

CHAPTER 42**(HB 99)**

AN ACT relating to telecommunications.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 65.7629 is amended to read as follows:

The board shall administer the provisions of KRS 65.7621 to 65.7643, and shall have the following powers and duties:

- (1) To review, evaluate, and approve or disapprove the plans or plan modifications that are submitted to the board for complying with the wireless E911 service requirements established by the FCC order and by any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order;
- (2) To develop standards to be followed by the board in reviewing, evaluating, approving, or disapproving the plans or plan modifications that are submitted to the board;
- (3) To collect the CMRS service charge from each CMRS connection within the Commonwealth. The CMRS service charge shall be seventy cents (\$0.70) per month per CMRS connection, and shall be collected in accordance with KRS 65.7635 beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly;
- (4) To review the rate of the CMRS service charge at least once every *twenty-four (24)*~~eighteen (18)~~ months and, at its discretion, to decrease the rate or recommend that the General Assembly increase the rate if the board determines that changing the rate is necessary to achieve the purposes of KRS 65.7621 to 65.7643. The first cost study shall be completed on or before July 1, 1999, and shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the board shall recommend, on the basis of the cost study, whether legislation to increase the CMRS service charge should be proposed during the 2000 Regular Session of the General Assembly;
- (5) To administer and maintain the CMRS fund according to the provisions of KRS 65.7627, and promptly to deposit all revenues from the CMRS service charge into the CMRS fund;
- (6) To make disbursements from the CMRS fund, according to the allocations and requirements established in KRS 65.7631;
- (7) To establish procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements made in accordance with KRS 65.7631;
- (8) To resolve conflicts regarding reimbursable costs and expenses under KRS 65.7631(2) and (3);
- (9) To submit annual reports to the Auditor of Public Accounts no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS fund during the preceding fiscal year and all disbursements to CMRS providers and PSAPs during the preceding fiscal year;
- (10) To employ consultants, engineers, and other persons and employees as may be, in the judgment of the board, essential to the board's operations, functions, and responsibilities, and to fix and pay their compensation from funds available to the CMRS board;

- (11) To acquire, by gift, purchase, installment purchase, or lease, any equipment necessary to carry out the board's purposes and duties;
- (12) To retain any and all information, including all proprietary information, that is submitted to the board by CMRS providers and PSAPs, for the purposes of maintaining it and verifying its accuracy;
- (13) To retain, with approval by the Auditor of Public Accounts, an independent certified public accountant who shall audit, once every *twenty-four (24)*~~eighteen (18)~~ months, the books of the board, CMRS providers, and PSAPs eligible to request or receive disbursements from the CMRS fund under KRS 65.7631 for the following purposes:
 - (a) To verify the accuracy of collection, receipts, and disbursements of all revenues derived from the CMRS service charge and the number of wireless E911 calls received by each PSAP eligible to request or receive disbursements from the CMRS fund;~~and~~
 - (b) To determine whether the revenues generated by the CMRS service charge equal, exceed, or are less than the costs incurred in order to comply with the FCC order; *and*
 - (c) *To determine the sufficiency of the funds currently being withheld for administrative purposes under Section 2(1) of this Act.*

The independent certified public accountant shall make a report of the audits to the board and to the appropriate chief executive officer or officers of the CMRS providers and PSAPs. The board shall incorporate the auditor's findings in its studies of the CMRS service charge required by subsection (4) of this section. All information with respect to the audits shall be released to the public or published only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to individual CMRS providers;

- (14) To ensure that all carriers have an equal opportunity to participate in the wireless E911 system;~~and~~
- (15) To ensure that wireless E911 systems are compatible with wireline E911 systems; *and*
- (16) *To determine the appropriate method for disbursing funds to PSAP's based on wireless workload under Section 2(2)(b) of this Act.*

Section 2. KRS 65.7631 is amended to read as follows:

The moneys in the CMRS fund shall be apportioned among the approved uses of the fund as specified in this section. The board shall make individual disbursements from the fund upon such terms and conditions necessary in view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.

- (1) Not more than two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to pay the administrative costs and expenses incurred in the operation of the board, including the compensation of the administrator and expenses incurred pursuant to KRS 65.7629(10), (11),~~and~~ (13), *and (16). An additional sum, not to exceed two hundred fifty thousand dollars (\$250,000), shall be available to the board from the fund to implement the wireless workload formula under subsection (2)(b) of this section.*
- (2) From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsection (1) of this section have

been subtracted, fifty percent (50%) shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (4) of this section who actually request disbursement, as follows:

- (a) Twenty-five percent (25%) shall be distributed according to the "PSAP pro rata formula," whereby each receives a percentage determined by dividing one (1) by the total number of PSAPs eligible to request and actually requesting disbursements under subsection (4) of this section. ***Any PSAPs that choose to consolidate their operations after July 15, 1998, shall have a twenty-four (24) month period in which they shall continue to receive pro-rata shares as if they remained separate and distinct entities. The twenty-four (24) month period shall run from a date set by the board. The consolidated entity must be certified to receive funds under subsection (4) of this section;*** and
- (b) Twenty-five percent (25%) shall be distributed according to ***a method chosen by the board and based on the wireless workload of the PSAP. Methods to be considered may be based on the number of wireless 911 calls answered by each PSAP, the number of wireless phone users served by each PSAP, or any other method deemed by the board to be reasonable and equitable. The method chosen shall be promulgated as a regulation under KRS 65.7633***~~the "PSAP volume formula," whereby each receives a percentage determined by dividing the number of wireless E911 calls received by that PSAP in the previous quarter by the total number of wireless E911 calls received in the previous quarter by all PSAPs located within the boundaries of the Commonwealth that are eligible to receive and actually requesting disbursements under subsection (4) of this section~~.

All amounts distributed to PSAPs under this subsection shall be used by the PSAPs solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, ***training PSAP staff, public education concerning appropriate use of 911***, and of complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission pursuant to the FCC order, including the payment of costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service.

- (3) The balance of the total monthly revenues deposited into the CMRS fund which remains after the disbursements or disbursement reservations prescribed by subsections (1) and (2) of this section have been made shall be distributed to CMRS providers licensed to do business in the Commonwealth solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service. Sworn invoices shall be presented to the board in connection with any request for reimbursement under this subsection, and approval by a majority vote of the board shall be required prior to any disbursement, which approval shall not be withheld unreasonably. ***No payment shall be made to any provider who is not in compliance with all requirements of this chapter and the FCC order.*** In no event shall

any invoice for reimbursement be approved for payment of costs that are not related to compliance with requirements established by the FCC order, or for payment of any costs incurred by a CMRS provider exceeding one hundred twenty-five percent (125%) of the CMRS emergency service charges remitted by that CMRS provider, unless prior approval for the expenditures was given by the CMRS Board. If the total amount of invoices submitted to the CMRS Board and approved for payment exceeds the amount in the CMRS fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the fund available that month, based on approved invoices, and the balance of the payments shall be carried over to the following months until all of the approved payments are made.

- (4) Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (2) of this section unless and until the PSAP:
- (a) Is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board;
 - (b) Demonstrates that the PSAP is providing 911 services to a local government that has adopted an ordinance either imposing a special tax, license, or fee as authorized by KRS 65.760(3) or has established other means of funding wireline 911 emergency telephone service;
 - (c) Demonstrates that the administrator of the PSAP sent a request for wireless, E911 service to a CMRS provider, and that the infrastructure of the local exchange carrier will support wireless E911 service;
 - (d) Provides an accounting of the number of wireless E911 calls received by the PSAP during the prior calendar year *if requested by the board*; and
 - (e) Either demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service, or provides to the board a binding resolution, duly adopted by the governing authority of the PSAP, committing the PSAP to expend funds to lease or purchase emergency telephone equipment, including necessary computer hardware and software, for database provisioning, for addressing, and for the other nonrecurring costs of establishing wireless E911 service.

Section 3. KRS 65.7639 is amended to read as follows:

Each CMRS provider shall provide customer mobile handset telephone numbers and names to PSAPs when required by the board. Each CMRS provider *may be required to*~~shall~~ provide a quarterly report to the board of the number of *subscribers receiving bills in each zip code served by the provider*~~calls the provider forwarded to each PSAP~~ during that quarter *if needed*. Funds from the CMRS fund may be used to pay for the costs associated with providing this information. Although customer mobile handset telephone numbers and names shall be available to PSAPs, and to the board, this information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls *and in collecting the service charge from subscribers*. Mobile handset telephone numbers and names which are required to be provided under this section constitute confidential proprietary information and shall not be released to any person for purposes other than for including the numbers and names in the emergency telephone system database, *for purposes related to the collection of the service charge*, and for providing the numbers and names to permit a response to police, fire, medical, or

other emergency situations. Notwithstanding any other provision of the law, no ~~proprietary~~ information provided to PSAPs under this section shall be *disclosed* ~~subject to subpoena of the PSAP or otherwise released to any person~~ other than to the submitting CMRS provider, the administrator, the board, and the independent certified public accountant retained by the board under KRS 65.7629(13) without the express permission of the submitting CMRS provider *unless ordered by a court of competent jurisdiction*. General information collected by the independent certified public accountant shall only be released or published in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

Section 4. The CMRS Board shall conduct a study of equity issues surrounding the distribution of the PSAP portion of the fund and report to the Legislative Research Commission on or before January 1, 2003. Questions to be addressed shall include:

- (a) Whether rural, low call-volume PSAPs are receiving more funds than are necessary to maintain operations; and
- (b) Whether an alternate funding formula should be adopted to replace the current pro rata/wireless workload formula.

Approved March 15, 2001