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

Form #3

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2004 AUG 27 P 4:52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Department of ~~Administration~~ Information Services and Communications Div. TITLE NUMBER: 161

CITE AUTHORITY: 5A-7-4a

AMENDMENT TO AN EXISTING RULE: YES x NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Telecommunications payments by Spending Units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Helen Wilson

Authorized Signature

$14.50

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. These rules outline the process involved for implementing the legislation. They also outline the duties and responsibilities of all parties involved and the impact it will have upon them.

Agency: Department of Administration	**Title Number**: 161
Rule Type: Legislative	**Cite Authority**: 5A-7-4a

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

Vendor Comments:

Several comments were received from the various vendors. The comments of substance are reflected below:

Comment 1: Recommend adding to section 8.3.1 the wording "If a portion of an invoice is uncontested, however, IS&C will pay the legitimate uncontested portion of the invoice pending resolution of the disputed portion".

Agency Response 1: The Department of Administration does not agree that the wording should be added. Historically the vendors have not gone back and resolved contested charges and we can not do back billing from year to year. Not paying the bill will encourage the vendor to resolve the issues in order to get their funding.

Amendment 1: No amendment made

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Comment 2: Request that wording be added to 8.1.3 stating that "Those charges must be billed to the spending unit".

Agency Response 2: The Department of Administration can not make the recommended change as these prior charges are not the responsibility of IS&C.

Amendment 2: No amendment made

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Comment 3: In section 8.3.3 it states that vendors must reply within 10 business days to IS&C's notice of dispute. Billing can be complex and 10 days may not be enough to research and propose resolutions to the dispute. Would like the rules to say the vendor must reply within 10 days unless they advise IS&C that additional time is necessary and IS&C may set a reasonable time in which to respond.

Agency Response 3: The Department of Administration can not make any changes as the bills can not be processed timely without the 10 day time limit. If bills are not paid timely it would result in unpaid bills at the end of the fiscal year resulting in claims in the court of claims.

Amendment 3: No amendment made

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Comment 4: In section 8.3.3 the second sentence states that if the vendor does not submit a written response within 10 business days they admit to the contested charges. This sentence should be deleted as the "default judgement" seems overly harsh for missing a deadline.

Agency Response 4: The Department of Administration can not delete this sentence or contested charges will drag out with no prompt resolution. Written response does not require the matter to be resolved in 10 days it just says they must respond and acknowledge the charge contested.

Amendment 4: No amendment made

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Comment 5: In regard to section 8.1.1 a shared account as of July 2004 is unrealistic given the timing of the issuance of these rules. This should be revised to September 2004.

Agency Response 5: The rules can not be modified to meet this request. Emergency rules are currently in affect and any modifications made through this process would not take affect until after their passage during the 2005 legislative session.

Amendment 5: No amendment made

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Comment 6: A definition of "spending unit" should be included.

Agency Response 6: The Department of Administration agrees with this comment and a definition of "spending unit" will be added.

Amendment 6: Amended as requested

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Comment 7: Vendors need to be informed of who was granted exemptions to the rules.

Agency Response 7: The Department of Administration will inform the vendor if an exemption is granted so they will bill appropriately. Does not need to be incorporated into the rules.

Amendment 7: No amendment made

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Comment 8: Not sure if "work days" is comparable to business days.

Agency Response 8: The Department of Administration will define a "business day" and change the word "work days" to business days throughout the rules.

Amendment 8: Amended as requested

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Comment 9: Believe that 10 business days is too long for IS&C to make initial determination as to whether an invoice has contested charges.

Agency Response 9: The Department of Administration can not shorten the time period due to volume of invoices received.

Amendment 9: No amendment made

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Comment 10: Concerned that "marked as received" as written is not in and of itself objectionable and does not provide the default mechanism for determining when an invoice is deemed received.

Agency Response 10: The Department of Administration does not believe that any amendments are necessary as "marked as received" is clearly defined in the WV Code already.

Amendment 10: No amendment made

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Comment 11: The rules state that IS&C will provide by vendor account; information relative to track charges and payments on a "routine basis". Some clarification needs to be given as to how often this will be provided.

Agency Response 11: The Department of Administration has just begun to implement these rules and does not know how often it can provide the information. Additionally, some vendors may need information more frequently than other vendors.

Amendment 11: No amendment made

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Comment 12: IS&C should not have the authority to seek discontinuance of service for non-payment.

Agency Response 12: The rules implement what is already required by WV Code and the decision regarding discontinuance of service was made by the legislature.

Amendment 12: No amendment made

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Comment 13: Vendors should be paid more quickly than 90 days.

Agency Response 13: 90 days is the maximum time period and they may be paid sooner. The WV Code allows for the 90 day time limit except for the end of the fiscal year.

Amendment 13: No amendment made

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Comment 14: The rules do not make it clear from whom the vendor will receive a Telecommunications Change Request from. Does the vendor seek the TCR from the involved spending unit or IS&C.

Agency Response 14: The Department of Administration will amend the rules to state that the TCR will be provided by IS&C

Amendment 14: Amendment made to clarify

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Comment 15: Concerned about the requirement that puts the burden on the vendors to provide a complete list of all spending units currently being direct billed to IS&C for inclusion on the newly created shared account.

Agency Response 15: The Department of Administration believes that the vendor currently does the billing and would be in a better position to provide such a list.

Amendment 15: No amendment made

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Comment 16: The rules state in section 8.3.3 that vendors are provided 10 business days to reply to notice received from IS&C that they are contesting an invoice. When does the 10 days start.

Agency Response 16: The 10 business days starts from the date of the written notification.

Amendment 16: No amendment made

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Comment 17: A time limit should be established as to how long the Cabinet Secretary has to make a decision on a contested invoice.

Agency Response 17: The Department of Administration agrees and will amend the rules to include a 10 day time period.

Amendment 17: Amended as requested

Agency Comments:

Bureau of Employment Programs:

Comment 18: The rules do not establish a specific time frame for payment by agencies to IS&C for telecommunications changes.

Agency Response 18: The rules do not identify this but the WV Code sets a 30 day time period.

Amendment 18: No amendment made

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Comment 19: There is no specific time frame in which IS&C and/or the vendor has to respond to a questioned charge. 6.3 of the rules should have a specified time limit in which the agency would have to be notified of the determination on a questioned charge.

Agency Response 19: The Department of Administration agrees and will amend the rules to include a "10 business day" time limit.

Amendment 19: Amended as requested

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Comment 20: What is the Telecommunications Service Payment and Reserved Fund application and how is it used.

Agency Response 20: This is the initial application on file which provides IS&C with the needed information for non-payment purposes.

Amendment 20: No amended made

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Comment 21: The rule contemplates a service fee to be charged to agencies on an allocated basis. Troubled by the fact that there is no limitation placed on the service fee.

Agency Response 21: The WV Code established the service fee and set the fee at $150,000 annually to be allocated among all spending units.

Amendment 21: No amendment made

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Comment 22: Service fees cannot be charged to federal program sources unless they are promulgated based upon an approved federal cost allocation plan.

Agency Response 22: The Department of Administration is aware of this and already operates under the Office of Management and Budget Circular A-87.

Amendment 22: No amendment made

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Comment 23: The rules state that spending units will have a unique code. Is this the same or different from the current BAC codes used by current telecommunications billing system?

Agency Response 23: Current codes will remain

Amendment 23: No amendment made

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Comment 24: The language that says we must pay the entire statement amount even if certain charges are contested troubles us.

Agency Response 24: The WV Code requires that it be done in this manner and president set with the purchasing card.

Amendment 24: No amendment made

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Comment 25: The rules do not state which telecommunications charges they apply to. We are assuming that we are only talking about central service telecommunications that are currently billed through the DAIN billing system.

Agency Response 25: That assumption is incorrect. The rules apply to all telecommunications services on state contracts.

Amendment 25: No amendment made

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<u>WV Educational Network:</u>

Comment 26: We are a reseller of telecommunications services. Would we be eligible for an exemption to this rule?

Agency Response 26: You would not be exempt as a spending unit. As a reseller your services would be exempt.

Amendment 26: No amendment made

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Comment 27: Have had problems with incorrect rates being charged to the agency and the invoices being paid by the fiscal office as valid. Would IS&C have the authority and mechanism to prevent the revenue loss of the agency?

Agency Response 27: Yes. IS&C would dispute the charges up front and not bill the agency.

Amendment 27: No amendment made

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Comment 28: The agency has been billed for long distance calls placed by another source. Will IS&C know the calls on the invoice are legitimately placed from the correct agency?

Agency Response 28: Each agency will have the responsibility to audit the portion of the invoice.

Amendment 28: No amendment made

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Comment 29: Services for satellite transponder bandwidth would be difficult to schedule as these are ad hoc transmissions and are sometimes used for news services with only 15 minutes notice. Would be a burden for IS&C to staff for booking these satellite feeds on short notice from TCR's.

Agency Response 29: Does not apply as this is not a part of the statewide contract for telecommunications services.

Amendment 29: No amendment made

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Comment 30: Under SWC SAT03 how is IS&C going to be able to check the legitimacy of the charges unless it has access to the logs at the earth stations?

Agency Response 30: Does not apply as this is not a part of the statewide contract for telecommunications services.

Amendment 30: No amendment made

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Comment 31: This department operates conference call facilities available to all WV State agencies and political subdivisions. Are the invoices directly sent to agencies going to IS&C?

Agency Response 31: The Department of Administration can not respond as we need further clarification of the process.

Amendment 31: No amendment made

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Comment 32: Much of our funding is based on our income, this rule could impact our cash flow and impede our operation greatly.

Agency Response 32: The rules should not affect your income or cash flow.

Amendment 32: No amendment made

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Higher Education Policy Commission:

Comment 33: We would like clarification that telecommunications contracts entered into directly by an agency and not through finance and administration are not covered by the rule.

Agency Response 33: That is true as long as the contract between the vendor and the spending unit does not include reference to terms, pricing, etc. of the statewide contract..

Amendment 33: No amendment made

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Comment 34: There should be a cap on the service expense fee.

Agency Response 34: There is a cap of $150,000 as set by the WV Code

Amendment 34: No amendment made

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West Virginia University:

Comment 35: WVU has approved and processed directly all invoices and payments from telecommunications vendors for over 20 years. We request that this continue to be the procedure.

Agency Response 35: IS&C can not give any exemptions to the rules unless approved by the Cabinet Secretary and reported to the Joint Committee for Government and Finance.

Amendment 35: No amendment made

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Comment 36: Shared account invoices need to be communicated to WVU on a more timely basis to allow for review and process for payment.

Agency Response 36: The purpose of the WV Code and the rules is to force timely processing and auditing for accuracy.

Amendment 36: No amendment made

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Comment 37: The Department of Administration would not be the best unit to audit and/or make payment for telecommunications services on behalf of spending units. Having a central unit process payment prevents the spending unit from reviewing these expenditures.

Agency Response 37: Agencies will continue to audit and pay for invoices. The only thing that changes is who they pay. They will pay IS&C rather than the vendor.

Amendment 37: No amendment made.

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WV Conservation Agency:

Comment 38: How much will the service expense fee cost and what will determine how much each spending unit pays?

Agency Response 38: The WV Code sets the fee at $150,000 in aggregate per fiscal year to the participating spending units based upon each spending units' portion of service or usage. The Department of Administration does not yet know what the cost will be to each agency until after we have determined what telecommunications services each agency has.

Amendment 38: No amendment made

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Department of Natural Resources:

Comment 39: Same comments as number 38 above

Agency Response 39: Same response as number 38 above

Amendment 39: No amendment made

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WV Supreme Court of Appeals:

Comment 40: Am I correct in assuming that the rule applies to the invoices presently issued through IS&C and commonly referred to as the "DAIN" invoice? We process several other invoices we receive from Armstrong, Frontier and Verizon.

Agency Response 40: You are not correct in your assumption. The new rules are applicable to all billing for all telecommunications services off of state wide contracts. This would include data circuits.

Amendment 40: No amendment made

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Comment 41: What will the document prepared in accordance with 5.3.1 (d) look like?

Agency Response 41: The Department of Administration has not yet gotten that far with the new procedure but we expect the invoices to look very similar to the ones you currently receive from the vendors.

Amendment 41: No amendment made.

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<u>WV Department of Environmental Protection:</u> Strongly oppose the new rules for several reasons:

Comment 42: Our personnel have the most accurate knowledge of the voice, data, and cellular services. Billing for data circuits provided by IS&C for the past 6 years has been inaccurate.

Agency Response 42: The Department of Administration can not amend the rules as the Legislature has already given the responsibility to IS&C. Agencies, however, will still be responsible for auditing their services.

Amendment 42: No amendment made

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Comment 43: IS&C's track record for paying invoices is not good. The service to the agencies will suffer and more problems will be caused for each agency because their invoices are past due; however, paying invoices will be beyond our control.

Agency Response 43: The Department of Administration can not amend the rules as the Legislature has already given the responsibility to IS&C.

Amendment 43: No amendment made

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Comment 44: Since the Department of Administration does not have knowledge of telecommunications services, the only opportunity to audit invoices for accuracy is after already paid. Each agency should be able to review, audit, and accordingly adjust their invoices to make sure they are paying for the correct services.

Agency Response 44: Each agency will still be responsible for reviewing, auditing and request adjustments to their invoices.

Amendment 44: No amendment made

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Comment 45: The rules state that a telecommunications change request form must be submitted for all requests for services. Will this also include repair services? If so, a great number of problems can arise.

Agency Response 45: This is not addressed in the rules and must be decided as the Department of Administration implements the process.

Amendment 45: No amendment made

19 West Cork Street, Suite 102
Winchester, Virginia 22601
Telephone (540) 723-8877

101 South Queen Street
Martinsburg, West Virginia 25401
Telephone (304) 263-0836

7000 Hampton Center, Suite K
Morgantown, West Virginia 26505
Telephone (304) 285-2500

Bowles Rice McDavid Graff & Love LLP

ATTORNEYS AT LAW

600 Quarrier Street
Charleston, West Virginia 25301

Post Office Box 1386
Charleston, West Virginia 25325-1386
Telephone (304) 347-1100
www.bowlesrice.com

5th Floor, United Square
501 Avery Street
Parkersburg, West Virginia 26101
Telephone (304) 485-8500

333 West Vine Street, Suite 1201
Lexington, Kentucky 40507
Telephone (859) 225-8700

July 16, 2004

Joseph J. Starsick, Jr.
Telephone (304) 347-1183
Facsimile (304) 343-2867

E-Mail Address:
jstarsic@bowlesrice.com

Donna Lipscomb
Executive Coordinator
State of West Virginia
Department of Administration
Building I, Room E-119
1900 Kanawha Boulevard, East
Charleston, WV 25305-0120

Re: Proposed Legislative Rules

Dear Ms. Lipscomb:

Thank you for the opportunity to comment on the Emergency Rule of the Division of Information Services and Communications Division ("IS&C") of the Department of Administration (the "Department"), Title 161, Series 2. On behalf of Verizon West Virginia Inc. ("Verizon WV"), we would like, first, to thank IS&C and the Department for their hard work in supplying information and assistance to the Legislature in connection with the enabling legislation for the Rules. We look forward to continuing to work with IS&C and the Department to achieve the Legislature's objective to ensure prompt payment of legitimate charges for telecommunications services rendered to State spending units. *See* W. Va. Code § 5A-7-4a (a).

As for the Emergency Rules, in general they are well-drafted and acceptable to Verizon WV. We do have a few respectful comments, however, that we would ask you please to take under advisement:

1. We believe that the Rules should clarify that, if an invoice is disputed, the State will pay the undisputed portion of the invoice pending resolution of the dispute. There certainly is no reason not to pay legitimate charges, and we believe that doing so within the then-current fiscal year was precisely the objective of the Legislature in passing W. Va. Code § 5A-7-4a. Accordingly, we respectfully recommend that the following language be added to the end of Section 5.1.3 of the Rules: "If a portion of an invoice is uncontested, however, IS&C will pay the legitimate uncontested portion of the invoice pending resolution of the dispute in accordance with

this Legislative Rule." For the same reasons, we respectfully recommend that the same language be added to the end of Section 8.3.1.

2. In order to clarify Section 8.1.3, we request that the following sentence be added to the end of that Section: "Those charges must be billed to the spending unit." In order to achieve the Legislature's objective that all legitimate charges for telecommunications services must be paid, either the spending unit or IS&C must pay for telecommunications services. If a legitimate charge is inadvertently missed in preparing the shared account, it still should be paid, albeit by the spending unit. We believe that this is the intent of this Emergency Rule, and that it merely needs to be clarified.

3. The first sentence of Section 8.3.3 requires that the Vendor reply within ten business days to IS&C's notice of a dispute as to how the Vendor will provide the resolution being sought. In general, Verizon WV believes that it should be able in most cases to comply with the ten-business-day deadline. However, as IS&C is well aware, the provision and billing of telecommunications services can be extremely complex, and in some cases ten business days may not be enough time to research and propose resolutions to disputes.

Moreover, the first sentence of Section 8.3.3 seems to imply that the resolution being sought in the IS&C's dispute notice is necessarily the correct result. We imagine that, often, a putative billing dispute will be at the request of the Spending Unit. As IS&C is aware, the Spending Unit is not always correct.

We therefore respectfully ask that the first sentence of Section 8.3.3 be replaced by the following: "The vendor will have ten business days to reply to the IS&C's notice, unless within those ten business days the vendor notifies IS&C that additional time is necessary to respond to the notice. If additional time is requested, IS&C may set a reasonable time in which a response must be provided by the vendor. The response in any event must state clearly the position of the vendor on the contested amount."

4. The second sentence of Section 8.3.3 states that "If the vendor does not submit a written response within ten business days, it admits to the contested charges and will provide the resolution being sought by IS&C." However, it is entirely possible that the notice of the contest may be misdirected, that the responsible persons may be on vacation or that the ten-business-day deadline may be missed for other reasons or excusable neglect. The automatic "default judgment" seems an overly harsh penalty for missing a relatively short deadline. The aim of the Rules, instead, should be to do substantial justice, particularly in light of the Legislature's clearly stated intention that legitimate charges are to be promptly paid. Thus, we respectfully ask that the second sentence of Section 8.3.3 be deleted.

Bowles Rice
McDavid Graff & Love LLP

Thank you, again, for this opportunity to comment.

Very truly yours,

Joseph J. Starsick, Jr.

AT&T

Mark A. Keffer
Chief Regulatory Counsel
Atlantic Region

Room 3-D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6046
FAX 703 691-6093
INTERNET mkeffer@lgamgw.attmail.com

July 16, 2004

Donna Lipscomb
Executive Coordinator
State of West Virginia
Department of Administration
Building I, Room E-119
1900 Kanawha Boulevard, East
Charleston, WV 25305-0120

Re: Proposed Legislative Rules

Dear Ms. Lipscomb:

Please accept on behalf of AT&T Corp. the following comments on the Emergency Rule of the Division of Information Services and Communications Division ("IS&C") of the Department of Administration (the "Department"), Title 161, Series 2.

1. AT&T requests that the Rules be clarified to state that, in any circumstances where the State disputes an invoice, the State will pay the undisputed portion of the invoice pending resolution of the dispute. Where AT&T is the State's service provider, AT&T should be paid the legitimate uncontested charges on the invoice in a timely manner. Payment of the undisputed charges would be consistent with the intent of W. Va. Code § 5A-7-4a. Accordingly, AT&T respectfully recommends that the following language be added to end of Section 5.1.3 of the Rules: "If a portion of an invoice is uncontested, however, IS&C will pay the legitimate uncontested portion of the invoice pending resolution of the dispute in accordance with this Legislative Rule." For the same reasons, AT&T also respectfully recommends that the same language be added to end of Section 8.3.1.

2. AT&T is concerned that the Rule's target date of July 2004 for the vendors to create the new shared accounts is unrealistic given the timing of the issuance of these Rules. Accordingly, the July 2004 date in Section 8.1.1 should be revised to September 2004 and the other dates in Sections 8.1.2 and 8.1.3 should be modified accordingly.

3. AT&T also seeks to clarify Section 8.1.3 by adding the following sentence to the end of that Section: "Those charges must be billed to the spending unit." Clearly, in order to achieve the Legislature's objective that all legitimate charges for telecommunications services must be paid, AT&T must have the ability to charge either the spending unit or IS&C for the

telecommunications services AT&T renders. If a vendor inadvertently overlooks a legitimate charge in preparing the invoice for the shared account, it still should be paid, albeit by the spending unit. Here again, this requested change is consistent with the intent of this Emergency Rule, and therefore AT&T requests that it be so clarified.

4. The second sentence of Section 8.3.3 states that "If the vendor does not submit a written response within ten business days, it admits to the contested charges and will provide the resolution being sought by IS&C." AT&T cannot support this sentence. As you know, it is entirely possible that the contest notice may be misdirected, that the responsible persons may be out of the office on vacation or business or that the ten-business-day deadline may be missed for other legitimate and excusable reasons. The penalty imposed by this section seems fairly draconian for missing a relatively short deadline. In AT&T's view, justice would be better served, particularly in light of the Legislature's clearly stated intention that legitimate charges are to be promptly paid, by eliminating the second sentence of Section 8.3.3.

5. AT&T also has concerns with the first sentence of Section 8.3.3 which requires that the Vendor reply within ten business days to IS&C's notice of a dispute. As a general matter, AT&T will be able in most cases to comply with the ten-business-day deadline. However, due to the complexity of the provisioning and billing of telecommunications services, it is entirely foreseeable that in some circumstances ten business days may not be enough time to research and propose resolutions to disputes.

Additionally, the first sentence of Section 8.3.3 seems to imply that the resolution being sought in the IS&C's dispute notice is necessarily the correct result, which may not always be the case.

Accordingly, AT&T also respectfully asks that the first sentence of Section 8.3.3 be replaced by the following: "The vendor will have ten business days to reply to the IS&C's notice, unless within those ten business days the vendor notifies IS&C that additional time is necessary to respond to notice. If additional time is requested, IS&C may set a reasonable time in which a response must be provided by the vendor. The response in any event must state clearly the position of the vendor on the contested amount."

Thank you for this opportunity to comment.

Sincerely,

Mark A. Keffer

Mark A. Keffer

FIBERNET
211 LEON SULLIVAN WAY • CHARLESTON, WV 25301 • 304.720.2101 • FAX: 304.720.2121

July 16, 2004

Donna Lipscomb
Executive Coordinator
Department of Administration
1900 Kanawha Blvd., East
Building 1, Room E-119
Charleston, WV 25305-0120

Re: Proposed Legislative Rules

Dear Ms. Lipscomb:

In response to your June 18, 2004, letter to all telecommunications vendors in West Virginia, enclosed for your consideration please find an original and one (1) copy of **"FiberNet's Comments on Proposed Legislative Rules Governing Telecommunications Payments by Spending Units."**

If you have any questions regarding FiberNet's comments, please feel free to contact me directly at your convenience. I may be reached directly by telephone at (304) 720-2159, by facsimile at (304) 720-2121, or by e-mail at shamula@wvfibernet.net.

Sincerely,

STEVEN HAMULA
Director of Regulatory Affairs
FiberNet, LLC

SH/s
Enclosures

328 Neville Street
Beckley, WV 25801
304.929.2101
Fax: 304.929.2114

900 Fairmont Avenue
Suite 201
Fairmont, WV 26554
304.333.2101
Fax: 304.333.2114

1102 Third Avenue
Huntington, WV 25701
304.781.2101
Fax: 304.781.2114

412 Market Street
Suite 203
Parkersburg, WV 26101
304.865.2101
Fax: 304.865.2114

38 Fifteenth Street
Suite 200
Wheeling, WV 26003
304.230.2101
Fax: 304.230.2114

225 South Maple Ave.
Greensburg, PA 15601
724-216-9101
Fax: 724.216.9114

114 12th Street
Altoona, PA 16601
814.296.2101
Fax: 814.296.2114

1968 Rock Cliff Drive
Martinsburg, WV 25401
304.596.2101
Fax: 304.596.2114

1003 Broad Street
Suite 124
Johnstown, PA 15906
814.361.2101
Fax: 814.361.2114

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

Re: TITLE 161 -- DEPARTMENT OF ADMINISTRATION
INFORMATION SERVICES AND COMMUNICATIONS (IS&C)

FIBERNET'S COMMENTS ON PROPOSED LEGISLATIVE RULES GOVERNING TELEOMMUNICATIONS PAYMENTS BY SPENDING UNITS

Now comes FiberNet, LLC ("FiberNet") to respectfully submit these comments on the Department of Administration's ("Department") proposed Legislative Rules ("Rules") regarding telecommunications payments by spending units. Although FiberNet certainly appreciates the statutory impetus behind the Department's efforts to craft the Rules necessary to establish a more structured and centralized method of paying for the telecommunications services being utilized by its respective spending units, FiberNet is nonetheless concerned about the ambiguity in these Rules related to the processing and timely payment of legitimate telecommunications invoices.

§161-2-3. Applicability.

Although §161-2-3.1 provides that the Department's proposed Rules are applicable 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, the definition of "spending units" is neither provided for in the Rules nor in the underlying statutory language contained in West Virginia Code §5A-7-4a. FiberNet believes this apparent oversight needs to be addressed and corrected so that vendors know exactly which agencies and departments (spending units) of state government are covered by these Rules.

This is especially important in light of the exemption option provided for in §161-2-3.2. Specifically, §161-2-3.2 allows any state spending unit to petition the Department's Secretary and the Joint Committee of Government and Finance for an exemption from participation in the shared account established by the Rules. Needless to say, it is extremely important for vendors like FiberNet to know which, if any, state spending units are granted exemptions from participation in the shared account so that direct billing for telecommunications services can be continued or established for these spending units. More importantly, the Rules are silent as to where, or even if, vendors can find and access information concerning those state spending units that are exempt from participation in the shared account.

The proposed Rules also do not discuss the timing and processing of such exemption requests. How long does the Department Secretary have to make a determination as to whether to grant the requested exemption? What are the criteria to be used by the Department Secretary in evaluating exemption requests? How long does the Department Secretary have to make a final decision on an exemption request, and does an involved spending unit have the right to challenge the Department Secretary's determination if an exemption request is denied? These are some but by no means all of the questions that need to be addressed on the issue of exemptions from the shared account. FiberNet would thus urge the Department to further elaborate on the processing of exemption requests under the proposed Rules so that spending units, and by extension the vendors that currently provide telecommunications services to these spending units, know when exemptions have been granted and can access accurate information regarding what specific spending units have been exempted.

§161-2-5. IS&C Duties and Rights.

In §161-2-5.1.2, IS&C is provided with ten (10) business days in which to evaluate a vendor invoice for purposes of determining whether said invoice constitutes a "legitimate uncontested invoice" as this term is defined in the Rules. However, this period of time given for evaluation is not specifically provided for in the underlying statute, and FiberNet believes that ten (10) business days is far too long a period of time for IS&C to merely make an initial determination as to whether a vendor invoice meets the requirements for an "legitimate uncontested invoice." FiberNet believes that a period of five (5) business days would be more than sufficient for IS&C to make its initial determination as to whether an invoice is a "legitimate uncontested invoice." FiberNet would thus urge that §161-2-5.1.2 be revised to allow IS&C only a five (5) business day period to review and decide that a properly received vendor invoice meets the definition of a "legitimate uncontested invoice."

The aforementioned section also is confusing when compared to §161-2-5.2.1, which provides that the vendor will be notified in writing of the rejection of an invoice within fourteen ***"work days"*** of receipt of the invoice by IS&C. FiberNet is not sure whether the term ***"work days"*** as it is being used in §161-2-5.2.1 is supposed to be comparable to the ten ***"business days"*** time period being used in §161-2-5.1.2 or not, but FiberNet asserts that the Rules should endeavor to be consistent wherever possible, and a good place to start would appear to be the discrepancy between ***"work days"*** versus ***"business days"*** as those terms are being generally used in §161-2-5.

Moreover, §161-2-5.2.2 provides that an invoice will not be considered "received" until they are "marked as received" by IS&C and deemed to fulfill the requirements of a legitimate uncontested invoice. While this section as written is not in and of itself objectionable, it does not provide the default mechanism for determining when a vendor invoice is deemed "received" as contained in West Virginia Code § 5A-7-4a(j). Specifically, Code § 5A-7-4a(j) provides in pertinent part that *"an invoice is considered received by the division on the date the invoice is marked as received by the division,* ***or three business days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier…"***. (Emphasis Added). Accordingly, FiberNet would suggest that § 161-2-5.2.2 be modified to include the aforementioned statutory language contained in Code § 5A-7-4a(j).

Finally, § 161-2-5.5.2 provides that IS&C will, by vendor account, track charges and payments and will make this information available to vendors on "a routine basis." Again, FiberNet does not object to this particular Rule, but FiberNet does believe that it needs some further clarification so that vendors have a better understanding of exactly when this "charges and payments" information will be provided to the vendors. Is this information to be provided to vendors on a monthly basis? A quarterly basis? Semi-annually? In short, the current language is simply too ambiguous to be of any real benefit to vendors and thus needs to be more specifically drafted so as to better define exactly when "charges and payments" information will be released by IS&C to interested telecommunications vendors.

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

The initial language found in § 161-2-6 provides in effect that 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 further that all requests for telecommunications services must be obtained by submitting to IS&C a Telecommunications Change Request form. While uniformity is a worthwhile goal, this language would again appear to be in conflict with the exemption option provided for in §161-2-3.2. In other words, § 161-2-6 would appear to compel spending units currently receiving telecommunications services pursuant to a state-issued contract to participate in the shared fund to be administered by IS&C. However, as noted earlier, § 161-2-3.2 provides spending units, presumably even those currently receiving telecommunications services under a state-issued contract, with the ability to request an exemption from participation in the shared account. Consequently, FiberNet believes that the Rules should be clarified either in § 161-2-3.2 or in § 161-2-6 so as to be consistent with respect to a spending units participation in the shared account – especially those that happen to be receiving their telecommunications services via a state-issued contract.

Furthermore, § 161-2-6.1.1 provides that 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. This entire issue of IS&C having the ability to request or seek discontinuance of telecommunications services currently being provided to a particular spending unit is a matter that FiberNet intends to address in its comments on the Late Payment section of the proposed Rules. However, FiberNet has serious concerns about vesting this kind of unilateral authority with IS&C. Specifically, FiberNet is concerned as to what happens if IS&C mistakenly requests interruption or discontinuance of telecommunications services to a spending unit. In this regard, FiberNet wishes to emphasize the fact that once telecommunications facilities or services are interrupted or discontinued, restoration of these facilities or services at a later point in time is no easy task.

§ 161-2-7. Payments.

As an initial matter, FiberNet realizes that § 161-2-7.2's requirement that IS&C is to make full payment to all telecommunications vendors within ninety (90) days of receiving a legitimate uncontested invoice for shared accounts has its origin in West Virginia Code § 5A-7-4a(g). Having said that, however, it is FiberNet's hope that payment of its legitimate uncontested invoices can be accomplished much sooner than the allotted 90-day period. Since FiberNet bills its state telecommunications customers 30-days in arrears to begin with, it is quite possible under the proposed Rules that FiberNet would not receive payment for its legitimate uncontested invoices for up to 120-days, and of course, this presupposes that FiberNet's invoice will not be challenged or contested by either the underlying spending unit or by IS&C. Obviously, if one of its invoices is challenged or contested, even more time will elapse before FiberNet stands to receive payment for the provision of its telecommunications services.

Under § 161-2-7.3, IS&C, with the approval of Department Secretary, may seek the discontinuance of a spending unit's telecommunications services on account of the failure of that spending unit to transfer the funds necessary to pay legitimate vendor invoices. While FiberNet understands the need for IS&C to have the ability to ensure that spending units transfer the funds necessary to pay legitimate vendor invoices in a timely fashion, FiberNet would respectfully urge IS&C and the Department Secretary to make interruption or discontinuance of existing telecommunications services to be a last resort. As noted previously, once FiberNet acts to interrupt or discontinue telecommunications services and facilities, the restoration of those services can sometimes take several days or perhaps longer to accomplish. Obviously, this type of telecommunications service interruption or discontinuance could adversely effect the efficient operation of the underlying spending units.

§ 161-2-8. Vendors' Duties and Rights.

The initial language in this section provides that vendors are to provide telecommunications services to spending units on the shared account only upon the receipt of an authorized Telecommunications Change Request form. This introductory language further provides that IS&C is not responsible for the payment of charges associated with the provision of telecommunications services provided to a spending unit without a valid Telecommunications Change Request. While FiberNet acknowledges the need for this Telecommunications Change Request form, the proposed Rules do not make clear from whom the vendor is supposed to receive the Telecommunications Change Request form – either the spending unit or IS&C. Does the vendor seek the Telecommunications Change Request form from the involved spending unit or is it only officially to come from IS&C -- which appears to be the only entity empowered to approve such requests for new telecommunications services under § 161-2-6?

In addition, FiberNet is concerned about the requirement contained in § 161-2-8.1.2 that puts the burden on vendors to provide a complete list of all spending units currently being direct billed to IS&C for inclusion on the newly created shared account by no later than October 1, 2004, and similarly FiberNet is concerned about § 161-2-8.1.3 which provides that any charges incurred from July 1, 2004 to December 31, 2004 that are not merged on to the new shared account shall not be the responsibility of IS&C unless authorized by the Department Secretary.

In this regard, FiberNet believes a much better process would be to require each involved spending unit to provide appropriate documentation to IS&C, which in turn could then be shared with all of the involved telecommunications vendors. This process would be far more accurate in FiberNet's view, and would also act to prevent situations such as that contemplated under § 161-2-8.1.3, in which vendors run the risk of not being paid for telecommunications services legitimately being provided to state spending units merely because such telecommunications services do not appear on the newly created shared account.

With respect to § 161-2-8.2.1, vendors are required to submit all invoices to IS&C that include more than one spending unit. Once again, FiberNet is not clear in the first instance as to what constitutes a "spending unit" as the term is being used in these Rules or about the type of situation in which invoices, presumably for the same provision of telecommunications service, would be submitted to "more than one spending unit." Accordingly, FiberNet recommends that the Rules be revised so as to better clarify these questions.

Further, § 161-8-2.1 requires that vendors providing services to spending units governed by the pricing contained in an applicable state-issued contract must have the charges associated with these services included on the shared account, and in addition, §

161-8-2.1 requires that all shared account invoices be mailed to IS&C's Telecommunications Unit. FiberNet is concerned first about whether spending units receiving telecommunications services pursuant to a state-issued contract are eligible for exemption from participation in the shared account as is provided for under § 161-2-3.2. If these spending units are indeed still eligible for exemption and can petition the Department Secretary for the same, how are the vendors to be notified of the granting of these exemptions so that direct billing of these spending units can be maintained.

Additionally, under § 161-2-8.3.3, vendors are provided with ten (10) business days to reply to notice received from IS&C that IS&C is contesting an invoice. However, this section does not specify whether this ten (10) business day period is started as of the date of the IS&C notice or is started upon the actual receipt of the IS&C notice by the vendor. In order to be consistent, FiberNet believes that § 161-2-8.3.3 ought to be revised to include the default start date calculation language embodied in West Virginia Code § 5A-7-4a(j).

Moreover, FiberNet believes that vendors should be provided with the opportunity to request more time in which to provide a written response back to IS&C. As noted above, the language in § 161-2-8.3.3 requires a written response to be provided within ten (10) days. However, depending on when the ten (10) business day period for a response is actually triggered, this particular period of time may not always provide adequate time for the involved vendor to adequately research and respond to the notice received from IS&C that an invoice is being contested. Consequently, FiberNet recommends the inclusion of some language in § 161-2-8.3.3, which allows the vendor to request and for IS&C to grant more time for the submittal of written responses by vendors in cases where notification is received that an invoice is being contested by IS&C.

Finally, in situations in which IS&C and the involved vendor cannot agree to a mutually agreeable resolution of a contested invoice, the Department Secretary is empowered under § 161-2-8.3.3 to make the final decision as to the legitimacy of the contested invoice. While FiberNet has no objection to the Department Secretary being given this authority, FiberNet does believe that some definitive timeframe, perhaps thirty (30) days, ought to be established by which the Department Secretary is required to render a final decision on the legitimacy, or lack thereof, of contested invoices that cannot in the first instance be resolved by IS&C and the vendor. As it stands presently, final action by the Department Secretary is left open ended and could conceivably take several months, which does not work to the benefit of either IS&C, the involved spending units or the vendor.

Respectfully submitted this 16th day of July, 2004.

FiberNet, LLC

By Counsel,

Steven Hamula, Esquire (SB # 4580)
211 Leon Sullivan Way
Charleston, WV 25301

Tele: (304) 720-2159
Fax: (304) 720-2121
Email: shamula@wvfibernet.net

Bob Wise
Governor

Quetta Muzzle
Acting Commissioner

West Virginia Bureau of Employment Programs
• Job Service • Labor Market Information
• Unemployment Compensation
an equal opportunity/affirmative action employer

July 19, 2004

Donna Lipscomb, Executive Coordinator
Department of Administration
Cabinet Secretary's Office
Building 1, Room E-119
1900 Kanawha Boulevard, East
Charleston, WV 25305-0120

Dear Ms. Lipscomb:

In response to your correspondence of June 18, 2004, which communicated the proposed legislative rule related to telecommunications payments by spending unit. I believe that the rule is general a good effort that is greatly needed within state government. However, we did have several items on which we would like to comment. They are as follows:

- The proposed administrative rule does not establish a specific time frame for payment by the agencies to Information Services and Communications (IS&C) for centralized telecommunication charges. We feel that it is critical that the expectation of the agency be clearly defined in this matter. Therefore, we would like to see a specified number of business or calendar days placed into the rule to indicate how long an agency has to make payment. Most agencies are experiencing reduced staffing due to budget cuts. It is important that we have a clear understanding of the expectation so that we can prioritize our work.

- Similar to the item above, there is no specified timeframe in which IS&C and/or the vendor has to respond to a questioned charge. I would refer you to 6.3 of the rule. I believe that this should have a specified time limit in which the agency would have to be notified of the determination on the questioned charge. If this is not possible as a minimum, then they should be notified within a given number of days of the anticipated completion date of the resolution of the contested item. This is especially critical in that our federal grants require us to close out our grant and report final charges within ninety days of the end of the grant period.

- Section 6.11 refers to something called a fund application. The full name given in the rule for this fund application is the Telecommunications Service Payment and Reserved Fund application. What this is and how it is used is very unclear in the proposed rule. Is this a form for payment? Is this an application in which the form of payment would be specified and set forth? Once again, there is no time frame for remittance. Also, it refers to a statement date but it does not say how the statement date relates to the fund application or the time frames. We feel that this item needs to be clarified so that it is clearly understood what type of payment is required and whether new processes must be put in place in order to implement this rule.

- The rule contemplates a service fee to be charged to agencies on an allocated basis. We are troubled by the fact that there is no limitation placed on this service fee in either dollars or percentages and no approval process for an annual budget for this item. It is important that costs be controlled wherever possible as nearly all agencies in state government are suffering from budgetary constraints. Repeatedly we have seen administrative fees considerably increased with little or no increase in service levels. More often, the increase in fees is coupled with a declining service level. Therefore, we feel that some sort of budgetary control must be placed on the service fee in order for it to be acceptable to us as an agency. Furthermore, that service fee should be linked with certain performance expectations. Not only as it relates to billing but also as it relates to time frame of requested changes to centralized communication systems.

- Also, in relation to the service fee, the Bureau needs to make you aware that we are a 100 percent federally funded agency. In addition, many of the other state agencies are funded all or in part federal funds. Service fees cannot be charged to federal program sources unless they are promulgated based upon an approved federal cost allocation plan. (See Office of Management and Budget Circular A-87.) This could be a part of the statewide cost allocation plan or as part of an IS&C or telecommunication specific plan that is approved by the State of West Virginia's federal cognizant agency. The Bureau would be unable to compensate IS&C for fees until such a plan was in place as they would not be an allowable charge to our federal grants.

- Likewise as it relates to the federal funds discussed above, any costs that were later determined to be inappropriate that were charged to a federal source can become a liability to the State of West Virginia in that the federal grantors can require us to reimburse them. Therefore, it is critical that the rule address anticipated disallowed costs in the subsequent audits or federal reviews and who is responsible for both researching these questioned costs and funding any ultimate payment of them. The Bureau does not have unrestricted funds to use for the payment of these types of costs and would have to seek a general revenue appropriation to pay them.

- The proposed rule mentions that spending units will have a unique code. Is this the same or different from the current BAC codes that are used by the current telecommunications billing system? If so, will there be a conversion of these codes from the existing system or will a completely new set of codes and systems have to be put in place. Such activities, even though they may be necessary, can be quite burdensome to the agencies using these services with no additional funds or resources available to do so. Therefore, it is important for planning purposes that we have a clear idea of what the expectation on the agency is as far as helping set up these new "unique" codes.

- The language that says we must pay the entire statement amount even if certain charges are contested especially troubles us. We have routinely been billed for certain charges that we are not allowable to pay under state code. A good example is the *69 charges because they are not authorized under state telecommunications contracts. Will these items be removed from the billing before it is transmitted to the agency? If they are truly erroneous and are something that cannot be paid by a state agency, are we still required to remit them? Furthermore, we are especially concerned by this requirement in that there is no stipulation that says how long it will be before we are credited back for these. However, we are required to close all federal grant funds and file close out reports within ninety days of end of their particular period. Therefore, it is necessary that all credit be received and applied before the end of that ninety-day period in order for our financial records to be correct and our grant close outs to be accurate. We feel that it is especially important that a time frame be placed on the credit.

- The proposed rule does not really state to which telecommunications charges these apply. We are assuming that we are only talking about central service telecommunications that are currently billed through the DAIN billing system. Are we correct in this assumption? This needs to be clearly specified in the rule.

Thank you for the opportunity to comment on the proposed rule. If you have any questions about our comments or need any additional information or examples, please feel free to contact at 558-2631 or mmiller@wvbep.org.

Respectfully yours,

Mark S. Miller
Deputy Commissioner of Administration

MSM/wss

Attachment

pc: Helen Wilson
Sherry Kirk
Gary Blankenship
Telephones File

h:\2005\telephones\doa\proposed\rule\071904

WV Educational Network

114 Cole Complex
PO BOX 1000
Institute, WV 25112-1000

July 16, 2004

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Blvd E
Building 1 Room E-119
Charleston, WV 25305
dliscomb@wvadmin.gov

Dear Sir or Madam:

This is a response to a request for comments on SB 700 bill ISC (161-02).

Some comments concerning this rule change and their effect on this department of a WV State Agency. These comments are from personal interpretations of the proposed rule changes:

1. WV Educational Network is a reseller of telecommunication services, IE: (Telephone Conferencing, Satellite uplinking services). Would WV Educational Network be eligible for an exemption to this rule?
2. History with some telecommunications vendors, namely AT&T, has had the problems with incorrect rates being charged this agency and the invoices being paid by the fiscal office as valid. This was brought to AT&T's attention and it took 2 years before an adjustment was made to current charges to nearly come to the contract rate. A complete refund or credit was requested and only partial credits have been issued to the account. This is one instance that IS&C operating under the proposed rules would have caught the overcharge sooner. But would ISC have the authority and mechanism to prevent the revenue loss of the agency.
3. AT&T has also invoiced this department of an agency on its State Calling Service account for long distance calls placed from Thomas Memorial Hospital. Again only partial credit has been issued to the account. Under the proposed rules how will IS&C know that the calls on the invoice are legitimately placed from an agencies facilities?
4. Services for satellite transponder bandwidth on SWC SAT03 would be difficult to schedule as these are ad hoc transmissions and are sometimes used for news services with only 15 minutes notice. The scheduling of this service is done directly by the department now. I believe this would be a burden to IS&C to staff 24x7 services for booking these satellite feeds on short notice from TCRs (Telecommunication Change Requests).
5. Under SWC SAT03 how is IS&C going to be able to check the legitimacy of the charges unless it has access to the logs at the earth stations?
6. This department of an agency operates conference call facilities available to all WV State Agencies and political subdivisions. Are the invoices that are directly sent to agencies going to go to IS&C under this rule change?
7. Because much of WV Educational Network's funding is based on our income, this rule could impact our cash flow and impede our operation greatly.

Sincerely,

WV Educational Network Staff

Garvey Price and Matt Wood

garvey@wvstateu.edu and matt@wvstateu.edu

From: "Bruce Walker" <walkerb@HEPC.WVNET.EDU>
To: <dlipscomb@wvadmin.gov>
Date: 7/16/04 4:52PM
Subject: Telecommunications Payments Rule

As comment on this rule we would like it clarified that telecommunications contracts entered into directly by an agency and not through F&A are not covered by the rule. Also there should be cap on the Service Expense Fee.

Bruce Ray Walker

General Counsel

West Virginia

Higher Education Policy Commission

Suite 700, 1018 Kanawha Blvd. East

Charleston, WV 25301

304-558-0695

walkerb@hepc.wvnet.edu

From: "Timothy Williams" <Timothy.Williams@mail.wvu.edu>
To: <dlipscomb@wvadmin.gov>, <HWILSON@wvadmin.gov>
Date: 7/12/04 2:47PM
Subject: Telecommunications Payments by Spending Units

I am writing to comment on the proposed rule related to Telecommunications Payments to Spending Units.

a. West Virginia University presently and has in the past twenty years approved and processed directly all invoices and payments from Telecommunication vendors totaling over $5 million annually. This process has proved efficient and allows WVU to work directly with each vendor to ensure the invoices are paid accurately and timely. In addition, WVU is able to adjudicate any issues relating to these invoices/services/payments directly with the vendors. It is our request this continue to be the procedure.

b. Shared account invoices need to be communicated to WVU on a more timely basis to allow for review and process for payment. This improved process would reduce the time between vendor invoicing and state agency payments. Invoices can be reviewed for accuracy and be processed within the mandated time frames. If this process were implemented it would reduce the need to set up an additional account structure and intended overhead.

If you need additional information or clarification do not hesitate to contact me.

Timothy P. Williams
West Virginia University
Director of Telecommunications
and Collaborative Partnerships

304 293-0577 (office)
304 293-3994 (Fax)
email Timothy.Williams@mail.wvu.edu

CC: "Beth Wyant" <Beth.Wyant@mail.wvu.edu>, "Cindy Marn" <Cindy.Marn@mail.wvu.edu>

From: "Tackett, Angi" <ATackett@wvca.us>
To: <dlipscomb@wvadmin.gov>
Date: 7/9/04 3:53PM
Subject: Proposed Telecommunications Legislative Rules

The WV Conservation Agency has reviewed the above referenced Legislative Rule proposed change. Our comments/questions about this proposed change are:

Item 161-2-4,4.4 (e) discusses a "Telecommunications Service Expense fee' that will be assessed to all spending units. How much will this fee increase Agency telecommunication cost? What will determine how much each spending unit pays?

Will spending units have the opportunity to verify and approve charges prior to payment?

Angi Tackett
Assistant Division Director
WV Conservation Agency
1900 Kanawha Blvd., East
Charleston, WV 25305-0193
phone: 304.558.2204
fax: 304.558.1635
email: atackett@wvca.us <mailto:atackett@wvca.us>

From: Donna Lipscomb
To: Tackett, Angi
Subject: Re: Proposed Telecommunications Legislative Rules

Thank you for your comments. I will try to respond as best I can for now as we are still in the process of trying to implement the requirements of the legislation.

Senate Bill 700 states that to help defray the cost of administering the section a fee of up to $150,000 in aggregate per fiscal year to the participating spending units based upon each spending units' portion of service or usage. We do not yet know what the costs will be to each agency until after we have determined what telecommunications each agency has.

IS&C will be the one who determines what each spending unit pays.

Yes, each spending unit will be required to review, verify and approve the bills prior to payment.

If you have any more questions just let me know.

>>> "Tackett, Angi" <ATackett@wvca.us> 07/09/04 03:52PM >>>
The WV Conservation Agency has reviewed the above referenced Legislative Rule proposed change. Our comments/questions about this proposed change are:

item 161-2-4,4.4 (e) discusses a "Telecommunications Service Expense fee' that will be assessed to all spending units. How much will this fee increase Agency telecommunication cost? What will determine how much each spending unit pays?

Will spending units have the opportunity to verify and approve charges prior to payment?

Angi Tackett
Assistant Division Director
WV Conservation Agency
1900 Kanawha Blvd., East
Charleston, WV 25305-0193
phone: 304.558.2204
fax: 304.558.1635
email: atackett@wvca.us <mailto:atackett@wvca.us>

From: Cynthia Good
To: Donna Lipscomb; Helen Wilson
Date: 7/8/04 10:15AM
Subject: Reply to DNR's question

Donna,

As we discussed on the phone, the Enrolled Senate bills has language that says:

(i) To help defray the additional cost of administering this section, the director may assess a proportional fee of up to **one hundred fifty thousand dollars in aggregate per fiscal year** to the participating spending units based on each spending unit's portion of service and usage. This fee is to be included in the statement sent to spending units pursuant to subsection (c) of this section and transferred to the telecommunications service payment and reserve fund by the date specified in the statement for the transfer of payment.

Also see attached sections from the proposed rules that outline this issue. There may be something else that I have missed and once Stephanie and Helen gets out of their meeting, they may have more to comment on.

I do know that we have not determined how this is going to be allocated. That is still in the works.

Thank you , and have a Joyful Day!

Cynthia Good,
Administrative Services Assistant
Department of Administration- IS&C
558-5472 ext 5981

CC: Judie Barnes; schafin@wvadmin.gov

§161-2-2. Definitions.

(a.) "Administration costs" means the costs (personnel, supplies, etc.) associated with administering the Legislative Rules governing W. Va. Code §5A-7-4a.
(b.) xx
(c.) xx
(d.) xx
(e.) xx
(f.) xx
(g.) xx
(h.) xx
(i.) xx
(j.) xx
(k.) xx
(l.) xx
(m.)xx
(n.) xx

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

§161-2-4. Authority of the Director.

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

§161-2-5. IS&C Duties and Rights.

5.3. Statements to Spending Units

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

From: "Beth Wyant" <Beth.Wyant@mail.wvu.edu>
To: <dlipscomb@wvadmin.gov>
Date: 7/7/04 2:36PM
Subject: Telecommunications Payments

It is the opinion of West Virginia University's Telecommunications Department that the Department of Administration would not be the best unit to audit and/or make payment for telecommunications services on behalf of the spending units. It would undoubtedly be better for the telecommunications vendors, but not for the units. In the past WVU has requested that services be disconnected, but we continue to be charged well past the date of the requested disconnect. Often the volume of work is so great at that level that it is nearly impossible to realize when services are no longer required. Having a central unit process payment prevents the spending unit from reviewing these expenditures as well.

It would be far better if the vendors would extend the contract pricing to the spending units, and create individual invoices/statements for each. The vendors would be paid in a more timely manner, the spending units would maintain control of their spending, the Department of Administration could reduce the amount of effort involved in maintaining the billing system, and the individual units would be more aware of the services for which they are paying. Decentralization of the process would serve the State far better than the centralization of such.

If you wish to discuss this in greater detail, please do not hesitate to contact me.

Sincerely,

Beth Wyant

Beth Mancinelli Wyant
Manager, EBO
Office of Information Technology
PO Box 6503
Morgantown, WV 26506-6503
Voice: 304-293-2152
Fax: 304-293-6726

From: Donna Lipscomb
To: Proops, Mike
Date: 6/28/04 9:48AM
Subject: Re: Proposed Legislative Rules

You are not assuming correctly as the new rules will be applicable to all billing for all services off of the statewide contracts. It is my understanding that the supreme court has data circuits with verizon and frontier as well as some shared facility billing that would be rerouted to IS&C for payment. You may also have some direct billing off of the statewide contract and if so that would also be rerouted to IS&C. To my knowledge there is no statewide contract with Armstrong so the rules would not be applicable for their billing.

As far as the document prepared in accordance with 5.3.1 (d) we have not yet gotten that far with the new procedure but expect the invoices to look very similar to the ones you currently get from the vendors. IS&C will just take the same information and put it into an invoice directing you to pay them rather than the vendor.

I hope I have not confused you. If you have further questions just give me a call at 558-3392.

>>> "Proops, Mike" <mikeproops@mail.courtswv.org> 06/28/04 09:10AM >>>
Am I correct in assuming the rule "Telecommunications Payments by Spending Units" applies to the invoices presently issued through IS&C and commonly referred to as the "DAIN" invoice? We process several other invoices we receive from Armstrong, Frontier, and Verizon.

What will the document prepared in accordance with 5.3.1 (d) look like? I would like a sample if available.

Thanks.

Office of Administration
10 McJunkin Road
Nitro, WV 25143
Phone: (304) 759-0505
Fax: (304) 759-0531

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie R. Timmermeyer
Cabinet Secretary

June 29, 2004

Donna Lipscomb, Exec. Coordinator
Department of Administration
Office of the Cabinet Secretary
1900 Kanawha Boulevard, East
State Capitol, Room E-119
Charleston, WV 25301

Dear Ms. Lipscomb:

Please consider this letter to be the comments on the proposed Legislative Rule which will affect telecommunications payments by spending units. Effectively, this new rule would consolidate the function of paying telecommunications invoices in the Department of Administration (DOA), IS&C Division, and would cease the practice of agencies paying their own invoices and/or reimbursing the DOA.

I strongly oppose this new rule for several reasons:

1) Department of Environmental Protection (DEP), personnel have the most accurate knowledge of the voice, data, and cellular services provided to our Department around the state. Until this past year for example, the billing for data circuits provided by IS&C was late in arriving and inaccurate every year for 6 years. Specifically, invoices for the second half of the fiscal year weren't arriving until May or June and the invoices showed data circuits which the DEP did not have. Each year, these unidentified circuits were deducted from our invoices so the DEP would not pay for circuits we did not have. Despite repeated requests to update these invoices they remained incorrect for over 6 years.

2) All DEP telecommunications invoices are now current, with a few exceptions involving federal fees and taxes, which we are trying to resolve. IS&C's track record of paying invoices promptly is not good. If invoices are not paid promptly, the agencies will have to resolve disconnection situations, deal with collections calls, and receive termination notices. In short, the service to the agencies will suffer and more problems will be caused for each agency because their invoices are past due; however, paying invoices will be beyond our control.

3) Since the Dept. of Administration does not have an accurate knowledge of the telecommunications systems in DEP offices statewide, the only opportunity to audit the invoices for accuracy and proper use of state-owned phone systems and equipment will after the invoice has already been paid. In this current period of fiscal crisis, each agency should be able to review, audit, and accordingly adjust their invoices to make sure they are paying for the correct services and lines. It is not fiscally responsible to pay the invoices without question and never audit or investigate to ensure that taxpayer dollars are paying for state business and property only. According to the proposal, all disputed charges must be approved either by the Cabinet Secretary of Administration or by IS&C. Neither have a functional knowledge of agency phone systems and services, nor do they know about funding requirements, such as federal grant appropriations, which are also issues which could potentially arise during the payment process.

4) In Section 161-2-6, the proposed rule outlines the Spending Units' Duties and Rights. According to this section, "all requests for telecommunications services must be obtained by submitting to IS&C a Telecommunications Change Request form." Will this also include repair services? If so, there are a great number of problems which can arise, the most striking of which is delays in repair service which is unacceptable considering that phone service is crucial to our mission and the service we provide to citizens. Additionally, IS&C does not provide timely confirmations of these request forms (TCR's), sometimes allowing weeks to go by after a TCR has been processed before sending our agency a confirmation. Also, in the past, IS&C has changed the criteria for services which require a TCR without notifying the DEP.

Given these reasons, I strongly oppose the proposed Legislative Rule. If certain agencies are consistently late in making telecommunications payments or are not auditing their invoices sufficiently, the problems in those particular agencies should be addressed. Please do not force all of state government to conform to a process that would more than likely be less efficient and more problematic for many agencies, like the DEP, which keep their telecommunications invoices current and frequently audited.

I appreciate the opportunity to provide comments on this new Rule proposal. If you have questions or if I can provide assistance in any way, please feel free to contact me at (304) 759-0505.

Sincerely,

Brent A. Kessinger
Telecommunications Manager

cc: Randy Huffman, WVDEP Asst. Cabinet Sec.
Cap Smith, ADM Chief, WVDEP
June Casto, ADM Asst. Chief, WVDEP
Carol Leffew, Telecom. Coordinator, WVDEP

From: "Timothy Williams" <Timothy.Williams@mail.wvu.edu>
To: <dlipscomb@wvadmin.gov>, <HWILSON@wvadmin.gov>
Date: 7/12/04 2:47PM
Subject: Telecommunications Payments by Spending Units

I am writing to comment on the proposed rule related to Telecommunications Payments to Spending Units.

a. West Virginia University presently and has in the past twenty years approved and processed directly all invoices and payments from Telecommunication vendors totaling over $5 million annually. This process has proved efficient and allows WVU to work directly with each vendor to ensure the invoices are paid accurately and timely. In addition, WVU is able to adjudicate any issues relating to these invoices/services/payments directly with the vendors. It is our request this continue to be the procedure.

b. Shared account invoices need to be communicated to WVU on a more timely basis to allow for review and process for payment. This improved process would reduce the time between vendor invoicing and state agency payments. Invoices can be reviewed for accuracy and be processed within the mandated time frames. If this process were implemented it would reduce the need to set up an additional account structure and intended overhead.

If you need additional information or clarification do not hesitate to contact me.

Timothy P. Williams
West Virginia University
Director of Telecommunications
and Collaborative Partnerships

304 293-0577 (office)
304 293-3994 (Fax)
email Timothy.Williams@mail.wvu.edu

CC: "Beth Wyant" <Beth.Wyant@mail.wvu.edu>, "Cindy Marn" <Cindy.Marn@mail.wvu.edu>

From: "Tackett, Angi" <ATackett@wvca.us>
To: <dlipscomb@wvadmin.gov>
Date: 7/9/04 3:53PM
Subject: Proposed Telecommunications Legislative Rules

The WV Conservation Agency has reviewed the above referenced Legislative Rule proposed change. Our comments/questions about this proposed change are:

Item 161-2-4,4.4 (e) discusses a "Telecommunications Service Expense fee' that will be assessed to all spending units. How much will this fee increase Agency telecommunication cost? What will determine how much each spending unit pays?

Will spending units have the opportunity to verify and approve charges prior to payment?

Angi Tackett
Assistant Division Director
WV Conservation Agency
1900 Kanawha Blvd., East
Charleston, WV 25305-0193
phone: 304.558.2204
fax: 304.558.1635
email: atackett@wvca.us <mailto:atackett@wvca.us>

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

Re: TITLE 161 -- DEPARTMENT OF ADMINISTRATION
INFORMATION SERVICES AND COMMUNICATIONS (IS&C)

FIBERNET'S COMMENTS ON PROPOSED LEGISLATIVE RULES GOVERNING TELEOMMUNICATIONS PAYMENTS BY SPENDING UNITS

Now comes FiberNet, LLC ("FiberNet") to respectfully submit these comments on the Department of Administration's ("Department") proposed Legislative Rules ("Rules") regarding telecommunications payments by spending units. Although FiberNet certainly appreciates the statutory impetus behind the Department's efforts to craft the Rules necessary to establish a more structured and centralized method of paying for the telecommunications services being utilized by its respective spending units, FiberNet is nonetheless concerned about the ambiguity in these Rules related to the processing and timely payment of legitimate telecommunications invoices.

§161-2-3. Applicability.

Although §161-2-3.1 provides that the Department's proposed Rules are applicable 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, the definition of "spending units" is neither provided for in the Rules nor in the underlying statutory language contained in West Virginia Code §5A-7-4a. FiberNet believes this apparent oversight needs to be addressed and corrected so that vendors know exactly which agencies and departments (spending units) of state government are covered by these Rules.

This is especially important in light of the exemption option provided for in §161-2-3.2. Specifically, §161-2-3.2 allows any state spending unit to petition the Department's Secretary and the Joint Committee of Government and Finance for an exemption from participation in the shared account established by the Rules. Needless to say, it is extremely important for vendors like FiberNet to know which, if any, state spending units are granted exemptions from participation in the shared account so that direct billing for telecommunications services can be continued or established for these spending units. More importantly, the Rules are silent as to where, or even if, vendors can find and access information concerning those state spending units that are exempt from participation in the shared account.

The proposed Rules also do not discuss the timing and processing of such exemption requests. How long does the Department Secretary have to make a determination as to whether to grant the requested exemption? What are the criteria to be used by the Department Secretary in evaluating exemption requests? How long does the Department Secretary have to make a final decision on an exemption request, and does an involved spending unit have the right to challenge the Department Secretary's determination if an exemption request is denied? These are some but by no means all of the questions that need to be addressed on the issue of exemptions from the shared account. FiberNet would thus urge the Department to further elaborate on the processing of exemption requests under the proposed Rules so that spending units, and by extension the vendors that currently provide telecommunications services to these spending units, know when exemptions have been granted and can access accurate information regarding what specific spending units have been exempted.

§161-2-5. IS&C Duties and Rights.

In §161-2-5.1.2, IS&C is provided with ten (10) business days in which to evaluate a vendor invoice for purposes of determining whether said invoice constitutes a "legitimate uncontested invoice" as this term is defined in the Rules. However, this period of time given for evaluation is not specifically provided for in the underlying statute, and FiberNet believes that ten (10) business days is far too long a period of time for IS&C to merely make an initial determination as to whether a vendor invoice meets the requirements for an "legitimate uncontested invoice." FiberNet believes that a period of five (5) business days would be more than sufficient for IS&C to make its initial determination as to whether an invoice is a "legitimate uncontested invoice." FiberNet would thus urge that §161-2-5.1.2 be revised to allow IS&C only a five (5) business day period to review and decide that a properly received vendor invoice meets the definition of a "legitimate uncontested invoice."

The aforementioned section also is confusing when compared to §161-2-5.2.1, which provides that the vendor will be notified in writing of the rejection of an invoice within fourteen ***"work days"*** of receipt of the invoice by IS&C. FiberNet is not sure whether the term ***"work days"*** as it is being used in §161-2-5.2.1 is supposed to be comparable to the ten ***"business days"*** time period being used in §161-2-5.1.2 or not, but FiberNet asserts that the Rules should endeavor to be consistent wherever possible, and a good place to start would appear to be the discrepancy between ***"work days"*** versus ***"business days"*** as those terms are being generally used in §161-2-5.

Moreover, §161-2-5.2.2 provides that an invoice will not be considered "received" until they are "marked as received" by IS&C and deemed to fulfill the requirements of a legitimate uncontested invoice. While this section as written is not in and of itself objectionable, it does not provide the default mechanism for determining when a vendor invoice is deemed "received" as contained in West Virginia Code § 5A-7-4a(j). Specifically, Code § 5A-7-4a(j) provides in pertinent part that *"an invoice is considered received by the division on the date the invoice is marked as received by the division,* ***or three business days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier…"***. (Emphasis Added). Accordingly, FiberNet would suggest that § 161-2-5.2.2 be modified to include the aforementioned statutory language contained in Code § 5A-7-4a(j).

Finally, § 161-2-5.5.2 provides that IS&C will, by vendor account, track charges and payments and will make this information available to vendors on "a routine basis." Again, FiberNet does not object to this particular Rule, but FiberNet does believe that it needs some further clarification so that vendors have a better understanding of exactly when this "charges and payments" information will be provided to the vendors. Is this information to be provided to vendors on a monthly basis? A quarterly basis? Semi-annually? In short, the current language is simply too ambiguous to be of any real benefit to vendors and thus needs to be more specifically drafted so as to better define exactly when "charges and payments" information will be released by IS&C to interested telecommunications vendors.

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

The initial language found in § 161-2-6 provides in effect that 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 further that all requests for telecommunications services must be obtained by submitting to IS&C a Telecommunications Change Request form. While uniformity is a worthwhile goal, this language would again appear to be in conflict with the exemption option provided for in §161-2-3.2. In other words, § 161-2-6 would appear to compel spending units currently receiving telecommunications services pursuant to a state-issued contract to participate in the shared fund to be administered by IS&C. However, as noted earlier, § 161-2-3.2 provides spending units, presumably even those currently receiving telecommunications services under a state-issued contract, with the ability to request an exemption from participation in the shared account. Consequently, FiberNet believes that the Rules should be clarified either in § 161-2-3.2 or in § 161-2-6 so as to be consistent with respect to a spending units participation in the shared account -- especially those that happen to be receiving their telecommunications services via a state-issued contract.

Furthermore, § 161-2-6.1.1 provides that 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. This entire issue of IS&C having the ability to request or seek discontinuance of telecommunications services currently being provided to a particular spending unit is a matter that FiberNet intends to address in its comments on the Late Payment section of the proposed Rules. However, FiberNet has serious concerns about vesting this kind of unilateral authority with IS&C. Specifically, FiberNet is concerned as to what happens if IS&C mistakenly requests interruption or discontinuance of telecommunications services to a spending unit. In this regard, FiberNet wishes to emphasize the fact that once telecommunications facilities or services are interrupted or discontinued, restoration of these facilities or services at a later point in time is no easy task.

<u>§ 161-2-7. Payments.</u>

As an initial matter, FiberNet realizes that § 161-2-7.2's requirement that IS&C is to make full payment to all telecommunications vendors within ninety (90) days of receiving a legitimate uncontested invoice for shared accounts has its origin in <u>West Virginia Code</u> § 5A-7-4a(g). Having said that, however, it is FiberNet's hope that payment of its legitimate uncontested invoices can be accomplished much sooner than the allotted 90-day period. Since FiberNet bills its state telecommunications customers 30-days in arrears to begin with, it is quite possible under the proposed Rules that FiberNet would not receive payment for its legitimate uncontested invoices for up to 120-days, and of course, this presupposes that FiberNet's invoice will not be challenged or contested by either the underlying spending unit or by IS&C. Obviously, if one of its invoices is challenged or contested, even more time will elapse before FiberNet stands to receive payment for the provision of its telecommunications services.

Under § 161-2-7.3, IS&C, with the approval of Department Secretary, may seek the discontinuance of a spending unit's telecommunications services on account of the failure of that spending unit to transfer the funds necessary to pay legitimate vendor invoices. While FiberNet understands the need for IS&C to have the ability to ensure that spending units transfer the funds necessary to pay legitimate vendor invoices in a timely fashion, FiberNet would respectfully urge IS&C and the Department Secretary to make interruption or discontinuance of existing telecommunications services to be a last resort. As noted previously, once FiberNet acts to interrupt or discontinue telecommunications services and facilities, the restoration of those services can sometimes take several days or perhaps longer to accomplish. Obviously, this type of telecommunications service interruption or discontinuance could adversely effect the efficient operation of the underlying spending units.

§ 161-2-8. Vendors' Duties and Rights.

The initial language in this section provides that vendors are to provide telecommunications services to spending units on the shared account only upon the receipt of an authorized Telecommunications Change Request form. This introductory language further provides that IS&C is not responsible for the payment of charges associated with the provision of telecommunications services provided to a spending unit without a valid Telecommunications Change Request. While FiberNet acknowledges the need for this Telecommunications Change Request form, the proposed Rules do not make clear from whom the vendor is supposed to receive the Telecommunications Change Request form – either the spending unit or IS&C. Does the vendor seek the Telecommunications Change Request form from the involved spending unit or is it only officially to come from IS&C -- which appears to be the only entity empowered to approve such requests for new telecommunications services under § 161-2-6?

In addition, FiberNet is concerned about the requirement contained in § 161-2-8.1.2 that puts the burden on vendors to provide a complete list of all spending units currently being direct billed to IS&C for inclusion on the newly created shared account by no later than October 1, 2004, and similarly FiberNet is concerned about § 161-2-8.1.3 which provides that any charges incurred from July 1, 2004 to December 31, 2004 that are not merged on to the new shared account shall not be the responsibility of IS&C unless authorized by the Department Secretary.

In this regard, FiberNet believes a much better process would be to require each involved spending unit to provide appropriate documentation to IS&C, which in turn could then be shared with all of the involved telecommunications vendors. This process would be far more accurate in FiberNet's view, and would also act to prevent situations such as that contemplated under § 161-2-8.1.3, in which vendors run the risk of not being paid for telecommunications services legitimately being provided to state spending units merely because such telecommunications services do not appear on the newly created shared account.

With respect to § 161-2-8.2.1, vendors are required to submit all invoices to IS&C that include more than one spending unit. Once again, FiberNet is not clear in the first instance as to what constitutes a "spending unit" as the term is being used in these Rules or about the type of situation in which invoices, presumably for the same provision of telecommunications service, would be submitted to "more than one spending unit." Accordingly, FiberNet recommends that the Rules be revised so as to better clarify these questions.

Further, § 161-8-2.1 requires that vendors providing services to spending units governed by the pricing contained in an applicable state-issued contract must have the charges associated with these services included on the shared account, and in addition, §

161-8-2.1 requires that all shared account invoices be mailed to IS&C's Telecommunications Unit. FiberNet is concerned first about whether spending units receiving telecommunications services pursuant to a state-issued contract are eligible for exemption from participation in the shared account as is provided for under § 161-2-3.2. If these spending units are indeed still eligible for exemption and can petition the Department Secretary for the same, how are the vendors to be notified of the granting of these exemptions so that direct billing of these spending units can be maintained.

Additionally, under § 161-2-8.3.3, vendors are provided with ten (10) business days to reply to notice received from IS&C that IS&C is contesting an invoice. However, this section does not specify whether this ten (10) business day period is started as of the date of the IS&C notice or is started upon the actual receipt of the IS&C notice by the vendor. In order to be consistent, FiberNet believes that § 161-2-8.3.3 ought to be revised to include the default start date calculation language embodied in West Virginia Code § 5A-7-4a(j).

Moreover, FiberNet believes that vendors should be provided with the opportunity to request more time in which to provide a written response back to IS&C. As noted above, the language in § 161-2-8.3.3 requires a written response to be provided within ten (10) days. However, depending on when the ten (10) business day period for a response is actually triggered, this particular period of time may not always provide adequate time for the involved vendor to adequately research and respond to the notice received from IS&C that an invoice is being contested. Consequently, FiberNet recommends the inclusion of some language in § 161-2-8.3.3, which allows the vendor to request and for IS&C to grant more time for the submittal of written responses by vendors in cases where notification is received that an invoice is being contested by IS&C.

Finally, in situations in which IS&C and the involved vendor cannot agree to a mutually agreeable resolution of a contested invoice, the Department Secretary is empowered under § 161-2-8.3.3 to make the final decision as to the legitimacy of the contested invoice. While FiberNet has no objection to the Department Secretary being given this authority, FiberNet does believe that some definitive timeframe, perhaps thirty (30) days, ought to be established by which the Department Secretary is required to render a final decision on the legitimacy, or lack thereof, of contested invoices that cannot in the first instance be resolved by IS&C and the vendor. As it stands presently, final action by the Department Secretary is left open ended and could conceivably take several months, which does not work to the benefit of either IS&C, the involved spending units or the vendor.

Respectfully submitted this 16th day of July, 2004.

FiberNet, LLC

By Counsel,

Steven Hamula, Esquire (SB # 4580)
211 Leon Sullivan Way
Charleston, WV 25301

Tele: (304) 720-2159
Fax: (304) 720-2121
Email: shamula@wvfibernet.net

From: "Joe Starsick" <jstarsick@bowlesrice.com>
To: <dlipscomb@wvadmin.gov>
Date: 7/16/04 11:58AM
Subject: Comments of Verizon West Virginia Inc. to ISC Emergency Rule

Ms. Lipscomb:

In accordance with your letter of June 18, 2004, attached are the comments of Verizon West Virginia Inc. We would ask that you please forward us a copy of any comments of other parties.

Please do not hesitate to contact me if you have any questions.

Joe Starsick

19 West Cork Street, Suite 102
Winchester, Virginia 22601
Telephone (540) 723-8877

101 South Queen Street
Martinsburg, West Virginia 25401
Telephone (304) 263-0836

7000 Hampton Center, Suite K
Morgantown, West Virginia 26505
Telephone (304) 285-2500

Bowles Rice McDavid Graff & Love LLP

ATTORNEYS AT LAW

600 Quarrier Street
Charleston, West Virginia 25301

Post Office Box 1386
Charleston, West Virginia 25325-1386
Telephone (304) 347-1100
www.bowlesrice.com

5th Floor, United Square
501 Avery Street
Parkersburg, West Virginia 26101
Telephone (304) 485-8500

333 West Vine Street, Suite 1201
Lexington, Kentucky 40507
Telephone (859) 225-8700

Joseph J. Starsick, Jr.
Telephone (304) 347-1183
Facsimile (304) 343-2867

E-Mail Address:
jstarsic@bowlesrice.com

July 16, 2004

Donna Lipscomb
Executive Coordinator
State of West Virginia
Department of Administration
Building I, Room E-119
1900 Kanawha Boulevard, East
Charleston, WV 25305-0120

Re: Proposed Legislative Rules

Dear Ms. Lipscomb:

Thank you for the opportunity to comment on the Emergency Rule of the Division of Information Services and Communications Division ("IS&C") of the Department of Administration (the "Department"), Title 161, Series 2. On behalf of Verizon West Virginia Inc. ("Verizon WV"), we would like, first, to thank IS&C and the Department for their hard work in supplying information and assistance to the Legislature in connection with the enabling legislation for the Rules. We look forward to continuing to work with IS&C and the Department to achieve the Legislature's objective to ensure prompt payment of legitimate charges for telecommunications services rendered to State spending units. *See* W. Va. Code § 5A-7-4a (a).

As for the Emergency Rules, in general they are well-drafted and acceptable to Verizon WV. We do have a few respectful comments, however, that we would ask you please to take under advisement:

1. We believe that the Rules should clarify that, if an invoice is disputed, the State will pay the undisputed portion of the invoice pending resolution of the dispute. There certainly is no reason not to pay legitimate charges, and we believe that doing so within the then-current fiscal year was precisely the objective of the Legislature in passing W. Va. Code § 5A-7-4a. Accordingly, we respectfully recommend that the following language be added to the end of Section 5.1.3 of the Rules: "If a portion of an invoice is uncontested, however, IS&C will pay the legitimate uncontested portion of the invoice pending resolution of the dispute in accordance with

this Legislative Rule." For the same reasons, we respectfully recommend that the same language be added to the end of Section 8.3.1.

2. In order to clarify Section 8.1.3, we request that the following sentence be added to the end of that Section: "Those charges must be billed to the spending unit." In order to achieve the Legislature's objective that all legitimate charges for telecommunications services must be paid, either the spending unit or IS&C must pay for telecommunications services. If a legitimate charge is inadvertently missed in preparing the shared account, it still should be paid, albeit by the spending unit. We believe that this is the intent of this Emergency Rule, and that it merely needs to be clarified.

3. The first sentence of Section 8.3.3 requires that the Vendor reply within ten business days to IS&C's notice of a dispute as to how the Vendor will provide the resolution being sought. In general, Verizon WV believes that it should be able in most cases to comply with the ten-business-day deadline. However, as IS&C is well aware, the provision and billing of telecommunications services can be extremely complex, and in some cases ten business days may not be enough time to research and propose resolutions to disputes.

Moreover, the first sentence of Section 8.3.3 seems to imply that the resolution being sought in the IS&C's dispute notice is necessarily the correct result. We imagine that, often, a putative billing dispute will be at the request of the Spending Unit. As IS&C is aware, the Spending Unit is not always correct.

We therefore respectfully ask that the first sentence of Section 8.3.3 be replaced by the following: "The vendor will have ten business days to reply to the IS&C's notice, unless within those ten business days the vendor notifies IS&C that additional time is necessary to respond to the notice. If additional time is requested, IS&C may set a reasonable time in which a response must be provided by the vendor. The response in any event must state clearly the position of the vendor on the contested amount."

4. The second sentence of Section 8.3.3 states that "If the vendor does not submit a written response within ten business days, it admits to the contested charges and will provide the resolution being sought by IS&C." However, it is entirely possible that the notice of the contest may be misdirected, that the responsible persons may be on vacation or that the ten-business-day deadline may be missed for other reasons or excusable neglect. The automatic "default judgment" seems an overly harsh penalty for missing a relatively short deadline. The aim of the Rules, instead, should be to do substantial justice, particularly in light of the Legislature's clearly stated intention that legitimate charges are to be promptly paid. Thus, we respectfully ask that the second sentence of Section 8.3.3 be deleted.

Thank you, again, for this opportunity to comment.

Very truly yours,

Joseph J. Starsick, Jr.

From: Stephanie Chafin
To: Beth Wyant
Date: 8/5/04 5:11PM
Subject: Re: Fwd: WVU Telecom invoices

Beth, as for the status of the exemption I'm not aware. Any request for an exemption has to be sent to the Department of Administratin's Cabinet Secretary John Poffenbarger.

>>> "Beth Wyant" <Beth.Wyant@mail.wvu.edu> 08/05/04 05:07PM >>>
Thank you for the information.

Tim Williams had requested the exemption for WVU. Has that not been reviewed and/or approved? If not, what is the process for the exemption? To whom in the Dept of Administration would we send the request to be exempt?

Beth

Beth Mancinelli Wyant
Manager, EBO
Office of Information Technology
PO Box 6503
Morgantown, WV 26506-6503
Voice: 304-293-2152
Fax: 304-293-6726

>>> "Stephanie Chafin" <SChafin@wvadmin.gov> 8/5/2004 4:55:20 PM >>>
Beth, let me see if I can answer your questions.

1. The auditors have apparently returned some of WVU's invoices for telecommunications services. These are invoices in which WVU did not order through IS&C. We are confused as to why they were returned to WVU.
1a. Please let me know why these invoices have been returned.

They were returned to WVU because the invoices are most likely for for services that are available from the statewide contract so they fall under Senate Bill 700 and IS&C is responsible for them now so they will need to be sent to us. We are working with the vendors to have those invoices mailed to us instead of the user. Until then, we need to ask that you forward them to us. On our website is a telecommunications log that we are asking users to complete when they send us the invoices.

2. Also, it is my understanding that IS&C will be processing the invoices
for payment to the vendors for all services in which we did request through IS&C. When will this begin? What is the amount of the administrative fee?

We will start processing invoices as soon as we receive them from the vendors which will probably be the end of August. The process is: we get the invoices and audit for contractual compliance; we send the invoice to you to audit for your purposes; you pay us; we pay the vendor. As for the admin. fee, the code caps the fee at $150,000/year which will be allocated to ALL spending units that we bill.

3. I addition WVU would like to request an exemption from this process.
Any service that has been obtained and billed directly through the vendors, should continue to be sent directly to WVU for processing. Adding another party will only slow the payment process. Auditing these
WVU invoices would be an impossible task for IS&C.

When you go to our web site you'll also find the state code and the rules. In the rules, only the Dept. of Administration can grant an exemption. As for "slowing" the process, the code requires all processes be completed in 90 days (receipt of vendor invoice, audit by IS&C, invoice to user, audit by user, payment to IS&C and payment to vendor). Regarding auditing, as stated earlier we only audit for contractual-type issues; spending units will continue to audit these invoices when they receive them from IS&C.

I would encourage you to try to attend a workshop we are having on Aug. 18th to discuss the details of this bill with the spending units. It will be here in Charleston. The information for registration is also on our website.

If you have more questions, please email me at telecomm@wvadmin.gov

Thank you,

Stephanie

>>> "Beth Wyant" <Beth.Wyant@mail.wvu.edu> 08/05/04 04:03PM >>>

Beth Mancinelli Wyant
Manager, EBO
Office of Information Technology
PO Box 6503
Morgantown, WV 26506-6503
Voice: 304-293-2152
Fax: 304-293-6726

>>> Beth Wyant 8/5/2004 1:06:42 PM >>>
Stephanie,

The auditors have apparently returned some of WVU's invoices for telecommunications services. These are invoices in which WVU did not order through IS&C. We are confused as to why they were returned to WVU.

Also, it is my understanding that IS&C will be processing the invoices for payment to the vendors for all services in which we did request through IS&C. When will this begin? What is the amount of the administrative fee?

I addition WVU would like to request an exemption from this process.
Any service that has been obtained and billed directly through the
vendors, should continue to be sent directly to WVU for processing.
Adding another party will only slow the payment process. Auditing
these
WVU invoices would be an impossible task for IS&C.

Please let me know why these invoices have been returned.

Thank you,

Beth

Beth Mancinelli Wyant
Manager, EBO
Office of Information Technology
PO Box 6503
Morgantown, WV 26506-6503
Voice: 304-293-2152
Fax: 304-293-6726

CC: Cheryl Taylor; Cindy Marn; Cynthia Good; Judie Barnes; Sid Morrison;
twilliam@wvu.edu

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.) "Business days" means any day the State of West Virginia is open for business excluding official holidays and emergency closings.

(c.) "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.

(d.) "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.

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

(f.) "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.

(g.) "Marked as Received" means the invoice has been received by IS&C and has been date stamped or three business days after the postmark.

(h.) "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.

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

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

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

(l.) "Spending Unit" means any department, bureau, division, office, board, commission, agency, local government, municipality, or institution to which a statement for telecommunications services are allocated from a state wide contract.

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

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

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

(p.) "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.

(q.) "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, within 10 business days, 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 business 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 for approval.

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

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 from IS&C of an authorized and IS&C-approved 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 within 15 business days 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.

QUESTIONNAIRE

DATE: August 27, 2004

TO: Legislative Rule-Making Review Committee

FROM: Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Room E-119
Charleston, WV 25305
304-558-3392

LEGISLATIVE RULE TITLE: 161, Series 2, Telecommunications Payments by Spending Units

1. Authorizing statute(s) citation W.Va. Code 5A-7-4a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

   June 18, 2004

   b. What other notice, including advertising, did you give of the hearing?

   Mailing to all agency coordinators with phone bills and all vendors

   c. Date of Public Hearing(s) or Public Comment Period Ended:

   July 18, 2004

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received ______

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   August 27, 2004

   f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

   Donna Lipscomb, Executive Coordinator

   Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

Helen Wilson, Director of IS&C

Davis Square, Capitol Street

Charleston, WV 25301

304-558-1066

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 18, 2004 through July 18, 2004

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

August 17, 2004

d. Attach findings and determinations and reasons:

Attached X

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: One Davis Square

PO Box 50110

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES	$150,000		$150,000	$150,000	$150,000
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
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 Bill700.

3. Objectives of These Rules:
To make sure that the processes are clearly defined and all parties impacted by the rules are aware of their duties and responsibilites.

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

BOB WISE
GOVERNOR

JOHN T. POFFENBARGER
ACTING CABINET SECRETARY

August 27, 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 rules are in regard to telecommunications payments by state spending units. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note
6. Questionnaire,
7. Disc containing 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