**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of<br><br>Seventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges | PS Docket No. 09-14 |

## REPLY COMMENTS OF T-MOBILE USA INC.

T-Mobile USA, Inc.[1] ("T-Mobile") appreciates the Federal Communications Commission's ("Commission" or "FCC") efforts in generating its annual report to Congress on 911 fees.[2] These reports provide information on 911 fee revenue and collection throughout the United States, giving some insight into how 911 fees are used—including instances where 911 fees are diverted to other uses—and identifying funding gaps. Unfortunately, and as demonstrated by the 7th Annual Report, because of the different ways states collect and spend fees, the current state of 911 fee collection and use is not entirely clear. For instance, because of differences in state statutes that govern funding, some 911 fee diversion may be undetected or unreported. Furthermore, some states are forgoing 911 revenue—*e.g.*, they lack mechanisms for point-of-sale ("POS") collection of fees from prepaid wireless users—which means that there are some resources that could be obtained for 911 upgrades and the transition to Next Generation 911 ("NG911") that are not being collected. T-Mobile therefore respectfully suggests that the

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[1] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[2] FEDERAL COMMUNICATIONS COMMISSION, *7th Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges for the Period January 1, 2014 to December 31, 2014* (Dec. 31, 2015) ("7th Annual Report").

Commission focus on clarifying the existing status of 911 fee collection in order to ensure transparency, efficiency, accountability, and equitable cost sharing among consumers who benefit from 911, before it recommends the adoption of any new fees or increases to existing fees.

## I. THE FCC MUST CLARIFY WHAT CONSTITUTES FEE DIVERSION

T-Mobile opposes diversion of 911 fees. This practice negatively affects public safety answering point ("PSAP") resources—resources that in some cases are already stretched thin—and slows the transition to NG911. Key stakeholders agree with this position. For instance, APCO International correctly pointed out in its comments that diversion of 911 fees exacerbates the challenges for resource-strained PSAPs.[3] T-Mobile concurs.

One of the biggest contributors to fee diversion and its impact on 911 funding is the lack of consensus around what activities and investments 911 fees should support. For example, what one state may report as fee diversion may not be reported as fee diversion by another state because the second state's laws allow 911 fees to be used for a broad array of activities that are marginally related to providing 911 services. Because of this, the amount of 911 fees that are diverted to non-911 activities may actually be higher than the report indicates.

Thus, while the report calls out several states that diverted 911 funds, it does not—and cannot—paint the whole picture. Each state has its own legislation governing collection and disbursement of 911 fees, leading to a wide breadth in how the various states allow those fees to be spent. Where state law permits the use of 911 fees for non-911 purposes, that state may not report those fees as "diverted." For instance, T-Mobile is aware that at least one state collects "Police and Fire" fees, but those fees are deposited in the state's general fund rather than being

[3] Comments of APCO International at 2, PS Docket No. 09-14 (filed Feb. 8, 2016).

set aside for police and fire activities.[4] As noted in the comments, some states divert 911 fees for programs that have a general public safety impact—such as military programs—but are not for the provision or upgrade of 911 services.[5] Finally, some states use 911 fees for the hiring and training of call takers—which is closely connected to the provision of 911 services, but may also be considered fee diversion.[6]

In addition to the lack of uniformity regarding what constitutes fee diversion, the FCC relies on states to self-report fee diversion. However, many states do not require an independent audit of 911 fee collections or expenditures. Without independent verification, these self-reports could well be understated even with respect to the permitted uses under state law.

In short, it is clear that, in many cases, 911 fees are being used for a variety of purposes that are not centrally, or at all, related to the provision and upgrade of 911 services. T-Mobile encourages the Commission to seek additional information on the practices of various states and to refine its definition of "fee diversion" in order to capture all instances where 911 fees are not used for 911 (whether E911 or NG911) network and operational expenses.

## II. THE COMMISSION SHOULD ENCOURAGE ADOPTION OF POINT OF SALE COLLECTION OF E911 FEES FOR PREPAID SERVICE

Collection of 911 fees from prepaid wireless users at the POS has been a great success in those states that have adopted such collection mechanisms. Those states have seen a marked

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[4] Wis. Stat. § 196.025(6); WISCONSIN DEP'T OF REVENUE, *Police & Fire Protection Fee* (May 12, 2015) https://www.revenue.wi.gov/html/pfprofee.html. *See also* Tom Kertscher, *Billed As Being For Police And Fire, Wisconsin Phone Fee Does Nothing For Them, Lawmaker Says*, POLITIFACT (June 24, 2013), http://www.politifact.com/wisconsin/statements/2013/jun/24/andre-jacque/billed-being-police-and-fire-wisconsin-phone-fee-d/.

[5] Comments of the Washington State Chapter of APCO/NENA at 2, PS Docket No. 09-14 (filed Feb. 17, 2016).

[6] Co. St. §§ 29-11-102, 104(2).

increase in 911 revenue.[7] In fact, as reported by the states to the FCC, nationwide POS fee collection amounted to approximately $145 million in 2014.[8] This revenue would not be available to PSAPs in the absence of POS legislation adopted by most of the states in which POS collection occurs.[9] POS provides a stable and predictable way to collect 911 fees from prepaid customers to support the 911 services, moots disputes about the application of 911 fees to prepaid, and is a fair and equitable collection method that is transparent to customers.[10]

Some states that require the collection of 911 fees on prepaid services do not authorize POS collection, thereby requiring carriers to remit those fees without providing the ability to transparently allocate those costs to the end users that benefit from the service, as the FCC's rules permit. Yet other states simply don't collect 911 fees on prepaid service at all, depriving those states of certain, stable, and predictable 911 fees from prepaid customers, and creating a situation in which some customers pay no fee to support emergency communications services.[11] This gap will become more and more apparent as states transition 911 fees toward NG911.

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[7] For instance, per the 7th Annual Report, effective January 1, 2014, California adopted a prepaid wireless 911 fee, to be collected at the point-of-sale. 7th Annual Report at 22-23. California subsequently saw its 911 fee revenues increase from approximately $75 million to approximately $97 million. *Id.* at 114.

[8] *Id.* at Table 12.

[9] Such legislation authorizes the collection of 911 fees when prepaid service is sold to the customer—*i.e.*, at the point-of-sale.

[10] The final report of the Task Force on Optimal PSAP Architecture ("TFOPA Final Report") states that due to the "non-monthly purchase pattern of pre-paid customers, actual collections of 9-1-1 fees at point-of-sale on these plans may not be equitable at current levels." TFOPA Final Report at 28. T-Mobile disagrees with this conclusion and believes that it is far more equitable to assess 911 fees on the services purchased, whether those services are post-paid on a monthly basis or prepaid as needed. Indeed, such a system seems more equitable than failing to assess 911 fees on a subset of consumers (*e.g.*, prepaid).

[11] *See* CTIA, *States Trending Toward Point-of-Sale Collection of E911 Taxes and Fees on Prepaid* (2011), http://legislature.mi.gov/documents/2011-2012/CommitteeDocuments/House/Energy/Testimony/Committee6-10-18-2011.pdf.

By strongly encouraging a prompt adoption of POS collection of 911 fees in the remaining states, the FCC can help ensure that 911 fee collection is fairly and equitably implemented and that those states will have additional 911 funds to facilitate the transition to NG911.

## III. Consideration of additional Fees or Increases to Existing Fees Must Wait for Resolution of Fee Diversion and Point of Sale Issues

Given the concerns expressed above, T-Mobile believes that it would be premature for the Commission to recommend that states and their respective 911 governing bodies consider increasing existing 911 fees, or the imposition of new categories of 911 fees, when it is unclear how the states are currently using 911 fees. This is particularly true given that part of the lack of clarity may be the result of undetected 911 fee diversion. Furthermore, it would be premature to consider new types of fees in states where 911 fees are not collected on prepaid service because of the lack of authorization for POS collection. Until the Commission, industry, and other stakeholders have a clearer picture of how 911 fees are used (and how much is uncollected), any consideration of new fees or increases to existing fees should be deferred.

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As the Commission continues to explore issues related to 911 fee collection and use, T-Mobile encourages the FCC to focus first on defining what constitutes fee diversion and on the availability of POS fee collection. Addressing these two issues must precede any recommendation regarding the adoption of new fees or increases to existing fees.

Respectfully Submitted,

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