WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3208

(By Delegates Trump, Michael, Mahan, Campbell and Ashley)

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Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating to the wireless enhanced 911 fee; raising the fee; earmarking ten cents to the fee for the State Police; earmarking one million dollars of the fee for the construction of wireless towers; creating the Enhanced 911 Wireless Tower Assistance Fund to be administered by the Public Service Commission; authorizing the Commission to provide loans and matching grants; use of towers for emergency services; authorizing the Commission to promulgate rules and emergency rules; adjusting the formula by which the Public Service Commission distributes wireless enhanced 911 fees to the counties; and allowing counties which consolidate government services to receive one percent of fee for each county consolidated.

Be it enacted by the Legislature of West Virginia:
That §24-6-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee.

(a) Beginning on the first day of January, one thousand nine hundred ninety-eight, all CMRS providers, as defined in section two of this article, shall, on a monthly basis, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. No later than the first day of August, one thousand nine hundred ninety-eight, the Public Service Commission, shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an order which directs the CMRS providers regarding all relevant details of wireless enhanced 911 fee collection, including the determination of who is considered an in-state two-way service subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The Public Service Commission shall solicit the views of the wireless telecommunications utilities prior to issuing the order.

(b) The wireless enhanced 911 fee is three dollars per month for each valid retail commercial mobile radio service subscription, as that term is defined by the Public Service Commission in its order issued under subsection (a) of this section: Provided, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: Provided, however, That for the fiscal year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. The monies shall be
deposited in a fund administered by the West Virginia Public
Service Commission, entitled “Enhanced 911 wireless Tower
Access Assistance Fund”, and shall be expended in accordance
with an enhanced 911 wireless tower access matching grant
order adopted by the Public Service Commission. The Commis-
sion order shall contain terms and conditions designed to
provide financial assistance loans or grants to state agencies,
political subdivisions of the state and wireless telephone
carriers 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
marginal financial viability of the applicable tower coverage
area: Provided further, That the grants shall be allocated among
potential sites based on application from county commissions
demonstrating the need for enhanced 911 wireless coverage in
specific areas of this state. Any tower constructed with assis-
tance from the fund created by this subdivision shall be
available for use by emergency services, fire departments and
law enforcement agencies communication equipment, so long
as that use does not interfere with the carrier’s wireless signal:
And provided further, That the Public Service Commission
shall promulgate rules in accordance with article three, chapter
twenty-nine-a of this code to effectuate the provisions of this
subsection. The Public Service Commission is specifically
authorized to promulgate emergency rules.

(c) Beginning in the year one thousand nine hundred
ninety-seven, and every two years thereafter, the Public Service
Commission shall conduct an audit of the wireless enhanced
911 fee and shall recalculate the fee so that it is the weighted
average rounded to the nearest penny, as of the first day of
March of the respecification year, of all of the enhanced 911
fees imposed by the counties which have adopted an enhanced
911 ordinance: Provided, That the wireless enhanced 911 fee
may never be increased by more than twenty-five percent of its
value at the beginning of the respecification year: Provided,
however, That the fee may never be less than the amount set in subsection (b) of this section: Provided further, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: And provided further, That beginning on the first day of July, two thousand five, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of wireless towers as specified in subsection (b) of this section.

(d) The CMRS providers shall, after retaining a three percent billing fee, send the wireless enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The Public Service Commission shall, on a quarterly and approximately evenly staggered basis, disburse the fee revenue in the following manner:

(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand nine hundred ninety-seven, shall receive eight and one half tenths of one percent of the fee revenues received by the Public Service Commission: Provided, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Each county shall receive eight and one half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: Provided, however, That after the
effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder based on that county’s population as determined in the most recent decennial census as a percentage of the state total population. The Public Service Commission shall recalculate the county disbursement percentages on a yearly basis, with the changes effective on the first day of July, and using data as of the preceding first day of March. The public utilities which normally provide local exchange telecommunications service by means of lines, wires, cables, optical fibers or by other means extended to subscriber premises shall supply the data to the Public Service Commission on a county specific basis no later than the first day of June of each year;

(2) Counties which have an enhanced 911 ordinance in effect shall receive their share of the wireless enhanced 911 fee revenue for use in the same manner as the enhanced 911 fee revenues received by those counties pursuant to their enhanced 911 ordinances;

(3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue for each county which does not have an enhanced 911 ordinance in effect into an escrow account which it has established for that county. Any county with an escrow account may, immediately upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the escrow account for use as specified in subdivision (2), subsection (d) of this section: Provided, That a county that adopts a 911 ordinance after the original effective date of this section in the year one thousand nine hundred ninety-seven or has adopted a 911 ordinance within five years
of the original effective date of this section in the year one
thousand nine hundred ninety-seven, shall continue to receive
one percent of the total 911 fee revenue for a period of five
years following the adoption of the ordinance. Thereafter, each
county shall receive that county's eight and one half tenths of
one percent of the remaining fee revenue, plus that county's
additional pro rata portion of the fee revenues then remaining,
based on that county's population as determined in the most
recent decennial census as a percentage of the state total
population: Provided, however, That every five years from the
year one thousand nine hundred ninety-seven, all fee revenue
residing in escrow accounts shall be disbursed on the pro rata
basis specified in subdivision (1), subsection (d) of this section,
except that data for counties without enhanced 911 ordinances
in effect shall be omitted from the calculation and all escrow
accounts shall begin again with a zero balance.

(e) CMRS providers have the same rights and responsibili-
ties as other telephone service suppliers in dealing with the
failure by a subscriber of a CMRS provider to timely pay the
wireless enhanced 911 fee.

(f) Notwithstanding the provisions of section one-a of this
article, for the purposes of this section, the term "county" means
one of the counties provided in section one, article one, chapter
one of this code.

(g) From any funds distributed to a county pursuant to this
section, a total of three percent shall be set aside in a special
fund to be used exclusively for the purchase of equipment that
will provide information regarding the x and y coordinates of
persons who call an emergency telephone system through a
commercial mobile radio service: Provided, That upon purchase
of the necessary equipment, the special fund shall be dissolved
and any surplus shall be used for general operation of the
emergency telephone system as may otherwise be provided by
law.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of ____________, 2005.

Governor