

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED
DEC 24 11 17 AM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

CITE AUTHORITY: §§24-1-7, 24-6-6b

RULE TYPE: PROCEDURAL Exempt Leg. INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

§24-1-7

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 25

TITLE OF RULE BEING ADOPTED: Rules and Regulations Governing Emergency
Telephone Service

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 6, 1998

Charlotte R. Lane

150CSR25

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE

FILED
DEC 24 11 17 AM '97
OFFICE OF 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 counties in West Virginia.

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, 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.

2.2. "Commission" -- The Public Service Commission of West Virginia.

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

2.4. "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.

2.5. "Emergency Services Organization" -- The organization established under Article 5 (§§15-5-1 et seq.), Chapter 15 of the West Virginia Code, as amended.

2.6. "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.

2.7. "E911" -- Enhanced 911.

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

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

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

2.11. "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.

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

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

2.14. "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.

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

2.16. "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.

2.17. "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.

§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 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, levy an E911 fee 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 the first business day on or after the twenty-fifth (25th) day of each month, each CMRS provider shall remit to the Commission's a check or appropriate financial equivalent, for the net E911 fees collected, after retaining three percent (3%) as a

billing and collection fee, during the preceding monthly billing period. The fees should be remitted to:

Public Service Commission
Attention: Executive Director
P.O. Box 812
201 Brooks Street
Charleston, West Virginia 25323

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

5.3. The first \$0.75 collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

5.4. Each CMRS provider shall, contemporaneous with the remission of E911 fees, file with the Commission a financial report reflecting the total amount of E911 fees billed in the preceding monthly billing period and the total amount of E911 fees collected.

5.4.1. In the alternative, a CMRS provider may remit the E911 fee based on what is billed, and subsequently take a deduction for bad debt, for customers who refuse to pay the fee, and for other uncollectibles, and submit its report on this basis.

§150-25-6. Disbursement of E911 Fees.

6.1. The Telecommunications Section of the Commission's Utilities Division shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursements ratios as provided herein.

6.1.1. The initial disbursement ratios shall be effective on April 1, 1998. Disbursement ratios shall be recalculated by the Telecommunications Section of the Commission's Utilities Division in each subsequent year and shall be effective on July 1 of each such year.

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 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. herein.

6.3. 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.

6.4. 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 E911 fee revenues received by those counties pursuant to their 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 moneys 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 moneys 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

8.3 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, 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 7.3 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.

8.3. 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:

8.3.1. In the months of January, April, July and October, checks/escrow entries 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.

8.3.2. In the months of February, May, and August and November, checks/escrow entries 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.

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

8.4. The fee revenues disbursed in any given month shall be those billed during the three-month period which ended three-months prior to the disbursement month. For example, the monthly E911 fee revenues filed with the Commission by CMRS providers for 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.

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

December 24, 1997

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

Re: Series 25

Dear Judy:

Enclosed for filing are the final rules of the Public Service Commission regarding Series 25. I have submitted a completed Form 5; a Fiscal Note; a Brief Summary of the Rule; a Statement of Circumstances Requiring The Rule; and a diskette containing the Rule in electronic format. As we discussed on the telephone, there were provisions in Series 6 which pertain to emergency telephone service. The Commission has moved those provisions into Series 25 since this new series will deal with emergency telephone service. We intend to issue a proposed rulemaking in Series 6 soon, and when we do so we will delete the provisions that we moved from Series 6.

If there are any problems or questions, please bring them to my attention. Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

RICHARD E. HITT
General Counsel
(304)340-0317

REH/mh
Enclosures

FISCAL NOTE

P.S.C.
Series 25

IN THE MATTER of reference to the Commission's Rules and Regulations Governing Emergency Telephone Service.

I. OBJECTIVES OF THE RULE

The purpose of this rulemaking is to implement the requirements of Senate Bill 278 passed in the 1997 Session of the Legislature concerning the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunication carriers subject to the jurisdiction of the PSC and the disbursement of such fee revenues to counties in West Virginia.

II. COST OF IMPLEMENTING THE PROPOSED RULES:

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of the rulemaking.

III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature.)

This rulemaking will have no effect on the costs or revenues of state government.

IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

This rulemaking will have no significant economic impact on the state or its residents.

DATE: Dec. 23, 1997 AGENCY: Public Service Commission

SIGNATURE OF AUTHORIZED REPRESENTATIVE: Charlotte R. Lane
CHARLOTTE R. LANE, Chairman

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

The purpose of this rulemaking is to implement a 1997 enactment of the legislature, Senate Bill 278, which calls for the collection of fees commencing January 1, 1998. .

BRIEF SUMMARY OF THE RULE

The proposed rulemaking is to implement the requirements of Senate Bill 278 passed in the 1997 session of the legislature concerning the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunication carriers subject to the jurisdiction of the Public Service Commission of West Virginia and the disbursement of such fee revenues to counties in West Virginia.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 24th day of December, 1997.

GENERAL ORDER NO. 187.14

In the matter of promulgating
rules and regulations governing
local emergency telephone service
and implementing an enhanced
911 fee program.

COMMISSION ORDER

By Order entered October 17, 1997, the Commission promulgated proposed rules implementing the provisions of Senate Bill No. 278 (SB278), which required the Commission to issue an order regarding the details associated with the assessment, collection and distribution of Enhanced 911 (E911) fees assessed on wireless telecommunications utility subscribers. In its Order, the Commission established a procedural schedule requiring written initial and reply comments to be filed by November 18 and 25, 1997, respectively, and scheduling a public hearing for November 25, 1997.

The Commission's October 17, 1997 order further required the Commission's Executive Secretary to publish a notice, attached to the Order, of the proposed rulemaking in newspapers, duly qualified by the Secretary of State, published and of general circulation in nineteen (19) cities in the State, and to file proof of publication immediately upon return of same.

Between October 24 and November 10, 1997, the Commission's Executive Secretary filed proof of publication of public notice in accordance with

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

the Commission's October 17, 1997 order.

On November 18, 1997, the following persons filed initial comments to the Commission's proposed rulemaking: AT&T Wireless Services; Hardy Cellular Telephone Company and Georgia RSA #13, Inc. dba United States Cellular Corporation; Telespectrum, Inc. dba 360° Communications Company; Northland Cellular Corporation and Eastern Wireless Cellular Corporation; and Washington/Baltimore Cellular Limited Partnership dba Cellular One Washington/Baltimore;¹ Bell Atlantic - West Virginia, Inc. (BA-WV); and CELLCO Partnership dba Bell Atlantic Mobile (CELLCO). Commission Staff (Staff) filed a letter with the Commission advising that it would not be filing initial comments but that it wished to reserve its right to file reply comments.

On November 25, 1997, BA-WV and Highland Cellular, Inc. (Highland) filed reply comments.

A public hearing on the proposed rules was held, as scheduled, on November 25, 1997. The following persons appeared at the November 25, 1997 hearing: the CMRS Group; BA-WV; CELLCO; Highland; Staff; and the West Virginia Enhanced 9-1-1 Council (E911 Council). Staff presented the testimony of Dannie L. Walker in lieu of reply comments. The CMRS Group and Highland likewise presented testimony, through a joint industry witness, Kristin K. Anderson. The E911 Council, through Ronald Kyle,

¹These commercial mobile radio service (CMRS) providers filed comments as a group (collectively, the CMRS Group).

offered a statement and cross-examined the witnesses.

DISCUSSION

BA-WV, the CMRS Group, CELLCO and Highland offered a number of comments and objections to the proposed rules. In its testimony during the November 25 hearing, Staff concurred in a number of these comments and objections, but demurred on a number of others. Staff and Industry's witnesses responded to several questions propounded by the Commission itself or the E911 Council. All of these comments, and responses thereto are addressed below, as is the Commission's decision and rationale. In addition, the Commission addresses some additional changes which, after further review, it believes should be made to the proposed rules.

A. Delaying the Implementation Date for Collecting E911 Fees Until a Cost-Recovery Mechanism is in Place.

This is the most contentious issue in the proposed rulemaking. The CMRS Group and CELLCO urged the Commission to postpone the effective date of the proposed rules until a cost-recovery mechanism is in place. Staff disagreed strongly with the industry commenters on this point. At most, Staff indicated it was willing to have E911 fees held in escrow until a cost-recovery proceeding could be held and a mechanism put in place to allow CMRS providers to recover their costs of providing E911 access.

After considering the commenters' arguments and the legal authorities, the Commission concludes that the CMRS Group's and CELLCO's comments should

be rejected and that final rules should be adopted which are effective as soon as possible, and in any event before the establishment of a mechanism for CMRS providers to recover their costs of providing E911 service. Moreover, the Commission rejects Staff's suggestion that the E911 fees collected could be escrowed until a proceeding regarding establishing a cost-recovery mechanism could be completed and such a mechanism implemented.

The CMRS Group and CELLCO argue that, in accordance with the FCC's July 26, 1996 decision regarding E911 systems,² cost-recovery mechanisms should be in place before E911 fees are collected, much less disbursed. See CELLCO Initial Comments, at 1; CMRS Group Initial Comments, at 3. The Commission notes that neither the CMRS Group nor CELLCO contend that the FCC E911 Order **requires** cost-recovery mechanisms to be in place **before** the State's E911 program can go into effect. The CMRS Group comes closest, claiming that the FCC E911 Order "contemplates" that the Commission will not collect, nor disburse, E911 fees until cost-recovery mechanisms are in place. CMRS Group Initial Comments, at 3, citing FCC E911 Order, ¶¶46 and 89. The CMRS Group further notes that most states that assess an E911 fee have developed a specific mechanism for CMRS providers to obtain reimbursement for their E911 implementation costs. Id., citing Ark. Stat. Ann. §12-10-303; Tex. Health and Safety Code Ann. §771.0711.

²"Report and Order," In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143 (Rel. July 26, 1996)(FCC E911 Order).

Alternatively, the CMRS Group argues that, if the Commission proceeds with fee collection as scheduled, it should escrow all fees collected until cost recovery mechanisms have been established to ensure that CMRS providers recover their costs from the fees collected. The CMRS Group claims that this action is required, at a minimum, because it understands "at least some emergency service providers do not intend to hold any portion of their revenues for return to the Commission after such cost-recovery mechanisms are in place; these funds will be spend upon or shortly after receipt." CMRS Group Initial Comments, at 3.

In response, Staff was less than clear in its testimony regarding what the FCC E911 Order requires with respect to cost-recovery mechanisms. Tr. at 39-48. Staff maintained, however, that the issue of cost-recovery was too complex an issue to resolve in the context of this rulemaking and that it should be addressed in a separate proceeding initiated early in 1998. Id. at 27-28. Staff noted that the wireless industry itself does not know what its costs of implementing E911 are going to be or when they would be incurred. Id. at 28. So long as the CMRS providers have a cost-recovery mechanism in place by mid-1998, Staff believes that they will not be materially harmed by settling this issue separately. Id. at 30. Finally, Staff pointed out that the E911 fee program is not intended simply to defray emergency providers' costs of implementing E911, nor to compensate CMRS providers for their costs to install E911-capable facilities. Tr. at 28-29. Instead, the E911 fees are intended to equalize costs among wireline and wireless customers in the State, as well as to provide needed revenue to emergency service providers to pay for any legitimate purpose,

such as increased pay to their 911 and E911 personnel. Id.

Ronald Kyle of the E911 Council testified in a similar vein. Mr. Kyle testified that the E911 Council's intent in drafting SB278 was to equalize the cost between wireline subscribers and wireless subscribers in the State -- especially since the latter category is experiencing rapid growth. Tr. at 7-8, 13. In addition, Mr. Kyle testified that the E911 Council knows that a cost-recovery mechanism will be necessary to cover the equipment costs for CMRS providers to implement E911 service but that this cost element is separate from the E911 fee program established by SB278. Id. at 10-12.

After reviewing the FCC E911 Order, the Commission is not persuaded that promulgating rules implementing an E911 fee program should be postponed until a cost-recovery mechanism is in place.³ In addressing

³Paragraph 46 of the FCC's order, cited by the CMRS Group, states in part:

As we have noted, we are requiring that cost recovery mechanisms must be in place as a prerequisite to the imposition of enhanced 911 service requirements upon covered carriers. . . . We recognize, however, that the establishment of regulatory requirements, especially regarding provision of basic 911 service to non-subscribers, might result in a carrier incurring additional costs related to the provision of such service to non-subscribers that may have a negative effect on levels of service and overall competition. Thus, a carrier may seek reimbursement, for its reasonable costs to provide basic 911 service to non-subscribers, at the state and local level. If any disputes arise in connection with recovery of these costs, the carrier may petition the [FCC] for relief.

comments regarding cost-recovery, the FCC noted:

The Consensus Agreement proposes essentially to rely on state and local funding mechanisms which could be in the form of public appropriations or bond issues, with or without a separate 911 subscriber line fee. The Consensus Agreement parties, however, ask the Commission to declare that state or local 911 fees or taxes reasonably related to recovery of prudently-incurred wireless system or service costs are not barred as a matter of law. They also ask the Commission to state that such fees or taxes should not discriminate between wireline and wireless carriers involved in delivery of 911 services. The parties agree to work in good faith toward the adoption of state and local legislation fairly designed for cost recovery under these principles.

FCC E911 Order, ¶187. The FCC also noted that, in their reply comments, "the signatories to the Consensus Agreement, Comcast, Vanguard, and Nextel argue that a public funding mechanism is required as a prerequisite to imposing obligations on CMRS carriers to provide E911." *Id.*, ¶188. The FCC clearly had before it arguments concerning state and local cost-recovery mechanisms.

However, the FCC chose not to address itself to the issue of cost-recovery mechanisms. In response to the above-quoted comments, the FCC wrote:

Although we have made implementation of E911 services contingent upon the adoption of a cost recovery mechanism, we will not prescribe a particular E911 cost recovery mechanism at this time for two reasons. First, the record does not demonstrate a need for such action. No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services. Nor is there any evidence of state or local officials

FCC E911 Order, ¶146 (emphasis added).

attempting to prevent a carrier from doing so. To the contrary, carriers and government officials uniformly recognize (1) that resolving cost recovery issues is a prerequisite to E911 deployment, and (2) that carriers should not be required to provide E911 capability unless a PSAP is capable of receiving the associated data elements. Moreover, we agree with APCO that local and state governments have pursued innovative and diverse means for the funding of wireline E911 services, and that it is reasonable to anticipate that these governments will follow a similar course with regard to wireless E911.

Second, an inflexible Federal prescription would deny carriers and government officials the freedom to develop innovative cost recovery solutions tailored to local conditions and needs. . . . Thus, Federal action at this time actually might undercut and delay efforts to deploy wireless E911 capabilities. For these reasons, we will not prescribe a cost recovery methodology at this time. Furthermore, nothing in the record persuades us that, as a general matter, all state and local E911 cost recovery mechanisms are necessarily permissible, or necessarily barred .

FCC E911 Order, ¶¶89-90 (emphasis added).

Nothing in the above-quoted provisions of the FCC E911 Order suggests that the Commission is barred from implementing an E911 fee program or disbursing E911 fees to counties, unless it first establishes a cost-recovery mechanism. The FCC's order merely precludes state or local governments from requiring CMRS providers to provide E911 service without paying them for their costs of providing such service. In fact, after reviewing the FCC's order, the Commission is not convinced that the FCC intended it, as opposed to the State Legislature or county governments, to be the body which adopts state or local E911 cost recovery mechanisms -- it appears that counties could develop a mechanism themselves.

The FCC stayed out of the fray, at least in part because of an

incomplete record regarding the costs of implementing E911, as well as in deference to the cost-recovery mechanisms employed by various state or local governments. The Commission considers this a wise policy -- at least at this point. Moreover, if a county seeks to impose E911 service requirements without providing for the wireless carriers to recover their costs, the wireless carriers could petition the FCC for redress. See FCC E911 Order, ¶91. Having said this, however, the Commission believes that it should initiate a proceeding to determine whether it should ultimately prescribe a cost-recovery mechanism or series of mechanisms. A general investigation into this issue will be initiated upon the entry of this Order.

Finally, the Commission does not agree with the CMRS providers' alternative suggestion, or Staff's lack of opposition to it, that the Commission escrow rather than disburse E911 fees collected until a cost-recovery mechanism is in place. Such action would be directly contrary to the Legislature's directives regarding collection and disbursement of such fees. See W. Va. Code §24-6-6b.

B. Delaying the Implementation Date of the E911 Fee Program Because of Clerical Errors in SB278.

The CMRS Group and CELLCO also recommended that the Commission should delay the effective date of the E911 fee program because of certain clerical errors in SB278, regarding dates by which various actions must be undertaken by wireless carriers and the Commission. Staff opposed this position.

During the November 25, 1997 hearing, Staff admitted, upon cross examination, that the Legislature intended that rules regarding fee collection and disbursement would be in place for five (5) months before fee collection actually began. Tr. at 80-83. This tied into the argument several industry commenters made in Case No. 97-0815-T-GI, namely that the January 1, 1998 date upon which E911 fees are to begin being collected, set forth in W. Va. Code §24-6-6b(a) was a clerical error, as made evident by the requirement that the Commission issue an order establishing rules for fee collection, disbursement, etc. by August 1, 1998.

Staff testified that the Legislature's intent was that the Commission's order issue by August 1, 1997 and fees would begin being collected January 1, 1998. The error in dates was due to the fact that SB278 had been introduced during the 1996 legislative session, had failed to pass during that session, and some of the provisions in the bill were not cleaned-up in the 1997 session. Tr. at 70-71. Staff further testified that the Legislature did not contemplate delaying the collection of E911 fees by over a year, and that the E911 Council convinced the Legislature that emergency service providers needed increased revenue beginning January 1, 1998. Tr. at 81-82. Staff offered that certain measures could accommodate CMRS providers that are unable to begin collecting and remitting fees on January 1, 1998 -- such as obtaining temporary waivers or exemptions from the Commission or billing E911 fees in arrears. Id.

After considering the wireless carriers' arguments and Staff's testimony, as well as the provisions of SB278 itself, the Commission

concludes that it should not delay implementation of the E911 fee program proposed in these rules. As an initial matter, the Commission notes that SB278 appears to have a number of clerical or other errors which makes it difficult to follow at points. For example, in addition to the date problems noted by the CMRS Group, CELLCO and Staff, SB278 refers to both "E911 ordinances" and "911 ordinances" in describing the counties to which fees are disbursed directly or disbursed into escrow. Compare W. Va. Code §§24-6-6b(d)(1)&(2) with 24-6-6b(d)(3). The Legislature apparently intended both to give wireless carriers five (5) months' notice of their obligation to pay fees and also intended that E911 fees begin to be collected on January 1, 1998. Of the two (2) intentions, the Commission believes the latter to be the more important. Moreover, wireless carriers have had notice of SB278's import since April 12, 1997, and have had notice and opportunity to comment and participate in both this proceeding and the Commission's general investigation in Case No. 97-0815-T-GI. See Tr. at 104-05.

C. Changes to 150 C.S.R. §25-2 -- Definitions.

CELLCO claimed that 150 C.S.R. §25-2.9 should be amended to include a definition of "in-state 2-way service subscribers" based on the use of the term in W. Va. Code §24-6-6b(a). Staff testified, on cross-examination, that it had no problem with additional definitions but did not believe it necessary to add the definition of "in-state 2-way service subscribers." Tr. at 26. To be consistent with the statute, the Commission concludes that it should include a definition of "in-state 2-way service subscribers" in

150 C.S.R. §25-2. However, this definition may refer back to "valid retail CMRS subscription" since the Commission believes that the two terms are interchangeable.

Another change to the proposed rules, advocated by the CMRS Group and CELLCO, was broadening the definition of "valid retail CMRS subscription" to accommodate CMRS providers' billing systems. As proposed, 150 C.S.R. §25-2.9 defines such subscriptions by area code within the State. The CMRS Group and CELLCO want to be able to define such subscriptions by the way their billing systems do -- for example, by billing address. Staff disagrees with the CMRS providers' recommended change to 150 C.S.R. §25-2.9. Tr. at 26-27, 32.

After considering the parties' comments and arguments, the Commission concludes that 150 C.S.R. §25-2.9 should not be modified and should be retained as proposed. In the comments originally submitted in Case No. 97-0815-T-GI, most providers recommended that subscribers be defined by area code as an administratively workable system. The commenters' position seems to be that defining subscribers according to the method the provider uses for billing purposes is just as administratively simple. Moreover, in her testimony, industry's witness testified that her company, U.S. Cellular, would find it difficult to render fees based on area code since it bills on the basis of address. Tr. at 96-97. However, in response to cross-examination by the E911 Council, Ms. Anderson admitted that U.S. Cellular's subscribers telephone numbers, including area code, are shown on the subscribers' monthly bills. Id. at 102-03. The Commission believes there is

not that much burden associated with defining subscribers by area code, it is preferable to have one (1) method for defining subscribers, and it more closely ties fees to the persons most likely to use the 911 and E911 facilities and services of West Virginia's emergency responders.

D. Changes Regarding 150 C.S.R. §25-3 -- Billing and Collection of E911 Fees.

Industry made a number of suggested changes to several provisions in this rule. First, the CMRS Group and CELLCO proposed that 150 C.S.R. §25-3.5 should be deleted in its entirety. Proration of monthly E911 fees was simply too burdensome for the monies which would be recovered, they argued. Instead, the CMRS Group and CELLCO recommended that a full month's fee should be collected -- even if a subscriber cancels service mid-month. Staff concurred with the proposed deletion. Tr. at 33-34.

The Commission agrees with the CMRS Group and CELLCO and therefore will delete 150 C.S.R. §25-3.5 in its entirety. This action is also consistent with the Commission's decision to require CMRS providers to consider the first \$0.75 collected each month, or such fee as may later be respecified, as attributable to E911 fees. See Discussion, infra, at 12.

In addition, the CMRS Group suggested that proposed 150 C.S.R. §25-3.6 should be deleted. This provision would require CMRS providers to submit an annual report providing a total customer count for the preceding year, subject to verification by Staff. Staff had no response to this suggestion.

Although Staff did not oppose the CMRS Group's suggested change, the Commission does not believe that requiring an annual customer count is overly burdensome on industry and may provide valuable information regarding the growth of wireless service in the State, as well as the level of wireless companies' compliance with SB278. Accordingly, 150 C.S.R. §25-3.6 will be adopted as proposed.

E. Changes to 150 C.S.R. §25-4 -- Remission of E911 Fees to the Commission.

Both the CMRS Group and CELLCO argued that the Commission should modify 150 C.S.R. §25-4 to provide that fees will be remitted on a quarterly basis within 45-days of the quarter's close. The CMRS Group went further, suggesting that remittances should be made on a semi-annual basis and within 45-days of the half-year's close. At a minimum, both the CMRS Group and CELLCO suggested that CMRS providers should be required to remit E911 fees collected no earlier than the 25th day of the following month. During cross-examination, Staff indicated that it was amenable to quarterly remittances of E911 fees collected. Tr. at 34.

Despite Staff's amenability to quarterly remittances, the Commission will require E911 fees to be remitted on a monthly basis. The Commission is concerned about the workability of a system which has quarterly remittances of fees together with quarterly disbursements of E911 fees to counties. However, the Commission will make the due date the 25th day of the following month.

The CMRS Group also suggested that 150 C.S.R. §25-4.3 should be amended by replacing the term "statement" with the term "report." Staff indicated that it was agreeable to this change. Tr. at 35. The Commission will amend the proposed rule accordingly.

In addition, the CMRS Group asked the Commission to add a rule regarding deductions for bad debts. In its testimony, Staff stated that it was agreeable to adding the CMRS Group's proposed rule. Id. The Commission concludes that it is reasonable to adopt the rule proposed by the CMRS Group.

F. Changes to 150 C.S.R. §25-8 -- Registration of CMRS Providers.

Both the CMRS Group and CELLCO suggested that the Commission should amend 150 C.S.R. §25-8 to clarify that registration of CMRS providers is for informational purposes only and is not an effort to expand Commission regulation of such carriers or to require registration as a prerequisite to CMRS providers doing business in West Virginia. Staff disagreed with the proposal on the grounds that it is already clear that the proposed rule is for informational purposes only and is not an effort to regulate CMRS providers who are clearly regulated exclusively by the FCC. Tr. at 36-37.

The Commission concludes that there is no need to clarify the proposed rule. As Staff points out, the FCC -- not the Commission -- regulates CMRS providers. If the Commission tried to tie compliance with the proposed rule to a precondition to do business in the State, the Commission expects that

a complaint to the FCC would suffice to ensure that the agencies' proper jurisdictions are respected.

The CMRS Group also recommended that 150 C.S.R. §25-8 should be amended to clarify that CMRS resellers must also register with the Commission. During cross-examination, Staff testified that it had no objection to defining "Valid retail CMRS subscription" in proposed 150 C.S.R. §25-2.9 to include resale. Tr. at 66-67. The Commission will amend the definition of "Valid retail CMRS subscription" to include resale. No further clarifications are necessary.

G. Changes to 150 C.S.R. §25-9 -- Submission of Local Exchange Information.

BA-WV requested that the Commission clarify that both incumbent LECs and competitive LECs must submit line count information. BA-WV also urged the Commission to modify the definition of "LEC" in 150 C.S.R. §25-2 to make it clear that CLECs are subject to the line count reporting requirements. In response, Staff indicated that no clarification was necessary because the amendments to the Commission's Telephone Rules would define LEC to include both ILECs and CLECs. Staff, however, agreed that both ILECs and CLECs are subject to the line reporting requirements. Tr. at 24-25.

The Commission agrees that its definition of "LEC" in the Telephone Rules should be added to the final rules adopted by the Commission. As a matter of clarity, the Commission believes that persons reviewing rules should not have to refer to another set of rules to understand the meaning

of a term. Accordingly, 150 C.S.R. §25-2 will be amended to include a definition of "LEC" consistent with that being proposed in the Telephone Rules.

H. Proposed Changes to 150 C.S.R. §25-11 -- Uncollectibles.

The CMRS Group, BA-WV and CELLCO urged the Commission to delete proposed 150 C.S.R. §25-11.2 in its entirety. This rule would have required CMRS providers to eventually terminate subscriptions for non-payment of E911 fees. Staff concurred somewhat, suggesting that the terminology "shall terminate" service for nonpayment of E911 fees could be replaced with "may terminate." Tr. at 25.

After considering Industry's comments and Staff's response thereto, the Commission concludes that the proposed rule should be deleted in its entirety.

The CMRS Group and CELLCO also requested the Commission to delete 150 C.S.R. §25-11.3 from the final rules. Staff recommended that this proposed rule should be retained. Tr. at 31. However, in response to cross-examination, Staff admitted that the reporting requirement was different than the requirements wireline companies are subject to and further that Section 2.2.6.g of the Commission's Rules and Regulations for the Government of Telephone Utilities, 150 C.S.R. §6-2.2.6.g (Telephone Rules) exempts wireless carriers from the Commission's notice requirements regarding delinquent accounts.

The Commission concludes that 150 C.S.R. §25-11.3 should be deleted from the final rules.

I. Changes to 150 C.S.R. §25-12 -- Confidentiality of Proprietary Information.

CELLCO and the CMRS Group suggest that the Commission should revise proposed 150 C.S.R. §25-12.1 to provide that certain information submitted by CMRS providers is automatically confidential and proprietary and remove the Commission's proposed language that would leave it to the Commission to first determine that the information could be used to the provider's disadvantage before it is extended confidential, proprietary status. Staff initially argued against industry's comments, contending that the Commission has the ability to make a judgment call regarding whether information within the statutory proprietary coverage should apply to material within the statutory categories. Tr. at 52-55.

In addition, these two commenters also suggested that the Commission should delete 150 C.S.R. §25-12.2 which, as proposed, provides that the Commission will make determinations regarding claims of confidential/proprietary nature for all other information submitted by CMRS providers. CELLCO claimed that all information submitted to the Commission by CMRS providers should be considered automatically confidential. Staff likewise disagreed with these comments. Id.

After considering the parties' comments and testimony, as well as the provisions of SB278, the Commission concludes that 150 C.S.R. §25-12 should

be deleted in its entirety. SB278 provides that certain information "provided by the Public Service Commission and any county or enhanced 911 program, is not subject to disclosure under the provisions" of the West Virginia Freedom of Information Act. See W. Va. Code §24-6-10. The Commission concludes that there is no reason to promulgate a rule restating the statutory requirement. Moreover, there is no reason for the Commission to establish a rule for other types of information. The Commission will simply apply established precedent in considering claims that information should be considered confidential or proprietary.

In addition to the foregoing comments, BA-WV suggested that the Commission should treat line count information submitted by local exchange carriers (LECs) as proprietary information and modify 150 C.S.R. §§25-12.1 & 12.2 accordingly. Staff indicated its agreement to BA-WV's suggestions and proposed that such modifications should be adopted. Tr. at 26-27. Industry's witness likewise had no objection to BA-WV's comment. Id. at 101.

Since the Commission has decided to delete 150 C.S.R. §25-12 in its entirety, BA-WV's suggestion that the proposed rules should be modified is rendered somewhat moot. Furthermore, the issue raised by BA-WV is not reasonably related to this rulemaking. The Commission concludes that it should not extend such protection to line count information. The Commission will consider all requests for such treatment of line count information in accordance with established legal authority and Commission practice and precedent.

J. Other Suggested Changes.

The CMRS Group suggested that the Commission should require counties to use E911 fee revenues to provide E911 to wireless customers exclusively. Staff had no response to this comment.

Although Staff did not oppose the CMRS Group's suggestion, the Commission concludes that it should be rejected. As set forth in detail above, testimony at the hearing supported the conclusion that the E911 fees are intended to equalize costs to wireless and wireline customers and are not tied to any particular purpose. Fees disbursed to counties may be used to purchase equipment, pay personnel, etc. Tr. at 13-17. In view of the latitude counties are given in determining how to use E911 fees, the Commission will not restrict that latitude. Moreover, any such restriction would appear to be inconsistent with SB278, since the Legislature did require counties to set aside three percent (3%) of fees disbursed to them to purchase equipment that will provide information regarding the x and y coordinates of persons who call an emergency telephone system through CMRS providers' service. See W. Va. Code §24-6-6b(g). Finally, the Commission may consider this issue further in the context of the general investigation into cost-recovery mechanisms.

K. Other, Commission-Initiated Changes to 150 C.S.R. Series 25.

In addition to the foregoing revisions to the proposed rules, the Commission concludes that several additional changes should be adopted.

First, the reference to "1.6" in 150 C.S.R. §25-6.1 is a typographical error and should be changed to "7.3." Second, 150 C.S.R. §25-4.2 should be corrected to reflect the fact that carriers are required to remit the net amount of fees collected, i.e., total monthly fees collected less 3% as a billing and collection fee. The phrase "up to 3%" accordingly should be replaced with "3%." Third, 150 C.S.R. §25-6 should be amended to reflect the fact that the State Treasurer's Department, rather than the Commission, will establish and maintain accounts for E911 fees remitted to the Commission, as well as escrow accounts for E911 fees disbursed to counties which did not have an E911 ordinance in effect on the effective date of SB278. Fourth, the Commission will amend 150 C.S.R. §25-4 to provide that the first \$0.75 collected from each valid CMRS retail subscription, or such other amount as may hereafter be respecified, shall be considered attributable to the E911 fee and remitted to the Commission. Fifth, 150 C.S.R. §25-5.6.b should be amended by replacing references to "July 11" with "January 31." This will better accommodate the schedule contemplated by the Legislature for collecting E911 fees and also is consistent with the phrase "every five years from [1997]" in W. Va. Code §24-6-6(d)(3).

Finally, the Commission will transfer, unchanged, a number of provisions dealing with local emergency service from the Telephone Rules, 150 C.S.R. Series 6, to the rules being adopted herewith. A general order which the Commission intends to issue shortly, proposing amendments to the Commission's Telephone Rules, will note the transfer of these rules as well. Specifically, the sections of these rules previously contained in 150 C.S.R. Series 6 consist of Section 9, dealing with local emergency

telephone systems -- now set forth in 150 C.S.R. §25-3, and the following definitions now set forth 150 C.S.R. §25-2: 1.7.17 ("Emergency Number"); 1.7.18 ("Emergency Services Organization"); 1.7.19 ("Emergency Telephone System"); 1.7.47 ("Public Agency"); and 1.7.48 ("Public Safety Unit"). In addition, the Commission will define the term "Telephone Utility" set forth in the 150 C.S.R. Series 6, to the extent that term clarifies that CMRS providers are not subject to the provisions relating to local emergency telephone systems.

FINDINGS OF FACT

1. By Order entered October 17, 1997, the Commission promulgated proposed rules implementing the provisions of Senate Bill No. 278 (SB278), which required the Commission to issue an order regarding the details associated with the assessment, collection and distribution of Enhanced 911 (E911) fees assessed on wireless telecommunications utility subscribers.

2. Between October 24 and November 10, 1997, the Commission's Executive Secretary filed proof of publication of public notice in accordance with the Commission's October 17, 1997 order.

3. On November 18, 1997, the following persons filed initial comments to the Commission's proposed rulemaking: AT&T Wireless Services; Hardy Cellular Telephone Company and Georgia RSA #13, Inc. dba United States Cellular Corporation; Telespectrum, Inc. dba 360° Communications Company; Northland Cellular Corporation and Eastern Wireless Cellular

Corporation; and Washington/Baltimore Cellular Limited Partnership dba Cellular One Washington/Baltimore;⁴ Bell Atlantic - West Virginia, Inc. (BA-WV); and CELLCO Partnership dba Bell Atlantic Mobile (CELLCO). Commission Staff (Staff) filed a letter with the Commission advising that it would not be filing initial comments but that it wished to reserve its right to file reply comments.

4. On November 25, 1997, BA-WV and Highland Cellular, Inc. (Highland) filed reply comments.

5. A public hearing on the proposed rules was held, as scheduled, on November 25, 1997. The following persons appeared at the November 25, 1997 hearing: the CMRS Group; BA-WV; CELLCO; Highland; Staff; and the West Virginia Enhanced 9-1-1 Council (E911 Council). Staff presented the testimony of Dannie L. Walker in lieu of reply comments. The CMRS Group and Highland likewise presented testimony, through a joint industry witness, Kristin K. Anderson. The E911 Council, through Ronald Kyle, offered a statement and cross-examined the witnesses.

6. The Commission adopts and incorporates herein all recitals of facts set forth in this Order.

⁴These commercial mobile radio service (CMRS) providers filed comments as a group (collectively, the CMRS Group).

CONCLUSIONS OF LAW

1. The CMRS Group's and CELLCO's comments should be rejected and that final rules should be adopted which are effective as soon as possible, and in any event before the establishment of a mechanism for CMRS providers to recover their costs of providing E911 service. Moreover, the Commission rejects Staff's suggestion that the E911 fees collected could be escrowed until a proceeding regarding establishing a cost-recovery mechanism could be completed and such a mechanism implemented.

2. The Commission should not delay implementation of the E911 fee program proposed in these rules. The Legislature apparently intended both to give wireless carriers five (5) months' notice of their obligation to pay fees and also intended that E911 fees begin to be collected on January 1, 1998. Of the two (2) intentions, the Commission believes the latter to be the more important. Moreover, wireless carriers have had notice of SB278's import since April 12, 1997, and have had notice and opportunity to comment and participate in both this proceeding and the Commission's general investigation in Case No. 97-0815-T-GI. See Tr. at 104-05.

3. Section 2.9 of the proposed rules should not be modified and should be retained as proposed.

3. Section 3.5 of the proposed rules should be deleted in its entirety.

4. Section 3.6 of the proposed rules should not be deleted.

5. Despite Staff's amenability to quarterly remittances, the Commission will require E911 fees to be remitted on a monthly basis and will retain this provision of Section 4 of the proposed rules. However, the Commission will make the due date the 25th day of the following month.

6. Section 4.3 of the proposed rules should be modified by replacing the term "statement" with report.

7. Section 4 of the proposed rules should be modified by adding a new provision regarding deductions for bad debts.

8. There is no need to clarify Section 8 of the proposed rules to provide that registration of CMRS providers is for information purposes only and is not an effort to expand Commission regulation of such carriers or to require registration as a prerequisite to CMRS providers doing business in West Virginia.

9. Section 8 of the proposed rules should be amended to clarify that CMRS resellers must also register with the Commission.

10. A definition of "Local Exchange Carrier" or "LEC" in the consistent with the definition of that term in the proposed Telephone Rules should be added to Section 2 of these proposed rules.

11. Section 11.2 of the proposed rules should be deleted in its entirety.

12. Section 11.3 of the proposed rules should be deleted in its entirety.

13. Section 12 of the proposed rules should be deleted in its entirety.

14. The protection extended by W. Va. Code §24-6-10 to certain information provided by CMRS providers should not be extended to line count information submitted by local exchange carriers.

15. Counties should not be required to use E911 fee revenues exclusively to provide E911 service to wireless customers.

16. The reference to "1.6" in proposed Section 6.1 is a typographical error and will be replaced.

17. Section 4.2 of the proposed rules should be corrected to reflect that CMRS providers are required to remit the net amount of E911 fees collected (i.e., total fees collected less 3% as a billing and collection fee).

18. Section 6 of the proposed rules should be amended to reflect the fact that the State Treasurer's Department, rather than the Commission, will

establish and maintain accounts for E911 fees remitted to the Commission, as well as escrow accounts for E911 fees disbursed to counties which did not have an E911 ordinance in effect on the effective date of SB278.

19. Section 4 of the proposed rules should be amended to provide that the first \$0.75 collected from each valid CMRS retail subscription, or such other amount as my hereafter be respecified, shall be considered attributable to the E911 fee and remitted to the Commission.

20. Section 5.6.b of the proposed rules should be amended by replacing "July 11, 2003" with "January 31, 2003" and replacing "July 11 of every fifth year thereafter" with "January 1 of every fifth year thereafter."

21. The term "Telephone Utility" set forth in 150 CSR Series 6 will be defined to clarify that CMRS providers are not subject to the provisions relating to local emergency telephone systems.

22. The provisions dealing with local emergency service in the Telephone Rules should be transferred, unchanged, to these rules.

23. The Commission adopts and incorporates herein all legal conclusions set forth in this Order.

ORDER

IT IS, THEREFORE, ORDERED that the proposed rules promulgated by Order entered October 17, 1997 in this proceeding should be adopted, as amended herein, as final rules of the Commission.

IT IS FURTHER ORDERED that the rules attached hereto are adopted as final rules of the Commission to become effective March 6, 1998.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause a copy of this Order, together with the rules attached hereto, to be filed with the Secretary of State of West Virginia upon entry hereof.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Neal
Executive Secretary