Publication Date: **September 11, 2009**
Effective Dates: **September 11, 2009 through February 7, 2010**

PUBLIC SERVICE COMMISSION OF WISCONSIN
ORDER ADOPTING EMERGENCY RULES (1-AC-228)

The Public Service Commission of Wisconsin (Commission) proposes an order to create ch. PSC 172 related to the police and fire protection fee created under 2009 Wisconsin Act 28.

FINDING OF EMERGENCY

The Commission finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009,[1] will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

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. A completed Fiscal Estimate is included as Attachment C.

EFFECTIVE DATE

This rule shall take effect upon publication in the *Wisconsin State Journal*.

CONTACT PERSON

Questions from the media may be directed to Tim Le Monds, Director of Governmental and Public Affairs at (608) 266-9600. Small business questions may be directed to Gary Evenson, Telecommunications Division Administrator, at (608) 266-6744 or Gary.Evenson@psc.state.wi.us. Other questions regarding this matter should be directed to Docket Coordinator Dennis Klaila at (608) 267-9780 or Dennis.Klaila@psc.state.wi.us. Hearing or speech-impaired individuals may use the Commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (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 proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed above.

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., 227.11 and 227.24.

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. Section 227.24 allows agencies to draft emergency rules in certain circumstances.

Emergency rules may be promulgated if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to when it would otherwise take effect. The police and fire protection fee, which must go into effect

[1] 2009 Wisconsin Act 28, s. 9441.

September 1, 2009,[2] will be used to replace shared revenue payments for such services. To ensure the health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue unimpeded, quickly, and smoothly. Thus, it is important that the rule establishing the requirements and process for collection of this fee be implemented as soon as possible.

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 governments. Anyone required to assess the fee must register with the department of revenue, 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 phone 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 Department of Revenue (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 PSC 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.

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[2] 2009 Wisconsin Act 28, s. 9441.

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 Department of Revenue (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@psc.state/wi.us. Small business questions may be directed to Gary Evenson, Telecommunications Division Administrator, at (608) 266-6744 or gary.evenson@psc.state.wi.us. 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. Comments
Comments on this rule may be submitted as part of the docket for a permanent rule on this matter or at the emergency rule hearing.

K. 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 resellers.
(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" are 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 with no expectation that it will be resold. 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 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).

(14) "Retailer" means a person that sells a prepaid wireless communications plan on behalf of a communications provider.

(15) "Subscriber" means a person that enters into a subscription communications plan with a communications provider.

(16) "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 the subsequent month or paid in arrears for the service previously provided.

(17) "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.

(18) "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 source of the sale is Wisconsin under s. PSC 172.06 (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 resellers that bill end-users for the communications services provided, except that the fee shall be applied by the reseller 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.

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 less 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.

(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 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 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, but establishes to the satisfaction of the commission and the department that the customer is aware that the fee is included in the total sales price of the prepaid wireless retail transaction, the sales price shall be 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. (a) 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 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.

PSC 172.08 Resale. (1) (a) A reseller 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 services to resell. The reseller 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.

(b) Within 30 days of the effective date of this rule […LRB inserts date…], a reseller shall file a form under par. (a) for services it is purchasing at that time. If that form is not for continuous purchases, the reseller 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 reseller shall file a form under par. (a) within 10 days of purchasing services for resale.

(2) When filing a return under s. PSC 172.06 (1), a communications provider selling services for resale to a reseller 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 reseller shall apply, collect, and remit the fee for all communications service connections that it resells to an end-user.

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

(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. Effective date: This rule is effective upon publication in the Wisconsin State Journal.

SECTION 3. 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.

2009 Session

☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL	LRB or Bill No./Adm. Rule No. 1-AC-228
FISCAL ESTIMATE DOA-2048 N(R10/96)	Amendment No. if Applicable

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 sum sufficient 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.)	**Authorized Signature/Telephone No.**	**Date**
Gordon Grant 267-9086	Gordon Grant	8/11/2009