeting. This resulted in some of the consternation experienced today, because members did not realize two sets of rules were being developed. Members were asked to email questions to Geoff and Quinn on sections that were not covered today. **Task Item:** Quinn will make the revisions to Sections I, II, and III and IV and send them out to everyone by Thursday, March 29.

**Public Comment:** None

**Adjournment**: Steve moved to adjourn. Liz seconded. The meeting was adjourned at 3:45 PM.