

BRIEF SUMMARY OF RULE

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

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 29th day of November, 2005.

GENERAL ORDER NO. 187.29

**Rules and Regulations Governing Emergency Telephone Service
Series 25**

COMMISSION ORDER

By this Order the Commission is issuing proposed legislative rules to implement the provisions of House Bill No. 3208 (H.B. 3208) governing the collection and disbursement of wireless enhanced 911 (E911) fees and the formation of a mechanism for administering a fund to subsidize the acquisition, equipping, and construction of new wireless towers to provide enhanced 911 service coverage to areas where such service would not be available otherwise due to marginal financial viability of the tower coverage area. These proposed legislative rules are in furtherance of the emergency rules issued by the Commission on November 1, 2005.

Background And Discussion

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 Enhanced 911 Wireless Tower Access Assistance Fund to be administered by the Public Service Commission, authorized the Commission to provide loans and matching grants from the Enhanced 911 Wireless Tower Access Assistance Fund, 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 Public Service 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.

The Commission notes that the legislation addresses two general areas. The first involves an increase in the E911 fee and a revision of the mechanism for distributing those

fees to the appropriate recipients. This order shall refer to that aspect of H.B. 3208 as the "collection and disbursement" function.

The second aspect of H.B. 3208 addresses the creation of the Enhanced 911 Wireless Tower Access Assistance Fund in order to provide a source of money for distribution of E911 fees, in the form of loans and grants, in order to subsidize the construction of wireless towers to provide E911 service coverage in areas which would not normally be served due to marginal financial viability. This order shall refer to that aspect of H.B. 3208 as the "wireless towers" function.

H.B. 3208 specifically authorized the Commission to promulgate rules and emergency rules for use in implementing the legislation. The Commission notes that sections 4, 5, 6, 7, and 8 of 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service (Emergency Telephone Rules)*, currently address the collection and disbursal of the E911 fees to the counties. Modification of those existing sections of the *Emergency Telephone Rules* will be necessary. As the Enhanced 911 Wireless Tower Access Assistance Fund represents a new administrative duty of the Commission, an additional section shall be added to the *Emergency Telephone Rules* to hold the rules necessary to implement that fund.

The Commission issued an order on June 28, 2005 noting the broad interest in H.B. 3208. Specifically, the Commission noted the following interested entities: cellular phone companies, contractors, E911 call centers, emergency responders, and county officials. In order to obtain input from these entities, and others, the Commission's Order created a Task Force charged with developing proposed emergency rules through the input of interested entities. The Commission directed that its Executive Secretary publish notice inviting participation in the Task Force and further directed the Commission's Executive Secretary to serve the Commission's Order upon a number of already identified interested entities.

The Commission issued an additional order on July 18, 2005 scheduling an organizational meeting for the Task Force and requiring the Task Force to provide written updates on or before the fifteenth of each month and submit a final report, containing proposed emergency rules, on or before October 7, 2005.

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

The Commission acknowledges and appreciates the hard work by the Task Force.

The Commission reviewed the proposed emergency rules submitted by the Task Force, and, with some minor modifications, integrated them into the Commission's revision to 150 C.S.R. 25, *Emergency Telephone Rules*.

The Commission's emergency rule revisions to the *Emergency Telephone Rules* reflected the collection and disbursement functions of H.B. 3208 by:

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

H.B. 3208 provides limited guidance regarding administration of the Enhanced 911 Wireless Tower Access Assistance Fund:

That for the fiscal year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. The monies shall be deposited in a fund administered by the West Virginia Public Service Commission, entitled

“Enhanced 911 [W]ireless Tower Access Assistance Fund”, and shall be expended in accordance with an enhanced 911 wireless tower access matching grant order adopted by the Public Service Commission. The Commission order shall contain terms and conditions designed to provide financial assistance loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to marginal financial viability of the applicable tower coverage area: *Provided further*, That the grants shall be allocated among potential sites based on application from county commissions demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed with assistance from the fund created by this subdivision shall be available for use by emergency services, fire departments and law enforcement agencies communication equipment, so long as that use does not interfere with the carrier's wireless signal: *And provided further*, That the Public Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection. The Public Service Commission is specifically authorized to promulgate emergency rules.

The Commission's emergency rules for implementing the wireless tower functions of H.B. 3208 were included as a new section, §150-25-13, of the Commission's *Emergency Telephone Rules* with a few additions to §150-25-2, the *Definitions* section of those Rules.

The emergency rules created a Tower Assistance Fund Review Committee (Committee) to review and make determinations as to those projects qualifying for funding through the Enhanced 911 Wireless Tower Access Assistance Fund. Pursuant to the emergency rules, applicants for grants or loans will submit an application to the Committee. Within sixty days of submission the Committee will review the application in accordance with criteria contained in the Rule, and forward its determination regarding funding for the proposed wireless tower project to the Commission. If the Committee approves the application, the Commission will schedule a loan/grant closing with the applicant and disburse the approved funding. The Committee will operate under by-laws developed by the Committee and approved by the Commission.

On November 1, 2005 the Commission caused to be filed an emergency rulemaking with the West Virginia Secretary of State's Office and the Legislative Rule-Making & Review Committee. Pursuant to the *Administrative Procedures Act (West Virginia Code §§ 29A-1-1, et seq.)* the Commission is required to promulgate proposed legislative rules within thirty days of the emergency rulemaking filing. As such, the Commission shall

promulgate the attached rules as its proposed rulemaking and shall call for public comment regarding those proposed rules. The Commission shall provide statewide notice in addition to the notice requirements of the *Administrative Procedures Act*.

FINDINGS OF FACT

1. During the 2005 Regular Session the Legislature passed House Bill No. 3208, (passed on April 9, 2005, effective July 8, 2005).
2. H.B. 3208 amended and reenacted *West Virginia Code* § 24-6-6b relating to the E911 fee. The legislation raised the E911 fee, earmarked ten cents of the fee, per subscription, per month, for the West Virginia State Police, earmarked one million dollars of the fee for the construction of wireless towers, created the Enhanced 911 Wireless Tower Access Assistance Fund to be administered by the Public Service Commission, authorized the Commission to provide loans and matching grants from the Enhanced 911 Wireless Tower Access Assistance Fund, addressed the use of wireless towers for emergency services, authorized the Commission to promulgate rules and emergency rules, adjusted the formula by which the Public Service 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.
3. H.B. 3208 specifically authorized the Commission to promulgate legislative rules and emergency rules for use in implementing the legislation.
4. Sections 4, 5, 6, 7, and 8 of 150 C.S.R. 25, *Emergency Telephone Rules*, currently address the collection and disbursement of the E911 fees to the counties.
5. The Enhanced 911 Wireless Tower Access Assistance Fund represents a new administrative duty of the Commission.
6. The Commission issued an order on June 28, 2005 creating a Task Force charged with developing proposed emergency rules through the input of interested entities.
7. The Commission directed that its Executive Secretary publish notice inviting participation in the Task Force and further directed the Commission's Executive Secretary to serve the Commission's Order upon a number of already identified interested entities.
8. The Commission issued an order on July 18, 2005 scheduling an organizational meeting for the Task Force and requiring the Task Force to submit a final report, containing proposed emergency rules, on or before October 7, 2005.

9. The Task Force filed its final report on October 7, 2005. Attached thereto were proposed emergency rules for use in implementing House Bill No. 3208.

10. On November 1, 2005 the Commission caused to be filed an emergency rulemaking with the West Virginia Secretary of State's Office and the Legislative Rule-Making & Review Committee. Pursuant to the *Administrative Procedures Act* (*West Virginia Code* §§ 29A-1-1, et seq.) the Commission is required to promulgate proposed legislative rules within thirty days of the emergency rulemaking filing. As such, the Commission shall promulgate the attached rules as its proposed rulemaking and shall call for public comment regarding those proposed rules. The Commission shall provide statewide notice in addition to the notice requirements of the *Administrative Procedures Act*.

CONCLUSIONS OF LAW

Pursuant to H.B. 3208 and the *Administrative Procedures Act* the Commission shall submit its emergency rules as a proposed legislative rule. The Commission shall also provide public notice of the proposed rule and solicit public comment thereon.

ORDER

IT IS THEREFORE ORDERED that the attached proposed legislative rules be promulgated as Commission 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 text of the proposed legislative rules, with the forms attached, with the Offices of the Secretary of State and the Legislative Rule-Making & Review Committee, together with the forms required to be filed by the Secretary of State's Office.

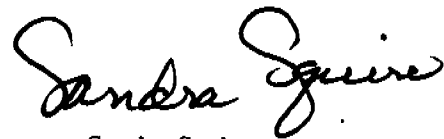
IT IS FURTHER ORDERED that the Commission's Executive Secretary cause the attached Notice of Proposed Rule to be published in the *Capitol News Service*, and as noted below.

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

IT IS FURTHER ORDERED that all interested persons must set forth specific comments regarding the proposed rule. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the initial comment period and shall explicitly state the grounds upon which the request is made. All comments should be addressed to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, W. Va. 25323.

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.

A True Copy, Teste:



Sandra Squire
Executive Secretary

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 29th day of November, 2005.

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone Service
Series 25

NOTICE OF RULEMAKING AND COMMENT PERIOD

On November 29, 2005 the Public Service Commission of West Virginia started a rulemaking to amend its *Rules and Regulations Governing Emergency Telephone Service*, 150 C.S.R. Series 25, to modify the process of billing, collecting, and disbursing E911 fees; to establish the procedural and substantive process for reviewing and evaluating applicants seeking grants or loans for subsidizing the acquisition, equipping, and construction of new wireless towers; and to establish a committee to review and evaluate the applications. Anyone interested may obtain a copy of the proposed rules from Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323. Written comments on the proposed rules may be filed with the Commission's Executive Secretary, on or before January 10, 2006, at 4:00 p.m.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

FILED

2005 NOV 29 P 2:05

SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE

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. 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, 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. "Cost" -- means, as applied to any project to be financed in whole or in part with funds provided from the Tower 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 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 and expenses 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 Assistance Fund.

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

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

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

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

2.78. "E911"-- Enhanced 911.

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

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

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

2.1112. "Local Exchange Carrier" or "LEC" -- A person or entity granted a certificate of public convenience and necessity to provide local exchange services within a defined service area of the State. Incumbent LECs shall be those LECs holding certificates of public convenience and necessity prior to January 1, 1995.

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

2.1314. "NANP" -- The North American Numbering Plan.

2.15. "Need of the project sponsor" -- means there is a public need for a project. The Tower 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, corporation, partnership, association, limited liability company or any other form of business organization.

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 state agency, political subdivision, wireless telephone carrier, or any combination thereof, 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 Assistance Fund revenue" -- means all amounts appropriated by the Legislature; all amounts deposited into the Tower 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 Assistance Fund.

2.27. "Tower Assistance Fund Review Committee," or "Committee" -- means a committee established by the Commission to review and make recommendations to the Commission on applications for loans and/or grants from the Tower 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 West Virginia Association of Counties; 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 monthly to consider applications for financial assistance from the Tower 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, that, at the time of submitting an application for assistance from the Tower Assistance Fund, is subject to the collection of the wireless enhanced 911 fee.

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 billing and collection fee, during the preceding monthly billing period. If the payment is mailed, the postmark shall be used as proof when the payment was remitted. If the payment is made electronically, the date the payment is sent, as specified by the software used, shall be used as proof of when the payment was remitted. The fees ~~should~~ shall be remitted to:

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

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

6.1.b. 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.c. 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. [RESERVED FOR RULES RE COUNTY CONSOLIDATION]

6.4. Each county shall receive eight and one-half tenths of one percent of the remainder of the 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.

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

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

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

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

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

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

7.1. The Commission shall cause to be established an account for all monthly E911 fee revenues remitted to the Commission. Said account shall serve as a repository for such fee revenues until, in accordance with the quarterly disbursement schedule set forth in 8.32 herein, such revenues are either: (1) disbursed to each county with an E911 ordinance currently in effect; or (2) deposited to a separate escrow account for each county without an E911 ordinance currently in effect.

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

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

8.1. Disbursement of monthly E911 fee revenues ~~shall begin on April 10, 1998 and shall be~~ disbursed, 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 Rules.

13.1 Projects.

13.1.a. Project Review. In order to receive a loan, grant or other funding assistance 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 Assistance Fund Review Committee, and the wireless tower project must receive the approval of the Tower Assistance Fund Review Committee.

13.1.b. Application Filing. A project sponsor may file an application with the Commission at any time during Commission business hours.

13.1.c. Application Review. Within sixty (60) days of the filing of a complete application from a wireless tower project sponsor, the Tower Assistance Fund Review Committee shall make a determination regarding the application. The Tower 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. A copy of the determination by the Committee shall be sent to the Commission's Executive Secretary and to the applicant.

13.1.c.1. The determination by the Committee must be in writing and contain findings that the project meets, if it is to be funded, or does not meet, if it is not to be funded, 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 Assistance Fund Review Committee, the Commission shall, in the instance of a determination to fund a particular project, mail a copy of the funding contract to the applicant and schedule a closing on the loan/grant to be held within thirty (30) days. If there is insufficient money available to fund the project as determined by the Committee, the Commission shall return the application to the Committee within fourteen (14) days for further action by the Committee.

13.1.d.1. Denial. If the Committee determines that the project is not worthy of funding assistance from the Tower Assistance Fund, or if the application has been returned by the Commission due to insufficient money available to the fund, 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 loan, grant or other assistance, the Committee shall determine that the loan, grant or other assistance 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 make grants for any wireless tower project that is not applied for by a county commission on behalf of itself and/or a project sponsor.

13.1.g. Grant Requirements. The Committee may make 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 Assistance Fund.

13.1.h. Limit on Grant Amount. In making its determination the Committee shall ensure that any moneys awarded from the Tower Assistance Fund in the form of grants shall not exceed twenty percent of the total funds in the Tower Assistance Fund at the time of the grant award. The Committee may limit individual grant awards to whatever amount it considers desirable to advance the intent and purposes of W.Va. Code §24-6-6b(b); Provided, That no project sponsor shall receive Tower Assistance grant money in an amount in excess of fifty percent of the total cost of the project, where such cost is defined by these Rules.

13.1.i. Loans. The Committee shall make loans or loan assistance from the Tower Assistance Fund on a case-by-case basis based on the bona fide needs of the project sponsor and upon terms and conditions as specified by statute and by these Rules.

13.1.j. Limit on Loan Amount. The Committee may limit loans to project sponsors to whatever amount it considers desirable to advance the intent and purposes of W.Va. Code §24-6-6b(b).

13.1.k. Interest Rate Applicable to Loans. The interest rate on any loan for projects made pursuant to these rules shall be included in the Committee's determination.

13.2. Review Guidelines.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct, equip, or otherwise develop a wireless tower, the Tower 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.

13.3. Tower Assistance Fund Administration.

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

13.3.b. Sources of Money for Fund. The Tower Assistance Fund shall consist of Tower Assistance Fund revenues; any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the Tower Assistance Fund from any source, public or private; amounts received as payments, including interest, on any loans made by the Commission from the Tower Assistance Fund; insurance proceeds payable to the Commission or the Tower Assistance Fund in connection with any Tower Assistance project or projects; and all income earned on moneys held in the Tower 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 Assistance Fund to make loans or grants, or any combination thereof, 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 Assistance Fund the amount of the Tower Assistance grant. In the alternative, the grant contract shall allow repayment of the grant by converting the grant into a loan from the Tower Assistance Fund.

13.3.d.1. The proceeds from the repayment of any grant or grant which has been converted to a loan shall retain their character as proceeds available for grants.

13.3.d.2. 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.3. 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.4. 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 loan, loan guarantee, grant or other assistance made or provided by the Commission shall be evidenced by a loan, loan guarantee, grant or assistance contract between the Commission and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided; 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; the amount of the loan, loan guarantee or grant or the other nature of the assistance; and, in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

13.3.e.2. The specific purposes for which any items on which the loan or grant proceeds shall be expended and/or the benefits to accrue from the loan guarantee or other assistance and the conditions and procedure for disbursing loan or 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 thirteen copies 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 Assistance Fund Review 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 Assistance Fund Review Committee and one copy filed with the Commission's Executive Secretary. The Applicant shall, upon request of the Chairperson of the Tower Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, this shall include documents comprising the original application and documents filed subsequently.

13.5. Tower 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 West Virginia Association of Counties 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 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 monthly 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 loan and grant application forms as developed by the Committee, and (6) copies of the contracts used to administer the individual loans and 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

BRIEF SUMMARY OF RULE

The attached Proposed Legislative Rule implements House Bill 3208, which was passed effective July 8, 2005. The Rule modifies Sections 1, 2, 4, 5, 6, 7, 8 of 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service* and adds a new section, 13. The revised Rule addresses the billing and collection of E911 fees; remission of E911 fees to the Commission; disbursement of E911 fees; E911 fee revenue accounting; and disbursement of monthly E911 fee revenues. The new section of 150 C.S.R. 25 establishes the procedural and substantive process for reviewing and evaluating applicants seeking grants or loans 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 specifically authorized the Public Service Commission to promulgate rules for implementation of the procedures set forth in the Bill.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural Emergency

Agency: Public Service Commission of West Virginia

Address: Richard E. Hitt, General Counsel (340-0317); J. Joseph Watkins, Law Clerk (340-0775)

201 Brooks Street, Post Office Box 812

Charleston, West Virginia 25323

Phone Number: 304-340-0775

Email: _____

Fiscal Note Summary

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

Revenue: State Police should receive up to \$800,000 per year. 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 and loan 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 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 portion as identified in the statute, the \$1,000,000 Grant/Loan Program and the processing and management of the Grant/Loan Program.

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

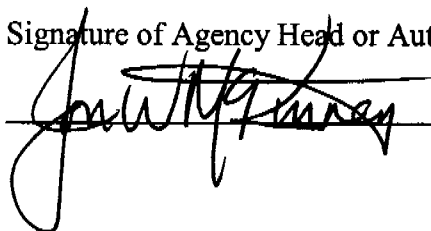
MEMORANDUM

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

[Empty box for identifying areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.]

Date: November 29, 2005

Signature of Agency Head or Authorized Representative



TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

FILED

2005 NOV 29 P 2:07

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 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, 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. "Cost" -- means, as applied to any project to be financed in whole or in part with funds provided from the Tower 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 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 and expenses 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 Assistance Fund.

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

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

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

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

2.78. "E911"-- Enhanced 911.

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

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

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

2.1112. "Local Exchange Carrier" or "LEC" -- A person or entity granted a certificate of public convenience and necessity to provide local exchange services within a defined service area of the State. Incumbent LECs shall be those LECs holding certificates of public convenience and necessity prior to January 1, 1995.

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

2.1314. "NANP" -- The North American Numbering Plan.

2.15. "Need of the project sponsor" -- means there is a public need for a project. The Tower 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, corporation, partnership, association, limited liability company or any other form of business organization.

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 state agency, political subdivision, wireless telephone carrier, or any combination thereof, 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 Assistance Fund revenue" -- means all amounts appropriated by the Legislature; all amounts deposited into the Tower 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 Assistance Fund.

2.27. "Tower Assistance Fund Review Committee," or "Committee" -- means a committee established by the Commission to review and make recommendations to the Commission on applications for loans and/or grants from the Tower 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 West Virginia Association of Counties; 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 monthly to consider applications for financial assistance from the Tower 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, that, at the time of submitting an application for assistance from the Tower Assistance Fund, is subject to the collection of the wireless enhanced 911 fee.

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.~~

4.42. 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 billing and collection fee, during the preceding monthly billing period. If the payment is mailed, the postmark shall be used as proof when the payment was remitted. If the payment is made electronically, the date the payment is sent, as specified by the software used, shall be used as proof of when the payment was remitted. The fees ~~should~~ shall be remitted to:

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

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

6.1.b. 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.c. 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. [RESERVED FOR RULES RE COUNTY CONSOLIDATION]

6.4. Each county shall receive eight and one-half tenths of one percent of the remainder of the 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, 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 Rules.

13.1 Projects.

13.1.a. Project Review. In order to receive a loan, grant or other funding assistance 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 Assistance Fund Review Committee, and the wireless tower project must receive the approval of the Tower Assistance Fund Review Committee.

13.1.b. Application Filing. A project sponsor may file an application with the Commission at any time during Commission business hours.

13.1.c. Application Review. Within sixty (60) days of the filing of a complete application from a wireless tower project sponsor, the Tower Assistance Fund Review Committee shall make a determination regarding the application. The Tower 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. A copy of the determination by the Committee shall be sent to the Commission's Executive Secretary and to the applicant.

13.1.c.1. The determination by the Committee must be in writing and contain findings that the project meets, if it is to be funded, or does not meet, if it is not to be funded, 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 Assistance Fund Review Committee, the Commission shall, in the instance of a determination to fund a particular project, mail a copy of the funding contract to the applicant and schedule a closing on the loan/grant to be held within thirty (30) days. If there is insufficient money available to fund the project as determined by the Committee, the Commission shall return the application to the Committee within fourteen (14) days for further action by the Committee.

13.1.d.1. Denial. If the Committee determines that the project is not worthy of funding assistance from the Tower Assistance Fund, or if the application has been returned by the Commission due to insufficient money available to the fund, 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 loan, grant or other assistance, the Committee shall determine that the loan, grant or other assistance 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 make grants for any wireless tower project that is not applied for by a county commission on behalf of itself and/or a project sponsor.

13.1.g. Grant Requirements. The Committee may make 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 Assistance Fund.

13.1.h. Limit on Grant Amount. In making its determination the Committee shall ensure that any moneys awarded from the Tower Assistance Fund in the form of grants shall not exceed twenty percent of the total funds in the Tower Assistance Fund at the time of the grant award. The Committee may limit individual grant awards to whatever amount it considers desirable to advance the intent and purposes of W.Va. Code §24-6-6b(b): Provided, That no project sponsor shall receive Tower Assistance grant money in an amount in excess of fifty percent of the total cost of the project, where such cost is defined by these Rules.

13.1.i. Loans. The Committee shall make loans or loan assistance from the Tower Assistance Fund on a case-by-case basis based on the bona fide needs of the project sponsor and upon terms and conditions as specified by statute and by these Rules.

13.1.j. Limit on Loan Amount. The Committee may limit loans to project sponsors to whatever amount it considers desirable to advance the intent and purposes of W.Va. Code §24-6-6b(b).

13.1.k. Interest Rate Applicable to Loans. The interest rate on any loan for projects made pursuant to these rules shall be included in the Committee's determination.

13.2. Review Guidelines.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct, equip, or otherwise develop a wireless tower, the Tower 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.

13.3. Tower Assistance Fund Administration.

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

13.3.b. Sources of Money for Fund. The Tower Assistance Fund shall consist of Tower Assistance Fund revenues; any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the Tower Assistance Fund from any source, public or private; amounts received as payments, including interest, on any loans made by the Commission from the Tower Assistance Fund; insurance proceeds payable to the Commission or the Tower Assistance Fund in connection with any Tower Assistance project or projects; and all income earned on moneys held in the Tower 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 Assistance Fund to make loans or grants, or any combination thereof, 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 Assistance Fund the amount of the Tower Assistance grant. In the alternative, the grant contract shall allow repayment of the grant by converting the grant into a loan from the Tower Assistance Fund.

13.3.d.1. The proceeds from the repayment of any grant or grant which has been converted to a loan shall retain their character as proceeds available for grants.

13.3.d.2. 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.3. 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.4. 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 loan, loan guarantee, grant or other assistance made or provided by the Commission shall be evidenced by a loan, loan guarantee, grant or assistance contract between the Commission and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided; 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; the amount of the loan, loan guarantee or grant or the other nature of the assistance; and, in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

13.3.e.2. The specific purposes for which any items on which the loan or grant proceeds shall be expended and/or the benefits to accrue from the loan guarantee or other assistance and the conditions and procedure for disbursing loan or 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 thirteen copies 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 Assistance Fund Review 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 Assistance Fund Review Committee and one copy filed with the Commission's Executive Secretary. The Applicant shall, upon request of the Chairperson of the Tower Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, this shall include documents comprising the original application and documents filed subsequently.

13.5. Tower 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 West Virginia Association of Counties 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 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 monthly 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 loan and grant application forms as developed by the Committee, and (6) copies of the contracts used to administer the individual loans and 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 WVPC 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

RELEVANT FEDERAL STATUTES OR REGULATIONS

Although there are Federal statutes and regulations which tangentially touch on the subject matter of this rulemaking (e.g. Regulation of Wireless Telephone Carriers, Use of E911 Funds by Counties), those statutes and regulations are not specifically applicable and do not directly impact the proposed rules.

Public Service Commission
Of West Virginia

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



Phone: (304) 340-0300
FAX: (304) 340-0325

November 29, 2005

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

FILED
2005 NOV 29 P 2:05
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

Dear Ms. Cooper:

Enclosed is a proposed legislative rule-making in response to House Bill No. 3208 passed during the 2005 legislative session. This legislation can be found at *West Virginia Code* §24-6-6b. The statute made this particular rule-making subject to legislative rule review. This proposed rule is in furtherance of the emergency rule-making filed by the West Virginia Public Service Commission with your office on November 1, 2005.

I have enclosed one copy of the proposed rule for your office and one copy for the Legislative Rule-Making & Review Committee. 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*.

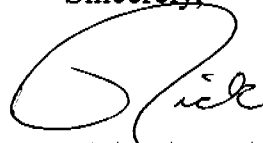
I have also enclosed two sets, one for your office and one for the Legislative Rule-Making & Review Committee, of each of the following:

- Notice of a Comment Period on a Proposed Rule (Form #2)
- Commission General Order No. 187.29, issued November 29, 2005
- Brief Summary of Rule
- Statement of Circumstances
- Fiscal Note for Proposed Rules
- Relevant Federal Statutes or Regulations

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 "R. E. Hitt". The signature is written in a cursive style with a large, looping initial "R".

Richard E. Hitt
General Counsel

REH/klm
Enclosures