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June 28, 2004

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

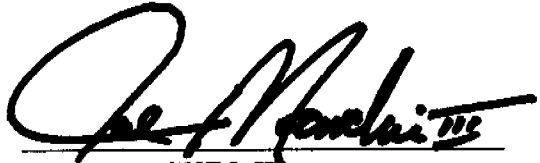
AGENCY: Information Services & Communications Division

RULE: New Rule, 161CSR2, Telecommunications Payments by Spending Units

DATE FILED AS AN EMERGENCY RULE: June 18, 2004

DECISION NO. 7-04

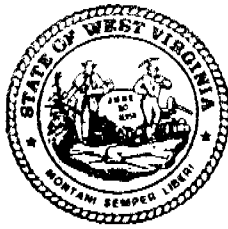
Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


JOE MANCHIN, III
Secretary of State

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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EMERGENCY RULE DECISION
(ERD 7-04)

AGENCY: Information Services and Communications Division
RULE: New Rule, 161CSR2, Telecommunications Payments by Spending Units

FILED AS AN EMERGENCY RULE: June 18, 2004

- par. 1 The Information Services and Communications Division (IS&C) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The IS&C filed this emergency rule with supporting documents with the Secretary of State June 18, 2004 and with the LRMRC June 18, 2004.

par. 7 It is the determination of the Secretary of State that the IS&C has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §5A-7-4a(l) reads:

(l) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty- nine-a of this code to effectuate the purposes of this section. The initial rule filed by the division pursuant to this subsection shall be filed as an emergency rule.

par. 9 It is the determination of the Secretary of State that the IS&C has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the IS&C are as follows:

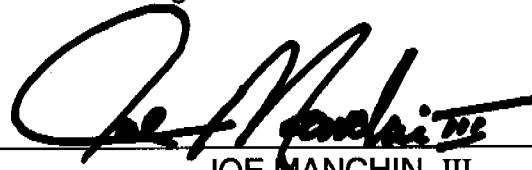
During the past several years there were extremely large claims filed against the State of West Virginia by telecommunications vendors in the Court of Claims for unpaid telephone bills. As a result of those claims, the Legislature passed SB 700 during the 2004 session which requires the Department of 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 & responsibilities of all involved parties & 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 & to preserve the public peace, health, safety & 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 & 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.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" & "time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 7-04 or ERD 7-04 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Information Services and Communications Division, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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