

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

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**FILED**

2003 DEC 17 A 8:38

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

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

RULE TYPE: Legislation CITE AUTHORITY: Senate Bill 436

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: Rules for Statewide Telephone Information and Referral 211 Service

A public hearing will be held on January 30, 2004, at the Commission's offices. A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH

ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. Initial comments must be filed by January 10, 2004 AT 4:00 p.m. Reply comments must be ONLY WRITTEN

filed on January 17, 2004.  
COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:


Sandra Squire, Executive Secretary

Public Service Commission of WV

201 Brooks Street

P. O. Box 812  
Charleston, WV 25323

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 29

RULES FOR STATEWIDE TELEPHONE INFORMATION  
AND REFERRAL 211 SERVICE

FILED  
2003 DEC 12 A 8:36  
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SECRETARY OF STATE

§150-29-1. General.

1.1. Scope - These rules and regulations govern the establishment and operation of a statewide "211" Information and Referral call system in West Virginia.

1.2. Authority: W. Va. Code §§24-1-7, 24-2-1, 24-2-7, 24-8-1, 24-8-2 and 29A-3-15.

1.3. Filing Date: December 11, 2003.

1.4. Effective Date: proposed to be December 31, 2003, contingent upon review and approval of emergency status by the West Virginia Secretary of State.

§150-29-2. Definitions.

2.1. These rules adopt, and incorporate herein, the definitions of terms 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. "AIRS" - Alliance for Information and Referral Systems. A national accrediting and professional oversight organization regulating the provision of I & R services and the training and operational requirements applicable to I & R providers.

2.3. "I & R" - Information and referral.

2.4. "I & R provider" - An individual or entity that furnishes, upon request and without charge to the caller, I & R services to individuals regarding community-based resources, such as social services and charities that provide housing, medical care, human services, financial assistance, and other social services that are available in the area served by the I & R provider. I & R providers furnish a comprehensive

informational link between individuals seeking the afore-enumerated services and appropriate providers of such services.

2.5. "I & R specialist" - An individual employed by an I & R provider that provides I & R services directly to callers.

2.6. "Statewide 211 system" - The system for providing access, via the 211 dialing arrangement, to a single call center, or functional equivalent, that provides callers with centralized I & R services, including, as appropriate, links to regionalized I & R services statewide. The statewide 211 system shall be implemented by utilizing a single, toll-free 8XX number, with all telecommunications carriers translating and routing 211 calls to the 8XX number assigned to the statewide 211 call center.

2.7. "211" - The three digit, abbreviated dialing arrangement designated by the Federal Communications Commission for use as the universal access number for contacting local, regional, or statewide I & R service providers.

2.8. "211 Collaborative" - A private, non-governmental West Virginia incorporated association whose members are drawn from local I & R providers, including call centers, and other stakeholders (*e.g.*, social services and charitable organizations, governmental agencies and educational institutions) in the state.

2.9. "211 Provider" - A private, non-governmental entity, either stand-alone or part of a larger organization, selected by the 211 Collaborative and having responsibility for the operation and management of the statewide 211 system. The 211 Provider shall provide I & R services to members of the public who dial 211. Any I & R provider may petition the 211 Collaborative to be considered to be chosen the 211 Provider in West Virginia.

§150-29-3. The 211 Collaborative.

3.1. The 211 Collaborative shall provide direction and oversight over the operation of the statewide 211 system established in West Virginia in accordance with the May 15, 2002, task force report in WVPSC Case No. 01-0689-T-GI and these Rules.

3.2. The 211 Collaborative shall include I & R providers, including call centers, representatives of social services and charitable organizations, governmental agencies, public service answering points, educational institutions, and the public. In addition, the 211 Collaborative shall include, at all times, one (1) non-voting

representative of the 211 Provider.

3.2.a. The 211 Collaborative shall maintain with the Commission, at all times, a list of its members, either in written form or in electronic format, which shall be revised as the 211 Collaborative's membership changes.

3.2.b. The 211 Collaborative shall maintain with the Commission, at all times, a current copy of the 211 Collaborative's articles of incorporation and by-laws, either in written form or in electronic format.

3.3. The 211 Collaborative shall ensure that the 211 Provider adheres to national standards established by AIRS regarding I & R operations, program development and the training and conduct of I & R specialists.

3.4. Within sixty (60) days of the effective date of these Rules, the 211 Collaborative shall prepare written procedures governing the 211 Collaborative's monitoring and oversight of the statewide 211 system's operation, as well as written procedures governing the process and standards for selecting the 211 Provider.

3.4.a. The 211 Collaborative shall maintain with the Commission, at all times, a current copy of the written procedures set forth in Section 3.4 of these Rules, either in written form or in electronic format.

3.5. All documents and other materials required to be maintained with the Commission pursuant to Section 3 of these Rules, shall be accessible on the Commission's official Internet website.

3.6. The 211 Collaborative shall reasonably assist the 211 Provider in complying with the requirements of these Rules.

§150-29-4. The 211 Provider.

4.1. Selection of an Initial 211 Provider.

4.1.a. The 211 Collaborative shall submit its written decision, together with supporting documents, selecting an initial 211 Provider to the Commission within one-hundred twenty (120) days of the effective date of these Rules. No Commission approval of the 211 Collaborative's decision is required for the 211 Provider to begin providing service.

4.1.b. The Commission shall cause notice of the 211 Collaborative's decision selecting an initial 211 Provider to be published, statewide within ten (10) days following receipt of such decision and supporting documents.

4.2. Term of 211 Provider; Removal of 211 Provider.

4.2.a. The 211 Collaborative may, in its discretion, fix or otherwise limit the 211 Provider's term of service.

4.2.b. The 211 Collaborative may, for cause, remove the 211 Provider at any time during the 211 Provider's term of service. "Cause" shall be construed to mean: (1) the 211 Provider's material non-performance of any obligation established as part of its selection by the 211 Collaborative; (2) the 211 Provider's violation of any Commission rule, regulation or order relating to the operation of the statewide 211 system; or (3) malfeasance or fraud on the 211 Provider's part. The 211 Collaborative shall submit its written decision removing the 211 Provider to the Commission within ten (10) days of such decision.

4.2.c. In the event the 211 Provider's term of service expires, or if the 211 Provider is removed pursuant to Section 4.2 of these Rules, the 211 Collaborative shall take action to designate a successor 211 Provider prior to the expiration of the current 211 Provider's term or effective date of the 211 Provider's removal, if possible.

4.2.d. If the 211 Provider determines to cease operating the statewide 211 system, the 211 Provider shall provide written notice to the 211 Collaborative and the Commission at least ninety (90) calendar days prior to its intended date of cessation of operation as the 211 Provider.

4.3. Selection of Subsequent 211 Providers.

4.3.a. In the event the 211 Provider's term of service expires, or if the 211 Provider is removed pursuant to Section 4.2 of these Rules, or if the current 211 Provider ceases to operate the statewide 211 system for any reason, the 211 Collaborative shall solicit and review applications from qualified I & R providers, including call centers, seeking to operate the statewide 211 system.

4.3.b. The 211 Collaborative shall provide public notice by publication at least once in a newspaper, duly qualified by the Secretary of State, published and of general circulation throughout the state, and by other appropriate means, advising

I & R providers that the 211 Collaborative is soliciting applications for selection of a 211 Provider.

4.3.c. The 211 Collaborative shall submit its written decision selecting a subsequent 211 Provider, together with supporting documents, to the Commission within thirty (30) days of such decision.

4.3.d. The Commission shall cause notice of the 211 Collaborative's decision selecting a subsequent 211 Provider to be published, statewide, within ten (10) days following receipt of such decision and supporting documents.

4.4. The 211 Collaborative shall have final operational authority over changes in the 211 Provider, and shall submit to the Commission a plan for continuation of the statewide 211 system under the circumstances set forth in Section 4.2 of these Rules.

4.5. The Commission, or its designated representative, shall mediate any dispute involving the selection or removal of the 211 Provider, upon the filing of a petition requesting mediation with the Commission by either the 211 Collaborative, the 211 Provider or an aggrieved applicant for selection as the 211 Provider.

4.6. The 211 Provider shall not charge a fee to I & R providers, nor to community-based resources, such as social services and charities that provide housing, medical care, human services, financial assistance, or other social services, for participation in the statewide 211 system.

#### §150-29-5. Standards Applicable to the 211 Provider.

5.1. Operation of the statewide 211 system shall be the responsibility of the 211 Provider.

5.2. The 211 Provider shall be responsible for obtaining funding, implementing procedures, and meeting target dates for commencing its operation of the statewide 211 system.

5.3. Within twelve (12) months following the promulgation of these Rules, the 211 Collaborative shall file a written recommendation with the Commission, regarding whether national standards established by AIRS should be adopted by the Commission and made applicable to the 211 Provider. AIRS standards include criteria for I & R providers, as well as criteria for individual I & R specialists.

§150-29-6. Review of the Statewide 211 System.

6.1. The Commission may, at its discretion, periodically review the 211 Provider's operations in implementing a statewide 211 system. At such time, the Commission may utilize its staff or may contract the review to an organization familiar with I & R operations.

6.2. The Commission may, by order, fix reasonable acts, practices, services or regulations relating to the provision of 211 statewide or the operations of the 211 Provider: Provided, however, that the foregoing shall not be construed to authorize Commission regulation of I & R providers or otherwise subject I & R providers to Commission jurisdiction.

§150-29-7. Charges, Availability and Participation.

7.1. Calls from landline telephones to 211 shall be free of charge to the caller, including calls made over public and semipublic telephones. Wireless carriers may elect to charge for calls over their systems to 211. Inmate facilities may block access to 211 by inmates. For purposes of access charges and other intercarrier compensation associated with the completion of 211 calls within the state, 211 calls shall be treated in the same manner as all other end user calls are treated.

7.2. All telephone companies providing telecommunications within the state shall reasonably cooperate in implementing any non-recurring network modifications (*e.g.*, central office switch translations) required in order for end users to access the statewide 211 system. Providers of Telecommunications Relay Service, and all providers of public and semipublic telephone service, shall likewise reasonably cooperate in implementing the statewide 211 system.

7.3. Initial capital and non-recurring costs associated with implementing network modifications required in order for end users to access the statewide 211 system, including central office switch translations, shall be absorbed by participating telephone companies and other entities set forth in Section 7.2 above: Provided, however, that telephone companies and other entities set forth in Section 7.2 may petition the Commission to recover such costs, which the Commission may grant upon a showing of good cause. Provided further, that wireless carriers are not required to obtain Commission approval to recover such costs.

7.4. Additional costs associated with participating in the statewide 211 system not described in Sections 7.2 and 7.3 of these Rules, may not be imposed by landline

carriers absent a lawful order of the Commission.

7.5. Within one-hundred eighty (180) days of the effective date of these rules, calls to the statewide 211 system shall be answered by an I & R specialist, in a timely manner, on a 24-hours per day, 7-days per week basis.

§150-29-8. Complaints.

8.1. Complaint Log. The 211 Provider shall keep a complaint log of consumer-reported problems concerning the operations of 211.

8.1.a. The complaint log shall include the complainant's name, address and telephone number, the date and nature of the complaint, the date the complaint is considered resolved, and the disposition of the complaint. Such complaints shall be resolved by the 211 Provider and reported in the complaint log.

8.1.b. Copies of the log shall be sent to Commission Staff and the 211 Collaborative at least quarterly.

8.1.c. The complaint log shall be maintained in electronic format suitable for transmittal as an email attachment or via other electronic means, consistent with federal or state privacy laws.

8.2. Informal complaints regarding the statewide 211 system, filed with the Commission pursuant to C.S.R. §150-1-6.1, shall be referred to the 211 Provider for response and resolution in accordance with the requirements of said rule.

8.3. Formal complaints regarding the statewide 211 system, filed with the Commission pursuant to C.S.R. §150-1-6.2, shall be dealt with in accordance with established Commission rules, regulations and orders, including the requirement of an order from the Commission to the 211 Provider to respond to the Commission within ten (10) working days of receipt of a formal complaint.

8.4. The 211 Collaborative shall conduct a quarterly review of formal and informal complaints regarding the provision of 211 statewide and shall take appropriate action to correct legitimate issues identified from the complaints. The 211 Collaborative shall also consider suggestions regarding the statewide 211 system submitted to it by any interested party as part of the 211 Collaborative's quarterly review.

8.5. The 211 Collaborative shall cooperate with representatives of the West Virginia Enhanced 9-1-1 Council regarding matters relating to the statewide 211 system that are of concern to the Enhanced 9-1-1 Council's members.

§150-29-9. 911 Referral and Phone Directories.

9.1. All emergency calls received by the 211 Provider shall be transferred to the appropriate 911 Public Safety Answering Point (PSAP) as expeditiously as possible, unless such transfer would result in loss of the call or would otherwise unduly jeopardize the physical or mental health, or the safety, of the caller.

9.1.a. In the event an emergency call is not transferred to 911, the 211 Provider shall immediately contact the appropriate 911 PSAP and seek advice regarding how to deal with the situation.

9.2. In each telephone directory provided to West Virginia telephone service subscribers as a primary directory, a listing for 211 shall appear on the directory page which contains non-emergency numbers listings for emergency services providers.

§150-29-10. Statewide 211 Database.

10.1. As part of its duties, the 211 Provider shall be responsible for creating, maintaining and updating an electronic database of all community-based social and other services providers within the state. The 211 Provider shall consult with the 211 Collaborative in fulfilling its duties under this Section.

10.2. The 211 Collaborative shall establish procedures whereby community-based social and other services providers may directly submit information to the 211 Provider for inclusion in the database referred to in Section 10.1 of these Rules.

10.3. The database shall be updated by the 211 Provider at least semi-annually. The 211 Collaborative may, in consultation with the 211 Provider, require the database to be updated more frequently.

10.4. The statewide 211 system's database created, maintained and updated in accordance with this Section shall, at all times, be considered the exclusive intellectual property of the 211 Collaborative. Upon any change in 211 Provider, as set forth in Section 4 of these Rules, the statewide 211 system's database shall be returned to the 211 Collaborative.

10.5. The 211 Collaborative shall keep the Commission apprized of all decisions or actions undertaken pursuant to Sections 10.1 through 10.4 of these Rules.

§ 150-29-11. Severability Clause.

11.1. If any provision of these Rules, or the application thereof to any person or circumstances, is held invalid, the remainder of these Rules and the application of such Rules to other persons or circumstances shall not be affected thereby.

## BRIEF SUMMARY OF RULES

The attached emergency legislative rules implement Senate Bill 436 which was passed effective June 6, 2003. The Rules implement a statewide telephone information and referral service (211 service); define the duties of a 211 Collaborative; define the duties and terms of service of a 211 Provider; set forth a 211 Provider selection process to be followed by the 211 Collaborative; state the potential for future Commission review of the 211 system; and require that landline calls to 211 be permitted free of charge to the caller. Furthermore, the Rules require 211 calls to be answered within 180 days of the effective date of the Rules; set up a complaint procedure; require referral of emergency calls to 911; and provide for the development of a statewide 211 database.

STATEMENT OF CIRCUMSTANCES  
WHICH REQUIRE THE RULES TO BE FILED  
AS AN EMERGENCY

Senate Bill 436 does not provide funding for implementation or operation of the 211 Information and Referral System. The Commission's 211 task force has sought and received a commitment from the Benedum Foundation for a \$125,000 grant for use as implementation funds. The Benedum Foundation will not make the grant available, however, unless these rules are in place, as emergency rules, as of December 31, 2003.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for Statewide Telephone Information and Referral 211 Service

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Public Service Commission of WV

Address: 201 Brooks Street, P. O. Box 812  
Charleston, WV 25323

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	None	None	None	None	None
<b>PERSONAL SERVICES</b>	None	None	None	None	None
<b>CURRENT EXPENSE</b>	None	None	None	None	None
<b>REPAIRS &amp; ALTERATIONS</b>	None	None	None	None	None
<b>EQUIPMENT</b>	None	None	None	None	None
<b>OTHER</b>	None	None	None	None	None

2. Explanation of Above Estimates:

3. Objectives of These Rules:

To implement the intention of Senate Bill No. 436

Rule Title: Rules for Statewide Telephone Information and Referral 211 Service

4. Explanation of Overall Economic Impact of Proposed Rule:

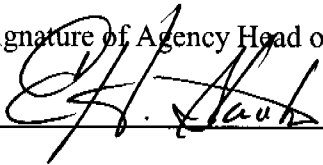
A. Economic Impact on State Government:  
None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of  
Citizens: None

C. Economic Impact on Citizens/Public at Large.  
None

Date: 12-11-03

Signature of Agency Head or Authorized Representative:





EMERGENCY RULE QUESTIONNAIRE

DATE: December 11, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Public Service Commission of WV  
201 Brooks Street, P. O. Box 812, Charleston, WV 25323  
(304)340-0317

EMERGENCY RULE TITLE: Rules for Statewide Telephone Information and Referral 211 Service

1. Date of filing December 11, 2003

2. Statutory authority for promulgating emergency rule:  
Senate Bill No. 436; W. Va. Code §§ 24-8-1 and 24-8-2

3. Date of filing of proposed legislative rule: December 11, 2003

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? new language

5. Has the same or similar emergency rule previously been filed and expired?  
no

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.  
Senate Bill No. 436, passed during the Regular 2003 Legislative Session, permitted the PSC to issue emergency legislative rules. The funds to implement 211 Service are in the form of a \$125,000 grant from the Benedum Foundation. If not allocated by December 31, 2003, this grant will no longer be available.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not applicable

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The loss of the Benedum Foundation grant that is proposed as implementation funds  
would cause significant delay and necessitate a search for replacement funds.

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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11<sup>th</sup> day of December, 2003.

GENERAL ORDER NO. 187.25

IN THE MATTER OF A PROCEEDING FOR THE ADOPTION  
OF RULES IMPLEMENTING AND GOVERNING THE WEST  
VIRGINIA 211 INFORMATION AND REFERRAL SYSTEM

**COMMISSION ORDER**

On March 8, 2003, the West Virginia Legislature passed Senate Bill No. 436 directing the West Virginia Public Service Commission to implement the West Virginia 211 information and referral system in accordance with the recommendations of the Commission's appointed task force as reported to the Legislature in 2002. Senate Bill No. 436 was codified as Article 8 of Chapter 24 of the West Virginia Code. Included in the Bill is a requirement that the Commission propose rules for legislative promulgation pursuant to West Virginia Code Chapter 29A, Article 3. The Bill further notes that the Commission may file such rules as emergency rules pursuant to West Virginia Code §29A-3-15.

By Order issued June 2, 2003, the Commission instituted this General Order No. 187.25; ordered service on all members of the task force that were active in Case No. 01-0689-T-GI, and appointed the same task force in this proceeding. Additionally, the Commission ordered statewide publication and invited other interested entities to participate in the task force if they desired. The Commission appointed Dannie Walker, Commission Staff Technical Analyst, to chair the task force. The Commission ordered the task force to file consensus rules on or before September 2, 2003.

The Commission stated that following the filing of the task force's rules proposal, the Commission would schedule a public hearing on the proposed rules.

By Order issued August 8, 2003, the Commission extended the task force report and consensus rules deadline to September 23, 2003.

On September 23, 2003, the task force filed its report and consensus rules

recommended by a majority of the task force. The report also included dissenters' comments and the majority's response to the dissenters' comments. The two separate dissenters were (1) a group of wireless carriers consisting of AT&T Wireless, Cingular Wireless and American Cellular; and (2) A.V. Luttamus Communications, Inc. (Luttamus Communications). The task force recommended that the Commission adopt the majority's rules as a new series of emergency rules, to be titled, "Statewide Information and Referral Service."

On September 25, 2003, the task force chairman filed two appendices to the task force report that were inadvertently omitted from the September 23, 2003, filing.

On October 7, 2003, counsel to the wireless carriers filed a letter clarifying that the wireless carriers were not part of the majority of the task force and did not join in the task force's recommendations contained in the "Further Procedural Matters" appearing at page 3 of the task force report. The wireless carriers did concur with the request for a hearing on the issue of whether the rules would be contrary to the state preemption provisions contained in Section 332(c) of the Federal Communications Act, 47 USC §332(c)(3). The wireless carriers asserted that this Commission lacks jurisdiction to regulate wireless charges.

On October 15, 2003, Verizon Wireless filed a request for a hearing to be held prior to the Commission's consideration of the task force's proposed rules. As grounds for its request, Verizon Wireless noted that the task force's proposed rules, if implemented, would make West Virginia the first state in the nation to deny wireless carriers the right to charge for air time or recover costs of 211 service.

By Order issued October 21, 2003, the Commission set this case for hearing and required the parties to address the following issues:

- 1) Funding of the 211 system.
- 2) Description of the 211 system.
- 3) Objections raised by parties who did not join in the task force majority.

On November 5, 2003, Armstrong Telephone Company - Northern Division, Armstrong Telephone Company - West Virginia, Hardy Telecommunications, Inc., Spruce Knob Seneca Rocks Telephone, Inc., and West Side Telecommunications (the Independent Group), filed a statement in lieu of participation in the hearing. The Independent Group stated that it supported the majority's recommendations.

A hearing was held on November 6, 2003. The Commission's Consumer Advocate Division (CAD), Commission Staff, the wireless carriers, Verizon Wireless, Verizon West

Virginia, and Luttamus appeared at the hearing. Following appearances, CAD counsel provided a background of the proceeding. Thereafter, representatives of the West Virginia 211 Collaborative gave testimony regarding the Collaborative's efforts since 2000 to bring 211 information and referral service to the State.

Robin Smith of the 211 Collaborative gave a brief history of the 211 project and explained that this is an effort at the state level to provide a recognizable and easy to recall telephone service to citizens. The service will connect up existing local information and referral services and publicize the type of services that can be identified and accessed by citizens. Ms. Smith explained that operators at the 211 center will find out the origin of the call, the county where the caller is, and refer callers to local resources. (Tr. p. 27-29). Phones will be answered after-hours and operators will provide callers with the names and numbers of crisis shelters. (Tr. p. 29-31). Ultimately, the Collaborative would like to be able to transfer calls directly to resource agencies, but initially, 211 will provide names and telephone number for the agencies and the caller will have to hang up and place another call. (Tr. p. 36-37).

Criss-Cross has been given a \$125,000 Benedum Foundation Grant to fund implementation of 211. The Collaborative hopes for additional funding through United Way and from the West Virginia Division of Health and Human Resources. (Tr. p. 16-27). There is a possibility for funding from the federal government as well. (Tr. p. 26-27). The initial annual budget for provision of 211 service was \$340,000, including equipment purchase and staffing. (Tr. p. 24).

Second to testify was Ms. Sandy Miller, Executive Director of Criss-Cross and member of the 211 Collaborative. Ms. Miller is concerned that the \$125,000 Benedum Foundation grant will expire at the end of December 2003. (Tr. p. 32-34). This grant represents the only formally committed funds for the 211 service. (Tr. p. 34; 40-41). She stated that it is not unusual for non-profit entities to begin operation without all of their ultimate funding in place. (Tr. p. 41-42).

The Federal Communications Commission (FCC) has imposed a July 2005 sunset date at which time the FCC may revoke the setting aside of 211 for information and referral service if the service has not been sufficiently established by the various states. Currently, 27% of the United States population has 211 access. (Tr. p. 42).

The 211 Collaborative estimates that 211 service will be operational in the State within 6 to 12 months of Commission approval of the majority proposed rules. (Tr. p. 44).

The 211 Provider has not been selected but the Collaborative believes the 211

Provider should be a non-profit entity due to the availability of funding. Many grants are restricted to non-profit entities. (Tr. p. 45-46). The majority's proposed rules do not require that the 211 Provider be a non-profit entity. (Tr. p.47). Nor would the rules preclude a non-profit entity from acting as 211 Provider and contracting with a for-profit entity for the provision of services. (Tr. p. 54). The 211 service is proposed to be a 24-hour service within 180 days of beginning operation. (Tr. p. 48-49; 53).

The next witness to testify was Lisa Volpe on behalf of the wireless carriers. Ms. Volpe is employed in regulatory compliance by AT&T Wireless. Ms. Volpe has conferred with Verizon Wireless, Cingular and Dobson regarding the 211 issue in West Virginia. These wireless carriers support the development of 211 service in the State but take the position that the Commission cannot prohibit wireless carriers from charging air time for calls to 211, as proposed in Section 7 of the majority's rules. The wireless carriers also object to the provisions contained in Section 7 relating to the requirements to obtain Commission approval in order to recover costs associated with carrying 211 calls. (Tr. p. 56-59).

AT&T Wireless has implemented 211 in Connecticut, Colorado, Nebraska, Idaho and Hawaii. None of those states has prohibited wireless carrier from charging air time for 211 calls. (Tr. p. 60). None of those states has 211 legislation as comprehensive as that in West Virginia. (Tr. p. 79-80). If Section 7 remains as proposed, the Commission will in effect be dictating a service for which wireless carriers cannot charge in contradiction of the 1993 Omnibus Reconciliation Act amending Section 332(c)(3) of the Communications Act which provides that no state or local government has authority to regulate the entry of or the rates charged by private telecommunications carriers such as AT&T wireless. (Tr. p. 61-62).

The FCC has designated several N11 numbers including 511 for child services, 611 for customer care, 711 for telecommunications relay service, 311 for police - non emergency, and 911 - police/fire/rescue emergency. Ms. Volpe explained that AT&T Wireless has made an internal policy decision not to charge air time for calls to either 911 - emergency services, or to 611 - its own customer care representatives. There is no law prohibiting such charges, however. (Tr. p. 63-64). AT&T Wireless based its decision not to charge air time for these calls on public interest. (Tr. p. 84-85).

The wireless carriers urge the Commission to adopt their recommended changes to Section 7 in lieu of the majority's draft of Section 7. (Tr. p. 64-65). The wireless carriers' proposed language would give wireless carriers the ability to choose whether to charge air time for 211 calls. (Tr. p. 66).

Ms. Volpe admitted that AT&T Wireless never objected to the inclusion of the

prohibition on charging for 211 calls, as included in the 2001 Task Force report to the Commission which was later adopted by the Commission and reported to the West Virginia Legislature. (Tr. p. 75-76). AT&T Wireless never believed the 2001 Task Force report would foreclose its ability to raise the air time charge issue in this proceeding. (Tr. p. 90-91).

The next witness to testify was Michael McDermott on behalf of Verizon Wireless. Mr. McDermott is the Regional Director of State Public Policy for Verizon Wireless. Verizon Wireless disagreed with the portion of the majority report that supported Section 7 of the proposed rules, requiring commercial level radio service providers and wireless service providers from providing free 211 access. Mr. McDermott agrees with the comments presented by Ms. Volpe. Verizon Wireless believes these rules amount to State rate regulation in contradiction of federal law. (Tr. p. 94-99).

Mr. McDermott stated that in addition to the jurisdictional issue, an additional concern of wireless carriers is that callers and operators may abuse free 211 access. This has occurred with respect to 911 access. (Tr. p. 100-01). Fraud can occur when a caller asks a 911 operator to transfer the call to an acquaintance for a non-emergency purpose. (Tr. p. 109).

Verizon Wireless was aware of the inclusion of free access in the 2001 task force report and did not object at that time. (Tr. p. 103-04). Mr. McDermott could not estimate the number of minutes that might be carried by wireless carriers for 211 calls. (Tr. p. 108).

The next witness to testify was Paul Luttamus on behalf of Luttamus Communications. Luttamus Communications provides paging, two-way radio, security, telephone answering service and call center services for approximately 600 clients in a four-state region. The company provides information and referral service in one West Virginia county. (Tr. p. 120). Included in the I&R service it provides are referrals to MADD, Alcoholics Anonymous, Gamblers Anonymous, Southern Workshop, Change, Inc., and youth services. (Tr. p. 120-121).

Mr. Luttamus believes that the Commission should be actively involved in the 211 Provider selection process. The Commission's acting as a mediator of disputes is not sufficient involvement. The 211 Collaborative does not have the expertise that the Commission has to select the provider. Also, the mediation process could be eliminated if the Commission were to make the decision in the first instance. (Tr. p. 122-23). Mr. Luttamus is concerned that Criss-Cross enjoys the Collaborative's friendly bias in view of the Benedum grant, whereas Luttamus Communications would have the advantage of an existing infrastructure and lower start-up costs. (Tr. p. 123-24). Included in that infrastructure are an in-place labor force, liability insurance and accountability for quality

assurance. (Tr. p. 124).

Mr. Luttamus believes the performance standards set forth in the proposed rules lack a benchmark. (Tr. p. 124-25).

Luttamus Communications did not participate in the prior task force or in developing the 2001 Task Force report. (Tr. p. 127). The company did participate on the recent task force, the majority of which proposed rules for Commission approval. (Tr. p. 127-132).

The proposed rules do not prevent Luttamus Communications from applying to be selected as the 211 Provider. If the company is not satisfied with the 211 Collaborative's ultimate choice as 211 Provider, it may seek Commission review of the Collaborative's decision. (Tr. p. 137). Luttamus Communications is a for-profit entity. The company believes it could provide 211 service at very minimal cost because its infrastructure is already in place and paid for. It might seek funding from different sources than would a non-profit, but those sources would include grants for which it is eligible, the West Virginia Legislature, and federal funding. In Ohio County, the company provides the I&R service free of charge as a public service. (Tr. p. 138-140).

Mr. Luttamus believes it is appropriate for the Commission to perform the selection of the 211 Provider, by issuing a request for proposals and then evaluating the bids received. (Tr. p. 142). Luttamus Communications would have no objection to the Commission regulating its provision of 211 service. (Tr. p. 143-44).

The next witness to testify was Dannie Walker on behalf of Commission Staff. Mr. Walker is a technical analyst in the Commission's Utilities Division. He specializes in telecommunications. (Tr. p. 153). Mr. Walker proposed that Rule 2.6. of the majority's proposed rules be amended to correct a drafting oversight. Mr. Walker offered to file a post-hearing Staff exhibit clarifying the suggested amendments.

Mr. Walker went on to explain the intent of the first, versus the second task force at work in the development of 211. The first task force was primarily focused on whether the provision of 211 should be recommended. The second task force was addressing how to get the calls through without a charge to customers. Another goal of the second task force was to keep Commission involvement in 211 to a minimum. This goal recognized that the Commission does not have expertise in social work. Mr. Walker believes it would be a big mistake for the Commission to have the responsibility for selecting the 211 Provider. (Tr. p. 157-159). The Collaborative is comprised of social service agencies and organizations, which should be able to weigh the costs of one applicant to be 211 Provider against another

and decide what they can afford. (Tr. p. 160-61).

The Commission's involvement in 211 should be similar to that for 911. The Commission does not regulate the quality of 911 service, it only regulates the telecommunications associated with the service. (Tr. p. 163).

Mr. Walker believes the majority's proposed rules are consistent with the report approved by the Legislature.

This concluded the evidence. An expedited briefing schedule was ordered and the hearing concluded.

On November 25, 2003, the CAD, Commission Staff and the wireless carriers filed a Joint Stipulation and Agreement for Settlement. The stipulation recommended that the Commission adopt the task force's recommended rules, except that Sections 7.1., 7.3., and 7.4. be amended as provided in the stipulation. With these amendments, the wireless carriers withdrew all objections to the proposed rules. However, the objections of A.V. Luttamus remained outstanding.

On November 26, 2003, each of CAD and Luttamus Communications filed briefs.

In Luttamus Communications' brief, the company argued that the proposed rules fail to provide meaningful Commission oversight for selection of a 211 Provider. If the Commission is only to act as mediator of disputes regarding selection or removal of the 211 Provider, then the rules are deficient. The Commission's highly professional and technical staff should contribute to the selection process. Secondly, Luttamus Communications stated that the rules are deficient because nowhere do they state provider standards regarding call center experience, handling of multiple calls, capability to monitor quality assurance, and errors and omission insurance. Luttamus Communications suggested that Two Million Dollars of such insurance coverage would be appropriate in addition to One Million Dollars of general liability insurance coverage. Thirdly, Luttamus Communications argues that the rules should adhere to the West Virginia Purchasing Department requirements, and that the 211 services be placed out for bid.

In CAD's brief, CAD criticized Luttamus Communications' objections by noting that the company did not participate in the Commission's 2001 proceeding and never reviewed the Commission's 2002 report to the Legislature (2002 Report) which served as the starting point for the current proceeding. Luttamus Communications' proposed changes to the majority's proposed rules would require active Commission involvement in the selection of a 211 Provider and require more precise performance standards for the 211

Provider. CAD believes these two changes are directly or implicitly counter to the 2002 Report.

CAD disagreed with Luttamus Communications' argument that the Commission has more expertise to select a 211 Provider than does the 211 Collaborative. CAD's research indicates that most states have delegated the task of provider selection to an independent body such as the 211 Collaborative. Only a few (California and North Dakota) provide for selection by the state commission. Although Luttamus suggests that the state's role as mediator of disputes regarding the selection process would be eliminated if the Commission were the selecting body, CAD does not believe this would alleviate the burdens on the Commission. If the Commission were the selecting body, it would be saddled with soliciting applications via a request for proposal, reviewing applications, complying with state contracting requirements, and monitoring the 211 Providers' service. CAD asserts there is no practical advantage to the Commission acting as the selecting entity.

In response to Luttamus' request for more specific performance standards in the proposed rules, the majority anticipates that any business proposal submitted by an entity seeking to be the 211 Provider will include performance standards. Furthermore, Rule 5.3 of the proposed rules provides that the 211 Collaborative will recommend in 12 months whether national 211 system standards should be adopted by the Commission. Luttamus' suggestions presume a Commission expertise that does not exist and which the 2002 Report did not contemplate.

CAD's brief did not directly address Luttamus Communications' argument that selection of the 211 Provider should be put out for bid in accordance with West Virginia State Purchasing Department requirements.

On December 5, 2003, Luttamus Communications filed a Reply Brief addressing the CAD's arguments.

On December 8, 2003, Trina Bartless, Chair of the West Virginia Collaborative, and Robin Smith, Facilitator of the West Virginia 211 Collaborative filed a letter reiterating that if the Benedum Foundation does not allocate the \$125,000 grant by December 31, 2003, the funds would no longer be available. The letter further stated that another source of funds had been identified. Fred Boothe, Commissioner for Children and Families with the WV Department of Health and Human Resources, along with Governor Wise, have committed to provide 211 funding, contingent upon collaborative support with the Benedum Foundation.

## DISCUSSION

Upon review of all of the foregoing and of the record in this proceeding, the Commission finds it to be reasonable and appropriate to adopt the attached Rules for Statewide Information and Referral 211 Service, 150 CSR 29, as Commission proposed emergency Rules. Promulgation as emergency rules is justified by the threatened expiration of the \$125,000 grant from the Benedum Foundation. Accordingly, we find that promulgation of these rules prior to December 31, 2003, will prevent substantial harm to the public interest.

We find that the Joint Stipulation and Agreement for Settlement filed November 25, 2003 represents a reasonable resolution of the wireless carriers' objections to the majority's proposed rules.

As to the objections put forth by Luttamus Communications, the Commission rejects that company's request for amendment of the majority's proposal. We agree with the majority that the 211 Collaborative is the appropriate entity to select the 211 Provider. Furthermore, we find that the State Purchasing requirements regarding requests for proposals and bidding were not contemplated by the West Virginia Legislature when it delegated implementation of 211 service to this Commission. Additionally, because the rules provide that 211 Provider is responsible for obtaining its own funding, the state purchasing requirements are not applicable. We further find that more specificity regarding performance standards for the 211 Provider is not required at this time. We expect, and the Rules require, however, that the 211 Collaborative recommend to the Commission in 12 months whether the national 211 system standards should be adopted by this Commission.

Finally, in light of the impending expiration of the Benedum Foundation grant to fund the implementation of 211 service in this State, these Rules are adopted as emergency proposed rules. The Commission will provide a thirty day comment period and thereafter issue an order on Final Rules, withing ninety (90) days of the date of this Order.

## ORDER

IT IS THEREFORE ORDERED that the attached Rules for Statewide Information and Referral 211 Service, 150 CSR 29, attached hereto as Attachment B, are hereby promulgated as emergency legislative rules, to become effective December 31, 2003, if authorized by the Secretary of State.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the text of the emergency rules with the offices of the Secretary of State and the

Legislative Rule-making Review Committee together with the forms required to be filed by the Secretary of State's office.

IT IS FURTHER ORDERED that the Commission will hold a hearing on these Rules on January 30, 2004, at 9:30 a.m. in the Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, West Virginia.

IT IS FURTHER ORDERED that a comment period is established in this matter and that initial comments concerning the attached rules shall be filed with the Public Service Commission on or before January 10, 2004, at 4:00 p.m. Reply comments shall be filed on or before January 17, 2004, at 4:00 p.m. All interested parties who so file shall set forth specific comments regarding the proposed Rules for Statewide Information and Referral 211 Service, 150 CSR 29, and referencing G.O. 187.25.

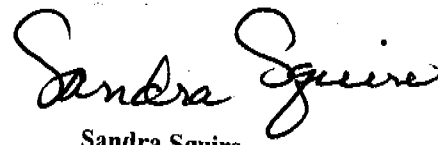
IT IS FURTHER ORDERED that the Executive Secretary shall cause a true and accurate copy of this emergency rule to be posted upon the Commission's website and shall provide copies of these proposed rules to interested parties that request copies of the same.

IT IS FURTHER ORDERED that the Commission Executive Secretary cause the notice attached hereto as Attachment A to be published once, immediately, in newspapers published and of general circulation in the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling, and Williamson.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order by First Class United States Mail on all task force members and upon other parties who have filed comments in this proceeding, and upon Commission Staff by hand delivery.

JML/ljm  
go18725cb.wpd

A True Copy, Teste:



Sandra Squire  
Executive Secretary

10

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

GENERAL ORDER NO. 187.25

IN THE MATTER OF A PROCEEDING FOR THE ADOPTION  
OF RULES IMPLEMENTING AND GOVERNING THE WEST  
VIRGINIA 211 INFORMATION AND REFERRAL SYSTEM

NOTICE OF PROPOSED EMERGENCY RULES  
AND HEARING

By Order issued December 11, 2003, the Public Service Commission adopted proposed emergency Rules Implementing and Governing the West Virginia 211 Information and Referral System, 150 CSR 29. The Commission also established a comment period on the proposed rules that requires initial comments to be filed no later than January 10, 2004, and reply comments to be filed no later than January 17, 2004. The Commission will hold a public hearing on the proposed rules on January 30, 2004, at 9:30 a.m. in the Howard M. Cunningham hearing room, at the Commission's offices, 201 Brooks Street, Charleston, West Virginia.

The rules will go into effect on an emergency basis on December 31, 2003, if authorized by the Secretary of State's office, but will not become final agency adopted rules until after the comment period expires and the hearing has been held. The agency adopted rules will be subject to Legislative rule review and will not become final until authorized by the Legislature. The emergency status of these rules is justified by the fact that funds for implementing 211 service in this state are in the form of a \$125,000 grant that will expire at year's end.

Interested persons may obtain a copy of the proposed rules from the Commission's website [www.psc.state.wv.us](http://www.psc.state.wv.us); request a copy by mail of the proposed emergency rules from the Commission's Executive Secretary, P.O. Box 812, Charleston, West Virginia; or request a copy by telephone by calling (304) 340-0300. Written comments on the proposed rules may be filed by mail to the Executive Secretary. All filings should reference the General Order No. 187.25. Members of the public may also appear at the January 30, 2004, hearing to present oral comments.

PUBLIC SERVICE COMMISSION

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 29

RULES FOR STATEWIDE TELEPHONE INFORMATION  
AND REFERRAL 211 SERVICE

§150-29-1. General.

1.1. Scope - These rules and regulations govern the establishment and operation of a statewide "211" Information and Referral call system in West Virginia.

1.2. Authority: W. Va. Code §§24-1-7, 24-2-1, 24-2-7, 24-8-1, 24-8-2 and 29A-3-15.

1.3. Filing Date: December 11, 2003.

1.4. Effective Date: proposed to be December 31, 2003, contingent upon review and approval of emergency status by the West Virginia Secretary of State.

§150-29-2. Definitions.

2.1. These rules adopt, and incorporate herein, the definitions of terms 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. "AIRS" - Alliance for Information and Referral Systems. A national accrediting and professional oversight organization regulating the provision of I & R services and the training and operational requirements applicable to I & R providers.

2.3. "I & R" - Information and referral.

2.4. "I & R provider" - An individual or entity that furnishes, upon request and without charge to the caller, I & R services to individuals regarding community-based resources, such as social services and charities that provide housing, medical care, human

services, financial assistance, and other social services that are available in the area served by the I & R provider. I & R providers furnish a comprehensive informational link between individuals seeking the afore-enumerated services and appropriate providers of such services.

2.5. "I & R specialist" - An individual employed by an I & R provider that provides I & R services directly to callers.

2.6. "Statewide 211 system" - The system for providing access, via the 211 dialing arrangement, to a single call center, or functional equivalent, that provides callers with centralized I & R services, including, as appropriate, links to regionalized I & R services statewide. The statewide 211 system shall be implemented by utilizing a single, toll-free 8XX number, with all telecommunications carriers translating and routing 211 calls to the 8XX number assigned to the statewide 211 call center.

2.7. "211" - The three digit, abbreviated dialing arrangement designated by the Federal Communications Commission for use as the universal access number for contacting local, regional, or statewide I & R service providers.

2.8. "211 Collaborative" - A private, non-governmental West Virginia incorporated association whose members are drawn from local I & R providers, including call centers, and other stakeholders (e.g., social services and charitable organizations, governmental agencies and educational institutions) in the state.

2.9. "211 Provider" - A private, non-governmental entity, either stand-alone or part of a larger organization, selected by the 211 Collaborative and having responsibility for the operation and management of the statewide 211 system. The 211 Provider shall provide I & R services to members of the public who dial 211. Any I & R provider may petition the 211 Collaborative to be considered to be chosen the 211 Provider in West Virginia.

#### §150-29-3. The 211 Collaborative.

3.1. The 211 Collaborative shall provide direction and oversight over the operation of the statewide 211 system established in West Virginia in accordance with the May 15, 2002, task force report in WVPSC Case No. 01-0689-T-GI and these Rules.

3.2. The 211 Collaborative shall include I & R providers, including call centers, representatives of social services and charitable organizations, governmental agencies, public service answering points, educational institutions, and the public. In addition, the 211 Collaborative shall include, at all times, one (1) non-voting representative of the 211

Provider.

3.2.a. The 211 Collaborative shall maintain with the Commission, at all times, a list of its members, either in written form or in electronic format, which shall be revised as the 211 Collaborative's membership changes.

3.2.b. The 211 Collaborative shall maintain with the Commission, at all times, a current copy of the 211 Collaborative's articles of incorporation and by-laws, either in written form or in electronic format.

3.3. The 211 Collaborative shall ensure that the 211 Provider adheres to national standards established by AIRS regarding I & R operations, program development and the training and conduct of I & R specialists.

3.4. Within sixty (60) days of the effective date of these Rules, the 211 Collaborative shall prepare written procedures governing the 211 Collaborative's monitoring and oversight of the statewide 211 system's operation, as well as written procedures governing the process and standards for selecting the 211 Provider.

3.4.a. The 211 Collaborative shall maintain with the Commission, at all times, a current copy of the written procedures set forth in Section 3.4 of these Rules, either in written form or in electronic format.

3.5. All documents and other materials required to be maintained with the Commission pursuant to Section 3 of these Rules, shall be accessible on the Commission's official Internet website.

3.6. The 211 Collaborative shall reasonably assist the 211 Provider in complying with the requirements of these Rules.

§150-29-4. The 211 Provider.

4.1. Selection of an Initial 211 Provider.

4.1.a. The 211 Collaborative shall submit its written decision, together with supporting documents, selecting an initial 211 Provider to the Commission within one-hundred twenty (120) days of the effective date of these Rules. No Commission approval of the 211 Collaborative's decision is required for the 211 Provider to begin providing service.

4.1.b. The Commission shall cause notice of the 211 Collaborative's decision selecting an initial 211 Provider to be published, statewide within ten (10) days following receipt of such decision and supporting documents.

#### 4.2. Term of 211 Provider; Removal of 211 Provider.

4.2.a. The 211 Collaborative may, in its discretion, fix or otherwise limit the 211 Provider's term of service.

4.2.b. The 211 Collaborative may, for cause, remove the 211 Provider at any time during the 211 Provider's term of service. "Cause" shall be construed to mean: (1) the 211 Provider's material non-performance of any obligation established as part of its selection by the 211 Collaborative; (2) the 211 Provider's violation of any Commission rule, regulation or order relating to the operation of the statewide 211 system; or (3) malfeasance or fraud on the 211 Provider's part. The 211 Collaborative shall submit its written decision removing the 211 Provider to the Commission within ten (10) days of such decision.

4.2.c. In the event the 211 Provider's term of service expires, or if the 211 Provider is removed pursuant to Section 4.2 of these Rules, the 211 Collaborative shall take action to designate a successor 211 Provider prior to the expiration of the current 211 Provider's term or effective date of the 211 Provider's removal, if possible.

4.2.d. If the 211 Provider determines to cease operating the statewide 211 system, the 211 Provider shall provide written notice to the 211 Collaborative and the Commission at least ninety (90) calendar days prior to its intended date of cessation of operation as the 211 Provider.

#### 4.3. Selection of Subsequent 211 Providers.

4.3.a. In the event the 211 Provider's term of service expires, or if the 211 Provider is removed pursuant to Section 4.2 of these Rules, or if the current 211 Provider ceases to operate the statewide 211 system for any reason, the 211 Collaborative shall solicit and review applications from qualified I & R providers, including call centers, seeking to operate the statewide 211 system.

4.3.b. The 211 Collaborative shall provide public notice by publication at least once in a newspaper, duly qualified by the Secretary of State, published and of general circulation throughout the state, and by other appropriate means, advising I & R providers that the 211 Collaborative is soliciting applications for selection of a 211 Provider.

4.3.c. The 211 Collaborative shall submit its written decision selecting a subsequent 211 Provider, together with supporting documents, to the Commission within thirty (30) days of such decision.

4.3.d. The Commission shall cause notice of the 211 Collaborative's decision selecting a subsequent 211 Provider to be published, statewide, within ten (10) days following receipt of such decision and supporting documents.

4.4. The 211 Collaborative shall have final operational authority over changes in the 211 Provider, and shall submit to the Commission a plan for continuation of the statewide 211 system under the circumstances set forth in Section 4.2 of these Rules.

4.5. The Commission, or its designated representative, shall mediate any dispute involving the selection or removal of the 211 Provider, upon the filing of a petition requesting mediation with the Commission by either the 211 Collaborative, the 211 Provider or an aggrieved applicant for selection as the 211 Provider.

4.6. The 211 Provider shall not charge a fee to I & R providers, nor to community-based resources, such as social services and charities that provide housing, medical care, human services, financial assistance, or other social services, for participation in the statewide 211 system.

#### §150-29-5. Standards Applicable to the 211 Provider.

5.1. Operation of the statewide 211 system shall be the responsibility of the 211 Provider.

5.2. The 211 Provider shall be responsible for obtaining funding, implementing procedures, and meeting target dates for commencing its operation of the statewide 211 system.

5.3. Within twelve (12) months following the promulgation of these Rules, the 211 Collaborative shall file a written recommendation with the Commission, regarding whether national standards established by AIRS should be adopted by the Commission and made applicable to the 211 Provider. AIRS standards include criteria for I & R providers, as well as criteria for individual I & R specialists.

#### §150-29-6. Review of the Statewide 211 System.

6.1. The Commission may, at its discretion, periodically review the 211 Provider's

operations in implementing a statewide 211 system. At such time, the Commission may utilize its staff or may contract the review to an organization familiar with I & R operations.

6.2. The Commission may, by order, fix reasonable acts, practices, services or regulations relating to the provision of 211 statewide or the operations of the 211 Provider: Provided, however, that the foregoing shall not be construed to authorize Commission regulation of I & R providers or otherwise subject I & R providers to Commission jurisdiction.

#### §150-29-7. Charges, Availability and Participation.

7.1. Calls from landline telephones to 211 shall be free of charge to the caller, including calls made over public and semipublic telephones. Wireless carriers may elect to charge for calls over their systems to 211. Inmate facilities may block access to 211 by inmates. For purposes of access charges and other intercarrier compensation associated with the completion of 211 calls within the state, 211 calls shall be treated in the same manner as all other end user calls are treated.

7.2. All telephone companies providing telecommunications within the state shall reasonably cooperate in implementing any non-recurring network modifications (*e.g.*, central office switch translations) required in order for end users to access the statewide 211 system. Providers of Telecommunications Relay Service, and all providers of public and semipublic telephone service, shall likewise reasonably cooperate in implementing the statewide 211 system.

7.3. Initial capital and non-recurring costs associated with implementing network modifications required in order for end users to access the statewide 211 system, including central office switch translations, shall be absorbed by participating telephone companies and other entities set forth in Section 7.2 above: Provided, however, that telephone companies and other entities set forth in Section 7.2 may petition the Commission to recover such costs, which the Commission may grant upon a showing of good cause. Provided further, that wireless carriers are not required to obtain Commission approval to recover such costs.

7.4. Additional costs associated with participating in the statewide 211 system not described in Sections 7.2 and 7.3 of these Rules, may not be imposed by landline carriers absent a lawful order of the Commission.

7.5. Within one-hundred eighty (180) days of the effective date of these rules, calls

to the statewide 211 system shall be answered by an I & R specialist, in a timely manner, on a 24-hours per day, 7-days per week basis.

§150-29-8. Complaints.

8.1. Complaint Log. The 211 Provider shall keep a complaint log of consumer-reported problems concerning the operations of 211.

8.1.a. The complaint log shall include the complainant's name, address and telephone number, the date and nature of the complaint, the date the complaint is considered resolved, and the disposition of the complaint. Such complaints shall be resolved by the 211 Provider and reported in the complaint log.

8.1.b. Copies of the log shall be sent to Commission Staff and the 211 Collaborative at least quarterly.

8.1.c. The complaint log shall be maintained in electronic format suitable for transmittal as an email attachment or via other electronic means, consistent with federal or state privacy laws.

8.2. Informal complaints regarding the statewide 211 system, filed with the Commission pursuant to C.S.R. §150-1-6.1, shall be referred to the 211 Provider for response and resolution in accordance with the requirements of said rule.

8.3. Formal complaints regarding the statewide 211 system, filed with the Commission pursuant to C.S.R. §150-1-6.2, shall be dealt with in accordance with established Commission rules, regulations and orders, including the requirement of an order from the Commission to the 211 Provider to respond to the Commission within ten (10) working days of receipt of a formal complaint.

8.4. The 211 Collaborative shall conduct a quarterly review of formal and informal complaints regarding the provision of 211 statewide and shall take appropriate action to correct legitimate issues identified from the complaints. The 211 Collaborative shall also consider suggestions regarding the statewide 211 system submitted to it by any interested party as part of the 211 Collaborative's quarterly review.

8.5. The 211 Collaborative shall cooperate with representatives of the West Virginia Enhanced 9-1-1 Council regarding matters relating to the statewide 211 system that are of concern to the Enhanced 9-1-1 Council's members.

§150-29-9. 911 Referral and Phone Directories.

9.1. All emergency calls received by the 211 Provider shall be transferred to the appropriate 911 Public Safety Answering Point (PSAP) as expeditiously as possible, unless such transfer would result in loss of the call or would otherwise unduly jeopardize the physical or mental health, or the safety, of the caller.

9.1.a. In the event an emergency call is not transferred to 911, the 211 Provider shall immediately contact the appropriate 911 PSAP and seek advice regarding how to deal with the situation.

9.2. In each telephone directory provided to West Virginia telephone service subscribers as a primary directory, a listing for 211 shall appear on the directory page which contains non-emergency numbers listings for emergency services providers.

§150-29-10. Statewide 211 Database.

10.1. As part of its duties, the 211 Provider shall be responsible for creating, maintaining and updating an electronic database of all community-based social and other services providers within the state. The 211 Provider shall consult with the 211 Collaborative in fulfilling its duties under this Section.

10.2. The 211 Collaborative shall establish procedures whereby community-based social and other services providers may directly submit information to the 211 Provider for inclusion in the database referred to in Section 10.1 of these Rules.

10.3. The database shall be updated by the 211 Provider at least semi-annually. The 211 Collaborative may, in consultation with the 211 Provider, require the database to be updated more frequently.

10.4. The statewide 211 system's database created, maintained and updated in accordance with this Section shall, at all times, be considered the exclusive intellectual property of the 211 Collaborative. Upon any change in 211 Provider, as set forth in Section 4 of these Rules, the statewide 211 system's database shall be returned to the 211 Collaborative.

10.5. The 211 Collaborative shall keep the Commission apprized of all decisions or actions undertaken pursuant to Sections 10.1 through 10.4 of these Rules.

§ 150-29-11. Severability Clause.

11.1. If any provision of these Rules, or the application thereof to any person or circumstances, is held invalid, the remainder of these Rules and the application of such Rules to other persons or circumstances shall not be affected thereby.

# Public Service Commission

Richard E. Hitt, General Counsel



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Charleston, West Virginia 25323

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

December 11, 2003

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

Re: Public Service Commission Rules for Statewide  
Telephone Information and Referral 211 Service

Dear Judy:

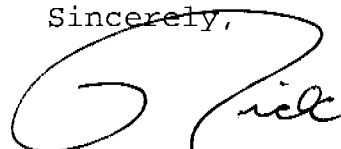
Enclosed is a proposed rulemaking in response to Senate Bill No. 436 passed during the 2003 legislative session. This legislation can be found at W. Va. Code §24-8-1. The statute made this particular rulemaking subject to legislative rule review. For reasons explained in the documents, we are seeking emergency status of these rules no later than December 31, 2003. The emergency status is requested primarily to prevent the loss of grant funding to the 211 collaborative.

I have enclosed fifteen copies of the proposed rule, fourteen copies for your office and one copy for the legislative rule review committee. It is my understanding that you will assist in filing the rule with the legislative committee.

I have also enclosed fifteen copies of a notice of emergency rule, a notice of comment period and hearing date on proposed rules, a summary of the rules, a statement of circumstances, a fiscal note, and an emergency rule questionnaire. In addition, I have enclosed fifteen copies of the order of the Commission which adopted the rules.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt". The signature is written in a cursive style with a large, looping initial "R".

Richard E. Hitt  
General Counsel

REH/cbd

Enclosure

H:\CDODD\WPDOCS\RICKMISC\COOPER41.WPD