

PUBLIC SERVICE COMMISSION

911 Grant Program and Surcharge

Motion:

Move to create a 911 grant program administered by the Public Service Commission (PSC) and authorize a surcharge to provide program funding as follows:

Basic Surcharge. Impose a monthly surcharge on certain communication service connections to provide funding for the 911 system based on the following provisions:

A monthly 911 surcharge would be imposed beginning on the first day of the third month beginning after the budget act's effective date. The surcharge would apply to each active voice and non-voice communications service connection that is capable of accessing the 911 system. Initially, the surcharge would be set to a maximum of seventy-five cents or a lower amount set by the PSC, as described below. The surcharge would be payable by the subscriber to the service provider. Service providers would be allowed to list the surcharge separately from other charges on the bill. Partial payments made by a subscriber would be applied first to the amount the subscriber owes the service provider for service. The maximum surcharge would be adjusted annually based on the change in the consumer price index for the Midwest region, U.S. Department of Labor, for the month of August of the previous year and of the year before that year.

The PSC would be required to monitor the revenues and interest generated by the surcharge. If the PSC determines that the rate produces revenue in excess of the amount needed, the PSC would be required to reduce the rate, provided that rate would ensure full cost recovery for grant recipients over a reasonable period. A change in the amount of the surcharge rate would become effective only on January 1 of each year. The PSC would be required to notify providers of a change in the rate at least 90 days before a change becomes effective.

If the PSC determines that the surcharge rate produces revenue that is less than the amount needed, the PSC would be required to increase the rate. The increased rate would be required to ensure full cost recovery for grant recipients over a reasonable period, but no increase could result in a surcharge greater than the maximum surcharge, as adjusted by the change in the consumer price index for that year, as described above. A change in the amount of the surcharge rate would become effective only on January 1 of each year. The PSC would be required to notify providers of a change in the rate at least 90 days before the change becomes effective.

Surcharge for Subscribers of Prepaid Wireless Plans. Exclude prepaid wireless telecommunications plans from the preceding surcharge and instead base the surcharge for those

plans on the following provisions.

The prepaid wireless 911 surcharge would be based on each retail transaction. The rate of the surcharge per retail transaction would be one-half of the basic surcharge described above. The prepaid wireless 911 surcharge would be collected by the seller from the consumer with respect to each retail transaction occurring in the state. Providers would be allowed to state the amount of the prepaid wireless 911 surcharge separately on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or to otherwise disclose the surcharge to the consumer. A retail transaction that is effected in person by a consumer at a business location of the seller would be treated as occurring in this state if that business location is in this state, and any other retail transaction would be treated as occurring in this state if the retail transaction is treated as occurring in this state. The prepaid wireless 911 surcharge would be the liability of the consumer and not of the seller or of any provider, except that the seller would be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers, including all such surcharges that the seller would be deemed to collect where the amount of the surcharge is not separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller. The amount of the prepaid wireless 911 surcharge collected by a seller from a consumer, would not be included in the base for measuring any tax, fee, surcharge, or other charge imposed by this state or its political subdivisions. The prepaid wireless 911 surcharge would be proportionately increased or reduced, based on changes to the basic surcharge, and those increases or reductions would become effective on the effective date of the change to the basic rate or, if later, the first day of the first calendar month to occur at least 60 days after the implementation of such change. The PSC would be required to establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, like the procedures for documenting sale for resale transactions under the state general sale and use tax. The prepaid wireless 911 surcharge could be the only 911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge could be imposed by the state or its political subdivisions for 911 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

General Surcharge Provisions. Require service providers to remit payments to the PSC on a monthly basis based on the following provisions.

Service providers would be required to remit collected surcharges to the PSC by the end of the calendar month following the month the provider received the charges from its subscribers. Providers would be allowed to deduct and retain an administrative allowance equal to the greater of 1% of the amount of the remitted surcharge or \$50 per month. Service providers would have no obligation to take any legal action to enforce the collection of the surcharge billed to a subscriber. The PSC would be authorized to initiate a collection action, which would include the recovery of reasonable costs and attorneys' fees associated with the action, against the subscriber. The PSC would be authorized to require service providers to report the amount of uncollected surcharges on an annual basis, or less frequently as the Commission determines. The PSC would be authorized to request the name, address, and telephone number of a subscriber who refuses to pay the 911

surcharge.

911 Fund. Create a SEG fund called the 911 fund based on the following provisions.

With guidance from the 911 Advisory Board (described below), the PSC would administer the fund. The PSC would be required to credit to the fund all revenues remitted to it from the surcharge imposed under this proposal, and revenue in the fund could only be used as provided in this proposal. The PSC would be allowed to deduct and retain for its administrative expenses up to 1% of the annual revenues generated by the fund. All remaining revenues in the fund would be used to make grants under this proposal. In February of each odd-numbered year, the PSC would be required to issue a report to the Legislature. The report would be required to contain complete information regarding receipts and expenditures of all funds received by the PSC during the period covered by the report, the status of the 911 system in Wisconsin at the time of the report, and the results of any related investigations by the PSC completed during the period covered by the report.

Grants. Authorize the PSC to make grants to reimburse service providers and local governments maintaining designated public safety answering points for incurred costs, previously approved by the PSC based on the following provisions. Limit the total amount of grants to any provider or local government to the estimated amount approved in the grant by the Commission for that provider or local government.

Service providers would be eligible for reimbursement of actual costs incurred in complying with the requirements of enhanced 911 service. Costs of complying would include costs incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide service as well as the recurring and nonrecurring costs of providing the service. Reimbursements would be limited to costs and expenses that are commercially reasonable, and all invoices for reimbursement would have to be related to compliance with the requirements of enhanced 911 service. Enhanced 911 service would be defined as the delivery of 911 calls with automatic number identification and automatic location identification to an appropriate public safety answering point by selective routing based on the geographical location from which the call originated and providing either a specific street address or information defining the approximate geographic location, in accordance with orders promulgated by the Federal Communications Commission.

Grants to local governments would be limited to those governments operating a designated primary public safety answering point that was in operation as of November 30, 2008, except that for counties without wireless enhanced 911 services on that date, one local government operating a public safety answering point in each county would be eligible for grants if that government is designated as the primary public safety answering point in the county. Further, grants would be limited to actual costs incurred by the public safety answering point in complying with the requirements of enhanced 911 service. Costs of complying would include costs incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide service as well as the recurring and nonrecurring costs of providing the service, and costs associated with training public safety

answering point personnel. To obtain reimbursement, a local government's designated primary public safety answering point would have to submit an annual application to the PSC identifying expenses eligible for reimbursement under the program and listing the invoices for reimbursement that are related to compliance with enhanced 911 service requirements. Further, the application would have to include the costs of landline 911 trunks and charges for the designated and authorized public safety answering points in the county.

A local government that receives a distribution from the fund would be prohibited from using the amount received to pay for the lease or purchase of real estate, radio equipment for field personnel or equipment, or the purchase of police vehicles, ambulances, fire engines, or other emergency vehicles, or their associated emergency personnel. Distributions would be required to be used for the following items:

- designated public safety answering point personnel training expenses including salaries while in training, the cost of transportation, lodging, instructors, certifications, improvement programs, quality assurance training, and training associated with call-taking, and emergency medical, fire, or law enforcement procedures;

- the lease, purchase, or maintenance of equipment in the designated public safety answering point used in the delivery of 911 calls such as phone systems, database provisioning, addressing, voice recorders, instant recorders, computer-aided design (CAD)/computer systems, GIS functions including computerized geographical information including street centerlines, natural features, commonly identified named facilities, ortho-rectified photography, and oblique imaging, dispatcher consoles and their radio equipment, local exchange carriers and 911 public safety answering point trunk and line costs and their data maintenance costs, 911 trunks and charges for authorized public safety answering points within a county system; and

- charges associated with the service supplier's 911 service and other service supplier recurring charges. The designated public safety answering point providing 911 service would be responsible to the voice communications or other service providers for all 911 installation, service, equipment, operation, and maintenance charges owed to the service provider for a county system. A designated public safety answering point would be allowed to contract with a service provider on terms agreed to by it and the service provider.

If the total amount of invoices submitted to the PSC and approved for payment in a month exceeds the amount available from the 911 fund for reimbursements, the amount payable to each service provider and local government would be reduced proportionately so that the amount paid would not exceed the amount available for payment. The balance of the payment would be deferred. A local government and its designated public safety answering point would be required to comply with all requests by the PSC for financial information related to the operation of the public safety answering point and, upon request, to provide a copy of its annual audit to the PSC. Any local government with a designated public safety answering point would be required to include the designated public safety answering point in the local government's annual audit.

911 Advisory Board. Create a 911 Advisory Board based on the following provisions.

The PSC would be required to appoint a board to advise it concerning the administration of

the 911 grant program and surcharge, any related administrative rules, and any other matters assigned to the board by the PSC. In addition, the board would assist the 911 coordinator, described below, in the development of a statewide plan for Enhanced 911 services for the state.

The board would consist of diverse membership of service providers and public safety representatives. The board would consist of members from the following groups:

- an individual recommended by the League of Wisconsin Municipalities;
- an individual recommended by the Wisconsin Counties Association;
- an individual recommended by the Wisconsin Chapter of the National Emergency Number Association;
- an individual recommended by the Badger State Sheriffs Association;
- two individuals who represent commercial mobile radio service providers operating in Wisconsin;
- an individual recommended by the Wisconsin Chapter of the Association of Public Safety Communications Officials;
- two individuals recommended by the Wisconsin State Telecommunications Association, one of whom represents a local exchange carrier with less than 50,000 access lines;
- an individual who represents a voice over internet protocol provider;
- a police chief recommended by the Wisconsin Police Chiefs Association;
- a fire chief recommended by the Wisconsin Fire Chiefs Association;
- an individual recommended by the state Emergency Management Association;
- an individual who represents the cable industry; and
- an individual recommended by the Wisconsin Emergency Medical Services Association.

Each board member would be appointed to a staggered three-year term, and members would remain in office until their successors are appointed. Vacancies would be filled in the same manner as original appointments. The board would elect a chairperson and vice chairperson from its membership, but those offices could not be filled by PSC staff. The term of these positions would be one year. Elections would be held at the first meeting of each calendar year.

The board would meet upon the call of the chair or by a majority vote of the members and would be required to meet at least twice a year. Meetings would be open to the public. Members would serve without compensation, but members, other than those representing service providers could be reimbursed for their actual and necessary expenses incurred in the performance of their duties, subject to guidelines adopted by the board. A quorum of the board would be a majority of the members. Duties of the board would include providing advice in the administration of the 911 Fund, adopting by-laws to implement the program, other than the regulation of any enhanced 911 service, developing a statewide 911 plan, taking other necessary and proper action to implement the provisions of the program, and advising the state 911 coordinator in developing a statewide 911 plan. Members would be required to undertake their duties in a manner that is competitively and technologically neutral to all service providers. The board would be prohibited from leasing, constructing, operating, or owning a communications network for the purpose of providing 911 service.

Public Service Commission. Authorize 1.0 FTE position and provide \$166,600 SEG annually to fund a 911 state coordinator. Direct the PSC to develop a statewide plan for enhanced 911 services for the state. Authorize the Commission to promulgate administrative rules for the 911 grant program and administer the program, as described above. Create a SEG appropriation to provide grants to service providers and local governments estimated at \$41,233,400 in 2009-10 and \$61,033,400 in 2010-11. Estimate SEG-REV of \$41,400,000 in 2009-10 and \$61,200,000 in 2010-11 from surcharges imposed by telecommunications service providers.

Miscellaneous Provisions. Authorize miscellaneous administrative provisions as follows.

Recovery of Unauthorized Use of Funds. The PSC would be required to give written notice of violation to any service provider or designated public safety answering point found to be using monies from the 911 Fund for unauthorized purposes. Upon receipt of the notice, the service provider or designated public safety answering point would be required to cease making any unauthorized expenditures. Violators would be allowed to petition the PSC for a hearing on the question of whether the expenditures were unauthorized, and the PSC would be required to grant the request within a reasonable period. If, after the hearing, the PSC concludes the expenditures were in fact unauthorized, the PSC could require the service provider or designated public safety answering point to refund the monies improperly spent within 90 days of its determination.

Conditions for Providing Enhanced Wireless 911 Service. In accordance with the FCC Order 94-102, no provider would be required to provide enhanced wireless 911 service until all of the following conditions are met: (a) the provider receives a request for the service from the administrator of a public safety answering point that is capable of receiving and utilizing the data elements associated with the service; (b) funds for reimbursement of the provider's costs are available; and (c) the local exchange carrier is able to support the requirements of enhanced 911 service.

Audits. The PSC would be authorized to order audits of grant recipients to ensure that the funding was applied for and used appropriately. The audit and appeal procedures applicable to the state general sales and use tax would apply to prepaid wireless 911 surcharges.

Telephone Relay Service for the Hearing Impaired. Each public safety answering point receiving funding would be required to comply with FCC requirements that all 911 answering positions be equipped with the necessary equipment in order to accept 911 calls from the hearing impaired directly or through the use of a relaying service.

Subscriber Records. Subscriber records would remain the property of the disclosing provider and their use would be limited to providing emergency response services to 911 calls. Service provider connection information obtained by designated primary public safety answering point personnel for public safety purposes would not be public information under current law provisions. The disclosure or use, other than for 911 operations, of information contained in the database of the telephone network portion of a 911 system would be prohibited. Each service provider and public

safety answering point would be required to ensure that changes to the master street address guide or other location data are updated within 48-hours during business days of when submitted and/or received by the public safety answering point.

Proprietary Information. All proprietary information submitted to the PSC and 911 Advisory Board would be confidential. Proprietary information submitted under this program would not be subject to disclosure under statutory provisions relating to the uniform trade secrets act, and release of such information to any person other than to the submitting service provider, the PSC, and the 911 Advisory Board without the express permission of the submitting service provider would be prohibited. General information collected by the PSC and 911 Advisory Board could be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual service provider.

Limitation of Liability. Specify that a service provider, defined as an entity that provides exchange telephone service to a telephone subscriber, or cellular services, or voice over internet protocol services, or cable telephony, or provides service to a device that can access 911, would not be liable to any person who uses an emergency number system or makes an emergency telephone call initially routed to a wireless public safety answering point.

Note:

The motion would establish a surcharge and create a grant program to fund a statewide 911 system. An initial surcharge of up to 75 cents per month for each active voice and non-voice communications service connection that is capable of accessing the 911 system in the state would be allowed. Assuming the maximum surcharge is imposed beginning on October 1, 2009, revenues estimated at \$41.4 million in 2009-10 and \$61.2 million in 2010-11 would be collected, based on an estimated 6.9 million land line and wireless customers. Revenues would be used to fund PSC administrative costs estimated at \$166,600 annually and grants to service providers and local governments estimated at \$41,233,400 in 2009-10 and \$61,033,400 in 2010-11. If the PSC sets the surcharge below 75 cents per month, revenues and expenditures would be less than the estimated amounts. Also, surcharges from prepaid wireless plans would affect the preceding estimates and could cause either decreases or increases to the estimates.

The provisions under "Limitation of Liability" would extend the current provisions that apply to telecommunications utilities, wireless providers, and local governments to the service providers identified in the motion.

[Change to Bill: \$102,600,000 SEG, 1.0 SEG FTE, and \$102,600,000 SEG-REV]