

No. 2003-56

AN ACT

HB 1018

Amending the act of July 9, 1990 (P.L.340, No.78), entitled "An act providing for a Statewide emergency telephone number 911 system; providing for contributions from telephone subscribers; providing a penalty; and making a repeal," further providing for definitions, for local government immunity and for powers and duties of the Pennsylvania Emergency Management Agency; establishing a Statewide integrated wireless E-911 State plan; establishing a Wireless E-911 Emergency Services Fund and disbursements therefrom; further providing for collection of an E-911 surcharge from wireless customers and for annual reporting; establishing a wireless E-911 Emergency Services Advisory Committee; and providing for rules and regulations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of July 9, 1990 (P.L.340, No.78), known as the Public Safety Emergency Telephone Act, amended February 12, 1998 (P.L.64, No.17), is amended to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"911 emergency communication system" or "911 system." A system, *including enhanced 911 service but excluding a wireless E-911 system*, which permits a person dialing 911 by telephone to be connected to a public safety answering point, via normal telephone facilities, for the reporting of police, fire, medical or other emergency situations.

"Active prepaid wireless account." A *prepaid wireless account that has been used by the customer during the month to complete a telephone call for which the customer's card or account was reduced.*

"Advisory committee." *The wireless E-911 Emergency Services Advisory Committee established in section 11.3.*

"Agency." The Pennsylvania Emergency Management Agency.

"Associated with Pennsylvania."

(1) *In the case of the mobile telephone number (MTN), the geographical location associated with the first six digits or NPA/NXX of the MTN; or*

(2) *in the case of a customer service address, the physical location of the address.*

"Automatic location information" or "ALI." *The delivery or receipt of the street address of the telephone or the geographic location of the wireless device, as specified in the FCC E-911 Order, being used to place a call to a 911 system or to a wireless E-911 system.*

“Automatic number identification” or “ANI.” The delivery or receipt of the telephone number assigned to the telephone or wireless device being used to place a call to a 911 system or to a wireless E-911 system.

“Commission.” The Pennsylvania Public Utility Commission.

“Competitive local exchange carrier.” A local exchange carrier that has been certificated as a competitive local exchange carrier by the Pennsylvania Public Utility Commission.

“Contribution rate.” A fee assessed against a telephone subscriber for the nonrecurring costs, maintenance and operating costs of a 911 system. Counties of the first through second class A may impose a monthly contribution rate in an amount not to exceed \$1 per line on each local exchange access line. Counties of the third through fifth class may impose monthly contribution rates in an amount not to exceed \$1.25 per line on each local exchange access line. Counties of the sixth through eighth class may impose a monthly contribution rate in an amount not to exceed \$1.50 per line on each local exchange access line. The contribution rate may be used by counties for the expenses of implementing, expanding or upgrading a 911 system. Expenses eligible for reimbursement through the contribution rate shall include telephone terminal equipment, trunk line service installation, network changes, building of initial data base and any other nonrecurring costs to establish a 911 system. The contribution rate may also be used to fund recurring costs pursuant to section 8(b). Expenses not eligible for reimbursement through the contribution rate shall include purchase of real estate, cosmetic remodeling, central office upgrades, hiring of dispatchers, ambulances, fire engines or other emergency vehicles, utilities, taxes and other expenses as determined by the Pennsylvania Emergency Management Agency.

“Council.” The Pennsylvania Emergency Management Council.

“County.” The term shall include a city of the first class coterminous with a county.

“County plan.” A document submitted by the county on a triennial basis to the Pennsylvania Emergency Management Agency, outlining its proposed [or existing 911 system] ***and existing wireline and wireless 911 and enhanced 911 systems and procedures***, including a contribution rate, for the forthcoming three years.

“Emergency notification services.” Services provided by authorized agencies of Federal, State, county or local governments, or by persons authorized by such governments, that notify the public, using ANI/ALI data base information, of emergencies declared by such governments.

“Emergency support services.” Information or data base management services provided by authorized agencies of Federal, State, county or local governments, or by persons authorized by such governments, that are used in support of PSAPs or emergency notification services.

“Enhanced 911 service” or “E-911.” *Emergency telephone service providing for automatic identification of caller location and calling number.*

“FCC E-911 Order.” *All orders issued by the Federal Communications Commission pursuant to the proceeding entitled “Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems” (CC Docket No. 94-102) codified at 47 CFR 20.18 (relating to 911 Service), any successor proceeding and any other FCC order that affects the provision of wireless E-911 service to wireless service customers.*

“Fund.” *The Wireless E-911 Emergency Services Fund established in section 11.4.*

“Interexchange carrier.” *A person that is authorized by the Pennsylvania Public Utility Commission to provide long-distance telecommunications service.*

“Local exchange carrier.” *A person, including a competitive local exchange carrier, that is authorized by the Pennsylvania Public Utility Commission to provide local exchange telecommunications service or exchange access.*

“Local exchange telephone service.” *The provision of telephonic message transmission within an exchange, as such is defined and described in tariffs filed with and approved by the commission.*

“Mobile telephone number” or “MTN.” *The telephone number assigned to a wireless telephone at the time of initial activation.*

“NPA-NXX.” *The first six digits of a ten-digit telephone number, including a mobile telephone number, representing the area code and exchange of the telephone number.*

“Person.” *The term includes a corporation, a partnership, an association, the Federal Government, the State government, a political subdivision, a municipal or other local authority, as well as a natural person.*

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

“Public agency.” *The Commonwealth or a political subdivision, public authority, municipal authority or any organization located in whole or in part within this Commonwealth which provides or has the authority to provide firefighting, law enforcement, ambulance, emergency medical or other emergency services.*

“Public safety answering point” or “PSAP.” The *agency-approved* first point at which calls for emergency assistance from individuals are answered, operated 24 hours a day.

“Sufficient positive balance.” A dollar amount greater than or equal to the monthly wireless surcharge amount.

“Telephone subscriber.” A person who contracts with a [telephone company] *local exchange carrier* within this Commonwealth for local exchange telephone service, either residential or commercial. When the same person has several telephone dial tone access lines, each dial tone access line shall constitute a separate subscription. For purposes of the contribution rate, the term shall not include pay stations owned or operated by a regulated public utility, or *nonpublic utilities as the term is used in 66 Pa.C.S. § 2913(b) (relating to minimum service requirement)*.

“Vendor.” A person *other than a local exchange carrier or a wireless provider* who supplies 911 or *wireless E-911* system services or equipment.

“Wireless E-911 service.” Service provided by a wireless provider, pursuant to the FCC E-911 Order.

“Wireless E-911 State plan.” A document to be prepared, maintained and kept current by the Pennsylvania Emergency Management Agency providing for all aspects of the development, implementation, operation and maintenance of a Statewide integrated wireless E-911 system, including the exclusive authority to formulate technical standards and determine permitted uses of and amounts disbursed from the Wireless E-911 Emergency Services Fund established by section 11.4(a).

“Wireless E-911 surcharge.” A monthly fee assessed upon each wireless service customer for each wireless two-way communication device for which that customer is charged by a wireless provider for wireless service.

“Wireless E-911 system.” An E-911 system which permits wireless service customers dialing 911 to be connected to a public safety answering point for the reporting of police, fire, medical or other emergency situations.

“Wireless provider.” A person engaged in the business of providing wireless service to end-use customers in this Commonwealth, including resellers.

“Wireless service.” Commercial mobile radio service as defined under section 332(d) of the Communications Act of 1934 (47 U.S.C. § 332(d)) and which provides real-time, two-way voice service that is interconnected with the public switched telephone network.

“Wireless service customer.” A person who is billed by a wireless provider or who receives prepaid wireless telephone service from a wireless provider for wireless service within this Commonwealth.

Section 2. Section 3 of the act is amended by adding a subsection to read:

Section 3. Telecommunications management.

* * *

(d) Exemption.—The Pennsylvania State Police telecommunications facilities are exempt from the telecommunications management of the agency, council and the commission.

Section 3. Section 4(a) introductory paragraph of the act, amended February 12, 1998 (P.L.64, No.17), is amended and the subsection is amended by adding paragraphs to read:

Section 4. Counties.

(a) Powers and duties.—The board of county commissioners, or, in a home rule county, the appropriate body according to the home rule charter, shall have the following powers and duties in relation to a 911 system and wireless E-911 system:

* * *

(8) To cooperate with the Pennsylvania State Police. Subject to subparagraphs (i) through (iii), a county that utilizes ANI/ALI data base services shall, upon request of the Commissioner of the Pennsylvania State Police or the designee of the commissioner, provide authority to access all ANI/ALI data base information relating to 911 calls for emergency services, whether the data base is held by the county or by a commercial entity.

(i) In order to ensure that no county or PSAP experiences degradation of service or additional costs as a result of complying with this subsection:

(A) the Pennsylvania State Police shall provide, at its cost, any equipment, computer software or telecommunications equipment or services, exclusive of recurring personnel costs for county personnel, that are necessary to enable its access to any ANI/ALI data base information; and

(B) all such means of access must be approved by the county, PSAP and the Pennsylvania State Police before the county is required to authorize or provide the access. In the event of a dispute between the Pennsylvania State Police and a county or PSAP regarding approval by the county and PSAP, the dispute shall be mediated by the Office of Information Technology of the Commonwealth's Office of Administration. The Office of Information Technology may bring in a Commonwealth mediator from the Office of General Counsel to provide assistance in resolving the dispute.

(ii) The ANI/ALI data base information to which access is authorized or enabled under this paragraph or section 4.1(a)(3) shall be used only in providing emergency response services to a 911 call. A person who uses or discloses such ANI/ALI data base information for any other purpose commits a misdemeanor of the third degree.

(iii) Nothing contained in this paragraph shall be construed to impose on wireless providers any obligations beyond those created by applicable Federal Communications Commission orders and regulations. Public agencies, counties, PSAPs and wireless providers shall not be liable to any person for errors in any of the ANI/ALI data base information which may be accessed by or provided to the Pennsylvania State Police under this paragraph.

(9) To comply with reporting requirements established by the agency.

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Section 4. The act is amended by adding a section to read:

Section 4.1. Pennsylvania State Police.

(a) Powers and duties.—The Commissioner of the Pennsylvania State Police, or the designee of the commissioner, shall have the following powers and duties in relation to a Pennsylvania State Police telecommunications facility:

(1) To designate, with specificity, which Pennsylvania State Police facilities shall be considered Pennsylvania State Police telecommunications facilities under this act.

(2) To designate a commander of a Pennsylvania State Police telecommunications facility who shall serve as the point of contact with the agency and the counties and shall oversee the implementation, operation and maintenance of a Pennsylvania State Police telecommunications facility. A Pennsylvania State Police facility shall, where technologically feasible, be adequate to provide service to the designated area of coverage.

(3) To request authority to access ANI/ALI data base information relating to 911 calls for emergency services from the counties and PSAPs within the designated area of coverage of a Pennsylvania State Police telecommunications facility; provided, that no county or PSAP shall be required to comply with such a request unless it is made by the Commissioner of the Pennsylvania State Police or the designee of the commissioner pursuant to section 4(a)(8); and provided further that section 4(a)(8) shall apply to any such request.

(4) To provide training and certification for all call-takers/dispatchers and call-taker/dispatcher supervisors that meets or exceeds the training and certification standards that are provided for in 4 Pa. Code Ch. 120c (relating to training and certification standards for 911 emergency communications personnel) or any successor standard.

(b) Ineligible reimbursement.—The Pennsylvania State Police are not eligible to receive any reimbursement from the moneys collected from the contribution rate or wireless E-911 surcharge, nor may the Pennsylvania State Police impose a monthly contribution rate upon the telephone

subscribers on the local exchange access line or any wireless E-911-related surcharge upon wireless service customers.

Section 5. Sections 9 and 11.1 of the act, amended or added February 12, 1998 (P.L.64, No.17), are amended to read:

Section 9. Telephone records.

(a) Access.—Each telephone service supplier shall provide customer telephone numbers, names and service addresses [to 911 systems when required.] *to PSAPs when requested by them for use in responding to 911 calls and, when required, to providers of emergency notification services and emergency support services, solely for the purposes of delivering or assisting in the delivery of emergency notification services and emergency support services. Each wireless provider shall provide the telephone number and geographical location of the wireless device, as required pursuant to the FCC E-911 Order, to PSAPs when requested by them for use in responding to 911 calls.* Although customer telephone numbers, names and service addresses shall be available to [911 systems] *PSAPs, providers of emergency notification services and providers of emergency support services, and the telephone numbers and geographical locations of wireless devices shall be available to PSAPs,* such information shall remain the property of the disclosing service supplier. The total cost of the *911 system or wireless E-911 system* shall include expenses to reimburse telephone service suppliers for providing and maintaining 911 information; *provided, however, that nothing in this section shall permit a telephone service supplier to be reimbursed directly from the fund for providing and maintaining 911 information.* This information shall be used only in providing emergency response services to a 911 call *or for purposes of delivering or assisting in the delivery of emergency notification services or emergency support services, except as provided in subsection (c).* A person who uses or discloses ANI/ALI data base information for purposes other than [handling] *providing emergency response services to a 911 call, delivering or assisting in the delivery of emergency notification services or emergency support services or other than as provided in subsection (c)* commits a misdemeanor of the third degree.

(b) Privacy waived.—Private listing service customers in a 911 service district shall waive the privacy afforded by nonlisted and nonpublished numbers [when using the 911 emergency service] *with respect to the delivery of emergency services.*

(c) Immunity.—No telephone company, wireless [communications company] *provider* or vendor or agent, employee or director of a telephone company, wireless [communications company] *provider* or vendor *that provides information to PSAPs, providers of emergency notification services or providers of emergency support services* shall be liable to any person who *directly or indirectly* uses the 911 emergency service *or wireless E-911 emergency service* established under this act *or provides*

information to 911 systems or wireless E-911 systems with respect to the delivery of emergency services:

(1) [for release to a public safety answering point of information specified in this section that is not already part of the public records, including nonpublished telephone numbers; or] *for release to PSAPs, providers of emergency notification services or providers of emergency support services of information specified in this section, including nonpublished telephone numbers;*

(2) *for release to the commission, the Federal Communications Commission or any other Federal or Commonwealth agency with the authority to regulate the provision of telecommunications services, of telephone company information specified in this section that is not already part of public records, including, where applicable, information regarding numbers of lines served by an individual company but excluding nonpublic information regarding the company's individual customer names, addresses and telephone numbers; or*

[(2)] (3) for interruptions, omissions, defects, errors, mistakes or delays in transmission occurring in the course of [rendering 911 emergency service] *the delivery of emergency services or wireless E-911 service* under this act, unless such interruptions, omissions, defects, errors, mistakes or delays are caused by the willful or wanton misconduct of the telephone company, wireless [communications company] *provider* or vendor, their agents, employees or directors[: **Provided, however, That**]; *provided, however, that* nothing herein shall preclude the application of any commission tariff or regulation *within its jurisdiction* pertaining to allowances for telephone service interruptions.

Section 11.1. Immunity.

All 911 systems *and wireless E-911 systems* run by county and local governments shall be local agencies who shall enjoy local governmental immunity as provided under 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties).

Section 6. The act is amended by adding sections to read:

Section 11.2. Powers and duties of agency.

(a) *Administration.—The agency shall have the following powers and duties in relation to a wireless E-911 system:*

(1) *To designate at least one employee of the agency who shall serve as a point of contact at the agency for all matters involving wireless E-911 systems in this Commonwealth.*

(2) *To oversee the development, implementation, operation and maintenance of a Statewide integrated wireless E-911 system, formulate technical standards and determine permitted uses of and amounts disbursed from the Wireless E-911 Emergency Services Fund established in section 11.4(a), including the costs of PSAPs and wireless providers that are eligible for payment from the fund; and*

(3) to approve each county's county plan, or amendment to its agency-approved county plan, incorporating wireless E-911 service capabilities as may be submitted by the county to the agency.

(b) Wireless E-911 State plan.—The agency shall prepare, maintain and keep current, after adequate public notice and opportunity to comment and after consideration of the recommendations of the wireless subcommittee of the advisory committee, a wireless E-911 State plan providing for all aspects of the development, implementation, operation and maintenance of a Statewide integrated wireless E-911 system in accordance with the FCC E-911 Order. Pursuant to such plan, the agency shall:

(1) Establish model agreements for mutual aid agreements, cross-service agreements, service contracts and all other documents by and among public agencies, PSAPs and wireless providers that may be required in the implementation of the wireless E-911 State plan, review such agreements and documents for consistency with the applicable county plan and assist the parties in assuring their execution.

(2) Require each wireless provider to notify the agency of each county in which it is licensed on the effective date of this section and provides wireless service and, at the time new service is initiated, each county in which it is licensed and initiates wireless service; and to notify counties of wireless service within each county, specifically noting wireless service to more than one county. In the event of disputes among PSAPs regarding the PSAP to which a wireless provider routes 911 calls, the routing shall be determined by the agency.

(3) Establish uniform Statewide standards for the format and content of wireless automatic location information and wireless automatic number identification, which standards shall be the standards adopted by the National Emergency Number Association, as from time to time amended by that organization. Wireless providers will use the applicable National Emergency Number Association data transmission format standards to deliver such data to the wireless E-911 system.

(4) Forward a copy of the completed plan and any revision thereof to all affected counties, PSAPs, wireless providers, local exchange carriers, competitive local exchange carriers and interexchange carriers.

(5) Require each wireless provider to provide the agency with a 24-hour, seven-days-a-week contact telephone number or pager number for use by PSAPs in emergency situations.

Section 11.3. Advisory committees.

(a) Establishment of an E-911 Emergency Services Advisory Committee.—There is hereby established an advisory committee to be known as the E-911 Emergency Services Advisory Committee.

(b) Members.—*The advisory committee shall be comprised of the following persons:*

(1) *The director of the agency or his designee, who shall act as chairperson.*

(2) *Two county commissioners.*

(3) *Four county 911 program managers.*

(4) *Four wireless providers licensed by the Federal Communications Commission.*

(5) *Two landline telephone service provider representatives.*

(6) *Two representatives each from fire services, emergency medical services and police.*

(7) *The chairman and minority chairman of the Communications and Technology Committee of the Senate and the chairman and minority chairman of the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives, or their designees.*

The Governor, upon recommendation of the applicable Statewide organizations, associations and industry segments, shall appoint the committee members, who will each serve a two-year term. Advisory committee membership shall be limited to one representative per organization or corporate entity.

(c) Roles and responsibilities.—*The advisory committee shall make recommendations to the agency regarding the formulation of technical, administrative and operational standards for use in overseeing 911 programs Statewide.*

(d) Reimbursement.—*The members of the advisory committee shall serve without compensation but shall be reimbursed for their actual and necessary travel and other expenses in connection with attendance at meetings called by the chairperson.*

(e) Advisory committee subcommittees.—*The chairperson may create, within the committee membership, subcommittees to study and address specific technical and program areas:*

(1) *A wireless subcommittee shall be created as a permanent subcommittee and shall consist of the following persons:*

(i) *The advisory committee chairperson.*

(ii) *Two county commissioners.*

(iii) *Four county 911 program managers.*

(iv) *Four representatives of wireless providers licensed by the Federal Communications Commission.*

(v) *Two landline telephone service provider representatives.*

(2) *Wireless subcommittee roles and responsibilities:*

(i) *To advise the agency regarding the development, implementation, operation and maintenance of a Statewide integrated wireless E-911 system.*

(ii) *To make recommendations to the agency regarding the preparation and periodic revision of a wireless E-911 State plan providing for the development, implementation, operation and maintenance of a Statewide integrated wireless E-911 system in accordance with the FCC E-911 Order.*

(iii) *To make recommendations to the agency regarding the approval or disapproval of wireless provider service agreements and the formulation of technical standards.*

(iv) *To make recommendations to the agency regarding the development of guidelines, rules and regulations required to address the administration of the Statewide E-911 wireless plan and the disbursement of moneys from the Wireless E-911 Emergency Services Fund.*

(v) *To make recommendations to the agency regarding the development of the annual report required of the agency by this act, including, but not limited to, recommendations concerning adjustments of the wireless E-911 surcharge.*

Section 11.4. Wireless E-911 Emergency Services Fund.

(a) *Establishment of fund.—There is hereby established in the State Treasury a nonlapsing restricted interest-bearing account to be known as the Wireless E-911 Emergency Services Fund. The fund shall consist of the fees collected under subsection (b), funds appropriated by the General Assembly and of funds from any other source, private or public. Moneys in the fund and the interest it accrues is hereby appropriated to the Pennsylvania Emergency Management Agency to be disbursed by the agency. The moneys in the fund shall be used only for the following costs:*

(1) *PSAP and wireless provider costs resulting from compliance with the FCC E-911 Order, including development, implementation and testing, operation and maintenance of a Statewide integrated wireless E-911 system. Costs paid from the fund must be eligible recurring or nonrecurring costs as determined by the agency in accordance with sections 11.2(a) and 11.5 for wireless E-911 service provided in accordance with the FCC E-911 Order or a county plan or amended county plan approved by the agency.*

(2) *The agency-approved costs of PSAPs specified in section 8(b) that relate directly or indirectly to the provision of wireless E-911 service, to the extent:*

(i) *the costs are not included in the costs paid under section 11.4(a)(1) and the approved E-911 costs provided in section 11.4(a)(1) have been reimbursed; and*

(ii) *the costs do not exceed the percentage of the actual ratio of demonstrated wireless calls to demonstrated total emergency call volume times the amount of money in the fund, and further:*

(A) *the amount of the costs that may be reimbursed is limited to 25% of the fund if a majority of wireless providers serving the*

geographic area covered by the PSAP have been tested and accepted by the PSAP for wireless E-911 Phase I service;

(B) the amount of the costs that may be reimbursed is limited to 50% of the fund if all of the wireless providers serving the geographic area covered by the PSAP have been tested and accepted by the PSAP for wireless E-911 Phase I service;

(C) the amount of the costs that may be reimbursed is limited to 75% of the fund if a majority of wireless providers serving the geographic area covered by the PSAP have been tested and accepted by the PSAP for wireless E-911 Phase II service; and

(D) the amount of the costs that may be reimbursed is limited to 100% of the fund if all of the wireless providers serving the geographic area covered by the PSAP have been tested and accepted by the PSAP for wireless E-911 Phase II service.

In the event that, pursuant to an FCC E-911 waiver, a wireless provider is temporarily relieved of its obligation to provide wireless E-911 Phase II service in the geographic area covered by a requesting PSAP, such wireless carrier shall be disregarded in the determinations to be made pursuant to subparagraphs (iii) and (iv) until such time as the wireless carrier's obligation to provide wireless E-911 Phase II service again becomes effective.

(b) Wireless E-911 surcharge.—Each wireless service customer shall pay a fee, to be known as a wireless E-911 surcharge, in an amount of \$1 per month for each device that provides wireless service for which that customer is billed by a wireless provider for wireless service or receives prepaid wireless telephone service from a wireless provider. Such fee shall be collected apart from and in addition to any fee levied by the wireless provider in whole or in part for the provision of 911 services.

(1) Wireless providers shall collect the fee on behalf of the agency as part of their billing process and shall have no obligation to take any legal action to enforce the collection of the surcharge. Such action may be brought by or on behalf of the agency. Annually, upon written request of the agency, each wireless provider shall provide a list of the names and addresses of those wireless service customers carrying a balance that have failed to pay the wireless E-911 surcharge. The wireless provider shall not be liable for such unpaid amounts.

(2) If a wireless provider receives a partial payment for a monthly bill from a wireless service customer, the wireless provider shall apply the payment against the amount the wireless service customer owes the wireless provider first and shall remit to the State Treasurer such lesser amount, if any, as shall result therefrom.

(3) The fees collected under this subsection shall not be subject to taxes or charges levied by the Commonwealth or any political subdivision of this Commonwealth, nor shall such fees be considered revenue of the wireless provider for any purpose.

(4) In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by this section shall be remitted based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities, such as customer address, location associated with the MTN, or reasonable allocation method based upon other comparable relevant data and associated with Pennsylvania, for each wireless customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of each month, if such information is available.

(c) Remittance of fees.—On a quarterly basis, each wireless provider shall remit the fees collected under subsection (b) to the State Treasurer for deposit into the fund.

(d) Reimbursement of wireless provider and PSAP costs.—

(1) From every such remittance, the wireless provider shall be entitled to deduct and retain an amount not to exceed 2% of the gross receipts collected as reimbursement for the administrative costs incurred by the wireless provider to bill, collect and remit the surcharge.

(2) Wireless providers and PSAPs shall be entitled to payment from the fund, in the manner provided in section 11.5(c), for the following costs:

(i) Recurring costs approved by the agency pursuant to agency rules associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served by the requesting PSAP; and

(ii) Nonrecurring costs approved by the agency pursuant to agency rules associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served by the requesting PSAP.

(3) In no event shall any costs be paid that are not related to a wireless provider's or PSAP's compliance with requirements established by the wireless E-911 State plan, the FCC E-911 Order or the wireless E-911 provisions of an agency-approved county plan or amended county plan.

(4) Costs incurred by a PSAP or wireless provider for wireless E-911 service prior to the effective date of this section shall be paid by the agency provided that the costs comply with the requirements of this section and section 11.5, were incurred after January 1, 1998, and are determined by the agency, after application in accordance with section 11.5(c), to be eligible for payment from the fund. Any such costs that the agency determines to be eligible shall be paid as provided in section 11.5.

(5) Nothing in this act shall prevent a wireless provider from recovering its costs of implementing and maintaining wireless E-911 service directly from its customers, whether itemized on the customer's

bill or by any other lawful method. No wireless provider that levies such a separate fee for provision of E-911 wireless service in the geographic area served by the requesting PSAP may receive a reimbursement for the same costs.

(e) Reporting by wireless providers.—With each remittance a wireless provider shall supply the following information to the State Treasurer and to the agency:

(1) The total fees collected through the wireless E-911 surcharge from its wireless service customers during the reporting period.

(2) The total amount retained by it as reimbursement for administrative costs to cover its expenses of billing, collecting and remitting the fees collected from the wireless E-911 surcharge during the reporting period.

(3) Until all nonrecurring costs have been recovered by a wireless provider, the total amount it has been reimbursed by the agency for nonrecurring costs associated with the development, implementation, operation and maintenance of wireless E-911 service during the reporting period.

(f) Information to be supplied by wireless providers.—All wireless providers shall provide the agency with such information as it shall request in writing in order to discharge its obligations under this section, including, but not limited to, the collection and deposit of the wireless E-911 surcharge and its administration of the fund. Information supplied by wireless providers pursuant to this section shall remain confidential, and release of such information shall be governed by section 11.7.

(g) Prohibition.—No part of the fund, including any excess amount under section 11.6(a), shall be used for any purpose unless expressly authorized by this act.

(h) Surcharge sunset.—The wireless E-911 surcharge fee established in subsection (b) shall terminate on June 30, 2009, unless extended by an act of the General Assembly.

Section 11.5. Disbursement of fund amounts by agency.

(a) Expenditures for wireless E-911 systems.—During each fiscal year the agency may, only in furtherance of the Wireless E-911 State plan, disburse moneys from the Wireless E-911 Emergency Services Fund to PSAPs with agency-approved county plans or amended county plans and wireless providers for the following purposes:

(1) To pay the costs of PSAPs and wireless providers provided for in section 11.4(a)(1) and (d)(2) and the costs of PSAPs provided for in section 11.4(a)(2).

(2) To train emergency service personnel regarding receipt and use of wireless E-911 service information.

(3) To educate consumers regarding the operations, limitations, role and responsible use of wireless E-911 service.

(b) Limitations on use of fund amounts by PSAPs.—No PSAP shall receive a disbursement from the fund for any cost necessary to house the wireless E-911 system or for the purchase of real estate, cosmetic remodeling, ambulances, fire engines or other emergency vehicles, utilities, taxes and other expenses as determined by the agency. No more than 70% of the disbursements which a PSAP receives from the fund during the agency's fiscal year may be utilized to fund personnel training, salary and benefit costs.

(c) Manner of payment.—Each PSAP and wireless provider shall submit to the agency each year, not later than 120 days before the first day of the agency's fiscal year, the eligible costs it expects to incur for wireless E-911 service during the next fiscal year of the agency. The submission may include eligible costs that the PSAP or wireless provider has already incurred for wireless E-911 service at the time of the submission. The agency shall review the submission, ensure that the costs are eligible for payment from the fund and notify the submitting PSAP or wireless provider, not later than 30 days before the first day of the agency's fiscal year, of the eligible costs. The agency shall pay to each PSAP and wireless provider, from the fund, the amount of the submitted costs the agency determined to be eligible, whether or not the costs have been incurred at or before the time of payment and whether or not the costs, if already incurred, were incurred prior to the effective date of this section. Payment shall be made in four equal payments during the first month of each quarter of the agency's fiscal year as follows:

(1) The agency shall first pay the costs approved for each PSAP that are payable in the quarter.

(2) Following the payment of approved costs to a PSAP for Phase I deployment of wireless E-911 service, as set forth in the FCC E-911 Order, but only after the PSAP has issued its request to wireless providers to furnish Phase I wireless E-911 service pursuant to the FCC E-911 Order, the agency shall pay the approved costs of wireless providers that are payable in the quarter to provide the requested wireless E-911 service to that PSAP.

(3) Following the payment of approved costs to a PSAP for Phase II deployment of wireless E-911 service, as set forth in the FCC E-911 Order, but only after the PSAP has issued its request to wireless providers to furnish Phase II wireless E-911 service pursuant to the FCC E-911 Order, the agency shall pay the approved costs of wireless providers that are payable in the quarter to provide the requested wireless E-911 service to that PSAP.

(4) In any quarter of the agency's fiscal year, all costs specified in section 11.4(a)(1) that are approved by the agency for payment to PSAPs or wireless providers shall be paid before any other costs payable pursuant to this chapter are paid to any PSAP or wireless provider. In the first quarter of the agency's fiscal year, the agency

shall determine whether payments to PSAPs and wireless providers during the preceding fiscal year exceeded or were less than the eligible costs incurred by each PSAP and wireless provider submitting costs during the fiscal year. Each PSAP and wireless provider shall provide verification of such costs as required by the agency. Any overpayment shall be refunded to the agency or, with the agency's approval, may be used to pay agency-approved costs the PSAP or wireless provider submitted for the current fiscal year of the agency. The amount of any underpayment will be paid to the PSAP or wireless provider in accordance with this subsection and subsection (d) within the current fiscal year. The agency shall reconsider a determination of eligible costs pursuant to this subsection upon request by a submitting PSAP or wireless provider and shall provide a procedure for such reconsideration.

(d) Pro rata sharing of fund amounts.—

(1) If the total amount of money in the fund in any quarter is insufficient to pay for both agency-approved PSAP costs and agency-approved wireless provider costs which are payable in the quarter under subsection (c) for both Phase I deployment and Phase II deployment of wireless E-911 service, as set forth in the FCC E-911 Order, then payments from the fund for that quarter shall be made as follows:

(i) The agency-approved Phase I deployment costs of a PSAP and those wireless providers to which the PSAP has issued its request for Phase I wireless E-911 service shall be paid before any agency-approved costs for Phase II deployment are paid.

(ii) If, notwithstanding subparagraph (i), the total amount of moneys in the fund in the quarter is insufficient to pay all Phase I deployment costs of both PSAPs and wireless providers which are payable in the quarter, then each requesting PSAP and each requesting wireless provider shall receive, for payment of Phase I deployment costs, a pro rata share of the total amount of moneys in the fund in the quarter.

(iii) If the total amount of moneys in the fund in the quarter is insufficient to pay all agency-approved Phase II deployment costs of both PSAPs and wireless providers which are payable in the quarter, then each requesting PSAP and each requesting wireless provider shall receive, for payment of Phase II deployment costs, a pro rata share of the total moneys in the fund which are available in the quarter for payment of Phase II deployment costs.

(2) For any PSAP or wireless provider, pro rata shares shall be computed based upon the total dollar amount of money available in the fund for payment of Phase I or Phase II deployment costs, whichever is applicable, multiplied by the ratio of:

(i) *the total dollar amount of agency-approved but unpaid costs of that PSAP or wireless provider for Phase I or Phase II deployment, whichever is applicable; to*

(ii) *the total dollar amount of all agency-approved but unpaid costs.*

(3) *Any remaining unpaid agency-approved PSAP costs or wireless provider costs shall be carried forward for payment during the next fiscal quarter. Such carryforward process shall continue each fiscal quarter until all agency-approved PSAP costs and wireless provider costs have been paid. Pro rata and other payments under this subsection, including, but not limited to, payments of costs which are carried forward for payment in subsequent fiscal quarters, shall also be subject to all provisions and requirements of subsection (c) except for subsection (c)(1).*

(e) *Triennial financial audit.—The agency shall require a triennial financial audit of each PSAP's use of the disbursements it has received from the fund and of a wireless provider's collection, deduction, retention, remittance and use of the amounts collected by the wireless provider under the wireless E-911 surcharge or the disbursements it received from the fund. These triennial financial audits shall be consistent with guidelines established by the agency, and the cost of each audit shall be paid from the fund.*

Section 11.6. Reporting.

(a) *Annual report by agency.—Not later than March 1 of each year, the agency, after consideration of the recommendations of the advisory committee, shall submit an annual report, which may be combined with that required by section 3(a)(5), to the Governor and the General Assembly. Subject to the provisions of section 11.7(b), the report shall include at least the following:*

(1) *The extent to which wireless E-911 systems currently exist in this Commonwealth.*

(2) *Those PSAPs which completed installation of wireless E-911 systems pursuant to the wireless E-911 State plan and the costs and expenses for installation.*

(3) *An itemization by PSAP or wireless provider, project and description and expenditure for each Wireless E-911 Emergency Services Fund disbursement made in the fiscal year just concluded. The itemization shall include an explanation of how each project contributed to the fulfillment of the existing wireless E-911 State plan.*

(4) *The planned expenditures for the next fiscal year for installation of wireless E-911 systems pursuant to the wireless E-911 State plan.*

(5) *The total aggregate fees collected from all wireless providers in the fiscal year just concluded based upon the reports of such providers*

submitted under section 11.4(e) and any other funds received by the fund.

(6) The amount of any unexpended funds carried forward in the fund.

(7) The amount of any remaining unpaid agency-approved PSAP costs or wireless provider costs being carried forward for payment during the next fiscal quarter.

(8) Any advances in a wireless provider's system technology or expansion of its customer service area which further the goal of providing access to a wireless E-911 system regardless of the customer's geographic location on any interstate highway in this Commonwealth.

(b) Study of wireless E-911 emergency services implementation and operation.—The agency, after consideration of the recommendations of the advisory committee, shall report to the Governor and the General Assembly no less than triennially its recommendations concerning wireless E-911 implementation and operation, including, but not limited to, necessary or required actions which must be undertaken in response to the Federal Communication Commission's directive in the FCC E-911 Order. The report shall recommend measures to be taken by the General Assembly.

Section 11.7. Public disclosure and confidentiality of information.

(a) Annual report of the agency.—The annual report of the agency shall be a public document.

(b) Prohibition against release of information.—Neither the State Treasurer, the agency, nor any employee, agent or representative of a PSAP or public agency shall divulge any information acquired with respect to any wireless provider, its customers, revenues or expenses, trade secrets, commercial information and such other proprietary information while acting or claiming to act as such employee, agent or representative, and all such information is hereby required to be kept confidential except that aggregations of information which do not identify or effectively identify numbers of customers, revenues or expenses, trade secrets, commercial information and such other proprietary information attributable to any individual wireless provider may be made public.

Section 11.8. Wireless provider records.

(a) Access.—Upon request from and pursuant to agreement with a PSAP, each wireless provider shall provide E-911 service data base information as permitted under the law to the requesting PSAP. Such information shall remain the property of the disclosing wireless provider and, except as otherwise provided by applicable Federal or State law, shall be used by the PSAP only in connection with providing emergency response services to a call to a 911 system or to a wireless E-911 system.

(b) Violations.—A person commits a misdemeanor of the third degree who:

(1) Uses or discloses wireless E-911 service data base information for purposes other than handling a call to a 911 system or to a wireless E-911 system without the consent of the wireless service customer or as otherwise provided by applicable Federal or State law.

(2) Knowingly uses the telephone number of a 911 system or wireless E-911 system to avoid any charges for the services of a local exchange carrier, competitive local exchange carrier, interexchange carrier or wireless provider.

(c) Privacy waived.—The provisions of 66 Pa.C.S. § 2906 (relating to dissemination of telephone numbers and other identifying information) shall have no application to wireless providers to the extent they are engaged in providing wireless E-911 service or related services.

Section 11.9. Immunity.

(a) Generally.—No wireless provider or its officers, directors, employees, agents or vendors shall be liable to any person for civil damages resulting from or caused by such wireless provider's, its officers', directors', employees', agents' or suppliers' participation in or acts, failure or omissions in connection with that participation in the development, design, installation, operation, maintenance, performance or provision of wireless E-911 service, except for willful or wanton misconduct.

(b) Parity of liability.—A wireless provider shall have the same immunity from liability for transmission errors or failures, network outages or other technical problems that arise in the course of handling emergency calls or providing emergency services, including wireless E-911 service, as a local exchange carrier enjoys in the course of handling such calls or providing such services.

(c) Release of information.—No wireless provider or its employees or agents shall be liable to any person for releasing wireless service customer information to the agency or to any 911 system or wireless E-911 system, public agency or PSAP as required by this act.

Section 11.10. Agency funding for wireless E-911 support.

The agency is authorized to retain up to 2% of the annual wireless E-911 surcharge proceeds to pay for agency expenses directly related to administering the wireless E-911 provisions of this act. This will include, but will not be limited to, personnel, travel, administrative, financial auditing and printing costs.

Section 11.11. Rate regulation.

Nothing in this act shall be construed to constitute the regulation of the rates charged by wireless providers for any service or feature which they provide to their wireless service customers or to prohibit a wireless provider from charging a wireless service customer for any service or feature provided to such customer.

Section 11.12. Rules and regulations.

The council shall have the power and authority to issue guidelines and to promulgate, adopt, publish, use and enforce rules and regulations for the implementation of this act and shall, within one year of the effective date of this act, after consideration of the recommendations of the advisory committee, promulgate such guidelines and rules and regulations as may be necessary to implement this act. Guidelines and rules and regulations proposed under the authority of this section shall be subject to review by the General Counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 11.13. Enforcement of provisions of act.

In addition to any powers expressly enumerated in this act, the agency shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its rules and regulations or otherwise, all and singular, the provisions of this act, and the agency may institute injunction, mandamus or other appropriate legal proceedings to enforce the provisions of this act and regulations promulgated under it.

Section 7. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 8. This act shall take effect as follows:

- (1) The wireless E-911 subscriber surcharge provided in section 11.4 of the act shall take effect with the first monthly billing cycle of a wireless provider occurring 90 days after the effective date of this act.
- (2) The remainder of this act shall take effect in 90 days.

APPROVED—The 30th day of December, A.D. 2003.

EDWARD G. RENDELL