

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2009 JUN 22 PM 2:40

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY: W.Va. Code §7-1-3cc

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §24-1-7

AMENDMENT TO AN EXISTING RULE: YES NO

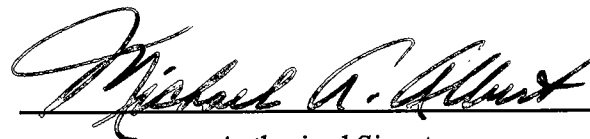
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 21, 2009



Authorized Signature

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

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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.

§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.

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 E911 charges applied to equivalent wireline telephone services. 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 between providers and agents.

Providers of VoIP service may make arrangements with agents 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, or an agent of a provider of VoIP services, 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 or its agent 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. When a provider of VoIP services uses an agent for the billing, collecting, and remission of E911 fees, the agent is only liable to a county commission for remission of E911 fees to the extent the agent has received such fees from VoIP subscribers and the provider of VoIP services. A provider of VoIP services shall be liable to a county commission to the extent it fails to remit to its agent E911 fees collected from subscribers.

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 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
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of June 2009.

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

This Order makes clarifying amendments to the currently effective emergency rules and adopts final legislative Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 C.S.R. 32 ("VoIP Rules").

Background

By Order issued October 8, 2008, the Commission issued proposed VoIP Rules as emergency exempt rules. The VoIP Rules became effective on or about November 19, 2008. The Commission published notice of the emergency rule proceeding statewide and established a comment period. Interested persons were directed to file comments concerning the rules on or before November 7, 2008, by 4:00 p.m.

The Secretary of State's Step Procedure for Emergency Rule Making provides that emergency rules remain in effect until the sooner of the promulgation of legislative rules or fifteen months.

Two interested parties, AT&T Communications of West Virginia, Inc. ("AT&T") and Level 3 Communications, LLC ("Level 3"), filed comments in this proceeding suggesting amendment and clarification of VoIP Rules 3.2.5, 3.2.6 and 3.2.7. By Order issued February 9, 2009, the Commission scheduled a hearing to address the proposed amendments and clarifications and ordered that the Executive Secretary of the Commission publish statewide notice of the hearing. Affidavits of publication are on file evidencing the publication.

The hearing occurred as scheduled on April 29, 2009. James V. Kelsh appeared on behalf of Level 3, Robert R. Rodecker appeared on behalf of AT&T, Joseph J. Starsick, Jr.

appeared on behalf of Verizon, and C. Terry Owen appeared on behalf of Commission Staff ("Staff"). Randy Rowe and Mark Troy attended the hearing as non-attorney representatives of the West Virginia Enhanced 911 Council. Level 3 presented three exhibits that were admitted into the record. References to the transcript of the April 29, 2009 hearing will appear as "Tr. p. ___" and to the exhibits will appear as "Level 3 Exh. No. ___ p. ___."

Mr. Kelsh stated that AT&T, Level 3 and Staff had agreed to certain modifications to Rules 3.2.5, 3.2.6 and 3.2.7, and called Greg Diamond as a witness to testify in support of the agreed changes. Mr. Diamond is employed by Level 3 as regulatory counsel and he explained the operations of Level 3. Tr. pp.12-14. Mr. Diamond stated that Level 3 constructed an ID based fiber backbone network throughout forty-five of the United States and acts as a carrier's carrier. *Id.* pp. 12-13. Level 3 carries traffic for VoIP providers and does not provide retail service to end users or subscribers except for large enterprise customers and government entities. *Id.* pp. 13-14. Level 3 is involved in this E911 proceeding as well as 911 proceedings in other states because it wants to ensure that county public safety answering points have certainty regarding which entities have the obligation to remit a surcharge, and to avoid a double payment situation in which an underlying provider, such as Level 3, and the VoIP provider are both paying a 911 surcharge. *Id.* p.14.

Level 3's proposed rule changes are explained and set forth on Level 3 Exhs. 1 and 2. Level 3 proposed amendments to Rule 3.2.5 to make sure that VoIP service lines are treated the same way as traditional wire line service and to avoid a disproportionate assessment on VoIP providers. *Id.* pp.16-17. The goals of Level 3 are consistent with AT&T's position explained in its filed comments. See Level 3 Exh. 3, Tr. pp.17-18.

Mr. Diamond testified that the proposed amendments to Rule 3.2.6 were non-substantive, stylistic language changes. The purpose of the proposed amendments to 3.2.7 was to identify the process by which wholesale providers such as Level 3 currently handle 911 surcharges. Level 3 acts as an agent for its VoIP provider customers and pays assessed 911 fees to government entities. The proposed rule language clarifies that, notwithstanding Level 3 acting as an agent, the VoIP provider is the entity ultimately responsible for 911 surcharges. *Id.* pp.19-20.

None of the parties stated any objection to Mr. Diamond's testimony and all parties supported or had no objection to the rule changes set forth on Level 3 Exh 2. Tr. pp.24-26.

DISCUSSION

Upon review of the hearing testimony and exhibits, and the parties' explanations as to the difference between entities providing underlying backbone fiber network service to carriers, and entities providing retail VoIP service to end users, the Commission agrees that the proposed clarifications to the VoIP Rules as agreed to by all parties are appropriate.

FINDINGS OF FACT

1. The emergency VoIP Rules went into effect on or about November 19, 2008.
2. Two interested parties, AT&T and Level 3, filed comments requesting amendment and clarification of VoIP Rules 3.2.5 and 3.2.6.
3. The Commission held a hearing on the proposed rule changes following statewide publication of the Notice of Hearing.

CONCLUSIONS OF LAW

1. Pursuant to the Step Procedure for Emergency Rule Making of the Office of the Secretary of State, emergency rules remain in effect until the sooner of the promulgation of legislative rules or fifteen months.
2. It is appropriate to provide county public safety answering points with certainty regarding which entities have the obligation to remit an E911 surcharge, and to avoid a double payment situation in which an underlying provider, such as Level 3, and the VoIP provider are both paying a 911 surcharge.
3. It is appropriate for the VoIP Rules to correctly assign ultimate responsibility for payment of E911 fees to VoIP providers, notwithstanding a wholesale network entity's acting as an agent for VoIP providers by collecting and remitting the applicable E911 fees on their behalf.
4. The modifications to Rules 3.2.5, 3.2.6 and 3.2.7 agreed to by the parties should be adopted in the final VoIP Rules.

ORDER

IT IS THEREFORE ORDERED that the Executive Secretary of the Commission shall submit the final Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 C.S.R. 32, attached hereto as Attachment A, to the Secretary of State.

IT IS FURTHER ORDERED that the Rules attached on Attachment A shall be effective as of August 21, 2009.

IT IS FURTHER ORDERED that Attachment B hereto shows the amendments to the emergency Rules 3.2.5, 3.2.6 and 3.2.7 effective as of November 19, 2008, now incorporated in the final rules.

IT IS FURTHER ORDERED that the rules submitted to the Secretary of State shall be accompanied by the required Form No. 5 "Notice of Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review."

IT IS FURTHER ORDERED that, upon entry hereof, this case shall be removed from the Commission's open docket.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order on all parties of record in both this proceeding and Case No. 07-2098-T-GI by electronic mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

JML/klm
go18736cb.wpd

150CSR32
FINAL RULES

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

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.

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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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FINAL RULES

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

3.1. Billing agency and administrative charges.

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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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FINAL 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 E911 charges applied to equivalent wireline telephone services. 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 between providers and agents.

Providers of VoIP service may make arrangements with agents 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, or an agent of a provider of VoIP services, 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 or its agent 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. When a provider of VoIP services uses an agent for the billing, collecting, and remission of E911 fees, the agent is only liable to a county commission for remission of E911 fees to the extent the agent has received such fees from VoIP subscribers and the provider

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FINAL RULES

of VoIP services. A provider of VoIP services shall be liable to a county commission to the extent it fails to remit to its agent E911 fees collected from subscribers.

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

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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.

ATTACHMENT B

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~~ E911 charges applied to equivalent wireline telephone services. 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 between among providers or carriers and agents.

Providers of VoIP service may make arrangements ~~among themselves or with agents~~ 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, ~~or an agent of 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 ~~or its agent~~ 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. When a provider of VoIP services uses an agent for the billing, collecting, and remission of E911 fees, the agent is only liable to a county commission for remission of E911 fees to the extent the agent has received such fees from VoIP subscribers and the provider of VoIP services. A provider of VoIP services shall be liable to a county commission to the extent it fails to remit to its agent E911 fees collected from subscribers.

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November 7, 2008

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WV VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

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

RE: GENERAL ORDER NO. 187.36
Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

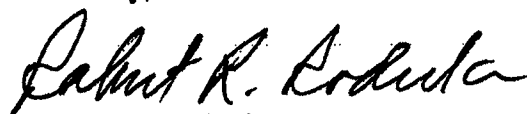
Dear Ms. Squire:

Pursuant to the October 8, 2008 Commission Order initiating the above-referenced proceeding, enclosed herein please find the original and twelve (12) copies of the Comments of AT&T Communications of West Virginia, Inc. ("AT&T").

A copy of the Comments is being served upon Staff Attorney C. Terry Owen as evidenced by the Certificate of Service attached thereto,

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

Sincerely,



Robert R. Rodecker
WV State Bar No. 3145

bg
enclosures

cc: Mark A. Keffer, Esquire (via e-mail)
J. Manning Lee, Esquire (via e-mail)
C. Terry Owen, Esquire

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

GENERAL ORDER NO. 187.36

Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

**COMMENTS
OF
AT&T COMMUNICATIONS OF WEST VIRGINIA, INC.**

Now Comes AT&T Communications of West Virginia, Inc. ("AT&T") pursuant to the Commission's October 8, 2008 Order in this proceeding and submits its comments on the emergency rules.

AT&T generally supports the Commission's rules. However, in order that all carriers are treated equally, AT&T would suggest a minor change to the language of the Proposed Emergency Rule 3.2.5. AT&T proposes that section be revised to read as follows:

3.2.5 An 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 E911 charges applied to equivalent wireline telephone services. For example, for single line VoIP service, that would equal the number of telephone numbers capable of simultaneous outward dialing. The E91 1 fee is due and payable by customers on the same basis as the rates and charges for VoIP service. (additions are shown by underlining and deletions are shown by strikethrough)

The proposed change is necessitated in order to address the application of charges to multiple service offerings such as PBX trunks or Centrex.

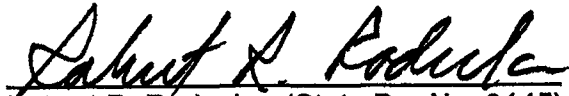
AT&T recommends that the Commission adopt competitively neutral language for the assessment of E911 charges. The proposed language, while fine for single line consumer or business situations, is not appropriate for large business customers. For example, a wireline Primary Rate Interface (PRI) service connects to a business' PBX and provides the equivalent of 24 individual lines and can support hundreds of telephone numbers. Today, users of such services in West Virginia are assessed the equivalent of five single line E911 charges. Under the proposed emergency language, an equivalent VOIP service could be charged twenty or thirty times as much, while imposing no greater costs on the 911 emergency service network. Such a disparity could make it uneconomic for large businesses to upgrade to VOIP based network services.

Currently, wireline carriers are permitted to charge the E911 fee to their customers on this basis. In order that all forms of service be treated similarly, it is respectfully requested that the revision proposed herein be adopted.

Respectfully Submitted.

AT&T COMMUNICATIONS
OF WEST VIRGINIA, INC.

By Counsel



Robert R. Rodecker (State Bar No. 3145)
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Dated: November 7, 2008

CERTIFICATE OF SERVICE

I, Robert R. Rodecker, co-counsel for AT&T Communications of West Virginia, Inc. in this proceeding, do hereby certify that a copy of the foregoing Comments have been served upon Staff Attorney C. Terry Owen on this 7th day of November, 2008, via hand delivery to 201 Brooks Street, Charleston, West Virginia.


ROBERT R. RODECKER

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November 7, 2008

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

RECEIVED
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W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

RE: GENERAL ORDER NO. 187.36
Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

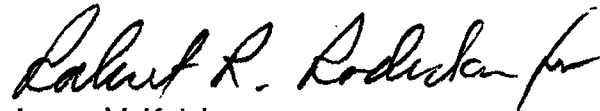
Dear Ms. Squire:

Pursuant to the October 8, 2008 Commission Order initiating the above-referenced proceeding, enclosed herein please find the original and twelve (12) copies of the Comments of Level 3 Communications, LLC ("Level 3"). As reflected in the Comments, I am co-counsel with Michael P. Donahue and, therefore, each of our names should appear on the Commission's official service list in this proceeding.

As evidenced by the Certificate of Service attached thereto, a copy of the Comments is being served upon Staff Attorney C. Terry Owen.

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

Sincerely,



James V. Kelsh
WV State Bar No. 6617

bg
enclosures

cc: Michael Donahue, Esquire (via e-mail)
C. Terry Owen, Esquire

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

GENERAL ORDER NO. 187.36

Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

**COMMENTS
OF
LEVEL 3 COMMUNICATIONS, LLC**

In accordance with the Commission's October 8, 2008 Order in this proceeding, Level 3 Communications, LLC ("Level 3") submits its comments on the emergency rules. Level 3 generally supports the Commission's rules and the underlying goal of an effective, efficient E911 system that includes all technologies; however, Level 3 seeks clarification as to the scope of the rules with respect to wholesale Voice over Internet Protocol ("VoIP") and other IP-based services.

Level 3 provides services primarily on a wholesale basis to incumbent local exchange carriers, competitive local exchange carriers, Commercial Mobile Radio Services, VoIP providers, other content providers, including ISPs, and other enhanced service providers. Level 3 offers direct inward dial ("DID"), for which E911/911 services are not applicable, and direct outward dial ("DOD") services, which may include E911/911 services, that allow for local connectivity to the public switched telephone network ("PSTN") by Level 3's customers, including VoIP and other IP-enabled service providers, and their end users. In cases where Level 3 provides E911 service to a wholesale customer in West Virginia, Level 3 collects the applicable E911 fee and remits that fee to the

the appropriate county commission, Public Safety Answering Point or other agency. Therefore, Level 3 remits the E911 fees on behalf of its wholesale customers.

The emergency rules give VoIP providers the opportunity to make arrangements with their underlying local exchange carrier (“LEC”) for the “billing, collection and remission of E911 fees, including but not limited to wholesale provision of VoIP.” 150 CSR 32, § 3.2.6. Level 3 supports the inclusion of this provision as it recognizes what the FCC has characterized as a typical arrangement between VoIP providers and LECs in which the LEC provides PSTN connectivity, telephone numbers and other services that the VoIP bundles with its services to provide VoIP services to end users.¹ In addition, this rule recognizes and promotes the continuation of existing wholesale arrangements in which an underlying LEC provides the E911 billing, collecting and remittance functions for its VoIP customers. Maintaining this option for VoIP providers is important as Level 3 has found that many of these providers are smaller companies with few personnel and resources that do not have the institutional knowledge and expertise to monitor and comply with multiple, often conflicting E911 fee requirements across multiple states. Therefore, for many VoIP providers, it is easier and more cost-effective to authorize their wholesale provider to handle the billing, collection and remittance of E911 and other surcharges.

Nonetheless, it is important that the Commission confirm a wholesale provider’s obligations under the new rules under certain circumstances. For instance, while the rules in Section 3.2.9 relieve a VoIP provider of the obligation to remit an E911 surcharge where the VoIP provider’s customer

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151, ¶ 31 (2008). See also *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Red 19,531, 19,542, ¶ 12 (2007).

provider's customer refuses to pay the charge, there is no similar provision with respect to wholesale providers of VoIP service. It is consistent with the Commission's recognition of the existence of wholesale arrangements in Section 3.2.6 for the Commission to provide those arrangements the same treatment afforded retail VoIP services in Section 3.2.9. Level 3 requests the Commission clarify that if a VoIP provider does not pay the applicable E911 surcharge, either directly or through its wholesale provider (*i.e.*, the VoIP provider refuses to pay a surcharge line item on its wholesale invoice), the wholesale provider is not obligated to pay the surcharge on behalf of the VoIP provider. Rather, the county commission must look to the retail VoIP provider for payment.

In addition, Section 3.2.6, states that where a VoIP provider has made arrangements with its wholesale provider to collect and remit the E911 surcharge, only one such charge shall be collected. This is an important provision as it reduces the likelihood that there will be a double remittance of fees in certain circumstances – once by the wholesale provider on the services it provides a VoIP provider and once by the VoIP provider on its retail services. It is important for the Commission to clarify that this rule also limits the ability of a county commission to seek payment of E911 fees when either a wholesale carrier or the wholesale carrier's customer has already collected and remitted the fee. In other words, while the language of this rule precludes a wholesale VoIP provider and retail VoIP provider from billing an end user for the same line or line equivalent, it is not clear the same restriction applies to county commissions.

Level 3 collects and remits E911 fees on the DID/DOD services and telephone numbers it provides to its VoIP customers in West Virginia based upon the county in which those services/numbers are provided. Level 3 bills the E911 surcharges directly to its wholesale VoIP customers, and remits the amount collected to the county commissions. Many of these customers

have expressed to Level 3 their preference for the continuation of such arrangements rather than having to collect and remit the fees. Level 3's concern, and the concern expressed by many of its customers, is that a county commission may seek E911 fees from a VoIP provider and its wholesale provider. Level 3 urges the Commission to clarify that if a county commission can confirm that it has received payment for a particular line or line equivalent from either a VoIP provider directly or from a wholesale provider on behalf of its VoIP customers, the county commission cannot also seek payment from another entity.

For the foregoing reasons, while Level 3 generally supports the Commission's emergency rules, Level 3 urges the Commission to make the clarifying revisions described in these comments in order to eliminate uncertainty and provide consistency within the rules.

LEVEL 3 COMMUNICATIONS, LLC

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Dated: November 7, 2008

CERTIFICATE OF SERVICE

I, James V. Kelsh, co-counsel for Level 3 Communications, LLC in this proceeding, do hereby certify that a copy of the foregoing Comments have been served upon Staff Attorney C. Terry Owen on this 7th day of November, 2008, via hand delivery to 201 Brooks Street, Charleston, West Virginia.



JAMES V. KELSH

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

* * * * *

IN RE: GENERAL ORDER NO. 187.36 *

*

RULES GOVERNING BILLING, COLLECTION*

AND REMISSION OF E911 FEES BY *

PROVIDERS OF VOICE OVER INTERNET *

PROTOCOL SERVICE SERIES 32 *

*

* * * * *

HEARING TRANSCRIPT

* * * * *

BEFORE: MICHAEL ALBERT, Chairman

JON W. MCKINNEY, Commissioner

HEARING: Wednesday, April 29, 2009

9:34 a.m.

LOCATION: Howard M. Cunningham Hearing Room

201 Brooks Street

Charleston, WV 25301

Reporter: Alison Salyards

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A P P E A R A N C E S (cont)

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P R O C E E D I N G S

CHAIRMAN:

My apologies for keeping you waiting. My wife had a minor surgical procedure this morning and it was just a matter of waiting around to talk to the doctor and it didn't amount to anything but nonetheless ---. I think everybody here is fairly familiar with the new audio/video system, so I won't berate you about turning on the blue light and speaking into the microphones, but let's go ahead and get started. My name is Mike Albert. I'm the chairman of the Public Service Commission. With me is Commissioner Jon McKinney. We are here today on General Order Number 187.36, which were rules governing billing, collection and remission of 911 fees by providers of voice over internet protocol service. Let's begin by taking the appearance of counsel. Mr. Kelsh.

ATTORNEY KELSH:

Good morning, Chairman. Good morning, Commissioner. My name is James V. Kelsh, representing Level (3) in this matter.

ATTORNEY RODECKER:

Your Honor, Robert Rodecker, and I'm here today on behalf of AT & T Communications of West

1 Virginia.

2 CHAIRMAN:

3 Attorney Starsick?

4 ATTORNEY STARSICK:

5 Joe Starsick, Goodwin & Goodwin on
6 behalf of Verizon.

7 CHAIRMAN:

8 Mr. Owen?

9 ATTORNEY OWEN:

10 May it please the Commission. My name
11 is Terry Owen. I'm a staff attorney with the legal
12 department here this morning representing the staff's
13 interest in this proceeding. Appearing with me is Jerry
14 Bennett of the Utilities Division.

15 CHAIRMAN:

16 Are there any other persons here that
17 want to note their appearance or make a statement with
18 respect to the proposed rules? I'm not quite sure where
19 to begin. It's not a --- yes, sir?

20 ATTORNEY OWEN:

21 Mr. Chairman, Randy Rowe, I represent
22 ---.

23 CHAIRMAN:

24 Mr. Rowe, come up and sit in one of the
25 desks there, and lean the microphone down to where it

1 looks like you're going to jump on it, and turn the light
2 on. They are directional, so you need to put it right in
3 front of your mouth, or it won't ---.

4 MR. ROWE:

5 Okay, sir. There we go. Randy Rowe.
6 I represent West Virginia Enhanced 911 Council. I also
7 represent Wood County E-911.

8 CHAIRMAN:

9 You say you represent. In a legal
10 capacity, or are you just a representative of the agency?

11 MR. ROWE:

12 Not in a legal capacity, just as a
13 representative.

14 CHAIRMAN:

15 That's fine. Are you here for
16 appearance, or to make statements or ---?

17 MR. TROY:

18 My name is Mark Troy, Metro 911. Sir,
19 it's unlikely I'll make any statements.

20 CHAIRMAN:

21 All right. I'm not really sure how to
22 proceed. It didn't look to me as if there was a great
23 deal of disparity among the positions on the rules, other
24 than one or two of them, I don't know if --- why don't we
25 start with Counsel making a brief statement, each of you,

1 and tell us what it is you want --- what enlightening
2 things about our proposed rules, you want to demonstrate
3 to us or whether you propose putting on a witness or
4 exactly what we're going to do. Mr. Starsick, why don't
5 we start with you. You look anxious, like I've misstated
6 something, so we'll just start with you.

7 ATTORNEY STARSICK:

8 I do not believe you have misstated
9 anything in the least. Your Honor, I think that all
10 parties are fairly agreed to some minor modifications of
11 the rules as promulgated by commission. I think that
12 Level (3) was the moving force behind suggesting those
13 modifications. I think they have someone here today who
14 can explain the modifications. For our part Verizon
15 doesn't have any problems with them. We don't seem them
16 as being material. We see them as clarifying.

17 CHAIRMAN:

18 All right. Mr. Rodecker?

19 ATTORNEY RODECKER:

20 I confirmed with Mr. Starsick in prior
21 discussions with Level (3) and Verizon, and there's been
22 agreed language between the three carriers that are
23 participating in this proceeding, which I understand that
24 Level (3) will be presenting. While the proposed changes
25 in the rule go beyond what AT & T's initial concerns

1 were, we're comfortable with the fact that the AT & T
2 issues that were raised and comments filed in November
3 are addressed in the revision of 3.2.5 and the other
4 changes are acceptable to AT & T.

5 CHAIRMAN:

6 As I understood it, while they're sort
7 of not like I would have drafted a kind of a thought,
8 everybody seems acceptable. The rules, as promulgated or
9 modified as we've gone along. Except my understanding
10 was that there was a dispute with respect to 3.2.5 and
11 3.2.6; and is that what Level (3) is going to explain to
12 us, what the new language is and how that stands?

13 ATTORNEY RODECKER:

14 In deed, Your Honor.

15 CHAIRMAN:

16 All right. All right. Mr. Kelsh, I
17 guess, the ball's in your court.

18 ATTORNEY KELSH:

19 Okay. Thank you, Mr. Chairman. I
20 concur with the explanations offered by the other
21 counsel, that we've had discussions about these rules,
22 and AT & T staff, Verizon and Level (3) has concurred on
23 some modifications to Rules 3.25, 3.26 and also 3.27.
24 And I'll be calling Greg Diamond as a witness to explain
25 those changes to the Commission.

1 CHAIRMAN:

2 All right. Please do that.

3 ATTORNEY KELSH:

4 All right. Level (3) would like to
5 call the first witness, Greg Diamond.

6 CHAIRMAN:

7 Mr. Diamond, do you want to raise your
8 right hand and be sworn?

9 -----

10 GREGORY T. DIAMOND, HAVING FIRST BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 -----

13 DIRECT EXAMINATION

14 BY ATTORNEY KELSH:

15 Q. All right. Mr. Diamond, where are you employed?

16 A. I work for Level (3) Communications.

17 Q. Okay. And what's your position at Level (3)?

18 A. I am a regulatory counsel.

19 Q. All right. And how many states do you cover as
20 a regulatory counsel for Level (3)?

21 A. I cover about 18 states. Most of the states,
22 some of my colleagues tease me, I handle regulatory
23 matters for every state south of the Mason Dixon line.
24 So that's pretty much it.

25 Q. What's your educational background?

1 A. I graduated from the John Marshall Law School in
2 Chicago, Illinois in 1987. I practiced commercial
3 litigation for 10 years in Chicago and then moved to
4 Seattle and started my practice in telecommunications law
5 at a law firm in Seattle. I did that for about seven or
6 eight years. Then I worked in-house for a company called
7 Kobet (phonetic) Communications. And I had two small
8 jobs in between those positions, and then I started with
9 Level (3) Communications in September of 2008.

10 Q. Is that still out of Seattle?

11 A. Yes ---oh, no. Level (3) Communications is
12 based in Broomfield, Colorado. It's a suburb just north
13 of Denver, which is where I work.

14 Q. Okay. How is Level (3) involved in providing
15 VoIP in West Virginia?

16 A. We are --- the best way to understand what Level
17 (3) does is Level (3) has an ID based fiber backbone
18 network throughout the United States. And we are
19 basically a carrier's carrier, so we provide the
20 faculties to carry traffic from voice over IP providers.
21 And we either do it on a turnkey solution, you know,
22 complete voice over IP provider's solution to just
23 providing 911 only, for example.

24 Q. Did you build, construct, purchase, or how did
25 you get all this?

1 A. We built our own network over a period of 34
2 months starting --- I believe we started in 1999, and
3 it's a very, very large network both in the United States
4 and in West Virginia.

5 Q. Any other state Level (3) is involved in in
6 providing a similar type as provided in Western Europe?

7 A. It's pretty much the same, yes.

8 Q. And in how many other states are you providing
9 or assisting in providing service?

10 A. It's not all 50 states. I think we are in about
11 45 states where we provide service. We don't provide
12 voice over IPs to carriers in every single state, but
13 it's a growing part of the business.

14 CHAIRMAN:

15 My theory is if I don't ask questions,
16 I won't learn; but does this limit it essentially to
17 other carriers you don't do residential service?

18 A. We don't provide retail services. We don't
19 provide service for voice over IP, we don't provide
20 service to the end user or the subscriber, so we wouldn't
21 be serving --- we would not be serving residential
22 market. We wouldn't be serving small and medium size
23 markets, but we do have --- we do serve large enterprise
24 customers, and we do also serve government customers as
25 well.

1 CHAIRMAN:

2 Large enterprise customers being what?

3 A. Google, Microsoft, companies like that, I can't
4 give you a list but but those are two examples of
5 enterprise customers. The federal government, the
6 Department of Defense, those types of customers.

7 Q. Now has Level (3) been involved with the issue
8 of an E-911 fee in other states?

9 A. It has, yes.

10 Q. What are Level (3)'s concerns regarding E-911
11 page?

12 A. I think our biggest concern is we want to make
13 sure that the county public safety points don't find
14 themselves sort of whipsawed between the voice over IP
15 provider and the underlying carrier, such as Level (3).
16 We want to make sure that the surcharge gets remitted by
17 the voice over IP provider and that there's no confusion
18 over who has the obligation to pay. And we also want to
19 avoid --- make sure we avoid double payment situation
20 where the underlying provider and the voice over IP
21 provider are paying the same surcharge when only one
22 surcharge is due.

23 Q. Did Level (3) prepare comments at the filing of
24 this proceeding?

25 A. Yes, we did.

1 Q. And I previously handed you a copy of your
2 comments. I'll give you it, and the other parties'
3 copies. I'll hand this to the Commissioner. I also
4 provided a copy previously to the court reporter. Do you
5 have any changes to make to your comments?

6 A. Yes. There are --- not on my copy, but I think
7 on the original copy that you submitted to the Chair.

8 Q. Yeah. The copy that's submitted has some
9 strikes-throughs.

10 A. Some strike-throughs on page three and then
11 there's a small correction on page four. So at the top
12 of page three there's a strike-through, there's several,
13 and there's a ---.

14 CHAIRMAN:

15 The only strike-through that I see is
16 one in the very first two words on the page, and then on
17 page four there's a --- is changed to it on line four; is
18 that the extent of it?

19 A. Yeah. That would be the extent of it.

20 CHAIRMAN:

21 All right.

22 BY ATTORNEY KELSH:

23 Q. Are these dominant comments consistent with
24 Level (3) --- with --- concerning Level (3) as expressed
25 in the other state proceedings?

1 A. Generally, yes. Exactly. Yes.

2 Q. Does Level (3)'s agree with the proposed
3 commission's rules?

4 A. Yes, at that time.

5 CHAIRMAN:

6 Let's have your comment marked for
7 identification?

8 (Level (3) Exhibit One and Two marked
9 for identification.)

10 ATTORNEY KELSH:

11 Yes. I'd like to have those comments
12 marked as Level (3) Exhibit Number One and have these
13 proposed revisions marked as Level (3) Exhibit Number
14 Two.

15 CHAIRMAN:

16 So it would be similar.

17 BY ATTORNEY KELSH:

18 Q. Mr. Diamond, just to be clear, the Commission
19 promulgated whole set of proposed rules, and these are
20 the only changes that Level (3) proposes to make to that
21 set of rules?

22 A. Yes. That's correct.

23 Q. We'll start at the top with the change to rule
24 3.25; why was that change made?

25 A. Well the principal reason for the change as made

1 was we wanted to make sure that the voice over IP service
2 lines were treated the same way as traditional wire line
3 service. And the language that's been struck from 3.2.5,
4 where it reads telephone number capable of simultaneous
5 outward dialing, if that language were included and
6 applied to voice over IP providers, the amount of
7 surcharges that the voice over IP provider would pay
8 would be completely out of proportion to what the wire
9 line provider pays. And so instead we used this
10 language, the underscored language, E-911 charges applied
11 to equivalent wire line telephone services.

12 CHAIRMAN:

13 And that is why?

14 A. That's correct.

15 CHAIRMAN:

16 No, I say, and that is why? Why would
17 it be completely out of proportion?

18 A. Well, as I understand, the comments from AT & T
19 --- it would --- let me just refer to them actually.

20 Q. Mr. Diamond, do you have the AT & T comments
21 with you?

22 A. I do.

23 (Level (3) Exhibit Three marked for
24 identification.)

25 ATTORNEY KELSH:

1 I'd like to have these marked as Level
2 (3) Exhibit Number Three.

3 CHAIRMAN:

4 Okay. It would be so marked.

5 BY ATTORNEY KELSH:

6 Q. On page two of AT & T's comments, there's a
7 paragraph and under the language that's proposed in
8 3.2.5, the language that's included, telephone numbers
9 capable of simultaneous outward dialing. A VoIP service
10 could be charged 20 to 30 times as much of the 911
11 surcharge while imposing greater cost on the 911
12 emergency service networks. So again, we're trying to
13 maintain equivalency between the traditional wire line
14 world and the voice over IP line.

15 CHAIRMAN:

16 So the result is that if there is ---
17 regardless of the number of people who are able to call
18 out if there's a line coming in, essentially you're going
19 to have one; is that correct?

20 A. That's right.

21 CHAIRMAN:

22 Okay.

23 A. And you pay on that line.

24 CHAIRMAN:

25 We had that discussion and debated at

1 our meeting about these rules, and we were curious as to
2 how it would be handled. Okay.

3 A. All right.

4 BY ATTORNEY KELSH:

5 Q. Can you explain the change to rule 3.26?

6 A. I believe those were just --- I think those were
7 stylistic changes.

8 Q. The proposed language, among themselves or with
9 carriers now is replaced with agents?

10 A. Right.

11 Q. And that doesn't involve anything substantive;
12 does it?

13 A. No. It does not.

14 Q. It's just a shorthand ---. Can you explain the
15 changes to your rule 3.27?

16 A. Sure. I think the best way to explain it is to
17 identify the process by which Level (3) currently handles
18 911 surcharges. What we do with our customers is, is we
19 offer a product. And part of the product that the
20 customer pays for is we agree, they pay a charge for
21 this, is we agree to pay and remit government surcharges
22 for them including 911 surcharges. And many, many voice
23 over --- many, many carriers, including voice over IP
24 carriers, really appreciate that service because there's
25 a great deal of complexity that goes into software,

1 coding and human resources necessary to remit 911
2 surcharges, there are approximately 10,000 public safety
3 answering points in the United States. It's a very, very
4 daunting undertaking, so a lot of carriers appreciate the
5 fact that we pay them. The way that --- the language in
6 3.2.7 was to --- is to provide --- the agent language
7 used in here refers to a company like Level (3). So that
8 to the extent that Level (3) collects and remits to the
9 public safety answering point, the county PSAP, if it
10 collects the money from the VoIP provider, as I've just
11 described, that did have an obligation to remit that to
12 the public safety answering point. But ultimately, this
13 language provides that ultimate obligation, the exclusive
14 obligation to pay the surcharge falls on the VoIP
15 provider so that if the VoIP provider fails to pay, the
16 county PSAP has an ability to recover the surcharge from
17 the voice over IP provider, not the wholesale provider,
18 which is Level (3). But we need to make sure that's what
19 is attempted to be accomplished here.

20 Q. Okay.

21 A. And I hope I answered that.

22 Q. I believe so.

23 A. Okay. Very good.

24 Q. Mr. Diamond, do you have any other comments to
25 offer the Commission?

1 A. I do not.

2 ATTORNEY KELSH:

3 Level (3) would like to move Exhibit
4 Numbers One through Three into evidence, and the witness
5 is available for further questioning.

6 CHAIRMAN:

7 Okay. The exhibits are admitted. Mr.
8 Starsick, we'll begin with you.

9 ATTORNEY STARSICK:

10 Your Honor, I have no questions, but I
11 did want to note for the record that I did a lot of the
12 work on these rules, as did Attorney Owen. And had these
13 concerns been raised to me or to Verizon previously, we
14 would have happily made the changes. We think that these
15 changes are very good and very well reasoned.

16 CHAIRMAN:

17 Thank you. Mr. Rodecker?

18 ATTORNEY RODECKER:

19 Thank you, Your Honor. I just have a
20 clarification question. Before that I want to say I did
21 not work on the taskforce, so a lot of this is ---.

22 CHAIRMAN:

23 We'll give you credit anyway.

24 ATTORNEY RODECKER:

25 Thank you.

1 CHAIRMAN:

2 I'm sure you had some role in it, Mr.
3 Rodecker.

4 CROSS EXAMINATION

5 BY ATTORNEY RODECKER:

6 Q. Mr. Diamond, just by way of clarification here,
7 if you could explain what I understand to be the role of
8 Level (3) in the provision of service as a backbone or a
9 provider to service to carriers as opposed to the end
10 user? In the definition --- or not the definition, in
11 rule 3.2.7, the reference is made to the provider of VoIP
12 service. Would Level (3) be a provider of VoIP service?

13 A. No, they would not.

14 Q. All right.

15 A. They provide an underlying backbone facility, a
16 finer facility, to carry traffic for the voice over IP
17 provider.

18 Q. And so with regard to the issue of the remission
19 of fees, then the entity that would be affected here
20 would be either the underlying carrier that actually
21 provides the VoIP service or the agent of that entity?

22 A. Yeah. When you say underlying carrier, that
23 refers to Level (3), but I think what you meant to say
24 was the VoIP provider.

25 Q. Correct.

1 A. Right. Yeah. The answer to your question is
2 correct, yes.

3 Q. The provider of VoIP service is not defined
4 anywhere in the rule; is it?

5 A. I haven't reviewed the rules in any
6 comprehensive sense, but I'll take it on faith that, Mr.
7 Rodecker, that it has not been defined unless it has
8 been, if you note the size of the rules. But I have not
9 reviewed all the rules comprehensively, so I don't know
10 essentially.

11 Q. I think the only position of Level (3) is that
12 you don't believe that Level (3), unless it's actually
13 providing the VoIP service to the end user, would be the
14 entity required to remit any key 911 fees?

15 A. That's correct. Whoever's the carrier that is
16 providing service to the end user is the carriers
17 responsible for remitting the fee, whether there's a
18 collection obligation or just a remittance obligation. I
19 don't know what the structure here is in West Virginia,
20 but the obligation to remit falls on the VoIP provider.
21 And to the extent that --- and this is only true true to
22 the extent that Level (3) operates as a VoIP provider in
23 other states and provides that service as a VoIP provider
24 directly to end users, we would have an obligation to
25 remit the surcharge depending upon the regulatory regime

1 in those states.

2 CHAIRMAN:

3 So there are states where you're the
4 direct VoIP ---?

5 A. Yes, there are. We do. With our enterprise and
6 government customers that I mentioned earlier we do
7 provide VoIP services.

8 CHAIRMAN:

9 Right.

10 BY ATTORNEY RODECKER:

11 Q. To the extent that the rules do not include
12 definition of VoIP provider, do you believe that it would
13 be appropriate for the purposes of Level (3) to contain
14 or that the rules include such a definition to make it
15 clear that VoIP provider is the entity providing service
16 to end users?

17 A. Not necessarily, no.

18 ATTORNEY RODECKER:

19 No further questions.

20 CHAIRMAN:

21 All right. Do you have any questions?

22 ATTORNEY OWEN:

23 I'm going to the move, which is
24 considered uncharacteristic by my other counsel
25 associated with this case, that staff has determined that

1 it can live with the suggested changes.

2 CHAIRMAN:

3 You'll survive it.

4 ATTORNEY OWEN:

5 Thank you.

6 CHAIRMAN:

7 Gentleman, you're not here by counsel,
8 but certainly we'll permit you to ask any clarifying
9 questions that you may have about the materials that were
10 presented this morning or ask any questions or express
11 any concerns you may have.

12 MR. ROWE:

13 I'd just like to make a statement that
14 I have reviewed these changes prior to the hearing today.
15 And on face value and after hearing the testimony today,
16 it appears that they're presenting clarificational
17 accountability, which I believe our County Commissioners
18 in the State of West Virginia will appreciate and also
19 the PSAPs. And we also support an even playing field so
20 if this is indeed an even playing field between wire line
21 customers and VoIP customers, then we support that.

22 CHAIRMAN:

23 All right. We'll note your comments.

24 Sir?

25 ATTORNEY TROY:

1 No questions, Your Honor.

2 CHAIRMAN:

3 Okay. You indicated you're a
4 regulatory counsel in 18 states, and you all operate in
5 45 states; are there any --- I assume there are E-911
6 fees in all states?

7 A. In the traditional wire line world, the answer
8 is yes. In the voice over IP world, not every state is
9 there yet, but we've anticipated that that's the
10 predominant direction that states are going where they're
11 passing legislation where 911 surcharges have to be
12 remitted by voice over IP providers. So we've seen that
13 trend, and our systems are geared up for that.

14 CHAIRMAN:

15 Just out of curiosity, what's the range
16 of fees that you're ---?

17 A. Oh, my. It can be cents, you know, 10 cents, 20
18 cents per access line its way up to dollars, \$3 or \$4. I
19 am speculating when I say that, but that's the kind of
20 range that I've --- the type of numbers that I've seen,
21 but that's a rough guess.

22 CHAIRMAN:

23 All right. Are there any other
24 comments, questions, presentations? If not, thank you,
25 Mr. Diamond.

1 A. Thank you very much.

2 CHAIRMAN:

3 We appreciate your testimony, and the
4 exhibits will be admitted, and we'll close this. And we
5 appreciate your time, and the hearing is at an end.

6 Thank you.

7 A. Thank you.

8

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HEARING CONCLUDED AT 10:00 A.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken
stenographically by me, and thereafter reduced to
typewriting by me or under my direction; and that this
transcript is a true and accurate record to the best of
my ability.


Court Reporter

LAW OFFICE OF
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November 7, 2008

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

RE: GENERAL ORDER NO. 187.36
Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

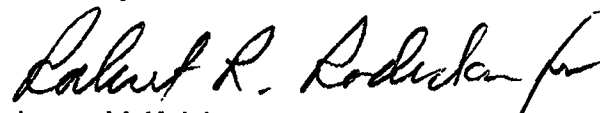
Dear Ms. Squire:

Pursuant to the October 8, 2008 Commission Order initiating the above-referenced proceeding, enclosed herein please find the original and twelve (12) copies of the Comments of Level 3 Communications, LLC ("Level 3"). As reflected in the Comments, I am co-counsel with Michael P. Donahue and, therefore, each of our names should appear on the Commission's official service list in this proceeding.

As evidenced by the Certificate of Service attached thereto, a copy of the Comments is being served upon Staff Attorney C. Terry Owen.

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

Sincerely,



James V. Kelsh
WV State Bar No. 6617

bg
enclosures

cc: Michael Donahue, Esquire (via e-mail)
C. Terry Owen, Esquire



LEVEL 3 - EX. NO. 1

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

GENERAL ORDER NO. 187.36

Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

**COMMENTS
OF
LEVEL 3 COMMUNICATIONS, LLC**

In accordance with the Commission's October 8, 2008 Order in this proceeding, Level 3 Communications, LLC ("Level 3") submits its comments on the emergency rules. Level 3 generally supports the Commission's rules and the underlying goal of an effective, efficient E911 system that includes all technologies; however, Level 3 seeks clarification as to the scope of the rules with respect to wholesale Voice over Internet Protocol ("VoIP") and other IP-based services.

Level 3 provides services primarily on a wholesale basis to incumbent local exchange carriers, competitive local exchange carriers, Commercial Mobile Radio Services, VoIP providers, other content providers, including ISPs, and other enhanced service providers. Level 3 offers direct inward dial ("DID"), for which E911/911 services are not applicable, and direct outward dial ("DOD") services, which may include E911/911 services, that allow for local connectivity to the public switched telephone network ("PSTN") by Level 3's customers, including VoIP and other IP-enabled service providers, and their end users. In cases where Level 3 provides E911 service to a wholesale customer in West Virginia, Level 3 collects the applicable E911 fee and remits that fee to the

the appropriate county commission, Public Safety Answering Point or other agency. Therefore, Level 3 remits the E911 fees on behalf of its wholesale customers.

The emergency rules give VoIP providers the opportunity to make arrangements with their underlying local exchange carrier (“LEC”) for the “billing, collection and remission of E911 fees, including but not limited to wholesale provision of VoIP.” 150 CSR 32, § 3.2.6. Level 3 supports the inclusion of this provision as it recognizes what the FCC has characterized as a typical arrangement between VoIP providers and LECs in which the LEC provides PSTN connectivity, telephone numbers and other services that the VoIP bundles with its services to provide VoIP services to end users.¹ In addition, this rule recognizes and promotes the continuation of existing wholesale arrangements in which an underlying LEC provides the E911 billing, collecting and remittance functions for its VoIP customers. Maintaining this option for VoIP providers is important as Level 3 has found that many of these providers are smaller companies with few personnel and resources that do not have the institutional knowledge and expertise to monitor and comply with multiple, often conflicting E911 fee requirements across multiple states. Therefore, for many VoIP providers, it is easier and more cost-effective to authorize their wholesale provider to handle the billing, collection and remittance of E911 and other surcharges.

Nonetheless, it is important that the Commission confirm a wholesale provider’s obligations under the new rules under certain circumstances. For instance, while the rules in Section 3.2.9 relieve a VoIP provider of the obligation to remit an E911 surcharge where the VoIP provider’s customer

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151, ¶ 31 (2008). See also *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19,531, 19,542, ¶ 12 (2007).

~~provider's customer~~ refuses to pay the charge, there is no similar provision with respect to wholesale providers of VoIP service. It is consistent with the Commission's recognition of the existence of wholesale arrangements in Section 3.2.6 for the Commission to provide those arrangements the same treatment afforded retail VoIP services in Section 3.2.9. Level 3 requests the Commission clarify that if a VoIP provider does not pay the applicable E911 surcharge, either directly or through its wholesale provider (*i.e.*, the VoIP provider refuses to pay a surcharge line item on its wholesale invoice), the wholesale provider is not obligated to pay the surcharge on behalf of the VoIP provider. Rather, the county commission must look to the retail VoIP provider for payment.

In addition, Section 3.2.6, states that where a VoIP provider has made arrangements with its wholesale provider to collect and remit the E911 surcharge, only one such charge shall be collected. This is an important provision as it reduces the likelihood that there will be a double remittance of fees in certain circumstances – once by the wholesale provider on the services it provides a VoIP provider and once by the VoIP provider on its retail services. It is important for the Commission to clarify that this rule also limits the ability of a county commission to seek payment of E911 fees when either a wholesale carrier or the wholesale carrier's customer has already collected and remitted the fee. In other words, while the language of this rule precludes a wholesale VoIP provider and retail VoIP provider from billing an end user for the same line or line equivalent, it is not clear the same restriction applies to county commissions.

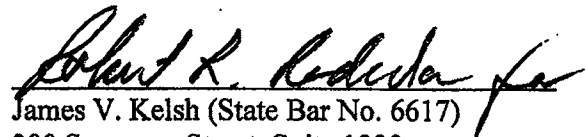
Level 3 collects and remits E911 fees on the DID/DOD services and telephone numbers it provides to its VoIP customers in West Virginia based upon the county in which those services/numbers are provided. Level 3 bills the E911 surcharges directly to its wholesale VoIP customers, and remits the amount collected to the county commissions. Many of these customers

have expressed to Level 3 their preference for the continuation of such arrangements rather than having to collect and remit the fees. Level 3's concern, and the concern expressed by many of its customers, is that a county commission may seek E911 fees from a VoIP provider and its wholesale provider. Level 3 urges the Commission to clarify that if a county commission can confirm that ^{it} ~~is~~ has received payment for a particular line or line equivalent from either a VoIP provider directly or from a wholesale provider on behalf of its VoIP customers, the county commission cannot also seek payment from another entity.

For the foregoing reasons, while Level 3 generally supports the Commission's emergency rules, Level 3 urges the Commission to make the clarifying revisions described in these comments in order to eliminate uncertainty and provide consistency within the rules.

LEVEL 3 COMMUNICATIONS, LLC

By Counsel



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Dated: November 7, 2008

CERTIFICATE OF SERVICE

I, James V. Kelsh, co-counsel for Level 3 Communications, LLC in this proceeding, do hereby certify that a copy of the foregoing Comments have been served upon Staff Attorney C. Terry Owen on this 7th day of November, 2008, via hand delivery to 201 Brooks Street, Charleston, West Virginia.


JAMES V. KELSH

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 ~~telephone numbers capable of simultaneous outward dialing~~ E911 charges applied to equivalent wireline telephone services. 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 between among providers ~~or carriers~~ and agents.

Providers of VoIP service may make arrangements ~~among themselves or with carriers~~ agents 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, or an agent of 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 or its agent 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. When a provider of VoIP services uses an agent for the billing, collecting, and remission of E911 fees, the agent is only liable to a county commission for remission of E911 fees to the extent the agent has received such fees from VoIP subscribers and the provider of VoIP services. A provider of VoIP services shall be liable to a county commission to the extent it fails to remit to its agent E911 fees collected from subscribers.



LEVEL 3 - EX. NO. 2

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CHARLESTON, WEST VIRGINIA 25337

November 7, 2008

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RECEIVED
08 NOV - 7 PM 4:23
IN VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

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

RE: GENERAL ORDER NO. 187.36
Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

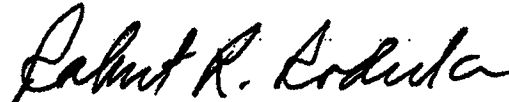
Dear Ms. Squire:

Pursuant to the October 8, 2008 Commission Order initiating the above-referenced proceeding, enclosed herein please find the original and twelve (12) copies of the Comments of AT&T Communications of West Virginia, Inc. ("AT&T").

A copy of the Comments is being served upon Staff Attorney C. Terry Owen as evidenced by the Certificate of Service attached thereto,

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

Sincerely,



Robert R. Rodecker
WV State Bar No. 3145

bg
enclosures

cc: Mark A. Keffer, Esquire (via e-mail)
J. Manning Lee, Esquire (via e-mail)
C. Terry Owen, Esquire



LEVEL 3 - EX. NO. 3

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

GENERAL ORDER NO. 187.36

Rules Governing Billing, Collection and
Remission of E911 Fees By Providers of
Voice Over Internet Protocol Service Series 32

**COMMENTS
OF
AT&T COMMUNICATIONS OF WEST VIRGINIA, INC.**

Now Comes AT&T Communications of West Virginia, Inc. ("AT&T") pursuant to the Commission's October 8, 2008 Order in this proceeding and submits its comments on the emergency rules.

AT&T generally supports the Commission's rules. However, in order that all carriers are treated equally, AT&T would suggest a minor change to the language of the Proposed Emergency Rule 3.2.5. AT&T proposes that section be revised to read as follows:

3.2.5 ~~An 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 E911 charges applied to equivalent wireline telephone services. ~~For example, for single line VoIP service, that would equal the number of~~ telephone numbers capable of simultaneous outward dialing. The E91 1 fee is due and payable by customers on the same basis as the rates and charges for VoIP service. (additions are shown by underlining and deletions are shown by strikethrough)

The proposed change is necessitated in order to address the application of charges to multiple service offerings such as PBX trunks or Centrex.

AT&T recommends that the Commission adopt competitively neutral language for the assessment of E911 charges. The proposed language, while fine for single line consumer or business situations, is not appropriate for large business customers. For example, a wireline Primary Rate Interface (PRI) service connects to a business' PBX and provides the equivalent of 24 individual lines and can support hundreds of telephone numbers. Today, users of such services in West Virginia are assessed the equivalent of five single line E911 charges. Under the proposed emergency language, an equivalent VOIP service could be charged twenty or thirty times as much, while imposing no greater costs on the 911 emergency service network. Such a disparity could make it uneconomic for large businesses to upgrade to VOIP based network services.

Currently, wireline carriers are permitted to charge the E911 fee to their customers on this basis. In order that all forms of service be treated similarly, it is respectfully requested that the revision proposed herein be adopted.

CERTIFICATE OF SERVICE

I, Robert R. Rodecker, co-counsel for AT&T Communications of West Virginia, Inc. in this proceeding, do hereby certify that a copy of the foregoing Comments have been served upon Staff Attorney C. Terry Owen on this 7th day of November, 2008, via hand delivery to 201 Brooks Street, Charleston, West Virginia.


ROBERT R. RODECKER



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

June 22, 2009

VIA HAND DELIVERY

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 Billing,
Collection and Remission of E911 Fees by Providers of
Voice over Internet Protocol Service, 150 C.S.R. 32.

Dear Ms. Cooper:

Enclosed are adopted Rules Governing Billing, Collection and Remission of E911 Fees by Providers of Voice over Internet Protocol Service, 150 C.S.R. 32 ("VoIP Rules") to replace emergency rules that went into effect on November 19, 2008.

The VoIP Rules resulted 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.

The Commission promulgated the emergency rules on October 8, 2008, to recognize that (i) E911 is vital to the public safety and public interest and (ii) the rules were necessary to put an end to the prolonged loss of revenue experienced by the county PSAPs statewide.

Judy Cooper, Director
June 22, 2009
Page 2

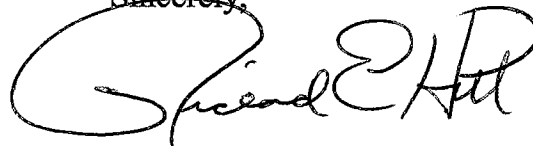
At the same time that the Commission promulgated the emergency rules, it also established a comment period and published notice of the comment period statewide. The Commission required comments on the emergency rules to be filed with the Commission on or before November 7, 2008. Two interested parties, AT&T Communications of West Virginia, Inc. ("AT&T") and Level 3 Communications, LLC ("Level 3"), filed comments in this proceeding suggesting amendment and clarification of VoIP Rules 3.2.5, 3.2.6 and 3.2.7.

Upon receipt of the filed comments, the Commission issued an order scheduling a hearing on April 29, 2009, and ordering notice of the hearing. The hearing was held as scheduled. All interested parties agreed on certain clarifying amendments to VoIP Rules 3.2.5, 3.2.6 and 3.2.7 and the Commission has incorporated those agreed changes into these final rules.

In this filing I enclose one copy each of Form No. 5 "Notice of Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review," the Rule, the final Order in General Order No. 187.36, and copies of the filed comments and the hearing transcript that includes an exhibit setting forth the agreed-upon rule changes. 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 304-340-0316.

Sincerely,

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

Richard E. Hitt
General Counsel

REH/JML/klm
Enclosures