

Date Mailed February 22, 2010

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Police and Fire Fee

1-AC-228

Clearinghouse Rule 09-086

ORDER ADOPTING FINAL RULES

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 172 relating to the police and fire protection fee imposed on all voice communications connections.

REPORT TO THE LEGISLATURE

The Report to the Legislature is set forth as Attachment A.

FISCAL ESTIMATE

Section 196.025 (6), Stats., and thus this rule implementing it, has a fiscal impact as it will increase costs to businesses and government, although it may be possible to absorb them. The fee created by the statute will be billed to each government and business customer according to a formula based on the number of lines of service they have in groupings of 10. For government, the fee would presumably be offset by revenue collections. For small businesses, the fee would be an additional cost of doing business or recovered in charges to customers. Fiscal information is included as Attachment B.

EFFECTIVE DATE

This rule shall take effect on the first day of the first month following publication in the *Wisconsin Administrative Register*.

CONTACT PERSONS

Questions from the media may be directed to Timothy Le Monds at (608) 266-9600. Questions from small businesses may be directed to Gary Evenson, Administrator, Telecommunications Division at (608) 266-6744 or Gary.Evenson@wisconsin.gov. Other questions regarding this matter should be directed to docket coordinator Dennis Klaila, at (608) 267-9780 or dennis.klaila@wisconsin.gov. Hearing or speech-impaired individuals may use the commission's TTY number; if calling from Wisconsin use (800) 251-8345, if calling from outside Wisconsin use (608) 267-1479.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this rulemaking or who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, February 22, 2010

By the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

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Attachments

REPORT TO THE LEGISLATURE

A. NEED FOR THE RULE

This rule interprets s. 196.025 (6), which imposes a police and fire protection fee on communications service connections. The rule establishes the requirements for administering the fee.

B. PLAIN LANGUAGE ANALYSIS

The analysis is set forth as Attachment A1.

C. TEXT OF THE RULE

The text of the rule is set forth as Attachment A2.

D. PUBLIC HEARING ATTENDEES

A public hearing was held in Madison and a comment period extended for a period of time after the hearing. Those who provided input are listed below. Details about and responses to specific comments are in Attachment A3.

Karl Anderson
AT&T

Darrell Townsley
Verizon

William C. Esbeck
Wisconsin State Telecommunications Association

Jean Pauk
TDS Telecom

E. RESPONSE TO LEGISLATIVE COUNCIL REPORT

A copy of the Legislative Council's report, and responses to it, are included with this Report as Attachment A4.

F. FINAL REGULATORY FLEXIBILITY ANALYSIS

While the statute creating this fee and this rule will affect small businesses to some degree, the Commission is unable to estimate the number because the statute and rule apply to all telecommunications providers and to retailers that sell prepaid wireless telecommunications plans. Since the Commission does not regulate wireless telecommunications providers or retail sellers of wireless services, it does not have the data necessary to determine whether those are small businesses. However, the Commission and the Department of Revenue (DOR) worked together to develop this rule. The steps taken by DOR to reduce the burden of tax filings on small businesses were taken into account when drafting this rule.

PLAIN LANGUAGE ANALYSIS

A. Statutory Authority and Explanation of Authority

This rule is authorized under ss. 196.02 (1) and (3), 196.025 (6) (d) 1., and 227.11.

Section 227.11 authorizes agencies to promulgate administrative rules. Section 196.02 (1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the Commission specific authority to promulgate rules. Section 196.025 (6) (d) 1. allows the Commission to promulgate rules about the new police and fire protection fee.

B. Statute Interpreted

This rule interprets s. 196.025 (6), which imposes a police and fire protection fee on communications service connections.

C. Related Statutes or Rules

Sections 77.59 (1) to (5), (5m) except any penalty or interest provision, (6) (a), (8) and (8m) describe department of revenue audit and appeal procedures.

D. Brief Summary of Rule

This rule deals with the new police and fire protection fee. It establishes the requirements for administering the fee.

The rule states that a fee must be assessed on all retail voice communications connections including voice over internet protocol, except that no fee should be assessed on lines used internally by a communications provider, by the federal government or by tribal government offices or agencies. Anyone required to assess the fee must register with the Department of Revenue (DOR), which will be collecting the fee.

For communications connections under a subscription plan (one with regularly occurring payments scheduled), the provider is required to assess \$.75 cents per connection, per month. If a partial month of service is provided, then the provider is to follow the same procedure it uses with county 911 fees. If the provider does not assess those fees, then it can charge the full fee amount unless its billing system can prorate it. If a customer has more than 10 connections from a particular provider, each connection above 10 is assessed \$.075 cents per connection, per month. If only a partial payment is received from a customer, the payment is first applied to the provider's charges. Providers must explain the fee on the first bill on which it appears and, if it

is listed separately on the bill, must identify the bill in a manner specified in the statute and in the rule.

For prepaid wireless communications connections, the provider or retailer that sells the plan must assess 38 cents per connection sold in retail sales transactions. Retail sales transactions involving prepaid wireless include the sale of a telephone and airtime, as well as sales of additional airtime. Whether the source of the sale is Wisconsin is determined using a hierarchy similar to that used for sales tax purposes.

Returns must be filed with the DOR. Fees imposed during one month must be paid to DOR by the end of the following month. Extensions may be granted for good cause. Fees written off as uncollectible and those repaid when an item is returned may be deducted from a later return.

Appeals about amounts due or refunds must be filed with DOR within 60 days of the date on which a notice of amount due, notice of refund, or notice of refund claim denial is received. A request for a redetermination must be filed with DOR as well. If the communications provider or retailer wishes to pursue its appeal further, it must file an objection to the assessment with the commission, which will follow a process similar to that in s. PSC 196.85, Stats., which deals with objections to other commission assessments.

Resellers are required to file a form with their underlying local exchange carrier certifying that the lines they have purchased will be resold. This ensures that the local exchange carrier is not held responsible for submitting fees on those lines.

Providers and retailers are required to keep records about fee assessment. DOR and the commission can audit for compliance and the commission can bring an action for uncollected fees.

E. Comparison with Existing or Proposed Federal Legislation

The commission is not aware of any existing or proposed federal legislation on this matter.

F. Comparison with Similar Rules in Surrounding States

The commission is not aware of any similar rules in surrounding states.

G. Data and Methodology

The commission and the DOR worked together to develop this rule. The current processes used by DOR for the collection of sales and other taxes were considered while developing this rule.

H. Effect on Small Business

The commission and DOR worked together to develop this rule. The steps taken by DOR to reduce the burden of tax filings on small businesses were taken into account when drafting this rule.

I. Agency Contact Person

Questions regarding this rule should be directed to Dennis Klaila, Docket Coordinator, Telecommunications Division, at (608) 267-9780 or dennis.klaila@wisconsin.gov. Small business questions may be directed to Gary Evenson, Telecommunications Division Administrator, at (608) 266-6744 or gary.evenson@wisconsin.gov. Media questions should be directed to Tim Le Monds, Director of Governmental and Public Affairs at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number; if calling from Wisconsin use (800) 251-8345, if calling from outside Wisconsin use (608) 267-1479.

J. Accommodation

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed above.

TEXT OF THE RULES

SECTION 1. PSC ch. 172 is created to read:

Chapter PSC 172

POLICE AND FIRE PROTECTION FEE ON COMMUNICATIONS CONNECTIONS

PSC 172.01 General. (1) **PURPOSE.** The purpose of this chapter is to implement the police and fire protection fee required under s. 196.025(6), Stats.

(2) **EXCEPTION.** Nothing in this chapter shall preclude the commission from giving special and individual consideration to exceptional or unusual circumstances and, upon investigation of the facts and circumstances involved, adopting requirements that may be other or different than those provided in this chapter.

PSC 172.02 Definitions. In this chapter: (1) “Basic local voice service” means the provision to residential or business customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area for the transmission of high-quality 2-way interactive switched voice communication.

(2) “Commercial mobile radio service” has the meaning given in 47 USC 332 (d).

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

(4) “Communications provider” means a person that provides communications service.

(5) “Communications service” means any of the following:

(a) Retail basic local voice service.

(b) Retail wireless voice service.

(c) Retail voice over internet protocol service.

(6) “Communications service connection” means a link with a communications network that provides a person the ability to access that network for voice communications.

(7) “Customer” means a person that purchases a communications service connection.

“Customer” includes pay telephone providers, but excludes communications providers that resell communications service.

(8) “Department” means the department of revenue.

(9) “Fee” means the police and fire protection fee imposed under s. PSC 196.025 (6).

(10) “Official company lines” means communications service connections that are reserved for a communications provider’s internal administrative use.

(11) “Prepaid wireless retail transaction” means the sale of a prepaid wireless communications plan, but not for resale. A prepaid wireless retail transaction includes any of the following:

(a) The sale of a handset with airtime for a specified dollar amount, or for a specified period of time, such as a finite number of minutes of use or days of service.

(b) The sale of additional airtime, including an additional finite dollar amount of service, additional minutes of use or additional days of service, whether the additional airtime was sold at a retail location, over the internet, by mail, or by telephone call.

(12) “Prepaid wireless communications plan” means a plan for wireless voice service that provides a person the right to utilize wireless voice service, is paid for prior to use, and is sold in predetermined dollar amounts whereby a number of units declines with use of a known amount.

(13) “Place of primary use” has the meaning given in 4 USC 124(8), except that if a communications provider or retailer does not have the information under that provision, then it means the place to which the sale is sourced under s. PSC 172.05 (2) (b).

(14) “Resale” or “resell” means a communications provider obtaining the use of a communications service connection from a different communications provider and using that connection to provide communications service to an end-user customer.

(15) “Retailer” means a person that sells a prepaid wireless communications plan on behalf of a communications provider.

(16) “Subscriber” means a person that enters into a subscription communications plan with a communications provider.

(17) “Subscription communications plan” means a contract or other service agreement in which a subscriber pays a periodic rate for a communications service, including both recurring and nonrecurring charges, either paid in advance for service to be provided in a subsequent time period or paid in arrears for the service previously provided.

(18) “Voice over internet protocol service” means a service that is provided to customers with either a billing address or a place of primary use within the state, that does all of the following:

- (a) Enables real-time, two-way voice communications.
- (b) Employs a broadband connection from the user's location.
- (c) Requires internet protocol-compatible customer premises equipment.
- (d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(19) “Wireless voice service” means commercial mobile radio service, including the resale of commercial mobile radio service but excluding mobile satellite service, that meets all of the following:

- (a) The sale is sourced to Wisconsin, as determined under s. PSC 172.05 (2) (b).

(b) Offers real-time, two-way switched voice service that is interconnected with the public switched network.

PSC 172.03 Police and fire protection fee. (1) FEE. Except as provided in sub. (2), the fee shall be imposed on all communications service connections with an assigned telephone number, including a communications service provided using a voice over internet protocol connection.

(2) EXEMPTIONS. The fee may not be imposed on the following communications service connections:

- (a) Those purchased by offices and agencies of the federal government or a sovereign tribe.
- (b) Those used as official company lines.
- (c) Those sold to a communications provider that resells communications service connections and bills end-users for the communications services provided, except that the fee shall be applied by the communications provider that resells communications service connections when the connection is resold to an end-user.

PSC 172.04 Registration. Every communications provider and retailer required to impose the fee shall register with the department, in the manner prescribed by the department, to report and remit the fees.

Note: Instructions on how to register may be found on the department's website at <http://www.revenue.wi.gov/faqs/ise/pfprofeea.html>.

PSC 172.05 Assessment of fee. (1) SUBSCRIPTION COMMUNICATIONS PLAN. (a) *Application of fee.* A communications provider shall apply a fee of \$0.75 per month on each communications service connection established under a subscription telecommunications plan. The communications provider shall remit the fee to the department using the procedure specified in s. PSC 172.06.

(b) *Partial month of service.* If a communications provider charges a subscriber for less than a full month of subscription communications plan service, the communications provider shall assess the fee in the same way that it assesses the countywide 911 charges under s. 256.35 (3), Stats. A provider that does not assess the 911 fees may assess a full fee if its billing system does not permit the fee to be prorated.

(c) *Multi-line service.* 1. If a communications provider furnishes multiple communications service connections to a single subscriber account, the communications provider shall impose a fee according to the following schedule:

a. For subscribers with 10 or fewer communications service connections, \$0.75 per connection, per month.

b. For subscribers with more than 10 communications service connections, \$7.50 for the first 10 connections plus \$0.075 per service connection in excess of 10, per month.

2. a. If a subscriber receives service from more than one communications provider, the communications providers serving the subscriber may not add together the communication service connections to determine the fee imposed on the subscriber. Each communications provider shall determine the fee to be imposed on a subscriber based upon the communication service connections the provider itself provides.

b. A communications provider may not add together the communications service connections from multiple accounts to determine the fee imposed. Only service connections within an account may be added together.

c. Notwithstanding subd. 2. b., a communications provider's billing practices may not have the effect of making it unlikely or impossible for a subscriber with multiple communications service connections billed under a single account to qualify for the reduced fee under subd. 1. b.

(d) *Partial payments.* If a subscriber remits to the communications provider an amount less than the full amount billed to the subscriber in a given month, the communications provider shall first apply the partial payment to any amount the subscriber owes to the communications provider for the communications service provided.

(e) *Billing identification and information.* 1. On its bill, a communications provider shall identify the fee in one of the following ways:

a. List the fee separately from other charges on a subscriber's bill and identify the fee as "police and fire protection fee."

b. Combine the fee with a charge imposed under s. 256.35(3), Stats., and identify the combined fee and charge as "charge for funding countywide 911 systems plus police and fire protection fee."

c. Combine the fee with basic rates and either do not identify the fee separately, or state that the basic rate includes the "police and fire protection fee."

2. On the first bill on which the fee appears, a communications provider offering a subscription communications plan shall inform its subscribers by bill message of all of the following:

a. The addition of the fee to the monthly bill.

b. The purpose the fee is intended to serve.

(2) PREPAID WIRELESS COMMUNICATION PLAN. (a) *Application of fee.* Any retailer or communications provider that sells a Wisconsin communications service connection established under a prepaid wireless communications plan shall impose a \$0.38 fee on each prepaid wireless retail transaction. The fee does not apply to the sale of related wireless handset equipment and accessories.

(b) *Determining Wisconsin connection.* A communications provider or retailer shall determine if a communications service connection that it sells is a Wisconsin communications service connection as follows:

1. If a customer receives the purchased item at a seller's business location, the sale is sourced to that business location.
2. If a customer does not receive the purchased item at a seller's business location, the sale is sourced to the location where the customer, or the customer's designated recipient, receives the product, including the location indicated by the instructions known to the seller for delivery to the customer or the customer's designated recipient.
3. If the location of a sale of a purchased item cannot be determined under subd. 1. or 2., the sale is sourced to the customer's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if the seller's use of that address to establish the location of a sale is not in bad faith.
4. If the location of a sale of a purchased item cannot be determined under subds. 1. to 3., the sale is sourced to the customer's address as obtained during the consummation of the sale, including the address indicated on the customer's payment instrument, if no other address is available and if the seller's use of that address is not in bad faith.
5. If a customer buys a prepaid wireless communications plan and the location of the sale cannot be determined under subds. 1. to 4., the sale is sourced to the location associated with the telephone number associated with the plan, as determined by the seller.

(c) *Remission of fee.* 1. If a prepaid wireless retail transaction is completed by a retailer, that retailer shall impose the fee and remit it using the procedure specified in s. PSC 172.06.

2. If a prepaid wireless retail transaction is completed by a communications provider, that provider shall impose the fee and remit it using the procedure specified in s. PSC 172.06.

(d) *Invoice or sales receipt identification.* A communications provider or retailer may state the amount of the fee separately on a bill, invoice, sales receipt, or other document associated with the prepaid wireless retail transaction. If a retailer or communications provider lists the fee separately, it shall identify the fee as “police and fire protection fee.”

(e) When a communications provider or retailer does not state the amount of the fee separately on a bill, invoice, sales receipt or other document associated with the prepaid wireless retail transaction, the communications provider or retailer shall ensure that the customer is aware that the fee is included in the total sales price of the prepaid wireless retail transaction and that the sales price is the amount received exclusive of the fee.

Note: For example, a 50 minute card for a prepaid wireless account is sold in a vending machine for \$20.00. A sign is conspicuously posted on the vending machine that the “Price Includes the Police and Fire Protection Fee.” The sales price of the card is \$19.62, the amount paid by the customer less the fee (\$20.00 - \$0.38 = \$19.62).

PSC 172.06 Filing returns. (1) **FILING.** Every person registered or required to be registered for the fee shall electronically file a return.

(2) **ACCRUAL BASIS.** A filer under sub. (1) shall collect, report and remit the fee on an accrual, or as-imposed, basis.

(3) **DUE DATE.** A filer under sub. (1) shall submit the return and remit fees to the department by the last day of the month following the month in which the fees are imposed.

(4) **EXTENSIONS.** The department may, for good cause, extend the time for making any return or remitting any amount under this chapter. The extension may not exceed one month from the due

date of the return and may be granted at any time provided a request is filed with the department within or prior to the period for which the extension is requested.

PSC 172.07 Uncollectible amounts, misidentified accounts, and returns. (1)

UNCOLLECTIBLE AMOUNTS. (a) A filer under s. PSC 172.06 (1) may claim a deduction for an unpaid fee if all of the following are met:

1. The communications provider or retailer previously reported and remitted the fee to the department.
2. The communications provider or retailer writes off the fee as uncollectible in its books and records.
3. The unpaid fee is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the filer is required to file a federal income tax return.

(b) A deduction shall be claimed in the period in which the filer writes off the unpaid fee as uncollectible in its books and records and in which the amount is eligible to be deducted as a bad debt for federal income tax purposes.

(c) If the filer subsequently collects, in whole or in part, any bad debt for which a deduction under par. (a) is claimed, the filer shall include the amount collected in the return filed for the period in which the amount is collected and shall remit the fee with that return.

(2) CUSTOMER RETURNS. A filer under s. PSC 172.06 (1) may claim a deduction for a fee that is included in a previously filed return but refunded to the purchaser in cash or in credit. The filer shall claim the deduction on the return for the period in which the refund of the fee is paid.

(3) MISIDENTIFIED ACCOUNT. (a) A filer under s. PSC 172.06 (1) may claim a deduction for a fee that meets all of the following:

1. Was collected from a federal or tribal government account because the filer did not identify it as such after a good faith effort.

2. Was included in a previously filed return but refunded to the purchaser.

(b) The filer shall claim the deduction on the return for the period in which the refund of the fee is paid.

(c) The filer shall keep a record of why the account was misidentified, how it became aware of the account's proper identification, and any actions taken as a result.

PSC 172.08 Resale. (1) (a) A communications provider that resells communications service connections shall file a properly completed form PFP-211, Wisconsin Police and Fire Protection Fee Resale Certificate, with the communications provider from which it purchases communications service connections to resell. The communications provider that resells communications service connections shall certify that the service connections it has purchased are being, or will be, resold. The certificate shall indicate whether the certificate is for a single purchase or for continuous purchases.

Note: Form PFP-211 may be obtained from the department's website at <http://www.revenue.wi.gov/forms/misc/pfp-211.pdf>.

(b) Within 30 days of the effective date of this rule [...LRB inserts date...], a communications provider that resells communications service connections shall file a form under par. (a) for services it is purchasing at that time. If that form is not for continuous purchases, the provider shall file a form under par. (a) within 10 days of purchasing additional services, for resale. If a new purchasing relationship is established after the effective date of this rule [...LRB inserts date...], the communications provider that resells communications service connections shall file

a form under par. (a) within 10 days of purchasing communications service connections for resale.

(2) When filing a return under s. PSC 172.06 (1), a communications provider selling communications service connections for resale to a communications provider that resells communications service connections shall not include communications service connections or prepaid wireless retail transactions involving services for which they have received a certificate under par. (a).

(3) A communications provider that resells communications service connections shall apply, collect, and remit the fee for all communications service connections that it resells to an end-user customer.

PSC 172.09 Sales and use tax exemption. The fee is not subject to Wisconsin sales or use taxes.

PSC 172.10 Audit. (1) The commission may audit to determine compliance with this chapter.

(2) The department may determine compliance with this chapter by office or field audit, using the procedures in ss. 77.59 (1) to (5), (5m) except any penalty or interest provision, (8) and (8m), Stats.

(3) The filer under s. PSC 172.06 (1) shall maintain records to substantiate the number of communications service connections subject to the fee and the number of prepaid wireless retail transactions subject to the fee, as well as records to substantiate sales for resale and uncollectible accounts.

PSC 172.11 Appeals. (1) A communications provider or retailer that disagrees with a notice from the department about an amount due, a refund due, or a refund claim denial relating to the fee may file an appeal with the department.

(2) A communications provider's or retailer's appeal shall be in writing and signed. The appeal shall state the facts and reasons for disagreeing with the adjustments and include supporting documents.

(3) A communications provider or retailer shall mail or fax the appeal within 60 days after receiving a notice of amount due, notice of refund, or notice of refund claim denial from the department. The appeal shall be submitted to the address or fax number provided in the notice. An appeal that is mailed is considered timely if it is postmarked on or before the due date specified and is received by the department within five days of the due date.

(4) The procedures in s. 77.59 (6) (a), Stats., shall apply to an appeal under subs. (1) to (3).

(5) (a) Within 30 days after a redetermination under sub. (4) is mailed, a communications provider or retailer may file an objection with the commission. The objection shall set out in detail the grounds upon which the objector regards the bill to be excessive or erroneous.

(b) The commission, after at least 10 days notice to the objector, shall hold a hearing on the objection. After the hearing, the commission shall mail a decision by registered mail that includes the amount, if any, to be paid.

(c) If the amount to be paid under the order in par. (b) is not paid within 10 days after the determination has been sent by registered mail, the commission may proceed under s. PSC 172.12.

PSC 172.12 Collection action authorized. The commission may bring an action to collect any amount that is required to be remitted under this chapter.

SECTION 2. Applicability dates.

Section PSC 172.06 (1) applies to any subscription telecommunications plan in effect on September 1, 2009, and any subscription telecommunications plan entered into on or after September 1, 2009.

Section PSC 172.06 (2) applies to every prepaid wireless retail transaction that occurs on or after September 1, 2009.

SECTION 3. Effective date. This rule shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register*.

RESPONSES TO PUBLIC HEARINGS AND WRITTEN COMMENTS

AT&T

Comment:

The commission should adopt the rules without modification.

Response:

Agree in part. See changes discussed below.

Verizon and Wisconsin State Telecommunications Association

Comment:

The rule exempts offices and agencies of the federal government and sovereign tribes from the fee. Amend the rule to hold harmless providers that make a good faith effort to identify these exempted accounts as long as the provider stops assessing the fee as soon as it learns that the account is exempt.

Reason:

Some billing systems are unable to separately identify tribal or federal government accounts, so a manual effort will be necessary. As long as a provider makes a good faith effort to identify these accounts, it should not be subject to fines or adverse action if it fails to identify such an account but should be considered to be in full compliance with the rule.

Response:

Agree in part. Language has been added allowing a provider to deduct from a later return any amounts improperly billed, and then refunded, to a federal or tribal government account that was not identified as such after a good faith effort by the provider. Tribal government accounts include accounts of tribal agencies and government offices, but not tribal owned businesses.

Comment:

The rules require a reseller to file a certificate with its wholesale provider indicating the number of lines the reseller has. The wholesale provider does not assess the fee on those lines. Amend the rule to indicate that if a reseller has not filed such a certificate, but the wholesale provider knows or has good reason to believe that the retailer is reselling the lines, the wholesale provider can choose not to assess the fee on those lines.

Reason:

This clarifies the rule so that the wholesale provider is ensured that it can fully comply with the intent of the rules while being held harmless and protected from allegations of non-compliance when a reseller fails to properly submit the required certification.

Response:

Disagree. The requirement for an exemption certificate was requested by the industry to hold a provider harmless when an exemption certificate has been received. The receipt of a certificate by the communications provider places the onus of the fee collection on the reseller of the service. This treatment is similar to the sales and use tax treatment in that the communications provider is also required to have an exemption certificate on file for its sales to such resellers; therefore, the resellers should be familiar with this process and have no problem providing the communications providers with exemption certificates for the police and fire protection fee as well.

Providing relief to communications providers who “knows or has good reason to believe that the communications service connections it sells to another service provider are being resold to end-user retail customers....” renders the exemption certificate requirement ineffectual. If a provider believes that lines are being resold but it has not received a certificate for those lines, it can notify the commission of the problem.

Comment:

A form under the current rule requires a provider to separately report the number of lines assessed the \$.75 fee and the number assessed at \$.075. Amend the rule so that if a provider’s billing system cannot break the information down this way for multi-line accounts, it can just report the total collected from multi-line accounts without further breakdown.

Reason:

While some billing systems can cull multi-line accounts and properly assess each line, the breakdown of how many lines were charged \$.75 and how many were charged \$.075 is not readily available.

Response:

Disagree. If accounts can be culled out and charged separately, then it must be possible for a report to be developed that either gives the information requested (number of lines charged \$.75 and number of lines charged \$.075) or that reports the total dollar amount collected from \$.75 charges and the total collected from \$.075 charges, from which the provider can back out the number of lines. The ability to produce such information is also necessary for audits concerning the fee.

Wisconsin State Telecommunications Association**Comment:**

As is true for official company lines, do not assess the fee on lines provided to employees by providers.

Reason:

There is no real difference between these lines and official company lines. Employee lines are often provided to expedite the response of the company to customer concerns and service outages.

Response:

Disagree. Official company lines are those used only for a provider's internal administrative use. Lines used by employees for personal and company business are different. While they may be provided to help expedite responses, they are also provided as "percs" of a job with a provider. There is no significant difference between these lines and those sold to customers.

Comment:

Clarify when the multi-line discounts are applied.

Reason:

TDS uses a separate account for each line it sells when the customer wants call detail on all lines. Clarification is necessary about whether the discount is applied when multiple accounts appear on one bill.

Response:

Agree. Language has been added.

RESPONSES TO LEGISLATIVE COUNCIL REPORT

2. Form, Style and Placement in Administrative Code

- a. Disagree. This provision appears in multiple commission rules, and has done so dating back to the 1950s. This flexibility is important given the very quick changes that can occur in the industries regulated by the commission, especially telecommunications. Further, this rule is unique in its inter-relationship between the department and the commission. Unusual complications may arise as a result of this. The rule is not totally open-ended. The commission must examine the facts and circumstances of an individual case and can only change requirements if there is an unusual or exceptional circumstance.
- b. Agree in part. Language changes have been made, although a specific definition of “reseller” has not been added.
- c. Disagree. “Voice service” is only used in the definitions section. If “communications service” is used instead, then that phrase would be used in the definition of itself. For example, the definition of “communications service” would include basic local communications service and wireless communications service. Definitions for “basic local voice service” and “wireless voice service” are included because those phrases are used in the definition of “communications service,” which is the phrase used in the rest of the rule.
- d. Agree. Change made.
- e. Agree. Change made. (Note: Although this is identified as s. PSC 134.02 (13), it actually appears in s. PSC 134.02 (11) (a).)
- f. Agree. Change made.
- g. Agree. Change made.
- h. Agree. Change made and copy of form is attached.
- i. Agree. Change made.

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

- a. Agree. Change made.

- b. Disagree. Different telecommunications providers assess the 911 fee differently, depending on the capabilities of their billing systems. The proposed rule takes the same limitations into account for the police and fire protection fee.
- c. Agree. Change made. (Note: Although this is identified as s. PSC 134.01 (2), it actually appears in s. PSC 134.06 (2).)

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

- a. Disagree. This matches the statutory definition.
- b. Agree. Change made.
- c. Disagree. This language is used to be consistent with the sourcing guidelines provided in the streamlined sales and use tax provisions, as adopted by Wisconsin in 2009 Wis. Act 2 (effective October 1, 2009). This sourcing hierarchy is used in s. PSC 172.05(2)(b)1. to 5. The phrase “the source of the sale” has been interpreted to mean where the seller is located, rather than “where the sale is sourced” which means where the sale takes place, according to the hierarchy. These can be different locations, for example, in catalog or internet purchases.

To say that “the sale is sourced to” a location identifies *where the sale occurs*, based on the hierarchy that is provided. The phrase “the source of a sale” has been interpreted to mean the seller’s physical location.

- d. Agree. Change made.
- e. Agree. Change made.
- f. Agree. Change made.

2009 Session

LRB or Bill No./Adm. Rule No.

1-AC-228

Amendment No. if Applicable

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 N(R10/96)

Subject

Create Rules for Operation and Collection of the Police and Fire Protection fee required in 2009 WI Act 28

Fiscal Effect

State: No State Fiscal Effect

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

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

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

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

none

Assumptions Used in Arriving at Fiscal Estimate

2009 WI Act 28 created a fee to be paid by telecommunications customers for support of county costs of police and fire protection services. The fee is billed to both residential and business landline and wireless providers including those wireless providers who use pre-paid cards to obtain cellular service. This fee will be billed to state and local government customers and business customers following the definitions in the law and this rule. Federal Government offices will be exempt from the charge because of the federal supremacy clause and the various court interpretations of its applicability in situations similar to those of this fee.

The cost effect on state and local government presumably will be in turn absorbed by collections in revenue. Each government and business customer will be billed according to a formula based on the number of lines of service they have in groupings of 10. Statistics on the number of lines for governments and small businesses are not available without extensive data requests of all providers of landline and cellular services in Wisconsin.

Long-Range Fiscal Implications

For government fee offset by revenue collections.

For small business fee would be additional cost of doing business or recovered in charges to customers.

Agency/Prepared by: (Name & Phone No.)

Gordon Grant 267-9086

Authorized Signature/Telephone No.

Gordon Grant

Date

8/11/2009