WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED
Committee Substitute for
SENATE BILL NO. 728

(By Senator ________ Chafin ________)

PASSED ________ March 11, 2006 ________

In Effect ________ July 1, 2006 ________ Passage
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.

(a) In addition to possessing the authority to establish an emergency telephone system pursuant to section four, article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia Enhanced 911 Council concerning the operation of all county emergency communications centers or emergency
telephone systems centers in the state, including, but not limited to, recommendations for:

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

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

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

(b) A county commission may impose a fee upon consumers of local exchange service within that county for an enhanced emergency telephone system and associated electronic equipment and for the conversion of all rural routes to city-type addressing as provided in section three of this article. The fee revenues may only be used solely and directly for the capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing and including the reasonable costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point. Effective on the first day of July, two thousand six, all county enhanced emergency telephone system fees that are in effect as of the first day of July, two thousand six, and as such may later be modified by action of a county commission, shall be imposed upon in-state subscribers to voice over internet protocol (VoIP) service, as VoIP service is defined by the Federal Communications Commission of the United States. A nonbusiness VoIP service subscriber shall be considered in-state if the primary residence of the subscriber is located within West Virginia. A business subscriber shall be considered in-state if the site at which the service is primarily used is located within West Virginia. The Public Service Commission may, as it deems
appropriate and in accordance with the requirements of
due process, issue and enforce orders, as well as adopt and
enforce rules, dealing with matters concerning the imposi-
tion of county enhanced emergency telephone system fees
upon VoIP service subscribers.

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

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

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

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.
As used in this article, unless the context clearly requires a different meaning:

(1) "Commercial mobile radio service provider" or "CMRS provider" means cellular licensees, broadband personal communications services (PCS) licensees and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, 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) "County answering point" means a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

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

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

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

(6) "Enhanced emergency telephone system" means a telephonesystem which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the
call, immediately on answering the call, information on the location and the telephone number from which the call is being made and, upon direction from the personnel receiving the call, routes or dispatches the call by telephone, radio or any other appropriate means of communication to emergency service providers that serve the location from which the call is made.

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

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

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

(10) "Comprehensive plan" means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility's response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility's responsibility to report to the public service commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.

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

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

(a) An enhanced emergency telephone system, at a minimum, shall provide that:
(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system: Provided, That if a portion of the county or a portion of a municipal corporation within the county is already being served by an enhanced emergency telephone system, that portion of the county or municipality may be excluded from the county enhanced emergency telephone system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

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

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

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission or the West Virginia State Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of employment, any person employed to act as the director of an emergency dispatch center who dispatches emergency calls or supervises the dispatching of emergency call takers shall be subject to an investigation of their character and background. This investigation shall include, at a minimum, a criminal background check.
Conducted by the State Police at its expense. A felony conviction shall preclude such person from holding any of these positions. This requirement applies prospectively. The requirement takes effect on the first day of July, two thousand six.

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

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

In addition, the director of the county or municipal enhanced telephone system shall serve as an ex officio member of the advisory board. The initial advisory board shall serve staggered terms of one, two and three years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred ninety-four. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term. All members shall serve without compensation. The board shall adopt such policies, rules and regulations as are necessary for its own
guidance. The board shall meet monthly on the day of each month which the board may designate. The board may make recommendations to the county or municipality concerning the operation of the system.

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

(h) Nothing herein contained shall be construed to prohibit or discourage in any way the establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of enhanced emergency telephone systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency.

§24-6-6b. Wireless enhanced 911 fee.

(a) Beginning on the first day of July, two thousand six, all CMRS providers as defined in section two of this article shall, on a monthly basis or otherwise for good cause and as directed by order of the Public Service Commission, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. As used in this section “in-state two-way service subscriber” shall have the same meaning as that set forth in the rules of the Public Service Commission. No later than the first day of June, two thousand six, the Public Service Commission shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an updated 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 moneys 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 commission 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 assistance 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: And provided further, That for the fiscal year beginning on the first day of July, two thousand six, and for every fiscal year thereafter, five percent of the wireless enhanced 911 fee money received by the Public Service Commission shall be deposited in a special fund established by 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. Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for the following year.

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

98 (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:

104 (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 telecom-
 munications 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 en-
hanced 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 ordi-
nance 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, how-
ever, 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) of this subsection, 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 responsibilities 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... is... this the... Day of... April..., 2006.

Governor
PRESENTED TO THE GOVERNOR

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Time 9:15 AM