



Public Service Commission

Richard E. Hitt, General Counsel

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June 30, 2006

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 CSR Series 25

Dear Ms. Cooper:

Enclosed is a proposed rulemaking in response to both House Bill 3208 passed during the 2005 legislative session and Senate Bill 728 passed during the 2006 legislative session. The legislation can be found at *West Virginia Code* § 24-6-6b. The statute made this particular rule-making subject to legislative rule review. For reasons explained in the documents, we are seeking emergency status of these rules no later than August 11, 2006. The emergency status is requested as House Bill 3208 (and as reenacted by Senate Bill 728) specifically authorized the Public Service Commission to promulgate emergency rules for implementation of the procedures set forth in the Bill. The withdrawal of a pending rulemaking in Series 25 is the subject of a separate letter delivered to you on this date.

I have enclosed fifteen copies of the proposed rule, fourteen copies for your office and one copy for the legislative rule review committee. It is my understanding that you will assist in filing the rule with the legislative committee.

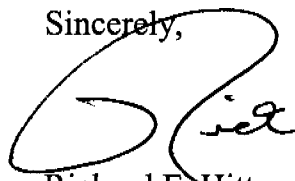
I have also enclosed fifteen copies of a notice of emergency rule, a copy of Commission General Order No. 187.29, the emergency rule questionnaire, the summary of

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the emergency rule, the statement of circumstances, and the fiscal note. Since the Commission is not part of the Cabinet structure, the Commission order is evidence of approval of the filing by the agency lead, Chairman Jon W. McKinney.

If you have any questions or if there are any problems, please bring them to my attention. You may reach me at 340-0317.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt", written over a large, stylized circular flourish.

Richard E. Hitt
General Counsel

REH/klm
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 30th day of June, 2006.

GENERAL ORDER NO. 187.29

A general order to initiate an emergency and proposed rulemaking for implementation of House Bill 3208 and Senate Bill 728 regarding wireless enhanced 911 fees and the Enhanced 911 Wireless Tower Assistance Fund.

COMMISSION ORDER

During the 2005 Regular Session the Legislature passed House Bill 3208 (H.B. 3208), (passed on April 9, 2005, effective July 8, 2005). The legislation amended and reenacted *West Virginia Code* § 24-6-6b relating to the E911 fee. The legislation raised the E911 fee, earmarked ten cents of the fee, per subscription, per month, for the West Virginia State Police, earmarked one million dollars of the fee for the construction of wireless towers, created the Enhanced 911 Wireless Tower Access Assistance Fund (WTAAF) to be administered by the Commission, authorized the Commission to provide loans and matching grants from the WTAAF, addressed the use of wireless towers for emergency services, authorized the Commission to promulgate legislative rules and emergency rules, adjusted the formula by which the Commission distributes E911 fees to the various counties, and allowed counties which consolidate government services to receive an additional one percent of the fee for each county consolidated.

By a Commission Order entered June 28, 2005 the Commission noted that there were a number of entities, including cellular phone companies, contractors, E911 call centers, emergency responders, and county officials, among others, with an interest in the implementation of H.B. 3208. Thus, instead of issuing emergency rules immediately the Commission decided to issue its emergency rules no later than November 1, 2005 to give the Commission adequate time to develop emergency rules with the input of other interested entities. Noting the effective date of the legislation, the Commission set forth how H.B. 3208 would be administered in the interim including collection of funds and disbursement of those funds to the counties. Regarding creation of the WTAAF the Commission noted that the creation of the WTAAF constituted a new program at the Commission, and as such the Commission would seek input from interested stakeholders, through the emergency rule-

making, in developing the processes necessary to administer the WTAAF. The Commission created a Task Force to collaborate with those entities having an interest in the new legislation in developing proposed emergency rules. Finally, the Commission ordered publication of a notice regarding these proceedings on a statewide basis.

In a July 18, 2005 Order the Commission set a procedural schedule for use by the Task Force, including a due date for its final report and proposed emergency rules of October 7, 2005.

The Task Force made its first report on August 12, 2005. Therein the Task Force described the initial organization and membership of the Task Force. The Task Force submitted a second report on September 15, 2005 indicating its progress. The Task Force filed its final report on October 7, 2005. Attached thereto were proposed emergency rules for use in implementing H.B. 3208.

On November 1, 2005 the Commission issued an Order promulgating emergency rules to implement the provisions of H.B. 3208 governing the collection and disbursement of E911 fees and the formation of a mechanism for administering a fund to subsidize the acquisition, equipping, and construction of new wireless towers to provide enhanced 911 service coverage to areas where such service would not be available otherwise due to marginal financial viability of the tower coverage area. The Order noted that H.B. 3208 addressed two general areas. The first involved an increase in the enhanced 911 fee and a revision of the mechanism for distributing those fees to the appropriate recipients. The order referred to that aspect of H.B. 3208 as the "collection and disbursement" function. The second addressed the creation of the WTAAF in order to provide a source of money for distribution of enhanced 911 fees, in the form of loans and grants, in order to subsidize the construction of wireless towers to provide enhanced 911 service coverage in areas which would not normally be served due to marginal financial viability. The order referred to that aspect of H.B. 3208 as the "wireless towers" function.

The Commission noted that H.B. 3208 specifically authorized the Commission to promulgate emergency rules for use in implementing the legislation. The Commission further noted that sections 4, 5, 6, 7, and 8 of 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service (Emergency Telephone Rules)*, addressed the collection and disbursement of the E911 fees to the counties. As such, the Commission determined that modification of those existing sections of the *Emergency Telephone Rules* would be necessary. As the WTAAF represented a new administrative duty of the Commission, an additional section would be added to the *Emergency Telephone Rules* to implement those functions.

The Commission reviewed the proposed emergency rules submitted by the Task Force, and, with some minor modifications, integrated them into the Commission's revision to the *Emergency Telephone Rules*. Specifically, the Commission's emergency rule revisions to the *Emergency Telephone Rules* reflected the collection and disbursement functions of H.B. 3208 by:

- A. deleting outdated language (see, § 150-25-4, *Billing and Collection of E911 Fees*);
- B. allowing for electronic payments, developing a form for use in remitting the E911 fees, and noting the increase in the fee to \$3.00 per month per subscription (see, § 150-25-4, *Remission of E911 Fees to Commission*);
- C. reassigning administrative duties regarding collection and disbursal of E911 fees from the Commission's Utilities Division to its Administrative Services Division, allowing for the allocation of one million dollars annually from the E911 collections for use in funding grants and loans for wireless towers; directing the disbursal of \$0.10 per subscription per month to the West Virginia State Police, and directing the disbursal of the remainder of the collected E911 fees to the counties of this State (see, § 150-25-6, *Disbursement of E911 Fees*);
- D. removing the no-longer applicable escrow requirement (see, § 150-25-7, *E911 Fees Revenues Accounting*); and
- E. revising the timing of disbursements to the counties, and removing a provision regarding the no-longer applicable escrow requirement (see, § 150-25-8, *Disbursement of Monthly E911 Fee Revenues*);

The Commission noted that H.B. 3208 provided limited guidance regarding administration of the WTAAF:

That for the fiscal year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. The monies shall be deposited in a fund administered by the West Virginia Public Service Commission, entitled "Enhanced 911 Wireless Tower Access Assistance Fund", and shall be expended in accordance with an enhanced 911 wireless tower access matching grant order adopted by the Public Service Commission. The Commission order shall contain terms and conditions designed to provide financial assistance

loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers 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 marginal financial viability of the applicable tower coverage area: Provided further, That the grants shall be allocated among potential sites based on application from county commissions demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed with assistance from the fund created by this subdivision shall be available for use by emergency services, fire departments and law enforcement agencies communication equipment, so long as that use does not interfere with the carrier's wireless signal: And provided further, That the Public Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection. The Public Service Commission is specifically authorized to promulgate emergency rules.

To address those directives the Commission's emergency rules created a Wireless Tower Access Assistance Fund Review Committee (Committee) to review and make determinations as to those projects qualifying for funding through the WTAAF. Pursuant to the emergency rules, applicants for grants or loans would submit an application to the Committee. Within sixty days of submission the Committee would review the application in accordance with criteria contained in the *Emergency Telephone Rules*, and forward its determination regarding funding for the proposed wireless tower project to the Commission. If the Committee approved the application, the Commission would schedule a loan/grant closing with the applicant and disburse the approved funding. The Committee would operate under by-laws developed by the Committee and approved by the Commission.

By an Order issued November 29, 2005 the Commission promulgated proposed legislative rules to implement the provisions of H.B. 3208 governing the collection and disbursement of E911 fees and the formation of a mechanism for administering a fund to subsidize the acquisition, equipping, and construction of new wireless towers to provide enhanced 911 service coverage to areas where such service would not be available otherwise due to marginal financial viability of the tower coverage area. The proposed legislative rules were promulgated in furtherance of the emergency rules issued by the Commission on November 1, 2005. The order required notice of the rules to be published statewide in addition to the notice requirements of the *Administrative Procedures Act, West Virginia Code Chapter 29A, et seq.* The publication required comments on or before January 10, 2006.

By a Commission Corrective Order entered November 29, 2005 the Commission corrected a date in the style of the November 29, 2005 publication notice. However, since

the error was discovered before copies of the notice were sent for publication and before the proposed legislative rules were forwarded to the West Virginia Secretary of State's Office and the Legislative Rule-Making & Review Committee, the Commission directed substitutions of the corrected versions of the documents.

By a Commission Order entered December 23, 2005 the Commission named Commission Staff member Dannie Lee Walker, Technical Analyst, to be the Commission's designated member on the Committee. Therein, the Order also noted that the Commission's emergency rules became effective on December 13, 2005, pursuant to the *Administrative Procedures Act*.

The Commission received affidavits of publication on December 5, 2005 from *The Logan Banner*; on December 7, 2005 from *The Bluefield Daily Telegraph*; on December 8, 2005 from *The Daily Times*; on December 16, 2005 from *The Dominion Post*; and on December 23, 2005 from *The Mountain Messenger*. Additional affidavits of publication were filed on December 27, 2005 from *The Parkersburg News*; and on December 28, 2005, from *The Welch News*.

On January 9, 2006 the Commission received a letter from the County Commissioners' Association of West Virginia (CCAWV) requesting that the Commission change the appointing agency for a representative of county commissioners from the WV Association of Counties (WVACo) to the CCAWV.

On January 10, 2006 the Commission received the "Comments of the Consumer Advocate Division."

On January 11, 2006 the Commission received the "Advisory Further Joint Staff Memorandum" from Staff. Staff explained that Dannie L. Walker, Technical Analyst, had spoken with WVACo Executive Director Patti Hamilton about the January 9, 2006 filing and that Ms. Hamilton had no objection to CCAWV's request being granted.

On January 20, 2006 Highland Cellular, LLC filed Reply Comments to the comments filed by the Consumer Advocate Division (CAD) on January 10, 2006.

On February 7, 2006 the Commission issued an Order waiving and modifying subsection 2.27.(4) of the emergency version of the *Emergency Telephone Rules* to allow the representative of the County Commissions to be appointed by the CCAWV.

On April 10, 2006 the Commission issued an Order revising its proposed legislative rules and promulgating agency-approved proposed legislative rules for filing with the West

Virginia Secretary of State and the Legislative Rule-Making & Review Committee. *West Virginia Code* § 24-6-6b(b) provides that the Commission may provide “loans or grants.” Of the two, the Commission recognized the lower administrative costs associated with a grant program as opposed to a loan program.¹ Given the \$1,000,000 per year available for disbursement, along with the vast expanses of West Virginia potentially in need of wireless service coverage, the Commission recognized the benefit in providing only grants through the WTAAF.

As such, the Commission saw the need to revise its proposed Legislative rule issued November 29, 2005 so as to remove that language authorizing loans and modify the language of the rule to limit the disbursement of funds from the WTAAF to the form of grants.

Additionally, the Commission noted the opportunity to reduce administrative costs by streamlining the operations of the Committee to a one-time per year review process. Under the modification, all applicants would submit their respective requests for funding as of a date certain each year. The Committee would meet, rank the applications, and recommend distribution of funds to the respective applicants. At that time, the Commission would disburse the full \$1,000,000 across the various approved applicants, after which time the distribution would conclude until the next fiscal year.

The Order noted that the CAD filed comments on January 10, 2006 regarding the proposed Legislative rules. A number of these were minor, clarifying changes and they were adopted without comment by the Commission. The CAD submitted a number of substantive recommended modifications. In particular, the CAD recommended several modifications to Rule 4. On January 20, 2006 Highland Cellular, LLC (Highland) filed comments in response to the CAD’s filing. Highland pointed out that CAD’s proposed revisions to Rule 4 would impact prepaid wireless carriers. Highland correctly noted that such issues were currently pending before the Commission in Case Nos. 05-1303-C-GI and 06-0076-C-GI.

As such issues were not yet ripe for inclusion in the rules, the Commission reserved a portion of the rule for later inclusion of directives involving prepaid wireless carriers.

The Commission also noted that on March 11, 2006 the Legislature passed Senate Bill 728. Noting that S.B. 728 would go into effect on July 1, 2006 and would impact these rules, the Commission reserved a subsection of the rules for use in incorporating the directives of S.B. 728 through a subsequent rule-making.

¹ In comparison to grants, loans require additional overhead in the form of establishing collateral, administering collections, and collecting on defaulted loans.

The following are descriptions of the Commission's substantive modifications made to the proposed agency-approved legislative rule promulgated by the Commission's April 10, 2006 Order:

Rule 1.1.

Pursuant to the CAD recommendation, the Commission included language describing the provision of fee revenues to the West Virginia State Police.

Rule 2.1.

The Commission adopted the CAD's language explaining that, unless otherwise specified in this Rule series, definitions of words would be as described in § 1.7 of the Commission's *Rules and Regulations for the Government of Telephone Utilities*. 150 C.S.R. 6.

Rule 2.3.

The CAD pointed out that in several instances the Commission inadvertently left the word "Access" out of the term "Tower Access Assistance Fund." The Commission added that word where appropriate.

Rule 2.3. defines the word "cost" as used in the Rule. The CAD recommended adding the phrase "or expenses" following the word "cost." Believing that the addition of the word "expenses" could otherwise confuse the definition, the Commission left it out. However, the Commission did see the need to modify its definition of "cost" in order to allow for the inclusion of the cost of insurance covering construction of the wireless tower.

Rule 2.16.

The Commission clarified the use of the word "person" along the lines of the comments provided by the CAD.

Rule 2.29.

The CAD recommended that the definition of "Commercial Mobile Radio Service Provider" or "CMRS Provider" track the language in *West Virginia Code* § 24-6-2. The Commission agreed and made the change to the rules.

Rule 4.1.

As noted above, the CAD recommended several additions and modifications to this Rule based on events occurring in a separate Commission case. By a January 25, 2006 order in Case No. 05-1303-C-GI the Commission created Case No. 06-0076-C-GI and a task force with a directive to develop a stakeholders' report regarding proposed revisions to the rules currently before the Commission. The task force in those cases was directed to address prepaid wireless carriers. A petition for reconsideration was filed in Case No. 05-1303-C-GI questioning the Commission's jurisdiction.

As the prepaid wireless issue was unresolved, the Commission declined to include the CAD's modifications regarding this issue. Instead, the Commission reserved a portion of the Rule in order to later address issues pertaining to prepaid wireless carriers.

Rule 5.1.

The CAD suggested several changes regarding the wording of Rule 5.1. The CAD pointed out that the CMRS provider is not making a payment to the Commission when it remits the E911 fees but is instead acting as the State's collection agent and it is the wireless subscriber who is actually paying the fee. The Commission agreed and made the changes. The Commission recognized that a portion of the CAD's comments regarding Rule 5.1 could be considered applicable to prepaid wireless carriers. The Commission recognized that the modifications suggested by the CAD were applicable to non-prepaid wireless carriers as well, and, as such, adopted the change.

Rule 6.1.a.

The CAD's proposed change described a means of amassing the \$1,000,000 distributed through the WTAAF as rapidly as possible. Given the modification to the process, as described above, whereby funds would be distributed in the form of grants one time per year, the Commission decided it was not necessary to require the \$1,000,000 be collected on a rapid basis. Accordingly, the Commission did not adopt the CAD's recommended changes to Rule 6.1.a.

Rule 6.3.

In the Commission's emergency rules issued November 1, 2005 and the proposed Legislative rule issued November 29, 2005, the Commission left Rule 6.3, concerning fund distribution to consolidated counties, blank. *West Virginia Code* § 24-6-6b(d)(1) describes how the E911 fees are distributed to the various counties. Within that subsection of the

Code, an explanation is provided as to how additional amounts will be distributed to counties which have consolidated into one county to provide government services. That portion of the *Code* reads as follows:

AN ACT to amend and reenact §§24-6-6b of the Code of West Virginia, 1931, as amended, relating to the wireless enhanced 911 fee; raising the fee; earmarking ten cents to the fee for the State Police; ... and allowing counties which consolidate government services to receive one percent of fee for each county consolidated.

(d) The CMRS providers shall, after retaining a three percent billing fee, send the wireless enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The Public Service Commission shall, on a quarterly and approximately evenly staggered basis, disburse the fee revenue in the following manner:

(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand nine hundred ninety-seven, shall receive eight and one half tenths of one percent of the fee revenues received by the Public Service Commission: ***Provided, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, 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.*** Each county shall receive eight and one half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: ***Provided, however, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, 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.*** Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder based on that county's population as determined in the

most recent decennial census as a percentage of the state total population.

[Emphasis added.]

The Commission interpreted this statute to say that an enhanced share of the E911 revenues shall be distributed to counties that have consolidated to the extent that the two counties have become one county. Rule 6.3 reflects that interpretation of the above *Code* section.

Rule 6.4.

The Commission agreed with the CAD and made the CAD's proposed clarifying modifications to better describe the interest rate and the fee.

Rule 6.5.

The CAD recommended what it considered to be clarifying additions to the Rule. The Commission concluded that such changes did not enhance the Rule. Accordingly, the Commission declined to adopt the CAD's recommendations on this Rule.

Rule 13.

The CAD noted an excess reference to the Rules in the title of this section. The Commission agreed and removed it.

The Commission concluded the Order by noting that Rule 13 generally discussed the operation of the WTAAF. The Commission revised this section of the Rule to remove references to the Commission issuing loans from the WTAAF and to modify the operation of the WTAAF Committee. In doing so, the Commission did not fully integrate the CAD's recommendations, but used them where applicable.

DISCUSSION

On July 1, 2006 S.B. 728 will become law. S.B. 728 made two changes impacting this rule-making: First, it modified *West Virginia Code* § 24-6-6b by requiring the Commission give a portion of the E911 wireless fee to the Division of Homeland Security and Emergency Management. Specifically, it added the following to *West Virginia Code* § 24-6-6b(b):

(b) The wireless enhanced 911 fee is three dollars per month for each valid retail commercial mobile radio service subscription, as that term is defined by the Public Service Commission in its order issued under subsection (a) of this section: *Provided*, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: *Provided*, however, That for the fiscal year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. ... *And provided further*, That the Public Service Commission shall promulgate rules in accordance with article three, chapter twenty- nine-a of this code to effectuate the provisions of this subsection. The Public Service Commission is specifically authorized to promulgate emergency rules: *And provided further*, That for the fiscal year beginning on the first day of July, two thousand six, and for every fiscal year thereafter, five percent of the wireless enhanced 911 fee money received by the Public Service Commission shall be deposited in a special 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. Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for the following year. [Emphasis added.]

Second, S.B. 728 modified *West Virginia Code* § 7-1-3cc to impose county enhanced emergency telephone system fees upon in-state subscribers to voice over internet protocol services. Specifically, S.B. 728 modified *West Virginia Code* § 7-1-3cc(b) as follows:

(b) A county commission may impose a fee upon consumers of local exchange service within that county for an enhanced emergency telephone system and associated electronic equipment and for the conversion of all rural routes to city-type addressing as provided in section three of this article. The fee revenues may only be used ~~is to be used~~ solely and directly for the capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing and including the reasonable costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point. Effective on the first day of July, two thousand six, all county enhanced emergency telephone system fees that are in effect as of the first day of July, two thousand six, and

as such may later be modified by action of a county commission, shall be imposed upon in-state subscribers to voice over internet protocol (VoIP) service, as VoIP service is defined by the Federal Communications Commission of the United States. A nonbusiness VoIP service subscriber shall be considered in-state if the primary residence of the subscriber is located within West Virginia. A business subscriber shall be considered in-state if the site at which the service is primarily used is located within West Virginia. The Public Service Commission may, as it deems appropriate and in accordance with the requirements of due process, issue and enforce orders, as well as adopt and enforce rules, dealing with matters concerning the imposition of county enhanced emergency telephone system fees upon VoIP service subscribers. [Emphasis added.]

The Commission currently has two rule-makings outstanding associated with its *Emergency Telephone Rules*. The first is the emergency rule-making promulgated November 1, 2005. The second is the agency-approved proposed legislative rule-making promulgated April 10, 2006. The agency-approved proposed legislative rule-making modified the emergency rule-making in several substantial ways for the reasons described in the Commission's Order of April 10, 2006.

The agency-approved proposed legislative rule-making was recently reported out of the Legislative Rule-Making and Review Committee with no changes. The next step is for the Legislature to act on the Commission's agency-approved proposed legislative rule-making during the next regular legislative session.

However, with the advent of S.B. 728 it is necessary to again modify the Commission's *Emergency Telephone Rules*. In order to minimize confusion regarding the various versions of the Rule currently outstanding the Commission shall take the following steps:

1. The Commission notes that S.B. 728 amended and reenacted *West Virginia Code* § 24-6-6b(b). That *Code* subsection specifically directs the Commission to use the legislative rule-making procedure and authorizes the Commission to issue emergency rules.

Accordingly, the Commission shall, by a separate document, petition the Secretary of State's Office and the Legislative Rule-Making and Review Committee to withdraw the Commission's existing emergency rule-making (promulgated November 1, 2005), and its agency-approved proposed legislative rule-making (promulgated April 10, 2006).

2. By this order the Commission shall promulgate two rule makings:

(A) a new emergency rule-making so that the Committee and the Commission will have rules in place for administering H.B. 3208 and S.B. 728, and

(B) a new proposed legislative rule-making.

The content of each of the proposed rules will be substantially similar to the Commission's agency-approved proposed legislative rule-making (promulgated April 10, 2006) with a few modifications, as described below.

3. Direct its Executive Secretary to cause the rule-makings to be filed with the Secretary of State's Office and the Legislative Rule-Making and Review Committee, along with the appropriate supporting documentation.

4. Direct its Executive Secretary to serve copies of the rule-makings upon the county commissions of the state in addition to the members of the service list for this proceeding.

5. Direct its Executive Secretary to publish notice of the existence of a comment period regarding the proposed legislative rules.

As to the content of the Rule, the Commission notes that the agency-approved proposed legislative rule-making (promulgated April 10, 2006) was developed through the input of a task force as well as through public comment, all of which is described above. As such, the agency-approved proposed legislative rule-making (promulgated April 10, 2006) contains all of the changes recommended by interested parties and approved by the Commission, in the form of strike-throughs and underlines, to the *Emergency Telephone Rules* as it existed prior to November 1, 2005. Thus, the Commission shall use the agency-approved proposed legislative rule-making (promulgated April 10, 2006) as the basis for the rule-makings created herein.

With that starting point, the Commission shall make the following modifications to the rule-makings:

1. S.B. 728 required that the Commission deposit 5% of the wireless enhanced 911 fee money in a special 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.

The Commission shall add a new subsection to Rule 6.1 to reflect the additional division of the fees.

2. Rule 13.1.b of the agency-approved proposed legislative rule-making (promulgated April 10, 2006) describes the process by which entities may apply to the WTAAF for grants. The Commission shall add language to the rule to describe the timetable for the first year the WTAAF is in operation.

3. Rule 13.1.c of the agency-approved proposed legislative rule-making (promulgated April 10, 2006) describes the timetable under which the Committee reviews application filings. As with Rule 13.1.b, the Commission shall add language to the rule to describe how the timetable shall work for the first year the WTAAF is in operation. Additionally, the Commission shall add language to allow for expedited treatment of applications based upon a positive vote of at least six of the nine Committee members.

4. Rule 13.4.a of the agency-approved proposed legislative rule-making (promulgated April 10, 2006) describes the mechanics of filing an application for a grant with the Commission. The Commission shall modify the language to reduce the number of copies necessary and require the chairman of the Committee to distribute copies of the application to the Committee members.

5. In the agency-approved proposed legislative rule-making (promulgated April 10, 2006) the Commission created two additional parts of the rule: 14 – to contain rules regarding prepaid wireless carriers; and 15 – to address changes made by S.B. 728. As the Commission is issuing a separate General Order to address prepaid wireless carriers, and as the Commission has elsewhere addressed the changes made by S.B. 728, the Commission shall remove these sections from the present rule-makings.

Finally, the Commission shall address the remaining modification directed by S.B. 728.

The *Emergency Telephone Rules*, 150 CSR 25, applies to wireless carriers (cell phones) and directs them to send their E911 fees to the Commission and then the Commission sends that money on to the counties. For land-line carriers, the process is different. The tariffs on file with the Commission for land-line carriers contain procedures under which those carriers collect and pay to the county commissions those fees imposed pursuant to *West Virginia Code* § 7-1-3cc upon consumers of local exchange service. The Commission does not have any rules in place governing the transfer of money between the

county commissions and the land-line carriers as such additional instruction would be superfluous.

S.B. 728 modified *West Virginia Code* § 7-1-3cc such that the county enhanced emergency telephone system fees automatically apply to the in-state subscribers to Voice over Internet Protocol (VoIP)² service. The legislation left the question of whether a rule-making was necessary within the discretion of the Commission.

The Commission shall not develop rules at this time regarding the imposition of county enhanced emergency telephone system fees upon VoIP service subscribers. Instead, the Commission shall herein order all VoIP service providers, as that term is defined by the Federal Communications Commission of the United States, with in-state subscribers to register with the Commission. Contact information collected from those VoIP service providers shall be made available on the Commission's web site for use by the county commissions in determining compliance with the county enhanced emergency telephone system fee ordinances. The Commission shall direct its Executive Secretary to publish, on a state-wide basis, a notice to the VoIP service providers regarding this requirement. The Commission shall also require its Executive Secretary to serve a copy of this order upon all county commissions so that they are aware of the resources available. The county commissions should petition the Commission should the county commissions wish the Commission to consider implementing a rule-making on this matter.

FINDINGS OF FACT

1. During the 2005 Regular Session the Legislature passed H.B. 3208, (passed on April 9, 2005, effective July 8, 2005). The legislation amended and reenacted *West Virginia Code* § 24-6-6b and raised the E911 fee, earmarked ten cents of the fee, per subscription, per month, for the West Virginia State Police, earmarked one million dollars of the fee for the construction of wireless towers, created the WTAAF to be administered by the Commission, authorized the Commission to provide loans and matching grants from the WTAAF, addressed the use of wireless towers for emergency services, authorized the Commission to promulgate legislative rules and emergency rules, adjusted the formula by which the

² VoIP is an Internet-based technology whereby a person is able to talk to another person over a high-speed Internet connection. Through the application of additional technology by VoIP service providers individuals are able to use standard telephone equipment in making and receiving calls even to the extent of making calls by dialing a telephone number just as the person would do while making a regular non-Internet based telephone call.

Commission distributes E911 fees to the various counties, and allowed counties which consolidate government services to receive an additional one percent of the fee for each county consolidated.

2. On November 1, 2005 the Commission issued an Order promulgating emergency rules, based on proposed rules developed by interested entities, to implement the provisions of H.B. 3208 governing the collection and disbursal of E911 fees and the formation of a mechanism for administering a fund to subsidize the acquisition, equipping, and construction of new wireless towers to provide enhanced 911 service coverage to areas where such service would not be available otherwise due to marginal financial viability of the tower coverage area. The Commission's emergency rules created a Committee to review and make determinations as to those projects qualifying for funding through the WTAAF.

3. By an Order issued November 29, 2005 the Commission promulgated proposed legislative rules to implement the provisions of H.B. 3208. These rules were similar to the previously-promulgated emergency rules. The Commission provided state-wide notice of the proposed legislative rules and requested comments from the public on the rules.

4. On January 10, 2006 the Commission received the "Comments of the Consumer Advocate Division" to the proposed legislative rules.

5. On January 20, 2006 Highland Cellular, LLC filed Reply Comments to the comments filed by the CAD on January 10, 2006.

6. On April 10, 2006 the Commission issued an Order revising its proposed legislative rules and promulgating agency-approved proposed legislative rules for filing with the West Virginia Secretary of State and the Legislative Rule-Making & Review Committee. The agency-approved proposed legislative rules differed from the previously-filed proposed legislative rules by modifying the language of the rule to limit the disbursement of funds from the WTAAF to the form of grants, and by streamlining the operations of the WTAAF Committee to a one-time per year review. The agency-approved legislative rules were also modified to accommodate certain recommendations made by the CAD.

7. On July 1, 2006 S.B. 728 will become law and will modify *West Virginia Code* § 24-6-6b by requiring the Commission give a portion of the E911 wireless fee to the Division of Homeland Security and Emergency Management, and will modify *West Virginia Code* § 7-1-3cc to impose county enhanced emergency telephone system fees upon in-state subscribers to VoIP services.

8. The Commission currently has two rule-makings outstanding associated with its *Emergency Telephone Rules*. The first is the emergency rule-making promulgated November 1, 2005. The second is the agency-approved proposed legislative rule-making promulgated April 10, 2006.

9. The agency-approved proposed legislative rule-making was recently reported out of the Legislative Rule-Making and Review Committee with no changes.

10. The *Emergency Telephone Rules*, 150 CSR 25, applies to wireless carriers (cell phones) and directs them to send their E911 fees to the Commission and then the Commission sends that money on to the counties.

CONCLUSIONS OF LAW

1. With the advent of S.B. 728 it is necessary to modify the Commission's *Emergency Telephone Rules*.

2. S.B. 728 amended and reenacted *West Virginia Code* § 24-6-6b(b) authorizing the Commission to use the legislative rule-making procedure and authorizing the Commission to issue emergency rules.

3. To minimize confusion regarding the currently outstanding rule-makings and those rule-makings stemming from this order, it is reasonable for the Commission to Petition the Secretary of State's Office and the Legislative Rule-Making & Review Committee for permission to withdraw the Commission's existing emergency rule-making (promulgated November 1, 2005), and its agency-approved proposed legislative rule-making (promulgated April 10, 2006).

4. This order shall promulgate two rule-makings:

(A) a new emergency rule-making so that the Committee and the Commission will have rules in place for administering H.B. 3208 and S.B. 728, and

(B) a new proposed legislative rule-making.

5. As to the content of the Rule, the Commission notes that the agency-approved proposed legislative rule-making (promulgated April 10, 2006) was developed through the input of a task force as well as through public comment. As such, the agency-approved proposed legislative rule-making (promulgated April 10, 2006) contains all of the changes recommended by interested parties and approved by the Commission, in the form of strike-

throughs and underlines, to the *Emergency Telephone Rules* as it existed prior to November 1, 2005. The Commission concludes that it is reasonable to use the agency-approved proposed legislative rule-making (promulgated April 10, 2006) as the basis for the rule-makings created herein.

6. It is reasonable to modify the following rules of the agency-approved proposed legislative rules in creating the present rule-makings: (1) Rule 6.1 to reflect a transfer of 5% of the collected fees to the Division of Homeland Security and Emergency Services; the additional division of the fees; (2) Rule 13.1.b to describe the timetable for the first year the WTAAF is in operation; (3) Rule 13.1.c to describe how the timetable shall work for the first year the WTAAF is in operation and to allow for expedited treatment of applications based upon a positive vote of at least six of the nine Committee members; and (4) Rule 13.4.a to reduce the number of copies necessary and to require the chairman of the Committee to distribute copies of the application to the Committee members. Additionally it is reasonable to delete part 14 (regarding prepaid wireless carriers) and part 15 (regarding changes made by S.B. 728).

7. In order to promulgate and provide notice of these rule-makings, it is necessary to :

A. Cause the rule-makings to be filed with the Secretary of State's Office and the Legislative Rule-Making & Review Committee, along with the appropriate supporting documentation;

B. Serve copies of the rule-makings upon the county commissions of the state in addition to the members of the service list for this proceeding;

C. Publish notice of the rule-makings in the State Register as well as state-wide regarding the rule-makings and the comment period for the agency-approved proposed legislative rules.

8. S.B. 728 modified *West Virginia Code* § 7-1-3cc such that the county enhanced emergency telephone system fees automatically apply to the in-state subscribers to VoIP service.

9. The Commission concludes that a rule-making is not necessary at this time regarding application of the county enhanced emergency telephone system fees to in-state subscribers to VoIP service.

10. It is reasonable to require all VoIP service providers, as that term is defined by the Federal Communications Commission of the United States, with in-state subscribers to register with the Commission with the resulting contact information to be made available on the Commission's web site for use by the county commissions in determining compliance with the county enhanced emergency telephone system fee ordinances.

11. Notice on a state-wide basis to the VoIP service providers and to the county commissions shall be made to make those entities aware of this requirement.

ORDER

IT IS THEREFORE ORDERED that the rule attached hereto as Appendix C is hereby promulgated as both emergency rules and as proposed legislative rules. By the provisions of the *Administrative Procedures Act* the emergency rules shall, unless acted upon by the Secretary of State's Office, become effective August 11, 2006, as Commission emergency legislative rule 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service*.

IT IS FURTHER ORDERED that the Commission's Executive Secretary file a copy of the text of the emergency rule with the Offices of the Secretary of State and the Legislative Rule-Making & Review Committee, together with the forms required to be filed by the Secretary of State's Office for an emergency rule filing.

IT IS FURTHER ORDERED that the Commission's Executive Secretary file a copy of the text of the proposed legislative rule with the Offices of the Secretary of State and the Legislative Rule-Making & Review Committee, together with the forms required to be filed by the Secretary of State's Office for a proposed legislative rule.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause publication, one time, of the "Notice of Proposed Rule," attached hereto as Appendix A, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson. The Executive Secretary shall file the affidavits of publication as soon as they are received.

IT IS FURTHER ORDERED that all persons interested in submitting comments must set forth specific written comments regarding the proposed rule. Any party seeking a hearing on the proposed rule shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made. All comments

shall be addressed to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323, and filed on or before August 15, 2006, at 4:00 p.m.

IT IS FURTHER ORDERED that all VoIP service providers, as that term is defined by the Federal Communications Commission of the United States, with in-state subscribers are hereby required to register with the Commission. Such registration shall be accomplished by submitting the information described in Appendix B to:

Public Service Commission
P.O. Box 812
201 Brooks Street
Charleston, WV 25323
Attention: Dannie L. Walker, Technical Analyst

In the alternative, registration information may be sent via electronic mail to:

dlwalker@psc.state.wv.us

The VoIP service providers are under an ongoing obligation to provide updated information should any of the required information change.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause publication, one time, of the "Notice of VoIP Service Provider Registration," attached hereto as Appendix B, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson. The Executive Secretary shall file the affidavits of publication as soon as they are received.

IT IS FURTHER ORDERED that Commission Staff is hereby directed to create and maintain a database to contain the VoIP service provider registration information. Commission Staff shall cause such database to be made available on the Commission's web site (<http://www.psc.state.wv.us>).

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order upon all parties of record, all county commissions of this State, and all members of the service list in this case by United States First Class Mail, and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

JJW/klm
go18729ch.wpd

**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 30th day of June, 2006.

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone Service
Series 25

NOTICE OF RULEMAKING AND COMMENT PERIOD

On June 30, 2006 the Public Service Commission of West Virginia issued a rule-making to amend its *Rules and Regulations Governing Emergency Telephone Service*, 150 C.S.R. Series 25, to modify the process of billing, collecting, and disbursing E911 fees; to establish the procedural and substantive process for reviewing and evaluating applicants seeking grants for subsidizing the acquisition, equipping, and construction of new wireless towers; and to establish a committee to review and evaluate the applications. Anyone interested may obtain a copy of the proposed rules from Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323. Written comments on the proposed rules should be as specific as possible and must be filed with the Commission's Executive Secretary, on or before August 15, 2006, at 4:00 p.m. Any person seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

**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 30th day of June, 2006.

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone Service
Series 25

NOTICE OF VOIP SERVICE PROVIDER REGISTRATION

On March 11, 2006 the Legislature passed Senate Bill 728, effective July 1, 2006. Among other things S.B. 728 modified *West Virginia Code* § 7-1-3cc to impose county enhanced emergency telephone system fees upon in-state subscribers to voice over internet protocol (VoIP) services. Specifically, S.B. 728 modified *West Virginia Code* § 7-1-3cc(b), in part, as follows:

(b) ... Effective on the first day of July, two thousand six, all county enhanced emergency telephone system fees that are in effect as of the first day of July, two thousand six, and as such may later be modified by action of a county commission, shall be imposed upon in-state subscribers to voice over internet protocol (VoIP) service, as VoIP service is defined by the Federal Communications Commission of the United States. A nonbusiness VoIP service subscriber shall be considered in-state if the primary residence of the subscriber is located within West Virginia. A business subscriber shall be considered in-state if the site at which the service is primarily used is located within West Virginia. The Public Service Commission may, as it deems appropriate and in accordance with the requirements of due process, issue and enforce orders, as well as adopt and enforce rules, dealing with matters concerning the imposition of county enhanced emergency telephone system fees upon VoIP service subscribers.

By a Commission order entered June 30, 2006 the Commission directed that all VoIP service providers with in-state subscribers register with the Commission. Registration shall be accomplished by submitting the following information:

1. Contact information (including name, address, phone number, facsimile transmission number, and email) of the VoIP service provider.
2. Contact information for officers/principals of the VoIP service provider.

3. If the VoIP is incorporated, provide the state and date of incorporation.

Please send the above registration information to:

Public Service Commission
P.O. Box 812
201 Brooks Street
Charleston, WV 25323
Attention: Dannie L. Walker, Technical Analyst

In the alternative, registration information may be sent via electronic mail to:

dlwalker@psc.state.wv.us

The VoIP service providers should note that they are under an ongoing obligation to provide updated information should any of the required information change.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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. -- ~~December 24, 1997~~ _____.

1.4. Effective Date. -- ~~March 6, 1998~~ _____.

§150-25-2. Definitions.

2.1. For purposes of ~~this section~~ these rules, 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. In addition, unless otherwise specified in these rules, 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.

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

2.45. "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.

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

2.67. "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.

2.78. "E911"-- Enhanced 911.

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

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

2.1011. "In-state two-way service subscriber" -- A person or entity with a valid retail CMRS subscription.

2.1112. "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.

2.1213. "NANC" -- The North American Numbering Council.

2.1314. "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.

2.1420. "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.

2.1521. "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.

2.1624. "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; 3) the Senate President or that person's designee; 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.

2.1728. "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. Each CMRS provider shall, ~~beginning on January 1, 1998 with each bill rendered,~~ levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription.

4.2. ~~The initial E911 fee amount shall be \$0.75 per billing month.~~

4.3. ~~Each CMRS provider shall bill the currently applicable E911 fee to each valid retail CMRS subscription monthly.~~

4.4. The applicable E911 fee shall be a separate line item on the ~~monthly~~ billing statement provided to each valid retail CMRS subscription by CMRS providers.

4.5. ~~Each CMRS provider shall file with the Commission, by February 15th of each year, a total customer count as of December 31 of the preceding year. This annual report, as well as the required monthly reports, shall be subject to verification by the Commission.~~

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

5.1. ~~On~~ By no later than the first business day on or after the twenty fifth (25th) 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%) as a for the billing and/or collection of the E911 fee, during the preceding monthly 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 ~~should~~ shall be remitted to:

By mail:

Public Service Commission of West Virginia
Attention: Executive Director Administrative Services Division
P.O. Box 812
201 Brooks Street
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.

5.2. 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.

5.3. The first ~~\$0.75~~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.

§150-25-6. Disbursement of E911 Fees.

6.1. ~~The Telecommunications Section of the Commission's Utilities Administrative Services~~ Division shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursements 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. The initial disbursement ratios shall be effective on April 1, 1998. Disbursement ratios used pursuant to 6.5 herein shall be recalculated by the Telecommunications Section of the Commission's Utilities Administrative Services Division in each subsequent year within thirty calendar days of the availability of updated decennial county population census data, and Such recalculated disbursement ratios shall be effective on July 1 of each such year immediately following such recalculation.~~

6.2. Each county which has not enacted an E911 ordinance as of 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 monthly E911 fee revenue submitted to the Commission by the CMRS providers.

~~6.2.1. 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 continue to 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.

~~6.35. From the remainder of E911 fee revenues remitted to the Commission, each county shall receive a pro rata portion of the E911 fee revenues received by the Commission based on that county's percentage of the total number of local exchange telephone access lines and line equivalents in service in the State at the beginning of the calendar year 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.~~

~~6.46. Each county which has an E911 ordinance in effect shall receive its share of the wireless E911 fee revenue for use in the same manner as the county uses the E911 fee revenues received by those counties the county pursuant to their its E911 ordinances.~~

~~6.5. For each county that does not have an E911 ordinance in effect, the Commission shall deposit the wireless E911 fee revenue allocable to such county into an escrow account established by the Commission for that county, in accordance with 6.2 herein.~~

~~6.6. Each county with an E911 fee revenue escrow account may, immediately upon adopting an E911 ordinance, receive the monies which have accumulated in the escrow account for use as specified in W. Va. Code §24-6-6b(d)(2), subject to the following provisions:~~

~~6.6.1. Such county shall file with the Commission, together with its request for the release of monies accumulated in the county's escrow account, a duly verified copy of the county's E911 ordinance. Escrow account monies shall not be released until such copy of the county's ordinance has been filed with the Commission.~~

~~6.6.2. Beginning January 1, 2003, and on January 1 of every fifth year thereafter, all E911 fee revenue on deposit in the escrow account of a county without an E911 ordinance shall be disbursed on the pro rata basis specified in W. Va. Code §24-6-6b(d)(1), except that data for counties without E911 ordinances in effect shall be omitted from the calculation and all escrow accounts shall begin again with a zero (0) balance.~~

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

7.1. 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 8.32 herein, such revenues are either: (1) disbursed to each county ~~with an E911 ordinance currently in effect~~; or (2) ~~deposited to a separate escrow account for each county without an E911 ordinance currently in effect.~~

~~7.2. The Commission shall cause to be established a separate escrow account for the E911 fee revenues remitted to the Commission for each county without an E911 ordinance currently in effect. Such accounts shall be used for the quarterly deposit of monthly E911 fee revenues received from CMRS providers and shall be placed in such counties' escrow accounts in accordance with these rules.~~

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

8.1. Disbursement of monthly E911 fee revenues ~~shall begin on April 10, 1998 and shall be disbursed~~ made, by check or appropriate financial equivalent, to each county ~~with an E911 ordinance currently in effect~~; by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.32 herein.

~~8.2. Disbursement of monthly E911 fee revenues shall begin on April 10, 1998 and shall be deposited to the escrow account established for each county without an E911 ordinance currently in effect; by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.3 herein.~~

8.32. Monthly E911 fee revenues shall be disbursed, either directly, by check or appropriate financial equivalent, to counties ~~with E911 ordinances currently in effect, or deposited to escrow accounts established for counties without an E911 ordinance currently in effect~~, as follows:

8.32.1a. In the months of January, April, July and October, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson and Jefferson.

8.32.2b. In the months of February, May, August and November, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton and Pleasants.

8.32.3c. In the months of March, June, September, and December, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming.

8.43. 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 ~~for~~ during April, May and June 1998 shall be disbursed in October 1998.

§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.

12.1. CMRS providers shall make reasonable and diligent efforts to collect unpaid E911 fees from each valid retail 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 five 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.

13.6. Waiver.

13.6.a. Waiver of Rules. For good cause shown and pursuant to applicable established Commission procedures the Commission may, pursuant to Commission Order, waive any Rule herein.

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

EMERGENCY RULE QUESTIONNAIRE

DATE: June 30, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Public Service Commission of West Virginia
Richard E. Hitt, General Counsel (340-0317); J. Joseph Watkins, Law Clerk (340-0775)
201 Brooks Street, Post Office Box 812, Charleston, West Virginia 25323

EMERGENCY RULE TITLE: 150 C.S.R. 25 Rules and Regulations Governing Emergency Telephone Service

1. Date of filing June 30, 2006
2. Statutory authority for promulgating emergency rule:
H. B. 3208 (passed April 19, 2005, effective July 8, 2005); Senate Bill 728 (passed March 11, 2006, effective July 1, 2006)
3. Date of filing of proposed legislative rule: June 30, 2006
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? It amends the current rule 150 C.S.R. 25 Rules and Regulations Governing Emergency Telephone Service
5. Has the same or similar emergency rule previously been filed and expired?
A previously-filed emergency rule was withdrawn. A new emergency rule-making is authorized by the amendment and re-enactment of West Virginia Code § 24-6-6b(b) by S.B. 728.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
House Bill 3208, passed during the Regular 2005 Legislative Session, and Senate Bill 728, passed during the Regular 2006 Legislative Session, authorized the Commission to promulgate emergency rules. These emergency rules describe the means for collection and distribution of enhanced 911 fees from wireless carriers to the State Police, Division of Homeland Security and Emergency Management, and to the Counties of this State, and institute procedures by which the Commission shall administer a fund for use in subsidizing the construction of new wireless

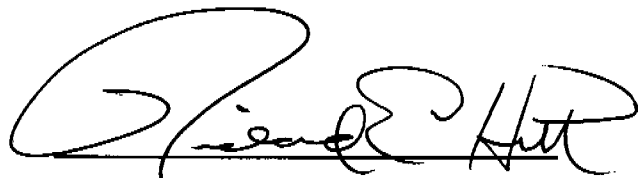
towers which will provide enhanced 911 service coverage and which would not be available otherwise due to marginal financial viability of the applicable tower coverage area.

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

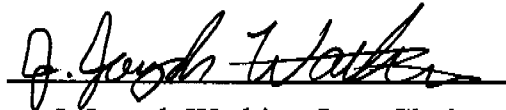
Not applicable.

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

The disbursal of enhanced 911 fees to the State Police allow for equipment upgrades for
improving and integrating their communication efforts with those of the enhanced 911 systems
and the enhanced 911 wireless tower access assistance fund and will assist the effort of spreading
the wireless reach of emergency service responders as well as increasing the wireless
connectivity of the citizens of, and visitors to, the remote areas of the state.



Richard E. Hitt, General Counsel



J. Joseph Watkins, Law Clerk

BRIEF SUMMARY OF RULES

The attached Emergency Legislative Rules implements House Bill 3208, which was passed effective July 8, 2005, and Senate Bill 728, which was passed effective July 1, 2006. The Rule modifies Sections 1, 2, 4, 5, 6, 7, 8 of 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service* and adds a new section,13. The revised Rule addresses the billing and collection of E911 fees; remission of E911 fees to the Commission; disbursement of E911 fees; E911 fee revenue accounting; and disbursement of monthly E911 fee revenues. The new section of 150 C.S.R. 25 establishes the procedural and substantive process for reviewing and evaluating applicants seeking grants for the subsidization of the acquisition, equipping, and construction of new wireless towers; and the development of a committee to review and evaluate the applications.

**STATEMENT OF CIRCUMSTANCES
WHICH REQUIRE THE RULES TO BE FILED
AS AN EMERGENCY**

House Bill 3208 (passed during the 2005 Legislative Session), as amended and reenacted by Senate Bill 728 (passed during the 2006 Legislative Session) specifically authorized the Public Service Commission to promulgate emergency rules for implementation of the procedures set forth in the respective Bills.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural Emergency

Agency: Public Service Commission of West Virginia

Address: Richard E. Hitt, General Counsel (340-0317); J. Joseph Watkins, Law Clerk (340-0775)
201 Brooks Street, Post Office Box 812
Charleston, West Virginia 25323

Phone Number: 304-340-0775 Email: _____

Fiscal Note Summary

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

Revenue:	State Police should receive up to \$800,000 per year. The Division of Homeland Security and Emergency Management will receive approximately \$1.2 million per year. PSC will administer \$1,000,000 annually related to the Enhanced 911 Wireless Tower Access Assistance Fund.
Costs:	Costs will vary in direct proportion with the frequency of grant applications. The figures below are rough estimates based on estimated increased costs to the Commission related to implementing the Enhanced 911 Wireless Tower Access Assistance Fund and collection and disbursement of enhanced 911 fees to the WV State Police, Division of Homeland Security and Emergency Management, and counties of the state.

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	8,000	14,000	14,000
Personal Services	4,200	10,200	10,200
Current Expenses	3,800	3,800	3,800
Repairs & Alterations			
Assets			
Other			
1. Estimated Total Revenues			

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

Rule Title: 150 C.S.R. 25 Rules and Regulations 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.

The above estimate incorporates the process of receiving and disbursing the State Police and Division of Homeland Security and Emergency Management portions as identified in the statute, the \$1,000,000 Grant Program and the processing and management of the Grant Program.

The Enhanced 911 Wireless Tower Access Assistance Fund represents a new responsibility for the Commission. Although the listed costs are only estimates, they represent costs related to the increase in processing paperwork; storing filings; providing administrative support to the Committee; legal costs involved in drafting grant agreements and closing on those agreements; and hosting meetings and associated conference calls of the Committee.

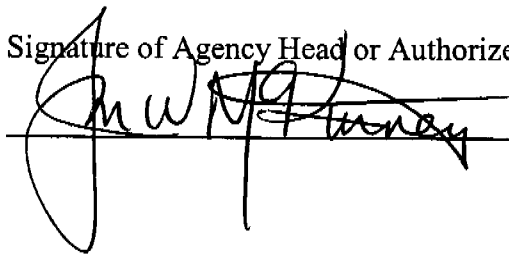
MEMORANDUM

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.

[Empty box for identifying 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.]

Date: June 30, 2006

Signature of Agency Head or Authorized Representative



TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

FILED

2006 JUN 30 P 1:49

SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. -- ~~December 24, 1997~~ _____.

1.4. Effective Date. -- ~~March 6, 1998~~ _____.

§150-25-2. Definitions.

2.1. For purposes of ~~this section~~ these rules, 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. In addition, unless otherwise specified in these rules, 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.

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

2.45. "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.

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

2.67. "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.

2.78. "E911"-- Enhanced 911.

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

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

2.1011. "In-state two-way service subscriber" -- A person or entity with a valid retail CMRS subscription.

2.112. "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.

2.1213. "NANC" -- The North American Numbering Council.

2.1314. "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.

2.1420. "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.

2.1521. "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.

2.1624. "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; 3) the Senate President or that person's designee; 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.

2.1728. "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. Each CMRS provider shall, ~~beginning on January 1, 1998 with each bill rendered,~~ levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription.

~~4.2. The initial E911 fee amount shall be \$0.75 per billing month.~~

~~4.3. Each CMRS provider shall bill the currently applicable E911 fee to each valid retail CMRS subscription monthly.~~

4.4. The applicable E911 fee shall be a separate line item on the ~~monthly~~ billing statement provided to each valid retail CMRS subscription by CMRS providers.

~~4.5. Each CMRS provider shall file with the Commission, by February 15th of each year, a total customer count as of December 31 of the preceding year. This annual report, as well as the required monthly reports, shall be subject to verification by the Commission.~~

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

5.1. ~~On~~ By no later than the first business day on or after the twenty fifth (25th) 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%) as a for the billing and or collection of the E911 fee, during the preceding monthly 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 ~~should~~ shall be remitted to:

By mail:

Public Service Commission of West Virginia
~~Attention: Executive Director~~ Administrative Services Division
P.O. Box 812
201 Brooks Street
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.

5.2. 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.

5.3. The first ~~\$0.75~~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.

§150-25-6. Disbursement of E911 Fees.

6.1. ~~The Telecommunications Section of the Commission's Utilities Administrative Services~~ Division shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursements 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. The initial disbursement ratios shall be effective on April 1, 1998. Disbursement ratios used pursuant to 6.5 herein shall be recalculated by the Telecommunications Section of the Commission's Utilities Administrative Services Division in each subsequent year within thirty calendar days of the availability of updated decennial county population census data, and Such recalculated disbursement ratios shall be effective on July 1 of each such year immediately following such recalculation.~~

6.2. Each county which has not enacted an E911 ordinance as of 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 monthly E911 fee revenue submitted to the Commission by the CMRS providers.

~~6.2.1. 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 ~~continue to~~ 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.

~~6.35. From the remainder of E911 fee revenues remitted to the Commission, each county shall receive a pro rata portion of the E911 fee revenues received by the Commission based on that county's percentage of the total number of local exchange telephone access lines and line equivalents in service in the State at the beginning of the calendar year 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.~~

~~6.46. Each county which has an E911 ordinance in effect shall receive its share of the wireless E911 fee revenue for use in the same manner as the county uses the E911 fee revenues received by ~~those counties~~ the county pursuant to their-its E911 ordinances.~~

~~6.5. For each county that does not have an E911 ordinance in effect, the Commission shall deposit the wireless E911 fee revenue allocable to such county into an escrow account established by the Commission for that county, in accordance with 6.2 herein.~~

~~6.6. Each county with an E911 fee revenue escrow account may, immediately upon adopting an E911 ordinance, receive the monies which have accumulated in the escrow account for use as specified in W. Va. Code §24-6-6b(d)(2), subject to the following provisions:~~

~~6.6.1. Such county shall file with the Commission, together with its request for the release of monies accumulated in the county's escrow account, a duly verified copy of the county's E911 ordinance. Escrow account monies shall not be released until such copy of the county's ordinance has been filed with the Commission.~~

~~6.6.2. Beginning January 1, 2003, and on January 1 of every fifth year thereafter, all E911 fee revenue on deposit in the escrow account of a county without an E911 ordinance shall be disbursed on the pro rata basis specified in W. Va. Code §24-6-6b(d)(1), except that data for counties without E911 ordinances in effect shall be omitted from the calculation and all escrow accounts shall begin again with a zero (0) balance.~~

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

7.1. 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 8.32 herein, such revenues are either: (1) disbursed to each county with an E911 ordinance currently in effect, or (2) deposited to a separate escrow account for each county without an E911 ordinance currently in effect.

~~7.2. The Commission shall cause to be established a separate escrow account for the E911 fee revenues remitted to the Commission for each county without an E911 ordinance currently in effect. Such accounts shall be used for the quarterly deposit of monthly E911 fee revenues received from CMRS providers and shall be placed in such counties' escrow accounts in accordance with these rules.~~

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

8.1. Disbursement of monthly E911 fee revenues shall begin on April 10, 1998 and shall be disbursed made, by check or appropriate financial equivalent, to each county with an E911 ordinance currently in effect, by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.32 herein.

~~8.2. Disbursement of monthly E911 fee revenues shall begin on April 10, 1998 and shall be deposited to the escrow account established for each county without an E911 ordinance currently in effect, by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.3 herein.~~

8.32. Monthly E911 fee revenues shall be disbursed, either directly, by check or appropriate financial equivalent, to counties with E911 ordinances currently in effect, or deposited to escrow accounts established for counties without an E911 ordinance currently in effect, as follows:

8.32.1a. In the months of January, April, July and October, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson and Jefferson.

8.32.2b. In the months of February, May, August and November, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton and Pleasants.

8.32.3c. In the months of March, June, September, and December, ~~checks/escrow entries~~ payments shall be issued to, ~~or made for~~, the following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming.

8.43. 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 for during April, May and June 1998 shall be disbursed in October 1998.

§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.

12.1. CMRS providers shall make reasonable and diligent efforts to collect unpaid E911 fees from each valid retail 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 Access 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 five 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.

13.6. Waiver.

13.6.a. Waiver of Rules. For good cause shown and pursuant to applicable established Commission procedures the Commission may, pursuant to Commission Order, waive any Rule herein.

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