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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-26

#### Comments

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

#### 1. Statutory Authority

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

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

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

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

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

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

a. The term “active prepaid wireless telephone” is used only once in the rule (in s. PSC 173.10 (2) (b) 2.). The definition should be omitted and, in the referenced section, the phrase “when the telephone becomes an active prepaid wireless telephone” should be replaced with a phrase regarding when the telephone acquires the attributes in the definition. Also, the definition includes three criteria: the telephone has been used or activated; a call has been completed; and the customer’s card or account has been decremented. Are all of these criteria necessary, or can any one or two of them define the circumstances intended? It would appear that decrementing the card or account may be a sufficient criterion.

b. The definition of “application” is sufficiently obvious that it should be omitted.

c. In the definition of “fund,” the reference to s. 25.17 (1) (yo), Stats., should be omitted. Section 25.98, Stats., creates the fund and s. 25.17 (1) (yo) places the fund under the management of the Investment Board.

d. Once defined, a term should be used consistently throughout a rule. Although this rule defines “fund” as the Wireless 911 Fund, it also makes reference to it by the full name.

e. The first sentence of the definition of “surcharge period” is duplicative of the section it references; it should be omitted or placed in a note. The remainder of the definition should more closely follow the form of the statutory definition: “...means the period beginning...and ending...”

f. The term “wireless 911 surcharge” is used only in the definition of the term and in the title of s. PSC 173.10; the rest of the rule uses the term “wireless surcharge.” Only one term should be used throughout. Given the clear context, it could be reduced to just “surcharge,” even in the section title, without losing clarity (though either of the other versions is fine, as well). Also, the surcharge is not merely authorized by s. 146.70 (3m) (f), Stats., it is **required**. The definition should reflect this.

g. Section PSC 173.05 should refer to contracts “under this subchapter” or, more precisely, “under s. PSC 173.03.”

h. Section PSC 173.06 (2) and (3) restate language in the statutes. The second sentence of s. PSC 173.06 (2) however, omits the phrase “in this state” after “reimbursed by customers,” while the first sentence of s. PSC 173.06 (3) omits the phrase “before or during the reimbursement period” after “in this state.” These provisions were debated extensively in the Legislature, including specific discussion of the phrases in question. The rule should more closely conform to the statutes, especially on this point.

i. The term “Phase I or Phase II wireless 911 service,” used in s. PSC 173.06 (4), should be defined. Also, in the first sentence, the second “the” should be deleted.

j. Section PSC 173.07 (1) appears to allow any local government to apply for a grant. This should be limited to a local government designated under s. 146.70 (3m) (c) 3. and 4., Stats.

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

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

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

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

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

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

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

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

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