



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Public Service Commission TITLE-SERIES: 150-25

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Rules Governing Emergency Wireless Telephone Service

CITE STATUTORY AUTHORITY: 24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-6-6b, and 24-6-11

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 11, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jane Neal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 150
EXEMPT LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 25
RULES GOVERNING
EMERGENCY AND WIRELESS TELEPHONE SERVICE

§150-25-1. General.

1.1. Scope -- These Rules govern the billing, collection, and remission of the Wireless Enhanced 911 Fee, the Public Safety Fee and the Wireless Tower Fee, on a monthly basis, by certain telecommunications carriers subject to the jurisdiction of the Public Service Commission of West Virginia (Commission) pursuant to W. Va. Code §24-2-1 and the disbursement of such fee revenues in accordance with W. Va. Code §24-6-6b to the West Virginia State Police, Division of Homeland Security and Emergency Management, Wireless Tower Access Assistance Fund, and counties in West Virginia. Additionally, these Rules establish guidelines to be used by the Commission in evaluating any request by a project sponsor for funding assistance for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to the marginal financial viability of the applicable tower coverage area.

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

1.3. Filing Date. -- July 12, 2023.

1.4. Effective Date. -- September 11, 2023.

§150-25-2. Definitions.

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

2.2. “Cost” -- Means, as applied to any project to be financed in whole or in part with funds provided from the Tower Access Assistance Fund, the cost of acquisition, equipping, and/or construction of the proposed wireless tower; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, equipping, and/or construction of the wireless tower; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth; the cost of constructing any tower, guy lines, warning lights, antennae, feed lines, radio equipment, power lines, generators, security fencing, gates or other facilities necessary for the operation and protection of the tower; the cost of all apparatus, other machinery, and equipment necessary for the operation of the tower; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of

construction; the cost of insurance related to equipping and construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any wireless tower; the cost of placing any project in operation; and all other costs of any kind or nature incurred or to be incurred by the project sponsor that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs will not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Commission has not determined to be consistent with the purposes and objectives of the legislation establishing the Wireless Tower Access Assistance Fund.

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

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

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

2.6. "Enhanced Emergency Telephone System" or "Enhanced 911 Service" -- A telephone system which automatically connects a person dialing 911 to the appropriate county answering point with automatic location identification and automatic number identification.

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

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

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

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

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

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

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

2.14. "Political subdivision of the state" -- Means any county commission, municipality or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county health department created

pursuant to W. Va. Code §16-2-1 et. seq.; public service district; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a governmental function.

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

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

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

2.18. “Public Safety Wireless Fee” or “Public Safety Fee” -- Means the monthly fee that a CMRS provider charges and collects from their in-state two-way service subscribers, which generates revenue designated for certain uses by the Division of Homeland Security and Emergency Management and the West Virginia State Police.

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

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

2.21. “State agency” -- Means a state department, board, commission, institution or other administrative agency of state government.

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

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

2.24. “WE911 Fee” or “Wireless Enhanced 911 Fee” -- Means the wireless enhanced 911 fee prescribed by W. Va. Code §24-6-6b.

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

2.26. “Wireless tower” -- Means any structure, antenna, tower, or other device which provides, or is suitable to provide, CMRS, cellular phone services, specialized mobile radio (SMR) communications services, common carrier wireless exchange phone services, PCS, public safety (including law

enforcement, ambulance, rescue and firefighting) communications, wireless broadband Internet access, Department of Highways communications and/or commercial pager services.

2.27. “Wireless Tower Access Assistance Fund,” or “Fund” -- Means the Fund established in accordance with the provisions of W. Va. Code §24-6-6b.

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

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

2.30. “Wireless Tower Access Fee” -- Means the monthly fee that a CMRS provider charges and collects from their in-state two-way service subscribers, which generates revenue designated to fund the construction of wireless towers.

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

3.1. Creation of emergency telephone systems.

3.1.1. A public agency may establish, consistent with these Rules, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, will be construed to prohibit or discourage in any way the establishment of multi-jurisdictional or regional systems, and any system established may include only a portion of the territory of a public agency. To the extent feasible, these systems will be centralized.

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

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

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

3.2. Establishment of emergency telephone systems.

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

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

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

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

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

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

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

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

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

3.3. Reporting requirements of the telephone utility. The telephone utility, before establishing any

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

3.4. 9-1-1 Rule regarding telephone directory emergency numbers pages.

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

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

3.4.3. Where an entire directory coverage area is not covered by 9-1-1, the emergency calling information page will list the seven (7) digit telephone numbers of all directory coverage area Public Safety Units not accessible by calling 9-1-1. The emergency calling information page will, at least, clearly show which emergency calls should be made to 9-1-1 and which should be made to other emergency telephone numbers listed on the page.

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

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

§150-25-4. Billing and Collection of WE911 Fee, Public Safety Fee and Wireless Tower Fee.

4.1. Post-paid service -- On a monthly basis, each CMRS post-paid provider will charge and collect a WE911 Fee, a Public Safety Fee, and a Wireless Tower Fee at the current statutory rate, on each valid retail CMRS subscription. The applicable fees will be listed as separate line items on the billing statement provided to each valid post-paid retail CMRS subscription by CMRS providers.

4.1.1 The WE911 Fee, equal to the amount established by W. Va. Code §24-6-6b(b), or the amount as may be subsequently respecified in accordance with the statute, should be listed as a separate line item on the monthly billing statement provided to each valid in-state CMRS subscriber and collected by CMRS providers.

4.1.2 The Public Safety Fee, equal to the amount of twenty-nine cents (\$0.29) per month, or the amount as may be subsequently modified by force of law, should be listed as a separate line item on the billing statement provided to each valid in-state CMRS subscriber and collected by CMRS providers.

4.1.3 The Wireless Tower Fee, equal to the amount of eight cents (\$0.08) per month, or the amount as may be subsequently modified by force of law, should be listed as a separate line item on the billing statement provided to each valid in-state CMRS subscriber and collected by CMRS providers.

4.2. Pre-paid service -- Prepaid wireless calling service is subject to the general consumer sales and service tax, in lieu of the WE911 Fee, the Public Safety Fee and the Wireless Tower Fee.

§150-25-5. Remission of WE911 Fee, Public Safety Fee and Wireless Tower Fee Revenues to Commission.

5.1. Post-paid service -- By no later than the seventeenth (17th) day of each month, or the first business day thereafter, each CMRS provider will, after retaining a billing fee equal to three percent (3%) of the total sum collected for the WE911 Fee, the Public Safety Fee, and the Wireless Tower Fee during the preceding month or billing period, remit to the Commission a check, or appropriate financial equivalent, for the net balance of the fee revenues collected. If remitted by mail, the postmark will be used as proof of compliance. If remitted electronically, the date specified by the software used will be used as proof of compliance. The fee revenues will be remitted to:

By mail:

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

Electronically:

executive_director_CMRS@psc.state.wv.us

5.1.1. Form to be used with fee revenue remittals. CMRS providers will use P.S.C. W. VA. Form No. WLF-1, or a reasonable functional equivalent, when remitting the fee revenue to the Commission. Form No. WLF-1 requires CMRS providers to separately list (1) the total number of subscriber fees collected and amount of revenue collected for each fee; (2) the sum of all revenue collected; (3) the three percent (3%) billing fee amount withheld from the sum total revenue; and (4) the total net amount of fee revenue remitted to the Commission. All information requested by Form No. WLF-1 will be provided. This may be done electronically, at the discretion of the CMRS provider.

5.1.2. Each CMRS provider will remit to the Commission the net funds collected by the CMRS provider. The remitted funds will include any previously unpaid WE911 Fees, Public Safety Fees, and Wireless Tower Fees collected by the CMRS provider during the preceding monthly billing period.

§150-25-6. Calculation of Fee Revenue Disbursement.

6.1. The Commission's Administration Division will, using the methodology and data required by W. Va. Code §24-6-6b, calculate the disbursement ratios for the revenue generated by the WE911 Fee, Public Safety Fee and Wireless Tower Fee, as provided below.

6.1.1. Nineteen cents (\$0.19) of the twenty-nine cents (\$0.29) Public Safety Fee collected per subscriber and received by the Commission each month will be designated for the Division of Homeland

Security and Emergency Management.

6.1.2. Each month, eight cents (\$0.08), or the total amount of the Wireless Tower Fee, collected per subscriber and received by the Commission will be deposited in a fund entitled “Wireless Tower Access Assistance Fund.”

6.1.3. Each month, ten cents (\$0.10) of the remaining twenty-nine cent (\$0.29) Public Safety Fee collected per subscriber and received by the Commission will be designated for the West Virginia State Police.

6.1.4. Disbursement ratios for the WE911 Fee revenue pursuant to 6.4 will be recalculated by the Commission’s Administration Division within thirty calendar days of the availability of updated decennial county population census data. Such recalculated disbursement ratios will be effective on July 1 immediately following such recalculation.

6.2. Counties with an Enhanced Emergency Telephone System ordinance enacted will receive only that county's portion of the monthly WE911 Fee revenues being disbursed on a pro rata basis, as set forth in Rules 6.3., 6.4 and 6.5 herein.

6.3. When two or more counties organize pursuant to law into one county in order to provide government services and upon written notice to the Commission verifying such consolidation, the consolidated county will receive one percent (1) of the monthly net WE911 Fee revenues received by the Commission for itself and for each county merged into the consolidated county, in addition to other amounts permitted by this Rule.

6.4. Each county will receive eight and one-half tenths of one percent (0.0085) of the remainder of the monthly WE911 Fee revenues received by the Commission.

6.5. From any WE911 Fee moneys remaining, each county will receive a pro rata portion, based on that county’s percentage of the state’s total population, as determined in the most recent decennial census.

§150-25-7. Accounting for Fee Revenues.

7.1. The Commission will establish and maintain an account for the WE911 Fee, the Public Safety Fee and the Wireless Tower Fee revenues remitted to the Commission.

7.2. Said accounts will serve as repositories for such fee revenues until, in accordance with the quarterly disbursement schedule set forth below in section 8, such revenues are disbursed to each county.

§150-25-8. Disbursement of Monthly Fee Revenues.

8.1. Disbursement of WE911 Fee revenues. On a quarterly basis, the Commission will, by check or appropriate financial equivalent, distribute the WE911 Fee revenues to each county by the 10th day of the month in accordance with the schedule set forth below.

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

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

8.1.3. In the months of March, June, September, and December, payments will be issued to the

following counties: Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming.

8.1.4. The WE911 Fee revenues disbursed in any given month will be those billed during the three-month period which ended three months prior to the disbursal month. For example, the monthly WE911 Fee revenues filed with the Commission by CMRS providers during April, May and June will be disbursed in October.

8.2. Disbursement of Public Safety Fee revenues. On a monthly basis, the Commission will disburse the Public Safety Fee revenues received as set forth below:

8.2.1. The Commission will disburse nineteen cents (\$0.19) of the Public Safety Fee received per each subscriber to the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance, and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system.

8.2.2. The Commission will distribute the remaining ten cents (\$0.10) of the Public Safety Fee received per each subscriber to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with the Enhanced Emergency Telephone System.

8.3. Disbursement of Wireless Tower Fee revenues. On a monthly basis, the Wireless Tower Fee revenues received by the Commission will be deposited into the Wireless Tower Access Assistance Fund, to subsidize the construction of wireless towers.

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

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

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

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

9.3.1. Legal name of CMRS provider;

9.3.2. All business names used by the CMRS provider;

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

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

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

9.4. Changes to any of the above-listed information will be filed with the Commission's Executive Secretary within thirty (30) calendar days of the effective date of such change(s). This filing requirement

includes providing notice to the Commission's Executive Secretary of any and all mergers, divestitures, acquisitions, etc. affecting West Virginia service areas.

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

10.1. Each local exchange carrier certificated by the Commission will, by no later than April 7 of each year, submit to the Telecommunications Section of the Commission's Utilities Division line counts and WE911 Fee data, by county, as of March 1 of that year.

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

§150-25-11. Respecification of the WE911 Fee.

11.1. The WE911 Fee will be respecified biennially, in odd numbered years, using the respecification methodology and data required by W. Va. Code §24-6-6b(b). The respecified WE911 Fee will become effective on July 1 of the respecification year.

11.2. No later than the first of February of each respecification year, Commission Staff will notify each local exchange carrier to submit to the Commission, on or before April 7, line counts and the landline fee for E911 service in each county as of March 1 of the same year.

11.3. Commission Staff will make its calculations and recommendation to the Commission regarding whether the WE911 Fee needs to be respecified no later than May 7 of the respecification year. The Staff recommendation will be provided to each registered CMRS provider.

11.4. The Commission will provide notice of the respecified WE911 Fee by issuance of a general order as soon as possible after the receipt of the Staff recommendation.

11.5. For each new CMRS provider that registers with the Commission, the Commission will provide notice of the currently applicable WE911 Fee within thirty (30) calendar days after the date such CMRS provider registers with the Commission.

§150-25-12. Uncollectibles.

12.1. CMRS post-paid providers will make reasonable and diligent efforts to collect unpaid WE911 Fees, Public Safety Fees and Wireless Tower Fees from each valid retail post-paid CMRS subscription. Notwithstanding the foregoing, a CMRS provider will not be deemed to be a collection agent or otherwise held liable for a subscriber's failure to pay fees properly billed by the CMRS provider.

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

13.1. Projects.

13.1.1. Project Review. In order to receive "grant funding" for a project from the Wireless Tower Access Assistance Fund, a project sponsor must submit the appropriate form application, to be developed and provided by the Wireless Tower Access Assistance Fund Review Committee, and the project must receive the approval of the Committee.

13.1.2. Application Filing. To be considered for funding from money accruing from the period January 1 through December 31 of the funding year, the project sponsor must file its application on or before November 15 of the funding year with the Commission's Executive Secretary.

13.1.3. Application Review. The Committee will review all applications filed on or before the November 15 filing deadline. The Committee will make a determination regarding each application and either recommend the approval of, in whole or in part, or the denial of funding for the project or request additional information if necessary to make a determination. The Committee will rank all of the applications for which it recommends approval in order of funding preference. A copy of the determination by the Committee will be sent to the Commission's Executive Secretary and to the applicant. The Committee will review the applications and make recommendations to the Commission, as described above, during the period following the November 15 filing deadline and before December 31. This same procedure will repeat with each calendar year, provided that, upon a positive vote of at least six of its members, the Committee, for good cause shown, may treat an application in an expedited manner to be determined by the members. In all such instances of expedited treatment, the Commission will have fourteen (14) days, from receipt of the Committee's expedited recommendation, in which to make its decision regarding such expedited recommendation.

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

13.1.3.b. If funding for a project is denied for any reason, the Committee will provide written notice of such to the applicant with a copy to the Commission's Executive Secretary.

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

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

13.1.6. Eligible Grant Recipients. The Committee will not recommend grants for any project that is not applied for by a county commission as project sponsor on behalf of itself and/or another person.

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

13.1.8. Loans. The Committee will not recommend, and the Commission will not distribute, any loans from the Wireless Tower Access Assistance Fund.

13.2. Review Guidelines.

13.2.1. Determination of Eligible Projects. When evaluating any request for funding assistance to acquire, construct or equip a wireless tower, the Committee will consider the following:

13.2.1.a. The public health and safety benefits;

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

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

13.2.1.d. The cost effectiveness of the project as compared with alternatives which achieve substantially the same benefits;

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

13.2.1.f. The applicant's ability to operate and maintain the wireless tower if the project is approved and consummated;

13.2.1.g. The degree to which the project achieves or abets other state or regional planning goals;

13.2.1.h. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;

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

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

13.2.1.k. Verification that the project sponsor will obtain a performance bond guaranteeing completion of the project.

13.3. Wireless Tower Access Assistance Fund Administration.

13.3.1. Administration of the Wireless Tower Access Assistance Fund. The Commission's Administration Division will be responsible for administration of the account containing Wireless Tower Access Assistance Fund money. The Administration Division will receive and deposit Wireless Tower Fee revenues intended for the Fund and will be responsible for all Fund grant transactions.

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

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

13.3.4. Reporting Requirements of Grant. West Virginia Code §24-4-14 and the State Auditor's Accountability Requirements for State Funds and Grants, 150 C.S.R. Series 9, establishes reporting requirements for the Commission as the grantor of wireless tower grant funds and the project sponsor(s) who is/are awarded grant monies from the Wireless Tower Access Assistance Fund.

13.3.4.a. Project Sponsor Grantee(s) Reporting. Within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the Commission is made, a grantee of \$50,000 or more of Wireless Tower Access Assistance Fund, in a state's fiscal year, will file with the Commission and the State Auditor a report of the disbursement of the grant funds; and, a grantee of less than \$50,000, in a state's fiscal year, will file with the Commission and the State Auditor a sworn statement detailing the expenditures of the grant funds.

13.3.4.b. Project Sponsor Grantor Reporting. The Director of the Commission's Administration Division is named Chief Accountability Officer and responsible to facilitate compliance with W. Va. Code §24-4-14 and the State Auditor's Accountability Requirements for State Funds and Grants, 150 C.S.R. Series 9, with respect to the Commission's requirement to report on Wireless Tower Access Assistance Fund funding, including reporting any grantee(s) failing to file a report or sworn statement in accordance with the law.

13.3.4.c. Wireless Tower Access Assistance Fund Review Committee Reporting. The Committee will prepare a report for the Commission on an annual basis listing the projects which received grant money and are sold after receipt of grant funds, including a description of the terms by which the project sponsor(s) will repay grant monies upon the sale of a grant funded wireless tower.

13.3.5. Terms and conditions for Receiving Financial Assistance from the Fund. Each grant awarded by the Commission will be evidenced by a grant agreement contract between the Commission as the grantor and the project sponsor(s) as the grantee which will include, in addition to those provisions described elsewhere in this Rule, and without limitation and to the extent applicable, the following provisions:

13.3.5.a. The estimated cost of the project and the amount of the grant;

13.3.5.b. The specific purposes for which any items on which the grant proceeds will be expended and the conditions and procedure for disbursing grant proceeds;

13.3.5.c. The duties and obligations imposed by the Commission upon the project sponsor(s) regarding the project;

13.3.5.d. The agreement of the project sponsor(s) will comply with all applicable federal and state laws and all Rules and regulations issued or imposed by the Commission or other state, federal or local bodies regarding the design, acquisition, equipping, and/or construction of the wireless tower and granting the Commission the right to appoint a receiver for the wireless tower project if the project sponsor should default on any terms of the agreement;

13.3.5.e. The project sponsor(s) will provide the Commission with thirty (30) days advance notice of its intent to sell the tower that is the subject of the project, by filing written notice with the Executive Secretary of the Commission, which must include the Tower Assistance Fund (-TAF) docket number for the specific grant that funded the tower.

13.3.5.f. Upon sale by the project sponsor(s) of the tower that is the subject of the project, to the extent that proceeds are available, the project sponsor(s) will reimburse the Wireless Tower Access Assistance Fund the amount of the grant funding, reduced by the applicable share of accumulated depreciation of the project.

13.3.5.g. The grant agreement contract will be governed by the laws of the State of West Virginia.

13.4. Filing and Docketing of Applications.

13.4.1. Applications procedures. The project sponsor will file an original and one copy of the application with the Commission's Executive Secretary. That office will record the filing in the Commission's docket using an appropriate designation methodology consisting of a Tower Assistance Fund (-TAF) case designation. The chairman of the Wireless Tower Access Assistance Fund Review Committee will distribute the application filing to the other members of the Committee. The project sponsor will send any additional documents, correspondence, etc., associated with the filing directly to each of the members of the Committee and will file one copy with the Commission's Executive Secretary. The project sponsor will, upon request of the chairman of the Committee, make electronic copies, in a format specified by that person, of all application documents available, including documents comprising the original application and documents filed subsequently.

13.5. Wireless Tower Access Assistance Fund Review Committee.

13.5.1. Terms of Membership. Membership terms will be for three years. Initial memberships of the Commission Staff representative, the House representative and the Senate representative will be for one year and initial memberships for the County Commissioners' Association of West Virginia representative, the wireless telephone providers representative and the wireless tower construction industry representative will be for two years. Members will serve at the will and pleasure of the appointing authority. The unexpired portion of a vacating member's term will be filled by a replacement appointed pursuant to Rule 2.29, herein.

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

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

13.5.4. Quorum. No matter may be put to a vote at a Committee meeting unless a quorum of members and member designees is present at the meeting. A quorum will consist of a total of at least four (4) voting members and/or member designees.

13.5.5. Chairperson. The Committee membership will designate a Chairperson who will be

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

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CMRS SUBSCRIBER FEE REPORT**

MONTH OF _____, 20____

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

.....

FEIN: _____

COMPANY NAME: _____

DBA (IF APPLICABLE): _____

ADDRESS: _____

CONTACT PERSON _____ **PHONE** _____

EMAIL ADDRESS _____

.....

	<u>Authorized</u> <u>Fee</u>	<u>Number of Fees</u> <u>Collected</u>	<u>Amount</u> <u>Collected</u>
Wireless Enhanced 911 Fee:	\$ _____	X _____	\$ _____
Wireless Tower Fee:	\$ _____	X _____	\$ _____
Public Safety Fee:	\$ _____	X _____	\$ _____
Total Amount Collected:			\$ _____
Less 3% Administrative Fee:			\$ _____
Net Payable to PSC:			\$ _____

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

OR, TO FILE ELECTRONICALLY: executive_director_CMRS@psc.state.wv.us

FAX INFO: (304) 340-3753, ATTN: CMRS Subscriber Fee Report