

Date Mailed August 11, 2004
--------------------------------

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Revisions to Wis. Admin. Code ch. PSC 173 to Establish a  
Wireless 911 Fund to Promote an Emergency Telephone  
Number Service for Wireless Subscribers

1-AC-213

Clearinghouse Rule 04-026

**ORDER ADOPTING PROPOSED RULES**

The Public Service Commission of Wisconsin (Commission) proposes an order to repeal and recreate ch. PSC 173.

**REPORT TO THE LEGISLATURE**

The Report to the Legislature that is required under s. 227.19, Stats., is included as Attachment A (which in turn includes its own attachments, A1 through A5).

**FISCAL ESTIMATE**

The Commission is authorized by s. 20.155(3)(q), Stats., to receive and deposit moneys from a surcharge on wireless telephones, and to administer and make grants and supplemental grants from the wireless fund. The legislation creating the fund provides for the PSC to use administrative funds as needed to accomplish the goals of the program during the three years of operation. Administration of the wireless fund will create additional workload related to two specific activities:

- The Commission will consider and either approve or disapprove approximately 100 applications for grants. This work can be accomplished by existing staff.
- The Commission will deposit moneys and audit collection of those funds, and disburse grants and audit documentation to ensure the money is properly spent. Because the fund cannot have a negative balance, annual adjustments will need to be made in the payout amounts along with monthly cash management procedures. Decisions have not been made on how this second part of the workload will be accomplished. The Commission may allocate an existing position to do the work, or may hire a money manager to do the audit, payout and money management functions, much the way the Universal Service Fund Program is managed.

Docket 1-AC-213

The proposed rules may increase costs for local governments. The costs would be permissive; the enhanced 911 (E911) statute does not mandate participation in this program. However, if counties elect to participate in the program, it is not expected that 100 percent of the costs to implement enhanced wireless 911 service will be reimbursed by the fund. Counties will also have ongoing costs associated with staffing and maintenance of equipment associated with the E911 program that will not be reimbursed by the fund.

The proposed rules may have a significant fiscal effect on the private sector as well. The proposed rules require wireless providers operating in the state to bill and collect a monthly surcharge on wireless telephone accounts for a 36 month period. Precise subscriber statistics are not available at this point in the program, nor has the amount of the wireless surcharge been set. However, approximately 2.5 million wireless subscribers may pay a surcharge of 50 cents to 80 cents per month per telephone number, generating \$45 million to \$72 million which the fund will then disburse to wireless carriers and local governments as grants to reimburse purchases of wireless E911 related equipment and services.

A completed Fiscal Estimate form is included as Attachment B.

**TEXT OF PROPOSED RULE**

Text of proposed rule is attached as Attachment A2, the Report to the Legislature.

**THE COMMISSION ORDERS:**

1. These rules, except s. PSC 173.10(1)(b) and (2), shall take effect on the first day of the second month following publication in the Wisconsin administrative register.
2. Section PSC 173.10(1)(b) and (2) shall take effect on the first day of the eleventh month following publication in the Wisconsin administrative register.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

LLD:DJK:dwh:cdg:g:\order\pending\1-AC-213 Final.doc

Attachments

**REPORT TO THE LEGISLATURE**

Legislative Clearinghouse Rule 04-026

Revisions to Wis. Admin. Code ch. PSC 173 to Establish a  
Wireless 911 Fund to Promote an Emergency Telephone  
Number Service for Wireless Subscribers

1-AC-213

Public Service Commission of Wisconsin

August 2004

**REPORT TO THE LEGISLATURE****A. NEED FOR THE RULE**

Section 146.70(3m), Stats., directs the Commission to promulgate rules to govern the administration of the Wireless 911 Fund. This fund will provide money in the form of grants to assist wireless providers and local governments that must purchase equipment and telecommunications network facilities and services to implement enhanced wireless 911 service. The rules will establish the criteria the Commission will use to award grants and supplemental grants from the fund. The rules will also regulate the collection of the wireless surcharge that will provide the money the fund will disburse.

**B. PLAIN LANGUAGE ANALYSIS**

A plain language analysis of the proposed rule is attached to this Report as Attachment A1.

**C. TEXT OF THE FINAL RULE**

The proposed text of the final rule is attached to this Report as Attachment A2.

**D. PUBLIC HEARING ATTENDEES**

A summary of the names of those who attended the April 27, 2004, Public Hearing and commented on the proposed rule, or submitted written comments concerning the proposed rule, together with the Commission's response to each comment, is attached to this Report as Attachment A3.

**E. RESPONSE TO LEGISLATIVE COUNCIL REPORT**

A copy of the Legislative Council's report, and the Commission's responses to it, are attached to this Report as Attachment A4. A list of the changes to the text of the rule, as proposed in the initial Notice of Hearing, is attached to this Report as Attachment A5.

**F. FINAL REGULATORY FLEXIBILITY ANALYSIS**

The proposed rules impose additional reporting and surcharge collection requirements upon wireless providers. The affected wireless providers operate in the state under a federal commercial mobile radio service spectrum license. Given the substantial cost of obtaining this type of license, it is unlikely that any wireless provider in this state would be a small business as defined in s. 227.114(1), Stats.

The proposed rules may also impose additional reporting and surcharge collection requirements upon resellers of wireless service. Resellers offer service to consumers by purchasing airtime at wholesale rates from facilities-based providers and reselling it at retail prices. Resale of wireless service accounts for approximately 5 percent of all

mobile telephone subscribers nationally.<sup>1</sup> Only one reseller, Tracfone Wireless, Inc., participated in the comment cycle for this rule. Tracfone serves over 2 million customers nationwide through prepaid wireless service offerings, and is therefore not a small business as defined in s. 227.114(1), Stats. There may be other resellers of wireless service in Wisconsin that were not known to the Commission when these rules were adopted. It is possible that one or more of these resellers would be a small business as defined in s. 227.114(1), Stats. In any event, the Commission considered the methods for mitigating the impact of the proposed rules on small businesses set forth in s. 227.114(2), Stats., and found those methods to be inconsistent with statutory requirement in s. 146.70(3m)(f)1., Stats.

DJK:cdg:G:\RULEMAKING DOCKETS\1-AC-213\1-AC-213 Attach A.doc

---

<sup>1</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, 18 F.C.C.R. 14783, 14838-39 (2003).

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 146.70(3m)(d)4, (e) and (f); 196.02(3) and 227.11(2), Stats.

Statute interpreted: s. 146.70, Stats.

**A. Objective of the Rule**

The objective of this rulemaking is to implement a three-year grant program created by 2003 Wisconsin Act 48 (Act 48) to reimburse local governments and wireless telecommunications service providers for certain costs they will incur to establish an enhanced wireless 911 service. The proposed rule funds the grant program by imposing a temporary surcharge on the subscribers of wireless service in Wisconsin.

The existing 911 emergency number services in place throughout the country use two distinct network designs. Basic 911 service uses the public switched network to route calls to the answering point. The telephone switch uses a translation table to convert the dialed 911 digits to a standard seven-digit or ten-digit telephone number. The dispatcher at the answering point must query the caller to learn the name and location of the calling party.

Enhanced 911 (E911) service routes a 911 call (from the telecommunications central office switch to the county or municipal public safety answering point) over a dedicated network, independent of the public switched network. The enhanced service will automatically report the name and address corresponding to the calling party's access line. The enhanced service also permits the system to route 911 calls from a given telephone exchange to more than one answering point, based upon the calling party's location. A telephone exchange may straddle a county boundary or a municipal boundary within a county. A call from a customer in that exchange can be routed to the public safety answering appropriate to the calling party's location. Thus, enhanced 911 service can be distinguished from basic 911 service by three service elements: a dedicated network, automatic location identification (ALI), and selective routing.

The 911 emergency number systems that are currently deployed in Wisconsin will terminate calls directed to 911 from wireless telephones. This is required by s. 146.70(2)(h), Stats. However, the existing access to 911 from wireless telephones can only provide the features of a basic 911 system. Wireless 911 calls are routed over the public switched network. A wireless provider routes all 911 calls originated by its antennas or cell sites in a given county to the wireless answering point designated for that county. The current wireless 911 system cannot support multiple answering points within a given county. The current system does not disclose the wireless calling party's telephone number or location. This lack of automatic location disclosure severely

degrades the usefulness of wireless 911 service, particularly in instances when the caller cannot communicate with the dispatcher or when the caller is in a rural or off-road location that lacks landmarks or other reference points known to the caller or to the dispatcher answering the call.

The proposed rule addresses these deficiencies by providing funds to reimburse wireless providers and local governments for the cost of the additional equipment, computer software and telephone network facilities that are required to provide the service elements (dedicated access, ALI, and selective routing) associated with wireless E911 service.

## **B. Statutory Authority to Promulgate the Proposed Rule**

Section 25.98, Stats., creates the Wireless 911 Fund.

Section 146.70(3m)(d)4, Stats., directs the Commission to promulgate rules setting forth the requirements and procedures for making grants from the Wireless 911 Fund. The rules shall establish the criteria the Commission will use to estimate the costs that will be incurred to implement wireless E911 service, the time period during which the funds may be disbursed, the record-keeping requirements grantees must comply with, and the conditions under which a wireless provider or local government may revise a previously approved application.

Section 146.70(3m)(e), Stats., directs the Commission to promulgate rules for making supplemental grants from the Wireless 911 Fund to counties that have submitted joint applications. The rules shall establish an incentive to encourage counties to submit joint applications.

Section 146.70(3m)(f), Stats., directs the Commission to promulgate rules requiring each wireless provider to impose the same monthly surcharge for each telephone number of a customer that has a billable address in Wisconsin, except that the rules shall adjust the amount of the surcharge that is imposed on customers who prepay for service to ensure that such customers pay an amount that is comparable to the monthly amount paid by other customers.

## **C. Summary of Existing Federal Regulation**

Act 48 responds in part to policy initiatives of the U.S. Congress and the Federal Communications Commission (FCC). *See* Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999); and 47 CFR 20.18.

The FCC first adopted a rule to promote wireless E911 service throughout the country in 1996. The rule established a two-phase plan for implementation of wireless E911 service. Phase I requires wireless providers to upgrade their networks to permit answering points to determine a wireless caller's originating telephone number and the active base station or cell site carrying the 911 call. 47 CFR 20.18(d). Phase II requires wireless providers to install equipment to enable answering points to determine the actual

geographic location of the calling party to within a specified range of accuracy.  
47 CFR 20.18(e)-(i).

A wireless provider may implement the Phase II capability on its network using either of two available technologies. The first alternative is termed “network-based.” The network-based method determines a caller’s location by triangulating signals received by several different cell sites or base stations. Wireless providers employing the network-based method must provide the location of wireless 911 calls with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.  
47 CFR 20.18(h)(1).

The second method is termed “handset-based.” This method uses a Global Positioning System (GPS) device installed in the wireless telephone to locate the caller. Wireless providers employing the handset-based method must provide the location of wireless 911 calls with an accuracy of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls, and must ensure that 95 percent of their customers have location-capable handsets by December 31, 2005. 47 CFR 20.18(h)(2).

A wireless provider is only obligated to furnish wireless E911 service to an answering point if the local government has served a valid request for service upon the provider. Once a valid request has been served, the wireless provider must implement the E911 service to that answering point within six months of the date of the request.  
47 CFR 20.18(d) and (j)(2). A request is valid if the administrator of a public safety answering point has requested the service and the answering point is capable of receiving and utilizing the information associated with the wireless E911 service.  
47 CFR 20.18(j)(1). The federal rule further provides that answering point will be deemed to be capable of receiving and utilizing the information associated with the wireless E911 service if the local government can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within the six-month period, and has made a timely request to the appropriate local exchange carrier for the necessary trunks, equipment upgrades, and other service elements to support and transport a wireless E911 call. 47 CFR 20.18(j)(2)(i)(A) and (B).

The Wireless 911 Fund will provide the financial support wireless providers and local governments need to acquire the equipment and telecommunications network facilities associated with the wireless E911 service. The Commission expects that this financial support will ensure that the threshold requirements of the federal rule will be satisfied as well.

#### **D. Comparison of Similar Rules in Adjacent States**

##### Michigan

On December 23, 2003, Michigan enacted 2003 Mich. Pub. Act 244, amending Mich. Comp. Laws Ann. §§ 484.1408, 484.1411, 484.1602 and 484.1711 (West 2004). This act imposes a surcharge of \$0.52 per month for 24 months for each wireless telephone service connection (as defined in Michigan statutes) that has a billing address

in Michigan. The surcharge drops to \$0.29 for the final 12 months of the program (CY 2006). If a wireless provider notifies the state that it will not seek reimbursement for its costs from the Michigan fund, the surcharge for that provider's subscribers drops to \$0.29 immediately.

Act 244 provides that \$0.265 of each monthly surcharge will be disbursed to counties to reimburse training, network and equipment costs related to wireless emergency service.

### Minnesota

In Minnesota, a surcharge is applied to the monthly bill for each customer receiving service from a wireless or wireline telecommunications service provider. The surcharge is authorized by Minn. Stat. §§ 403.11.1(c) and 403.113.1(a). The 911 fee is presently set at \$0.40 per month per line for both wireless and wireline telephone service.

The money collected from the 911 fee is distributed to counties in Minnesota according to a formula set forth in the statute. This money may be spent to lease, purchase, lease-purchase, or maintain enhanced 911 equipment, including telephone equipment; recording equipment; computer hardware; computer software for database provisioning, addressing, mapping, and any other software necessary for automatic location identification or local location identification; trunk lines; selective routing equipment; the master street address guide; dispatcher public safety answering point equipment proficiency and operational skills; pay for long-distance charges incurred due to transferring 911 calls to other jurisdictions; and the equipment necessary within the public safety answering point for community alert systems and to notify and communicate with the emergency services requested by the 911 caller. Minn. Stat. § 403.113.3(a).

### Illinois

In Illinois, each wireless carrier is required to impose a monthly surcharge per wireless connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan administrator or has a billing address in Illinois. 50 Ill. Comp. Stat. 751/17(a)(2004). The monthly wireless surcharge is presently set at \$0.75 per month.

The statute provides that one-third of the wireless surcharge will be used to reimburse wireless carriers for their 911-related expenses. 50 Ill. Comp. Stat. 751/17(b)(2004). The remaining two-thirds of the wireless surcharge will be used for grants for emergency telephone system boards, qualified government entities, or the Illinois Department of State Police, and for reimbursement of the Communications Revolving Fund for administrative costs incurred by the Illinois Department of Central Management Services related to administering the program. These grants may be used only for the design, implementation, operation, maintenance, or upgrade of wireless 911 or E911 emergency services and public safety answering points, and for no other purposes. Grants from their wireless fund may not be used to pay for or recover any

costs associated with public safety agency equipment or personnel dispatched in response to wireless 911 or wireless E911 emergency calls.

### Iowa

In 1998, Iowa enacted Iowa Acts 1998 (77 G.A.) ch. 1101, § 9 (eff. Apr. 16, 1998) and codified as Iowa Code Ann. § 34A.7A (West 2004) authorizing a surcharge on wireless communications service numbers in Iowa to support E911 service. Iowa set the wireless surcharge at \$0.50, and began to collect that surcharge in January 1999. Iowa Admin. Code § 605—10.8(34A)(2004).

The Iowa statute provides that the wireless E911 fund shall reimburse the authorized expenses of the fund administrator, and shall reimburse wireless providers for all eligible costs associated with the implementation and operation of E911 services. The administrator may also disburse funds to a local joint E911 service board or department of public safety, upon request, if the administrator finds that the requested funding is for equipment necessary for the reception and disposition of wireless E911 calls and that sufficient funds are available. Iowa Code § 34A.7A.2.

## **E. Section-by-Section Analysis of the Proposed Rule**

### Subchapter I

The rule first makes non-substantive changes to the format of ch. PSC 173 to improve the overall presentation of the chapter. The rule is now organized into three subchapters. The first subchapter concerns general matters. In s. PSC 173.02, the rule adds definitions for 15 terms with meaning unique to this chapter.

### Subchapter II

Subchapter II concerns the funding of wireline 911 systems adopted by counties under a county-wide 911 service contract. Generally, this subchapter recreates provisions that were first adopted in February 1989.

In s. PSC 173.03(3), the rule adds a provision permitting telecommunications providers to file a county-wide 911 service contract and supporting information under a confidential cover. This provision reflects the fact that local exchange telecommunications service is becoming increasingly competitive, and the providers do not want to make public company-specific cost and market-share data.

In s. PSC 173.04(1), the rule modifies the current notice requirement for county-wide 911 contracts to align the notice procedure in this rule with the Commission's general administrative process in ch. PSC 2.

### Subchapter III

Subchapter III concerns the funding of enhanced wireless 911 systems with grants from the Wireless 911 Fund.

In s. PSC 173.06, the rule provides the criteria under which grant applications from wireless providers will be reviewed and approved. This section also requires wireless providers to make certain declarations as well. A wireless provider must disclose any funds that have already been received from customers as reimbursement for the provider's 911 development and operating expenses in the state. The provider must describe its service area in the state, and report which answering points in that service area have actually requested wireless E911 service from the provider under 47 CFR 20.18. The provider must attest that its E911 service conforms to the performance standard in the federal rule, and disclose any waivers that postpone the effective date of that standard for that provider.

In s. PSC 173.07, the rule provides the criteria under which grant applications from local governments will be reviewed and approved. In s. PSC 173.07(3), the rule specifies the equipment, training, telecommunications network, and data resources that may be reimbursed by the Wireless Fund. Under s. PSC 173.07(3)(a)3, the fund will reimburse the cost of local exchange trunks, selective routing, database access, and other telecommunications services needed to support wireless E911 service during the 3-year life of the Wireless Fund. After the fund expires, counties and other local governments will pay the ongoing or monthly recurring charges for these services.

In s. PSC 173.08, the rule provides the criteria under which local governments applications for supplemental grants will be reviewed and approved. In s. PSC 173.08(1), the rule limits the availability of the supplemental grant program to instances where two or more counties have agreed to consolidate answering points into a single regional facility with primary dispatch responsibility over the consolidated territory.

In s. PSC 173.09, the rule sets forth the procedures and standards the Commission will use to approve or disapprove grant applications.

In s. PSC 173.10, the rule sets forth the procedures for setting the wireless surcharge, and for collecting and depositing the money generated by the wireless surcharge.

In s. PSC 173.11, the rule sets forth the procedures the Commission will use to administer the Wireless 911 Fund. In s. PSC 173.11(6), the rule schedules a review of the surcharge rate at the end of the first and second year of the program to ensure that the fund has sufficient funds, but does not accumulate excess money. To the extent that there is money left in the fund at the end of the third year of the program, the rule provides that that money will be returned to wireless subscribers as a credit on their telephone bill.

In s. PSC 173.12, the rule recites the language adopted by the legislature in s. 146.70(3m)(g), Stats., to protect the confidentiality of commercially-sensitive information provided by the wireless telecommunications industry to support implementation of the wireless 911 service.

**F. Summary of the Effective Dates in the Proposed Rule**

The rule contains several dates on which specific provisions within the rule take effect. The sequence of those effective dates is summarized below. This summary uses an example to illustrate how the schedule would work in practice. The actual schedule is not known. It will be known when the publication date for the final rule is set.

1. The reimbursement period begins on September 3, 2003. A grant application from a local government may also request reimbursement for costs incurred between January 1, 1999, and September 2, 2003. *See* ss. 146.70(3m)5. and 146.70(3m)1r., Stats.
2. The provisions of the rule, with the exception of s. PSC 173.10(1)(b) and (2), take effect on the first day of the second month following publication of the rule in the Wisconsin Administrative Register. *See* Proposed Rule, Section 2. Effective Dates.
  - For example, if the rule was published in September 2004, the provisions of the rule, with the exception of s. PSC 173.10(1)(b) and (2), would take effect on November 1, 2004.
3. Applications from wireless providers and local governments for grants from the Wireless 911 Fund are due on the first day of the third month beginning after the effective date of ss. PSC 173.06 and 173.07. *See* ss. 146.70(3m)(b)1. and 146.70(3m)(c)1., Stats.; ss. PSC 173.06(1) and PSC 173.07(1).
  - Using the example above, if the rule was published in September 2004, and became effective on November 1, 2004, these applications would be due on February 1, 2005.
4. Applications for 3-year supplemental grants from local governments are due on the first day of the third month beginning after the effective date of ss. PSC 173.06 and 173.07 as well. *See* s. PSC 173.08(2)(a).
  - Using the example above, if the rule was published in September 2004, and became effective on November 1, 2004, these applications would also be due on February 1, 2005.
5. Section PSC 173.10(1)(b) and (2), authorizing the billing and collection of the wireless surcharge, takes effect on the first day of the eleventh month following publication of the rule in the Wisconsin Administrative Register. *See* Proposed Rule, Section 2. Effective Dates.
  - Using the example above, if the rule was published in September 2004, s. PSC 173.10(1)(b) and (2) would take effect on August 1, 2005.
6. The surcharge period commences on the first day of the second month beginning after the effective date of s. PSC 173.10(2), and concludes on the last day of the thirty-fifth month beginning after the month in which the surcharge commences. Wireless providers billing on a monthly basis would

- bill and collect the wireless surcharge each month during the 36-month surcharge period. *See* s. 146.70(3m)(f)1., Stats.
- Using the example above, if the rule was published in September 2004, and s. PSC 173.10(2) became effective on August 1, 2005, the surcharge period would commence October 1, 2005, and would conclude on September 30, 2008.
7. The fund administrator shall make quarterly payments to wireless providers and local governments that have approved grant applications. *See* s. PSC 173.11(5)(a).
    - Using the example above, if the rule was published in September 2004, and s. PSC 173.10(2) became effective on August 1, 2005, the first quarter for purposes of grant payment would be November 1, 2005, to January 31, 2006. The final quarter would be August 1, 2008, to October 31, 2008.
  8. The Commission shall review the amount of the wireless surcharge and the status of scheduled disbursements prior to the thirteenth and twenty-fifth month of the surcharge period. A county may also submit an application for a supplemental grant as part of these second-year and third-year reviews. *See* s. PSC 173.11(6).
    - Using the example above, if the rule was published in September 2004, and s. PSC 173.10(2) became effective on August 1, 2005, the second-year review would be completed prior to September 30, 2006, and the third-year review would be completed prior to September 30, 2007.
  9. The reimbursement period concludes on the last day of the 3-year period beginning on the first day of the second month beginning after the effective date of s. PSC 173.10(2). *See* s. 146.70(3m)(5), Stats.
    - Using the example above, if the rule was published in September 2004, and s. PSC 173.10(2) became effective on August 1, 2005, the reimbursement period would conclude on September 30, 2008.
  10. The Commission shall conduct its final review of the program after the conclusion of the reimbursement period. *See* s. PSC 173.11(7).
    - Using the example above, if the rule was published in September 2004, the Commission would conduct its final review after October 1, 2008, and disburse any unspent money as provided by the rule.
  11. The statutory authority to administer the Wireless 911 Fund expires on the first day of the 42<sup>nd</sup> month beginning after the effective date of s. PSC 173.10(2). *See* s. 146.70(3m)(j), Stats.
    - Using the example above, if the rule was published in September 2004, and s. PSC 173.10(2) became effective on August 1, 2005, the statutory authority to administer the Wireless 911 Fund expires on February 1, 2009.

1 SECTION 1. Chapter PSC 173 is repealed and recreated to read:

2 **Wisconsin Administrative Code**

3 **Chapter PSC 173**

4 **911 EMERGENCY TELECOMMUNICATIONS SERVICE**

5 **Subchapter I—General Provisions**

6 **PSC 173.01 Purpose.** The purpose of this chapter is to implement those  
7 provisions of s. 146.70, Stats., that authorize the commission to review the contracts  
8 between counties and telecommunications providers for the provision of 911 emergency  
9 telecommunications service and that establish a wireless 911 fund to promote installation  
10 and use of enhanced wireless 911 emergency telecommunications service.

11 **PSC 173.02 Definitions.** In this chapter:

12 (1) “Active prepaid wireless telephone” means a prepaid wireless telephone that  
13 has been used or activated by the customer during the month to complete a telephone call  
14 for which the customer’s card or account was decremented.

15 (2) “Commercial mobile radio service provider” has the meaning given in  
16 s. 196.01(2g), Stats.

17 (3) “Commission” means the public service commission.

18 (4) “Designated public safety answering point” means a wireless public safety  
19 answering point that has been identified in a resolution adopted under s. 146.70(3m)(c)3.  
20 or 6., Stats., for the purpose of implementing the federal wireless orders.

1           **(5)** “Federal wireless orders” means the orders of the federal communications  
2 commission regarding 911 emergency services for wireless telephone users in FCC  
3 docket no. 94-102.

4           **(6)** “Fund” means the wireless 911 fund established by s. 25.98, Stats.

5           **(7)** “Local government” has the meaning given in s. 146.70(3m)(a)4., Stats.

6           **(8)** “Phase I wireless 911 service” means the wireless telecommunications  
7 service described in 47 CFR 20.18(d).

8           **(9)** “Phase II wireless 911 service” means the wireless telecommunications  
9 service described in 47 CFR 20.18(e)-(i).

10           **(10)** “Prepaid wireless telephone service” means wireless telephone service  
11 which is activated by payment in advance of a finite dollar amount or for a finite set of  
12 minutes and which, unless an additional finite dollar amount or finite set of minutes is  
13 paid in advance, terminates either upon use by a customer of an agreed-upon amount of  
14 service corresponding to the total dollar amount paid in advance, or within a certain  
15 period of time following initial purchase or activation.

16           **(11)** “Reimbursement period” has the meaning given in s. 146.70(3m)(a)5., Stats.

17           **(12)** “Surcharge period” means the 3-year period beginning on the first day of the  
18 second month beginning after the effective date of s. PSC 173.10(1)(b) and (2)  
19 ...[revisor inserts date] and ending on the last day of the thirty-fifth month beginning  
20 after the month in which the surcharge period commences....[revisor inserts date].

21           **(13)** “Wireless provider” has the meaning given in s. 146.70(3m)(a)6., Stats.

22           **(14)** “Wireless public safety answering point” has the meaning given in  
23 s. 146.70(3m)(a)7., Stats.

1           (15) “Wireless surcharge” means the monthly surcharge required by  
2 s. 146.70(3m)(f), Stats.

3   **Subchapter II—Wireline 911 Emergency Telecommunications Service Contracts**

4           **PSC 173.03 Submission of telecommunications emergency services**

5   **contracts. (1)** A telecommunications provider that enters into a contract with a county  
6 for the provision of wireline 911 emergency telecommunications service shall within 20  
7 days submit the contract for commission review.

8           (2) In addition to the contract, the utility shall submit all of the following  
9 information:

10          (a) A copy of the county ordinance adopting the plan for a wireline 911  
11 emergency telecommunications system.

12          (b) A list identifying all participating local exchange carriers and a statement that  
13 each has tariffs or concurring tariffs on file with the commission providing for individual  
14 911 contracts.

15          (c) A list identifying the localities and the number of all service users residing  
16 outside the contracting county, specifying the municipality in which they reside.

17          (d) A list identifying those municipalities outside the contracting county with  
18 residents who will be billed for the service.

19          (e) A statement that all telecommunications service users in the county have  
20 access to a wireline 911 system. If such a statement cannot be made with regard to a  
21 segment of the county's service users, the telecommunications utility shall provide  
22 information indicating that the local exchange carrier serving those service users is not

1 capable of providing the wireline 911 system on a reasonable economic basis on the  
2 effective date of the contract.

3 (f) A list of exchanges in the county with customers served by a wireline 911  
4 system outside the county, which identifies the provider of the wireline 911 service.

5 (g) A description of access to the wireline 911 system by telecommunications  
6 devices for the communicatively impaired.

7 (h) Cost support for and complete itemization of the installation and monthly  
8 charges for automatic number identification, automatic location identification and all  
9 trunking service components for both the primary telecommunications utility under the  
10 contract and the participating local exchange carriers. Cost support may be in the form of  
11 tariff reference if the rates and charges for wireline 911 service are those in the utility's  
12 tariffs.

13 (i) A statement of the total billable exchange access lines for purposes of the  
14 contract and the actual exchange access line count. This statement shall provide detail as  
15 to how the billable exchange access line count was determined, including any  
16 equivalency factor used for the line equivalents and the number of lines to which the  
17 factor applies.

18 **(3)** The commission shall withhold from public inspection any wireline 911  
19 emergency telecommunications service contract, or any other information received under  
20 this subchapter, that would aid a competitor of one or more of the participating  
21 telecommunications providers.

1           **PSC 173.04 Commission review.** (1) Upon receipt of a contract for wireline  
2 911 emergency telecommunications service, the commission shall issue a notice of  
3 investigation in accordance with s. PSC 2.09.

4           (2) Within 60 days of receipt of a contract for the provision of wireline 911  
5 emergency telecommunications service, the commission may disapprove the contract if it  
6 finds any of the following:

7           (a) The contract is not compensatory.

8           (b) The contract is excessive.

9           (c) The contract does not comply with the utility's tariff specifying the rates and  
10 charges or terms and conditions for the offering of wireline 911 emergency  
11 telecommunications service.

12           (3) The commission may act on the contract without hearing.

13           (4) Any person may request disapproval of the contract within 20 days of mailing  
14 of notice by the commission, specifying reasons for the disapproval in writing. The  
15 person may request a hearing by specifying factual issues that are in dispute.

16           (5) The contract shall be effective immediately on signing and remain effective  
17 unless and until disapproved by the commission.

18           **PSC 173.05 Assessment.** A telecommunications provider submitting a contract  
19 under s. PSC 173.03 shall pay the commission's direct costs of contract approval, unless  
20 the utility has an agreement with participating telecommunications providers to share this  
21 cost.

1    **Subchapter III—Wireless 911 Fund**

2           **PSC 173.06 Grant applications from wireless providers.** (1) A wireless  
3 provider may apply to receive a grant from the fund as reimbursement for costs estimated  
4 in sub. (2). Except as provided in sub. (6), the wireless provider shall submit an  
5 application to the commission no later than the first day of the third month beginning  
6 after the effective date of this section ...[revisor inserts date].

7           (2) An application under sub. (1) shall contain an itemized estimate, and  
8 supporting documentation, of the costs that the applicant has incurred, or will incur,  
9 during the reimbursement period to upgrade, purchase, lease, program, install, test,  
10 operate, or maintain all data, hardware, and software necessary to comply with the federal  
11 wireless orders in this state.

12           (a) This estimate may not include any costs for the implementation of wireless  
13 911 emergency service in this state for which the wireless provider has been reimbursed  
14 by customers in this state before or during the reimbursement period, apart from the  
15 wireless surcharge established pursuant to s. PSC 173.10. This estimate may include  
16 reasonable administrative costs associated with the billing and collection of the wireless  
17 surcharge.

18           (b) If a wireless provider does request reimbursement of its costs to provide  
19 Phase II wireless 911 service in this state in its application under sub. (1), the provider  
20 may elect not to submit an estimate of its Phase II costs.

21           (3) An application under sub. (1) shall declare the amount of money the wireless  
22 provider has recovered or will recover from customers in this state before or during the  
23 reimbursement period, apart from the wireless surcharge established pursuant to s. PSC

1 173.10, as reimbursement for costs the wireless provider has incurred or will incur to  
2 implement wireless emergency 911 service in this state.

3 (a) The declaration shall include all money recovered from customers with a  
4 recurring billing statement or pre-paid service agreement using a separate line item  
5 charge identified as related to or associated with the implementation, installation,  
6 maintenance, or operation of wireless 911 emergency service network facilities or service  
7 features in this state, regardless of whether the amount collected was actually used for  
8 that purpose.

9 (b) If a wireless provider does not request reimbursement of its costs to provide  
10 Phase II wireless 911 service in this state in its application under sub. (1), the provider  
11 may elect not to make the declaration required under this subsection with respect to its  
12 Phase II service.

13 (4) An application under sub. (1) shall contain a description or explanation of the  
14 geographic area in which the wireless provider will provide wireless 911 service in this  
15 state. The application shall disclose which local governments within the geographic  
16 service area the wireless provider has described have requested from the provider either  
17 Phase I or Phase II wireless 911 service in accordance with 47 CFR 20.18(j).

18 (5) A wireless provider may not apply for a grant under this section if its  
19 provision of 911 service does not conform to applicable requirements set forth at 47 CFR  
20 20.18. A wireless provider's eligibility for a grant under this section shall not be  
21 conditioned upon compliance with a location accuracy standard different from that  
22 established in 47 CFR 20.18 and applicable federal wireless orders. An application under  
23 sub. (1) shall contain an attestation that the applicant's service conforms to the

1 requirements of 47 CFR 20.18, and shall disclose any waivers or other applicable orders  
2 of the federal communications commission that postpone the date on which the applicant  
3 is required to meet the service standards established in 47 CFR 20.18.

4 (6) A wireless provider that does not provide service to customers in this state  
5 before September 3, 2003, may make an application under this section after the first day  
6 of the third month beginning after the effective date of this section ....[revisor inserts  
7 date] under s. PSC 173.11(6)(b).

8 **PSC 173.07 Grant applications from local governments.** (1) A local  
9 government, that is authorized by s. 146.70(3m)(c)1., Stats., to do so, may apply to  
10 receive a grant from the fund as reimbursement for costs that have been directly and  
11 primarily incurred, or will be directly and primarily incurred, or both, for leasing,  
12 purchasing, operating, or maintaining the wireless public safety answering point, as well  
13 as telecommunications network costs assigned to the local government for recovery  
14 under 47 CFR 20.18(j) and applicable federal wireless orders. The local government  
15 shall submit an application to the commission no later than the first day of the third  
16 month beginning after the effective date of this section ....[revisor inserts date].

17 (2) An application under sub. (1) shall do all of the following:

18 (a) Demonstrate with appropriate documentation that each county which itself is  
19 one of the local governments or in which any of the local governments is located has  
20 adopted a resolution to satisfy the requirement of ss. 146.70(3m)(c)3. or 4., Stats.

21 (b) Demonstrate that the designated public safety answering point will serve the  
22 geographic area specified by ss. 146.70(3m)(c)5. and 6., Stats.

1 (c) Demonstrate that the designated public safety answering point has complied  
2 with the requirements set forth in 47 CFR 20.18(j).

3 (d) Contain an estimate of costs under sub. (3).

4 (e) If an application is for the joint operation of a wireless public safety  
5 answering point by local governments, specify the manner in which the estimated costs  
6 are apportioned among the local governments.

7 **(3)** The estimate of costs under sub. (2)(d):

8 (a) Shall include an estimate of all costs that the applicant has directly and  
9 primarily incurred, or will directly and primarily incur, during the reimbursement period  
10 for leasing, purchasing, operating, or maintaining the wireless public safety answering  
11 point including costs for all of the following:

12 1. Necessary network equipment, computer hardware and software, database  
13 equipment, and radio and telephone equipment, that are located within the wireless public  
14 safety answering point.

15 a. The estimate of costs may include radio equipment if that equipment is  
16 necessary to complete a wireless 911 call to the designated public safety answering point,  
17 including microwave telecommunications equipment provided by a telecommunications  
18 provider and radio equipment used to transfer calls between answering points to the  
19 extent approved under s. PSC 173.09(4).

20 b. The estimate of costs may not include radio equipment that is used for a  
21 purpose other than completing a wireless 911 call to the designated public safety  
22 answering point, including radio equipment providing communications between a  
23 dispatcher and an emergency vehicle and radio equipment providing an inter-agency or

1 inter-government communications link for purposes other than that approved under  
2 s. PSC 173.09(4).

3 2. Training operators of a wireless public safety answering point. The estimate of  
4 training costs may not include any portion of the salary and benefits paid to an individual  
5 employed by a county or municipal government in any of the job descriptions associated  
6 with the operation of the designated public safety answering point.

7 3. Network costs for delivery of calls from a wireless provider to a wireless  
8 public safety answering point.

9 4. Collection and maintenance of data used by the wireless public safety  
10 answering point, including data to identify a caller and the location of a caller.

11 5. Relaying messages regarding wireless emergency 911 telephone calls via data  
12 communications from the wireless public safety answering point to local government  
13 emergency call centers in operation before June 1, 2003, that dispatch the appropriate  
14 emergency service providers.

15 (b) May include costs directly and primarily incurred by the applicant between  
16 January 1, 1999, and September 3, 2003, for any costs identified in par. (a)1. or 4.

17 (c) May not include:

18 1. Costs related to any of the following:

19 a. Emergency service dispatch, including personnel, training, equipment,  
20 software, records management, radio communications, and mobile data network systems.

21 b. Vehicles and equipment in vehicles.

22 c. Communications equipment and software used to communicate with vehicles.

1           d. Real estate and improvements to real estate, other than improvements  
2 necessary to maintain the security of a wireless public safety answering point.

3           e. Salaries and benefits of operators of a wireless public safety answering point.

4           2. Any costs in sub. (3)(a) which the applicant has recovered in the form of a gift  
5 or grant for the purposes described in sub. (3)(a).

6           **(4)** Except to the extent approved by the commission under s. PSC 173.09(4), an  
7 application from a local government or governments under this section may request to  
8 receive a grant for only one wireless public safety answering point in each county.

9           **PSC 173.08 Supplemental grants. (1)** A county may apply for a supplemental  
10 grant under this section if:

11           (a) The county, or a local government within the county, jointly operates a  
12 wireless public safety answering point with another county, or local government in  
13 another county.

14           (b) The county has previously or concurrently applied for a grant under s. PSC  
15 173.07.

16           (c) Each county in which the participating local governments are located has  
17 adopted a resolution pursuant to s. 146.70(3m)(c)3., Stats., designating the same wireless  
18 public safety answering point, and that answering point is located in the county  
19 submitting the application for a supplemental grant.

20           (d) The designated public safety answering point provides a single point of  
21 termination for telephone calls directed to 911 that originate from wireless telephones  
22 located within the combined geographic jurisdiction of the participating local  
23 governments.

1 (e) For purposes of this section, a “local government in another county” means a  
2 city, village or town located in a county other than the county applying for a  
3 supplemental grant that operates a public safety answering point, as defined in s.  
4 146.70(1)(gm), Stats., pursuant to a countywide 911 system plan adopted by ordinance in  
5 accordance with s. 146.70(3)(b)1., Stats.

6 (2) (a) To receive a supplemental grant during all three years of the  
7 reimbursement period, a county that is eligible to apply for a supplemental grant under  
8 sub. (1) shall submit its application to the commission with its application under s. PSC  
9 173.07, no later than the first day of the third month beginning after the effective date of  
10 this section ....[revisor inserts date].

11 (b) To receive a supplemental grant during the second and third year of the  
12 reimbursement period, a county that is eligible to apply for a supplemental grant under  
13 sub. (1), and that did not submit an application for a supplemental grant with its grant  
14 application under s. PSC 173.07, shall submit its application during the commission’s  
15 second year review under s. PSC 173.11(6) by the date the commission establishes in a  
16 public notice.

17 (c) To receive a supplemental grant during the third year of the reimbursement  
18 period, a county that is eligible to apply for a supplemental grant under sub. (1), and that  
19 did not submit an application for a supplemental grant with its grant application under s.  
20 PSC 173.07 or during the commission’s second year review, shall submit its application  
21 during the commission’s third year review under s. PSC 173.11(6) by the date the  
22 commission establishes in a public notice.

1           (3) An application for a supplemental grant under this section is in addition to the  
2 application for grants that the county may make under s. PSC 173.07.

3           (4) An application for a supplemental grant under this section is not subject to the  
4 restrictions set forth in s. PSC 173.07.

5           (5) An individual supplemental grant shall not exceed an amount equal to 50% of  
6 the amount awarded to the applicant county as a grant under ss. PSC 173.07(1) and PSC  
7 173.09(3). The total of the amount awarded as supplemental grants shall not exceed 10%  
8 of the 911 wireless fund.

9           **PSC 173.09 Review and approval of grant and supplemental grant**

10 **applications.** (1) The commission shall provide reasonable notice to the clerk of each  
11 county, each wireless provider that has requested notice, and any other interested party,  
12 of the date on which an application under this subchapter is due. If an application under  
13 ss. PSC 173.06 or 173.07 is submitted after the deadline, the commission shall take action  
14 under sub. (7).

15           (2) After the receipt of an application requesting a grant under this subchapter, the  
16 commission shall issue a notice of investigation in accordance with s. PSC 2.09 if it has  
17 not already done so. The commission shall provide an opportunity for interested parties  
18 to comment on whether pending grant applications should be approved, subject to the  
19 limitation on access to information in s. PSC 173.12.

20           (3) The commission shall approve an application under ss. PSC 173.06 or 173.07  
21 if the commission determines all of the following:

1           (a) The costs estimated in the application have been, or will be, incurred for the  
2 purpose of promoting a cost-effective and efficient statewide system for responding to  
3 wireless emergency 911 telephone calls.

4           (b) The costs estimated in the application are reasonable.

5           (c) The application complies with the requirements of this chapter.

6           (d) If the application is from a local government and includes costs related to the  
7 collection and maintenance of data under s. PSC 173.07(2)(d), the requirements under  
8 sub. (6) are met.

9           **(4)** The commission shall approve an application requesting a supplemental grant  
10 under s. PSC 173.08 if the commission determines all of the following:

11           (a) The supplemental grant application is submitted by a county and complies  
12 with the requirements of this chapter.

13           (b) The amount requested is reasonable.

14           **(5)** Notwithstanding sub. (3), the commission may only approve an application  
15 for a grant to reimburse a local government for costs under s. PSC 173.07(3)(a)5. if the  
16 commission first determines that reimbursement of such costs is in the public interest and  
17 will promote public health and safety. In making this determination, the Commission  
18 shall give preference to applications that propose to use existing equipment, and request  
19 reimbursement for equipment already purchased and costs already incurred.

20           **(6)** If an application from a local government requests reimbursement under  
21 s. PSC 173.07(3)(a) for equipment and facilities that will also be used to terminate  
22 wireline 911 emergency telecommunications service, the commission shall presume that

1 one half of the total cost of equipment and facilities is directly associated with wireless  
2 911 service and can be reimbursed from the fund.

3 (a) An applicant may rebut this 50% presumption by providing sufficient  
4 evidence to demonstrate that the presumed ratio is unfair and would unreasonably burden  
5 local taxpayers with the recovery of costs directly and solely attributable to the addition  
6 of enhanced wireless 911 telephone service.

7 (b) A wireless provider or other interested party may also submit comments in  
8 response to the notice required under sub. (2) challenging this presumption by providing  
9 sufficient evidence to demonstrate that the presumed ratio is unfair and would  
10 unreasonably burden wireless telephone subscribers with the recovery of costs that have  
11 not been, or will not be, incurred for the purpose of promoting a cost-effective and  
12 efficient statewide system for responding to wireless emergency 911 telephone calls.

13 (7)(a) An application from a local government that requests reimbursement for  
14 costs related to the collection and maintenance of data under s. PSC 173.07(2)(d) shall be  
15 approved only if the commission determines all of the following:

16 1. The local government's collection of land information, and development of a  
17 land information system that is related to that purpose are consistent with the applicable  
18 county land records modernization plans developed under s. 59.72(3)(b), Stats.

19 2. The local government's collection of land information conforms to the  
20 standards on which such plans are based.

21 3. The local government's collection of land information does not duplicate land  
22 information collection and other efforts funded through the land information program  
23 under s. 16.967(7), Stats.

1           (b) For any determination made by the commission under par. (a) before July 1,  
2 2005, the commission shall first request the advice of the land information board before  
3 making its determination.

4           **(8)** If a wireless provider or local government submits an application after the  
5 deadline specified in ss. PSC 173.06 and PSC 173.07, respectively, the commission shall  
6 reduce the costs approved under sub. (3) by the following amounts:

7           (a) If the application is less than 1 week late, 5%.

8           (b) If the application is 1 week or more but less than 2 weeks late, 10%.

9           (c) If the application is 2 weeks or more but less than 4 weeks late, 25%.

10          (d) If the application is 4 weeks or more late, the wireless provider or local  
11 government is not eligible for a grant.

12          **(9)** If the commission does not approve an application under sub. (3) or sub. (4),  
13 the commission shall provide the applicant with the commission's reasons and give the  
14 applicant an opportunity to resubmit the application. If the commission approves a part  
15 of the application, the commission shall provide the applicant with the commission's  
16 reasons for disapproving part of the application and give the applicant an opportunity to  
17 resubmit the portion of the application previously disapproved.

18          **(10)** For any application under this subchapter pending before the commission,  
19 the wireless provider or a local government that submitted the application may revise the  
20 application before the commission approves or disapproves it without incurring a penalty  
21 under sub. (8). For any application approved by the commission under sub. (3), the  
22 wireless provider or a local government that submitted the application may revise the

1 application before the commission makes a disbursement to that wireless provider or  
2 local government.

3 **PSC 173.10 Wireless surcharge. (1) CALCULATION.** (a) Upon the request of  
4 the commission, each wireless provider shall file with the commission a report setting  
5 forth the number of its wireless telephone numbers with billing addresses in this state that  
6 are billed on a recurring basis and the number of its wireless telephone numbers subject  
7 to a pre-paid service agreement with a customer with an address in this state or sold  
8 within this state, as of the date specified in the commission request.

9 (b) The commission shall determine the amount of the wireless surcharge by  
10 dividing the sum of the total amount of money requested from all grant and supplemental  
11 grant applications approved under s. PSC 173.09 and the reasonable administration costs  
12 under 173.11(2) by 36, and then dividing that result by the total number of telephone  
13 numbers served by wireless providers and reported under sub. (a).

14 **(2) ORDER.** The commission shall set the amount of the wireless surcharge by an  
15 order pursuant to s. 227.47(1), Stats. An interested party may petition to reopen the  
16 proceeding and amend the surcharge order under s. 196.39(2), Stats., and s. PSC 2.28.

17 **(3) COLLECTION.** (a) Each wireless provider shall impose the wireless surcharge  
18 for each telephone number of a customer that has a billing address in this state on each  
19 bill rendered during the surcharge period.

20 (b) The wireless surcharge shall be calculated and applied on a monthly basis.  
21 The wireless surcharge shall be the same for each wireless telephone number, regardless  
22 of the serving wireless provider, except that:

1                   1. For a customer that is billed on a recurring basis other than monthly,  
2 the wireless provider shall impose a surcharge equal to the amount of the wireless  
3 surcharge times the number of months of service billed in that customer's billing  
4 statement times the number of telephone numbers billed or assigned to that customer.

5                   2. For a customer with prepaid wireless telephone service, the wireless  
6 provider shall charge to that customer's prepaid account using one of the following  
7 methods:

8                   a. The provider shall charge the prepaid account the amount of the monthly  
9 surcharge when the telephone becomes an active prepaid wireless telephone, provided the  
10 balance of the prepaid account is greater than or equal to the monthly wireless surcharge.

11                  b. The provider shall divide the total prepaid wireless telephone revenue earned  
12 and received in the state a calendar month during the surcharge period by fifty dollars  
13 (\$50), and multiply the quotient by the monthly wireless surcharge.

14                  (c) Each wireless provider shall pay the full amount of the surcharge collected to  
15 the commission within 30 days of the end of the month in which the surcharge was  
16 collected for deposit in the fund. A wireless provider may not withhold any portion of  
17 the surcharge it collects as reimbursement for the cost of billing and collecting the  
18 surcharge, or for any other purpose. A wireless provider may include reasonable  
19 administrative costs as part of its grant application under s. PSC 173.06.

20                  **PSC 173.11 Fund administration. (1) DESIGNATION.** The commission may  
21 designate a fund administrator.

22                  **(2) ADMINISTRATIVE COSTS.** The commission may recover from the fund its  
23 reasonable costs related to the administration of the fund.

1           **(3) DEPOSIT OF FUNDS.** The commission shall ensure that the amounts billed and  
2 collected through the wireless surcharge and remitted to the commission are deposited in  
3 the fund. All amounts deposited in the fund, including moneys earned as interest, shall  
4 remain in the fund until disbursed as provided in this chapter.

5           **(4) REQUIRED DOCUMENTATION.** Wireless providers and local governments with  
6 approved applications for grants under this chapter shall submit requests for  
7 reimbursement that include all of the following:

8           (a) A paid invoice to document the actual cost of any approved purchase from a  
9 vendor or supplier.

10          (b) Appropriate documentation, such as time slips for work performed by  
11 employees or attendance rosters and training outlines for training performed, to verify  
12 that any internal costs approved for reimbursement actually were incurred.

13          (c) Appropriate documentation to verify that local governments have complied  
14 with the requirements under 47 CFR 20.18(j).

15          (d) Any other documentation that the commission may request to ensure that the  
16 moneys disbursed by grant have been used in the manner proposed by the applicant and  
17 approved by the commission.

18           **(5) DISBURSEMENTS.** (a) The commission shall make quarterly payments to  
19 wireless providers and local governments that have approved applications for grants  
20 under this chapter.

21          (b) The amount disbursed each quarter to a wireless provider or local government  
22 shall be the unpaid amount of the grant approved by the commission under s. PSC 173.09  
23 for that wireless provider or local government divided by the number of months

1 remaining in the reimbursement period times 3, but the commission may not disburse  
2 more than the amount for which the wireless provider or local government has provided  
3 the documentation specified in sub. (4).

4 (c)1. The commission shall begin payment of approved grant amounts to wireless  
5 providers when the wireless provider has installed all necessary equipment, upgrades and  
6 interconnecting telecommunications circuits to provide service to a designated public  
7 safety answering point. If a wireless provider provides wireless 911 service to more than  
8 one answering point in the state, the Commission may divide the approved grant amount  
9 due to that wireless provider into appropriate increments, and pay the increments based  
10 upon installation of service to each individual answering point.

11 2.a. Except as provided in subd. 2.b., the commission shall begin payment of  
12 approved grant amounts to local governments when the enhanced wireless 911  
13 telecommunications service is implemented and made available to wireless telephone  
14 subscribers located within the boundaries of that local government.

15 b. For grant applications that include a request for reimbursement for the purchase  
16 of equipment described in s. PSC 173.07(3)(a)1., the commission may begin quarterly  
17 payments of approved grant amounts related to that equipment after the start of the  
18 surcharge period and upon receipt of the documentation in sub. (4)(a).

19 (d) The commission shall withhold payment of an approved grant to a local  
20 government if that local government does not implement the wireless 911 service in its  
21 jurisdiction before the end of the reimbursement period, and the local government shall  
22 repay to the fund any money it already received from the fund.

1 (e) No wireless provider or local government may receive a total amount in  
2 grants that exceeds the lesser of the estimated amount approved by the commission under  
3 s. PSC 173.09 for that wireless provider or local government or the cost actually incurred  
4 and documented under sub. (4).

5 (f) In the event that the fund has an insufficient balance to make all scheduled  
6 payments, the commission may reschedule payments to ensure the solvency of the fund.

7 (g) In the case of a disbursement for a jointly operated wireless public safety  
8 answering point, the commission shall apportion the disbursement of the grant in the  
9 manner specified under s. PSC 173.07(2)(e).

10 **(6) SECOND YEAR AND THIRD YEAR REVIEW.** (a) The commission shall review  
11 the amount of the wireless surcharge and the status of scheduled disbursements prior to  
12 the thirteenth and twenty-fifth month of the surcharge period. To facilitate these reviews,  
13 the commission may request from wireless providers an updated count of the number of  
14 wireless telephone numbers billed on a recurring basis and the number of wireless  
15 telephone numbers subject to a pre-paid service agreement.

16 (b) A wireless provider that did not provide service to customers in this state  
17 before September 3, 2003, and did not otherwise apply for a grant under s. PSC 173.06,  
18 may apply for a grant during the second year or third year review by the date the  
19 commission establishes in a public notice. A wireless provider applying for a grant under  
20 this section shall comply with all other requirements of this chapter.

21 (c) A wireless provider or local government may revise an application approved  
22 under s. PSC 173.09 before the date on which the grant is disbursed.

1 (d) A county that is eligible to apply for a supplemental grant under s. PSC  
2 173.08(1) may apply for a supplemental grant under during the commission's second  
3 year or third year review if it did not apply for a supplemental grant when it submitted its  
4 grant application under s. PSC 173.07.

5 (e) The commission may decrease the wireless surcharge at any time. The  
6 commission may increase the wireless surcharge, effective as of the thirteenth and  
7 twenty-fifth month of the surcharge period, after completion of the second year and third  
8 year review.

9 (f) The Commission may reduce the amount of the wireless surcharge collected  
10 under s. PSC 173.10(2)(b)2.b. during the final six months of the surcharge period to  
11 avoid collecting money in excess of the needs of the fund.

12 **(7) FINAL REVIEW.** At the conclusion of the reimbursement period, the  
13 commission shall distribute to wireless providers any funds collected but not disbursed or  
14 otherwise obligated. Funds shall be distributed to wireless providers in proportion to the  
15 providers' respective deposits into the fund. The commission shall withhold payment of  
16 this residual money until the provider agrees to credit its current customer accounts the  
17 full amount of the residual payment. If a provider does not agree, then that provider's  
18 distribution amount shall be proportionately distributed to those providers that have  
19 agreed. Upon completion of all scheduled payments, including the residual payments at  
20 the end of the reimbursement period, the commission shall discontinue the fund.

21 **(8) COLLECTION ACTION AUTHORIZED.** The commission may bring an action to  
22 collect a surcharge that is not paid by a customer. The customer's wireless provider is not  
23 liable for the unpaid surcharge.

1           **PSC 173.12 Confidentiality of information.** (1) The commission shall  
2 withhold from public inspection any information received under this subsection that  
3 would aid a competitor of a wireless provider in competition with the wireless provider.

4   SECTION 2. EFFECTIVE DATES.

5           (1) This rule, except s. PSC 173.10(1)(b) and (2), shall take effect on the first day  
6 of the second month following publication in the Wisconsin administrative register.

7           (2) Section PSC 173.10(1)(b) and (2) shall take effect on the first day of the  
8 eleventh month following publication in the Wisconsin administrative register.

9   DK:cdg:

**SUMMARY OF AND RESPONSES TO  
COMMENTS REGARDING THE PROPOSED RULE**

The Public Service Commission conducted a public hearing on the proposed rule on April 27, 2004. The following individuals testified at the hearing:

- Dennis Klaila of the Commission staff answered questions concerning the proposed rule
- Carol Kelso, Brown County
- Jay Maritz, Walworth County
- Richard Tuma, Waukesha County
- Edward Huck, Wisconsin Alliance of Cities
- Lorelee Brumund, Wisconsin State Patrol

In addition, the Commission invited interested parties to submit written comments concerning the proposed rule. Written comments were received from the following parties:

- Cingular Wireless
- City of Milwaukee
- Rock County Public Safety and Justice Committee
- SBC Wisconsin
- Sprint Spectrum, LLP
- TracFone Wireless, Inc.
- US Cellular Corporation
- Verizon Wireless, LLC
- VoiceStream PCS II and VoiceStream Minneapolis, Inc., d/b/a T-Mobile
- Wisconsin Alliance of Cities
- Wisconsin Land Information Board
- Wisconsin Sheriffs and Deputy Sheriffs Association, the Wisconsin Police Chief Association, the Wisconsin Association of Public-Safety Communications Officials and the Wisconsin Emergency Number Association (joint comments)

The changes recommended by the commenting parties, and the response of the Commission to each recommendation, are summarized below.

**Brown County**

**1. Comment:**

Section PSC 173.09(5) presumes that one-half of all 911 calls will be wireline. The rule therefore only permits reimbursement of 50 percent of the costs for equipment and facilities that are utilized for both wireless and wireline 911 calls. While the proposed rule, at s. 173.09(5), does allow a community to challenge the

50 percent reimbursement level, it can only do so by providing “sufficient evidence to demonstrate that the presumed ratio is unfair and would unreasonably burden local taxpayers.” Brown County recommends that the Commission revise s. PSC 173.09(5) to make the standard for rebutting the 50 percent presumption less burdensome.

**Response:** Disagree.

The standard for rebutting the 50 percent presumption is intended to be difficult to overcome. See response to City of Milwaukee, comment 2.

**2. Comment:**

Brown County recommends that the Commission revise ss. PSC 173.07(3)(a)2. and 173.07(3)(c)1.e. to permit the fund to reimburse local governments for overtime costs for county and municipal employees engaged in training dispatchers to answer and respond to wireless 911 calls.

**Response:** Disagree.

This proposed use of the wireless fund is prohibited by statute. Under s. 146.70(3m)(d)3.e., Stats., no grant to a local government may be used to reimburse costs for salaries and benefits of operators of a wireless answering point. See response to Cingular Wireless, comment 3.

**3. Comment:**

The Commission should clarify the circumstances under which counties may apply for a supplemental grant.

Brown County also recommends that the Commission revise s. PSC 173.08(1) to permit counties that have created inter-operable 911 systems to apply for supplemental grants under this section.

**Response:** Agree in part.

The recommended change to clarify the circumstances under which counties are eligible to apply for a supplemental grant has been added in s. PSC 173.08(1).

The statute created the opportunity to apply for a supplemental grant as an incentive to encourage local governments to combine their wireless call termination and dispatch into a single multi-county answering point. The inter-operable 911 system created by several counties in the Fox River Valley is commendable. It improves 911 response times in the region through the use of compatible communications equipment and specific inter-agency agreements to provide back-up response in the event of a communications failure or substantial demand upon primary dispatch resources. However, this set of agreements is not

the same thing as the regional answering point that the statute requires for a supplemental grant.

### **Cingular Wireless**

#### **1. Comment:**

Section PSC 173.06(4) requires that a wireless provider's grant application contain a description or explanation of the geographic area in which the wireless provider will provide wireless E911 service in the state. As suggested in the proposed rules, the FCC imposes criteria that distinguish initial "requests" from "valid requests." Only after a request has been determined to be valid can Cingular know whether it should include those costs within its application.

**Response:** Disagree.

Cingular brings up a concern that may prove to be a weakness in the statutory scheme. The statute and rule require both the counties and the wireless providers to project what their costs will be over the three-year reimbursement period. However, a wireless provider's costs depends in turn upon how many counties actually file valid requests for wireless E911 service under the federal rule, 47 CFR 20.18(j). Thus, the wireless providers will project their costs based upon a level of county participation that is not known. Projections under these circumstances will be imprecise and will probably err on the high side. Nonetheless, the rule implements the statutory scheme.

#### **2. Comment:**

Cingular is generally concerned that without further safeguards, the amount of reimbursable local government E911 costs will explode the required and resulting wireless 911 surcharge on wireless customers. Cingular recommends that s. PSC 173.07 should cross-reference FCC rules and other guidance that specify how network costs should be allocated.

**Response:** Agree in part.

Under the statutory process adopted by the legislature, the Commission will hold down the amount of the wireless surcharge by screening individual applications for compliance with the statute and rule. The recommended change to clarify how network costs should be allocated, by cross-referencing the federal rule and other applicable orders and instructions, has been added in s. PSC 173.07(1).

#### **3. Comment:**

There is some potential confusion with the list of reimbursable costs in s. PSC 173.07: real estate improvements necessary to maintain the security of a wireless public safety answering point, training costs in 173.07(3)(a)2. and 173.07(3)(c)1.a., and radio equipment in those same sections.

**Response:** Agree.

The rule has been amended consistent with the following clarifications.

Radio equipment is reimbursable if that equipment is necessary to complete the telephone call to the 911 dispatcher. This would include microwave telecommunications equipment provided by a telecommunications provider. This would also include radio links used to transfer calls between answering points to the extent approved under s. PSC 173.09(4). Radio equipment that is not part of the telephone call, including radio equipment providing communications between a dispatcher and an emergency vehicle, or radio equipment providing an inter-agency or inter-government communications link, is not reimbursable. See s. PSC 173.07(3)(a)1.

The statute unambiguously states that no grant to a local government may be used to reimburse costs for salaries and benefits of operators of a wireless public safety answering point. The statute does permit the fund to reimburse a local government for the cost of training operators of a wireless public safety answering point. Will the fund reimburse the salaries and benefits of operators providing in-house training for other operators at an answering point? No. The prohibition on reimbursement of salaries and benefits is not limited to selected tasks within a larger job description of a county or municipal employee. Rather, the prohibition applies to the entire salary of an individual employed by a county or municipal government in any of the job descriptions associated with the operation of the designated public safety answering point. See s. PSC 173.07(3)(a)2.

The statute does not identify specific improvements to real estate that are necessary to maintain the security of a wireless public safety answering point. The Commission does not have any additional information to indicate what security-related improvements counties intend to apply for in their grant applications. If a county does request reimbursement for a security-related improvement to real estate, the Commission will apply the standard of review in s. PSC 173.09, and approve the grant request if the estimated cost of the security-related improvement in the application is reasonable and has been, or will be, incurred for the purpose of promoting a cost-effective and efficient statewide system for responding to wireless emergency 911 telephone calls.

**4. Comment:**

The Commission should define, or clarify by a cross-reference, the meaning of the term “reasonable” in s. PSC 173.09.

**Response:** Disagree.

The rule mirrors the statutory standard. The Commission will apply this standard to individual applications for grants from the fund.

**5. Comment:**

The Commission should clarify how it intends to reimburse costs related to relaying 911 calls to secondary answering points under s. PSC 173.09(4).

**Response:** Agree in part.

The rule mirrors the statutory standard. The Commission will apply this standard to individual applications for grants from the fund. The rule has been amended to clarify this standard in one respect. In s. PSC 173.09(4), the rule has been changed to give a preference to applications that request reimbursement for secondary answering point equipment that has already been installed and paid for at the time of the application.

**6. Comment:**

When a local government applicant requests reimbursement for equipment and facilities that will also be used to terminate wireline 911 emergency service, any interested party, rather than only the applicant, should be entitled to rebut the presumption that one-half the total cost of equipment and facilities is directly associated with wireless 911 service and can be reimbursed from the fund.

**Response:** Agree.

The recommended change has been made in s. PSC 173.09(6).

**7. Comment:**

An applicant should be entitled to revise an application after it is submitted, and before approved, if it is prior to a disbursement of funds to the wireless provider or local government.

**Response:** Agree.

The recommended change has been made in s. PSC 173.09(9).

**8. Comment:**

Cingular is greatly concerned that there is no cap on the amount of wireless surcharge that may be imposed on its customers.

**Response:** Disagree.

This proposed change to the rule is contrary to the statutory process adopted by the legislature. The Commission will hold down the amount of the wireless surcharge by screening individual applications for compliance with the statute and rule. The legislature did not adopt a proposal to cap the amount of the surcharge.

An overall cap could interfere with the review and approval process that the statute requires the Commission to undertake.

**9. Comment:**

Cingular objects to the treatment of partial payments by wireless customers in s. PSC 173.10(2)(d). Cingular recommends deleting this section.

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(d).

**10. Comment:**

The Commission should amend the deadline for remitting the surcharge to the Commission to allow companies to remit their collected funds within a 30 day time frame.

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(c).

**11. Comment:**

Cingular objects to the requirement for a sworn paid invoice. The Commission should amend this provision to require documentation of the payment or a copy of the invoice.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(4)(a).

**12. Comment:**

The proposed rule does not provide for a change in the fund amount based on changes to a company's technology, license or vendor for the provision of 911. If a company's needs change, provisions should be made in order to allow that company to recover its costs.

**Response:** Agree in part.

The wireless providers and counties may use the second-year and third-year review to adjust their cost recovery. There is no provision in this program for adding new equipment or facilities after the period for grant applications closes. However, this is not to say that counties cannot add features to their 911 systems. If a county elects to improve its 911 terminal equipment or dispatch system after the date on which grant applications are due, the county would have to pay for that improvement through its own budget.

**13. Comment:**

In the event that payments are reduced by the Commission to protect the solvency of the fund, those payments should be rescheduled to ensure that local governments and wireless providers receive full reimbursement of costs.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(5)(f).

**City of Milwaukee****1. Comment:**

Section PSC 173.09(5) assumes that one-half of all 911 calls will be wire-line, and therefore only allows for 50 percent reimbursement of costs for equipment and facilities that are utilized for both wireless and wire-line calls. It is estimated that the actual percentage of wireless calls is closer to 60 percent in the Milwaukee area and all indications are that this percentage will increase as more customers choose to rely fully on wireless service. By underestimating this percentage, communities will not be fully reimbursed for costs directly associated with wireless calls.

**Response:** Disagree.

The terminal telecommunications equipment at the answering point is funded from different sources depending upon its use. Wireless subscribers pay for terminal equipment related to wireless 911 calls through grants from the wireless 911 fund. City and county taxpayers pay for terminal equipment related to wireline 911 calls through expenditures approved by the county board or city council.

A problem arises, however, because a single set of terminal equipment at the answering point can be used to terminate both wireless and wireline 911 calls. Given the different funding sources, then how much of the terminal equipment and other related expenses for dual-use equipment and features should be borne by the wireless subscribers rather than local taxpayers?

Milwaukee proposes to allocate a portion of the cost of terminal equipment to wireless subscribers equal to the percentage of traffic that was received from wireless telephones. However, if this approach were applied to all counties, many counties would receive less than 50 percent reimbursement of terminal equipment. This could discourage those counties from participating in this program altogether.

Moreover, it is not clear that a ratio of traffic is a useful proxy for allocation of the cost of this equipment. The cost of the terminal equipment is incurred on a non-recurring basis. Although the terminal equipment will be purchased with an

expectation regarding anticipated traffic volume, the size or capacity of this equipment is a function of several factors, including the number of telecommunications trunks terminated and the number of dispatcher stations supported by the system. The cost of this equipment will not change as the ratio of wireless 911 traffic increases.

Also, the 911 surcharge is similar to the subscriber line charge in the respect that it recovers the cost of enabling access to the 911 network, rather than the cost of actual use of the access. A wireline subscriber pays a fixed 911 surcharge each month regardless of whether the subscriber uses the 911 access at all. Wireless subscribers will pay a similar fixed surcharge during the period of the wireless 911 program. In this type of pricing environment, an allocation based upon usage is not superior to a flat-rate allocator. It would be fairer to allocate the cost of the terminal equipment in equal amount to each access line served by the system. A ratio-based allocator disproportionately burdens subscribers that use the 911 network more often, and is contrary to the pricing scheme enacted by the legislature.

The 50 percent presumption is arbitrary, and therefore it is debatable whether the 50 percent presumption is an adequate proxy for this cost allocation as well. It was adopted because it best serves the objectives the Commission seeks to achieve with this rule. The wireless subscribers are a portion of the total population of telephone subscribers. While many local governments must replace or upgrade their terminal equipment to accommodate the larger data set associated with an enhanced wireless 911 call, it is not reasonable to impose this cost on just the wireless subscribers. The allocation of cost should reflect that all telephone subscribers benefit from this equipment. The wireless subscribers should pay for the improvements in the network and at the answering point that are necessary to terminate enhanced wireless 911 calls, but there must be a balance or sharing of the common costs among all beneficiaries of the 911 system.

Ultimately, this issue may prove to be another weakness in the statutory approach. The statute identifies two funding sources to recover the cost of a single set of equipment that can serve both wireless and wireline 911 calls. The practical concerns of local politics make a grant from the Wireless 911 Fund the preferred choice as a funding source. In the proposed rule, the Commission has addressed this problem by insisting that counties avail themselves of both funding sources if they purchase any of the items described in s. 146.70(3m)(c)1., Stats. In effect, the proposed rule creates a 50 percent matching fund that a county can access only if it agrees to raise the remaining 50 percent through county resources. The long-term solution may be to amend the statute to adopt a single-funding method that applies to both wireless and wireline 911 services.

**2. Comment:**

While s. 173.09(5) allows a community to challenge the 50 percent reimbursement level, it can only do so by providing “sufficient evidence to

demonstrate that the presumed ratio is unfair and would unreasonably burden local taxpayers.” As pointed out by Ed Huck of the Alliance of Cities at the hearing, not only is that an ambiguous and difficult criterion to prove, it is also an inappropriate standard. Instead, the county designated answering point should only be required to show that the presumed ratio does not appropriately reflect the ratio of wireless to wire-line calls in the county.

**Response:** Disagree.

If a county includes in its application a rebuttal of the 50 percent presumption, the rule requires that county to meet a demanding standard. It is not enough that the county show that another allocation formula is possible or defensible. Instead, the county must show that the 50 percent presumption is unfair and unreasonable. In other words, the county must show that the application of the 50 percent rule would cause harm. The City of Milwaukee requests a provision that would replace the presumption with an allocation derived from the percentage of total 911 traffic received from wireless telephones. However, as discussed above, using a ratio of wireless 911 calls to allocate costs would disproportionately burden wireless subscribers. Because the 50 percent presumption is preferable to the proposed alternatives, the Commission will adjust the presumption only after a showing that applying the 50 percent presumption produces an unfair outcome.

**3. Comment:**

There is an inconsistency between ss. PSC 173.07(3)(a) and PSC 173.07(3)(c) regarding reimbursement for training costs. Section 173.07(3)(a) provides that training costs are eligible for reimbursement. However, at the Public Hearing, the PSC staff witness testified that the section prohibiting reimbursement for salaries would apply to salaries directly related to the costs of training. This could discourage in-house training, which may be more cost effective and appropriate than outsourcing. The City of Milwaukee recommends that the PSC make an exception to s. PSC 173.07(3)(c) to allow for reimbursement of salaries associated with training.

**Response:** Agree in part.

The rule has been changed to clarify that no grant to a local government may be used to reimburse costs for salaries and benefits of an individual employed by a county or municipal government in any of the job descriptions associated with the operation of the designated public safety answering point. See response to Cingular Wireless, comment #3, and s. PSC 173.07(3)(a)2.

**SBC Wisconsin**

**1. Comment:**

The Commission should revise s. PSC 173.03 to provide that all wireline telecommunications providers participate in the county contract unless the

telecommunications provider can demonstrate economic hardship in accordance with the statute.

**Response:** Disagree.

The change recommended by SBC is outside of the Commission's statutory authority. Section 146.70(3)(b)3., Stats., imposes upon each county that levies the wireline 911 surcharge the requirement that it enter into "a contract with each service supplier in the county for the establishment of that system to the extent that each service supplier is capable of providing that system on a reasonable economic basis on the effective date of the contract and that contract includes all of the following..." SBC invites the Commission to supervise a county's interpretation of this provision of the 911 statute.

Moreover, it is not clear that the approach taken by most counties is an unreasonable interpretation of the statute. SBC is obligated by federal law to provide interconnection to competing local exchange carriers that includes access to 911 service. SBC complies with the federal requirement by providing 911-related network elements to the competing carriers at cost, under a tariff filed with this Commission. Counties may have reasonably concluded that compliance with the federal statute satisfies the state statute as well.

**2. Comment:**

The Commission should revise s. PSC 173.03 to provide that telecommunications providers may file confidential data furnished for the purpose of establishing a county-wide 911 contract.

**Response:** Agree.

To the extent that participating telecommunications providers file a contract containing sensitive price and market share information, the providers may file that contract under confidential cover, pursuant to s. 196.14, Stats., and s. PSC 2.12. The recommended change has been made in s. PSC 173.03(3).

This action will only protect information that is filed with the Commission. Counties have a right under s. 146.70(3)(j), Stats., to request cost information from participating telecommunications providers. It is not clear that providers may condition providing cost information upon compliance with s. 196.14. However, this is an issue for the county involved, not the Commission.

**3. Comment:**

The Commission should revise s. PSC 173.05 to replace the phrase "participating utilities" with the phrase "participating telecommunications providers."

**Response:** Agree.

The recommended change has been made in s. PSC 173.05.

**Sprint Spectrum, L.L.P.**

**1. Comment:**

If a wireless provider does not request reimbursement for its Phase II costs, it should not have to submit an estimate of those costs or make the declaration required by s. PSC 173.06(3).

**Response:** Agree.

The recommended changes have been made in ss. PSC 173.06(2) and (3).

**2. Comment:**

The deadline for remitting collected surcharges to the Commission should be amended to be thirty (30) days from the end of the month in which the surcharge is collected from customers.

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(c).

**TracFone Wireless, Inc.**

**1. Comment:**

The Commission should revise s. PSC 173.10(2)(b)2. to provide an alternative method by which a wireless provider could collect and remit the wireless surcharge from prepaid wireless telephone accounts. The TracFone proposal follows similar language adopted by statute in Tennessee. Under this proposal, the rule would assume that a wireless account will earn \$50 per month on average. A vendor of prepaid wireless service would take the revenue earned from the sale of prepaid wireless service in Wisconsin in a month, divide the revenue by \$50, and multiply the result by the wireless 911 surcharge.

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(b)2. The rule also permits the Commission to reduce the amount of the surcharge under this collection method during the final 6 months of the surcharge period to avoid collecting money in excess of the needs of the program. See s. PSC 173.11(6)(f).

**United States Cellular Corporation****1. Comment:**

The Commission should revise s. PSC 173.02(11) to make clear that the rule provisions related to approval and collection of the surcharge have an effective date which is later than the other provisions of the rule.

**Response:** Agree.

The recommended change has been made in s. PSC 173.02(11).

**2. Comment:**

The Commission should revise s. PSC 173.06(2) to clarify the exclusion intended by this provision.

**Response:** Agree.

The recommended change has been made in s. PSC 173.06(2).

**3. Comment:**

The Commission should revise s. PSC 173.06(3) to incorporate the statutory language in s. 146.70(3m)(b)1., Stats., and s. PSC 173.06(2).

**Response:** Agree.

The recommended change has been made in s. PSC 173.06(3).

**4. Comment:**

The Commission should amend s. PSC 173.07(1) to clarify that a local government applying for a grant must comply with the statutory requirements in ss. 146.70(3m)(c)3. and 4., Stats.

**Response:** Agree.

The recommended change has been made in s. PSC 173.07(1).

**5. Comment:**

The Commission should revise ss. PSC 173.08(1), 173.08(2)(a), 173.08(2)(b), 173.08(2)(c) and 173.08(3) to clarify that only a county government may apply for a supplemental grant.

**Response:** Agree.

The recommended changes have been made in ss. PSC 173.08(1), 173.08(2)(a), 173.08(2)(b), 173.08(2)(c) and 173.08(3).

**6. Comment:**

The Commission should add language to s. PSC 173.08 to clarify and create consistency, where appropriate, between a supplemental grant application and other grant applications identified in s. PSC 173.09.

**Response:** Agree.

The recommended change has been made in ss. PSC 173.09(1), 173.09(8) and 173.09(9).

**7. Comment:**

The Commission should add the following subsection as s. PSC 173.08(6):  
“(6) The commission shall approve an application requesting a supplemental grant if the commission determines all of the following:  
(a) The supplemental grant application is submitted by a county and complies with the requirements of this chapter.  
(b) The amount requested is reasonable.”

This amendment identifies the Commission’s involvement in the review and approval of a supplemental grant application, ensures compliance with the statute, and creates consistency with the approval process in s. PSC 173.09.

**Response:** Agree.

The recommended change has been made in s. PSC 173.09(4).

**8. Comment:**

The Commission should add the following subsection as s. PSC 173.08(7):  
“(7) An individual supplemental grant shall not exceed [\$10,000][amount], and the total of supplemental grants shall not exceed [ % ] of the 911 wireless fund.”

This amendment provides some definition to, and a limit on, the supplemental grant amount. In the absence of such language, the supplemental grant program could exceed other aspects of the legislative grant process. Some specific dollar amount limit is appropriate to ensure the achievement of all of the statutory requirements.

**Response:** Agree.

The recommended change has been made in s. PSC 173.08(5). This provision recognizes a degree of tension between the request of the legislature for a meaningful incentive to promote consolidation of answering points and the requests of wireless providers for a reasonable cap on the size of the supplemental grant program. The incentive the Commission offers in this rule would in effect increase by half the amount of money available to a county for wireless E911 service, if that county meets the eligibility requirements for a supplemental grant.

However, it is not clear that any county will make an application for a supplemental grant. This grant opportunity requires one of the participating counties to choose between receipt of a financial incentive and retention of local control over emergency services dispatching. The Commission is not aware of any county planning to adopt a resolution designating as its wireless answering point an answering point in an adjacent county. Generally, rural counties that do not intend to implement enhanced wireless 911 service will instead continue to provide the basic wireless 911 service that presently exists.

The overall cap on the amount awarded as supplemental grants is arbitrary. Since the Commission is not aware at this time of any counties that actually intend to apply for a supplemental grant, it is difficult to say whether the proposed cap will have any effect. The cap does respond to the request of the wireless providers for an upper limit on the amount of money available under the supplemental grant opportunity.

**9. Comment:**

The Commission should amend s. PSC 173.10(1)(b) to read, “The commission shall determine and approve the wireless surcharge. The commission may approve a wireless surcharge only if it is reasonable in amount. A wireless surcharge in excess of 75 cents per month per telephone shall not be reasonable. ~~€~~The amount of the wireless surcharge shall be calculated by dividing the sum of the total amount of money requested from all grant applications approved under s. PSC 173.09, all supplemental grant applications approved under s. PSC 173.08 and the reasonable administration costs under 173.11(2) by 36, and then dividing that result by the total number of telephone numbers served by wireless providers and reported under sub. (a). If this calculation yields a surcharge amount of more than 75 cents per month per telephone number, the commission may not approve such amount and shall determine a reasonable wireless surcharge amount not to exceed 75 cents per month per telephone number.”

The amount of the wireless surcharge will have a direct impact on wireless customers in Wisconsin. This amendment makes clear that the Commission must review and consider the wireless surcharge before approval. This amendment also establishes the framework for determining whether a wireless surcharge is

reasonable by identifying an amount beyond which the wireless surcharge could not be approved. This amendment ensures that customers will have a process for review and approval of the surcharge before it is imposed.

**Response:** Agree in part.

Section PSC 173.10(1)(b) has been amended to clarify that the amount of the surcharge will be set based upon all grants approved, including supplemental grants approved prior to the start of the surcharge period.

As indicated above, the proposal to cap the overall amount of the surcharge is contrary to the statutory process adopted by the legislature. See response to Cingular Wireless, comment 8. The rule has been revised at s. PSC 173.09(2) to ensure that any interested party may comment on pending grant applications that have not been filed confidentially.

The rule permits a grant applicant whose application has been disapproved in whole, or in part, to resubmit its application. Section PSC 173.09(9). The rule has also been revised at s. PSC 173.09(2) to clarify that the Commission will set the surcharge by order, and that interested parties have the standard opportunity to request reopening and reconsideration of the agency's order. This final review permits a wireless provider to object to the amount of the surcharge if it believes the surcharge is excessive.

**10. Comment:**

The Commission should amend s. PSC 173.10(2)(c) to require that the surcharge to be remitted to the Commission within 30 days of the end of the month in which the surcharge was collected, rather than within 20 days. This amendment should also clarify that a wireless provider may include reasonable administrative costs in its grant application under s. PSC 173.06.

**Response:** Agree.

The recommended changes have been made in ss. PSC 173.06(2) and 173.10(2)(c).

**11. Comment:**

The Commission should delete s. PSC 173.10(2)(d). This deletion would ensure consistency with the statute. As proposed, s. PSC 173.10(2)(d) conflicts with s. 146.70(3m)(f)4., Stats.

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(d).

**12. Comment:**

The Commission should amend s. PSC 173.11(4)(a) to read, “A ~~sworn~~ paid invoice to document the actual cost of any approved purchase from a vendor or supplier.” This amendment deletes the requirement that a paid invoice be sworn. Requiring a sworn statement for paid invoices is not necessary, especially when other documents require no similar testament.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(4)(a).

**13. Comment:**

The Commission should amend s. PSC 173.11(6)(d) to clarify that only counties may apply for a supplemental grant.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(6)(d).

**14. Comment:**

The Commission should amend s. PSC 173.11(6)(e) to read, “The commission may decrease the wireless surcharge at any time. The commission may increase the wireless surcharge, effective as of the 13<sup>th</sup> and 25<sup>th</sup> month of the surcharge period, after completion of the second-year and third-year review, except that the increased amount shall not exceed 75 cents per month per telephone number.” This amendment ensures consistency between s. PSC 173.10(1)(b), as proposed by US Cellular, and this subsection.

**Response:** Disagree.

This proposed change is contrary to the statute for the reasons discussed above.

**15. Comment:**

The Commission should amend s. PSC 173.11(7) to read, “... The commission shall withhold payment of this residual money until the wireless provider agrees either (a) to credit its current customer accounts the full amount of the residual payment or (b) to apply the full amount of the residual payment to Wisconsin E911 costs incurred, but not previously reimbursed by the wireless 911 fund. If a wireless provider does not agree, then that wireless provider’s distribution amount shall be proportionately distributed to those wireless providers that have agreed...” This amendment provides an option to wireless providers regarding treatment of residual money to ensure that unreimbursed E911 costs are paid if residual money is available. This suggestion merely creates an option, especially

in the circumstance where a customer credit process may be cost prohibitive in relation to the residual amount available.

**Response:** Disagree.

The purpose of this section is to return any residual funds to the subscribers that paid the surcharge. The wireless providers have an opportunity to recover their expenses in full at the outset of the program. To direct excess funds to wireless providers at the conclusion of the program would be contrary to the statutory scheme.

**16. Comment:**

The Commission should amend Section 2: Effective dates to read, “(1) This rule, except s. PSC 173.10(1)(b) and (2), shall take effect on the first day of the second month following publication in the Wisconsin administrative register. (2) Section PSC 173.10(1)(b) and (2) shall take effect on the first day of the eleventh month following publication in the Wisconsin administrative register.”

This amendment makes clear the delayed effective date of s. PSC 173.10(1)(b) and (2).

**Response:** Agree.

The recommended change has been made in Section 2.

**Verizon Wireless, LLC**

**1. Comment:**

Section PSC 173.06 should provide for an annual cost true-up. The cost of compliance with state and federal rules will change over time. The true-up would support appropriate adjustments to the surcharge.

**Response:** Agree in part.

The Commission has scheduled a review of the program’s cost recovery at the end of the first and second years of the surcharge period. The Commission will use these scheduled reviews to adjust the wireless surcharge so as to prevent collecting funds in excess of the needs of the program.

However, the Commission will not use the second and third year reviews to increase the grant amounts due to individual grant applicants. Under s. PSC 173.11(5)(e), a grant applicant may not receive more than the lesser of the grant amount approved by the Commission at the outset or the actual cost of the equipment, service or facility. The Commission acknowledges that this restriction may cause a wireless provider to overestimate its costs in its grant application.

However, the rule follows the requirement of the statute at s. 146.70(3g)(d)2., Stats.

**2. Comment:**

Verizon Wireless agrees with s. PSC 173.06(5) that only expenditures necessary to comply with 47 CFR s. 20.18 should be reimbursed. However, Verizon Wireless recommends that if requested, a provider applicant should be permitted to provide for an attestation that it is compliant with these federal code provisions.

**Response:** Agree.

The recommended change has been made in s. PSC 173.06(5). This rule does not intend to create technical requirements for wireless providers in addition to those found in the federal rule. The intent of this provision is to ensure that the fund is not obligated to reimburse wireless providers for a 911 service that does not comply with the federal rule.

**3. Comment:**

The Commission should revise s. PSC 173.09(3)(a) to clarify what type of expenditures would be considered cost effective, efficient and reasonable, and therefore reimbursable.

**Response:** Disagree.

The rule mirrors the standard found in the statute at s. 146.70(3m)(d)1., Stats. The Commission will apply this standard to individual applications for grants from the fund.

**4. Comment:**

The Commission should amend s. PSC 173.09(5) to permit an applicant or other interested party to argue that the 50 percent presumption would unfairly and unreasonably burden the wireless ratepayers.

**Response:** Agree.

The recommended change has been made in ss. PSC 173.09(2) and 173.09(6). The rule provides that the Commission will issue a Public Notice when applications are filed. The notice will invite comment on the applications to the extent those applications are filed without confidential cover. Verizon Wireless will have that opportunity in the comment cycle following the notice to challenge the 50 percent presumption if it believes the presumption is unreasonably high for some applications.

**5. Comment:**

The Commission should provide for a reduction in the surcharge over time due to growth in the wireless customer base.

**Response:** Agree.

The rule, at s. PSC 173.11(6)(a), schedules a review of the surcharge at the end of the first and second year of the program. The surcharge will be decreased during those reviews if the fund is accumulating excess funds.

**6. Comment:**

Verizon Wireless objects to s. PSC 173.10(2)(d).

**Response:** Agree.

The recommended change has been made in s. PSC 173.10(2)(d).

**7. Comment:**

The Commission should delete the requirement in s. PSC 173.11(4)(a) that a local government or wireless provider must furnish a sworn paid invoice to document costs incurred and paid to vendors.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(4)(a).

**8. Comment:**

The Commission should clarify that s. PSC 173.11(5)(c)1. requires the wireless provider to complete installation of equipment and service on an answering point-specific basis, not on a state-wide basis, prior to receiving a grant disbursement from the wireless fund.

**Response:** Agree.

The recommended change has been made in s. PSC 173.11(5)(c)1.

**VoiceStream PCS II Corp., VoiceStream Minneapolis, Inc., d/b/a T-Mobile****1. Comment:**

T-Mobile recommends that s. PSC 173.06(3) allow the Commission to annually establish two separate surcharges: one surcharge for those wireless providers that seek cost recovery via the Wireless 911 Fund, and another, lower, surcharge for those wireless providers that are not seeking grants via the Wireless 911 Fund.

**Response:** Disagree.

This proposal would conflict with the statutory requirement for a uniform rate in s. 146.70(3m)(f)1., Stats.

**2. Comment:**

T-Mobile recommends that s. PSC 173.06(5) include additional detail and express language that states that the scope of any review of a wireless provider's market location accuracy be conducted according to the rules approved by the FCC.

**Response:** Agree.

The recommended change has been made in s. PSC 173.06(5).

**3. Comment:**

In some other states where a surcharge has been adopted for similar wireless 911 purposes, the admin rules have allowed a wireless provider to retain 1-3 percent of the surcharge to recover the administrative costs of collecting and remitting the surcharge.

**Response:** Agree.

The recommended changes have been made in ss. PSC 173.06(2) and 173.10(2)(c).

**4. Comment:**

T-Mobile recommends that the Commission clarify the term "radio equipment" in s. PSC 173.07(3)(a)1. to ensure that grants from the Wireless 911 Fund are not diverted to purposes other than wireless 911 service.

**Response:** Agree.

The recommended change has been made in s. PSC 173.07(3)(a)1.

**5. Comment:**

T-Mobile recommends that ss. PSC 173.10(2)(b)1. and 2. be stricken and replaced with the following:

(b) The wireless surcharge shall be calculated and applied on a monthly basis. The wireless surcharge shall be the same for each wireless telephone number, regardless of the serving wireless provider or whether the customer is billed on a recurring or purchases wireless prepaid services.

**Response:** Agree in part.

This provision has been amended as recommended by TracFone to provide an additional collection method for prepaid wireless services.

### **Walworth County**

**1. Comment:**

Walworth County recommends that the Commission revise s. PSC 173.11(5)(d) to permit the fund to make payments to a local government even though the local government will not implement its enhanced wireless 911 system until after the reimbursement period expires.

**Response:** Disagree.

This program will expire after completion of the surcharge period, and the Commission's statutory authority over this program will cease. After the program expires, there will be no fund administrator or other assigned staff to supervise the use of grant funds. For this reason, it is essential that counties that have received money from the fund complete the installation and implement the wireless 911 service prior to the program's sunset.

Moreover, a delay in implementation of the wireless 911 service would be contrary to the intent of the legislation. One objective of Act 48 is to accelerate the deployment of the wireless 911 service by easing or eliminating the funding concerns associated with this program. Permitting some counties to postpone implementation of the wireless 911 service into the next decade is not desirable.

**2. Comment:**

Walworth County recommends that the Commission revise s. PSC 173.11(6)(b) to permit counties to request additional money from the fund during the second year and third year review.

**Response:** Disagree.

This proposed change would be inconsistent with the statutory scheme. The statute and rule require counties to project, at the outset of the program, what their costs will be over the three-year reimbursement period. The statute does not provide for changes in equipment or network provider during the course of the program. Thus, a county will identify at the outset which vendors it will purchase from, and what those costs will be. If a county subsequently decides that another vendor, equipment option or network provider would be preferable, the county will have to fund that change from its own resources. The wireless 911 fund will not be available in that circumstance.

**3. Comment:**

Walworth County recommends that the Commission revise s. PSC 173.11(7) to distribute excess funds at the end of the reimbursement period to counties whose applications were initially denied in part during the grant review process.

**Response:** Disagree.

The rule provides for a final review that will identify the amount of money collected through the surcharge that is in excess of the needs of the program. The rule provides that the excess funds will be returned to wireless subscribers in the form of a credit. The Commission simply seeks to return unneeded funds to the subscribers that put up the money in the first place. The Commission believes that accumulating and distributing excess funds to any third party at the end of the program would be a poor policy choice.

**Wisconsin Alliance of Cities****1. Comment:**

The proposed rule is unclear exactly how a local government emergency call center may apply for, and be the recipient of, a grant to help pay for the costs of equipment upgrades necessary to enable it to receive messages regarding wireless emergency 911 telephone calls from the wireless answering point. Relevant provisions are: ss. PSC 173.07(1), 173.07(3)(a)5., 173.07(4), and 173.09(4). The rule implies in some instances (e.g., ss. PSC 173.07(4) and 173.09(4)) that a local government emergency call center may receive a grant. However, in other places it expressly states that only the wireless answering point designated by the county may apply for, and be the recipient of, a grant from the wireless 911 fund (e.g., s. PSC 173.07(1)).

The final rule should clearly specify that a local government emergency call center may obtain reimbursement from the wireless 911 fund for the cost of any equipment upgrades that are necessary to enable the center to receive messages from the wireless answering point.

The final rule should also clearly specify what procedure a local government emergency call center must follow in order to obtain reimbursement.

**Response:** Agree in part.

The proposed rule has been changed to clarify that only a local government that is authorized by s. 146.70(3m)(c)1., Stats., may apply for a grant from the fund. *See* s. PSC 173.07(1). A municipal government requesting reimbursement of any of its expenses related to wireless 911 service must either demonstrate that it is eligible to apply under that statute, or work with the county government to incorporate its request into the county application. The proposed rule, at s. PSC

173.08(1), has been changed as well to clarify that only a county may apply for a supplemental grant.

**2. Comment:**

Proposed s. PSC 173.09(5) provides that if a grant application requests reimbursement for equipment and facilities that will be used to terminate both wireline and wireless 911 emergency telecommunications service, the PSC will presume that 50 percent of the total cost of equipment and facilities is directly associated with wireless 911 service and can be reimbursed from the fund.

We believe that a more realistic and accurate presumption would be that 60 percent to 70 percent of the total cost of equipment and facility upgrades is directly associated with wireless 911 service.

**Response:** Disagree.

See response to City of Milwaukee, comment 1.

**3. Comment:**

Proposed s. PSC 173.11(5)(d) provides that the Commission shall withhold payment of an approved grant to a local government if the local government does not implement the wireless 911 service in its jurisdiction before the end of the reimbursement period, and the local government must repay to the fund any money it already received from the fund. This is an unduly harsh provision especially if the wireless provider causes the delay in implementation. The rule should specify that the withholding of grant payments to the county-designated answering point does not apply if the delay in implementing the wireless 911 service is caused by the wireless provider.

**Response:** Disagree.

All activities paid for by the Wireless Fund must be completed before the statutory authority of the Wireless Fund expires. See response to Walworth County, comment 1.

**4. Comment:**

Proposed s. PSC 173.11(7) provides that at the conclusion of the reimbursement period, the Commission must distribute to wireless providers any funds collected, but not disbursed, or otherwise obligated. The provider must then credit its current customer accounts the full amount of the residual payment. Rather than refunding the wireless surcharge, we recommend the rule provide that any left over money in the wireless 911 fund be distributed to recipients of supplemental grants under s. PSC 173.08.

**Response:** Disagree.

See response to Walworth County, comment 3.

**Wisconsin Department of Administration**

**1. Comment:**

The Commission should add the following subsection as s. PSC 173.09(6)(a)4.:  
 “4. The Land Information Officer shall certify that sub. 1., 2. & 3. are met.” The Wisconsin Land Information Board recommends this amendment to ensure that the requirements in sub. 1, 2 & 3 under s. PSC 173.09(6)(a) are met.

**Response:** Disagree.

The statute requires the Commission to obtain the advice of the Land Information Board regarding pending applications for grants. The rule adheres to the statutory requirement on this point. The change the Land Information Board proposes would require correspondence from a second county official for each county application submitted. This is a substantial change from the process intended by the legislature in Act 48.

The Commission believes it would be preferable that a given county speak with one voice regarding a pending application. If a county land information officer has an objection or other recommendation regarding the county application, that concern should be directed to the county officials preparing the application. Of course, the Land Information Board is welcome to communicate with a county land information officer before submitting its opinion on a pending application if it wants. However, the Commission prefers not to add an additional layer of consultation when it reviews a grant application, and the Commission does not want to receive conflicting advice from county officers on whether a county’s grant application should be approved.

**Wisconsin Sheriffs and Deputy Sheriffs Association (WSDSA), the Wisconsin Police Chief Association (WPCA), the Wisconsin Association of Public-Safety Communications Officials (APCO), and the Wisconsin National Emergency Number Association (NENA)(joint comments)**

**1. Comment:**

Secondary answering points requesting wireless 911 surcharge funding would need to be approved by the primary county answering point for consideration and incorporation into the county grant application. This will be problematic as localized politics will come into play, not the concern for the best interest of the public. We strongly support the funding of all secondary answering points electing to receive wireless 911 calls, even if a secondary answering point is not approved by the county designated answering point.

It will be a waste of resources if a secondary answering point is not allowed to receive 911 calls after previously purchasing mapping systems to provide location information.

**Response:** Agree in part.

The statute and rule permit the Commission to reimburse some expenses related the transfer of calls between primary and secondary answering points within a county. See s. 146.70(3m)(d)4m., Stats., and s. PSC 173.09(5). The Commission does not have sufficient information to predict how many secondary answering points will approved under this rule at this time.

**2. Comment:**

The Commission has drafted a rule that, if approved, will limit reimbursement of the terminal telephone equipment at the answering point to 50 percent. We understand the argument that Wisconsin's answering points would need telephone systems of some kind, in any case, but are confused when the wireless providers will be reimbursed for 100 percent of their wireless 911 related costs.

**Response:** Disagree.

See response to City of Milwaukee, comment 1.

**3. Comment:**

The costs of Computer-Aided Dispatch systems are solely attributable to wireless 911 services provided by the answering points, and it would be unfair to not reimburse them as such.

**Response:** Agree in part.

This is not a settled issue. The proposed rule does not address whether expenses related to computer-aided dispatch (CAD) equipment should be reimbursed. It appears that CAD equipment is ancillary to the completion of a 911 call, and therefore not included within the description of reimbursable equipment in s. 146.70(3m)(c)1.a., Stats., and s. PSC 173.07(3)(a)1. However, the Commission has been informed that some counties use CAD systems to transfer calls between PSAPs. This is a factor that the Commission will take into account if a county requests reimbursement of this type of expense in its application.

**Wisconsin State Patrol**

**1. Comment:**

The Wisconsin State Patrol recommends that the Commission revise ss. PSC 173.02(8) and 173.07(1) to permit the State Patrol to apply for a grant to upgrade the terminal equipment at its dispatch center.

**Response:** Disagree.

There is no authority in the statute for a state agency to request a grant from the Wireless Fund to reimburse its expenses for terminating a wireless 911 call.

DK:cdg:G:\RULEMAKING DOCKETS\1-AC-213\1-AC-213 Attach A3.doc



---

---

**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 04-026**

AN ORDER to repeal and recreate chapter PSC 173, relating to establishing a wireless 911 fund to promote an emergency telephone number service for wireless subscribers.

Submitted by **PUBLIC SERVICE COMMISSION**

03-25-2004 RECEIVED BY LEGISLATIVE COUNCIL.  
04-02-2004 REPORT SENT TO AGENCY.

RNS:DLL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

## 1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

## 2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

## 3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

## 5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

## 7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky  
*Clearinghouse Director*

Terry C. Anderson  
*Legislative Council Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 04-26

#### Comments

**[NOTE:** All citations to "Manual" in the comments below are to the **Administrative Rules Procedures Manual**, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

#### I. Statutory Authority

Section PSC 173.10 (2) (d) may conflict with s. 146.70 (3m) (f) 4., Stats. The two provisions are as follows:

146.70 (3m) (f) 4. The commission may bring an action to collect a surcharge that is not paid by a customer and the customer's wireless provider is not liable for the unpaid surcharge.

PSC 173.10 (2) (d) In the event that a customer tenders a partial payment of the monthly bill for wireless telecommunications service or other wireless service agreement, the serving wireless provider shall credit and remit to the commission the full amount of the wireless surcharge billed and due, irrespective of any contrary written directions from the customer, before applying the partial payment to any other outstanding charge for wireless telecommunications service.

The statute appears intended to ensure that a wireless provider does not lose revenue when a customer fails or refuses to pay the surcharge and is not required to collect the payment. The rule appears to ensure the opposite result. This is especially clear in the case that a customer explicitly refuses to pay the surcharge. The rule would have the wireless provider remit a portion of the payment it received for service to the Public Service Commission as the surcharge, and then either try to recover the difference to ensure full payment of the amount billed for service or forego the revenue. In the case that a customer makes a partial payment not related to refusal to pay the

surcharge; the wireless provider is also in the position of having to collect the amount related to the surcharge.

## 2. Form, Style and Placement in Administrative Code

- a. The term "active prepaid wireless telephone" is used only once in the rule (in s. PSC 173.10 (2) (b) 2.). The definition should be omitted and, in the referenced section, the phrase "when the telephone becomes an active prepaid wireless telephone" should be replaced with a phrase regarding when the telephone acquires the attributes in the definition. Also, the definition includes three criteria: the telephone has been used or activated; a call has been completed; and the customer's card or account has been decremented. Are all of these criteria necessary, or can any one or two of them define the circumstances intended? It would appear that decrementing the card or account may be a sufficient criterion.
- b. The definition of "application" is sufficiently obvious that it should be omitted.
- c. In the definition of "fund," the reference to s. 25.17 (1) (yo), Stats., should be omitted. Section 25.98, Stats., creates the fund and s. 25.17 (1) (yo) places the fund under the management of the Investment Board.
- d. Once defined, a term should be used consistently throughout a rule. Although this rule defines "fund" as the Wireless 911 Fund, it also makes reference to it by the full name.
- e. The first sentence of the definition of "surcharge period" is duplicative of the section it references; it should be omitted or placed in a note. The remainder of the definition should more closely follow the form of the statutory definition: "...means the period beginning...and ending..."
- f. The term "wireless 911 surcharge" is used only in the definition of the term and in the title of s. PSC 173.10; the rest of the rule uses the term "wireless surcharge." Only one term should be used throughout. Given the clear context, it could be reduced to just "surcharge," even in the section title, without losing clarity (though either of the other versions is fine, as well). Also, the surcharge is not merely authorized by s. 146.70 (3m) (f), Stats., it is *required*. The definition should reflect this.
- g. Section PSC 173.05 should refer to contracts "under this subchapter" or, more precisely, "under s. PSC 173.03."
- h. Section PSC 173.06 (2) and (3) restate language in the statutes. The second sentence of s. PSC 173.06 (2) however, omits the phrase "in this state" after "reimbursed by customers," while the first sentence of s. PSC 173.06 (3) omits the phrase "before or during the reimbursement period" after "in this state." These provisions were debated extensively in the Legislature, including specific discussion of the phrases in question. The rule should more closely conform to the statutes, especially on this point.
- i. The term "Phase I or Phase II wireless 911 service," used in s. PSC 173.06 (4), should be defined. Also, in the first sentence, the second "the" should be deleted.
- j. Section PSC 173.07 (1) appears to allow any local government to apply for a grant. This should be limited to a local government designated under s. 146.70 (3m) (c) 3. and 4., Stats.

k. Section 146.70 (3m) (e), Stats., requires that the rules establish supplemental grants “in an amount that provides an incentive for counties to submit joint applications.” Section PSC 173.08 allows local governments to apply for supplemental grants, but is silent regarding the amount of a grant that is allowable, and so fails to address the requirement that the grants be designed to serve as an incentive for joint programs.

l. In s. PSC 173.09 (4), the language beginning with “, related to” and ending with “providers,” duplicates s. PSC 173.07 (3) (a) 5. and so should be omitted.

m. In s. PSC 173.10 (1), the formula for calculating the surcharge should include recovery of the cost of supplemental grants. Even if the commission expects this amount to be zero, it should be acknowledged in the formula.

n. It appears that the delayed effective date in SECTION 2 (2) of the rule should apply only to s. PSC 173.10 (2). Presumably, the commission will need the authority granted in s. PSC 173.10 (1) to obtain information from wireless providers earlier.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In s. PSC 173.06 (6), the phrase “the date specified in sub. (1)” should be replaced by “the first day of the third month beginning after the effective date of this section....[revisor inserts date]”, so that the actual date will be shown in sub. (6).

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Subchapter III relates to wireless services, and consistently uses the term “wireless” throughout the subchapter. In contrast, subch. II relates specifically to wireline 911 service. It would aid clarity to add the term “wireline” before “911 emergency telephone service” and in other appropriate places throughout this subchapter, as well.

b. In ss. PSC 173.03 (1) and 173.04 (4), the word “which” should be replaced with “that.”

## Response to Report from Legislative Council

### 1. Statutory Authority

**Response:** Agree The recommended change has been made in s. PSC 173.10(2)(d).

### 2. Form, Style and Placement in Administrative Code

#### a. **Response:** Disagree

The Legislative Council Report recommended that, since the term “active prepaid wireless telephone” is used only once in the rule (in s. PSC 173.10(2)(b)2.), the Commission should omit the definition and amend the referenced section to include the definition of the term. The approach suggested by the Legislative Council would work just fine. However, the Commission has also agreed to modify 173.10(2)(b) to create an additional method that a prepaid wireless provider could use to collect the wireless surcharge. The proposed rule appears to read better if the definition of the term is included in the list of definitions (in s. PSC 173.02), while the later section sets forth the alternative collection methods.

The Legislative Council Report also noted that the definition of the term “active prepaid wireless telephone” contains three attributes. The Legislative Council questions whether all three attributes are necessary. The Commission agrees that, in most instances, the attributes are redundant. However, it is conceivable that a prepaid provider could deduct minutes or money from a prepaid account for something other than a telephone call (e.g., voice mail), or complete a telephone call for which the prepaid subscriber is not charged.

b. **Response:** Agree The recommended change has been made in s. PSC 173.02(2).

c. **Response:** Agree The recommended change has been made in s. PSC 173.02(7).

d. **Response:** Agree The recommended change has been made in ss. PSC 173.06(1), 173.07(10), 173.10(2)(c), 173.11(2), 173.11(3), 173.11(5)(f) and 173.11(7).

e. **Response:** Agree The recommended change has been made in s. PSC 173.02(11).

f. **Response:** Agree The recommended change has been made in ss. PSC 173.02(14) and 173.10(1).

- g. **Response:** Agree The recommended change has been made in s. PSC 173.05.
  - h. **Response:** Agree The recommended change has been made in ss. PSC 173.06(2) and 173.06(3).
  - i. **Response:** Agree The recommended change has been made in s. PSC 173.06(4).
  - j. **Response:** Agree The recommended change has been made in s. PSC 173.07(1).
  - k. **Response:** Agree The recommended change has been made in s. PSC 173.08(5).
  - l. **Response:** Agree The recommended change has been made in s. PSC 173.09(4).
  - m. **Response:** Agree The recommended change has been made in s. PSC 173.10(1)(b).
  - n. **Response:** Agree The recommended change has been made in Section 2: Effective Dates.
- 4. Adequacy of References to Related Statutes, Rules and Forms**
- Response:** Agree The recommended change has been made in s. PSC 173.06(6).
- 5. Clarity, Grammar, Punctuation and Use of Plain Language**
- a. **Response:** Agree The recommended change has been made in ss. PSC 173.03(1), 173.03(2)(a), 173.03(2)(e), 173.03(2)(f), 173.03(2)(g), 173.03(2)(h), 173.04(1), 173.04(2) and 173.04(2)(c).
  - b. **Response:** Agree The recommended change has been made in ss. PSC 173.03(1) and 173.04(4).

**LIST OF CHANGES MADE TO THE TEXT OF THE PROPOSED RULE  
IN RESPONSE TO TESTIMONY AND COMMENTS RECEIVED**

Text Reference (as proposed in the Notice of Hearing)	Text Revision
1. s. PSC 173.02(2)	<p style="text-align: center;"><del>(2)</del> “Application” means a request for money in the form of a grant authorized under s. <del>146.70(3m)(b), (c) or (e), Stats.</del> [and renumber the remaining subsections in s. PSC 173.02]</p> <p style="text-align: center;">Comment reference: Legislative Council, comment 2.b</p>
2. s. PSC 173.02(7)	<p style="text-align: center;"><del>(67)</del> “Fund” means the wireless 911 fund established by ss. <del>25.17(1)(yo) and 25.98, Stats.</del></p> <p style="text-align: center;">Comment reference: Legislative Council, comment 2.c</p>
3. [new] s. PSC 173.02(8)	<p style="text-align: center;"><b>(8)</b> “Phase I wireless 911 service” means the wireless telecommunications service described in <u>47 CFR 20.18(d).</u> [and renumber the remaining subsections in s. PSC 173.02]</p> <p style="text-align: center;">Comment reference: Legislative Council, comment 2.i</p>
4. [new] s. PSC 173.02(9)	<p style="text-align: center;"><b>(9)</b> “Phase II wireless 911 service” means the wireless telecommunications service described in <u>47 CFR 20.18(e)-(i).</u> [and renumber the remaining subsections in s. PSC 173.02]</p> <p style="text-align: center;">Comment reference: Legislative Council, comment 2.i</p>

<p>5. s. PSC 173.02(11)</p>	<p><del>(1211)</del> “Surcharge period” means the 3-year period <del>beginning during which wireless providers shall bill and collect the wireless surcharge authorized by s. 146.70(3m)(f), Stats. The surcharge period shall commence</del> on the first day of the second month beginning after the effective date of s. PSC 173.10(1)(b) and (2) ...[revisor inserts date] and <del>ending</del><u>conclude</u> on the last day of the thirty-<del>fifth</del><u>sixth</u> month beginning after the month in which the surcharge period commences ...[revisor inserts date].</p> <p>Comment references: Legislative Council, comment 2.e                  Legislative Council, comment 2.n                  US Cellular, comment 1</p>
<p>6. s. PSC 173.02(14)</p>	<p><del>(1514)</del> “Wireless 911 surcharge” or “wireless surcharge” means <del>the monthly surcharge required</del><u>authorized</u> by s. 146.70(3m)(f), Stats.</p> <p>Comment reference: Legislative Council, comment 2.f</p>
<p>7. s. PSC 173.03(1)</p>	<p><b>PSC 173.03 Submission of telecommunications emergency services contracts. (1)</b> A telecommunications <del>utility provider which</del><u>that</u> enters into a contract with a county for the provision of <u>wireline</u> 911 emergency telecommunications service shall within 20 days submit the contract for commission review.</p> <p>Comment references: Legislative Council, comment 5.a                  Legislative Council, comment 5.b                  SBC, comment 3</p>
<p>8. s. PSC 173.03(2)(a)</p>	<p>(a) A copy of the county ordinance adopting the plan for a <u>wireline</u> 911 emergency telecommunications system.</p> <p>Comment reference: Legislative Council, comment 5.a</p>

9. s. PSC 173.03(2)(e)	<p>(e) A statement that all telecommunications service users in the county have access to a <u>wireline</u> 911 system. If such a statement cannot be made with regard to a segment of the county's service users, the telecommunications utility shall provide information indicating that the local exchange carrier serving those service users is not capable of providing the <u>wireline</u> 911 system on a reasonable economic basis on the effective date of the contract.</p> <p>Comment reference: Legislative Council, comment 5.a</p>
10. s. PSC 173.03(2)(f)	<p>(f) A list of exchanges in the county with customers served by a <u>wireline</u> 911 system outside the county, which identifies the provider of the <u>wireline</u> 911 service.</p> <p>Comment reference: Legislative Council, comment 5.a</p>
11. s. PSC 173.03(2)(g)	<p>(g) A description of access to the <u>wireline</u> 911 system by telecommunications devices for the communicatively impaired.</p> <p>Comment reference: Legislative Council, comment 5.a</p>
12. s. PSC 173.03(2)(h)	<p>(h) Cost support for and complete itemization of the installation and monthly charges for automatic number identification, automatic location identification and all trunking service components for both the primary telecommunications utility under the contract and the participating local exchange carriers. Cost support may be in the form of tariff reference if the rates and charges for <u>wireline</u> 911 service are those in the utility's tariffs.</p> <p>Comment reference: Legislative Council, comment 5.a</p>

<p>13. [new] s. PSC 173.03(3)</p>	<p><b>(3)</b> <u>The commission shall withhold from public inspection any wireline 911 emergency telecommunications service contract, or any other information received under this subchapter, that would aid a competitor of one or more of the participating telecommunications providers.</u></p> <p>Comment reference: SBC, comment 2</p>
<p>14. s. PSC 173.04(1)</p>	<p><b>PSC 173.04 Commission review. (1)</b> Upon receipt of a contract for <u>wireline</u> 911 emergency telecommunications service, the commission shall issue a notice of investigation in accordance with s. PSC 2.09.</p> <p>Comment reference: Legislative Council, comment 5.a</p>
<p>15. s. PSC 173.04(2)</p>	<p><b>(2)</b> Within 60 days of receipt of a contract for the provision of <u>wireline</u> 911 emergency telecommunications service, the commission may disapprove the contract if it finds any of the following:</p> <p>Comment reference: Legislative Council, comment 5.a</p>
<p>16. s. PSC 173.04(2)(c)</p>	<p>(c) The contract does not comply with the utility's tariff specifying the rates and charges or terms and conditions for the offering of <u>wireline</u> 911 emergency telecommunications service.</p> <p>Comment reference: Legislative Council, comment 5.a</p>
<p>17. s. PSC 173.04(4)</p>	<p><b>(4)</b> Any person may request disapproval of the contract within 20 days of mailing of notice by the commission, specifying reasons for the disapproval in writing. The person may request a hearing by specifying factual issues <del>which</del><u>that</u> are in dispute.</p> <p>Comment reference: Legislative Council, comment 5.b</p>

<p>18. s. PSC 173.05</p>	<p><b>PSC 173.05 Assessment.</b> A telecommunications <del>utility</del>provider submitting a contract under <del>this chapter</del>. PSC 173.03 shall pay the commission's direct costs of contract approval, unless the utility has an agreement with participating <del>utilities</del>telecommunications providers to share this cost.</p> <p>Comment references: Legislative Council, comment 2.g SBC, comment 3</p>
<p>19. s. PSC 173.06(1)</p>	<p><b>(1)</b> A wireless provider may apply to receive a grant from the <del>wireless 911</del>fund as reimbursement for costs estimated in sub. (2). Except as provided in sub. (6), the wireless provider shall submit an application to the commission no later than the first day of the third month beginning after the effective date of this section ....[revisor inserts date].</p> <p>Comment reference: Legislative Council, comment 2.d</p>

<p>20. s. PSC 173.06(2)</p>	<p>(2) An application under sub. (1) shall contain an itemized estimate, and supporting documentation, of the costs that the applicant has incurred, or will incur, during the reimbursement period to upgrade, purchase, lease, program, install, test, operate, or maintain all data, hardware, and software necessary to comply with the federal wireless orders in this state.</p> <p>(a) This estimate may not include any costs for the implementation of wireless 911 emergency service in this state for which the wireless provider has been reimbursed by customers <u>in this state</u> before or during the reimbursement period, <u>apart from the wireless surcharge established pursuant to s. PSC 173.10. This estimate may include reasonable administrative costs associated with the billing and collection of the wireless surcharge.</u></p> <p><u>(b) If a wireless provider does request reimbursement of its costs to provide Phase II wireless 911 service in this state in its application under sub. (1), the provider may elect not to submit an estimate of its Phase II costs.</u></p> <p>Comment references: Legislative Council, comment 2.h          Sprint Spectrum, comment 1          T-Mobile, comment 3          US Cellular, comment 2          US Cellular, comment 10</p>
-----------------------------	--

<p>21. s. PSC 173.06(3)</p>	<p><b>(3)</b> An application under sub. (1) shall declare the amount of money the wireless provider has recovered or will recover from customers in this state <u>before or during the reimbursement period</u>, apart from the wireless surcharge established pursuant to s. PSC 173.10, as reimbursement for costs the wireless provider has incurred or will incur to implement wireless <u>emergency 911 service in this state</u>.</p> <p><u>(a)</u> The declaration shall include all money recovered from customers with a recurring billing statement or pre-paid service agreement using a separate line item charge identified as related to or associated with the implementation, installation, maintenance, or operation of wireless 911 emergency service network facilities or service features in this state, regardless of whether the amount collected was actually used for that purpose.</p> <p><u>(b)</u> <u>If a wireless provider does not request reimbursement of its costs to provide Phase II wireless 911 service in this state in its application under sub. (1), the provider may elect not to make the declaration required under this subsection with respect to its Phase II service.</u></p> <p>Comment references: Legislative Council, comment 2.h Sprint Spectrum, comment 1 US Cellular, comment 3</p>
<p>22. s. PSC 173.06(4)</p>	<p><b>(4)</b> An application under sub. (1) shall contain a description or explanation of the geographic area <del>in the</del> which the wireless provider will provide wireless 911 service in this state. The application shall disclose which local governments within the geographic service area the wireless provider has described have requested from the provider either Phase I or Phase II wireless 911 service in accordance with 47 CFR 20.18(j).</p> <p>Comment reference: Legislative Council, comment 2.i</p>

<p>23. s. PSC 173.06(5)</p>	<p><b>(5)</b> A wireless provider may not apply for a grant under this section if its provision of 911 service does not conform to applicable requirements set forth at 47 CFR 20.18. <u>A wireless provider's eligibility for a grant under this section shall not be conditioned upon compliance with a location accuracy standard different from that established in 47 CFR 20.18 and applicable federal wireless orders. An application under sub. (1) shall contain an attestation that the applicant's service conforms to the requirements of 47 CFR 20.18, and shall disclose any waivers or other applicable orders of the federal communications commission that postpone the date on which the applicant is required to meet the service standards established in 47 CFR 20.18.</u></p> <p>Comment references: T-Mobile, comment 2 Verizon Wireless, comment 2</p>
<p>24. s. PSC 173.06(6)</p>	<p><b>(6)</b> A wireless provider that does not provide service to customers in this state before September 3, 2003, may make an application under this section after the <del>date specified in sub. (1),</del> <u>first day of the third month beginning after the effective date of this section ...[revisor inserts date]</u> under s. PSC 173.11(6)(b).</p> <p>Comment reference: Legislative Council, comment 4</p>

<p>25. s. PSC 173.07(1)</p>	<p>(1) A local government, <u>that is authorized by s. 146.70(3m)(c)1., Stats., to do so, that operates a wireless public safety answering point, or local governments that jointly operate a wireless public safety answering point</u> may apply to receive a grant from the wireless 911-fund as reimbursement for costs that <u>have been</u><del>the applicant has</del> directly and primarily incurred, or will be directly and primarily incurred, or both, for leasing, purchasing, operating, or maintaining the wireless public safety answering point, <u>as well as telecommunications network costs assigned to the local government for recovery under 47 CFR 20.18(j) and applicable federal wireless orders.</u> The local government shall submit an application to the commission no later than the first day of the third month beginning after the effective date of this section ...[revisor inserts date].</p> <p>Comment references: Legislative Council, comment 2.d          Legislative Council, comment 2.j          Cingular Wireless, comment 2          US Cellular, comment 4</p>
<p>26. s. PSC 173.07(3)(a)1.</p>	<p>1. Necessary network equipment, computer hardware and software, database equipment, and radio and telephone equipment, that are located within the wireless public safety answering point.</p> <p>a. <u>The estimate of costs may include radio equipment if that equipment is necessary to complete a wireless 911 call to the designated public safety answering point, including microwave telecommunications equipment provided by a telecommunications provider and radio equipment used to transfer calls between answering points to the extent approved under s. PSC 173.09(4).</u></p> <p>b. <u>The estimate of costs may not include radio equipment that is used for a purpose other than completing a wireless 911 call to the designated public safety answering point, including radio equipment providing communications between a dispatcher and an emergency vehicle and radio equipment providing an inter-agency or inter-government communications link for purposes other than that approved under s. PSC 173.09(4).</u></p> <p>Comment references: Cingular Wireless, comment 3</p>

<p>27. s. PSC 173.07(3)(a)2.</p>	<p>2. Training operators of a wireless public safety answering point. <u>The estimate of training costs may not include any portion of the salary and benefits paid to an individual employed by a county or municipal government in any of the job descriptions associated with the operation of the designated public safety answering point.</u></p> <p>Comment references: Brown County, comment 2 Cingular Wireless, comment 3 City of Milwaukee, comment 3</p>
<p>28. s. PSC 173.08(1)</p>	<p><del>(1) A county, or a local government in a county, that jointly operates a wireless public safety answering point with another county, or local government in another county, may apply for a supplemental grant under this section if:</del></p> <p><u>(a) The county, or a local government within the county, jointly operates a wireless public safety answering point with another county, or local government in another county.</u></p> <p><u>(b) The county has previously or concurrently applied it is applying for a grant under s. PSC 173.07.</u></p> <p><u>(c) Each county in which the participating local governments are located has adopted a resolution pursuant to s. 146.70(3m)(c)3., Stats., designating the same wireless public safety answering point, and that answering point is located in the county submitting the application for a supplemental grant.</u></p> <p><u>(d) The designated public safety answering point provides a single point of termination for telephone calls directed to 911 that originate from wireless telephones located within the combined geographic jurisdiction of the participating local governments.</u></p> <p><u>(e) For purposes of this section, a “local government in another county” means a city, village or town located in a county other than the county applying for a supplemental grant that operates a public safety answering point, as defined in s. 146.70(1)(gm), Stats., pursuant to a countywide 911 system plan adopted by ordinance in accordance with s. 146.70(3)(b)1., Stats.</u></p> <p>Comment references: Brown County, comment 3 US Cellular, comment 5</p>

<p>29. s. PSC 173.08(2)(a)</p>	<p>(2) (a) To receive a supplemental grant during all three years of the reimbursement period, a county; <del>that is eligible to apply for a supplemental grant under sub. (1) or a local government in a county, that jointly operates a wireless public safety answering point with another county, or local government in another county,</del> shall submit its application to the commission with its application under s. PSC 173.07, no later than the first day of the third month beginning after the effective date of this section ....[revisor inserts date].</p> <p>Comment reference: US Cellular, comment 5</p>
<p>30. s. PSC 173.08(2)(b)</p>	<p>(b) To receive a supplemental grant during the second and third year of the reimbursement period, a county; <del>that is eligible to apply for a supplemental grant under sub. (1) or a local government in a county, that jointly operates a wireless public safety answering point with another county, or local government in another county,</del> and that did not submit an application for a supplemental grant with its grant application under s. PSC 173.07, shall submit its application during the commission’s second year review under s. PSC 173.11(6) by the date the commission establishes in a public notice.</p> <p>Comment reference: US Cellular, comment 5</p>
<p>31. s. PSC 173.08(2)(c)</p>	<p>(c) To receive a supplemental grant during the third year of the reimbursement period, a county; <del>that is eligible to apply for a supplemental grant under sub. (1) or a local government in a county, that jointly operates a wireless public safety answering point with another county, or local government in another county,</del> and that did not submit an application for a supplemental grant with its grant application under s. PSC 173.07 or during the commission’s second year review, shall submit its application during the commission’s third year review under s. PSC 173.11(6) by the date the commission establishes in a public notice.</p> <p>Comment reference: US Cellular, comment 5</p>

32. s. PSC 173.08(3)	<p>(3) An application for a supplemental grant under this section is in addition to the application for grants that the <del>local government</del> <u>county</u> may make under s. PSC 173.07.</p> <p>Comment reference: US Cellular, comment 5</p>
33. [new] s. PSC 173.08(5)	<p><u>(5) An individual supplemental grant shall not exceed an amount equal to 50% of the amount awarded to the applicant county as a grant under ss. PSC 173.07(1) and PSC 173.09(3). The total of the amount awarded as supplemental grants shall not exceed 10% of the 911 wireless fund.</u></p> <p>Comment references: Legislative Council, comment 2.k US Cellular, comment 8</p>
34. s. PSC 173.09(1)	<p><b>PSC 173.09 Review and approval of grant <u>and supplemental grant</u> applications.</b> (1) The commission shall provide reasonable notice to the clerk of each county, each wireless provider that has requested notice, and any other interested party, of the date on which an application under this subchapter is due. If an application under ss. PSC 173.06 or 173.07 is submitted after the deadline, the commission shall take action under sub. (7).</p> <p>Comment reference: US Cellular, comment 6</p>
35. s. PSC 173.09(2)	<p>(2) After receipt of an application requesting a grant under this <u>subchapter</u>, the commission shall issue a notice of investigation in accordance with s. PSC 2.09 if it has not already done so. <u>The commission shall provide an opportunity for interested parties to comment on whether pending grant applications should be approved, subject to the limitation on access to information in s. PSC 173.12.</u></p> <p>Comment references: Cingular Wireless, comment 6 Commission clarification US Cellular, comment 9 Verizon Wireless, comment 4</p>

<p>36. s. PSC 173.09(3)</p>	<p><b>(3)</b> The commission shall approve an application <u>under ss. PSC 173.06 or 173.07</u> if the commission determines all of the following:</p> <p>Comment reference: Commission clarification</p>
<p>37. [new] s. PSC 173.09(4)</p>	<p><b>(4)</b> The commission shall approve an application requesting a supplemental grant under s. PSC 173.08 if the commission determines all of the following:</p> <p><u>(a) The supplemental grant application is submitted by a county and complies with the requirements of this chapter.</u></p> <p><u>(b) The amount requested is reasonable.</u> [and renumber the remaining subsections in s. PSC 173.09]</p> <p>Comment reference: US Cellular, comment 7</p>
<p>38. s. PSC 173.09(4)</p>	<p><b>(54)</b> Notwithstanding sub. (3), the commission may only approve an application for a grant to reimburse a local government for costs under s. PSC 173.07(3)(a)5. <del>related to relaying messages regarding wireless emergency 911 telephone calls via data communications from the wireless public safety answering point to local government emergency call centers in operation before June 1, 2003, that dispatch the appropriate emergency service providers,</del> if the commission first determines that reimbursement of such costs is in the public interest and will promote public health and safety. <u>In making this determination, the Commission shall give preference to applications that propose to use existing equipment, and request reimbursement for equipment already purchased and costs already incurred.</u></p> <p>Comment references: Legislative Council, comment 2.1 Cingular Wireless, comment 5</p>

<p>39. s. PSC 173.09(5)</p>	<p><b>(65)</b> If an application from a local government requests reimbursement under s. PSC 173.07(3)(a) for equipment and facilities that will also be used to terminate wireline 911 emergency telecommunications service, the commission shall presume that one half of the total cost of equipment and facilities is directly associated with wireless 911 service and can be reimbursed from the fund.</p> <p><u>(a)</u> An applicant may rebut this 50% presumption by providing sufficient evidence to demonstrate that the presumed ratio is unfair and would unreasonably burden local taxpayers with the recovery of costs directly and solely attributable to the addition of enhanced wireless 911 telephone service.</p> <p><u>(b)</u> A wireless provider or other interested party may also submit comments in response to the notice required under sub. (2) challenging this presumption by providing sufficient evidence to demonstrate that the presumed ratio is unfair and would unreasonably burden wireless telephone subscribers with the recovery of costs that have not been, or will not be, incurred for the purpose of promoting a cost-effective and efficient statewide system for responding to wireless emergency 911 telephone calls.</p> <p>Comment references: Cingular Wireless, comment 6 Verizon Wireless, comment 4</p>
<p>40. s. PSC 173.09(8)</p>	<p><b>(98)</b> If the commission does not approve an application under sub. (3) or sub. (4), the commission shall provide the applicant with the commission's reasons and give the applicant an opportunity to resubmit the application. If the commission approves a part of the application, the commission shall provide the applicant with the commission's reasons for disapproving part of the application and give the applicant an opportunity to resubmit the portion of the application previously disapproved.</p> <p>Comment reference: US Cellular, comment 6</p>

41. s. PSC 173.09(9)	<p><b>(109)</b> <u>For any application under this subchapter pending before the commission, the wireless provider or a local government that submitted the application may revise the application before the commission approves or disapproves it without incurring a penalty under sub. (87).</u> For any application approved by the commission under sub. (3) <u>or sub. (4)</u>, the wireless provider or a local government that submitted the application may revise the application before the commission makes a disbursement to that wireless provider or local government.</p> <p>Comment references: Cingular Wireless, comment 7 US Cellular, comment 6</p>
42. s. PSC 173.10(1)(a)	<p><b>PSC 173.10 Wireless 911 surcharge. (1) CALCULATION.</b> (a) Upon the request of the commission, each wireless provider shall file with the commission a report setting forth the number of its wireless telephone numbers with billing addresses in this state that are billed on a recurring basis and the number of its wireless telephone numbers subject to a pre-paid service agreement with a customer with an address in this state or sold within this state, as of the date specified in the commission request.</p> <p>Comment reference: Legislative Council, comment 2.f</p>
43. s. PSC 173.10(1)(b)	<p>(b) The commission shall determine the amount of the wireless surcharge by dividing the sum of the total amount of money requested from all grant <u>and supplemental grant</u> applications approved under s. PSC 173.09 and the reasonable administration costs under 173.11(2) by 36, and then dividing that result by the total number of telephone numbers served by wireless providers and reported under sub. (a).</p> <p>Comment references: Legislative Council, comment 2.m US Cellular, comment 9</p>

44. [new] s. PSC 173.10(2)	<p>(2) <u>ORDER. The commission shall set the amount of the wireless surcharge by an order pursuant to s. 227.47(1), Stats. An interested party may petition to reopen the proceeding and amend the surcharge order under s. 196.39(2), Stats., and s. PSC 2.28. [and renumber the remaining subsections in s. PSC 173.10]</u></p> <p>Comment reference: US Cellular, comment 9</p>
45. s. PSC 173.10(2)(b)2.	<p>2. For a customer with prepaid wireless telephone service, the wireless provider shall charge to that customer's prepaid account <u>using one of the following methods:</u></p> <p>a. <u>The provider shall charge the prepaid account the amount of the monthly surcharge when the telephone becomes an active prepaid wireless telephone, provided the balance of the prepaid account is greater than or equal to the monthly wireless surcharge.</u></p> <p>b. <u>The provider shall divide the total prepaid wireless telephone revenue earned and received in the state a calendar month during the surcharge period by fifty dollars (\$50), and multiply the quotient by the monthly wireless surcharge.</u></p> <p>Comment reference: TracFone Wireless, comment 1</p>
46. s. PSC 173.10(2)(c)	<p>(c) Each wireless provider shall pay the full amount of the surcharge collected to the commission within <u>2030</u> days of the end of the month in which the surcharge was collected for deposit in the <del>wireless 911</del> fund. A wireless provider may not withhold any portion of the surcharge it collects as reimbursement for the cost of billing and collecting the surcharge, or for any other purpose. <u>A wireless provider may include reasonable administrative costs as part of its grant application under s. PSC 173.06.</u></p> <p>Comment references: Legislative Council, comment 2.d Cingular Wireless, comment 10 Sprint Spectrum, comment 2 US Cellular, comment 10 T-Mobile, comment 3</p>

47. s. PSC 173.10(2)(d)	<p><del>(d) In the event that a customer tenders a partial payment of the monthly bill for wireless telecommunications service or other wireless service agreement, the serving wireless provider shall credit and remit to the commission the full amount of the wireless surcharge billed and due, irrespective of any contrary written directions from the customer, before applying the partial payment to any other outstanding charge for wireless telecommunications service.</del></p> <p>Comment references: Legislative Council, comment 1 Cingular Wireless, comment 9 US Cellular, comment 11 Verizon Wireless, comment 6</p>
48. s. PSC 173.11(2)	<p><b>(2) ADMINISTRATIVE COSTS.</b> The commission may recover from the <del>wireless 911</del> fund its reasonable costs related to the administration of the fund.</p> <p>Comment reference: Legislative Council, comment 2.d</p>
49. s. PSC 173.11(3)	<p><b>(3) DEPOSIT OF FUNDS.</b> The commission shall ensure that the amounts billed and collected through the wireless surcharge and remitted to the commission are deposited in the <del>wireless 911</del> fund. All amounts deposited in the fund, including moneys earned as interest, shall remain in the fund until disbursed as provided in this chapter.</p> <p>Comment reference: Legislative Council, comment 2.d</p>
50. s. PSC 173.11(4)(a)	<p>(a) A <del>sworn</del> paid invoice to document the actual cost of any approved purchase from a vendor or supplier.</p> <p>Comment references: Cingular Wireless, comment 11 US Cellular, comment 12 Verizon Wireless, comment 7</p>

<p>51. s. PSC 173.11(5)(c)1.</p>	<p>(c)1. The commission shall begin payment of approved grant amounts to wireless providers when the wireless provider has installed all necessary equipment, upgrades and interconnecting telecommunications circuits <u>to provide service to a designated public safety answering point. If a wireless provider provides wireless 911 service to more than one answering point in the state, the Commission may divide the approved grant amount due to that wireless provider into appropriate increments, and pay the increments based upon installation of service to each individual answering point.</u></p> <p>Comment reference: Verizon Wireless, comment 8</p>
<p>52. s. PSC 173.11(5)(f)</p>	<p>(f) In the event that the <del>wireless 911</del> fund has an insufficient balance to make all scheduled payments, the commission may <del>adjust or</del> reschedule payments to ensure the solvency of the fund.</p> <p>Comment references: Legislative Council, comment 2.d Cingular Wireless, comment 13</p>
<p>53. s. PSC 173.11(6)(d)</p>	<p>(d) A county, <del>that is eligible to apply for a supplemental grant under s. PSC 173.08(1) or a local government in a county, that jointly operates a wireless public safety answering point with another county, or local government in another county,</del> may apply for a supplemental grant <del>under s. PSC 173.08</del> during the commission’s second year or third year review if it did not apply for a supplemental grant when it submitted its grant application under s. PSC 173.07.</p> <p>Comment reference: US Cellular, comment 13</p>
<p>54. [new] s. PSC 173.11(6)(f)</p>	<p>(f) <u>The Commission may reduce the amount of the wireless surcharge collected under s. PSC 173.10(2)(b)2.b. during the final six months of the surcharge period to avoid collecting money in excess of the needs of the fund.</u></p> <p>Comment reference: TracFone, comment 1</p>

<p>55. s. PSC 173.11(7)</p>	<p>(7) FINAL REVIEW. At the conclusion of the reimbursement period, the commission shall distribute to wireless providers any funds collected but not disbursed or otherwise obligated. Funds shall be distributed to wireless providers in proportion to the providers' respective deposits into the fund. The commission shall withhold payment of this residual money until the provider agrees to credit its current customer accounts the full amount of the residual payment. If a provider does not agree, then that provider's distribution amount shall be proportionately distributed to those providers that have agreed. Upon completion of all scheduled payments, including the residual payments at the end of the reimbursement period, the commission shall discontinue the <del>wireless 911</del> fund.</p> <p>Comment reference: Legislative Council, comment 2.d</p>
<p>56. Section 2</p>	<p>SECTION 2. EFFECTIVE DATES.</p> <p>(1) This rule, except s. PSC 173.10(1)(b) and (2), shall take effect on the first day of the second month following publication in the Wisconsin administrative register.</p> <p>(2) Section PSC 173.10(1)(b) and (2) shall take effect on the first day of the eleventh month following publication in the Wisconsin administrative register.</p> <p>Comment references: Legislative Council, comment 2.n US Cellular, comment 16</p>

DJK:slg:g:\RULEMAKING DOCKETS\1-AC-213\1-AC-213 Attach A5

2003 Session

LRB or Bill No./Adm. Rule No.  
1-AC-213  
Amendment No. if Applicable

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
911 Wireless Program

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes     No

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
     Permissive     Mandatory  
2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
4.  Decrease Revenues  
     Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

20.155 (1) (g)

**Assumptions Used in Arriving at Fiscal Estimate**

The Commission is authorized by Wis. Stat. s. 20.155 (3) (q) to receive and deposit moneys from a surcharge on wireless telephones, and to administer and make grants and supplemental grants from the wireless 911 fund. The program will create additional workload related to two specific activities. First, the Commission will consider and approve or disapprove approximately 100 applications for grants. This work can be accomplished by existing staff. Second, the Commission will deposit moneys and audit collection of those funds, and disburse grants and audit documentation to ensure the money is properly spent. Because the fund cannot have a negative balance annual adjustments will need to be made in the payout amounts along with monthly cash management procedures. Decisions have not been made on how this second part of the workload will be accomplished. The Commission may allocate an existing position to do the work, or may hire a money manager to do the audit, payout and money management functions much the way the Universal Services Program is managed. The legislation creating the fund provides for the PSC to use administrative funds as needed to accomplish the goals of the program during the three years of operation.

**Local Government Costs:**

The program may increase costs for local governments. The costs would be permissive; the 911 statute does not mandate participation in this program. However, if counties elect to participate in the program it is not expected that 100% of the Wireless 911 costs to implement enhanced wireless services will be reimbursed by the fund.

**Long-Range Fiscal Implications**

The counties will have ongoing costs associated with staffing and maintenance of equipment associated with the 911 program. The Commission's costs will be eliminated upon the sunset of the program.

Agency/Prepared by: (Name & Phone No.)  
Gordon Grant 267-9086

Authorized Signature/Telephone No.

*Gordon O. Grant*

Date  
March 12, 2004