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SB 728
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

Committee Substitute for
SENATE BILL NO. 728

(By Senator Chafin)



PASSED March 11, 2006

In Effect July 4, 2006 Passage

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 728

(SENATOR CHAFIN, *original sponsor*)

[Passed March 11, 2006; to take effect July 1, 2006.]

AN ACT to amend and reenact §7-1-3cc of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2, §24-6-5 and §24-6-6b of said code, all relating to the regulation of voice communication services; redefining "in-state subscriber" to include voice over internet protocol subscribers; authorizing Public Service Commission to issue and enforce orders dealing with matters concerning imposition of fees on voice over internet protocol service subscribers; amending definition of "commercial mobile radio service provider" to include prepaid and post-paid services; requiring directors of emergency dispatch centers to undergo background checks; precluding convicted felons from serving as emergency directors of emergency dispatch centers; effective date; authorizing Public Service Commission to regulate enhanced 911 service fees from in-state two-way subscribers; authorizing Public Service Commission to define in-state two-way subscriber; enhanced emergency telephone system requirements; requiring an investigation on character and criminal background to be conducted by and at the

expense of the State Police on certain persons to be employed in an emergency dispatch center; prohibiting persons with felony convictions from holding certain positions; and assignment of a portion of the wireless enhanced 911 fee moneys received by Public Service Commission to the Division of Homeland Security and Emergency Management.

Be it enacted by the Legislature of West Virginia:

That §7-1-3cc of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2, §24-6-5 and §24-6-6b of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for the systems and for roadway conversion systems; authority to contract with the telephone companies for billing of fee.

1 (a) In addition to possessing the authority to establish an
2 emergency telephone system pursuant to section four,
3 article six, chapter twenty-four of this code, a county
4 commission or the county commissions of two or more
5 counties may, instead, establish an enhanced emergency
6 telephone system or convert an existing system to an
7 enhanced emergency system. The establishment of such a
8 system shall be subject to the provisions of article six of
9 said chapter. The county commission may adopt rules
10 after receiving recommendations from the West Virginia
11 Enhanced 911 Council concerning the operation of all
12 county emergency communications centers or emergency

13 telephone systems centers in the state, including, but not
14 limited to, recommendations for:

15 (1) Minimum standards for emergency telephone systems
16 and emergency communications centers;

17 (2) Minimum standards for equipment used in any center
18 receiving telephone calls of an emergency nature and
19 dispatching emergency service providers in response to
20 that call and which receives 911 moneys or has basic 911
21 service funded through its county commission; and

22 (3) Minimum standards for education and training of all
23 personnel in emergency communications centers.

24 (b) A county commission may impose a fee upon consum-
25 ers of local exchange service within that county for an
26 enhanced emergency telephone system and associated
27 electronic equipment and for the conversion of all rural
28 routes to city-type addressing as provided in section three
29 of this article. The fee revenues may only be used solely
30 and directly for the capital, installation, administration,
31 operation and maintenance costs of the enhanced emer-
32 gency telephone system and of the conversion to city-type
33 addressing and including the reasonable costs associated
34 with establishing, equipping, furnishing, operating or
35 maintaining a county answering point. Effective on the
36 first day of July, two thousand six, all county enhanced
37 emergency telephone system fees that are in effect as of
38 the first day of July, two thousand six, and as such may
39 later be modified by action of a county commission, shall
40 be imposed upon in-state subscribers to voice over internet
41 protocol (VoIP) service, as VoIP service is defined by the
42 Federal Communications Commission of the United
43 States. A nonbusiness VoIP service subscriber shall be
44 considered in-state if the primary residence of the sub-
45 scriber is located within West Virginia. A business
46 subscriber shall be considered in-state if the site at which
47 the service is primarily used is located within West
48 Virginia. The Public Service Commission may, as it deems

49 appropriate and in accordance with the requirements of
50 due process, issue and enforce orders, as well as adopt and
51 enforce rules, dealing with matters concerning the imposi-
52 tion of county enhanced emergency telephone system fees
53 upon VoIP service subscribers.

54 (c) A county commission may contract with the tele-
55 phone company or companies providing local exchange
56 service within the county for the telephone company or
57 companies to act as the billing agent or agents of the
58 county commission for the billing of the fee imposed
59 pursuant to subsection (b) of this section. The cost for the
60 billing agent services may be included as a recurring
61 maintenance cost of the enhanced emergency telephone
62 system.

63 Where a county commission has contracted with a
64 telephone company to act as its billing agent for enhanced
65 emergency telephone system fees, all competing local
66 exchange telephone companies with customers in that
67 county shall bill the enhanced emergency telephone system
68 fees to its respective customers located in that county and
69 shall remit the fee. It may deduct its respective costs for
70 billing in the same manner as the acting billing agent for
71 the enhanced emergency telephone system fee.

72 (d) A county commission of any county with an emer-
73 gency communications center or emergency telephone
74 system may establish standards for alarm systems, includ-
75 ing security, fire and medical alarms.

76 (e) The books and records of all county answering points
77 that benefit from the imposition of the local exchange
78 service fees shall be subject to annual examination by the
79 state auditor's office.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Commercial mobile radio service provider" or
4 "CMRS provider" means cellular licensees, broadband
5 personal communications services (PCS) licensees and
6 specialized mobile radio (SMR) providers, as those terms
7 are defined by the Federal Communications Commission,
8 which offer on a post-paid or prepaid basis or via a
9 combination of those two methods, real-time, two-way
10 switched voice service that is interconnected with the
11 public switched network and includes resellers of any
12 commercial mobile radio service.

13 (2) "County answering point" means a facility to which
14 enhanced emergency telephone system calls for a county
15 are initially routed for response and where county person-
16 nel respond to specific requests for emergency service by
17 directly dispatching the appropriate emergency service
18 provider, relaying a message to the appropriate provider
19 or transferring the call to the appropriate provider.

20 (3) "Emergency services organization" means the
21 organization established under article five, chapter fifteen
22 of this code.

23 (4) "Emergency service provider" means any emergency
24 services organization or public safety unit.

25 (5) "Emergency telephone system" means a telephone
26 system which through normal telephone service facilities
27 automatically connects a person dialing the primary
28 emergency telephone number to an established public
29 agency answering point, but does not include an enhanced
30 emergency telephone system.

31 (6) "Enhanced emergency telephone system" means a
32 telephone system which automatically connects the person
33 dialing the primary emergency number to the county
34 answering point and in which the telephone network
35 system automatically provides to personnel receiving the

36 call, immediately on answering the call, information on
37 the location and the telephone number from which the call
38 is being made and, upon direction from the personnel
39 receiving the call, routes or dispatches the call by tele-
40 phone, radio or any other appropriate means of communi-
41 cation to emergency service providers that serve the
42 location from which the call is made.

43 (7) "Public agency" means the state and any municipal-
44 ity, county, public district or public authority which
45 provides or has authority to provide fire-fighting, police,
46 ambulance, medical, rescue or other emergency services.

47 (8) "Public safety unit" means a functional division of a
48 public agency which provides fire-fighting, police, medi-
49 cal, rescue or other emergency services.

50 (9) "Telephone company" means any public utility and
51 any CMRS provider which is engaged in the provision of
52 telephone service whether primarily by means of wire or
53 wireless facilities.

54 (10) "Comprehensive plan" means a plan pertaining to
55 the installing, modifying or replacing of telephone switch-
56 ing equipment; a telephone utility's response in a timely
57 manner to requests for emergency telephone service by a
58 public agency; a telephone utility's responsibility to report
59 to the public service commission; charges and tariffs for
60 the services and facilities provided by a telephone utility;
61 and access to an emergency telephone system by emer-
62 gency service organizations.

63 (11) "Technical and operational standards" means those
64 standards of telephone equipment and processes necessary
65 for the implementation of the comprehensive plan as
66 defined in subdivision (10) of this subsection.

§24-6-5. Enhanced emergency telephone system requirements.

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included in
7 the system: *Provided*, That if a portion of the county or a
8 portion of a municipal corporation within the county is
9 already being served by an enhanced emergency telephone
10 system, that portion of the county or municipality may be
11 excluded from the county enhanced emergency telephone
12 system;

13 (2) Every emergency service provider that provides
14 emergency service within the territory of a county partici-
15 pate in the system;

16 (3) Each county answering point be operated constantly;

17 (4) Each emergency service provider participating in the
18 system maintain a telephone number in addition to the one
19 provided for in the system; and

20 (5) If the county answering point personnel reasonably
21 determine that a call is not an emergency, the personnel
22 provide the caller with the number of the appropriate
23 emergency service provider.

24 (b) To the extent possible, enhanced emergency tele-
25 phone systems shall be centralized.

26 (c) In developing an enhanced emergency telephone
27 system, the county commission or the West Virginia State
28 Police shall seek the advice of both the telephone compa-
29 nies providing local exchange service within the county
30 and the local emergency providers.

31 (d) As a condition of employment, any person employed
32 to act as the director of an emergency dispatch center who
33 dispatches emergency calls or supervises the dispatching
34 of emergency call takers shall be subject to an investiga-
35 tion of their character and background. This investigation
36 shall include, at a minimum, a criminal background check

37 conducted by the State Police at its expense. A felony
38 conviction shall preclude such person from holding any of
39 these positions. This requirement applies prospectively.
40 The requirement takes effect on the first day of July, two
41 thousand six.

42 (e) As a condition of continued employment, persons
43 employed to dispatch emergency calls shall successfully
44 complete a forty-hour nationally recognized training
45 course for dispatchers within one year of the date of their
46 employment; except that persons employed to dispatch
47 emergency calls prior to the effective date of this subsec-
48 tion, as a condition of continuing employment, shall
49 successfully complete such a course not later than the first
50 day of July, one thousand nine hundred ninety-five.

51 (f) Each county or municipality shall appoint for each
52 answering point an enhanced emergency telephone system
53 advisory board consisting of at least six members to
54 monitor the operation of the system. The board shall be
55 appointed by the county or municipality and shall include
56 at least one member from affected fire service providers,
57 law-enforcement providers, emergency medical providers
58 and emergency services providers participating in the
59 system and at least one member from the county or
60 municipality. The board may make recommendations to
61 the county or municipality concerning the operation of the
62 system.

63 In addition, the director of the county or municipal
64 enhanced telephone system shall serve as an ex officio
65 member of the advisory board. The initial advisory board
66 shall serve staggered terms of one, two and three years.
67 The initial terms of these appointees shall commence on
68 the first day of July, one thousand nine hundred
69 ninety-four. All future appointments shall be for terms of
70 three years, except that an appointment to fill a vacancy
71 shall be for the unexpired term. All members shall serve
72 without compensation. The board shall adopt such
73 policies, rules and regulations as are necessary for its own

74 guidance. The board shall meet monthly on the day of
75 each month which the board may designate. The board
76 may make recommendations to the county or municipality
77 concerning the operation of the system.

78 (g) Any advisory board established prior to the first day
79 of January, one thousand nine hundred ninety-four, shall
80 have three years to meet the criteria of subsection (e) of
81 this section.

82 (h) Nothing herein contained shall be construed to
83 prohibit or discourage in any way the establishment of
84 multijurisdictional or regional systems, or
85 multijurisdictional or regional agreements for the estab-
86 lishment of enhanced emergency telephone systems, and
87 any system established pursuant to this article may
88 include the territory of more than one public agency, or
89 may include only a portion of the territory of a public
90 agency.

§24-6-6b. Wireless enhanced 911 fee.

1 (a) Beginning on the first day of July, two thousand six,
2 all CMRS providers as defined in section two of this article
3 shall, on a monthly basis or otherwise for good cause and
4 as directed by order of the Public Service Commission,
5 collect from each of their in-state two-way service sub-
6 scribers a wireless enhanced 911 fee. As used in this
7 section "in-state two-way service subscriber" shall have
8 the same meaning as that set forth in the rules of the
9 Public Service Commission. No later than the first day of
10 June, two thousand six, the Public Service Commission
11 shall, after the receipt of comments and the consideration
12 of evidence presented at a hearing, issue an updated order
13 which directs the CMRS providers regarding all relevant
14 details of wireless enhanced 911 fee collection, including
15 the determination of who is considered an in-state two-
16 way service subscriber and which shall specify how the
17 CMRS providers shall deal with fee collection shortfalls
18 caused by uncollectible accounts. The Public Service

19 Commission shall solicit the views of the wireless telecom-
20 munications utilities prior to issuing the order.

21 (b) The wireless enhanced 911 fee is three dollars per
22 month for each valid retail commercial mobile radio
23 service subscription, as that term is defined by the Public
24 Service Commission in its order issued under subsection
25 (a) of this section: *Provided*, That beginning on the first
26 day of July, two thousand five, the wireless enhanced 911
27 fee shall include ten cents to be distributed to the West
28 Virginia State Police to be used for equipment upgrades
29 for improving and integrating their communication efforts
30 with those of the enhanced 911 systems: *Provided, how-*
31 *ever*, That for the fiscal year beginning on the first day of
32 July, two thousand five, and for every fiscal year thereaf-
33 ter, one million dollars of the wireless enhanced 911 fee
34 shall be distributed by the Public Service Commission to
35 subsidize the construction of towers. The moneys shall be
36 deposited in a fund administered by the West Virginia
37 Public Service Commission, entitled Enhanced 911
38 Wireless Tower Access Assistance Fund, and shall be
39 expended in accordance with an enhanced 911 wireless
40 tower access matching grant order adopted by the Public
41 Service Commission. The commission order shall contain
42 terms and conditions designed to provide financial assis-
43 tance loans or grants to state agencies, political subdivi-
44 sions of the state and wireless telephone carriers for the
45 acquisition, equipping and construction of new wireless
46 towers, which would provide enhanced 911 service cover-
47 age and which would not be available otherwise due to
48 marginal financial viability of the applicable tower
49 coverage area: *Provided further*, That the grants shall be
50 allocated among potential sites based on application from
51 county commissions demonstrating the need for enhanced
52 911 wireless coverage in specific areas of this state. Any
53 tower constructed with assistance from the fund created
54 by this subdivision shall be available for use by emergency
55 services, fire departments and law-enforcement agencies
56 communication equipment, so long as that use does not

57 interfere with the carrier's wireless signal: *And provided*
58 *further*, That the Public Service Commission shall promul-
59 gate rules in accordance with article three, chapter
60 twenty-nine-a of this code to effectuate the provisions of
61 this subsection. The Public Service Commission is specifi-
62 cally authorized to promulgate emergency rules: *And*
63 *provided further*, That for the fiscal year beginning on the
64 first day of July, two thousand six, and for every fiscal
65 year thereafter, five percent of the wireless enhanced 911
66 fee money received by the Public Service Commission shall
67 be deposited in a special fund established by the Division
68 of Homeland Security and Emergency Management to be
69 used solely for the construction, maintenance and up-
70 grades of the West Virginia Interoperable Radio Project
71 and any other costs associated with establishing and
72 maintaining the infrastructure of the system. Any funds
73 remaining in this fund at the end of the fiscal year shall
74 automatically be reappropriated for the following year.

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

95 911 fee shall be distributed by the Public Service Commis-
96 sion to subsidize the construction of wireless towers as
97 specified in subsection (b) of this section.

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

104 (1) Each county that does not have a 911 ordinance in
105 effect as of the original effective date of this section in the
106 year one thousand nine hundred ninety-seven or has
107 enacted a 911 ordinance within the five years prior to the
108 original effective date of this section in the year one
109 thousand nine hundred ninety-seven shall receive eight
110 and one half tenths of one percent of the fee revenues
111 received by the Public Service Commission: *Provided*, That
112 after the effective date of this section, in the year two
113 thousand five, when two or more counties consolidate into
114 one county to provide government services, the consoli-
115 dated county shall receive one percent of the fee revenues
116 received by the Public Service Commission for itself and
117 for each county merged into the consolidated county.
118 Each county shall receive eight and one half tenths of one
119 percent of the remainder of the fee revenues received by
120 the Public Service Commission: *Provided, however*, That
121 after the effective date of this section, in the year two
122 thousand five, when two or more counties consolidate into
123 one county to provide government services, the consoli-
124 dated county shall receive one percent of the fee revenues
125 received by the Public Service Commission for itself and
126 for each county merged into the consolidated county.
127 Then, from any moneys remaining, each county shall
128 receive a pro rata portion of that remainder based on that
129 county's population as determined in the most recent
130 decennial census as a percentage of the state total popula-
131 tion. The Public Service Commission shall recalculate the

132 county disbursement percentages on a yearly basis, with
133 the changes effective on the first day of July, and using
134 data as of the preceding first day of March. The public
135 utilities which normally provide local exchange telecom-
136 munications service by means of lines, wires, cables,
137 optical fibers or by other means extended to subscriber
138 premises shall supply the data to the Public Service
139 Commission on a county specific basis no later than the
140 first day of June of each year;

141 (2) Counties which have an enhanced 911 ordinance in
142 effect shall receive their share of the wireless enhanced
143 911 fee revenue for use in the same manner as the en-
144 hanced 911 fee revenues received by those counties
145 pursuant to their enhanced 911 ordinances;

146 (3) The Public Service Commission shall deposit the
147 wireless enhanced 911 fee revenue for each county which
148 does not have an enhanced 911 ordinance in effect into an
149 escrow account which it has established for that county.
150 Any county with an escrow account may, immediately
151 upon adopting an enhanced 911 ordinance, receive the
152 moneys which have accumulated in the escrow account for
153 use as specified in subdivision (2), subsection (d) of this
154 section: *Provided*, That a county that adopts a 911 ordi-
155 nance after the original effective date of this section in the
156 year one thousand nine hundred ninety-seven or has
157 adopted a 911 ordinance within five years of the original
158 effective date of this section in the year one thousand nine
159 hundred ninety-seven shall continue to receive one percent
160 of the total 911 fee revenue for a period of five years
161 following the adoption of the ordinance. Thereafter, each
162 county shall receive that county's eight and one half tenths
163 of one percent of the remaining fee revenue, plus that
164 county's additional pro rata portion of the fee revenues
165 then remaining, based on that county's population as
166 determined in the most recent decennial census as a
167 percentage of the state total population: *Provided, how-*
168 *ever*, That every five years from the year one thousand

169 nine hundred ninety-seven, all fee revenue residing in
170 escrow accounts shall be disbursed on the pro rata basis
171 specified in subdivision (1) of this subsection, except that
172 data for counties without enhanced 911 ordinances in
173 effect shall be omitted from the calculation and all escrow
174 accounts shall begin again with a zero balance.

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

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

183 (g) From any funds distributed to a county pursuant to
184 this section, a total of three percent shall be set aside in a
185 special fund to be used exclusively for the purchase of
186 equipment that will provide information regarding the x
187 and y coordinates of persons who call an emergency
188 telephone system through a commercial mobile radio
189 service: *Provided*, That upon purchase of the necessary
190 equipment, the special fund shall be dissolved and any
191 surplus shall be used for general operation of the emer-
192 gency telephone system as may otherwise be provided by
193 law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Sherry White
.....
Chairman Senate Committee

Blair
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

Russell E. Ebel
.....
Clerk of the Senate

Betsy R. Smith
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert R.
.....
Speaker House of Delegates

The within *yes approved* this the *5th*
Day of *April*, 2006.

Paul Marshall
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 27 2006

Time 9:15 am