



**FISCAL NOTE FOR PROPOSED RULES**

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

Type of Rule:  Exempt Legislative  Interpretive  Procedural  Emergency

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street  
Charleston, West Virginia 25301

Phone Number: Cindy Wilson, 340-0302 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.

E911 fees flow to local emergency service providers, the State Police and the Wireless Tower Access Assistance Fund. New statutes (Senate Bill 552) require the vendors of prepaid wireless services to collect the E911 fees from prepaid subscribers and to forward those amount to the State Tax Commissioner. **Repealing** Series 31 addresses the process by which the fees are collected from prepaid wireless subscribers, but it does not affect the amount of E911 fees that prepaid wireless subscribers are required to pay.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

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

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

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**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.

New statutes require the vendors of prepaid wireless services to collect the E911 fees from prepaid subscribers and to forward those amount to the State Tax Commissioner. This rulemaking is to repeal Series 31, which required a different process to collect those fees. The Commission expects the E911 fees to be collected as part of the sales tax process, which is an ordinary function of the Tax Commissioner's operations. The law requires the Tax Commissioner to remit the collected fees to the Public Service Commission to be disbursed.

Date: July 18, 2008

Signature of Agency Head or Authorized Representative

*Michael A. Albert*

### **Brief Summary of Rule**

Series 31 requires prepaid cellular *providers* to collect and remit E911 fees from their subscribers, and statutes were enacted in 2008 (Senate Bill 552) that require *vendors* of prepaid cellular services, not prepaid cellular providers, to collect the E911 fees with each prepaid purchase and to forward those fees to the State Tax Commissioner, who will forward them to the Commission. The Commission is **repealing** Series 31 to conform its rules with the new statutes.

### Statement of Circumstances Which Require the Rule

The Legislature recently amended the statutes relating to E911 fees (Senate Bill 552) payable by prepaid wireless subscribers. The Commission is **repealing** Series 31 to conform its rules with the new statutes.



## Public Service Commission

Richard E. Hitt, General Counsel

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

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

July 18, 2008

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 Judy:

Enclosed for filing is a copy of the proposed rules in the referenced series. Included is a notice of a comment period, a fiscal note; a summary of the rule, and the statement of circumstances. The notice of comment period is signed by the Chairman of the Commission, which is not part of the cabinet structure. I have also enclosed a copy of the Commission's order directing that this proposed rule be filed with your office.

If there are any problems or questions, please bring them to my attention. Thank you for your consideration.

Sincerely,

Richard E. Hitt  
General Counsel

REH/sek  
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 18<sup>th</sup> day of July, 2008.

GENERAL ORDER NO. 187.32 (REOPENED)  
IN THE MATTER OF Rules Governing E911 Fees,  
150 C.S.R. Series 31, to provide further guidance  
regarding E911 fee requirements.

GENERAL ORDER NO. 187.35  
IN THE MATTER OF Rules Governing Emergency  
Telephone Service, 150 C.S.R. Series 25, to revise the  
rules relating to E911 fees for prepaid cellular service.

**COMMISSION ORDER**

Following the enactment of legislation in 2008 regarding the collection and remittance of enhanced 911 fees for prepaid cellular service, the Commission reopens General Order Number 187.32 to consider repealing the Commission's Rules Governing E911 Fees, 150 C.S.R. Series 31, and institutes General Order 187.35 to promulgate proposed revisions to the Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, regarding the collection and remittance of enhanced 911 fees for prepaid cellular service.

**BACKGROUND**

Rules regarding enhanced 911 (E911) fee requirements for landline and wireless telecommunications services have been in effect since March 6, 1998. See Rules and Regulations Governing Emergency Telephone Service, 150 C.S.R. Series 25 (Emergency Telephone Service Rules).

In 2006, the Legislature enacted several provisions concerning E911 services, and on June 30, 2006, the Commission promulgated proposed rules to address the collection and remittance of E911 fees for prepaid cellular service as a new series, Series 31:

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.

Gen. O. No. 187.32, Comm'n O. p. 5 (June 30, 2006).

On November 28, 2006, the Commission issued final Rules Governing E911 Fees as Series 31, which became effective January 27, 2007. Those rules required commercial mobile radio service providers (CMRS) to remit 10 cents a day for each day that prepaid customer service is provided. Recognizing that many wireless providers offer service in longer increments, however, the Commission simultaneously established a waiver provision. Thus, if a CMRS provider offered prepaid service by the month and preferred to calculate \$3 a month, instead of a daily amount, the CMRS provider could request permission to do so. Moreover, if a CMRS provider preferred a different approach for its particular prepaid business model, that CMRS provider could also petition for a waiver.

On March 26, 2007, TracFone Wireless, Inc. filed a petition for appeal with the West Virginia Supreme Court of Appeals, seeking the Court's review of the Commission's issuance of Series 31. See TracFone Wireless, Inc. v. Public Serv. Comm'n, S. Ct. Docket No. 070922.

Thereafter, TracFone and the Commission's General Counsel advised the Court that the parties were negotiating a settlement that addressed TracFone's challenge to the new rules. They asked the Court to hold TracFone's Petition for Appeal in abeyance, and the Court granted that motion on May 16, 2007.

In 2008, the Legislature substituted the general consumer sales and service tax for E911 fees for prepaid cellular service. See W. Va. Code §§11-15-2(17), 11-15-2(13), 11-15-30(d), 24-6-2(7) & 24-6-6b(h); Senate Bill 552. Effective July 1, 2008, vendors of prepaid cellular services collect the E911 fees with each purchase and remit those fees to the West Virginia State Tax Commissioner, who forwards those fees to the Commission.

## **DISCUSSION**

### *Repeal of Rules Governing E911 Fees, Series 31*

When the Commission issued Series 31, those rules addressed E911 fees for prepaid wireless service exclusively and the Commission advised that eventually the E911 fee provisions in Series 25 and Series 31 would be consolidated. The Commission's Rules Governing E911 Fees, 150 C.S.R. Series 31, are no longer valid as a result of the 2008 legislation regarding E911 fees for prepaid cellular service. Because the law establishes a different process for E911 fees for prepaid wireless

service, it is reasonable for the Commission to reopen General Order Number 187.32 to consider repealing Series 31 entirely and returning all E911 fee rules to Series 25. See Attachment A.

*Revision of Rules Governing Emergency Telephone Service, Series 25*

To conform the Commission's rules with the 2008 statutes regarding E911 fees for prepaid cellular service, the Commission should amend its Emergency Telephone Service Rules, Series 25:

P. 1 Title – delete “and Regulations,” consistent with the Commission's recent simplification of other rule titles.

Rule 2.1 – incorporate 2008 statutory definitions relating to prepaid cellular service.

Pp. 7-8 Rule 4.1 – consolidate the provisions relating to post-paid service.

Rule 4.2 – add a section for prepaid service, stating that general consumer sales and service tax is applied in lieu of E911 fee.

Rule 5.1 – consolidate the provisions relating to post-paid service.

Rule 5.2 – add a section for remission of E911 amounts for prepaid service.

P. 11 Rule 12 – clarify that the rule relating to uncollectibles applies to post-paid service.

See Attachment B. As part of this rule-making the Commission will seek guidance in the form of written comments.

This rule-making is designed to conform the Commission's rules to statutes recently enacted by the Legislature and not to implement any new Commission policy or practice. Accordingly, the Commission is not scheduling a hearing at this time. Any commentor who requests a hearing on the proposed changes must state why a hearing should be conducted in this matter.

**FINDINGS OF FACT**

1. The Commission's Rules Governing E911 Fees, 150 C.S.R. Series 31, exclusively address E911 fees for prepaid cellular service.

2. The Commission's Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, also address E911 fees.

3. When Series 31 was adopted, the Commission advised that it would consider consolidating Series 25 and 31 in the future.

4. In 2008, the Legislature enacted statutes revising the process for E911 fees for prepaid cellular service. See Senate Bill 552.

### **CONCLUSIONS OF LAW**

1. The Commission's Rules Governing E911 Fees, 150 C.S.R. Series 31, are no longer valid as a result of the 2008 legislation.

2. Because Series 31 must, at a minimum, be amended, it is reasonable to consider returning the E911 fee provisions for prepaid cellular service to Series 25.

### **ORDER**

IT IS THEREFORE ORDERED that General Order Number 187.32 is reopened and General Order 187.35 is instituted.

IT IS FURTHER ORDERED that the attached Rules Governing E911 Fees, 150 C.S.R. Series 31, are promulgated as Commission-proposed repeal of legislative rules. See Attachment A.

IT IS FURTHER ORDERED that the attached amendments to the Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, are promulgated as Commission-proposed legislative rules. See Attachment B.

IT IS FURTHER ORDERED that the following procedural schedule is adopted for addressing both the proposed repeal of Series 31, Rules Governing E911 Fees, and the proposed amendments to Series 25, Rules Governing Emergency Telephone Service:

Deadline for written initial comments 4 p.m., August 20, 2008

Deadline for written reply comments 4 p.m., August 27, 2008

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

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause publication, one time, of the notice that appears in Attachment C 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.

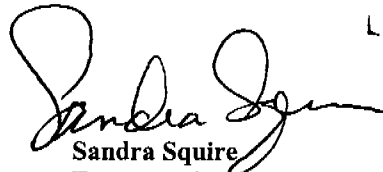
IT IS FURTHER ORDERED that the Commission's Executive Secretary shall file a copy of this order and the rules with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause a copy of all orders in these cases to be posted on the Commission's webpage.

IT IS FURTHER ORDERED that a copy of all orders in this case shall be served upon the West Virginia Tax Commissioner.

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 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/sek  
go18732cf.wpd

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**FILED**

2008 JUL 18 PM 3: 14

**SERIES 31  
RULES GOVERNING E911 FEES**

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. — November 28, 2006.~~

~~1.4. Effective Date. — January 27, 2007.~~

**~~§ 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), and which has useable available calling time during the month for which the applicable E911 fee is being calculated. 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 Non-emergency 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 the date of the first E911 fee remittance following the effective date of these rules, 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. The Commission will consider any emergency filing made under this rule also as a filing under Rule 3.3.1, so long as the applicant advises the Commission how long the non-emergency waiver is proposed to be in effect.~~

~~§ 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:~~

~~Post-paid service~~

- ~~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 service~~

~~Prepaid customer activates 45 days service on 9/15/06 and service remains active for 45 days~~

<del>15 x \$3</del>	<del>\$45</del>	<del>30 x \$3</del>	<del>\$90</del>
<del>30</del>	<del>30</del>	<del>30</del>	<del>30</del>
	<del>\$1.50</del>		<del>\$3</del>

~~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 WVPSC by no later than the 17<sup>th</sup>, or the first business day thereafter~~

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

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

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

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

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

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

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

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

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

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

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

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

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

\* 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).

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 25  
RULES AND REGULATIONS GOVERNING  
EMERGENCY TELEPHONE SERVICE

§150-25-1. General.

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

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

1.3. Filing Date. -- July 18 ~~May 5~~, 2008.

1.4. Effective Date. -- \_\_\_\_\_ July 4, 2008.

§150-25-2. Definitions.

2.1. For purposes of this rule, the Commission adopts the definitions of “commercial mobile radio service provider or CMRS provider,” “county answering point,” “emergency services organization,” “emergency service provider,” “emergency telephone system,” “enhanced emergency telephone system,” “public agency,” “public safety unit,” “telephone company,” “comprehensive plan,” “technical and operational standards,” set forth in W. Va. Code §24-6-2. Regarding prepaid cellular service, the Commission adopts the definitions of “prepaid wireless calling service” in W. Va. Code § 11-15-2 and “sale” in W. Va. Code § 11-15-2. In addition, unless otherwise specified in this rule, the Commission adopts the definitions set forth in section 1.7 of the Commission’s *Rules and Regulations for the Government of Telephone Utilities*, C.S.R. § 150-6-1.7.

2.2. “Commission” -- The Public Service Commission of West Virginia.

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

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

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

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

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

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

2.8. "E911"-- Enhanced 911.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **3.1. Creation of emergency telephone systems.**

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

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

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

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

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

### 3.2. Establishment of emergency telephone systems.

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

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

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

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

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

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

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

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

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

### 3.3. Reporting requirements of the telephone utility.

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

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

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

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

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

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

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

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

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

4.1. Post-paid service – Each CMRS post-paid provider shall, with each bill rendered, levy an E911 fee, at the current statutory rate, on each valid retail CMRS subscription. ~~4.2.~~ The applicable E911 fee shall be a separate line item on the billing statement provided to each valid post-paid retail CMRS subscription by CMRS providers.

4.2. Pre-paid service – Beginning July 1, 2008, prepaid wireless calling service is subject to the general consumer sales and service tax, in lieu of the wireless enhanced 911 fee.

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

5.1. Post-paid service – 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 collected, after retaining three percent (3%) for the billing or collection of the E911 fee, during the preceding month or billing period. If remitted by mail, the postmark shall be used as proof of compliance. If remitted electronically, the date specified by the software used shall be used as proof of compliance. The fees shall be remitted to:

By mail:

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

Electronically:

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

5.1.a.2. Form to be used with fee remittals. CMRS providers shall use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting E911 fees to the Commission. All information requested by WLF-1 shall be provided. This may be done electronically, at the discretion of the

CMRS provider.

5.1.b.3. Each CMRS provider shall remit to the Commission such E911 fees actually collected by the CMRS provider. Such E911 fees remitted shall include any previously unpaid E911 fees collected by the CMRS provider during the preceding monthly billing period.

5.1.c.4. The first 3.00, or the monthly wireless E911 fee amount as such may subsequently be modified by force of law, collected on each valid retail CMRS subscription, or such E911 fee as may be respecified by the Commission in accordance with these rules, shall be attributed to payment of the applicable monthly E911 fee.

5.2. Pre-paid service – Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Commission the proceeds of the general consumer sales and service tax collected from prepaid wireless calling service in the preceding month.

5.2.a. For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to 1/12th of the wireless enhanced 911 fees collected from prepaid wireless calling service under W. Va. Code § 24-6-6b during the period beginning on July 1, 2007, and ending on June 30, 2008.

5.2.b. Beginning on July 1, 2009, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Commission under W. Va. Code § 24-6-6b during the previous 12 months.

#### **§150-25-6. Disbursement of E911 Fees.**

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

6.1.a. Five percent of the wireless enhanced 911 fee money received by the Public Service Commission each month shall be deposited in the fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system.

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

6.1.c. Each month, the West Virginia State Police shall be provided an amount equal to ten cents from each fee payment received in the previous month.

6.1.d. Disbursement ratios used pursuant to 6.5 herein shall be recalculated by the Commission's Administrative Services Division within thirty calendar days of the availability of updated decennial county population census data. Such recalculated disbursement ratios shall be effective on July 1 immediately following such recalculation.

6.2. Counties which enact an E911 ordinance after July 11, 1997, or which enacted an E911

ordinance on or after July 11, 1992 but before July 11, 1997, shall receive one percent (1%) of the remainder of the monthly E911 fee revenues for a period of five (5) years following the adoption of the ordinance. After the fifth anniversary of the date of adoption of the ordinance, each such county shall receive only that county's portion of the monthly E911 fee revenues being disbursed on a pro rata basis, as set forth in 6.3., 6.4 and 6.5 herein.

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

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

6.5. From any moneys remaining each county shall receive a pro rata portion, based on that county's percentage of the state's total population, as determined in the most recent decennial census.

6.6. Each county shall receive its share of the wireless E911 fee revenue for use in the same manner as the E911 fee revenues received by the county pursuant to its E911 ordinances.

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

The Commission shall cause to be established an account for all monthly E911 fee revenues remitted to the Commission. Said account shall serve as a repository for such fee revenues until, in accordance with the quarterly disbursement schedule set forth in 8.2 herein, such revenues are disbursed to each county.

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

8.1. Disbursement of monthly E911 fee revenues shall be made, by check or appropriate financial equivalent, to each county by the Commission by the 10th day of the month in accordance with the schedule set forth in 8.2 herein.

8.2. Monthly E911 fee revenues shall be disbursed, either directly, by check or appropriate financial equivalent, to counties as follows:

8.2.a. In the months of January, April, July and October, payments shall be issued to the following counties: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson and Jefferson.

8.2.b. In the months of February, May, August and November, payments shall be issued to the following counties: Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton and Pleasants.

8.2.c. In the months of March, June, September, and December, payments shall be issued to the following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming.

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

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

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

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

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

9.3.1. Legal name of CMRS provider;

9.3.2. All business names used by the CMRS provider;

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

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

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

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

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

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

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

10.3. Beginning in 1999, and for each subsequent year, the line count data shall be submitted by

February 15 and shall be for line counts as of January 1.

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

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

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

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

**§150-25-12. Uncollectibles.**

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

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

13.1 Projects.

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

13.1 .b. Application Filing. A project sponsor may file an application with the Commission's Executive Secretary at any time during Commission business hours. To be considered for funding from money accruing from the period January 1 through December 31 of the funding year, the project sponsor must file its application on or before November 15 of the funding year, provided that the initial funding year shall be the period from July 8, 2005 through December 31, 2005 and for funding from that funding year, the project sponsor must file its application on or before June 15, 2006.

13.1.c. Application Review. On or before July 31, 2006, the Tower Access Assistance Fund Review Committee will review all applications filed on or before June 15, 2006 and shall make a determination regarding each application. The Tower Access Assistance Fund Review Committee shall either recommend the approval of, in whole or in part, or the denial of funding for the project or request additional information if necessary to make a determination. The Tower Access Assistance Fund Committee shall rank all of those applications for which it recommends approval in order of funding preference. A copy of the determination by the Committee shall be sent to the Commission's Executive secretary and to the applicant. For applications made after June 15, 2006, the Tower Access Assistance Fund Review Committee will review the applications and make recommendations to the Commission, as described above, during the period

following the November 15, 2006 filing deadline and before December 31, 2006. This same procedure shall repeat with each calendar year, provided that, upon a positive vote at least six of its members, the Tower Access Assistance Fund Review Committee, for good cause shown, may treat an application in an expedited manner to be determined by the members. In all such instances of expedited treatment, the Commission shall have fourteen (14) days, from receipt of the Tower Access Assistance Fund Review Committee's expedited recommendation, in which to make its decision regarding such expedited recommendation.

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

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

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

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

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

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

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

## 13.2. Review Guidelines.

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

Committee shall consider the following:

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

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

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

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

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

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

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

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

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

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

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

### 13.3. Tower Access Assistance Fund Administration.

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

## Fund grant transactions.

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

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

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

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

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

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

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

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

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

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

## 13.4. Filing and Docketing of Applications.

13.4.a. Applications procedures. The project sponsor shall file an original and one copy of

the application with the Commission's Executive Secretary. That office shall record the filing using an appropriate designation methodology. The filing shall be distributed to the members of the Tower Access Assistance Fund Review Committee by the chairman of the Committee. Additional documents, correspondence, etc., associated with the filing shall be sent directly by the project sponsor to each of the members of the Tower Access Assistance Fund Review Committee and shall file one copy with the Commission's Executive Secretary. The Applicant shall, upon request of the chairman of the Tower Access Assistance Fund Review Committee, make electronic copies, in a format specified by that person, of all application documents available, including documents comprising the original application and documents filed subsequently.

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

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

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

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

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

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

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

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

**Must remit to WVPSC by no later than the 17th  
or the first business day thereafter**

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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

**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 18<sup>th</sup> day of July, 2008.

GENERAL ORDER NO. 187.32 (REOPENED)  
IN THE MATTER OF Rules Governing E911 Fees,  
150 C.S.R. Series 31, to provide further guidance  
regarding E911 fee requirements.

GENERAL ORDER NO. 187.35  
IN THE MATTER OF Rules Governing Emergency  
Telephone Service, 150 C.S.R. Series 25, to revise the  
rules relating to E911 fees for prepaid cellular service.

**NOTICE OF OPPORTUNITY TO COMMENT**

Legislation enacted in 2008 requires vendors of prepaid wireless telecommunications services to collect enhanced 911 fees at the time of purchase by prepaid subscribers and to forward those amounts to the State Tax Commissioner, who will remit the fees to the Public Service Commission to be disbursed. The Commission is considering changes to its Rules Governing E911 Fees, 150 C.S.R. Series 31, and its Rules Governing Emergency Telephone Service, 150 C.S.R. Series 25, to conform its rules to the new statutes.

Interested persons may file written initial comments by 4 p.m. August 20, 2008, and written reply comments by 4 p.m. August 27, 2008. All comments should be addressed to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, W. Va. 25323 and be marked with the case numbers listed above. All documents in these proceedings, including the proposed rule changes, may be viewed at the Commission's website, [www.psc.state.wv.us](http://www.psc.state.wv.us).

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**