



**Betty Ireland**  
Secretary of State

OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

August 1, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Public Service Commission

RULE: Amendments, 150CSR25, Rules & Regulations Governing Emergency Telephone Service

DATE FILED AS AN EMERGENCY RULE: June 30, 2006

DECISION NO. 12-06

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

A handwritten signature in cursive script, appearing to read "Betty Ireland".

BETTY IRELAND  
Secretary of State

Building 1, Suite 157-K  
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Charleston, West Virginia 25305

EMERGENCY RULE DECISION  
(ERD 12-06)

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RULE: Amendments, 150CSR25, Rules & Regulations Governing  
Emergency Telephone Service

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- par. 1 The Public Service Commission (PSC) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The PSC filed this emergency rule with supporting documents with the Secretary of State June 30, 2006 and with the LRMRC June 30, 2006.
- par. 7 It is the determination of the Secretary of State that the PSC has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §24-6-6b reads in part:

*(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. The moneys 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: 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.*

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

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

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

par. 11 There are essentially three classes of emergency broadly presented with the above

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

par. 12 The facts and circumstances as presented by the PSC are as follows:

HB 3208 & SB 728 specifically authorized the PSC to promulgate emergency rules.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . mandated by the Legislature

par. 14 This decision shall be cited as Emergency Rule Decision 12-06 or ERD 12-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Public Service Commission, the Attorney General and the Legislative Rule Making Review Committee.

  
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BETTY IRELAND  
Secretary of State

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