



BOARD OF COMMISSIONERS REVISED MEETING AGENDA

March 8, 2021, 5:30 PM

Virtual Meeting Held in Accordance with Public Act 254 of 2020

Zoom Virtual Meeting

Meeting ID: 399-700-0062 / Password: LCBOC

<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

"The mission of Livingston County is to be an effective and efficient steward in delivering services within the constraints of sound fiscal policy. Our priority is to provide mandated services which may be enhanced and supplemented to improve the quality of life for all who work, reside and recreate in Livingston County."

Pages

1. **CALL MEETING TO ORDER**
2. **MOMENT OF SILENT REFLECTION**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG**
4. **ROLL CALL**
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 - b. Crawford County Resolution 2252021 Supporting Local Business
 - c. Iron County Resolution 20210208 in Support of Waiving Fees for Licenses/Permits for Small Business Servicing the Public
 - d. Otsego County Resolution No. OCR 21-08 Pandemic Resolution
6. **CALL TO THE PUBLIC**
7. **APPROVAL OF MINUTES** 10
 - a. Minutes of Meeting Dated: February 22, 2021
 - b. Minutes of Meeting Dated: March 3, 2021
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8. **TABLED ITEMS FROM PREVIOUS MEETINGS**
9. **APPROVAL OF AGENDA**
10. **REPORTS**
 - a. **COVID-19 Vaccination Update**

Dianne McCormick, Public Health Officer/Health Department Director

***b. County Administration Update**

Nathan Burd, County Administrator

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13. CALL TO THE PUBLIC

14. ADJOURNMENT



THE HONORABLE BOARD OF COMMISSIONERS OF BERRIEN COUNTY, MICHIGAN ADOPTS
THE FOLLOWING RESOLUTION:

WHEREAS, the Berrien County Board of Commissioners recognizes the heroic efforts of our front-line workers and first responders and applauds the citizens and businesses who have diligently adhered to mitigation measures; and

WHEREAS, the Berrien County Board of Commissioners appreciates the need for appropriate executive and epidemic orders and policies to mitigate the spread of the COVID-19 virus and promote public safety, while also protecting local and state economic interests; and

WHEREAS, Berrien County's cases and positivity rates continue to decline, hospital capacity continues to improve, and the number of citizens who have been vaccinated to protect themselves from the virus, increases daily; and

WHEREAS, the Berrien County Board of Commissioners addressed the need to regionalize the response to COVID-19 in a letter to Governor Whitmer in April of 2020, recognizing that what is necessary for some areas of our state may not be necessary in Southwest Michigan; and

WHEREAS, those of us in border counties have seen a magnified effect on our economy due to our citizens being able to drive a short distance to Indiana, where the restrictions are less; and

WHEREAS, the proximity to Indiana has particularly impacted our local restaurant industry which is already struggling to recover from another dine-in closure order, followed by a curfew and 25% capacity restriction that lacks financial viability for most area establishments; and

WHEREAS, while some local businesses may have received some governmental financial assistance it was not enough to offset the losses of revenue due to closures and restrictions, thus many local businesses have been forced to close permanently due to the irreparable economic harm they have experienced throughout this past year and many more will follow if the state does not adopt a new approach to mitigation policies; and

WHEREAS, Berrien County has seen a consistent downward trend in the numbers affected by COVID-19, it is now time for all of our businesses, including but not limited to restaurants and banquet facilities, to remain open in accordance with CDC guidelines with industry-specific procedures and protocols aimed at containing the spread of COVID-19 in place.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Berrien County Board of Commissioners calls upon the Governor to implement a new, regional approach to mitigation that values local input; takes cases, vaccinations, seasonality, and regional differences into consideration; and sets clear benchmarks for the easing of restrictions on businesses for the public to follow.

Respectfully,
Berrien County Board of Commissioners

Handwritten signature of R. McKinley Elliott in blue ink.

R. McKinley Elliott

Handwritten signature of Jim Curran in blue ink.

Jim Curran

Handwritten signature of Julie Wuerfel in blue ink.

Julie Wuerfel

Handwritten signature of Ezra A. Scott in blue ink.

Ezra A. Scott

Handwritten signature of David Vollrath in blue ink.

David Vollrath

Handwritten signature of Michael J. Majerek in blue ink.

Michael J. Majerek

Handwritten signature of Don Meeks in blue ink.

Don Meeks

Handwritten signature of Teri Sue Freehling in blue ink.

Teri Sue Freehling

Handwritten signature of Robert P. Harrison in blue ink.

Robert P. Harrison

Handwritten signature of Mamie L. Yarbrough in blue ink.

Mamie L. Yarbrough

Handwritten signature of Jon Hinkelman in blue ink.

Jon Hinkelman

Handwritten signature of Rayonte D. Bell in blue ink.

Rayonte D. Bell

CRAWFORD COUNTY RESOLUTION
Supporting Local Businesses -2252021

WHEREAS, the novel coronavirus (COVID – 19) is a respiratory disease that can result in serious illness and death; and

WHEREAS, the Crawford County Board of Commissioners recognizes that COVID-19 is having direct impacts on all County residents, impacts which include, but are not limited to, physical and mental health care difficulties, educational constraints and financial strains; and

WHEREAS, the Crawford County Board of Commissioners understands that many local businesses have suffered and continue to suffer economic harm due to COVID – 19; and

WHEREAS, the Crawford County Board of Commissioners furthermore recognizes that the local hospitality industry is being hit particularly hard with financial losses due to COVID – 19; and

WHEREAS, the Crawford County Board of Commissioners believes that the ability of county residents and visitors to patronize local restaurants, hotels, recreation venues, etc., contributes substantially to the overall well-being of the County; and

WHEREAS, the Crawford County Board of Commissioners is aware of many options to support Crawford County small businesses, such as ordering takeout food, making advance reservations and purchasing gift cards; and

NOW THEREFORE BE IT RESOLVED THAT, The Crawford County Board of Commissioners encourages county residents to support local businesses at all times, but particularly during this global pandemic; and

BE IT FURTHER RESOLVED THAT, that this resolution is sent to all counties in Michigan, the Michigan Association of Counties, Representative Daire Rendon, Senator Curt VanderWall and Governor Gretchen Whitmer.

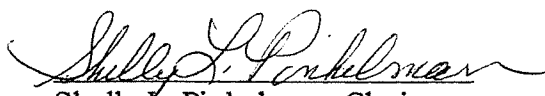
APPROVED AS TO FORM

Commissioner Jamison	Yes	Commissioner McClain	Yes
Commissioner Priebe	Absent	Commissioner Jansen	Yes
Commissioner Pinkelman	Yes	Commissioner Powers	Yes
Commissioner Lewis	Yes		

ADOPTED DATE: February 25th, 2021

I, Sandra Moore, Clerk of the Crawford County Board of Commissioners and Clerk of the County of Crawford, do hereby certify that the above Resolution was duly adopted by the said Board on February 25th, 2021.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Court at Grayling, Michigan, this 25th day of February, 2021



Shelly L. Pinkelman, Chair
Crawford County Board of Commissioners



Sandra M. Moore
Clerk/ROD

**RESOLUTION IN SUPPORT OF WAIVING FEES FOR
LICENSES/PERMITS FOR SMALL BUSINESSES
SERVICING THE PUBLIC**

WHEREAS the COVID-19 pandemic has placed a substantial public health risk upon society as a whole;

WHEREAS scientifically tailored public health restrictions to limit the opportunity for spread of COVID-19 amongst services to the public can be a responsible exercise of public health, welfare and safety powers;

WHEREAS many small businesses providing service to the general public that were ordered closed in whole and/or part have yearly licenses and/or permits issued by the State of Michigan;

WHEREAS if safety of society requires closure of small businesses it is inequitable to not provide a waiver in whole and/or part of State of Michigan yearly license and/or permit fees when such activities are ordered closed and/or restricted;

WHEREAS in rural small communities in Iron County, Michigan, small businesses serving the general public are significant centers of economic activity that employ significant numbers of employees and mutually contribute to the economic well being the community;

WHEREAS the small businesses serving the general public have been economically devastated by being unable to serve the general public due to public health orders;

NOW THEREFORE BE IT RESOLVED the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF IRON** as representatives of the citizens of Iron County implore the Governor and the Legislature to immediately adopt legislation providing fee waivers of licenses/permit fees required by the State of Michigan for small businesses serving the general public during such periods service to the public is prohibited and/or limited by public health orders;

The foregoing resolution was moved by Stauber and supported by
Ofsdahl.

Yeas: 5

Nays: 0

Absent: 0

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF IRON

By: Patti A. Peretto
Patti A. Peretto
Its Chairperson

By: Julie Kezerle
Julie Kezerle
Its Clerk

I hereby certify that the foregoing is a true and correct copy of the
resolution adopted at a meeting of the **BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF IRON** held on February 8, 2021.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF IRON

By: Julie Kezerle
Julie Kezerle
Its Clerk



c:\resolution.licens.permits

Minutes of a regular meeting of the Otsego County Board of Commissioners, held in Room 100 at the County Building, 225 W. Main St., Gaylord, Michigan on the 23rd, day of February, 2021 beginning at 9:30a.m.

PRESENT: Henry Mason, Paul Liss, Brett McVannel, Rob Pallarito, Ken Glasser, Doug Johnson, Jason Caverson, Bruce Brown.

ABSENT: Julie Powers.

The following preamble and resolution was offered by Commissioner Paul Liss, seconded by Commissioner Doug Johnson.

RESOLUTION NO. OCR 21-08
PANDEMIC RESOLUTION
OTSEGO COUNTY BOARD OF COMMISSIONERS

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death with resulting widespread disruptions to everyday life and;

WHEREAS, the Otsego County Board of Commissioners recognizes that COVID-19 restrictions are having and will continue to have, direct short and long term impacts on all County residents, impacts which include, but are not limited to, physical and mental health care difficulties, educational constraints, and financial strains; and

WHEREAS, the Otsego County Board of Commissioners understands that many local private businesses and industries have suffered and continue to suffer economic harm due to COVID-19 thru no fault of their own; and

WHEREAS, the COVID-19 shutdown, pause, and mandates have created a desperate situation for our county's constituents, businesses, schools, and organizations.

WHEREAS, the Otsego County Board of Commissioners asserts that the vitality of our local restaurants, hotels, recreation venues, industries, service providers, etc., contributes substantially to the overall physical and mental well-being of residents of the County, and further asserts that the seasonal nature of our area places a heavy dependence for employment on the food and recreation industries and the loss of these businesses will have long term effects on employment for our citizens; and

WHEREAS, it is our belief that while public health must be prioritized, unconstitutional burdens have been placed on certain sectors of our economy, community groups, and citizenry. We believe Gubernatorial actions have polarized, politicized, and antagonized Michigan leaders in all sectors. These challenging times call for unity, coordination, and balance to protect lives and livelihoods with actions considered by the many hands that hold the responsibility.

NOW THEREFORE BE IT RESOLVED, that the duly elected Commissioners of Otsego County, with the sworn duty to uphold the Constitution of the United States, the Constitution of the State of Michigan, and responsibility to serve the people of Otsego County, do hereby resolve to oppose, the distress and destruction continuing to impact our community, our state, and our nation due to COVID-19 restrictions.

BE IT FURTHER RESOLVED that the Otsego County Board of Commissioners encourages the lifting of restrictions as soon as is feasible.

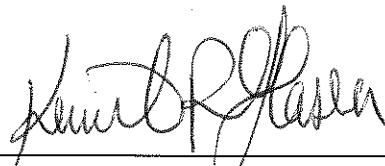
BE IT FURTHER RESOLVED, that we call for actions that restore our faith in a Michigan leadership that is unified, not unilateral, and driven by decisions that serve the needs of the many without polarization. It is with the utmost serious reflection and responsibility, that we stand resolved in our sworn duty to serve our community and demand our freedom of choice be reinstated.

A ROLL CALL VOTE WAS TAKEN AS FOLLOWS:

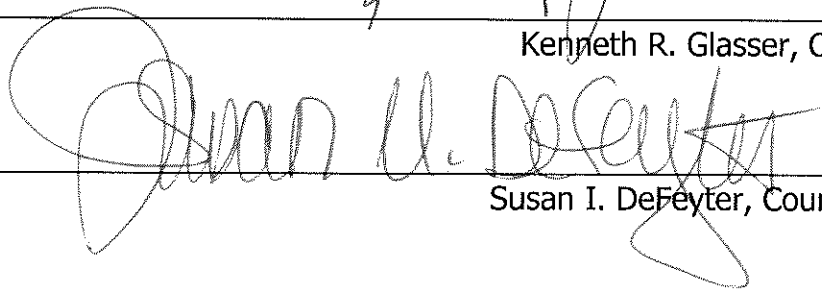
YES: Paul Liss, Brett McVannel, Ken Glasser, Doug Johnson, Jason Caverson, Bruce Brown.

NO: Henry Mason, Rob Pallarito.

RESOLUTION DECLARED ADOPTED.



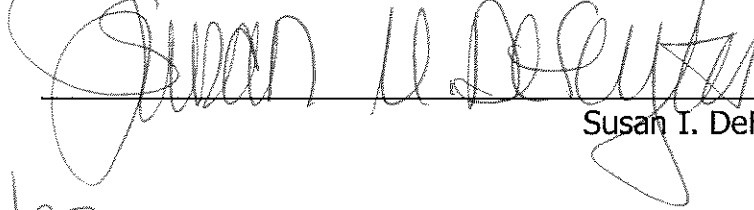
Kenneth R. Glasser, Chairman



Susan I. DeFeyter, County Clerk

STATE OF MICHIGAN)
§
COUNTY OF OTSEGO)

The undersigned, being the duly qualified and acting Clerk of the County of Otsego, hereby certifies that the foregoing is a true and complete copy of a resolution duly adopted by the Otsego County Board of Commissioners at its regular meeting held on the 23rd day of February, 2021, at which meeting a quorum was present and remained throughout and that an original thereof is on file in the records of the County. I further certify that the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and of such meeting were kept and will be or have been made available as required thereby.



Susan I. DeFeyter, County Clerk

DATED: 2/23, 2021

LIVINGSTON COUNTY BOARD OF COMMISSIONERS

MEETING MINUTES

February 22, 2021, 5:30 p.m.

Virtual Meeting Held in Accordance with Public Act 254 of 2020

Zoom Virtual Meeting

Meeting ID: 399-700-0062 / Password: LCBOC

<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

Members Present: Wes Nakagiri, Carol Griffith, Carol Sue Reader, Douglas Helzerman, Jay Drick, Mitchell Zajac, Jay Gross, and Brenda Plank

Members Absent: Kate Lawrence

1. CALL MEETING TO ORDER

The meeting was called to order by Chairman Wes Nakagiri at 5:30 p.m.

2. MOMENT OF SILENT REFLECTION

3. PLEDGE OF ALLEGIANCE TO THE FLAG

All rose for the Pledge of Allegiance to the Flag of the United States of America.

4. ROLL CALL

Roll call by the Deputy Clerk indicated the presence of a quorum.

Wes Nakagiri, remotely from Hartland Township, County of Livingston, Michigan

Carol Griffith, remotely from Genoa Township, County of Livingston, Michigan

Carol Sue Reader, remotely from Deerfield Township, County of Livingston, Michigan

Douglas Helzerman, remotely from Handy Township, County of Livingston, Michigan

Jay Drick, remotely from City of Howell, County of Livingston, Michigan

Mitchell Zajac, remotely from Marion Township, County of Livingston, Michigan

Jay Gross, remotely from Green Oak Township, County of Livingston, Michigan

Brenda Plank, remotely from Green Oak Township, County of Livingston, Michigan

5. CORRESPONDENCE

a. Huron County Resolution No. 21-13 Calling Upon the Governor to End the Shutdown

b. Huron County Resolution No. 21-19 in Support of Enbridge's Proposed Tunnel Replacement Project

c. Jackson County Resolution No. 06-20.19 in Support of the Request to Reopen Jackson County

d. Mecosta County Resolution #2021-05 in Support of Local Business

e. Menominee County Resolution 2021-06 Supporting a Collective Effort by Michigan Counties in Opposing Current and Future Orders Unilaterally Issued by Governor Whitmer and State Agencies Response to COVID-19

f. Missaukee County Resolution 2021-2 Pandemic Resolution

Motion to accept and place on file.

It was moved by C. Griffith

Seconded by M. Zajac

Roll Call Vote: Yes (8): C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, and B. Plank; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

6. CALL TO THE PUBLIC

The following people spoke regarding Resolution 2021-02-029, Ron Kardos, Oceola Township; Lee Ann Blazejewski, City of Howell; Judy Daubenmier, Genoa Township; Lynn Vogel, City of Brighton; Caitlyn Perry Dial, City of Brighton; Diane Davison, Deerfield Township; Dr. Leo Hanifin, Brighton Township; Timothy Schnelle, Howell; Marie Joppich, Pinckney; Paul S. Funk, Oceola Township; Dan Huth, City of Brighton; Jessica Garcia, Brighton; Senator Lana Theis, 22nd District, City of Brighton; David Halonen, Green Oak Township; Karen Pierce, Pinckney; Lance Schumacher, Oceola Township; Meghan Reckling, Handy Township; Keith Van Houten, Hartland Township; Denise O'Connell, Hartland Township; Mona Shand, City of Brighton; Jane Suarez-Forward, Brighton Township; Connie Robinson, Hartland Township; and Nancy Durance, City of Brighton.

The following people spoke regarding a proposed asphalt plant at the intersection of Old U.S. 23 and Center Road in Tyrone Township, John Fialka, Tyrone Township; Robert Kerr, Tyrone Township; Rose Foster, Tyrone Township; Jim Lee, Deerfield Township; Michael Zack, Tyrone Township; and Ted Merciez, Tyrone Township.

Chairman Nakagiri addressed the public with regards to the proposed asphalt plant.

7. APPROVAL OF MINUTES

- a. Minutes of Meeting Dated: February 8, 2021
- b. Minutes of Meeting Dated: February 17, 2021

Motion to approve the minutes as presented.

It was moved by C. Griffith
Seconded by B. Plank

Roll Call Vote: Yes (8): C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, and B. Plank; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

8. TABLED ITEMS FROM PREVIOUS MEETINGS

None.

9. APPROVAL OF AGENDA

Motion to approve the Agenda as presented.

It was moved by J. Drick
Seconded by D. Helzerman

Roll Call Vote: Yes (8): J. Drick, M. Zajac, J. Gross, B. Plank, W. Nakagiri, C. Griffith, C. Reader, and D. Helzerman; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

10. REPORTS

Commissioner Zajac reported on his recent meeting with County Legal regarding streamlining the County's purchasing terms and process. He also stated that his meeting last week with County Administrator, Nathan Burd, Commissioner Plank, members of the local education systems, Superintendents and LESA was very productive.

Chairman Nakagiri shared his screen for a slide presentation that highlighted the State's protocol for the vaccine rollout.

Commissioner Helzerman presented his COVID-19 report and shared a handout.

11. APPROVAL OF CONSENT AGENDA ITEMS

Resolutions 2021-02-025 and 2021-02-026

Motion to approve the resolutions on the Consent Agenda.

It was moved by C. Griffith

Seconded by B. Plank

Roll Call Vote: Yes (8): C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, and B. Plank; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

11.a 2021-02-025

Resolution Authorizing Agreements with Multiple Vendors to Provide Court Appointed Attorney Services - 44th Circuit Court – Juvenile Division

11.b 2021-02-026

Resolution Authorizing a Budget Amendment to Carry Forward Approved Prior Year Projects into the Fiscal Year 2021 Budget – Fiscal Services

12. RESOLUTIONS FOR CONSIDERATION

Resolutions 2021-02-027 through 2021-02-029

12.a 2021-02-027

Resolution Authorizing Livingston County to Participate in the 2021 Statewide Tornado Drill – Emergency Management

Motion to adopt the Resolution.

It was moved by D. Helzerman

Seconded by B. Plank

Discussion.

Roll Call Vote: Yes (8): W. Nakagiri, C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, and B. Plank; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

12.b 2021-02-028

Resolution Approving Appointments to the Livingston County Board of Public Works - Board of Commissioners

Motion to adopt the Resolution.

It was moved by C. Griffith

Seconded by C. Reader

Roll Call Vote: Yes (8): W. Nakagiri, C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, and B. Plank; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

12.c 2021-02-029

Resolution Calling Upon the Governor and the Michigan Department of Health and Human Services to Retract their SVI Social Factor Based Plan and Replace it with a Scientific Medical

Factor Based Plan that Results in a Pro-Rata Uniform Distribution to Michigan's Most Medically Vulnerable Population

Motion to adopt the Resolution.

It was moved by M. Zajac

Seconded by J. Gross

Discussion.

Motion made by Chairman Nakagiri to amend the resolution to add BE IT FURTHER RESOLVED, that the County Administrator and County Corporate Counsel are directed to investigate and report to the Board of Commissioners, by March 1, 2021, possible administrative appeals and legal avenues to compel the State of Michigan to protect our most medically vulnerable citizens by fairly allocating vaccine doses to counties based upon proportional vaccination phase population estimates and not based upon non-medical or social factors. This paragraph shall be inserted at the end of the resolution.

It was moved by W. Nakagiri

Seconded by C. Reader

Motion to Amend the Resolution.

Roll Call Vote: Yes (8): W. Nakagiri, C. Griffith, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, and B. Plank; No (0): None; Absent (1): K. Lawrence

AMENDMENT PASSED (8-0-1)

Motion to Adopt the Amended Resolution.

It was moved by M. Zajac

Seconded by J. Gross

Roll Call Vote: Yes (8): M. Zajac, J. Gross, B. Plank, W. Nakagiri, C. Griffith, C. Reader, D. Helzerman, and J. Drick; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

13. CALL TO THE PUBLIC

The following people spoke regarding Resolution 2021-02-029, Lynn Vogel, City of Brighton; Jim Anderson, Marion Township; Dr. Leo Hanifin, Brighton Township; Jessica Garcia, Brighton; Lee Ann Blazejewski, City of Howell and Nancy Durance, City of Brighton.

14. ADJOURNMENT

Motion to adjourn the meeting at 7:58 p.m.

It was moved by D. Helzerman

Seconded by C. Griffith

Roll Call Vote: Yes (8): D. Helzerman, J. Drick, M. Zajac, J. Gross, B. Plank, W. Nakagiri, C. Griffith, and C. Reader; No (0): None; Absent (1): K. Lawrence

MOTION Carried (8-0-1)

Amy L. Kotesich, Livingston County Deputy Clerk

LIVINGSTON COUNTY BOARD OF COMMISSIONERS

MEETING MINUTES

March 3, 2021

IMMEDIATELY FOLLOWING THE FINANCE COMMITTEE

Virtual Meeting Held in Accordance with Public Act 254 of 2020

Zoom Virtual Meeting

Meeting ID: 399-700-0062 / Password: LCBOC

<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

Members Present Wes Nakagiri, Carol Griffith, Kate Lawrence, Carol Sue Reader, Douglas Helzerman, Jay Drick, Mitchell Zajac, Jay Gross, and Brenda Plank

1. **CALL MEETING TO ORDER**

The meeting was called to order by Chairman Wes Nakagiri at 8:12 a.m.

2. **PLEDGE OF ALLEGIANCE TO THE FLAG**

All rose for the Pledge of Allegiance to the Flag of the United States of America.

3. **ROLL CALL**

Roll call by the Clerk indicated the presence of a quorum.

Wes Nakagiri, remotely from Hartland Township, County of Livingston, Michigan
Carol Griffith, remotely from Genoa Township, County of Livingston, Michigan
Kate Lawrence, remotely from City of Brighton, County of Livingston, Michigan
Carol Sue Reader, remotely from Deerfield Township, County of Livingston, Michigan
Douglas Helzerman, remotely from Handy Township, County of Livingston, Michigan
Jay Drick, remotely from City of Howell, County of Livingston, Michigan
Mitchell Zajac, remotely from Marion Township, County of Livingston, Michigan
Jay Gross, remotely from Green Oak Township, County of Livingston, Michigan
Brenda Plank, remotely from Green Oak Township, County of Livingston, Michigan

4. **CALL TO THE PUBLIC**

None.

5. **APPROVAL OF AGENDA**

Motion to approve the Agenda as presented.

Moved By K. Lawrence

Seconded By J. Gross

Roll Call Vote: Yes (9): K. Lawrence, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, C. Griffith, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

6. **FINANCE COMMITTEE RECOMMENDATION FOR APPROVAL OF CLAIMS**

Dated: March 3, 2021

Motion to approve the Claims.

Moved By C. Griffith
Seconded By B. Plank

Roll Call Vote: Yes (9): C. Griffith, K. Lawrence, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

7. FINANCE COMMITTEE RECOMMENDATION FOR APPROVAL OF PAYABLES

Dated: February 12 through February 25, 2021

Motion to approve the Payables.

Moved By K. Lawrence
Seconded By C. Griffith

Roll Call Vote: Yes (9): K. Lawrence, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, C. Griffith, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

8. CALL TO THE PUBLIC

None.

Commissioner Helzerman asked Nathan Burd, County Administrator, to review changes with Zoom meetings.

Nathan Burd, County Administrator, gave an update on the new Health Order and potential changes it may have on the Open Meetings Act.

9. CLOSED SESSION

Consider Written Legal Opinion [MCL 15.268(h)]

Motion to recess to Closed Session at 8:21 a.m.

Moved By J. Drick
Seconded By J. Gross

Roll Call Vote: Yes (9): J. Drick, M. Zajac, J. Gross, W. Nakagiri, C. Griffith, K. Lawrence, C. Reader, D. Helzerman, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

Motion to return to Open Session at 9:46 a.m.

Moved By K. Lawrence
Seconded By J. Gross

Roll Call Vote: Yes (9): K. Lawrence, C. Reader, D. Helzerman, J. Drick, M. Zajac, J. Gross, W. Nakagiri, C. Griffith, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

10. ADJOURNMENT

Motion to adjourn the meeting at 9:48 a.m.

Moved By C. Griffith
Seconded By K. Lawrence

Roll Call Vote: Yes (9): C. Griffith, K. Lawrence, C. Reader, D. Helzerman, J. Drick, M. Zajac, W. Nakagiri, J. Gross, and B. Plank; No (0): None; Absent (0): None

Motion Carried (9-0-0)

Elizabeth Hundley, Livingston County Clerk

UNAPPROVED

RESOLUTION

NO: 2020-03-030

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution Authorizing an Amendment to the Existing Lease Agreement with The Regents of The University of Michigan – Emergency Medical Services

WHEREAS, Livingston County has had a lease agreement with THE REGENTS OF THE UNIVERSITY OF MICHIGAN since June 12, 2012 for building and hangar space at the public safety complex; and

WHEREAS, It was discovered in early 2020 that neither party had been following the terms of the lease agreement and both parties have been in regular communications since; and

WHEREAS, After months of conversation and review of the operational expenses for said lease property THE REGENTS OF THE UNIVERSITY OF MICHIGAN have proposed an amendment to the lease; and,

WHEREAS, The lease amendment was reviewed by the EMS Director, County Administrator, and Chief Financial Officer who have all approved the amendment.

THEREFORE BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorize the attached lease amendment with THE REGENTS OF THE UNIVERSITY OF MICHIGAN for the duration of the lease agreement after review and approval from legal counsel.

BE IT FURTHER RESOLVED that the Chairman of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments related to the above upon review and/or preparation of Civil Counsel.

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#

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MOVED:
SECONDED:
CARRIED:

David Feldpausch
Director



Amy Chapman
Deputy Director

1911 Tooley Rd * Howell, MI 48855
Business (517) 546-6220 * Fax (517) 546-6788 * Emergency 911
www.livgov.com

Memorandum

To: Livingston County Board of Commissioners
Fr: David Feldpausch, EMS Director
Date: 01/20/2021
Re: Resolution regarding U of M Lease Amendment

I have been in regular communication with a representative from THE REGENTS OF THE UNIVERSITY OF MICHIGAN since March of 2020 regarding the existing lease agreement for building and hangar space at the public safety complex.

Upon review we discovered that neither party had fulfilled their obligations under the lease including rent increases and reporting of actual operational cost. Under the existing agreement we are required to report operational costs annually and make adjustments to the additional rent based on those costs. To the best of our knowledge this has never occurred.

After months of review of years' worth of invoices Hilery DeHate and I met with several of their representatives. We were having trouble justifying the operational costs received as the lease does not outline them specifically and the process to come up with them is quite complex. The lease breaks the building out by percentages and only a portion of each expense was attributed to their portion of the operational cost. They made a recommendation that we consider a lease amendment to eliminate any confusion and simplify the process going forward.

They immediately began to pay the rent increase that we had identified that was past due along with past increases that had been missed. There was just no simple solution to the additional rent (operational expenses) calculation and it is next to impossible to go back and capture them accurately now.

I was very pleased with the proposed amendment as we were challenged justifying the past operational expenses. I believe this is a very generous offer based on that and it eliminates the need for complex calculations going forward. THE REGENTS OF THE UNIVERSITY OF MICHIGAN have been exceptional tenants and to lose them would be devastating to the EMS department financially.

As we were bringing this issue forward last month we discovered an issue with the foam fire suppression system in the hangar requiring a \$40,000.00 repair. Under the new lease agreement, we would not be able to charge the \$40,000 back to U of M because it is an operational expense that we would have been responsible for under a new fixed rate.

David Feldpausch
Director



Amy Chapman
Deputy Director

1911 Tooley Rd * Howell, MI 48855
Business (517) 546-6220 * Fax (517) 546-6788 * Emergency 911
www.livgov.com

That sent us back to the negotiating table and we agreed to remove the foam fire suppression system from the operating costs and gained the ability to invoice those expenses back to them. After 3 more legal reviews we are now hopefully ready to bring this forward once again.

As a quick reminder this lease has U of M paying for the construction cost of their portion of the building “annual contribution”, their operational cost to operate it “Additional Rent” as well as renting the space from us “Rent” so it is a very good deal.

I realize that this is likely a complex topic and welcome any questions regarding this matter.

~~2012 LEASE PROVISIONS~~ REVISED LANGUAGE FOR 2021 AMENDMENT

4.1 Additional Rent: Tenant shall also pay to Landlord, as “Additional Rent”, Tenant’s ~~Pre Rata Shares~~share of the “Landlord’s Operating Expenses” (as defined below).~~—“Tenant’s Pre Rata Share” is 18.6% which is ratio of the number of square feet in the Premises (12,369 sf) to the number of square feet in the Building (66,500 sf).—~~ according to the following schedule:

<u>Lease Year</u>	<u>OpEx</u>	
	<u>Monthly</u>	<u>Annual</u>
<u>11/1/2013-10/31/2018</u>	<u>\$9,781.50</u>	<u>\$117,378.00</u>
<u>11/1/2018-10/31/2023</u>	<u>\$9,977.13</u>	<u>\$119,725.56</u>
<u>11/1/2023-10/31/2028</u>	<u>\$10,176.67</u>	<u>\$122,120.07</u>
<u>11/1/2028-10/31/2033</u>	<u>\$10,380.21</u>	<u>\$124,562.47</u>

Landlord’s Operating Expenses relate to the Premises, the Building and the real property on which the Building is located and are defined as: (a) all real property taxes if any coming due in the usual course of business during the lease term, exclusive of any taxable additions by persons other than Tenant (after the date of the lease); (b) water, sewer, electricity, gas, and other sources of power for heating, lighting, ventilating, or air-conditioning for the Building, ~~except when separately billed to Tenant~~; (c) janitorial services for the Common Areas and the Premises contracted for by Landlord, and/or wages, salaries, fringe benefits, and applicable taxes on the employer for such janitorial services performed by Landlord’s employees; (d) supplies consumed in connection with cleaning and general maintenance of the Common Areas and the Premises; (e) snow removal and exterior grounds care, including the new access road to the Airport; (f) installation and maintenance of exterior and Common Area signs identifying the Building and its tenants; (g) insurance premiums for the Building; (h) the annual amortized amount for any capital improvements (as defined in accordance with generally accepted accounting principles, except that, for purposes of this Section, capital improvements shall only include replacements and shall not include additions or upgrades beyond what is required by the final construction drawings and specifications for the Premises unless the same are made at the request of Tenant or required by applicable law or any government agency having jurisdiction over the Premises) made by Landlord to the Building (e.g., replacement of HVAC equipment) and the Common Areas (but excluding any depreciation or amortization of the initial costs of the Building or Site Improvements), all amortized over the useful life of the capital item on a straight line depreciation basis, computed in accordance with generally accepted accounting principles; (i) Landlord’s costs for providing maintenance, repair and replacements for the Premises pursuant to Section ~~9(b)~~9.2 of ~~this~~the Lease and (j) any of Landlord’s costs or obligations under the Airport Access Agreement.

Landlord's Operating Expenses excludes any costs for (1) maintenance, repair or replacement of the Building roof, exterior windows, exterior doors (except the ~~Hanger~~Hangar rolling door), floor, and walls; (2) building mechanical systems, including heating, air conditioning, ventilation, electrical and plumbing maintenance of the Building, except as set forth in Section 99.1(b) and (3) any capital expenditures, all of which are the Landlord's sole cost and responsibility under Section 9 of this Lease, except as set forth in the paragraph above. ~~Landlord grants Tenant the right to challenge on Landlord's behalf, either or both the assessed value and taxable value of the real property and Landlord shall cooperate with Tenant in obtaining and providing potentially relevant information as may be necessary or useful in pursuing the challenge.~~ The foregoing notwithstanding, Operating Expenses shall not include the cost of any maintenance, repair or replacement of any building component or equipment, nor the repair or replacement of any defects in materials and workmanship, that are covered by any warranty issued by any contractor, subcontractor, supplier or manufacturer.

~~The Additional Rent shall be computed on the basis of each calendar year and shall be adjusted at the end of each calendar year during the term. Tenant shall pay its Pro Rata Shares of operating expenses in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord. The estimated monthly Additional Rent for the first calendar year during the term is \$9,781.50. The parties acknowledge that this amount may vary significantly between the first lease year and later lease years as Tenant repair items arise in later lease years which are not covered by warranties issued by contractors, subcontractors, supplier or manufacturers in connection with the construction of the Building. Within 30 days after the end of each calendar year, Landlord shall furnish Tenant with a written statement itemizing Landlord's operating expenses for that calendar year and a written statement of the amount of Tenants' Pro Rata Share of the operating expenses. If the total amount paid by Tenant for the prior calendar year is less than the actual amount due from Tenant for that year, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due; if the total amount paid by Tenant for the prior calendar year exceeds the actual amount due from Tenant for that year, Tenant shall receive a refund of the excess from Landlord. Once per calendar year, Tenant has the right to audit Landlord's operating statement, related account ledgers, books and all other documentation used to compile the statement. If the Commencement Date is not the start of a calendar year, the Additional Rent shall be prorated on a daily basis and shall be paid pro rata, only for the pro rata period of actual occupancy. When the lease term has ended, including any month to month holdover under paragraph 26, and Tenant has vacated Premises at a time prior to the end of a calendar year, the Additional Rent shall be based upon the prior year's computation and shall be paid pro rata, only for the pro rata period of actual occupancy.~~

~~**5.0**~~ **5.0** **Utilities and Other Charges:** ~~The monthly rent under Section 4.0 above does not include any utilities. Tenant will pay all separately metered utility costs specific to the Premises, including all telephone and internet costs. The Survival Flight Hangar will be separately metered for all utilities and Tenant will be solely responsible for these utility costs. Tenant is responsible for 8.2% of the Utility Costs and other Charges for its portion of the Office Building including Tenant's share of the Common Areas that will be billed to Tenant as part~~ billed to the Premises.

All other utility costs are included in Tenant's Additional Rent payments made pursuant to Section 4.1 of the ~~Landlord's Operating Expenses~~ Lease.

9.1 Landlord's Obligations: Landlord, at its expense (~~other than~~excluding those expenses for which ~~can be billed to the~~ Tenant pays either as ~~Operating Expenses under~~ part of its monthly Additional Rent payment as set forth in Section 4.1, above, or mutually agreed to in advance and billed by separate invoice payable within 30 days), shall be responsible for all Building Common Areas and Premises maintenance and repairs, including, but not limited to, the following: (a) roof, exterior windows, exterior doors (except the Hanger rolling door), floor, and walls; (b) building mechanical systems, including heating, air conditioning, ventilation, electrical and plumbing; (c) Site grounds and parking lot, including snow and ice removal; (d) trash removal; (e) fire equipment/exit signs and (f) proximity card reader access system. Landlord shall provide janitorial service and supplies for the Building Common Areas, the external Common Areas and the Premises.

9.2 The Premises: Tenant shall be responsible for repair and maintenance due to damage caused by Tenant's negligence or willful misconduct. Tenant shall also be responsible for the costs of maintenance, repair of the Premises and every part thereof (except as set forth above regarding Landlord's structural obligations) including replacement as required. Landlord shall perform or contract for the repairs and maintenance to the Premises and ~~bill back~~ Tenant shall pay for ~~the~~such expenses when it pays its monthly Additional Rent payment as set forth in Section 4.1, above (as part of Landlord's operating expenses in Section 4.1 ~~or may be billed separately if an individual repair or maintenance item cost exceeds \$15,000~~). Landlord shall have the right to enter the Premises at all reasonable hours to inspect, maintain and improve the Premises provided the activities do not interfere with Tenant's business activities within the Premises, and other than in an emergency, Landlord provides reasonable prior notice of any entry into the Premises.

Document comparison by Workshare 10.0 on Tuesday, January 19, 2021
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Input:	
Document 1 ID	file:///U:\Transfer\2012 LEASE PROVISIONS 4826-0954-5176 v.1.docx
Description	2012 LEASE PROVISIONS 4826-0954-5176 v.1
Document 2 ID	file:///U:\Transfer\2021 Amendment Lease Provisions 4812-4574-1016 v.1.docx
Description	2021 Amendment Lease Provisions 4812-4574-1016 v.1
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
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Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	38
Deletions	27
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	65

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease (“Amendment”) is made on _____, 2021, between **LIVINGSTON COUNTY** (“Landlord”) and **THE REGENTS OF THE UNIVERSITY OF MICHIGAN** (“Tenant”). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

RECITALS:

- A. Landlord and Tenant entered into a Lease Agreement dated June 12, 2012, as amended by that First Amendment to Lease dated April 28, 2020 (collectively, the “Lease”) pursuant to which Tenant leased, for a term of twenty years, certain hangar and office space (“Premises”) at the Emergency Medical Services building located at 1885 N. Tooley Road, Howell, Michigan (“Building”);
- B. Landlord and Tenant desire to modify the terms of the Lease as it relates to the amount of Additional Rent to be paid by Tenant; and
- C. Landlord and Tenant desire to confirm their understandings with regard to the amount of Additional Rent to be paid by Tenant, in accordance with the terms and conditions of this Amendment.

AGREEMENTS:

In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, Landlord and Tenant agree as follows:

- 1. **The Site Street Address:** The street address of the Site (as defined in Background Paragraph A) has been changed from 1885 Tooley Road to 1911 Tooley Road.
- 2. **Additional Rent:** Section 4.1 (*Additional Rent*) of the Lease is deleted in its entirety and replaced with the following:

Additional Rent: Tenant shall also pay to Landlord, as “Additional Rent”, Tenant’s share of “Landlord’s Operating Expenses” (as defined below) according to the following schedule:

Lease Year	OpEx	
	Monthly	Annual
11/1/2013-10/31/2018	\$9,781.50	\$117,378.00
11/1/2018-10/31/2023	\$9,977.13	\$119,725.56
11/1/2023-10/31/2028	\$10,176.67	\$122,120.07
11/1/2028-10/31/2033	\$10,380.21	\$124,562.47

Landlord’s Operating Expenses relate to the Premises, the Building and the real property on which the Building is located and are defined as: (a) all real property taxes if any coming due in the usual course of business during the lease term, exclusive of any taxable additions by persons other than Tenant (after the date of the lease); (b) water, sewer, electricity, gas,

and other sources of power for heating, lighting, ventilating, or air-conditioning for the Building; (c) janitorial services for the Common Areas and the Premises contracted for by Landlord, and/or wages, salaries, fringe benefits, and applicable taxes on the employer for such janitorial services performed by Landlord's employees; (d) supplies consumed in connection with cleaning and general maintenance of the Common Areas and the Premises; (e) snow removal and exterior grounds care, including the new access road to the Airport; (f) installation and maintenance of exterior and Common Area signs identifying the Building and its tenants; (g) insurance premiums for the Building; (h) the annual amortized amount for any capital improvements (as defined in accordance with generally accepted accounting principles, except that, for purposes of this Section, capital improvements shall only include replacements and shall not include additions or upgrades beyond what is required by the final construction drawings and specifications for the Premises unless the same are made at the request of Tenant or required by applicable law or any government agency having jurisdiction over the Premises) made by Landlord to the Building (e.g., replacement of HVAC equipment) and the Common Areas (but excluding any depreciation or amortization of the initial costs of the Building or Site Improvements), all amortized over the useful life of the capital item on a straight line depreciation basis, computed in accordance with generally accepted accounting principles; (i) Landlord's costs for providing maintenance, repair and replacements for the Premises pursuant to Section 9.2 of the Lease and (j) any of Landlord's costs or obligations under the Airport Access Agreement.

Landlord's Operating Expenses excludes any costs for (1) maintenance, repair or replacement of the Building roof, exterior windows, exterior doors (except the Hangar rolling door), floor, and walls; (2) building mechanical systems, including heating, air conditioning, ventilation, electrical and plumbing maintenance of the Building, except as set forth in Section 9.1(b) and (3) any capital expenditures, all of which are the Landlord's sole cost and responsibility under Section 9 of this Lease, except as set forth in the paragraph above. The foregoing notwithstanding, Operating Expenses shall not include the cost of any maintenance, repair or replacement of any building component or equipment, nor the repair or replacement of any defects in materials and workmanship, that are covered by any warranty issued by any contractor, subcontractor, supplier or manufacturer.

3. **Additional Rent Correction Payment:** The parties acknowledge that rather than paying the amounts set forth in the Additional Rent Schedule set forth in Section 2, above, for the period of time from November 1, 2013 through October 31, 2014, Tenant paid the Monthly Additional Rent payment of \$9,781.50 and for the period of time from November 1, 2014 through February 28, 2021, Tenant paid the Monthly Additional Rent payment of \$9,876.17 ("Payment Discrepancy"). The parties desire to recognize the Payment Discrepancy with a one-time payment from Tenant to Landlord in the amount of \$1,717.28, which Tenant shall make with its March 2021 Base Rent and Additional Rent payments. This amount is intended to correct the Payment Discrepancy.

4. **Foam Fire Suppression System Expenses.** Notwithstanding any other provision of the Lease as amended, Tenant shall pay to Landlord 100% of the costs incurred by Landlord to replenish the foam fire suppressant in the foam fire suppression system in the hangar portion of the Premises, as necessary for regular maintenance and any required upgrades to the foam fire suppression system in hangar portion of the Premises, which costs shall be paid within ninety (90) days of receipt of an invoice from the Landlord. Landlord shall provide thirty (30) days prior written notice to Tenant of replenishment of foam fire suppressant or any required upgrade work on the foam fire suppression system.

5. **Utilities and Other Charges.** Section 5.0 (*Utilities and Other Charges*) of the Lease is hereby deleted in its entirety and replaced with the following:

Utilities and Other Charges. Tenant will pay separately all telephone and internet costs separately billed to the Premises. All other utility costs are included in Tenant's Additional Rent payments made pursuant to Section 4.1 of the Lease.

6. **Maintenance and Repairs.** Section 9.1 (*Landlord's Obligations*) and Section 9.2 (*The Premises*) are hereby deleted in their entirety and replaced with the following:

9.1 Landlord's Obligations. Landlord, at its expense (excluding those expenses for which Tenant pays either as part of its monthly Additional Rent payment as set forth in Section 4.1, above, or mutually agreed to in advance and billed by separate invoice payable within 30 days), shall be responsible for all Building Common Areas and Premises maintenance and repairs, including but not limited to, the following: (a) roof, exterior windows, exterior doors (except the Hangar rolling door), floor, and walls; (b) building mechanical systems, including heating, air conditioning, ventilation, electrical and plumbing; (c) Site grounds and parking lot, including snow and ice removal; (d) trash removal; (e) fire equipment/exit signs and (f) proximity card reader access system. Landlord shall provide janitorial service and supplies for the Building Common Areas, the external Common Areas and the Premises.

9.2 The Premises: Tenant shall be responsible for repair and maintenance due to damage caused by Tenant's negligence or willful misconduct. Tenant shall also be responsible for the costs of maintenance, repair of the Premises and every part thereof (except as set forth above regarding Landlord's structural obligations) including replacement as required. Landlord shall perform or contract for the repairs and maintenance to the Premises and Tenant shall pay for such expenses when it pays its monthly Additional Rent payment as set forth in Section 4.1, above (as part of Landlord's operating expenses in Section 4.1). Landlord shall have the right to enter the Premises at all reasonable hours to inspect, maintain and improve the Premises provided the activities do not interfere with Tenant's business activities within the Premises, and other than in an emergency, Landlord provides reasonable prior notice of any entry into the Premises.

7. **Reaffirmation of Terms.** Except as expressly modified hereby, all of the terms, covenants and provisions of the Lease are hereby confirmed and ratified and shall remain unchanged and in full force and effect.

8. **Representations.** Tenant hereby represents and warrants to Landlord that: (i) Tenant is not in default of any of its obligations under the Lease and that such Lease is valid, binding and enforceable in accordance with its terms, (ii) Tenant has full power and authority to execute and perform this Second Amendment, and (iii) Tenant has taken all action necessary to authorize the execution and performance of this Second Amendment.

9. **Counterpart Copies.** This First Amendment may be executed in two or more counterpart copies, each of which shall be deemed to be an original and all of which counterparts shall have the same force and effect as if the parties hereto had executed a single copy of this Second Amendment.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this agreement as of the day and year first above written.

TENANT:

**THE REGENTS OF THE UNIVERSITY
OF MICHIGAN**

LANDLORD:

COUNTY OF LIVINGSTON

BY: _____
Kevin Hegarty

ITS: Executive Vice President and
Chief Financial Officer

BY: _____
Wesley J. Nakagiri

ITS: County Board of Commissioners
Chairperson

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RESOLUTION

NO: 2021-03-031

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution Authorizing the Removal of Food Service License Fees for the Year 2021-Health Department

WHEREAS, each year the Livingston County Health Department (LCHD) charges licensing fees for food service facilities operating in Livingston County which contribute to offset a portion of food program expenses in combination with State funding; and

WHEREAS, since the beginning of the COVID-19 pandemic, food service facilities have been disproportionately affected by closures, indoor dining restrictions, and limited capacity; and

WHEREAS, many of our food service businesses are struggling financially as a direct result of COVID restrictions; and

WHEREAS, in an effort to support our local food service businesses, LCHD is requesting authorization to waive all licensing fee renewals for existing facilities for the year 2021; and

WHEREAS, the estimated amount of annual revenue received from licensing fees is \$335,000; and

WHEREAS, the reduction of department revenue from the waiver of local fees will be offset by supplemental State and Federal COVID response funding available due to a large portion of Health Department staff reassigned to COVID specific job functions. The current budgeted amount of State and Federal COVID response funding for 2021 is at least \$1,500,000; and

WHEREAS, this licensing fee removal will be one-time and non-precedent setting for the 2021 licensing year only.

THEREFORE, BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorize the Livingston County Health Department to waive food license fee renewals for existing facilities for the year 2021.

BE IT FURTHER RESOLVED that the Board of Commissioners authorize any budget amendment to effectuate the above.

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**MOVED:
SECONDED:
CARRIED:**



LIVINGSTON COUNTY HEALTH DEPARTMENT

2300 East Grand River Avenue, Suite 102
Howell, Michigan 48843-7578

www.lchd.org

PERSONAL/PREVENTIVE HEALTH SERVICES

P: (517) 546-9850
F: (517) 546-6995

ENVIRONMENTAL HEALTH SERVICES

P: (517) 546-9858
F: (517) 546-9853

February 24, 2021

To: Livingston County Board of Commissioners

From: Matt Bolang, Deputy Health Officer/Director of Environmental Health

Re: Resolution to Remove Food Service License Fees for 2021

The COVID-19 pandemic has caused many of our local businesses to struggle during the past year due to mandated closures and capacity restrictions. None have been more adversely affected than our food service establishments. Our local restaurants have gone through periods of closure and indoor dining restrictions and many are struggling financially during this time.

In an effort to alleviate some of the financial burden of operating a restaurant, the attached resolution proposes to eliminate the collection of food licensing fees for existing facilities for the upcoming year. During normal years, the LCHD relies on the revenue generated from this local fee (\$335,000), along with our annual Essential Local Public Health Services contract funding (\$137,749), to support our food safety operations that include routine onsite inspections, education, reviewing plans for new construction, remodels, change of ownership, and the investigation of complaints and foodborne illness.

Due to many staff working in and being reassigned COVID specific roles and responsibilities, we are able to offset some of the operational costs with supplemental State and Federal COVID funding (estimated to be at least \$1.5M for 2021). If necessary, any additional budget shortfall will be made up through a contribution from our fund balance.

Given these unprecedented times, and to support our local food service businesses, I recommend approving this resolution.

If you have any questions regarding this matter please contact me at (517) 552-6870.

RESOLUTION

NO: 2021-03-032

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution Authorizing the Purchase of a Leased Sheriff's Vehicle from Enterprise Fleet Management for Transfer to MMRMA Insurance - Car Pool

WHEREAS, the Car Pool department is requesting authorization to purchase a leased 2020 Dodge Durango Sheriff's patrol vehicle from Enterprise Fleet Management that was involved in an accident and declared a total loss by MMRMA Insurance; and

WHEREAS, the purchase price is equal to the current lease payoff amount of \$28,355; and

WHEREAS, the purchase will allow the County to transfer the title of the totaled vehicle to MMRMA, which has completed a salvage auction and received a high bid of \$6,400 which will be applied to the insurance settlement; and

WHEREAS, if the vehicle is purchased and transferred to MMRMA the County will receive the Actual Cash Value (ACV) of \$34,400; and

WHEREAS, if the vehicle is not purchased and transferred to MMRMA, the high salvage bid of \$6,400 will be deducted from the insurance reimbursement and Enterprise will sell the vehicle for parts for an estimated \$1,500, and the County will receive a total of \$29,500; and

WHEREAS, it is therefore in the County's financial interest to purchase the vehicle from Enterprise and transfer to MMRMA for sale to the high salvage bidder.

THEREFORE BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorize the Car Pool department to purchase a leased 2020 Dodge Durango from Enterprise Fleet Management in the amount of \$28,355 and transfer the title to MMRMA Insurance for sale to the high salvage bidder.

BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners authorize any budget amendments necessary for the vehicle purchase.

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**MOVED:
SECONDED:
CARRIED:**



Memorandum

To: Livingston County Board of Commissioners
From: Greg Kellogg, Transportation Director
Date: 02/22/2021
Re: Resolution Authorizing the Purchase of a Leased Sheriff's Vehicle from Enterprise Fleet Management for Transfer to MMRMA Insurance - Car Pool

The Car Pool department is requesting authorization to purchase a leased 2020 Dodge Durango Sheriff's patrol vehicle from Enterprise Fleet Management that was involved in an accident and declared a total loss by MMRMA Insurance.

The purchase price is equal to the current lease payoff amount of \$28,355.

The purchase will allow the County to transfer the title of the totaled vehicle to MMRMA, which has completed a salvage auction and received a high bid of \$6,400 which will be applied to the insurance settlement.

If the vehicle is purchased and transferred to MMRMA the County will receive the Actual Cash Value (ACV) of \$34,400.

If the vehicle is not purchased and transferred to MMRMA, the high salvage bid of \$6,400 will be deducted from the insurance reimbursement and Enterprise will sell the vehicle for parts for an estimated \$1,500, and the County will receive a total of \$29,500.

Therefore, it is therefore in the County's financial interest to purchase the vehicle from Enterprise and transfer to MMRMA for sale to the high salvage bidder.

The Bill of Sale to purchase the vehicle is attached. Please contact me with any questions at 517-540-7843.

Claim #2100060 – 2020 Dodge Durango - 66459

Actual Cash Value (ACV)

The ACV on the vehicle is \$34,400.00.

Salvage

There were 3 salvage bids made on the vehicle they were:

1. Weller - \$6,400.00
2. Neuners - \$6,100.00
3. American & Imported - \$5,265.00

******Salvage bids are only guaranteed for 10 days and they do not include any equipment or graphics, but they do include wheels and tires******

Settlement Options

1. MMRMA can pay the full ACV of **\$34,400.00** to the Member and the vehicle is sold to the highest salvage bidder and the MMRMA would apply the salvage amount to the claim, which would reduce the cost of the claim.
2. MMRMA can pay the Member the ACV less the highest salvage bid, and the Member can keep the vehicle, which would be in the amount of **\$28,000.00**. *However, if this option is chosen the Member would have to advise the MMRMA to make sure the vehicle is still eligible to remain on the policy.*

If the vehicle is at a body shop, please pay any storage or towing fees incurred and send the invoice to the MMRMA for reimbursement. If those fees are not paid before the Salvage Company picks up the vehicle, they will have to pay those fees prior to taking possession of the vehicle.

Please review and advise how you would like to move forward. If you are not authorized to make this decision, please let me know who is and I will follow up with them.

Dear County of Livingston

Below you will find the Bill of Sale for the vehicle that you would like to purchase. Please verify that the name, address and phone number are correct and the address is the same place you would like the title mailed. Please also update the mileage and confirm vehicle color. If anything does not appear to be correct, please send an email to EFM_Car_Sales@efleets.com to request any changes. The title will be assigned exactly as it states on the Bill of Sale.

If everything appears to be correct, please proceed with the following steps to complete the purchase:

1. Sign and date the Bill of Sale via DocuSign
2. Complete the odometer statement and sign the bottom of the statement via DocuSign
3. Submit certified funds or a certified check, made payable to Enterprise FM Trust, for the amount listed as the 'Selling Price' (Item Q) on the Bill of Sale.
4. Mail a copy of the signed Bill of Sale, the certified check, and completed odometer statement to the following:

Mailing Address

Enterprise FM Trust
Car Sales
PO Box 843004
Kansas City, MO 64184-3004

Fed Ex Address

Commerce Bank
Attn: 843004 KCWLBX
811 Main St
Kansas City, MO 64105

Please note, if the Selling Price is \$1.00, this is for documentation purposes only. The purchaser will not need to provide a payment for this transaction. If the Selling Price is \$1, simply complete Steps 1 and 2 to sign both documents via DocuSign.

As a reminder, the Selling Price only covers the remaining amount owed for the vehicle. The Selling Price does not include any unpaid balances on your most recent Billing Statement. The title will only be released once the statement balance has been paid. Please refer to your most recent Billing Statement on <https://efmfleetaccess.efleets.com/fleetweb/login> to review any outstanding charges.

Once we receive the signed Bill of Sale, payment for the selling price, and completed Odometer Statement, we will begin to process the transaction and the title will be received in approximately 10-14 business days.

If you have any questions, feel free to reach out to us via e-mail at EFM_Car_Sales@efleets.com or by phone at 1-800-543-8226



FLEET MANAGEMENT

Enterprise Fleet Management
Purchase Option Team
1-800-543-8226 direct
EFM_Car_Sales@efleets.com
9315 Olive BLVD
Saint Louis, MO 63132

BILL OF SALE

Printed as of 02/10/2021

BUYER(S)		SALE DATE		GPBR	
BUYER County of Livingston		CAR SALE #		UNIT NO. 23HVD6	
CO-BUYER		A SALE PRICE \$28,355.45			
		B ADDITIONAL EQUIPMENT			
STREET ADDRESS 3950 W. Grand River Ave.		APT #			
CITY/STATE/ZIP HOWELL / MI / 48855		C SUBTOTAL (A PLUS B) \$28,355.45			
DAY PHONE		EVENING PHONE		D SALES TAX \$0.00	
FAX		OTHER CHARGES			
PURCHASE VEHICLE		E TITLE FEE			
YR/MAKE/MODEL/SERIES 2020 Dodge Durango Pursuit 4dr All-wheel Drive (5969983)		F ADMINISTRATION FEE \$0.00			
VIN# 1 C 4 S D J F T 3 L C 3 6 6 4 5 9		G ACCUMULATED PERSONAL PROPERTY TAX \$0.00			
MILEAGE		H ACCUMULATED LICENSE FEES \$0.00			
COLOR (0 P) DB Black Clearcoat		I			
The vehicle is sold "As Is - not expressly warranted or guaranteed" with All Faults: BUYER UNDERSTANDS THAT THIS VEHICLE IS BEING SOLD "AS IS NOT EXPRESSLY WARRANTED OR GUARANTEED WITH ALL FAULTS AND IS NOT COVERED BY DEALER WARRANTIES. I UNDERSTAND THAT THE SELLER IS NOT REQUIRED TO MAKE ANY REPAIRS AFTER BUYER BUYS THIS VEHICLE AND BUYER WILL HAVE TO PAY FOR REPAIRS THIS VEHICLE WILL NEED."		J			
		K			
		L			
		M			
		N			
		O			
		P TOTAL OTHER (F THRU O) \$0.00			
		Q SELLING PRICE (C PLUS D PLUS P) \$28,355.45			

ADDITIONAL	
Payments for the vehicle(s) are to be made payable to "Enterprise FM Trust" Please remit payment by certified check.	
Buyer is responsible for obtaining any necessary insurance coverage on the purchased vehicle. Any coverage maintained by seller does not transfer with the purchased vehicle.	
There may be additional charges outstanding that are not included in the Selling Price. Please refer to your most recent Billing Statement on https://efmfleetaccess.efleets.com/fleetweb/login . The title for the vehicle will only be released once all outstanding charges have been cleared.	

LIENHOLDER	LIENHOLDER ADDRESS	LIEN DATE	LIENHOLDER PHONE
BUYER County of Livingston	SELLER The Legal Entity as listed on the Vehicle(s) Titles(s) ('Seller')		
SIGNATURE	DATE	ADDRESS 9315 Olive Boulevard	
CO-BUYER	CITY/STATE/ZIP St.Louis /MO /63132		
SIGNATURE	DATE	APPROVED BY	DATE

LESSEE ODOMETER (MILEAGE) DISCLOSURE STATEMENT

Federal Law (and State Law if applicable) requires that the lessee disclose the mileage to the lessor in connection with the transfer of ownership. Failure to complete or making a false statement may result in fines and/or imprisonment. Complete disclosure form below and return to lessor.

I, _____ (Name of person making disclosure) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

- ☐ 1. I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the amount of mileage in excess of the designed mechanical odometer limit of the vehicle described below.
- ☐ 2. I hereby certify that to the best of my knowledge the odometer reading as stated above is not the actual mileage.
- ☐ 3. I hereby certify that to the best of my knowledge the vehicle described above does not have an air bag on or off switch which has been installed by someone other than the vehicle manufacturer and any existing air bag has not been deactivated.

YMMS	Unit Number
2020 Dodge Durango Pursuit 4dr All-wheel Drive (5969983)	23HVD6
VEHICLE IDENTIFICATION NUMBER	
1C4SDJFT3LC366459	

LESSEE'S NAME		
Sheriff Road		
STREET ADDRESS		
CITY	STATE	ZIP CODE
LESSEE'S SIGNATURES		
Date		

LESSOR'S LEGAL NAME		
ENTERPRISE FLEET MANAGEMENT		
STREET ADDRESS		
9315 Olive Blvd		
CITY	STATE	ZIP CODE
St. Louis	MO	63132
DATE DISCLOSURE FORM SENT TO LESSEE		DATE COMPLETED FORM RECEIVED FROM LESSEE
02-10-2021		
LESSOR'S SIGNATURE		

Please return to:

Enterprise FM Exchange
9315 Olive Blvd
St. Louis, MO 63132
1-800-543-8226
EFM_Car_Sales@efleets.com

RESOLUTION

NO: 2021-03-033

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution Authorizing Capital Expenditure for the Purchase of Six Replacement Buses - LETS

WHEREAS, LETS has FY 2020 and 2021 grant funding available from various state and federal transit capital programs to replace six (6) small buses that are eligible for replacement based on age and/or mileage; and

WHEREAS, all grants have an 80% federal funding share with a 20% state match; and

WHEREAS, the replacement buses will be purchased using the State of Michigan Transit Vehicle Purchasing Program from Hoekstra Transportation of Grand Rapids, Michigan at a cost not to exceed \$100,000 each; and

WHEREAS, the buses will have a useful life of seven (7) years or 200,000 miles; and

WHEREAS, funding for four (4) buses was included in the LETS 2021 budget, but actual grant amounts were not known until after budget adoption and therefore a budget amendment is necessary to adjust for price and the addition of two additional buses; and

WHEREAS, the proposed amendment ensures compliance with the Uniform Budgeting and Accounting Act, as amended.

THEREFORE, BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorize capital expenditure for six (6) replacement buses at a total cost not to exceed \$600,000 from Hoekstra Transportation of Grand Rapids Michigan.

BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners authorize any budget amendments necessary for the bus purchases.

BE IT FURTHER RESOLVED that the LETS Director is hereby authorized to dispose of the replaced vehicles per the County Purchasing/Disposal Policy.

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**MOVED:
SECONDED:
CARRIED:**



Memorandum

To: Livingston County Board of Commissioners
From: Greg Kellogg, Transportation Director
Date: 02/22/2021
Re: Resolution Authorizing Capital Expenditure for the Purchase of Six Replacement Buses - LETS

LETS has FY 2020 and 2021 grant funding available from various state and federal transit capital programs to replace six (6) small buses that are eligible for replacement based on age and/or mileage. All grants have an 80% federal funding share with a 20% state match.

The buses being replaced are 2015 Eldorado National small propane buses that were delivered concurrently. The replacement buses will be Champion small propane buses built in Imlay City, Michigan and will be purchased using the State of Michigan Transit Vehicle Purchasing Program from Hoekstra Transportation of Grand Rapids, Michigan at a cost not to exceed \$100,000 each.

These buses are typically delivered 8-10 months after the order is placed and will have a useful life of seven (7) years or 200,000 miles.

Funding for four (4) buses was included in the LETS 2021 budget, but actual grant amounts were not known until after budget adoption and therefore a budget amendment is necessary to adjust for price and the addition of two additional buses.

The completed order form for the buses is attached for your review. As always I appreciate your consideration and support. Please contact me with any questions at 517-540-7843.



VEHICLE ORDER FORM - MOBILITY TRANSPORTATION
Small Class II Metal Cage Bus Only
158"(min) Wheelbase (21-23 ft) 176" Wheelbase (24-25 ft)
7 year / 200,000 miles

Instructions: (1) Complete sections I & II. (2) For sections III and IV, simply type in the quantity and the form will automatically calculate costs. (3) For section V (local options), type in the quantity, item descriptions, and unit prices as the form will automatically calculate costs. (4) Sign and date the form in section VII. (5) Submit completed and signed form to the vendor. (6) Once new bus is received and accepted, a copy of this completed form shall be submitted to MDOT with payment request (see State Vehicle Purchasing Program Guidelines).

I Contact Information							
Transit Agency Name:		Livingston County Board of Commissioners					
Contact Name:		Greg Kellogg					
Phone Number:		517-540-7843					
E-mail:		gkellogg@livgov.com					
FORD FIN CODE							
TAX ID #							
II Funding, Contract and Vehicle Information							
Program		FY '20 & '21 5307/5339/CMAQ		Vehicle Base Color	White	Color Code	
Agency Contract No.				Vehicle Color Top			
State Vehicle Contract No.		071B7700124		Striping Color			
Vendor Name		Mobility Transportation, Inc.		Striping Width			
Body Manufacturer		Champion Bus		Seating Color	Vinyl: <input checked="" type="checkbox"/> Tan <input type="checkbox"/> Gray <input type="checkbox"/> Blue Fabric: <input type="checkbox"/> Heather Grey <input type="checkbox"/> Slate Blue		
Chassis/ Manufacturer		Ford (Gas Only - No Diesel Available)		Flooring	<input type="checkbox"/> Tan <input checked="" type="checkbox"/> Gray		
III Base Vehicle Floor Plans							
	Qty	Description	Price Each	Total Price	Low Bidder Price	Federal/State Share	Local Share
		vinyl seat covers 158" (min) Wheelbase (21-23 ft) 176" Wheelbase (24-25 ft)					
A		18 passenger without lift	\$56,255.69	\$0.00	\$56,255.69	\$0.00	\$0.00
B		10 + 1 passenger with lift	\$60,036.41	\$0.00	\$60,036.41	\$0.00	\$0.00
C		8 + 2 passenger with lift	\$61,171.69	\$0.00	\$61,171.69	\$0.00	\$0.00
D		4 + 2 passenger with lift	\$61,820.57	\$0.00	\$61,820.57	\$0.00	\$0.00
E		22 passenger without lift	\$58,511.56	\$0.00	\$58,511.56	\$0.00	\$0.00
F		6 + 2 passenger with lift	\$61,921.46	\$0.00	\$61,921.46	\$0.00	\$0.00
G	6	10 + 2 passenger with lift	\$61,608.35	\$369,650.12	\$61,608.35	\$369,650.12	\$0.00
H		4 + 2 passenger with lift	\$62,844.52	\$0.00	\$62,844.52	\$0.00	\$0.00
		Fabric Seat Covers 158" (min) Wheelbase (21-23 ft) 176" Wheelbase (24-25 ft)					
I		18 passenger without lift	\$56,255.69	\$0.00	\$56,255.69	\$0.00	\$0.00
J		10 + 1 passenger with lift	\$60,036.41	\$0.00	\$60,036.41	\$0.00	\$0.00
K		8 + 2 passenger with lift	\$60,959.29	\$0.00	\$60,959.29	\$0.00	\$0.00
L		4 + 2 passenger with lift	\$61,820.57	\$0.00	\$61,820.57	\$0.00	\$0.00
M		22 passenger without lift	\$58,511.56	\$0.00	\$58,511.56	\$0.00	\$0.00
N		6 + 2 passenger with lift	\$61,921.46	\$0.00	\$61,921.46	\$0.00	\$0.00
O		10 + 2 passenger with lift	\$60,450.77	\$0.00	\$60,450.77	\$0.00	\$0.00
P		4 + 2 passenger with lift	\$62,844.52	\$0.00	\$62,844.52	\$0.00	\$0.00
Total	6		Base Vehicle Totals	\$369,650.12		\$369,650.12	\$0.00
IV Contract Options							
	Qty	Contract Options	Price Each	Total Price	Low Bidder Price	Federal/State Share	Local Share
1	6	Air Conditioning – Split System (rooftop)	\$4,513.50	\$27,081.00	\$4,513.50	\$27,081.00	\$0.00

2		Air Conditioning - Tie-in System (skirt)	\$2,708.10	\$0.00	\$2,708.10	\$0.00	\$0.00
3		Air Conditioning - Rooftop System	\$5,761.35	\$0.00	\$5,761.35	\$0.00	\$0.00
4		Auxiliary Coolant Heater	\$3,132.90	\$0.00	\$3,132.90	\$0.00	\$0.00
5		Auxiliary Air Heater	\$3,047.94	\$0.00	\$3,047.94	\$0.00	\$0.00
6		Destination Sign - Roller Curtain	\$2,017.80	\$0.00	\$2,017.80	\$0.00	\$0.00
7	6	Destination Signs – LED	\$4,163.04	\$24,978.24	\$4,163.04	\$24,978.24	\$0.00
8	6	Entrance Stepwell Heater	\$438.61	\$2,631.66	\$438.61	\$2,631.66	\$0.00
9	6	Driver Side Running Board	\$485.33	\$2,911.98	\$485.33	\$2,911.98	\$0.00
10	6	Donation box (in lieu of standard farebox – deduct)	-\$902.70	-\$5,416.20	-\$902.70	-\$5,416.20	\$0.00
11		Propane - Roush Dedicated LPG 40 Gallon	\$20,231.00	\$0.00	\$20,231.00	\$0.00	\$0.00
12	6	Propane - Roush Dedicated LPG 64 Gallon	\$22,833.00	\$136,998.00	\$22,833.00	\$136,998.00	\$0.00
13		CNG - Westport Dedicated CNG	\$25,329.00	\$0.00	\$25,329.00	\$0.00	\$0.00
14	6	Power Seat Base (Driver)	\$477.90	\$2,867.40	\$477.90	\$2,867.40	\$0.00
15		Farebox Electrical Prep Only (less standard farebox- deduct)	-\$1,183.07	\$0.00	-\$1,183.07	\$0.00	\$0.00
16	6	Limited Slip Differential	\$254.88	\$1,529.28	\$254.88	\$1,529.28	\$0.00
17		Paint - One stripe	\$743.40	\$0.00	\$743.40	\$0.00	\$0.00
18		Paint - Roof second color	\$743.40	\$0.00	\$743.40	\$0.00	\$0.00
19		Paint - Different Full body	\$2,655.00	\$0.00	\$2,655.00	\$0.00	\$0.00
20		Reflective Vinyl Belt Stripe	\$424.80	\$0.00	\$424.80	\$0.00	\$0.00
21		Lift – Type I, 800# (in lieu of standard - deduct) - Braun	-\$212.40	\$0.00	-\$212.40	\$0.00	\$0.00
22		Lift – Type II, 800# – Powered outer barrier (in lieu of standard) - Braun	-\$212.40	\$0.00	-\$212.40	\$0.00	\$0.00
23		Lift - Folding Platform (in lieu of standard lift)	-\$212.40	\$0.00	-\$212.40	\$0.00	\$0.00
24		Alternate Standard Lift Manufacturer - Ricon	\$0.00	\$0.00	\$0.00	\$0.00	
25	12	Wheelchair Single Point Securement System (in lieu of one standard L-Track position)	\$212.40	\$2,548.80	\$212.40	\$2,548.80	\$0.00
26		Additional Wheelchair Position – L Track System	\$531.00	\$0.00	\$531.00	\$0.00	\$0.00
27		Additional Wheelchair Position – Single Point System	\$722.16	\$0.00	\$722.16	\$0.00	\$0.00
28	6	Two-way radio prep package	\$426.92	\$2,561.52	\$426.92	\$2,561.52	\$0.00
29		Radio - AM/FM stereo system w/ four speakers	\$194.35	\$0.00	\$194.35	\$0.00	\$0.00
30		Public Address (PA) System Only w/ two speakers	\$318.60	\$0.00	\$318.60	\$0.00	\$0.00
31	6	Radio – AM/FM/PA System w/ four speakers	\$371.70	\$2,230.20	\$371.70	\$2,230.20	\$0.00
32		Radio – Speaker only (additional)	\$26.55	\$0.00	\$26.55	\$0.00	\$0.00
33		Manual Entrance Door	-\$106.20	\$0.00	-\$106.20	\$0.00	\$0.00
34		Rear Emergency Exit Window in lieu of Standard Rear Door	-\$531.00	\$0.00	-\$531.00	\$0.00	\$0.00
35	6	Raised Flooring (No Wheel Wells)	\$1,274.40	\$7,646.40	\$1,274.40	\$7,646.40	\$0.00
36		Rubber Flooring (In lieu of standard ALTRO flooring)	-\$106.20	\$0.00	-\$106.20	\$0.00	\$0.00
37		Passenger Activated Stop Request System	\$1,008.90	\$0.00	\$1,008.90	\$0.00	\$0.00
38	6	Back-up Sensor System	\$684.99	\$4,109.94	\$684.99	\$4,109.94	\$0.00
39		Video Surveillance – Two Camera System	\$2,097.45	\$0.00	\$2,097.45	\$0.00	\$0.00
40		Video Surveillance - Four Camera System	\$2,548.80	\$0.00	\$2,548.80	\$0.00	\$0.00
41		Video Surveillance - Six Camera System	\$3,451.50	\$0.00	\$3,451.50	\$0.00	\$0.00
42		Video Surveillance - DVR System Upgrade	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
43		Video Surveillance – Extra Interior Cameras	\$265.50	\$0.00	\$265.50	\$0.00	\$0.00
44		Video Surveillance – Extra Exterior Cameras	\$265.50	\$0.00	\$265.50	\$0.00	\$0.00
45		Video Surveillance Preparation Package (for future setup of video system)	\$371.70	\$0.00	\$371.70	\$0.00	\$0.00
46	3	Spare Tire - Steer Axle - Only one spare tire per bus will be funded by MDOT	\$185.85	\$557.55	\$185.85	\$557.55	\$0.00
47	3	Spare Tire - Drive Axle - Only one spare tire per bus will be funded by MDOT	\$185.85	\$557.55	\$185.85	\$557.55	\$0.00
48	6	Interior Mirror	\$37.17	\$223.02	\$37.17	\$223.02	\$0.00

49		Deduct Standard Ceiling Handrails	-\$637.20	\$0.00	-\$637.20	\$0.00	\$0.00
Seating is standard in base vehicle floor plan. Only use options below to modify floor plan.							
50		Seating – Forward Facing Standard Double Seat – Vinyl	\$401.44	\$0.00	\$401.44	\$0.00	\$0.00
51		Seating – Forward Facing Standard Double Seat – Fabric	\$305.86	\$0.00	\$305.86	\$0.00	\$0.00
52		Seating – Forward Facing Standard Double Seat – Vinyl (Deduct)	-\$305.86	\$0.00	-\$305.86	\$0.00	\$0.00
53		Seating – Forward Facing Standard Double Seat – Fabric (Deduct)	-\$305.86	\$0.00	-\$305.86	\$0.00	\$0.00
54		Seating – Forward Facing Double Fold-A-Way – Vinyl	\$665.87	\$0.00	\$665.87	\$0.00	\$0.00
55		Seating – Forward Facing Double Fold-A-Way – Fabric	\$665.87	\$0.00	\$665.87	\$0.00	\$0.00
56		Seating – Forward Facing Double Fold-A-Way – Vinyl (Deduct)	-\$665.87	\$0.00	-\$665.87	\$0.00	\$0.00
57		Seating – Forward Facing Double Fold-A-Way – Fabric (Deduct)	-\$772.07	\$0.00	-\$772.07	\$0.00	\$0.00
58		Seating – Single Flip-up – Vinyl	\$509.76	\$0.00	\$509.76	\$0.00	\$0.00
59		Seating – Single Flip-up – Fabric	\$414.18	\$0.00	\$414.18	\$0.00	\$0.00
60		Seating – Double Flip-up – Vinyl	\$637.20	\$0.00	\$637.20	\$0.00	\$0.00
61		Seating – Double Flip-up – Fabric	\$531.00	\$0.00	\$531.00	\$0.00	\$0.00
62		Seating – Double w/Single Integrated Child Seat (ICS) - Vinyl	\$900.58	\$0.00	\$900.58	\$0.00	\$0.00
63		Seating – Double w/Single Integrated Child Seat (ICS) – Fabric	\$794.38	\$0.00	\$794.38	\$0.00	\$0.00
64		Seating – Double w/Single Integrated Child Seat (ICS) – Vinyl (Deduct)	-\$900.58	\$0.00	-\$900.58	\$0.00	\$0.00
65		Seating – Double w/Single Integrated Child Seat (ICS) – Fabric (Deduct)	-\$1,325.38	\$0.00	-\$1,325.38	\$0.00	\$0.00
66		Seating – Double w/Double Integrated Child Seat (ICS) - Vinyl	\$1,330.69	\$0.00	\$1,330.69	\$0.00	\$0.00
67		Seating – Double w/Double Integrated Child Seat (ICS) - Fabric	\$1,224.49	\$0.00	\$1,224.49	\$0.00	\$0.00
68		Seating - Rear five place passenger - Vinyl	\$221.96	\$0.00	\$221.96	\$0.00	\$0.00
69		Seating - Rear five place passenger - Fabric	\$249.57	\$0.00	\$249.57	\$0.00	\$0.00
		Contract Options Total		\$214,016.34		\$214,016.34	\$0.00
		Base + Contract Option Subtotal		\$583,666.46		\$583,666.46	\$0.00
V	Non-Specified Local Options (Paid 100% Locally)						
O L o c a l O p t i o n s		Qty	Enter Item Description Below	Enter Unit Price Below	Total Price	Local Share	
	1	6	Braun 1000# lift	\$0.00	\$0.00	\$0.00	
	2	6	Flat Floor Choice 23286 - Raised Extended to Fro	\$0.00	\$0.00	\$0.00	
	3				\$0.00	\$0.00	
	4				\$0.00	\$0.00	
	Local Options Subtotal				\$0.00	\$0.00	
	Total (Base + Contract Options + Local Options)				\$583,666.46	\$0.00	
	Optional: Administrative Fee			Not to exceed: \$5,836.66			
	Grand Total				\$583,666.46	\$0.00	
VI	Comments						

VII	Authorization		
	Authorized Signature:		Date:

RESOLUTION

NO: 2021-03-034

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution of Intent to Apply for Financial Assistance for Fiscal Year 2022 Under Act 51 of the Public Acts of 1951, as Amended - LETS

WHEREAS, pursuant to Act No. 51 of the Public Acts of 1951, as amended (Act 51), it is necessary for the Livingston Essential Transportation Service (LETS), established under Act 94, to provide a local transportation program for the state fiscal year 2022 and, therefore, apply for state financial assistance under provisions of Act 51; and

WHEREAS, it is necessary for the governing body to name an official representative for all public transportation matters, who is authorized to provide such information as deemed necessary by the State Transportation Commission or department for its administration of Act 51; and

WHEREAS, it is necessary to certify that no changes in eligibility documentation have occurred during the past state fiscal year; and

WHEREAS, the performance indicators have been reviewed and approved by the governing body; and

WHEREAS, the County of Livingston has reviewed and approved the proposed balanced budget and estimated funding sources consisting of the following:

Program	Federal	State	Local/Other	Total
State Local Bus Operating	\$ -	\$ 2,204,228	\$ -	\$ 2,204,228
S. 5307 Urban Operating	\$ 1,407,422	\$ -	\$ 2,105,847	\$ 3,513,269
S. 5311 Rural Operating	\$ 45,000	\$ -	\$ 111,163	\$ 156,163
Specialized Services	\$ -	\$ 70,080	\$ -	\$ 70,080
Transportation to Work	\$ -	\$ 77,670	\$ 10,000	\$ 87,670
S. 5307 Capital	\$ 428,000	\$ 107,000	\$ -	\$ 535,000
S. 5339 Capital (Formula)	\$ 176,000	\$ 44,000	\$ -	\$ 220,000
S. 5339 Capital (Disc.)	\$ 200,000	\$ 50,000	\$ -	\$ 250,000
New Freedom Capital	\$ 80,000	\$ 20,000	\$ -	\$ 100,000
STP Capital	\$ 80,000	\$ 20,000	\$ -	\$ 100,000
Total	\$ 2,416,422	\$ 2,592,978	\$ 2,227,010	\$ 7,236,410

THEREFORE, BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorizes LETS to provide public transportation services and to apply for assistance with this annual plan, in accordance with Act 51.

BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners hereby appoint Transportation Director, Greg W. Kellogg as the Transportation Coordinator for all public transportation matters, who is authorized to provide such information as deemed necessary by the State Transportation Commission or department for its administration of Act 51 for the fiscal year 2022.

BE IT FINALLY RESOLVED that the Livingston County Board of Commissioners authorize the Board chair to sign any documents related to grant applications and subsequent contracts for the programs listed herein following review and approval by Mark T. Koerner, LETS Transit Attorney.

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MOVED:
SECONDED:
CARRIED:



Memorandum

To: Livingston County Board of Commissioners
From: Greg Kellogg, Transportation Director
Date: 02/15/2021
Re: Resolution of Intent to Apply for State Financial Assistance for Fiscal Year 2022 under Act 51 of the Public Acts of 1951, as Amended - LETS

Attached for your consideration and approval is a resolution stating the intention of LETS to apply for financial assistance from the State of Michigan for FY 2022 under Act 51 of the Public Act of 1951, as amended. This resolution must accompany the application to be considered for state funding.

The application includes federal funding of \$2,416,422; state funding of \$2,592,978; and local/other funding of \$2,227,010. The “local/other” category comprises all non-federal/state funding, which includes passenger fares, service contract revenue, contributions from local partnerships, and a continuation of the County’s \$65,000 General Fund contribution.

State Local Bus Operating Assistance

The State of Michigan Local Bus Operating program provides operating assistance estimated at 37.535% of eligible expenses for FY 2022. The LETS programs eligible for this assistance include regular countywide service, the service agreement with People’s Express, and the Michigan Flyer airport shuttle service.

Federal Section 5307 Urban Operating Assistance

Provides 50% reimbursement for operating expenses for regular countywide service. The reimbursement must be calculated net of passenger fare revenue.

Federal Section 5311 Rural Operating Assistance

Provides 18.0% reimbursement for operating expenses for the pass-through funding agreement with People’s Express of Whitmore Lake to provide supplemental dial-a-ride service in southeast Livingston County.

Specialized Services Operating Assistance

State pass-through funding in the amount of \$70,080 for five (5) sub-recipients that provide transportation services to seniors and individuals with disabilities. The providers are Brighton Senior Center, Catholic Charities, Community Mental Health, Hartland Senior Center, and Special Ministries. This funding reimburses the providers at \$1.20 per passenger mile and is allocated based on each provider's share of the total mileage each quarter.

Transportation to Work

Provides 100% reimbursement for up to \$77,670 in eligible operating expenses for the Transportation to Work program. As the name implies this program is dedicated to transportation to employment for low income workers.

Section 5307 Capital

Provides 80% federal funding with 20% state match for transit capital projects. For FY '22 this will include \$485,000 in vehicle and facility preventive maintenance costs and \$50,000 for trip management software annual subscription fees as specified in the agreement with Ecolane.

Section 5339 Capital Formula and Discretionary

Provides 80% federal funding with 20% state match for vehicle and facility projects. Estimated FY '22 Formula funding of \$220,000 will be used to purchase one (1) replacement bus and various facility rehab projects. Also included in the application is \$250,000 in Sec. 5339 Discretionary funding, which is awarded by MDOT if funds are available, and would be used to purchase two (2) replacement buses.

Surface Transportation Program (STP) Capital

Provides 80% federal funding with 20% state match for transit capital projects. This funding is appropriated to the Federal Highway Administration and "flexed" to FTA for eligible transit projects. The funding is coordinated by SEMCOG and the Huron Valley Federal Aid Committee, which votes to allocate funding to local road and transit projects (LETS is a voting member). Estimated FY '22 funding of \$100,000 will be used to purchase one (1) replacement bus.

New Freedom Capital

Provides 80% federal funding and 20% state match for projects that improve mobility options for seniors and individuals with disabilities. The total grant of \$100,000 will be used for our new Mobility Management program, including wages and benefits of the LETS Mobility Manager.

Performance indicators from the 2020 fiscal year and budgeted expenses for the 2022 application are attached. As always, thank you for your consideration and support. If you have any questions, please do not hesitate to contact me at 517-540-7843.

Livingston Essential Transportation

**3950 W. Grand River
Howell, MI 48855**

(517) 540-7843

Urban Medium

Regular Service

Annual Budgeted

2022

Operating Revenue: \$1,135,500

Total Eligible Expenses: \$5,622,460

Local Share: \$2,105,847

Comments: - Regular Service includes competitively bid shuttle service between Brighton and Detroit Metro Airport which began operating on October 1, 2019. The shuttle service is reported under Line-Haul on OAR schedules.

**Livingston Essential Transportation
Urban Medium
Regular Service
Annual Budgeted
2022**

Revenue Schedule Report

Code	Description	LH	DR	Total
401 :	Farebox Revenue			
40100	Passenger Fares (-)	\$985,500	\$150,000	\$1,135,500
407 :	Gains from the Sale of Capital Assets (Explain in comment field) 			
40760	Gains from the Sale of Capital Assets (Explain in comment field) (- Vehicle sales)		\$12,243	\$12,243
409 :	Local Revenue			
40910	Local Operating Assistance (-)		\$65,000	\$65,000
40950	Local Service Contract/Local Source (-)	\$607,104	\$286,000	\$893,104
411 :	State Formula and Contracts			
41101	State Operating Assistance (-)	\$919,668	\$1,190,723	\$2,110,391
41111	Preventive Maintenance (20% State Share) (-)		\$97,000	\$97,000
413 :	Federal Contracts			
41302	Federal Section 5307 Operating (operating funds only) (-)		\$1,407,422	\$1,407,422
41311	Preventive Maintenance (80% Fed. Share) (-)		\$388,000	\$388,000

Total Revenues: \$6,108,660

**Livingston Essential Transportation
Urban Medium
Regular Service
Annual Budgeted
2022**

Expense Schedule Report

Code	Description	LH	DR	Amount
501 :	Labor			
50101	Operators Salaries & Wages (-)		\$1,360,000	\$1,360,000
50102	Other Salaries & Wages (-)		\$245,000	\$245,000
50103	Dispatchers' Salaries & Wages (-)		\$170,000	\$170,000
502 :	Fringe Benefits			
50200	Fringe Benefits (-)		\$690,000	\$690,000
50210	DC Pensions (-)		\$31,000	\$31,000
50220	DB Pensions (-)		\$209,500	\$209,500
503 :	Services			
50302	Advertising Fees (-)		\$5,000	\$5,000
50399	Other Services (-)		\$433,500	\$433,500
504 :	Materials and Supplies			
50401	Fuel & Lubricants (-)		\$200,000	\$200,000
50402	Tires & Tubes (-)		\$30,000	\$30,000
50499	Other Materials & Supplies (-)		\$45,000	\$45,000
505 :	Utilities			
50500	Utilities (-)		\$60,000	\$60,000
506 :	Insurance			
50603	Liability Insurance (-)		\$45,000	\$45,000
508 :	Purchased Trans Service			

**Livingston Essential Transportation
Urban Medium
Regular Service
Annual Budgeted
2022**

Expense Schedule Report

Code	Description	LH	DR	Amount
50800	Purchased Trans Service (-)	\$2,450,160		\$2,450,160
509 :	Misc Expenses			
50902	Travel, Meetings & Training (-)		\$2,500	\$2,500
50903	Association Dues & Subscriptions (-)		\$6,000	\$6,000
50999	Other Misc Expenses (Explain in comment field) (- Uniforms)		\$6,000	\$6,000
512 :	Operating Leases & Rentals			
51200	Operating Leases & Rentals (-)		\$120,000	\$120,000
550 :	Ineligible Expenses			
55009	Ineligible Percent of Association Dues (-)		\$1,200	\$1,200
55011	Ineligible Preventive Maintenance (-)		\$485,000	\$485,000

Total Expenses: \$6,108,660

Total Ineligible Expenses: \$486,200

Total Eligible Expenses: \$5,622,460

**Livingston Essential Transportation
Urban Medium
Regular Service
Annual Budgeted
2022**

Non Financial Schedule Report

Public Service

Code	Description	Weekday LH	Weekday DR	Saturday LH	Saturday DR	Sunday LH	Sunday DR	Total
610	Vehicle Hours	10,200	46,500	0	0	0	0	56,700
611	Vehicle Miles	445,400	950,000	0	0	0	0	1,395,400
615	Unlinked Passenger Trips - Regular	50,400	50,900	0	0	0	0	101,300
616	Unlinked Passenger Trips - Elderly	1,400	9,800	0	0	0	0	11,200
617	Unlinked Passenger Trips - Persons w/Disabilities	1,400	81,300	0	0	0	0	82,700
618	Unlinked Passenger Trips - Elderly Persons w/Disabilities	1,400	9,200	0	0	0	0	10,600
621	Total Line-Haul Unlinked Passenger Trips	54,600	0	0	0	0	0	54,600
622	Total Demand-Response Unlinked Passenger Trips	0	151,200	0	0	0	0	151,200
625	Days Operated	365	352	0	0	0	0	717

Total Passengers: 205,800

Vehicle Information

Code	Description	Quantity
655	Total Demand-Response Vehicles	31
656	Demand-Response Vehicle w/ Lifts	29
658	Total Transit Vehicles	31

Total Vehicles: 31

Miscellaneous Information

Code	Description	Quantity LH	Quantity DR
601	Number of Routes (Line Haul Only)	2	0
602	Total Route Miles (Line Haul Only)	446,614	0
659	LPG (propane) or CNG (compressed natural gas) Gallons Equivalent Consumed	0	65,000
660	Diesel/Gasoline Gallons Consumed	0	35,000
661	Total Transit Agency Employees (Full-Time Equivalents)	0	44
662	Total Revenue Vehicle Operators (Full-Time Equivalents)	0	33

Livingston Essential Transportation

**3950 W. Grand River
Howell, MI 48855**

(517) 540-7843

Nonurban County

Job Access

Annual Budgeted

2022

Operating Revenue: \$10,000

Total Eligible Expenses: \$77,670

Local Share: \$10,000

Comments: - FY 2022 Transportation to Work continuation

**Livingston Essential Transportation
Nonurban County
Job Access
Annual Budgeted
2022**

Revenue Schedule Report

Code	Description	Amount
401 :	Farebox Revenue	
40100	Passenger Fares (-)	\$10,000
411 :	State Formula and Contracts	
41199	Other MDOT/OPT Contracts and Reimbursements (Explain in comment field) (- Transportation to Work)	\$77,670

Total Revenues: \$87,670

**Livingston Essential Transportation
Nonurban County
Job Access
Annual Budgeted
2022**

Expense Schedule Report

Code	Description	Amount
501 :	Labor	
50101	Operators Salaries & Wages (-)	\$54,670
502 :	Fringe Benefits	
50200	Fringe Benefits (-)	\$25,000
50210	DC Pensions (-)	\$2,000
50220	DB Pensions (-)	\$6,000
550 :	Ineligible Expenses	
55000	Ineligible JARC and NF Fares (-)	\$10,000

Total Expenses: \$87,670

Total Ineligible Expenses: \$10,000

Total Eligible Expenses: \$77,670

**Livingston Essential Transportation
Nonurban County
Job Access
Annual Budgeted
2022**

Non Financial Schedule Report

Public Service

Code	Description	Weekday DR	Saturday DR	Sunday DR	Total
610	Vehicle Hours	3,200	0	0	3,200
611	Vehicle Miles	58,500	0	0	58,500
615	Unlinked Passenger Trips - Regular	3,500	0	0	3,500
616	Unlinked Passenger Trips - Elderly	750	0	0	750
617	Unlinked Passenger Trips - Persons w/Disabilities	4,500	0	0	4,500
618	Unlinked Passenger Trips - Elderly Persons w/Disabilities	500	0	0	500
621	Total Line-Haul Unlinked Passenger Trips	9,250	0	0	9,250
625	Days Operated	252	0	0	252

Total Passengers: 9,250

Vehicle Information

Code	Description	Quantity
655	Total Demand-Response Vehicles	1
656	Demand-Response Vehicle w/ Lifts	1
658	Total Transit Vehicles	1

Total Vehicles: 1

Miscellaneous Information

Code	Description	Quantity DR
659	LPG (propane) or CNG (compressed natural gas) Gallons Equivalent Consumed	5,000
661	Total Transit Agency Employees (Full-Time Equivalents)	1
662	Total Revenue Vehicle Operators (Full-Time Equivalents)	1

**Livingston Essential Transportation
Capital Requests For FY 2022**

Req. Yr	Program	Item Description/Justification	Federal Amount	State Amount	Local Amount	Total Amount	Action	Status
2022 SEC 5307								
Requested:1	Facility	Desc: Justn:Preventive Maintenance (vehicle & facility)	\$388,000	\$97,000	\$0	\$485,000	REPLACE	REQUESTED
Requested:1	Equipment	Desc: Justn:Annual software maintenance fee per contract (Ecolane)	\$40,000	\$10,000	\$0	\$50,000	REPLACE	REQUESTED
Sub Total By Program Type			\$428,000	\$107,000	\$0	\$535,000		
2022 STBG(STP)								
Eligible/Pending:1 Requested:1	Vehicle	Desc:Small Bus, 176 in. wheelbase, w/ lift, propane (Radios, equipment necessary to put bus in service) Justn:Replace one (1) <30 ft. bus	\$80,000	\$20,000	\$0	\$100,000	REPLACE	REQUESTED
Sub Total By Program Type			\$80,000	\$20,000	\$0	\$100,000		
2022 SEC 5317-NF								
Requested:1	Mobility Mgt	Desc: Justn:Continuation of Mobility Management program funding	\$80,000	\$20,000	\$0	\$100,000	REPLACE	REQUESTED
Sub Total By Program Type			\$80,000	\$20,000	\$0	\$100,000		
2022 SEC 5339 - Bus and Bus Facilities								

**Livingston Essential Transportation
Capital Requests For FY 2022**

Req. Yr	Program	Item Description/Justification	Federal Amount	State Amount	Local Amount	Total Amount	Action	Status
Eligible/Pending:2 Requested:2	Vehicle	Desc:Small Bus, 176 in. wheelbase, w/ lift, propane (Equipment plus estimated \$15-20K cost increase in new Small Bus contract.) Justn:Replace two (2) <30 ft. buses. LETS receives direct formula funding from FTA so this request is for unallocated/discretionary 5339 funding administered by MDOT, if available.	\$200,000	\$50,000	\$0	\$250,000	REPLACE	RESUBMITTED
Requested:1	Facility	Desc: Justn:Sec. 5339 Formula funding for Facility Rehab/Renovate Projects	\$80,000	\$20,000	\$0	\$100,000	REPLACE	RESUBMITTED
Eligible/Pending:1 Requested:1	Vehicle	Desc:Small Bus, 176 in. wheelbase, w/ lift, propane (Equipment plus estimated \$15-20K cost increase in new small bus contract) Justn:Sec. 5339 Formula funding to replace one (1) <30 ft. bus	\$96,000	\$24,000	\$0	\$120,000	REPLACE	RESUBMITTED
Sub Total By Program Type			\$376,000	\$94,000	\$0	\$470,000		
Sub Total By Request Year			\$964,000	\$241,000	\$0	\$1,205,000		

**Michigan Public Transit Facts
Performance Indicators
2020**

Transit Agency Info			Total Passengers	Total Eligible Expense	Total Miles	Total Vehicle Hours	Cost/Pass.	Cost/Mile	Cost/Hour	Pass./Veh.H r.	Pass./Veh.M ile
Urban Medium Regular Service											
Livingston Essential Transportation	2020	Reconciled	82,204	3,935,104	834,923	38,301	47.87	4.71	102.74	2.15	0.10
Grand Total			82,204	3,935,104	834,923	38,301	47.87	4.71	102.74	2.15	0.10

**Michigan Public Transit Facts
Performance Indicators
2020**

Transit Agency Info			Total Passengers	Total Eligible Expense	Total Miles	Total Vehicle Hours	Cost/Pass.	Cost/Mile	Cost/Hour	Pass./Veh.H r.	Pass./Veh.M ile
Nonurban Cnty Job Access											
Livingston Essential Transportation	2020	Reconciled	4,713	77,670	46,867	2,282	16.48	1.66	34.04	2.07	0.10
Grand Total			4,713	77,670	46,867	2,282	16.48	1.66	34.04	2.07	0.10

1. Data Source: Michigan Department of Transportation - Public Transportation Management System Performance Indicators Report

2/22/2021 11:00 Page 1 of 1

RESOLUTION

NO: 2021-03-035

LIVINGSTON COUNTY

DATE: March 8, 2021

Resolution Authorizing support for participation in filing Michigan concerns regarding FCC 911 fee diversion NPRM – 911 Central Dispatch

WHEREAS, The Federal Communications Commission (“FCC”) is accepting comments on its Notice of Proposed Rulemaking (NPRM) where it plans to eliminate the diversion of 911 fees for items it deems not directly related to the 911 process; and

WHEREAS, Michigan Public Act 32 of 1986 provides for each local 911 district to utilize 911 fees within certain limitations that are determined by the State and regularly audited for compliance with the limitations; and

WHEREAS, under Michigan law, allowable uses include radio systems, paging systems, automatic vehicle location (AVL) systems, communications infrastructure and connectivity; and

WHEREAS, FCC proposed rules impinge upon Michigan’s ability to determine the definition of allowable costs for 911 fees; and

WHEREAS, the County of Livingston and the Livingston County Central Dispatch Center believe a broader use and interpretation of the phrase “directly related to the 911 process” should be adopted to include the entire 911 dispatching communication process; and

WHEREAS, the County of Livingston and the Livingston County Central Dispatch Center believe that local decision making and local control regarding the utilization of 911 fees is paramount.

THEREFORE BE IT RESOLVED that the Livingston County Board of Commissioners hereby supports a broader use and interpretation of the phrase “directly related to the 911 process”, to maintain Michigan’s ability to determine the definition of allowable costs for 911 fees; and support local decision making and local control utilization of 911 fees.

BE IT FURTHER RESOLVED that a copy of this resolution will be distributed to the Federal Communications Commission (FCC) upon approval by the Livingston County Board of Commissioners.

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MOVED:

SECONDED:

CARRIED:



Memorandum

To: Livingston County Board of Commissioners

From: Leane Lowe, 911 Deputy Director

Date: March 4, 2021

Re: FCC 911 Fee Diversion

On December 27, 2020, new federal legislation (the Don't Break Up the T-Band Act of 2020) was signed into law that requires the FCC to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. The Federal Communications Commission (FCC) approved a Notice of Proposed Rulemaking (NPRM) on February 17, 2021 in regards to 911 fee (surcharge) diversion.

While the 911 community in Michigan agrees with the intent of the proposed rules, language in the NPRM brings concerns to many 911 centers in Michigan. Michigan has a strong reputation for NOT diverting fees by maintaining an 'allowable/disallowable' list determined by the State 911 Committee, along with random compliance reviews of counties by the State 911 Office. However, there is a conflict between what the FCC defines as allowable use of 911 fees and the definitions used by agencies in the state of Michigan. The NPRM appears to only identify costs in the PSAP (911 center) as allowable. For example, the state of Michigan's concept of the '911 ecosystem' includes radio systems and communications system infrastructure for first responders that are directly dispatched by the 911 center. These systems are critical in allowing information sharing between 911 and first responders.

Failure by the FCC to include definitions of allowable expenses which are similar to those identified by the State of Michigan would result in Livingston County, along with many other counties in Michigan, being identified as diverting 911 fees. The recent investment in a microwave radio system, radio tower infrastructure, and CAD connectivity is considered allowable under the current state rules; however, the FCC NPRM language would no longer qualify these as allowable expenses. Items such as this would have to be paid for out of general fund or at the public safety agencies expense.

Due to the potential negative impact this would have on Livingston County, I recommend that we provide the attached resolution to the FCC on this NPRM.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
911 Fee Diversion)	PS Docket No. 20-291
)	
New and Emerging Technologies 911)	PS Docket No. 09-14
Improvement Act of 2008)	

NOTICE OF PROPOSED RULEMAKING

Adopted: February 17, 2021

Released: February 17, 2021

Comment Date: (20 days after date of publication in the Federal Register)

Reply Comment Date: (30 days after date of publication in the Federal Register)

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. On December 27, 2020, the President signed the Don't Break Up the T-Band Act of 2020 as part of the Consolidated Appropriations Act, 2021.¹ Section 902 of the new legislation requires the Commission to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, it directs the Commission to issue final rules, not later than 180 days after the date of enactment of section 902, designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. § 615a-1, as amended by section 902.² In this Notice of Proposed Rulemaking, we propose measures to implement section 902. We seek

¹ 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 (section 902).

² Section 902(c)(1)(C).

comment on these measures, which are designed to identify those uses of 911 fees by states and other jurisdictions that support the provision of 911 services.³

II. BACKGROUND

2. Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes. In the ENHANCE 911 Act of 2004, Congress required states and local jurisdictions receiving federal 911 grants to certify that they were not diverting 911 funds.⁴ In the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Congress enacted additional measures to limit 911 fee diversion, codified in 47 U.S.C. § 615a-1 (section 615a-1).⁵ Specifically, section 615a-1(f)(1) provided that nothing in the NET 911 Act, the Communications Act of 1934,⁶ or any Commission regulation or order “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation . . . for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.”⁷

3. The NET 911 Act also required the Commission to begin reporting annually on the status in each state of the collection and distribution of fees for the support or implementation of 911 or E911 services, including findings on the amount of revenues obligated or expended by each state “for any purpose other than the purpose for which any such fees or charges are specified.”⁸ Pursuant to this provision, the Commission has reported annually to Congress on 911 fee diversion every year since

³ Comments on this Notice of Proposed Rulemaking are due within 20 days after publication of a summary of the document in the Federal Register, and reply comments are due within 30 days after such publication in the Federal Register. The Commission considers this time period necessary given the 180-day statutory deadline for its rulemaking and given the scope of the issues raised.

⁴ Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (*ENHANCE 911 Act*) (relevant grant provisions codified at 47 U.S.C. § 942). Congress provided another round of 911 grant funding, with similar non-diversion requirements, in the NG911 Act. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 237, Title VI, Subtitle E, Next Generation 9-1-1 Advancement Act of 2012 (*NG911 Act*) (relevant grant provisions codified at 47 U.S.C. § 942).

⁵ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (*NET 911 Act*). The NET 911 Act enacted 47 U.S.C. § 615a-1 and also amended 47 U.S.C. §§ 222, 615a, 615b, and 942. See 47 U.S.C. § 615a-1 Editorial Notes.

⁶ 47 U.S.C. § 151 *et seq.*

⁷ 47 U.S.C. § 615a-1(f)(1) (prior version). Under the NET 911 Act, the Commission’s annual 911 fee report covers states, as well as U.S. territories and the District of Columbia. See 47 U.S.C. § 615a-1(f)(2) (directing the Commission to report on the status “in each State” of the collection and distribution of 911 fees and charges); *id.* § 615b(2) (definition of “State”).

⁸ 47 U.S.C. § 615a-1(f)(2) (prior version).

2009.⁹ All 12 of the annual reports issued to date have identified some states that have diverted 911 fees to other uses.¹⁰

4. In October 2020, the Commission released a Notice of Inquiry seeking comment on the effects of fee diversion and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911 fees.¹¹ Noting that publicly identifying diverting states in the Commission's annual reports has helped discourage the practice but has not eliminated fee diversion, the Commission sought comment on whether it could take other steps to discourage fee diversion, such as conditioning state and local eligibility for FCC licenses, programs, or other benefits on the absence of fee diversion.¹² The Commission received eight comments and seven reply comments in response to the Notice of Inquiry.¹³

5. The newly enacted section 902 requires the Commission to take additional action with respect to 911 fee diversion. Specifically, section 902(c)(1)(C) adds a new paragraph (3)(A) to section 615a-1(f) that directs the Commission to adopt rules "designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable" for purposes of section 902 and the Commission's rules.¹⁴ The newly added section 615a-1(f)(3)(B) states that these purposes and functions 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.¹⁵ The new section also states that, 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 their 911 fees or charges, and "determine whether such purposes and functions directly support providing 9-1-1 services."¹⁶

6. Section 902 also amends section 615a-1(f)(1) to provide that the rules adopted by the Commission for these purposes will apply to states and taxing jurisdictions that impose 911 fees or charges. Whereas the prior version of section 615a-1(f)(1) referred to fees or charges "obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as

⁹ The Chair of the Federal Communications Commission submits the annual report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, as mandated by the NET 911 Act and as prepared by the staff in the Public Safety and Homeland Security Bureau. See 47 U.S.C. § 155(a) (stating, inter alia, that "[i]t shall be [the Chair's] duty . . . to represent the Commission in all matters relating to legislation and legislative reports"). These annual reports can be viewed at <https://www.fcc.gov/general/911-fee-reports>.

¹⁰ The Twelfth Report found that five states diverted more than \$200 million in 911 fees or surcharges for non-911 purposes in 2019, or 6.6% of all fees collected. FCC, Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 49-50, para. 27, Table 16 (2020) (*Twelfth Report*), <https://www.fcc.gov/files/12thannual911feereport2020pdf>. Following release of the Twelfth Report, the Bureau sought comment on the Twelfth Report and "how it should impact the Commission's ongoing proceeding to end the practice of 911 fee diversion by states and localities." *Public Safety and Homeland Security Bureau Seeks Comment on Twelfth Annual Report to Congress on 911 Fee Diversion in Light of Ongoing Proceeding to Deter Such Practices*, PS Docket Nos. 20-291 and 09-14, Public Notice, 35 FCC Rcd 14144, 14144 (PSHSB 2020), <https://www.fcc.gov/document/pshsb-seeks-comment-twelfth-annual-report-911-and-e911-fees>.

¹¹ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Inquiry, 35 FCC Rcd 11010, 11010, para. 1 (2020) (*Fee Diversion NOI*).

¹² *Fee Diversion NOI*, 35 FCC Rcd at 11011, 11016, paras. 5, 16.

¹³ These filings can be viewed in the FCC's electronic comment filing system (ECFS) at <https://www.fcc.gov/ecfs/>, under PS Docket Nos. 20-291 and 09-14.

¹⁴ 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

¹⁵ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

¹⁶ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

specified in the provision of State or local law adopting the fee or charge,”¹⁷ the amended version reads as follows:

Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, *consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.*¹⁸

7. In addition, section 902(c) establishes a process for states and taxing jurisdictions to seek a determination that a proposed use of 911 fees should be treated as having such an acceptable purpose or function even if it is for a purpose or function that has not been designated as such in the Commission’s rules.¹⁹ Specifically, newly added section 615a-1(f)(5) provides that a state or taxing jurisdiction may submit to the Commission a petition for a determination that an obligation or expenditure of a 911 fee or charge “for a purpose or function other than a purpose or function designated under [section 615a-1(f)(3)(A)] should be treated as such a purpose or function,” i.e., as acceptable for purposes of this provision and the Commission’s rules.²⁰ The new section 615a-1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function “(i) supports public safety answering point functions or operations,” or “(ii) has a direct impact on the ability of a public safety answering point to—(I) receive or respond to 9-1-1 calls; or (II) dispatch emergency responders.”²¹

8. Section 902(d) requires the Commission to create an “interagency strike force” to study “how the Federal Government can most expeditiously end diversion” by states and taxing jurisdictions and to report to Congress on its findings within 270 days of the statute’s enactment.²² Section 902(d)(1) provides that if the Commission obtains evidence that “suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges,” the Commission shall submit such information to the strike force, “including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”²³ Section 902(d)(2) provides that the Commission shall also include evidence it obtains of diversion and underfunding in future annual fee reports, beginning with the first report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act.”²⁴ In addition, section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after the date of the enactment of the new legislation, “such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the

¹⁷ 47 U.S.C. § 615a-1(f)(1) (prior version).

¹⁸ 47 U.S.C. § 615a-1(f)(1) (as amended) (emphasis added); section 902(c)(1)(A).

¹⁹ 47 U.S.C. § 615a-1(f)(5) (as amended); section 902(c)(1)(C).

²⁰ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

²¹ 47 U.S.C. § 615a-1(f)(5)(A)-(B) (as amended); section 902(c)(1)(C).

²² Section 902(d)(3).

²³ Section 902(d)(1).

²⁴ Section 902(d)(2). Based on the December 27, 2020 enactment date of section 902, this requirement will apply beginning with the next annual fee report, due to Congress by December 31, 2021.

[annual report to Congress on 911 fees].”²⁵ Finally, section 902(d)(4) prohibits any state or taxing jurisdiction identified as a fee diverter in the Commission’s annual report from participating or sending a representative to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) under 47 U.S.C. § 1425(a) or any advisory committee established by the Commission.²⁶

9. Section 902 does not impose any requirement on states or taxing jurisdictions to impose any fee in connection with the provision of 911 service. As revised, the proviso to section 615a-1 states that nothing in the Act or the Commission’s rules “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services” specifically designated by the taxing jurisdiction “for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, consistent with the purposes and functions designated in [the Commission’s forthcoming rules] as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.”²⁷

III. DISCUSSION

10. With this Notice of Proposed Rulemaking, we propose rules to implement the provisions of section 902 that require Commission action. Specifically, we propose to amend part 9 of our rules to establish a new subpart I that would address 911 fees and fee diversion in accordance with and for the purposes of the statute. Accordingly, we propose to (1) adopt rules that clarify what does and does not constitute the kind of diversion of 911 fees that has concerned Congress (and the Commission), (2) establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues, and (3) codify the specific restrictions that section 902 imposes on states and taxing jurisdictions that engage in diversion as defined by our rules (i.e., a reporting requirement upon which eligibility for NTIA grants are to be conditioned, and the exclusion from eligibility to participate on certain committees, panels, councils, and Commission advisory committees). We tentatively conclude that these proposed changes to part 9 would further Congress’s stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions. We seek comment on this tentative conclusion and on the proposed changes we set forth below.

A. Definitions and Applicability

11. As a preliminary matter, we note that section 902 defines certain terms relating to 911 fees and fee diversion. To promote consistency, we propose to codify these definitions in our rules with certain modifications, as described below. We seek comment on these proposed definitions.

12. *911 fee or charge.* Section 902 defines “9-1-1 fee or charge” as “a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.”²⁸ We propose to codify this definition in our rules. However, we note that the statutory definition in section 902 does not address services that may be subject to 911 fees other than Commercial Mobile Radio Services (CMRS) and IP-enabled voice services. The reason for this omission is unclear. For example, virtually all states impose 911 fees on wireline telephone services and have provided information on such fees for inclusion in the

²⁵ 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C).

²⁶ Section 902(d)(4).

²⁷ 47 U.S.C. § 615a-1(f)(1) (as amended); section 902(c)(1)(A).

²⁸ 47 U.S.C. § 615a-1(f)(3)(D)(i) (as amended); section 902(c)(1)(C), (f)(1).

Commission's annual fee reports. In addition, as 911 expands beyond voice to include text and other non-voice applications, states could choose to extend 911 fees to such services in the future.²⁹

13. To promote regulatory parity and avoid gaps that could inadvertently frustrate the rapid deployment of effective 911 services, including advanced Next Generation 911 (NG911) services, we propose to define "911 fee or charge" in our rules to include fees or charges applicable to "other emergency communications services" as defined in section 201(b) of the NET 911 Act. Under the NET 911 Act, the term "other emergency communications service" means "the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service."³⁰ The proposed modification will make clear that the rules in subpart I extend to all communications services regulated by the Commission that provide emergency communications, including wireline services, and not just to commercial mobile services and IP-enabled voice services.

14. We tentatively conclude that adoption of this proposed expanded definition of "911 fee or charge" is reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities under section 902 and other federal 911-related statutes that, taken together, establish an overarching federal interest in ensuring the effectiveness of the 911 system.³¹ The Commission's general jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to CMRS and IP-enabled voice services. Section 251(e)(3) of the Communications Act of 1934, which directs the Commission to designate 911 as the universal emergency telephone number, states that the designation of 911 "shall apply to both wireline and wireless telephone service," which evidences Congress's intent to grant the Commission broad authority over different types of communications services in the 911 context.³² Similarly, RAY BAUM'S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls "regardless of the technological platform used."³³ In addition, section 615a-1(e)(2) provides that the Commission "shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 et seq.]" and that "[f]or purposes of this

²⁹ For example, the Commission has extended 911 obligations to providers of text messaging services. *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 10-255 and 11-153, Report and Order, 28 FCC Rcd 7556 (2013) (*Bounce-Back Report and Order*) (requiring covered text providers to provide consumers attempting to send a text to 911 with an automatic bounce-back message when the service is unavailable); *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (*Text-to-911 Second Report and Order*) (requiring covered text providers to implement text-to-911 service no later than June 30, 2015 or six months from the date of a PSAP's request, whichever is later). Further, in RAY BAUM'S Act, which directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls, Congress specifically defined the term "9-1-1 call" to include a voice call "or a message that is sent by other means of communication." *See Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (*RAY BAUM'S Act*) § 506(c)(1) (codified at 47 U.S.C. § 615 Notes).

³⁰ *NET 911 Act* § 201(b), codified at 47 U.S.C. § 615b(8).

³¹ *See, e.g., Comcast Corp. v. FCC*, 600 F.3d 642, 646-47 (D.C. Cir. 2010).

³² 47 U.S.C. § 251(e)(3). Section 251(e)(3) was added as part of the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (*911 Act*), which established 911 as the national emergency number and required the Commission to provide for appropriate transition periods for areas in which 911 was not in use. Congress broadly stated the purpose of the 911 Act as "to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs." *911 Act* § 2(b), codified at 47 U.S.C. § 615 Notes.

³³ *See RAY BAUM'S Act* § 506(a).

section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.”³⁴

15. Based on the foregoing, we tentatively conclude that including “other emergency communications services” within the scope of the definition of 911 fees we propose is also reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities for ensuring that the 911 system, including 911, E911, and NG911 calls and texts from any type of service, is available, that these 911 services function effectively, and that 911 fee diversion by states and other jurisdictions does not detract from these critical, statutorily recognized purposes.³⁵ Diverting fees collected for 911 service of any type, whether it be wireline, wireless, IP based, or text, undermines the purpose of these federal statutes by depriving the 911 system of the funds it needs to function effectively and to modernize 911 operations.³⁶ We seek comment on this tentative conclusion and on the extent to which our proposed rules would strengthen the effectiveness of a nationwide 911 service.

16. In addition, we seek comment on extending the definition of “911 fee or charge” to include fees or charges designated for the support of “public safety,” “emergency services,” or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation

³⁴ 47 U.S.C. § 615a-1(e)(2).

³⁵ See, e.g., 47 U.S.C. § 151 *et seq.*; 47 U.S.C. § 601; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996); *911 Act* § 3(a), and as codified at 47 U.S.C. §§ 222, 251, 615, 615a, 615b; 47 CFR § 64.3000 *et seq.*, renumbered as 47 CFR § 9.4 *et seq.*; 47 CFR § 20.18, renumbered as 47 CFR § 9.10; 47 CFR § 9.1 *et seq.*, renumbered as 47 CFR § 9.11 *et seq.*; *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Nuvio Corp. v. FCC*, 473 F.3d 302, 312 (D.C. Cir. 2007) (Kavanaugh, J., concurring); *NET 911 Act*, as codified at §§ 222, 615a, 615a-1, 615b, 942; Twenty-First Century Communications and Video Accessibility Act, Pub. L. No. 111-260, 124 Stat. 2751 (2010) § 106, as codified in part at 47 U.S.C. § 615c(a), (g); *Bounce-Back Report and Order; Text-to-911 Second Report and Order; NG911 Act* §§ 6503-6509, and as codified at 47 U.S.C. §§ 942, 1471-1473; Kari’s Law Act of 2017, Pub. L. No. 115-127, 132 Stat. 326 (2018), codified at 47 U.S.C. § 623; *RAY BAUM’S Act*, codified at 47 U.S.C. § 615 Notes; *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607 (2019), *corrected by* Erratum, 34 FCC Rcd 11073 (PSHSB Dec. 2, 2019).

³⁶ The 2016 report of the Task Force on Optimal PSAP Architecture (TFOPA) recounted how fee diversion practices have “delayed plans in several states to meet the deployment schedule for the transition to an NG9-1-1 system.” See FCC, Task Force on Optimal PSAP Architecture, Adopted Final Report at 154 (2016) (*TFOPA Report*), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf; see generally FCC, Legal and Regulatory Framework for Next Generation 911 Services, Report and Recommendations, at Sec. 4.1.4 (2013), https://www.911.gov/pdf/FCC_Report_Legal_Regulatory_Framework_NG911_Services_2013.pdf. Other commenters have noted instances of fee diversion resulting in the delay of 911 improvements. See New Jersey Wireless Association Reply Comments to Tenth Report, PS Docket No. 09-14, at 2 (rec. Feb. 12, 2019) (noting that instead of upgrading to NG911 technology, New Jersey is maintaining a 911 selective router system that is “past its useful life and is now costing more to maintain from previous years, due to its obsolescence”); Letter from Matthew Grogan, 1st Vice President, Nevada APCO at 1 (Feb. 15, 2019) (noting that Nevada 911 funds have been used to purchase police body cameras at a time when “several counties and jurisdictions . . . are still not equipped with enhanced 9-1-1 services”), https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=36516&fileDownloadName=SB%2025_Testimony%20in%20Opposition_Matthew%20Grogan%20Nevada%20Fee%20Diversion.pdf.

of 911 services.³⁷ This would be consistent with the approach taken in the agency’s annual fee reports, which found that the mere labelling of a fee is not dispositive and that one must examine the underlying purpose of the fee to determine whether it is (or includes) a 911 fee within the meaning of the NET 911 Act.³⁸ We seek comment on these conclusions.

17. We propose that for purposes of implementing section 902, our definition of “911 fee or charge” should similarly extend to fees or charges that are expressly identified by the state or taxing jurisdiction as supporting 911, even if the fee is not labelled as a 911 fee. We tentatively conclude that this is consistent with the purpose of section 902 with respect to diversion of 911 fees and charges.³⁹ We seek comment on this proposal. Does the proposed definition of 911 fees or charges capture the universe of 911 fees or charges that can be diverted? Is the definition overinclusive or underinclusive? Are there other modifications to the definition that would help to prevent 911 fee diversion?

18. *Diversion.* Section 902(f) defines “diversion” as follows:

The term “diversion” means, with respect to a 9-1-1 fee or charge, the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.⁴⁰

We propose to codify this definition, with minor changes to streamline it. Specifically, we propose to define diversion as “[t]he 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 [the applicable rule section in subpart I].”⁴¹ In addition, we propose to clarify that 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 by the Commission. We believe this provision will clarify that states and taxing jurisdictions are also responsible for diversion of 911 fees by political subdivisions, such as counties, that may receive 911 fees. We seek comment on these proposals.

19. *State or taxing jurisdiction.* Section 902 defines a state or taxing jurisdiction as “a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”⁴² We propose to codify this definition in our rules. We note that the existing language in section 615a-1 directs the Commission to submit an annual report to Congress on the use of 911 fees by “each State or political subdivision thereof,” and section 902 does not revise this language. We also note that section 902 does not alter the

³⁷ We also propose a safe harbor in the rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. *See infra* para. 28.

³⁸ *E.g.*, *Twelfth Report* at 51-52, para. 31 (“We do not agree that a fee or charge must be exclusively designated for 911 or E911 purposes in order to constitute a fee or charge ‘for the support or implementation of 9-1-1 or enhanced 9-1-1 services’ under section 6(f)(1) of the NET 911 Act.”); *see also* FCC, Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 43, para. 34 (2019) (*Eleventh Report*), <https://www.fcc.gov/files/11thannual911feereport2019pdf>.

³⁹ *See, e.g.*, 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

⁴⁰ Section 902(f)(4).

⁴¹ As proposed for the new subpart I, “[a]cceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to: (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.”

⁴² 47 U.S.C. § 615a-1(f)(3)(D)(iii) (as amended); section 902(c)(1)(C), (f)(5).

definition of “State” in the existing legislation. Under section 615b, the term “State” means “any of the several States, the District of Columbia, or any territory or possession of the United States.”⁴³ Accordingly, provisions in subpart I that apply to any “State or taxing jurisdiction” would apply to the District of Columbia and any United States territory or possession as well. To clarify this and to assist users of the regulations, we propose to add the definition of “State” to subpart I.

20. Regarding the scope of proposed subpart I, we propose that the rules apply to states or taxing jurisdictions that collect 911 fees or charges (as defined in that subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services. And as the proposed definitions make clear, such fees or charges would include fees or charges designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services. We seek comment on these proposals.

B. Designation of Obligations or Expenditures Acceptable for Purposes of Section 902

21. Section 902 requires the Commission to issue rules “designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable” for purposes of the statute.⁴⁴ In addition, section 902 provides that the purposes and functions designated as acceptable for such purposes “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.”⁴⁵ Section 902 also provides that the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and “determine whether such purposes and functions directly support providing 9-1-1 services.”⁴⁶ Moreover, Section 902 provides states and taxing authorities with the right to file a petition with the Commission for a determination that an obligation or expenditure of a 911 fee or charge that is imposed for a purpose or function other than those designated as acceptable for purposes of the statute in the Commission rules should nevertheless be treated as having an acceptable purpose or function for such purposes.⁴⁷

22. We propose to codify the statutory standard for acceptable purposes and functions for the obligation or expenditure of 911 fees or charges by providing that acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 911 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. This proposed language tracks the language in section 902.⁴⁸ In addition, we propose to specify in the rules that examples of such acceptable purposes and functions include, but are not limited to, the following, provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

⁴³ 47 U.S.C. § 615b(2).

⁴⁴ 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

⁴⁵ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

⁴⁶ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

⁴⁷ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C). Such a petition must be granted if the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to demonstrate that the purpose or function in question supports PSAP functions or operations, or that the purpose or function has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. *Id.*

⁴⁸ See 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C) (stating that “[t]he purposes and functions designated [by the Commission] 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”).

- (1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
- (2) PSAP personnel costs, including telecommunicators' salaries and training;
- (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
- (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and
- (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.

23. We believe these purposes and functions are consistent with the general standard for designating acceptable uses of 911 fees and charges set out in section 902. They also are consistent with the Commission's past analysis of 911 fee diversion in its annual fee reports, and, as required under section 902, they reflect the Commission's consideration of the purposes and functions that states have specified for their 911 fees and charges. In particular, the Commission has stated in its annual fee reports that the requisite nexus to 911 includes expenditures that (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 911 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders).⁴⁹ In addition, the Commission has stated that expenses associated with integrating public safety dispatch and 911 systems (e.g., purchase of CAD hardware and software to support integrated 911 and dispatch operations) may be 911 related, provided the state or other jurisdiction can document a connection to 911.⁵⁰ We seek comment on our proposed inclusion of these examples of acceptable purposes and functions and any additional examples that should be specified in the rules.

24. We also seek comment on specifying certain examples of purposes and functions that are *not* acceptable for the obligation or expenditure of 911 fees or charges for purposes of the statute. These would include, but are not limited to:

- (1) Transfer of 911 fees into a state or other jurisdiction's general fund or other fund for non-911 purposes;
- (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
- (3) 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.

25. Identifying these examples as unacceptable expenditures for purposes of the statute is consistent with the manner in which such expenditures were analyzed in our annual 911 fee reports. For

⁴⁹ See FCC, Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 49, para. 40 (2018) (*Tenth Report*), <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>. Under this analysis, funding for 911 dispatcher salaries and training would have a sufficient nexus to 911, but equipment and infrastructure for law enforcement, firefighters, and other first responders generally would not. See also *Eleventh Report* at 74, para. 59 ("CTIA supports the Commission in requiring documentation sufficient to demonstrate that the expenditures (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 9-1-1 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs.").

⁵⁰ See *Twelfth Report* at 48-49, para. 26; *Eleventh Report* at 39, para. 26; *Tenth Report* at 42, para. 26.

example, the fee reports have repeatedly found that transferring 911 fees to the state's general fund or using 911 fees for the expansion of commercial cellular networks constitutes fee diversion.⁵¹ The fee reports also have found that expenditures to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related.⁵² The Eleventh Report explained that the purchase or upgrade of public safety radio equipment was not considered to be 911 related because "radio networks used by first responders are technically and operationally distinct from the 911 call-handling system."⁵³ We seek comment on whether we should reexamine any of these prior findings in light of the impact of the coronavirus pandemic on public safety and emergency communications services, if any.

26. Our proposed designation of acceptable purposes and functions for purposes of the statute is also consistent with the legislative history of the NET 911 Act. In its report on H.R. 3403 (the bill that was enacted as the NET 911 Act), the House Committee on Energy and Commerce noted that several states were known to be using 911 fees for "purposes other than 911 or emergency communications services."⁵⁴ The Report also noted that under subsection 6(f) of the proposed legislation, "[s]tates and their political subdivisions should use 911 or E-911 fees only for direct improvements to the 911 system. Such improvements could include improving the technical and operational aspects of PSAPs; establishing connections between PSAPs and other public safety operations, such as a poison control center; or implementing the migration of PSAPs to an IP-enabled emergency network."⁵⁵ Further, "[t]his provision is not intended to allow 911 or E-911 fees to be used for other public safety activities that, although potentially worthwhile, are not directly tied to the operation and provision of emergency services by the PSAPs."⁵⁶

27. We seek comment on our proposed designation of acceptable purposes and functions under the statute. Are the proposed purposes and functions that would be deemed acceptable overinclusive or underinclusive? If the proposed purposes are overinclusive, commenters should explain how and why. What purposes and functions have states and taxing jurisdictions specified as the intended functions for 911 fees and charges, and how should we take these specifications into account as we designate acceptable purposes and functions under section 902? CTIA contends that allowable 911 expenditures should include the nonrecurring costs of establishing a 911 system, the costs of emergency telephone and dispatch equipment, and costs for training for maintenance and operation of the 911 system but should exclude costs for leasing real estate, cosmetic remodeling of facilities, salaries or benefits, or emergency vehicles.⁵⁷ The Commission has found in its 911 fee reports, however, that some PSAP overhead costs, such as 911 telecommunicator salaries, are 911 related.⁵⁸ To the extent that the proposed purposes and functions are underinclusive, commenters should identify what additional purposes and functions should be deemed acceptable, and why.

⁵¹ *E.g.*, *Twelfth Report* at 52-54, paras. 32, 35, 37; *Eleventh Report* at 40, 42-43, paras. 28, 32, 35; *Tenth Report* at 43-44, 46-47, paras. 30, 32, 35, 37.

⁵² *See Twelfth Report* at 48-49, para. 26; *Eleventh Report* at 39, para. 26; *Tenth Report* at 42, para. 26.

⁵³ *See Eleventh Report* at 42, para. 32; *see also Eleventh Report* at 44, para. 37 (finding that there was no 911 fee diversion where Virginia allocated a portion of its wireless E911 funding to the Virginia State Police for costs incurred for answering wireless 911 telephone calls and to support sheriff's 911 dispatchers).

⁵⁴ House of Representatives Committee on Energy and Commerce, Report on 911 Modernization and Public Safety Act of 2007, H. Rept. 110-442 at 11 (2007) (*H. Rept. 110-442*), <https://www.congress.gov/110/crpt/hrpt442/CRPT-110hrpt442.pdf> ("The most recent data available indicate that four states use 911 fees, including wireless and wireline fees, for purposes other than 911 or emergency communications services.").

⁵⁵ *H. Rept. 110-442* at 15.

⁵⁶ *H. Rept. 110-442* at 15.

⁵⁷ CTIA Comments on *Fee Diversion NOI* at 5-6 (rec. Nov. 2, 2020).

⁵⁸ *See, e.g., Eleventh Report* at 21, para. 18; *Tenth Report* at 44-45, para. 33.

28. We also propose to define acceptable purposes and functions under section 902 for states and taxing jurisdictions that impose multi-purpose fees or charges intended to support 911 services as well as other public safety purposes. In such instances, we believe states and taxing jurisdictions should have the flexibility to apportion the collected funds between 911 related and non-911 related programs, but that safeguards are needed to ensure that such apportionment is not subject to manipulation that would constitute fee diversion. We therefore propose to adopt a safe harbor in our rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. This provision would provide transparency in the use of 911 fees when a state or taxing jurisdiction collects a fee for both 911 and non-911 purposes. It would also enable the Commission to verify through the annual fee report data collection that the 911 portion of such fees or charges is not being diverted.⁵⁹

29. We seek comment on our proposal for determining whether there is diversion of a fee or charge collected for both 911 and non-911 purposes. Are the measures we propose sufficient to provide transparency with respect to diversion in the use of such fees? Are there other measures that would help ensure that 911 fees or charges are fully traceable in states or taxing jurisdictions with such funding mechanisms? In addition, some state laws and regulations provide that any excess 911 funds left over after all 911 expenditures have been covered can be used for non-911 related purposes.⁶⁰ Similarly, some state laws and regulations provide that if the 911 service is *discontinued*, the remaining 911 funds can be disbursed to non-911 uses, such as a general fund. Does the existence or implementation of such provisions for non-911 related disbursements constitute diversion?

C. Petition for Determination

30. Section 902(c)(1)(C) provides that a state or taxing jurisdiction may petition the Commission for a determination that “an obligation or expenditure of a 9-1-1 fee or charge . . . by such State or taxing jurisdiction for a purpose or function other than a purpose or function designated under paragraph (3)(A) [support for 911 services/PSAP expenditures] should be treated as such a purpose or function.”⁶¹ The state or taxing jurisdiction must demonstrate that the expenditure: (1) “supports public safety answering point functions or operations,” or (2) has a direct impact on the ability of a public safety answering point to “receive or respond to 9-1-1 calls” or to “dispatch emergency responders.”⁶² If the Commission finds that the state or taxing jurisdiction has provided sufficient documentation to make this demonstration, section 902 provides that the Commission shall grant the petition.⁶³

⁵⁹ This proposal is consistent with the agency’s review of the U.S. Virgin Islands’ “Emergency Service” surcharge, which is dedicated for both 911 and non-911 purposes. The Eleventh Report noted that under the U.S. Virgin Islands’ statute, surcharge funds are deposited in an Emergency Service Fund (ESF), with ESF funds allocated 40% to the Virgin Islands Territorial Emergency Management Agency (VITEMA) and the other 60% allocated to other specific public safety, non-911 uses. *See Eleventh Report* at 44-45, paras. 39-40. In addition, the percentage of the ESF allocated to VITEMA must be used entirely for 911/E911 support of PSAPs, and the ESF cannot be commingled with or redirected to the general fund or any other account. *See id.* at 45, para. 40. The Commission concluded that the collection and use of these surcharge funds did not constitute diversion of 911 fees. *See id.* at 44-45, paras. 39-40.

⁶⁰ The TFOPA Report noted, “The legislative practice of sweeping uncommitted balances of 9-1-1-related accounts, especially those intended to fund NG9-1-1 system infrastructure generally occurs quietly without much public scrutiny.” *TFOPA Report* at 153-54. The TFOPA Report proposed measures to deter such sweeps and advised that “there should ultimately be consequences for *repeated* diversions.” *Id.* at 162.

⁶¹ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

⁶² 47 U.S.C. § 615a-1(f)(5)(B) (as amended); section 902(c)(1)(C).

⁶³ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

31. We propose to codify these provisions in new subpart I of the rules. We believe Congress intended this petition process to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related. At the same time, the proposed rule would set clear standards for what states must demonstrate to support a favorable ruling, including the requirement to provide sufficient documentation. To promote efficiency in reviewing such petitions, we also propose that states or taxing jurisdictions seeking such a determination must do so by filing a petition for declaratory ruling under section 1.2 of the Commission's rules.⁶⁴ The declaratory ruling process would promote transparency regarding the ultimate decisions about 911 fee revenues that legislatures and executive officials make and how such decisions promote effective 911 services and deployment of NG911. Consistent with the declaratory ruling process outlined in section 1.2(b), we anticipate docketing the petition within an existing or new proceeding.⁶⁵ In addition, we anticipate the Public Safety and Homeland Security Bureau will seek comment on petitions via public notice and with a comment and reply comment cycle.⁶⁶ We propose to delegate authority to the Bureau to rule on these petitions. We seek comment on these proposals and on any possible alternative processes for entertaining such petitions.

D. Other Section 902 Provisions

32. Pursuant to section 902(d)(4), any state or taxing jurisdiction identified by the Commission in the annual 911 fee report as engaging in diversion of 911 fees or charges "shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 . . . or any advisory committee established by the Commission."⁶⁷ We propose to codify this restriction as it applies to any advisory committee established by the Commission in subpart I and seek comment on this proposal. We also seek comment on the extent to which state and local governments currently diverting 911 fees (based on the Commission's most recent report) now participate in such Commission advisory committees and the impact on them from being prohibited from doing so. Would it be helpful to provide a mechanism for states and taxing jurisdictions to raise questions regarding their eligibility to serve on an advisory committee?

33. Section 902(c)(1)(C) also provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of enactment of section 902, "such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual report to Congress on 911 fees]."⁶⁸ We propose to codify this provision in subpart I and seek comment on this proposal. What effect does this statutory provision and its proposed codification in the Commission's rules have on states or taxing jurisdictions that receive such grants? Does this provision, combined with other statutory anti-diversion restrictions that already apply to 911 grant recipients, increase the likelihood that diverting states and taxing jurisdictions will change their diversion

⁶⁴ See 47 CFR § 1.2.

⁶⁵ See 47 CFR § 1.2(b).

⁶⁶ See 47 CFR § 1.2(b).

⁶⁷ Section 902(d)(4) (internal citations omitted). The committees, panels, and councils referred to in section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 are those established to assist FirstNet. See 47 U.S.C. § 1425.

⁶⁸ 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C). The National Highway Traffic Safety Administration and National Telecommunications and Information Administration will review the regulations for the 911 Grant Program at 47 CFR part 400 in order to determine how best to implement the new obligation under the law. The Commission will work with these Agencies to ensure a coordinated compliance regime.

practices?⁶⁹ Are there any aspects of our proposed implementation of section 902 that might create obstacles to state fiscal needs?

34. Finally, section 902(d)(2) provides that, beginning with the first annual fee report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act,” the Commission shall include in each report “all evidence that suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges, including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”⁷⁰ Given that the Commission is similarly required to provide the interagency strike force with any information regarding underfunding of 911 services,⁷¹ in addition to the proposals discussed above, we seek comment on how the Commission can emphasize this aspect of its information collection reports.

IV. PROCEDURAL MATTERS

35. *Initial Paperwork Reduction Act of 1995 Analysis.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.⁷² If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁷³ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁷⁴

36. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁵ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁷⁶ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is contained in Appendix B.

37. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made

⁶⁹ The ENHANCE 911 Act required grant applicants to certify that no portion of 911 charges were obligated or expended for “any purpose other than the purposes for which such charges are designated or presented” and required grant recipients that improperly obligated or expended grant funds to return all funds. *ENHANCE 911 Act* § 158 (codified at 47 U.S.C. § 942(c)). The NG911 Act included similar provisions. *NG911 Act* § 6503 (codified at 47 U.S.C. § 942(c)).

⁷⁰ Section 902(d)(2).

⁷¹ Section 902(d)(1).

⁷² Pub. L. No. 104-13.

⁷³ Pub. L. No. 107-198.

⁷⁴ 44 U.S.C. § 3506(c)(4).

⁷⁵ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷⁶ 5 U.S.C. § 605(b).

⁷⁷ 47 CFR §§ 1.1200 *et seq.*

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

38. *Comment Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in PS Docket Nos. 20-291 and 09-14. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

39. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

40. *Additional Information.* For additional information on this proceeding, contact Brenda Boykin, Brenda.Boykin@fcc.gov or 202-418-2062, or John A. Evanoff, John.Evanoff@fcc.gov or 202-418-0848, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

⁷⁸ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

V. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up the T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b, that this *Notice of Proposed Rulemaking* is hereby ADOPTED.

42. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* on or before 20 days after publication in the Federal Register, and reply comments on or before 30 days after publication in the Federal Register.

43. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

The Federal Communications Commission proposes to amend part 9 of Title 47 of the Code of Federal Regulations as follows:

PART 9 – 911 Requirements

1. Revise the authority citation for part 9 to read as follows: [TO BE INSERTED PRIOR TO FEDERAL REGISTER PUBLICATION]
2. Amend part 9 by adding subpart I to read as follows:

Subpart I – 911 Fees

Sec.

9.21 Applicability.

9.22 Definitions.

9.23 Designation of acceptable obligations or expenditures.

9.24 Petition regarding additional purposes and functions.

9.25 Participation in annual fee report data collection.

9.26 Advisory committee participation.

§ 9.21 Applicability.

The rules in this subpart I apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

§ 9.22 Definitions.

For purposes of this subpart I, the terms below have the following meaning:

911 fee or charge. A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

Diversion. 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.

Other emergency communications services. The provision of emergency information to a public safety answering point via wire or radio communications, and may include 911 and E911 service.

State. Any of the several States, the District of Columbia, or any territory or possession of the United States.

State or taxing jurisdiction. A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

§ 9.23 Designation of acceptable obligations or expenditures.

- (a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to:
 - (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
 - (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.
- (b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:
 - (1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
 - (2) PSAP personnel costs, including telecommunicators' salaries and training;
 - (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
 - (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations;
 - (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.
- (c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges include, but are not limited to, the following:
 - (1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;
 - (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks);
 - (3) 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.
- (d) If a State or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes that include the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:
 - (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;
 - (2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and
 - (3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

§ 9.24 Petition regarding additional purposes and functions.

- (a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.
- (b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
 - (1) supports public safety answering point functions or operations, or
 - (2) has a direct impact on the ability of a public safety answering point to:
 - (i) receive or respond to 911 calls, or
 - (ii) dispatch emergency responders.

§ 9.25 Participation in annual fee report data collection.

If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)).

§ 9.26 Advisory committee participation.

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)) as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *NPRM* proposes and seeks comment on ways to implement section 902 of the Consolidated Appropriations Act of 2021.⁴ On December 27, 2020, the President signed the Don't Break Up the T-Band Act of 2020, which is Division FF, Title IX, Section 902 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). Section 902 directs the Commission to issue final rules 180 days after enactment on December 27, 2020 designating acceptable purposes and functions for the obligation or expenditure of 911 fees by states and taxing jurisdictions. Section 902 also provides that the use of 911 fees for any purpose or function other than those designated by the Commission constitutes 911 fee diversion.

3. To implement section 902 of the Act, the *NPRM* seeks comment on the Commission's proposals to amend part 9 of the rules to establish a new subpart I regarding "911 Fees." Section 902 defines several terms, and the *NPRM* proposes to codify these definitions in the new subpart I of the rules. In addition, section 902 directs the Commission to issue final rules designating purposes and functions for which the obligation or expenditure of 911 fees is acceptable. It also provides that the purposes and functions identified by the Commission as acceptable "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." The *NPRM* seeks comments on proposals to develop an illustrative, non-exhaustive list of permissible and non-permissible uses for purposes of section 902.

4. Section 902 provides that a state or taxing jurisdiction may petition the FCC for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those deemed acceptable by the Commission should be treated as an acceptable expenditure. Per section 902, the petition must demonstrate that the expenditure: (1) supports public safety answering point (PSAP) functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. In addition, the Commission seeks comment on amending the rules to require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020, such state or taxing jurisdiction shall provide the information requested by the Commission to prepare the annual

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ 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 (section 902).

report to Congress required by the NET 911 Act. The *NPRM* seeks comment on proposals to codify these provisions in subpart I of part 9 of the rules.

B. Legal Basis

5. This action was taken pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up The T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁷ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA's) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.¹¹

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual

⁵ See 5 U.S.C. § 603(b)(3).

⁶ See *id.* § 601(6).

⁷ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ See 15 U.S.C. § 632.

⁹ See 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, “What's New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2017 Census of Governments¹⁶ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number there were 36,931 general purpose governments (county,¹⁸ municipal and town or township¹⁹) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁰ with enrollment

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁷ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁸ See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁰ See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.²¹ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²²

10. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁴ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁵ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.²⁶ Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁷ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁸ U.S. Census Bureau data for 2012 show that there were 3,117 firms

²¹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²³ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

²⁴ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

²⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁸ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

that operated that year.²⁹ Of this total, 3,083 operated with fewer than 1,000 employees.³⁰ Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³¹ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³² Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³³ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.³⁴ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.³⁵ Of those firms, a total of 1,400 had annual receipts less than \$25 million, and 15 firms had annual receipts of \$25 million to \$49,999,999.³⁶ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. As indicated in Section A above, the *NPRM* seeks comment on proposed rules to implement section 902. The *NPRM* generally does not propose specific reporting or recordkeeping requirements. The *NPRM* does, however, propose and seek comment on codifying the requirement that states or taxing jurisdictions seeking a Commission determination on 911 fee diversion satisfy certain criteria established in section 902. In such cases, a state or taxing jurisdiction would have to show that a proposed expenditure: (1) supports PSAP functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. The information and documentation that a state or taxing jurisdiction will have to provide the Commission to make the requisite showing will impact the reporting and recordkeeping requirements for small entities and others subject to the requirements. The Commission proposes to apply the existing declaratory ruling procedures and obligations under section 1.2 of the Commission’s rules, which small entities may already be familiar with, to petitions for determination.

²⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

³⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

³² *Id.*

³³ *Id.*

³⁴ See 13 CFR § 121.201, NAICS Code 517919.

³⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

³⁶ *Id.*

14. In addition, the *NPRM* seeks comment on amending the rules to require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such state or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)). This proposed requirement is consistent with the requirements of section 902. Under OMB Control No. 3060-1122, the Office of Management and Budget previously approved and renewed the information collection requirements associated with filing annual 911 fee reports as mandated by the NET 911 Act.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁷

16. In the *NPRM*, the Commission seeks to implement the provisions of section 902 that require Commission action by proposing changes to part 9 of our rules that would achieve the stated objectives of Congress's mandated rules in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunication services or to states and taxing jurisdictions. Using this approach, we inherently take steps to minimize any significant economic impact or burden for small entities. Specifically, we propose to adopt and codify the definitions in section 902 for certain terms relating to 911 fees and fee diversion in part 9 of our rules. For a few terms, we make limited modifications to the definition to avoid gaps and promote the apparent intent of the new statute.³⁸ In addition to promoting consistency, we believe our proposals will help small entities and others who will be subject to section 902 and our rules avoid additional expenses for compliance which may have resulted if the Commission in the alternative proposed and adopted different definitions for certain terms in section 902 relating to 911 fees and fee diversion.

17. Similarly, to fulfill the Commission obligations associated with issuing rules designating acceptable purposes and functions, for consistency we propose to use language from section 902 codifying the statutory standard for which the obligation or expenditure of 911 fees or charges by any state or taxing jurisdiction is considered acceptable. We also propose to specify in the rules examples of both acceptable and unacceptable purposes and functions for the obligation or expenditure of 911 fees or charges. If adopted, identifying and including these examples in the Commission's rules should enable small entities to avoid unacceptable expenditures in violation of our rules, which could impact eligibility for federal grants and participation in federal advisory committees.

18. Finally, the Commission expects to more fully consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.

³⁷ 5 U.S.C. § 603(c)(1)-(4).

³⁸ The definitions for the terms “911 fee or charge” and “Diversion” include modifications.

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *911 Fee Diversion*, PS Docket No. 20-291; *New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 09-14, Notice of Proposed Rulemaking (February 17, 2021)

The first duty of the public servant is the public safety. So it is fitting that the first vote at my first meeting as Acting Chairwoman is this rulemaking to protect and strengthen our nation's emergency number—911.

As the old saying goes, you may only call 911 once in your life, but it will be the most important call you ever make. Chances are when you make that call, you won't put much thought into the system that's behind it. But the reality is that with the advent of the digital age, there are technologies that could improve this system and enhance emergency calling. However, we are unlikely to see those upgrades in all parts of the United States without first halting a practice known as 911 fee diversion. That simply means that when states allow a charge on communications bills for 911 service, they shouldn't be turning around and sending those fees elsewhere, shortchanging public safety in the process.

Unfortunately, fee diversion is not new. I first wrote about this subject more than four years ago. I later testified before Congress about it. Then I shared the pen with my former colleague Michael O'Rielly, who was also concerned about this practice. Then late last year Congress enacted new appropriations legislation providing the FCC with fresh tools to help solve this persistent problem.

So we are wasting no time. Today the Federal Communications Commission starts a rulemaking to ensure that fees that say they are for 911 go to 911. Specifically, we seek comment on rules that would define the kinds of expenditures by states that would constitute 911 fee diversion, create a process for states to petition the FCC for case-by-case review, and require federal 911 grantees to provide information on fee diversion to the FCC.

But that's not all. We know the results of 911 fee diversion can be tragic. It can lead to understaffed calling centers, longer wait times in an emergency, and sluggish dispatch for public safety personnel. And it can slow the ability of 911 call centers to update their systems to support digital age technologies. So consistent with this new law, I've also directed the Public Safety and Homeland Security Bureau to establish an interagency 911 Fee Diversion Strike Force that will study and report on what can be done to end this practice. In fact today, the Bureau will announce it is seeking members for this group from the public safety community as well as local and state governments.

I look forward to the work they will do and the record that develops in response to this rulemaking. All good ideas are welcome. We need them. In fact, I believe they can make a meaningful difference as we navigate both the ongoing pandemic and the transition to next-generation 911. They are especially important for states wrestling with funding challenges and they matter deeply for the nation's 911 operators who run emergency call centers across the country. They deserve the support intended for them; fee diversion needs to stop.

I extend my thanks to the Commission staff who helped prepare this Notice of Proposed Rulemaking, including Brenda Boykin, Jill Coogan, John Evanoff, Lisa Fowlkes, David Furth, Erika Olsen, Rachel Wehr, Michael Wilhelm, from the Public Safety and Homeland Security Bureau; David Horowitz, Keith McRickard, Bill Richardson, Anjali Singh from the Office of the General Counsel; Chuck Needy from the Office of Economics and Analytics; Becky Tangren from the Wireless Telecommunications Bureau; Heather Hendrickson from the Wireline Competition Bureau; and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: 911 Fee Diversion, PS Docket No. 20-291, New and Emerging Technologies 911 Improvement Act of 2008, PS Docket No. 09-14

Ensuring that a modern, effective 911 system stands ready to assist Americans during a crisis is one of the Commission's most important responsibilities. Both Congress and the Commission have long recognized that 911 fees should serve 911 purposes and have worked to combat fee diversion. Recent legislation, adopted as part of the 2021 Consolidated Appropriations Act, extends and strengthens those efforts by directing the Commission to define and deter 911 fee diversion. I thank the staff of the Public Safety and Homeland Security Bureau for their hard work quickly preparing this Notice of Proposed Rulemaking in response to that statute, and I look forward to reviewing a robust record on these important issues.