

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150 C.S.R.

CITE AUTHORITY: II.B. 3208

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE THROUGH A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

**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 10th day of April, 2006.

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone Service
Series 25

COMMISSION ORDER

On November 29, 2005 the Commission issued an Order for the purpose of promulgating 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 E911 service coverage to areas where such service would not be available otherwise due to marginal financial viability of the tower coverage area. The proposed Legislative rules were in furtherance of the emergency rules issued by the Commission Order of November 1, 2005. The November 29, 2005 Order required the publication of a "Notice of Rulemaking and Comment Period." Written comments regarding the proposed rules were required to be filed with the Commission on or before January 10, 2006.

On November 29, 2005 the Commission issued a "Commission Corrective Order" to correct a minor clerical error in the previous order.

Affidavits of publication were received on December 5, 2005 from *The Logan Banner*; on December 7, 2005 from *The Bluefield Daily Telegraph*; on December 8, 2005 from *The Daily Times*; on December 16, 2005 from *The Dominion Post*; and on December 23, 2005 from *The Mountain Messenger*.

On December 23, 2005 the Commission issued an Order appointing Dannie Walker, a Technical Analyst with the Commission Staff, as the Commission's designated member of the "Tower Access Assistance Fund Review Committee" pursuant to Rule 2.27 of the *Rules and Regulations Governing Emergency Telephone Service (Emergency Telephone Service Rules)* promulgated as an emergency rule on November 1, 2005, effective December 13, 2005. The Order also required that the Tower Access Assistance Fund Review Committee hold its first meeting no later than February 28, 2006.

Additional affidavits of publication were filed on December 27, 2005 from *The Parkersburg News*; and on December 28, 2005 from *The Welch News*.

On January 9, 2006 the Commission received a letter from the County Commissioners' Association of West Virginia (CCAWV). The letter read as follows:

On behalf of the County Commissioner's Association of WV, I am making a formal written request to the West Virginia Public Service Commission asking for IMMEDIATE issuance of an amended order to General Order No. 187.29, paragraph 2.27 creating the "Tower Assistance Fund Review Committee," which will change the appointing agency for a representative of county commissioners from the WV Association of Counties (WVACo) to the County Commissioners' Association of West Virginia (CCAWV).

The County Commissioners' Association of West Virginia is the agency representing county commissioners in West Virginia and has represented them on the task force which met to help create these emergency rules. Since the appointment is to be a county commissioner representative, we feel that appointment should come through our agency. Any appointment from WVACo for a county commissioner representative would have to first come through our organization anyway, as we are one of the six associations making up the membership of WVACo. **This appointment will be more directly achieved by seeking the appointment directly through our organization - CCAWV.**

(Emphasis in original.)

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

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

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

On February 7, 2006 the Commission issued an Order which noted that the membership of the "Tower Access Assistance Fund Review Committee" is meant to provide

representation by entities in West Virginia with an interest in the construction of wireless telephone towers. As there was no disagreement between the WVACo and the CCAWC, the Commission waived *Emergency Telephone Service Rule 2.27.(4)* to allow the representative of the County Commissions to be appointed by the County Commissioners' Association of West Virginia, instead of by the West Virginia Association of Counties.

DISCUSSION

Upon review of comments received and upon further reflection by the Commission, it is necessary to revise the proposed Legislative rule issued by the Commission on November 29, 2005.

West Virginia Code § 24-6-6b(b) describes the Commission's responsibility in regards to developing an enhanced 911 wireless tower access assistance fund as:

Provided, however, That for the fiscal year beginning on the first of July, 2005, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the public service commission to subsidize the construction of towers. The monies shall be deposited in a fund administered by the West Virginia Public Service Commission, entitled "Enhanced 911 Wireless Tower 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:

In the November 29, 2005 proposed rules the Commission included language describing the dissemination of loans through the Enhanced 911 Wireless Tower Access Assistance Fund.

West Virginia Code § 24-6-6b(b) provides that the Commission may provide "loans or grants." Of the two, the Commission recognizes the lower administrative costs associated

with a grant program as opposed to a loan program.¹ Given the \$1,000,000 per year available for disbursement, along with the vast expanses of West Virginia potentially in need of wireless service coverage, the Commission recognizes the benefit in providing only grants through the Enhanced 911 Wireless Tower Access Assistance Fund.

As such, the Commission sees the need to revise its proposed Legislative rule issued November 29, 2005 so as to remove that language authorizing loans and modify the language of the rule to limit the disbursement of funds from the Enhanced 911 Wireless Tower Access Assistance Fund to the form of grants.

Additionally, the Commission shall reduce administrative costs by streamlining the operations of the Enhanced 911 Wireless Tower Access Assistance Fund Committee to a one-time per year review process. All applicants will submit their respective requests for funding as of a date certain each year. The Enhanced 911 Wireless Tower Access Assistance Fund Committee will meet, rank the applications, and recommend distribution of funds to the respective applicants. At that time, the Commission will disburse the full \$1,000,000 across the various approved applicants, after which time the distribution will conclude until the next fiscal year.

The Commission recognizes that the above represents a change from its November 29, 2005 proposed Legislative rule but believes that such change is in the best interest of meeting its Legislative charge.

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

The Commission agrees with Highland that such issues are not yet ripe for inclusion in these rules. Accordingly, the Commission shall reserve a portion of the rule for later inclusion of directives involving prepaid wireless carriers.

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

The Commission also notes that on March 11, 2006 the Legislature passed Senate Bill No. 728. That legislation will go into effect on July 1, 2006, and will impact these rules. The Commission shall reserve a subsection of these rules for use in incorporating the directives of Senate Bill No. 728 through a subsequent rulemaking.

The following are descriptions of the Commission's substantive modifications made to the attached proposed Legislative rule:

Rule 1.1.

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

Rule 2.1.

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

Rule 2.3.

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

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

Rule 2.16.

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

Rule 2.29.

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

Rule 4.1.

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

As the prepaid wireless issue is as yet unresolved, the Commission shall decline to include the CAD's modifications regarding this issue. Instead, the Commission shall reserve a portion of the Rule in order to later address issues pertaining to prepaid wireless carriers.

Rule 5.1.

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

Rule 6.1.a.

The CAD's proposed change describes a means of amassing the \$1,000,000 distributed through the E911 Wireless Tower Access Assistance Fund as rapidly as possible. Given the Commission's modification to the process, as described above, whereby funds would be distributed in the form of grants one time per year, it is not necessary to require the \$1,000,000 be collected on a rapid basis. Accordingly, the Commission shall not adopt the CAD's recommended changes to Rule 6.1.a.

Rule 6.3.

In the Commission's emergency rules issued November 1, 2005 and the proposed Legislative rule issued November 29, 2005, the Commission left Rule 6.3, concerning fund distribution to consolidated counties, blank. *West Virginia Code* § 24-6-6b(d)(1) describes how the E911 fees are distributed to the various counties. Within that subsection of the *Code*, an explanation is provided as to how additional amounts will be distributed to counties which have consolidated into one county to provide government services. That portion of the *Code* reads as follows:

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

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

(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand nine hundred ninety-seven, shall receive eight and one half tenths of one percent of the fee revenues received by the Public Service Commission: ***Provided, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county.*** Each county shall receive eight and one half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: ***Provided, however, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to***

provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder based on that county's population as determined in the most recent decennial census as a percentage of the state total population.

[Emphasis added.]

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

Rule 6.4.

The Commission agrees with the CAD and will make these clarifying modifications to better describe the interest rate and the fee.

Rule 6.5.

The CAD recommended what it considered to be clarifying additions to the Rule. The Commission concludes that such changes do not enhance the Rule. Accordingly, the Commission shall decline to adopt the CAD's recommendations on this point.

Rule 13.

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

Rule 13 generally discusses the operation of the Wireless Tower Access Assistance Fund. The Commission has revised this section of the Rule as described in the first part of this Discussion. Specifically, the Commission has removed references to loans as well as modified the operation of the E911 Wireless Tower Access Assistance Fund Committee. As such, the Commission has not fully integrated the CAD's recommendations, but has used them where applicable.

FINDINGS OF FACT

1. During the 2005 Regular Session the Legislature passed H.B. 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 H.B. 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 was required to promulgate proposed legislative rules within thirty days of the emergency rulemaking filing.

11. The Commission promulgated proposed legislative rules on November 29, 2005 and caused them to be filed with the West Virginia Secretary of State and the Legislative Rule-Making & Review Committee.

12. The Commission's November 29, 2005 Order also initiated a comment period ending January 10, 2006.

13. The CAD filed comments regarding the proposed legislative rules.

14. Highland made a responsive filing to the CAD's comments.

CONCLUSION OF LAW

The Commission has revised its proposed legislative rules, for the reasons stated herein, and shall promulgate its agency-approved proposed legislative rules for filing with the West Virginia Secretary of State and the Legislative Rule-Making & Review Committee.

ORDER

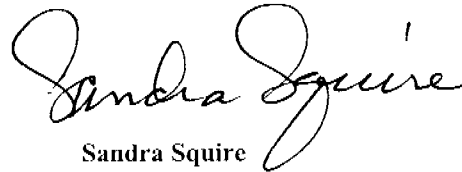
IT IS THEREFORE ORDERED that the attached rules be promulgated as agency-approved proposed legislative rule, 150 C.S.R. 25, *Rules and Regulations Governing Emergency Telephone Service*.

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

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

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all of those entities described in Rule 2.27 of the Commission's *Rules and Regulations Governing Emergency Telephone Service* 150 C.S.R. 25, as attached to the Commission's Order of November 1, 2005.

A True Copy, Teste:



Sandra Squire
Executive Secretary

JJW/klm
go18729cg.wpd

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all of those entities described in Rule 2.27 of the Commission's *Rules and Regulations Governing Emergency Telephone Service* 150 C.S.R. 25, as attached to the Commission's Order of November 1, 2005.

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TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE

FILED
2005 APR 10 P 1:25
WEST VIRGINIA
SECRETARY OF STATE

§150-25-1. General.

1.1. Scope -- These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1 and the disbursement of such fee revenues to the West Virginia State Police and counties in West Virginia. Additionally, these rules establish guidelines to be used by the Public Service Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

1.2. Authority. -- W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-6b, and 24-6-11.

1.3. Filing Date. -- ~~December 24, 1997~~ _____.

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

§150-25-2. Definitions.

2.1. For purposes of this section these rules, the Commission adopts the definitions of "commercial mobile radio service provider or CMRS provider," "county answering point," "emergency services organization," "emergency service provider," "emergency telephone system," "enhanced emergency telephone system," "public agency," "public safety unit," "telephone company," "comprehensive plan," "technical and operational standards," set forth in W. Va. Code §24-6-2. In addition, unless otherwise specified in these rules, the Commission adopts the definitions set forth in section 1.7 of the Commission's Rules and Regulations for the Government of Telephone Utilities, C.S.R. § 150-6-1.7.

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

2.3. "Cost" -- Means, as applied to any project to be financed in whole or in part with funds provided from the Tower Access Assistance Fund, the cost of acquisition, equipping, and/or construction of the proposed wireless tower; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, equipping, and/or construction of the wireless tower; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any

lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth; the cost of constructing any tower, guy lines, warning lights, antennae, feed lines, radio equipment, power lines, generators, security fencing, gates or other facilities necessary for the operation and protection of the tower; the cost of all apparatus, other machinery, and equipment necessary for the operation of the tower; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of insurance related to equipping and construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any wireless tower; the cost of placing any project in operation; and all other costs of any kind or nature incurred or to be incurred by the project sponsor that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Tower Access Assistance Fund.

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

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

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

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

2.78. "E911"-- Enhanced 911.

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

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

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

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

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

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

2.15. "Need of the project sponsor" -- Means there is a public need for a project. The Tower Access Assistance Fund Review Committee may construe a lack of wireless telephone service, in that part of a county in which a project is proposed, as a factor supporting the conclusion that a need exists for a project in that county.

2.16. "Person" -- Means any individual, entity, or any corporation, partnership, association, limited liability company or any other form of business organization or agency entitled to sue or be sued under applicable state law.

2.17. "Political subdivision of the state" -- Means any county commission, municipality or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county health department created pursuant to W. Va. Code §16-2 et. seq.; public service district; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a governmental function.

2.18. "Project" -- Means an undertaking involving a wireless tower to be acquired, constructed, equipped and/or operated by a state agency, political subdivision or wireless telephone carrier or any combination of such entities.

2.19. "Project sponsor" -- Means any county commission which intends to acquire, construct, equip, or otherwise develop a wireless tower.

2.1420. "Public Agency" -- Means the State, and any municipality, county, public district, or public authority which provides or has the authority to provide fire-fighting, police, ambulance, medical, rescue or other emergency services.

2.1521. "Public Safety Unit" -- Means a functional division of a public agency which provides fire-fighting, police, medical, rescue or other emergency services.

2.22. "Public Service Commission," or "Commission," -- Means the Public Service Commission of West Virginia created and established under Chapter 24 of the W. Va. Code or any successor to all or any substantial part of its powers and duties.

2.23. "State agency" -- Means a state department, board, commission, institution or other administrative agency of state government.

2.1624. "Telephone Utility" -- Any person, firm, partnership, or corporation engaged in the business of furnishing telephone communications services to the public under the jurisdiction of the Public Service Commission of West Virginia.

2.25. "Tower Access Assistance Fund" -- Means the Fund established in accordance with the provisions of W. Va. Code §24-6-6b(b).

2.26. "Tower Access Assistance Fund revenue" -- Means all amounts appropriated by the Legislature; all amounts deposited into the Tower Access Assistance Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any wireless tower project funded by the Tower Access Assistance Fund.

2.27. "Tower Access Assistance Fund Review Committee," or "Committee" -- Means a committee established by the Commission to review and make recommendations to the Commission on applications for grants from the Tower Access Assistance Fund. The Committee shall be made up of the following: 1) a member, to be appointed by the Chairman of the Commission, of the Staff of the Public Service Commission familiar with wireless telecommunications technology; 2) the Speaker of the House of Delegates or that person's designee; 3) the Senate President or that person's designee; 4) a representative of County Commissions, to be appointed by the County Commissioners' Association of West Virginia; 5) a representative, to be appointed by the Governor, of wireless telephone providers operating in West Virginia; 6) a representative, to be appointed by the Governor, of the wireless tower construction industry; 7) the Superintendent of State Police or that person's designee; 8) the Director of the West Virginia Division of Homeland Security and Emergency Management or that person's designee; 9) a representative, appointed by the West Virginia Enhanced 911 Council, of the W. Va. Enhanced 911 Council. The committee shall meet to consider applications for financial assistance from the Tower Access Assistance Fund and to make determinations regarding such applications. Such determinations shall be based upon the guidelines and criteria established by these Rules.

2.28. "Valid retail CMRS subscription" -- A two-way, voice grade or better, cellular or PCS telecommunications service associated with a unique multi-digit area code prefix assigned by NANC, pursuant to NANP, for any area within the State of West Virginia, and which may be used to signal terminal equipment devices associated with the service. Note: A single cellular or PCS account may have more than one valid retail CMRS subscription associated with that account.

2.29. "Wireless telephone carrier" -- Means any commercial mobile radio service provider, as defined in W. Va. Code §24-6-2 as cellular licensees, broadband personal communications services licensees, and specialized mobile radio providers, as those terms are defined by the Federal Communication Commission, which offer real-time, two-way switched voice service that is interconnected with the public switched network, and includes resellers of any commercial mobile radio service.

2.30. "Wireless tower" -- Means any structure, antenna, tower, or other device which provides, or is suitable to provide, commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or commercial pager services.

§150-25-3. Local Emergency Telephone Systems.

3.1. Creation of emergency telephone systems.

3.1.1. A public agency may establish, consistent with these rules, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multi-jurisdictional or regional systems, and any system

established may include only a portion of the territory of a public agency. To the extent feasible, these systems shall be centralized.

3.1.2. Every system shall provide access to emergency services organizations, police, fire-fighting, and emergency medical and ambulance services and may provide access to other emergency services. The system may also provide access to private ambulance services. The system may also provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the State provides emergency services, the system shall provide access to the public safety unit.

3.1.3. The number "9-1-1" shall be used as the primary emergency number whenever practicable. If the use of the number "9-1-1" is not practicable, the telephone utility or companies shall make application to this Commission in order to use an alternate emergency telephone number. The Commission encourages the use of "1-9-1-1" as the alternate emergency telephone number.

3.1.4. The telephone utility in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the telephone utility, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities.

3.2. Establishment of emergency telephone systems.

3.2.1. The telephone utility when establishing a new wire center or when replacing the switching equipment for any existing wire center shall insure that the new switching equipment contains the capability of providing emergency telephone system services.

3.2.2. The telephone utility shall design the switching equipment used in all new wire centers and in the replacement of existing wire centers to be capable of accessing emergency services by using the telephone number "9-1-1".

3.2.3. The telephone utility when modifying the existing switching equipment in any wire center shall configure the equipment in a manner that will most easily facilitate the implementation of an emergency telephone system in that wire center, using the telephone number "9-1-1", if practicable.

3.2.4. Under normal circumstances, the telephone utility shall respond within ninety (90) days to any application for emergency telephone service made by a public agency, emergency services organization or public safety unit. This response shall show the projected cost of the system to the maker of the application and the projected date on which emergency telephone service can be established. A copy of this response shall be filed with the Commission.

3.2.5. Under normal circumstances where equipment is available, the telephone utility shall have as its objective the satisfaction of all requests for the establishment of emergency telephone service within nine (9) months of the date of a firm order for such service. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.6. The telephone utility shall report to the Commission any request for emergency telephone service it is unable to satisfy within nine (9) months of any application therefor.

3.2.7. The provision of emergency telephone service shall be made under tariffs approved by this Commission.

3.2.8. In political jurisdictions served by more than one (1) telephone utility, the telephone utilities shall cooperate in establishing an emergency telephone system. The Utilities Division of this Commission shall, upon request, assist in the coordination of the different telephone utilities. In these political jurisdictions, the telephone utilities shall have as their objective the satisfaction of all requests for an emergency telephone system within nine (9) months of the date a firm order for such system is received. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.9. The telephone utilities shall report to the Commission any request for emergency telephone systems involving more than one (1) utility which cannot be established within one (1) year of the date a firm order is received.

3.3. Reporting requirements of the telephone utility.

The telephone utility before establishing any wire center, replacing any wire center or making major modifications to any wire center, shall furnish the Commission plans showing that it has complied with the requirements of these rules. "Major Modifications" is hereby defined to be a central office modification affecting level assignments, thousands levels or trunking.

3.4. 9-1-1 rule regarding telephone directory emergency numbers pages.

3.4.1. Telephone directories shall list, on the inside of the directory front cover or on the front page of the directory, otherwise known as the emergency calling information page, all emergency service providers accessible from the exchanges covered by the directory on a local call and/or 9-1-1 basis: Provided, That, if a 9-1-1 system serves any portion of the area covered by the directory, the emergency calling information page shall boldly and prominently display the 9-1-1 telephone number. Furthermore, all major public agencies such as, municipal police, fire, ambulance, sheriff and state police, that are accessible by calling 9-1-1 shall be listed in close proximity to the 9-1-1 listing along with the appropriate agency generic symbols.

3.4.2. Each telephone directory shall have a page immediately following the emergency calling information page which shall clearly list the name and seven (7) digit non-emergency administrative telephone number of each individual emergency services provider which serves any portion of the area covered by the telephone directory. Such listings shall be grouped by service type (e.g., ambulance, fire, law enforcement, rescue, etc.) and the listings shall be arranged alphabetically within the service type grouping. Where appropriate, subgrouping by county may be done. The seven (7) digit non-emergency administrative telephone number of each 9-1-1 Public Safety Answering Point which serves any portion of the area covered by the telephone directory shall be prominently displayed at the top of the page.

3.4.3. Where an entire directory coverage area is not covered by 9-1-1, the emergency calling information page shall list the seven (7) digit telephone numbers of all directory coverage area Public

Safety Units not accessible by calling 9-1-1. The emergency calling information page shall, at least, clearly show which emergency calls should be made to 9-1-1 and which should be made to other emergency telephone numbers listed on the page.

3.4.4. Additional information regarding emergency calling, as is beneficial to the public interest, may appear on the emergency calling information page.

3.4.5. Each and every local exchange telephone carrier responsible for a telephone directory emergency calling information page shall submit each emergency calling information page and the page immediately following to the Public Service Commission for review, by informally filing same with the Public Service Commission's Telecommunications Section, before said pages are published. Such submissions 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) scventeenth (17th) day of each month, or the first business day thereafter, each CMRS provider shall remit to the Commission a check, or appropriate financial equivalent, for the net E911 fees collected, after retaining three percent (3%) ~~as a~~ for the billing and or collection of the E911 fee, during the preceding monthly month or billing period. If remitted by mail, the postmark shall be used as proof of compliance. If remitted electronically, the date specified by the software used shall be used as proof of compliance. The fees ~~should~~ shall be remitted to:

By mail:

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

Electronically:

executive_director_e911@psc.state.wv.us

5.1.a. Form to be used with fee remittals. CMRS providers shall use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting E911 fees to the Commission. All information requested by WLF-1 shall be provided. This may be done electronically, at the discretion of the CMRS provider.

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

5.3. The first \$0.753.00, or the monthly wireless E911 fee amount as such may subsequently be modified by force of law, collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

§150-25-6. Disbursement of E911 Fees.

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

6.1.a. 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. On and after July 1, 2005, when two or more counties organize pursuant to law into one county in order to provide government services and upon written notice to the Commission verifying such consolidation, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county, in addition to other amounts permitted by this rule.

6.4. Each county shall receive eight and one-half tenths of one percent (0.0085) of the remainder of the monthly E911 fee revenues received by the Commission.

6.35. From the remainder of E911 fee revenues remitted to the Commission, each county shall receive a pro rata portion of the E911 fee revenues received by the Commission based on that county's percentage of the total number of local exchange telephone access lines and line equivalents in service in the State at the beginning of the calendar year any moneys remaining each county shall receive a pro rata portion, based on that county's percentage of the state's total population, as determined in the most recent decennial census.

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

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

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

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

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

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

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

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.

include, among other necessary provisions of the Committee to conduct business, provisions related to (1) the conduct of public meetings, (2) the publication of the time, location, and agenda of such meetings, (3) rules for submission of items to the agenda, (4) a provision for minutes of the meetings, (5) copies of the grant application forms as developed by the Committee, and (6) copies of the contracts used to administer the individual grants as developed by the Committee.

13.5.c. Voting. Each Committee member shall have one vote on all matters put to a vote by the Committee. A Committee member may, by stating such on a written and signed document submitted to the Committee Chairperson, assign a voting designee when that member is unable to attend a Committee meeting. Members may attend meetings in person or via teleconference facilities. A member or that member's voting designee must be in attendance at a Committee meeting in order to vote on matters at that meeting. Matters voted upon at Committee meetings shall be considered passed when a majority of the members and member designees present at the meeting, either in person or via teleconference facilities, vote for the matter.

13.5.d. Quorum. No matter may be put to a vote at a Committee meeting unless a quorum of members and member designees is present at the meeting. A quorum shall consist of a total of at least five members and/or member designees.

13.5.e. Chairperson. The Committee membership shall designate a Chairperson who shall be responsible for conducting the business of the Committee. The Chairperson shall serve at the will and pleasure of the Committee's members and may be replaced by a majority vote at a Committee meeting at which a quorum is present. The Chairperson, or that person's designee, designated by submission of a signed written document to the Chairman of the Commission, shall preside at Committee meetings.

13.6. Waiver.

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

§150-25-14. Prepaid Wireless Carriers. [RESERVED FOR RULES REGARDING PREPAID WIRELESS CARRIERS.]

§150-25-15. [RESERVED FOR RULES PURSUANT TO SENATE BILL NO. 728, PASSED MARCH 11, 2006, EFFECTIVE JULY 1, 2006.]

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

April 10, 2006

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

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

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

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

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

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

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

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

Richard E. Hitt, General Counsel, 340-0317

J. Joseph Watkins, Law Clerk, 340-0775

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

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

N/A

b. Date of hearing or comment period:

N/A

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

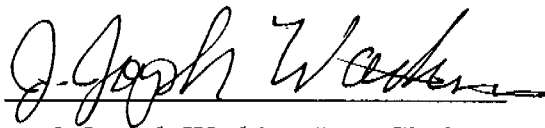
N/A

d. Attach findings and determinations and reasons:

Attached N/A



Richard E. Hitt, General Counsel



J. Joseph Watkins, Law Clerk

ATTACHMENT TO QUESTIONNAIRE

List of Comments Received to Proposed Legislative Rules:

1. On January 10, 2006 the Commission received the Comments of the Consumer Advocate Division of the Public Service Commission of West Virginia (CAD). The CAD made numerous recommendations for modifications to the proposed Legislative rules. The Commission's modifications based on the CAD's recommendations are set forth in the Commission's Order of April 10, 2006, submitted with these filings.
2. On January 20, 2006 the Commission received the "Reply Comments of Highland Cellular, LLC." Highland Cellular's filing addressed the January 10, 2006 comments filed by the CAD. The filing by Highland Cellular was made after the close of the allowable comment period. However, Highland Cellular's comments merely pointed out a fact that was already known to the Commission: specifically, that a portion of the CAD's comments addressed an open and unresolved proceeding before the Commission. The Commission would have struck that portion of the CAD's recommendations even had Highland Cellular not made its filing.

BRIEF SUMMARY OF RULE

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

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

House Bill 3208, effective July 8, 2005, specifically authorized the Public Service Commission to promulgate rules for implementation of the procedures set forth in the Bill.

FISCAL NOTE FOR PROPOSED RULESRule Title: 150 C.S.R. 25 Rules and Regulations Governing Emergency Telephone Service.Type of Rule: Legislative Interpretive Procedural EmergencyAgency: Public Service Commission of West VirginiaAddress: Richard E. Hitt, General Counsel (340-0317); J. Joseph Watkins, Law Clerk (340-0775)201 Brooks Street, Post Office Box 812Charleston, West Virginia 25323Phone 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 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 Program and the processing and management of the Grant Program.

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

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

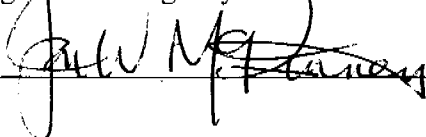
MEMORANDUM

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

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

Date: April 10, 2006

Signature of Agency Head or Authorized Representative



**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 25
RULES AND REGULATIONS GOVERNING
EMERGENCY TELEPHONE SERVICE**

§150-25-1. General.

1.1. Scope -- These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1 and the disbursement of such fee revenues to the West Virginia State Police and counties in West Virginia. Additionally, these rules establish guidelines to be used by the Public Service Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

1.2. Authority. -- W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-6b, and 24-6-11.

1.3. Filing Date. -- ~~December 24, 1997~~ _____.

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

§150-25-2. Definitions.

2.1. For purposes of ~~this section~~ these rules, the Commission adopts the definitions of "commercial mobile radio service provider or CMRS provider," "county answering point," "emergency services organization," "emergency service provider," "emergency telephone system," "enhanced emergency telephone system," "public agency," "public safety unit," "telephone company," "comprehensive plan," "technical and operational standards," set forth in W. Va. Code §24-6-2. In addition, unless otherwise specified in these rules, the Commission adopts the definitions set forth in section 1.7 of the Commission's *Rules and Regulations for the Government of Telephone Utilities*, C.S.R. § 150-6-1.7.

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

2.3. "Cost" -- Means, as applied to any project to be financed in whole or in part with funds provided from the Tower Access Assistance Fund, the cost of acquisition, equipping, and/or construction of the proposed wireless tower; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, equipping, and/or construction of the wireless tower; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any

lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth; the cost of constructing any tower, guy lines, warning lights, antennae, feed lines, radio equipment, power lines, generators, security fencing, gates or other facilities necessary for the operation and protection of the tower; the cost of all apparatus, other machinery, and equipment necessary for the operation of the tower; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of insurance related to equipping and construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any wireless tower; the cost of placing any project in operation; and all other costs of any kind or nature incurred or to be incurred by the project sponsor that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Tower Access Assistance Fund.

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

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

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

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

2.78. "E911"-- Enhanced 911.

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

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

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

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

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

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

2.15. "Need of the project sponsor" -- Means there is a public need for a project. The Tower Access Assistance Fund Review Committee may construe a lack of wireless telephone service, in that part of a county in which a project is proposed, as a factor supporting the conclusion that a need exists for a project in that county.

2.16. "Person" -- Means any individual, entity, or any corporation, partnership, association, limited liability company or any other form of business organization or agency entitled to sue or be sued under applicable state law.

2.17. "Political subdivision of the state" -- Means any county commission, municipality or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county health department created pursuant to W. Va. Code §16-2 et. seq.; public service district; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a governmental function.

2.18. "Project" -- Means an undertaking involving a wireless tower to be acquired, constructed, equipped and/or operated by a state agency, political subdivision or wireless telephone carrier or any combination of such entities.

2.19. "Project sponsor" -- Means any county commission which intends to acquire, construct, equip, or otherwise develop a wireless tower.

2.20. "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.

2.21. "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.

2.24. "Telephone Utility" -- Any person, firm, partnership, or corporation engaged in the business of furnishing telephone communications services to the public under the jurisdiction of the Public Service Commission of West Virginia.

2.25. "Tower Access Assistance Fund" -- Means the Fund established in accordance with the provisions of W. Va. Code §24-6-6b(b).

2.26. "Tower Access Assistance Fund revenue" -- Means all amounts appropriated by the Legislature; all amounts deposited into the Tower Access Assistance Fund; any amounts received, directly or indirectly,

from any source for the use of all or any part of any wireless tower project funded by the Tower Access Assistance Fund.

2.27. “Tower Access Assistance Fund Review Committee,” or “Committee” -- Means a committee established by the Commission to review and make recommendations to the Commission on applications for grants from the Tower Access Assistance Fund. The Committee shall be made up of the following: 1) a member, to be appointed by the Chairman of the Commission, of the Staff of the Public Service Commission familiar with wireless telecommunications technology; 2) the Speaker of the House of Delegates or that person’s designee; 3) the Senate President or that person’s designee; 4) a representative of County Commissions, to be appointed by the County Commissioners’ Association of West Virginia; 5) a representative, to be appointed by the Governor, of wireless telephone providers operating in West Virginia; 6) a representative, to be appointed by the Governor, of the wireless tower construction industry; 7) the Superintendent of State Police or that person’s designee; 8) the Director of the West Virginia Division of Homeland Security and Emergency Management or that person’s designee; 9) a representative, appointed by the West Virginia Enhanced 911 Council, of the W. Va. Enhanced 911 Council. The committee shall meet to consider applications for financial assistance from the Tower Access Assistance Fund and to make determinations regarding such applications. Such determinations shall be based upon the guidelines and criteria established by these Rules.

2.28. “Valid retail CMRS subscription” -- A two-way, voice grade or better, cellular or PCS telecommunications service associated with a unique multi-digit area code prefix assigned by NANC, pursuant to NANP, for any area within the State of West Virginia, and which may be used to signal terminal equipment devices associated with the service. Note: A single cellular or PCS account may have more than one valid retail CMRS subscription associated with that account.

2.29. “Wireless telephone carrier” -- Means any commercial mobile radio service provider, as defined in W. Va. Code §24-6-2 as cellular licensees, broadband personal communications services licensees, and specialized mobile radio providers, as those terms are defined by the Federal Communication Commission, which offer real-time, two-way switched voice service that is interconnected with the public switched network, and includes resellers of any commercial mobile radio service.

2.30. “Wireless tower” -- Means any structure, antenna, tower, or other device which provides, or is suitable to provide, commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or commercial pager services.

§150-25-3. Local Emergency Telephone Systems.

3.1. Creation of emergency telephone systems.

3.1.1. A public agency may establish, consistent with these rules, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multi-jurisdictional or regional systems, and any system established may include only a portion of the territory of a public agency. To the extent feasible, these systems shall be centralized.

3.1.2. Every system shall provide access to emergency services organizations, police, fire-fighting, and emergency medical and ambulance services and may provide access to other emergency services. The system may also provide access to private ambulance services. The system may also provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the State provides emergency services, the system shall provide access to the public safety unit.

3.1.3. The number "9-1-1" shall be used as the primary emergency number whenever practicable. If the use of the number "9-1-1" is not practicable, the telephone utility or companies shall make application to this Commission in order to use an alternate emergency telephone number. The Commission encourages the use of "1-9-1-1" as the alternate emergency telephone number.

3.1.4. The telephone utility in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the telephone utility, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities.

3.2. Establishment of emergency telephone systems.

3.2.1. The telephone utility when establishing a new wire center or when replacing the switching equipment for any existing wire center shall insure that the new switching equipment contains the capability of providing emergency telephone system services.

3.2.2. The telephone utility shall design the switching equipment used in all new wire centers and in the replacement of existing wire centers to be capable of accessing emergency services by using the telephone number "9-1-1".

3.2.3. The telephone utility when modifying the existing switching equipment in any wire center shall configure the equipment in a manner that will most easily facilitate the implementation of an emergency telephone system in that wire center, using the telephone number "9-1-1", if practicable.

3.2.4. Under normal circumstances, the telephone utility shall respond within ninety (90) days to any application for emergency telephone service made by a public agency, emergency services organization or public safety unit. This response shall show the projected cost of the system to the maker of the application and the projected date on which emergency telephone service can be established. A copy of this response shall be filed with the Commission.

3.2.5. Under normal circumstances where equipment is available, the telephone utility shall have as its objective the satisfaction of all requests for the establishment of emergency telephone service within nine (9) months of the date of a firm order for such service. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.6. The telephone utility shall report to the Commission any request for emergency telephone service it is unable to satisfy within nine (9) months of any application therefor.

3.2.7. The provision of emergency telephone service shall be made under tariffs approved by this Commission.

3.2.8. In political jurisdictions served by more than one (1) telephone utility, the telephone utilities shall cooperate in establishing an emergency telephone system. The Utilities Division of this Commission shall, upon request, assist in the coordination of the different telephone utilities. In these political jurisdictions, the telephone utilities shall have as their objective the satisfaction of all requests for an emergency telephone system within nine (9) months of the date a firm order for such system is received. Under all circumstances, emergency telephone service should be established within twenty-four (24) months of the date of such firm order received by the telephone utility.

3.2.9. The telephone utilities shall report to the Commission any request for emergency telephone systems involving more than one (1) utility which cannot be established within one (1) year of the date a firm order is received.

3.3. Reporting requirements of the telephone utility.

The telephone utility before establishing any wire center, replacing any wire center or making major modifications to any wire center, shall furnish the Commission plans showing that it has complied with the requirements of these rules. "Major Modifications" is hereby defined to be a central office modification affecting level assignments, thousands levels or trunking.

3.4. 9-1-1 rule regarding telephone directory emergency numbers pages.

3.4.1. Telephone directories shall list, on the inside of the directory front cover or on the front page of the directory, otherwise known as the emergency calling information page, all emergency service providers accessible from the exchanges covered by the directory on a local call and/or 9-1-1 basis: Provided, That, if a 9-1-1 system serves any portion of the area covered by the directory, the emergency calling information page shall boldly and prominently display the 9-1-1 telephone number. Furthermore, all major public agencies such as, municipal police, fire, ambulance, sheriff and state police, that are accessible by calling 9-1-1 shall be listed in close proximity to the 9-1-1 listing along with the appropriate agency generic symbols.

3.4.2. Each telephone directory shall have a page immediately following the emergency calling information page which shall clearly list the name and seven (7) digit non-emergency administrative telephone number of each individual emergency services provider which serves any portion of the area covered by the telephone directory. Such listings shall be grouped by service type (e.g., ambulance, fire, law enforcement, rescue, etc.) and the listings shall be arranged alphabetically within the service type grouping. Where appropriate, subgrouping by county may be done. The seven (7) digit non-emergency administrative telephone number of each 9-1-1 Public Safety Answering Point which serves any portion of the area covered by the telephone directory shall be prominently displayed at the top of the page.

3.4.3. Where an entire directory coverage area is not covered by 9-1-1, the emergency calling information page shall list the seven (7) digit telephone numbers of all directory coverage area Public Safety Units not accessible by calling 9-1-1. The emergency calling information page shall, at least, clearly show which emergency calls should be made to 9-1-1 and which should be made to other emergency telephone numbers listed on the page.

3.4.4. Additional information regarding emergency calling, as is beneficial to the public interest, may appear on the emergency calling information page.

3.4.5. Each and every local exchange telephone carrier responsible for a telephone directory emergency calling information page shall submit each emergency calling information page and the page immediately following to the Public Service Commission for review, by informally filing same with the Public Service Commission's Telecommunications Section, before said pages are published. Such submittals shall be sent at least thirty (30) calendar days prior to the deadline for making changes.

§150-25-4. Billing and Collection of E911 Fees.

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

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

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

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

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

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

5.1. ~~On~~ By no later than the first business day on or after the twenty fifth (25th) seventeenth (17th) day of each month, or the first business day thereafter, each CMRS provider shall remit to the Commission a check, or appropriate financial equivalent, for the net E911 fees collected, after retaining three percent (3%) ~~as a for the billing and or collection of the E911 fee, during the preceding monthly month or billing period. If remitted by mail, the postmark shall be used as proof of compliance. If remitted electronically, the date specified by the software used shall be used as proof of compliance. The fees should shall be remitted to:~~

By mail:

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

Electronically:

executive_director_e911@psc.state.wv.us

5.1.a. Form to be used with fee remittals. CMRS providers shall use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting E911 fees to the Commission. All information requested by WLF-1 shall be provided. This may be done electronically, at the discretion of the CMRS provider.

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

5.3. The first \$0.753.00, or the monthly wireless E911 fee amount as such may subsequently be modified by force of law, collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

§150-25-6. Disbursement of E911 Fees.

6.1. ~~The Telecommunications Section of the Commission's Utilities Administrative Services Division~~ shall, using the methodology and data required by W. Va. Code §24-6-6b, calculate the E911 fee disbursement 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. On and after July 1, 2005, when two or more counties organize pursuant to law into one county in order to provide government services and upon written notice to the Commission verifying such consolidation, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county, in addition to other amounts permitted by this rule.

6.4. Each county shall receive eight and one-half tenths of one percent (0.0085) of the remainder of the monthly E911 fee revenues received by the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.43. The fee revenues disbursed in any given month shall be those billed during the three-month period which ended three months prior to the disbursal month. For example, the monthly E911 fee revenues filed with the Commission by CMRS providers ~~for during~~ April, May and June 1998 shall be disbursed in October 1998.

§150-25-9. Registration of CMRS Providers.

9.1. Each CMRS provider, or any reseller of any commercial mobile radio service, which has received FCC authority to serve any area within the State of West Virginia on or before December 31, 1997 shall, no later than January 31, 1998, register with the Commission. Such CMRS providers shall register with the Commission even if the CMRS provider is not actually providing service in any part of West Virginia.

9.2. CMRS providers which receive authority to serve any area within the State of West Virginia after January 31, 1998 shall register within thirty (30) calendar days of receiving FCC authority to operate in West Virginia.

9.3. Such registration shall be filed with the Commission's Executive Secretary and shall include the following information:

9.3.1. Legal name of CMRS provider;

9.3.2. All business names used by the CMRS provider;

9.3.3. Name, title, mailing address, telephone number, fax number, and E-Mail address (if available) of the person to be contacted regarding state regulatory matters;

9.3.4. A listing of all areas in which the CMRS provider is authorized, by the FCC, to serve any portion of West Virginia; and

9.3.5. A copy of the FCC license authorizing the CMRS provider to serve any portion of West Virginia.

9.4. Changes to any of the above-listed information shall be filed with the Commission's Executive Secretary within thirty (30) calendar days of the effective date of such change(s). This filing requirement includes providing notice to the Commission's Executive Secretary of any and all mergers, divestitures, acquisitions, etc. affecting West Virginia service areas.

§150-25-10. Submission of Local Exchange Information.

10.1. Each local exchange carrier certificated by the Commission shall, by no later than February 15, 1998, submit to the Telecommunications Section of the Commission's Utilities Division line counts, by county, as of January 1, 1998.

10.2. Such line counts shall be for each access line, trunk and trunk equivalent, including PBX trunks and CENTREX trunk equivalents, in actual service.

10.3. Beginning in 1999, and for each subsequent year, the line count data shall be submitted by February 15 and shall be for line counts as of January 1.

§150-25-11. Respecification of E911 Fees.

11.1. The E911 fee shall be respecified biennially, beginning in 1999 and using the respecification methodology and data required by W. Va. Code §24-6-6b(d)(1). The respecified E911 fee shall become effective on July 1 of the respecification year.

11.2. The Commission shall provide notice of the respecified E911 fee to each CMRS provider currently registered with the Commission on or before November 1 of each respecification year.

11.3. The Commission shall provide notice of the currently applicable E911 fee to each new CMRS provider that registers with the Commission on or after November 1 of each calendar year, within thirty (30) calendar days after the date such CMRS provider registers with the Commission.

§150-25-12. Uncollectibles.

12.1. CMRS providers shall make reasonable and diligent efforts to collect unpaid E911 fees from each valid retail CMRS subscription. Notwithstanding the foregoing, a CMRS provider shall not be deemed to be a collection agent or otherwise held liable for a such subscription's failure to pay E911 fees properly billed by the CMRS provider.

§150-25-13. Wireless Tower Access Assistance Fund.

13.1 Projects.

13.1.a. Project Review. In order to receive a grant for a project from the Tower Access Assistance Fund, a wireless tower project sponsor must submit an application on the appropriate form, to be developed and provided by the Tower Access Assistance Fund Review Committee, and the wireless tower project must receive the approval of the Tower Access Assistance Fund Review Committee.

13.1.b. Application Filing. A project sponsor may file an application with the Commission's Executive Secretary at any time during Commission business hours. To be considered for the fiscal year beginning July 1, the project sponsor must file its application on or before June 15 of the previous fiscal year.

13.1.c. Application Review. On or before July 31, the Tower Access Assistance Fund Review Committee will review all applications filed and shall make a determination regarding each application. The Tower Access Assistance Fund Review Committee shall either recommend the approval of, in whole or in part, or the denial of funding for the project or request additional information if necessary to make a determination. The Tower Access Assistance Fund Committee shall rank all of those applications for which it recommends approval in order of funding preference. A copy of the determination by the Committee shall be sent to the Commission's Executive Secretary and to the applicant.

13.1.c.1. The determination by the Committee must be in writing and contain findings that the project meets, if funding is recommended, or does not meet, if funding is not recommended, each of the public interest factors specified in section 13.2. of these Rules.

13.1.d. Issuance of funds by the Commission. Within fourteen (14) days of the receipt of the determination of the Tower Access Assistance Fund Review Committee, the Commission shall, in the instance of a determination to fund a particular project, decide to either accept or reject such determination. Upon the Commission's acceptance to fund a particular project, the Administrative Services Division shall mail a copy of the funding contract to the applicant and schedule a closing on the grant to be held within thirty (30) days. The Commission shall continue its decision-making process through the ranked list until the available funding for the fiscal year is exhausted.

13.1.d.1. Denial. If funding for a project is denied for any reason, the Committee shall provide written notice of such to the applicant with a copy to the Commission's Executive Secretary.

13.1.e. Committee Determination. Prior to making any grant, the Committee shall determine that the grant and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of W.Va. Code §24-6-6b(b). Priority shall be given to projects, including public/private partnerships, where the project will provide significant benefits to public safety (including law enforcement, ambulance, rescue and fire fighting) communications as well as to commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, personal communications services (PCS), wireless broadband Internet access, Department of Highways communications and/or pager services.

13.1.f. Eligible Grant Recipients. The Committee shall not recommend grants for any wireless tower project that is not applied for by a project sponsor on behalf of itself and/or another person.

13.1.g. Grant Requirements. The Committee may recommend a grant for a project if the Committee determines and finds that (1) the project will result in the provision of enhanced 911 wireless coverage in the project area; and (2) the absence of a sufficient number of potential wireless users in the project area prevents adequate funding of the project without the awarding of a grant from the Tower Access Assistance Fund.

13.1.h. Loans. The Committee shall not recommend, and the Commission shall not distribute, any loans from the Tower Access Assistance Fund.

13.2. Review Guidelines.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct or equip a wireless tower, the Tower Access Assistance Fund Review Committee shall consider the following:

13.2.a.1. The public health and safety benefits;

13.2.a.2. The degree to which the project will allow the acquisition, construction, and/or equipping of a wireless tower which would provide additional enhanced 911 service coverage;

13.2.a.3. The degree to which the project sponsor can establish that, without such funds, such project would not be economically feasible;

13.2.a.4. The cost effectiveness of the project as compared with alternatives which achieve substantially the same benefits;

13.2.a.5. The availability of alternative sources of funding which could finance all or a part of the project, and the need for the assistance of the Commission to finance the project or attract other sources of funding;

13.2.a.6. The applicant's ability to operate and maintain the wireless tower if the project is approved and consummated;

13.2.a.7. The degree to which the project achieves or abets other state or regional planning goals;

13.2.a.8. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;

13.2.a.9. The capability of the project to permit the co-location of communications equipment on the proposed tower for commercial mobile radio services (CMRS), cellular phone services, specialized mobile radio communications (SMR) services, common carrier wireless exchange phone services, personal communications services (PCS), public safety (including law enforcement, ambulance, rescue and fire fighting) communications, wireless broadband Internet access, Department of Highways communications and/or pager services;

13.2.a.10. The adequacy and efficiency of other wireless communications facilities, if any, in the area to be served by the project; the increase in the reliability of wireless communications service which will be attained; and the efficiency of the proposed solution when compared with other alternatives; and

13.2.a.11. Verification that the project sponsor will obtain a performance bond guaranteeing completion of the project.

13.3. Tower Access Assistance Fund Administration.

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

13.3.b. Sources of Money for Fund. The Tower Access Assistance Fund shall consist of Tower Access Assistance Fund revenues; any appropriations, grants, gifts, contributions, or other revenues received by the Tower Access Assistance Fund from any source, public or private; insurance proceeds payable to the Commission or the Tower Access Assistance Fund in connection with any Tower Access Assistance project or projects; and all income earned on moneys held in the Tower Access Assistance Fund.

13.3.c. Use of Moneys in the Fund. The Commission, subject to the restrictions set forth in W.Va. Code §24-6-6b(b), shall use money in the Tower Access Assistance Fund to make grants to finance all or part of the costs of projects to be undertaken by a project sponsor.

13.3.d. Terms of Grant. Where a project sponsor has received Tower Assistance grant money to fund a project, and the project is thereafter sold, then to the extent that proceeds are available, the grant contract developed by the Committee shall require the project sponsor to reimburse the Tower Access Assistance Fund the amount of the Tower Assistance grant. The contract shall require that the amount of repayment shall be reduced by the applicable share of accumulated depreciation of the project.

13.3.d.1. The funding contract may contain provisions such that if the project is sold, the Commission shall be notified and the applicant and/or purchaser shall be required to repay the grant funds.

13.3.d.2. The Committee shall prepare a report for the Commission on an annual basis listing those projects which received grant money and are sold. The report shall include a description of the terms by which the grant will be repaid.

13.3.e. Financial Assistance from the Fund. Each grant awarded by the Commission shall be evidenced by a grant contract between the Commission and the project sponsor to which the grant shall be awarded; the contract shall include, in addition to those provisions described elsewhere in this Rule, and without limitation and to the extent applicable, the following provisions:

13.3.e.1. The estimated cost of the project and the amount of the grant;

13.3.e.2. The specific purposes for which any items on which the grant proceeds shall be expended and the conditions and procedure for disbursing grant proceeds;

13.3.e.3. The duties and obligations imposed by the Commission upon the project sponsor regarding the project;

13.3.e.4. The agreement of the project sponsor to comply with all applicable federal and state laws and all rules and regulations issued or imposed by the Commission or other state, federal or local bodies regarding the acquisition, equipping, and/or construction of the wireless tower and granting the Commission the right to appoint a receiver for the wireless tower project if the project sponsor should default on any terms of the agreement.

13.4. Filing and Docketing of Applications.

13.4.a. Applications procedures. The project sponsor shall file an original and 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 Access 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 Access Assistance Fund Review Committee and shall file one copy with the Commission's Executive Secretary. The Applicant shall, upon request of the Chairperson of the Tower Access Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, including documents comprising the original application and documents filed subsequently.

13.5. Tower Access Assistance Fund Review Committee.

13.5.a. Terms of Membership. Membership terms shall be for three years. Initial memberships of the Commission Staff representative, the House representative and the Senate representative shall be for one year and initial memberships for the County Commissioners' Association of West Virginia representative, the wireless telephone providers representative and the wireless tower construction industry representative shall be for two years. Members shall serve at the will and pleasure of the appointing authority. The unexpired portion of a vacating member's term shall be filled by a replacement appointed pursuant to Rule 2.27, herein.

13.5.b. Bylaws. The Tower Access Assistance Fund Review Committee shall, as soon as possible, draft bylaws and submit them to the Commission for its review and approval. Such bylaws shall include, among other necessary provisions of the Committee to conduct business, provisions related to (1) the conduct of public meetings, (2) the publication of the time, location, and agenda of such meetings, (3) rules for submission of items to the agenda, (4) a provision for minutes of the meetings, (5) copies of the grant application forms as developed by the Committee, and (6) copies of the contracts used to administer the individual grants as developed by the Committee.

13.5.c. Voting. Each Committee member shall have one vote on all matters put to a vote by the Committee. A Committee member may, by stating such on a written and signed document submitted to the Committee Chairperson, assign a voting designee when that member is unable to attend a Committee meeting. Members may attend meetings in person or via teleconference facilities. A member or that member's voting designee must be in attendance at a Committee meeting in order to vote on matters at that meeting. Matters voted upon at Committee meetings shall be considered passed when a majority of the members and member designees present at the meeting, either in person or via teleconference facilities, vote for the matter.

13.5.d. Quorum. No matter may be put to a vote at a Committee meeting unless a quorum of members and member designees is present at the meeting. A quorum shall consist of a total of at least five members and/or member designees.

13.5.e. Chairperson. The Committee membership shall designate a Chairperson who shall be responsible for conducting the business of the Committee. The Chairperson shall serve at the will and pleasure of the Committee's members and may be replaced by a majority vote at a Committee meeting at which a quorum is present. The Chairperson, or that person's designee, designated by submission of a signed written document to the Chairman of the Commission, shall preside at Committee meetings.

13.6. Waiver.

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

§150-25-14. Prepaid Wireless Carriers. [RESERVED FOR RULES REGARDING PREPAID WIRELESS CARRIERS.]

§150-25-15. [RESERVED FOR RULES PURSUANT TO SENATE BILL NO. 728, PASSED MARCH 11, 2006, EFFECTIVE JULY 1, 2006.]

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_c911@psc.state.wv.us

FAX INFO: (304) 340-3753, ATTN: E-911 Fcc Report

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

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

FOLLOWING PUBLIC HEARING AND/OR COMMENT PERIOD -

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

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

In response thereto, the Public Service Commission of West Virginia responds as follows:

1. No public hearing was held in this matter.
2. Attached, please find comments from the Public Service Commission of West Virginia's Consumer Advocate Division filed January 10, 2006 and the comments from Highland Cellular, LLC, filed January 20, 2006. The filing by Highland Cellular was made after the close of the allowable comment period. However, Highland Cellular's comments merely pointed out a fact that was already known to the Commission: specifically, that a portion of the Consumer Advocate Division's comments addressed an open and unresolved proceeding before the Commission. The Commission would have struck that portion of the Consumer Advocate Division's recommendations even had Highland Cellular not made its filing. The Commission's Order issued April _____, 2006 submitted as part of this filing addresses all comments filed by the above-listed parties.
- 3.& 4. The Commission Order entered April _____, 2006 submitted with these documents addresses the amendments and the reason for the amendments to the proposed rule as a result of the comments filed by the Consumer Advocate Division.

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"Step Procedures for Legislative Rule Making"**

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CONSUMER ADVOCATE DIVISION
STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
700 Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 558-0526

RECEIVED
06 JAN 10 PM 4:23
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

January 10, 2006

Sandra Squire
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

RE: GENERAL ORDER NO. 187.29

Dear Ms. Squire:

Enclosed is an original and twelve copies of the Consumer Advocate Division's comments being filed in this proceeding.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patrick W. Pearلمان".

PATRICK W. PEARLMAN
WV State Bar No. 5755

PWP/s

cc: All parties of record

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

GENERAL ORDER NO. 187.29

Rules and Regulations Governing Emergency Telephone
Service Series 25.

COMMENTS OF THE CONSUMER ADVOCATE DIVISION

In accordance with the Commission's November 29, 2005 order and notice of rulemaking, the Consumer Advocate Division of the Public Service Commission ("CAD") hereby submits its written comments on the proposed rules attached to the Commission's order. CAD appreciates the efforts of the Commission, and the task force established by the Commission, to promulgate rules implementing the Legislature's 2005 amendments to W. Va. Code § 24-6-6b, as well as the opportunity to submit these comments.

CAD's comments are set forth in the following manner. First, CAD sets forth the text of the proposed rule (including proposed changes), with CAD's recommended changes reflected in bold or strike-through. Then CAD sets forth the rationale for its recommended changes following the particular rule.

Comments and Rationale.

§150-25-1. General.

1.1. Scope -- These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1 and the disbursement of such fee revenues to **the West Virginia State Police and** counties in West Virginia. Additionally, these rules establish guidelines to be used by

the Public Service Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

Rationale:

The proposed change makes it clear that the new rules govern the distribution of ten cents (\$0.10) to the West Virginia State Police from each monthly wireless E911 fee, in accordance with *W. Va. Code* § 24-6-6b(b).

§150-25-2. Definitions.

2.1. For purposes of **these rules** ~~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. **In addition, unless otherwise specified in these rules, the Commission adopts the definitions set forth in section 1.7 of the Commission’s Rules and Regulations for the Government of Telephone Utilities, C.S.R. §150-6-1.7.**

Rationale:

The first recommended change makes it clear that the referenced terms apply throughout Series 25 and are not limited to section 2 of the rules. The second recommended change picks up any other terms in the Commission’s *Telephone Rules* that may be relevant in defining the scope of telecommunications services and providers that are subject to Series 25.

2.3. "Cost" -- means, as applied to any project to be financed in whole or in part with funds provided from the Tower **Access** Assistance Fund, the following costs or expenses associated with the 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 (6) 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 **such** costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Tower **Access** Assistance Fund.

Rationale:

CAD's recommended changes are primarily stylistic and intended to remove excess references to "the costs of." That said CAD inserts the term "Access" when referring to the Fund, consistent with the terms set forth in section 2.25 of the proposed rules. The term "Access" is frequently omitted from references to either the Fund or the Committee

implementing the Fund throughout the proposed rules. Rather than restating each of the proposed rules in which the term "Access" is omitted, CAD simply recommends that "Access" be inserted where appropriate in the following rules (and any others that CAD has overlooked): 2.15; 2.26; 2.27; 13.1.a; 13.1.c; 13.1.d; 13.1.d.1; 13.1.g; 13.1.h; 13.1.i; 13.2.a; 13.3; 13.3.a; 13.3.b; 13.3.c; 13.3.d; 13.4.a; 13.5; 13.5.b.

2.16. "Person" -- means any individual **or any**, corporation, partnership, association, limited liability company or any other form of business organization **or agency entitled to sue or be sued under applicable state law.**

Rationale:

The recommended changes are intended to make the term "person" coextensive with the concept of legal persons, including both natural and artificial persons. The rule as currently written could, arguably, exclude state or other government agencies, as well as organizations or associations that are not necessarily engaged in "business."

2.29. "Wireless telephone carrier" - See "**Commercial Mobile Radio Service Provider**" or "**CMRS Provider**" ~~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.~~

Rationale:

The change recommended by CAD makes the term "wireless telephone carrier," which is used at times in W. Va. Code § 24-6-6b,

synonymous with the other term used in the statute and in *W. Va. Code* § 24-6-2, namely "commercial mobile radio service provider." CAD believes that this was the Legislature's intent. Furthermore, CAD sees no reason why the additional verbiage linking the definition of a wireless telephone carrier to the submission of an application for assistance or the timing of that submission is necessary. In CAD's opinion, the additional verbiage offers an opportunity for confusion or legal maneuvering to avoid the application of the obligations imposed on CMRS carriers by the relevant statutes and regulations.

§150-25-4. Billing and Collection of E911 Fees.

4.1. Each CMRS provider shall, **on a monthly basis, bill to or otherwise collect from each valid retail CMRS subscription and each prepaid service card, account or functional equivalent,**—~~month beginning on January 1, 1998 the currently applicable E911 fee established pursuant to W. Va. Code § 24-6-6b with each bill rendered, levy an E911 fee, at the current statutory rate.~~ **Provided, that this section shall not become effective for CMRS providers that provide retail prepaid CMRS service on each valid retail CMRS subscription until 180 days from the effective date of these rules.**

4.2. **Except for retail prepaid CMRS,** ~~t~~The applicable E911 fee shall be **set forth clearly and conspicuously as** a separate line item on the monthly billing statement provided to each valid retail CMRS subscription by CMRS providers.

4.3. **For each retail prepaid CMRS subscriber, the currently applicable E911 fee shall be collected by the CMRS provider using one of the two following methods:**

4.3.a. **The CMRS provider shall divide the provider's total prepaid CMRS revenue received from prepaid customers in West Virginia during the monthly 911 period by fifty dollars (\$50), or such other amount that may be specified by Commission order, and multiply the quotient by the currently applicable E911 fee.**

4.3.a.1. The Commission may, by order, establish a denominator other than \$50 for any individual CMRS provider either upon its own motion, or upon the petition of said CMRS provider, provided that sufficient evidence is provided demonstrating that a different denominator is reasonable and appropriate.

4.3.b. The CMRS provider shall collect, or cause to be collected, the currently applicable E911 fee at the point of sale. The currently applicable E911 fee shall apply to each increment of 500 minutes of usage purchased by the CMRS subscriber.

4.3.b.1. For CMRS providers that collect the E911 fee at the point of sale, the provider shall make available literature advising consumers clearly and conspicuously that the prepaid CMRS purchase price does not include the currently applicable E911 fee and advising consumers of the amount of the E911 applicable to the usage being purchased.

Rational:

CAD recommends substantial revisions to section 4 of the Commission's rules in order to address issues and concerns raised by the Commission in its currently pending general investigation regarding the applicability of the wireless E911 fees to prepaid CMRS, docketed as Case No. 05-1303-C-GI. The gist of CAD's position in that proceeding is that prepaid CMRS providers are obliged to collect and remit the wireless E911 fee under *W. Va. Code* § 24-6-6b, but the Commission's regulations implementing the statute – the same regulations at issue in this proceeding – are deficient in that they fail to address such wireless service. In Case No. 05-1303-C-GI, CAD (and others) recommended a regulatory "fix" to address this omission. Rather than rehash the comments and arguments set forth in its December 1, 2005 reply brief in Case No. 05-1303-C-GI, CAD simply adopts and incorporates them

herein in support of its proposed revisions to section 4 of the Commission's rules.

§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) seventecnth (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%) **for the** ~~as a billing and~~ **or** collection **of the E911** fee, during the preceding monthly ~~or~~ billing period. If **remitted by** the payment is mailed, the postmark shall be used as proof **of compliance** when the payment was remitted. If **remitted** the payment is made electronically, the date the payment is sent, as specified by the software used, shall be used as proof of **compliance** when the payment was remitted. The fees ~~should~~ shall be remitted to:

By mail:

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

Electronically:

executive_director_e911@psc.state.wv.us

Rationale:

Section 5 of the rules, as proposed, continues to suggest that collection of E911 fees is related to the rendering of a monthly bill for wireless service, thereby omitting prepaid CMRS providers from its application. A number of the changes recommended by CAD are intended to eliminate this defect in the rules and to make it clear that the collection and remission of E911 fees is an obligation that exists regardless of whether the CMRS provider renders a monthly bill. The

remaining changes to the proposed rule recommended by CAD are intended to clarify that the CMRS provider is not making a "payment" to the Commission when it remits the net E911 fees collected. This is not merely a matter of semantics - the CMRS provider is acting as the State's collection agent and it is the wireless subscriber who is "paying" the fee, not the provider.

§150-25-6. Disbursement of E911 Fees.

6.1.a. During each year that the monthly wireless E911 fee is \$3, each month, one-thirtieth (1/30) twelfth of all E911 fees collected one million dollars shall be withheld and deposited in a fund entitled "Enhanced 911 Wireless Tower Access Assistance Fund." The withholding of E911 fees for deposit into this fund shall continue until the total amount of fees deposited into the Enhanced 911 Wireless Tower Access Assistance Fund in any calendar year reaches one million dollars (\$1,000,000). Thereafter, all further E911 fees collected shall be disbursed in accordance with sections 6.1.b and 6.2 through 6.6 of these rules. The portion of E911 fees withheld shall be adjusted in any year that the monthly E911 fee is increased above \$3 so that the amount dedicated to and deposited in the Fund shall not exceed \$0.10 from each CMRS subscriber's monthly E911 fee.

Rationale:

CAD believes that its recommended changes to section 6.1.a of the proposed rules better reflects the statutory requirements of *W. Va. Code* § 24-6-6b(b). The statute requires \$1 million to be deposited into the E911 Wireless Tower Access Assistance Fund and distributed annually. The proposed rule would ensure that it takes a year to collect \$1 million. Nothing in the statute suggests that such a delay is appropriate. Moreover, the proposed rule would take more than ten cents (\$0.10) from

the monthly E911 fee collected, at least until \$1 million is collected. Finally, the proposed rule is unclear what happens after \$1 million is collected and deposited. CAD's recommendations more closely track the statutory fee requirements in that the portion of the E911 fees dedicated to the Fund are consistent with the \$0.10 obligation, allows the \$1 million to be collected and deposited more quickly, thus giving the Commission a stable source of money for distribution in accordance with the statute, and caps the fund (and dedication of any further E911 fees to the Fund) at \$1 million. CAD's recommendations also account for future increases in the E911 fee and ensure that the amount dedicated to the Fund remains fixed at \$0.10 of each subscriber's monthly fee.

6.4. Each county shall receive eight and one-half tenths of one percent (0.0085) of the remainder of the **monthly E911** fee revenues received by the Commission.

Rationale:

CAD recommends these changes for purposes of clarification.

~~6.35. From the remainder of E911 fee revenues remitted to the Commission, each county shall receive a pro rata portion of the E911 fee revenues received by the Commission based on that county's percentage of the total number of local exchange telephone access lines and line equivalents in service in the State at the beginning of the calendar year~~ any moneys **monthly E911 fee revenues** remaining **after distribution in accordance with section 6.4 of these rules**, 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.

Rationale:

CAD recommends these changes in order to clarify the rules.

§150-25-13. Wireless Tower Access Assistance Fund Rules.

Rationale:

The reference to Rules is redundant.

13.1.a. Project Review. In order to **be eligible 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 **completed** application on the appropriate form, to be developed and provided by the Tower **Access** Assistance Fund Review Committee. **In order to receive a loan, grant or other funding assistance**, and the wireless tower project must receive the approval of the Tower **Access** Assistance Fund Review Committee.

Rationale:

The changes recommended by CAD make it clear that eligibility for consideration, and approval of an application for funding assistance, are two distinct issues. In addition, the rules define “project sponsor” in the context of a wireless tower and the inclusion of “wireless tower” is excess verbiage.

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

Rationale:

This section of the proposed rules appears to be unnecessary and should be removed.

13.1.c. Application Review. Within sixty (60) days of the filing of a complete application from a ~~wireless tower~~ project sponsor, the Tower **Access** Assistance Fund Review Committee shall make a **final** 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.

Rationale:

See above.

13.1.c.1. The determination by the Committee **shall must** be in writing and **shall** contain **all relevant** 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 **review guidelines** specified in section 13.2. of these Rules.

Rationale:

The changes recommended are primarily for clarification. However, the changes make it clear that the Committee's determination must address whether the applicant meets or does not meet each of the factors set forth in section 13.2's review guidelines. This allows unsuccessful applicants to know precisely on what grounds their applications were deemed deficient and would allow them to correct any deficiencies in order to resubmit an application in the future. CAD also removed the reference to "public interest factors" on the grounds that not every review guideline is necessarily a consideration of the "public interest." The Commission may also want to consider including a "black out" provision that would prohibit unsuccessful applicants from immediately resubmitting an application in the hopes of "wearing down" the Committee. Such a provision would also provide an incentive for applicants to make sure that their applications are complete and likely to satisfy all the review guidelines before submitting such applications.

CAD has included such a provision in section 13.1.d.1 below but it could be included in this section as well.

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.

Rationale:

CAD recommends deletion of the language regarding the unavailability of funds from this particular rule and its inclusion in the review guidelines set forth in section 13.2 of the proposed rules. As currently proposed, the rules would allow an application to go through the review process, result in a determination that funding should be provided, only to have a subsequent notice issue advising the successful applicant that, in fact, the application is being denied for insufficient funds. Rather than going through this entire process, CAD believes that the availability of funding should be the last step in the review guidelines and that, if funds are unavailable, that fact should be communicated to the applicant as part of the denial of the application. Similarly, if there are funds available, but less than sought in the application, the denial of the application could be tempered by notice that the project could be funded for less than the application sought and the applicant could be

given an opportunity to accept less in order to still go forward with the project.

13.1.d.1. Denial. If the Committee **denies the application, 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. **Project sponsors whose applications are denied shall be prohibited from resubmitting an application for the same project for a period not exceeding 180 days.****

Rationale:

See above regarding the "black out" provision. The language CAD recommends deleting from the proposed rule simply is unnecessary, especially in light of section 13.1.c.1's requirement that the Committee provide all relevant findings regarding denial of an application. Furthermore, denial of an application is not necessarily a determination regarding its "worthiness."

~~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.~~

Rationale:

CAD suggests deletion of the proposed rule and that, instead, the proposed rule's provisions should be incorporated in the review guidelines set forth in section 13.2 of the proposed rules. CAD's

comments regarding that section of the proposed rules make those changes.

Under *W. Va. Code* § 24-6-6b(b), the two criteria contained in the proposed rule apply to all forms of funding assistance that may be provided under the statute. In particular, the statute provides:

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. . . .

W. Va. Code § 24-6-6(b) (emphasis added). As the statute makes clear, the coverage and marginal financial viability considerations apply to both financial assistance loans, as well as grants.

13.1.h. Limits on **Financial Assistance Loans and Grants Grant Amount.**

13.1.h.1. **Grants.** In making its **funding** determination the Committee shall ensure that any moneys awarded from the Tower **Access** Assistance Fund in the form of grants shall not exceed twenty percent (**20%**) of the total funds in the Tower **Access** 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 **Access** Assistance grant money in an amount in excess of fifty percent (**50%**) of the total cost of the project, where such cost is defined by these Rules.

13.1.h.2. **Loans.** 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). The interest rate on

any loan for projects made pursuant to these rules shall be included in the Committee's determination. **The Committee may require the provision of an appropriate surety bond or other guaranty of the loan recipient's performance.**

Rationale:

CAD recommends that the limits on financial assistance grants and loans logically should be grouped together in one section, particularly in light of its recommendation that the separate limits on grant requirements in section 13.1.g of the proposed rules should be eliminated and instead incorporated in section 13.2 of the rules. Further, CAD recommends that the interest considerations for financial assistance loans should be incorporated in the limits on loans rather than broken out as a separate subsection (section 13.1.k of the proposed rules). Finally, CAD recommends that the Commission include language allowing the Committee to condition the award of financial assistance loans on the applicant's agreement to provide a surety bond or other guaranty that the loan will be repaid.

13.2.a. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct, ~~or equip, or otherwise develop~~ a wireless tower, the Tower Assistance Fund Review Committee shall consider the following:

Rationale:

The phrase "otherwise develop" does not appear in *W. Va. Code* § 24-6-6b(b) and CAD recommends that it should be deleted from the proposed rules. Inclusion of the phrase invites efforts to seek financial assistance for projects that the Legislature did not intend to fund.

13.2.a.1. The public health and safety benefits **of the proposed project**;

Rationale:

Clarifying change.

13.2.a.2. The degree to which the **proposed** project will allow the acquisition, construction, and/or equipping of a wireless tower which would provide ~~additional~~ enhanced 911 service coverage **in specific areas of the state**;

Rationale:

Clarifying change. Eliminating the word “additional” makes the proposed rule consistent with the first statutory criterion for providing financial assistance grants or loans. The statute speaks only of the project “provid[ing] enhanced 911 service coverage in specific areas of the state,” not “additional” E911 coverage.

13.2.a.3. The degree to which the project sponsor can establish that **funding would not be available otherwise due to marginal financial viability of the applicable tower coverage area**; ~~without such funds, such project would not be economically feasible~~;

Rationale:

CAD’s recommended change makes this particular review guideline consistent with the second statutory criterion for providing financial assistance grants or loans.

13.2.a.7. The degree to which the **proposed** project **further** ~~achieves or abets~~ other State or regional planning goals;

Rationale:

Clarifying change.

13.2.a.8. The estimated date upon which the **proposed** project could commence if funding were available and the estimated completion date of the **proposed** project;

Rationale:

Clarifying change.

13.2.a.9. The capability of the **proposed** project to permit the collocation of communications equipment on the proposed tower for **other communications and communications-related services, such as** 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;

Rationale:

Clarifying charge. The other language recommended by CAD is intended to broaden the types of services that could be provided by collocated equipment and recognizes the sometimes blurred nature of the service as a "communications" or other form of service (for example, wireless Internet).

13.2.a.10. The adequacy and efficiency of other wireless communications facilities, if any, in the area to be served by the **proposed** 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.

Rationale:

Clarifying change.

13.2.a.11. Whether there is sufficient money available to fund the project as determined by the Committee. In the event there is insufficient money available to fund the proposed project, the Committee shall advise the applicant of the funds available and provide the applicant a reasonable opportunity to consider

accepting reduced financial assistance if the proposed project otherwise satisfies all the review guidelines for financial assistance.

Rationale:

See CAD's comments regarding proposed section 13.1.d.1 of the proposed rules.

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) **and the limits set forth in section 13.1.h of these rules**, shall use money in the Tower **Access** 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.

Rationale:

The recommended changes incorporate the limits on grants and loans set forth in the proposed rules.

13.4.a. Applications procedures. **Unless otherwise ordered by the Commission,** tThe project sponsor shall file an original and thirteen **(13)** 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 **Access** 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 **Access** 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 **Access** 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.

Rationale:

The change recommended by CAD simply reflects the fact that the Commission may change, and indeed previously has changed, the number of copies of documents that must be filed with the Commission.

The additional language allows for such changes without requiring amending the proposed rules.

13.5. Tower **Access** Assistance Fund Review Committee.

Rationale:

The recommended change, again for the sake of consistency, incorporates the term "access" which is used generally throughout the proposed rules.

Conclusion.

For all the foregoing reasons, the Commission should adopt the proposed rules, incorporating the changes recommended by CAD, as final rules.

Respectfully submitted this 10th day of January, 20065.



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Brian Skinner, Esq.
House Committee on Judiciary
State Capitol Complex
Main Building, Room 404
Charleston, WV 25305



PATRICK W. PEARLMAN, ESQ.

CERTIFICATE OF SERVICE

I, Patrick W. Pearlman, counsel for the Consumer Advocate Division of the Public Service Commission of West Virginia, (CAD), hereby certify that I have served a copy of the foregoing "*Consumer Advocate Division's Comments*" upon all parties of record by First Class, U.S. Mail, postage pre-paid.

The Honorable Richard Browning
West Virginia House of Delegates
Building 1, Room M-212
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

Ms Patricia L. Hamilton, Executive
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West Virginia Association of
Counties
2211 Washington Street East
Charleston, WV 25311-2118

The Honorable John R. Unger, II
West Virginia Senate
Building 1, Room W-211
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Charleston, WV 25305

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JAMES V. KELSH
OF COUNSEL
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January 20, 2006

AREA CODE 304
343-1854
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343-1857

Ms. Sandra Squire
Executive Secretary
Public Service Commission
of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

RECEIVED
2006 JAN 20 PM 3:01
W. VA. PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

RE: GENERAL ORDER NO. 187.29
Rules and Regulations Governing
Emergency Telephone Service Series 25

Dear Ms. Squire:

Enclosed herein for filing in the above-referenced proceeding please find the original and twelve (12) copies of the Reply Comments of Highland Cellular, LLC.

As evidenced by the Certificate of Service attached thereto, a copy of the document has been served upon all parties of record.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



Robert R. Rodecker
WV State Bar No. 3145

enclosures

cc: parties of record
Tom Attar

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA**

GENERAL ORDER NO. 187.29
Rules and Regulations Governing
Emergency Telephone Service Series 25.

**REPLY COMMENTS OF
HIGHLAND CELLULAR, LLC**

Highland Cellular, LLC ("Highland"), by counsel, hereby provides reply comments to the Comments of the Consumer Advocate Division ("CAD") filed herein on January 10, 2006.

For the most part, the Comments submitted by the CAD are reasonable and provide helpful suggestions to make the proposed rules more workable. However, in a number of instances, the CAD has deviated from the purpose of the rules and it has attempted to inject matters into the proposed rules that are the subject of ongoing litigation before the Commission. Because of the uncertainty of the outcome of that litigation, and the need to establish a set of rules to implement the 2005 Legislature's enactment of legislation pertaining to the development and implementation of a Tower Access Assistance Fund, it is respectfully submitted that it would not be proper to burden this rulemaking with matters in litigation.

Highland objects to the proposed changes to section 4 of the proposed rules (§15-25-4.) As stated in the rationale for the suggested change at pages 6 and 7 of CAD's comments, the change is intended to insert the CAD's position in a case that is currently pending before the Commission; Case No. 05-1303-C-GI into this rulemaking. That case has not been finally decided by the Commission and there are opposing views to the position advanced by CAD. Highland will not argue its position in this case on the matter of billing of the Wireless E-911 Fee on prepaid service which is properly before the Commission in Case No. 05-1303-C-GI and neither should the CAD. The Commission should reject the CAD's suggested changes to section 4.

In section 5, the CAD attempts to insert changes which are also related to its position in Case No. 05-1303-C-GI. The changes which it suggests are dependent upon either a decision in its favor in that case, or a revision of the language in West Virginia Code §24-6-6b. Highland believes a statutory change is required in order to accomplish the CAD's objective. Whether the CAD or Highland is correct, this issue is the subject of litigation and should not be included in this rulemaking.

Highland does not believe the proposed changes to section 6.1.a. are appropriate. It is not necessary to suggest that the Wireless E-911 Fee may not always be \$3.00 per month. As drafted, the proposed rule does not foreclose that possibility. Under the CAD's proposed language, the possibility of an increase in the monthly fee is contemplated, but there is no provision for the possibility of a

reduction in the monthly fee and the language proposed by the CAD would not cover that situation, however unlikely. Highland recommends that the Commission reject the proposed changes to section 6.1.a.

Based upon the foregoing, Highland recommends that the Commission reject CAD's proposed changes to sections 4, 5, and 6.1.a. of the proposed rules.

Respectfully submitted,

HIGHLAND CELLULAR, LLC

By Counsel



Robert R. Rodecker [State Bar # 3145]
Post Office Box 3713
Charleston, West Virginia 25337
(304) 343-1654

January 20, 2006

CERTIFICATE OF SERVICE

I, Robert R. Rodecker, counsel for Highland Cellular, LLC, do hereby certify that copies of the foregoing document have been served upon the following parties of record on this 20th day of January, 2006, in the manner so indicated:

**VIA FIRST CLASS U.S.
MAIL, POSTAGE PREPAID:**

Honorable Richard Browning
West Virginia House of Delegates
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State Fire Marshall
2nd Floor
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Honorable John R. Unger, II
West Virginia State Senate
Building 1, Room W-211
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John W. Campbell, Jr.
Charter Associates
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Jonathan Clark
Corporate Development Analyst
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West Virginia State Police
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Honorable Earl Ray Tomblin
President, WV State Senate
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House Committee on Judiciary
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VIA HAND DELIVERY:

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ROBERT R. RODECKER

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April 10, 2006

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

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

Dear Ms. Cooper:

Enclosed is an agency-approved proposed legislative rule-making in response to House Bill No. 3208 passed during the 2005 regular 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 and proposed rule-makings filed by the Public Service Commission of West Virginia with your office on November 1, 2005 and November 29, 2005 respectively.

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

- Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee (Form #3)
- Approval of filing by agency Chairman in the form of Commission General Order No. 187.29, issued April 10, 2006
- Legislative Rule-Making & Review Committee Questionnaire with Attachment
- Brief Summary of Agency-Approved Proposed Legislative Rule

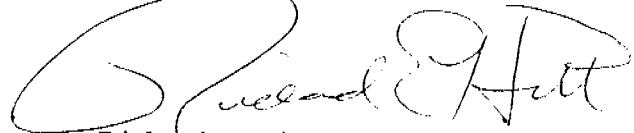
- Statement of Circumstances
- Fiscal Note for Agency-Approved Proposed Legislative Rule
- Agency-Approved Proposed Legislative Rule
- Public Comments Received (Revisions, and Reasons for the Revisions, to the rule are contained in the April 10, 2006 order

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

Since the Commission is not part of the Cabinet structure, the Commission order is evidence of approval of the filing by the agency lead, Chairman Jon W. McKinney.

If you have any questions or if there are any problems, please bring them to my attention.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Hitt". The signature is written in black ink and is positioned above the printed name and title.

Richard E. Hitt
General Counsel

REH/klm
Enclosures