

By: Senator(s) White, Flowers

To: Public Utilities

SENATE BILL NO. 2651

1 AN ACT TO AMEND SECTIONS 19-5-303 AND 19-5-313, MISSISSIPPI
2 CODE OF 1972, TO INCLUDE VOICE OVER INTERNET PROTOCOL SERVICES
3 WITHIN THE SCOPE OF THE SERVICES SUBJECT TO WIRELINE EMERGENCY
4 E-911 CHARGES; TO ESTABLISH A PROCEDURE FOR SERVICE SUPPLIERS TO
5 REPORT TO EMERGENCY COMMUNICATIONS DISTRICTS REGARDING SERVICES
6 AND COLLECTIONS; TO PROVIDE A CIVIL PENALTY IN CASES WHERE SERVICE
7 PROVIDERS FAIL TO MAKE REPORTS OR AUDITS REQUIRED BY LAW; TO AMEND
8 SECTIONS 19-5-331 AND 19-5-333, MISSISSIPPI CODE OF 1972, TO
9 INCLUDE PREPAID CELLULAR TELEPHONE SERVICE WITHIN THE SCOPE OF THE
10 COMMERCIAL MOBILE RADIO SERVICE BOARD AND TO AUTHORIZE THE BOARD
11 TO REQUIRE AUDITS OF CMRS SERVICE PROVIDERS; AND FOR RELATED
12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** Section 19-5-303, Mississippi Code of 1972, is
15 amended as follows:

16 19-5-303. For purposes of Sections 19-5-301 through
17 19-5-317, the following words and terms shall have the following
18 meanings, unless the context clearly indicates otherwise:

19 (a) "Exchange access facilities" shall mean all lines
20 provided by the service supplier for the provision of local
21 exchange service as defined in existing general subscriber
22 services tariffs.

23 (b) "Tariff rate" shall mean the rate or rates billed
24 by a service supplier as stated in the service supplier's tariffs
25 and approved by the Public Service Commission, which represent the
26 service supplier's recurring charges for exchange access
27 facilities, exclusive of all taxes, fees, licenses or similar
28 charges whatsoever.

29 (c) "District" shall mean any communications district
30 created pursuant to Sections 19-5-301 et seq., or by local and
31 private act of the State of Mississippi.

32 (d) "Service supplier" shall mean any person providing
33 exchange telephone service or VoIP service to any service user
34 throughout the county.

35 (e) "Service user" shall mean any person, not otherwise
36 exempt from taxation, who is provided exchange telephone service
37 or VoIP service in the county or state.

38 (f) "E911" shall mean Enhanced Universal Emergency
39 Number Service or Enhanced 911 Service, which is a telephone
40 exchange communications service whereby a Public Safety Answering
41 Point (PSAP) designated by the county or local communications
42 district may receive telephone calls dialed to the telephone
43 number 911. E911 Service includes lines and equipment necessary
44 for the answering, transferring and dispatching of public
45 emergency telephone calls originated by persons within the serving
46 area who dial 911. Enhanced 911 Service includes the displaying
47 of the name, address and other pertinent caller information as may
48 be supplied by the service supplier.

49 (g) "Basic 911" shall mean a telephone service
50 terminated in designated Public Safety Answering Points accessible
51 by the public through telephone calls dialed to the telephone
52 number 911. Basic 911 is a voice service and does not display
53 address or telephone number information.

54 (h) "Shared tenant services (STS)" shall mean any
55 telephone service operation supplied by a party other than a
56 regulated local exchange telephone service supplier for which a
57 charge is levied. Such services shall include, but not be limited
58 to, apartment building systems, hospital systems, office building
59 systems and other systems where dial tone is derived from
60 connection of tariffed telephone trunks or lines connected to a
61 private branch exchange telephone system.

62 (i) "Private branch exchange (PBX)" shall mean any
63 telephone service operation supplied by a party other than a
64 regulated local exchange telephone service supplier for which a

65 charge is not levied. Such services are those where tariffed
66 telephone trunks or lines are terminated into a central switch
67 which is used to supply dial tone to telephones operating within
68 that system.

69 (j) "Off-premise extension" shall mean any telephone
70 connected to a private branch exchange or a shared tenant service
71 which is in a different building or location from the main
72 switching equipment and, therefore, has a different physical
73 address.

74 (k) "Centrex" or "ESSX" shall mean any variety of
75 services offered in connection with any tariffed telephone service
76 in which switching services and other dialing features are
77 provided by the regulated local exchange telephone service
78 supplier.

79 (l) "Commercial mobile radio service" or "CMRS" shall
80 mean commercial mobile radio service under Sections 3(27) and
81 332(d) of the Federal Telecommunications Act of 1996, 47 USCS
82 Section 151 et seq., and the Omnibus Budget Reconciliation Act of
83 1993, Public Law 103-66. The term includes the term "wireless"
84 and service provided by any wireless real time two-way voice
85 communication device, including radio-telephone communications
86 used in cellular telephone service, personal communication
87 service, or the functional or competitive equivalent of a
88 radio-telephone communications line used in cellular telephone
89 service, a personal communication service, or a network radio
90 access line. The term does not include service whose customers do
91 not have access to 911 or to a 911-like service, to a
92 communication channel suitable only for data transmission, to a
93 wireless roaming service or other nonlocal radio access line
94 service, or to a private telecommunications system.

95 (m) "Telecommunicator" shall mean any person engaged in
96 or employed as a telecommunications operator by any public safety,
97 fire or emergency medical agency whose primary responsibility is

98 the receipt or processing of calls for emergency services provided
99 by public safety, fire or emergency medical agencies or the
100 dispatching of emergency services provided by public safety, fire
101 or emergency medical agencies and who receives or disseminates
102 information relative to emergency assistance by telephone or
103 radio.

104 (n) "Public safety answering point (PSAP)" shall mean
105 any point of contact between the public and the emergency services
106 such as a 911 answering point or, in the absence of 911 emergency
107 telephone service, any other point of contact where emergency
108 telephone calls are routinely answered and dispatched or
109 transferred to another agency.

110 (o) "Local exchange telephone service" shall mean all
111 lines provided by a service supplier as defined in existing
112 general subscriber tariffs.

113 (p) "VoIP service" means interconnected voice over
114 Internet protocol service as defined in the Code of Federal
115 Regulations, Title 47, Part 9, Section 9.3, as amended.

116 **SECTION 2.** Section 19-5-313, Mississippi Code of 1972, is
117 amended as follows:

118 19-5-313. (1) The board of supervisors may levy an
119 emergency telephone service charge in an amount not to exceed One
120 Dollar (\$1.00) per residential telephone subscriber line per month
121 and Two Dollars (\$2.00) per commercial telephone subscriber line
122 per month for exchange telephone service. Any emergency telephone
123 service charge shall have uniform application and shall be imposed
124 throughout the entirety of the district to the greatest extent
125 possible in conformity with availability of such service in any
126 area of the district. Those districts which exist on the date of
127 enactment of Chapter 539, Laws of 1993, shall convert to the
128 following structure for service charge levy: If the current
129 charge is five percent (5%) of the basic tariff service rate, the
130 new collection shall be Eighty Cents (\$.80) per month per

131 residential subscriber line and One Dollar and Sixty Cents (\$1.60)
132 per month per commercial subscriber line. The collections may be
133 adjusted as outlined in Chapter 539, Laws of 1993, and within the
134 limits set forth herein. The fees levied by authority of this
135 subsection shall also be levied on subscribers to interconnected
136 voice over Internet protocol services or VoIP service.

137 (2) If the proceeds generated by the emergency telephone
138 service charge exceed the amount of monies necessary to fund the
139 service, the board of supervisors may authorize such excess funds
140 to be expended by the county and the municipalities in the
141 counties to perform the duties and pay the costs relating to
142 identifying roads, highways and streets, as provided by Section
143 65-7-143. The board of supervisors shall determine how the funds
144 are to be distributed in the county and among municipalities in
145 the county for paying the costs relating to identifying roads,
146 highways and streets. The board of supervisors may temporarily
147 reduce the service charge rate or temporarily suspend the service
148 charge if the proceeds generated exceed the amount that is
149 necessary to fund the service and/or to pay costs relating to
150 identifying roads, highways and streets. Such excess funds may
151 also be used in the development of county or district
152 communications and paging systems when used primarily for the
153 alerting and dispatching of public safety entities and for other
154 administrative costs such as management personnel, maintenance
155 personnel and related building and operational requirements. Such
156 excess funds may be placed in a depreciation fund for emergency
157 and obsolescence replacement of equipment necessary for the
158 operation of the overall 911 emergency telephone and alerting
159 systems.

160 (3) No such service charge shall be imposed upon more than
161 twenty-five (25) exchange access facilities per person per
162 location. Trunks or service lines used to supply service to CMRS
163 providers shall not have a service charge levied against them.

164 Every billed service user shall be liable for any service charge
165 imposed under this section until it has been paid to the service
166 supplier. The duty of the service supplier to collect any such
167 service charge shall commence upon the date of its implementation,
168 which shall be specified in the resolution for the installation of
169 such service. Any such emergency telephone service charge shall
170 be added to and may be stated separately in the billing by the
171 service supplier to the service user.

172 (4) The service supplier shall have no obligation to take
173 any legal action to enforce the collection of any emergency
174 telephone service charge. However, the service supplier shall
175 annually provide the board of supervisors and board of
176 commissioners with a list of the amount uncollected, together with
177 the names and addresses of those service users who carry a balance
178 that can be determined by the service supplier to be nonpayment of
179 such service charge. The service charge shall be collected at the
180 same time as the tariff rate in accordance with the regular
181 billing practice of the service supplier. Good faith compliance
182 by the service supplier with this provision shall constitute a
183 complete defense to any legal action or claim which may result
184 from the service supplier's determination of nonpayment and/or the
185 identification of service users in connection therewith.

186 (5) The amounts collected by the service supplier
187 attributable to any emergency telephone service charge shall be
188 due the county treasury monthly. The amount of service charge
189 collected each month by the service supplier shall be remitted to
190 the county no later than sixty (60) days after the close of the
191 month. A return, in such form as the board of supervisors and the
192 service supplier agree upon, shall be filed with the county,
193 together with a remittance of the amount of service charge
194 collected payable to the county. The service supplier shall
195 maintain records of the amount of service charge collected for a
196 period of at least two (2) years from date of collection. The

197 board of supervisors and board of commissioners shall receive an
198 annual audit of the service supplier's books and records with
199 respect to the collection and remittance of the service charge.
200 From the gross receipts to be remitted to the county, the service
201 supplier shall be entitled to retain as an administrative fee, an
202 amount equal to one percent (1%) thereof. From and after March
203 10, 1987, the service charge is a county fee and is not subject to
204 any sales, use, franchise, income, excise or any other tax, fee or
205 assessment and shall not be considered revenue of the service
206 supplier for any purpose.

207 (6) In order to provide additional funding for the district,
208 the board of commissioners may receive federal, state, county or
209 municipal funds, as well as funds from private sources, and may
210 expend such funds for the purposes of Section 19-5-301 et seq.

211 (7) (a) For the fiscal year beginning October 1, 2007, and
212 for the following fiscal year, the service supplier shall provide
213 each emergency communications district with a sworn copy of an
214 emergency telephone service charge billing history for the
215 district detailing by month the number of residential and
216 commercial customers; the amount billed in emergency telephone
217 service charges; any adjustments, amounts uncollectible and
218 administrative fees, as well as any other items related to the
219 collection and remittance of emergency telephone service charges;
220 and the net amount remitted to the district.

221 (b) For the fiscal year beginning October 1, 2009, each
222 service supplier shall provide to each emergency communications
223 district an audit conducted by an independent certified public
224 accounting firm of the service supplier's books and records with
225 respect to the collection and remittance of the emergency
226 telephone service charges.

227 (c) For fiscal years beginning October 1, 2010, each
228 service supplier shall adhere to the following ongoing three-year
229 cycle of reporting: sworn statements for two (2) years as

230 described in paragraph (a) of this subsection followed by an
231 independent audit as described in paragraph (b) of this
232 subsection.

233 (8) In instances wherein a service supplier fails to provide
234 an audit or sworn billing history as required in subsection (7) of
235 this section, a county may make demand upon the service supplier
236 by certified mail seeking delivery to the affected district of the
237 required audit or sworn billing history. In the event that the
238 service supplier fails to respond, the county may proceed in
239 chancery court against the supplier for an injunction directing
240 compliance with this subsection and a civil penalty of Fifty
241 Thousand Dollars (\$50,000.00) against any supplier who fails to
242 provide the required reports. Any such penalty shall be paid to
243 the emergency communications district of whose benefit the civil
244 action was commenced. A county may seek assistance from the
245 Attorney General or the District Attorney in seeking remedies
246 provided herein.

247 **SECTION 3.** Section 19-5-331, Mississippi Code of 1972, is
248 amended as follows:

249 19-5-331. As used in Sections 19-5-331 through 19-5-341, the
250 following words and phrases have the meanings ascribed in this
251 section unless the context clearly indicates otherwise:

252 (a) The terms "board" and "CMRS Board" mean the
253 Commercial Mobile Radio Service Emergency Telephone Services
254 Board.

255 (b) The term "automatic number identification" or "ANI"
256 means an Enhanced 911 Service capability that enables the
257 automatic display of the ten-digit wireless telephone number used
258 to place a 911 call and includes "pseudo-automatic number
259 identification" or "pseudo-ANI," which means an Enhanced 911
260 Service capability that enables the automatic display of the
261 number of the cell site and an identification of the CMRS
262 provider.

263 (c) The term "commercial mobile radio service" or
264 "CMRS" means commercial mobile radio service under Sections 3(27)
265 and 332(d) of the Federal Telecommunications Act of 1996, 47 USCS
266 Section 151 et seq., and the Omnibus Budget Reconciliation Act of
267 1993, Public Law 103-66. The term includes the term "wireless"
268 and service provided by any wireless real time two-way voice
269 communication device, including radio-telephone communications
270 used in cellular telephone service, personal communication
271 service, or the functional or competitive equivalent of a
272 radio-telephone communications line used in cellular telephone
273 service, a personal communication service, specialized mobile
274 radio service, or a network radio access line. The term includes
275 services that are prepaid as well as those billed periodically by
276 a CMRS provider. The term does not include service whose
277 customers do not have access to 911 or to a 911-like service, to a
278 communication channel suitable only for data transmission, to a
279 wireless roaming service or other nonlocal radio access line
280 service, or to a private telecommunications system.

281 (d) The term "commercial mobile radio service provider"
282 or "CMRS provider" means a person or entity who provides
283 commercial mobile radio service or CMRS service.

284 (e) The term "CMRS connection" means each mobile
285 handset telephone number assigned to a CMRS customer with a place
286 of primary use in the State of Mississippi.

287 (f) The term "CMRS Fund" means the Commercial Mobile
288 Radio Service Fund required to be established and maintained
289 pursuant to Section 19-5-333.

290 (g) The term "CMRS service charge" means the CMRS
291 emergency telephone service charge levied and maintained pursuant
292 to Section 19-5-333 and collected pursuant to Section 19-5-335.

293 (h) The term "distribution formula" means the formula
294 specified in Section 19-5-333(c) by which monies generated from

295 the CMRS service charge are distributed on a percentage basis to
296 emergency communications districts and to the CMRS Fund.

297 (i) The term "ECD" means an emergency communications
298 district created pursuant to Section 19-5-301 et seq., or by local
299 and private act of the State of Mississippi.

300 (j) The term "Enhanced 911," "E911," "Enhanced E911
301 system" or "E911 system" means an emergency telephone system that
302 provides the caller with emergency 911 system service, that
303 directs 911 calls to appropriate public safety answering points by
304 selective routing based on the geographical location from which
305 the call originated, and that provides the capability for
306 automatic number identification and other features that the
307 Federal Communications Commission (FCC) may require in the future.

308 (k) The term "exchange access facility" means an
309 "exchange access facility" as defined by Section 19-5-303.

310 (l) The term "FCC Order" means Federal Communications
311 Commission orders, rules and regulations issued with respect to
312 implementation of Basic 911 or Enhanced 911 and other emergency
313 communication services.

314 (m) The term "place of primary use" means the street
315 address representative of where the customer's use of mobile
316 telecommunications services primarily occurs, which must be either
317 the residential street address or the primary business street
318 address of the customer.

319 (n) The term "service supplier" means a "service
320 supplier" as defined by Section 19-5-303.

321 (o) The term "technical proprietary information" means
322 technology descriptions, technical information or trade secrets
323 and the actual or developmental costs thereof which are developed,
324 produced or received internally by a CMRS provider or by a CMRS
325 provider's employees, directors, officers or agents.

326 **SECTION 4.** Section 19-5-333, Mississippi Code of 1972, is
327 amended as follows:

328 19-5-333. (1) There is created a Commercial Mobile Radio
329 Service (CMRS) Board, consisting of seven (7) members to be
330 appointed by the Governor with the advice and consent of the
331 Senate. The members of the board shall be appointed as follows:

332 (a) One (1) member from the Northern Public Service
333 Commission District selected from two (2) nominees submitted to
334 the Governor by the Mississippi 911 Coordinators Association;

335 (b) One (1) member from the Central Public Service
336 Commission District selected from two (2) nominees submitted to
337 the Governor by the Mississippi Chapter of the Association of
338 Public Safety Communication Officers;

339 (c) One (1) member from the Southern Public Service
340 Commission District selected from two (2) nominees submitted to
341 the Governor by the National Emergency Numbering Association;

342 (d) Two (2) members who are wireless provider
343 representatives;

344 (e) One (1) member who is a consumer representing the
345 state at large with no affiliation to the three (3) trade
346 associations or the wireless providers; and

347 (f) One (1) member who is a member of the Mississippi
348 Law Enforcement Officers Association selected from two (2)
349 nominees submitted to the Governor by the association.

350 The initial terms of the board members, as appointed after
351 July 1, 2002, shall be staggered as follows: the members
352 appointed under paragraph (d) shall serve a term of two (2) years;
353 the member appointed under paragraph (e) shall serve a term of one
354 (1) year. After the expiration of the initial terms, the term for
355 all members shall be four (4) years.

356 (2) The board shall have the following powers and duties:

357 (a) To collect and distribute a CMRS emergency
358 telephone service charge on each CMRS customer whose place of
359 primary use is within the state. The rate of such CMRS service
360 charge shall be One Dollar (\$1.00) per month per CMRS connection.

361 The CMRS service charge shall have uniform application and shall
362 be imposed throughout the state. The board is authorized to
363 receive all revenues derived from the CMRS service charge levied
364 on CMRS connections in the state and collected pursuant to Section
365 19-5-335. The service charge provided in this paragraph shall
366 also be imposed on customers who procure prepaid CMRS.

367 (b) To establish and maintain the CMRS Fund as an
368 insured, interest-bearing account into which the board shall
369 deposit all revenues derived from the CMRS service charge levied
370 on CMRS connections in the state and collected pursuant to Section
371 19-5-335. The revenues which are deposited into the CMRS Fund
372 shall not be monies or property of the state and shall not be
373 subject to appropriation by the Legislature. Interest derived
374 from the CMRS Fund shall be divided equally to pay reasonable
375 costs incurred by providers in compliance with the requirements of
376 Sections 19-5-331 through 19-5-341 and to compensate those
377 persons, parties or firms employed by the CMRS Board as
378 contemplated in paragraph (d) of this subsection. The interest
379 income is not subject to the two percent (2%) cap on
380 administrative spending established in Section 19-5-335(3).

381 (c) To establish a distribution formula by which the
382 board will make disbursements of the CMRS service charge in the
383 following amounts and in the following manner:

384 (i) Out of the funds collected by the board,
385 thirty percent (30%) shall be deposited into the CMRS Fund, and
386 shall be used to defray the administrative expenses of the board
387 in accordance with Section 19-5-335(3) and to pay the actual costs
388 incurred by such CMRS providers in complying with the wireless
389 E911 service requirements established by the FCC Order and any
390 rules and regulations which are or may be adopted by the FCC
391 pursuant to the FCC Order, including, but not limited to, costs
392 and expenses incurred for designing, upgrading, purchasing,
393 leasing, programming, installing, testing or maintaining all

394 necessary data, hardware and software required in order to provide
395 such service as well as the incremental costs of operating such
396 service. Sworn invoices must be presented to the board in
397 connection with any request for payment and approved by a majority
398 vote of the board prior to any such disbursement, which approval
399 shall not be withheld or delayed unreasonably. In no event shall
400 any invoice for payment be approved for the payment of costs that
401 are not related to compliance with the wireless E911 service
402 requirements established by the FCC Order and any rules and
403 regulations which are or may be adopted by the FCC pursuant to the
404 FCC Order, and any rules and regulations which may be adopted by
405 the FCC with respect to implementation of wireless E911 services.

406 (ii) The remainder of all funds collected by the
407 board, which shall not be less than seventy percent (70%) of the
408 total funds collected by the board, shall be distributed by the
409 board monthly based on the number of CMRS connections in each ECD
410 for use in providing wireless E911 service, including capital
411 improvements, and in their normal operations. For purposes of
412 distributing the funds to each ECD, every CMRS provider shall
413 identify to the CMRS Board the ECD to which funds should be
414 remitted based on zip code plus four (4) designation, as required
415 by the federal Uniform Sourcing Act.

416 An ECD board that has within its jurisdiction zip code
417 designations that do not adhere to county lines shall assist CMRS
418 providers in determining the appropriate county to which funds
419 should be distributed.

420 (d) To contract for the services of accountants,
421 attorneys, consultants, engineers and any other persons, firms or
422 parties the board deems necessary to effectuate the purposes of
423 Sections 19-5-331 through 19-5-341.

424 (e) To obtain from an independent, third-party auditor
425 retained by the board annual reports to the board no later than
426 sixty (60) days after the close of each fiscal year, which shall

427 provide an accounting for all CMRS service charges deposited into
428 the CMRS Fund during the preceding fiscal year and all
429 disbursements to ECDs during the preceding fiscal year. The board
430 shall provide a copy of the annual reports to the Chairmen of the
431 Public Utilities Committees of the House of Representatives and
432 Senate.

433 (f) To retain an independent, third-party accountant
434 who shall audit CMRS providers at the discretion of the CMRS Board
435 to verify the accuracy of each CMRS providers' service charge
436 collection. The information obtained by the audits shall be used
437 solely for the purpose of verifying that CMRS providers accurately
438 are collecting and remitting the CMRS service charge and may be
439 used for any legal action initiated by the board against CMRS
440 providers.

441 (g) To levy interest charges at the legal rate of
442 interest established in Section 75-17-1 on any amount due and
443 outstanding from any CMRS provider who fails to remit service
444 charges in accordance with Section 19-5-335(1).

445 (h) To promulgate such rules and regulations as may be
446 necessary to effect the provisions of Sections 19-5-331 through
447 19-5-341.

448 (i) To make the determinations and disbursements as
449 provided by Section 19-5-333(2)(c).

450 (j) To maintain a registration database of all CMRS
451 providers and to impose an administrative fine on any provider
452 that fails to comply with the registration requirements in Section
453 19-5-335.

454 (3) The CMRS service charge provided in subsection (2)(a) of
455 this section and the service charge provided in Section 19-5-357
456 to fund the training of public safety telecommunicators shall be
457 the only charges assessed to CMRS customers relating to emergency
458 telephone services.

459 (4) The board shall serve without compensation; however,
460 members of the board shall be entitled to be reimbursed for actual
461 expenses and travel costs associated with their service in an
462 amount not to exceed the reimbursement authorized for state
463 officers and employees in Section 25-3-41, Mississippi Code of
464 1972.

465 (5) It is the Legislature's intent to ensure that the State
466 of Mississippi shall be Phase I compliant by July 1, 2005. For
467 purposes of this subsection, Phase I compliant means the mandate
468 by the FCC that requires any carrier when responding to a PSAP to
469 define and deliver data related to the cell site location and the
470 caller's call-back number.

471 **SECTION 5.** This act shall take effect and be in force from
472 and after July 1, 2007.