

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 150 C.S.R. 25, Rules Governing Emergency Telephone Service

Type of Rule: Exempt Legislative Interpretive Procedural Emergency

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street
Charleston, West Virginia 25301

Phone Number: Cindy Wilson, 340-0302 Email: cwilson@psc.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

E911 fees flow to local emergency service providers, the State Police and the Wireless Tower Access Assistance Fund. New statutes (Senate Bill 552) require the vendors of prepaid wireless services to collect the E911 fees from prepaid subscribers and to forward those amount to the State Tax Commissioner. **Amendments** to Series 25 address the process by which the fees are collected from prepaid wireless subscribers, but they do not affect the amount of E911 fees that prepaid wireless subscribers are required to pay.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
1. Estimated Total Revenues			

Rule Title: 150 C.S.R. 25. Rules Governing Emergency Telephone Service

Rule Title:

150 C.S.R. 25. Rules Governing Emergency Telephone Service

3.Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

New statutes require the vendors of prepaid wireless services to collect the E911 fees from prepaid subscribers and to forward those amount to the State Tax Commissioner. This rulemaking is to **amend** Series 25, to conform the Commission's rules to the new statutory process. The Commission expects the E911 fees to be collected as part of the sales tax process, which is an ordinary function of the Tax Commissioner's operations. The law requires the Tax Commissioner to remit the collected fees to the Public Service Commission to be disbursed.

Date: August 29, 2008

Signature of Agency Head or Authorized Representative



Brief Summary of Rule

Series 25 includes a process for prepaid cellular *providers* to collect and remit E911 fees from their subscribers, and statutes were enacted in 2008 (Senate Bill 552) that require *vendors* of prepaid cellular services, not prepaid cellular providers, to collect the E911 fees with each prepaid purchase and to forward those fees to the State Tax Commissioner, who will forward them to the Commission. The Commission is **amending** Series 25 to conform its rules with the new statutes.

Statement of Circumstances Which Require the Rule

The Legislature recently amended the statutes relating to E911 fees (Senate Bill 552) payable by prepaid wireless subscribers. The Commission is **amending** Series 25 to conform its rules with the new statutes.

Public Service Commission

Richard E. Hitt, General Counsel



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August 29, 2008

Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0771

Re: Public Service Commission
*Rules and Regulations Governing Emergency
Telephone Service, 150 C.S.R. Series 25*

Dear Judy:

Enclosed for filing is a copy of the Commission's final rules in the referenced series. Included is a notice of adoption, a fiscal note, a summary of the rule, and the statement of circumstances.

In addition, a diskette has been enclosed containing a clean version of the final rules. If there are any problems with the submittal, please bring them to my attention immediately. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard E. Hitt".

Richard E. Hitt
General Counsel

REH/sek
Enclosures

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 29th day of August, 2008.

GENERAL ORDER NO. 187.32 (REOPENED)
IN THE MATTER OF Rules Governing E911 Fees,
150 C.S.R. Series 31, to provide further guidance
regarding E911 fee requirements.

GENERAL ORDER NO. 187.35
IN THE MATTER OF Rules Governing Emergency
Telephone Service, 150 C.S.R. Series 25, to revise the
rules relating to E911 fees for prepaid cellular service.

COMMISSION ORDER

Following the review of comments, the Commission repeals the Rules Governing E911 Fees, 150 C.S.R. Series 31, and amends the Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25, regarding the collection and remittance of enhanced 911 (E911) fees for prepaid cellular service.

BACKGROUND

Rules regarding E911 fees for landline and wireless telecommunications services have been in effect since March 6, 1998. See Emergency Telephone Service Rules, 150 C.S.R. Series 25.

On November 28, 2006, the Commission promulgated final E911 fees for prepaid cellular service separately as Series 31 because the prepaid cellular service issues were complex and contested. The Commission expected, thereafter, to return the E911 rules for prepaid cellular service to the Emergency Telephone Service Rules, Series 25. Gen. O. No. 187.32, Comm'n O. p. 5 (June 30, 2006).

The E911 Fee Rules, Series 31, became effective January 27, 2007, and required commercial mobile radio service providers (CMRS) to remit 10 cents a day for each day that prepaid customer service is provided. Recognizing that many wireless providers offer service in longer increments and

that some providers operate under unique business plans, however, the Commission simultaneously established a waiver provision.

On March 26, 2007, TracFone Wireless, Inc. filed a petition for appeal with the West Virginia Supreme Court of Appeals, seeking the Court's review of the Commission's issuance of Series 31. See TracFone Wireless, Inc. v. Public Serv. Comm'n, S. Ct. Docket No. 070922.

Thereafter, TracFone and the Commission's General Counsel advised the Court that the parties were negotiating a settlement. They asked the Court to hold TracFone's Petition for Appeal in abeyance, and the Court granted that motion on May 16, 2007.

In 2008, via Senate Bill 552, the Legislature substituted the general consumer sales and service tax for E911 fees for prepaid cellular service. See W. Va. Code §§11-15-2(17), 11-15-2(13), 11-15-30(d), 24-6-2(7) & 24-6-6b(h). Effective July 1, 2008, vendors of prepaid cellular services collect the E911 fees with each purchase and remit those fees to the West Virginia State Tax Commissioner, who forwards those fees to the Commission.

On July 18, 2008, the Commission proposed to repeal Series 31, the E911 Fee Rules, and to amend Series 25, the Emergency Telephone Service Rules, solely to conform the Commission's E911 fee provisions to the revised statutes. The Commission set August 20, 2008, as the deadline for initial comments and August 27, 2008, as the deadline for reply comments. The Commission also required that notice of this proceeding be published statewide.

DISCUSSION

On August 13, 2008, Commission Staff advised that the proposed rule changes administratively and concisely implement the recent legislation. Initial Joint Staff Memorandum p. 1. Staff recommended, therefore, that Series 31 be repealed and that Series 25 be amended as the Commission proposed. Id.

On August 20, 2008, AT&T, Inc. filed comments on behalf of its wireless affiliates, New Cingular Wireless PCS, LLC, American Cellular, LLC, Dobson Cellular Systems, LLC, Highland Cellular, LLC and Easter Mountain, LLC. AT&T applauded the passage of Senate Bill 552 and the Commission's efforts, perseverance and flexibility in addressing disputes regarding E911 fees for prepaid cellular service. Initial Comments pp. 1-2. AT&T characterized Senate Bill 552 as a "first in the nation" approach that ensures that both post-paid and pre-paid wireless customers equitably fund the E911 system via the point-of-sale surcharge. Id. pp. 1-3. AT&T supported the Commission's proposals to amend Series 25. Id. pp. 3-4.

No other comments were filed.

The Commission's revisions conform the E911 fee provisions for prepaid wireless service with the point-of-sale process adopted in the 2008 legislation. Both Staff and AT&T support the

Commission's proposal. There being no opposition, the Commission should adopt the proposed revisions to Series 25 as final rules and repeal Series 31.

FINDINGS OF FACT

1. Notice of the opportunity to comment was published statewide. See Affidavits of Publication.
2. On August 13, 2008, Staff recommended that Series 31 be repealed and that Series 25 be amended as the Commission proposed. Initial Joint Staff Memorandum p. 1.
3. On August 20, 2008, AT&T's wireless affiliates supported the Commission's proposal to amend Series 25. Initial Comments pp. 3-4.

CONCLUSION OF LAW

Because the Commission's revisions conform the E911 fee provisions for prepaid wireless service with the point-of-sale process adopted in the 2008 legislation and those revisions are unopposed, the Commission should adopt the amended Series 25 provisions as final rules and repeal Series 31.

ORDER

IT IS THEREFORE ORDERED the attached Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, as amended, including Form WLF-1, are adopted as final Commission legislative rules. See Attachment A for strike-through version and Attachment B for clean version.

IT IS FURTHER ORDERED that the attached Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, and the form attached thereto, shall be effective 60 days from the date of this order, or on October 28, 2008.

IT IS FURTHER ORDERED that the attached Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, including Form WLF-1, repeal and replace 150 C.S.R. Series 31, titled Rules Governing E911 Fees, filed November 28, 2006, and effective January 27, 2007.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall file a copy of this order and the revised Series 25 rules with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that these cases are resolved and shall be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order by first class U.S. Mail upon the West Virginia Tax Commissioner, all wireless carriers and resellers operating in the State of West Virginia as well as upon OnStar and similar companies that use wireless telephony in the provision of service to their customers and meet the West Virginia Code's definition of a commercial mobile radio service provider.

A True Copy, Teste:


Sandra Squire
Executive Secretary

CLW/sek
go18732cg.wpd

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE

§150-25-1. General.

1.1. Scope -- These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1 and the disbursement of such fee revenues to the West Virginia State Police, Division of Homeland Security and Emergency Management, and counties in West Virginia. Additionally, these rules establish guidelines to be used by the Public Service Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

1.2. Authority. -- W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-6b, and 24-6-11.

1.3. Filing Date. -- August 29 ~~May 5~~, 2008.

1.4. Effective Date. -- October 28 ~~July 4~~, 2008.

§150-25-2. Definitions.

2.1. For purposes of this rule, the Commission adopts the definitions of “commercial mobile radio service provider or CMRS provider,” “county answering point,” “emergency services organization,” “emergency service provider,” “emergency telephone system,” “enhanced emergency telephone system,” “public agency,” “public safety unit,” “telephone company,” “comprehensive plan,” “technical and operational standards,” set forth in W. Va. Code §24-6-2. Regarding prepaid cellular service, the Commission adopts the definitions of “prepaid wireless calling service” in W. Va. Code § 11-15-2 and “sale” in W. Va. Code § 11-15-2. In addition, unless otherwise specified in this rule, the Commission adopts the definitions set forth in section 1.7 of the Commission’s *Rules and Regulations for the Government of Telephone Utilities*, C.S.R. § 150-6-1.7.

2.2. “Commission” -- The Public Service Commission of West Virginia.

2.3. “Cost” -- Means, as applied to any project to be financed in whole or in part with funds provided from the Tower Access Assistance Fund, the cost of acquisition, equipping, and/or construction of the proposed wireless tower; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies,

assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, equipping, and/or construction of the wireless tower; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth; the cost of constructing any tower, guy lines, warning lights, antennae, feed lines, radio equipment, power lines, generators, security fencing, gates or other facilities necessary for the operation and protection of the tower; the cost of all apparatus, other machinery, and equipment necessary for the operation of the tower; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of insurance related to equipping and construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any wireless tower; the cost of placing any project in operation; and all other costs of any kind or nature incurred or to be incurred by the project sponsor that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Tower Access Assistance Fund.

2.4. "County" -- One of the counties provided for in W. Va. Code §1-1-1.

2.5. "Emergency Number" -- Any telephone number, including 9-1-1, and any 7-digit or 10-digit number which could access a 9-1-1 line or trunk, which is primarily used for the purpose of reporting emergencies such as fires, the need for law enforcement, rescue and/or medical assistance, actual or imminent disasters, etc.

2.6. "Emergency Services Organization" -- The organization established under W. Va. Code §15-5-1 et seq.

2.7. "Emergency Telephone System" -- A telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point.

2.8. "E911"-- Enhanced 911.

2.9. "E911 Fees" -- Wireless Enhanced 911 Fees.

2.10. "FCC" -- The Federal Communications Commission.

2.11. "In-state two-way service subscriber" -- A person or entity with a valid retail CMRS subscription.

2.12. "Local Exchange Carrier" or "LEC" -- A person or entity granted a certificate of public convenience and necessity to provide local exchange services within a defined service area of the State. Incumbent LECs shall be those LECs holding certificates of public convenience and necessity prior to January 1, 1995.

2.13. "NANC" -- The North American Numbering Council.

2.14. "NANP" -- The North American Numbering Plan.

2.15. "Need of the project sponsor" -- Means there is a public need for a project. The Tower Access Assistance Fund Review Committee may construe a lack of wireless telephone service, in that part of a county in which a project is proposed, as a factor supporting the conclusion that a need exists for a project in that county.

2.16. "Person" -- Means any individual, entity, or any corporation, partnership, association, limited liability company or any other form of business organization or agency entitled to sue or be sued under applicable state law.

2.17. "Political subdivision of the state" -- Means any county commission, municipality or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county health department created pursuant to W.Va. Code §16-2 et. seq.; public service district; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a governmental function.

2.18. "Project" -- Means an undertaking involving a wireless tower to be acquired, constructed, equipped and/or operated by a state agency, political subdivision or wireless telephone carrier or any combination of such entities.

2.19. "Project sponsor" -- Means any county commission which intends to acquire, construct, equip, or otherwise develop a wireless tower.

2.20. "Public Agency" -- Means the State, and any municipality, county, public district, or public authority which provides or has the authority to provide fire-fighting, police, ambulance, medical, rescue or other emergency services.

2.21. "Public Safety Unit" -- Means a functional division of a public agency which provides fire-fighting, police, medical, rescue or other emergency services.

2.22. "Public Service Commission," or "Commission," -- Means the Public Service Commission of West Virginia created and established under Chapter 24 of the W. Va. Code or any successor to all or any substantial part of its powers and duties.

2.23. "State agency" -- Means a state department, board, commission, institution or other administrative agency of state government.

2.24. "Telephone Utility" -- Any person, firm, partnership, or corporation engaged in the business of furnishing telephone communications services to the public under the jurisdiction of the Public Service Commission of West Virginia.

2.25. "Tower Access Assistance Fund" -- Means the Fund established in accordance with the provisions of W. Va. Code §24-6-6b(b).

2.26. "Tower Access Assistance Fund revenue" -- Means all amounts appropriated by the Legislature; all amounts deposited into the Tower Access Assistance Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any wireless tower project funded by the Tower Access Assistance Fund.

2.27. "Tower Access Assistance Fund Review Committee," or "Committee" -- Means a committee established by the Commission to review and make recommendations to the Commission on applications for grants from the Tower Access Assistance Fund. The Committee shall be made up of the following: 1) a member, to be appointed by the Chairman of the Commission, of the Staff of the Public Service Commission familiar with wireless telecommunications technology; 2) the Speaker of the House of Delegates or that person's designee, as a non-voting member; 3) the Senate President or that person's designee, as a non-voting member; 4) a representative of County Commissions, to be appointed by the County Commissioners' Association of West Virginia; 5) a representative, to be appointed by the Governor, of wireless telephone providers operating in West Virginia; 6) a representative, to be appointed by the Governor, of the wireless tower construction industry; 7) the Superintendent of State Police or that person's designee; 8) the Director of the West Virginia Division of Homeland Security and Emergency Management or that person's designee; 9) a representative, appointed by the West Virginia Enhanced 911 Council, of the W.Va. Enhanced 911 Council. The committee shall meet to consider applications for financial assistance from the Tower Access Assistance Fund and to make determinations regarding such applications. Such determinations shall be based upon the guidelines and criteria established by these Rules.

2.28. "Valid retail CMRS subscription" -- A two-way, voice grade or better, cellular or PCS telecommunications service associated with a unique multi-digit area code prefix assigned by NANC, pursuant to NANP, for any area within the State of West Virginia, and which may be used to signal terminal equipment devices associated with the service. Note: A single cellular or PCS account may have more than one valid retail CMRS subscription associated with that account.

2.29. "Wireless telephone carrier" -- Means any commercial mobile radio service provider, as defined in W. Va. Code §24-6-2 as cellular licensees, broadband personal communications services licensees, and specialized mobile radio providers, as those terms are defined by the Federal Communication Commission, which offer real-time, two-way switched voice service that is interconnected with the public switched network, and includes resellers of any commercial mobile radio service.

2.30. "Wireless tower" -- Means any structure, antenna, tower, or other device which provides, or is suitable to provide, commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or commercial pager services.

§150-25-3. Local Emergency Telephone Systems.

3.1. Creation of emergency telephone systems.

3.1.1. A public agency may establish, consistent with these rules, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multi-jurisdictional or regional systems, and any system established may include only a portion of the territory of a public agency. To the extent feasible, these systems shall be centralized.

3.1.2. Every system shall provide access to emergency services organizations, police, fire-fighting, and emergency medical and ambulance services and may provide access to other emergency services. The system may also provide access to private ambulance services. The system may also provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the State provides emergency services, the system shall provide access to the public safety unit.

3.1.3. The number "9-1-1" shall be used as the primary emergency number whenever practicable. If the use of the number "9-1-1" is not practicable, the telephone utility or companies shall make application to this Commission in order to use an alternate emergency telephone number. The Commission encourages the use of "1-9-1-1" as the alternate emergency telephone number.

3.1.4. The telephone utility in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the telephone utility, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities.

3.2. Establishment of emergency telephone systems.

3.2.1. The telephone utility when establishing a new wire center or when replacing the switching equipment for any existing wire center shall insure that the new switching equipment contains the capability of providing emergency telephone system services.

3.2.2. The telephone utility shall design the switching equipment used in all new wire centers and in the replacement of existing wire centers to be capable of accessing emergency services by using the telephone number "9-1-1".

3.2.3. The telephone utility when modifying the existing switching equipment in any wire center shall configure the equipment in a manner that will most easily facilitate the implementation of an emergency telephone system in that wire center, using the telephone number "9-1-1", if practicable.

3.2.4. Under normal circumstances, the telephone utility shall respond within ninety (90) days to any application for emergency telephone service made by a public agency, emergency services organization or public safety unit. This response shall show the projected cost of the system to the maker of the application and the projected date on which emergency telephone service can be established. A copy of this response shall be filed with the Commission.

3.2.5. Under normal circumstances where equipment is available, the telephone utility shall have as its objective the satisfaction of all requests for the establishment of emergency telephone service within nine (9) months of the date of a firm order for such service. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.6. The telephone utility shall report to the Commission any request for emergency telephone service it is unable to satisfy within nine (9) months of any application therefor.

3.2.7. The provision of emergency telephone service shall be made under tariffs approved by this Commission.

3.2.8. In political jurisdictions served by more than one (1) telephone utility, the telephone utilities shall cooperate in establishing an emergency telephone system. The Utilities Division of this Commission shall, upon request, assist in the coordination of the different telephone utilities. In these political jurisdictions, the telephone utilities shall have as their objective the satisfaction of all requests for an emergency telephone system within nine (9) months of the date a firm order for such system is received. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.9. The telephone utilities shall report to the Commission any request for emergency telephone systems involving more that one (1) utility which cannot be established within one (1) year of the date a firm order is received.

3.3. Reporting requirements of the telephone utility.

The telephone utility before establishing any wire center, replacing any wire center or making major modifications to any wire center, shall furnish the Commission plans showing that it has complied with the requirements of these rules. "Major Modifications" is hereby

defined to be a central office modification affecting level assignments, thousands levels or trunking.

3.4. 9-1-1 rule regarding telephone directory emergency numbers pages.

3.4.1. Telephone directories shall list, on the inside of the directory front cover or on the front page of the directory, otherwise known as the emergency calling information page, all emergency service providers accessible from the exchanges covered by the directory on a local call and/or 9-1-1 basis: Provided, That, if a 9-1-1 system serves any portion of the area covered by the directory, the emergency calling information page shall boldly and prominently display the 9-1-1 telephone number. Furthermore, all major public agencies such as, municipal police, fire, ambulance, sheriff and state police, that are accessible by calling 9-1-1 shall be listed in close proximity to the 9-1-1 listing along with the appropriate agency generic symbols.

3.4.2. Each telephone directory shall have a page immediately following the emergency calling information page which shall clearly list the name and seven (7) digit non-emergency administrative telephone number of each individual emergency services provider which serves any portion of the area covered by the telephone directory. Such listings shall be grouped by service type (e.g., ambulance, fire, law enforcement, rescue, etc.) and the listings shall be arranged alphabetically within the service type grouping. Where appropriate, subgrouping by county may be done. The seven (7) digit non-emergency administrative telephone number of each 9-1-1 Public Safety Answering Point which serves any portion of the area covered by the telephone directory shall be prominently displayed at the top of the page.

3.4.3. Where an entire directory coverage area is not covered by 9-1-1, the emergency calling information page shall list the seven (7) digit telephone numbers of all directory coverage area Public Safety Units not accessible by calling 9-1-1. The emergency calling information page shall, at least, clearly show which emergency calls should be made to 9-1-1 and which should be made to other emergency telephone numbers listed on the page.

3.4.4. Additional information regarding emergency calling, as is beneficial to the public interest, may appear on the emergency calling information page.

3.4.5. Each and every local exchange telephone carrier responsible for a telephone directory emergency calling information page shall submit each emergency calling information page and the page immediately following to the Public Service Commission for review, by informally filing same with the Public Service Commission's Telecommunications Section, before said pages are published. Such submittals shall be sent at least thirty (30) calendar days prior to the deadline for making changes.

§150-25-4. Billing and Collection of E911 Fees.

4.1. Post-paid service – Each CMRS post-paid provider shall, with each bill rendered, levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription. ~~4.2.~~ The applicable E911 fee shall be a separate line item on the billing statement provided to each valid post-paid retail CMRS subscription by CMRS providers.

4.2. Pre-paid service – Beginning July 1, 2008, prepaid wireless calling service is subject to the general consumer sales and service tax, in lieu of the wireless enhanced 911 fee.

§150-25-5. Remission of E911 Fees to Commission.

5.1. Post-paid service – By no later than the seventeenth (17th) day of each month, or the first business day thereafter, each CMRS provider shall remit to the Commission a check, or appropriate financial equivalent, for the net E911 fees collected, after retaining three percent (3%) for the billing or collection of the E911 fee, during the preceding month or billing period. If remitted by mail, the postmark shall be used as proof of compliance. If remitted electronically, the date specified by the software used shall be used as proof of compliance. The fees shall be remitted to:

By mail:

Public Service Commission of West Virginia
Administrative Services Division
P.O. Box 812
Charleston, West Virginia 25323

Electronically:

executive_director_e911@psc.state.wv.us

5.1.a.2. Form to be used with fee remittals. CMRS providers shall use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting E911 fees to the Commission. All information requested by WLF-1 shall be provided. This may be done electronically, at the discretion of the CMRS provider.

5.1.b.3. Each CMRS provider shall remit to the Commission such E911 fees actually collected by the CMRS provider. Such E911 fees remitted shall include any previously unpaid E911 fees collected by the CMRS provider during the preceding monthly billing period.

5.1.c.4. The first 3.00, or the monthly wireless E911 fee amount as such may subsequently be modified by force of law, collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

5.2. Pre-paid service – Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Commission the proceeds of the general consumer sales and service tax collected from prepaid wireless calling service in the preceding month.

5.2.a. For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to 1/12th of the wireless enhanced 911 fees

collected from prepaid wireless calling service under W. Va. Code § 24-6-6b during the period beginning on July 1, 2007, and ending on June 30, 2008.

5.2.b. Beginning on July 1, 2009, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Commission under W. Va. Code § 24-6-6b during the previous 12 months.

§150-25-6. Disbursement of E911 Fees.

6.1. The Commission's Administrative Services Division shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursement ratios as provided herein.

6.1.a. Five percent of the wireless enhanced 911 fee money received by the Public Service Commission each month shall be deposited in the fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system.

6.1.b. Each month, one-twelfth of one million dollars shall be deposited in a fund entitled "Enhanced 911 Wireless Tower Access Assistance Fund."

6.1.c. Each month, the West Virginia State Police shall be provided an amount equal to ten cents from each fee payment received in the previous month.

6.1.d. Disbursement ratios used pursuant to 6.5 herein shall be recalculated by the Commission's Administrative Services Division within thirty calendar days of the availability of updated decennial county population census data. Such recalculated disbursement ratios shall be effective on July 1 immediately following such recalculation.

6.2. Counties which enact an E911 ordinance after July 11, 1997, or which enacted an E911 ordinance on or after July 11, 1992 but before July 11, 1997, shall receive one percent (1%) of the remainder of the monthly E911 fee revenues for a period of five (5) years following the adoption of the ordinance. After the fifth anniversary of the date of adoption of the ordinance, each such county shall receive only that county's portion of the monthly E911 fee revenues being disbursed on a pro rata basis, as set forth in 6.3., 6.4 and 6.5 herein.

6.3. On and after July 1, 2005, when two or more counties organize pursuant to law into one county in order to provide government services and upon written notice to the Commission verifying such consolidation, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county, in addition to other amounts permitted by this rule.

6.4. Each county shall receive eight and one-half tenths of one percent (0.0085) of the remainder of the monthly E911 fee revenues received by the Commission.

6.5. From any moneys remaining each county shall receive a pro rata portion, based on that county's percentage of the state's total population, as determined in the most recent decennial census.

6.6. Each county shall receive its share of the wireless E911 fee revenue for use in the same manner as the E911 fee revenues received by the county pursuant to its E911 ordinances.

§150-25-7. E911 Fee Revenues Accounting.

The Commission shall cause to be established an account for all monthly E911 fee revenues remitted to the Commission. Said account shall serve as a repository for such fee revenues until, in accordance with the quarterly disbursement schedule set forth in 8.2 herein, such revenues are disbursed to each county.

§150-25-8. Disbursement of Monthly E911 Fee Revenues.

8.1. Disbursement of monthly E911 fee revenues shall be made, by check or appropriate financial equivalent, to each county by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.2 herein.

8.2. Monthly E911 fee revenues shall be disbursed, either directly, by check or appropriate financial equivalent, to counties as follows:

8.2.a. In the months of January, April, July and October, payments shall be issued to the following counties: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson and Jefferson.

8.2.b. In the months of February, May, August and November, payments shall be issued to the following counties: Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton and Pleasants.

8.2.c. In the months of March, June, September, and December, payments shall be issued to the following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzell, Wirt, Wood and Wyoming.

8.3. The fee revenues disbursed in any given month shall be those billed during the three-month period which ended three months prior to the disbursal month. For example, the monthly E911 fee revenues filed with the Commission by CMRS providers during April, May and June shall be disbursed in October.

§150-25-9. Registration of CMRS Providers.

9.1. Each CMRS provider, or any reseller of any commercial mobile radio service, which has received FCC authority to serve any area within the State of West Virginia on or before December 31, 1997 shall, no later than January 31, 1998, register with the Commission. Such CMRS providers shall register with the Commission even if the CMRS provider is not actually providing service in any part of West Virginia.

9.2. CMRS providers which receive authority to serve any area within the State of West Virginia after January 31, 1998 shall register within thirty (30) calendar days of receiving FCC authority to operate in West Virginia.

9.3. Such registration shall be filed with the Commission's Executive Secretary and shall include the following information:

9.3.1. Legal name of CMRS provider;

9.3.2. All business names used by the CMRS provider;

9.3.3. Name, title, mailing address, telephone number, fax number, and E-Mail address (if available) of the person to be contacted regarding state regulatory matters;

9.3.4. A listing of all areas in which the CMRS provider is authorized, by the FCC, to serve any portion of West Virginia; and

9.3.5. A copy of the FCC license authorizing the CMRS provider to serve any portion of West Virginia.

9.4. Changes to any of the above-listed information shall be filed with the Commission's Executive Secretary within thirty (30) calendar days of the effective date of such change(s). This filing requirement includes providing notice to the Commission's Executive Secretary of any and all mergers, divestitures, acquisitions, etc. affecting West Virginia service areas.

§150-25-10. Submission of Local Exchange Information.

10.1. Each local exchange carrier certificated by the Commission shall, by no later than February 15, 1998, submit to the Telecommunications Section of the Commission's Utilities Division line counts, by county, as of January 1, 1998.

10.2. Such line counts shall be for each access line, trunk and trunk equivalent, including PBX trunks and CENTREX trunk equivalents, in actual service.

10.3. Beginning in 1999, and for each subsequent year, the line count data shall be submitted by February 15 and shall be for line counts as of January 1.

§150-25-11. Respecification of E911 Fees.

11.1. The E911 fee shall be respecified biennially, beginning in 1999 and using the respecification methodology and data required by W. Va. Code §24-6-6b(d)(1). The respecified E911 fee shall become effective on July 1 of the respecification year.

11.2. The Commission shall provide notice of the respecified E911 fee to each CMRS provider currently registered with the Commission on or before November 1 of each respecification year.

11.3. The Commission shall provide notice of the currently applicable E911 fee to each new CMRS provider that registers with the Commission on or after November 1 of each calendar year, within thirty (30) calendar days after the date such CMRS provider registers with the Commission.

§150-25-12. Uncollectibles.

CMRS post-paid providers shall make reasonable and diligent efforts to collect unpaid E911 fees from each valid retail post-paid CMRS subscription. Notwithstanding the foregoing, a CMRS provider shall not be deemed to be a collection agent or otherwise held liable for a such subscription's failure to pay E911 fees properly billed by the CMRS provider.

§150-25-13. Wireless Tower Access Assistance Fund.

13.1 Projects.

13.1.a. Project Review. In order to receive a grant for a project from the Tower Access Assistance Fund, a wireless tower project sponsor must submit an application on the appropriate form, to be developed and provided by the Tower Access Assistance Fund Review Committee, and the wireless tower project must receive the approval of the Tower Access Assistance Fund Review Committee.

13.1 .b. Application Filing. A project sponsor may file an application with the Commission's Executive Secretary at any time during Commission business hours. To be considered for funding from money accruing from the period January 1 through December 31 of the funding year, the project sponsor must file its application on or before November 15 of the funding year, provided that the initial funding year shall be the period from July 8, 2005 through December 31, 2005 and for funding from that funding year, the project sponsor must file its application on or before June 15, 2006.

13.1.c. Application Review. On or before July 31, 2006, the Tower Access Assistance Fund Review Committee will review all applications filed on or before June 15, 2006 and shall make a determination regarding each application. The Tower Access Assistance Fund Review Committee shall either recommend the approval of, in whole or in part, or the denial of funding for the project or request additional information if necessary to make a determination. The Tower Access Assistance Fund Committee shall rank all of those applications for which it recommends approval in order of funding preference. A copy of the determination by the Committee shall be sent to the Commission's Executive secretary and to the applicant. For

applications made after June 15, 2006, the Tower Access Assistance Fund Review Committee will review the applications and make recommendations to the Commission, as described above, during the period following the November 15, 2006 filing deadline and before December 31, 2006. This same procedure shall repeat with each calendar year, provided that, upon a positive vote at least six of its members, the Tower Access Assistance Fund Review Committee, for good cause shown, may treat an application in an expedited manner to be determined by the members. In all such instances of expedited treatment, the Commission shall have fourteen (14) days, from receipt of the Tower Access Assistance Fund Review Committee's expedited recommendation, in which to make its decision regarding such expedited recommendation.

13.1.c.1. The determination by the Committee must be in writing and contain findings that the project meets, if funding is recommended, or does not meet, if funding is not recommended, each of the public interest factors specified in section 13.2. of these Rules.

13.1.d. Issuance of funds by the Commission. Within fourteen (14) days of the receipt of the determination of the Tower Access Assistance Fund Review Committee, the Commission shall, in the instance of a determination to fund a particular project, decide to either accept or reject such determination. Upon the Commission's acceptance to fund a particular project, the Administrative Services Division shall mail a copy of the funding contract to the applicant and schedule a closing on the grant to be held within thirty (30) days. The Commission shall continue its decision-making process through the ranked list until the available funding for the fiscal year is exhausted.

13.1.d.1. Denial. If funding for a project is denied for any reason, the Committee shall provide written notice of such to the applicant with a copy to the Commission's Executive Secretary.

13.1.e. Committee Determination. Prior to making any grant, the Committee shall determine that the grant and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of W.Va. Code §24-6-6b(b). Priority shall be given to projects, including public/private partnerships, where the project will provide significant benefits to public safety (including law enforcement, ambulance, rescue and fire fighting) communications as well as to commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), wireless broadband Internet access, Department of Highways communications and/or pager services.

13.1.f. Eligible Grant Recipients. The Committee shall not recommend grants for any wireless tower project that is not applied for by a project sponsor on behalf of itself and/or another person.

13.1.g. Grant Requirements. The Committee may recommend a grant for a project if the Committee determines and finds that (1) the project will result in the provision of enhanced 911 wireless coverage in the project area; and (2) the absence of a sufficient number of potential wireless users in the project area prevents adequate funding of the project without the awarding of a grant from the Tower Access Assistance Fund.

13.1.h. Loans. The Committee shall not recommend, and the Commission shall not distribute, any loans from the Tower Access Assistance Fund.

13.2. Review Guidelines.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct or equip a wireless tower, the Tower Access Assistance Fund Review Committee shall consider the following:

13.2.a.1. The public health and safety benefits;

13.2.a.2. The degree to which the project will allow the acquisition, construction, and/or equipping of a wireless tower which would provide additional enhanced 911 service coverage;

13.2.a.3. The degree to which the project sponsor can establish that, without such funds, such project would not be economically feasible;

13.2.a.4. The cost effectiveness of the project as compared with alternatives which achieve substantially the same benefits;

13.2.a.5. The availability of alternative sources of funding which could finance all or a part of the project, and the need for the assistance of the Commission to finance the project or attract other sources of funding;

13.2.a.6. The applicant's ability to operate and maintain the wireless tower if the project is approved and consummated;

13.2.a.7. The degree to which the project achieves or abets other state or regional planning goals;

13.2.a.8. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;

13.2.a.9. The capability of the project to permit the co-location of communications equipment on the proposed tower for commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio communications (SMR) services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or pager services;

13.2.a.10. The adequacy and efficiency of other wireless communications facilities, if any, in the area to be served by the project; the increase in the reliability of wireless communications service which will be attained; and the efficiency of the proposed solution when compared with other alternatives; and

13.2.a.11. Verification that the project sponsor will obtain a performance bond guaranteeing completion of the project.

13.3. Tower Access Assistance Fund Administration.

13.3.a. Administration of the Tower Access Assistance Fund. The Commission's Administrative Services Division shall be responsible for administration of the account containing Tower Access Assistance Fund money. That division shall receive and deposit Enhanced 9-1-1 Fee revenues intended for the Tower Access Assistance Fund and shall be responsible for all Tower Access Assistance Fund grant transactions.

13.3.b. Sources of Money for Fund. The Tower Access Assistance Fund shall consist of Tower Access Assistance Fund revenues; any appropriations, grants, gifts, contributions, or other revenues received by the Tower Access Assistance Fund from any source, public or private; insurance proceeds payable to the Commission or the Tower Access Assistance Fund in connection with any Tower Assistance project or projects; and all income earned on moneys held in the Tower Access Assistance Fund.

13.3.c. Use of Moneys in the Fund. The Commission, subject to the restrictions set forth in W.Va. Code §24-6-6b(b), shall use money in the Tower Access Assistance Fund to make grants to finance all or part of the costs of projects to be undertaken by a project sponsor.

13.3.d. Terms of Grant. Where a project sponsor has received Tower Assistance grant money to fund a project, and the project is thereafter sold, then to the extent that proceeds are available, the grant contract developed by the Committee shall require the project sponsor to reimburse the Tower Access Assistance Fund the amount of the Tower Assistance grant. The contract shall require that the amount of repayment shall be reduced by the applicable share of accumulated depreciation of the project.

13.3.d.1. The funding contract may contain provisions such that if the project is sold, the Commission shall be notified and the applicant and/or purchaser shall be required to repay the grant funds.

13.3.d.2. The Committee shall prepare a report for the Commission on an annual basis listing those projects which received grant money and are sold. The report shall include a description of the terms by which the grant will be repaid.

13.3.e. Financial Assistance from the Fund. Each grant awarded by the Commission shall be evidenced by a grant contract between the Commission and the project sponsor to which the grant shall be awarded; the contract shall include, in addition to those provisions described elsewhere in this Rule, and without limitation and to the extent applicable, the following provisions:

13.3.e.1. The estimated cost of the project and the amount of the grant;

13.3.e.2. The specific purposes for which any items on which the grant proceeds shall be expended and the conditions and procedure for disbursing grant proceeds;

13.3.e.3. The duties and obligations imposed by the Commission upon the project sponsor regarding the project;

13.3.e.4. The agreement of the project sponsor to comply with all applicable federal and state laws and all rules and regulations issued or imposed by the Commission or other state, federal or local bodies regarding the acquisition, equipping, and/or construction of the wireless tower and granting the Commission the right to appoint a receiver for the wireless tower project if the project sponsor should default on any terms of the agreement.

13.4. Filing and Docketing of Applications.

13.4.a. Applications procedures. The project sponsor shall file an original and one copy of the application with the Commission's Executive Secretary. That office shall record the filing using an appropriate designation methodology. The filing shall be distributed to the members of the Tower Access Assistance Fund Review Committee by the chairman of the Committee. Additional documents, correspondence, etc., associated with the filing shall be sent directly by the project sponsor to each of the members of the Tower Access Assistance Fund Review Committee and shall file one copy with the Commission's Executive Secretary. The Applicant shall, upon request of the chairman of the Tower Access Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, including documents comprising the original application and documents filed subsequently.

13.5. Tower Access Assistance Fund Review Committee.

13.5.a. Terms of Membership. Membership terms shall be for three years. Initial memberships of the Commission Staff representative, the House representative and the Senate representative shall be for one year and initial memberships for the County Commissioners' Association of West Virginia representative, the wireless telephone providers representative and the wireless tower construction industry representative shall be for two years. Members shall serve at the will and pleasure of the appointing authority. The unexpired portion of a vacating member's term shall be filled by a replacement appointed pursuant to Rule 2.27, herein.

13.5.b. Bylaws. The Tower Access Assistance Fund Review Committee shall, as soon as possible, draft bylaws and submit them to the Commission for its review and approval. Such bylaws shall include, among other necessary provisions of the Committee to conduct business, provisions related to (1) the conduct of public meetings, (2) the publication of the time, location, and agenda of such meetings, (3) rules for submission of items to the agenda, (4) a provision for minutes of the meetings, (5) copies of the grant application forms as developed by the Committee, and (6) copies of the contracts used to administer the individual grants as developed by the Committee.

13.5.c. Voting. Each Committee member shall have one vote on all matters put to a vote by the Committee. A Committee member may, by stating such on a written and signed document submitted to the Committee Chairperson, assign a voting designee when that member is unable to attend a Committee meeting. Members may attend meetings in person or via

teleconference facilities. A member or that member's voting designee must be in attendance at a Committee meeting in order to vote on matters at that meeting. Matters voted upon at Committee meetings shall be considered passed when a majority of the members and member designees present at the meeting, either in person or via teleconference facilities, vote for the matter.

13.5.d. Quorum. No matter may be put to a vote at a Committee meeting unless a quorum of members and member designees is present at the meeting. A quorum shall consist of a total of at least four voting members and/or member designees.

13.5.e. Chairperson. The Committee membership shall designate a Chairperson who shall be responsible for conducting the business of the Committee. The Chairperson shall serve at the will and pleasure of the Committee's members and may be replaced by a majority vote at a Committee meeting at which a quorum is present. The Chairperson, or that person's designee, designated by submission of a signed written document to the Chairman of the Commission, shall preside at Committee meetings.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA WIRELESS E-911 SUBSCRIBER FEE REPORT

MONTH OF _____, 20 _____

**Must remit to WVPSC by no later than the 17th
or the first business day thereafter**

FEIN: _____

COMPANY NAME: _____

DBA (IF APPLICABLE): _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE: _____

E-MAIL ADDRESS: _____

NUMBER OF FEES COLLECTED	_____
AMOUNT COLLECTED	\$ _____
LESS 3% ADMINISTRATIVE FEE	\$ _____
NET PAYABLE TO PSC	\$ _____

MAIL PAYMENT TO: Public Service Commission of West Virginia
 Administrative Services Division
 PO Box 812
 Charleston, WV 25323

OR, TO FILE ELECTRONICALLY: executive_director_e911@psc.state.wv.us

FAX INFO: (304) 340-3753, ATTN: E-911 Fee Report

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 25
RULES GOVERNING
EMERGENCY TELEPHONE SERVICE**

§150-25-1. General.

1.1. Scope -- These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1 and the disbursement of such fee revenues to the West Virginia State Police, Division of Homeland Security and Emergency Management, and counties in West Virginia. Additionally, these rules establish guidelines to be used by the Public Service Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

1.2. Authority. -- W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-6b, and 24-6-11.

1.3. Filing Date. -- August 29, 2008.

1.4. Effective Date. -- October 28, 2008.

§150-25-2. Definitions.

2.1. For purposes of this rule, the Commission adopts the definitions of “commercial mobile radio service provider or CMRS provider,” “county answering point,” “emergency services organization,” “emergency service provider,” “emergency telephone system,” “enhanced emergency telephone system,” “public agency,” “public safety unit,” “telephone company,” “comprehensive plan,” “technical and operational standards,” set forth in W. Va. Code §24-6-2. Regarding prepaid cellular service, the Commission adopts the definitions of “prepaid wireless calling service” in W. Va. Code § 11-15-2 and “sale” in W. Va. Code § 11-15-2. In addition, unless otherwise specified in this rule, the Commission adopts the definitions set forth in section 1.7 of the Commission’s *Rules for the Government of Telephone Utilities*, C.S.R. § 150-6-1.7.

2.2. “Commission” -- The Public Service Commission of West Virginia.

2.3. “Cost” -- Means, as applied to any project to be financed in whole or in part with funds provided from the Tower Access Assistance Fund, the cost of acquisition, equipping, and/or construction of the proposed wireless tower; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans

and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, equipping, and/or construction of the wireless tower; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth; the cost of constructing any tower, guy lines, warning lights, antennae, feed lines, radio equipment, power lines, generators, security fencing, gates or other facilities necessary for the operation and protection of the tower; the cost of all apparatus, other machinery, and equipment necessary for the operation of the tower; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of insurance related to equipping and construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any wireless tower; the cost of placing any project in operation; and all other costs of any kind or nature incurred or to be incurred by the project sponsor that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Tower Access Assistance Fund.

2.4. "County" -- One of the counties provided for in W. Va. Code §1-1-1.

2.5. "Emergency Number" -- Any telephone number, including 9-1-1, and any 7-digit or 10-digit number which could access a 9-1-1 line or trunk, which is primarily used for the purpose of reporting emergencies such as fires, the need for law enforcement, rescue and/or medical assistance, actual or imminent disasters, etc.

2.6. "Emergency Services Organization" -- The organization established under W. Va. Code §15-5-1 et seq.

2.7. "Emergency Telephone System" -- A telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point.

2.8. "E911"-- Enhanced 911.

2.9. "E911 Fees" -- Wireless Enhanced 911 Fees.

2.10. "FCC" -- The Federal Communications Commission.

2.11. "In-state two-way service subscriber" -- A person or entity with a valid retail CMRS subscription.

2.12. "Local Exchange Carrier" or "LEC" -- A person or entity granted a certificate of public convenience and necessity to provide local exchange services within a defined service area of the State. Incumbent LECs shall be those LECs holding certificates of public convenience and necessity prior to January 1, 1995.

2.13. "NANC" -- The North American Numbering Council.

2.14. "NANP" -- The North American Numbering Plan.

2.15. "Need of the project sponsor" -- Means there is a public need for a project. The Tower Access Assistance Fund Review Committee may construe a lack of wireless telephone service, in that part of a county in which a project is proposed, as a factor supporting the conclusion that a need exists for a project in that county.

2.16. "Person" -- Means any individual, entity, or any corporation, partnership, association, limited liability company or any other form of business organization or agency entitled to sue or be sued under applicable state law.

2.17. "Political subdivision of the state" -- Means any county commission, municipality or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county health department created pursuant to W.Va. Code §16-2 et. seq.; public service district; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a governmental function.

2.18. "Project" -- Means an undertaking involving a wireless tower to be acquired, constructed, equipped and/or operated by a state agency, political subdivision or wireless telephone carrier or any combination of such entities.

2.19. "Project sponsor" -- Means any county commission which intends to acquire, construct, equip, or otherwise develop a wireless tower.

2.20. "Public Agency" -- Means the State, and any municipality, county, public district, or public authority which provides or has the authority to provide fire-fighting, police, ambulance, medical, rescue or other emergency services.

2.21. "Public Safety Unit" -- Means a functional division of a public agency which provides fire-fighting, police, medical, rescue or other emergency services.

2.22. "Public Service Commission," or "Commission," -- Means the Public Service Commission of West Virginia created and established under Chapter 24 of the W. Va. Code or any successor to all or any substantial part of its powers and duties.

2.23. "State agency" -- Means a state department, board, commission, institution or other administrative agency of state government.

2.24. "Telephone Utility" -- Any person, firm, partnership, or corporation engaged in the business of furnishing telephone communications services to the public under the jurisdiction of the Public Service Commission of West Virginia.

2.25. "Tower Access Assistance Fund" -- Means the Fund established in accordance with the provisions of W. Va. Code §24-6-6b(b).

2.26. "Tower Access Assistance Fund revenue" -- Means all amounts appropriated by the Legislature; all amounts deposited into the Tower Access Assistance Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any wireless tower project funded by the Tower Access Assistance Fund.

2.27. "Tower Access Assistance Fund Review Committee," or "Committee" -- Means a committee established by the Commission to review and make recommendations to the Commission on applications for grants from the Tower Access Assistance Fund. The Committee shall be made up of the following: 1) a member, to be appointed by the Chairman of the Commission, of the Staff of the Public Service Commission familiar with wireless telecommunications technology; 2) the Speaker of the House of Delegates or that person's designee, as a non-voting member; 3) the Senate President or that person's designee, as a non-voting member; 4) a representative of County Commissions, to be appointed by the County Commissioners' Association of West Virginia; 5) a representative, to be appointed by the Governor, of wireless telephone providers operating in West Virginia; 6) a representative, to be appointed by the Governor, of the wireless tower construction industry; 7) the Superintendent of State Police or that person's designee; 8) the Director of the West Virginia Division of Homeland Security and Emergency Management or that person's designee; 9) a representative, appointed by the West Virginia Enhanced 911 Council, of the W.Va. Enhanced 911 Council. The committee shall meet to consider applications for financial assistance from the Tower Access Assistance Fund and to make determinations regarding such applications. Such determinations shall be based upon the guidelines and criteria established by these Rules.

2.28. "Valid retail CMRS subscription" -- A two-way, voice grade or better, cellular or PCS telecommunications service associated with a unique multi-digit area code prefix assigned by NANC, pursuant to NANP, for any area within the State of West Virginia, and which may be used to signal terminal equipment devices associated with the service. Note: A single cellular or PCS account may have more than one valid retail CMRS subscription associated with that account.

2.29. "Wireless telephone carrier" -- Means any commercial mobile radio service provider, as defined in W. Va. Code §24-6-2 as cellular licensees, broadband personal communications services licensees, and specialized mobile radio providers, as those terms are defined by the Federal Communication Commission, which offer real-time, two-way switched voice service that is interconnected with the public switched network, and includes resellers of any commercial mobile radio service.

2.30. "Wireless tower" -- Means any structure, antenna, tower, or other device which provides, or is suitable to provide, commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or commercial pager services.

§150-25-3. Local Emergency Telephone Systems.

3.1. Creation of emergency telephone systems.

3.1.1. A public agency may establish, consistent with these rules, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multi-jurisdictional or regional systems, and any system established may include only a portion of the territory of a public agency. To the extent feasible, these systems shall be centralized.

3.1.2. Every system shall provide access to emergency services organizations, police, fire-fighting, and emergency medical and ambulance services and may provide access to other emergency services. The system may also provide access to private ambulance services. The system may also provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the State provides emergency services, the system shall provide access to the public safety unit.

3.1.3. The number "9-1-1" shall be used as the primary emergency number whenever practicable. If the use of the number "9-1-1" is not practicable, the telephone utility or companies shall make application to this Commission in order to use an alternate emergency telephone number. The Commission encourages the use of "1-9-1-1" as the alternate emergency telephone number.

3.1.4. The telephone utility in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the telephone utility, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities.

3.2. Establishment of emergency telephone systems.

3.2.1. The telephone utility when establishing a new wire center or when replacing the switching equipment for any existing wire center shall insure that the new switching equipment contains the capability of providing emergency telephone system services.

3.2.2. The telephone utility shall design the switching equipment used in all new wire centers and in the replacement of existing wire centers to be capable of accessing emergency services by using the telephone number "9-1-1".

3.2.3. The telephone utility when modifying the existing switching equipment in any wire center shall configure the equipment in a manner that will most easily facilitate the implementation of an emergency telephone system in that wire center, using the telephone number "9-1-1", if practicable.

3.2.4. Under normal circumstances, the telephone utility shall respond within ninety (90) days to any application for emergency telephone service made by a public agency, emergency services organization or public safety unit. This response shall show the projected cost of the system to the maker of the application and the projected date on which emergency telephone service can be established. A copy of this response shall be filed with the Commission.

3.2.5. Under normal circumstances where equipment is available, the telephone utility shall have as its objective the satisfaction of all requests for the establishment of emergency telephone service within nine (9) months of the date of a firm order for such service. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.6. The telephone utility shall report to the Commission any request for emergency telephone service it is unable to satisfy within nine (9) months of any application therefor.

3.2.7. The provision of emergency telephone service shall be made under tariffs approved by this Commission.

3.2.8. In political jurisdictions served by more than one (1) telephone utility, the telephone utilities shall cooperate in establishing an emergency telephone system. The Utilities Division of this Commission shall, upon request, assist in the coordination of the different telephone utilities. In these political jurisdictions, the telephone utilities shall have as their objective the satisfaction of all requests for an emergency telephone system within nine (9) months of the date a firm order for such system is received. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.9. The telephone utilities shall report to the Commission any request for emergency telephone systems involving more than one (1) utility which cannot be established within one (1) year of the date a firm order is received.

3.3. Reporting requirements of the telephone utility.

The telephone utility before establishing any wire center, replacing any wire center or making major modifications to any wire center, shall furnish the Commission plans showing

that it has complied with the requirements of these rules. "Major Modifications" is hereby defined to be a central office modification affecting level assignments, thousands levels or trunking.

3.4. 9-1-1 rule regarding telephone directory emergency numbers pages.

3.4.1. Telephone directories shall list, on the inside of the directory front cover or on the front page of the directory, otherwise known as the emergency calling information page, all emergency service providers accessible from the exchanges covered by the directory on a local call and/or 9-1-1 basis: Provided, That, if a 9-1-1 system serves any portion of the area covered by the directory, the emergency calling information page shall boldly and prominently display the 9-1-1 telephone number. Furthermore, all major public agencies such as, municipal police, fire, ambulance, sheriff and state police, that are accessible by calling 9-1-1 shall be listed in close proximity to the 9-1-1 listing along with the appropriate agency generic symbols.

3.4.2. Each telephone directory shall have a page immediately following the emergency calling information page which shall clearly list the name and seven (7) digit non-emergency administrative telephone number of each individual emergency services provider which serves any portion of the area covered by the telephone directory. Such listings shall be grouped by service type (e.g., ambulance, fire, law enforcement, rescue, etc.) and the listings shall be arranged alphabetically within the service type grouping. Where appropriate, subgrouping by county may be done. The seven (7) digit non-emergency administrative telephone number of each 9-1-1 Public Safety Answering Point which serves any portion of the area covered by the telephone directory shall be prominently displayed at the top of the page.

3.4.3. Where an entire directory coverage area is not covered by 9-1-1, the emergency calling information page shall list the seven (7) digit telephone numbers of all directory coverage area Public Safety Units not accessible by calling 9-1-1. The emergency calling information page shall, at least, clearly show which emergency calls should be made to 9-1-1 and which should be made to other emergency telephone numbers listed on the page.

3.4.4. Additional information regarding emergency calling, as is beneficial to the public interest, may appear on the emergency calling information page.

3.4.5. Each and every local exchange telephone carrier responsible for a telephone directory emergency calling information page shall submit each emergency calling information page and the page immediately following to the Public Service Commission for review, by informally filing same with the Public Service Commission's Telecommunications Section, before said pages are published. Such submittals shall be sent at least thirty (30) calendar days prior to the deadline for making changes.

§150-25-4. Billing and Collection of E911 Fees.

4.1. Post-paid service – Each CMRS post-paid provider shall, with each bill rendered, levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription. The

applicable E911 fee shall be a separate line item on the billing statement provided to each valid post-paid retail CMRS subscription by CMRS providers.

4.2. Pre-paid service – Beginning July 1, 2008, prepaid wireless calling service is subject to the general consumer sales and service tax, in lieu of the wireless enhanced 911 fee.

§150-25-5. Remission of E911 Fees to Commission.

5.1. Post-paid service – By no later than the seventeenth (17th) day of each month, or the first business day thereafter, each CMRS provider shall remit to the Commission a check, or appropriate financial equivalent, for the net E911 fees collected, after retaining three percent (3%) for the billing or collection of the E911 fee, during the preceding month or billing period. If remitted by mail, the postmark shall be used as proof of compliance. If remitted electronically, the date specified by the software used shall be used as proof of compliance. The fees shall be remitted to:

By mail:

Public Service Commission of West Virginia
Administrative Services Division
P.O. Box 812
Charleston, West Virginia 25323

Electronically:

executive_director_e911@psc.state.wv.us

5.1.a. Form to be used with fee remittals. CMRS providers shall use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting E911 fees to the Commission. All information requested by WLF-1 shall be provided. This may be done electronically, at the discretion of the CMRS provider.

5.1.b. Each CMRS provider shall remit to the Commission such E911 fees actually collected by the CMRS provider. Such E911 fees remitted shall include any previously unpaid E911 fees collected by the CMRS provider during the preceding monthly billing period.

5.1.c. The first 3.00, or the monthly wireless E911 fee amount as such may subsequently be modified by force of law, collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

5.2. Pre-paid service – Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Commission the proceeds of the general consumer sales and service tax collected from prepaid wireless calling service in the preceding month.

5.2.a. For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to 1/12th of the wireless enhanced 911 fees collected from prepaid wireless calling service under W. Va. Code § 24-6-6b during the period beginning on July 1, 2007, and ending on June 30, 2008.

5.2.b. Beginning on July 1, 2009, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Commission under W. Va. Code § 24-6-6b during the previous 12 months.

§150-25-6. Disbursement of E911 Fees.

6.1. The Commission's Administrative Services Division shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursement ratios as provided herein.

6.1.a. Five percent of the wireless enhanced 911 fee money received by the Public Service Commission each month shall be deposited in the fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system.

6.1.b. Each month, one-twelfth of one million dollars shall be deposited in a fund entitled "Enhanced 911 Wireless Tower Access Assistance Fund."

6.1.c. Each month, the West Virginia State Police shall be provided an amount equal to ten cents from each fee payment received in the previous month.

6.1.d. Disbursement ratios used pursuant to 6.5 herein shall be recalculated by the Commission's Administrative Services Division within thirty calendar days of the availability of updated decennial county population census data. Such recalculated disbursement ratios shall be effective on July 1 immediately following such recalculation.

6.2. Counties which enact an E911 ordinance after July 11, 1997, or which enacted an E911 ordinance on or after July 11, 1992 but before July 11, 1997, shall receive one percent (1%) of the remainder of the monthly E911 fee revenues for a period of five (5) years following the adoption of the ordinance. After the fifth anniversary of the date of adoption of the ordinance, each such county shall receive only that county's portion of the monthly E911 fee revenues being disbursed on a pro rata basis, as set forth in 6.3., 6.4 and 6.5 herein.

6.3. On and after July 1, 2005, when two or more counties organize pursuant to law into one county in order to provide government services and upon written notice to the Commission verifying such consolidation, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county, in addition to other amounts permitted by this rule.

6.4. Each county shall receive eight and one-half tenths of one percent (0.0085) of the remainder of the monthly E911 fee revenues received by the Commission.

6.5. From any moneys remaining each county shall receive a pro rata portion, based on that county's percentage of the state's total population, as determined in the most recent decennial census.

6.6. Each county shall receive its share of the wireless E911 fee revenue for use in the same manner as the E911 fee revenues received by the county pursuant to its E911 ordinances.

§150-25-7. E911 Fee Revenues Accounting.

The Commission shall cause to be established an account for all monthly E911 fee revenues remitted to the Commission. Said account shall serve as a repository for such fee revenues until, in accordance with the quarterly disbursement schedule set forth in 8.2 herein, such revenues are disbursed to each county.

§150-25-8. Disbursement of Monthly E911 Fee Revenues.

8.1. Disbursement of monthly E911 fee revenues shall be made, by check or appropriate financial equivalent, to each county by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.2 herein.

8.2. Monthly E911 fee revenues shall be disbursed, either directly, by check or appropriate financial equivalent, to counties as follows:

8.2.a. In the months of January, April, July and October, payments shall be issued to the following counties: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson and Jefferson.

8.2.b. In the months of February, May, August and November, payments shall be issued to the following counties: Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton and Pleasants.

8.2.c. In the months of March, June, September, and December, payments shall be issued to the following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming.

8.3. The fee revenues disbursed in any given month shall be those billed during the three-month period which ended three months prior to the disbursal month. For example, the monthly E911 fee revenues filed with the Commission by CMRS providers during April, May and June shall be disbursed in October.

§150-25-9. Registration of CMRS Providers.

9.1. Each CMRS provider, or any reseller of any commercial mobile radio service, which has received FCC authority to serve any area within the State of West Virginia on or before December 31, 1997 shall, no later than January 31, 1998, register with the Commission. Such CMRS providers shall register with the Commission even if the CMRS provider is not actually providing service in any part of West Virginia.

9.2. CMRS providers which receive authority to serve any area within the State of West Virginia after January 31, 1998 shall register within thirty (30) calendar days of receiving FCC authority to operate in West Virginia.

9.3. Such registration shall be filed with the Commission's Executive Secretary and shall include the following information:

9.3.1. Legal name of CMRS provider;

9.3.2. All business names used by the CMRS provider;

9.3.3. Name, title, mailing address, telephone number, fax number, and E-Mail address (if available) of the person to be contacted regarding state regulatory matters;

9.3.4. A listing of all areas in which the CMRS provider is authorized, by the FCC, to serve any portion of West Virginia; and

9.3.5. A copy of the FCC license authorizing the CMRS provider to serve any portion of West Virginia.

9.4. Changes to any of the above-listed information shall be filed with the Commission's Executive Secretary within thirty (30) calendar days of the effective date of such change(s). This filing requirement includes providing notice to the Commission's Executive Secretary of any and all mergers, divestitures, acquisitions, etc. affecting West Virginia service areas.

§150-25-10. Submission of Local Exchange Information.

10.1. Each local exchange carrier certificated by the Commission shall, by no later than February 15, 1998, submit to the Telecommunications Section of the Commission's Utilities Division line counts, by county, as of January 1, 1998.

10.2. Such line counts shall be for each access line, trunk and trunk equivalent, including PBX trunks and CENTREX trunk equivalents, in actual service.

10.3. Beginning in 1999, and for each subsequent year, the line count data shall be submitted by February 15 and shall be for line counts as of January 1.

§150-25-11. Respecification of E911 Fees.

11.1. The E911 fee shall be respecified biennially, beginning in 1999 and using the respecification methodology and data required by W. Va. Code §24-6-6b(d)(1). The respecified E911 fee shall become effective on July 1 of the respecification year.

11.2. The Commission shall provide notice of the respecified E911 fee to each CMRS provider currently registered with the Commission on or before November 1 of each respecification year.

11.3. The Commission shall provide notice of the currently applicable E911 fee to each new CMRS provider that registers with the Commission on or after November 1 of each calendar year, within thirty (30) calendar days after the date such CMRS provider registers with the Commission.

§150-25-12. Uncollectibles.

CMRS post-paid providers shall make reasonable and diligent efforts to collect unpaid E911 fees from each valid retail post-paid CMRS subscription. Notwithstanding the foregoing, a CMRS provider shall not be deemed to be a collection agent or otherwise held liable for a such subscription's failure to pay E911 fees properly billed by the CMRS provider.

§150-25-13. Wireless Tower Access Assistance Fund.

13.1 Projects.

13.1.a. Project Review. In order to receive a grant for a project from the Tower Access Assistance Fund, a wireless tower project sponsor must submit an application on the appropriate form, to be developed and provided by the Tower Access Assistance Fund Review Committee, and the wireless tower project must receive the approval of the Tower Access Assistance Fund Review Committee.

13.1 .b. Application Filing. A project sponsor may file an application with the Commission's Executive Secretary at any time during Commission business hours. To be considered for funding from money accruing from the period January 1 through December 31 of the funding year, the project sponsor must file its application on or before November 15 of the funding year, provided that the initial funding year shall be the period from July 8, 2005 through December 31, 2005 and for funding from that funding year, the project sponsor must file its application on or before June 15, 2006.

13.1.c. Application Review. On or before July 31, 2006, the Tower Access Assistance Fund Review Committee will review all applications filed on or before June 15, 2006 and shall make a determination regarding each application. The Tower Access Assistance Fund Review Committee shall either recommend the approval of, in whole or in part, or the denial of funding for the project or request additional information if necessary to make a determination. The Tower Access Assistance Fund Committee shall rank all of those applications for which it

recommends approval in order of funding preference. A copy of the determination by the Committee shall be sent to the Commission's Executive secretary and to the applicant. For applications made after June 15, 2006, the Tower Access Assistance Fund Review Committee will review the applications and make recommendations to the Commission, as described above, during the period following the November 15, 2006 filing deadline and before December 31, 2006. This same procedure shall repeat with each calendar year, provided that, upon a positive vote at least six of its members, the Tower Access Assistance Fund Review Committee, for good cause shown, may treat an application in an expedited manner to be determined by the members. In all such instances of expedited treatment, the Commission shall have fourteen (14) days, from receipt of the Tower Access Assistance Fund Review Committee's expedited recommendation, in which to make its decision regarding such expedited recommendation.

13.1.c.1. The determination by the Committee must be in writing and contain findings that the project meets, if funding is recommended, or does not meet, if funding is not recommended, each of the public interest factors specified in section 13.2. of these Rules.

13.1.d. Issuance of funds by the Commission. Within fourteen (14) days of the receipt of the determination of the Tower Access Assistance Fund Review Committee, the Commission shall, in the instance of a determination to fund a particular project, decide to either accept or reject such determination. Upon the Commission's acceptance to fund a particular project, the Administrative Services Division shall mail a copy of the funding contract to the applicant and schedule a closing on the grant to be held within thirty (30) days. The Commission shall continue its decision-making process through the ranked list until the available funding for the fiscal year is exhausted.

13.1.d.1. Denial. If funding for a project is denied for any reason, the Committee shall provide written notice of such to the applicant with a copy to the Commission's Executive Secretary.

13.1.e. Committee Determination. Prior to making any grant, the Committee shall determine that the grant and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of W.Va. Code §24-6-6b(b). Priority shall be given to projects, including public/private partnerships, where the project will provide significant benefits to public safety (including law enforcement, ambulance, rescue and fire fighting) communications as well as to commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), wireless broadband Internet access, Department of Highways communications and/or pager services.

13.1.f. Eligible Grant Recipients. The Committee shall not recommend grants for any wireless tower project that is not applied for by a project sponsor on behalf of itself and/or another person.

13.1.g. Grant Requirements. The Committee may recommend a grant for a project if the Committee determines and finds that (1) the project will result in the provision of enhanced 911 wireless coverage in the project area; and (2) the absence of a sufficient number of

potential wireless users in the project area prevents adequate funding of the project without the awarding of a grant from the Tower Access Assistance Fund.

13.1.h. Loans. The Committee shall not recommend, and the Commission shall not distribute, any loans from the Tower Access Assistance Fund.

13.2. Review Guidelines.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct or equip a wireless tower, the Tower Access Assistance Fund Review Committee shall consider the following:

13.2.a.1. The public health and safety benefits;

13.2.a.2. The degree to which the project will allow the acquisition, construction, and/or equipping of a wireless tower which would provide additional enhanced 911 service coverage;

13.2.a.3. The degree to which the project sponsor can establish that, without such funds, such project would not be economically feasible;

13.2.a.4. The cost effectiveness of the project as compared with alternatives which achieve substantially the same benefits;

13.2.a.5. The availability of alternative sources of funding which could finance all or a part of the project, and the need for the assistance of the Commission to finance the project or attract other sources of funding;

13.2.a.6. The applicant's ability to operate and maintain the wireless tower if the project is approved and consummated;

13.2.a.7. The degree to which the project achieves or abets other state or regional planning goals;

13.2.a.8. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;

13.2.a.9. The capability of the project to permit the co-location of communications equipment on the proposed tower for commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio communications (SMR) services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or pager services;

13.2.a.10. The adequacy and efficiency of other wireless communications facilities, if any, in the area to be served by the project; the increase in the reliability of wireless communications service which will be attained; and the efficiency of the proposed solution when compared with other alternatives; and

13.2.a.11. Verification that the project sponsor will obtain a performance bond guaranteeing completion of the project.

13.3. Tower Access Assistance Fund Administration.

13.3.a. Administration of the Tower Access Assistance Fund. The Commission's Administrative Services Division shall be responsible for administration of the account containing Tower Access Assistance Fund money. That division shall receive and deposit Enhanced 9-1-1 Fee revenues intended for the Tower Access Assistance Fund and shall be responsible for all Tower Access Assistance Fund grant transactions.

13.3.b. Sources of Money for Fund. The Tower Access Assistance Fund shall consist of Tower Access Assistance Fund revenues; any appropriations, grants, gifts, contributions, or other revenues received by the Tower Access Assistance Fund from any source, public or private; insurance proceeds payable to the Commission or the Tower Access Assistance Fund in connection with any Tower Assistance project or projects; and all income earned on moneys held in the Tower Access Assistance Fund.

13.3.c. Use of Moneys in the Fund. The Commission, subject to the restrictions set forth in W.Va. Code §24-6-6b(b), shall use money in the Tower Access Assistance Fund to make grants to finance all or part of the costs of projects to be undertaken by a project sponsor.

13.3.d. Terms of Grant. Where a project sponsor has received Tower Assistance grant money to fund a project, and the project is thereafter sold, then to the extent that proceeds are available, the grant contract developed by the Committee shall require the project sponsor to reimburse the Tower Access Assistance Fund the amount of the Tower Assistance grant. The contract shall require that the amount of repayment shall be reduced by the applicable share of accumulated depreciation of the project.

13.3.d.1. The funding contract may contain provisions such that if the project is sold, the Commission shall be notified and the applicant and/or purchaser shall be required to repay the grant funds.

13.3.d.2. The Committee shall prepare a report for the Commission on an annual basis listing those projects which received grant money and are sold. The report shall include a description of the terms by which the grant will be repaid.

13.3.e. Financial Assistance from the Fund. Each grant awarded by the Commission shall be evidenced by a grant contract between the Commission and the project sponsor to which the grant shall be awarded; the contract shall include, in addition to those provisions described elsewhere in this Rule, and without limitation and to the extent applicable, the following provisions:

13.3.e.1. The estimated cost of the project and the amount of the grant;

13.3.e.2. The specific purposes for which any items on which the grant proceeds shall be expended and the conditions and procedure for disbursing grant proceeds;

13.3.e.3. The duties and obligations imposed by the Commission upon the project sponsor regarding the project;

13.3.e.4. The agreement of the project sponsor to comply with all applicable federal and state laws and all rules and regulations issued or imposed by the Commission or other state, federal or local bodies regarding the acquisition, equipping, and/or construction of the wireless tower and granting the Commission the right to appoint a receiver for the wireless tower project if the project sponsor should default on any terms of the agreement.

13.4. Filing and Docketing of Applications.

13.4.a. Applications procedures. The project sponsor shall file an original and one copy of the application with the Commission's Executive Secretary. That office shall record the filing using an appropriate designation methodology. The filing shall be distributed to the members of the Tower Access Assistance Fund Review Committee by the chairman of the Committee. Additional documents, correspondence, etc., associated with the filing shall be sent directly by the project sponsor to each of the members of the Tower Access Assistance Fund Review Committee and shall file one copy with the Commission's Executive Secretary. The Applicant shall, upon request of the chairman of the Tower Access Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, including documents comprising the original application and documents filed subsequently.

13.5. Tower Access Assistance Fund Review Committee.

13.5.a. Terms of Membership. Membership terms shall be for three years. Initial memberships of the Commission Staff representative, the House representative and the Senate representative shall be for one year and initial memberships for the County Commissioners' Association of West Virginia representative, the wireless telephone providers representative and the wireless tower construction industry representative shall be for two years. Members shall serve at the will and pleasure of the appointing authority. The unexpired portion of a vacating member's term shall be filled by a replacement appointed pursuant to Rule 2.27, herein.

13.5.b. Bylaws. The Tower Access Assistance Fund Review Committee shall, as soon as possible, draft bylaws and submit them to the Commission for its review and approval. Such bylaws shall include, among other necessary provisions of the Committee to conduct business, provisions related to (1) the conduct of public meetings, (2) the publication of the time, location, and agenda of such meetings, (3) rules for submission of items to the agenda, (4) a provision for minutes of the meetings, (5) copies of the grant application forms as developed by

the Committee, and (6) copies of the contracts used to administer the individual grants as developed by the Committee.

13.5.c. Voting. Each Committee member shall have one vote on all matters put to a vote by the Committee. A Committee member may, by stating such on a written and signed document submitted to the Committee Chairperson, assign a voting designee when that member is unable to attend a Committee meeting. Members may attend meetings in person or via teleconference facilities. A member or that member's voting designee must be in attendance at a Committee meeting in order to vote on matters at that meeting. Matters voted upon at Committee meetings shall be considered passed when a majority of the members and member designees present at the meeting, either in person or via teleconference facilities, vote for the matter.

13.5.d. Quorum. No matter may be put to a vote at a Committee meeting unless a quorum of members and member designees is present at the meeting. A quorum shall consist of a total of at least four voting members and/or member designees.

13.5.e. Chairperson. The Committee membership shall designate a Chairperson who shall be responsible for conducting the business of the Committee. The Chairperson shall serve at the will and pleasure of the Committee's members and may be replaced by a majority vote at a Committee meeting at which a quorum is present. The Chairperson, or that person's designee, designated by submission of a signed written document to the Chairman of the Commission, shall preside at Committee meetings.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA WIRELESS E-911 SUBSCRIBER FEE REPORT

MONTH OF _____, 20 _____

**Must remit to WVPSC by no later than the 17th
or the first business day thereafter**

FEIN: _____

COMPANY NAME: _____

DBA (IF APPLICABLE): _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE: _____

E-MAIL ADDRESS: _____

NUMBER OF FEES COLLECTED	_____
AMOUNT COLLECTED	\$ _____
LESS 3% ADMINISTRATIVE FEE	\$ _____
NET PAYABLE TO PSC	\$ _____

MAIL PAYMENT TO: Public Service Commission of West Virginia
 Administrative Services Division
 PO Box 812
 Charleston, WV 25323

OR, TO FILE ELECTRONICALLY: executive_director_e911@psc.state.wv.us

FAX INFO: (304) 340-3753, ATTN: E-911 Fee Report