

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	CC Docket No. 96-45
State of Alabama)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the)	
State of Alabama)	

**REPLY COMMENTS OF ALABAMA COMMERCIAL MOBILE
RADIO SERVICE EMERGENCY TELEPHONE SERVICES BOARD**

The Alabama Commercial Mobile Radio Service Emergency Telephone Services Board (“CMRS Board”), by its attorneys, submits its comments in reply to the Comments of TracFone Wireless, Inc. (“TracFone”) in opposition to the CMRS Board’s Petition for Rejection of TracFone’s certification and revocation of TracFone’s limited ETC status in the State of Alabama filed by TracFone on July 24, 2009.

In the CMRS Board’s June 2, 2009 Petition, the CMRS Board argued that TracFone’s self-certification of full compliance with the application of 911 and enhanced 911 (“E-911”) obligations of the State of Alabama should be rejected and TracFone’s limited ETC status revoked because (1) TracFone’s certification was deficient on its face (*i.e.*, in that TracFone only certified that it collects E-911 fees from those Alabama customers to whom it sells its services *directly*, not that TracFone was in full compliance with the applicable 911 and enhanced 911 (“E-911”) obligations of the State of Alabama); (2) TracFone does not collect and remit to the CMRS Board CMRS service charges for each CMRS connection to which TracFone furnishes services in Alabama (as required by statute and the CMRS Board’s regulations), and as a

consequence, makes no remittance to the CMRS Board of CMRS service charges for many CMRS connections for which TracFone is obligated by statute to collect and remit such charges, and (3) TracFone improperly uses an unauthorized proxy for its “direct” sales customers in Alabama, resulting in underpayment of CMRS service charges on service to these customers to whom TracFone sells its services directly in Alabama. The crux of TracFone’s response in opposition to the CMS Board’s Petition is that the CMRS Board lacks authority to interpret and apply the applicable Alabama law and that TracFone’s self-certification is based upon TracFone’s interpretation of Alabama law, which although contrary to the CMRS Board’s interpretation and application, TracFone contends is sufficient for purposes of its self-certification to the FCC. The CMRS Board has audited TracFone’s records and has notified TracFone in writing that TracFone has under-remitted the CMRS service charge.¹

Ironically, in its arguments and actions, TracFone not only conveniently skirts its financial obligations to assist in collecting and remitting the CMRS services charges which are imposed for the support of vital 911 and E-911 services in Alabama, but similarly, conveniently slights the requirement of the FCC that it “certify” its “full” compliance with the applicable 911 and E-911 obligations imposed by the State of Alabama. The FCC should neither tolerate TracFone’s “soft-pedaling” its irresponsible neglect of its obligation to collect Alabama CMRS service charges, nor reward TracFone’s clumsy effort to finesse its response to the FCC’s requirement of certification of compliance through a carefully crafted certificate which, notwithstanding its careful wording, appears to have been intended to mislead the Commission

¹ The CMRS Board will make available to the FCC upon request the report of the independent auditor, Kassouf & Co. The audit report is not submitted with this reply since TracFone did not dispute the CMRS Board’s contentions that TracFone is not compliant with Alabama 911 laws because (1) it only remits the 911 fee for direct sale customers and (2) it improperly calculates wireless connections by dividing the revenue from its direct sale customers by \$50.

even as to the degree of TracFone's compliance with application of CMRS service charges to its "direct" sale wireless customers.

1. THE PLAIN MEANING OF THE ACT REVEALS THAT THE ALABAMA LEGISLATURE INTENDED THE ACT TO APPLY TO PREPAID PROVIDERS AND CONSUMERS.

In its Opposition, TracFone amazingly states that the CMRS Board has provided "no legal basis for its assertion that Alabama laws have been violated." (Opposition at 1) TracFone's assertion is incorrect. In paragraphs three through five of the Petition filed by the CMRS Board, the Board thoroughly set forth its legal basis for its position that TracFone is not in compliance with Alabama's 911 laws. While this oversight is curious, the fact that TracFone did not directly address the CMRS Board's alleged violations is most telling. For instance, TracFone did not dispute that it only collects the 911 charges from Alabama customers to whom it sells services directly. This concession by itself establishes that TracFone is not in compliance with Alabama's 911 laws. As set forth below, the law in Alabama and the CMRS Board's position on the matter require CMRS service providers like TracFone to collect the 911 fee for *each mobile telephone number* assigned to a wireless customer in Alabama. There is no direct sale exemption to this requirement. Furthermore, TracFone remained silent in the face of the CMRS Board's allegation that it improperly determines its monthly remittance by dividing the revenue for its direct sales by \$50 in an artificial attempt to derive the number of monthly wireless connections in Alabama. This methodology is conspicuously absent from the Alabama 911 laws and the CMRS Board's rules and regulations. TracFone's silence in the face of these contentions fully supports the CMRS Board's position that TracFone is not in compliance with Alabama 911 laws.

TracFone's avoidance of the CMRS Board's direct allegations is not surprising since the CMRS Board's legal basis for its position is sound. First and foremost, the plain language of

Alabama Code § 11-98-7.2 unequivocally establishes that the Act applies to prepaid customers. In § 11-98-7.2, the Legislature established the Alabama Emergency Communication District Long-Range Study Commission (“the Commission”). *See* Ala. Code § 11-98-7.2(a). The Commission was to report its findings to the Legislature. *Id.* Two areas that the Commission was to examine and report on directly address application of the Act to prepaid providers:

(6) The process by which all providers of telephone services, including wired and wireless providers and **prepaid** and post-paid providers, **collect and remit 911 charges in this state** and in other states.

.....
(8) **The specific barriers to the collection and remittance of the CMRS service charge by providers of prepaid wireless telephone services** and solutions that have been developed and utilized in other states.

Id. at §§ 11-98-7.2(b)(6) & (b)(8) (emphasis provided). The Commission was directly charged with studying and reporting back to the Legislature the process by which prepaid providers were *collecting* and *remitting* the 911 charges in Alabama.² The Legislature would not have assigned the Commission this task if it did not intend for the provisions of the Act to apply to prepaid providers and consumers. *See Ex parte McCormick*, 932 So. 2d at 132 (“[I]nquiry begins with the language of the statute, and if the meaning of the statutory language is plain, [the] analysis ends there.”); *DeKalb County LP Gas Co. v. Suburban Gas, Inc.*, 729 So. 2d 270, 275 (Ala. 1998) (noting that “[i]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect”).

² The Commission did issue a preliminary report to the Legislature. Of note, the Commission recognized as a “significant issue” the collection of 911 fees from prepaid cellular service: “Because such service is purchased from a variety of sources and may be utilized over a time period that is difficult to accurately control and predict, many challenges confront the efficient collection of the statewide wireless fee, **which by law applies to those using prepaid service.**” *See* Alabama Emergency Communication District Long-Range Study Commission, *Preliminary Report to the Alabama Legislature* at 4 (emphasis provided). Pursuant to the provisions of Act 2007-459, the Commission was dissolved at the conclusion of the 2008 Regular Session of the Legislature and § 11-98-7.2 was repealed effective June 1, 2008. *See* 2007 Ala. Acts 459 at §§ 3(a) and 3(g).

2. THE LANGUAGE OF THE ACT AND THE RATIONALE FOR THE ACT CONFIRM THAT THE LEGISLATURE INTENDED THE ACT TO APPLY TO PREPAID PROVIDERS AND CONSUMERS.

“It is a well-settled rule of statutory construction that courts ascertain the Legislature’s intent in enacting a statute from the language used in the statute itself, as well as from the reason for the statute and the goals the Legislature seeks to accomplish through the statute.” *Alabama Bd. of Pardons & Paroles v. Brooks*, 802 So. 2d 242, 247 (Ala. Civ. App. 2001). Sections of the Code dealing with the same subject matter are *in pari materia* and are construed together to ascertain the meaning and intent of each statute. *See Gartman v. Limestone County Bd. of Educ.*, 939 So. 2d 926, 929 (Ala. Civ. App. 2006). When construing a statute, “the court must consider the entire statute and not an isolated part, giving to every clause effect in light of the subject matter and purpose of the enactment.” *Standard Oil Co. v. State*, 313 So. 2d 532, 539 (Ala. Civ. App. 1975).

The language used in the Act, as well as the rationale for the Act, reveals the Legislature’s intent to grant a broad power to the CMRS Board to levy the CMRS Service Charge on each CMRS connection, including prepaid connections. The CMRS Board has the statutory power to “levy a CMRS emergency telephone service charge on each CMRS connection that has a place of primary use within the geographic boundaries of the State of Alabama.” Ala. Code § 11-98-7(b)(1). Webster defines “each” as “every one of two or more considered individually or one by one.” Webster’s College Dictionary 419 (1991). The phrase “CMRS connection” has been defined in the Act as follows: “A mobile telephone number assigned to a CMRS customer.” Ala. Code § 11-98-6(5). Notably and dispositively, the Legislature made **no distinction** between telephone numbers assigned to “prepaid” and “postpaid” subscribers. Thus, a plain reading of the phrase “each CMRS connection” leads to the conclusion that the Legislature authorized the CMRS Board to levy the CMRS Service

Charge on every mobile telephone number assigned to a CMRS customer, as long as the number has a principal place of use within the State of Alabama.

The mobile telephone numbers TracFone assigns its prepaid customers are by definition “CMRS Connections.” If these connections have a place of primary use in Alabama, then the CMRS Board has the statutory authority to levy the CMRS Service Charge on these connections.

Second, the duty of TracFone to collect the CMRS Service Charge provides additional support for the conclusion that the Act applies to *all* CMRS connections (*i.e.*, all mobile telephone numbers). It is undisputed that TracFone is a CMRS Provider as defined by the Act. TracFone has a duty to collect the CMRS Service Charge from each CMRS connection: “Each CMRS provider shall act as a collection agent for the CMRS Fund and shall collect the CMRS service charges levied upon CMRS connections pursuant to Section 11-98-7(b)(1) from *each CMRS connection to whom the CMRS provider provides CMRS service . . .*” Ala. Code § 11-98-8(a) (emphasis provided). A CMRS connection is a mobile telephone number. *Id.* at § 11-98-6(5). TracFone provides its prepaid customers with mobile telephone numbers.

Moreover, it is undisputed that TracFone provides its prepaid customers with CMRS service. The term “CMRS service” includes “the term wireless and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service . . .” *Id.* at § 11-98-6(3). The term does not include “service whose customers do not have access to 911 . . .” *Id.* TracFone’s prepaid customers in Alabama have access to 911 services in Alabama. Thus, TracFone plainly has a statutory duty to collect the CMRS Service Charge from their prepaid customers since these customers are assigned mobile telephone numbers and are provided wireless telephone service with the capacity to place a 911 call. *See* Ala. Code § 11-98-8(a).

Third, the Act's "uniform application" provision further supports the conclusion that the CMRS Board can levy the CMRS Service Charge on each CMRS connection, including prepaid connections. *See* Ala. Code § 11-98-7(b)(1). The Legislature has mandated that the levied CMRS Service Charge is to be applied uniformly: "The CMRS service charge shall have uniform application and shall be imposed throughout the state." *Id.* The use of the broad phrase "uniform application" reveals that the Legislature intended the levy to apply to all wireless providers and services. This reading of the phrase "uniform application" is consistent with the Legislature's broad grant of authority to the CMRS Board to levy the service charge on "each CMRS connection."

TracFone's reading of the Act would eviscerate the "uniform application" provision. Specifically, TracFone contends that the Act does not apply to its prepaid customers other than those to whom it makes sales directly. Thus, TracFone's interpretation of the Act would create two classes of wireless consumers: prepaid and postpaid customers. In this two-class world, postpaid customers would be subject to the provisions of the Act and would be required to fund 911 services in Alabama by paying the levied CMRS Service Charge. However, prepaid customers would shoulder none of the financial burden while enjoying access to the same 911 service. This two-class system is the antithesis of uniformity. The Legislature surely did not intend for this absurd result.

This is especially true considering the fact that the Legislature granted the CMRS Board the authority to levy the CMRS Service Charge on "each CMRS connection." TracFone's attempt to carve out prepaid telephone numbers from this broad grant of authority runs contrary to the plain language of the Act and would lead to an unintended and damaging result. *See Ex*

parte Meeks, 682 So. 2d 423, 428 (Ala. 1996) (noting that “golden rule” of statutory construction requires rejecting interpretation that leads to “absurd” or “unreasonable” results).

The purpose of the Act further supports a construction that it applies to each CMRS connection, including prepaid connections. The purpose of the Act is primarily two-fold. First, the Legislature enacted Act 98-338 to “provide for a wireless enhanced emergency 911 system.” 1998 Ala. Acts 338. Second, the Legislature enacted Act 98-338 “to provide for assessments” and to “authorize the board to establish and maintain a fund administered by the board.” *Id.* The purpose of the Act was reinforced when the Legislature amended the wireless provisions of the Act in 2007. In the preamble, the Legislature declared that one of its purposes in amending the Act was to “further provide the procedures for collecting the service charge.” 2007 Ala. Acts 459. The stated purpose of the Act is to provide a mechanism for funding the wireless enhanced emergency 911 system in Alabama. The CMRS Service Charge is the “sole charge assessed to CMRS providers relating to emergency telephone services.” Ala. Code § 11-98-7(c). Since the purpose of the Act is to provide funding for emergency services, and the CMRS Service Charge is the sole charge that can be assessed by the CMRS Board, it is illogical to conclude that the Legislature would carve out an entire class of consumers based solely on their payment relationship with their wireless carriers (*e.g.*, prepaid *v.* postpaid). To the contrary, the civic purpose of providing emergency 911 service to wireless subscribers in Alabama indicates that the Legislature intended the Act to apply to every mobile telephone number (CMRS connection) assigned to a wireless telephone service (CMRS service) in Alabama.

Finally, the history of the adoption of the CMRS Board’s Rules and Regulations and the Legislature’s 2007 amendment to the Act further demonstrate that the Act applies to prepaid providers and consumers. Alabama appellate courts give great weight and deference to the

interpretation of a statute by an administrative body charged with its enforcement. *See Farmer v. Hypo Holdings, Inc.*, 675 So. 2d 387, 390 (Ala. 1996) (“It is true that an interpretation placed on a statute by an administrative agency charged with its enforcement will be given great weight and deference by a reviewing court.”). The CMRS Board has always maintained that the CMRS Service Charge applies to prepaid wireless service. In the 1998 Act, the Legislature empowered the CMRS Board “[t]o promulgate such rules and regulations as may be necessary to effect the provisions of this section.” Ala. Code § 11-98-7(b)(7). In the exercise of this authority, the CMRS Board unanimously adopted Rule 225-1-3-.01 in 1999. (Minutes of CMRS Board Meeting dated April 22, 1999; Rule 225-1-3-.01 provides in relevant part: “The CMRS Board shall levy a CMRS emergency telephone service on each CMRS connection that has a principal wireless address (or billing address if the principal wireless service address is not known) within the state, including prepaid connections.”)

The Legislature did nothing to change this rule when it amended the wireless provisions of the Act in 2007. It is presumed that the Legislature knew this existing rule when it enacted the 2007 Act. *See Blue Cross & Blue Shield v. Nielsen*, 714 So. 2d 293, 297 (Ala. 1998) (“It is a familiar principle of statutory interpretation that the Legislature, in enacting new legislation, is presumed to know the existing law.”). If the Legislature perceived the rule to be *ultra vires*, then it certainly could have added language in the 2007 amendment clarifying that the Act does not apply to prepaid providers or consumers. Instead, it created a Commission to study the collection and remittance practices of *prepaid* providers in this State. *See* Ala. Code § 11-98-7.2(b)(6) and (b)(8). The fact that the Legislature elected not to address this rule further supports the conclusion that it intends the Act to apply to prepaid providers and consumers.

In the face of this clear legal authority supporting the CMRS Board's position, TracFone is left with the unpersuasive argument that the entirety of the "legal basis" for the CMRS Board's conclusions regarding TracFone's compliance is the "collective opinion of the members of the AL Board." (Opposition at 3) This argument is unconvincing considering the clear legal authority set forth above. Furthermore, TracFone's argument is without merit in light of the unassailable fact that the CMRS Board is the state board empowered by the Alabama Legislature to implement and enforce Alabama's wireless 911 laws. The CMRS Board was created by the Alabama Legislature and empowered with the authority to levy the CMRS Service Charge. See Ala. Code § 11-98-7(b)(1). The CMRS Board was authorized to establish and administer the state CMRS fund. *Id.* at § 11-98-7(b)(2) & (b)(3). It was also provided the authority to enact rules and regulations necessary to enforce the wireless 911 laws. *Id.* at § 11-98-7(b)(7). Finally, the CMRS Board was authorized to seek legal enforcement of the wireless 911 laws. *Id.* at § 11-98-8(g). Therefore, TracFone's dismissive argument concerning the "collective opinion" of the members of the CMRS Board lacks credibility.

3. THE ATTORNEY GENERAL OF ALABAMA HAS OPINED THAT THE ACT APPLIES TO PREPAID CONSUMERS.

The Attorney General of Alabama also issued an opinion in 2002 stating that "[t]he monthly \$.70 emergency telephone service charge levied by the Commercial Mobile Radio Service [Board] is applicable to prepaid wireless service connections." Op. Att'y Gen. No. 2002-295 (July 26, 2002) (attached). In reaching this opinion, the Attorney General has concluded that "[t]he intent of the Legislature was to levy the same emergency service charge on prepaid phone customers as on billable customers." *Id.* The Attorney General also noted that Rule 225.1.3 of the Alabama Administrative Code supports this conclusion because the rule specifically includes "prepaid" in its definition of connections. *Id.* "While an opinion of the

attorney general is not binding, it can constitute persuasive authority.” *Alabama –Tennessee Natural Gas Co. v. Southern Natural Co.*, 694 So. 2d 1344, 1346 (Ala. 1997). Thus, the Attorney General’s opinion provides persuasive support for the Board’s position that the Act applies to prepaid providers and consumers.

4. THE BOARD IS NOT IN VIOLATION OF ALABAMA’S OPEN RECORDS ACT.

TracFone also erroneously contends that the CMRS Board is in violation of Alabama’s Open Records Act in that it did not furnish TracFone requested records within 14 days of the date of TracFone’s request. The CMRS Board is not in violation of the Open Records Act. This non-argument is a red herring to distract from the unavoidable conclusion that TracFone is not in compliance with the 911 laws as demonstrated above.

Citizens’ rights to inspect public records under Alabama law are addressed in Alabama Code §§ 36-12-40 and 41. While citizens generally have a right to inspect and take copies of public writings, there is no requirement that records custodians respond to public records requests within 14 days. Indeed, TracFone cites no statutory basis for this 14 day requirement. TracFone’s silence on this point is understandable as there is no 14 day response requirement in Alabama’s Open Records Act.

Moreover, there is no requirement that custodians send records upon request at all. The statute merely requires that those records subject to inspection be made available for inspection and copying at the custodian’s offices. *Person v. Alabama Dept. of Forensic Sciences*, 721 So. 2d 203 (Ala. Civ. App. 1998); *Ex parte Gill*, 841 So. 2d 123 (Ala. 2002).

Lastly, many of the documents that TracFone seeks are, by law, confidential and not subject to inspection. *See* Ala. Code § 11-98-9. Thus, not only do TracFone’s public records arguments have nothing to do with the accuracy or validity of its self-certification to the FCC, but, they are erroneous as well.

5. THE PARTING POLICY ARGUMENTS ARE IRRELEVANT AND MERITLESS.

Instead of defending its position on the merits, TracFone spills much ink addressing the unfairness of the self-certification requirement. (Opposition at 5-6) It then goes on to lament a perceived “industry” problem with tracking or accounting for prepaid wireless customers. (Opposition at 6 – 7)

TracFone’s arguments are irrelevant to the issue at hand: whether TracFone has failed to comply with Alabama’s wireless 911 laws? TracFone has failed. The independent audit authorized by the CMRS Board of TracFone’s remittance practices has confirmed this point. TracFone’s “industry” argument obfuscates the main point. TracFone must comply with Alabama’s wireless 911 laws if it assigns and services mobile telephone numbers for Alabama customers. Thus, it is incumbent upon TracFone to develop operational and accounting systems that track these mobile telephone numbers and the place of primary use associated with these telephone numbers.

The CMRS Board is not unsympathetic to the purported 26,000 Alabama residents that are receiving wireless Lifeline benefits through TracFone’s SafeLink Wireless Program. However, TracFone’s designation as an ETC for the limited purpose of providing Lifeline service does not make it immune from compliance with Alabama law. TracFone still has to comply with Alabama wireless 911 laws, irrespective of the self-certification requirement imposed by the FCC. TracFone neglects to factor into its public policy analysis the demand made on 911 call centers by 26,000 additional mobile telephones in Alabama. At a minimum, the additional call demand creates needs for additional telephone lines, call takers, and dispatchers. These cost money. The Alabama Legislature has already weighed the public policy arguments and has determined that the CMRS Board can levy the \$.70 service charge on each mobile telephone number with a place of primary use in Alabama.

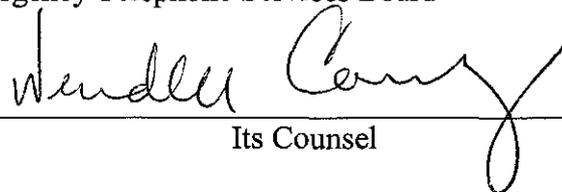
TracFone and the CMRS Board agree on at least one thing: “TracFone does not dispute that collection of 911 fees from customers of prepaid wireless services is important and is growing in importance as customers migrate from traditional post-paid billed services to prepaid services.” (Opposition at 6) The migration of these subscribers to prepaid services requires the CMRS Board to ensure compliance from prepaid wireless carriers with Alabama wireless 911 laws in order to adequately fund Alabama’s 911 call centers. The CMRS Board has submitted its Petition to the FCC to ensure TracFone’s compliance with these important laws.

WHEREFORE, the CMRS Board respectfully requests that the FCC reject TracFone’s self-certification of compliance with Alabama law regarding 911 and E-911 obligations and revoke TracFone’s limited ETC status in Alabama.

Respectfully submitted,

The Alabama Commercial Mobile Radio Service
Emergency Telephone Services Board

By:



Its Counsel

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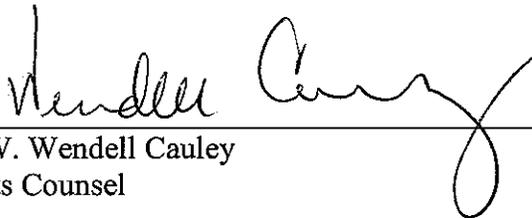
Date: September 4, 2009

CERTIFICATE OF SERVICE

I, W. Wendell Cauley, attorney for the Alabama Commercial Mobile Radio Services Board, hereby certify that on September 4, 2009, I caused to be served a true and correct copy of the foregoing "Reply Comments of Alabama Commercial Mobile Radio Service Emergency Telephone Services Board" by U.S. Mail, first-class postage prepaid and addressed to the following individuals:

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2002-295

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July 26, 2002

Honorable James H. Porter III
Commercial Radio Services Board
d/b/a Alabama Wireless 911 Board
Porter and Porter
400 South Union Street
Suite 320
Montgomery, Alabama 36104

Wireless Transmissions – Emergency
Telephone Service – Service Charges –
Montgomery County

Wireless carriers are required by federal law to obtain and maintain the address, residential or business, of each wireless customer, and this address is the principal wireless service address for purposes of section 11-98-7 of the Code of Alabama. The monthly \$.70 emergency telephone service charge levied by the Commercial Mobile Radio Service is applicable to prepaid wireless service connections.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Commercial Radio Services Board, d/b/a Alabama Wireless 911 Board.

QUESTION

Whether the monthly \$.70 emergency telephone service charge levied by the Commercial Mobile Radio Service is applicable to prepaid wireless service connections.

FACTS AND ANALYSIS

Section 11-98-7 of the Code of Alabama created a Commercial Mobile Radio Service ("CMRS") Board and gave the Board the authority to levy a \$.70 emergency telephone service charge on each connection that has a principal wireless service address or billing address within the state, if the principal wireless service address is not known. *See* ALA. CODE § 11-98-7(b)(1)(Supp. 2001). These monies are remitted to the Wireless 911 Board and are then dispersed back to the wireless carriers for reimbursement of costs associated with the federally mandated Phase I and Phase II regulations regarding the information received concerning identity and location of the cellular callers when a 911 call is placed from a cellular phone. All wireless carriers in Alabama are collecting the \$.70 service charge on their billable customers on a monthly basis. Most of these carriers also offer prepaid cellular phone service. Prepaid customers must pay in advance for a certain number of minutes for a cellular phone. Not all the wireless carriers in Alabama charge the \$.70 monthly fee on prepaid cellular connections.

There is some question as to whether the emergency telephone service charge authorized under section 11-98-7 applies to prepaid cellular connections. It is the opinion of this Office that the \$.70 service charge does apply to prepaid cellular connections.

Section 11-98-7(b)(1) states, in pertinent part:

The Board shall have the following powers and duties:

(1) To levy a CMRS emergency telephone service charge on each CMRS connection that has a principal wireless service address (or billing address, if the principal wireless service address is not known) within the state. The rate of such CMRS service charge shall be seventy cents (\$.70) per month per CMRS connection beginning on May 1, 1998, which amount shall not be increased except by the Legislature.

ALA. CODE § 11-98-7(b)(1) (Supp. 2001).

There is no question that a billing address is the address where the wireless carrier sends a monthly bill. A prepaid customer, however, does not receive a monthly bill, and so we must determine if a prepaid cellular customer

has a primary service address and the location of that address. A CMRS connection is defined as “[e]ach number assigned to a CMRS customer.” ALA. CODE § 11-98-6(5) (Supp. 2001). The emergency service charge is applicable to each wireless telephone number that the wireless carrier assigns to a customer. Section 225.1.3 of the Alabama Administrative Code further provides that “the CMRS board shall levy a CMRS emergency telephone charge on each CMRS connection that has a principal wireless service address (or billing address if the principal wireless service address is not known) within the state, including prepaid connections.” Ala. Admin. Code § 225.1.3 (2001). The Alabama statute does not define “principal wireless service address” per se.

All of the wireless carriers in Alabama require, at the least, a name and address of the prepaid customer. Even if there is no bill sent to the address provided at purchase, that address should serve as the principal wireless service address for purposes of levying this service charge. The Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 106-252 (2000) defines “primary place of use” as the applicable residential or business street address supplied to the home service provider’s customer. *See* 4 U.S.C. § 122 (2000). Under section 122 of this act, a home service provider shall be responsible for obtaining and maintaining the customer’s place of primary use. *Id.* This section mandates that wireless carriers obtain and maintain a residential or business street address for each wireless customer. This address is classified as the place of primary use in the federal regulation. It is the opinion of this Office that the primary place of use and the principal wireless service address have the same definition. The intent of the Legislature was to levy the same emergency service charge on prepaid phone customers as on billable customers. The Alabama Administrative Code supports this interpretation by specifically including “prepaid” in its definition of connections with principal service addresses. *See* Ala. Admin. Code § 225.1.3 (2001).

CONCLUSION

Wireless carriers are required by federal law to obtain and maintain the address, residential or business, of each wireless customer, and this address is the principal wireless service address for purposes of section 11-98-7 of the Code of Alabama. The monthly \$.70 emergency telephone service charge levied by the Commercial Mobile Radio Service is applicable to prepaid wireless service connections.

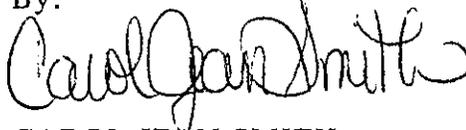
Honorable Jim Porter
Page 4

I hope this opinion answers your question. If this Office can be of further assistance, please contact Rebecca G. Acken of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:

A handwritten signature in black ink, appearing to read "Carol Jean Smith". The signature is written in a cursive, flowing style with some loops and flourishes.

CAROL JEAN SMITH
Chief, Opinions Division

BP/CJS/RGA
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