

## Chapter PSC 172

### POLICE AND FIRE PROTECTION FEE ON COMMUNICATIONS CONNECTIONS

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**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.

**History:** EmR0919; emerg. cr. eff. 9-11-09; CR 09-086; cr. Register June 2010 No. 654, eff. 7-1-10.

**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:

- Retail basic local voice service.
- Retail wireless voice service.
- Retail voice over internet protocol service.

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

**(7)** “Customer” means a person that purchases a communications service connection. “Customer” includes pay telephone providers, but excludes communications providers that resell communications service.

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

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

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

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

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

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

**(12)** “Prepaid wireless communications plan” means a plan for wireless voice service that provides a person the right to utilize wireless voice service, is paid for prior to use, and is sold in prede-

termined dollar amounts whereby a number of units declines with use of a known amount.

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

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

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

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

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

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

- Enables real-time, two-way voice communications.
- Employs a broadband connection from the user’s location.
- Requires internet protocol-compatible customer premises equipment.

(d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

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

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

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

**History:** EmR0919; emerg. cr. eff. 9-11-09; CR 09-086; cr. Register June 2010 No. 654, eff. 7-1-10; correction in (9) made under s. 13.92 (4) (b) 7., Stats., Register June 2010 No. 654.

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

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

(a) Those purchased by offices and agencies of the federal government or a sovereign tribe.

(b) Those used as official company lines.

(c) Those sold to a communications provider that resells communications service connections and bills end-users for the communications services provided, except that the fee shall be applied by the communications provider that resells communications service connections when the connection is resold to an end-user.

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

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

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

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The purpose the fee is intended to serve.

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

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

1. If a customer receives the purchased item at a seller's business location, the sale is sourced to that business location.

2. If a customer does not receive the purchased item at a seller's business location, the sale is sourced to the location where the customer, or the customer's designated recipient, receives the product, including the location indicated by the instructions known to the seller for delivery to the customer or the customer's designated recipient.

3. If the location of a sale of a purchased item cannot be determined under subd. 1. or 2., the sale is sourced to the customer's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if the seller's use of that address to establish the location of a sale is not in bad faith.

4. If the location of a sale of a purchased item cannot be determined under subds. 1. to 3., the sale is sourced to the customer's address as obtained during the consummation of the sale, including the address indicated on the customer's payment instrument, if no other address is available and if the seller's use of that address is not in bad faith.

5. If a customer buys a prepaid wireless communications plan and the location of the sale cannot be determined under subds. 1. to 4., the sale is sourced to the location associated with the telephone number associated with the plan, as determined by the seller.

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

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

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

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

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

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

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

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

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

(4) **EXTENSIONS.** The department may, for good cause, extend the time for making any return or remitting any amount under this chapter. The extension may not exceed one month from the due date of the return and may be granted at any time provided a request is filed with the department within or prior to the period for which the extension is requested.

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

**PSC 172.07 Uncollectible amounts, misidentified accounts, and returns.** (1) **UNCOLLECTIBLE AMOUNTS.** (a) A filer under s. PSC 172.06 (1) may claim a deduction for an unpaid fee if all of the following are met:

1. The communications provider or retailer previously reported and remitted the fee to the department.

2. The communications provider or retailer writes off the fee as uncollectible in its books and records.

3. The unpaid fee is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the filer is required to file a federal income tax return.

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

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

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

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

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

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

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

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

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

**PSC 172.08 Resale.** (1) (a) A communications provider that resells communications service connections shall file a properly completed form PFP-211, Wisconsin Police and Fire Protection Fee Resale Certificate, with the communications provider from which it purchases communications service connections to resell. The communications provider that resells communications

service connections shall certify that the service connections it has purchased are being, or will be, resold. The certificate shall indicate whether the certificate is for a single purchase or for continuous purchases.

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

(b) Within 30 days of July 1, 2010, a communications provider that resells communications service connections shall file a form under par. (a) for services it is purchasing at that time. If that form is not for continuous purchases, the provider shall file a form under par. (a) within 10 days of purchasing additional services for resale. If a new purchasing relationship is established after July 1, 2010, the communications provider that resells communications service connections shall file a form under par. (a) within 10 days of purchasing communications service connections for resale.

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

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

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10; correction in (2) made under s. 13.92 (4) (b) 7. Stats., Register June 2010 No. 654.

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

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

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

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

(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.

**History:** EmR0919: emerg. cr. eff. 9-11-09; CR 09-086: cr. Register June 2010 No. 654, eff. 7-1-10.

**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.

**History:** EmR0919; emerg. cr. eff. 9-11-09; CR 09-086; cr. Register June 2010 No. 654, eff. 7-1-10.

**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.

**History:** EmR0919; emerg. cr. eff. 9-11-09; CR 09-086; cr. Register June 2010 No. 654, eff. 7-1-10.