

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2169

2007 SENATE POLITICAL SUBDIVISIONS

SB 2169

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2169**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **January 18, 2007**

Recorder Job Number: **1388**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Political Subdivisions Committee to order. All members (5) present.

Chairman Cook opened the hearing on SB 2169 relating to the application, collection, and use of emergency services communication fees/relating to a report on all standards and guidelines.

Senator Wardner, District 37. Dickinson, ND, introduced SB 2169. The bill comes about out of an audit. During the last interim the performance audit was conducted by the State Auditors Office of the revenues and expenditures related to fees and phone services that support the enhanced 911. The counties and cities got on the ball and took the auditors recommendations and started to develop a comprehensive bill to address them and that is what this bill is. It is kind of a technical corrections bill, however there are some glitz's in there that had to be ironed out as we develop this bill. There are some repeal of some out of date sections and other things to update.

Terry Traynor Assistant Director of ND Associations of Counties testified in support of SB 2169. (See attachment #1) Amendment at end of Testimony.

Brent Nelson, Walsh County 911 Coordinator and ND President of 911 Association, testified in support of SB 2169. (See attachment #2)

No further testimony in Support of SB 2169

Testimony opposed.

John Olson, appeared on behalf of TracFone Wireless, in opposition of SB 2169. They are opposed to the mechanisms and the provisions that require the assessment directly against the provider. Mr. Richard Salzman has some national experience in other states and will address these details and the problem for you.

Richard Salzman, TracFone Wireless, appeared in opposition of SB 2169. TracFone Wireless is the largest prepaid in the country. They do support 911 and think it is a wonderful public service and do think all subscribers should pay. The key is all subscribers and the unfortunate part of this bill is the collection mechanism does not work for prepaid providers. Prepaid is sold through mass providers all over the states. TracFone is different from every other prepaid provider as well. Every prepaid provider in this country except TracFone uses what they call a switch base technology. TracFone Wireless is the largest prepaid provider in the country but it is not the only prepaid. TracFone is a reseller, they are not a self communications company and they don't have a switch based technology. When TracFone business modeled developed a long time ago, the idea was to bring prepaid to a handset to buy off the shelf at mass retail. The way TracFone did that many years ago is it made deals with 72 different wireless carriers so they could cover every square inch of this country that had any wireless service available any where in the country. Then they could go to mass retailers and put TracFone's in every Radio Shack store in the country. The big carriers like verizon could not do that because they did not have service everywhere in the country. That necessitated a business model that did not rely on the carrier switch being a prepaid engine so

to speak. TracFone's prepaid engine is the software in the handset and what that handset does it tracks your minutes for you. There is nothing at the office that tells how many minutes are left. The way this bill is structured it never included prepaid as it wasn't around when these bills were written. The first statutes were: we are the 911 board; we need money for this great public service and nobody disagrees so we will charge people who have phones so they put a line item on the bill and added a dollar on it for us. Let the consumer no they are being charged to provide a valuable service for 911. The collection mechanism is the problem. When prepaid came along, it could not be put on the bill because there is no bill. TraFone agrees the prepaid guys have to pay but there is no bill to put it on. The mechanism that has been suggested and will be suggested is that it should be funded out of a general fund or sales tax. It is a service that everyone receives and should pay for. TracFone suggest they work with the association and Mr. Traynor to come up with a workable solution that will be the right thing with prepaid that will work across all carriers and is fair to all carriers and all subscribers and there will not be a difference between prepaid and postpaid.

Chairman Cook assigned Senator Hacker to meet with John Olson and Terry Traynor to further discuss the prepaid and try to obtain a solution with Richard Salzman.

No further testimony opposed to SB 2169.

David Crothers, ND Telephones Association of Telephone Co-ops, testified in a neutral position. Mr Traynor from Association for Counties mentioned an amendment that would be addressed. The amendment is critically important to the members of the independent telephone industry. He wanted to emphasize that the amendment is a critical part of the work that they did with the association of counties.

Gordy Smith, Audit Manager in charge of the performance audit, appeared neutral to commend State Radio, 911 Association, Association of Counties and everybody that worked

on the bill to address some of the things in the audit report. The purpose of the performance audits are to try and improve the operations of what ever we are auditing. Sometimes the clients do not take the time or make the effort to do the right things. Mr. Smith just wanted to give them the credit they deserve for trying to address this and improve the operation.

No further testimony.

Chairman Cook closed the hearing on SB 2169.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2169

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: January 26, 2007 (Committee Work)

Recorder Job Number: 2055

Committee Clerk Signature



Minutes:

Chairman Cook asked the committee to go to SB 2169 for discussion. Senator Hacker has been working closely with some of the players in this bill. In the interest of a fair process we are going to give some people with concerns the time to make any suggestions that they would want us to deliberate on.

Senator Hacker sent around a packet from Pembina County (see attachment # 1)

No further discussion,

Chairman Cook closed the discussion.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2169**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2652**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Senate Political Subdivisions committee to order. All members (5) present.

Chairman Cook asked the committee to go to SB 2169 which is the 911 bill. John Olson had amendments to present.

John Olson, Attorney. TracFone said they can not review a positive balance on any cards they sell. They do not get it until there is a invoice, thirty to forty five days later if that card is activated right away. They have no contact with the consumers where others do. He passed out amendments (attachment #1)

Senator Warner said the amendments added another level of problems to the situation. He could see this in court by July.

Senator Hacker said there would be a law suit and it would be large by creating a playing field in that manner.

Senator Hacker handed out amendments that come on behalf of one of the carriers with the prepaid. What it does is insures that it is a billed retailed. (See attachment #2) The reason they need this is that when they test lines that a consumer does not own yet, they want to

make sure they are not paying the one dollar when it is not being used by a consumer, so they do not get billed among themselves.

Senator Hacker moved the amendments.

Senator Olafson seconded the motion.

Voice vote: All members in favor.

Senator Hacker moved the amendment by Association of Counties.

Senator Olafson seconded the motion.

Voice Vote: All members in favor

Senator Warner moved a Do Pass as amended.

Senator Hacker seconded the motion.

Roll Call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Hacker**

FISCAL NOTE
 Requested by Legislative Council
 01/15/2007

Bill/Resolution No.: SB 2169

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$0		
Appropriations				\$0		

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Expands fees allowed for "assessed communication services." No fiscal impact to the state or local jurisdictions. There will be an unquantifiable revenue increase.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 expands authority for collection of fees to all assessed communication service.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Will expand collections by counties and cities that impose fees to include all assessed communications service. It is unknown how many such sales exist. Typically \$.95 of the \$1 dollar collected (5% admin fee) is returned to the local governing bodies. The 22 PSAPs serviced by State Radio are provided \$.20 out of the \$.95 recieved by the local governing bodies.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

None

Name:	LTC Dave Thiele	Agency:	Office of the Adjutant General
Phone Number:	333-2009	Date Prepared:	01/17/2007

AMENDMENT TO ND SB 2169

SB 2169 is amended by adding a new section at the end thereof:

SECTION 11. AMENDMENT. The Legislature finds that all users of assessed communications services with access to emergency 911 services should pay a fair and reasonable fee to fund the 911 system. Any fees imposed pursuant to this Chapter shall be imposed in a competitively neutral and nondiscriminatory manner on such users.

PROPOSED AMENDMENT TO SENATE BILL NO. 2169
SENATE POLITICAL SUBDIVISIONS COMMITTEE
DWIGHT COOK, CHAIRMAN
FEBRUARY 1, 2007

Page 1, line 16, after between, overstrike "an"

Page 1, line 16, after "between" insert "a billed retail"

Renumber accordingly

70323.0301
Title.0400

Adopted by the Political Subdivisions
Committee

February 1, 2007

JB
2-2-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2169

Page 1, line 16, replace "an" with "a billed detail"

Page 8, line 16, replace "twenty-four hours" with "two business days"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2169: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2169 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "an" with "a billed detail"

Page 8, line 16, replace "twenty-four hours" with "two business days"

Renumber accordingly

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2169

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2169

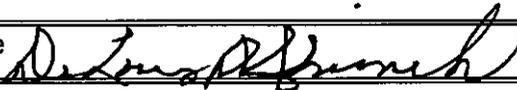
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: 4200

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on SB 2169.

Senator Wardner: This deals with emergency services and ironing out some reimbursement things that have been a problem over the last few years. All parties have come together and I think we have a bill that every body has agreed to and so Mr. Chairman we have someone here that will explain the bill and some of the parts of it.

Terry Traynor, Ass't Director, ND Association of Counties: (see testimony #1) Went over the testimony in depth.

Chairman Herbel: Terry, when you say annually what does that mean. From the date that they purchased it to one year after that; is there a calendar year?

Terry Traynor: That would be the governing bodies duty than to annually say it is 2%, 1.5% or 1%.

Opposition:

Todd Kranda: Verizon Wireless: (Stacey Sprinkle testimony #2) The testimony was more in favor than opposed to the bill. Because of the one section in there dealing with the prepaid service which we feel is an expansion and the problems that Mr. Traynor explained with his amendment about how it is actually applied. Currently the end user you get your fee assessed

to you on your bills for your cell phone and you pay it at as the end user. On prepaid there are some difficulties with trying to pass that on to actually get it back to the 911 end user. The companies are concerned that without some consideration at this portion of the bill, they have expanded it to prepaid. How can the companies bear that burden of that expense without being able to pass that on. I guess with that prospective on how we are concerned with SB 2169 I would like to go through the testimony of Stacey Sprinkle. Went through the testimony. As a minimum we request that if you go forward with that portion where you apply to prepaid you would request you add that amendment.

Chairman Herbel: So you are comfortable with the amendment?

Todd Kranda: Yes, that language was something Stacey Sprinkle had provided originally to the counties and we are in agreement with that.

Rep. Kim Koppelman: You talked earlier that it is difficult to pass this on if it is a monthly but if it is a monthly with all the taxes etc. and that would allow you or your company to ask for that cost at the point of sale. Can the user of a tracfone call 911 and get 911 service?

Todd Kranda: Yes, I believe so.

Rep. Kim Koppelman: So they are receiving the benefit. So they are receiving the same benefit as I am by subscribing to Verizon, which I do.

Todd Kranda: Yes, and your monthly phone bill is a post paid situation where you pay the dollar and the tracfone or our prepaid services don't get a subsequent monthly bill. They go to the purchase dollar amount and they are using it. My understanding is that all of them have excess to 911.

Rep. Kim Koppelman: The amendment would be a good way of doing this at the point of sale would be good by the end user as well.

Todd Kranda: I think that it is like the example of Mr. Traynor gave with the \$50 purchase that we know it is going to be a 2% add on. You have another \$1 on top of that \$50 purchase price that would be the tax now. The concern is how do you actually adjust that for a nation wide company so we are going to have to focus on North Dakota's proportion and each county how much the county would accept. The amendment is allot better for us because it is more of a front end than post review application. I know some companies at their request are doing post end. We prefer this alternative it this does end up going forward.

Rep. Kim Koppelman: This is a national issue anyway.

Todd Kranda: I asked that question of Stacey just this morning and a question about what is going on in other states. A brief response was there were 17 states that have some type of prepaid assessment. There are 7 of those states that have this percentage of revenue provision available and there is a couple of states that are considering it. I think the companies are saying it is more of a hazel than value to do it, but that is obviously you policy to decide.

Rep. Lawrence Klemin: Looking at the amendment as proposed it would seem to me that this fee could be assessed by the governing body could very considerably from one county or city to the next across the state. If we concede the 2% there is no uniform method that you know in the area of prepaid. I am wondering if it would be better to have a uniform fixed rate that was statewide in this particular situation.

Todd Kranda: We prefer not to have anything, but if you are going to have something, I guess we are satisfied with the amendment. I don't know if each county had a \$1 set. The original legislation allowed each county to set it, but now I understand they are uniform at a \$1. I guess certainly it would be more reasonable to do that, but we are going to leave it to the governing bodies to establish that up to the 2% level.

Rep. Steve Zaiser: Could you support the bill if it is amended as proposed?

Todd Kranda: We don't like the application of prepaid because of the problematic application; second position if forced to answer that, the amendment makes it more palpable so that extend, yes.

Rep.Dwight Wrangham: If we are looking at individual's accessing 911, but not paying their fee I have heard if you have a wireless phone, even if you are currently out of service, that you can still call 911 where would you be paying the \$1.

Todd Kranda: Yes that is correct. They do have that service regardless of whether you have run out of minutes. It is an emergency feature that is available.

Rep.Dwight Wrangham: On those prepaid phones is the ability there on those too?

Todd Kranda: I believe it is.

Chairman Herbel: further testimony in opposition.

John Olson: Representing tracfones. (see testimony #3) I suggest you do a study on this deal for the 911 system. I think they have the money.

Chairman Herbel: Did you say you have no way of tracking where these phones are being used?

John Olson: I don't know if they have a way of tracking or not. They would have to do it after the fact.

Chairman Herbel: In one of the testimonies here it shows in 2003 payments to the counties and it shows all the wireless people there. For some reason they remitted payment for that period of time. There must be some form of tracking?

John Olson: There must have been some form of tracking. Where they are required to pay; they are cutting the check out of their own pocket; whether that is fair or not, who knows. They are paying directly an assessment to the states or jurisdiction which they have paid in the past.

They informed me something similar in Florida has passed and they are now looking at it because it is impossible to implement this decision. Other states are doing different things too.

Chairman Herbel: Did you have time to look at the amendment before it was brought in here?

John Olson: I had an opportunity to look at the concept yesterday but I haven't got a copy of the amendment yet so if I could get one and at least review it.

Rep. Lawrence Klemin: I think I understand what you are saying. To have a statewide uniform fee that would be added to each card according to the minutes and then the retailer would be responsible for remitting that to the governing bodies.

John Olson: I think that would be the ideal way to do it at the point of sale. Another alternative maybe to have the retailer remit something back to the provider and cut a check from there, but it would depend on the number of cards sold etc.

Tom Kelsch: Kelsch Law Firm: (see testimony #4) The amendment put forth is something we could deal with because it is a percentage that we would know how to handle. The original bill makes it very difficult to deal with.

Chairman Herbel: How would the remittance of this fee be handled by On Star?

Tom Kelsch: It is my understanding that the remittance would go to the county where the individual lived.

Rep. Lawrence Klemin: Am having a problem figuring out how that would work. The remittance would go to the governing body not to exceed 2%. Since this allows for a variety of rates who would On Star when it is downloading those minutes know what percentage rate to charge to a particular customer?

Tom Kelsch: Certainly national companies would like one set fee. It makes it easier for them. When this tax first came in should the tax be divided up or by each county. When it first was done with the regular wireless companies that bill on regular basis, there were some counties

that were fifty cents and some were one dollar. Basically it was based on where you lived. The company would know by the zip code what the amount would be.

Neutral Testimony:

Gordy Smith: Audit Manager with the State Auditor's Office: I was the manager of the 911, which has been referred to here. Not every entity that we performed these audits on takes the initiative to try to address all the areas of improvement that we try to point out to make it a better, more efficient effective organization. I wanted to commend those parties that are involved in coming up with this bill because it is obviously a genuine attempt to address these things and make it better. I just want to make sure this committee recognize and commend those entities for making that effort to make things better.

Rep. Steve Zaiser: There were a couple of comments the auditor addressed whether or not the funds will be used properly for 911 services. What is your view on that?

Gordy Smith: One of the things the audit found was there were a lot of the system being decentralized so the various counties as far as their accounting systems. Nothing was uniform. We struggled with one of our goals was to be able to tell the legislature the dollars were being used correctly. We were not able to do that because of the condition and style of the counting records. The way revenue collected from 911 went into the general fund. Once it is in the general fund I can't tell which expenditures came out of general fund were that 911 money. One part of the bill here does require that there be an accounting system where the money goes into a separate fund and then you are going to be able to track the money that comes out, which I think is a very big improvement. One think I like is the committee that Mr.

Traynor referred to that there was going to be a three people. One of their charges is going to be to establish some guidelines and those guidelines should be consistently followed. When we are talking about spending the money we are talking about building a 911 tower. In a lot of

cases the entire tower was paid for with 911 money, but yet if you took a look at the traffic on the tower it might be 80% or higher was not 911 traffic. From our standpoint we are not saying that is right or wrong. The tower is needed for the 911 traffic, just like it is for the non 911 traffic. We wanted somebody to establish that is acceptable or not. In one case we found 911 funds given to an entity for a loan with no interest. Then the state entity paid them back with the 911 money. Discussed various inconsistencies in use of funds for 911. We liked these various entities getting together to establish guidelines to account for the use of these 911 funds.

Rep. Steve Zaiser: One of the things that appears to be a sticking point should we expand those fees. Based on your audit report and talking about some of these problems it is hard for a policy maker to really make an accurate assessment of whether or not it is appropriate.

Gordy Smith: From our standpoint there were two reasons where we basically said the legislature should consider how to collect the 911 fees. We also discussed the fairness of the issue, if people were able to use 911 and these other two types of technology why not require them to at least help pay for the system so that is why we addressed that. There are a lot of good things in this bill and I surely hope we don't think about killing the bill. The auditors office would have jumped in and try to survey every state to see how they are doing with this and how it is working.

Rep. Dwight Wrangham: You do a performance audit and probably death with what had been accomplished with the 911 service. Indications are it has been a wonderful success. If you could give us a few comments on that and my questions would be were you able to determine costs in the future. Is it going to cost more or is it going to reach a plate

Gordy Smith: A performance audit tries to focus its scope so we did not look at all it's successes and all the challenges faced by 911. Appreciated the fact that all these groups have

come together to try to find some common ground to work out they need. I think if this would go into affect and all the counties had some guidance and they all had a reasonable accounting system it would be easy at that point to get in and decide on is it enough or isn't it?

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2169

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4815

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on SB 2169.

Rep. Nancy Johnson: My amendment is just adding the study resolution. (passed out proposed amendment). Discussed need to look at other states with this legislation.

Chairman Herbel: So we are adding section 11 that would add the need for a study in addition to the information on the bill.

Moved Motion By Rep. Nancy Johnson Seconded By Rep. Pat Hatlestad

Discussion:

Rep. Kim Koppelman: I intend to support the motion but we heard during the hearing that there is more than enough money in this fund? I don't know if that is right or not. Is this going to be part of the study. Is the tax too high since they have enough money?

Rep. Nancy Johnson: The study should bring this out.

Voice vote carried.

Chairman Herbel are there any other further amendments?

Rep. Dwight Wrangham: I don't have a written amendment prepared, but I would like to offer an amendment that we delete the sections that deal with the prepared wireless telephones. It

would be sections 1,2,3 ? We would need to get some help from Legislative Counsel to make sure we don't take out something we didn't mean to.

Chairman Herbel: Is it the intent of the amendment then to delete those parts of those sections that would deal with the prepared wireless telephone. I wish we would have had those amendments prepared.

Rep. Lawrence Klemin: This is a substantial revision of this bill and I am not comfortable doing this based on the extent of this and I also do have another amendment to propose. I also want to go on record to have the amendment that was proposed by the Association of Counties.

Chairman Herbel: we haven't had the amendment approved yet either. Yes it is on the county testimony. Does some one want to move the amendment proposed by the county?

Rep. Lawrence Klemin: I don't want to move the exact language that the counties had in their written testimony. It would be, if you look at the amendment they had, on page 6 lines 13 I would propose the language or upon a 2% assessment on the gross revenue received from the sale of prepaid wireless services each month, period. Delete the rest of the sentence. Delete the second sentence.

Chairman Herbel: It would read after the word month we would insert or upon 2% assessment.

Motion Made By Rep. Lawrence Klemin Seconded By Rep. Steve Zaiser

Discussion:

Rep. Kim Koppelman: So this potentially increases the tax because the amendment was originally written talks about the governing body setting that amount up to 2%.

Rep. Lawrence Klemin: As I understand it would probably be 2% anyway. Instead of adding the monthly fee it would only be 2%. Another option is still in there.

Rep. Kim Koppelman: It doesn't say monthly, it says annual doesn't it?

Rep. Lawrence Klemin: On the language it does say each month.

Rep. Kim Koppelman: I am saying the amendment we got from the counties called for monthly.

Rep. Lawrence Klemin: So there is no misunderstanding the county would not be setting this percentage, we will set it in this bill.

Rep. Kim Koppelman: If your amendment passes; the amendment presented was that they set it can be up to 2%, but they would make that decision annually. I though we said we could change to 2% and it would change every month.

Rep. Lawrence Klemin: The reason I think it should be a flat rate is we are dealing with this prepaid wireless telephone service and it seems to me it is better to have a flat rate than the company having to deal with 53 different rates.

Chairman Herbel: Is it your intent here then that this 2% is to be assessed monthly on each of those?

Rep. Lawrence Klemin: Yes, that is what that is saying rather than a one time fee.

Chairman Herbel: It isn't the assessment on that particular phone every month; it is on every phone that is sold during those months?

Rep. Lawrence Klemin: It is the 2% on the gross revenues received from the sale of the prepaid wireless services.

Chairman Herbel: Is our amendment including all the other portions of the amendment above that is in this county amendment?

Rep. Lawrence Klemin: Yes, it includes all the changes that the county proposed.

Rep. Steve Zaiser: Essentially the motion is the county amendment.

Rep. Nancy Johnson: Discussed problem with the prepared cards. The logistics of trying to do this is very hard to do.

Rep. Steve Zaiser: It is a difficult decision and I think it is critical it be comprehensive.

Voice Vote on the county amendment. Motion carried.

Rep. Dwight Wrangham: I know that there are portions of this bill are very important and that we need to pass. I fear that this bill would not pass on the floor as it presently stands. That would be really too bad. We need to get the study done and we need to get these other things into play so that we can collect the necessary information both for that study and for our next legislative session. I apologize. I should have had Legislative Counsel do what I wanted and what I would like to do is just taking out the references to the prepaid wireless.

Chairman Herbel: I would be reluctant for fear that we might do things to the bill that we probably don't want to do.

Rep. Dwight Wrangham: I would apologize to the people in the gallery because they have been very diligent about being here and expecting that we were going to finish the bill today. If you decide that Legislative Counsel should have time to do those amendments I apologize for the delay.

Chairman Herbel: Rep. William Kretschmar suggested we wait until the amendments are drawn up. Committee was comfortable with waiting. We will hold the bill until next Thursday. The bill has to pass and I don't want to lose the information that is in it. This will be the bill we will take up first and act on it. We will take no further testimony.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2169

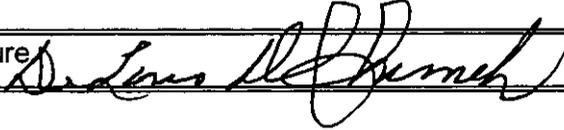
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5108

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on SB 2169.

Rep. Dwight Wrangham presented the proposed amendment. (see attachment)

Moved amendment Motion Made By Rep. Dwight Wrangham; Seconded By Rep. Steve

Zaiser

Discussion:

Rep. Dwight Wrangham: I feel we are trying to fix a problem. There are five different states that are wrestling with this now. I am not convinced the tax can be done without undo hardship on a business. The 2% factor is a gross sales tax and it is a new tax; it is a flat increase in new taxes. We have seen information that there is 2.1 million dollars in reserve. The audit indicated there was in excess of 4 million and maybe another million somewhere so I guess all of those numbers probably aren't important. The fact is there is no shortage of funds at this time. In the future the counties have indicated there may have to be another bill for this. I am afraid if we go to the floor with this I can see this entire bill being lost on the floor. So for those reasons I would urge you support the amendment.

Rep. William Kretschmar: I certainly support the concept. Does the amendment have the study in it?

Chairman Herbel: Yes the study is in there. We amended it in there last week.

Rep. Lawrence Klemin: I am going to resist the amendment. I think if they have so much money there should be a cost reduction to all of us as customers.

Chairman Herbel: There is excessive fees so I think the study is good.

Voice Vote on amendment failed.

**Moved an amendment to delete the underlined stuff on page 2, lines 6 & 7 Motion Made
By Rep. Kim Koppelman Seconded By Rep. Chris Griffin**

Discussion:

Rep. Kim Koppelman: I feel by taking out the " and any associated equipment and personnel", that they could use the money in more ways where ever necessary.

Chairman Herbel: We have the amended bill including the changes of line 6 and 7, page 2 for further discussion:

Rep. Kim Koppelman: I think the study is a very good idea since there is some real concerns on this issue.

Vote: 13 yes 1 No 0 Absent Carrier: Rep. Kim Koppelman

Hearing closed.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2169

Page 1, line 4, remove "and"

Page 1, line 5, after "guidelines" insert "; and to provide for a legislative council study"

Page 13, after line 5, insert:

"SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 3-9-07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2169

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved to Amend Sec to delete wireless

Motion Made By Wrangham Seconded By telephones.

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman			Rep. Kari Conrad		
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin		
Rep. Donald Dietrich			Rep. Lee Kaldor		
Rep. Patrick Hatlestad			Rep. Louis Pinkerton		
Rep. Nancy Johnson			Rep. Steve Zaiser		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

#1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2169

Page 1, line 1, remove "57-40.6-02, 57-40.6-03,"

Page 1, line 2, remove "57-40.6-04," and remove "57-40.6-08,"

Page 1, line 4, remove "and"

Page 1, line 5, after "guidelines" insert "; and to provide for a legislative council study"

Page 1, line 11, remove "Active prepaid wireless telephone" means a prepaid wireless telephone that has"

Page 1, remove lines 12 through 20

Page 1, line 21, remove "3."

Page 2, line 1, remove the overstrike over "2." and remove "4. Communication connection" means a telephone access line, wireless access line."

Page 2, remove lines 2 and 3

Page 2, line 4, remove "5."

Page 2, line 10, remove the overstrike over "3." and remove "6."

Page 2, remove lines 13 through 18

Page 2, line 19, remove the overstrike over "4." and remove "8."

Page 2, line 24, remove the overstrike over "5." and remove "9."

Page 2, line 29, remove the overstrike over "6." and remove "10."

Page 3, line 1, remove the overstrike over "7." and remove "11."

Page 3, line 6, remove the overstrike over "8." and remove "12."

Page 3, remove lines 8 through 12

Page 3, line 13, remove the overstrike over "9.", remove "14.", and remove "and prepaid wireless"

Page 3, line 16, remove the overstrike over "10." and remove "15."

Page 3, line 18, remove the overstrike over "11." and remove "16."

Page 3, line 28, remove the overstrike over "12." and remove "17."

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 7

Page 8, remove lines 19 through 31

Page 9, remove lines 1 through 10

Page 13, after line 5, insert:

"SECTION 7. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which emergency 911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

March 15, 2007

VR
3/15/07

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2169

Page 1, line 4, remove "and"

Page 1, line 5, after "guidelines" insert "; and to provide for a legislative council study"

Page 1, line 11, replace the first "telephone" with "service" and replace the second "telephone" with "service"

Page 2, line 6, remove "and any associated"

Page 2, line 7, remove "equipment and personnel"

Page 2, line 13, remove the first "telephone" and remove the second "telephone"

Page 6, line 10, remove "telephone"

Page 6, line 11, after "based" insert "either"

Page 6, line 13, after "month" insert "or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month"

Page 13, after line 5, insert:

"SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 3-15-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved Amend -

Motion Made By Wrangham Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman		✓	Rep. Kari Conrad		✓
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin		✓
Rep. Donald Dietrich		✓	Rep. Lee Kaldor		✓
Rep. Patrick Hatlestad		✓	Rep. Louis Pinkerton		✓
Rep. Nancy Johnson		✓	Rep. Steve Zaiser		✓
Rep. Lawrence Klemin		✓			
Rep. Kim Koppelman		✓			
Rep. William Kretschmar		✓			
Rep. Vonnie Pietsch		✓			

Total (Yes) 1 No 13

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed.
S

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2169**

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended – line 6 & 6 Page 2"underline taken off"

Motion Made By Rep. Koppelman Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	x		Rep. Kari Conrad	X	
Rep. Dwight Wrangham-V. Chair		X	Rep. Chris Griffin	X	
Rep. Donald Dietrich	X		Rep. Lee Kaldor	X	
Rep. Patrick Hatlestad	X		Rep. Louis Pinkerton	X	
Rep. Nancy Johnson	X		Rep. Steve Zaiser	X	
Rep. Lawrence Klemin	X				
Rep. Kim Koppelman	X				
Rep. William Kretschmar	X				
Rep. Vonnie Pietsch	x				

Total (Yes) 13 NO 1

Absent 0

Floor Assignment Rep. Kim Koppelman

Proposed Amended title number 0402 plus deleting underline on line 6 & 7, Page 2

REPORT OF STANDING COMMITTEE

SB 2169, as engrossed: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2169 was placed on the Sixth order on the calendar.

Page 1, line 4, remove "and"

Page 1, line 5, after "guidelines" insert "; and to provide for a legislative council study"

Page 1, line 11, replace the first "telephone" with "service" and replace the second "telephone" with "service"

Page 2, line 6, remove "and any associated"

Page 2, line 7, remove "equipment and personnel"

Page 2, line 13, remove the first "telephone" and remove the second "telephone"

Page 6, line 10, remove "telephone"

Page 6, line 11, after "based" insert "either"

Page 6, line 13, after "month" insert "or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month"

Page 13, after line 5, insert:

"SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 TESTIMONY

SB 2169

**Testimony To The
SENATE POLITICAL SUBDIVISIONS COMMITTEE
Prepared January 18, 2007 by the
North Dakota Association of Counties
Terry Traynor – Assistant Director**

REGARDING SENATE BILL 2169

Thank you Chairman Cook and members of the Committee, for the opportunity to present the support of county government for Senate Bill 2169. The 53 counties and four cities that are responsible for North Dakota's emergency services communication system requested the introduction of this bill, and ask for the committee's favorable recommendation.

During the past interim, a performance audit was conducted of the revenues and expenditures related to the fees authorized by Chapter 57-40.6 and imposed by elections in the 57 separate jurisdictions. The performance audit report made several recommendations and raised a number of issues that we believe have been clearly addressed in this proposed legislation. It is my desire to walk quickly through the bill, and explain the substantive changes and how they relate to those recommendations.

Section 1, is obviously an update of the pertinent definitions, but these updates clearly relate to the audit. It was pointed out by the Auditor's Office, that the current fee is inequitably applied. The fee is attached only to traditional landline and the wireless service obtained by contract. It was noted that the fee is not attached to the increasingly popular pre-paid wireless service, and "voice over Internet protocol" or VOIP service. This creates inequity among service providers, and erodes revenues as new technologies replace the old. The most important definition is that of "assessed communications services" which includes all those defined in the other definitions, but is broad enough to include new, and as yet unnamed, technologies. The definitions of "prepaid wireless service" and "active prepaid wireless service" have been supplied by the wireless industry as the emerging standard.

Section 2 replaces the more specific phone service types with the newly defined more universal term of "assessed communications services". It also makes it clear that the fee must be equitably applied, regardless of service type or billing mechanism. Subsection 7 removes the process of extending the fee to wireless service, as it has been accomplished

in every jurisdiction; and replaces that with the extension of the fee to those services identified by the State Auditor, as well as any future replacement technologies.

Section 3, is again the industry recommended language directing the calculation of the fee for those "prepaid wireless" services that do not have a monthly billing. South Dakota adopted almost identical language last year, and a number of other States that our office researched were very similar.

Section 4 addresses the cost of fee collection by the providers. The State Auditor indicated that an administrative charge "not to exceed 5%" may be more than is necessary – noting that many states allow less. After much debate and discussion with the industry, our decision to propose no change was based on several factors. First, their retention is in fact limited to "actual costs". Second, in a subsequent section we are asking for timelier reporting. And third, we have many small traditional phone companies that have understandably higher overhead costs. This section also allows for quarterly distributions of the fee revenue, for those extremely small providers.

Section 5, strikes out much of the language added to the chapter in 1999. At that time, the fee was extended to wireless service and the industry (reflecting on their experiences in other states) wanted protections that the revenue associated with wireless service would be dedicated first to implementing "enhanced 911 service" for wireless. This has been accomplished statewide – in fact, North Dakota was the sixth state in the nation to reach this milestone. Importantly, the section retains the limitation that the fee proceeds remain in a separate fund within the jurisdiction and that they be used solely for "implementing, maintaining, or operating the emergency services communications system". This use is further defined, as you will see in a subsequent section.

Section 6, currently requires the landline providers to report changes in their phone system database. The new language would require new service or change of service to be reported within 24 hours. (Dropped service could be reported monthly). This was not included in the Auditors Report, but was felt to be a public safety enhancement by the local jurisdictions. We have since been informed that it may be impossibly strict for most providers, and have been asked to propose an amendment to adjust the requirement to two business days. As this will be an improvement for many, we are willing to support that amendment, and the suggested language is attached at the end of my testimony.

Section 7 contains only necessary changes to terminology.

Section 8 adds an additional standard for the governing body of the local 911 jurisdiction to meet. As the Auditor felt several jurisdictions did not have accounting systems adequate to clearly delineate the expenditures of this revenue, this requirement was added. It also creates a requirement to expend the funds within specified guidelines that are established by an existing committee – addressed in the next Section.

Section 9 revises the duties (and the name) of an existing committee created by the 1999 legislature to report on the “income, expenditures, and status of its emergency services communication system”. This legislation adds the duties of recommending changes to the operating standards (Section 8), developing the expenditure guidelines referenced in the previous section, reviewing reports from the jurisdictions regarding their expenditures, and reporting to the legislative council. The committee may also initiate and administer agreements among the governing bodies to procure equipment and services in a coordinated and cost-effective manner.

Section 10 repeals the requirement for State Radio to recommend changes to the standards of Section 8 to the Legislature. As State Radio has a representative on the existing committee formed in Section 9, and since they must solicit information from the 911 jurisdictions to develop any recommendations, they felt repeal of this section was appropriate.

Mr. Chairman and committee members, I am available for any questions you may have, but I wish to close by urging consideration of the attached amendments and request a “Do Pass” recommendation.

PROPOSED AMENDMENTS TO SENATE BILL No. 2169

Page 8, line 16, replace “twenty-four hours” with “two business days”

Re-number accordingly

AMENDMENT TO ND SB 2169

SB 2169 is amended by adding a new section at the end thereof:

SECTION 11. AMENDMENT. The Legislature finds that all users of assessed communications services with access to emergency 911 services should pay a fair and reasonable fee to fund the 911 system. Any fees imposed pursuant to this Chapter shall be imposed in a competitively neutral and nondiscriminatory manner on such users.

PROPOSED AMENDMENT TO SENATE BILL NO. 2169
SENATE POLITICAL SUBDIVISIONS COMMITTEE
DWIGHT COOK, CHAIRMAN
FEBRUARY 1, 2007

Page 1, line 16, after between, overstrike "~~an~~"

Page 1, line 16, after "between" insert "a billed retail"

Renumber accordingly

WALSH COUNTY EMERGENCY SERVICES COMMUNICATIONS (9-1-1)

Administrative Bldg., 638 Cooper Ave., Grafton, ND 58237
Phone: (701) 352-2311 Fax: (701) 352-5072

TESTIMONY ON SENATE BILL NO. 2169
Political Subdivisions Committee
January 18, 2007 10:00 a.m.
Red River Room

BY: BRENT NELSON
WALSH COUNTY 911 COORDINATOR
PRESIDENT, ND 911 ASSOCIATION

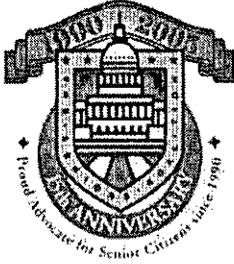
Chairman Cook, Vice Chairman Olafson and members of the committee, my name is Brent Nelson, Walsh County 911 Coordinator and current President of the ND 911 Association. I am here today in support of SB2169. With me today are several members of the ND 911 Association, representing a variety of jurisdictions, from the small to the large.

This bill is the ND 911 Associations response to the Performance Audit Report on "911 Fees – Collection and Use" dated November 18, 2005. The Association utilized a committee comprised of representatives from large dispatch centers, small centers, combined jurisdiction centers, state radio jurisdictions, Qwest, ND Association of Counties, and State Radio to review the "list of concerns" brought out in the report. The committee drafted changes to the ND Century Code relating to Emergency Services Communication and brought those recommended changes to the ND 911 Association Quarterly Meeting in August 2006. At that time the Association made some additional recommendations and voted to support the recommended changes, as they are presented to you today, in the form of SB2169.

Those changes have been address by Mr. Traynor. What I wish to express to you today is that these changes are the result of a process taken on by the ND 911 Association, over the past year. Not only has this diverse group of nearly 100 members adopted the changes, but we have also worked with the State Auditors, who conducted the audit report, to implement changes that they felt addressed the issues.

The ND 911 Association stands ready to work with you, to implement legislation that will continue to provide the citizens and visitors of North Dakota with high quality Emergency Services Communications, for today and well into the future.

Mr. Chairman, I will conclude by encouraging your committee to issue a "Do Pass" recommendation on SB2169.



THE SENIORS COALITION

Working for a Responsible America

E-911 Service in Maine **The Impact on Senior Consumers of Prepaid Wireless Services** **Surcharges and Fees to Fund E-911 Systems**

On behalf of the more than 4 million members and supporters of The Seniors Coalition (TSC), and more importantly for the 22,739 of our members in Maine, TSC strongly urges the Maine Public Utilities Commission and the Maine Legislature to adopt a senior friendly policy on E-911 fee collections that fully recognizes the significant public benefits of expanding and encouraging access to wireless technology. There are two critical arguments that need to be addressed to properly resolve this issue:

1. E-911 Service is a Public Accommodation, Not Exclusively A Personal or Private Benefit

When 911 services were introduced in the early 1960s, the primary beneficiary of this emergency service was the individual telephone subscriber. Today, the 911 system is a centerpiece of an emergency communications system both for public safety responses to traditional emergencies as well as for homeland security threat response and intervention that benefits the public as a whole, not just individual telephone subscribers.

- More than 50% of emergency 911 calls come from wireless phones. These calls represent an extraordinary benefit for the public from virtually on-site wireless subscribers who report a wide variety of public safety issues ranging from fires that threaten life and property, crimes in progress, to life-threatening injuries that require immediate responses. The key element in effective responses to such emergencies is timely reporting of the emergency. When a report is made from an individual who is actually on the scene at or near the time of the inception of the emergency, valuable enhanced response time allows first responders to save countless lives, protect property, and apprehend criminals who prey on society.

- One-half of all wireless phone purchases are made by consumers for personal emergencies. This consumer purchasing behavior demonstrates the value consumers ascribe to the technology being available to them as a personal safety measure. These purchasers of wireless phones become an integral part of the first responder team when they arm themselves with the technology to provide timely reports of some personal emergency in progress. As such, they serve the overall public interest far more than any personal benefit that may have prompted the purchase of wireless technology in the first place. Most importantly, consumers have demonstrated they do not hesitate to use this technology when any emergency, personal or otherwise, to call 911 on their handheld phones.
- A substantial number of 911 calls are from seniors who are personally experiencing a medical or family emergency. This is significant because seniors are more susceptible to age-related medical problems that require a timely emergency response, and are generally more vulnerable to crimes committed against them. Maine, like other states, invests a substantial amount of public resources to assure the fastest response possible to such emergencies with the goal to save lives and protect property.
- A significant, and growing segment of 911 calls are from Good Samaritans who observe some emergency and call first responders to provide assistance to victims. These calls are not for any personal emergency being experienced by the caller, but rather serve the public interest by being functionally integrated into the first responder network governments establish to respond to emergencies. Communities measure effectiveness of these emergency response infrastructures in how quickly services are available to the location of the emergency. Callers using wireless technology at the site of the emergency are an invaluable part of that network, and public policies that fund the E-911 system should recognize their value to the public at large.
- In the present climate of a terrorist threat, all citizens are strongly encouraged to report any suspicious activity as a critical element of homeland security. These terrorist threats will typically occur in public places with large numbers of people at-risk, and citizens who have access to wireless technology are in the best position to observe and make timely reports that will allow for the critically needed fast response to the homeland threat by appropriate emergency responders.

Viewed in this context, it is clear that the public interest is overwhelmingly served by policies that provide for the most affordable access to wireless technology. A key element of that policy has to recognize the public benefits of arming citizens

with a technology that serves the public as a whole rather than viewing the use of wireless technology as only a private benefit – and mistakenly taxing or applying surcharges to its use on that premise. Yet, if the Maine Public Utilities Commission adopts a fee surcharge structure that creates disincentives to the acquisition of this technology, that policy will essentially be stripping this tool from the hands of seniors, and many low-income families, who have no other emergency life-line available to them.

The time has come for public policy makers to recognize the evolution of this technology, and the benefits its use and application now provide to every citizen, and unburden individual subscribers and service providers from exclusively financing this system – particularly seniors and low-income families.

2. The Senior Consumer and the Adverse Economic Impact of E-911 Fees and Surcharges on Pre-Paid Wireless Service

A national study of 659 seniors across America by Opinion Research Corporation conducted for The Seniors Coalition in March 2006 that assessed the impact of fees on senior phone bills makes a compelling case to protect seniors from unfair and regressive taxes on wireless services. *[This survey measured the impacts of the proposed USF fee change at the federal level currently based on usage fees to a per telephone line charge, but has application to E-911 surcharges at the state level if the E-911 surcharge is also assessed as a per telephone line charge or as a charge against the purchase of a pre-paid wireless card.]*

- Half of all older Americans – and an even larger 55 percent of those who said they are on a “fixed income” – would have to cut back on long-distance phone calls if their “phone bill was raised by \$1 to \$2 every month in higher phone fees.
 - More than three-fifths (62 percent) of the lowest-income seniors would have to cut back on long-distance phone calls if their “phone bill was raised by \$1 to \$2 every month in higher phone fees.
 - A third of all seniors – and 38 percent of those who said they were on a “fixed income” – reported that they already have had to “cut back on your long-distance calling in the last two years in order to save money needed for other things, such as prescription drugs, heating bills and other energy charges, or other expenses.”
3. Nearly four out of five older Americans (79 percent) reported that they are living on a “fixed income.”

TSC urges the Maine Public Utilities Commission to adopt an E-911 emergency fee implementation plan for wireless telephone service that (1) recognizes the public benefits of wider access to wireless technology and therefore relies principally on funding the implementation of the E-911 system from general revenues; (2) that any E-911 surcharge should be fully transparent to consumers and collected at the retail point-of-sale; (3) that Maine assures that its E-911 surcharge collection methodology is competitively neutral between traditional wireless service providers and pre-paid wireless providers; and (4) fully recognizes the impact of any E-911 surcharge potentially has on the market-driven product choices available to consumers.

As referenced earlier, seniors living on fixed incomes must often make difficult economic decisions about how they will allocate the limited income available to improve our quality of life. Seniors who elect to use pre-paid wireless service usually do so because it offers a more affordable alternative to contract-based wireless cellular service. One of the primary purchase considerations for these seniors is to have a wireless phone available for safety when emergencies arise, and the availability of a pre-paid program allows these seniors to avoid long-term contracts with fixed minimum monthly usage requirements. Having a pre-paid program, where the minutes can be used when needed, affords the maximum flexibility and economic advantages to seniors on fixed retirement incomes.

It is fundamentally unfair to these seniors who are relying so heavily on the more affordable pre-paid wireless option for the Maine Legislature and/or the Public Utilities Commission to impose a regulatory and fee scheme that will effectively drive out some pre-paid providers from offering the service in Maine, and will obviously drive up the prices of these services to seniors and other consumers as competitors abandon this market. A flat monthly fee, without regard for the number of minutes used by a consumer, economically discriminates against low-usage seniors who are most sensitive to price increases. For many seniors, it will mean they will have to give up the safety afforded by this service at its current competitive pricing.

The need for enhancements to the 911 emergency response system to account for proper identification and location of wireless emergency callers is unquestioned. Seniors, with attendant age-related health issues, are clearly an at-risk population that desperately needs affordable access to this technology. However, when the budgeting for this program imposes a disproportionately onerous financial burden on those who can least afford it, the value of the program diminishes greatly.

Allowing for the assessment of a reasonable one percent 911 emergency surcharge fee at the retail point-of-sale based on the value of the minutes purchased protects seniors from the unfair burden of a monthly fee that otherwise would price them

out of the ability to access this important safety technology. Any fixed price per prepaid card, or per transaction, is unfair and anti-competitive. Access to this affordable technology is equally valuable to other low-income families in Maine who otherwise could not afford to use or have access to wireless programs. Any fee in excess of the one percent fee on the value of minutes purchased would become highly regressive and would clearly adversely impact access of seniors to this technology.

We also strongly urge you to adopt the fairer and more rational surcharge fee policy that, for pre-paid wireless users, allows for the 911 emergency fee to be collected at the retail point-of-sale and assessed against the value of the minutes purchased. That fee can then be submitted to the service providers who would then complete appropriate state forms and remit the collected surcharge fees. That will enhance competition for this service for Maine consumers, and protect seniors who desperately need that added buffer of safety offered by affordable pre-paid wireless plans currently available.

Retail providers often object to this policy because they claim it ostensibly imposes an additional burden upon them. Such claims are made any time such procedures require additional resources be applied to accomplish a public policy, including regulatory requirements for checking identification for tobacco and alcohol purchases. In the end, however, those retailers are anxious to continue providing these products to consumers in order to enhance consumer foot traffic and profits derived therefrom in their retail establishments.

TSC is also strongly opposed to the procedure referred to as "sufficient positive balance" and "decrementing" of prepaid accounts to collect E-911 fees.

Some providers propose to deduct the E-911 fee from all consumers who have what is called a "sufficient positive balance" in their account. That hidden tax, literally taken in the dead of night, is unfair and discriminatory to consumers. It also allows those providers to hide the true cost of their services by using this collection method.

Court decisions nationally have already attacked the surcharges on customer's monthly phone bills that often carry misleading names, such as "Regulatory Assessment Charge" and "Regulatory Cost Recovery Fee," even though those fees aren't mandated by any regulatory agency or statute. Phone service carriers regularly fail to mention the special fees when they advertise their low monthly rates, and they bury any explanation of the surcharges in the fine print on their bills.

Fee collection methodologies must be completely transparent to consumers. If pre-paid wireless providers who offer a product that is sold exclusively on minute increments are required to collect the E-911 fee up front in their pricing, but those providers who bill monthly are allowed to hide those charges and mislead customers in to thinking their product is somehow cheaper, then consumers are placed in a significant disadvantage. Consumers should be able to compare easily and accurately provider's prices.

A key element to this approach is to assure that the policy for E-911 fee collections does not create a burden on one provider to the advantage of another. This kind of imbalance will ultimately limit competition and hurt consumers. For example, the proposals to simply assess a tax on the overall revenues of providers, on the false premise that a \$50 average revenue per user (ARPU) reflects an easy and fair methodology for fee collection, completely undermines the competitive position of prepaid wireless carriers to offer products to low-income consumers. Maine should not, under any circumstances, be enticed into this false promise of easy E-911 fee collections.

Most importantly, Maine should make every attempt to encourage fair competition in the wireless technology marketplace that has already demonstrated a capability to offer a wide range of products and competitive pricing plans when innovative business models are allowed market entry. If Maine were to adopt an E-911 fee collection methodology that was not technologically possible for a segment of the pre-paid wireless providers, it would unfairly discriminate against those providers and reduce the competition in the marketplace that is presently such an advantage to Maine consumers.

TSC remains committed to providing whatever additional information that may be useful to the Maine Public Utilities Commission, and welcomes any specific questions the Commission may have on the materials provided in this submission. We strongly urge the Commission to adopt a competitively neutral and senior-friendly E-911 fee collection methodology, and one that is largely funded from general revenues to reflect the benefits provided to the entire population from this technology for emergency calls.

Respectfully submitted,

Mac Haddow
Chairman, Policy Advisory Council
The Seniors Coalition
(703) 754-6404
mhaddow@comcast.net



MEMO

VIA Fax 207-287-1039

TO: Chris Simpson, Maine Public Utilities Commission

FROM: Jenifer Simpson,
Senior Director, Telecommunications and Technology Policy

DATE: December 7, 2006

RE: Legislature's Resolve, LD 2088

Some Comments in regard to Prepaid Wireless E-911 Surcharges

The American Association of People with Disabilities (AAPD)¹ recently learned that the Maine Public Utility Commission has been looking at E911 surcharges and how these work with prepaid wireless service (airtime). We understand you are looking at defining an appropriate amount and the means of collecting and remitting the E-911 surcharge, including for prepaid wireless services.

AAPD has a telecommunications and technology policy that provides the framework for our approach to this kind of issue.² We are particularly interested in affordability issues, such as costs applied to consumer bills by providers of telecommunications services and costs that are otherwise shared with all providers to pay for services such as 911 and E911. We know that 911 and E911 services are highly regarded by persons with disabilities, and their families, for whom access to such public emergency service is essential, and very often critical.

AAPD believes that persons with disabilities are very price sensitive to charges on phone bills and at point-of-purchase, and may perceive increases as onerous. Our understanding is that persons with disabilities in Maine are among the poorest in the state. Recent poverty and income statistics shed light on their situation. In 2005, the poverty rate of working-age (age 21-64)

¹AAPD is the largest national nonprofit cross-disability member organization in the United States, dedicated to ensuring economic self-sufficiency and political empowerment for the more than 51 million Americans with disabilities. AAPD works in coalition with other disability organizations for the full implementation and enforcement of disability nondiscrimination laws, particularly the Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act of 1973, and other statutes.

² This policy resolution is as follows: AAPD Policy Resolution On Telecommunications And Technology For Persons With Disabilities -- Given that telecommunications and technology are fields that are rapidly changing, and this will impact the integration of persons with disabilities in all aspects of daily living, be it resolved that: With regard to telecommunications equipment and services, accessibility and usability are critical, and affordability is essential, for the full inclusion of persons with disabilities; and With regard to technology, barriers to usability and availability should be removed; all technologies should incorporate the concepts of accessibility and usability in design, development, production and dissemination, with the intention of making new technologies available to all persons regardless of disability. Passed 6/16/06 by AAPD Board.

people with disabilities was 27.2 percent, almost four times that of working-age people without disabilities in Maine, at 7.6%.³

Furthermore, in regard to income, persons with disabilities in Maine earn much less than their counterparts without disabilities. In 2005, the median household income of working-age people with disabilities was \$30,000, or \$28,500 less when compared to the median household income of working-age people without disabilities, at \$58,500. Likewise, in 2005, the employment rate of working age people with disabilities was 38%, compared to an 83% employment rate for working-age people without disabilities. The median labor earnings of working age people with disabilities who worked full-time/full year was \$25,500, compared to \$32,000 for those without disabilities, or a \$6,500 difference.⁴

We believe that persons with disabilities in Maine may disproportionately take advantage of low cost phone plans, or utilize prepaid plans, such as prepaid wireless airtime cards rather than opting for subscriber phone service or other means. These reasons may vary: in addition to being low income, we suspect that there may often be individuals with disabilities who have little or no credit who may seek this type of phone service provision as they may have exhausted their resources and may not, or cannot, sign up for subscription phone service.

We note that compared to monthly bills, prepaid wireless phone airtime is marketed through third-party retail merchants who resell the airtime to retail customers. In most states, including Maine, these purchasers pay a retail sales tax collected by the retail vendor who then remits this to the state and/or local government. We therefore support proposals that recommend that E-911 fees on prepaid wireless services be collected at the retail point of sale, and that the fee be imposed as a percentage of the purchase price and that 1% would be a reasonable rate.

We believe this would also be acceptable to almost all prepaid wireless customers in the state, who do not object to a reasonable E-911 surcharge. Consumers, particularly those with disabilities, benefit greatly from E-911, and would want to support the system

We offer no comment on the appropriate means of remitting this cost to the government entity, but in any event, would want to see something that imposes no burden on the consumer. Consumers with disabilities have enough to deal with and there should be no specific action required of them in regard to the remittance of this charge. In fact, we believe they would prefer to know at the time of purchase how many minutes they are buying and the price, including the E-911 cost. We do not believe this is a burden on retailers as they may choose or not choose to sell prepaid wireless services.

We appreciate the opportunity to support some aspects of the proposals involving prepaid wireless airtime on behalf of consumers with disabilities in Maine who, we believe, are the most likely to benefit from consumer-friendly, point of sale low charges for E-911.

³ See "Disability Status Reports- Maine, Cornell University, Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC), at http://www.ilr.cornell.edu/edi/disabilitystatistics/StatusReports/2005-pdf/2005-StatusReports_ME.pdf?CFID=16670176&CFTOKEN=39018476, last accessed December 6, 2006.

⁴ See "Disability Status Reports- Maine, Cornell University, Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC), at http://www.ilr.cornell.edu/edi/disabilitystatistics/StatusReports/2005-pdf/2005-StatusReports_ME.pdf?CFID=16670176&CFTOKEN=39018476, last accessed December 6, 2006.

If you have a concern or question, please do not hesitate to contact me.

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States with Prepaid 911 Fee Statutes, Regulations or Policies

November 2006

Introduction

Traditional state and local 911 fee statutes require that fees be collected by local telephone and wireless service providers through itemized surcharges on monthly bills. Some states have amended their statutes to provide for specific methods of collection and remittance of fees applicable to prepaid wireless services. The collection methods most commonly found in the prepaid statutes are as follows:

- *Sufficient Positive Balance ("SPB") Method* – SPB requires, or allows, the prepaid service provider to track the remaining minutes, units or dollars in the prepaid customer's account and to deduct the surcharge amount from the customer's account at the end of the month (or other reporting period), if there is a "sufficient positive balance" in the account. Unless the balance is greater than or equal to the surcharge, the provider has no obligation to collect or remit the fee. Not all prepaid carriers are technically capable of tracking prepaid account balances and decrementing the account to pay the fee.
- *Tennessee Method, or "ARPU" Method* – First adopted in Tennessee in 2003, the TN method provides that –

The CMRS provider shall divide the total earned prepaid wireless telephone revenue received by the CMRS provider within the monthly 911 reporting period by (\$50), and multiply the quotient by the service charge amount.

Since the service charge in TN is \$1.00 per month, this method allows the service provider to remit \$1.00 for every \$50 of prepaid revenue earned in the state, \$50 being the average revenue per user ("ARPU") per month reported by the major wireless carriers. While the TN method provides a simplified way of computing and remitting the surcharge applicable to prepaid services, it does not actually provide any workable method of collecting the fee from the end-user. The TN statute also allows SPB as another option.

- *Point-of-Sale ("POS")* – Some states allow the prepaid service provider to collect the monthly fee from customers at the point-of-sale. But such laws, as currently written, do not recognize that most prepaid airtime is sold by retail merchants and not service providers and that the airtime is not sold on a monthly basis.

- *Other Methods* – Some state have simply added prepaid language to their statutes or rules without providing any workable collection method. The statute may require monthly billing or simply state that the provider must collect from the customer.

Alabama

Fee: \$0.70

Method of Collection or Remittance: Monthly billing

Discussion: AL's wireless 911 law requires each CMRS provider to collect the seventy cents per month service charge "as part of the provider's normal billing process", and to list the service charge "as a separate entry on each bill . . .". Ala. Code § 11-98-8(a). Prepaid is not addressed in the statute, but the administrative regulations for the CMRS Board say that the charge applies to prepaid wireless connections. Ala. Admin. Code § 225-1-2-.03 and 225-1-3-.01.

In response to a Board request, the Attorney General opined in 2002 that the charge applied to prepaid services. According to the opinion, the charge applies to any connection that has a "principal wireless service address" in the state, and such term (though not defined in the state statute) means the same as "place of primary use" in the MTSA. The opinion did not consider the prepaid exemption in MTSA or comment on how a prepaid provider could collect the charge through itemized monthly billing. Atty. Gen. Opinion 2002-295. Legislation (HB 610) was introduced on March 10, 2005 to impose 911 fees on prepaid wireless services. The bill was not enacted. Similar legislation, House Bill 590, was introduced in 2006 but was not adopted.

Florida

Fee: \$0.50

Method of Collection or Remittance: SPB

Discussion: FL added prepaid to its existing wireless 911 statute effective July 1, 2003. Chapter 365.172(9)(b). On October 21, 2004, the FL 911 Board voted to initiate a formal administrative rulemaking proceeding for the purpose of adopting Tennessee's prepaid methodology (\$50 ARPU remittance method) but later voted to defer rulemaking. The Board continued to discuss prepaid at each monthly meeting during 2004-2006. On July 13, 2005, the Board decided to seek an attorney general's opinion on prepaid. The Board sent a letter to the AG requesting the opinion on August 31, 2005. The AG opinion was issued in December 2005. The AG opinion was that prepaid was not covered prior to the 2003 amendments but that prepaid providers were obligated to collect and remit after 2003 without regard to technological capability. In 2006, the Board began

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Survey of U.S. Prepaid Wireless E911 Surcharge Laws & Legislation

November 2006

Alaska – House Bill 74 was introduced on January 18, 2005 to authorize municipalities to require retailers of prepaid wireless accounts to impose a 911 surcharge of up to one percent at the point-of-purchase. The bill was not enacted.

House Bill 249 was enacted to authorize municipalities to increase the maximum wireless 911 surcharge from \$.50 to \$2.00 per month for each wireless telephone number and local exchange access line, except that voters may approve a higher amount. The bill does not specifically address prepaid. Although the bill deletes a provision that the fee applies to a wireless number “billed to an address” in the 911 service area, the legislation retains certain other provisions relating to billing, including the requirement that the wireless telephone company “shall include the appropriate enhanced 911 surcharge, stated separately and included in the total amount owed, in the bills delivered to its customers.” (See Alaska Statutes § 29.35.131, et seq.) The definition of “wireless telephone company” remains unchanged by HB 249, which means:

a telephone utility that provides telephone service for wireless telephone customers who receive monthly or periodic bills sent to an address within a designated enhanced 911 service area . . .

Alabama – AL’s wireless 911 law requires each CMRS provider to collect the seventy cents per month service charge “as part of the provider’s normal billing process”, and to list the service charge “as a separate entry on each bill . . .”. Ala. Code § 11-98-8(a). Prepaid is not addressed in the statute, but the administrative regulations for the CMRS Board say that the charge applies to prepaid wireless connections. Ala. Admin. Code § 225-1-2-.03 and 225-1-3-.01.

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Arizona - AZ levies an excise tax for 911 purposes on "each activated wire and wireless service account". Each provider is required to state the fee on the invoice to customers as "a separate line item." AZ DOR Ruling TPR 04-1 indicates that the 911 excise tax does not apply to prepaid wireless because prepaid is excluded from the coverage of the MTSA.

California - Assembly Bill No. 1274 was introduced on February 22, 2005 to exempt prepaid wireless services from several state and local end-user taxes and fees that were intended to be collected through monthly billing of subscribers. This legislation was not enacted.

Colorado - State law authorizes local governments to impose an "emergency telephone charge" of up to 70 cents "per wireless communications access" to pay for 9-1-1. The charge is to be imposed on "service users" with an address in the local jurisdiction and applies to "[e]very billed service user". See §§ 29-11-100.5, et seq.

Prepaid is not addressed in the CO law. Legislation (Senate Bill 05-078) was introduced on January 17, 2005 to delete the word "billed" from the term "every billed service user". The bill passed the legislature, was sent to the Governor on April 26, 2005 and was vetoed on May 6, 2005.

The CO PUC 9-1-1 Task Force in July 2006 recommended draft 911 legislation that would, among other things, impose a surcharge on prepaid services "equal to the monthly surcharge, multiplied by the number of months over which the prepaid service may be used (do not expire). . . ". The Task Force has scheduled a meeting with the wireless industry on November 7, 2006 to discuss the proposal.

Delaware - According to the DE State Police - 9-1-1 Administration, the Attorney General informally advised the agency that the 911 statute did not apply to prepaid. The statute says the surcharge applies to all "wireless service customers". The term "wireless service customer" means a person "who is billed by a wireless service provider for wireless service within the State."

District of Columbia - DC passed an ordinance in 2003 converting its 911 surcharge from a subscriber fee to a tax on the service provider. DC Code 34-1803(a)(1). Prepaid is not addressed in the 911 statute. However, the DC sales tax law says that the sale of a telecommunications service purchased through the use of a prepaid telephone calling card, even if no card has been issued, is deemed to be the sale of tangible personal property and subject only to sales taxes. DC Code 47-2001(T).

Florida - FL added prepaid to its existing wireless 911 statute effective July 1, 2003. Chapter 365.172(9)(b). On October 21, 2004, the FL 911 Board voted to initiate a formal administrative rulemaking proceeding for the purpose of adopting Tennessee's prepaid methodology (\$50 ARPU remittance method) but later voted

to defer rulemaking. The Board continued to discuss prepaid at each monthly meeting during 2004-2006. On July 13, 2005, the Board decided to seek an attorney general's opinion on prepaid. The Board sent a letter to the AG requesting the opinion on August 31, 2005. The AG issued an opinion in December 2005 that the wireless 911 statute, prior to the adoption of prepaid amendments that were effective July 1, 2003, did not apply to prepaid. In 2006, the Board began issuing refunds to some carriers that had remitted fees under the old statute. Although the AG said that the new law did apply to prepaid wireless, the Board advised the legislature that further legislative changes were needed regarding prepaid services.

Georgia – Legislation (HB 470) was introduced in the 2005 legislative session to impose a 911 fee on prepaid wireless in the amount of \$1.00 for each 100-minute airtime card (about 500% higher, on average, than the postpaid fee). The bill was later amended to delete this provision. However, another bill (HB 738) was subsequently introduced containing the same provision and providing for a Joint Study Committee on Wireless Enhanced 9-1-1 to study alternative methods of assessing and collecting 911 fees on an equitable basis and to make recommendations to the legislature by December 31, 2005. The 2005 session of the legislature adjourned without enacting HB 738, and the bill will be carried over to the 2006 session. No prepaid legislation was adopted in 2006.

Hawaii - HI passed wireless E911 legislation effective July 1, 2004 that exempted prepaid connections from the surcharge. HB 2883, Section 4(b)(2).

Idaho – In 2004, the legislature passed House Bill 363, which provided that “[t]he imposition of the emergency communications fee shall not apply to the prepaid calling cards for all forms of access fees.”

Illinois - IL added prepaid provisions to its existing wireless E911 statute effective January 1, 2004. 50 ILCS 751, Section 17. In 2006, the Manager of the Illinois Wireless Emergency Telephone Service Act Program advised that the wireless 911 surcharge applies to prepaid services, and also applied to prepaid prior to the adoption of the prepaid amendments. The Staff of the Illinois Commerce Commission issued a similar opinion on October 25, 2006. According to Staff, the IL fee is imposed on wireless carriers, not subscribers.

Indiana – IN added prepaid provisions in 2002. The amount to be remitted is calculated as the fee times the number of “active prepaid subscriber accounts on the last day of each calendar month.” See IC 36-8-16.5.

Iowa - IA added prepaid to its existing wireless 911 statute pursuant to Senate File 2298 enacted May 17, 2004. Section 34A.7A.1.c.(1). The Department of Homeland Security on September 15, 2004 issued final administrative regulations to implement the prepaid provisions of SF 2298. Administrative Code 605-

10.8(5)(34A). The final regulations incorporate the Tennessee prepaid methodology.

Kansas - KS enacted wireless E911 legislation (SB 153), including prepaid provisions, effective April 22, 2004. House Substitute for Substitute for Senate Bill 153, New Section 4.(b). The KS law established the prepaid 911 fee as one percent of prepaid revenues in the state. The fee applies to a “wholesaler of prepaid wireless service”, which means “a person who purchases at wholesale wireless service from a wireless carrier for resale as prepaid wireless service.” Prepaid service offered directly by a facilities-based carrier would apparently not be subject to the 1% fee. A reseller of postpaid wireless would probably not be subject to the statute, which generally applies only to licensed carriers. The general wireless fee provisions apply to “[e]very billed wireless service user . . .”, and the carrier is responsible for collecting the fee “insofar as practicable”. The law provides for a wireless “grant fee” of \$0.25 and “local fee” of \$0.25. The local fee “shall not be imposed on prepaid wireless service.” See Kansas Statutes 12-5301 through 12-5338.

Kentucky – Prior to 2006, the wireless 911 statute did not address prepaid. Prepaid provisions were added by House Bill 656, which became effective July 12, 2006. See KRS 65.7621, et seq.

Louisiana - LA Senate Bill 705, introduced in the 2004 session, would have added prepaid language to the state's existing wireless 911 law. SB 705, Section 1. The bill was rejected by the Senate Commerce Comm. on June 1, 2004.

Maine – Legislation (LD 1418) was introduced on March 22, 2005 to impose 911 surcharges on prepaid wireless services. The relevant provision provides that:

To comply with the surcharge requirement, a prepaid wireless telephone service provider either shall collect from the customer the surcharge for the entire period of the prepaid wireless telephone service at a rate of 50 cents per month at the time the customer purchases the service or shall collect the 50-cent surcharge at the beginning of each month for which time is left on the service.

Current law imposes the fifty cents per month surcharge on wireless subscribers, requires the wireless provider to itemize the surcharge on monthly bills and requires the provider to remit revenues collected from customers to the state treasurer. Maine Revised Statutes, Title 25, Chapter 352, §§ 2921, et seq.

A hearing on LD 1418 was held in the Joint Utilities & Energy Committee on April 25, 2005. A committee work session on the bill was held on May 3, 2005. The committee did not approve the bill and decided to postpone further action on the question of prepaid 911 surcharges until the next session of the legislature in 2006. In the meantime, the legislature passed an amended version of LD 1418 that

required the PSC to study the issue of prepaid wireless 911 fees and to submit a report to the legislature no later than the first Monday in February 2006. The study is supposed to consider "collecting fees at the retail point of sale."

In the 2006 session, the Legislature again refused to pass PUC-recommended prepaid legislation. In stead, the Legislature passed a bill establishing a stakeholder process to make recommendations on how to collect 911 fees from prepaid wireless customers. The PUC is currently considering the recommendations of the various participants and is expected to make a report to the Legislature in December 2006.

Michigan – The Emergency Telephone Service Enabling Act (Section 484.1101, et seq.) imposes a 911 service charge on wireless customers through "a separate line item on each bill". The Act does not address prepaid wireless services. The Emergency Telephone Service Committee ("ETSC"), which administers the Act, made the following comment on prepaid in a 2004 position paper:

For example, some combined wireline technical and 9-1-1 operational surcharges in Michigan are in excess of \$3 a month, while *there are pre-paid wireless calling devices and VoIP systems that are not subject to any 9-1-1 surcharges* [emphasis added].

Legal issues involving prepaid are currently the subject of litigation in the Michigan Court of Claims. The judge in the case issued a ruling in August 2006 that the current wireless 911 statute did not contemplate prepaid.

In the 2006 legislative session, a bill recommended by ETSC to apply the fee to prepaid services was not enacted. The ETSC is expected to again recommend prepaid legislation in the 2007 session.

Minnesota – The Minnesota wireless 911 statute does not address prepaid. However, the remittance form states that the fee applies to prepaid and allows a provider to deduct 911 fees in connection with the purchase and usage of prepaid cards.

The Department of Commerce ("DOC") was directed by the legislature in 2005 to prepare a report on changing the method of assessing 911 fees from one based on access lines to one based on telephone numbers. The report is due to the legislature by January 15, 2006. The DOC asked for public comments on, among other things, whether the per number fee should apply to prepaid wireless. The report was completed in 2006, but no action was taken by the legislature regarding prepaid.

Montana – A hearing to determine the application of 911 fees to prepaid wireless customers had been scheduled at the Montana Department of Revenue on September 28 and 29, 2005. Briefs were due on September 16, 2005. However,

the Department decided that, in lieu of the scheduled hearings and briefs, the Department would conduct a generic or negotiated rulemaking to determine if the Department, other state agencies, prepaid service providers and other interested parties can develop and agree on suitable methodologies for applying 911 fees to prepaid wireless services.

According to the Department:

The Department is currently in the process of identifying telecommunication providers that provide prepaid wireless services in the state of Montana and currently do not report for 911 and TDD purposes. Once the prepaid wireless providers are identified, the Department will pursue collection efforts of 911 and telecommunication fees of the providers who are not submitting said fees as required by [the statutory provisions].

Legislation (HB 775) was introduced on March 11, 2005 to exempt prepaid wireless services from 911 fees. The legislature adjourned on April 21, 2005 without taking up the bill. House Joint Resolution 45 was adopted to appoint an interim study committee to consider wireless 911 funding mechanisms, but the Legislative Council charged with appointing the study committee found the issue to be low-priority, and the study was not conducted.

In 2006, the 9-1-1 Advisory Council recommended prepaid legislation to the legislature for consideration in the 2007 session.

Nebraska – Legislation (LB 585) was enacted in 2001 providing that:

86.2202 Surcharge. Commencing July 1, 2001, each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless carrier shall not be liable for any surcharge not paid by a subscriber and shall not be obligated to take legal action to collect the surcharge.

The Public Service Commission administers the surcharge. The Commission on April 19, 2005 ordered an investigation as to whether the 911 statute applied to prepaid wireless services. Public comments were due May 20, 2005.

TracFone Wireless, Cingular Wireless, Verizon Wireless and OnStar filed comments maintaining that the statute did not cover prepaid wireless services.

The PSC issued an order in December 2005 agreeing with the carriers that the statute did not apply to prepaid. In 2006, the legislature passed prepaid amendments (LB 1222) that will take effect July 1, 2007.

New Jersey – The Division of Taxation issued an advisory in 2006 that the wireless 911 fee statute does not apply to prepaid services.

New Mexico – Under N.M. Sta. Ann. Section 63-9D-9.2, the 911 surcharge applies only to subscribers who are subject to periodic billing and who pay the surcharge to the provider after receiving the bill.

New York – NY's state and local 911 fee statutes apply to billed subscribers of wireless communications services and do not mention prepaid services. County Law, § 309. The Department of Taxation & Finance published a memorandum regarding the state surcharge on July 16, 2002, saying "Wireless communications service does not include a prepaid telephone calling service." New York Technical Service No. TSB-M-02(5)M. The Department arranged for the introduction of legislation in the 2005 session (S.990) that would have deleted the requirement that 911 fees applied to billed subscribers. Under the Department's proposal, 911 fees would be the direct obligation of the service provider. The bill did not pass. Prepaid legislation also failed to pass in the 2006 legislative session.

North Carolina – House Bill 1261 was introduced on April 14, 2005 to impose the wireless 911 fee on prepaid services. The bill was recommended to the legislature by the NC Wireless 911 Board. The law prior to HB 1261 imposed a service charge of \$.80 on subscribers and required each CMRS provider to collect the fee "as part of its monthly billing process." Prepaid was not addressed in the statute. (NC General Statutes, Chapter 62A) HB 1261 passed the House on May 26, 2005. The Senate approved a substitute version that required prepaid providers to collect the service charge from subscribers on a monthly basis or by the Tennessee \$50 ARPU method. The charge applies to each prepaid CMRS connection with a place of primary use in the State.

HB 1261 was passed by the legislature on August 23, 2005 and signed by the Governor on September 27, 2005. In October 2006 the Board reached a settlement of litigation regarding the application of the pre-2005 statute to prepaid services.

North Dakota – Legislation (HB 1257) to impose 911 fees on prepaid wireless services was introduced on January 10, 2005. Failing to obtain a majority vote of at least 48 House members, the bill was defeated on February 11, 2005 by a vote of 46 yeas to 45 nays.

Ohio – Legislation (HB 361) to extend the coverage of the existing wireline 911 fee law to wireless services passed the legislature in 2004 and was signed by the governor in 2005. The effective date of the law is May 6, 2005. The new law covers prepaid wireless services and includes the Tennessee method of collection and remittance. Section 4931.61(A)(3).

Pennsylvania - PA HB 1018, wireless E911 legislation, was signed into law on December 30, 2003. Act No. 56. The bill included prepaid provisions. Conference Report on HB 1018, Section 6, adding a new Section 11.4(b)(4) to the Act of July 9, 1990 (P.L. 340, No. 78, known as the Public Safety Emergency Telephone Act, amended February 12, 1998 (P.L. 64, No. 17).

Rhode Island – Senate Bill 1101, which became effective July 19, 2005, adds prepaid, VoIP and other provisions to existing law providing for a \$.26 per month surcharge for the GIS and Technology Fund and \$1.00 per month for E911 purposes. The \$.26 fee is required to be billed to and paid by the prepaid customer on a monthly basis and, notwithstanding such requirement, to be collected and remitted by the prepaid service provider using the \$50 ARPU (Tennessee) method, at the point of sale or by reducing the prepaid customer's account. The E911 agency is required to collect monthly from the prepaid providers the amounts that were collected from the prepaid customers. The Attorney General is given enforcement powers. (see General Laws of RI, § 39-1-62, et seq. and § 39-21.1-1, et seq.)

The legislation requires telecommunications service providers (defined to include prepaid providers) to bill the monthly \$1.00 E911 surcharge to prepaid customers. The 911 agency is required to establish by regulation “an appropriate funding mechanism to recover from the general body of ratepayers this surcharge”.

South Dakota – The Minnehaha County Commission (Sioux Falls, SD) adopted a resolution on July 26, 2005, calling on the Association of County Commissioners to support legislation to permit counties to double the monthly 911 fee to \$1.50 per month and to extend the fee to prepaid wireless, which is not addressed in the current 911 statute. The proposed statutory change requires prepaid providers to “remit the surcharge amount on each account for which service has been paid and not yet used, based (sic) the place at which the customer paid for the unused telecommunications service . . .”.

The legislature passed Senate Bill 130 on February 27, 2006 to apply the 911 fee to prepaid wireless services. The bill was signed into law by the Governor on March 21, 2006.

Tennessee - TN added prepaid to its existing wireless 911 statute effective October 1, 2003. Section 7-86-108(a)(1)(B)(iii). The Tennessee method provides that “The CMRS provider shall divide the total earned prepaid wireless telephone revenue received by the CMRS provider within the monthly 911 reporting period by (\$50), and multiply the quotient by the service charge amount.”

Texas – The current TX 911 statutes require 911 emergency service fees to be collected monthly from subscribers. The rate is fifty cents per month. The law says “[a] fee or surcharge must be stated separately on the customer's bill” and does not address prepaid services. (See Texas Statutes, Chapter 771.001, et seq.).

The TX Commission on State Emergency Communications ("CSEC") planned to initiate rulemaking on applying the surcharge to prepaid services at its meeting on January 20, 2005. However, at the request of members of the legislature, CSEC voted to defer further action on the rule until such time as the legislature considered the application of the fee to prepaid customers. Subsequently, bills were introduced in the House and Senate (HB 1581 and SB 745) to exempt prepaid wireless from the fee. A hearing on the House bill was held on March 22, 2005. A hearing on the Senate bill was held on May 3, 2005. The bills were not enacted.

On August 3, 2005, CSEC sent a letter to the Attorney General requesting an opinion as to whether CSEC or the Comptroller has primary jurisdiction to determine whether the 911 statute covers prepaid wireless. Request No. 0370-GA. The AG replied that an opinion would be provided by January 31, 2006.

The AG issued an opinion that CSEC has primary authority to determine the applicability of the statute to prepaid wireless but has no authority to grant refunds. Only the Comptroller can grant refunds. Related issues are currently being litigated by CSEC and wireless carriers in the State Office of Administrative Hearings.

Washington – WA law requires that the state and county 911 excise tax "shall be collected from the subscriber by the radio communications service company providing the radio access line to the subscriber. The amount of the tax shall be stated separately on the billing statement which is sent to the subscriber." RCW 82.14B.040.

The statute provides further that the tax "must be paid by the subscriber". RCW 82.14B.042. The provider is "personally liable" to the state for the tax, even if failure to collect it was "the result of acts or conditions beyond its control." RCW 82.14B.042(2). Prepaid is not addressed in the statute or regulations. In a letter ruling dated May 17, 2004, the Department of Revenue held that a prepaid provider is liable for collection and payment of the 911 tax. The Department said "[t]he company cannot avoid its liability to collect the tax just by refusing to issue printed billing statements. We realize this may be inconvenient to [the company]". The letter ruling was appealed on July 23, 2004, and an administrative hearing was held on February 9, 2005. On August 30, 2005, the appeal was denied.

The appeal was an "executive level" appeal under DOR regulations, which is reserved for cases involving issues for which no precedent has been established or issues that have industry-wide significance or impact.

Related issues are currently being litigated in Thurston County Superior Court.

West Virginia – At the request of the WV Enhanced 9-1-1 Council, the WV PSC opened a docket on August 24, 2004 to consider prepaid wireless services. Case No. 04-1285-C-PC. The existing wireless 911 statute and rules do not address prepaid. On October 8, 2004, the PSC issued an order initiating a general investigation regarding the payment of 911 fees for prepaid services.

On December 10, 2004, Commission staff asked for written comments on the interpretation of current law as it applies to prepaid wireless services. Comments were due January 10, 2005. TracFone Wireless, Cingular/AT&T Wireless, OnStar and Virgin Mobile filed comments. The staffs of the Commission's Legal Division and Utilities Division issued a joint recommendation on February 8, 2005 stating that the existing 911 law did not cover prepaid wireless services. An ALJ issued an order on May 4, 2005 agreeing with the staff recommendation and concluding, "it is reasonable to dismiss this general investigation, without prejudice, for lack of subject matter jurisdiction." The ALJ order became a Commission order on May 24, 2005.

On August 31, 2005, the Commission issued a "Notice of General Investigation and Hearing" into prepaid wireless 911 fees. Case No. 05-1303-C-GI. The purpose of the proceeding is to reverse the findings and conclusions of the previous order and to impose 911 fees on prepaid service providers. In January 2006, the PSC issued an order reversing its previous order and holding that the statute applies to prepaid, notwithstanding the absence of any rule applying the fee to prepaid services. A motion for reconsideration of the order is currently pending.

In 2005, the legislature passed legislation doubling the fee to \$3.00, and in 2006, passed a bill including prepaid wireless in the definition of CMRS services. A proposed PSC rule on prepaid is currently pending.

Wisconsin - WI enacted wireless E911 legislation (2003 Assembly Bill 61), including prepaid provisions, on August 18, 2003. Wisconsin Statutes 146.70(3m)(f). The Public Service Commission of WI on August 11, 2004 adopted administrative regulations to implement wireless E911. The regulations incorporate the Tennessee prepaid methodology. Wisc. Admin. Code ch. PSC 173.10(2)(b)2. The amount of the surcharge is to be determined and set by an order of the PSC that is to become effective on or after October 1, 2005. Other aspects of the regulations relating to the grant program to reimburse local governments and wireless carriers become effective on January 1, 2005.

Virginia - VA added prepaid to its existing wireless 911 statute effective July 1, 2003. Section 56-484.17(b). The VA 911 Board conducted conference calls on October 28 and November 3, 2004 to discuss the Tennessee prepaid method and other legislative matters. On November 10, 2004, the Board adopted a legislative proposal calling for the adoption of the Tennessee method by the legislature in the

2005 session. This legislation, S.1159, became law on April 6, 2005 (Chapter 942). The relevant provisions provide that:

For CMRS customers who purchase CMRS service on a prepaid basis, the wireless E-911 surcharge shall be determined according to one of the following methodologies:

- a. The CMRS provider and CMRS reseller shall collect, on a monthly basis, the wireless E-911 surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge; or
- b. The CMRS provider and CMRS reseller shall divide its total earned prepaid wireless telephone revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting period by \$50, multiply the quotient by the surcharge amount, and pay the resulting amount to the Board without collecting a separate charge from its prepaid customers for such amount; or
- c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale.

On March 8, 2004, VA amended its sales tax law to redefine "tangible personal property" to include "telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes." Section 58.1-602.

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* * * * *

Comments of Cingular Wireless – Maine PUC Stakeholder Proceeding
November 27, 2006

From: Liantonio, John [john.liantonio@cingular.com]
Sent: Monday, November 27, 2006 7:42 PM
To: Simpson, Chris
Cc: Jim Mitchell(Cingular); Sharon Sudbay(Cingular)
Subject: ME--Prepaid Wireless Service 911 Surcharge Collection & Remittance

Importance: High

Attachments: PROPOSED AMENDMENT TO 25 M.doc
Memorandum on Maine's Imposition of a 911 Surcharge on Prepaid Wireless Users/Consumers

Dear Chris,

I view the state's dilemma of collecting the 911 surcharge from wireless prepaid users as a question of both methodology and fairness. I would also like to define the term "wireless service provider" so there is no confusion and we can develop some consistency in our use of that important term. I also define some of the other terms used I use in describing the **Two-Tiered Retailer Transactional Method of Collection** we discussed in earlier stakeholder meetings and Legislative Committee meetings.

Wireless service provider can be viewed as 2 distinct groups:

1. **Network or Infrastructure-based providers** (sometimes referred to as "carriers", like Cingular Wireless, Verizon Wireless, U.S. Cellular, T-Mobile and Sprint Nextel) where we build the network, create the service, and sell the service directly through our own company-owned stores, or indirectly through an agent or authorized dealer (Wal Mart, Best Buy, Hannaford, the local general store or so-called "Mom & Pop" stores, and the like), or through a reseller (which is described in more detail in the next paragraph) or over the phone or over the internet. These are all referred to as different options of **distribution** for our prepaid wireless service.
2. **Resellers of wireless service are also "providers"** (Tracfone, Virgin Mobile, ESPN Mobile, Disney Mobile, etc.) in that they directly market prepaid wireless service to consumers under a particular brand name, and they have a small relationship with the consumer, but they do not actually build or control the network infrastructure of the service they are selling, hence why they are referred to as "Resellers". The actual wireless service is produced by the aforementioned Network or Infrastructure-based carriers and is purchased in bulk transactions by these resellers and re-branded and sold as a separate "service provider".

Everyone else involved in bringing prepaid wireless service "to market" would be considered a **wholesaler or distributor** who may have one or more relationships with the 2 groups above, but that is the extent of their involvement in the "selling" of the wireless service. They clearly do not touch the prepaid wireless consumer, nor do they want to. They are sometimes referred to as a "reseller", but that is not quite accurate given the description I use above for reseller. The other involved distributor groups are the **retailers or, as referenced above, authorized agents or dealers** of wireless service proffered by either of the 2 types of wireless service providers.

A **Retailer** of wireless service is whoever sells or transacts the sale of prepaid wireless service to the end-user or consumer purchasing the service. This could be the Network-based service provider by virtue of their "company-owned stores", all typically-defined "retailers", including all authorized agents and distributors at point-of-sale, and even, on some occasions, the resellers of wireless services as described in #2 above.

A **Supplier** of wireless service is the entity who actually supplies the service to the retailer, who eventually transacts with the prepaid wireless consumer.

Methods of Collection

As I see it, given the environment I describe above, you can collect the surcharge directly from the prepaid wireless consumer at **Point-of-Sale** or you can develop some other kind of **estimated calculation** of what would be collected and remitted to the state based on number of prepaid sales and the **Average Revenue Per User (ARPU)** or what is called the "ARPU Method", or also known as the Tennessee Method because it was one of the first states to adopt that method.

In either case, the prepaid wireless consumer should be **adequately informed** of the collection of such a 911 surcharge and of its importance to the viability of the 911 system. Such a "disclosure" to the consumer would also ensure that they would be knowledgeable about the 911 system and that it is operating and available to such prepaid wireless user. Such disclosure would be commensurate with the postpaid wireless user disclosure on their monthly bill.

All other details of the collection and remittance process flows through these 2 basic methods of collection.

The methodology question is limited to who should collect the surcharge on behalf of the state from the prepaid wireless service user and remit said revenue to the state to be added to what is already collected from the larger universe of postpaid wireless service users.

Who should collect the 911 surcharge from the prepaid wireless user?

Collection possibilities are limited to the wireless service provider or the retailer who actually performs the transaction with the end user. Any other possibility would necessitate an estimated collection and a "phantom" contribution by the consumer in the form of a possible added cost to their prepaid service that they would not even be aware is happening.

Therefore, Maine should consider a strictly **Two-tiered Retailer Point-of-Sale/Transactional Method of collection and remittance, with an optional ARPU Method of collection to be chosen** by the retailer in consultation with its supplier, regardless of who the supplier is. This dual method would allow several things to happen:

- the **transaction of actual service** would be the basis of the revenue collected, not the sometimes dormant un-used minutes remaining in a prepaid account;
- the prepaid consumer would pay a fee at point-of-sale that is clear and precise and doesn't extend beyond the initial transaction, which is fair and equitable to the method of collection on postpaid wireless users;
- the **transaction** drives the collection, not the plan or the address of the user or the amount of the purchase (which is also the case for postpaid wireless plans, same amount collected whether you spend \$39/month or \$200/month) or the frequency of use, etc.;
- the **transactional method** allows the technologically capable retailer to make minor adjustments to their point-of-sale billing process, with collections of the surcharge made when buying a prepaid service for the first time and for any re-fills that may occur subsequent to the initial purchase of the service;
- **transactions over the internet and over the phone** would automatically be billed with the 911 surcharge and disclosed on the receipt that is already provided to such users;
- such **transactional retail collections** should be remitted to the state on a **quarterly basis** or at the same frequency that other **remittances** need to be made to make it as simple as possible for the retailer;
- the **ARPU retailer option** should be permitted to be used when the retailer has been able to secure an agreement with its supplier and the product has clearly disclosed to the consumer that the 911 surcharge collection is being made and remitted to the state on the sale of such prepaid service;
- the **ARPU method** will be in place for an entire fiscal year and cannot be changed to the Transactional Retail Method until proper notification is made to the state;
- the **ARPU method** allows the technologically-less inclined retailer to still remit the 911 surcharge to the state with the significant involvement of their supplier (this option keeps the retailer as the point of the surcharge remittance);
- **ARPU method collections** should be **remitted** to the state **either quarterly or semi-annually** to simply the remittance to the state.

These 2 options keep the 911 surcharge collection consistent with the "retailer", whoever that turns out to be, and consistently a transactional collection, although the ARPU method does require some estimated usage calculation. It also provides a fair amount of flexibility to the retailer without creating undue burdens on any one stakeholder, including the state of Maine, as I believe the other methods end up doing, while preserving equity and disclosure for the prepaid wireless consumer.

Decrement collections on the account of a prepaid user can be employed by a retailer, but should be limited to transactions of prepaid service--initial prepaid service purchase; refills--and should not be based on how long a consumer is holding onto the minutes of prepaid service; such decrement needs to be disclosed to the consumer, as well.

I hope this helps. I have also attached a copy of an amended version of the original ME PUC bill that I think captures the things I have proposed in this memorandum. Of course, this can be radically re-written to incorporate whatever we need to capture to be consistent with things I've stated in this Memorandum.

Thanks.

John

John J. Liantonio

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Postpaid wireless users purchase, on average, \$50 worth of wireless service per month and are billed \$.50 for the surcharge, which equates to a one percent (1%) surcharge. TracFone has suggested that a surcharge of 1% imposed on retail purchases of prepaid wireless airtime would meet the competitive neutrality and "reasonable equivalency" tests in the Resolve.

If an equitable and non-discriminatory fee is applied to prepaid wireless services, revenues to the E-9-1-1 Fund should increase, and the PUC and Legislature should reduce the level of the surcharge on all customers by a proportionate amount. The Fund currently has a \$9 million reserve, so a fee reduction would be justified.

Means of Collecting the Surcharge

Traditionally, telephone and other utilities have retailed their services directly to end-users, and consumers have paid for such services through monthly bills. Postpaid wireless service providers also sell directly to subscribers on a retail basis. The wireless subscribers receive monthly or other period bills. Taxes and fees are collected from customers along with, and in addition to, the purchase price of the services.

In contrast with the practice of utilities and postpaid wireless providers, most prepaid wireless airtime is not sold directly by the service provider to retail customers. Instead, the prepaid airtime is marketed through third-party retail merchants who resell the airtime to retail customers. In most states, *including Maine*, these airtime purchases are subject to retail sales taxes that are collected by the retail vendor and remitted to state and local governments. The wholesale provider of prepaid airtime to the retail stores is not responsible for collecting and remitting sales taxes. Invariably, retail sales are taxed as a percentage of the purchase price, since neither the wholesale provider nor retailer has any means of calculating or collecting a monthly fee in connection with the retail sale of tangible personal property, including prepaid wireless airtime.

TracFone has recommended that E-9-1-1 fees on prepaid wireless services be collected at the retail point of sale, and that the fee be imposed as a percentage of the purchase price and that 1% would be a reasonable rate. The fee would be collected not only by retail merchants in Maine but also by service providers or others who sell directly to retail customers in Maine over the Internet or by phone. Thus, any retail vendor of prepaid airtime would be required to collect and remit the fee, whether or not it is licensed or authorized to provide CMRS services in Maine.

A point of sale fee of 1% would meet the Resolve's standards of "reasonable equivalency" and competitive neutrality. We believe this would also be acceptable to almost all prepaid wireless customers in the state, who do not object to a reasonable, non-regressive E-9-1-1 surcharge.

As alternatives to point of sale collection, TracFone recommended that the PUC consider imposing a 1% fee on wholesale transactions between wholesalers of the prepaid wireless airtime and retail merchants. This would require the retailers to track their retail sales in the state and pay the 1% fee to the wholesaler, which would remit this amount to the

Treasurer. The retailer would have the option of recovering this cost from retail customers. If the PUC decided that retail merchants should not be involved in the collection process at either the wholesale or retail level, we suggested that prepaid service providers could collect and remit a 1% fee only on their direct retail sales in the state.

But neither the 1% fee on wholesale transactions nor the 1% fee on the service provider's direct retail sales meets the Resolve's objective, which is a reasonable, competitively neutral customer surcharge. Therefore, applying the 1% fee at the retail point of sale is the preferred approach, because this would achieve the purposes of the Resolve.

Some states have enacted laws that allow a prepaid service provider to track the number of minutes, units or dollars in the prepaid wireless customer's account and to decrement such accounts as a method of collecting the surcharge. Although some facilities-based wireless providers may be able to track prepaid usage and decrement accounts, TracFone is not technologically capable of collecting under this method. TracFone believes this is a customer unfriendly method that should not be adopted, except as one option as part of omnibus legislation that would provide feasible alternatives to prepaid service providers. Such alternatives must also include point of sale collection.

Means of Remitting the Surcharge

The party collecting the purchase price and the surcharge from the retail customer should remit the surcharges collected to the Treasurer as provided in existing law. However, for those retailers who sell TracFone's prepaid airtime, TracFone would be willing to accept the surcharge payments from those retailers and to remit such payments to the Treasurer, if the retailer preferred this method.

During the stakeholder process, there has been considerable discussion of the method of remittance known as the Tennessee ARPU method. Under this method, the prepaid service provider would pay monthly the \$.50 surcharge for every \$50 of prepaid revenue earned in the state during that month, which would be approximately equal to the \$.50 per customer remitted by the postpaid wireless providers. While the Tennessee method provides a simple means of computing the fee, it provides no viable means of collecting the fee from customers and thus does not meet the standards called for in the Resolve; i.e., the Tennessee method does not establish a surcharge for prepaid customers that is reasonably equivalent to the surcharge paid by other telecommunications customers. The Tennessee method is essentially a tax on the prepaid service provider, and it is not competitively neutral.

Although some states have adopted the Tennessee ARPU method, TracFone is not aware of any research or data published by the states that indicates the efficacy of this method in generating revenue for the E-9-1-1 program. TracFone would suggest that the interests of the E-9-1-1 program are not well served by a method that is discriminatory or unfair.

Other Standards

The Resolve in Section 2 requires the stakeholder group to consider “costs, flexibility, efficiencies and enforcement of the means of collecting and remitting the surcharge from the perspective of the commission, service providers, retailers and end users . . . “. TracFone maintains that the retail point of sale collection method better meets these standards than any other method that has been recommended in the stakeholder process or adopted in other states.

Comments of Verizon Wireless

TracFone agrees with Verizon’s statement in support of the point of sale method:

. . . the primary benefit of the Point of Sale Method is that it ensures that pre-paid customers themselves pay E-911 fees, just as is the case with post-paid wireless customers. This method also is the most transparent method from the perspective of the customer, i.e. the customer knows at the time of purchase how many minutes they are buying, and the price.

Verizon stated that the only downside to the point of sale method is that retailers oppose it because “they logistically cannot, or financially choose not to, collect the surcharge.” This is not a “downside to the point of sale method” at all. TracFone believes this is an insufficient reason not to adopt the point of sale approach.

With regard to decrementing prepaid accounts as a collection method, Verizon said that “for carriers like Verizon Wireless who use third parties to perform certain IT functions, we still are not positive that a technical solution exists that would allow the decrementing of customers.” Like Verizon, TracFone is not technically capable of complying with this method.

Comments of Cingular Wireless

TracFone agrees with Cingular’s position on point of sale:

. . . the prepaid consumer would pay a fee at point-of-sale that is clear and precise and doesn’t extend beyond the initial transaction, which is fair and equitable to the method of collection on postpaid wireless users . . .

In Cingular’s draft legislative language, TracFone disagrees that the surcharge should apply at the time of initial activation, if by this Cingular means the activation of a handset, which does not necessarily correspond with any purchase or usage of prepaid wireless service. The surcharge should apply only to purchases of prepaid wireless airtime and not to handsets or handset activation.

Also, in Cingular's amendatory language regarding ARPU, TracFone disagrees that ARPU should be calculated based on a specific provider's ARPU. The national monthly ARPU of \$50 is well established and should be the basis for any ARPU provision. Otherwise, the high-ARPU service provider will remit less of its prepaid revenue (in percentage terms) than the low-ARPU provider, which would make the fee steeply regressive for those prepaid providers that serve low-volume, low-income consumers in Maine. Regressive fees are not competitively neutral and are not fair to consumers.

Comments of Sprint Nextel

Sprint advocates either decrementing prepaid accounts or paying through the ARPU method as if it were a tax on the prepaid provider. As previously stated, TracFone and other providers cannot technologically comply with the decrementing method, and the ARPU method is contrary to the objectives and standards set forth in the Resolve. Any prepaid provider wanting to pay the surcharge out of its own revenues can do so now under existing law. New legislation is not required.

Summary

TracFone believes that the retail point of sale method comes closest to meeting the objectives of the Resolve and the stakeholder process and, if enacted into law, will be the most effective revenue raiser for the E-9-1-1 program.

* * * * *

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November 13, 2006

Chris Simpson
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta ME 04333-0018

Re: Prepaid Wireless Stakeholder Group -- Comments of Verizon Wireless

Dear Chris:

On behalf of Verizon Wireless, we are submitting written comments with respect to the issue of collecting E-911 fees for prepaid wireless telephone service. We are providing these comments pursuant to the November 9, 2006 Memorandum requesting that comments be submitted no later than November 13th.

To date, Verizon Wireless has reviewed each of the proposals submitted by other carriers to the Stakeholder Group. There are positives and negatives to each of the proposed methods of collection. By these comments, Verizon Wireless hopes to frame the pluses and minuses of the various options so that the State of Maine can make an informed choice regarding what direction to pursue, if any.

Point of Sale method. If the State does elect to go forward with a plan to collect E-911 surcharges for prepaid wireless service, one option is the "Point of Sale" method. Under this mechanism, retailers located in Maine would be directly responsible for collecting a surcharge whenever a customer purchases minutes of use. For bricks and mortar locations, collections would occur in a face-to-face transaction with the customer. However, as part of implementing collections the State would first need to determine whether the collections should apply to all such transactions occurring in the State, or whether they should apply more narrowly to transactions related to a Maine area code. Likewise, for purchases over the phone or Internet, the State would need to determine how retailers should determine the customer's nexus with the State of Maine, perhaps through the customer's area code or primary address, if known.

Under federal mobile sourcing rules, which were adopted several years ago as part Title 36, primary residence is used as the primary determinant of a customer's nexus with a state. However, pre-paid wireless services are excluded from these rules in part because there is no monthly billing relationship between the provider and the customer. Thus, federal law is silent on the issue of nexus.

Comments of Verizon Wireless re: E-911 Surcharges for Prepaid Wireless Services

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That said, Verizon Wireless currently uses area code as the sourcing method in those states which require the collection of E-911 surcharges for prepaid wireless service. However, there are other bases by which sourcing could occur. For example, should nexus be based on a customer's address or phone number where they happen to be different? Should nexus relate to the location of the store where minutes are purchased, or some other method? No method perfectly captures which customers are "Maine" customers for purposes of collecting surcharges, but regardless, to move forward in this area, Maine would need to adopt system of determining nexus that is both fair and workable.

More broadly, the primary benefit of the Point of Sale Method is that it ensures that prepaid customers themselves pay E-911 fees, just as is the case with post-paid wireless customers. This method also is the most transparent method from the perspective of the customer, i.e. the customer knows at the time of purchase how many minutes they are buying, and the price.

The downside of the Point of Sale method is that it is vigorously opposed by retailers locally and nationally because they logistically cannot, or financially choose not to, collect the surcharge.

Decrement Method. A second method of collection, should the State choose to implement it, would be the "Decrement" method. Like the Point of Sale method, the Decrement method would occur at the point of sale; however, the responsibility for collection would rest with the provider, not the retailer. Under this method, when a card or block of minutes is purchased by the customer, the provider would "decrement" (i.e. deduct) from the minutes purchased an amount equal to the value of the surcharge, based on whatever formula the State determines provides parity with the current E-911 surcharge.

The theoretical advantage of this method is that it would ensure that customers themselves contribute to the surcharge, which provides parity with the post-paid customers. The down side of this approach is the lack of transparency from the perspective of customers who cannot clearly determine at the point of sale whether and how many minutes will be deducted at the time of purchase. Some consumers may even perceive the decrement method to be a misrepresentation of the number of minutes they receive at purchase.

There are also logistical challenges to overcome with the Decrement method before it could be adopted by the State. Specifically, this method assumes that providers will be able to develop systems that allow them to decrement minutes, which at this point is not an obvious assumption. In fact, for carriers like Verizon Wireless who use third parties to perform certain IT functions, we still are not positive that a technical solution exists that would allow the decrementing of customers. Moreover, it is not clear that a decrement method could be applied to an individual state, as opposed to nationwide, nor is it clear that a decrement mechanism could be instituted using a percentage of purchase price as opposed to a flat amount. Without knowing the answer to these technical questions, it is difficult to suggest that Maine should modify its law to allow collections solely using such the Decrement method.

In addition, assuming the logistics can be worked out, there remains the question of determining which purchases have nexus to the State of Maine for purposes of determining

Comments of Verizon Wireless re: E-911 Surcharges for Prepaid Wireless Services

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which state is entitled to the revenues. As noted above, area code appears to be the best method, but such a method would need to be clarified prior to instituting a policy.

A final note about the Decrement method is that the responsibility for implementing the decrement would fall on the wireless carriers themselves, not on the providers. That is because carriers, whether or not they are also direct providers, are responsible for managing the minutes of use by a customer. Providers, by contrast, are in many cases resellers who are not involved in managing the minutes of use once they are purchased, and therefore providers would not be able to directly decrement minutes of use from a customer. Thus, a potential downside of the decrement method is that the administrative burden of E-911 fee collection would fall on carriers, not providers.

Average Revenue Per User (ARPU) Method. A third assessment method, should the State choose to move in this direction, is the "Average Revenue Per User" or "ARPU" method. Unlike the Decrement method, this mechanism would involve the collection of funds directly from the provider of the prepaid wireless services to cover the cost of E-911 surcharges.

One benefit of this method is administrative simplicity. There would be a formula for determining monthly payments from a provider, and payment would simply come from the provider to the State on a monthly basis. The challenge would be determining whether the charge should relate to minutes purchased, or months of service actually utilized.

The primary negative of this mechanism is that it would not lead to parity with the collection mechanism for post-paid wireless customers, and in fact, might further disadvantage post-paid customers. Specifically, because wireless providers offer a nationwide service with national pricing, the opportunity for providers to offer a second price for Maine to cover the cost of E-911 services would be impossible from a practical business standpoint. In essence, this means that providers would be required to pay any E-911 surcharges directly out of pocket, which would in turn spread the cost of the surcharge across all customers -- including post-paid wireless customers -- within the carrier's basic rates. Given the likelihood of cost-shifting, if a primary goal of assessing E-911 surcharges on prepaid customers is fairness, it is not clear that the ARPU method would actually achieve this goal.

Tracfone proposal. In its most recent comments dated November 1, 2006, Tracfone suggests that the collection method for E-911 surcharges should be limited to direct sales made by carriers of pre-paid wireless services. Practically, since sales for resale account for the great majority of sales of prepaid wireless services, such a method would create a lack of parity within the industry as it relates to E-911 collections. Under Tracfone's proposal, because Tracfone is a reseller whose sales are "indirect," they would not be obligated to collect E-911 surcharges for its sale of Verizon Wireless minutes, but if Verizon Wireless were to sell the minutes directly to a customer, E-911 surcharges would apply. On its face, this does not seem fair.

Conclusion. In light of the foregoing, there remains an open question as to whether the collection of E-911 fees from pre-paid wireless customers is worth the effort. Collection of surcharges may make logistical sense under a traditional customer relationship where the customer receives a monthly bill from the provider, as is the case with landline and post-paid

Comments of Verizon Wireless re: E-911 Surcharges for Prepaid Wireless Services

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wireless customers, but in the case of pre-paid customers where there is no ongoing billing relationship, the surcharge method becomes far more cumbersome.

Specifically, absent a billing relationship, it is impossible to determine at the point of sale how long a customer will remain connected to the system, which is the basis for assessing all other telecommunications customers. In addition, the absence of a billing relationship makes it far more difficult to determine the nexus of a customer to a particular state. For example, just because a customer buys a wireless card in a Maine store does not mean the customer will be a Maine customer. Likewise, a huge percentage of prepaid sales occur over the phone or Internet, meaning that nexus may be unrelated to the physical location of the retailer or the customer at the time of purchase.

These administrative challenges, combined with the relatively small amount of surcharge revenues to be collected from this service, call into question whether such a collection mechanism is truly fair and/or necessary. These challenges also suggest that, if the State does opt to move forward with a collection mechanism, that the following goals should be accomplished: (1) that a "menu" approach for collecting surcharges is adopted to give carriers and/or providers flexibility regarding how E-911 surcharges are collected; and (2) that guidance is provided regarding which customers have sufficient "nexus" to Maine (i.e. "sourcing" rules) such that surcharges should be collected from them.

We hope these comments are helpful and look forward to working with the Maine PUC and other stakeholders on this issue as it moves forward.

Sincerely



James I. Cohen
Counsel for Verizon Wireless

JIC/lgn

cc: Daniel Mullin, Verizon Wireless
Annabelle Canning, Esq., Verizon Wireless
Prepaid Wireless Stakeholder Group

#2

**Testimony To The
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
Prepared March 1, 2007 by the
North Dakota Association of Counties
Terry Traynor – Assistant Director**

REGARDING ENGROSSED SENATE BILL 2169

Thank you Chairman Herbel and members of the Committee, for the opportunity to present the support of county government for Senate Bill 2169. The 53 counties and four cities that are responsible for North Dakota's emergency services communication system requested the introduction of this bill, and ask for the committee's favorable recommendation.

During the past interim, a performance audit was conducted of the revenues and expenditures related to the fees authorized by Chapter 57-40.6 and imposed by elections in the 57 separate jurisdictions. The performance audit report made several recommendations and raised a number of issues that we believe have been clearly addressed in this proposed legislation. It is my desire to walk quickly through the bill, and explain the substantive changes and how they relate to those recommendations.

Section 1, is obviously an update of the pertinent definitions for this chapter, but these updates clearly relate to the audit. It was pointed out by the Auditor's Office, that the current fee is not equitably applied. Although implemented in 2001 to apply to all landline and wireless phone services, the fee has been interpreted by one company not to apply to them. While local government disagrees with this interpretation, it has created an inequity among similar service providers, eroding revenues as new technologies replace the old. It was also noted by the auditor that the fee is not currently required to be collected by the increasingly popular "*voice over Internet protocol*" or VOIP service. The most important definition is that of "*assessed communications services*" which includes all those defined in the other definitions, but is broad enough to include new, and as yet unnamed, technologies. The definitions of "*prepaid wireless service*" and "*active prepaid wireless service*" have been supplied by the wireless industry as the emerging standard.

Section 2 replaces the more specific phone service types with the newly defined more universal term of "*assessed communications services*". It also makes it clear that the fee must be applied, regardless of service type or billing mechanism. This section makes no

change to the \$1 maximum that has been approved by the voters in every jurisdiction. Subsection 7 removes the process of extending the fee to wireless service, as this has been accomplished in every jurisdiction; and replaces that with the extension of the fee to those services identified by the State Auditor, as well as any future replacement technologies.

Section 3, is again the industry recommended language directing the calculation of the fee for those "prepaid wireless" services that do not have a monthly billing. South Dakota adopted almost identical language last year, and a number of other States that our office researched were very similar. It requires the prepaid wireless providers to remit the fee and allows (but not requires) them to deduct the fee from outstanding balances (either dollars or minutes) carried by the customer.

You may hear that one pre-paid wireless provider (TracFone) may find remitting this fee difficult. I have attached to my testimony, copies of partial records from one county (I can obtain them from many others as well) indicating that this fee was remitted by this company for 2001, 2002, and 2003 without apparent problems. The final monthly transmittal document you will see includes the statement that this company "... *has determined that the E-911 surcharge is not applicable to its business....*" Counties and cities disagree with their determination, but SB2169 make it crystal clear. County and city officials are in complete agreement with the State Auditor's Office – all phone services must remit this fee or a competitive inequity within the industry is allowed to continue.

Other wireless companies offering "prepaid" services have indicated that another method of calculating the fee has been provided as an option in some states (Iowa for one). And they have asked that this method also be provided as an option in North Dakota. If this will facilitate the collection of the fee, local government is supportive of allowing the option. To this end, I have attached amendments at the end of my testimony to incorporate this change.

Section 4 very clearly makes the collection and submittal of the fee revenue a responsibility of the service providers and addresses the cost of fee collection by the providers. The State Auditor indicated that an administrative charge "*not to exceed 5%*" may be more than is necessary – noting that many states allow less. After much debate and discussion with the industry, the decision to propose no change was based on several factors. First, their retention is in fact limited to "actual costs". Second, in a subsequent section we are asking for timelier reporting. And third, we have many small landline

phone companies that have understandably higher overhead costs. This section also allows for quarterly distributions of the fee revenue, for providers with few customers.

Section 5, strikes out much of the language added to the chapter in 1999. At that time, the fee was extended to wireless service and the industry (reflecting on their experiences in other states) wanted protections that the revenue associated with wireless service would be dedicated first to implementing “enhanced 911 service” for wireless. This has been accomplished statewide – in fact, North Dakota was the sixth state in the nation to reach this milestone. Importantly, the section retains the limitation that the fee proceeds remain in a separate fund within the jurisdiction and that they be used solely for “*implementing, maintaining, or operating the emergency services communications system*”. This use is further defined, as you will see in a subsequent section.

Section 6, currently requires the landline providers to report changes in their phone system database. The new language would require new service or change of service to be reported within two business days. (Dropped service could be reported monthly). This was not included in the Auditors Report, but was felt to be a public safety enhancement by the local jurisdictions, and was negotiated with the industry.

Section 7 contains only necessary changes to terminology.

Section 8 adds an additional standard for the governing body of the local 911 jurisdiction to meet. As the Auditor felt several jurisdictions did not have accounting systems adequate to clearly delineate the expenditures of this revenue, this requirement was added. It also creates a requirement to expend the funds within specified guidelines that are established by an existing committee – addressed in the next Section.

Section 9 revises the duties (and the name) of an existing committee created by the 1999 Legislature to report on the “*income, expenditures, and status of its emergency services communication system*”. SB2169 adds the duties of recommending changes to the operating standards (Section 8), developing the expenditure guidelines referenced in the previous section, reviewing reports from the jurisdictions regarding their expenditures, and reporting to the Legislative Council. The committee may also initiate and administer agreements among the governing bodies to procure equipment and services in a coordinated and cost-effective manner.

Section 10 repeals ^{it} the requirement for State Radio to recommend changes to the operating standards (Section 8). As State Radio has a representative on the existing committee given this duty in Section 9, and since they must solicit information from the

911 jurisdictions to develop any recommendations, State Radio agreed that the repeal of this section was appropriate.

Mr. Chairman and committee members, I am available for any questions you may have, but I wish to close by urging the committee to resist changes to the bill and to give it a strong "Do Pass" recommendation.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2169

Page 1, line 11, replace the first "telephone" with "service" and replace the second "telephone" with "service"

Page 2, line 13, remove the first "telephone" and the second "telephone"

Page 6, line 10, remove "telephone"

Page 6, line 11, after "based" insert "either"

Page 6, line 13, after "month" insert "or upon a percentage of revenue assessment on the gross revenue received from the sale of prepaid wireless services each month. The percentage assessed shall be set annually by the governing body by setting a rate that is comparable to the fee assessed to other assessed communication services, not to exceed 2%"

Renumber accordingly

Fund 75-750-5900

Revenue 911 Wireless Fees

MONTH	Date	Discription	Company	Amount
JAN	1/2/2003	E-911 Phone	RURAL CELLULAR CORP	\$7.60
	1/2/2003	E-911 Phone	VERIZON WIRELESS	\$1,082.36
	1/2/2003	E-911 Phone	TRACFONE WIRELESS	\$8.00
	1/24/2003	911 FEE	WESTERN WIRELESS	\$1,714.00
	1/31/2003	911 FEE	WIRELESS ALLIANCE, LLC	\$0.95
			TOTAL=	\$2,812.91
FEB	2/3/2003	911 FEE	TRACFONE WIRELESS	\$33.00
	2/3/2003	911 FEE	VERIZON WIRELESS	\$1,092.48
	2/3/2003	911 FEE	RURAL CELLULAR	\$7.60
	2/24/2003	E-911 FEES	VERIZON WIRELESS	\$1,091.83
	2/27/2003	WIRELESS 911 FEES	UNICEL	\$0.95
	2/27/2003	911 WIRELESS	POLAR COMMUNICATIONS	\$567.55
	2/27/2003	CORRECTION	POLAR COMMUNICATIONS	\$567.55
		TOTAL=	\$3,360.96	
MAR	3/3/2003	911 FEE	TRACFONE WIRELESS	\$25.65
	3/3/2003	911 FEE	RURAL CELLULAR CORPORAT	\$7.60
	3/7/2003	911 WIRELESS	WESTERN WIRELESS	\$1,691.00
	3/17/2003	911 WIRELESS FEES	POLAR TELECOMMUNICATION	\$578.65
	3/17/2003	CORRECTION	POLAR TELECOMMUNICATION	\$578.65
		TOTAL=	\$2,881.55	
APR	4/2/2003	E-911 FEES	RURAL CELLULAR CORPORAT	\$6.65
	4/2/2003	WIRELESS	WESTERN WIRELESS	\$1,682.00
	4/4/2003	911 FEES	VERIZON WIRELESS	\$1,109.08
	4/21/2003	CORRECTION	POLAR TELECOMMUNICATION	\$573.37
	4/21/2003	911 WIRELESS TAX	POLAR TELECOMMUNICATION	\$573.37
MAY	5/5/2003	911 FEE	VERIZON WIRELESS	\$1,119.52
	5/5/2003	911 FEE	RURAL CELLULAR	\$ 6.65
	5/5/2003	911 FEE	RURAL CELLULAR	\$ 0.95
	5/5/2003	WIRELESS 911 FEES TRACFON	TRACFONE WIRELESS	\$ 38.00
	5/5/2003	WIRELESS 911 FEES TRACFON	ONSTAR CORPORATION	\$ 69.35
	5/5/2003	911 FEES	WESTERN WIRELESS	\$1,678.00

ND

North Dakota, Pembina County E911

Reporting Period: November 1, 2003 to November 30, 2003

TracFone Wireless, Inc.
TracFone Wireless, Inc.
c/o Tax Partners, L.L.C.
3100 Cumberland Boulevard, Suite 900
Atlanta, GA 30339
8778294141 - Phone
7709560700 - Fax

Tax Identification Number
65-0655753

FINAL RETURN

Return Due: 12/30/2003

	Gross Units	Less: Exempt Units	Units Subject to Tax	Tax Rate	Gross Tax
Return Totals:	0	0	0		0.00

REMIT TO:

Pembina County
Attn: Auditor
301 Dakota Street W #1
Cavalier, ND 58220

Total Gross Tax Due:	0.00
Less: Vendor's Compensation:	(0.00)
Change in Prepayments:	0.00
Less: Tax Credits:	(0.00)
Net Tax Amount to be Remitted:	0.00

Jennifer Fitzgerald

Jennifer Fitzgerald, Atty-In-Fact

12/16/2003

I hereby declare that all information provided herein is true, complete and accurate to the best of my knowledge.

NO_PEMB_E9 12/16/2003 17:19:18 JFITZGERALD

FINAL RETURN

"We have enclosed herein the final return with respect to this surcharge on behalf of TracFone Wireless, Inc. TracFone has determined that the E-911 surcharge is not applicable to its business or customers and that, therefore, TracFone has been remitting these surcharges to date in error. TracFone plans to submit soon a formal request for a refund of all amounts erroneously paid to date."



North Dakota SB 2169
Testimony submitted to the House Political Subdivisions Committee
By Verizon Wireless
3/1/07

Good morning, my name is Stacey Sprinkle and I am the Executive Director of State Tax Policy for Verizon Wireless. I would like to thank the committee for the opportunity to submit this testimony today to express our company's position regarding SB 2169. Specifically the provisions of the bill that seek to expand the application of the 911 fee to prepaid wireless services.

Is expansion of the fund warranted?

In November of 2005, the office of the State Auditor issued a performance audit report on the collection and use of 911 fees. The scope of the audit was specifically to identify whether the 911 fees were being properly used and whether the current fee was sufficient to meet the corresponding costs of maintaining the emergency communications system. The report concluded that significant improvements were needed in how 911 fees are being used by the political subdivisions. A number of the PSAP locations were unable to justify the use of the 911 fees for PSAP operations. While the report indicated that it was unable to determine the amount inappropriately expended on non 911 purposes, it noted that a majority of the time spent by dispatchers appeared to be related to non 911 activities and that certain 911 purchases were benefiting non 911 purposes.

Additionally, the report concludes that while it is difficult to determine the reasonableness of the current fee being charged due to the lack of consistency in how the funds are currently being expended, based upon their limited review the report concluded that the fee amount appeared to be more than sufficient to cover the 911 costs.

Given this information, is expansion of the fund to additional services really warranted? Verizon Wireless believes that the Legislature should take a hard look at this specific issue before they consider expanding the fund. Until the process improvements are in place regarding how the funds can be expended; bringing in more revenue would appear to be premature and unnecessary.

Is expansion of the fee to prepaid services really achieving equity?

The original policy behind the imposition of 911 fees on consumers of communication services was based upon the premise that these users are the ones that directly benefit from being able to access the emergency communications systems. It has been argued that it would be inequitable to have post paid users pay the 911 fee if prepaid users are not. However, by extending this fee to prepaid services, the fee will shift from a

consumer imposition to one that is born by the provider. Providers do not have a monthly billing arrangement with users of prepaid wireless services. The monthly fee can not simply be added to the consumer's monthly bill, which is what happens in the post paid environment. The methods currently utilized by most providers to assess 911 fees on these services are estimates done at the end of the month and are not able to be pushed down to the actual consumers. It is also important to note that the Federal Mobile Telecommunications Sourcing Act (MTSA) specifically excluded prepaid services from its provisions. Providers are not required to obtain a tax address from a customer who purchases prepaid services. Since bills are not sent to these customers, most providers would not be collecting any address from prepaid users. A method to specifically identify North Dakota prepaid customers would need to be developed.

While one might ask why the fee is not built into the prices charged for prepaid services, the issue is far more complicated than it would appear. First, many of these plans are offered nationally and are not state specific plans. Incorporating North Dakota's 911 fee into the rates charged nationally would again be a fundamental shift in policy. The burden of this fee would now be exported to users that would never have the ability to access the emergency communications system in North Dakota. Additionally, how would that fee be built into the rate plans when it is imposed on a "per user per month" basis? When a customer purchases a plan for 200 minutes or 600 minutes, how would a provider estimate how long they will be a customer for purposes of trying to assess this fee? Both users could be customers for one month, three months or six months, so how should the fee be assessed? It would be even more complicated to take that estimated recovery element and ultimately incorporate it into the rates charged for such services. Again, the issue is far more complicated than it would appear on the surface.

Given the complexities involved in trying to push this fee down to the users of prepaid services, the fee becomes one that is ultimately born by the providers versus the consumers. That shift in policy would seem to be inequitable.

If expansion to prepaid services is inevitable, how can it be pushed down to the user to match the stated policy goals?

As previously mentioned, trying to assess a "per month per user" fee in the prepaid environment is difficult at best. However, one consideration is to establish a comparable percentage of revenue assessment that could be charged to prepaid users at the point of sale based upon the cost of the service. This would eliminate the administrative burden that providers have today in trying to estimate and monitor how long prepaid customers are users of such services. This method would also help push the fee down to the actual users of the prepaid services as it would be known at the time the sale took place.

Again, Verizon Wireless wants to thank the committee for the opportunity to submit this testimony today and would be happy to answer any questions that you might have.

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**Testimony of TracFone
In opposition to SB 2169
March 1, 2007**

Good Morning Chairman and members of the Committee. I am John Olson, representing TracFone in opposition to Senate Bill 2169, in its current form. In fact, there are provisions in the bill that are appropriate and should become law. Our main concern is with the procedure by which fees are assessed against prepaid wireless service providers.

TracFone is not a licensed CMRS provider. We are a reseller. We add our patented prepaid software to handsets, which are then sold directly to consumers at retail stores. The underlying wireless calls are handled by over 30 wireless companies' networks, including major nationwide carriers like Cingular and Verizon.

The present North Dakota bill envisions a prepaid provider "collecting" the fee from its customer by deducting minutes out of a prepaid handset. This will not work for TracFone and other providers, including Verizon Wireless. When a TracFone airtime card is purchased at a retail store, then loaded into a TracFone handset, TracFone's system is impacted by that transaction in that it supplies the actual code that must be accepted by the handset to load the airtime. However, since we are not the actual carrier carrying the calls being made by our handsets, we have no real time visibility of the actual use of the minutes for telephone calls after they are loaded in the handset. Only the underlying network operators have or can see that information on a real-time or near real-time basis. TracFone subsequently receives invoices from the underlying carriers for all airtime used by each handset. Most local calls are billed within 30 - 45 days. Calls that are made while "roaming" are sometimes not billed to TracFone until several months after calls are actually made.

Thus, there is no way for TracFone, on any given date each month, to look at all of its handsets in North Dakota to determine which may have a sufficient positive balance ("SPB") for which an E-911 surcharge should be charged. Even if the SPB of each handset could be determined at any point in time, there is no present mechanism by which TracFone can then "debit" or extract minutes from that handset to charge that customer the fee. Even if such mechanism could be developed, it would be entirely useless if the handset was not turned on, which TracFone does not control. Thus, TracFone can neither determine if a phone has a SPB, nor effectively extract minutes from a phone in any case.

Nor can TracFone bill its customers. TracFone, in fact, has no direct financial relationship with the vast majority of its customers and thus no opportunity to bill them the surcharge. TracFone customers purchase TracFone handsets and airtime directly from mass retailers and the purchase price is paid directly to those retailers as in any other retail purchase. That is why TracFone suggests that the best way to collect 911 surcharges from prepaid customers is when they purchase the prepaid airtime at retail

stores. When TracFone acts as a direct retailer when selling airtime on www.tracfone.com, we would collect the 911 fee like any other retailer under our suggested point of sale methodology.

These inability to collect any fees from our customers, either in minutes or actual dollars, are often confused with TracFone's ability to determine how many customers TracFone actually has in a given state or county. This can be generally approximated because TracFone determines which underlying carrier to use by a customer's zip code where the phone will be primarily used. TracFone also tries to gather as much customer information as possible, so that it can "know" its customers. No amount of customer information, however, changes the above facts that TracFone does not bill its customers and has no direct financial relationship with them or that it cannot effectively take minutes out of a phone (or know how many are in a phone) after they are loaded. Knowing how many customers are in a state or even where some of them live is not the issue; the issue is how should those customers contribute to the state's E911 if the legislature determines to extend the fee to them? Who should collect money from these customers? Since we have no direct financial relationship, it is only reasonable to suggest that our customers should contribute by paying the surcharge directly to the retailer from whom they purchase the service, i.e., the retailer who makes the direct sale.

Thankyou for your consideration and I respectfully urge a DO NOT PASS on SB2169 as currently drafted.

For further information, contact:

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Lobbyist #256
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Bismarck, ND 58501
(701)222-3485 off
(701)222-3091 fax
(701)391-6457 cell
olsonpc@midconetwork.com

SB 2169

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Testimony on Behalf of General Motors and OnStar

Chairman Herbol and members of the House Political Sub Committee, my name is Tom Kelsch, with the Kelsch Law Firm. I am here today to testify on behalf of OnStar, a wholly owned subsidiary of General Motors. General Motors is opposed to SB 2169 in its current format.

OnStar can be thought of in two parts. First the primary "core" services. These are the services you hear the most about when you hear/think of OnStar. The Safety and Security services: crash notification, routing assistance, remote unlock, remote diagnostics, etc. All of these core services utilize the cellular network to provide the OnStar call center with access to the vehicle. These services are all classified by the FCC as "information services" not subject to telecommunications taxes/fees/charges.

The second part of our service is the OnStar Hands Free Calling System. This system takes advantage of the fact that our core services need and use a cellular connection to function. Consequently, the hands free calling system can provide access to the cellular network to place personal calls. In order to use the hands free calling system you must separately purchase minutes on a prepaid basis. To purchase minutes you key press from the vehicle establishing a secure cellular connection with our call center. The call advisor verifies your account information and completes the sale of minutes by applying the total charges against a credit card provided by the user and minutes are downloaded to the vehicle (or cellular device). Once the minutes are downloaded to the device, we have no way of "decrementing" minutes from the system and no way of knowing how many minutes remain in the system. This becomes especially problematic for purposes of the proposed legislation because we don't know if someone uses all of their purchased minutes the same day they buy them or if they never use them (i.e. they expire).

(Handed out later)

APPLICATION OF E911 FEES TO PREPAID WIRELESS SERVICES AND OTHER TECHNOLOGIES IN NORTH DAKOTA

Study of E911 Needed – Several states have determined that comprehensive studies are needed to determine a fair method of collecting E911 fees from users of prepaid wireless services and certain other technologies like Voice-over-Internet-Protocol (“VoIP”). North Dakota could also benefit from such a study, which would help ensure that any legislation enacted is equitable and achieves the desired objectives of requiring all who benefit from E911 to make a fair contribution. There is precedent for this approach based on activities in several states:

- *South Dakota* passed legislation in 2006 similar to ND SB 2169 relating to E911 fees and prepaid wireless. During hearings on prepaid wireless in February of 2007, a spokesman for the 911 agencies testified that only one prepaid wireless provider was remitting. North Dakota should not rush to legislation that has proved to be unworkable. Governor Mike Rounds of South Dakota has appointed a working group on E911 funding to determine how to collect from customers of prepaid wireless and other telecommunications technologies.
- The *Maine* legislature in 2006 directed the Maine Public Utilities Commission (“ME PUC”) to appoint a stakeholder group to see if a consensus could be reached on appropriate E911 funding. The ME PUC is expected to report the results of the stakeholder group and the PUC’s recommendations in the near future.
- The *Nebraska* Public Service Commission held a meeting with wireless industry representatives in December 2006 to consider new legislation to revise the prepaid wireless E911 provisions enacted in 2006. These provisions were similar to those in ND SB 2169. A reform bill is currently pending in the Nebraska legislature.
- The *Florida* Wireless 911 Board has been considering issues involving prepaid wireless and other technologies for the last four years. The Board has recommended to the legislature that changes in the law are needed in order to collect from prepaid customers. A broad-based coalition of telecommunications providers have proposed that prepaid wireless services be exempt from E911 fees until a study can be conducted and the legislature has adopted fair and workable collection methods. A copy of the study proposal currently pending in the Florida legislature is attached.

Why ND SB 2169 Does Not Work for Many Prepaid Wireless Carriers – The bill requires prepaid providers to track prepaid wireless accounts and to determine whether the customer has a “sufficient positive balance” in the account, i.e., a whether there is a sufficient quantity of minutes, units or dollars in the account that are sufficient to pay the monthly fee. The bill contemplates that the prepaid wireless service provider will collect the fee by debiting the account and remitting this amount to the local governments. There are several significant problems with this approach:

- Many of the major prepaid wireless providers, including TracFone Wireless and Verizon Wireless, do not have the technology to track prepaid accounts, determine balances, and debit accounts as a method of collecting fees from the customers. The few states that have enacted legislation to debit prepaid accounts (e.g., South Dakota) have not been able to show that the method is actually working and generating revenue.
- Consumers and consumer representatives oppose having their minutes taken back as a form of fee payment. Low-volume users in particular may lose the use of their wireless handsets as the monthly debiting may exceed their usage of the service and totally deplete their prepaid accounts.
- Much potential E911 revenue is lost by the debiting method because it only applies to accounts with a "sufficient positive balance" on the last day of the month. Since many prepaid customers have depleted their accounts by the end of the month and have no balance, no fee will be remitted with respect to these accounts.
- The State Auditor's 2005 report on E911 recognized that debiting prepaid accounts would be difficult for some carriers and recommended that a fee be charged in connection with the sale of each prepaid card. The Auditor did not recommend the debiting method.

The Amendment to Impose a New Tax on Revenues Is Unfair – Recognizing that debiting prepaid accounts will not be fair or effective, some persons have proposed amending SB 2169 to impose a tax or fee on the prepaid wireless provider of up to two percent of gross revenues in the state. The proposed amendment contains no method of cost recovery or means of surcharging the fee to end users who are able to access the E911 system. Such a plan to tax prepaid providers while allowing traditional local and wireless companies to pass through the fee to customers is discriminatory. Federal law requires that state regulation of wireless companies be competitively neutral and nondiscriminatory. The proposal to tax the gross revenues of prepaid providers does not meet these standards, and if enacted, would be subject to preemption by the FCC or the federal courts.

Some Carriers Paid E911 Fees to North Dakota That Were Not Required by Law – The Auditor's E911 report in 2005 recognized that current North Dakota law does not apply to prepaid wireless services and certain other types of telecommunications services. This is why the legislature in 2005 tried to amend the statute to apply to prepaid wireless and why the process continues in 2007. A bill similar to SB 2169 failed to pass in 2005. Customers of TracFone Wireless have never remitted a monthly fee for E911 because the law has not applied to such customers or provided a viable way for prepaid customers to remit. However, TracFone did at one time by mistake pay the fees out of its own revenues due to an error by a tax compliance firm. But upon learning of the mistake, TracFone ceased remitting the fees. The ND fee does not now and has never applied to customers purchasing prepaid airtime in retail stores in ND. Such customers have never paid E911 fees to TracFone or to any other entity. The current statute clearly states that the fee is paid only in connection with a surcharge on monthly bills. Today, TracFone

(and most prepaid customers) support a reasonable E911 collected and paid at the retail point of sale.

Prepaid Wireless E911 Study Committee Proposal

Pending in the Florida Legislature

March 2007

"2. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to the subscribers on a per service identifier basis for service identifiers whose primary place of use is within this state. Prior to July 1, 2009, the fee shall not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid calling arrangement that is subject to the provisions of s. 212.05(1)(e).

a. The board shall conduct a study to determine the feasibility of collecting E911 fees on the sale of prepaid wireless services. If, based on the findings of the study, the board determines that the prohibition contained in this subparagraph should be extended, it shall report its findings and recommendation to the Governor, President of the Senate and Speaker of the House of Representatives by December 31, 2008. If the board determines the prohibition should not be extended, it shall implement the recommendation of the study effective July 1, 2009

b. For purposes of this section, "prepaid wireless service" means the right to access telecommunications services, which must be paid for in advance and which enables the origination of calls that is sold in predetermined units or dollars of which the number declines with use in a known amount. For purposes of this section, "prepaid wireless service providers" shall include those entities that sell prepaid wireless service regardless of its form, either as a retailer or reseller.

c. The study shall include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral and nondiscriminatory basis and shall consider whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fee based on the varying methodologies prepaid wireless service providers and their agents utilize in marketing prepaid wireless service.

d. The study shall include a review and evaluation of the collection of E911 fees on wireless prepaid services at the point of sale within the state. This

evaluation must be consistent with the collection principles of end user charges such as those in s. 212.05(1)(e).

e. Not later than 90 day after enactment of this section, the board shall require all prepaid wireless service providers, including resellers, to provide to the board the information that the board determines is necessary to discharge its duties under this section, including information such as total retail and reseller prepaid wireless service sales, necessary for its recommendations.

f. All subscriber information provided by a prepaid wireless service provider in response to a request from the board while conducting this study is subject to the provisions of s. 365.174.

g. The study shall be conducted by an entity competent and knowledgeable in matters of state taxation policy if the board does not possess that expertise. Any study shall be paid for from the moneys distributed to the board for administrative purposes pursuant to s. 365.173(2)(e) and shall not exceed \$250,000 in cost."

History of 911 in ND

Emergency Communications Snapshot

- ◆ In North Dakota all 911 calls are handled by 23 Public Safety Answering Points (PSAPs).
- ◆ PSAPs are operated 24/7 by dispatchers trained in emergency medical dispatch, radio communications and related skills.
- ◆ North Dakota's PSAPs respond to 376,000 emergency 911 calls each year. The busiest respond to an average of one call every 13 minutes.
- ◆ Each PSAP provides dispatching services for an average of 27 different responding agencies.
- ◆ All ND PSAPs have "enhanced 911" systems which display the phone number and address of land-line callers.
- ◆ All ND PSAPs are Phase II capable, meaning most GPS chip-equipped cell phones in sight of a satellite can be physically located when dialing 911.

Regional Comparison	
State	PSAP
ND	23
SD	33
Wyo-	34
Idaho	55
Montana	57
Kansas	83
Iowa	84
Minn.	111

The 1985 Legislature allowed local governments to adopt an excise tax for the purposes of an emergency services communication system. The tax was expanded to include wireless access lines beginning in 2001. In order for the tax to be assessed, the governor was required to appoint an Emergency Services Communication System Advisory Committee to establish standards and guidelines for the development and operation of emergency 911 telephone systems. The committee was disbanded in 1996.

In 1991, four counties began receiving 911 service from the state through the Division of State Radio. By 1995, State Radio served as the Public Service Answering Point (PSAP) for 11 counties and currently provides services to 22 counties. Today, the remaining portion of the state is provided 911 coverage through 22 locally operated PSAPs, plus one located in South Dakota.

To implement wireless 911 within the state, all political subdivisions receiving 911 fees entered into contracts with the North Dakota Association of Counties (NDACo) to coordinate the implementation of the networking, database management, non-premise equipment upgrades, testing, and ongoing services necessary for enhanced wireless 911.

In 2005, North Dakota's wireless project became one of the first in the nation to achieve Phase II wireless service, meaning most cell phones equipped with GPS chips and in sight of a satellite can be located when dialing 911.

For more information:

www.nd911.homestead.com

North Dakota EMERGENCY SERVICES COMMUNICATIONS 911



A snapshot of
Emergency 911 Services in
North Dakota
January 2007

North Dakota 911 Association

E-911 Funding and Expenses

North Dakota law (NDCC Ch. 57-40.6) establishes the requirements related to 911 fees, including how fees are to be collected and used. Each of these requirements is addressed below.

Establishing a 911 Fee

The governing body of a county or city is authorized to impose a fee on the use of telephone exchange access service and on the use of wireless service. A resolution is to be adopted which is to specify a fee amount not to exceed \$1 per month per telephone access line and per wireless access line. The adoption of the fee is required to be voted on by the residents of the jurisdiction. If electors approve the fee, it may be imposed for a six year period and can be extended for another six years by the political subdivision.

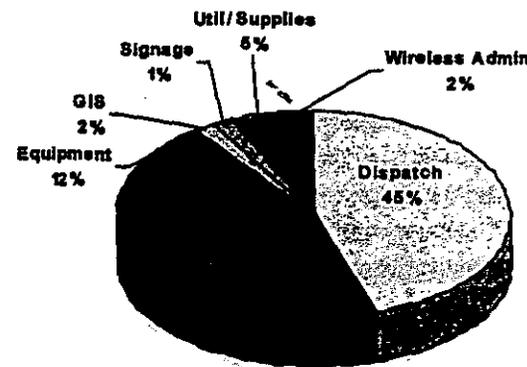
Collecting 911 Fees

Telephone exchange access service providers and wireless service providers are required to collect the 911 fees from customers and submit the fees to the appropriate political subdivision within 30 days of collection. Phone providers are allowed to retain a portion of the fees, not to exceed 5% of what is

collected, for the actual costs of administration in collection of the fee.

Use of 911 Fees

After the 911 fees have been used to get the 911 system operational, revenues may only be used for "implementing, maintaining, or operating the emergency services communication system." An emergency services communication system is defined in state law as a "radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services."



Statewide Expenditures

Future Challenges

The nation's current 911 system is designed around telephone technology and is not equipped to handle the text, data, images and video that are increasingly common in personal communications. For example, Voice over Internet Protocol (VoIP) allows computer users to make voice phone calls using any computer with an internet connection. Our 911 system is not currently able to identify the location of most VoIP calls.

The Next Generation 911 Initiative will establish the foundation for public emergency communications services in an increasingly wireless, mobile society.

As our systems met the challenges of wireless telephone technology, so they must meet the challenges of technologies like VoIP. Those working with Emergency Communications in North Dakota will continue to work hard at providing high quality services to its residents and visitors.

