

CHAPTER 219**(HB 656)**

AN ACT relating to wireless enhanced 911 systems.

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

Section 1. KRS 65.7621 is amended to read as follows:

As used in KRS 65.7621 to 65.7643, unless the context requires otherwise:

- (1) "Administrator" means the executive director of the Office of the 911 Coordinator within the Commonwealth Office of Technology functioning as the state administrator of CMRS emergency telecommunications under KRS 11.505;
- (2) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification;"
- (3) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call;
- (4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;
- (5) "CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky;
- (6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer;
- (7) "CMRS customer" means ***an end user***~~[a person]~~ to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation;
- (8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund;
- (9) "CMRS provider" means a person or entity who provides CMRS to an end user. ***The term includes both facilities-based resellers and nonfacilities-based resellers***~~[, including resellers];~~
- (10) "CMRS service charge" means the CMRS emergency telephone service charge levied under KRS 65.7629(3) and collected under KRS 65.7635;
- (11) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof;
- (12) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth;
- (13) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP;
- (14) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection;
- (15) "Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets;
- (16) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face;

- (17) "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;
- (18) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber;~~and~~
- (19) "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the *end* user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points~~by selective routing~~ based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order; *and*
- (20) "*Tier III CMRS provider*" means a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of December 31, 2001.

Section 2. KRS 65.7623 is amended to read as follows:

- (1) There is hereby created the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky, the "CMRS Board," consisting of *ten (10)*~~eight (8)~~ members, appointed by the Governor as follows: *two (2)*~~three (3)~~ members shall be employed by or representative of the interest of CMRS providers, *of which, one (1) shall be a representative of a Tier III CMRS provider*; one (1) member shall be a mayor of a city of the first or second class or urban-county government or his or her designee containing a public safety answering point; one (1)~~nonvoting~~ member shall be appointed from a list of local exchange landline telephone companies' representatives submitted by the Kentucky Telephone Association; *one (1) member shall be a director of a certified public safety answering point operated by a local governmental entity or a consolidated group of local governmental entities appointed from lists of candidates submitted to the Governor by the Kentucky Firefighters Association, the State Association of Chiefs of Police, and the Kentucky Ambulance Providers Association*; *two (2) members*~~and one (1) member~~ shall be appointed from lists of candidates submitted to the Governor by the Kentucky Emergency Number Association and the Association of Public Communications Officials; *and one (1) member shall be a director of a certified public safety answering point operated by a local governmental entity or a consolidated group of local governmental entities*. The commissioner of the State Police, or the commissioner's designee, and the CMRS emergency telecommunications administrator also shall be members of the board. Any vacancy on the board shall be filled in the same manner as the original appointment.
- (2) The commissioner and administrator shall serve by virtue of their office. The other members shall be appointed no later than August 15, 1998, for a term of four (4) years and until their successors are appointed and qualified, except that of the first appointments, one (1) shall be for a term of one (1) year, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years, and two (2) shall be for a term of four (4) years. *Any member missing three (3) consecutive meetings may be removed by a majority vote of the remaining voting members.*
- (3) In addition to the administrator, the *Office for Security Coordination*~~Finance and Administration Cabinet~~ shall provide staff services and carry out administrative duties and functions as directed by the board. The board shall be attached to the *Office for Security Coordination*~~Commonwealth Office of Technology~~ for administrative purposes only and shall operate as an independent entity within state government.
- (4) The board members shall serve without compensation but shall be reimbursed in accordance with KRS 45.101 for expenses incurred in connection with their official duties as members of the board.
- (5) All administrative costs and expenses incurred in the operation of the board, including payments under subsection (4) of this section, shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631 to be used by the board for administrative purposes.

Section 3. KRS 65.7625 is amended to read as follows:

- (1) The executive director of the Office of the 911 Coordinator shall be the state administrator of commercial mobile radio service emergency telecommunications. The CMRS Board shall set the administrator's compensation, which shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631(1) to be used by the board for administrative purposes.

- (2) The administrator of CMRS emergency telecommunications shall serve as a member of the CMRS Board and, as the coordinator and administrative head of the board, shall conduct the day-to-day operations of the board.
- (3) The administrator shall, with the advice of the board, coordinate and direct a statewide effort to expand and improve ~~wireless~~ enhanced emergency telecommunications capabilities and responses throughout the state, including but not limited to the implementation of wireless E911 service requirements of the FCC order and rules and regulations adopted in carrying out that order. In this regard, the administrator shall:
 - (a) Obtain, maintain, and disseminate information relating to emergency telecommunications technology, advances, capabilities, and techniques;
 - (b) Coordinate and assist in the implementation of advancements and new technology in the operation of emergency telecommunications in the state; and
 - (c) Implement compliance throughout the state with the wireless E911 service requirements established by the FCC order and any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order.

Section 4. 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:
 - (a) With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth; *or*
 - (b) *For prepaid CMRS connections:*
 1. *With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth, or*
 2. *With a geographical location associated with the first six (6) digits, or NPA/NXX, of the mobile telephone number is inside the geographic boundaries of 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) 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) *and* (4);

- (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) 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;
 - (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 KRS 65.7631(1).

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;
- (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 KRS 65.7631(3)~~(2)~~(b);
- (17) *To develop standards and protocols for the improvement and increased efficiency of 911 services in Kentucky; and*
- (18) *To provide direct grants or state matches for federal, state, or private grants for the establishment or improvement of the 911 emergency telecommunications system in the Commonwealth.*

Section 5. 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 *11.512*, 65.7629(10), (11), (13), ~~and~~ (16), *(17), and (18)*. 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 ~~(3)~~~~(2)~~(b) of this section.
- (2) (a) *Not more than ten percent (10%) of the total monthly revenues deposited into the CMRS Fund shall be disbursed or reserved for disbursement by the board to provide direct grants or matching money.*
 1. *For the establishment and improvement of E911 services in the Commonwealth;*

2. *For incentives to create more efficient delivery of E911 services by local governments receiving funding under subsection (3) of this section;*
 3. *For improvement of 911 infrastructure by wireless carriers receiving funding under subsection (4) of this section; and*
 4. *For consolidation reimbursement of one hundred thousand dollars (\$100,000) per PSAP, not to exceed two hundred thousand dollars (\$200,000) per county, to any PSAP that consolidates with a CMRS-certified PSAP, or creates a newly consolidated Phase II compliant PSAP. Funds shall be applied toward the cost of consolidating. If a PSAP consolidates and receives reimbursement, the CMRS Board shall not certify a new PSAP within the same county for a period of ten (10) years.*
- (b) *When the balance of money collected under paragraph (a) of this subsection and not yet disbursed for direct grants or matching moneys exceeds two million dollars (\$2,000,000), the excess amount shall be allocated under the provisions of subsections (3) and (4) of this section.*
- (3) From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under ~~subsections~~~~subsection~~ (1) and (2) of this section have been subtracted, *eighty percent (80%)*~~Fifty percent (50%)~~ shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (5)~~(4)~~ of this section who actually request disbursement, as follows:
- (a) *Forty percent (40%)*~~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 (5)~~(4)~~ of this section. Any PSAPs *certified before January 1, 2004, or for more than three (3) years*, 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 (5)~~(4)~~ of this section; and
 - (b) *Forty (40%)*~~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.

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.

- ~~(4)~~~~(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), and (3) 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.

- (5)~~(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 (3)~~(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 ~~E911~~~~(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 6. KRS 65.7633 is amended to read as follows:

- (1) The CMRS Board shall implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
- (2) As soon as practicable after its creation, the board shall promulgate regulations:
 - (a) Establishing procedures for the submission of plans or modifications of plans to the board, for its review and approval or disapproval, for 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, projections of anticipated costs and expenses necessary for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining on an ongoing basis all necessary data, hardware, and software required in order to provide this service;
 - (b) Establishing procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving the plans or modifications of plans that are submitted to it in accordance with the procedures promulgated under paragraph (a) of this subsection;
 - (c) Establishing 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 under KRS 65.7631(2),~~and~~ (3), **and (4)**; and
 - (d) Establishing procedures and guidelines for resolving disputes regarding reimbursable costs and expenses under KRS 65.7631(2),~~and~~ (3), **and (4)**.

Section 7. KRS 65.7635 is amended to read as follows:

- (1) Each CMRS provider shall act as a collection agent for the CMRS fund.~~and~~ **From its customers, the provider** shall, as part of the provider's ~~normal monthly~~ billing process, collect the CMRS service charges levied upon CMRS connections under KRS 65.7629(3) from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider. **For CMRS customers who purchase CMRS services on a prepaid basis, the CMRS service charge shall be determined according to one (1) of the following methodologies as elected by the CMRS provider:**

- (a) *The CMRS provider shall collect, on a monthly basis, the CMRS service charge specified in KRS 65.7629(3) from each active customer whose account balance is equal to or greater than the amount of service charge; or*
 - (b) *The CMRS provider shall divide its total earned prepaid wireless telephone revenue received with respect to its prepaid customers in the Commonwealth within the monthly 911 emergency telephone service reporting period by fifty dollars (\$50), multiply the quotient by the service charge amount, and pay the resulting amount to the board; or*
 - (c) *In the case of CMRS providers that do not have the ability to access or debit end user accounts, and do not have retail contact with the end user or purchaser of pre-paid wireless airtime, the CMRS service charge and collection methodology may be determined by administrative regulations promulgated by the board to collect the service charge from such end users.*
- (2) A CMRS provider has no obligation to take any legal action to enforce the collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.
 - (3) State and local taxes shall not apply to CMRS service charges.
 - (4) To reimburse itself for the cost of collecting and remitting the CMRS service charge, each CMRS provider may deduct and retain from the CMRS service charges it collects during each calendar month an amount not to exceed one and one-half percent (1.5%) of the gross aggregate amount of CMRS service charges it collected that month.
 - (5) All CMRS service charges imposed under KRS 65.7621 to 65.7643 collected by each CMRS provider, less the administrative fee described in subsection (3)~~[(4)]~~ of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

Section 8. KRS 11.512 is amended to read as follows:

The Office of the 911 Coordinator shall have the following duties and responsibilities:

- (1) Assist state and local government agencies in their efforts to improve and enhance 911 systems in Kentucky, including:
 - (a) Providing consultation to local elected officials, 911 coordinators, and board members; and
 - (b) Providing consultation to communities with basic 911 systems that are updating their facilities, equipment, or operations;
- (2) Develop and provide educational forums and seminars for the public safety community;
- (3) **Recommend**~~Develop~~ standards and protocols for the improvement and increased efficiency of 911 services in Kentucky; and
- (4) Administer the provisions of KRS 65.7621 to 65.7643 relating to commercial mobile radio service emergency telecommunications.

Approved April 22, 2006.