

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 341

An Act to amend and reenact §§ 56-484.12 and 56-484.17 of the Code of Virginia, relating to wireless enhanced 9-1-1 surcharge.

[S 942]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-484.12 and 56-484.17 of the Code of Virginia are amended and reenacted as follows:

§ 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Director" means the Director of the Department of Technology Planning.

"Division" means the Division of Public Safety Communications Systems.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning attributed in subsection L of § 58.1-3812.

"Public safety answering point" or PSAP means a facility (i) equipped and staffed on a ~~twenty-four~~ 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of ~~seventy-five cents~~ \$.75 billed ~~monthly~~ by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the

Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Except as provided in § 2.2-1710, moneys in the Fund shall be used solely for the purposes stated in subsections C through F. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. All wireless E-911 surcharges shall be remitted within ~~thirty~~ 30 days to the Board for deposit in the Fund. Each CMRS provider shall reduce collected surcharge amounts to the minimum amount necessary to defray costs of collecting the surcharges, ~~not to exceed~~ *equal to* three percent of the amount collected. State and local taxes shall not apply to the wireless E-911 surcharge. Fees levied under this subsection shall be subject to the provisions of subsection K of § 58.1-3812.

The surcharge shall be collected from wireless service subscribers through monthly billing. For any subscriber not billed on a monthly basis, the surcharge shall be collected either at the point of sale or calculated monthly based on the number of wireless subscribers on the last day of the month. The surcharge amount or an equivalent number of air-time minutes may be reduced from a prepaid subscriber's account when direct billing is not possible.

C. The Board shall provide full payment to PSAP operators for all wireless E-911 PSAP costs and to CMRS providers of all wireless E-911 CMRS costs. For these purposes (i) each PSAP operator shall submit to the Board on or before October 1 of each year, an estimate of wireless E-911 PSAP costs it expects to incur during its next fiscal year and (ii) each CMRS provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it operates. The Board shall review such estimates and advise each PSAP operator and CMRS provider on or before the following March 1 whether its estimate qualifies for payment hereunder and whether the Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. Each PSAP operator and CMRS provider shall notify the Board promptly of any material change in its plans to provide wireless E-911 service.

D. The Board shall make such qualifying payments to each PSAP operator and CMRS provider in four equal payments at the beginning of each calendar quarter of such fiscal year. If the Wireless E-911 Fund is insufficient during any calendar quarter to make all such qualifying payments, the Board shall prorate payments equally among all PSAP operators and CMRS providers during such calendar quarter. Unpaid amounts shall be carried forward for payment during the next calendar quarter. Such carry-forward process shall continue until all qualifying payments have been made.

E. During the period July 1 through September 30 of each year, the Board shall determine whether qualifying payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or CMRS provider. Each PSAP operator or CMRS provider shall provide such verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the Board or credited to qualifying payments during the then current fiscal year, on such schedule as the Board shall determine.

F. Any estimate of wireless E-911 PSAP costs submitted to the Board after October 1 and any estimate of wireless E-911 CMRS costs submitted to the Board after December 31 of any year shall be reviewed by the Board as described in subsection A to the extent practicable as determined by the Board; however, qualifying payments based on estimates submitted in accordance with the schedule set forth in subsection A shall have priority for payment.

G. CMRS providers and PSAPs found by the Board to be using the Wireless E-911 Fund moneys for purposes other than those authorized by the Board shall be provided with written notice by the Board of such unauthorized expenditures. Upon receipt of the notice, the named CMRS provider or PSAP shall cease making any expenditure involving Wireless E-911 Fund moneys identified by the Board as unauthorized. The CMRS provider or PSAP may petition and shall receive a hearing before the Board within a reasonable time. At the Board's discretion, the CMRS provider or PSAP shall be required to refund within ~~ninety~~ 90 days any Wireless E-911 Fund moneys spent on unauthorized expenditures to the Board for deposit into the Wireless E-911 Fund. CMRS providers or PSAPs who fail to cease making unauthorized expenditures or fail to comply with a request to refund Wireless E-911 Fund moneys shall be subject to a suspension of future Wireless E-911 funding by the Board until such time as they comply with all provisions of this article. Any action of the Board made pursuant to this section shall be subject to appeal to the circuit court in which the CMRS provider or PSAP is located, or to the Circuit Court for the City of Richmond.

H. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the

Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission.

I. The special tax authorized by § 58.1-3813.1 shall not be imposed on consumers of CMRS.