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December 10, 2024

To: Mr. Greg Schwarze, Chair of ETSB  
Mr. Mark Franz, Vice Chair of ETSB  
Mr. Grant Eckhoff, Member  
Ms. Marilu Hernandez, Member  
Deputy Chief Patrick Johl, Member  
Mr. Joseph Maranowicz, Member  
Ms. Sheryl Markay, Member  
Deputy Chief Dan McCarthy, Member  
Ms. Jessica Robb, Member  
Chief David Schar, Member  
Mr. Michael G. Tillman, Member  
Ms. Yeena Yoo, Member

From: ASA Mark Winistorfer

**RE: Authorized Uses for 911 Surcharge funds as of December 10, 2024.**

**MEMORANDUM**

Chairman Schwarze:

The purpose of this memorandum is to provide guidance on the billing of public safety agencies in the Emergency Telephone System Board's ("ETSB") for the reimbursement to ETSB for the purchase of radios that are considered non-allowable use of 9-1-1 surcharge funds. In 2022, the ETSB executed intergovernmental agreements with ETSB's member agencies of its Public Safety Answering Points ("PSAPs") to purchase radios in a collaborative effort to maintain and enhance the DuPage Emergency Dispatch Interoperable Radio System infrastructure and improve the ability of the two PSAPs to effectively respond to emergency calls to 9-1-1 throughout the ETSB's service area. ETSB then purchased portable and mobile radios for the member agencies using surcharge funds.

Due to the enhanced purchasing power the ETSB commanded in purchasing radios that would definitely be allowable purchases, it was able to negotiate the best possible price and service program for the agencies to purchase radios that would be questionable or not allowable purchases. The intergovernmental agreements provided that, in order to make these purchases for the member agencies, the ETSB would pay for all of the radios it purchased and the member agencies would then reimburse the ETSB on a set payment schedule that would allow the member agencies to properly budget for the purchase of the non-allowable radios.

The first installment for reimbursement for the non-allowable radios is now coming due. In order to properly bill the member agencies for their non-allowable radios, the ETSB must analyze the purchases made by the member agencies to determine what radios are allowable, and what radios are not, and must be reimbursed accordingly. To provide an example, the DuPage County Sheriff's Office operates three bureaus, a Bureau of Patrol, a Bureau of Administration, and the Bureau of Corrections, all of which utilize radios for communication. Two of those three Bureaus' radios, particularly the radios operated by the Bureau of Corrections, are not allowable because they are outside of the mission of directly supporting 9-1-1 services. The Bureau of Patrol's radios, for the most part, were allowable purchases. The Bureau of Corrections and Administrative Bureau's radios were not and were billed accordingly. However, there are radios purchased for the Bureau of Patrol that require interpretation and analysis to determine whether they are. To provide this analysis, an examination of the guidance passed by Congress, the FCC, the Illinois legislature, and the Illinois State Police is necessary.

On September 23, 2021, the "Ending 9-1-1 Fee Diversion Now Strike Force" established by the Federal Communications Commission (hereinafter the Strike Force) delivered its report to Congress regarding the use, and misuse, of funds collected via 9-1-1 surcharge legislation. After the Strike Force report, it was anticipated that the FCC, the Illinois legislature, the Illinois State Police ("ISP"), or some combination thereof would set forth guidance on acceptable uses of 9-1-1 Surcharge Funds. The State legislature, at the behest of the Statewide 9-1-1 Advisory Board, amended the Emergency Telephone Systems Act in the 2023 veto session and supplied some guidance. Each of these findings impacts what devices the DuPage Emergency Telephone System Board can fund utilizing surcharge funds provided for by 50 ILCS 750.

My interpretation of that guidance is set forth below:

## **I. Past guidance provides future guidance**

### **A. Federal Communications Commission**

On June 25, 2021, the Federal Communications Commission ("FCC"), pursuant to Congressional Order in the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (hereinafter Section 902), directed the FCC to publish final rules designating the uses of 9-1-1 fees by states and taxing jurisdictions that constitute 9-1-1 fee diversion for purposes of 47 U.S.C. § 615a-1 and amended that section with specific instructions. This action was made concurrently with the directive to the FCC to establish a 9-1-1 Strike Force to address 9-1-1 fee diversion and provide an annual report to Congress. The Strike Force's mission was to study how the Federal Government can most expeditiously end diversion by a State or taxing jurisdiction of 9-1-1 fees or charges.

In section 902, Congress amended 47 U.S.C. § 615a-1(f)(3)(B) to limit the purposes and functions for which surcharge may be expended to: "shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction. In designating such purposes and functions, the Commission shall consider the purposes and functions that States and taxing jurisdictions specify as the intended purposes and functions for the 9-1-1 fees or charges of such States and taxing jurisdictions, and determine whether such purposes and functions directly support providing 9-1-1 services." 9-1-1 Services is further defined in 47 U.S.C. § 942(e)(1) and includes both E9-1-1 Services and Next Generation 9-1-1 Services. The term "E9-1-1

1 services” means both phase I and phase II enhanced 9–1–1 services, as described in section 20.18 of the Commission’s regulations (47 C.F.R. 20.18, which is currently reserved), as in effect on February 22, 2012, or as subsequently revised by the Commission. Next Generation 9-1-1 Services is defined as:

“an IP-based system comprised of hardware, software, data, and operational policies and procedures that — (A) provides standardized interfaces from emergency call and message services to support emergency communications; (B) processes all types of emergency calls, including voice, data, and multimedia information; (C) acquires and integrates additional emergency call data useful to call routing and handling; (D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities; (E) supports data or video communications needs for coordinated incident response and management; and (F) provides broadband service to public safety answering points or other first responder entities.”

47 U.S.C. §942(e)(5).

Finally, Section 902 makes clear that the FCC rules that are imposed apply to states.

## **B. The FCC Report and Order of June 25, 2021**

In the June 25, 2021 report and order, the FCC imposed the following rules in summary:

1. Diversion is defined in 47 CFR 9.22:

**the obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23**

2. The Standard for determining Acceptable Purposes and Functions for 9-1-1 fees is defined as: acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 9-1-1 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of PSAPs within such state or taxing jurisdiction.
3. Acceptable Purposes Designated: (1) PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG 9-1-1, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs include technological innovation that supports 9-1-1; (2) PSAP personnel costs, including telecommunicators’ salaries and training; (3) PSAP administration, including costs for administration of 9-1-1 services and travel expenses associated with the provision of 9-1-1 services; (4) Integrating public safety/first responder dispatch and 9-1-1 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 9-1-1 and public safety dispatch operations; and (5) Providing for the

- interoperability of 9-1-1 systems with one another and with public safety/first responder radio systems.
4. Designation of Unacceptable Purposes and Functions for 9-1-1 Expenditures are defined in 74 C.F.R. § 923(C) and include in relevant part: Transfer of 9-1-1 fees into a State or other jurisdiction's general fund or other fund for non-9-1-1 purposes: **(3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.**<sup>1</sup> The FCC provides commentary rejecting as overbroad the proposition that *all* public safety radio expenditures directly support the provision of 9-1-1 services but declined to adopt a bright line. However, the FCC adopted the rule with the intent that expenditures on infrastructure or equipment are unacceptable if they do not directly support providing 9-1-1 services.

### C. The Mobile Strike Force Report

The Mobile Strike Force was created on May 21, 2021 with the purpose of ending the use of 9-1-1 surcharge funds for purposes not related to the provision of emergency services from the “entry point” to the *first responder* to the scene, to avoid underfunding 9-1-1. *See* 9-1-1 Strike Force Report, § Executive Summary P. 7 and § 2,2,1 p. 10 – 11. The term “entry point” is defined in the appendix to the Strike Force Report by referencing several sections of 47 CFR 9, but for our purposes they may be boiled down to the appropriate Public Safety Answering Point (“PSAP”). Underfunding 9-1-1 is defined as “funding levels that are below the levels required for optimal performance of 9-1-1 operations.”

The Strike Force provided the following recommendation regarding allowable uses for 9-1-1 Fees: “The allowable use of 9-1-1 fees should include the ability for local agencies and states to fund any communication system, technology or support activity that directly provides the ability to deliver 9-1-1 voice and data information between the “entry point” to the 9-1-1 system and the ***first responder***.” The Strike Force justified this definition because it intends to include “all current and future technologies and communication systems that directly support the 9-1-1 system” in its definition of allowable costs. The Strike Force reasoned that: this “definition is broad enough to provide state and local agencies the ability to support the communications systems, technology, and support activities that are used every day to save lives.”

The Strike Force went on to list examples of unauthorized uses of surcharge. The first unauthorized use identified by the Strike Force was “land mobile radio assets that support jail and prison operations because these systems are not directly supporting the delivery of data and information between the 9-1-1 request for assistance and the ***first responder***.” The second unauthorized use identified was subscriber units for Department of Transportation, emergency managers, and other entities that are not directly supporting the delivery of data and information between the 9-1-1 request for assistance and the ***first responder***. The third unauthorized use

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<sup>1</sup> It is important to note, that the FCC originally proposed the following designation as not allowed but backed off: Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, ***that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders*** and requested that the 911 Strike Force implement recommendations on specific examples for public safety radios in this regard.

identified was for LTE subscription plans that do not directly support delivery of data and information between the 9-1-1 request for assistance and the first responder.

The Strike Force then discussed the implication of a broader 9-1-1 Fee Structure and emphasized that State and local entities can adopt guidelines for the eligible use of 9-1-1 fees that are more restrictive than the federal definition, but not less restrictive. Therefore, statutes, rules, and guidance in place prior to this guidance that are more restrictive are still in place, however, less restrictive statutes, rules, and guidance must be amended to come into compliance.

The Strike Force then recommended and emphasized that the allowable use of 9-1-1 fees should include the ability for local agencies and states to fund any communication system, technology, or support activity that ***directly provides the ability to deliver 9-1-1 voice and data information between the “entry point” to the 9-1-1 system and the first responder.*** This definition includes, but may not be limited to, those items listed in Section 2.2.1. This definition recognizes that 9-1-1 telecommunicators are first responders in many states. The Strike Force further recommended that “[s]tate and local 911 fee structures should clearly identify the allowable use of 911 fees that aligns with the final FCC 911 Fee Diversion Report and Order” and those authorities should “ensure that current statutes, policies, procedures, and rules are updated to reflect the final FCC 911 Fee Diversion Report and Order.”

#### **D. Illinois Law**

Pursuant to the Strike Force’s recommendation, the Illinois legislature amended the Emergency Telephone System Act to incorporate the designation of acceptable obligations or expenditures for purposes of the Consolidated appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(c) are defined in 47 CFR 9.23 and the FCC Report and order of June 25, 2021 in 50 ILCS 750/35. In addition to incorporating the allowable expenditures, the Act specifically includes telecommunicators as “first responders.” 50 ILCS 750/2.

### **ANALYSIS**

#### **I. What was the intent of Congress, the FCC, and the Strike Force (collectively “the lawmakers”) in creating these rules?**

“All laws are to be interpreted consistent with the legislative intent for which they were originally enacted, as revealed in the Congressional Record prior to the passage. The passage of no amount of time can change the original legislative intent of a law. Courts should construe laws in harmony with the legislative intent and seek to carry our legislative purpose.” *Foster v. United States*, 303 U.S. 118, 120 (1938). It is clear that many of the radios purchased by the ETSB are “allowable costs.” Specifically, 50 ILCS 750/35 (quoting the language from the Strike Force Report and Section 902) allows for the ETSB to expend funds to provide “the interoperability of 911 systems with one another and with public safety and first responder radio systems.”

The ETSB chose to expend 9-1-1 surcharge funds to ensure that interoperability between the member agencies was maintained. Therefore, the purchase of “allowable” radios and the practice of expending 9-1-1 surcharge funds to allow member agencies to purchase radios that aid in the effort of interoperability is allowable, provided that the cost for non-allowable radios is reimbursed.

However, it is also clear that Congress, the FCC, and the Strike Force recommendations are intended to restrict the use of 9-1-1 surcharge funds to the *first responder* providing 9-1-1 services. Every word within a statute is there for a purpose and should be given its due significance. See *Russello v United States*, 464 US 16, 23, 78 LEd 2d 17, 104 S Ct 296 (1983); See also *Babbitt v Sweet Home Chapter Communities for Great Ore.*, 515 US 687, 698, 132 L Ed 2d 597, 115 5 Ct 2407(1995) (All of the words used in a legislative act are to be given force and meaning, otherwise they would be superfluous having been enough to have written the act without the words). The Strike Force report uses the term “first responder” in each of its recommendations, even while using the plural “first responders” in other areas. However, the law should be given its plain meaning wherever possible and statutes must be interpreted so as to be entirely harmonious with all laws as a whole.

Therefore, it is clear that the Strike Force intended to make a distinction between the first units dispatched to the scene of a 9-1-1 call and the units that augment or enhance that response. Although Congress, and later the FCC itself and its subsidiary advisory body (collectively “the lawmakers”), said “first responder” they did not mean only a PSAP telecommunicator or the first unit dispatched to the scene by the telecommunicator. If the lawmakers intended to restrict 9-1-1 Surcharge to the PSAPs, they could have done so and stopped there. They did not. Furthermore, if the lawmakers intended to include only the first units dispatched to the scene of a 9-1-1 call, they could have done so and stopped there. They, likewise, did not. Rather, the lawmakers meant to distinguish the *types* of units first dispatched to the scene based on their mission and responsibilities. Otherwise, the intent of the law and subsequent clarifying rules is frustrated.

**Therefore, the ETSB should consider the purpose for which the member agencies intend to use the radios that were purchased in making its billing determination.** The types of units that will be using the radios and their roles on the agency should be the determining factor. The types of personnel that will be using the radios should be first responders that are commonly dispatched to emergencies by a PSAP or otherwise routinely respond to emergencies initiated by a 9-1-1 call after alerted by a PSAP. The personnel must rely on radios to receive 9-1-1 voice and data information from the PSAP from the time of dispatch (or the time the incident is transmitted over the radio) to arrival to the scene.

There are a few obvious types of personnel using portable radios that immediately qualify, such as: police officers on patrol; firefighters dispatched or otherwise responding to a fire or rescue; or emergency medical personnel responding to a medical emergency. Likewise, a fire apparatus with a mobile radio installed that uses that radio to receive voice and data transmissions from the PSAP would also qualify. Thus, if a telecommunicator dispatches other first responders to a scene of a 9-1-1 call, the radios equipped to the types of units expected to immediately respond to, arrive at, and provide services to people in need of service at the scene are considered allowable costs.

For example, if a telecommunicator dispatches emergency personnel to an auto accident, the types of units expected to arrive and provide 9-1-1 services immediately in response to that incident should be considered first responders and their radios would be allowable costs. This may include police officers, firefighters, and emergency medical personnel. This may include additional units, such as community service officers from a police department if it is their job to *immediately respond* to the initial dispatch of such a call. It would also likely include the portable radio of certain supervisors if it is that person’s job to *immediately respond* to incidents of this nature.

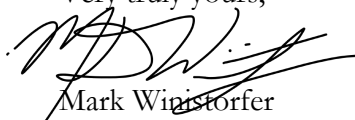
Allowable costs would likely not include personnel such as community service officers, evidence technicians, corrections officers transporting detainees, State's Attorney Investigators, or other personnel in an administrative or support role, unless one of their primary responsibilities is to respond to calls for service made by a PSAP after a 9-1-1 call. For instance, if a Police Sergeant is responsible for supervising lower-ranking police officers in the field but also routinely responds to 9-1-1 incidents called out over the radio by a PSAP, that Sergeant would certainly be a first responder. Similarly, if a fire supervisor has responsibilities other than responding to fire emergencies but *also* responds to such incidents using a portable radio, then that would likely be an allowable cost. However, if a community service officer on a police department is not assigned to emergency calls, then that is most likely not an allowable cost.

## II. Recommendation regarding Radios that are not Defined as Allowable Expenditures of 9-1-1 Surcharge

It is recommended that the ETSB establish with each member agency the purpose for which it is purchasing each radio. The member agency should certify that it intends to use the radios to equip *first responders* as defined by section 902(c)(1)(c), 47 CFR 9.23, the Strike Force Report, and 50 ILCS 750/35 in writing according to job description. The member agency will then be responsible for reimbursing the ETSB for any radios that are non-allowable expenditures.

If you have any questions or concerns, or you would like to discuss the contents of this memorandum, please do not hesitate to contact me.

Very truly yours,



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