WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: ~~DEPARTMENT OF ADMINISTRATION~~ Information Services + Communications Division TITLE NUMBER: 161

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: TELECOMMUNICATIONS PAYMENTS BY SPENDING UNITS

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 382

SECTION 64-2-4, PASSED ON 04/09/2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: 07/01/2005

Helen Wilson
Authorized Signature

[signature]

$3.60

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. – May 23, 2005

1.4 Effective Date. – July 1, 2005

§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 apportionment of the charges identified on the invoice.

(d.) "Due Date" means the date no more than thirty calendar days from the date the division sends a statement by which the spending unit shall submit payment or transfer to the fund all funds necessary to pay the spending unit's charges in full.

(e.) "Fund Application" means the "Telecommunications Services Payment and Reserve Fund Application.

(f.) "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.

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

(h.) "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.

(i.) "Received" or "receipt" means the date on which the invoice is marked as received by IS&C, 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.

(j.) "Rejected Invoice" means an invoice has been rejected for processing by IS&C for any of the following reasons: (a) charges not allowed, either by State law or contractually; (b) lack of designation of a specific spending unit for said service; and (c) where applicable, charges and/or services that are not in accordance with contract pricing.

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

(l.) "Spending Unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature: *Provided,* That spending unit does not include the Legislature or the judiciary.

(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".

(r.) "Vendor" means a vendor supplying telecommunications services to the state and its spending units which is properly registered and qualified and which supplies telecommunication services to two or more spending units under a shared account.

§161-2-3. Applicability.

This legislative rule applies to all spending units of that have their telecommunications services billed on the state's shared account.

§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;

(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.

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

§161-2-5. IS&C Duties and Rights.

5.1 Preliminary Review of Invoice

5.1.1. All telecommunications invoices, when received at IS&C, will be marked as received with the date on which the invoice arrived at IS&C.

5.1.2 Charges will be apportioned for payment to the appropriate spending units within 30 days of the invoice being received. 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.

5.2. Statements to Spending Units

5.2.1 Within thirty days of the receipt of an invoice detailing telecommunications charges, the Director will submit statement (s) to each spending unit. The Statement will include: (a) a unique identify code for each spending unit; (b) a payment or transfer due date; and (c) a detailed listing of all telecommunications charges, including the Telecommunications Service Expense.

5.2.2 A statement sent in the last month of the fiscal year will provide that payment is due by the thirty first day of July.

5.3. Accounting of Charges.

5.3.1. 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 has not been received as of the statement date.

5.3.2. IS&C will, by vendor account, track all_charges and payments. This information will be provided to the vendors on a routine basis, which will be, at a minimum, on a quarterly basis.

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

6.1. All spending units will be required to complete and have approved a 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. 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 Fund Application is provided.

6.2. Contested Charges on Statement

6.2.1. Spending units contesting a statement or any portion of a statement, must, nonetheless, remit for payment the entire statement amount to telecommunications services payment and reserve fund by the due date printed on the statement.

6.2.2. The Director must be notified, in writing, of all disputed charges within thirty days of receipt of the statement by the spending unit.

6.2.3. The spending unit's written notice to the Director must include: 1) the statement date, number and total charges; 2) the contested charges and the reason for contesting the charges; and 3) a proposed resolution.

6.3. Review of Contested Charges

6.3.1. If the basis of a contested charge is overcharge, service failure, failure on the vendor's part to terminate services as requested or other failure of or error in vendor performance, IS& will withhold the contested amount from the current or future vendor payments, pending resolution of the contest.

6.3.1.1. IS&C will bring the contested matter to the attention of the vendor, in writing within ten business days from receipt of the spending unit's notification of contested charges.

6.3.1.2. 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) a proposed resolution.

6.3.1.3. Contested charges that cannot be resolved in good faith between the Director and the vendor within seventy-five days of the receipt of vendor's invoice will be brought to the attention of the Secretary.

6.3.1.4. Within ninety days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor and the Secretary, the Secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted.

6.3.1.5. If the Secretary's decision is to refuse payment, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of the West Virginia State Code.

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

6.3.3. The spending unit will be notified of the final determination of any charges that are contested within ten business days of receipt of the contested charges and appropriate action will be taken by IS&C.

§161-2-7. Payments.

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

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

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

7.2. Payments to the telecommunications vendors.

7.2.1. IS&C shall make full payment for all legitimate, uncontested telecommunication charges to within ninety days of receipt by IS&C of an invoice for telecommunication services.

7.2.2. For the purposes of determining the ninety-day time period for payment provided by section 7.2.1, an invoice received by IS&C prior to the date on which the telecommunications services covered by the invoice are delievered or fully performed is considered to be received on the date on which the telecommunications services covered by the invoice are delivered or fully performed.

7.3. Late Payments.

7.3.1. In the event a spending unit fails to transfer funds or submit payment in full to the telecommunications services payment and reserve fund by the statement date, the secretary of the department of administration shall transfer to the telecommunications services payment and reserve fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit.

7.3.2. Upon exercising a transfer pursuant to section 7.3.1, the Director will notify the spending unit, in writing, of the transfer. Notification will include, but is not limited to, the date, time, total amount of the transfer, statement amount, and penalty amount.

7.3.3. A spending unit that does not have sufficient funds in the state treasury or depository to make full payment will be notified, in writing, of the insufficiency. The spending unit will have five days from receipt of the notice of insufficiency to make payment in full along with the three percent penalty charge based on the total statement amount.

7.4 Discontinuance of Service.

7.4.1 A 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.

7.4.2 A spending unit be given a written notice from IS&C that the telecommunications vendor(s) has been notified to discontinue services to the spending unit.

7.4.3 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.

7.4.4 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.

The provisions of this series section shall govern any new telecommunication vendor that provides services to spending units via a shared account. 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.

8.2.1. All shared account invoices are to be mailed to IS&C's Telecommunications Unit.

8.2.2. Vendors must make reasonable efforts to tender correct invoices for telecommunication services in a format approved by IS&C. If a vendor's company policy prohibits changes to its invoicing process, which results in the vendor's invoice being contested 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.

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

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

May 23, 2005

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2005 MAY 26 A 10: 50
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Ireland,

I am enclosing the "Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature" as well as the original rules for filing. The new rules reflect changes for telecommunications payments by spending units, 161 CSR 2, resulting from the passage of Senate Bill 382. As requested, I am also enclosing a disc containing the 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
Executive Coordinator

Enclosures