

AGENDA ITEM

FORT BEND COUNTY FY 2009  
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 8/25/2009	Submitted By: Kathleen Barnes	# 31 A
Court Agenda Date: 9/1/2009	Department: Sheriff's Office	
	Phone Number: 281 341-4703	

**SUMMARY OF ITEM:** Research cost for Grand Jury subpoena done without a Purchase Order

RENEWAL AGREEMENT/APPOINTMENT                      YES                      NO      X  
REVIEWED BY COUNTY ATTORNEY'S OFFICE:      YES                      NO      X

List Supporting Documents Attached: Invoice transmittal, invoice from Metro PCS, letter from Detective Morris and reply from MetroPCS

**FINANCIAL SUMMARY:**

BUDGETED ITEM:    YES    X                      NO

FUNDNG SOURCE:    Accounting Unit: 100560100                      Account Number: 63000

Activity (If Applicable):

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

**DISTRIBUTION:**

Original Form Submitted with back up to County Judge's Office X (✓ when completed)  
If by E-Mail to [ospindon@co.fort-bend.tx.us](mailto:ospindon@co.fort-bend.tx.us)                      If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

X	Auditor	(281-341-3774)	X	Comm. Pct. 1	(281-342-0587)
X	Budget Officer	(281-344-3954)	X	Comm. Pct. 2	(281-403-8009)
X	Facilities/Planning	(281-633-7022)	X	Comm. Pct. 3	(281-242-9060)
X	Purchasing Agent	(281-341-8642)	X	Comm. Pct. 4	(281-980-9077)
X	Information Technology	(281-341-4526)	X	County Clerk	(281-341-8697)
<input type="checkbox"/>	Other:		X	County Atty	(281-341-4557)

**RECOMMENDATION / ACTION REQUESTED:** COUNTY JUDGE RECEIVED  
AUG 25 2009

Special Handling Requested (specify):

# INVOICE TRANSMITTAL

<b>Accounting Unit (9 digit)</b>
100560100
<b>Account (5 digit)</b>
63000
<b>Grants &amp; Projects (If needed)</b>
<b>Activity</b>
<b>Account Category</b>

Vendor #	10803	
Vendor Name	MetroPCS, Inc.	
Address		
City		
State	Zip Code	Date
		08/25/09

Invoice #/Invoice Date/Desc
Invoice No. 37012

Amount
\$ 100.00
<b>Total \$ 100.00</b>

County Auditor's Use Only	
CC Approval Date	_____
Check Type	_____
Audited By	_____
Received	
Paid	

*Kathleen Barnes*

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Authorized Department Approval

Treasurer's Register Stamp and Number

MetroPCS, Inc.  
 2250 Lakeside Blvd.  
 ATTN: Accounts Receivable  
 Richardson, TX 75082

Invoice Total: 100.00  
 Invoice Number: 37012  
 Invoice Date: 23-APR-09  
 Customer ID: 6680

Attn: Accounts Payable  
 Fort Bend County Sheriff's Office  
 1410 Ransom Rd.  
 Richmond, TX 77469

Terms: DUE ON RECEIPT  
 Case Number: T. Morris  
 Request ID: 126425

Description	Target Number	Start Date	End Date	Quantity	Unit Price	Total
Text Message Retrieval	561-584-1565	02/01/2009	02/26/2009	1	50.00	50.00
Call Detail Records	561-584-1565	02/01/2009	02/26/2009	1	50.00	50.00

**Make Checks Payable To / Remit To:**

MetroPCS Wireless, Inc. (Please note the new Remit Address)  
 P.O. Box 842067  
 Dallas, TX 75284-2067

Customer ID	6680
Invoice Number	37012
Invoice Date	23-APR-09
Invoice Total	100.00

Invoices are generated only after requested information has been sent to the agent by the preferred means of delivery. If you have not received the information for which you have been invoiced or have billing questions please contact Daryl Browning at 214-570-4819. Please reference the Case/LERMS number for better assistance.  
 When Remitting a Payment, Please Reference the Case/LERMS Number Above.

# FORT BEND COUNTY SHERIFF'S OFFICE



## Contact Letter

July 21, 2009

MetroPCS, Inc.  
2250 Lakeside Blvd.  
Richardson, TX 75082

**RE: Research Cost for Grand Jury Subpoena – Invoice #37012**

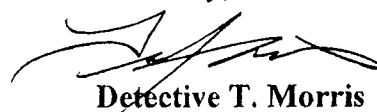
Dear Accounts Receivable,

Thank you for your response to the grand jury subpoena for the personal cell phone records you provided. These records were required in the investigation of our case and were filed into evidence. I am in receipt of the invoice summarizing your charges or cost incurred in complying with the processed subpoena. Regrettably, the Texas Legislature has not seen it fit to include in the State's laws any statutory authority for payment of research cost incurred to comply with a grand jury subpoena issued on behalf of a state or local government agency. Neither has it appointed any fund from which such reimbursement may be made. Due to this lack of funding the Fort Bend County District Attorney's Office has opted to allow subpoenaed witnesses to provide attested copies of their files via mail or courier rather than produce original documents.

Your assistance helped in the location of a juvenile runaway believed to be in danger, who was located and returned home safely. Regrettably, there will be no cost requested by the courts requiring restitution by any parties involved in this case.

Unfortunately, I can only offer my thanks and appreciation for your cooperation and prompt response.

Sincerely,



Detective T. Morris



MetroPCS, Inc.  
8144 Walnut Hill Lane  
Suite 800  
Dallas, Texas 75231

July 27, 2009

Dear Det. T. Morris:

This letter addresses the referenced subpoena for call detail records, which was recently served on MetroPCS Communications, Inc. ("MetroPCS").

MetroPCS operates differently than most wireless carriers, by allowing its customers totally unlimited use of its wireless network during the thirty day period for which the customer has prepaid. Additionally, MetroPCS does not generate a bill to its customers. The monthly fee the customer pays is a fixed flat rate, regardless of usage. Subsequently, MetroPCS' customer usage is substantially higher than traditional wireless companies. As a result of providing unlimited service to our customers, MetroPCS does not have a business need to maintain call detail records for billing purposes. Therefore, call detail records are not maintained by MetroPCS in the normal course of business.

Therefore, documents created in response to the subpoena are specially created records of outgoing and incoming calls that are not contained in the billing records of MetroPCS. Because compliance with the subpoena requires that responsive documents be created specifically for the agency, MetroPCS requests reimbursement for its incurred costs.

MetroPCS makes every effort to comply promptly with all lawful subpoenas. MetroPCS also recognizes that under 18 U.S.C. § 2706(c), agencies need not reimburse carriers for compliance with subpoenas that request certain subscriber information and toll records obtained under Section 2703 unless the information sought is "unusually voluminous in nature or otherwise cause[s] an undue burden on the provider." However, the records sought by the referenced subpoena do not constitute subscriber information or toll records within the meaning of § 2706(c). For that reason, the costs incurred by MetroPCS are reimbursable under § 2706(a), which states that governmental entities must reimburse carriers "for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information."

Section 2706(c) does not apply to documents that are not kept in the ordinary course of business. In re Grand Jury Subpoenas to Southwestern Bell Mobile Systems, 894 F. Supp. 355 (W.D. Mo. 1995), the court stated that the word "toll" in § 2703(c)(1)(C) was "used to make certain that the providers of electronic



communications were not required to create records not kept in the ordinary course of business." 894 F. Supp. at 359 (emphasis added). In an analogous setting, the House Report accompanying the FBI Access to Telephone Records Act, Pub. L. No. 103-142, states:

The Committee intends, and the FBI agrees, that the authority to obtain subscriber information and toll billing records under § 2709 does not require communication service providers to create records which they do not maintain in the ordinary course of business.

H.R. No. 103-46, 103rd Cong., 1st Sess., 1993, U.S. Code Cong. & Admin. News 1913, 1919.

MetroPCS generates the information sought by the referenced subpoena specifically in response to the subpoena. MetroPCS's existing records do not contain the requested information, nor does MetroPCS otherwise utilize the records that are produced. Because such call detail records are created specifically for law enforcement, and are not kept in the ordinary course of MetroPCS's business, Section 2706(a) entitles MetroPCS to reimbursement for the costs of compliance.