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Chas. F. McDevitt
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May 23, 2011

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: TFW-T-09-01

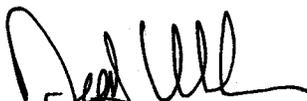
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven (7) copies of Tracfone Wireless, Inc.'s Post Hearing Brief.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Encl.

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UTILITIES COMMISSION

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UTILITIES COMMISSION

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Attorneys for TracFone Wireless, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. TFW-T-09-01
OF TRACFONE WIRELESS, INC. FOR)	
DESIGNATION AS AN ELIGIBLE)	TRACFONE WIRELESS,
TELECOMMUNICATIONS CARRIER)	INC's POST HEARING
)	BRIEF
)	
)	

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits its post-hearing brief in accordance with the Commission's Notice of Post-Hearing Briefing Schedule, Order No. 32231, issued April 21, 2011.

Pursuant to the Notice of Post-Hearing Briefing Schedule, the scope of the briefs is limited to whether TracFone is legally obligated to remit certain fees pursuant to the Idaho Emergency Communications Act ("IECA") or the Idaho Telecommunications Service Assistance Program ("ITSAP"). Limitation of the briefs to these two issues seems appropriate as there can be no dispute that TracFone has demonstrated that it meets all Federal Communications

Commission ("FCC") and Commission requirements for designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of providing Lifeline service to low-income Idaho consumers, and that designation of TracFone as an ETC will serve the public interest.

I. TracFone is Not Required to Collect and Remit Fees Under the IECA and Enforcement of IECA Requirements Is Not Within the Commission's Jurisdiction.

Although not relevant to any enumerated federal or state requirement for designation as an ETC, the Idaho Emergency Communications Commission ("IECC") sent a letter to the Commission dated May 21, 2010 in which it opposes TracFone's petition for designation as an ETC on the sole basis that "TracFone does not collect the Emergency Communications Fee in support of Idaho counties' 9-1-1 systems.¹ TracFone does not deny that it does not collect 9-1-1 fees. It does deny that the requirement to collect and remit 9-1-1 fees is applicable to it under current Idaho law. Moreover, the sole basis for IECC's opposition is inconsistent with prior statements of IECC regarding the non-applicability of Idaho's 9-1-1 fee to prepaid wireless telecommunications services such as those provided by TracFone, and disregards the fact that TracFone representatives have been in contact with IECC since 2007 and at no time has anyone from IECC ever indicated to TracFone its belief that 9-1-1 fee remittance requirements are applicable to prepaid services like those provided by TracFone.

Significantly, IECC submitted a letter of opposition to TracFone's ETC petition but chose not to intervene in this proceeding or provide testimonial evidence. Had it done so, the basis for its opposition could have been explored through discovery and cross-examination. By IECC's failure to participate, the only articulation of its position is its May 21, 2010 letter -- a statement which is nothing more than hearsay and the unexplained opinion of the signatory.

¹ Letter from Garret Nancolas, Chair, IECC, to the Commission, dated May 21, 2010.

The 9-1-1 fee remittance requirement is codified at Idaho Code § 31-4804(2). That provision states as follows:

The fee shall be imposed on and collected from purchasers of access lines or interconnected VoIP service lines with a service address or place of primary use within the county or 911 service area on a monthly basis by all telecommunications providers of such services. The fee may be listed as a separate item on customers' monthly bills.

(emphasis added)

As indicated by the underscored words from the statute, in Idaho 911 fees are to be collected on a monthly basis. It is axiomatic that fees can only be collected and remitted on a monthly basis when the services upon which those fees are assessed are provided on a monthly basis. Prepaid wireless service such as that provided by TracFone is not provided on a monthly basis. Consumers of such services purchase quantities of service on an as-needed basis, either by purchasing prepaid airtime cards at retail establishments (*e.g.*, Wal-Mart, Target, Best Buy, etc.) or by making service purchases on line through TracFone's Internet website (www.tracfone.com). Some consumers may make multiple purchases of prepaid wireless service from TracFone in any month; other consumers may make not make any airtime purchases in a given month. In short, prepaid wireless service, including that provided by TracFone, is offered on a "pay-as-you-go" basis. It is not provided on a monthly basis and statutes which impose fee payment obligations on services provided on a monthly basis are not applicable, indeed, cannot be applicable, to non-monthly services.

Further, IECC's May 21, 2010 letter asserting for the first -- and only -- time its view that TracFone is required to remit 9-1-1 fees under Idaho law is contradicted by its own prior acknowledgement that Idaho law in its current form (not as IECC might like Idaho law someday to be) does not cover prepaid services which are neither billed to customers nor provided on a monthly basis. Indeed, according minutes of IECC meetings, in February 2010, only three

months before sending its conclusory letter to the Commission, the IECC itself acknowledged that the law governing 9-1-1 fees was not applicable to prepaid services and that further legislation would be necessary.² The need for such legislation is reflected in the following excerpt from the IECC's minutes:

Mr. Goldsmith commented that the Commission [IECC] may want to start looking at legislation for collecting on prepaid wireless services. The National Telecommunications and Information Administration took a survey and found that 20% of all cell 911 calls that go into PSAPs come from prepaid services, and those people aren't paying a 911 fee. This is a big selling point for legislation. Its not something that will be created to add to the citizens, its just picking up the citizens that aren't contributing now.

Commissioner Berry asked if there were any States that have successfully passed legislation to collect a fee on prepaid services.

Mr. Goldsmith answered yes. Tennessee has three ways to do it: collect at the retailer, collect at the vendor, or collect both at the same time. Most states have started the movement to collect at the retail level. The National Association of Counties has adopted collection at the retail level. Once the Commission's Legislative Subcommittee starts to look at legislation for collection on prepaid, Mr. Goldsmith will pull all needed information and make packets so the Commission will have a good picture of what everyone is doing.

IECC's unsupported claim set forth in its May 21, 2010 letter that TracFone's failure to remit 9-1-1 fees on its prepaid services violates the Idaho Code stands in stark contrast to its February 4, 2010 acknowledgement as reflected in its meeting minutes of that date that legislation is necessary to include citizens who use such prepaid services among those required to contribute 9-1-1 fees. It appears that IECC's sudden and unexpected reversal of position regarding the non-applicability of the 9-1-1 fee under Idaho law to non-billed, non-monthly services such as TracFone's prepaid wireless service may have resulted from a presentation to the IECC by a Commission employee at the IECC's May 6, 2010 meeting. According to minutes of

² The IECC meeting minutes were provided to TracFone on April 27, 2011 in response to a public records request submitted to IECC pursuant to Idaho Code § 9-338. A copy of those meeting minutes is attached to this brief.

that IECC meeting (also obtained pursuant to TracFone's public records request), Ms. Grace Seaman advised the IECC that it is not too late to submit comments to the Commission, and that she was concerned that there could be people who will have TracFone services that will be able to call 911 without having to pay for it. Ms. Seaman also advised the IECC that "[i]t is TraFone's responsibility to comply with the 911 fees."³ Nothing in the minutes indicates that she provided any legal basis for her conclusion that TracFone is responsible for 911 fees.

The need for legislation to expand 9-1-1 fees to cover prepaid wireless services is not unique to Idaho. As noted in IECC's February 4, 2010 meeting minutes, most states have started the movement to collect 911 fees at the retail level. There is a sound reason why those other states have become part of that movement recognized by IECC itself -- collection of 911 fees from customers at the point of retail sale works! In fact, it is the only method of fee collection which assures that every user of prepaid wireless service contributes to support of 911 service.

Attempts to "force fit" a statute's billed surcharge collection mechanism on non-billed services does not work; it cannot work. With the exception of those relatively few consumers who purchase prepaid service directly from a provider (*e.g.*, those TracFone customers who purchase airtime on TracFone's website), there is no monetary exchange between the consumer and the service provider. There is, however, a monetary exchange between the consumer and the retail vendor. That is where the opportunity lies to collect 911 fees from prepaid wireless service customers. To date, no fewer than sixteen states have enacted such point-of-sale fee collection laws with similar legislation under consideration in other states. If and when Idaho joins the growing list of states which have enacted such laws, all consumers of prepaid wireless services in Idaho, including TracFone's customers, will be able to contribute to the support of 911. Until

³ May 6, 2010 meeting minutes of the Idaho Emergency Communications Commission.

such time as Idaho's 9-1-1 fee law is amended to encompass non-monthly, non-billed services, such as pay-as-you-go prepaid wireless services, there is no factual or legal support for the claim that the law is applicable to prepaid wireless services. Neither does IECC's assertion support a claim that designation of TracFone as a Lifeline-only ETC will not serve the public interest.

II. TracFone Is Not Required to Remit Surcharges to the Idaho Telecommunications Service Assistance Program.

Idaho Code § 56-901 *et seq.* establishes the Idaho Telecommunications Service Assistance Program (ITSAP). Section 56-904(1) requires telecommunications carriers to impose a uniform statewide monthly surcharge on each end user's business, residential and wireless access service. The surcharge shall be in an amount sufficient to reimburse each carrier of residential basic local exchange service for the total amount of telephone assistance discounts provided as well as the carrier's and the program administrator's expenses of administering the program. However, § 56-904(1) contains a critical qualification: **"The surcharge shall be explicitly stated on end user billings . . ."** (emphasis added)

The Legislature could not have more explicitly stated that qualification. The ITSAP surcharge shall be collected through billings rendered by providers to end users. There are no billings associated with prepaid services such as the prepaid wireless services provided by TracFone. As noted above, such services are not billed services. Those services are purchased in advance, most often, through third party vendors. Since the legislative command to collect the ITSAP surcharges is applicable only to billings rendered to end users, services whose charges are not recovered through such end user billings are not within the ambit of the remittance requirement codified at Idaho Code § 56-904(1).

TracFone acknowledges the possibility that the Legislature may wish to extend ITSAP surcharges to non-billed services such as prepaid wireless service. Prepaid services are a rapidly

growing segment of the Idaho telecommunications market in general and the Idaho wireless telecommunications market in particular. However, the current law contains no requirement that providers of such services collect ITSAP surcharges through any mechanism other than through specifically-stated items on end user billings. Whether to modify the ITSAP collection and remittance requirements under Idaho law so as to encompass collection of ITSAP surcharges through means other than the end user billing process is a matter for the Legislature, not for the Commission.

III. Questions Regarding Application of Fees and Surcharges to Non-billed Services Are Not Relevant to ETC Designation Proceedings.

As described in the preceding sections of this post-hearing brief, current Idaho law does not require TracFone to collect and remit 9-1-1 fees or ITSAP surcharges. Moreover, questions regarding the applicability, *vel non*, of such fees and surcharges to TracFone are not relevant to the only issues before the Commission in the instant proceeding: whether TracFone complies with all applicable federal and state requirements governing ETC designation for the limited purpose of providing Lifeline service to low-income Idaho households; and whether designation of TracFone as an ETC for the limited purpose of providing Lifeline service to low-income Idaho households will serve the public interest.

The record in this proceeding demonstrates that TracFone complies with the requirements codified at Section 214(e)(1) of the Communications Act of 1934, as amended,⁴ as well as all applicable FCC rules and Idaho requirements. It is uncontroverted that TracFone will provide all functionalities required by Section 54.101 of the FCC's rules.⁵ It is also undisputed that TracFone will advertise the availability of its Lifeline service using media of general distribution,

⁴ 47 U.S.C. § 214(e)(1).

⁵ 47 C.F.R. § 54.101.

as required by Section 214(e)(1)(b) of the Communications Act.⁶ As for the statutory requirement that ETCs provide Universal Service Fund-supported services, at least in part, using their own facilities, codified at Section 214(e)(1)(A) of the Communications Act,⁷ the FCC has exercised its authority pursuant to Section 10 of the Communications Act⁸ to forbear from application or enforcement of that requirement.⁹ The record also is undisputed that TracFone will provide its Idaho Lifeline customers with larger calling areas than any other ETC -- wireline or wireless -- designated as an ETC to provide Lifeline service in Idaho.

If the Commission has concerns regarding the applicability to TracFone of Idaho's 9-1-1 fee and ITSAP surcharge requirements, notwithstanding the fact that, as explained in this brief, those statutory provisions are inapplicable to TracFone as a matter of law, then it is recommended that the Commission consider the applicability of those fees in another proceeding outside the ETC designation process. Other state commissions, including commissions in the states of Maine, Arizona, and Nevada have proceeded in that manner. In those states, thousands of low-income households are enjoying SafeLink Wireless[®] service or will (in the case of Arizona) soon be enjoying service, while those state commissions review the applicability of the fee and surcharge laws in a systematic and responsible manner.

The availability of a free wireless Lifeline service to Idaho's neediest low-income households is too important to the public interest to be deferred while the Commission considers the applicability of certain fee statutes and whether legislative changes are necessary to extend

⁶ 47 U.S.C. § 214(e)(1)(B).

⁷ 47 U.S.C. § 214(e)(1)(A).

⁸ 47 U.S.C. § 160.

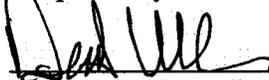
⁹ In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095(2004).

those fee and surcharge requirements to prepaid services. Federal and state regulators in thirty-seven states have concluded that designation of TracFone as an ETC and availability of its SafeLink Wireless® Lifeline service to low-income consumers in those states will serve the public interest. As a result of those determinations, more than three million customers throughout the United States already are enjoying the availability of Lifeline-supported wireless telecommunications service. Idaho's low-income households are no less deserving of those benefits than are the residents of those other thirty-seven states.

Conclusion

For the reasons described in this post-hearing brief, TracFone respectfully urges the Commission to promptly conclude this proceeding and designate TracFone as an ETC so that it may commence providing wireless Lifeline services to low-income Idaho households.

Respectfully submitted,



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Attorneys for TracFone Wireless, Inc.

May 23, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input type="checkbox"/>
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BY: Walter Houle
MCDEVITT & MILLER LLP

Attachments



Idaho
Emergency
Communications
Commission

IDAHO EMERGENCY COMMUNICATIONS

COMMISSION

4040 W. Guard St.
BOISE, ID 83705

OFFICIAL MINUTES

A meeting of the Idaho Emergency Communications Commission (ECC) was held on February 4, 2010 at Gowen Field, Bldg. 600, Joint Conference Room, Boise, ID. Commission Chairman Garret Nancolas called the meeting to order at 1:17 p.m. A quorum was present.

Members Present:

- Garret Nancolas, Mayor, City of Caldwell, Commission Chairman
- Joe Young, Bonner County Commissioner
- Teresa Baker, Ada County Prosecutor's Office
- Clint Berry, Qwest, Boise
- Bill Gardiner, Captain, Idaho State Police
- Dia Gainor, Chief, Idaho Bureau of Emergency Medical Services
- Troy Hagen, Ada County Paramedics
- Jim Lemm, J&R Electronics, INC., Coeur d'Alene
- R. David Moore, Blackfoot Police Chief, Commission Treasurer
- Martin Knoelk, Idaho Fire Chiefs Association
- Chris Smith, Idaho Sheriffs Association
- Bill Shawver, Military Division
- Mitchell Toryanski, Deputy Attorney General and Ex-Officio Member

Members Absent:

- Rich Wills, State Representative, Commission Vice-Chairman

Others Present:

- Eddie Goldsmith, E911 Program Coordinator
- Bruce Bowler, Madison County SO
- Michele Carreras, Manager, State Comm
- Ward Noland, BHS
- David Stonhill, Idaho National Laboratory
- Lorraine Elfering, Comm Manager
- Karren Wallen, Military Division
- Bren Bowl
- Nancy Gilsun
- Erin Hidalgo, BCSO

- Christine Stewart
- Carmen Boeger, Nampa
- Alesia Winner, Lewis County
- Jodi McCrosky, Qwest
- Nate Reed, Military Division

Approve Minutes of January 7, 2010

Chair Nancolas asked for a review of the January 7, 2010 Minutes.

MOTION: It was moved and seconded that the Commission approve the Minutes of the January 7, 2010, Idaho Emergency Communications Commission meeting. The motion passed.

Financial Report

Commissioner Moore presented the following financial information:

Total cash in the bank: \$2,626,976
Expenses: \$9,393
Operating money earned: \$21,256
E911 grant revenue earned: \$261,035

Commissioner Hagen moved that the commission accept the financial report.

MOTION: It was moved and seconded that the Commission approve the financial report. The motion passed.

Chair Nancolas reported that the financial report was included in the report to the Legislature. It was very nice to report that the Commission is living under a budget and expended less than the budgeted amount.

E911 Manager Report

Eddie Goldsmith reported the following:

Last month Mr. Goldsmith met with Adams County and assisted them with their RFP. It has since been published and is on the street for bids.

Custer County has their RFP written and plan on posting it February 15.

Mr. Goldsmith attended a meeting in northern Idaho concerning equipment consolidation. Those at the meeting were in agreement, and have started moving forward. They are working with Qwest on several different network options to identify cost.

Mr. Goldsmith will assist Boise County on February 12 in developing their RFP and network.

Bonner County is working with Verizon to identify a workable schedule for their migration to the enhanced network.

Boundary County has issued their RFP for a new phone system. February 8 will be their opening date with vendor selection February 12.

Camas County is awaiting delivery of their remaining equipment.

Franklin County has completed their installation. Mr. Goldsmith has audited their GAN request and invoice and approved them for a payout.

Teton County has signed a contract with Qwest for their enhanced 911 network. Work will not start until the spring thaw because they have to do some digging.

Shoshone County now has selective router through Verizon. They have submitted their paperwork to move to Phase II.

2010 is going to be a busy year for Mr. Goldsmith with nine counties moving from basic to enhanced. All movement is tied to Commission grants, so Mr. Goldsmith will be auditing requests as they come to ensure that everything is in line with grant applications.

Mr. Goldsmith reported that there are three groups in Idaho working on statewide mapping. There is a Statewide Public Safety Technical Working Group, the Next Generation 911 Program, and a Pacific Northwest pilot project called Virtual USA. All three groups are doing the same thing, so they have gotten together to see how they can pull resources to create a mapping system that everyone can use. This will be an ongoing project which will be several years in the making to identify what will be needed. Mr. Goldsmith will be working with these committees to make sure that the layers of the map that the Commission needs are created. Once all is completed, the mapping system will go out to all the stake holders. An issue that has come up is that some counties have their own mapping while the 911 people in that county have their own mapping, and the two aren't working together. There will be about 40 layers to this map.

Mr. Goldsmith reported that in August and September he will be working with the Commission Treasurer on the next year's budget.

The Commission's Grant Selection Committees is going to need to start looking at the next granting process, and have it completed by the end of May so those can go out to the counties.

Mr. Goldsmith commented that the Commission may want to start looking at legislation for collecting on prepaid wireless services. The National Transportation and Information Administration took a survey and found that 20% of all cell 911 calls that go into PSAPs come from prepaid services, and those people aren't paying a 911 fee. This is a big selling point for legislation. It's not something that will be created to add to the citizens, it's just picking up the citizens that aren't contributing now.

Commissioner Berry asked if there were any States that have successfully passed legislation to collect a fee on prepaid services.

Mr. Goldsmith answered yes. Tennessee has three ways to do it: collect at the retailer, collect at the vendor, or collect both at the same time. Most States have started the movement to collect at the retail level. The National Association of Counties has adopted collection at the retail level. Once the Commission's Legislative Subcommittee starts to look at legislation for collection on prepaid, Mr. Goldsmith will pull all needed information and make packets so the Commission will have a good picture of what everybody is doing.

Mr. Goldsmith presented a document to the Commission that has a Next Generation 911 assessment tool kit. Mr. Goldsmith wanted to make the Commission aware of what it is going to need to do prior to moving to Next Generation. The document will be emailed to Commission members and be available online.

Commissioner Gardiner thanked Mr. Goldsmith for his report, and suggested that instead of listing those counties who have adopted the surcharge, list those counties who have not adopted the fee.

Phone Bridge Presentation

Ward Noland from Idaho BHS presented the following:

During last month's meeting, there was some discussion about the cost of a phone bridge. Mr. Noland talked about a pilot program that BHS is using, which will hopefully become the standard messaging system. One feature of the system is the ability to have a conference call. A group can be created for the Commission, and the Commission can use the service for its conference call needs.

Mr. Noland demonstrated the system for the Commission.

Mr. Noland reported that he bought a large block of time as part of the pilot program, and it won't cost the Commission anything to use until June, and possibly after that won't cost anything.

Commissioner Moore asked that if this did cost the Commission, how much would it cost.

Mr. Noland answered that if this program continues, and the budget allows, after June there will be a yearly call block. The Commission won't be using it enough that it won't be charged, and it will be included in Mr. Noland's program expense.

Christine Stewart asked if this is something that the PSAP Committee will be able to use as well.

Mr. Noland answered that he will discuss that with them later.

Strategic Planning Update

Commissioner Hagen presented the following:

To recap what the Commission has done, it has reevaluated and come to a consensus on what the Mission, Vision, Philosophy, and Values should be. During the previous strategic planning meeting, the Commission went over goals and tactics to achieve those outcomes.

Commissioner Hagen recommended that with an out-of-town meeting coming up, time be set aside in the morning prior to the ECC meeting where the Commission can get together to discuss goals and how to achieve those. Commissioner Hagen will bring some information to help guide through the process, and will work with Mr. Goldsmith on setting aside some time for it.

PSAP Standards Committee Report

Bruce Bowler presented the following:

The PSAP website is now up and running. They are excited about it.

The PSAP Committee has been meeting with POST personnel. The Advanced Dispatch is no longer called Academy, it has been changed to Advanced Dispatch Training. It didn't meet an "Academy" type of criteria; it was advanced training, so it was changed to "Training."

There has been some discussion on the Basic Dispatch Academy possibly losing its funding. The PSAP Committee has discussed alternatives if the program gets cut.

Commissioner Moore commented that he hasn't heard of anything getting cut at this time, and hasn't seen that they are going to cut that far yet.

Mr. Bowler wanted to make the Commission aware that the PSAP Committee would like to do more training in 2011 and will be asking for more money for training in the next budget.

Mr. Bowler discussed updating the training facility at POST. They don't have the equipment needed to do scenario training.

Commissioner Baker asked if it would be possible for the PSAP Committee to show their website to the Commission.

Erin Hidalgo demonstrated the PSAP website.

New Business

Future Meetings:

March 4, 2010 – Blaine County Sheriff EOC, 1650 Aviation Dr., Hailey, ID

April 29, 2010 – Gowen Field, Bldg 600

May 6, 2010 – Cancelled

Chair Nancolas apologized in advance that he will not be able to attend the April 29 meeting.

Open Comment

Chair Nancolas extended congratulations to Col. Shawver, who will soon be General Shawver. Chair Nancolas commented that he appreciates all that Col. Shawver has done for the Commission, Treasure Valley, and the State of Idaho.

Chair Nancolas thanked Mr. Goldsmith, Commissioners Baker, Hagen, Lemm, and Ms. Hidalgo for their help on the annual report that was presented to the Legislature. Chair Nancolas thought that the report was very well received. The report was very well organized, with the important things front and center. One of the highlights was talking about dispatch certification that the PSAP Committee worked on. Chair Nancolas thanked and congratulated the PSAP Committee. Chair Nancolas reported that the Legislature was pleased by our budget, and that we live within our budget. The maps were also very helpful.

Commissioner Baker passed out copies of an RS that is going out, sponsored by Kootenai County and Representative Clark. Commissioner Baker commented that it is a proposal to create a Communications District. The Commission should be aware of it.

Ms. Hidalgo asked if the Legislature was surprised that there isn't any training or certification for dispatch.

Chair Nancolas answered that he didn't remember, but that was covered quite extensively in his report.

Commissioner Baker commented that the Commission will be scheduled to be in front of JLOC, and encouraged members of the Commission, that if they have any interest, to come to that hearing.

Closed Session in Accordance with Idaho Code Sec. 672345(11)(b)

Commissioner Moore moved that the Commission enter closed session in accordance with Idaho Code Sec. 672345(11)(b).

MOTION: It was moved and seconded that the Commission enter closed session in accordance with Idaho Code Sec. 672345(11)(b).

There was a roll call vote:

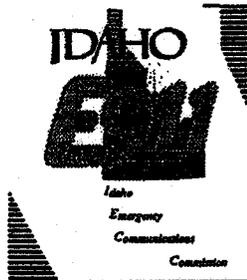
Garrett Nancolas: yes
 Rich Wills: absent
 Joe Young: yes
 Teresa Baker: yes
 Clint Berry: yes
 Bill Gardiner: yes
 Dia Gainor: yes
 Troy Hagen: yes
 Jim Lemm: yes
 R. David Moore: yes
 Martin Knoelk: yes
 Chris Smith: did not vote
 Col. Bill Shawver: yes
 Mitchell Toryanski: non-voting

The vote was 11 “yes” and 0 “no.” The motion passed.

At 3:25 pm the Commission moved backed into open session and the meeting was adjourned at 3:26.

**Garret Nancolas
Mayor, City of Caldwell, Commission Chairman**

**Nathan Reed
Administrative Assistant**



**IDAHO EMERGENCY COMMUNICATIONS
COMMISSION**
4040 W. Guard St.
BOISE, ID 83705

OFFICIAL MINUTES

A meeting of the Idaho Emergency Communications Commission (ECC) was held on May 6, 2010 at Gowen Field, Bldg. 600, Joint Conference Room, Boise, ID. Commission Chairman Garret Nancolas called the meeting to order at 1:01 p.m. A quorum was present.

Members Present:

- Garret Nancolas, Mayor, City of Caldwell, Commission Chairman
- Rich Wills, State Representative, Commission Vice-Chairman
- Teresa Baker, Ada County Prosecutor's Office
- Clint Berry, Qwest, Boise
- R. David Moore, Blackfoot Police Chief, Commission Treasurer
- Martin Knoelk, Idaho Fire Chiefs Association
- Chris Smith, Idaho Sheriffs Association
- Karin Magnelli, Deputy Attorney General and Ex-Officio Member

Members Absent:

- Joe Young, Bonner County Commissioner
- Bill Gardiner, Captain, Idaho State Police
- Dia Gainor, Chief, Idaho Bureau of Emergency Medical Services
- Troy Hagen, Ada County Paramedics
- Jimm Lemm, J&R Electronics, Inc., Coeur d'Alene
- Bill Shawver, Military Division

Others Present:

- Eddie Goldsmith, E911 Program Coordinator
- Bruce Bowler, Madison County SO
- Lorraine Elfering, Comm Mgr, Canyon County S.O.
- Ward Noland, BHS, Warnings
- Michele Carreras, State Comm. Manager
- Jodi McCrosky, Qwest, Account Manager
- Nathan Reed, ECC Administrative Assistant
- Karren Wallen, Military Division
- Angie VanVleet, Computer Arts
- Erin Hidalgo (via phone bridge), Bingham County

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- Brad Cougenhour (via phone bridge), Kootenai County
- Lisa Winner (via phone bridge), Lewis County

Approve Minutes of February 4, 2010

Chair Nancolas asked for a review of the March 4, 2010 Minutes.

MOTION: Commissioner Moore moved and Commissioner Knoelk seconded that the Commission approve the Minutes of the February 4, 2010, Idaho Emergency Communications Commission meeting. The motion passed.

Financial Report

Commissioner Moore presented the following financial reports:

Financial Report for March:

Cash in Bank: \$2,603,798

Fee 1% earned: \$17,977

Grant fee earned: \$261,625

Interest earned: \$1,933

E911 operating expenses: \$11,567

Commissioner Moore asked that the financial report for March be accepted.

MOTION: Commissioner Smith moved and Vice-Chair Wills seconded that the Commission approve the March financial report. The motion passed.

Financial Report for April:

Cash in Bank: \$2,706,076

Fee 1% earned: \$21,355

Grant fee earned: \$232,906

Interest earned: \$2,047

E911 operating expenses: \$11,226

Commissioner Moore asked that the financial report for April be accepted.

MOTION: Commissioner Baker moved and Vice-Chair Wills seconded that the Commission approve the April financial report. The motion passed.

Commissioner Karin Magnelli enters the meeting.

E911 Manager Report

Eddie Goldsmith presented the County 2010 Grant Status Update to the Commission.

Adams County has invited their top two vendors to give a demonstration and go over Adams County's RFP. Mr. Goldsmith has been asked to attend the demonstration and help with the technical aspects.

Custer County has requested Mr. Goldsmith to come and assist them in interpreting and clarifying their RFPs.

\$324,832.25 has been paid out of a total \$1.6 million for the 2010 grant. \$1,276,832.25 remains in the grant.

Chair Nancolas asked that once a request for reimbursement is received, how long does it take to make sure that the request meets the conditions of the grant, and then to actually issue the check.

Mr. Goldsmith answered that once the county submits their GAN request with their invoices, it is faxed to the grant coordinator who gives the information to him. Mr. Goldsmith goes through each individual line item to make sure it complies with the grant. He signs an approval, and the check is cut. It takes two days from the time the information is received to the time the check is made.

Annual PSAP Survey Form Review

Mr. Goldsmith presented an online survey to the Commission. No feedback has been received as to whether the Commission wanted any additional information included on the survey. The survey will go to all PSAPs to give the Commission a picture of where things stand. The last survey went out a little over four years ago. This current survey will take 30 minutes to one hour to complete.

Commissioner Berry asked if the survey is something the Commission will have to pay for.

Mr. Goldsmith answered that it will cost \$595 a year to have up to 10 separate and reusable templates. It can be used for assessments, surveys, and tests. The PSAP Standards Committee wants to develop a test for their dispatcher manual and would be able to use this to do that.

Commissioner Berry asked if there is any additional fee for how many people take the survey.

Mr. Goldsmith answered no, there is no additional fee. Kentucky is the only state with an online system. The owner of the company said that if other states get on board, Idaho could get a pretty good deal.

Commissioner Baker suggested that acronyms be spelled out on the survey.

Vice-Chair Wills moved that the Commission accept the survey, with the corrections that Mr. Goldsmith will make to the survey.

Commissioner Baker seconded the motion.

Mr. Goldsmith suggested that the Commission give the survey out in the later part of the year, or wait until January 2011 to fill it out for 2010. That will give the Commission enough time to get the information in by February to use in the report to the FCC due in March.

Commissioner Berry asked where the information is hosted.

Mr. Goldsmith answered that it is hosted with the survey firm and on his computer.

Commissioner Berry commented that the Commission would probably want some language structured around what that firm can do with this information. The Commission doesn't want to turn the PSAP survey into some kind of mailing list or contact list for vendors.

Vice-Chair Wills amended his motion that the information produced be limited to ECC use only.

Commissioner Baker, the motion second, was ok with the amendment.

MOTION: Vice-Chair Wills moved and Commissioner Baker seconded that the Commission accept the survey, with the corrections Mr. Goldsmith will make to the survey, and that the information produced from the survey be limited to Commission use only. The motion passed.

TracFone ETC Status Update

Mr. Goldsmith commented that Grace Seaman is not at the meeting, but he had something to share with the Commission on the subject. The Public Utilities Commission (PUC) has recommended that TracFone be denied ETC status due to their un-businesslike conduct.

TracFone has not provided this Commission with a point of contact, and they have not responded to the PUC regarding the 911 fee. TracFone won't talk to commissions, they get lobbyists and lawyers. Mr. Goldsmith commented that he believes TracFone has already done that and approached the Governor. He suggested that whatever the PUC does, this Commission follow suit.

PSAP Standards Committee Report

Bruce Bowler presented the PSAP Committee webpage to the Commission.

Mr. Bowler reported that the PSAP Committee went and visited dispatch centers to deliver the training manual. Photographs were taken at the visits, and those photos are on the webpage.

Grace Seaman (PUC) enters the meeting.

Mr. Bowler reported that the PSAP Committee attended the ILETS Conference. Commissioner Baker and Darren Murphy from Kootenai County gave a presentation on liabilities and dispelling myths. The PSAP Committee was very pleased with their presentation.

The PSAP Committee met with POST employees.

TracFone ETC Status Update

Chair Nancolas recognized Grace Seaman from the PUC, and with permission from the Commission returned to the topic of TracFone ETC Status.

Ms. Seaman reported that she is a utility analyst at the Idaho Public Utilities Commission. One of her responsibilities is to review all applications from companies that wish to become eligible telecommunication carriers, which gives them access to several pools of money at the federal and state level. This also allows these companies to be reimbursed for discounting communication services to

low income households in the state of Idaho. One of the biggest pre-paid wireless companies, TracFone, has submitted an application for ETC (Eligible Telecommunication Carrier) designation in Idaho.

TracFone's application was initially denied because they were not registered with the Secretary of State. TracFone countered with a petition for reconsideration, and supplied an new application, which is now in the process of being reviewed.

The issue of TracFone seeking ETC status might be of interest to the ECC because when asked how 911 funds are collected and paid to the appropriate Idaho counties, TracFone responded that they are not obligated to collect 911 fees. A greater percentage of wireless users are prepaid wireless users, and if they don't have to pay into the 911 fund, it could have a detrimental impact to that fund and the services provided.

Commissioner Berry asked if TracFone is trying to tap into the stat low cost fund.

Ms. Seaman answered that they claim they are not, but by virtue of becoming an ETC designated company there might not be a way to prevent them from doing so in the future.

Commissioner Smith suggested that the Commission ask for the Attorney General's office for an opinion on the matter.

Commissioner Baker suggested that she and Commissioner Magnelli discuss the issue and come up with some ideas for fixing legislation, because this is probably going to have to be addressed legislatively.

Chair Nancolas commented that he doesn't believe when a company says they want an ETC standing, and also says that they aren't going to pursue the benefits of that standing.

Ms. Seaman commented that TracFone has very powerful attorneys and people working for them at the nation level. They are very well connected nationally, and at the state level. They are very aggressive and have hired a very well know lobbyist in Idaho. The PUC has a letter from Gov. Otter strongly encouraging the commission to act promptly and to accept their application.

Vice-Chair Wills asked Ms. Seaman who the lobbyist is.

Ms. Seaman answered Weber and Sullivan.

Ms. Seaman commented that her purpose for addressing the ECC is to let the Commission know that it is too late for the Commission to intervene in this case, but it is not too late for the Commission to submit comments, if they so wish, on this case. The comment deadline is May 24, but it could change.

Ms. Seaman commented that she is concerned that there could be a very large number of people who will have TracFone services that will be able to call 911 without helping to pay for it. It is TracFone's responsibility to comply with the 911 fees.

Mr. Goldsmith commented that every state that passed legislation on collecting fees from prepaid wireless companies has been sued by TracFones. Every case has gone to those states' Supreme Courts.

In all but one state, TracFone has lost their case. TracFone will not hesitate to fight any state, and they don't care how much it will cost. When Idaho looks at creating legislation, we should look at the model of point of sale.

Chair Nancolas suggested that the Commission ask Commissioners Baker and Magnelli to draft some comments to reflect this discussion from a concern based from 911. This Commission's goal is to provide an emergency communication system that protects the citizens that need to rely upon it. Any suggestion that eliminates funding for that, or is an unfair practice associated with that, we as a Commission cannot support those activities. We also believe that anyone who accesses that system needs to pay their fair share. Therefore, our opinion as a Commission would be in this particular case, that if TracFone is not willing to pay those fees, we would respectfully request that the PUC deny their application.

MOTION: Commissioner Baker moved, and Vice-Chair Wills seconded, that a letter be addressed on behalf of the Commission, based on the Chair's comments, and have it signed by the Commission Chair. The motion passed.

Pre Paid 911 Fee Discussion

Mr. Goldsmith commented that the National Association of County Commissioners, the National Emergency Number Association, and APCO International have all adopted the model of point of sale for collection of fees, and a lot of states are changing their legislation now to that model, due to the challenges with TracFone.

New Business

Mr. Goldsmith commented that he has the new tele-communicator manual. If any Commission members want a copy to let him know. All members of the Commission will get a copy of the next generation 911 transition policy implementation handbook. He highly suggested that Commissioners read the handbook because it will be helpful on what the Commission needs to do to get to next generation.

Chair Nancolas asked for a suggestion for a location for the August meeting.

Mr. Goldsmith suggested Lewiston.

Commissioner Baker suggested that the location be decided at the next meeting.

Future Meetings:

June 3, 2010 – Gowen Field, Bldg 600

July 1, 2010 – Gowen Field, Bldg 600

August 5, 2010 - TBD

MOTION: Commissioner Moore moved, Commissioner Smith seconded, that the Commission accept the June 3 meeting date and place. The motion passed.

Chair Nancolas apologized for the confusion about the April 29 meeting.

Open Comment

Mr. Goldsmith wanted Commission member to be aware that new officers will be elected in July. There are also some Commissioners whose terms are up. Those Commissioners are Gainor, Hagen, Knoelk, Lemm, and Wills.

Chair Nancolas suggested that Mr. Goldsmith prepare a letter to each of those individuals advising them and asking them if they would like to be reappointed.

Commissioner Moore commented that a lot of money is being lost from the counties that are not participating in the 25 cent fee. A lot of money is being lost from the nonparticipation of Ada County, Bannock County, and Bonneville County. Do we have to wait until the legislation sunsets to readdress it?

Vice-Chair Wills answered no, and commented that the Commission needs to focus on one thing, whether it is this, or the TracFone issue.

Chair Nancolas suggested that Mr. Goldsmith send time sensitive emails to Commissioners as they come in, but send out nonessential emails once or twice a month.

Adjournment

MOTION: Vice-Chair Wills moved, Commissioner Moore seconded, that the meeting adjourn. The motion passed.

The meeting adjourned at 2:48 p.m.

Garret Nancolas
Mayor, City of Caldwell, Commission Chairman

Nathan Reed
Administrative Assistant