WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

Department of Administration

AGENCY: Information Services and Communications Division TITLE NUMBER: 161

CITE AUTHORITY: W. Va. Code Section 5A-7-4a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 2

TITLE OF RULE BEING PROPOSED: Telecommunications Payments by Spending Units

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

These rules are as a result of the passage of Senate Bill 700. The rules outline the processes involved and the duties and responsibilities of the parties impacted by this bill.

Use additonal sheets if necessary

Helen Wilson

Authorized Signature

Jim [illegible]

$4.80

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

BOB WISE
GOVERNOR

TOM SUSMAN
ACTING CABINET SECRETARY

June 18, 2004

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed emergency rules are being filed in regard to telecommunications payments by spending units.

The documents enclosed consist of the following:

1. Notice of an Emergency Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules,
4. Emergency Rule Questionnaire,
5. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Lipscomb

Donna M. Lipscomb
Executive Coordinator

Enclosures

1900 KANAWHA BOULEVARD, EAST . BUILDING 1, ROOM E-119 . CHARLESTON, WEST VIRGINIA 25305-0120 . 304.558.4331 . FAX: 304.558.2999

WWW.STATE.WV.US/ADMIN

Agency: Department of Administration Information Services & Communications Division	
	Title Number: 161
Rule Type: Emergency	**Cite Authority**: 5A-7-4a

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

During the past several years there were extremely large claims filed against the State of West Virginia by telecommunications vendors in the Court of Claims for unpaid telephone bills. As a result of those claims the Legislature passed Senate Bill 700 during the 2004 session which requires the Department of Administration to immediately take responsibility for seeing that phone bills were paid timely to prevent any further claims. This responsibility begins with the start of the new fiscal year on July 1, 2004. These emergency rules outline the process involved for implementing the legislation. It also outlines the duties and responsibilities of all involved parties and the impact it will have upon them.

Emergency rules are necessary in order for the Department of Administration to be authorized to carry out the requirements now set forth in the Statute and to preserve the public peace, health, safety and welfare of the citizens of the State of West Virginia. Without the emergency rules the claims for unpaid phone bills would be paid from the General Revenue of the State of West Virginia and would, therefore, take away funding for other much needed projects for our citizens thereby harming their health, safety and welfare as critical programs may be cut due to the lack of funding. These emergency rules are necessary to prevent substantial harm to the public interest by expending public funds unnecessarily.

TITLE 161

DEPARTMENT OF ADMINISTRATION

INFORMATION SERVICES AND COMMUNICATIONS (IS&C)

SERIES 2

Telecommunications Payments by Spending Units

§161-2-1. General.

1.1. Scope. – This Legislative Rule is an explanation and clarification of operative procedures for the telecommunications payments by State spending units as defined in W. V a. Code §5A-7-4a.

1.2. Authority. - W. Va. Code §5A-7-4a.

1.3. Filing Date. –

1.4 Effective Date. –

§161-2-2. Definitions.

As used in this rule, all terms have the same meaning as provided in W.Va. Code Section 5A-7-1 and as follows:

(a.) "Administration costs" means the costs (personnel, supplies, etc.) associated with administering the Legislative Rules governing W. Va. Code §5A-7-4a.

(b.) "Components" means any ancillary documentation or backup data (hard copy, electronic copies, etc.) that are required to complete the apportion of the charges identified on the invoice.

(c.) "Invoice" means the vendor's invoice and any components that list all of the services and charges that IS&C is expected to apportion out to the spending units for reimbursement.

(d.) "IS&C" means the Information Services and Communications Division of the Department of Administration as established in W. Va. Code §5A-7-2.

(e.) "Legitimate Uncontested Invoice" means an invoice for shared account telecommunication services that is received by the Information Services and Communications Division (IS&C) of the Department of Administration which does not include: (1) charges not allowed, either by State law or contractually; (2) designation of specific spending unit for said service; (3) charges in error due to , but not limited to, overcharge service failure, failure on the vendor's part to terminate services as requested or other failure of or error in vendor performance; and (4) where applicable, charges and/or services that are not in accordance with contract pricing.

(f.) "Marked as Received" means the invoice has been received by IS&C and has been date stamped (or equivalent).

(g.) "Receipt of Invoice" means the last date all components of the vendor's invoices that are required for IS&C to fully apportion the charges are "marked as received" by IS&C.

(h.) "Received" means the invoice has been "marked as received" by IS&C.

(i.) "Rejected" means an invoice has been rejected for processing by IS&C because it is not a legitimate uncontested invoice.

(j.) "Shared Account" means an invoice for telecommunications services as defined in §5A-7-4a(l) that includes charges for two or more spending units.

(k.) "State Treasury" means any payments that are processed outside of the State's Financial Information Management System (FIMS).

(l.) "Statement" means an itemized listing of all telecommunications charges for each spending unit.

(m.)"Statement Date" means the last day the spending unit must submit full payment or transfer payment to the telecommunications services payment and reserve fund.

(n.) "Telecommunications Change Request" means a request form that is completed by the spending unit for requesting telecommunications services and then submitted to IS&C for processing and authorization.

(o.) "Telecommunications Services Expenses" means the expenses associated with the "Administration Costs".

§161-2-3. Applicability.

3.1. This legislative rule applies to all spending units of State government and all spending units outside of the state treasury that continue to have its telecommunications services billed on the state's shared account.

3.2. Any state spending unit that wishes to be exempt for the shared account must submit such request in writing on an annual basis to the Secretary of the Department of Administration (hereinafter referred to as "Secretary") and the Joint Committee of Government and Finance. The request must be approved by the Secretary who will notify, in writing, both the requesting spending unit and the Director of IS&C of his approval. An example of request would be the potential loss of e-rate funds if not granted an exemption.

§161-2-4. Authority of the Director.

4.1 The Director shall:

(a.) Ensure that all telecommunications shared account invoices are received from a properly registered and qualified vendor;

(b.) Review all shared account invoices received from properly registered and qualified vendors to ensure the legitimacy of the charges;

(c.) Apportion all telecommunications charges among spending units based on the spending unit's service and usage, as determined by the director;

(d.) Ensure that all statements itemizing the apportioned telecommunications charges by spending unit are sent out within thirty days of receipt by IS&C;

(e.) Assess a Telecommunications Service Expense fee to all spending units based on each spending unit's portion of service and usage.

(f.) Track all payments received from the spending units and provide the Secretary with a list of those spending units who have not transferred or submitted full payment to the telecommunications services payment and reserve fund within the required statement date.

(g.) Reserve the right to waive any irregularities that may be in the best interest of the state or the telecommunications vendor.

(h.) Negotiate on behalf of the spending units any disputed charges.

§161-2-5. IS&C Duties and Rights.

IS&C will insure all of its duties and rights are executed as defined below after the first billing period. This allows IS&C to implement the new policies and allow for transition by all parties (vendors, spending units, etc.)

5.1 Receipt of Vendor Invoice

5.1.1. All telecommunications invoices, when received at IS&C, will be marked as "received".

5.1.2. Upon receipt, IS&C will review the invoice within ten business days to ensure the invoice meets the definition of a "legitimate uncontested invoice".

5.1.3. If IS&C receives an invoice and deems it not to be a legitimate uncontested invoice, it will be rejected by IS&C.

5.2. Rejection of Vendor Invoices.

5.2.1. The vendor will be notified, in writing, of the rejection within fourteen work days of receipt of the invoice. The rejection notice will include the reason (s) for rejection and the requested resolution.

5.2.2. The invoice will not be considered "received" until the resolutions are "marked as received" by IS&C and deemed to fulfill the requirements of a legitimate uncontested invoice.

5.2.3. During the time frame the invoice is in "rejection" status none of the charges will be apportioned for payment. When the contested charges have been resolved and received by IS&C, the invoice will be considered received.

5.3. Statements to Spending Units

5.3.1.Within thirty days of receipt, as defined in W. Va. Code §5A-7-4a(j), of a legitimate uncontested telecommunications shared account invoice, the Director will submit statement (s) to each spending unit as follows:

(a.) Each telecommunications invoice received for a shared account will be apportioned among the spending units based on the spending unit's service and usage, as determined by the director;

(b.) Spending units will be identified by a unique code and a spending unit may have more than one unique code for its unit;

(c.) A statement for each unique code will be generated and submitted to the spending unit for payment;

(d.) Each statement will include a detailed listing of all telecommunications charges, including the Telecommunications Service Expense.

5.4. Contested Charges

5.4.1. IS&C will review all received written contested charges received by the spending units. The review will be conducted as per the following section - §161-2-6. Spending Units' Duties and Rights.

5.5. Accounting of Charges.

5.5.1. IS&C will track all statements sent to each spending unit and then apply all payments made against same. Agencies will be notified when a payment does not meet the terms outlined in the Code or in this rule.

5.5.2. IS&C will, by vendor account, track on charges and payments. This information will be provided to the vendors on a routine basis.

§161-2-6. Spending Units' Duties and Rights.

Any spending unit that is utilizing the services and pricing of a telecommunications provider via a state-issued contract must agree to have its charges included in the shared account and all requests for telecommunications services must be obtained by submitting to IS&C a Telecommunications Change Request form.

6.1. All spending units will be required to complete and have approved the "Telecommunications Services Payment and Reserve Fund Application" (hereinafter referred to as the "Fund Application") by the date indicated on the application.

6.1.1. Any spending unit with moneys in the state treasury that fails to have an approved Fund Application on file by the required date may be subject to discontinuance of telecommunications services.

6.1.2. As required by code, any participating spending unit maintaining funds in depositories outside the state treasury shall furnish the Secretary access to those funds for the exclusive purposes of this section. Such spending units are required to file a Fund Application to meet this requirement. Failure to have an approved Fund Application on file by the required date will result in termination of that spending unit's telecommunication services and prohibit any new activity until the Application is provided.

6.2. Contested Charges on Statement

6.2.1. If any spending unit contests a statement or any portion of a statement, payment must, nonetheless, be remitted for the entire statement amount.

6.2.2. If a spending unit disputes any charges on the Statement, it has thirty days from the receipt of the Statement to submit a written notice to IS&C.

6.2.3. The spending unit's written notice to IS&C must include: 1) the statement date, number and total charges; 2) the contested charges and the reason for contesting the charges; and 3) the resolution being sought.

6.3. Review of Contested Charges

IS&C will review the spending unit's written notice of its contested charges as follows:

(a.) If a charge is contested due to, but not limited to, overcharge, service failure, failure on the vendor's part to terminate services as requested or other failure of or error in vendor performance and IS&C's review finds in favor of the spending unit, IS&C will apply that amount to the spending unit's next statement and notify the vendor of non-payment of that amount.

(b.) If the charge being contested is due to the apportionment of the charges, IS&C will submit a written recommendation to the Secretary who will provide a final determination. Should the Secretary find in favor of the spending unit that amount will be applied to the spending unit's next statement.

(c.) The spending unit will be notified of the final determination of any charges that are contested and appropriate action will be taken by IS&C.

§161-2-7. Payments.

7.1. Payments to the telecommunications services payment and reserve fund.

7.1.1. Spending units are required to submit or transfer payments in full to the telecommunications services payment and reserve fund by the statement date.

7.1.2. Spending units are required to remit full payment even if a portion of the statement's costs are being disputed (refer to §161-2-6.3 for submitting contested charges).

7.2. Payments to the telecommunications vendors.

7.2.1. IS&C shall make full payment to all telecommunications vendors within ninety days of receiving a legitimate uncontested invoice for shared accounts.

7.3. Late Payments.

7.3.1. In the event the spending units fail to pay for its telecommunications charges as outlined in §5A-7-4a of the W. Va. Code will be subject to the following:

(a.) Any spending unit that fails to transfer funds or submit payment in full to the telecommunications services payment and reserve fund by the statement date will be subject to the remedy and penalty outlined in §5A-7-4a(e) of the W. Va. Code;

(b.) Any spending unit subject to the remedy and penalty outlined in §5A-7-4a(e) of the W. Va. Code that does not have sufficient funds in the state treasury or depository to make full payment will be notified, in writing, that funds are not available. The spending unit will have five days to make payment in full along with the three percent penalty charge based on the total statement amount;

(c.) Any spending unit failing to make funds available after five days of receiving "Notice of Insufficient Funds" may have its telecommunications service discontinued. Prior to discontinuance, the Director shall notify the Joint Committee of Government and Finance and shall, with the approval of the Secretary, discontinue services for the Agency Head of the delinquent spending unit until an acceptable payment plan is submitted and approved by IS&C.

(d.) Any spending unit who does not make full payment within the prescribed deadlines shall be given a written notice from IS&C that the telecommunications vendor(s) has been given notice to discontinue those services that have not been paid;

(e.) If service is discontinued and the spending unit, in turn, makes full payment (including penalty costs), the Director may submit a written direction to the telecommunications vendor(s) to reinstitute those services. The spending unit will be responsible for any and all costs associated with any service that is discontinued or discontinued and then reinstituted.

(f.) Until a spending unit is in good standing it will not be permitted to obtain any new telecommunications services.

§161-2-8. Vendors' Duties and Rights.

Any new telecommunication vendor that provides services to spending units via a state-issued contract shall be governed by the provisions of this section. All vendors, both current and new, are to provide telecommunications services to spending units on the shared account only upon receipt of an authorized Telecommunications Change Request form. If a vendor provides new service without the authorized form, IS&C shall not be responsible for the charges.

8.1. Current Vendors

8.1.1. For all vendors currently invoicing IS&C on behalf of spending units for services procured via a state-issued purchase order, a new shared account(s) shall be created and in effect to reflect all charges that are incurred for the July, 2004 billing month.

8.1.2. For all vendors currently invoicing spending units via an individual account (direct billing), IS&C is to be provided with a list of these spending units no later than October 1, 2004. The accounts for these spending units are to be consolidated on to the newly created shared account no later than December 31, 2004.

8.1.3. Any charges incurred from July 1, 2004 to December 31, 2004 that were not merged on to the new shared account shall not be the responsibility of IS&C unless authorized by the Secretary.

8.2. Invoices submitted for payment.

8.2.1. Vendors are required to submit all invoices to IS&C that include more than one spending unit. If vendors are providing services to spending units governed by the pricing included in the applicable state-issued contract then the charges for these services must be included on the shared account. All shared account invoices are to be mailed to IS&C's Telecommunications Unit.

8.2.2. Vendors must submit legitimate uncontested invoices. If a vendor's company policy prohibits changes to its invoicing process which results in the vendor's invoice being contested (i.e. taxes), the vendor can submit a supplemental invoice or a letter that itemizes the off-setting charges. This will allow the original invoice to be considered a legitimate, uncontested invoice. If a vendor submits a supplement invoice or letter, these charges on the supplemental invoice or letter must be reflected on the vendor's invoice within the next 2 billing cycles of the receipt date of the contested charges. This will ensure all balances reflected on an invoice are legitimate charges only.

8.3. Contested Charges

8.3.1. If IS&C contests an invoice or any portion of an invoice, the vendor will be notified in writing within ten business days from receipt of invoice.

8.3.2. IS&C's notice to the vendor will include: 1) the account number; 2) invoice number and date; 3) the contested charges and the reason for contesting the charges; and 3) the resolution being sought.

8.3.3. The vendor will have ten business days to reply to IS&C's notice and state how it will provide the resolution being sought. If the vendor does not submit a written response within the ten business days, it admits to the contested charges and will provide the resolution being sought by IS&C. Any contested charges that cannot be resolved in good faith between the Director and the vendor shall be brought to the attention of the Secretary. The Secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted. If the Secretary's decision is to refuse payment, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

EMERGENCY RULE QUESTIONNAIRE

DATE: June 16, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Donna Prunty, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East, Room E-119

Charleston, WV 25305

304-558-3392

EMERGENCY RULE TITLE: Telecommunications Payments by Spending Units

1. Date of filing June 18, 2004

2. Statutory authority for promulgating emergency rule:

   WV Code § 5A-7-4a

3. Date of filing of proposed legislative rule: June 18, 2004

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? new language

5. Has the same or similar emergency rule previously been filed and expired?

   No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

   During the past several years there were extremely large claims filed against the State of West Virginia by telecommunications vendors in the Court of Claims for unpaid telephone bills. As a result of those claims the Legislature passed Senate Bill 700 which requires the Department of Administration to immediately take responsibility for seeing that phone bills were paid timely to prevent any further claims. This responsibility begins with the start of the new fiscal year on July 1, 2004. These emergency rules outline the process involved for implementing the legislation along with the duties and responsibilities of all parties impacted by the legislation. Emergency rules are necessary in order for the Department of Administration to be authorized to carry out the requirements now set forth in the Statute and to preserve the public peace, health, safety and welfare of the citizens of the State of West Virginia. Without the emergency rules the claims for unpaid phone bills would be paid from the General Revenue of the State of West Virginia and would, therefore, take away funding for other much needed projects for our citizens thereby harming their health, safety and welfare as critical programs may be cut due to the lack of funding. These emergency rules are necessary to prevent substantial harm to the public interest by expending public funds unnecessarily.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

   Senate bill 700 was passed by the legislature during the 2004 session. The bill calls for the Department of Administration to pay the phone bills with the start of the fiscal year in July. The bill also states that the initial rule shall be filed as an emergency rule.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

   See response to number 6 above which outlines the need for these emergency rules.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Telecommunications Payments by Spending Units

Type of Rule: X Legislative ______ Interpretive ______ Procedural

Agency: Information Services and Communications Division

Address: Building 6, Room 110

1900 Kanawha Blvd., East

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$15,235,000		$15,235,000	16,000,000	$16,000,000
PERSONAL SERVICES	$150,000		$150,000	$150,000	$150,000
CURRENT EXPENSE	$15,050,000		$15,050,000	15,835,000	$15,835,000
REPAIRS & ALTERATIONS	0				
EQUIPMENT	$35,000		$35,000	$15,000	$15,000
OTHER					

2. Explanation of Above Estimates:
   The total costs above are to implement, on an on-going basis, Senate Bill 700. Of the $15,050,000 in current expense, $15,000,000 is the monies paid currently paid by the spending units to the vendors but will be paid to IS&C for telecommunications services where we, in turn, will pay the vendors.
3. Objectives of These Rules:
   The objectives of these rules is to make sure that the processes are clearly defined and all parties impacted by the rules are aware of their duties and responsibilities.

Rule Title: Telecommunications Payments by Spending Units

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:
      Past telecommunications services have not been paid by spending units forcing the vendors to file with the Court of Claims. This bill will ensure payment and avoid monies being taken out of the General Fund for past due amounts so they can be used to finance programs for the citizens.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
      The telecommunications industry will benefit by being paid on a more timely basis and not having to seek payment through the Court of Claims.

   C. Economic Impact on Citizens/Public at Large.
      As stated above in 4.A, the monies currently having to be allocated out of the General Fund to pay past due telecommunications charges will not an issue. Allowing these funds, instead, to be used for programs that benefits the citizens of West Virginia.

Date: 6-16-04

Signature of Agency Head or Authorized Representative:

Helen Wilson