

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Alabama Commercial Mobile Radio Service)	
Emergency Telephone Services Board Petition)	
To Reject Tracfone Wireless Inc.'s ETC)	
Self-Certification)	

**COMMENTS OF THE
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® ("CTIA")¹ respectfully submits these comments in response to the Commission's Public Notice regarding Tracfone's self-certification of compliance with applicable 911 and E-911 obligations.² CTIA is fully committed to helping ensure that customers have access to E-911 services on their wireless phones and to improving E-911 service to all Americans regardless of the technologies and services used. CTIA also is committed to providing qualified individuals with access to wireless communications through the Commission's Lifeline program.³ Through these comments, CTIA explains why the

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, ESMR and 700 MHz licensees, as well as providers and manufacturers of wireless data services and products.

² See *Comment Sought on Alabama Commercial Radio Service Emergency Telephone Board Petition to Reject Tracfone Wireless Inc.'s ETC Self-Certification*, Public Notice, CC Docket No. 96-45, DA 09-1558 (rel. July 21, 2009).

³ The Lifeline program provides qualified consumers with a discount on monthly charges for their primary phone service, even if the primary phone is a wireless phone. See http://www.lifeline.gov/lifeline_Consumers.html.

traditional monthly billing collection of 911 and E-911 taxes and fees (“E-911 fees”) is ill-suited for prepaid wireless services, and provides an update on industry-wide efforts to develop a uniform solution for collecting and remitting E-911 fees from prepaid wireless customers to support effective state emergency communications systems. While the mechanism used to collect E-911 fees from prepaid wireless customers is an important issue, wireless customers who qualify for Lifeline assistance should not be held hostage while the billing and collection of E-911 fees for prepaid service is being resolved.

INTRODUCTION

Historically, most states and localities have established E-911 fees that are assessed monthly and collected directly from consumers of communication services. For traditional postpaid wireline and wireless services, the collection of these fees from the consumer has been done through the standard monthly billing process utilized by wireless carriers to charge consumers for their services. As the wireless industry has introduced new services, such as prepaid wireless service, many states and localities have sought to expand their E-911 fees to include the users of these services. As explained in this filing, the traditional monthly billing collection method is ill-suited for wireless prepaid services because, with few exceptions, there is no monthly billing statement or 30 day billing cycle that takes place in the prepaid environment.

DISCUSSION

A. Traditional Monthly Billing Collection of E-911 Fees is Ill-Suited for Prepaid Wireless Services.

The difficulty in collecting taxes and fees from wireless prepaid consumers has been magnified by the fact that many state laws specifying E-911 fee collection methods were adopted prior to the existence or widespread adoption of prepaid services and, thus, were written and codified into statute with traditional postpaid services in mind. Of the 50 states and the District

of Columbia, 49 jurisdictions impose an E- 911 fee on postpaid wireless services.⁴ Forty-seven of those 49 jurisdictions impose the fee directly on the consumer.⁵ Most of these state statutes require that the E-911 fee shall be clearly disclosed and collected as a separate charge from the end user – a requirement that is difficult for wireless prepaid service providers to comply with given the way prepaid services are purchased and provided.

Wireless providers have worked with states and the public safety community for several years seeking a solution that is better tailored to the collection of E-911 fees imposed upon prepaid consumers. Early efforts focused primarily on ways to adapt the traditional postpaid monthly billing process to the prepaid wireless business model. None of the resulting mixed bag of methodologies, however, adequately addressed E-911 funding. For example, none of these methods effectively solve the problem of how to collect the E-911 fees from all prepaid consumers. Instead, those measures focused on proxy methodologies to calculate the fees to be remitted for prepaid services, irrespective of whether the fee can ultimately be collected from the end-user as stated in the statute or as accomplished in the postpaid environment. Thus, none of these methods adequately address collection of E-911 fees from all prepaid consumers and, as a result, trying to comply with these methods has been confusing, burdensome and inconsistent.

The concept of assessing a monthly fee does not work in the prepaid wireless environment for a host of reasons. As noted previously, there is no monthly billing mechanism for charging the E-911 fee directly to prepaid wireless customers. The only way the carrier could try to “bill” the fee to the prepaid wireless users would be to “embed” the cost of the fee into the price of the service. However, prepaid wireless services are offered nationally and sold

⁴ Currently, about half the states do not impose E-911 fees on prepaid service at all.

⁵ Arizona and the District of Columbia impose the fee on the provider but allow the fee to be recovered from the end-user

throughout the country by mass retail outlets. The wireless provider has no way of knowing in which state the retailer will ultimately sell the prepaid cards and/or phones, and since wireless is a mobile service, no way of knowing in advance where the service will be used. Furthermore, the provider has no way of knowing whether the customer will use their minutes in a week or in three months. Thus, there is no way for the carrier to know how many “monthly” fees should be embedded into the cost of service. Since so many assumptions that may or may not be relevant to any individual user go into this calculation, this method does not allow for the collection of the E-911 fee to be clearly disclosed to the consumer, and in addition, embedding the fee into the cost of air time also subjects the E-911 fee to the general sales tax – improperly burdening prepaid consumers with double taxation. This is troubling as most state statutes specifically have precluded the state’s sales taxes from applying to E-911 fees.

Of the states that have indicated their E-911 fee applies to prepaid services, fifteen states⁶ provide for optional methodologies that require prepaid wireless service providers to either: remit the E-911 fees on behalf of their prepaid wireless customers using an estimated monthly Average Revenue Per User (“ARPU”) to determine the approximate number of prepaid subscribers (“Tennessee method”); collect the E-911 fee directly from the customers at the point of sale without specifying how to work with the retailers to implement this method; or “decrement” (deduct) comparable minutes from the prepaid wireless customer’s account each month, but only if they have a sufficient positive balance in their account to cover the fee when it is due. Both the ARPU and decrement methods presume that a carrier has built the fee into its cost of service, which as noted above, is impossible to accomplish and unfair to prepaid wireless

⁶ Alabama, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Maine, Nebraska, North Carolina, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee and Virginia.

customers. In the remaining states, the law is unclear and some prepaid providers are in litigation over whether the fee applies to prepaid wireless services.

The end result of the current confusing mix of state laws is an administratively burdensome system, an inability to directly collect E-911 fees from all prepaid wireless consumers, a lack of transparency to consumers regarding the collection of the E-911 fees, and, in some cases, expensive litigation over application of the E-911 fees to prepaid services. In response to these problems, wireless providers have focused their efforts on developing a uniform solution to collect E-911 fees at the point of sale.

B. Developing a Uniform Approach to Ensure that Fees are Equitable, Sufficient, and Clearly Disclosed to Consumers.

To address this challenge, the wireless industry has been working to develop a uniform approach that would replace the inefficient and ineffective traditional methods of assessing E-911 fees on wireless prepaid services with a solution that delivers more certainty and efficiency in the funds going to public safety by collecting the fee directly from all prepaid consumers when the service is sold. This “point of sale” approach ensures that collection of E-911 fees is transparent and clearly disclosed to the consumer, and is easily administered by all sellers of wireless prepaid services.

Since approximately 80% of wireless prepaid services are sold through traditional retail outlets such as Wal-Mart, Best Buy and Target, CTIA and its members have been working with the retail community to develop a point of sale solution that would impose minimal compliance burdens on them was essential. In 2008, the wireless industry reached out to a number of retailers to discuss the feasibility of developing a process for collection of the E-911 fees at the point of sale, seeking to leverage the existing sales tax structure as much as possible. Numerous

discussions were held with retailers and a set of concepts and principles, as well as model legislation were successfully developed.

As a result of those efforts, in the 2009 legislative session, three states passed legislation to impose E-911 fees on prepaid wireless customers at the point of sale: Louisiana;⁷ Maine;⁸ and Texas.⁹ It is notable that the point of sale approach has enjoyed support from the public safety community. For example, the National Emergency Number Association (“NENA”) supported the legislation in Louisiana, Maine, and Texas. Similarly, the Association of Public-Safety Communications Officials (“APCO”) supported the bill in Louisiana. In addition, the National Conference of State Legislatures (“NCSL”) recently endorsed model legislation to implement the point of sale approach at its 2009 annual meeting.¹⁰ The wireless industry is committed to working with state administrative agencies during the implementation process to ensure that, in cases where the legislature has granted significant administrative discretion to agencies, the agencies agree to administer the fee in a manner consistent with the intent of the model legislation endorsed by NCSL.

CONCLUSION

CTIA and the wireless industry remain committed to working with public safety, retailers and state and local governments to implement collection of E-911 fees for prepaid wireless services at the point of sale. As explained above, this is the optimal approach for collecting

⁷ Louisiana HB 1056 (Act No. 531), adopted July 10, 2009.

⁸ Maine LD 1056 (P.L. 400), adopted June 15, 2009.

⁹ Texas Health & Safety Code, Sec. 771.0712 - adopted June 19, 2009.

¹⁰ Certain states have modified the model bill to suit their own individual needs. For example, some states have adopted “flat” fees, while others have adopted “percentage” fees. CTIA believes that, as all stakeholders continue to work together, states should gravitate toward a single methodology for imposing E-911 fees on prepaid wireless consumers.

critical E-911 fees directly from the end-user, and this method will help ensure that all wireless users are contributing equitably and transparently to the funding requirements necessary to support the emergency communications systems. While the mechanism used to collect E 911 fees from prepaid wireless customers is an important issue, wireless customers who qualify for Lifeline assistance should not be held hostage while the issue is being resolved in state courts and legislatures.

Respectfully submitted,

/s/ Christopher Guttman-McCabe

CTIA – THE WIRELESS ASSOCIATION®

1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

Christopher Guttman-McCabe
Vice-President, Regulatory Affairs

Michael Altschul
Senior Vice President & General Counsel

Scott K. Bergmann
Assistant Vice-President, Regulatory Affairs

Its Attorneys

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