

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

In the Matter of	)	
	)	
Report to Congress	)	PS Docket No. 09-14
On State Collection and	)	
Distribution of 911 and	)	
Enhanced 911 Fees and Charges	)	

**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments on the Commission’s fifth annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges (“Fifth NET 911 Report”). On December 31, 2013, the Commission submitted the Fifth NET 911 Report to Congress to the Committee on Energy and Commerce of the House of Representatives as required by Section 6(f)(2) of the New and Emerging Technologies 911 Improvement Act of 2008.<sup>1</sup> By public notice issued January 24, 2014, the Commission has invited comment on the Fifth NET 911 Report.<sup>2</sup>

With more than twenty-three million customers nationwide, TracFone is the nation’s leading provider of prepaid wireless telecommunications services and the fifth largest provider of commercial mobile radio service (“CMRS”) based on number of active customers. Prepaid service such as that provided by TracFone and others, differs from post-paid service in that service is purchased by consumers in advance of usage, often at retail locations of independent vendors. Since prepaid service is not a billed service, there is no opportunity to collect fees to support 911 and E911 through a carrier billing process. Indeed with prepaid service, there is no carrier billing process. As a result, collection and remittance of fees from consumers of prepaid service to support 911 and E911 has been problematic.

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<sup>1</sup> Public Law 110-283 (“NET 911 Act”).

<sup>2</sup> Public Notice – FCC Seeks Public Comment on Fifth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, DA 14-82, released January 24, 2014.

Many states have addressed and resolved this problem by enacting laws which require those who sell prepaid services to consumers – whether the service providers themselves or retail vendors who sell the providers’ services – to collect 911 fees at the point of retail sale and to remit the collected fee proceeds to the appropriate public safety authorities.<sup>3</sup> Unfortunately, other states have not yet done so and those states continue to suffer due to the lack of a workable method for collection of fees to support 911 and E911 on sales of prepaid services. Of those states which have not yet addressed the question of 911 support from the sale of prepaid service, some have resorted to time-consuming and costly litigation to attempt to impose out-of-pocket payment obligations on providers who cannot collect 911 fees from non-billed customers; others have simply forgone 911 funding on sales of prepaid services.

In 2008, Congress enacted the NET 911 Act for the purpose of promoting and enhancing public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services. To achieve that goal, Congress affirmed the authority of state and local governments to require the imposition and collection of fees on service providers, including CMRS providers to support the implementation of 911 and E-911 services. However, that authority must be viewed in conformance with Section 253(b) of the Communications Act which provides, in relevant part, that states may impose requirements necessary to protect public safety (including, *e.g.*, 911 service funding), provided that such requirements are imposed on a competitively neutral basis.<sup>4</sup> Although Congress left the establishment of 911 and E911 fees to the states, it directed the Commission to monitor state compliance with the NET 911 Act’s fee provisions and directed the Commission to submit to Congress annual reports on the NET 911 Act, detailing the status in each state of the “collection and distribution of such fees or charges.”

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<sup>3</sup> To date, more than 30 states have enacted statutes requiring that 911 fees on prepaid services be collected at the point of retail sale.

<sup>4</sup> 47 U.S.C. § 253(b).

As with prior NET 911 reports, the Fifth NET 911 Report contains detailed information regarding the **distribution** of 911 fees or charges, but contains virtually no information on the other important aspect of 911 funding – **collection** of fees and charges. Because the Fifth Net 911 Report, like previous reports, focuses only on the distribution of 911 funding while largely ignoring the all-important collection of 911 funding, the report fails to address the state of 911 funding in a comprehensive, holistic manner.

TracFone recommends that future NET 911 reports contain information regarding how 911 fees are collected in the states and that it offer proposals as to which collection methods are most appropriate to assure sufficient funding of 911, especially during the migration to Next Generation 911 and its attendant costs. In making such recommendations, the Commission should remain mindful of the important competitive neutrality requirement applicable to state public safety matters, codified at 47 U.S.C. § 253(b).

To facilitate obtainment of that information, the Commission's questionnaire to the states should include questions about how 911 fees are imposed and whether the state's laws governing 911 fee collection methods contain provisions specifically applicable to prepaid wireless services, given the indisputable fact that there is no available carrier billing mechanism for collection of 911 fees from consumers of non-billed services such as prepaid wireless. As described above, TracFone – a company which operates in all 50 states, plus the District of Columbia and Puerto Rico – is aware that more than 30 states have enacted varying versions of point-of-sale fee collection laws applicable to 911 fees on the sale of prepaid wireless services. These laws are working well and the states which have enacted point-of-sale fee collection laws have benefitted by increasing their 911 contribution bases and increasing the funding available to implement and expand 911 and E911 service and to finance the transition to Next Generation 911. However, collection of this information will enable the Commission to inform Congress as to the number of states where collection of 911

funding from consumers of non-billed services remains problematic. It is anticipated that this information will enable Congress and the Commission to provide guidance to those remaining states which have to date failed to update their 911 funding laws to encompass all business models and service pricing options, including the prepaid model.

Such information should be of interest to Congress. During consideration of the bill that became the NET 911 Act, both houses of Congress issued committee reports which identified equitable 911 funding methods for prepaid services as a matter of national importance. The Senate Commerce Committee report stated as follows:

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.<sup>5</sup>

The House report articulated a similar concern:

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.<sup>6</sup>

It has now been more than six years since both Houses of Congress expressed their intent that state and local 911 funding laws accommodate the special circumstances regarding prepaid services. Still, as noted above, some states have failed to do so and important work in those states remains to be done in order to ensure that all who are able to utilize 911 systems contribute to their support. Availability of sufficient funding to cover the costs of expanding and updating emergency services, including Next Generation 911, is an important

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<sup>5</sup> U.S. Senate Committee on Commerce, Science and Transportation, Report on S. 428, Report No. 110-142, page 9, August 3, 2007.

<sup>6</sup> U.S. House Committee on Energy and Commerce, Report on H.R. 3403, Report No. 110-442, page 10, November 13, 2007.

federal concern as well as a state and local concern. The annual reporting requirement imposed on the Commission by the NET 911 Act provides a powerful opportunity for the Commission to address that concern and to provide guidance and encouragement to state and local governments to do the same.

Accordingly, TracFone respectfully urges the Commission to obtain information from states regarding how 911 service is funded (*i.e.*, how 911 fees are collected), particularly with respect to non-billed services such as prepaid wireless service, and to include such obtained and compiled data in its next NET 911 report.

Respectfully submitted,

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