

CHAPTER 40

(HB 229)

AN ACT relating to 911 services and making an appropriation therefor.

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

➔Section 1. KRS 65.7631 is amended to read as follows:

- (1) 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.
- (2) 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 in carrying out the functions and duties set forth in KRS 65.7621 to 65.7643.
- (3) ~~{(a) —} Two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be used solely for the purpose of *establishing or maintaining statewide next generation 911 initiatives to assist with the adoption and operation of next generation 911 services and applications. Fund disbursements shall be limited to equipment, hardware, software, or contracted services used in the preparation for, or delivery of, next generation 911* ~~reimbursing the actual expenses incurred by tier III CMRS providers from June 30, 2011, to January 1, 2016, for complying with requirements established by the FCC order. Reimbursement under this subsection is only available to tier III CMRS providers that:~~
 1. ~~Have a cost recovery plan that was approved by the CMRS Board, predecessor in name to the Kentucky 911 Services Board, prior to June 30, 2011; and~~
 2. ~~Had received approval for reimbursement from the CMRS Board, predecessor in name to the Kentucky 911 Services Board, prior to the effective date of this section.~~~~{(b) —} When all reimbursements approved under this subsection have been paid, the two and one-half percent (2.5%) apportioned under this subsection shall be used solely for the purposes specified in subsection (5) of this section.~~~~
- (4) Ten percent (10%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement to provide direct grants, matching money, or funds to PSAPs as determined by the Kentucky 911 Services Board:
 - (a) For the establishment and improvement of 911 services in the Commonwealth, including the implementation of next generation 911 capacity;
 - (b) For incentives to create more efficient delivery of 911 services by local governments receiving funding under subsection (5) of this section;
 - (c) For improvement of 911 infrastructure by Tier III wireless providers receiving funding under this section; and
 - (d) For consolidation reimbursement of two hundred thousand dollars (\$200,000) per PSAP, not to exceed four hundred thousand dollars (\$400,000) 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 Kentucky 911 Services Board shall not certify a new PSAP within the same county for a period of ten (10) years.

When the balance of money collected under this subsection and not yet obligated for permitted uses exceeds three million dollars (\$3,000,000) in any fiscal year, the excess amount shall be allocated under subsection (5) of this section.

- (5) The balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsections (2), (3), and (4) of this section have been subtracted shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (6) of this section who actually request disbursement, as follows:

- (a) Fifty percent (50%) of the remaining balance to be allocated under this subsection 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 (6) of this section. Any PSAPs certified before January 1, 2004, or for more than three (3) years, that choose to consolidate their operations shall continue to receive pro-rata shares as if they remained separate and distinct entities. The consolidated entity must be certified to receive funds under subsection (6) of this section; and
- (b) Fifty percent (50%) of the remaining balance to be allocated under this subsection 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 by the board 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, and public education concerning appropriate use of 911, in accordance with KRS 65.760(4) and (5). Additionally, amounts distributed to PSAPs under this subsection may be used for the purposes 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.

- (6) (a) Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (4)(a) or (b) or (5) of this section unless and until the PSAP:
 - 1. Is expressly certified as a PSAP by the Kentucky 911 Services Board, upon written application to the board;
 - 2. Demonstrates that the PSAP is providing E911 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 service;
 - 3. 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;
 - 4. 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
 - 5. 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.
- (b) In addition to the requirements of paragraph (a) of this subsection and in order to encourage the additional consolidation of PSAPs by local governments and state government agencies, after January 1, 2017, a PSAP shall receive priority consideration for distributions of funds from subsection (4)(a) and (b) of this section as follows:
 - 1. A PSAP that is not a state police dispatch center and that covers all local governments within two (2) or more counties shall receive first priority in the distribution of the funds by the board;
 - 2. A PSAP, including any state police dispatch center, that covers all the local governments within a single county shall receive second priority in the distribution of the funds by the board; and
 - 3. A PSAP that does not cover all of the local governments within a single county shall receive the last priority for the distribution of the funds listed in this subsection by the board.

➔Section 2. 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 person who serves as the state 911 coordinator, the executive director of the Kentucky 911 Services Board, and the state administrator of CMRS emergency telecommunications under KRS 65.7625;

- (2) "Automatic location identification", or "ALI" means a feature by which the location or estimated location of the calling party is made available to a PSAP in accordance with applicable FCC rules and regulations;
- (3) "Automatic number identification", or "ANI" means a feature that allows for the automatic display of the 911 caller's ten-digit number, or equivalent, in accordance with applicable FCC rules and regulations;
- (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) "Board" means the Kentucky 911 Services Board;
- (6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer;
- (7) "CMRS customer" means an end user 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;
- (10) "CMRS service charges" means the CMRS postpaid service charge, the CMRS prepaid service charge, and the CMRS service charge fee levied under KRS 65.7636;
- (11) "CMRS postpaid service charge" means the CMRS emergency telephone service charge fee levied under KRS 65.7629(3) and collected under KRS 65.7635;
- (12) "CMRS prepaid service charge" means the fee imposed on prepaid wireless telecommunications service under KRS 65.7634 and collected under KRS 142.100 to 142.135;
- (13) "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;
- (14) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth;
- (15) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP;
- (16) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection;
- (17) "Next generation 911" means a 911 system where any device capable of making a 911 emergency request uses digital technology through managed emergency services Internet protocol networks composed of functional elements and databases that replicate enhanced 911 features and functions while providing additional multimedia capabilities for the PSAP. "Next generation 911" includes any technology, functions, capabilities, best practices, or processes, either currently existing or later developed, that will be used during and after the transition of the delivery of 911 services from analog to digital technology;
- (18) "Prepaid wireless telecommunications service" means a wireless telecommunications service that, *if purchased, is required to be paid for in advance and is either sold in predetermined units, dollars, or time which decline with use in a known amount, or is sold for unlimited use during a predetermined period of time*;
 - (a) ~~— If purchased, must be paid for in advance;~~
 - (b) ~~— Is sold or provided in predetermined units of time or dollars that decline in a known amount of use or time; and~~
 - (c) ~~— Provides the user with access to 911 emergency service;~~

"Prepaid wireless telecommunications service" includes service provided by prepaid wireless providers approved as eligible telecommunications companies by the Kentucky Public Service Commission to participate in the wireless low-income Lifeline program;

- (19) "Prepaid wireless telecommunications service provider" means a person or entity that provides prepaid wireless telecommunications service as authorized by a license issued by the FCC;
- (20) "Proprietary information" means information, including customer lists and other related information, technology descriptions, technical information, or trade secrets;
- (21) "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;
- (22) "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;
- (23) "Purchaser" means a person who purchases prepaid wireless telecommunications service in a retail transaction;
- (24) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a retailer for any purpose other than resale;
- (25) "Retailer" means a person who sells prepaid wireless telecommunications service to any person for a purpose other than resale;
- (26) "Service connection" means the transmission, conveyance, or routing of voice, data, video, text, or any other information signal of the purchaser's choosing by any medium or method now in existence or later devised with the ability to directly connect the user to 911 emergency services;
- (27) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber;
- (28) "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 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
- (29) "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 3. KRS 65.7634 is amended to read as follows:

- (1) Beginning January 1, 2017, a CMRS prepaid service charge shall be imposed at a flat rate of ninety-three cents (\$0.93) on each retail transaction involving the purchase or sale of:
 - (a) Cellular phones preloaded with a set dollar amount for minutes or units of air time, or sold with rebates for air time;
 - (b) Calling cards for cellular phones preloaded with a set dollar amount for minutes of units or air time;
 - (c) The recharging of a reusable cellular phone calling card;~~and~~
 - (d) The recharging of a cellular phone itself with additional minutes or units of air time; **and**
 - (e) ***Any prepaid wireless telecommunications service.***
- (2) The CMRS prepaid service charge imposed by subsection (1) of this section shall be collected by the retailer from the purchaser at the time of purchase for each purchase sourced to this state as provided in KRS 139.105. The amount of the CMRS prepaid service charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the purchaser by the retailer, or otherwise disclosed to the purchaser.
- (3) The CMRS prepaid service charge shall be paid by the purchaser, and shall not constitute a liability of the retailer or of any prepaid wireless telecommunications service provider.

- (4) All amounts collected by the retailer shall be deemed to be held in trust by the retailer for and on account of the Commonwealth, shall constitute a debt of the retailer to the Commonwealth, and shall be remitted to the Department of Revenue as provided in KRS 142.100 to 142.135.
- (5) The CMRS prepaid service charge amount collected by a retailer from a purchaser shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of the state, or any intergovernmental agency if the amount is separately stated on an invoice, receipt, or a similar document provided to the consumer by the retailer.

Signed by Governor March 27, 2020.