

Meeting Date: Wednesday, November 18, 2015

Meeting Location: Embassy Suites, Altamonte Springs, Florida

**Board Members, meeting attendance:**

1. Bill Rogers, Director, Department of Management Services, Division of Telecommunications, E911 Board Chairman
2. Laurene "Laurie" Anderson, 911 County Coordinator, Charlotte County
3. Carolyn Dill-Collier, 911 County Coordinator, St. Lucie County
4. Chesley Dillon, Vice-President, Corporate Tax, Tracfone
5. Stan Greer, Area Manager, External Affairs, AT&T
6. Ben Guthrie, 911 Coordinator Gulf County
7. Sandra "Sandy" A. Khazraee, Director of State Regulatory Affairs, CenturyLink
8. David "Dave" Konuch, Attorney, Florida Cable Telecommunications Association (By phone)
9. Sergeant Dale Mitchell, 911 County Coordinator, St. Johns County
10. Tom Nadler, Manager, Sprint
11. Ira Pyles, 911 County Coordinator, Hillsborough County

**Staff Members, meeting attendance:**

1. Kimberly Bickley, Administrative Support, DMS-Division of Telecommunications
2. Kent Raheb, Technical Support, DMS-Division of Telecommunications
3. Donald Lamb, Technical Support, DMS-Division of Telecommunications
4. Charles Hadley, Interim Chief, Public Safety Bureau, DMS-Division of Telecommunications
5. Ben Fairbrother, External Affairs Coordinator, DMS-Legislative Affairs
6. Diane Guillemette, Legal Counsel, Office of the Attorney General

**Staff Members, participating via teleconference:**

1. Adrienne Jones, Administrative Support, DMS-Division of Telecommunications
2. Larry Houff, and Partner, Carr, Riggs & Ingram, LLC (CRI)
3. Daniel Rodriguez, Manager, Carr, Riggs & Ingram, LLC (CRI)
4. Robert Downey, DMS Attorney

**Public Members, meeting attendance:**

1. Chuck Freeman, Pinellas County
2. Silas Daniel, Sumter County
3. Susan Nelson, Airbus
4. Tim Gundlach, TGRA
5. Keith Godwin, Alachua County
6. Dina Walker, Seminole County
7. Stacey Manning, Putnam County
8. David Gleeson, TCS

**Public Members, participating via telephone conference:**

1. Annette Rodgers, Orange County
2. Jennifer Payne, Suwannee County
3. Amy Howard, Hendry County
4. Mark Lapp, Hendry County
5. Stacy Needham, Manatee County

(If teleconference participants are not listed, it may be due to non-receipt of emails acknowledging participation.)

## **1. Call to Order**

- Meeting called to order at approximately 9:00 a.m.
- Staff conducted roll call. Ten of the eleven current seated E911 Board Members were present. David “Dave” Konuch attended by phone.
- Roll call for staff members was conducted.
- Public members attending this meeting or participating in the telephone conference were requested to acknowledge their participation by signing in on the sign-in spreadsheet on the computer in the back of the room or by sending an email to staff to ensure that they would be properly noted in the meeting minutes.
- Public members with issue(s) to be presented to the board for consideration were requested to list their issue(s) on the issue(s) index cards provided, or to send the issue(s) via electronic mail to the staff.

## **2. Approval of Meeting Minutes**

- Mr. Rogers asked that approval of minutes be tabled until the end of the meeting to allow Board members time to review.

## **3. Voting Conflict Disclosure**

- Ms. Guillemette presented the law relating to potential voting conflicts for E911 Board members.
  - Mr. Pyles asked if the requirement to file a Form 8A applied to county employees.
    - Ms. Guillemette advised that a Form 8A is required when a voting member would potentially receive “special, private gain”.
  - Mr. Greer asked if votes unrelated to grants such as the E911 fee increase would require him or others to file a Form 8A.
    - Ms. Guillemette advised that a potential fee increase does not create a “special, private gain”.

## **4. Review and Vote on Disbursements to the Counties**

### **Wireless**

Wireless financial reports for the period ending August 31, 2015, were reviewed and discussed by the Board. Ms. Khazraee motioned to authorize distribution of wireless revenues in the amount of \$3,691,975.30. Sgt. Mitchell seconded the motion which carried unanimously (11-0). There were no questions or comments related to this vote.

### **Non-wireless**

Non-wireless financial reports for the period ending August 31, 2015, were reviewed and discussed by the Board. Ms. Khazraee motioned to authorize the distribution of non-wireless revenues in the amount of \$2,579,431.99. Mr. Guthrie seconded the motion which carried unanimously (11-0). There were no questions or comments related to this vote.

**Prepaid Wireless**

The county allocations of the fee in the Prepaid Wireless category for the period ending August 31, 2015, were reviewed and discussed. Ms. Khazraee motioned to distribute \$1,019,104.87 to the counties. Ms. Dill-Collier seconded the motion which carried unanimously (11-0). There were no questions or comments related to this vote.

- The Board requested that Carr Riggs and Ingram (CRI) create two trend lines; one trend line representing the \$0.50 fee rate prior to December 2014 and another trend line representing the \$0.40 fee rate.
- Mr. Pyles questioned the significant variations in revenue outlined by the report from month to month.
- Mr. Rogers explained the reports are based on data the Board staff receives from providers. Mr. Rogers also stated CRI has been made aware of the need for a supplemental financial summary that more clearly explains these variations.
- Mr. Rodriguez (CRI) stated that a supplemental report will be available at next month's meeting.

**5. Review Accountant's Financial Statement**

- Mr. Houff presented an overview of the Financial Statement (Blue book).
- The Board requested DMS staff provide a graph illustrating the history of the fund balance including the last 13 months.

**6. Wireless Service Provider Cost Recovery**

- Ms. Dill-Collier stated that she has reviewed service Provider #1 request and motioned to authorize the distribution of \$201,313.20 out of current year funds. Mr. Guthrie seconded the motion which carried (11-0).
- Ms. Dill-Collier stated that she has reviewed service Provider #2 request and motioned to authorize the distribution of \$38,176.92 out of current year funds. Mr. Guthrie seconded the motion which carried (11-0).
- Ms. Dill-Collier stated that she has reviewed service Provider #3 request and motioned to authorize the distribution of \$24,532.21 out of current year funds. Mr. Guthrie seconded the motion which carried (11-0).
- Ms. Dill-Collier presented the Approved Plans and Payments for review. There were no questions or discussion.
- Mr. Greer stated that he will follow up to file a Form 8A.

**7. Rural County Grant Applications Review and Vote**

- Ms. Khazraee presented a review of the Fall 2015 Rural Grant Awards.
- Ms. Khazraee provided an explanation of the Form 8A she filed one week following the October 2015 meeting.

- The Board discussed whether Board members representing wireless service providers are required to file a Form 8A when voting on grant requests.
- Ms. Guillemette stated that a grant award to a county with an intent to contract with a specific vendor constitutes a “special gain” and therefore requires the filing of a Form 8A.
- Ms. Khazraee stated that she will hand over management of the Grant application reviews to another Board member after the conclusion of the November meeting to avoid the appearance of a conflict of interest.
- Ms. Khazraee presented the Petition for Variance or Waiver from Hendry County due to the absence of Form 6A in their grant application.
  - Amy Howard and Mark Lapp joined the meeting via telephone conference.
  - Mr. Lapp stated the lack of Form 6A was an oversight and that the form has now been provided. Mr. Lapp further stated that funding from this grant is vital to operations and that this petition meets the requirements for variance due to the serious financial hardship that would be placed on the county in the event of grant denial.
  - Mr. Dillon asked how the Board would prevent this kind of situation from occurring in the future.
  - Ms. Guillemette stated that she has spoken with DMS staff and Form 6A will now be provided online with the grant application.
  - Ms. Guillemette also stated that approval of Hendry County’s request would not set a precedent that would impede the ability of other counties to file petitions.
  - Ms. Carolyn-Dill made a motion to approve Hendry County’s Petition for Variance or Waiver. Ms. Mitchell seconded the motion which carried (11-0).
- Ms. Khazraee presented the completed grant request filed by Hendry County for Annual Maintenance. The total amount requested is \$70,586.12.
  - Ms. Dill-Collier moved that the Board approve the Hendry County grant application at a 2A for \$70,586.12. Mr. Guthrie seconded the motion which carried (11-0).

## **8. Rural County Rule Modification**

- Mr. Lamb referenced the prior Board request that Form 6A be placed in both the Rural County and State Grant forms. Mr. Lamb also stated that Mr. Wink Infinger (DMS Staff) completed that task at the conclusion of the October board meeting. Additionally, Mr. Lamb stated the date change that was required for both the application and the Form 6B FF1-5.002 has been completed.
  - Mr. Pyles expressed concern that the placement of the Form 6A after the appendixes and addendums and not in order with the other application pages may cause confusion.
  - Ms. Guillemette stated that Form 6A is now appropriately placed because it is only referenced by the application and not part of the application itself.
  - Ms. Mitchell moved that the Board take page numbers off the 6A and let the form appear with the application at the link but not as a part of the application. Sgt. Anderson seconded the motion which carried (11-0).
  - Ms. Guillemette stated that the previous vote now makes a rule change unnecessary.

## **9. E911 Board Rule Development and Status Report**

- Ms. Guillemette reviewed the status of all pending Rules.
- Ms. Guillemette presented a separate memo on Rule 5.009. Ms. Guillemette also stated that without a Statement of Estimated Regulatory Cost (SERC), she cannot notice the rule or get the rule to the Legislature in time for the 2016 Legislative Session.

## **10. Follow up on the Fee Rate**

- Mr. Rogers stated that DMS was asked to examine the SERC process to ensure any rule change requested by the E911 Board has the greatest chance to succeed. Mr. Rogers also stated that he directed DMS Legal Counsel to conduct research on other agencies' rule making successes.
  - Mr. Rogers introduced Mr. Robert Downie, Special Counsel for DMS, for a presentation.
  - Mr. Downey presented an overview of the research and discussions DMS had with sister agencies and other parties regarding the SERC, as well as discussions with the Office of Fiscal Accountability and Regulatory Reform. Mr. Downey also presented information regarding the legislative rule ratification process.
- Sgt. Mitchell asked how long it could be before the counties could see an increase in the fee if the rule is approved.
  - Ms. Guillemette stated that because the rule may not be delivered to the Legislature in the 2016 Legislative Session, it may be submitted in the 2017 Legislative Session. In that case, the fee may not actually increase until the fourth quarter of 2017 or the first quarter of 2018 due to the requirement to give 120 day notice to providers.
- Ms. Dill-Collier requested a written summary of Mr. Downey's presentation for distribution to the counties.
- Ms. Khazraee asked Mr. Downey if the Public Service Commission offered any guidance on whether consideration of the SERC requirement should only include the cost to implement the fee change in addition to the cost of the fee change, or just the cost to implement.
  - Mr. Downey stated the Public Service Commission does include the amount of any fee increases into the consideration of the SERC requirement.
- Mr. Nadler asked if the Board has ever made any change to the fee since the Board was installed.
  - Ms. Guillemette stated that the E911 fee rate was statutorily \$.50 until the inclusion of prepaid wireless providers at which time the Legislature lowered the fee to \$.40 and gave authority to the E911 Board to raise the fee up to \$.50 if necessary.
- Mr. Downey stated that DMS will continue to look for an external expert to assist with the completion of a SERC.

- Mr. Konuch stated that a SERC of this nature could likely be conducted by a private firm for under \$35,000.
- Mr. Nadler stated the need for additional legal review on the subject of whether the SERC is needed.
  - Ms. Guillemette stated that the fee rate change must be processed as a rule.
- Ms. Khazraee asked that the E911 Board continue with preparing the SERC while considering other procedural options.
- Ms. Guillemette stated that she could compile a memorandum of law that explains why a SERC is necessary.
- Mr. Pyles asked if the SERC requirement considers the cost of implementation of the regulation or implementation of the regulation.
  - Ms. Guillemette referenced (F.S. 120.541) and stated that consideration of the SERC requirement must include both the cost of regulatory implementation and the cost of the regulation to each member of the public.
- Mr. Konuch asked Mr. Downey if he confirmed that the Public Service Commission does use the cost the regulation imposes on members of the public. Mr. Downey answered yes.
- Ms. Dill-Collier asked Mr. Downey for a timeline for completion regarding the SERC in order to inform the counties.
  - Mr. Downey stated that DMS will continue to work toward finding the right firm to prepare the SERC. Mr. Downey stated that he cannot give an exact deadline because the timeline for SERC preparation depends in part on the firm we hire to prepare the SERC.
- Mr. Greer stated that if the Board did not include the fee itself in the SERC requirement consideration, a SERC would not be required because the implementation costs alone do not cross the threshold that requires a SERC.
- Mr. Rogers stated that preparation of a SERC is a very complex process and directed Mr. Downey to continue his research and report back next month.
- Ms. Dill-Collier asked for clarification on what may happen if we moved forward without a SERC.
- Mr. Greer asked if the Joint Administrative Procedures Committee would be the one to challenge whether or not a SERC was necessary.
  - Ms. Guillemette advised that JAPC or OFAR may write a letter stating the E911 Board should have prepared a SERC.
- Mr. Guthrie asked if the Board would have access to memos prepared by the E911 Board's legal counsel in order to get input from county attorneys.

- Ms. Anderson stated that her opinion is that a SERC is not necessary. Ms. Anderson also reminded the Board that during a previous meeting they voted that a SERC was necessary. Ms. Anderson asked if the previous vote would increase the rule's risk of being overturned in the future should the Board decide to move forward without a SERC.
  - Ms. Dill-Collier reminded the Board that during the last meeting, the Board initially voted to move forward with the rule change without a SERC prior to the E911 Board's legal counsel advising that a SERC was necessary.
  - Mr. Dillon reminded the Board that the votes taken at the last meeting regarding the pursuit of a fee change without a SERC were not unanimous.
- Mr. Nadler asked if the Board may take a vote regarding whether a SERC is needed.
  - Ms. Guillemette advised that the Board must have a vote to reconsider the previous vote first.
- Ms. Guillemette stated that if the Board moved forward with a rule change without a SERC, she does not contemplate JAPC holding up the rule on legal grounds.
- Ms. Khazraee asked Mr. Downey if he found an example of a rule change that moved forward without a SERC during his research.
  - Mr. Downey responded that he conducted his research on SERC's themselves and legislative ratification based on the directive from the Board and therefore did not find any examples of a rule being challenged due to lack of a SERC.
- Mr. Konuch asked if anyone looked at past PSC SERC's in order to determine the rationale for including regulatory fees in consideration of the SERC requirement.
  - Mr. Downey stated that DMS staff found that PSC SERC's that were posted online considered fee increases are considered part of the transactional cost of compliance with the rule.
- Mr. Nadler made a motion to reconsider the previous vote necessitating a SERC. Mr. Guthrie seconded the motion which carried (10-1). Mr. Dillon voted "no".
- Ms. Mitchell made a motion that the fee increase is not part of the regulatory and transactional cost of the rule change and therefore a SERC is not necessary. Ms. Dill-Collier seconded the motion.
- Ms. Khazraee stated that moving forward without a SERC may increase the risk of challenge to the rule, which will add to the timeline and that is why she plans to vote "no" on this motion.
- Mr. Greer stated that he does not believe the statute considers the fee change itself to be part of the regulatory cost.
- Mr. Pyles stated that he also does not believe the fee change is part of the regulatory cost.

- Mr. Dillon asked Ms. Guillemette to again state her interpretation of the statute that references regulatory cost in consideration of a SERC requirement.
- Sgt. Mitchell withdrew her previous motion.
- Mr. Nadler made a motion to table this discussion until next month and continue to research SERC's that have been filed by other entities. Mr. Konuch seconded the motion which carried (11-0).
- Mr. Freeman asked DMS staff to prepare a financial assessment of how long the special disbursements could continue as the rule moves through the approval process.
- Mr. Raheb presented the Special Disbursement report.
  - Mr. Pyles suggested an analysis of quarterly data when determining the monthly disbursement amount for each county in order to reduce the significant shifts in disbursement amounts month over month.
  - Mr. Pyles recommended that Board Members reach out to counties after the conclusion of the November 2015 meeting and prepare to discuss special disbursements during the December 2015 meeting.
  - After discussion, the Board asked DMS staff to present new disbursement options at the December 2015 meeting based on an historical analysis of the data.
  - The Board decided to move forward with a Special Disbursement in November while the Board and DMS' staff conduct further analysis.
  - Mr. Greer made a motion to disburse \$231,781.34 distributed consistent with the averages that were distributed to the counties in October 2015 and that the Board will review the distribution averages on a quarterly basis. Mr. Pyles seconded the motion which carried (11-0).

## **11. Vote on Grant Change Requests**

- Mr. Stacy Manning, Putnam County Attorney, presented a Petition Variance or Waiver regarding software purchased by the county with grant funds and returned to the vendor less a 20 percent service fee. Putnam County requested to return 80 percent of the grant and receive a waiver for the 20 percent service fee.
  - Ms. Dill Collier made a motion that the Board accept their proposal and grant the waiver.
  - Ms. Guillemette quoted statutes regarding petitions for variance or waiver.
  - Mr. Greer stated that granting this waiver would set a bad precedent for the Board because the Putnam County Commission agreed to the conditions of the grant.
  - Ms. Mitchell stated the Board should grant the waiver because the current Putnam County employees were unaware of the issue.
  - Mr. Pyles asked for clarification on the rules governing equipment use and lifecycle of equipment. Mr. Pyles stated that he does not think a return of the equipment after this amount of time would warrant a return of the full value.



- Ms. Guillemette stated that the rule governing equipment lifecycles would take effect in 2010 because the grant monies came to Putnam County in 2010. Therefore, the return of 80 percent of the original grant amount would be consistent with the application.
- Mr. Greer made a motion that the Board dismiss the petition for variance and accept the 80 percent pro-rata return to the Board as compensation based on the contract process. Mr. Guthrie seconded the motion which carried (10-0). Mr. Nadler was not present for this vote.
- Ms. Stacey Needham, 911 Coordinator, presented a Change Request for Manatee County
  - Ms. Khazraee asked if DMS staff has reviewed the change request.
  - Mr. Raheb stated that staff has reviewed and staff is ok with everything in the request.
  - Ms. Khazraee moved that the Board approve the Manatee County Change Request. Ms. Dill-Collier seconded the motion which carried (10-0). Mr. Nadler was not present for this vote.

## **12. Funding Options for Text to 911**

- Ms. Guillemette stated that she spoke to Wink Infinger about this subject and requested to assist DMS staff with presentation. Ms. Guillemette was recognized by Mr. Rogers to proceed.
- Ms. Guillemette stated that Text to 911 service providers fit into the same category as Wireless Providers in terms of being able to apply for refunds.
- Ms. Dill-Collier asked if the Text to 911 providers would come to the Board at the same time as the other Wireless Providers and, if so, does the Board have a list of Text to 911 providers in order to notify them of the funding request process.
  - Mr. Raheb responded that DMS does have a list of Wireless Service Providers, but Text to 911 service providers are not a part of that existing list yet.
- Mr. Pyles stated that the Board should not categorize Text to 911 providers as “Wireless Service” providers because there are many companies that provide wireless components of the 911 solution, but they are not “Wireless Service” providers. Mr. Pyles also stated that he could see a Wireless Provider contracting with a Text to 911 provider and coming to the E911 Board for reimbursement for that cost.
  - Ms. Guillemette stated that under the statute, Text to 911 providers would be considered Wireless Service providers.
  - Mr. Dillon stated that he does not think a Text Control Center can be considered a Wireless Service provider because they do not have a carrier network of their own to provide their service.
  - Mr. Nadler stated that the Text Control Centers do not have a network and therefore should not be considered a Wireless Service provider.
  - Ms. Guillemette stated that if the Board does not consider a Text to 911 service provider to be a Wireless Service provider and therefore not eligible for direct reimbursement, the Board could consider allocating funds from the E911 Board Administrative Fund. Ms. Guillemette also stated that those Administrative funds have already been allocated to other things and those allocations have been approved by the Legislature so the Board would have to reallocate those funds.

- Mr. Pyles asked if the Administrative fund could be used since the Board is not establishing a contract, but rather providing a reimbursement.
  - Ms. Guillemette stated that in order to use the Administrative Fund, you must have a contract and there is no spending authority for this kind of contract in the Administrative Fund.
  - Mr. Greer stated that Administrative funds have been used in the past for repairs.
  - Mr. Rahab stated that those funds were for grants to the counties
- Mr. Nadler if the Wireless Carriers can ask for money on behalf of the Text to 911 service providers.
  - David Gleason, Telecommunications Services (TCS), stated that the Wireless Carriers pay TCS for the free service the Federal Communications Commission (FCC) asked them to provide. Mr. Gleason also stated that the proposal from TCS that was in front of the Board was for some additional features that the free service does not provide. Mr. Gleason stated that in order for the Wireless Carriers to be reimbursed, there has to be a dedicated circuit into MyFloridaNet because the state plan was to start building a network to provide that backup.
  - Mr. Nadler asked if TCS considers itself a “Wireless Service Carrier” to which Mr. Gleason answered “No.”
  - Mr. Dillon asked if TCS considers itself a “Wireless Service Provider” to which Mr. Gleason answered “No, we are not a Wireless Service Provider.”
- Mr. Nadler asked if the Board could add Text to 911 service to the county grants.
- Mr. Hadley stated that because the money in the Administrative Fund has already been allocated for this year, the Board must request spending authority in the next budget cycle, which would delay the Text to 911 service for a year.
- Ms. Walker asked if the position of the Board Attorney that TCC’s are considered wireless providers.
  - Ms. Guillemette stated that while she does not see why they would not be included under the definition of “Wireless Service Provider” in the statute, it is the Board’s call.
- Mr. Pyles suggested that staff look at other options. Mr. Pyles also stated that he understands that because of definitions, Option 1 of Mr. Infinger’s proposal is not possible and options 2 and 4 are impractical at this time.
- Mr. Rogers asked staff to examine other options regarding funding for Text to 911, including the possibility of reassignment of monies within the Administrative Fund for this purpose during the 2016 fiscal year.

### **13. Follow up on Strategic 911 Plan**

- Mr. Rogers stated that DMS staff searched internally and externally for a qualified strategic planning facilitator and found an individual who recently conducted a similar planning session for the State 211 Board. Mr. Rogers stated he would like to invite this individual to conduct a Strategic Planning scoping session at the December 2015 meeting.

- The Board decided to schedule the scoping session for 11am during the December 2015 meeting.

#### **14. Discuss E911 Board 2015 Annual Report**

- The Board discussed minor cosmetic changes to the Annual Report

#### **15. Other Business**

- Ms. Guillemette confirmed that she would prepare a memo regarding why a rule was necessary for a fee change and that she would compile sample SERC's from other agencies.
- Ms. Khazraee moved the October 2015 Board minutes be approved as presented. Mr. Guthrie seconded the motion which carried (11-0).
- Mr. Dillon agreed to take over management of review and prioritization of grants.
- Mr. Raheb presented a proposal for a new meeting PA system for the E911 Board meetings.
  - Mr. Nadler made a motion to approve the proposal contingent upon the new system having a telephone interface. Ms. Anderson seconded the motion which carried (11-0).
- Ms. Mitchell asked if there is any way for Board meeting hotel stays be paid in advance instead of reimbursed.
  - Mr. Rogers directed staff to conduct additional research on the subject.

#### **18. Adjourn**

- Mr. Nadler motioned to adjourn. Ms. Anderson seconded the motion which carried unanimously (11-0).

#### **Next scheduled meeting:**

DATE: December 16-17, 2015

LOCATION: Hotel Information:  
Ponte Vedra Inn & Club  
200 Pointe Vedra Boulevard  
Ponte Vedra, FL 32082