

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

Form #7

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2008 OCT -8 PM 1:46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

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

CITE AUTHORITY: W.Va. Code §7-1-3cc(b)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

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

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 32

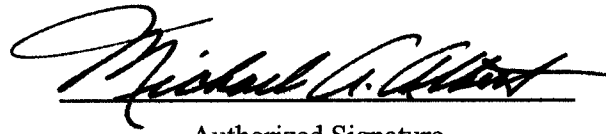
TITLE OF RULE BEING PROPOSED: Rules Governing Billing, Collection and Remission  
of E911 Fees by Providers of Voice over Internet Protocol Service.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42<sup>ND</sup> DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS: In 2006 the West Virginia Legislature recognized that county public service answer points ("PSAPs") have a vital need to obtain funding from Voice over Internet Protocol ("VoIP") subscribers by enacting S.B. No. 728, codified at W.Va. Code §7-1-3cc(b) that extends the county-imposed 911 fees to subscribers of VoIP service. However, the amended statute did not provide a framework for collecting the fees. The Legislature instead placed the authority to create rules and settle disputes regarding VoIP subscriber E911 fees with this Commission. In 2007, the Commission opened a General Investigation and appointed a task force of interested parties for the purpose of crafting rules. In 2008 the task force filed draft rules and unanimously recommended that the Commission adopt them as emergency rules. Until the rules are adopted VoIP providers lack guidance as to how to appropriately bill, collect and remit E911 fees. In the absence of rules, the respective responsibilities and obligations of PSAPs and VoIP providers will remain

unclear. Promulgation of the proposed rules as emergency rules recognizes that E911 is vital to the public safety and public interest, and that the rules are necessary to put an end to the prolonged loss of revenue experienced by the county PSAPs statewide. The inability to collect E911 fees from VoIP subscribers and providers may have a negative impact on the ability of PSAPs to respond effectively and efficiently to public safety emergencies.

Use additional sheets if necessary

A handwritten signature in black ink, appearing to read "Michael A. Altieri", written over a horizontal line.

Authorized Signature

150CSR32  
*PROPOSED EMERGENCY RULES*

FILED

2008 OCT -8 PM 1:46

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 32  
RULES GOVERNING BILLING, COLLECTION AND REMISSION OF E911  
FEES BY PROVIDERS OF VOICE OVER INTERNET PROTOCOL SERVICE**

**§150-32-1. General.**

1.1. Scope. -- These rules govern the billing, collection, and remission of enhanced 911 monthly fees by providers of Voice over Internet Protocol service.

1.2. Authority. -- W. Va. Code §§7-1-3cc, 24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-7, 24-6-8 and 24-6-11.

1.3. Filing Date. --

1.4. Effective Date. --

**§150-32-2. Definitions.**

2.1. Statutory definitions adopted.

The Commission adopts the definitions 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.

2.3. Voice over Internet Protocol service defined.

“Voice over Internet Protocol (VoIP) service” has the same definition as Interconnected Voice over Internet Protocol as set forth in the rules and regulations of the Federal Communications Commission, 47 C.F.R. § 9.3.

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*PROPOSED EMERGENCY RULES*

**§150-32-3. Billing and Collection of E911 Fees.**

3.1. Billing agency and administrative charges.

Subject to the regulations in these rules, each provider of VoIP service may act as a billing agent for the lawful county E911 fee on the bills rendered by the VoIP provider to its customers in each county in which the provider of VoIP service provides service. The provider of VoIP service may retain an administrative charge of up to three percent (3%) of the fees collected.

3.2. Regulations.

3.2.1. VoIP Service Location

VoIP service is considered located within this state if it is used primarily in this state. A provider of VoIP service may rely upon a subscriber's declaration of the state in which the subscriber primarily uses the service. If the subscriber does not declare a state of primary use, the provider of VoIP service shall treat the registered service address as the state of primary use.

3.2.2. Implementation of fee.

To the extent consistent with federal law and regulation, a provider of VoIP service shall begin acting as a billing agent for a county commission's fee when it begins providing VoIP service in that county, and shall implement changes in the amount of the fee within one hundred twenty (120) days of the receipt of notice under these rules, subject to any application for waiver as provided in these rules.

3.2.3. Notice of change in amount of fee.

A provider of VoIP service remitting fees to a county commission under these rules shall provide the county commission with an address for receipt of notices of changes in the amount of the fee. A county commission shall give each provider of VoIP service no less than one hundred twenty (120) days' notice of any change in the amount of the fee. This notice must include a certified copy of the applicable ordinance.

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*PROPOSED EMERGENCY RULES*

3.2.4. Separate line item.

Unless doing so is not reasonably feasible in its billing systems, the provider of VoIP service shall show the lawful E911 fee as a separate line item on the billing statement. Where a single bill is rendered for multiple VoIP service lines or line equivalents, the total applicable fee may appear as a single line on the bill. If a provider of VoIP service has a billing system for which showing a separate line item is not reasonably feasible, it shall notify the affected county commissions and the public service commission, and make application for a waiver under these rules.

3.2.5. Application and payment of fee.

A single E911 fee is to be billed and collected per VoIP service line or line equivalent. The number of a subscriber's VoIP service lines or line equivalents is equal to the number of VoIP service telephone numbers capable of simultaneous outward dialing. The E911 fee is due and payable by customers on the same basis as the rates and charges for VoIP service.

3.2.6. Arrangements among providers or carriers.

Providers of VoIP service may make arrangements among themselves or with carriers for the billing, collection and remission of E911 fees, including but not necessarily limited to wholesale provision of VoIP. In those instances, only a single E911 fee is to be billed and collected for each VoIP service line or line equivalent.

3.2.7. Remission of fees.

A provider of VoIP service billing a county E911 fee under these rules shall remit no later than the twenty-fifth (25th) day of each month the total fees collected during the previous month. In calculating the total fees collected, the provider of VoIP service may deduct the fees uncollectible or uncollected from the total fees billed, using its current rate of uncollectible revenues or other reasonable methodology. The fees may be remitted directly to the county commission, or may be remitted to any agent of the county commission designated by the commission in writing.

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*PROPOSED EMERGENCY RULES*

3.2.8. Over-remission and under-remission.

In the event that the amount remitted to a county commission or its agent by a provider of VoIP service is greater or less than the amount due, the liability of the county commission or of the provider of VoIP service is discharged by the return of the amount overpaid or the payment of the remaining amount due, whichever the case may be. In either case, no interest is due.

3.2.9. Refusal by customer to pay.

If a customer of VoIP service refuses to pay the E911 fee, the provider of VoIP service may remove any or all E911 fees from the customer's account. The county commission is responsible for the collection of E911 fees not billed due to the customer's refusal to pay.

3.2.10. Back-billing.

In the event that an E911 fee is not billed, the provider of VoIP service may back-bill the fee, unless the county commission directs otherwise. If the county commission directs the provider of VoIP service not to back-bill any such E911 fee, the obligations of the provider of VoIP service with respect to that fee are discharged.

3.2.11. Liability limitation.

Except for willful or wanton misconduct, neither a county commission nor a provider of VoIP service is liable in connection with administering E911 fees in accordance with, or in a good faith attempt to comply with, these rules.

3.2.12. Confidentiality of customer and trade secret information.

In recognition of the fact that information pertaining to numbers of customers and revenues collected by providers of VoIP service is obtained and maintained in a competitive environment and that information pertaining to the providers' subscribers could be used to the disadvantage of the participating provider of VoIP service, such information must be held in confidence, and may not be released without first notifying the provider and affording it

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*PROPOSED EMERGENCY RULES*

a reasonable opportunity to protect its information as a trade secret under West Virginia Code § 29B-1-1, et seq., or otherwise.

3.3. Waivers and petitions.

3.3.1. Waivers for alternative methods of administration.

A provider of VoIP service may petition the Commission for a waiver of these rules in favor of an alternative method of administering E911 fees. Any such petition must 1) be verified, 2) provide good cause why the waiver should be granted, 3) state the duration for which the waiver is requested, and 4) state the alternate method by which the provider of VoIP proposes to administer the billing, collection or remission of E911 fees. Petitions for an emergency waiver must clearly state the reasons for emergency relief. The Commission shall liberally grant the petition where the proposed alternative methodology is reasonable.

3.3.2. Hardship waivers.

If hardship results from the application of these rules, 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 or indefinite waiver of the requirement. The petition must 1) show good cause why the Commission should grant the hardship waiver and 2) explain the hardship or unusual difficulty. If the petition seeks a delay in the remission of E911 fees, the verified petition for a waiver must set forth a proposed timetable for the overdue amount to be remitted.

3.3.3. Other petitions.

The Commission also may entertain petitions from a county commission, the Commission Staff or a third party regarding E911 fees that have not been properly remitted, or the Commission may investigate the matter on its own motion. Any such petitions must clearly explain what happened and specify any action that is requested of the Commission. Any such petition must be verified.

**STATEMENT OF CIRCUMSTANCES WHICH  
REQUIRE THE EMERGENCY RULE**

Promulgation of the proposed rules as emergency rules recognizes that E911 is vital to the public safety and public interest, and that the rules are necessary to put an end to the prolonged loss of revenue experienced by the county public service answering points ("PSAPs") statewide. Until the Rules are adopted, counties and PSAPs are unable to collect E911 fees from Voice over Internet Protocol ("VoIP") subscribers and providers. This prolonged and continued loss of revenue may have a negative impact on the ability of PSAPs to respond effectively and efficiently to public safety emergencies. As explained below, interested parties who participated on a Commission task force unanimously recommended adoption of proposed rules as emergency rules.

In 2006, the West Virginia Legislature recognized the vital need for county PSAPs to receive E911 funding from VoIP subscribers by enacting Senate Bill No. 728, codified at W.Va. Code §7-1-3cc(b). The statutory amendment now includes VoIP subscribers and providers in the state's statutory scheme for the collection of E911 fees to finance county PSAPs. However, W.Va. Code §7-1-3cc(b) does not expressly require either that VoIP providers collect the fees from VoIP subscribers, or remit the E911 fees to the Commission for disbursement to county commissions. Instead, the provisions of W.Va. Code §7-1-3cc(b) confer explicit statutory authority upon the Commission to enter orders and enforce rules dealing with matters concerning the imposition of E911 system fees on VoIP subscribers. To date, the Commission has not promulgated any rule or regulation applicable to VoIP providers.

In 2007, a formal complaint was filed at the Commission by a county commission asking the Commission to require a VoIP provider to remit E911 fees. Commission Staff and the parties to the formal complaint jointly recommended that the Commission initiate a general investigation for the purpose of adopting rules pursuant to W.Va. Code §7-1-3cc(b). The Commission opened a General Investigation and appointed a task force for the purpose of proposing rules. In 2008, the task force completed its work and unanimously recommended that the Commission promulgate these rules as emergency rules. Until the rules are adopted, VoIP providers lack guidance as to how to appropriately bill, collect and remit E911 fees. Furthermore, in the absence of rules, the respective responsibilities and obligations of PSAPs and VoIP providers will remain unclear.

**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 8th day of October 2008.

GENERAL ORDER NO. 187.36

RULES GOVERNING BILLING, COLLECTION AND  
REMISSION OF E911 FEES BY PROVIDERS OF  
VOICE OVER INTERNET PROTOCOL SERVICE  
SERIES 32

**COMMISSION ORDER**

By this Order, the Commission issues emergency rules to become effective November 19, 2008, governing the billing, collection and remission of Enhanced 911 ("E911") fees by providers of Voice over Internet Protocol ("VoIP") service.

**Background**

In 2006, the West Virginia Legislature recognized that county public service answering points ("PSAPs") have a vital need to obtain funding from VoIP subscribers by enacting Senate Bill No. 728, codified at W.Va. Code §7-1-3cc(b) that extended the county-imposed 911 fees to subscribers of VoIP service. However, the amended statute did not provide a framework for collecting the fees. The Legislature instead placed the authority to create rules and settle disputes regarding VoIP subscriber E911 fees with this Commission.

On October 29, 2007, the Commission initiated a general investigation (Case No. 07-2098-T-GI) regarding the collection and remittance of E911 fees by VoIP providers, in response to a formal complaint filed earlier in the year by Kanawha County Metro Emergency Operating Center against Vonage Holdings Corporation (Case No. 07-0430-T-C). The legal issues presented in the formal complaint were (i) whether the Commission had authority, pursuant to W.Va. Code §7-1-3cc, to require VoIP telecommunications service

providers to collect E911 fees from their West Virginia subscribers and remit the fees to the Commission for redistribution to counties and (ii) when a VoIP provider does not collect E911 fees from subscribers, whether the Commission had jurisdiction to order that VoIP provider to collect the fees. Generally, the Commission sought input from stakeholders as to the Commission's role in this issue of contention between VoIP providers and counties.

In a September 26, 2007 Memorandum filed in Case No. 07-0430-T-C, Commission Staff ("Staff") advised that the parties were engaged in settlement negotiations that might provide a statewide resolution. Staff recommended that the Commission dismiss the complaint and initiate a rulemaking for the purpose of adopting emergency rules and facilitating the input of all county PSAPs, VoIP providers, VoIP subscribers and the West Virginia E911 Council. See September 26, 2007 Memorandum, Case No. 07-0430-T-C.

The Commission's October 29, 2007 Order (Case No. 04-0430-T-C) (i) dismissed the formal complaint, (ii) initiated a general investigation (Case No. 07-2098-T-GI), (iii) required Staff to organize a task force of all relevant stakeholders for the purpose of proposing rules, (iv) required the task force to file updates on a bi-monthly basis and submit proposed rules within one year, (v) ordered publication of notice of the rulemaking, and (vi) was served on all parties of record as well as all West Virginia PSAPs, the West Virginia E911 Council, and all West Virginia county commissions.

In November 2007, Affidavits of publication were filed evidencing statewide publication of the Commission's October 29, 2007 Order. See Case File.

Staff filed the first task force report stating the progress of the task force on November 30, 2007. Staff reported that the first Task Force meeting was attended by West Virginia E911 Council, the Wood County PSAP, the Kanawha County PSAP, the Putnam PSAP, Vonage, Verizon, CAS Cable and Staff. Staff filed subsequent reports on February 1, 2008, April 2, 2008 and May 1, 2008.

The final Task Force Report was filed on May 1, 2008. The Task Force proposed rules and stated its unanimous recommendation that the Commission adopt the proposed rules as emergency rules. Vonage and Kanawha Metro 911 filed supplemental statements with respect to the proposed rules.

## DISCUSSION

The Commission commends the Task Force for its work. The Commission has reviewed the proposed rules and agrees with the Task Force's recommendation that the proposed rules should be adopted as emergency rules effective as of November 19, 2008.

The justification for issuance as emergency rules is to prevent prolonged loss of revenue experienced by the County PSAPs statewide and negative impact on PSAP ability to respond effectively and efficiently to public safety emergencies.

The Commission believes that local E911 providers have a vital need to obtain funding from VoIP subscribers. The West Virginia Legislature recognized this in 2006 in amending W.Va. Code §7-1-3cc(b) to extend the county-imposed 911 fees to subscribers of VoIP service. The Federal Communications Commission has also established that VoIP providers are subject to 911 fees imposed by local jurisdictions. 20 F.C.C.R. 10245 (1995). The West Virginia statute, however, does not provide a framework for collecting the fees. See W.Va. Code §7-1-3cc(b). The Legislature instead placed the authority to create rules and settle disputes regarding VoIP subscriber E911 fees with this Commission.

The rules proposed by the Task Force provide necessary guidance to VoIP providers as to how to bill, collect and remit fees, and will implement the Legislature's extension of county-imposed E911 fees to VoIP subscribers. The proposed rules also clearly define the rights of PSAPs to collect fees and facilitate the ability of PSAPs and VoIP providers to determine their respective responsibilities for collection and remittance. Until the proposed rules are in effect, VoIP providers will remain unaware of the proper method of making payment of E911 fees. The inability to collect E911 fees from VoIP subscribers and providers may have a negative impact on the ability of PSAPs to respond effectively and efficiently to public safety emergencies.

Promulgation of the proposed rules as emergency rules recognizes that E911 is vital to the public safety and public interest, that the rules are necessary to put an end to the prolonged loss of revenue experienced by the county PSAPs statewide, and grants the specific request of the task force made up of interested parties.

### **FINDINGS OF FACT**

1. On October 29, 2007, the Public Service Commission initiated a general investigation regarding the collection and remittance of E911 fees by VoIP providers, in response to a formal complaint filed earlier in the year by Kanawha County Metro Emergency Operating Center against Vonage Holdings Corporation, Case No. 07-0430-T-C.
2. Notice of the proceeding was published statewide and served on interested parties. Affidavits of publication were filed evidencing statewide publication of the Commission's October 29, 2007 Order. See Case File (Case No. 07-2098-T-GI).
3. A task force of stakeholders met for the purpose of proposing rules. The Task Force filed progress reports on November 30, 2007, February 1, 2008, April 2, 2008, and May 1, 2008.

4. In its May 1, 2008 final Task Force report, the Task Force proposed rules and stated its unanimous recommendation that the Commission adopt the proposed rules as emergency rules.

### CONCLUSIONS OF LAW

1. The Commission has the responsibility of issuing and enforcing orders, as well as adopting and enforcing rules dealing with matters concerning the imposition of county enhanced emergency telephone system fees on VoIP service subscribers. W.Va. Code §7-1-3cc(b).

2. The proposed rules should be adopted as emergency rules effective as of November 19, 2008, to prevent prolonged loss of revenue experienced by the County PSAPs statewide and negative impact on PSAPs ability to respond effectively and efficiently to public safety emergencies.

3. The West Virginia Legislature and the Federal Communications Commission have recognized that VoIP providers should be subject to locally-imposed E911 fees. W.Va. Code §7-1-3cc(b); 20 F.C.C.R. 10245 (1995).

4. The proposed rules provide the necessary guidance to VoIP providers as to how to bill, collect and remit fees, and will implement the Legislature's extension of county-imposed E911 fees to VoIP subscribers. The proposed rules also clearly define the rights of PSAPs to collect fees and facilitate the ability of PSAPs and VoIP providers to determine their respective responsibilities for collection and remittance.

5. Until the proposed rules are in effect, VoIP providers will remain unaware of the proper method of making payment of E911 fees.

6. The inability to collect E911 fees from VoIP subscribers and providers may have a negative impact on the ability of PSAPs to respond effectively and efficiently to public safety emergencies.

7. Promulgation of the proposed rules as emergency rules recognizes that E911 is vital to the public safety and public interest, that the rules are necessary to put an end to the prolonged loss of revenue experienced by the county PSAPs statewide, and grants the specific request of the task force made up of interested parties.

8. This rulemaking is exempt from legislative rule review pursuant to W. Va. Code §24-1-7.

## ORDER

IT IS THEREFORE ORDERED that the attached emergency exempt rules be promulgated, to become effective November 19, 2008, as Commission emergency exempt Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice Over Internet Protocol Service. Series 32.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the text of the emergency rules, with the forms attached, with the offices of the Secretary of State together with the forms required to be filed by the Secretary of State's office.

IT IS FURTHER ORDERED that a comment period is established in this matter and that comments concerning the attached rules shall be filed with the Public Service Commission on or before November 7, 2008, by 4:00 p.m. All interested parties who so file shall set forth specific comments regarding the proposed Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice Over Internet Protocol Service.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of the attached notice to be published once in a newspaper duly qualified by the Secretary of State, published and of general circulation in each of the cities of Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Welch, Wheeling, Weirton, and Williamson, making due return to this Commission of proper certification of publication immediately after publication. Any person wishing to submit comments concerning this rulemaking shall do so no later than November 7, 2008, by 4:00 p.m., by submitting the comments to Sandra Squire, Executive Secretary, Post Office Box 812, Charleston, West Virginia 25323.

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

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

JML/klm  
go18736c.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

GENERAL ORDER NO. 187.36

RULES GOVERNING BILLING, COLLECTION AND  
REMISSION OF E911 FEES BY PROVIDERS OF  
VOICE OVER INTERNET PROTOCOL SERVICE.  
SERIES 32

**NOTICE OF COMMENT PERIOD**

On October 29, 2007, the Public Service Commission initiated a general investigation (Case No. 07-2098-T-GI) pursuant to W.Va. Code §7-1-3cc regarding the collection and remittance of enhanced 911 (“E911”) fees by Voice over Internet Protocol (“VoIP”) providers. The Commission established a task force to propose rules to facilitate VoIP providers’ collection of E911 fees from their West Virginia subscribers and remission of the fees to the Commission for redistribution to counties. The Commission published notice of that proceeding statewide and served the Order on all West Virginia public service answering points (“PSAPs”), the West Virginia E911 Council, and all West Virginia county commissions. The Task Force met several times between November 2007 and May 2008, and on May 1, 2008, filed unanimously-proposed Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 C.S.R. 32.

By Order issued October 8, 2008, the Commission issued the proposed rules as emergency exempt rules to become effective November 19, 2008.

A copy of General Order No. 187.36 is available on the Commission’s website at [www.psc.state.wv.us](http://www.psc.state.wv.us). In addition, copies of the emergency rulemaking may be obtained from the Commission Executive Secretary’s office upon request. The Commission has established a comment period and has directed that any person interested in filing comments concerning the rules should do so on or before November 7, 2008, by 4:00 p.m. by filing the comments with Sandra Squire, Executive Secretary, Public Service Commission, Post Office Box 812, Charleston, West Virginia 25323.

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

**150CSR32**  
*PROPOSED EMERGENCY RULES*

**TITLE 150**  
**LEGISLATIVE RULE**  
**PUBLIC SERVICE COMMISSION**

**SERIES 32**  
**RULES GOVERNING BILLING, COLLECTION AND REMISSION OF E911**  
**FEEES BY PROVIDERS OF VOICE OVER INTERNET PROTOCOL SERVICE**

**§150-32-1. General.**

1.1. Scope. -- These rules govern the billing, collection, and remission of enhanced 911 monthly fees by providers of Voice over Internet Protocol service.

1.2. Authority. -- W. Va. Code §§7-1-3cc, 24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-7, 24-6-8 and 24-6-11.

1.3. Filing Date. --

1.4. Effective Date. --

**§150-32-2. Definitions.**

2.1. Statutory definitions adopted.

The Commission adopts the definitions 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.

2.3. Voice over Internet Protocol service defined.

“Voice over Internet Protocol (VoIP) service” has the same definition as Interconnected Voice over Internet Protocol as set forth in the rules and regulations of the Federal Communications Commission, 47 C.F.R. § 9.3.

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*PROPOSED EMERGENCY RULES*

**§150-32-3. Billing and Collection of E911 Fees.**

3.1. Billing agency and administrative charges.

Subject to the regulations in these rules, each provider of VoIP service may act as a billing agent for the lawful county E911 fee on the bills rendered by the VoIP provider to its customers in each county in which the provider of VoIP service provides service. The provider of VoIP service may retain an administrative charge of up to three percent (3%) of the fees collected.

3.2. Regulations.

3.2.1. VoIP Service Location.

VoIP service is considered located within this state if it is used primarily in this state. A provider of VoIP service may rely upon a subscriber's declaration of the state in which the subscriber primarily uses the service. If the subscriber does not declare a state of primary use, the provider of VoIP service shall treat the registered service address as the state of primary use.

3.2.2. Implementation of fee.

To the extent consistent with federal law and regulation, a provider of VoIP service shall begin acting as a billing agent for a county commission's fee when it begins providing VoIP service in that county, and shall implement changes in the amount of the fee within one hundred twenty (120) days of the receipt of notice under these rules, subject to any application for waiver as provided in these rules.

3.2.3. Notice of change in amount of fee.

A provider of VoIP service remitting fees to a county commission under these rules shall provide the county commission with an address for receipt of notices of changes in the amount of the fee. A county commission shall give each provider of VoIP service no less than one hundred twenty (120) days' notice of any change in the amount of the fee. This notice must include a certified copy of the applicable ordinance.

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*PROPOSED EMERGENCY RULES*

3.2.4. Separate line item.

Unless doing so is not reasonably feasible in its billing systems, the provider of VoIP service shall show the lawful E911 fee as a separate line item on the billing statement. Where a single bill is rendered for multiple VoIP service lines or line equivalents, the total applicable fee may appear as a single line on the bill. If a provider of VoIP service has a billing system for which showing a separate line item is not reasonably feasible, it shall notify the affected county commissions and the public service commission, and make application for a waiver under these rules.

3.2.5. Application and payment of fee.

A single E911 fee is to be billed and collected per VoIP service line or line equivalent. The number of a subscriber's VoIP service lines or line equivalents is equal to the number of VoIP service telephone numbers capable of simultaneous outward dialing. The E911 fee is due and payable by customers on the same basis as the rates and charges for VoIP service.

3.2.6. Arrangements among providers or carriers.

Providers of VoIP service may make arrangements among themselves or with carriers for the billing, collection and remission of E911 fees, including but not necessarily limited to wholesale provision of VoIP. In those instances, only a single E911 fee is to be billed and collected for each VoIP service line or line equivalent.

3.2.7. Remission of fees.

A provider of VoIP service billing a county E911 fee under these rules shall remit no later than the twenty-fifth (25th) day of each month the total fees collected during the previous month. In calculating the total fees collected, the provider of VoIP service may deduct the fees uncollectible or uncollected from the total fees billed, using its current rate of uncollectible revenues or other reasonable methodology. The fees may be remitted directly to the county commission, or may be remitted to any agent of the county commission designated by the commission in writing.

**150CSR32**  
*PROPOSED EMERGENCY RULES*

3.2.8. Over-remission and under-remission.

In the event that the amount remitted to a county commission or its agent by a provider of VoIP service is greater or less than the amount due, the liability of the county commission or of the provider of VoIP service is discharged by the return of the amount overpaid or the payment of the remaining amount due, whichever the case may be. In either case, no interest is due.

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If a customer of VoIP service refuses to pay the E911 fee, the provider of VoIP service may remove any or all E911 fees from the customer's account. The county commission is responsible for the collection of E911 fees not billed due to the customer's refusal to pay.

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In the event that an E911 fee is not billed, the provider of VoIP service may back-bill the fee, unless the county commission directs otherwise. If the county commission directs the provider of VoIP service not to back-bill any such E911 fee, the obligations of the provider of VoIP service with respect to that fee are discharged.

3.2.11. Liability limitation.

Except for willful or wanton misconduct, neither a county commission nor a provider of VoIP service is liable in connection with administering E911 fees in accordance with, or in a good faith attempt to comply with, these rules.

3.2.12. Confidentiality of customer and trade secret information.

In recognition of the fact that information pertaining to numbers of customers and revenues collected by providers of VoIP service is obtained and maintained in a competitive environment and that information pertaining to the providers' subscribers could be used to the disadvantage of the participating provider of VoIP service, such information must be held in confidence, and may not be released without first notifying the provider and affording it

a reasonable opportunity to protect its information as a trade secret under West Virginia Code § 29B-1-1, et seq., or otherwise.

### 3.3. Waivers and petitions.

#### 3.3.1. Waivers for alternative methods of administration.

A provider of VoIP service may petition the Commission for a waiver of these rules in favor of an alternative method of administering E911 fees. Any such petition must 1) be verified, 2) provide good cause why the waiver should be granted, 3) state the duration for which the waiver is requested, and 4) state the alternate method by which the provider of VoIP proposes to administer the billing, collection or remission of E911 fees. Petitions for an emergency waiver must clearly state the reasons for emergency relief. The Commission shall liberally grant the petition where the proposed alternative methodology is reasonable.

#### 3.3.2. Hardship waivers.

If hardship results from the application of these rules, 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 or indefinite waiver of the requirement. The petition must 1) show good cause why the Commission should grant the hardship waiver and 2) explain the hardship or unusual difficulty. If the petition seeks a delay in the remission of E911 fees, the verified petition for a waiver must set forth a proposed timetable for the overdue amount to be remitted.

#### 3.3.3. Other petitions.

The Commission also may entertain petitions from a county commission, the Commission Staff or a third party regarding E911 fees that have not been properly remitted, or the Commission may investigate the matter on its own motion. Any such petitions must clearly explain what happened and specify any action that is requested of the Commission. Any such petition must be verified.



# Public Service Commission

Richard E. Hitt, General Counsel

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October 8, 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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FILED

Re: Emergency Rulemaking relating to Public Service Commission Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 CSR Series 32

Dear Ms. Cooper:

On this date, the Public Service Commission of West Virginia makes two separate filings relating to Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 CSR Series 32. This filing is the Emergency Rulemaking filing of rules to be in effect as of November 19, 2008. Under separate cover letter is the agency's Notice of Comment filing.

The subject Rules result from a Commission general investigation responsive to the Legislature's amendment of W.Va. Code §7-1-3cc(b) in 2006, to include Voice over Internet Protocol ("VoIP") subscribers and providers in the state's statutory scheme for the collection of E911 fees to finance county public safety answer points ("PSAPs"). Because W.Va. Code §7-1-3cc(b) does not expressly require either that VoIP providers collect the fees from VoIP subscribers, or remit the E911 fees to the Commission for disbursement to county commissions, these rules are necessary to provide guidance to VoIP providers on how to appropriately bill, collect and remit E911 fees. In the absence of rules, the respective responsibilities and obligations of PSAPs and VoIP providers will remain unclear. A task force of interested parties unanimously recommended promulgation of the proposed rules as emergency rules. Issuance as emergency rules will recognize that E911 is vital to the public safety and public interest, and that the rules are necessary to put an end to the prolonged loss of revenue

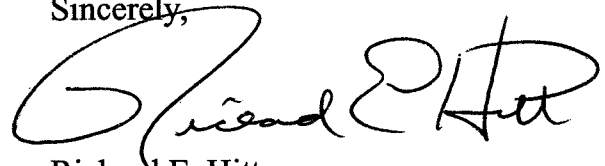
Judy Cooper, Director  
October 8, 2008  
Page 2

experienced by the county PSAPs statewide. Continued inability to collect E911 fees from VoIP subscribers and providers could have a negative impact on the ability of PSAPs to respond effectively and efficiently to public safety emergencies.

In this filing I enclose one copy each of the Rule, Commission General Order No. 187.36, Form No. 7 "Notice of an Emergency Rule," and the Statement of Facts and Circumstances Which Require the Emergency Rule. Because the Commission is not part of the Cabinet structure, the Commission order is evidence of approval of the filing by the agency lead, Chairman Michael A. Albert.

If you have any questions or if there are any problems, please bring them to my attention. You may reach me at 340-0316.

Sincerely,

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

Richard E. Hitt  
General Counsel

REH/JML/klm  
Enclosures