



# Public Service Commission

Richard E. Hitt, General Counsel



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

Phone: (304) 340-0317  
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June 30, 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 Governing E911 Fees  
150 C.S.R. Series 31

Dear Ms. Cooper:

Enclosed are two sets of an exempt legislative rule-making (one for your office and one for submission to the Legislative Rule-Making & Review Committee) of the required filings as follows: (1) Notice of a Public Hearing on a Proposed Rule (Form #1); (2) Approval of filing by agency Chairman in the form of Commission General Order No. 187.32, issued June 30, 2006; (3) Brief Summary of Exempt Legislative Rule; (4) Statement of Circumstances; (5) Fiscal Note for Exempt Legislative Rule; (6) Exempt Legislative Rule; and (7) Relevant federal statutes and/or regulations. 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.

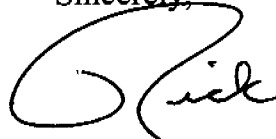
Page 2

150 C.S.R. Series 31

June 30, 2006

If you have any questions or if there are any problems, please bring them to my attention. You may reach me at 340-0317.

Sincerely,

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

Richard E. Hitt  
General Counsel

REH/klm  
Enclosures

**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 30th day of June, 2006.

GENERAL ORDER NO. 187.32

IN THE MATTER OF Rules Governing E911 Fees,  
150 C.S.R. Series 31, to provide further guidance  
regarding E911 fee requirements.

**COMMISSION ORDER**

By this order, the Commission promulgates proposed Rules Governing E911 Fees, 150 C.S.R. Series 31, to provide further guidance regarding enhanced 911 fee requirements.

As the Legislature recently amended the statutory definition of commercial mobile radio service provider to expressly state its applicability to prepaid and post-paid wireless service providers; as some carriers have asserted in earlier PSC proceedings that they have not been obligated to remit fees until there was clear statutory authority that prepaid services are subject to the E911 fees; and as some carriers have asserted in earlier proceedings that they are not obligated to remit any E911 fees for prepaid services until the Commission issues revised rules regarding E911 fees, the Commission also proposes to implement these new rules on an emergency basis, effective July 1, 2006.

**BACKGROUND**

Since March 6, 1998, the Commission has had in place rules regarding E911 fee requirements in the PSC's Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25 (Emergency Telephone Service Rules).

On November 1, 2005, the Emergency Telephone Service Rules were revised to implement the provisions of House Bill Number 3208.<sup>1</sup> See Gen. O. No. 187.29, as corrected

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<sup>1</sup> In July of 2005, House Bill 3208 became law and modified W. Va. Code § 24-6-6b by:

1. increasing the wireless E911 fee to \$3 per month,

November 29, 2005. The revisions were promulgated as emergency rules, to be effective December 13, 2005. House Bill 3208 made the Commission's revisions to those rules subject to legislative rule review, and on April 10, 2006, the Commission issued agency-approved proposed legislative rules,<sup>2</sup> which were reviewed by the Legislative Rule-Making and Review Committee following the 2006 Legislative session. That Committee reported out the Commission's agency-approved proposed legislative rules with no changes, and the PSC's proposed legislative rules will be on the Legislature's agenda for final adoption in 2007.

Also during the 2006 session, the Legislature further amended the statutes relating to the E911 fees via Senate Bill 728. Among other things, Senate Bill 728 makes Voice over Internet Protocol (VoIP) services subject to the E911 fee provisions, requires a character and criminal background investigation of certain persons to be employed in emergency dispatch centers and precludes persons with felony convictions from holding certain positions, and assigns part of the wireless enhanced 911 fees to West Virginia's Division of Homeland Security and Emergency Management.<sup>3</sup>

Senate Bill 728 also required the Commission to issue an updated Commission order by June 1, 2006, regarding wireless enhanced 911 fee collection matters. The Commission issued its update order on June 1, 2006, in Case Number 06-0076-C-GI, and advised that it intended to issue proposed rules by July 1, 2006, and at that time begin the comment and hearing process to adopt final rules.

In the June 1, 2006, order, the Commission also recognized that a settlement conference was scheduled for June 14, 2006, in a companion E911 fee proceeding, Case Number 05-1303-C-GI. As it has long been the Commission's policy to encourage settlement, and the Commission did not wish to foreclose any possibility that the affected parties could work out an agreement

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2. creating the Enhanced 911 Wireless Tower Access Assistance Fund to help fund wireless towers in West Virginia,
  3. allocating portions of the E911 fee to the State Police, the tower assistance fund and the counties, and
  4. authorizing the Commission to issue emergency and proposed legislative rules.

<sup>2</sup> Under the Commission's emergency rules, loans from the tower fund were anticipated. Under the agency-approved proposed legislative rules, in consideration of comments made and of lower administrative costs to handle only grants, the Commission removed the loan language and changed to a grant only approach.

<sup>3</sup> The Voice over Internet Protocol and Homeland Security provisions also require revisions to Commission rules. Those changes will be addressed in a separate order.

among themselves, the Commission advised that it might revisit the timing of its expected July 1, 2006, order.

More specifically, in the update order, the Commission reviewed reports filed March 15, April 25, and May 16, 2006. Ultimately, the Task Force proposed rules which would primarily implement a Point-Of-Sale approach, in which E911 fees would be collected from prepaid subscribers by the vendor from whom prepaid wireless services were purchased. Upon notification to the Commission, as an alternative, the draft rules would allow prepaid wireless carriers to use an Average Revenue Per User approach to remit the E911 fees.

The Commission also noted that, in response to the May 16, 2006, report, Virgin Mobile wrote that it concurred that adoption of a one-size-fits-all collection and remittance mechanism was unwarranted. Virgin Mobile argued that prepaid providers should be able to adopt the approach that better suits their respective business, operational, and customer requirements.

Further, the Commission recognized that the issues were complex; that wireless service is provided via emerging technologies; that service is available to West Virginia subscribers via numerous providers and service permutations; that the number of service permutations increase frequently, sometimes several times a month; and that the Commission expects that the number of service permutations will continue to increase frequently for the foreseeable future. In example, the Commission wrote as follows:

Today, subscribers can prepay or postpay. They can purchase unlimited usage for a set duration of time, say a month. Or, subscribers can buy finite units of time to use over longer periods, perhaps 120 minutes to use during the next six months. They can purchase from the carrier directly via a storefront or a website. From a reseller like RadioShack, Target, or 7-11, subscribers can select among competing carriers. Today, the options are so varied that unlimited usage is available a single day at a time – if subscribers so choose.

The Commission also recognized that the Legislature recently directed that cellular service be made more readily available throughout West Virginia's challenging terrain. Accordingly, the Commission said that it expected that the competitive landscape would continue to evolve and that additional choices in carriers and service options would become available.

However, the Commission concluded that the issues were too unsettled to immediately issue the Point-Of-Sale draft rules as proposed rules. While several participants jointly recommended the Point-of-Sale as the primary approach, the Commission wrote that it was concerned about its jurisdiction over the vendors who would be obligated to collect the E911

fees. Moreover, the Commission noted that those vendors had not been offered an opportunity to comment on the Point-of-Sale proposal or yet participated in any PSC proceeding.

Upon review of the three reports, the Commission concluded that the clearest consensus to emerge was that the various carriers, each with their separate business plans, wished to be able to collect and remit the E911 fees in a manner which least affected their own business models. Such a consensus was a curious result in a proceeding in which several carriers argued that they could not be expected to comply with the statute until the Commission provided explicit guidance, the Commission wrote.

Further, the Commission restated its conclusion that wireless carriers are required by the statute to collect and remit E911 fees, regardless of the alleged incompleteness of the Commission's rules, and that the Commission was unable to waive the statutory duty to do so. Although the PSC had not developed a formula to collect and remit the fees, the Commission continued to hold that individual carriers could, and should, apply their own formulas. The Commission also wrote that it remained committed to revising its rules.

A settlement conference was conducted on June 14, 2006. However, the parties to Case Number 05-1303-C-GI have not indicated to the Commission that they were able to resolve their differences.

### **DISCUSSION**

Upon consideration of all of the above, the Commission has determined that it is necessary to initiate a rulemaking proceeding to promulgate new rules to provide further guidance regarding E911 fee requirements.

Moreover, since the recent statutory amendment expressly states that both prepaid and post-paid wireless carriers are within the definition of a CMRS provider; since some carriers have asserted in earlier PSC proceedings that, absent clear statutory authority that prepaid services are subject to the E911 fees, they do not have to remit them; and since some carriers argued that they were not obligated to remit E911 fees for prepaid services until the Commission issued revised rules which included the mechanism to do so,<sup>4</sup> the Commission concludes that it should seek to make the proposed rules effective on July 1, 2006, on an emergency basis.

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<sup>4</sup> The Commission wishes to make clear that such a position is contrary to the Commission's repeated statements that CMRS providers have an independent obligation to comply with the statute.

The Commission has chosen to issue new rules in a separate series to address E911 fees, because it appears that the Commission may be able to resolve the more straightforward VoIP and Homeland Security revisions to its rules, separate from the complex and contested issue regarding the remission of E911 fees for prepaid service.

The Commission also recognizes that E911 fee rules remain, at present, in the Emergency Telephone Service Rules, 150 C.S.R. Series 25. By issuing rules in the new Series 31, the Commission intends that the new rules control. Thus, in cases of conflict, the Commission intends to rely upon the provisions of Series 31. Once final rules are in place via the Series 31 process, the Commission will return to Series 25 to resolve any outdated or repetitious provisions. Eventually, the Commission intends to consolidate the two separate series.

As the background set forth above reflects, wireless service is marketed today through vehicles never contemplated when the West Virginia statutes were written, and the Commission expects that new marketing approaches will continue to evolve. The Commission also recognizes that CMRS providers depend strongly upon their individual business models and they wish to comply with the law in the manner which is least intrusive upon those various business models. The Commission also desires to provide further guidance to the CMRS community.

Accordingly, in the proposed rules which are promulgated today, the Commission has fashioned a mechanism to capture the E911 fee even when service is provided for a single day during a month. Generally speaking, with the current statutory fee being \$3 per month, the Commission has decided to require CMRS providers to remit 10 cents a day for each day that customer service is provided. Thus, when service is provided to a subscriber for only four days in a particular month, a CMRS provider will remit a proportionate E911, or \$0.40, fee by the 17<sup>th</sup> of the following month.

However, recognizing that many wireless providers offer service in longer increments, the Commission has simultaneously established a waiver provision. Thus, if a CMRS provider offers service by the month and prefers to calculate \$3 a month, instead of a daily amount, the CMRS may ask the Commission's permission to do so. Moreover, if a CMRS provider prefers yet another approach for its particular business model, that CMRS provider may also petition for a waiver.

In general, so long as CMRS providers remit their E911 fees by July 17, 2006, and state that they will continue to do so as required by law, the Commission will grant an initial emergency waiver for any reasonable alternate method, pending further Commission order. See Rule 3.3 for the complete waiver provisions.

In conjunction with this rule-making the Commission shall seek guidance in the form of written comments and through a hearing to allow argument and testimony by the interested parties.

**ORDER**

IT IS THEREFORE ORDERED that this General Order Number 187.32 is instituted.

IT IS FURTHER ORDERED that the attached Rules Governing E911 Fees, 150 C.S.R. Series 31, are promulgated as Commission proposed legislative rules and as emergency rules to become effective July 1, 2006. See Attachment A.

IT IS FURTHER ORDERED that the following procedural schedule is adopted for addressing the proposed legislative rules:

Deadline for written initial comments	August 10, 2006, 4:00 p.m.
Deadline for written reply comments	August 16, 2006, 4:00 p.m.
Public Hearing in the HMC Hearing Room 201 Brooks Street, Charleston, West Virginia	August 17, 2006, 9:30 a.m.

IT IS FURTHER ORDERED that all interested persons must set forth specific comments regarding the proposed rules. All comments should be addressed to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, W. Va. 25323.

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

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall file a copy of these rules with the Office of the Secretary of State (and upon the Legislative Rule-Making and Review Committee, as appropriate), both as a proposed exempt legislative rule and as an emergency rule-making.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall provide a copy of these proposed rules to any person upon request.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order by first class U.S. Mail upon all parties to this case and to Case Number 04-1285-C-GI, as well as upon all wireless carriers and resellers operating in the State of West Virginia as well as upon OnStar and similar companies that use wireless telephony in the provision of service to their customers and meet the West Virginia Code's definition of a commercial mobile radio service provider.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

CLW/JJW/klm  
go18532c.wpd

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 31  
RULES GOVERNING E911 FEES**

**§ 150-31-1. General.**

1.1. Scope. – These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia.

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

1.3. Filing Date. – June \_\_, 2006.

1.4. Effective Date. – July 1, 2006.

**§ 150-31-2. Definitions.**

2.1. Statutory definitions adopted.

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," and "technical and operational standards," set forth in W. Va. Code § 24-6-2.

2.2. PSC rule definitions adopted.

The Commission also adopts the definitions set forth in Section 2 of the Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25.

**§ 150-31-3. Billing and Collection of E911 Fees.**

3.1. Post-paid service.

Each CMRS provider shall, with each bill rendered, levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription. The lawful E911 fee shall be a separate line item on the billing statement.

3.2. Prepaid service.

3.2.1 Formula.

For each month during which an account is active, CMRS service providers shall calculate the amount owed for prepaid service by multiplying the number of active customer days for that month by the amount of the current statutory fee divided by 30.

### 3.2.2. Active customer day.

As used in this section, an "active customer day" is a day, from activation to expiration, inclusive, associated with a prepaid service card, account or functional equivalent, which has been activated with a West Virginia NPA (area code), regardless of the amount of actual time or usage units left on the prepaid service card, account or functional equivalent, provided that no prepaid service card, account or functional equivalent shall be considered to have more than 30 active customer days for any month and that each renewal and extension shall be treated the same as is done for a new purchase.

### 3.3 Waivers.

#### 3.3.1 Permanent or limited duration waivers.

A CMRS provider may petition the Commission for permission to use an alternate method to calculate the amount of E911 fees due to be remitted to the Commission. Any such petition must 1) be verified, 2) provide good cause why the CMRS provider should be permitted to use a different method, 3) state the duration for which the waiver is requested, and 4) state the alternate method by which the CMRS provider proposes to calculate the amount of fees it remits to the PSC.

#### 3.3.2. Initial emergency waivers.

Upon filing a verified letter no later than July 17, 2006, in which the CMRS provider 1) states that it has already remitted fees to the PSC, or that it is remitting fees to the PSC simultaneously with the filing of the waiver petition, 2) states that it will continue to remit such fees on a going-forward basis, as required by law, 3) sets forth the alternate method by which the CMRS provider calculates the amount of fees it remits to the PSC, 4) sets forth good cause to permit the CMRS provider to use the alternate method, and 5) sets forth the duration for which the waiver is requested, the PSC will grant an initial emergency waiver. The initial emergency waiver will allow the alternate method to remain in effect until the PSC completes its full review of any such application, or until further Commission order. Any CMRS provider filing for an initial emergency waiver under this section does not also need to file for a permanent or limited duration waiver under the preceding section.

## § 150-31-4. Remission of E911 Fees to Commission.

### 4.1. When remission is due to PSC.

By no later than the 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. If the payment is mailed, the postmark shall be used as proof when the payment was remitted. If the payment is made electronically, the date the payment is sent, as specified by the software used, shall be used as proof of when the payment was remitted.

#### Examples:

Monthly E911 fee appears as line item on post-paid subscriber's bill  
 Post-paid subscriber pays bill & remits the monthly E911 fee to the CMRS provider on 9/15/06  
 CMRS provider remits the monthly \$3.00 E911 fee to the PSC by 10/17/06

150CSR31

Prepaid customer activates 45 days service on 9/15/06

$$\frac{15 \times \$3}{30} = \frac{\$45}{30} = \$1.50$$

$$\frac{30 \times \$3}{30} = \frac{\$90}{30} = \$3$$

CMRS provider remits \$1.50 to PSC by 10/17/06      CMRS provider remits \$3 to PSC by 11/17/06  
CMRS provider chooses how to collect the E911 fee from its subscriber

4.2. Form for fee remittals.

CMRS providers shall use P.S.C. W. Va. Form No. WLF-1, or a reasonable functional equivalent, when remitting net 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.

4.3. Address to remit the net fees.

The net E911 fees shall be remitted to:

Public Service Commission of West Virginia  
Administrative Services Division  
P.O. Box 812  
Charleston, West Virginia 25323

or

[executive\\_director\\_e911@psc.state.wv.us](mailto:executive_director_e911@psc.state.wv.us)

Information about how to remit fees electronically may also be obtained through this email address.

4.4. E911 remittals may be net of billing/collection fee.

For post-paid service, 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. For prepaid service, each CMRS provider shall comply with the prepaid service fee rules set forth above. Each month before remitting the E911 fees to the Commission, for both prepaid and post-paid service, CMRS providers may retain three percent (3%) of the E911 fees as a billing and collection fee.

4.5. Same remission rules for prepaid and post-paid service.

For prepaid and post-paid service, the same fee remission rules apply.

4.6. Partial payments on post-paid subscriptions.

If a subscriber remits less than the entire amount charged for post-paid service, the partial payment shall first be applied to the monthly wireless E911 fee amount, at the current lawful rate for the E911 fee.

Example:

If a customer pays \$20 on a \$65 bill on 8/1/06, \$3 will be applied to the monthly E911 fee and \$17 will be applied to the bill for wireless services.

**§ 150-31-5. Adjustments.**

5.1. Authority to resolve disputes

The Public Service Commission has been empowered to resolve any conflict between providers, county commissions and emergency telephone systems.

5.2. Over/under payments

5.2.1. CMRS petitions

If a CMRS provider should discover that an amount above or below that which is required by law has been remitted to the Commission, the CMRS provider should, by petition, forthwith notify the Commission of the overpayment or forthwith remit the overdue amount to the Commission.

5.2.2. Other petitions

The Commission would also entertain petitions from third parties or Commission Staff, or upon its own motion, regarding E911 fees which have not been properly remitted.

5.2.3. Hardship waivers

If hardship results from the application of this rule, or if unusual difficulty is involved in immediately complying with it, or upon other good cause shown, application may be made to the Commission for a temporary waiver of the requirement to forthwith remit an overdue amount. A verified petition for a waiver must 1) set forth a proposed timetable for the overdue amount to be remitted, and 2) show good cause why the Commission should grant the hardship waiver and/or explain the hardship or unusual difficulty.

5.3. Content of petitions

Any petitions filed under this rule must clearly explain what happened and specify any action that is requested of the Commission. Any petition must be verified.

5.4. Credits in lieu of refunds.

Recognizing that the Commission is only a conduit of emergency 911 fees, in cases of overpayments, credits against future payments may be approved by the Commission in lieu of refunds.

5.5. Time period for credits.

Credits may be distributed over a future period equal in length to the amount of time during which the overpayments were made.

5.6. Interest

No interest shall accrue on overpayments.

5.7. Time period to request credits

As the emergency 911 systems are developed, it is anticipated that each county will either expend or encumber the emergency 911 fees during the fiscal year within which they are received. Therefore, no credits

will be approved by the Commission for commercial mobile radio service providers who request refunds more than one fiscal year beyond the date of the overpayment.

5.8. Audits

Upon request from the Commission, a CMRS provider shall make available all books and records to permit the Commission, its Staff, or its designee, to conduct an audit relevant to the CMRS provider's compliance with West Virginia law. The Commission recognizes that, pursuant to W. Va. Code § 24-6-11, the Legislature has declared that information pertaining to the number of customers and revenues collected by CMRS providers is not subject to disclosure under the state Freedom of Information Act, Chapter 29B-1-1 et. seq.

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
WIRELESS E-911 SUBSCRIBER FEE REPORT**

P.S.C. W. Va. Form No. WLF-1 (Rev. July 1, 2006)

MONTH OF \_\_\_\_\_, 20\_\_\_\_

**Must remit to WVPSA by no later than the 17<sup>th</sup>, or the first business day thereafter**

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FEIN: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DBA (IF APPLICABLE): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

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NUMBER OF FEES COLLECTED\* \_\_\_\_\_

AMOUNT COLLECTED \$ \_\_\_\_\_

LESS 3% ADMINISTRATIVE FEE \$ \_\_\_\_\_

NET PAYABLE TO PSC \$ \_\_\_\_\_

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MAIL PAYMENT TO: Public Service Commission of West Virginia  
Administrative Services Division  
PO Box 812  
Charleston, WV 25323

OR, TO FILE ELECTRONICALLY: [executive\\_director\\_e911@psc.state.wv.us](mailto:executive_director_e911@psc.state.wv.us)

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

\* For prepaid service cards, accounts and functional equivalents, the "NUMBER OF FEES COLLECTED" is calculated by dividing the total number of active customer days associated with the reporting month by thirty (30).

**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 30th day of June, 2006.

GENERAL ORDER NO. 187.32

IN THE MATTER OF Rules Governing E911 Fees,  
150 C.S.R. Series 31, to provide further guidance  
regarding E911 fee requirements.

**NOTICE OF RULEMAKING, HEARING, & COMMENT PERIOD**

On June 30, 2006, the Public Service Commission of West Virginia started a rulemaking to promulgate a new series of rules, Rules Governing E911 Fees, 150 C.S.R. Series 31, to provide further guidance regarding E911 fee requirements. The Commission recognized that E911 fee rules remain in the Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25. By issuing rules in the new Series 31, the Commission said that it intended that the new rules control. Once final rules are in place via the Series 31 process, the Commission will return to Series 25 to resolve any outdated or repetitious provisions. Eventually the Commission intends to consolidate the two rule series.

The Legislature recently amended the statutory definition of commercial mobile radio service provider to expressly state its applicability to prepaid and post-paid wireless service providers. In spite of Commission orders to the contrary, some carriers have asserted that they have not been obligated to remit fees until there was clear statutory authority that prepaid services are subject to the E911 fees. Also, in spite of Commission orders to the contrary, some carriers have asserted that they are not obligated to remit any E911 fees for prepaid services until the Commission issues revised rules regarding E911 fees. Therefore, recognizing that E911 services are essential to the health, safety and welfare of West Virginia citizens, and that E911 services are funded by E911 fees, the Commission also proposes to implement these new rules on an emergency basis, effective July 1, 2006.

Anyone interested may obtain a copy of the new rules from Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323. Written comments on them may be filed with the Commission's Executive Secretary, according to this schedule:

Deadline for written initial comments	August 10, 2006, 4:00 p.m.
Deadline for written reply comments	August 16, 2006, 4:00 p.m.

Additionally, the Commission has scheduled this matter for hearing to be held on August 17, 2006 at 9:30 a.m. in the HMC Hearing Room, Public Service Commission

Building, 201 Brooks Street, Charleston, West Virginia for the purpose of allowing argument and testimony by interested entities. Any parties wishing to intervene in this matter for the purpose of appearing at the hearing should file to intervene within ten (10) days of the date of this publication.

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

### **Brief Summary of Rule**

The Commission is proposing to issue *Rules Governing E911 Fees*, 150 C.S.R. Series 31, to provide further guidance regarding E911 fees.

The Legislature recently amended the statutory definition of commercial mobile radio service provider to expressly state its applicability to prepaid and post-paid wireless service providers. In spite of Commission orders to the contrary, some carriers have asserted that they have not been obligated to remit fees until there was clear statutory authority that prepaid services are subject to the E911 fees. Also, in spite of Commission orders to the contrary, some carriers have asserted that they are not obligated to remit any E911 fees for prepaid services until the Commission issues revised rules regarding E911 fees. Therefore, recognizing that E911 services are essential to the health, safety and welfare of West Virginia citizens, and that E911 services are funded by E911 fees, the Commission proposes to implement these new rules on an emergency basis, effective July 1, 2006.

The Commission also recognizes that E911 fee rules remain in the *Rules and Regulations Governing Emergency Telephone Service*, 150 C.S.R. Series 25. By issuing rules in the new Series 31, the Commission said that it intended that the new rules control. Once final rules are in place via the Series 31 process, the Commission will return to Series 25 to resolve any outdated or repetitious provisions. Eventually the Commission intends to consolidate the two rule series.

### **Statement of Circumstances Which Require the Rule**

The Legislature recently amended the statutory definition of commercial mobile radio service provider to expressly state its applicability to prepaid and post-paid wireless service providers. In spite of Commission orders to the contrary, some carriers have asserted that they have not been obligated to remit fees until there was clear statutory authority that prepaid services are subject to the E911 fees. Also, in spite of Commission orders to the contrary, some carriers have asserted that they are not obligated to remit any E911 fees for prepaid services until the Commission issues revised rules regarding E911 fees. Therefore, recognizing that E911 services are essential to the health, safety and welfare of West Virginia citizens, and that E911 services are funded by E911 fees, the Commission proposes to implement these new rules on an emergency basis, effective July 1, 2006.

**FISCAL NOTE FOR PROPOSED RULES**Rule Title: **150 C.S.R. 31. Rules Regarding E911 Fees**Type of Rule:  Exempt Legislative  Interpretive  Procedural  EmergencyAgency: **Public Service Commission of West Virginia**Address: **201 Brooks Street****Charleston, West Virginia 25301**Phone Number: **Cindy Wilson**Email: **cwilson@psc.state.wv.us****Fiscal Note Summary**

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

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission already has in place a system to receive the E911 fees, and several CMRS carriers already submit such fees. The rules provide a formula for carriers to calculate the amounts to be remitted, as well as offer carriers an option of seeking approval of calculations which are relevant to the carrier's method of providing service.

This rulemaking will increase the flow of E911 fees to local emergency service providers, the State Police and the Wireless Tower Access Assistance Fund.

**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.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
1. Estimated Total Revenues			

Rule Title: **150 C.S.R. 31. Rules Regarding E911 Fees**

Rule Title: 150 C.S.R. 31. Rules Regarding E911 Fees

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

**MEMORANDUM**

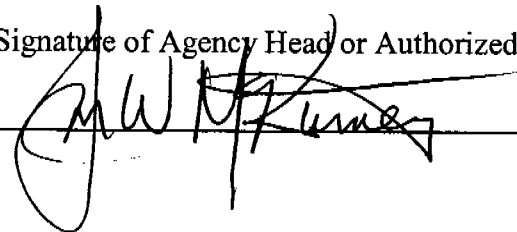
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Although the PSC has had rules regarding E911 fees in place for several years, some CMRS providers have not remitted those fees, asserting that prepaid services were outside of the statute or that the PSC rules were not sufficient to require the fees to be remitted. Following a recent statutory amendment, the Commission has proposed revised rules to provide further guidance to Commercial Mobile Radio Service providers regarding E911 fees.

All wireless subscribers in West Virginia, as a matter of law, are subject to the E911 fees. The rules does not change this obligation. The rule addresses the mechanism by which CMRS providers remit those fees to the Public Service Commission, for pass-through to the emergency service providers.

Date: June 30, 2006

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 31  
RULES GOVERNING E911 FEES

FILED

2006 JUN 30 P 1:54

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§ 150-31-1. General.**

1.1. Scope. – These rules govern the billing, collection, and remission of wireless enhanced 911 monthly fees by telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia.

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

1.3. Filing Date. – June \_\_, 2006.

1.4. Effective Date. – July 1, 2006.

**§ 150-31-2. Definitions.**

2.1. Statutory definitions adopted.

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," and "technical and operational standards," set forth in W. Va. Code § 24-6-2.

2.2. PSC rule definitions adopted.

The Commission also adopts the definitions set forth in Section 2 of the Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25.

**§ 150-31-3. Billing and Collection of E911 Fees.**

3.1. Post-paid service.

Each CMRS provider shall, with each bill rendered, levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription. The lawful E911 fee shall be a separate line item on the billing statement.

3.2. Prepaid service.

3.2.1 Formula.

For each month during which an account is active, CMRS service providers shall calculate the amount owed for prepaid service by multiplying the number of active customer days for that month by the amount of the current statutory fee divided by 30.

3.2.2. Active customer day.

As used in this section, an "active customer day" is a day, from activation to expiration, inclusive, associated with a prepaid service card, account or functional equivalent, which has been activated with a West Virginia NPA (area code), regardless of the amount of actual time or usage units left on the prepaid service card, account or functional equivalent, provided that no prepaid service card, account or functional equivalent shall be considered to have more than 30 active customer days for any month and that each renewal and extension shall be treated the same as is done for a new purchase.

3.3 Waivers.

3.3.1 Permanent or limited duration waivers.

A CMRS provider may petition the Commission for permission to use an alternate method to calculate the amount of E911 fees due to be remitted to the Commission. Any such petition must 1) be verified, 2) provide good cause why the CMRS provider should be permitted to use a different method, 3) state the duration for which the waiver is requested, and 4) state the alternate method by which the CMRS provider proposes to calculate the amount of fees it remits to the PSC.

3.3.2. Initial emergency waivers.

Upon filing a verified letter no later than July 17, 2006, in which the CMRS provider 1) states that it has already remitted fees to the PSC, or that it is remitting fees to the PSC simultaneously with the filing of the waiver petition, 2) states that it will continue to remit such fees on a going-forward basis, as required by law, 3) sets forth the alternate method by which the CMRS provider calculates the amount of fees it remits to the PSC, 4) sets forth good cause to permit the CMRS provider to use the alternate method, and 5) sets forth the duration for which the waiver is requested, the PSC will grant an initial emergency waiver. The initial emergency waiver will allow the alternate method to remain in effect until the PSC completes its full review of any such application, or until further Commission order. Any CMRS provider filing for an initial emergency waiver under this section does not also need to file for a permanent or limited duration waiver under the preceding section.

**§ 150-31-4. Remission of E911 Fees to Commission.**

4.1. When remission is due to PSC.

By no later than the 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. If the payment is mailed, the postmark shall be used as proof when the payment was remitted. If the payment is made electronically, the date the payment is sent, as specified by the software used, shall be used as proof of when the payment was remitted.

Examples:

Monthly E911 fee appears as line item on post-paid subscriber's bill  
Post-paid subscriber pays bill & remits the monthly E911 fee to the CMRS provider on 9/15/06  
CMRS provider remits the monthly \$3.00 E911 fee to the PSC by 10/17/06

Prepaid customer activates 45 days service on 9/15/06

$$\frac{15 \times \$3}{30} = \frac{\$45}{30} = \$1.50 \qquad \frac{30 \times \$3}{30} = \frac{\$90}{30} = \$3$$

CMRS provider remits \$1.50 to PSC by 10/17/06      CMRS provider remits \$3 to PSC by 11/17/06  
 CMRS provider chooses how to collect the E911 fee from its subscriber

4.2. Form for fee remittals.

CMRS providers shall use P.S.C. W. Va. Form No. WLF-1, or a reasonable functional equivalent, when remitting net 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.

4.3. Address to remit the net fees.

The net E911 fees shall be remitted to:

Public Service Commission of West Virginia  
 Administrative Services Division  
 P.O. Box 812  
 Charleston, West Virginia 25323

or

executive\_director\_e911@psc.state.wv.us

Information about how to remit fees electronically may also be obtained through this email address.

4.4. E911 remittals may be net of billing/collection fee.

For post-paid service, 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. For prepaid service, each CMRS provider shall comply with the prepaid service fee rules set forth above. Each month before remitting the E911 fees to the Commission, for both prepaid and post-paid service, CMRS providers may retain three percent (3%) of the E911 fees as a billing and collection fee.

4.5. Same remission rules for prepaid and post-paid service.

For prepaid and post-paid service, the same fee remission rules apply.

4.6. Partial payments on post-paid subscriptions.

If a subscriber remits less than the entire amount charged for post-paid service, the partial payment shall first be applied to the monthly wireless E911 fee amount, at the current lawful rate for the E911 fee.

Example:

If a customer pays \$20 on a \$65 bill on 8/1/06, \$3 will be applied to the monthly E911 fee and \$17 will be applied to the bill for wireless services.

**§ 150-31-5. Adjustments.**

5.1. Authority to resolve disputes

The Public Service Commission has been empowered to resolve any conflict between providers, county commissions and emergency telephone systems.

5.2. Over/under payments

5.2.1. CMRS petitions

If a CMRS provider should discover that an amount above or below that which is required by law has been remitted to the Commission, the CMRS provider should, by petition, forthwith notify the Commission of the overpayment or forthwith remit the overdue amount to the Commission.

5.2.2. Other petitions

The Commission would also entertain petitions from third parties or Commission Staff, or upon its own motion, regarding E911 fees which have not been properly remitted.

5.2.3. Hardship waivers

If hardship results from the application of this rule, or if unusual difficulty is involved in immediately complying with it, or upon other good cause shown, application may be made to the Commission for a temporary waiver of the requirement to forthwith remit an overdue amount. A verified petition for a waiver must 1) set forth a proposed timetable for the overdue amount to be remitted, and 2) show good cause why the Commission should grant the hardship waiver and/or explain the hardship or unusual difficulty.

5.3. Content of petitions

Any petitions filed under this rule must clearly explain what happened and specify any action that is requested of the Commission. Any petition must be verified.

5.4. Credits in lieu of refunds.

Recognizing that the Commission is only a conduit of emergency 911 fees, in cases of overpayments, credits against future payments may be approved by the Commission in lieu of refunds.

5.5. Time period for credits.

Credits may be distributed over a future period equal in length to the amount of time during which the overpayments were made.

5.6. Interest

No interest shall accrue on overpayments.

5.7. Time period to request credits

As the emergency 911 systems are developed, it is anticipated that each county will either expend or encumber the emergency 911 fees during the fiscal year within which they are received. Therefore, no

credits will be approved by the Commission for commercial mobile radio service providers who request refunds more than one fiscal year beyond the date of the overpayment.

5.8. Audits

Upon request from the Commission, a CMRS provider shall make available all books and records to permit the Commission, its Staff, or its designee, to conduct an audit relevant to the CMRS provider's compliance with West Virginia law. The Commission recognizes that, pursuant to W. Va. Code § 24-6-11, the Legislature has declared that information pertaining to the number of customers and revenues collected by CMRS providers is not subject to disclosure under the state Freedom of Information Act, Chapter 29B-1-1 et. seq.

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
WIRELESS E-911 SUBSCRIBER FEE REPORT**

P.S.C. W. Va. Form No. WLF-1 (Rev. July 1, 2006)

MONTH OF \_\_\_\_\_, 20\_\_\_\_

**Must remit to WVPC by no later than the 17<sup>th</sup>, or the first business day thereafter**

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FEIN: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DBA (IF APPLICABLE): \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

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NUMBER OF FEES COLLECTED*	_____
AMOUNT COLLECTED	\$ _____
LESS 3% ADMINISTRATIVE FEE	\$ _____
NET PAYABLE TO PSC	\$ _____

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MAIL PAYMENT TO: Public Service Commission of West Virginia  
Administrative Services Division  
PO Box 812  
Charleston, WV 25323

OR, TO FILE ELECTRONICALLY: executive\_director\_e911@psc.state.wv.us

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

\* For prepaid service cards, accounts and functional equivalents, the "NUMBER OF FEES COLLECTED" is calculated by dividing the total number of active customer days associated with the reporting month by thirty (30).

## **RELEVANT FEDERAL STATUTES OR REGULATIONS**

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