

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

WEST VIRGINIA PUBLIC SERVICE COMMISSION WIRELESS ENHANCED 911 FEES

Legislative Auditor: Aaron Allred
Post Audit Division Director: Justin Robinson



GENERALLY ACCEPTED GOVERNMENT
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

POST AUDIT DIVISION
Director, Justin Robinson

POST AUDIT DIVISION

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WEST VIRGINIA PUBLIC SERVICE COMMISSION: WIRELESS ENHANCED 911 FEES

JANUARY 8, 2019

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EXECUTIVE SUMMARY: PAGE	1
ISSUE 1: PAGE	3
<i>Between 2009 and Present, more than \$323 million has been distributed to West Virginia counties through the Wireless Enhanced 911 Fee. However, there is little state-level oversight of these funds to ensure they are spent to accomplish the Legislature's purpose.</i>	
APPENDIX A: PAGE	11
<i>Transmittal Draft Letter</i>	
APPENDIX B: PAGE	12
<i>Objective, Scope, & Methodology</i>	
APPENDIX C: PAGE	13
<i>Agency Response(s)</i>	
APPENDIX D: PAGE	24
<i>County E-911 Fees</i>	

Executive Summary

The Legislative Auditor conducted this audit of the Public Service Commission pursuant to W.Va. Code §4-2-5. The Objective of this review was to provide information regarding the purpose, collection, and distribution of the Wireless Enhanced 911 Fees, and to determine the extent to which there is State-level oversight and accountability over the expenditure of those fees. The findings of this audit are highlighted below.

Frequently Used Acronyms in This Report

CMRS: Commercial Mobile Radio Service

FCC: Federal Communications Commission

LEC: Local Exchange Carrier

PSC: Public Service Commission

VoIP: Voice over Internet Protocol

Report Highlights

Issue 1: Between 2009 and Present, More Than \$323 Million Has Been Distributed to West Virginia Counties Through the Wireless Enhanced 911 Fee. However, There is Little State-Level Oversight Over These Funds to Ensure They Are Spent to Accomplish the Legislature’s Purpose.

- There is no State agency that has a statutory responsibility for overseeing E-911 and Wireless E-911 expenditures.
- E-911 and Wireless E-911 funds are included in the financial statement audits of county commissions conducted by the State Auditor’s Office. However, these audits do not focus on the expenditures of E-911 and Wireless E-911 fees.
- In the PSC’s annual FCC filings, 13 out of the 52 primary county answering points did not provide data. The PSC indicated to the Legislative Auditor that under existing law, these responses are voluntary and not required. Because complete information was not provided by all 52 county answering points, the PSC was unable to provide an accurate total cost to operate the Enhanced Emergency 911 system.

Recommendations

1. The Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require all county answering points to provide annual reports to the Public Service

Commission. This should contain all required data for the Public Service Commission to complete its annual filing to the Federal Communications Commission.

2. The Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require the Public Service Commission, the State Auditor's Office, or some other entity to conduct periodic reviews or audits of the expenditure of E-911 fees and the State-generated Wireless Enhanced 911 fees.

Post Audit's Response to the Agency's Written Response

On January 4, 2019, Post Audit received a written response from the Chairman of the Public Service Commission (Appendix C). The PSC indicates that it agrees with the report from a factual standpoint. With respect to recommendation 2, however, the PSC indicates that it does not feel that it is the most appropriate entity to be given the responsibility to conduct audits or reviews of E-911/Wireless E-911 expenditures. The PSC's response lays out their reasoning, and also provides some additional comments for the Legislature's consideration with respect to establishing an effective audit requirement in W.Va. Code.

Issue 1: Between 2009 and Present, More Than \$323 Million Has Been Distributed to West Virginia Counties Through the Wireless Enhanced 911 Fee. However, There is Little State-Level Oversight of These Funds to Ensure They Are Spent to Accomplish the Legislature’s Purpose.

Introduction

As part of the ongoing audit of the West Virginia Public Service Commission (PSC), it was requested that the Legislative Auditor conduct a review of the Wireless Enhanced 911 (Wireless E-911) fees collected by the PSC. Specifically, the Legislative Auditor was asked to provide background information on the fees and their purpose and to:

- provide information regarding the flow and distribution of the funds;
- determine how the funds are distributed among the counties; and
- determine the extent to which the funds raised and collected by the State through the PSC are overseen and accounted for.

The Legislative Auditor’s review of these Wireless Enhanced 911 fees identified the following issues:

1. There is no State agency that has a statutory responsibility for overseeing E-911 and Wireless E-911 expenditures;
2. E-911 and Wireless E-911 funds are included in yearly financial statement audits of county commissions conducted by the State Auditor’s Office and private accounting firms. However, the primary focus of these audits is not to provide assurance that all expenditures made using these funds are in compliance with Code; and
3. In the PSC’s annual FCC filings, 13 out of the 52 primary county answering points did not provide data. The PSC indicated to the Legislative Auditor that under existing law, these responses are voluntary and not required. Because complete information was not provided by all 52 county answering points, the PSC was unable to provide an accurate total cost to operate the Enhanced Emergency 911 system.

In order to provide for greater oversight over the State-generated Wireless E-911 funds, and to ensure the funds are used in accordance with their statutory purpose, **the Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require that the Public Service Commission, the State Auditor’s Office, or some other entity conduct periodic reviews of the expenditures of the E-911 and Wireless E-911 fees. Further, the Legislative Auditor recommends the Legislature require all county answering points to report the necessary data to the Public Service Commission annually.**

The Legislature Facilitated the Establishment of Emergency Telephone Systems Through the West Virginia Public Service Commission

In W.Va. Code §24-6-1, the Legislature determined that it was in the public’s interest to shorten the amount of time required for a citizen to request and receive emergency aid. However,

the State was using hundreds of different emergency phone numbers. Therefore, the Legislature enacted the provision of W.Va. Code §24-6, which facilitated the establishment of emergency 911 systems throughout the State.

The overall purpose of an emergency telephone system, as stated in code, is to provide the citizens of West Virginia with a single, primary emergency number through which emergency services can be quickly and efficiently obtained, which results in saved lives, reduced property destruction, quicker apprehension of criminals, and ultimately the saving of money.

The Legislature charged the PSC to consult with the telephone companies, and to develop, adopt, and periodically review a comprehensive plan establishing the technical and operational standards to be followed by counties when establishing and maintaining their own emergency telephone systems. The PSC indicated to the Legislative Auditor that it had adopted the required comprehensive plan in the form of an administrative rule, effective March 6, 1998. Upon adoption of the plan by the PSC, counties were authorized under State law to establish emergency telephone systems and enhanced emergency telephone systems.

As defined in W.Va. Code §24-6-2, an emergency telephone system (911) automatically connects a person dialing the emergency telephone number to a public safety answering point in the county which then dispatches the necessary emergency services to their location after talking with the caller. However, the State's original 911 emergency systems did not provide the county answering points with the telephone number or geographic location of the caller because those systems were not equipped with the necessary technology to do so.

In 1998, federal law was amended to require Commercial Mobile Radio Service (CMRS) providers, or wireless telephone providers, to begin providing county answering points with the phone number and location of the caller. The Federal Communications Commission (FCC) regulation 47 C.F.R. §20.18 established time frames wherein CMRS providers must comply. The requirement applies to calls placed by Local Exchange Carrier (LEC) or landline phones, CMRS, or Voice Over Internet Protocol (VoIP) systems.

These additional requirements led to the establishment of enhanced emergency telephone systems. An enhanced emergency telephone system (E-911) is an equipment upgrade to local 911 county answering points and deploys the federally mandated new technologies capable of providing a caller's phone number and location automatically upon receiving the call. To establish enhanced emergency systems, county commissions were required to prepare a proposal on the implementation of the system.

According to W.Va. Code §24-6-6, county proposals must specify which telephone companies are participating in the system and include the location and number of each county answering point. In addition, the proposal must include a projection of the initial cost to establish the system, the estimated annual operating cost for the first five years, and a plan for how the county plans to pay its share of the projected costs.

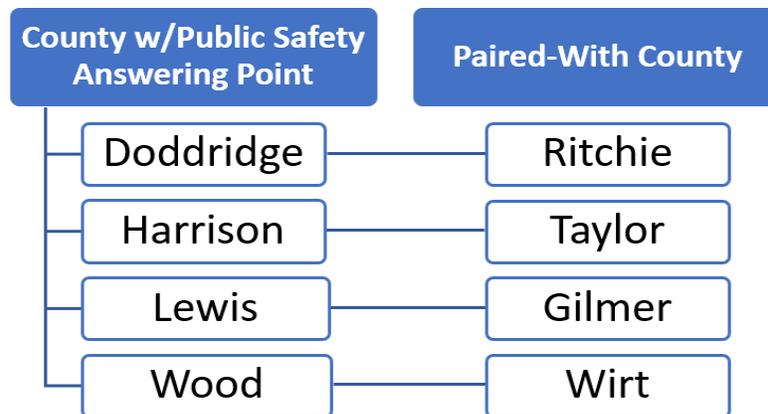
Additionally, W.Va. Code §24-6-5 contains specific requirements that each E- 911 system must meet. The system is required to cover all territory within the county and ensure all emergency service providers within the territory of a county participates in the system. Each of the emergency

service providers participating in the system are to maintain a separate telephone number in addition to the one provided in the system. The Code also requires that each county answering point be continuously operated. Finally, to the extent possible, the Legislature indicated that enhanced emergency telephone systems throughout the State should be centralized.

All of West Virginia’s 55 Counties Operate or Otherwise Participate In An Enhanced Emergency 911 Telephone System

According to information provided to the Legislative Auditor by the PSC, 47 counties currently operate their own enhanced E-911 system. The remaining eight counties have paired with a neighboring county to operate a multi-county E-911 system. Under a multi-county system, two counties enter into an agreement whereby one maintains the county answering point for both counties and is reimbursed by the other county pursuant to a mutual agreement. The eight counties participating in multi-county systems are shown in Figure 1. In addition, Figure 1 shows which county in each multi-county system houses and operates the answering point for the two counties.

Figure 1 Multi-County E-911 Systems



In order to fund these emergency telephone systems, W.Va. Code establishes two funding streams for county E-911 systems. W.Va. Code §7-1-3cc authorizes individual counties to adopt and assess a monthly enhanced 911 fee (E-911 fee) on LEC wireline and VoIP carriers, which is collected on the monthly bills of residents in the county and directly remitted to the county commissions. These fees vary based on ordinances passed by each county commission.

The Legislative Auditor obtained the PSC’s FCC filings covering calendar year 2016, which includes a full listing of the E-911 fees assessed by counties that year. In addition to the fees assessed on residents, four counties charge separate business rates. In 2016, the fee amounts range from \$0.98/month in Harrison County to \$9.50/month for business lines in Cabell County. Figure 2 provides of a breakdown of these fees by monthly price range. A full listing of county fees can be found in Appendix D.

Figure 2 County-Imposed E-911 Fee Ranges					
Monthly Fee Range	\$0.98 - \$1.99	\$2.00 - \$2.99	\$3.00 - \$3.99	\$4.00 - \$4.99	\$5.00+
Counties	9	22	13	5	10
The totals in the table equal 59 counties due to four counties charging a separate fee for business lines. <i>Source: PSC's annual filing with the FCC covering calendar year 2016.</i>					

The second funding source is the Wireless Enhanced 911 fees (Wireless E-911) established by W.Va. Code §24-6-6b. Wireless E-911 fees are assessed by CMRS wireless carriers on the monthly bills of in-state residents. The providers retain a three percent billing fee and remit the remainder of the Wireless E-911 fees to the PSC on a monthly basis. The PSC distributes these funds according to Code. The original Wireless E-911 fee established by W.Va. Code §24-6-6b, was \$3 per month per CMRS subscriber. However, the PSC is mandated by statute to conduct a biennial audit of county E-911 ordinances to recalculate the Wireless E-911 fee amount such that it equals a weighted average of county-imposed E-911 fees.

Subsequent to the PSC's review in 2017, the fee was increased from \$3.00 to \$3.34 per subscriber. The PSC indicated to the Legislative Auditor that the Wireless E-911 fee amount is expected to again increase in 2019 following their biennial audit of the E-911 fees because of increases in the county-imposed E-911 fees on wireline services.

Pre-paid wireless services are not subject to the monthly Wireless E-911 fee as they are instead subject to the general consumer sales and service tax. The Tax Commission collects this tax from the providers and remits it to the PSC.

The Wireless Enhanced 911 Fee Has Generated Between \$33-41 Million Annually and Over \$364 Million in Total Since 2009.

The PSC collects the Wireless E-911 fees from the CMRS providers on a monthly basis and distributes the funds according to W.Va. Code. The statutory distribution of the Wireless E-911 fee is broken down as follows:

- On an annual basis, \$1,000,000 is placed into the Enhanced 911 Wireless Tower Access Assistance Fund (Tower Fund) within the PSC to subsidize the construction of towers to better supplement the E-911 program.
- 10¢ is collected each month from each wireless telephone service subscriber and distributed to the West Virginia State Police for equipment upgrades to improve and integrate their communication with that of the E-911 system.
- 5 percent of the total annual fee collections is deposited in a special fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the WV Interoperable Radio Project and any other costs related to establish and maintain the infrastructure of the system.

- Each county receives 0.085 percent of the total annual amount collected. The remainder of the total annual fees collected are distributed according to the population figures as of the last decennial census where each county receives a percentage of the remaining balance that corresponds to its percentage of the State’s total population (i.e., Kanawha County makes up 10 percent of the State’s population and receives 10 percent of the remaining funds).

The Legislative Auditor reviewed a 10-year period (2009-2018) of the Wireless E-911 Fee payments by the PSC to each county, Homeland Security, WV State Police, and the Tower fund. In sum, the Wireless E-911 fee has generated over \$364 million since 2009. Nearly 89 percent of the money generated by the fee has been disbursed to the 55 counties. The remaining 11 percent of the funds have been disbursed to the Tower Fund, the West Virginia State Police, and the Division of Homeland Security and Emergency Management. Figure 3 shows the total amount of Wireless E-911 funds distributed to each of the required recipients since 2009.

Figure 3 Distribution of Wireless E-911 Fees 2009-18	
Fee Recipient	Total Received Since Fiscal Year 2009
Counties	\$323,803,980.53
Homeland Security	\$18,201,447.53
WV State Police	\$12,283,668.69
Wireless Tower Fund	\$10,000,000.00
Total	\$364,289,096.75
<i>Source: Figures provided to the Legislative Auditor by the PSC.</i>	

The State’s most populous counties receive the greatest shares of the Wireless E-911 monies. Kanawha County has received over \$2 million per year since 2009. In addition, Cabell, Monongalia, Wood, Raleigh, and Berkeley frequently receive more than \$1 million each year to cover the costs of their E-911 systems. Figure 4 displays the counties that received the most money from the Wireless E-911 fees since 2009.

Figure 4 Counties Receiving Largest Amount of Wireless E-911 Fees 2009-18	
County	Total Amount Received
Kanawha	\$21,134,062.16
Cabell	\$11,842,049.84
Berkeley	\$11,530,255.22
Monongalia	\$11,229,291.20
Wood	\$10,962,323.56
Raleigh	\$10,176,526.26
Harrison	\$9,246,389.94
Mercer	\$8,619,120.88
Marion	\$8,050,058.28
<i>Source: Figures provided to the Legislative Auditor by the PSC.</i>	

Code specifies that Wireless E-911 fee revenues are to be used in the same manner as the E-911 fee revenues counties receive pursuant to their E-911 ordinances. Specifically, W.Va. Code §7-1-3cc indicates that the fees collected are to be solely used for the installation, administration, operation, maintenance, and capital costs of the E-911 system. Additionally, the funds may also be used to establish, equip, furnish, and operate or maintain a county answering point. Finally, fees can be used to convert to city-type addressing to ease the process of obtaining the location of a caller.

The Legislative Auditor sought to determine what proportion of the total cost to provide E-911 services throughout the State are funded by the Wireless E-911 fee. According to the PSC’s FCC filings covering the calendar year 2016, the PSC indicated that the total cost to provide E-911 systems throughout the State was \$50,069,236. **However, the PSC indicated that this amount does not represent the full cost because 13 out of 52 county answering points did not report their costs to the PSC.**

The PSC informed the Legislative Auditor that it has no regulatory authority over the county answering points. Thus, responses provided to the PSC by the county answering points are provided entirely on a voluntary basis. The Legislative Auditor is concerned that the State and counties are unable to readily provide a complete and accurate cost figure for these services, especially since the State-generated funding source covers a large proportion if not a majority of the cost. **The Legislative Auditor recommends that the Legislature consider amending W. Va. Code to require all county answering points to provide annual reports to the PSC. This should contain all required data for the PSC to complete its annual filing to the FCC.**

Although the Legislatively Authorized Fee Has Distributed More Than \$323 Million to Counties to Accomplish a Public Purpose, There is Limited Accountability, at the State Level, for How Those Funds Are Spent.

The Legislative Auditor sought to determine how the State oversees and accounts for the Wireless E-911 fees it generates and distributes to each of the 55 counties. The PSC informed the Legislative Auditor that it does not conduct any audits of the expenditures of E-911 or Wireless E-911 funds. The Legislative Auditor inquired about the biennial audit of the Wireless E-911 fee established in Code. The PSC indicated that the statute only requires the audit to recalculate the fee so that it is the weighted average of the county-imposed E-911 fees. It was noted by the PSC that there is no statutory requirement or authorization currently in the West Virginia Code that would allow it to conduct an audit of the counties' expenditures.

In its annual filing with the FCC, the PSC indicates that it does have limited authority to review the use and expenditure of E-911 and Wireless E-911 fees. W.Va. Code §24-6-7 empowers the PSC to resolve conflicts or disputes between county commissions, between telephone companies, between telephone companies and county commissions and between the West Virginia State Police and a county commission or a telephone company in matters concerning E-911 systems. According to its most recent filing with the FCC, *"If the dispute involves misuse of 911/E-911 fees, the PSCWV has financial analysts review the use of these fees."*

However, except as provided by W.Va. Code §24-6-7, it does not appear that the PSC has any authority to review the use of the E-911 or Wireless E-911 fees or to engage in routine monitoring of the funds to ensure that they are spent in accordance with their statutory purpose.

The Legislative Auditor reached out to the State Tax Department to inquire if the Tax Commissioner conducted any audits or reviews of County Commission funds, or any specific audit or review of E-911 or Wireless E-911 fees. The Tax Commission responded:

The Tax Department does not conduct audits or reviews of County Commissions or audits of 911/E-911 fees collected and remitted to County Commissions. It is our belief that these audits are conducted by the Chief Inspector Division of the State Auditor's Office. The Chief Inspector Division used to be housed in the Tax Department but was moved to the [State] Auditor's Office.

It was indicated to the Legislative Auditor by the State Auditor's Office that they do, in fact, include the E-911 and Wireless E-911 fees when they conduct financial statement audits of the County Commissions. The Legislative Auditor reviewed these audits to determine the scope and level of detail concerning the state-generated Wireless E-911 funds.

Because these audits are financial statement audits, their primary purpose is not to provide assurance that these funds are spent in accordance with Code. Rather, they are conducted to provide assurance that the financial statements and disclosures are presented fairly in all material respects. Further, in some instances, the Legislative Auditor notes that the classifications of Wireless E-911 and E-911 funds differed between major or nonmajor funds. If the funds are listed as nonmajor funds, the Legislative Auditor determined

that they are often grouped together with many other types of nonmajor funds in a single line-item. As such, no details are provided about those accounts individually.

While these financial statement audits appear to accomplish their intended purpose of providing state and local officials with a level of assurance over the county's financial statements, they alone do not provide the Legislature with a full and detailed account of the Wireless E-911 fees nor do they examine whether these funds are spent in furtherance of accomplishing the public purpose set forth by the Legislature.

In addition, the Legislative Auditor reviewed information from other states regarding the provision of E-911 services by accessing their public filings with the FCC. According to the reports filed between 2008 and 2011, between 35 and 38 U.S. states require some form of state-level approval over the expenditure of funds for their respective E-911 telephone systems. In many cases, states indicated in their reports to the FCC that the expenditures from the state-generated wireless fees require some form of state-level approval, while locally generated E-911 fees do not. Other states, like West Virginia, indicate that there is no formal, state-level approval required, but the funds were subject to audit requirements at the state-level.

Based upon the information contained in FCC filings from other states, and the FCC's annual report to Congress, West Virginia appears to operate its E-911 telephone systems with less control and oversight of the state-generated funds than the majority of other states, which require a layer of state-approval. In addition, the Legislative Auditor's determination that no state-level entity is currently conducting routine audits specifically over the expenditure of the E-911 and Wireless E-911 fees highlights an important layer of accountability and transparency that is absent. **Therefore, the Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require the Public Service Commission, the State Auditor's Office, or some other entity to conduct periodic reviews or audits of the expenditure of E-911 fees and the State-generated Wireless E-911 fees.**

Recommendations

1. The Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require all county answering points to provide annual reports to the Public Service Commission. This should contain all required data for the Public Service Commission to complete its annual filing to the Federal Communications Commission.
2. The Legislative Auditor recommends that the Legislature consider amending W.Va. Code to require the Public Service Commission, the State Auditor's Office, or some other entity to conduct periodic reviews or audits of the expenditure of E-911 fees and the State-generated Wireless Enhanced 911 fees.

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE **Appendix A**
Post Audit Division

1900 Kanawha Blvd. East, Room W-329
Charleston, WV 25305-0610
(304) 347-4880



Justin Robinson
Director

December 21, 2018

Michael A. Albert, Chairman
Public Service Commission
201 Brooks Street
Charleston, WV 25301

Dear Chairman Albert:

This is to transmit a draft copy of the Post Audit Division's report on Wireless Enhanced 911 Fees. This report is tentatively scheduled to be presented during the January 2019 interim meeting of the Post Audits Subcommittee. We will inform you of the exact time and date once the information becomes available.

While this report does not contain a recommendation that directly affects your agency, the information presented as it relates to your agency may warrant a representative to be present at the meeting to respond to the report or answer any questions committee members may have.

If you would like to schedule a meeting to discuss any concerns you may have with the report prior to its release, please contact me at 304-347-4880 by Tuesday, January 3, 2019. In addition, if you wish to provide a written response or comment regarding the contents of the report to be included with the final version, we ask that it be provided to our office no later than noon on Friday, January 4, 2019. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin Robinson".

Justin Robinson

Enclosure

Appendix B

Objective, Scope, and Methodology

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

Objectives

The objective of this review was to determine if the Public Service Commission or any other state-level entity is providing routine oversight in relation to the Wireless Enhanced 911 fees established by the West Virginia Code. In addition, this objective seeks to provide background information of the purpose and distribution of the fee monies collected.

Scope

The scope of this review consists of the all documentation regarding how the fee is assessed, collected, and distributed. The scope will involve interviewing select staff with PSC staff, as well as staff from other offices, such as the State Auditor's Office and the Tax Commissioner's Office. The audit staff will not attempt to make any determination regarding county-level expenditures of the Wireless Enhanced 911 fees, as these expenditures do not fall within the Legislative Auditor's statutory authority under W.Va. Code §4-2-5.

Methodology

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through interviews with various agencies that oversee, collect, or maintain information. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff analyzed various source documents that were either provided to us by the PSC, State Auditor's Office, or publicly available on the web. In addition, information was obtained using the State Auditor's website. Information from other U.S. states was compiled from the annual report filings made to the Federal Communications Commission.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Public Service Commission

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January 3, 2019

Justin Robinson, Director
West Virginia Legislative Auditor's Office
Post Audit Division
1900 Kanawha Boulevard, East, Room W-329
Charleston, West Virginia 25305-0610

Re: Comments for inclusion with Final Post Audit
Division Report on Enhanced 911 Fees

Dear Mr. Robinson:

Thank you for the opportunity to provide the attached Public Service Commission comments to the Final Post Audit Division Report on Enhanced 911 Fees.

We understand that the Report will be presented at the January 8, 2019 interim meeting of the Post Audits Subcommittee of the Legislature. I plan to attend the interim meeting and will introduce Randall Short, Deputy Director, Carrier and Consumer Operations of the Commission Utilities Division, who will respond to the Report and answer questions from committee members. Additional Commission Staff members with knowledge of Commission procedures relating to wireless enhanced 911 fees will also be present.

Sincerely,

Jessica M. Lane,
General Counsel

Attachment

- cc: Michael A. Albert, Chairman
- Cheryl Ranson, Director, Administration Division
- Terry Eads, Director, Utilities Division
- Randall Short, Deputy Director, Utilities Division

Joint Committee
JAN 03 2019
Post Audit Committee

Public Service Commission comments to the January 2019
Post Audit Division Report on Enhanced 911 Fees

The Public Service Commission of West Virginia (Commission) appreciates the opportunity to comment on the draft Report on Enhanced 911 Fees to be presented to the Post Audits Subcommittee of the Legislature at its January 8, 2019 interim meeting.

In these comments, the Commission provides additional information on land/wireline and wireless E-911 fees, Commission distribution of wireless E-911 fees, Commission authority regarding county emergency telephone systems, and annual reports filed by the Commission with the Federal Communications Commission (FCC). These comments also respond to the recommendations of the Legislative Auditor contained in the January 2019 draft report.

As acknowledged by the Legislative Auditor, the Commission believes that it fully performs its delegated statutory duties with respect to emergency telephone systems as set forth in W.Va. Code §24-6-1 et seq.

I. Fees Supporting Emergency Telephone Systems

The Legislative Auditor correctly stated, beginning on page 3 of its report, that county commissions derive revenues to operate their enhanced emergency telephone systems from two different sources.

The first source of those revenues is a landline E-911 fee on consumers of local exchange telephone service and on voice over internet protocol (VoIP) service within their respective counties (collectively, the land/wireline E-911 fees). W.Va. Code §7-1-3cc. The West Virginia Code authorizes county commissions to impose land/wireline E-911 fees and does not limit the amount of those fees.¹ The land/wireline E-911 fees are placed on the customer bills issued by the telephone providers and the monies received by the landline service providers are distributed by those providers directly to the county commissions. Other than establishing rules, as directed by the Legislature, for the payment and collection of VoIP fees (150 C.S.R. 25), the Commission has no role in establishment, administration or collection of the land/wireline E-911 fees.

The second source of 911 revenue for counties comes from the wireless enhanced 911 fee (“wireless E-911 fee”) that the Legislature originally established by statute at \$3

¹ While there is no statutory limit on the level of the fee, “the fee revenues may only be used solely and directly for the capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing and including the reasonable costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point.” W.Va. Code §7-1-3cc(b).

per month for each valid retail commercial mobile radio service subscription. W.Va. Code §24-6-6b(b). The recalculation provisions of W.Va. Code §24-6-6b(c) provide:

Beginning in the year [1997], and every two years thereafter, the Public Service Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the fee so that it is the weighted average rounded to the nearest penny, as of the first day of March of the respecification year, of all the enhanced 911 fees imposed by the counties which have adopted an enhanced 911 ordinance.

Accordingly, if the weighted average of the land/wireline E-911 fees exceeds \$3 per month, then the Commission establishes an increased wireless E-911 fee at the weighted average of the land/wireline E-911 fees, but the increase is never more than twenty-five percent of the wireless E-911 fee in effect at the beginning of the respecification year. The Commission conducted its recalculation in 2017 and issued an Order increasing the wireless E-911 fee. The wireless E-911 fee is currently \$3.34 per month.

II. Distribution of Wireless E-911 fees by the Commission

Customers pay the wireless E-911 fees to the wireless service providers that, in turn, remit the fees to the Commission. The Commission retains none of the fees and distributes one hundred percent of the monies received according to the specific instructions contained in W.Va. Code §24-6-6b(b) and (d):

- One million dollars is placed in a fund, each year, to subsidize the construction of wireless towers.
- Ten cents of the amount collected per subscriber per month is distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communications efforts with those of the enhanced 911 systems.
- Five percent of the wireless E-911 fees received by the Commission are deposited in a special fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrade of the West Virginia Interoperable Radio Project.
- The remainder of the money is distributed to the counties according to the formula set forth in the Code.

III. Commission Authority relating to County Emergency Telephone Systems

The emergency and enhanced emergency telephone systems operated by counties are not public utilities under W.Va. Code Chapter 24 or 24A. Tabb v. Jefferson County Commission, Case No. 15-0323, Mem. Dec. at 3 (W.Va. Nov. 6, 2015) (Legislature has not designated county commissions as public utilities “for purposes of the imposition of E-911 fees”).

The Commission's role with respect to emergency telephone systems is limited by law. W.Va. Code §24-6-6(c) provides that a county's final plan for implementation and operation of an enhanced 911 System for the first five years is filed with the Commission, and the Commission should ensure that “its provisions are complied with.” W. Va. Code §24-6-6(b)(3) and (b)(4) require only that the final plan contain (i) “a projection of the initial cost of establishing, equipping and furnishing and of the annual cost of the first five years of operating and maintaining each county answering point,” and (ii) a statement of how the county will pay for its share of the system’s cost.

W.Va. Code §24-6-7 confers limited authority on the Commission to resolve conflicts between county commissions, between telephone companies, between telephone companies and County Commissions, and between the West Virginia Department of Military Affairs and Public Safety, State Police and county commissions and/or telephone companies in matters concerning emergency and enhanced emergency telephone systems.

The Commission has no statutory authority to perform audits of county commission emergency or enhanced emergency telephone system expenditures beyond the limited authority contained in W.Va. Code §§24-6-6(c) and 24-6-7 as described above. The Commission also has no jurisdiction over a county commission decision to change an E-911 fee pursuant to W.Va. Code § 7-1-3cc. Tabb, Mem. Dec. at 3.

As acknowledged by the Legislative Auditor, we believe the Commission fully performs its delegated duties with respect to emergency telephone systems as set forth in W.Va. Code §24-6-1 et seq. In addition to the duties delegated by the West Virginia Code, the Commission files an annual report with the Federal Communications Commission (FCC) regarding E911 fee collections in the state, as described in section IV. below.

IV. Annual Collection of Information Related to Emergency Telephone Systems

Each year the FCC, on behalf of the federal Public Safety and Homeland Security Bureau, seeks from state governors the following specific information in order to fulfill the FCC’s obligations under The New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act):

- A statement as to whether or not the state has established a funding mechanism designated for or imposed for the purposes of 911 or E911 support or implementation (including a citation to the legal authority for such mechanism).
- The amount of the fees or charges imposed for the implementation and support of 911 and E911 services, and the total amount collected pursuant to the assessed fees or charges, for the annual period ending December 31.
- A statement describing how the funds collected are made available to localities, and whether the state has established written criteria regarding the allowable uses of the collected funds, including the legal citation to those criteria.
- A statement identifying any entity in the state that has the authority to approve the expenditure of funds collected for 911 or E911 purposes, and a description of any oversight procedures established to determine that collected funds have been made available or used for the purposes designated by the funding mechanism, or otherwise used to implement or support 911 or E911.
- A statement whether all the funds collected for 911 or E911 purposes have been made available or used for the purposes designated by the funding mechanism, or otherwise used for the implementation or support of 911 or E911.
- A statement identifying what amount of funds collected for 911 or E911 purposes were made available or used for any purposes other than the ones designated by the funding mechanism or used for purposes otherwise unrelated to 911 or E911 implementation or support, including a statement identifying the unrelated purposes for which the funds collected for 911 or E911 purposes were made available or used.
- Any other comments the respondent may wish to provide regarding the applicable funding mechanism for 911 and E911.

The FCC requires that state officials report the information with respect to fees and charges collected in connection with the implementation and support of 911 or E911 services within their state, including any political subdivision thereof.

The FCC is required to annually file a report with the Congress “detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or

political subdivision thereof for any purpose other than the purpose for which any such fees or charges are specified.” The Public Safety and Homeland Security Bureau reviews the information collected pursuant to Section 6(f)(2) of the NET 911 Act.

To prepare the West Virginia annual report to the FCC, the Commission annually requests that each county commission with a 911 public service answering point (PSAP) provide information related to the collection and use of E911. The Legislative Auditor correctly indicated that the West Virginia Code does not require county commissions to respond to the Commission’s request for information. The majority but not all of the county commissions, however, voluntarily provide those responses.

V. Legislative Auditor Recommendations

Annual Reporting Recommendation

The Commission has no objection to the first recommendation of the Legislative Auditor that the Legislature consider amending the West Virginia Code to require all county commissions to provide annual reports to the Commission or the Governor’s Office of information required by the FCC relating to collection and use of all E-911 fees. The information should be filed with the Commission by May 15 of each year.

Recommendation for Periodic Financial Review/Audit of County Commission Public Service Answering Points (PSAPs)

The Commission has no objection to the second recommendation of the Legislative Auditor that the Legislature consider amending the West Virginia Code to require an entity of State government to conduct periodic reviews or audits of county commission expenditures of E-911 fees. The Commission does, however, have several suggestions relating to this recommendation.

1. The Commission is not the Appropriate Body to Conduct Financial Review or Audit

The Legislative Auditor recommended that the Legislature delegate the duty to conduct financial reviews/audits to the Commission, the State Auditor’s Office, or some other entity. The Commission does not believe that it is the appropriate body to take on these duties, and either the Office of the State Tax Commissioner or the State Auditor are more appropriate bodies to perform the audits.

A. The Office of the State Tax Commissioner is a more logical entity to conduct necessary audits of county commissions because the Office of the State Tax Commissioner has existing authority to audit various county commission activities including: county fire boards (W.Va. Code §7-17-17); emergency ambulance service

authorities (W.Va. Code §7-15-11); area development corporations (W.Va. Code §7-5-18); county and municipal development authorities (W.Va. Code §7-12-12); contributions to community action program organizations (W.Va. Code §7-13-9); and economic opportunity districts (W.Va. Code §7-22-15).

B. The State Auditor is another more logical entity to conduct necessary audits of county commissions because, as reported by the Legislative Auditor on page 1 and page 7 of its draft report, the State Auditor already includes E-911 fees in its yearly financial statement audits. Furthermore, the State Auditor is specifically authorized by law to examine the books and records of county commission PSAPs receiving land/wireline E-911 fees on an annual basis. W.Va. Code §7-1-3cc(e).

C. The Public Service Commission lacks sufficient Staff and resources to take on the additional workload of auditing fifty-one county commission PSAPs,² and continue to meet the numerous statutory decision deadlines related to regulation of public utilities established by the Legislature in West Virginia Code Chapter 24.

D. The current financial staff of the Commission is fully engaged in analyzing and processing utility proceedings delegated to the Commission by the Legislature.

E. Auditing of county commission PSAPs is outside the scope of the legislative purpose of the Commission which is to regulate public utilities. W.Va. Code §24-1-1. County commissions are local governing bodies and are not acting as public utilities in providing this service.

F. If auditing of county commissions is added to the workload of Commission financial staff, the Commission will be severely understaffed. As reported to the Legislative Auditor, salary restrictions have made it difficult for the Commission to retain its utility analyst and accounting employees. The Commission has difficulty hiring and retaining sufficient financial staff to perform its existing workload, and currently has a number of staff vacancies. The same difficulties would apply to hiring and retaining new staff members to perform county commission E-911 fee audits.

G. Commission salaries and expenses are paid from special revenues that are derived from assessments paid by regulated public utilities, and ultimately by utility ratepayers, as provided in W.Va. Code §24-3-6. County commissions do not pay fees to support Commission operations. Funding from the counties or other source(s) would therefore be needed to fund the hiring of additional personnel and to pay audit expenses rather than placement of this non-utility expense on utility ratepayers.

² There are a total of fifty-one PSAPs operating in the State comprised of forty-seven individual county PSAPs and four two-county combined PSAPs. Recent annual reports to the FCC misstated the number of PSAPs as fifty-two.

H. The expertise of the accountants employed by the Commission is based on the Uniform System of Accounts established for public utilities and utility-specific regulatory accounting. If Commission accountants were to perform audits of county commissions, existing Commission staff would need additional training.

For all of the foregoing reasons, the Commission is not the appropriate agency to perform periodic financial reviews/audits of county commission PSAPs.

2. Statutory Amendment should specify Allowable Expenditures

Regardless of which state entity is assigned periodic financial reviews/audits of the use of E-911 fees, the Legislature should specify the allowable expenditures of the E-911 fees in any statutory amendment. Current law describes allowable use of E-911 fee revenues only in general terms - for land/wireline E-911 fees at W.Va. Code §7-1-3cc(b) and for wireless E-911 fees at W.Va. Code §§24-6-6b(d)(2) and 24-6-6b(g). An auditor would have difficulty applying the law to evaluate county commission expenditures unless the law more granularly spells out allowable expenditures that could qualify as capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system, or as costs attributable to the establishment and conversion to city-type addressing.

In 2005, the members of the WV Enhanced 911 Council, comprised of all the directors of the 911 PSAPs in the state, established the following comprehensive list of expenses that the Council considered appropriate for use of E-911 fees:

(from the December 2, 2005 meeting of the WV Enhanced 911 Council)

NOTES - Fee-recoverable items (listed below) include such items used at or for the primary answering point and such items used at or for secondary and/or back-up answering points.

- 1) Recurring and non-recurring rates and charges paid to telephone companies for:
 - a) Lines, switching and trunks associated with Enhanced 911 service;
 - b) Administrative lines and telecommunications facilities associated with the Enhanced 911 system's public safety answering point(s) PSAP(s).
- 2) Telephone company charges associated with Enhanced 911 services such as ANI, ALI, Forced Disconnect, Called Party Hold, Selective Routing, Default Routing, Idle Circuit Tone, Switch Hook Status, etc.

- 3) Telephone Company billing and collection charges associated with the Enhanced 911 fee.
- 4) Costs associated with provision, update and maintenance of a database, for the Enhanced 911 system, which uniquely identifies all telephone subscribers in the Enhanced 911 service area in such a manner that emergency service providers may be timely, reliably, efficiently, accurately and unambiguously dispatched to locations in need of assistance. This activity includes mapping, address assignment, and Enhanced 911 system database programming activities, whether done by Enhanced 911 system personnel, emergency service provider personnel, one or more telephone companies and/or one or more contract groups. Costs of fax and/or computer facilities used for database activity (i.e., initial entry, corrections, updates, additions, deletions, etc.) may be covered by the Enhanced 911 fee. Vehicle costs accrued pursuant to mapping/addressing activities may be paid from 911 fee funds. Costs associated with the initial provision and placement of rural road name signs/posts/poles/etc. may be paid for by Enhanced 911 fee money. Replacement costs may not be covered in this manner, nor may any signage costs associated with municipal or state roadways be covered by 911 fee funds.
- 5) Costs for employee training and education, including:
 - a) School tuition, seminar fees, etc.;
 - b) Training materials;
 - c) Training related meals, lodging and travel;
 - d) Dues and other membership costs associated with professional organizations;
 - e) Testing, grading, evaluating;
 - f) Wages for time spent in on-the-job training.

NOTE - Training may commence prior to actual provision of 911 service by a county and, when it does, legitimate costs (see above) for such "advance training" may be recovered by use of Enhanced 911 fee revenues.

- 6) Computer-aided-dispatch (CAD) system costs for such systems used by Enhanced 911 PSAPs.
- 7) Wage, benefit, insurance, uniform, etc. costs for personnel employed by the Enhanced 911 system.

- 8) Costs (including insurance) associated with purchase, replacement, enhancement, repair and maintenance of the following items, both on-line and spare:
 - a) Enhanced 911 telecommunications equipment, including recorders and the recording media (tapes, discs, hard drives, etc.) that they use; fax equipment, computers and teletypes (if used, even occasionally, in conjunction with dispatch activity); equipment used for communicating with hearing or speech impaired persons who call 911;
 - b) Computer equipment and software associated with the Enhanced 911 database, CAD, and/or other aspects of the Enhanced 911 system.
- 9) Costs (including insurance) associated with radio equipment, including spare equipment, used in:
 - a) Dispatching emergency service providers pursuant to calls to 911;
 - b) Transferring or relaying 911 calls and/or information related to such calls.
- 10) Costs (including construction, insurance, land and vehicle expenses) associated with radio towers (including tower rental charges), radio antennae, feeder lines, etc., associated with the radio equipment described in Item 9, above.
- 11) Costs (including insurance) associated with back-up batteries and emergency power generation, transmission and control equipment.
- 12) Costs associated with electrical facilities (wiring, cabling, control devices, conduits, raceways, distribution equipment, sockets, outlets, etc.), including lighting, heating, humidity control and air conditioning facilities.
- 13) Costs associated with equipment, software, phone service, training, etc. necessary for compliance with the Federal Communications Commission's Phases I and II for wireless Enhanced 911 service.
- 14) Costs associated with provision (i.e., construction of a new building or purchase of an existing building or portion thereof), maintenance, cleaning, repair and upkeep of buildings and/or portions of buildings

used to house PSAP and associated operations. This includes shelters for radio dispatch facilities. It also includes a reasonable amount of land, as well as necessary roads, driveways and parking facilities on PSAP property.

- 15) Costs associated with PSAP furnishings (desks, chairs, credenzas, filing cabinets, shelving, storage facilities, etc.), accessories, office equipment (photocopiers, printers, PCs, laptop computers, scanners, clocks, postage meters, etc.), office supplies (paper, envelopes, staples/staplers, date stamps, binders, file folders, stationery, clips, writing instruments, etc.), and postage used for official PSAP business.
- 16) Utility costs (electricity, telephone, water, sewer, gas, etc.) associated with PSAP operations.
- 17) Costs associated with motor vehicles used for official business of the 911 operations. If a vehicle which has been paid for by 911 fee money is ever used for anything other than 911 business, the 911 fund must be reimbursed, using applicable motor vehicle reimbursement policies and practices, for such use.

This list is not part of the West Virginia Code or any agency rules. The Commission suggests that the Legislature review and determine whether it agrees with the WV Enhanced 911 Council guidelines and consider including specific guidance in the Code for allowable E-911 expenditures.

The Commission appreciates this opportunity to submit written comments.

County-Imposed E-911 Fees 2012-16					
<i>County</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
Barbour	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Berkeley	\$2.75	\$2.75	\$2.75	\$2.75	\$5.00
Boone	\$2.00	\$2.00	\$2.00	\$2.00	\$4.00
Boone-Bus	-	-	-	-	\$6.00
Braxton	\$2.10	\$2.10	\$2.10	\$2.10	\$2.10
Brooke	\$2.05	\$2.05	\$2.05	\$2.05	\$6.50
Cabell	\$4.50	\$4.50	\$4.50	\$4.50	\$7.00
Cabell-Bus	\$6.50	\$6.50	\$6.50	\$6.50	\$9.50
Calhoun	\$2.45	\$2.45	\$2.45	\$2.45	\$2.45
Clay	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Doddridge	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Fayette	\$3.50	\$3.50	\$3.50	\$4.50	\$4.50
Gilmer	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75
Grant	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
Greenbrier	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Hampshire	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Hancock	\$2.05	\$2.05	\$2.05	\$2.05	\$4.05
Hardy	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
Harrison	\$0.98	\$0.98	\$0.98	\$0.98	\$0.98
Jackson	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Jefferson	\$2.90	\$5.00	\$2.90	\$5.00	\$5.00
Kanawha	\$4.00	\$4.00	\$4.00	\$5.60	\$5.60
Kanawha-	\$6.40	\$6.40	\$6.40	\$8.96	\$8.96
Lewis	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75
Lincoln	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
Logan	\$1.50	\$1.50	\$1.50	\$3.00	\$3.00
Marion	\$2.25	\$2.25	\$2.25	\$2.25	\$2.25
Marshall	\$1.20	\$1.20	\$1.20	\$1.20	\$1.20
Mason	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
McDowell	\$2.90	\$2.90	\$2.90	\$2.90	\$2.90
Mercer	\$1.25	\$1.25	\$1.25	\$1.25	\$3.00
Mineral	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Mingo	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Monongalia	\$1.31	\$1.31	\$3.00	\$3.00	\$3.00
Monroe	\$4.65	\$4.65	\$4.65	\$4.65	\$4.65
Morgan	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50
Nicholas	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Ohio	\$1.97	\$1.97	\$1.97	\$1.97	\$1.97
Pendleton	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50
Pleasants	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Pocahontas	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25

<u>County</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Preston	\$1.00	\$1.00	\$1.00	\$1.00	\$3.00
Putnam	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50
Raleigh	\$2.00	\$2.00	\$3.00	\$3.00	\$5.00
Randolph	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50
Ritchie	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Roane	\$1.75	\$1.75	\$1.75	\$3.25	\$3.25
Summers	\$3.85	\$3.85	\$3.85	\$3.85	\$3.85
Taylor	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50
Tucker	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50
Tyler	\$2.85	\$2.85	\$2.85	\$2.85	\$2.85
Upshur	\$4.50	\$4.50	\$2.65	\$2.65	\$4.50
Upshur-	\$-	\$-	\$-	\$-	\$6.50
Wayne	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Webster	\$2.60	\$2.60	\$2.60	\$2.60	\$2.60
Wetzel	\$2.95	\$2.95	\$2.95	\$2.95	\$2.95
Wirt	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Wood	\$1.75	\$1.75	\$2.50	\$2.50	\$3.25
Wyoming	\$2.65	\$2.65	\$3.65	\$3.65	\$3.65



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