

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

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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.~~

~~4.4.2.~~ 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 \$0.753.00, 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.

~~6.3.5. 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.~~

~~6.4.6. 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 moneys 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

**Documents Required by Step 5B of the Secretary of State's Administrative Law Division
"Step Procedures for Legislative Rule Making"**

Step 5B of the West Virginia Secretary of State's "Step Procedures for Legislative Rule Making" reads as follows:

FOLLOWING PUBLIC HEARING AND/OR COMMENT PERIOD -

The agency should review all comments received to determine possible changes in the proposed rule. No comments can be reviewed and/or accepted after the close of the public hearing and/or comment period. The following actions are required to be documented and filed with the rule:

1. If a public hearing was held, a transcript of the hearing and names of all who attended;
2. Comments received, both written and oral with a response to the comments;
3. Amendments made to the proposed rule as a result of comments or other information received; and
4. Reasons for the amendments.

The Public Service Commission of West Virginia responds as follows:

1. No public hearing was held in this matter;
2. No comments were filed; and
- 3.& 4. As no comments were filed, no amendments have been made to the rule.

**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 26th day of September, 2006.

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone Service
Series 25

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 wireless enhanced 911 (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 June 28, 2005 Order the Commission instituted a task force comprised of Commission Staff, industry representatives, and other governmental representatives, for the purpose of developing a draft of rules and regulations for use by the Commission in implementing H.B. 3208.

On November 29, 2005 the Commission issued an Order for the purpose of promulgating proposed legislative rules to implement the provisions of H.B. 3208 governing the collection and disbursement of E911 fees, and for the formation of a mechanism for administering a fund to subsidize the acquisition, equipping, and construction of new wireless towers to provide E911 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 in furtherance of emergency rules issued by the Commission Order of November 1, 2005. The November 29, 2005 Order required the publication of a "Notice of Rulemaking and Comment Period." Written comments regarding the proposed

rules were required to be filed with the Commission on or before January 10, 2006. The Commission's Consumer Advocate Division (CAD) filed comments on January 10, 2006. On January 20, 2006 Highland Cellular, LLC filed Reply Comments to those comments filed by the CAD on January 10, 2006.

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. Based upon those recommendations, 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.

Further changes to the rule were based on the CAD comments filed on January 10, 2006. 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. The January 20, 2006 Highland Cellular, LLC reply comments 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.

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

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 April 10, 2006 Order also noted that on March 11, 2006 the Legislature passed Senate Bill 728 (S.B. 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.

S.B. 728 became law on July 1, 2006. S.B. 728 made two changes impacting this rule-making: First, it modified *West Virginia Code* § 24-6-6b by requiring the Commission to give a portion of the E911 wireless fee to the Division of Homeland Security and Emergency Management. 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 (VoIP)² services.

The Commission issued an Order on June 30, 2006 noting the July 1, 2006 effective date of S.B. 728 and the impact of S.B. 728 on the Commission's existing outstanding rule-making. Although the agency-approved proposed legislative rule-making had been reported out of the Legislative Rule-Making & Review Committee with no changes, the Commission determined that in light of S.B. 728 it was necessary to again modify the Commission's *Rules and Regulations Governing Emergency Telephone Service (Emergency Telephone Rules)*. Recognizing the confusion that might be brought about by multiple outstanding rule-makings in Series 25, the June 30, 2006 Order took the following actions:

1. Petitioned the Secretary of State's Office and the Legislative Rule-Making & Review Committee to withdraw the Commission's then-existing emergency rule-making (promulgated November 1, 2005), and its then-pending agency-approved proposed legislative rule-making (promulgated April 10, 2006);
2. Promulgated a new emergency rule-making and a new proposed legislative rule-making addressing both H.B. 3208 and S.B. 728 and caused those rule-makings

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.

to be filed with the Secretary of State and the Legislative Rule-Making & Review Committee, and;

3. Published notice of a comment period regarding the newly-issued proposed legislative rules and required that all comments be filed with the Commission on or before August 15, 2006.

The rules promulgated by the June 30, 2006 Order consisted of the agency-approved proposed legislative rules promulgated April 30, 2006 modified to include the provisions of S.B. 728. The modifications consisted of:

1. Adding a new subsection to Rule 6.1 to address the S.B. 728 requirement 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;
2. Adding language to describe the timetable for the first year the WTAAF is in operation and for expedited treatment of applications based upon a positive vote of at least six of the nine Committee members;
3. Modifying the language of Rule 13.4.a to reduce the number of copies necessary and require the chairman of the Committee to distribute copies of the application to the Committee members; and
4. Removing reserved sections of the rule that were addressed by a separate Commission proceeding and rule-making.

The June 30, 2006 Order also noted that 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. The legislation left the question of whether a rule-making was necessary within the discretion of the Commission. Instead of a rule-making, the Commission ordered all VoIP service providers, as that term is defined by the Federal Communications Commission, 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 received affidavits of publication indicating notice was provided as required by the Commission's June 30, 2006 Order.

No comments were filed to the Commission's Order regarding the rule-making.

DISCUSSION

As the Commission did not receive any comments to its proposed legislative rules, the Commission shall now promulgate those rules, unmodified, as the Commission's agency-approved proposed legislative rules, and direct its Executive Secretary to file those rules, along with the appropriate supporting documentation, with the Office of the Secretary of State and with the Legislative Rule-Making & Review Committee.

Additionally, attached to this Order are the following documents:

1. The "By-Laws Tower Access Assistance Fund Review Committee" (attached hereto as Appendix A). These by-laws govern the activities of the WTAAF Review Committee.
2. The "Grant Agreement" (attached hereto as Appendix B). This document defines the obligations of those entities awarded grant funding through the WTAAF.
3. The "Wireless Tower Access Assistance Fund Grant Application" (attached hereto as Appendix C). This document will be used by entities applying for funding through the WTAAF.

The Commission reviewed the three documents described above and shall approve them for use by the WTAAF Review Committee.

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 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 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.

2. S.B. 728 became law on July 1, 2006. 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. Second, S.B. 728 modified *West Virginia Code* § 7-1-3cc to impose county enhanced emergency telephone system fees upon in-state subscribers to VoIP services.

3. The Commission issued an Order on June 30, 2006 promulgating both an emergency rule-making and a proposed legislative rule-making to implement the provisions of H.B. 3208 and S.B. 728. The Commission's Order also required comments be filed with the Commission on or before August 15, 2006.

4. The rules promulgated by the June 30, 2006 Order consisted of the agency-approved proposed legislative rules promulgated April 30, 2006 modified to include the provisions of S.B. 728.

5. No comments were filed to the Commission's June 30, 2006 Order regarding the rule-making.

CONCLUSIONS OF LAW

1. The Commission's proposed legislative rules promulgated June 30, 2006 are now in a posture to be promulgated as agency-approved proposed legislative rules for filing with the West Virginia Secretary of State and the Legislative Rule-Making & Review Committee.

2. The Commission shall approve the "By-Laws Tower Access Assistance Fund Review Committee" (attached hereto as Appendix A), "Grant Agreement" (attached hereto as Appendix B); and "Wireless Tower Access Assistance Fund Grant Application" (attached hereto as Appendix C) for use by the WTAAF Review Committee.

ORDER

IT IS THEREFORE ORDERED that the rule attached hereto as Appendix D is hereby promulgated as agency-approved proposed 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 agency-approved proposed legislative rule with the Offices of the Secretary of State and the Legislative Rule-Making & Review Committee, together with the documents and forms required to be filed by those offices.

IT IS THEREFORE ORDERED that the "By-Laws Tower Access Assistance Fund Review Committee" (attached hereto as Appendix A), "Grant Agreement" (attached hereto as Appendix B); and "Wireless Tower Access Assistance Fund Grant Application" (attached hereto as Appendix C) are hereby approved for use by the WTAAF Review Committee.

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

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all of those entities described in Rule 2.27 of the Commission's *Rules and Regulations Governing Emergency Telephone Service* 150 C.S.R. 25, as attached hereto.

A True Copy, Teste:


Sandra Squire
Executive Secretary

JJW/klm
go18729ci.wpd

BY-LAWS

TOWER ACCESS ASSISTANCE FUND REVIEW COMMITTEE

ARTICLE I.

Name and Place of Business

SECTION 1. NAME: Tower Access Assistance Fund Review Committee (TAAFRC)

SECTION 2. The principal office of the TAAFRC shall be located at the West Virginia Public Service Commission (WVPSC) Building located at 201 Brooks Street, Charleston, West Virginia 25301.

ARTICLE II.

Purposes

The TAAFRC was created by Rules adopted by the WVPSC in the formal proceeding designated as G.O. 187.29, promulgated pursuant to amendment of Section 24-6-6b. of the *West Virginia Code* due to passage of HB 3208 by the West Virginia Legislature in its 2005 regular session. Such Rules are found at 150 CSR 25-13. The TAAFRC shall operate in the public interest and on a not-for-profit basis. The TAAFRC shall be governed by applicable *West Virginia Code* and WVPSC Rules, Regulations and Orders.

ARTICLE III.

Membership

Section 1. The TAAFRC shall have the following membership:

- 1) a member, to be appointed by the Chairman of the WVPSC, of the Staff of the WVPSC 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 West Virginia Enhanced 911 Council

Section 2. Terms and Vacancies

Membership terms shall be for three years. Initial memberships of the WVPSC Staff representative, the House representative and the Senate representative shall be for one year and initial memberships for the County Commissions 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 ARTICLE II, Section 1, herein. The TAAFRC Chairperson shall notify appointing authorities within sixty to ninety calendar days prior to the approaching expiration of a member's term.

Section 3. Member compensation

No member shall receive or in any way derive any profit from the operations of the TAAFRC and no part of the income, if any, of the TAAFRC shall inure to the benefit of any member.

ARTICLE IV.

Meetings of Members

Section 1. Dates/Times/Location of Meetings

Meetings of the membership shall normally be held at the TAAFRC's principal office. Meetings may be scheduled by means of any of the following:

- 1) By agreement reached at a TAAFRC meeting;
- 2) By direction of the TAAFRC Chairperson, who shall notify members and support staff of the meeting via email message sent at least five business days prior to the date of the meeting;
- 3) By email notification to the TAAFRC Chairperson by at least four members. Such notification shall include the date and time of the meeting and shall be emailed to the Chairperson at least seven business days prior to the date of the meeting. The Chairperson shall, in turn, notify the entire membership of the thus scheduled meeting.

Section 2. Quorum

At least five members of the TAAFRC must be present, either in person or via use of teleconferencing facilities, to constitute a quorum. The affirmative vote of one-half of such members present shall be necessary for any action to be taken pursuant to a vote of the TAAFRC. For purposes of this by-law, the presence of a voting designee shall count the same as the presence of a member.

Section 3. Voting

Each member shall have one vote on all matters put to a vote by the TAAFRC. A member may, by stating such on a written and signed document submitted, prior to the meeting, to the Chairperson (such submissions may be made via faxed documentation or via email, the latter by using pdf documents or functional equivalents), assign a voting designee when that member is unable to attend a meeting. A tie voting result shall be considered the same as a vote result in which a majority of voters vote against the item that was voted on.

Section 4. Chairperson

The TAAFRC membership shall designate a Chairperson who shall be responsible for conducting the business of the TAAFRC. The Chairperson shall serve at the will and pleasure of the TAAFRC's members and may be replaced by a majority vote at a TAAFRC 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 WVPSC, shall preside at TAAFRC meetings.

Section 5. Agendas

Major items of business at meetings shall be designated on meeting agendas. Items may be added to meeting agendas in either of the following ways:

a. By any member during meetings, provided that a vote of the majority of members at a meeting which has achieved a quorum shall be sufficient to delete or modify any such agenda item.

b. By any member at any other time, provided that such agenda item shall be emailed to the Chairperson before close of business on the business day prior to the meeting at which the agenda item will be dealt.

Members shall give due consideration to submittal of agenda items which have been proposed by TAAFRC support persons, stakeholders or members of the public.

Section 6. Notice of Meetings and Provision of Agendas

The Office of the Secretary of State shall be timely contacted regarding TAAFRC meetings and the agendas therefor. That agency shall be asked to publish notice of such meetings, and the accompanying agendas, in the *West Virginia State Register*. TAAFRC members shall be timely notified, via email messages, of meetings, meeting agendas and all other TAAFRC business of such import as to require member review. The primary responsibility for the tasks listed in this Section shall rest with the Chairperson, who may, with the consent of a majority of the TAAFRC membership, delegate any or all such duties to one or more TAAFRC members or support persons.

Section 7. Minutes

It shall be the responsibility of the Chairperson to have notes, either written, recorded or both, taken at TAAFRC meetings sufficient for the purpose of drafting official minutes of such meetings. The Chairperson shall also see to it that minutes of meetings are drafted and provided, via email transmittal, to all members by not later than five business days following the day of the meeting to which the minutes apply. The minutes must include the agenda for the next meeting, as such exists at the time of the completion of the drafting of the minutes. Meeting minutes shall be approved, with or without modification by the membership, at the meeting following the meeting to which the minutes apply. Approved meeting minutes shall be public documents and shall be reasonably made available to the public, both in paper and electronic formats. The official minutes shall be kept at the WVPSC Building by the WVPSC Executive Secretary.

ARTICLE V.

Applications for Funding

The TAAFRC shall develop all forms necessary for facile application by project sponsors for funding. Such forms shall be made available, without charge, to potential project sponsors as such come to the attention of the TAAFRC. The forms shall be available in suitable electronic formats and shall be supplied, upon reasonable request, in paper form.

ARTICLE VI.

Funding Contracts

All funding shall be done pursuant to contracts entered into between funding recipients and the WVPSC. The TAAFRC shall develop a suitable contract form and submit it to the WVPSC for approval.

ARTICLE VII.

Committees

The TAAFRC shall have the following standing committees, with membership as shown:

1. Technical Review Committee. Membership: TAAFRC members designated by numbers 5 through 9 in Article III, Section 1., herein. This committee shall have primary responsibility for reviewing and evaluating the technical aspects of funding applications.

2. Financial, Legal and Miscellany Committee. Membership: TAAFRC members designated by numbers 1 through 4 in Article III, Section 1., herein. This committee shall have primary responsibility for reviewing and evaluating the non-technical aspects of funding applications.

Other committees, as deemed appropriate by the TAAFRC membership, may be formed. All committees may informally seek assistance from TAAFRC support persons and/or others whose participation is deemed useful in completing committee tasks.

ARTICLE VIII.

Grant Forms

Appendix A contains the current version of the Grant Application Form and Appendix B contains the current version of the Grant Agreement Form.

ARTICLE IX.

Amendments to by-laws

These by-laws may be amended at any meeting by a positive vote of five TAAFRC members, provided that the subject matter of the amendment was mentioned on the agenda for the meeting at which the vote occurs.

Public Service Commission of West Virginia
Post Office Box 812, Charleston, West Virginia 25323

GRANT AGREEMENT

This Grant Agreement is entered into on the _____ day of _____, 20____
between the Public Service Commission of West Virginia, Grantor, and _____
_____ County, Grantee.

RECITALS

WHEREAS, a grant application was submitted by the Grantee, for the purposes of the acquisition, equipping and/or construction of a wireless tower (the "Project"). The grant application has been reviewed by the Tower Access Assistance Fund Review Committee (TAAFRC), and the TAAFRC has determined that (1) the Project will result in the provision of enhanced 911 wireless coverage in the Project's coverage area, and (2) the absence of a sufficient number of potential wireless users in the Project's coverage area prevents adequate funding of the Project without the awarding of a grant from the Wireless Tower Access Assistance Fund, and has recommended to the PSC that the application be approved. It is estimated that the Project's total costs will be:

\$ _____.

THEREFORE, in accordance with the provisions of *West Virginia Code* § 24-6-6b(b), the Grantor has decided to approve the award of a Grant in an amount of

\$ _____.

WHEREAS, the Grantee wishes to accept the Grant upon such terms and conditions as are hereinafter set forth, and as such are stated in the grant application form and supporting documentation, for the purposes of acquiring, equipping and/or constructing the Project described in Exhibit A, attached hereto and incorporated herein by reference.

WHEREAS, this Grant Agreement sets forth the Grantor's, the Grantee's and the TAAFRC's understandings and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Grantor and the Grantee agree as follows:

TERMS

1. The Grantee agrees that it will require the contractor(s) to provide a performance bond(s) and a payment bond(s) covering completion of the project. The Grantee shall submit copies of the bond(s) to the TAAFRC upon receipt.
2. Construction on the Project must begin within six months of the proposed beginning construction date and must be completed no more than six months after the proposed ending construction date.
3. All grant money shall be accounted for by the Grantee in a separate fund. Upon actual expenditure of grant money, the TAAFRC shall be provided appropriate evidence of payment of invoices and other financial transactions involving grant money. In the event that grant money is not expended as planned, it shall be returned to the Grantor.
4. The Grantee will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.
5. The Grantee shall comply with and is bound by the Grantor's Rules set forth as Title 150 C.S.R. 25.
6. The Grantee shall list the Grant in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.
7. The Grantee agrees to permit reasonable joint use of the tower by other entities as specified in Rule 13.2.a.9. of the Public Service Commission's *Rules and Regulations Governing Emergency Telephone Service*, 150 C.S.R. 25. Nothing in this Grant Agreement shall preclude reasonable leasing, at reasonable cost, of tower space by the Grantee, provided that use of tower space shall be free for (1) public safety operations, including 9-1-1, law enforcement, ambulance, rescue and fire fighting and (2) the West Virginia Department of Highways and other state agencies.
8. The Grantee shall comply with all applicable federal and state laws and all rules and regulations issued or imposed by the Grantor or other federal, state or local bodies regarding the design, acquisition, equipping and/or construction of the Project.
9. This Grant Agreement shall be governed by the laws of the State of West Virginia.

10. The Grantor may seek to have a receiver appointed for the Project, as described herein, if the Grantee defaults on any terms of this Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by their respective duly authorized officers as of the date executed below.

GRANTEE

By: _____
Its Chairman or other authorized
representative

Date: _____

SEAL

ATTEST

Its Secretary

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA, GRANTOR**

By: _____
Its Chairman or other authorized
representative

Date: _____

SEAL

ATTEST

Executive Director, Administrative Services Division
Public Service Commission of West Virginia

Grant Agreement: Exhibit A

Project Description

The Project consists of:

[Here provide a detailed description of the project including, but not limited to (1) a description of the tower; (2) location in latitude and longitude as well as a general description of the location in relation to nearby roads, landmarks, etc.; (3) starting and ending dates for construction; (4) an itemized and total project cost as contained in the Grant Application; and (5) other funding sources and amounts.]

Public Service Commission of West Virginia
PO Box 812, Charleston, WV 25323

**WIRELESS TOWER ACCESS ASSISTANCE FUND
GRANT APPLICATION**

This application form and all grant application requirements are pursuant to General Order No. 187.29 and the *Rules and Regulations Governing Emergency Telephone Service*, Series 25, Title 150 Legislative Rule, Public Service Commission 150-25-1 to 150-25-13.6.a.

Grant Request

(Print or type; Use additional sheets and attachments as necessary)

1. The Project Sponsor is the _____ County Commission, which shall, if a Grant is awarded, be designated as the Grantee.

2. Names of other entities, if any, joining the Project Sponsor in this Application:

3. Main Overall Contact Person regarding this Application:

Name _____ Title _____

Phone _____ Cellular _____

Fax _____ Email address _____

4. Tower type: Guide _____ Self supporting _____ Monopole _____

5. Tower height: _____ ft.

6. Tower location: Latitude: _____, Longitude: _____

7. Tower base elevation above average mean sea level: _____ ft.

8. Name of tower location: _____

Provide maps, photos and preliminary design drawings, prints, etc.

9. Will FAA approval be needed? Yes _____, No _____ If yes, provide details: _____

10. Is this application for modification of an existing tower? Yes _____, No _____ If Yes, what is the tower's FCC registration number? _____

11. Is approval needed from the State Historical Preservation Office? Yes _____, No _____

12. Is approval needed under the National Environmental Protection Act? Yes _____, No _____

13. Is any zoning approval needed? Yes _____, No _____ If Yes, provide details: _____

14. Tower site property is: Owned _____, Leased _____

15. How soon after a grant is received will construction begin? _____
[Rule 13.2.a.8]

16. How long will it take to complete the Project? _____
[Rule 13.2.a.8]

17. a. Do the Project Sponsor and all Co-Applicants agree to adopt the State Interoperative Radio Tower Specifications for the Project? Yes _____, No _____

b. Will the Project use a State Interoperative Radio "package design" for the proposed tower? Yes _____, No _____ If No, why not?

18. Does the Project Sponsor (County) agree to require the contractor(s) to provide a performance bond(s) and a payment bond(s) covering completion of the Project and to submit copies of the bond(s) to the TAAFRC upon receipt? Yes _____, No _____

PLEASE ATTACH TO YOUR APPLICATION, RESPONSES TO THE FOLLOWING QUESTIONS:

19. How will public health and safety benefit from completion of the Project? [Rule 13.2.a.1.]
20. Are there any other state or regional planning goals that the Project will help accomplish? Provide details. Of special importance is information regarding how the Project will fit in with State radio/telecommunications interoperability goals. [Rule 13.2.a.7]
21. Provide the total Project cost, with an itemization of all underlying costs in as much detail as feasible.
22. Provide information regarding all other towers, if any, within a three-mile radius of the Project.
23. Provide complete details of the financing of the Project, with an explanation of why a grant subsidy is necessary for the Project. How much grant money is sought? [Rules 13.2.a.3. and 13.2.a.5]
24. Are there any other feasible funding sources for the Project? What are they and in what amounts? Is Public Service Commission assistance necessary in obtaining funding from such other sources? If so, what assistance is necessary? [Rule 13.2.a.5.]
25. In your opinion, can the Project proceed without the assistance of the requested grant? Provide your rationale for your answer. [Rule 13.2.a.3.]
26. Are there any alternatives which would accomplish the same objective as the Project? Compare the financial feasibility of the alternatives with the cost of the Project. Compare the efficiency of the alternatives with the efficiency of the Project. [Rule 13.2.a.4.]
27. Will the proposed Project tower be suitable for multiple user applications? Provide support for your answer. [Rule 13.2.a.9]
28. How will the Project improve cellular coverage and/or make current coverage more reliable? Include, inasmuch as feasible: (1) information regarding the population of the affected area; (2) information regarding roadways, such as Interstates, which have significant traffic flows; (3) the adequacy and efficiency of other wireless

communications facilities, if any, in the area to be served by the Project. [Rules 13.2.a.2. and 13.2.a.10.]

29. Who will be the owner or owners of the Project tower once the work subsidized by the grant sought herein is completed? Who will be the operator or operators?

30. Does the Project tower operator have the expertise, staffing and financial resources to operate and maintain the tower if the Project is approved and constructed? Provide support for your answer. [Rule 13.2.a.6]

31. With which codes, specifications, standards, etc. must the Project comply?

32. For joint endeavors, provide information regarding all participants in addition to the Project Sponsor. Such information should include full details regarding a contact person for each participating entity.

**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.

2.112. "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 \$0-753.00, 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 moneys 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

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

September 26, 2006

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

(Addresses for all: Public Service Commission of WV, P.O. Box 812, Charleston, WV 25323)

Richard E. Hitt, General Counsel, phone 340-0317, fax 340-0372, rhitt@psc.state.wv.us

J. Joseph Watkins, Law Clerk, phone 340-0775, fax 340-3758, jwatkins@psc.state.wv.us

Sandra Squire, Executive Secretary, phone 340-0426, fax 340-0325, ssquire@psc.state.wv.us

Dannie L. Walker, Technical Analyst, phone 340-0454, fax 340-0326, dwalker@psc.state.wv.us

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

(Addresses for all: Public Service Commission of WV, P.O. Box 812, Charleston, WV 25323)

Richard E. Hitt, General Counsel, 340-0317

J. Joseph Watkins, Law Clerk, 340-0775

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

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

N/A

b. Date of hearing or comment period:

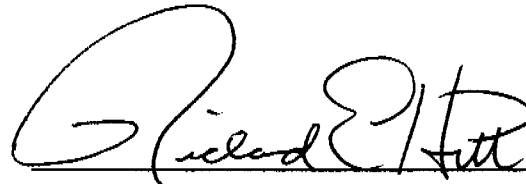
N/A

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

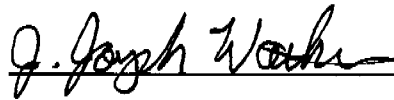
N/A

d. Attach findings and determinations and reasons:

Attached N/A



Richard E. Hitt, General Counsel



J. Joseph Watkins, Law Clerk

BRIEF SUMMARY OF RULE

The attached Agency-Approved Proposed Legislative Rule 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, and 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, 13, of 150 C.S.R. 25 establishes the procedural and substantive process for reviewing and evaluating applicants seeking grants for subsidizing the acquisition, equipping, and construction of new wireless towers; and establishes a committee to review and evaluate the applications.

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

House Bill 3208, effective July 8, 2005, and Senate Bill 728, effective July 1, 2006, specifically authorized the Public Service Commission to promulgate rules for implementation of the procedures set forth in the 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: jwatkins@psc.state.wv.us

Fiscal Note Summary

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

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 costs shown above anticipated the administration of grants and loans. The agency-approved proposed legislative rule will only administer grants. Additionally, the agency-approved proposed legislative rule limits the grant process to a period of several months each year. As such, the costs may be slightly less than those estimated and shown above.

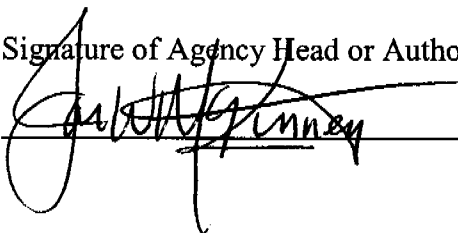
The Enhanced 911 Wireless Tower Access Assistance Fund represents a new responsibility for the Commission. Although the listed costs are only estimates, they represent costs related to the increase in processing paperwork; storing filings; providing administrative support to the Committee; legal costs 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.

Date: September 26, 2006

Signature of Agency Head or Authorized Representative



Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0317
FAX: (304) 340-0372

September 26, 2006

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

Re:

Original for
filing with
Judy Cooper
in the Secretary
of State's Office.

Regulations
ice;

Dear Ms. Cooper:

Enclosed is an agency-a _____ g in response to House Bill 3208 passed during the 2005 legislative session and Senate Bill 728 passed during the 2006 legislative session. The statute made this particular rule-making subject to legislative rule review. This agency-approved proposed rule is in furtherance of the emergency and proposed rule-makings filed by the Public Service Commission of West Virginia with your office on June 30, 2006.

I have enclosed eighteen sets (one for your office, fifteen sets to be stamped and submitted to the Legislative Rule-Making & Review Committee, and two sets to be stamped and returned for our records) of the required filings (described below):

- Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee (Form #3)
- Approval of filing by agency Chairman in the form of Commission General Order No. 187.29, issued September 26, 2006
- Legislative Rule-Making & Review Committee Questionnaire
- Brief Summary of Agency-Approved Proposed Legislative Rule

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- Statement of Circumstances
- Fiscal Note for Agency-Approved Proposed Legislative Rule
- Agency-Approved Proposed Legislative Rule
- Documentation Regarding Comments and Revisions to the Agency-Approved Proposed Legislative Rule

It is my understanding that you will assist in filing the rule with the legislative committee, and that your office will also assure that proper publication is made in the *State Register*.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt". The signature is stylized and cursive, with a large initial "R" and "H".

Richard E. Hitt
General Counsel

REH/klm
Enclosures