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For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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CHAPTER E-5.1

EMERGENCY 911 ACT

911 COST RECOVERY FEES REGULATIONS

Pursuant to section 10 of the *Emergency 911 Act* R.S.P.E.I. 1988, Cap. E-5.1, Council made the following regulations:

1. In these regulations, “Act” means the *Emergency 911 Act* R.S.P.E.I. Act 1988, Cap. E-5.1; (EC342/06)

2. (1) Where a telecommunications carrier wishes to pay under subsection 2.2(5) of the Act an amount that is calculated on the basis of the amount of the cost recovery fees that the telecommunications carrier collected in the immediately preceding calendar month, the amount that the telecommunications carrier is required to pay in respect of that month shall be determined by the formula

Calculation of amount payable on collection basis

$$A - (B \times C)$$

where

A is the total amount of the cost recovery fees collected in the immediately preceding calendar month by the telecommunications carrier;

B is the amount of the collection or billing allowance set out in section 5 that may be deducted by the telecommunications carrier in respect of each cost recovery fee that it collected; and

C is an amount equal to the number of the cost recovery fees that the telecommunications carrier collected in the immediately preceding calendar month.

(2) Where a telecommunications carrier wishes to pay under subsection 2.2(5) of the Act an amount that is calculated on the basis of the amount of the cost recovery fees that the telecommunications carrier has billed to its local subscribers for telephone services provided in the immediately preceding calendar month, the amount the telecommunications carrier is required to pay in respect of that month shall be determined by the formula

Calculation of amount payable on billed basis

$$[(A \times B) - (B \times C)] - [((A \times B) - (B \times C)) \times D]$$

where

A is the amount of the cost recovery fee set out in the Schedule to the Act;

B is the number of telephone services that the telecommunications carrier billed to its local subscribers during the immediately preceding calendar month;

C is the amount of the collection or billing allowance set out in section 5 that may be deducted by the telecommunications carrier in respect of each telephone service that it bills its local subscribers for; and

D is the telecommunication carrier's average percentage rate of bad debts for the telephone services that it billed to its local subscribers during its previous fiscal year. (EC342/06)

Returns

3. (1) On or before the twentieth day of each calendar month, every telecommunications carrier shall file with the Commissioner a return that

- (a) is in such form as may be prescribed by the Commissioner; and
- (b) contains the information required by this section.

Idem

(2) Where the amount that a telecommunications carrier pays in a calendar month under subsection 2.2(5) of the Act is calculated on the basis of the amount of the cost recovery fees that the telecommunications carrier collected during the immediately preceding calendar month, the return filed by the telecommunications carrier pursuant to subsection (1) must indicate

- (a) the total amount of the cost recovery fees collected by the telecommunications carrier in the immediately preceding calendar month;
- (b) the total number of the cost recovery fees that the telecommunications carrier collected in the immediately preceding calendar month; and
- (c) the total amount of the collection or billing allowance claimed by the telecommunications carrier in respect of the cost recovery fees it collected in the immediately preceding calendar month.

Idem

(3) Where the amount that a telecommunications carrier pays in a calendar month under subsection 2.2(5) of the Act is calculated on the basis of the amount of the cost recovery fees that the telecommunications carrier billed to its local subscribers during the immediately preceding calendar month, the return filed by the telecommunications carrier pursuant to subsection (1) must indicate

- (a) the number of telephone services that the telecommunications carrier billed to its local subscribers during the immediately preceding calendar month;
- (b) the total amount of the collection allowance claimed by the telecommunications carrier in respect of the cost recovery fees it billed in the immediately preceding calendar month; and
- (c) the telecommunication carrier's average percentage rate of bad debts for the telephone services it billed to its local subscribers during its previous fiscal year.

(4) Where a telecommunications carrier

(a) is registered under the Act as an agent of the Provincial Treasurer for the collection of the cost recovery fees payable by its local subscribers;

(b) normally provides telephone services to its local subscribers; and

(c) in the immediately preceding calendar month, did not collect or bill, as the case may be, any cost recovery fees,

the telecommunications carrier shall, on or before the twentieth day of the following calendar month, file a return that

(d) indicates that the telecommunications carrier did not collect or bill, as the case may be, any cost recovery fees in the immediately preceding calendar month; and

(e) is in a form acceptable to the Commissioner. (EC342/06)

No collection of or
billing made for
fees

4. (1) Where a telecommunications carrier fails in a calendar month to pay an amount to the Provincial Treasurer, as and when required under the Act and these regulations, the telecommunications carrier is deemed to hold an amount equal to the amount it is required to pay under the Act and these regulations in trust for the payment over of the same under the Act and these regulations, and the amount deemed to be held in trust, until paid, forms a lien and charge on the entire estate of the telecommunications carrier or on the entire assets of such estate in the hands of any trustee, and such lien or charge has priority over all other claims of any person.

Amount held in
trust

(2) Where a telecommunications carrier is deemed under subsection (1) to hold an amount in trust, that amount shall be deemed to be held separate from and form no part of the estate or assets of the telecommunications carrier, whether or not the amount has in fact been kept separate and apart from the estate or assets of the telecommunications carrier. (EC342/06)

Amount held
separate

5. (1) Subject to subsection (2), a telecommunications carrier may deduct, as provided for in section 2, a collection or billing allowance in the amount of seven cents (\$.07) for each cost recovery fee it bills to or collects from its local subscribers, as the case may be, on behalf of the Provincial Treasurer.

Collection or billing
allowance

(2) A telecommunications carrier is not entitled to deduct a collection or billing allowance when determining under section 2 the amount that is payable by the telecommunications carrier to the Provincial Treasurer in a calendar month if the telecommunications carrier fails

No deduction of
collection or billing
allowance

(a) in respect of that calendar month, to pay

(i) an amount that is equal to the amount payable under section 2,
or

- (ii) the amount referred to in subclause (i) when required by the Act and these regulations; or
- (b) to file a return for that calendar month as required under section 3. (EC342/06)

Books and records	<p>6. (1) Every telecommunications carrier that provides telephone service to its local subscribers shall keep and maintain books of account, records and documents sufficient to allow the Commissioner to determine, on a monthly basis,</p> <ul style="list-style-type: none"> (a) the number of telephone services subscribed to by its local subscribers; (b) the amount of cost recovery fees billed to its local subscribers; (c) the amount of cost recovery fees collected from its local subscribers; (d) the disposal of the cost recovery fees paid to the telecommunications carrier, including any allowance taken; and (e) the amount of any allowance for bad debts made by the telecommunications carrier under section 2.
<i>Idem</i>	<p>(2) Every telecommunications carrier shall preserve all books of account, records and documents that are required to be kept and maintained under subsection (1) until such time as the Commissioner may authorize their destruction. (EC342/06)</p>
Assessment and reassessment	<p>7. (1) The Commissioner may from time to time and at such intervals as the Commissioner may consider reasonable, determine and assess, or reassess, any amount that is required to be paid by a telecommunications carrier to the Provincial Treasurer under the Act and these regulations, and thereupon the amount so assessed or reassessed becomes due and payable by the telecommunications carrier.</p>
Estimate of amount payable under Act and these regulations	<p>(2) Where a telecommunications carrier</p> <ul style="list-style-type: none"> (a) fails, in a calendar month, <ul style="list-style-type: none"> (i) to pay an amount to the Provincial Treasurer, as and when required under the Act and these regulations, or (ii) to make a return to the Commissioner in accordance with section 3; or (b) on the request of the Commissioner, fails to substantiate, by means of the records kept by the telecommunications carrier, <ul style="list-style-type: none"> (i) the amount of cost recovery fees that the telecommunications carrier has collected from or billed to its local subscribers, as the case may be, during a calendar month, (ii) all or any part of the amount that the telecommunications carrier paid to the Provincial Treasurer under the Act and these regulations during a calendar month, or

(iii) a return for a calendar month made to the Provincial Treasurer by the telecommunications carrier under section 3, the Commissioner may estimate the amount that the telecommunications carrier is required to pay to the Provincial Treasurer during that calendar month and that it has not paid, and such estimated amount is deemed to be due and payable by the telecommunications carrier for that calendar month.

(3) The Commissioner shall serve personally or send by registered mail to the telecommunications carrier, at the latest known address of the telecommunications carrier, a notice setting out the amount assessed or reassessed under subsection (1), or estimated under subsection (2), as being due and payable to the Provincial Treasurer, and in the case of a telecommunications carrier that has more than one address, one of which is within the province, the notice may be sent to the address in the province.

Notice of amount
assessed or
estimated

(4) The liability of a telecommunications carrier to an assessment, reassessment or estimate made by the Commissioner under this section is not affected by

Liability to
assessment

- (a) any previous incorrect or incomplete assessment, reassessment or estimate made by the Commissioner; or
- (b) the fact that no previous assessment, reassessment or estimate has been made by the Commissioner.

(5) Any assessment, reassessment or estimate made by the Commissioner under this section is valid and binding notwithstanding any error, defect or omission therein or any proceeding under the Act or these regulations, unless the assessment, reassessment or estimate is varied or set aside,

Validity

- (a) by the Commissioner, on reconsideration under section 8; or
- (b) by the Commission, on appeal under section 9.

(6) An affidavit or statutory declaration by a person serving or mailing a notice to a telecommunications carrier pursuant to subsection (3) stating that the person has mailed or served the notice is proof that the amount stated in the notice is due and owing and the onus of proving otherwise rests on the telecommunications carrier.

Notice – proof of
mailing or service

(7) In making an assessment or a reassessment under this section, the Commissioner shall not consider a period prior to the sixty months immediately preceding the month in which the assessment or reassessment is made, as the case may be, except where there is a reasonable appearance of wilful default or fraud to the Commissioner.

Period of
assessment

(8) The Provincial Treasurer may by notice published in the Gazette designate any officer of the Provincial Treasury to

Designation by
Provincial Treasurer

- (a) issue and sign notices under subsection (3); and
- (b) exercise the powers of the Commissioner under this section. (EC342/06)

Notice of objection **8.** (1) Where a telecommunications carrier wishes to dispute liability for an amount indicated as being due and payable in a notice that is served on or mailed to the telecommunications carrier under subsection 7(3), the telecommunications carrier shall, within sixty days of the date of service or mailing of the notice, serve on the Commissioner a notice of objection setting out the reasons for the objection and all relevant facts.

Idem (2) A notice of objection is sufficiently served on the Commissioner if, within the time period required by subsection (1), it is

- (a) delivered to the office of the Commissioner; or
- (b) sent by registered mail addressed to the Commissioner.

Reconsideration (3) The Commissioner shall, within sixty days of receipt of a notice of objection from a telecommunications carrier that has been served on or mailed to the Commissioner as required by this section,

- (a) reconsider the assessment, reassessment or estimate that is the subject of the notice of objection;
- (b) decide whether to confirm, vary or set aside the assessment, reassessment or estimate, as the case may be; and
- (c) send by registered mail addressed to the telecommunications carrier a notice of the decision that includes a statement of the amount, if any, that is due and payable by the telecommunications carrier to the Provincial Treasurer. (EC342/06)

Appeals **9.** (1) If a telecommunications carrier is dissatisfied with the decision of the Commissioner under subsection 8(3), the telecommunications carrier may, within thirty days from the date of mailing of the decision, appeal to the Commission.

Notice (2) An appeal shall be commenced by serving upon the Commission a notice of appeal in writing setting out the grounds of the appeal and stating briefly the facts relative thereto.

Grounds (3) The grounds of an appeal set out in a notice of appeal shall be limited to the reasons raised by the telecommunications carrier in a notice of objection filed under subsection 8(1).

Service (4) A notice of appeal is sufficiently served on the Commission if, within the time period required by subsection (1), it is

- (a) delivered to the office of the Commission; or
- (b) sent by registered mail addressed to the Commission.

(5) On the hearing of the appeal both the appellant and the Commissioner are entitled to appear and be heard and to submit further evidence. Right to be heard

(6) The Commission may, in writing, designate a person to act on its behalf and hear an appeal under this section and any reference in this section to the Commission includes a person so designated. Designation of person to act on behalf of the Commission

(7) No grounds of appeal shall be considered by the Commission other than the grounds of appeal set out in the notice of appeal. Grounds that may be considered

(8) Upon any appeal, the Commission may confirm, vary or set aside the decision of the Commissioner and shall give the appellant and the Commissioner written notice of its decision by registered mail. (EC342/06) Decision

10. (1) Where

- (a) a telecommunications carrier gives
 - (i) a notice of objection to the Commissioner, or
 - (ii) a notice of appeal to the Commission; or

(b) a delay in the hearing of an appeal under section 9 occurs, the giving of the notice or the occurrence of the delay, as the case may be, shall not in any way affect the due date of, or the liability of the telecommunications carrier to pay to the Provincial Treasurer, any amount, including any interest or penalty, that is the subject matter of the objection or appeal and that is due and payable under the Act and these regulations. Payment liability not affected by notices of objection or appeal

(2) Where

- (a) an assessment, reassessment or estimate of the Commissioner concerning an amount required to be paid by telecommunications carrier is set aside or reduced on reconsideration by the Commissioner under section 8, or on appeal by the Commission under section 9; and

- (b) the decision of the Commissioner or the Commission respecting the reconsideration or appeal indicates that the telecommunications carrier paid to the Provincial Treasurer an amount it was not required to pay because of an error in the assessment, reassessment or estimate,

the Provincial Treasurer shall, on receipt of notice of the decision of the Commissioner or the Commission, as the case may be, refund to the telecommunications carrier any amount which it was not required to pay, and any additional interest or penalty it paid thereon. (EC342/06) Refund

11. Where

- (a) a telecommunications carrier defaults in the payment of any amount due and payable by a telecommunications carrier to the Recovery of amount

Provincial Treasurer under the Act and these regulations, including any amount due and payable as interest or a penalty;

(b) the Commissioner has sent a registered letter to the telecommunications carrier demanding payment of the amount due and payable; and

(c) 30 days has expired from the date that the registered letter was sent,

the Commissioner may issue a certificate stating

(d) the name of the telecommunications carrier from whom the amount is due and payable;

(e) the facts known to the Commissioner respecting the default referred to in clause (a); and

(f) the amount that is due and payable on the date of the certificate.

Exception

(2) Notwithstanding anything to the contrary in subsection (1), the certificate referred to in that subsection may be issued forthwith where the Commissioner considers it necessary or advisable to do so.

Effect of filing certificate

(3) Upon its production to and filing with the Registrar of the Supreme Court, the certificate shall be entered and recorded in the court, and when so entered and recorded it has the same force and effect, and all proceedings may be taken thereunder, as if it were a judgment obtained in the court by the Government against the person named in the said certificate.

Costs and charges are recoverable

(4) All reasonable costs and charges attendant upon the production and registration of the certificate shall be recovered in like manner as if the amount thereof had been included in the said certificate. (EC342/06)

Third party payment of amount due

12. When the Provincial Treasurer knows or suspects that a person is, or is about to become, indebted to or liable to make any payments to a telecommunications carrier liable to make a payment of an amount due and payable to the Provincial Treasurer under the Act and these regulations, the Provincial Treasurer may, by registered letter or by a letter served upon the person personally, require the person to pay the amount otherwise payable to the telecommunications carrier in whole or in part, to the Provincial Treasurer on account of the liability of the telecommunications carrier under the Act and these regulations. (EC342/06)

Debt due

13. (1) Any amount that is due and payable under the Act and these regulations, constitutes a debt due to the Government and may be recovered by action in any court of competent jurisdiction.

Costs

(2) The court may make an order as to the costs of such action in favour or against the Government.

(3) The *Statute of Limitations* R.S.P.E.I. 1988, Cap. S-7 does not apply to the liability of a telecommunications carrier for the payment of an amount due and payable by the telecommunications carrier under the Act and these regulations and does not constitute a restriction on the recovery of that amount. (EC342/06)

Statute of
limitations for
liability

14. (1) Any amount due and payable under the Act and these regulations by a telecommunications carrier shall bear interest at the rate of 1.5% per month from the day on which that amount should have been paid to the Provincial Treasurer.

Interest on amount
due

(2) Where, as a result of an objection or appeal, an amount is refunded by the Provincial Treasurer to any telecommunications carrier, interest is payable thereon by the Provincial Treasurer at the rate referred to in subsection (1).

Refunded amounts

(3) Notwithstanding subsection (1), interest shall cease to accrue on an amount due and payable under the Act and these regulations by a telecommunications carrier as of the date the telecommunications carrier files an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* R.S.C 1985, Chap. B-3. (EC342/06)

Bankruptcy

15. Every telecommunications carrier who fails, in a calendar month, to pay an amount to the Provincial Treasurer that is due and payable under the Act and these regulations, or to make a return to the Commissioner for the calendar month in accordance with section 3, shall pay a penalty to the Provincial Treasurer upon demand by the Commissioner in an amount equal to the lesser of

Penalty

(a) five percent of the total amount that was due and payable by the telecommunications carrier for the calendar month; and

(b) \$250,

and the amount of such penalties may be stated in a certificate issued by the Commissioner pursuant to section 11. (EC342/06)

16. (1) Where a telecommunications carrier owes an amount to the Provincial Treasurer that is due and payable under the Act and these regulations, the telecommunications carrier shall pay to the Provincial Treasurer, on demand by the Commissioner, all of the costs and expenses incurred by the Provincial Treasurer in collecting the amount that is due and payable, and the amount of such costs and expenses may be stated in a certificate issued by the Commissioner pursuant to section 11.

Costs and expenses

(2) The Commissioner may levy against a telecommunications carrier a penalty in the amount of \$35 for each non-negotiable cheque that is issued by the telecommunications carrier to the Provincial Treasurer. (EC342/06)

Penalty for non-
negotiable cheque

Audits	<p>17. (1) The Commissioner may, from time to time and at such intervals as the Commissioner considers appropriate, make or cause to be made an audit of the books of account, records, documents and papers of any telecommunications carrier.</p>
<i>Idem</i>	<p>(2) Each telecommunications carrier shall make its books of account, records, documents and papers available to the Commissioner for the purpose of an audit under subsection (1). (EC342/06)</p>
Entry for audit	<p>18. (1) The Commissioner, an inspector or any person authorized by the Provincial Treasurer may, without warrant, during normal business hours or at any other reasonable time, enter upon any premises or place where any telecommunications carrier carries on business or where any records of a telecommunications carrier are kept to audit, inspect or examine any account, record, paper, document, invoice, record keeping device, voucher, letter, electronic mail, or any other document or thing that is related or may relate in any way to the billing or collection of a cost recovery fee or the payment of the fee or an amount in respect of that fee.</p>
Assistance	<p>(2) Any person authorized under subsection (1) to enter the premises or place referred to in that subsection may, on entering upon any such premises or place, require the owner, employee or agent of the telecommunications carrier to give him or her all reasonable assistance with the audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he or she so requests, on oath or by statutory declaration, and for that purpose to require the owner or employee to attend at the premises or place with him or her.</p>
Answering questions	<p>(3) A telecommunications carrier and any person who is an officer, employee or agent of the telecommunications carrier shall</p> <p style="padding-left: 20px;">(a) answer all of the questions of a person authorized to enter the premises of the telecommunications carrier under subsection (1) relating to any of the matters concerning which authority to enter is given in this section; and</p> <p style="padding-left: 20px;">(b) produce for inspection such records, documents and other things as are required by a person authorized to enter the premises of the telecommunications carrier under subsection (1).</p>
Expenses of Provincial Treasurer - liability	<p>(4) A telecommunications carrier who carries on business in the province, but does not keep or maintain in the province all books of account, records, record-keeping devices, papers or any other documents required for the purpose of audit, inspection, or examination, is liable for the expenses necessarily incurred by any officer appointed by the Provincial Treasurer for the purpose of auditing, inspecting, or examining the books of account, records and documents at the place where they are kept or maintained.</p>

(5) If during the course of an audit or inspection pursuant to subsection (1) it appears to the person conducting the audit or inspection that there has been a contravention of the Act or these regulations, the person conducting the audit or inspection may seize and take away any books of account, records and other documents and retain them until they are produced in any court proceeding and may make a copy thereof.

Retention of records

(6) A copy of any book of account, record or document purporting to be certified by the Commissioner, an inspector or any authorized person referred to in subsection (1) to be a copy pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. (EC342/06)

Admissibility of
copies

19. Where a telecommunications carrier pays an amount to the Provincial Treasurer that is not due and payable under the Act and these regulations, the Provincial Treasurer shall repay to the telecommunications carrier the amount wrongly paid if application for refund has been made within four years of the date the amount was wrongly paid. (EC342/06)

Repayment of
amount wrongly
paid

20. (1) An application under section 19 for a refund of an amount wrongly paid shall be made, in writing, to the Commissioner and shall include

Application for
refund of amount
wrongly paid

- (a) the reason for requesting the refund; and
- (b) such information or documents, including invoices and receipts, as the Commissioner may require, respecting the payment of the amount for which the refund is requested.

(2) Any information or documents required by the Commissioner in respect of an application under subsection (1) shall be provided or presented by the applicant in such form or manner as the Commissioner may require. (EC342/06)

Information

21. (1) Any penalty or interest assessed against a telecommunications carrier may be waived by the Commissioner where the penalty or interest results from non-compliance by the telecommunications carrier with the Act, or any regulations made thereunder, as a result of one or more of the following extraordinary circumstances:

Waiver of penalty
or interest

- (a) a natural disaster such as flood, fire or storm;
- (b) a personal tragedy such as the serious illness or death of, or in the family of
 - (i) a telecommunications carrier, or
 - (ii) a person who oversees and ensures the telecommunications carrier's compliance with the Act, or any regulations made thereunder;
- (c) the theft or vandalism of records; or
- (d) a civil disturbance.

Waiver of penalty
due to errors or
delays

(2) Any penalty or interest assessed against a telecommunications carrier may be waived by the Commissioner where the assessment is the result of any of the following administrative errors or delays by the Commissioner:

- (a) a delay in processing returns that results in a lengthy delay in informing the telecommunications carrier of amounts owing;
- (b) incorrect written information being provided to the telecommunications carrier;
- (c) an unreasonable delay in providing required information to the telecommunications carrier;
- (d) an error in materials prepared and distributed by the Commissioner to the general public; or
- (e) a change in the interpretation of the Act, or any regulations made thereunder, after a return has been filed by the telecommunications carrier based on a prior interpretation of the Act, or any regulations made thereunder.

Commissioner's
decision final

(3) The decision of the Commissioner on the waiver of any penalty or interest pursuant to this section is final and is not subject to objection or appeal. (EC342/06)

Transitional

22. Where a telecommunications carrier has not paid to the Provincial Treasurer an amount that is payable under the Act in respect of the cost recovery fees collected or billed during February, March, April or May of 2006, the telecommunications carrier shall pay that amount to the Provincial Treasurer on or before July 20, 2006. (EC342/06)