

STATE 911 COMMITTEE
Legislative Action Subcommittee

January 25, 2013
MSP-HQ
Meeting Minutes

A. Roll Call

The meeting was called to order by Chairperson Shawn Sible and roll call was taken.

Voting Members Present:

Mr. Shawn Sible (Chair)
Ms. Pat Anderson
Ms. Marsha Bianconi
Ms. Patricia Coates
Ms. Yvette Collins
Mr. Bob Currier
Mr. Lloyd Fayling
Mr. Steve Leese
Mr. James Loeper
Mr. David Piasecki
Mr. David Vehslage
Mr. Tim Smith
Mr. Robert Bradley
Mr. Dale Berry
Mr. Jon Campbell
Mr. John Hunt
Ms. Pam Matelski
Mr. Jeff Troyer

Representing:

Michigan State Police
AT&T
Confrence of Western Wayne
CLEMIS
AT&T
Intrado
Genesee County 911 Authority
Eaton County Central Dispatch
Gogebic 911
AT&T
Verizon
Michigan Communications Directors Association
CCE
Huron Valley Ambulance
Michigan Association of Counties
Telecommunications Systems
Michigan State Police
Appointee, Speaker of the House of Representatives

Non-Voting Members Present:

Ms. Harriet Miller-Brown
Ms. Stacie Hansel

Michigan State Police
Michigan State Police

Absent:

Ms. Jennifer Greenburg
Sheriff Dale Gribler

Telecommunications Association of Michigan
Van Buren County Sheriff's Department

B. Meeting Minutes Approval

A **MOTION** was made by Mr. Steve Leese to approve the meeting minutes of May 31, 2012. Supported by Mr. Bob Currier, the **MOTION** carried.

C. Old Business

None

D. New Business

1. Confidentiality of 911 Call Recordings

Ms. Miller-Brown, referencing the handout provided to LAS members, stated it was a sampling of 911 call confidentiality statutes existing in other states. The president of Michigan NENA would like the LAS to consider including something similar the next time the statute is opened to protect the confidentiality of 911 calls. Ms. Coates asked if there were specific issues that brought this up. Ms. Miller-Brown stated there was nothing she knew of currently. Mr. Leese stated there is always an issue to protect the victim, especially when the media wants to FOIA information. He stated many centers are applying the five-day FOIA provision and then asking for an extension. Generally, after that time, it is no longer newsworthy. In his opinion, that is not the best way to handle the situation. He gave the

example of someone dying in a house fire while on a 911 call; that is not something that should be on the news.

Mr. Sible asked about the other side. There have been situations where dispatchers' performance has been less than stellar and the public has a right to know. He asked how to draw the line between protecting the rights of the victim, without protecting someone who should not be protected. Ms. Miller-Brown gave an example of a past situation where they gave a word-for-word transcription instead of the audio so the caller's voice could not be identified. Ms. Matelski asked if it was within the rights to not give the audio. Mr. Sible stated, legally, if the issue was pushed, the audio would have to be given because there is no restriction in FOIA. Ms. Coates stated she liked the laws in Rhode Island, which stated audio cannot be released without the written consent of the caller. Mr. Currier stated something that should be put on the table, moving into the Next Generation world, reporting will now be more than just voice. It will essentially be the entire data stream associated with that incident.

Mr. Campbell asked if the states that had 911 exemption laws had been tested through their Court of Appeals, Supreme Courts, etc. Ms. Miller-Brown stated that as far as she knew, they had not. Mr. Currier, as a regional representative for NENA National, stated he was not aware of any public tests of the statutes as most are fairly new.

Mr. Vehslage stated he believes a bill regarding confidentiality was introduced during the past week. Ms. Collins stated it is HB4011. After reviewing the bill, Ms. Miller-Brown stated it may not have shown up on the radar of 911 because it actually is an amendment to the FOIA statute and not under the 911 Act. Ms. Miller-Brown read excerpts from the Bill. Mr. Sible stated a link would be sent out today to get the proposed bill to the members of LAS. Also, he will ask the legislative staff to do a brief analysis and background, working with Ms. Miller-Brown to make sure the information is pertinent. Mr. Sible stated, from what Ms. Miller-Brown read, it does not address the Next Generation concept. There will be changes the LAS will want to recommend. Ms. Collins stated someone got the bill introduced and it would be interesting to hear their reasoning behind it and who is actually supporting it. Mr. Sible asked Ms. Bianconi to contact the legislator and find out the background, since he is from her district.

Mr. Sible stated the LAS will reach out to the representative for more details and also have legislative staff provide a brief analysis. Once completed, he would ask for volunteers to sit down and look at changes to recommend. Volunteers include: Ms. Bianconi, Mr. Bradley, Mr. Currier, Mr. Leese, and Ms. Coates.

Mr. Currier stated he would volunteer having Mr. John Kelly review the bill. Mr. Kelly is NENA's executive board attorney and also practices in the 911 space in Illinois. They have had similar discussions, so he may have some insight from a legal perspective he could share. Mr. Loeper stated he would forward to the membership in the U.P. for suggestions. Mr. Sible stated for others who have input, a list of the volunteers will be sent out to forward your suggestions to.

Mr. Sible stated there is strong consensus this issue needs to be addressed; however, there are only six states in the country right now with laws protecting the confidentiality of 911 calls. He asked if anyone had a different view. Ms. Collins stated she is neutral as the majority of the LAS have more knowledge of this area than herself as a provider. Her questions are, when contemplating legislation, what is driving it, and is there a real need? There were no issues occurring in Michigan at this time according to discussion. Mr. Campbell stated he has had occurrences when he had to warn family members they may hear their relative's 911 call on the news.

Mr. Sible stated while he understands protecting the families, this is moving in the direction of restricting FOIA. Government is supposed to be as transparent as possible and he asked if this is keeping the public out of knowing how a government operation is working. Mr. Leese stated if the calls are not restricted in some fashion, they may receive less information from callers knowing anything they say over the 911 line is public. They currently receive calls from people who leave great information, but do not want to be known. Ms. Matelski stated there was a similar discussion a few years ago and callers were intimidated or had some type of criminal act against them after making the call because the person had gotten the information after requesting the audio. Mr. Sible stated there are significant issues in specific areas of the state where people are concerned about retribution. Mr. Bradley stated in working with the civil counsel on FOIA issues, they use 484.1317, in section PA 32 to try and protect the identity of the caller. He redacts information from reports, and names and addresses out of audio transcripts and has never been challenged. There was discussion on the place the exemption belongs in the FOIA statute.

Ms. Miller-Brown went back to Mr. Leese's statements regarding the five-day delay. She discussed some of the history that came out of FOIA from an incident in Newaygo County. Ms. Miller-Brown commented back to Ms. Collins' concerns stating it is not an issue right now because there have been "work arounds" but this bill will actually lay out parameters on how it will be done.

A **MOTION** was made by Mr. Loeper to form a subcommittee to discuss HB4011 in the Freedom of Information Act dealing with 911 calls and have them report back to the LAS with recommendations. Supported by Mr. Campbell, the **MOTION** carried.

Regarding the volunteers forming the subcommittee, a **MOTION** was made by Ms. Coates to support the membership. Supported by Mr. Campbell, the **MOTION** carried.

2. Audit Work Group

Mr. Sible stated the State Police were just as surprised as everyone else there were findings in how audits have been done and have been trying to deal with those findings in the simplest way possible. Some draft language was provided for the PSAPs to use. The PSAPs were also told their own professional auditors should review and find the audit method that best suits their operation. An invitation from Ms. Coates and Ms. Bianconi was given to meet with Mr. Bob Daddow and Mr. Joe Heffernan from Plante Moran. The Office of Auditor General was also invited to the meeting to give feedback on how they interpreted the law; however, they chose not to attend, stating it is not their position to help develop policy. Mr. Sible thanked Ms. Coates and Ms. Bianconi for putting the meeting together. He stated everyone should have received an email from Ms. Miller-Brown stating if you are already doing audits, submit it to us; if you have not, wait until the criteria is established.

During the meeting, three options were developed, which is believed will meet the audit requirement:

- a. Each PSAP conduct an audit specific to this issue.
- b. Having a footnote in the audit documents and financial statement. Any footnote needs to be reviewed by an auditor and indicate they made sure the footnote is okay.
- c. Have the State conduct a central audit of 911 expenses where a contractor would be brought in at the state level who would sample 911 expenses at various PSAPs across the state on a rotating/random basis. This option would remove the onus from the local PSAPs in having to meet the requirements.

Everyone in the meeting with Plante Moran thought the third option was the best solution. After the meeting, the OAG was asked if they could say whether that option would be acceptable. Mr. Sible stated they have declined to respond. He suggests proceeding in

developing a state-wide audit program which meets the requirement. Mr. Heffernan, from Plante Moran, has offered his services for free to help with this issue. Ms. Miller-Brown stated he is a CPA who is actively engaged in governmental oversight. Mr. Sible asked for general discussion.

Mr. Piasecki asked if Mr. Sible reached out to the Office of the Auditor General. Mr. Sible stated the internal control individual at MSP who deals with the OAG daily is the one who made the contact. Mr. Piasecki asked if it was normal for their office to be uncooperative. Mr. Sible stated they draw a fine line between what they consider their role to be. He stated they are correct when they say it is not their job to develop policy. Even if there had been no findings, Mr. Sible said with changes coming due to Next Generation 911, it is a good time for subject matter experts to sit down and discuss what items are important for audit. Ms. Collins asked to discuss the footnote option for clarification. Mr. Sible stated it would be a footnote in each county's single audit, which indicates compliance with the statute. It would put the onus back on the county auditor to figure out how they were going to meet that requirement. The footnote option does not solve the issues, but centralizes and reduces the cost for some of the counties.

Mr. Leese asked if during the meeting with Plante Moran, the option of doing nothing different than what is done now was ever discussed. Mr. Sible stated the OAG will not give more direction and will only give another finding. Ms. Collins asked what the findings do and Mr. Leese asked if there were penalties. Mr. Sible stated the findings do not affect the locals, it is MSP being audited. However, in the long term, if recommendations keep appearing on the audits, legislators will notice the PSAPs are not being audited and will take care of the issue themselves. Ms. Miller-Brown stated the issue should be worked on internally to find ways to meet the standard, rather than the solution being directed externally.

Mr. Loeper agreed with the idea of going with a sampling of each county. Ms. Coates stated that is part of the problem, everyone is doing what they believe to be correct, but it is an issue when no criteria is established. Mr. Loeper stated there is an allowable/disallowable expense everyone follows, and that is what is reviewed during the certification review. Ms. Miller-Brown stated compliance reviews are not audits. Mr. Loeper stated there is something in place stating what the money can be used for. Ms. Miller-Brown stated the Auditor General's office found the compliance reviews were a good measure, but inadequate in that only a limited number could be conducted. Ms. Collins asked if a state audit would be the same because only a sampling would be done. Mr. Sible stated over a span of time, it could be shown every operation would have some sampling done.

Mr. Campbell asked if it would be beneficial to gather a small group to meet with the individual from Plante Moran to understand what the options are. Mr. Sible agreed. It was thought that all bases were covered, but the meeting brought much knowledge about how this works at the local levels and the implications. Mr. Sible asked if Ms. Bianconi or Ms. Coates could contact Plante Moran to see if they would be willing to walk through the issues and concerns, and what they think the directions are. Mr. Campbell stated if the Auditor General can see due diligence and knows options are being looked into, he thinks they would be okay with that.

Mr. Vehslage stated if the footnote option was chosen, and then a state study was conducted, everybody every year is certifying in the footnote using the same standards. If a percent sampling was being done, you would not find out five years from now which counties are not doing it. If not too costly, take a hybrid approach. Mr. Campbell stated he would like to know if that "would fly" at the local level because they do not want media showing up five years later saying everyone is out of compliance and the process was not good enough.

Mr. Sible asked who would be interested in the group meeting with Plante Moran. Volunteers included: Mr. Smith, Ms. Coates, Ms. Bianconi, Mr. Leese, Mr. Campbell, Ms. Miller-Brown, and Mr. Sible. Mr. Sible asked for a motion to accept those listed as the audit working group. A **MOTION** was made by Ms. Matelski and supported by Mr. Troyer. The **MOTION** carried.

3. Statute Review

Mr. Sible stated if there are things needing to be addressed in the statute they should be brought forward. There have been a couple of issues raised recently; potentially raising the local cap and issues regarding consolidation. He stated there will be a window of opportunity as NextGen moves forward, and the statute will be opened. If there is anything the group feels should be addressed, now is the time. Mr. Sible opened for discussion.

Ms. Bianconi stated Wayne County is already at the max with a commission imposed 911 surcharge, and with new legislation there is no provision to increase that beyond 42 cents. She would like there to be some sort of provision for an opportunity to increase the cap set four years ago. Ms. Miller-Brown stated that has been changed. She stated Ms. Bianconi is referring to the cap the statute gave to Wayne County by the MPSC in 2008. There are two caps in the statute right now. Ms. Anderson stated the voter approved surcharges were probably set to expire last year, but with the new legislation they are in there forever. There needs to be some consideration for those with voter approved surcharges to have them reapproved. Ms. Miller-Brown stated that goes back to the two different caps.

The first is the 42 cents cap that a county board of commissioners can put on without going to a vote of the people. The second is the \$3 cap that can go to the voters. Historically, there had always been a five year time cap until going through the 410 and 411 processes when the five year limit was taken off. There was not much concern when the sunset was extended to 2014; it had an almost five year cap built in. In the past year, with the extension of the prepaid, it came with an extension to 2021. Ms. Miller-Brown stated she believes the issue is not the monetary cap on the voter approved surcharge, but the time limit cap. Ms. Coates asked if most of the ballot questions had a built in timeline. Ms. Miller-Brown stated most ballot questions did build in timelines as allowed by law, without including a year.

Mr. Piasecki asked Ms. Bianconi for clarification on what she is proposing. He asked if she was referring to the \$3 cap in the statute, to which Ms. Bianconi stated no. She stated her concerns are referring to their county commission who has the ability, by statute, to increase the local surcharge. They have been told the local surcharge maximum amount is 42 cents, which is where they have been. If this law exists until 2021, she is asking there be some sort of mechanism put into the new law stating the commission can increase the surcharge. Mr. Campbell stated one way to accomplish that is to have language inserted that charter counties' commissions have the authority to do that and the others remain at the voter level. Mr. Sible asked, regarding the intent at the time, was to make sure there was only a certain amount the government could raise without having to go to the public. The only thing to fit with the original intent would be the ability to tie back to an inflation rate. Ms. Miller-Brown stated the industry would argue there is another option within the statute, which is going to the voters if higher than 42 cents.

Mr. Piasecki stated one assumption in the law was that it is on all devices, even though the use of landline devices are going down, wireless use is going up. Some counties' volumes have been going up, even if they are at 42 cents. Ms. Bianconi stated her concern is affording moving forward with NextGen and they may have to wait for CLEAR to make public their recommendations before moving forward. Ms. Miller-Brown stated CLEAR is not making any recommendations regarding caps the counties currently have.

Mr. Sible stated he is not hearing consensus on this issue. He suggested Ms. Bianconi create a pros and cons document, how the language would look if it were to be addressed in

a neutral stance. Once she has that completed, Mr. Sible will send to the LAS for review to discuss at the next meeting.

Mr. Currier suggested to Mr. Sible that everyone review the current statute. Ms. Miller-Brown stated she has a copy of the statute in Word format and can send to the LAS to review.

Mr. Sible suggested the next meeting have only one item on the agenda, making it a work group meeting to discuss all possible changes and be prepared to vote on which items the group wants to pursue. Ms. Coates stated she could ask Plante Moran to review the audit section of the statute for their input.

Mr. Vehslage asked where the CLEAR commission is with NextGen 911. That is a key part in moving forward. Mr. Sible stated the general overview of where the CLEAR group is going has been presented in several public safety venues. Ms. Miller-Brown stated the fine details should become public in the next few weeks. The administration wanted more time for discussions with the stakeholders and the industry. Mr. Currier stated Mr. Jeff Barnes would be posting the CLEAR NG911 slideshow on the Web site. Ms. Collins asked when the presentation would be posted. As the LAS dissect the statute, it would be nice to have an idea of where the CLEAR group is going. Ms. Miller-Brown will follow up with Mr. Barnes.

E. Public Comment

None

F. Next Meeting

Mr. Sible recommended the end of March.

G. Adjourn

Before adjourning, Mr. Sible asked for any further discussion. Mr. Piasecki asked if he could get a copy of the auditor general's report with the findings. Ms. Miller-Brown stated she could send the link to everyone.

The meeting adjourned at 10:44 a.m.