

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

In the Matter of)	
)	
Facilitating the Deployment of)	PS Docket No. 11-153
Text-to-911 and Other Next)	
Generation 911 Applications)	
)	
Framework for Next Generation)	PS Docket No. 10-255
911 Deployment)	
)	
Legal and Statutory Framework for)	PS Docket No. 12-333
Next Generation 9-1-1 Services Pursuant)	
To the Next Generation 9-1-1 Advancement)	
Act of 2012)	

COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to the public notice issued in this proceeding.¹

Introduction

As described in the Notice, in February 2012, Congress enacted the Next Generation 9-1-1 Advancement Act (“NG9-1-1 Act”). The purpose of the NG9-1-1 Act is to establish a framework to facilitate the deployment of NG9-1-1 service. Even prior to enactment of the NG9-1-1 Act, the Commission had recognized the importance to public safety of the development of NG9-1-1 technology and had commenced a proceeding for the purpose of accelerating the development and deployment of NG9-1-1 technology to modernize 9-1-1 emergency communications capability beyond legacy voice 9-1-1 service so as to enable Public Safety Answering Points (“PSAPs”) to receive and process emergency communications via text,

¹Public Notice - Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012, DA 12-1831, released November 13, 2012 (“Notice”).

photos, video and data, and to enhance the ability of PSAPs and first responders to respond to emergencies.²

Section 6509 of the NG9-1-1 Act directs the Commission, in coordination with the Secretary of Homeland Security, the Administrator of the National Highway Traffic Safety Administration, and the National E9-1-1 Implementation Coordination Office, to submit to Congress a report containing recommendations for NG9-1-1 service. Among other areas for inclusion in that report are proposals for removing state-imposed regulatory roadblocks to NG9-1-1 service and preemption of inconsistent state regulations. In the Notice, the Commission wisely recognizes the importance of appropriate funding mechanisms for NG9-1-1 deployment and invites comment on funding issues, including the need for technologically neutral funding mechanisms.³ TracFone's comments will focus on the need for federal standards to ensure that funding methods for both existing and NG9-1-1 systems are equitable, non-discriminatory, and competitively and technologically neutral, especially with respect to one of the fastest growing segments of the telecommunications industry -- prepaid wireless services. Moreover, such funding mechanisms should result in sufficient resources for the deployment of NG9-1-1.

TracFone is the nation's leading provider of prepaid commercial mobile radio services ("CMRS") and serves approximately 22 million customers in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. According to CTIA – The Wireless Association®, as of June 30, 2012, there were approximately 75 million prepaid wireless

² Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications (Notice of Proposed Rulemaking), FCC 11-134, released September 22, 2011.

³ Notice at 4. While the Notice specifically references "technologically neutral" funding mechanisms, Section 253 of the Communications Act requires that state measures to protect public safety must also be competitively neutral. 47 U.S.C. § 253(b) (" Nothing in this section shall affect the ability of a State to impose, **on a competitively neutral basis**, . . . requirements necessary to . . . protect the public safety and welfare" (emphasis added)).

subscribers, accounting for about 24 percent of all wireless subscribers in the U.S. Numerous other CMRS carriers also offer prepaid services, including all the major national carriers, as well as regional providers and resellers. Unlike traditional CMRS providers and wireline telecommunications carriers that send monthly bills to customers, prepaid wireless is not a monthly service, and there are no bills. Instead, customers purchase prepaid wireless on a “pay-as-you-go” basis, often from third party retail vendors, including, *e.g.*, Wal-Mart, Target, 7-Eleven, Walgreens, and many others. Tens of thousands of retail stores sell prepaid wireless services, usually in the form of prepaid wireless airtime cards that are denominated in minutes-of-use (*e.g.*, 60, 120, or 200 unit cards) or cards with stated dollar values (*e.g.*, \$10 and \$50 cards). Consumers may also purchase prepaid wireless services directly from carriers over the Internet or in carriers’ retail stores. Many consumers prefer prepaid wireless because it does not require long term contracts, activation fees, credit checks, or early termination fees, and there are never overage charges. The prepaid CMRS market is highly competitive. This growth in competition has resulted in declining prices and an expanding level of wireless services available on a prepaid basis, including Internet access, data, text messaging, and smartphone applications.

Public safety communications systems (9-1-1 and E9-1-1) have traditionally been funded through state or local laws that impose monthly taxes or fees on the end-user customers of wireless carriers and wireline local exchange carriers. Although those laws require the providers to collect 9-1-1 fees through line-item charges on monthly bills to those end users and to remit the amounts collected to the state, the providers are liable for remitting only the amounts collected from customers through the billing process. Those laws do not require the carriers to serve as the guarantor to the state if the customer does not pay the charges.

While 9-1-1 funding through monthly billed customer surcharges has worked well for postpaid wireless and wireline services, and, more recently, for Voice over the Internet Protocol

(VoIP) services, that monthly billed surcharge method is not workable for non-billed services that are purchased by customers not on a monthly basis, but rather on an “as needed” basis, mainly at retail locations. Those funding mechanisms designed to collect 9-1-1 fees through the post-paid billing process have failed to result in collection of 9-1-1 fees on much of the large and growing prepaid CMRS market segment. What they have caused are uncertainty, fee disputes and time-consuming and costly litigations in many states.

Fortunately, a solution to this problem exists that results in all consumers of prepaid wireless services contributing to 9-1-1 funding in a manner that is competitively and technologically neutral and which will ensure sufficient funding for NG9-1-1. The solution is for retail vendors of prepaid wireless services, including independent retail vendors as well as wireless providers themselves when they sell service directly to consumers, to collect the 9-1-1 fees at the retail point-of-sale (“POS”), either as a flat fee per card or as a percentage of the retail purchase price. The POS method was developed and recommended as model legislation by the National Conference of State Legislatures (“NCSL”) in 2008 in cooperation with CTIA – The Wireless Association[®], major wireless carriers, retailers, public safety organizations and others. Since 2009, POS legislation has been enacted in 28 states and has helped ensure a reliable and sufficient source of funding for 9-1-1 in states where existing 9-1-1 fee statutes either did not apply to prepaid services or where the statutory prepaid methods were unworkable or in dispute.⁴ Many of those states’ POS statutes are based on the NCSL model bill. For the convenience of the Commission and other parties to this proceeding, a copy of the NCSL model bill and the NCSL Resolution endorsing POS is attached to these comments as Attachment 2.

⁴ A list of the states which have, to date, enacted POS laws is attached hereto as Attachment 1.

I. Efforts to Extend Inapplicable State 9-1-1 Funding Laws to Non-billed Services have Led to Many Disputes and Litigations but have Failed to Obtain 9-1-1 Funding from Such Services

The demonstrated inability of wireless carriers to collect monthly 9-1-1 fees from consumers of their non-billed services (except in states that have adopted POS laws) has led to disputes and to litigation in numerous including Alabama, Arizona, Idaho, Indiana, Kentucky, Minnesota, Nebraska, Texas, and Washington. These states generally have attempted to shift the funding burden of 9-1-1, only for prepaid wireless service, away from end users where the legislators placed it, and onto the shoulders of the providers of the prepaid services. Blaming the prepaid “business model” for 9-1-1 funding difficulties, and for its lack of monthly bills, these states have forced prepaid carriers either to collect monthly surcharges from prepaid customers which they cannot do, or to remit 9-1-1 tax and fee payments from their own resources on behalf of their customers. These state efforts to extend fee collection laws enacted to address one type of payment arrangement -- post-paid billed services, onto a wholly dissimilar arrangement -- prepaid services, have not worked. They have not increased 9-1-1 funding. Certain states have acknowledged that fact.⁵

Courts in several states have also held that 9-1-1 fee collection laws are applicable to prepaid services notwithstanding the demonstrated and acknowledged inability of providers of prepaid services to collect such fees from their consumers through a billing process as required explicitly by those states’ laws. These courts include the Alabama Supreme Court, Kentucky Court of Appeals, Washington Supreme Court, Texas Court of Appeals, Nebraska Supreme Court, and the U.S. District Court, Western District of Kentucky. These courts have blamed

⁵ For example, in Kentucky, that state’s Emergency Telecommunications Board issued a report this year which concluded that the current 9-1-1 fee law’s inability to reach prepaid services costs about \$3.5 million annually in lost 9-1-1 fees. FY 2012 Annual Report July 2011 - June 2012, Kentucky Commercial Mobile Radio Service Board.

providers of prepaid services for not having billing platforms to collect 9-1-1 fees and taxes, notwithstanding that some of those providers offer only non-billed services and would have no reason to have a billing platform, other than to collect 9-1-1 fees on non-billed services.

Bundling 9-1-1 fees and taxes in retail service prices, which some state 9-1-1 agencies advocate and which some courts have endorsed, also is not a workable solution. It results in inflated and unlawful imposition of one state tax -- a state sales tax -- on another state tax -- a state 9-1-1 tax. This tax-on-a-tax does not occur with monthly billed services, as the carriers do not -- indeed, can not -- apply the tax to the surcharge line items on customer bills.

II. Sufficient Funding for the Deployment of NG9-1-1 Requires a Uniform Solution, not Costly State-by-State Litigation

The transition to NG9-1-1 will require a uniform national framework for 9-1-1 funding and preemption of state 9-1-1 funding laws which result in fee collection and remittance requirements which are discriminatory and which are not competitively and technologically neutral as required by federal law.⁶ Such antiquated and inappropriate state funding laws are wholly inadequate to meet the challenge of providing sufficient support for the deployment of NG9-1-1. Prolonged and costly litigation over fee disputes and continued efforts to dictate CMRS provider business models and to pick winners and losers in the competitive telecommunications marketplace will do nothing to ensure funding to deploy ubiquitous NG9-1-1. The Commission has adequate legal authority over CMRS services and public safety communications to impose such a framework, and it should do so in an expeditious manner.⁷ Whether or not the Commission chooses to exercise its authority, these concerns can and should

⁶ 47 U.S.C. § 253(b).

⁷ As recently as yesterday (December 12, 2012), the Commission exercised that authority to take an important step toward facilitating the deployment of a uniform nationwide Text-to-911 Service from wireless devices. See “FCC Proposes Action to Accelerate the Availability of Nationwide Text-To-911 Service,” released December 12, 2012.

be addressed in the Commission's report to Congress required by the NG9-1-1 Act. As long ago as 2007, both houses of Congress acknowledged the importance of equitable 9-1-1 fee collection methods and such methods should be appropriate for all manner of services, including, specifically, prepaid services:

“The Committee strongly encourages States and localities to equitably apply 911 fees among communications providers, to the extent possible. In particular, the Committee urges States and localities to study fee structures that accommodate pre-paid telecommunications services.”

- U.S. Senate Committee on Commerce, Science & Transportation, Report on S. 428, Report No.110-142, Page 9, August 3, 2007.

The U.S. House of Representatives report similarly stated:

“The Committee also encourages States and their political subdivisions to apply 911 fees equitably to providers of different types of communications services to the extent possible. In particular, the Committee urges States and their political subdivisions, when adopting 911 and E-911 fees, to examine fee structures that accommodate pre-paid telecommunications services.”

- U.S. House Committee on Energy & Commerce, Report on H.R. 3403, Report No.110-442, Page 10, November 13, 2007.

To date, 28 states have heeded that Congressional concern and enacted POS legislation. Unfortunately, other states (including, *e.g.*, Kentucky, Washington, and Minnesota) have declined repeatedly to enact 9-1-1 funding laws for prepaid services that are equitable and non-discriminatory and consistent with the technological and competitive neutrality provisions of the Communications Act.

Fee discrimination, lack of technical and managerial expertise by some 9-1-1 agency officials, and selective fee enforcement, all undermine achievement of the goals of efficient and sufficient 9-1-1 funding and will inhibit the development of NG9-1-1 services. TracFone calls on the Commission to exercise oversight over such practices, adopt corrective federal standards and rules, and preempt state and local policies that are impeding fair and sufficient NG9-1-1

funding and implementation. If necessary, the Commission's report to Congress should contain proposals for legislative authority to implement these recommendations.

CONCLUSION

The purpose for NG 9-1-1 is to enhance public safety. State 9-1-1 funding laws should be implemented and enforced to achieve that purpose. State enforcement efforts should not be diverted, as they all too often have been, to favor or disfavor specific providers and specific business models. Since wireless 9-1-1 was established by Congress and implemented by the Commission on a national basis, states have an obligation to observe the policy objectives of the Communications Act that require that 9-1-1 services be supported through fee collection methods which are non-discriminatory and which are competitively and technologically neutral. To the extent that antiquated state laws and strained interpretations of such antiquated state laws impede the efficient, sufficient, and non-discriminatory collection of 9-1-1 fees from all end users of telecommunications services in a technologically and competitively neutral manner, such state laws conflict with the goals of the NG9-1-1 Act and should be preempted. The Commission should advise Congress that it plans to take such action on its own initiative under the existing authority of the Communications Act, but should also recommend to Congress any changes in the Act that would further this objective.

Respectfully submitted,

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December 13, 2012

Attachment 1

**Collection of E911 Fees & Taxes from
Customers of Prepaid Wireless Services at the
Retail Point-of-Sale (POS)
States & Jurisdictions That Have Enacted POS Laws**

July 10, 2012

1. Alabama
2. Arizona
3. Colorado
4. Connecticut
5. District of Columbia
6. Georgia
7. Illinois
8. Indiana
9. Iowa
10. Kansas
11. Louisiana
12. Maine
13. Michigan
14. Mississippi
15. Nebraska
16. North Carolina
17. Oklahoma
18. Pennsylvania
19. Rhode Island
20. South Carolina
21. South Dakota
22. Tennessee
23. Texas
24. U.S. Virgin Islands
25. Utah
26. Virginia
27. West Virginia
28. Wisconsin (police & fire protection fee)

Attachment 2

1 **Model Legislation**

2 As approved by the NCSL Executive Committee Task Force
3 on State & Local Taxation of Communications and Electronic Commerce

4
5 As Amended January 29, 2010 (new language underlined; ~~deleted-strikethrough~~)
6
7
8

9 An act imposing a uniform, statewide E911 charge¹ on the retail sale of prepaid wireless
10 telecommunication services to consumers, precluding the application of other state and local
11 E911 charges to such services, and making conforming changes.
12

13

14 SECTION 1. SHORT TITLE.

15 This Act may be cited as the Prepaid Wireless E911 Charge Act of 20__.

16 SECTION 2. FINDINGS. The Legislature finds that –

- 17 A. Maintaining effective and efficient 911 systems across the state benefits all citizens;
- 18 B. 911 fees imposed upon the consumers of telecommunication services that have the ability
19 to dial 911 are an important funding mechanism to assist state and local governments with the
20 deployment of enhanced 911 services to the citizens of this state;
- 21 C. Prepaid wireless telecommunication services are an important segment of the
22 telecommunications industry and have proven particularly attractive to low-income, low-volume
23 consumers;
-

¹ Depending on state law, “fee” or “tax” may be a more appropriate label than “charge.”

1 D. Unlike traditional telecommunication services, prepaid wireless telecommunications
2 services are not sold or used pursuant to term contracts or subscriptions, and monthly bills are
3 not sent to consumers by prepaid wireless telecommunication service providers or retail vendors;

4 E. Prepaid wireless consumers have the same access to emergency 911 services from their
5 wireless devices as wireless consumers on term contracts, and prepaid wireless consumers
6 benefit from the ability to access the 911 system by dialing 911;

7 F. Consumers purchase prepaid wireless telecommunication services at a wide variety of
8 general retail locations and other distribution channels, not just through service providers;

9 G. Such purchases are made on a “cash-and-carry” or “pay-as-you-go” basis from retailers;
10 and

11 H. To ensure equitable contributions to the funding of 911 systems from consumers of
12 prepaid wireless telecommunication services, the collection and payment obligation of charges to
13 support E911 should be imposed upon the consumer’s retail purchase of the prepaid wireless
14 telecommunication service and should be in the form of a single, statewide charge that is
15 collected once at the time of purchase directly from the consumer, remitted to the state, and
16 distributed to E911 authorities pursuant to state law.

17 SECTION 3. DEFINITIONS. For purposes of this Act, the following terms shall have the
18 following meanings:

19 “Consumer” means a person who purchases prepaid wireless telecommunications service in a
20 retail transaction.

1 “Department” means the [Department of Revenue].²

2 “Prepaid wireless E911 charge” means the charge that is required to be collected by a seller from
3 a consumer in the amount established under Section 4 of this Act.

4 “Prepaid wireless telecommunications service” means a wireless telecommunications service
5 that allows a caller to dial 911 to access the 911 system, which service must be paid for in
6 advance and is sold in predetermined units or dollars of which the number declines with use in a
7 known amount.³

8 “Provider” means a person that provides prepaid wireless telecommunications service pursuant
9 to a license issued by the Federal Communications Commission.

10 “Retail transaction” means the purchase of prepaid wireless telecommunications service from a
11 seller for any purpose other than resale.

² The proper agency will vary from state to state, but should be the agency that administers whatever tax (e.g., sales tax) provides the registration, resale-exemption, audit, and appeal procedures that are incorporated by reference in this Act.

³ Alternatively, define by cross reference to sales tax statute. For example, if state has adopted SSUTA, substitute the following:

“Prepaid wireless telecommunications service” means prepaid wireless calling service as defined in [SECTION IMPLEMENTING SSUTA DEFINITION].

1 receipt, or other similar document that is provided to the consumer by the seller, or otherwise
2 disclosed to the consumer.

3 C. APPLICATION OF CHARGE. For purposes of paragraph B of this Section 4, a retail
4 transaction that is effected in person by a consumer at a business location of the seller shall be
5 treated as occurring in this state if that business location is in this state, and any other retail
6 transaction shall be treated as occurring in this state if the retail transaction is treated as occurring
7 in this state for purposes of [STATE LAW REFERENCE].⁶

8 D. LIABILITY FOR CHARGE. The prepaid wireless E911 charge is the liability of the
9 consumer and not of the seller or of any provider, except that the seller shall be liable to remit all
10 prepaid wireless E911 charges that the seller collects from consumers as provided in Section 5 of
11 this Act, including all such charges that the seller is deemed to collect where the amount of the
12 charge has not been separately stated on an invoice, receipt, or other similar document provided
13 to the consumer by the seller.

14 E. EXCLUSION OF E911 CHARGE FROM BASE OF OTHER TAXES AND FEES. The
15 amount of the prepaid wireless E911 charge that is collected by a seller from a consumer, if
16 ~~whether or not~~ such amount is separately stated on an invoice, receipt, or other similar document
17 provided to the consumer by the seller, shall not be included in the base for measuring any tax,
18 fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state,
19 or any intergovernmental agency.

⁶ Cross reference to the state transaction tax that provides sourcing rules to be piggybacked here.

1 F. RE-SETTING OF CHARGE. The prepaid wireless E911 charge shall be proportionately
2 increased or reduced, as applicable, upon any change to [the state E911 charge on postpaid
3 wireless telecommunications service under [STATE LAW REFERENCE]].⁷ Such increase or
4 reduction shall be effective on the effective date of the change to the postpaid charge or, if later,
5 the first day of the first calendar month to occur at least 60 days after the [enactment]⁸ of the
6 change to the postpaid charge. The Department shall provide not less than 30 days of advance
7 notice of such increase or reduction on the Department’s website.

8 G. BUNDLED TRANSACTIONS.⁹ When prepaid wireless telecommunications service is
9 sold with one or more other products or services for a single, non-itemized price, then the
10 percentage specified in Section 4 (A) shall apply to the entire non-itemized price unless the seller
11 elects to apply such percentage to:

12 1. if the amount of the prepaid wireless telecommunications service is disclosed to the
13 consumer as a dollar amount, such dollar amount; or

⁷ Will need to be adjusted depending on whether a state-level postpaid E911 charge applies.

⁸ The term “implementation” may be substituted if the postpaid charge can change without enactment of a new law or an amendment to existing law.

⁹ Subsection G is only required if a state elects to impose a percentage-based 911 fee in subsection A of Section 4.

1 2. if the seller can identify the portion of the price that is attributable to the prepaid
2 wireless telecommunications service by reasonable and verifiable standards from its books and
3 records that are kept in the regular course of business for other purposes including, but not
4 limited to, non-tax purposes, such portion.

5 However, if a minimal amount of prepaid wireless telecommunications service is sold with a
6 prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the
7 percentage specified in subparagraph a. to such transaction. For purposes of this paragraph, an
8 amount of service denominated as ten (10) minutes or less, or five dollars (\$5) or less, is
9 minimal.

10 SECTION 5. ADMINISTRATION OF E911 CHARGE.

11 A. TIME AND MANNER OF PAYMENT. Prepaid wireless E911 charges collected by
12 sellers shall be remitted to the Department at the times and in the manner provided by [SALES
13 TAX LAW]¹⁰ with respect to [SALES TAX]. The Department shall establish registration and
14 payment procedures that substantially coincide with the registration and payment procedures that
15 apply to [SALES TAX].

16 B. SELLER ADMINISTRATIVE DEDUCTION. A seller shall be permitted to deduct and
17 retain three percent (3%) of prepaid wireless E911 charges that are collected by the seller from
18 consumers.

¹⁰ Reference should be to a transfer tax of general application (e.g., sales tax or excise tax) and not to a communications-specific tax.

1 C. AUDIT AND APPEAL PROCEDURES. The audit and appeal procedures applicable to
2 [SALES TAX] under the [SALES TAX LAW] shall apply to prepaid wireless E911 charges.

3 D. EXEMPTION DOCUMENTATION. The Department shall establish procedures by
4 which a seller of prepaid wireless telecommunications service may document that a sale is not a
5 retail transaction, which procedures shall substantially coincide with the procedures for
6 documenting sale for resale transactions for [SALES TAX] purposes under the [SALES TAX
7 LAW].

8 E. DISPOSITION OF REMITTED CHARGES. The Department shall pay all remitted
9 prepaid wireless E911 charges over to [911 AGENCY]¹¹ within [30] days of receipt, for use by
10 [911 AGENCY] in accordance with the purposes permitted by [911 AGENCY LAW], after
11 deducting an amount, not to exceed two percent (2%) of collected charges, that shall be retained
12 by the Department to reimburse its direct costs of administering the collection and remittance of
13 prepaid wireless E911 charges.

14 SECTION 6. NO LIABILITY.

15 A. NO LIABILITY REGARDING 911 SERVICE. No provider or seller of prepaid wireless
16 telecommunications service shall be liable for damages to any person resulting from or incurred
17 in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying,
18 or failing to identify, the telephone number, address, location, or name associated with any
19 person or device that is accessing or attempting to access 911 or E911 service.

¹¹ Intention is to piggyback on existing state-level E911 framework, if any.

1 B. NO LIABILITY REGARDING COOPERATION WITH LAW ENFORCEMENT. No
2 provider or seller of prepaid wireless telecommunications service shall be liable for damages to
3 any person resulting from or incurred in connection with the provision of any lawful assistance
4 to any investigative or law enforcement officer of the United States, this or any other state, or
5 any political subdivision of this or any other state, in connection with any lawful investigation or
6 other law enforcement activity by such law enforcement officer.

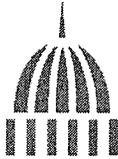
7 C. INCORPORATION OF POSTPAID 911 LIABILITY PROTECTION. In addition to the
8 protection from liability provided by paragraphs A and B of this Section 6, each provider and
9 seller shall be entitled to the further protection from liability, if any, that is provided to providers
10 and sellers of wireless telecommunications service that is not prepaid wireless
11 telecommunications service pursuant to [CITE APPLICABLE STATE LAW EXCULPATORY
12 PROVISIONS APPLICABLE TO POSTPAID WIRELESS SERVICE].

13 SECTION 7. EXCLUSIVITY OF PREPAID WIRELESS E911 CHARGE.

14 The prepaid wireless E911 charge imposed by this Act shall be the only E911 funding obligation
15 imposed with respect to prepaid wireless telecommunications service in this state, and no tax,
16 fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this
17 state, or any intergovernmental agency, for E911 funding purposes, upon any provider, seller, or
18 consumer with respect to the sale, purchase, use, or provision of prepaid wireless
19 telecommunications service.

20 SECTION 8. EFFECTIVE DATE.

1 This Act shall be effective with respect to retail transactions occurring on and after [_____].



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

NCSL RESOLUTION ON THE COLLECTION OF E911 FEES ON WIRELESS PREPAID SERVICE AT THE POINT-OF-SALE ACT

EXECUTIVE COMMITTEE TASK FORCE ON STATE & LOCAL TAXATION OF COMMUNICATIONS AND ELECTRONIC COMMERCE

WHEREAS, E9-1-1 fees have historically been collected from telecommunications users on their monthly bills and remitted to governments by telecommunications providers; and

WHEREAS, the lack of a billing relationship between the prepaid wireless user and the sellers and providers of prepaid wireless service means that the existing collection methodologies are not well suited to prepaid wireless, causing administrative and legal disputes that inhibit collection of E9-1-1 fees on prepaid wireless service; and

WHEREAS, the number of prepaid wireless users has grown from less than 6% of the wireless marketplace in 2003 to over 18% in 2009; and

WHEREAS, the growth in popularity of prepaid wireless service has led states to consider methods to impose E9-1-1 fees on prepaid wireless service; and

WHEREAS, prepaid wireless users benefit from the access to the 9-1-1 system and should therefore contribute proportionately to funding the 9-1-1 system; and

WHEREAS, the prepaid wireless industry has approached the states with model legislation to create a uniform collection methodology that would collect prepaid wireless E9-1-1 fees on end users at the retail point of sale; and

WHEREAS, the adoption of a uniform methodology for collecting E9-1-1 fees from prepaid wireless consumers would provide needed funding for E9-1-1 systems while minimizing administrative costs for states and providers of prepaid wireless service; and

WHEREAS, the adoption of variations of the model legislation by the states of Maine, Texas, Louisiana and Wisconsin in 2009 legislation demonstrates the need for the National Conference of State Legislatures to endorse a single model to encourage states to adopt an uniform approach; and

WHEREAS, consistent state action through enactment of a model legislation for the collection of E9-1-1 fees on prepaid will forestall federal government intrusion or preemption.

THEREFORE, LET IT BE RESOLVED, that the National Conference of State Legislatures endorses the point-of-sale model legislation, the "Prepaid Wireless Charge," and calls upon State legislatures to pass legislation that implements point-of-sale-collection of E911 fees.

Adopted by the NCSL Executive Committee on State and Local Taxation of Communications and Electronic Commerce, July 20, 2009