



**United States  
Department of  
Agriculture**

**Office of the  
General  
Counsel**

**Washington,  
D.C.  
20250-1400**

December 4, 2023

Ms. Catherine McMullen  
Chief, Disclosure Unit  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, DC 20036

ATTN: David Tuteur  
Attorney, Disclosure Unit

SUBJECT: Whistleblower Complaint – Francis Marion National Forest  
OSC File No. DI-23-001004  
OSC Referral to United States Department of Agriculture  
Office of the General Counsel (USDA-OGC)

Dear Ms. McMullen:

Pursuant to your Agency's referral dated September 11, 2023, for an investigation of a whistleblower complaint filed by Forest Service law enforcement officer (LEO) Sarah Miron concerning the failure of the USDA's United States Forest Service (FS) to provide land mobile radio communications for the agency's law enforcement officers serving the Francis Marion National Forest in South Carolina, please see enclosed USDA-OGC's report of investigation.

The investigation was conducted by Attorneys Judith McKenzie-Abraham of USDA-OGC's Atlanta Office and Ellen Hornstein of USDA-OGC's Washington Office.

The report shows that the complex issues involved in the complaint should be resolved by the end of January 2024. As a stopgap measure, a satellite telephone for emergency communications with South Carolina cooperators has been provided to the whistleblower, and the problem with another South Carolina LEO's radio equipment has been resolved temporarily with radio equipment loaned by a South Carolina cooperator. We therefore respectfully request that the matter be closed.

If you have any questions or require additional information, please do not hesitate to contact Ms. McKenzie-Abraham or Ms. Hornstein at 470-716-0751 or 202-720-2619, respectively.

Sincerely,

INGA BUMBARY-LANGSTON  
Deputy General Counsel

cc: Thomas J. Vilsack, Secretary of Agriculture  
Mary Beth Schultz, Principal Deputy General Counsel  
Randy Moore, Chief, The Forest Service

# **INVESTIGATION OF WHISTLEBLOWER COMPLAINT INVOLVING FAILURE TO PROVIDE RADIO COMMUNICATIONS TO UNITED STATES FOREST SERVICE LAW ENFORCEMENT OFFICERS IN THE FRANCIS MARION NATIONAL FOREST**

**Prepared by  
Judith McKenzie-Abraham, USDA Office of the General Counsel (USDA-OGC), Atlanta  
Ellen R. Hornstein, Senior Counsel, USDA-OGC, Washington, DC**

**December 1, 2023**

## **I. SUMMARY OF WHISTLEBLOWER COMPLAINT**

A United States Department of Agriculture, United States Forest Service (FS), law enforcement officer (LEO) assigned to the Francis Marion National Forest (FMNF) in South Carolina filed a whistleblower complaint with the U.S. Office of Special Counsel (OSC) regarding the failure of the FS's Law Enforcement and Investigations Staff (LEI) in the Southern Region (R8) to provide adequate land mobile radio (radio) communications to the LEOs in South Carolina as required by FS directives in Forest Service Manual (FSM) 5385.4. The Complaint alleges that LEOs in South Carolina do not have sufficient radio coverage and are serving in their areas of responsibility (AORs) without the ability to perform their jobs properly and safely.

On September 11, 2023, OSC referred the Complaint to the Secretary of Agriculture for investigation and resolution pursuant to 5 U.S.C. § 1213. On September 15, 2023, the Secretary of Agriculture referred the Complaint to USDA-OGC for investigation and resolution because of the Complaint's similarity to a whistleblower complaint filed by an LEO serving the Chattahoochee-Oconee National Forests (CONF) in Georgia (Georgia complaint), which USDA-OGC has been investigating. Judith McKenzie-Abraham in USDA-OGC's Atlanta Office and Ellen Hornstein in USDA-OGC's Washington, DC, Office have been assigned to conduct the investigation of the Complaint and draft the report of the investigation.

## **II. APPLICABLE LEGAL REQUIREMENTS AND RESPONSIBILITIES**

### **A. FS Chief Information Office**

The Federal Information Technology Acquisition Reform Act (FITARA), Title VIII, Subtitle D, of the National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, was enacted December 19, 2014. FITARA provides for a government-wide software purchasing program with a goal of eliminating or reducing information technology waste in the federal government.

Under FITARA, the FS's Chief Information Office (CIO) became responsible for the purchase, servicing, and maintenance of all information technology for the FS, including LEI radios, which are the responsibility of the CIO's Land Mobile Radio Program (LMR). Before

enactment of FITARA, LEI was responsible for the purchase, servicing, and maintenance of LEI radios.

The LMR is responsible for purchasing radio equipment and radio equipment firmware and software needed for the FS to access state and local radio systems; for programming radio equipment needed by the FS with the requisite firmware and software; and for installing the radio equipment in LEOs' law enforcement vehicles.

The type of radio equipment and radio equipment firmware and software needed to access state and local radio systems vary depending on the digital protocol used by the systems. For example, a radio system may employ the Nexedge protocol, which is a proprietary digital narrow banding protocol used primarily by Kenwood radios; the Mototrbo protocol, which is a proprietary digital protocol used by Motorola radios; or the Project 25 protocol, which includes a suite of standards for interoperable digital two-way radio products. The Project 25 protocol was developed for public safety applications. Although the Nexedge and Mototrbo protocols are used for public safety purposes, they were not designed for those purposes.

The LMR is responsible for obtaining a radio frequency authorization (RFA) from the National Telecommunications and Information Administration (NTIA) for FS use of each frequency on state and county conventional radio systems, which have a dedicated frequency for each set of users. For the LMR to obtain an RFA for a state or county frequency, the frequency must have a valid license from the Federal Communications Commission (FCC).

The LMR also coordinates agreements for FS access to state and local trunking radio systems, which use a pool of channels that are available to many different sets of users and typically operate at 700 to 800 megahertz (MHz). For example, the LMR worked with LEI in the FS's Alaska Region to execute an agreement with the State of Alaska for LEI to have access to the State's trunking radio system. FCC licenses and RFAs are not required for the FS to use frequencies on state and local trunking radio systems.

## **B. LEI**

FSM 5385.4, Communication Equipment for Law Enforcement Vehicles, states:

Special agents in charge (SACs) shall ensure that field-going special agents and law enforcement officers possess sufficient radio equipment to ensure 24-hour direct communication with either Forest Service dispatchers or adjacent cooperating law enforcement agencies within the predominant area of operation.

The SAC shall ensure that the installation, type of radios, and frequencies utilized by law enforcement personnel within the region are standardized (FSM 5385.04b).

Radio frequencies for law enforcement are managed by the regional/national frequency manager (FSM 6640.42). Keep these frequencies confidential and

unpublished. See FSM 6641.36 for the policy on programming frequency synthesized radios.

The FS does not have its own radio dispatch services for law enforcement. The FS's radio dispatch services are for firefighting. The FS's firefighting radio dispatch services are available only during business hours, not during evenings or on weekends and holidays, and only during fire season in the southeast. Moreover, FS firefighting dispatch service personnel lack the training and equipment necessary to access public safety criminal justice systems such as the national Criminal Justice Information System (CJIS), which are necessary to perform law enforcement checks or functions. To have adequate, round-the-clock radio communications, LEOs must have access to state and county radio frequencies. Access to state and county radio frequencies gives LEOs access to the CJIS and the ability to hear incident reports, communicate directly with a state or county agency when responding to an incident, verify license plates, perform background checks, and request assistance from the closest state or local law enforcement personnel. LEI refers to all these communications and information functions as law enforcement dispatch services.

For LEOs to have access to a particular state or county radio frequency, the relevant SAC must ensure that the LEOs have the requisite radio equipment for that frequency, with the requisite radio firmware and software, installed in their law enforcement vehicles. The relevant SAC must coordinate with the regional FS frequency manager, LMR, spectrum management, to ensure that these requirements are met.

For LEOs to have access to a particular state or county radio frequency on a conventional radio system, the relevant SAC also must execute an agreement with that state or county using FS Grants and Agreements form FS-1500-15A, Memorandum of Understanding for Cooperative Frequency Use. For LEOs to have access to a particular state or county radio frequency on a trunking radio system, the relevant SAC must execute an agreement with the system operator and an agreement with each state agency and county in LEOs' AORs that is on the system. The SAC needs to coordinate with the regional G&A Staff (G&A) in executing form FS-1500-15A and agreements for access to a trunking radio system. South Carolina has a single, statewide trunking radio system covering multiple counties. Access to some trunking radio systems requires payment of a fee. The amount of the fee varies.

For conventional radio systems, the relevant SAC must coordinate with the regional FS frequency manager, LMR, spectrum management, to ensure a valid FCC license is on file before requesting an RFA from the NTIA for each state or county radio frequency to be used by that SAC's LEOs on a conventional radio system. The SAC is also responsible for coordinating with the regional FS frequency manager, LMR, spectrum management, to execute any agreements with states or counties and the system operator for FS access to their trunking radio systems. The SAC is responsible for ensuring LEOs in the SAC's region take any training required for access to their state's portal to the CJIS.

In addition to FS access to state and county radio frequencies, FS use of state and county dispatch services requires a separate agreement between the affected state agency or county and

the FS. State agencies and counties may charge a fee for their dispatch services. The relevant SAC is responsible for executing agreements for FS use of state and county dispatch services.

### C. G&A

The Washington Office of G&A is responsible for maintaining form FS-1500-15A, including ensuring compliance with the Paperwork Reduction Act and coordinating with LEI regarding needed revisions to the form. The regional offices of G&A are responsible for working with SACs on execution of form FS-1500-15A and agreements for FS use of trunking radio systems and maintaining a record of all executed forms FS-1500-15A and executed agreements for FS use of state and local trunking radio systems.

### III. FACTS

Currently there are a patrol captain and four LEOs assigned to the FMNF. The facts in this report reflect our best efforts to reconcile any conflicting information. Though on its face the Complaint references a lack of radio support only in the FMNF in South Carolina, the issue also involves the national forests in Georgia.<sup>1</sup>

In investigating the Georgia complaint, we conducted numerous interviews to assess the validity of the allegations made by the South Carolina whistleblower, the steps being taken to address them, and the best means to ensure the LEOs in South Carolina are provided the radio support they need.<sup>2</sup> The interviewees were speaking from their individual perspectives and in some cases without the benefit of relevant information possessed by other interviewees. These interviews are relevant to investigation of the Complaint, which raises some of the same issues. We also interviewed the whistleblower who filed the Complaint.

From the inception of this issue, R8 LEI managers at all levels have had insufficient information as to the level and type of radio support the South Carolina LEOs required and possessed. The insufficient information arose from a failure to identify and address radio frequency changes in South Carolina counties; unfamiliarity with current FS authority, roles, and responsibilities for land mobile radio, resulting in a lack of coordination between R8 LEI and LMR at the regional and national levels regarding obtaining and programming the requisite radio equipment, ensuring the requisite FCC licenses are on file, and obtaining the requisite RFAs from the NTIA; and a lack of coordination between R8 LEI and R8 G&A regarding maintaining and updating form FS-1500-15A for R8 LEI access to frequencies on state and county

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<sup>1</sup> A separate whistleblower complaint has been filed by an LEO in Georgia. That complaint has also been referred to USDA-OGC for resolution.

<sup>2</sup> Interviews were conducted with the Assistant Director, Enforcement and Liaison, LEI; the Deputy Director, LEI; the R8 SAC; the R8 Patrol Commander; the whistleblower LEO FMNF; the whistleblower LEO, CONF; LEO #1, CONF; LEO #2, CONF; the Branch Chief, LMR, Program Management, CIO; the Branch Chief, Technical Services, Spectrum Management, CIO; the LEI LMR Program Manager, LMR Program Management, CIO; the Electronics Technician, LEI LMR Support, LMR Program, CIO; the Telecommunications Manager, R8, CIO; and the R8 Director, G&A.

conventional radio systems and executing agreements for trunking radio systems in South Carolina.

There are 14 cooperators—13 counties and the South Carolina Department of Natural Resources (DNR)—that cover National Forest System lands in South Carolina. Counties and the DNR use conventional radio systems and a single, statewide trunking radio system called the Palmetto 800 System (Palmetto). For the LEOs to perform their jobs properly and safely, they must be able to communicate with DNR and counties in their AORs on these radio systems, and they must have access to state or county dispatch services in their AORs.

It is unclear when South Carolina LEOs began to lose communications with DNR and South Carolina counties. The Complaint alleges that the FS has failed to provide South Carolina LEOs with the radio equipment required to communicate with local sheriff's offices, fire department and emergency medical services, and 911 centers in their AORs. The Complaint further alleges that the lack of required radio equipment prevents South Carolina LEOs from transmitting critical information to local police departments or other FS employees unless they move to a location with better service.

In [REDACTED] interview, the whistleblower reported a lack of radio communications due to the absence of executed forms FS-1500-15A with the two counties in [REDACTED] AOR and the need for a new battery for [REDACTED] handheld radio and possibly new frequencies or updates. She stated that since 2021, she has made verbal and written requests for a new battery, execution of forms FS-1500-15A with counties in [REDACTED] AOR, and dispatch services in [REDACTED] AOR.

R8 G&A has confirmed that all forms FS-1500-15A executed with South Carolina cooperators have expired. While the FS has had an agreement for access to Palmetto since 2013, payment of fees under the agreement lapsed in March 2022.

For South Carolina LEOs to have sufficient communications to perform their jobs safely and properly, R8 LEI must ensure that all batteries for South Carolina LEOs' handheld radios must be operational. R8 LEI must execute new forms FS-1500-15A for each cooperator in South Carolina LEOs' AORs for access to their frequencies on conventional radio systems. R8 LEI must execute agreements with each cooperator in South Carolina LEOs' AORs for access to their frequencies on Palmetto, and payment of fees under the agreement with Palmetto must be current.

R8 LEI must also coordinate with LMR to ensure that South Carolina LEOs have the requisite radio equipment with the requisite firmware and software to communicate with the cooperators in their AORs on either a conventional or trunking radio system. R8 LEI must also coordinate with LMR to ensure that a valid FCC license and an RFA are on file for cooperators in South Carolina LEOs' AORs to allow access to the cooperators' frequencies on conventional radio systems. R8 LEI must ensure that South Carolina LEOs take any training required for access to South Carolina's portal to the CJIS and that one or more dispatch service agreements covering South Carolina LEOs' AORs are executed.

## IV. CONCLUSIONS

### A. **Requirements for Fully Operational Radio Communications in South Carolina**

For South Carolina LEOs to have fully operational radio communications in their AORs:

1. South Carolina LEOs must have operational batteries for their radio equipment.
2. South Carolina LEOs must have radio equipment with radio firmware and software (radio equipment) that is compatible with conventional and trunking radio systems used by South Carolina cooperators in the LEOs' AORs, hereinafter referred to as "radio systems."
3. The frequencies on the radio systems (radio frequencies) must be verified and programmed into South Carolina LEOs' radio equipment.
4. Form FS-1500-15A or trunking radio system agreements that cover each of the radio frequencies must be executed.
5. A valid FCC license and an RFA must be on file for each of the radio frequencies on a conventional radio system.
6. South Carolina LEOs must take any training required for access to South Carolina's portal to the CJIS.
7. One or more dispatch service agreements covering South Carolina LEOs' AORs must be executed.

### B. **Compliance with FSM 5385.4**

Through our investigation, we determined that South Carolina LEOs have been without radio communications required to perform their jobs properly and safely. In the Complaint, the whistleblower alleges that R8 LEI is not in compliance with FSM 5385.4. Our evaluation of compliance with the FS directive considers the entire period reflected in the Complaint. During that period, there were deficiencies in the radio communications supporting the South Carolina LEOs.

During our investigation of the Georgia complaint, it was clear that a lack of communication among affected FS staffs compounded the problem. Once USDA-OGC got involved, the FS moved more quickly towards resolving the issues raised by the Complaint. As appropriate staffs engaged, progress began to be made. Obstacles were identified and started to be overcome, and towards the end of our investigation, LEI, CIO, and G&A started working collaboratively to address outstanding concerns.

The FS is closer to full compliance with FSM 5385.4 in South Carolina due to weekly reports required from CIO and LEI on steps taken to address remaining issues raised by the Complaint and assignment of the Assistant Director, Enforcement and Liaison, in the Washington Office of LEI to lead resolution of those issues.

### C. **Resolution of Issues Involved in the Complaint**

1. Acquisition of Satellite Telephones

As a stopgap measure, the Assistant Director, Enforcement and Liaison, in the Washington Office of LEI offered satellite telephones for emergency communications to the South Carolina LEOs and acquired and provided one to the South Carolina LEO who wanted one (the whistleblower). The satellite telephone will be activated now that the LEO has returned from remote field training once the LEO obtains the SIM card for the telephone and tests it.

## 2. Operational Radio Batteries

All South Carolina LEOs received operational batteries for their radio equipment around mid-September 2023.

## 3. Requisite Radio Equipment with Requisite Radio Firmware and Software

The FS has radio equipment issues (which may raise radio firmware or software issues) with only two of the fourteen South Carolina cooperators. The radio equipment issue with one of these cooperators has been resolved temporarily with radio equipment loaned by the cooperator. A Nexedge radio is needed for access to the other cooperator's frequencies. The FS has located a Nexedge radio and is in the process of obtaining it. The FS anticipates that the Nexedge radio will be obtained and programmed by mid-January 2024. For the long term, the FS will determine which type of radio equipment functions with the most radio systems used by cooperators in South Carolina LEOs' AORs and will obtain and program that type of radio equipment for all South Carolina LEOs.

All South Carolina LEOs have 800 MHz handheld radio equipment needed to access Palmetto, and that radio equipment has the requisite firmware and software.

## 4. Executed Form FS-1500-15A

The FS needs an executed form FS-1500-15A and valid FCC license and RFA on file for only four of the fourteen cooperators in South Carolina LEOs' AORs because the other nine cooperators are on Palmetto. The FS has executed form FS-1500-15A with 12 counties, including the four that are not on Palmetto. The FS has executed an agreement with DNR for access to its frequencies on Palmetto. The FS has requested access to the remaining county's frequencies on its conventional radio system.

LEI is working with the LMR to determine whether the four counties that are not on Palmetto have a valid FCC license and RFA on file, and if not, to ensure they are obtained. The FS is not aware that any South Carolina cooperators lack a valid FCC license for a conventional radio system.



## 5. Other County-Specific Access Issues

In reviewing executed forms FS-1500-15A, the FS has identified inconsistencies between the frequencies listed in the forms and the frequencies in use for four counties in South Carolina. The FS is awaiting clarification on the frequencies from the counties in question and will make any corrections to the forms as needed.

## 6. Executed Trunking Radio System Agreements

Palmetto is an 800 MHz, Project 25-compliant, trunking radio system that covers 97% of the State of South Carolina. Palmetto is operated by Motorola under a contract with the State of South Carolina. The fee for access to Palmetto is \$500.04 per year for six to twenty-five radios.

The FS has an agreement with Motorola for access to Palmetto. On November 9, 2023, the FS submitted payment for all outstanding fees (from March 2022 through February 2024) for access to Palmetto.

Nine of the 14 cooperators use Palmetto. The nine cooperators' frequencies need to be uploaded onto the LEOs' 800 MHz radio equipment, which can be performed after an agreement is executed with each cooperator for access to their frequencies on Palmetto and the FS identifies an appropriate vendor through Palmetto.

The FS has agreements with DNR and one county in South Carolina LEOs' AORs (Berkeley County, one of the two counties in the whistleblower's AOR) for access to their frequencies on Palmetto. Palmetto has a list of requirements that must be addressed when a user submits a request for another party's access to the user's frequencies on Palmetto. The FS has submitted forms FS-1500-15A for access to the remaining seven cooperators' frequencies on Palmetto and has asked whether that form meets all applicable requirements or whether the South Carolina Law Enforcement Division's form must be submitted.

The FS has a vendor contract with Caci for programming and maintaining FS Motorola radio equipment. The FS may be able to use that contract for uploading cooperators' frequencies on Palmetto onto South Carolina LEOs' 800 MHz radio equipment. The FS anticipates that cooperator frequencies on Palmetto will be uploaded onto South Carolina LEOs' radio equipment by mid-January 2024.

The FS is now a member of the Federal Partnership for Interoperable Communications (FPIC), which serves as a coordinating and advisory body for addressing technical and operational wireless issues relative to interoperability in the public safety emergency communications community. FPIC interfaces with representatives from federal, state, local, territorial, and Tribal organizations. The FS has engaged with FPIC staff to arrange meetings between the FS and Palmetto administrative staff to address any interoperability issues regarding South Carolina LEOs' access to Palmetto. Due to scheduling conflicts, the meetings will not occur until after the Thanksgiving holiday. The FS expects to make considerable progress in acquiring needed access to Palmetto once the meetings start.

## 7. Completion of Required Training

South Carolina LEOs must take any training required for access to CJIS through South Carolina's portal. The FS will schedule any required training and ensure that any required documentation of completed training is submitted to South Carolina.

## 8. Executed Dispatch Service Agreements

On July 20, 2023, the FS signed a dispatch service agreement with Berkeley County, one of the two counties in the whistleblower's AOR. The FS has signed a statewide dispatch service agreement with DNR, which is pending approval and signature by DNR. The FS anticipates execution of the statewide dispatch service agreement by mid-December 2023.

## **D. Estimated Date of Resolution of All Issues**

The FS estimates that all the issues involved in the Complaint will be 90% resolved by the end of January 2024.

The FS will continue to work with affected South Carolina cooperators to address any remaining issues raised by the Complaint, including those identified above and those that may arise as cooperators continue to transition to new radio systems. The FS is using FPIC resources to assist in finding solutions to remaining interoperability issues in South Carolina.

In addition, CIO and LEI will continue to report weekly to USDA-OGC on their progress in addressing any remaining issues involved in the Complaint until they are fully resolved to the extent practicable. CIO and LEI will ensure that the requisite staff maintain radio communications for South Carolina LEOs consistent with FSM 5385.4.