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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 278

(By Senators LOVE, BAILEY, & WOOTEN)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

SB 278

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SENATE, WEST VIRGINIA

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 278

(SENATORS LOVE, BAILEY AND WOOTON, *original sponsors*)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, four and eight, article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections six-b and eleven, all relating to local emergency telephone systems; defining terms; requiring telephone companies to provide capability for an emergency telephone system if consistent with federal law and regulations; providing for a wireless enhanced 911 fee; public service commission to issue order concerning fee; setting fee; collection and distribution of fee; limiting liability for telephone companies participating in an emergency telephone system; and providing for

confidentiality of information.

Be it enacted by the Legislature of West Virginia:

That sections two, four and eight, article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections six-b and eleven, all to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires 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 Communication Commission,
8 which offer real-time, two-way switched voice service that
9 is interconnected with the public switched network, and
10 includes resellers of any commercial mobile radio service.

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

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

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

24 (5) "Emergency telephone system" means a telephone
25 system which through normal telephone service facilities
26 automatically connects a person dialing the primary
27 emergency telephone number to an established public

28 agency answering point, but does not include an enhanced
29 emergency telephone system.

30 (6) "Enhanced emergency telephone system" means a
31 telephone system which automatically connects the person
32 dialing the primary emergency number to the county
33 answering point and in which the telephone network
34 system automatically provides to personnel receiving the
35 call, immediately on answering the call, information on
36 the location and the telephone number from which the call
37 is being made, and upon direction from the personnel
38 receiving the call routes or dispatches the call by tele-
39 phone, radio or any other appropriate means of communi-
40 cation to emergency service providers that serve the
41 location from which the call is made.

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

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

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

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

62 (11) "Technical and operational standards" means those
63 standards of telephone equipment and processes necessary
64 for the implementation of the comprehensive plan as
65 defined in subdivision (9) of this subsection.

§24-6-4. Creation of emergency telephone systems.

1 (a) Upon the adoption by the public service commission
2 of comprehensive plan, the public agency may establish,
3 consistent with the comprehensive plan, an emergency
4 telephone system within its jurisdiction. Nothing con-
5 tained in this section, shall be construed to prohibit or
6 discourage in any way the establishment of multi-jurisdic-
7 tion or regional systems, and any emergency telephone
8 system established pursuant to this article may include the
9 territory of more than one public agency, or may include
10 only a portion of the territory of a public agency. To the
11 extent feasible, emergency telephone systems shall be
12 centralized.

13 (b) Every emergency telephone system shall provide
14 access to emergency services organizations, police, fire
15 fighting and emergency medical and ambulance services
16 and may provide access to other emergency services. The
17 system may also provide access to private ambulance
18 services. The emergency telephone system shall provide
19 the necessary mechanical equipment at the established
20 public agency answering point to allow deaf persons
21 access to the system. In those areas in which a public
22 safety unit of the state provides emergency services, the
23 system shall provide access to the public safety unit.

24 (c) The primary emergency telephone number to the
25 extent possible, shall be uniform throughout the state.

26 (d) Insofar as it is consistent with applicable federal law
27 and federal communications commission regulations and
28 orders, a telephone company in the normal course of
29 replacing or making major modifications to its switching
30 equipment shall include the capability of providing for the
31 emergency telephone system and shall bear all costs
32 related to including that capability. All charges for other
33 services and facilities provided by the telephone company,
34 including the provision of distribution facilities and
35 station equipment, shall be paid for by the public agency
36 or public safety unit in accordance with the applicable
37 tariff rates then in effect for those services and facilities.
38 Other costs pursuant to the emergency telephone system

39 shall be allocated as determined by the applicable com-
40 prehensive plan of the public service commission.

41 (e) All coin-operated telephones within the state shall be
42 of a design that will permit a caller to initiate, without
43 first having to insert a coin (dial tone first or post-pay
44 systems), local calls to the long distance and directory
45 assistance operators, calls to the emergency telephone
46 number answering point, if one has been established in his
47 or her local calling area, and to other numbers for services
48 as the telephone company may from time to time make
49 available to the public.

§24-6-6b. Wireless enhanced 911 fee.

1 (a) Beginning on the first day of January, one thousand
2 nine hundred ninety-eight, all CMRS providers, as defined
3 in section two of this article, shall, on a monthly basis,
4 collect from each of their in-state two-way service sub-
5 scribers a wireless enhanced 911 fee. No later than the
6 first day of August, one thousand nine hundred ninety-
7 eight, the public service commission, shall, after the
8 receipt of comments and the consideration of evidence
9 presented at a hearing, issue an order which directs the
10 CMRS providers regarding all relevant details of wireless
11 enhanced 911 fee collection, including the determination
12 of who is considered an in-state two-way service sub-
13 scriber and which shall specify how the CMRS providers
14 shall deal with fee collection shortfalls caused by
15 uncollectible accounts. The public service commission
16 shall solicit the views of the wireless telecommunications
17 utilities prior to issuing the order.

18 (b) The wireless enhanced 911 fee is seventy-five cents
19 per month for each valid retail commercial mobile radio
20 service subscription, as that term is defined by the public
21 service commission in its order issued under subsection (a)
22 of this section.

23 (c) Beginning in the year one thousand nine hundred
24 ninety-seven, and every two years thereafter, the public
25 service commission shall conduct an audit of the wireless
26 enhanced 911 fee and shall recalculate the fee so that it is
27 the weighted average rounded to the nearest penny, as of

28 the first day of March of the respecification year, of all of
29 the enhanced 911 fees imposed by the counties which have
30 adopted an enhanced 911 ordinance: *Provided*, That the
31 wireless enhanced 911 fee may never be increased by more
32 than twenty-five percent of its value at the beginning of
33 the respecification year.

34 (d) The CMRS providers shall, after retaining a three
35 percent billing fee, send the wireless enhanced 911 fee
36 moneys collected, on a monthly basis, to the public service
37 commission. The public service commission shall, on a
38 quarterly and approximately evenly staggered basis,
39 disburse the fee revenue in the following manner:

40 (1) Each county that does not have a 911 ordinance in
41 effect as of the effective date of this section or has enacted
42 a 911 ordinance within the five years prior to the effective
43 date of this section shall receive one percent of the fee
44 revenues received by the public service commission and
45 from the remainder of the revenues, each county shall
46 receive a pro rata portion of the fee revenues received by
47 the public service commission based on that county's
48 percentage of the total number of local exchange tele-
49 phone access lines and line equivalents in service in the
50 state. The public service commission shall recalculate the
51 county disbursement percentages on a yearly basis, with
52 the changes effective on the first day of July, and using
53 data as of the preceding first day of March. The public
54 utilities which normally provide local exchange telecom-
55 munications service by means of lines, wires, cables,
56 optical fibers or by other means extended to subscriber
57 premises shall supply the data to the public service
58 commission on a county specific basis no later than the
59 first day of June of each year;

60 (2) Counties which have an enhanced 911 ordinance in
61 effect shall receive their share of the wireless enhanced
62 911 fee revenue for use in the same manner as the en-
63 hanced 911 fee revenues received by those counties
64 pursuant to their enhanced 911 ordinances;

65 (3) The public service commission shall deposit the
66 wireless enhanced 911 fee revenue for each county which

67 does not have an enhanced 911 ordinance in effect into an
68 escrow account which it has established for that county.
69 Any county with an escrow account may, immediately
70 upon adopting an enhanced 911 ordinance, receive the
71 moneys which have accumulated in the escrow account for
72 use as specified in subdivision (2), subsection (d) of this
73 section: *Provided*, That a county that adopts a 911
74 ordinance after the effective date of this section or has
75 adopted a 911 ordinance within five years of the effective
76 date of this section shall continue to receive one percent of
77 the 911 fee revenue for a period of five years following the
78 adoption of the ordinance and thereafter shall receive that
79 county's portion of the fee revenue being disbursed to
80 counties on a pro rata basis: *Provided, however*, That
81 every five years from the year one thousand nine hundred
82 ninety-seven, all fee revenue residing in escrow accounts
83 shall be disbursed on the pro rata basis specified in
84 subdivision (1), subsection (d) of this section, except that
85 data for counties without enhanced 911 ordinances in
86 effect shall be omitted from the calculation and all escrow
87 accounts shall begin again with a zero balance.

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

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

96 (g) From any funds distributed to a county pursuant to
97 this section, a total of three percent quarter shall be set
98 aside in a special fund to be used exclusively for the
99 purchase of equipment that will provide information
100 regarding the x and y coordinates of persons who call an
101 emergency telephone system through a commercial mobile
102 radio service: *Provided*, That upon purchase of the neces-
103 sary equipment, the special fund shall be dissolved and
104 any surplus shall be used for general operation of the
105 emergency telephone system as may otherwise be provided
106 by law.

§24-6-8. Limitation of liability.

1 A public agency or a telephone company participating
2 in an emergency telephone system or a county which has
3 established an enhanced emergency telephone system, and
4 any officer, agent or employee of the public agency,
5 telephone company or county is not liable for damages in
6 a civil action for injuries, death or loss to persons or
7 property arising from any act or omission, except willful
8 or wanton misconduct, in connection with developing,
9 adopting or approving any final plan or any agreement
10 made pursuant to this article, or otherwise bringing into
11 operation or participating in the operation of an emer-
12 gency telephone system or an enhanced emergency
13 telephone system pursuant to this article.

§24-6-10. Confidentiality of proprietary information.

1 In recognition of the fact that information pertaining to
2 numbers of customers and revenues collected by the
3 CMRS providers is obtained and maintained in a competi-
4 tive environment and that information pertaining to the
5 providers' subscribers could be used to the disadvantage
6 of the participating CMRS provider, the Legislature
7 declares that any such information provided by the public
8 service commission and any county or enhanced 911
9 program, is not subject to disclosure under the provisions
10 of chapter twenty-nine-b of this code.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th* day of *May*, 1997.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date

4/28/97

Time

2:21 pm