

Testimony of Scott Mackey on HB3317A**Oregon Ways and Means Committee
Subcommittee on Public Safety****May 9, 2013**

Representative Williamson, Senator Winters, and members of Subcommittee, thank you for the opportunity to testify today. I am here today on behalf of AT&T, Sprint, T-Mobile, U.S. Cellular, and Verizon to address what the wireless industry thinks is a very important 911 issue – the fair and efficient collection of 911 fees from prepaid wireless users. Therefore, I am testifying on the issue of how to collect 911 fees from users of prepaid wireless service and to respectfully request that if the Subcommittee decides that such fees should be imposed on prepaid wireless users, it adopt the so-called “point of sale” approach. The wireless industry believes that the point of sale approach is the best way to ensure that all users of wireless service contribute to the maintenance and operation of the Oregon 911 system.

My written testimony addresses the following topics:

- What is prepaid wireless service and how is it different from traditional postpaid wireless?
- National trends in the prepaid wireless market.
- The key provisions of the point of sale model legislation.
- The current status of the point-of-sale model legislation in other states.

How Prepaid Wireless Differs from Postpaid Wireless

Prepaid wireless service allows customers to pay in advance for a fixed number of minutes, or

for a fixed time period of use of unlimited minutes. Since customers pay in advance, there is no need to run a credit check on the purchaser and there is no need for the customer to sign a contract for a fixed term of service. This service has proven very popular with credit-challenged consumers as well as those who do not want to enter into a long-term service contract.

Some prepaid providers – such as AT&T, Sprint, T-Mobile U.S. Cellular, and Verizon Wireless – own their wireless networks and sell prepaid service as an alternative to their traditional “postpaid” offerings. Other prepaid providers do not own their own wireless networks and instead purchase network capacity at wholesale from wireless network owners.

Traditional postpaid wireless service is sold directly by the wireless service provider, or its agent, to the consumer. Consumers are billed monthly and must pay that monthly bill, including taxes and fees, in order to receive service. Under federal and Oregon law, the wireless provider must receive and record the address for each user’s “place of primary use” which is the residential street address or business location where the use of the wireless service primarily occurs. For this reason, the wireless provider has a straightforward mechanism to determine the location where the service should be subject to taxation and a billing mechanism to collect the fee from the user and remit it to the proper 911 agency.

Prepaid wireless service is marketed and sold differently. The initial purchase of prepaid service typically includes a phone bundled with a fixed number of minutes for a single price. When those minutes are exhausted, the customer has several options.

One option is to go a retail store (like a WalMart, Target, or Best Buy) and purchase a “recharge” card with a fixed number of dollars or minutes. The card includes a phone number and a code that the purchaser uses to add the dollars or minutes to the phone. It is important to note that the customer – and not the retailer —adds the minutes to their phone. In this instance, the prepaid provider does not know where the customer purchased the recharge card. Also, neither the provider nor the retail store knows where the customer lives. About 70% of all prepaid wireless transactions occur in these third party retail locations.

Another option is to go to a wireless provider's retail store and purchase a recharge card. Again, it is not necessary for the wireless provider to collect any address or other information about the customer at the time of purchase. The customer recharges the minutes at his or her convenience.

A final option is for the customer to recharge their minutes by going directly to the prepaid wireless provider's web site. In these transactions, the customer must use a credit card or other payment instrument to complete the transaction. Some wireless providers will ask for the customer's address information as a fraud prevention measure to verify that the credit card is being used legitimately. Wireless providers may or may not retain the customer's address information for other business purposes.

National Trends in the Prepaid Market

Prepaid wireless has been the fastest growing segment of the fast-growing wireless industry for the past three years. According to CTIA's recent figures:

- Prepaid subscribers are now over 22% of all wireless subscribers, up from 16% in 2007;
- There are now 75 million prepaid wireless subscribers, an increase of 27 million subscribers between December 2008 and December 2012;
- Almost half of all new subscribers added during the last six months were prepaid subscribers. Prepaid wireless service is growing at an annual rate of about 10%, significantly faster than the 5% growth rate of traditional postpaid service.

Clearly, the growth in the prepaid marketplace makes it very important that states adopt legislation to ensure that prepaid wireless 911 subscribers contribute their proportional share to the cost of operating the 911 system.

Origin of the Prepaid 911 Point-of-Sale Model Bill

There has been a longstanding acknowledgement by the wireless industry and public safety that the current prepaid wireless 911 fee collection methods in some states, which are based on the

postpaid wireless model, are not working. In 2007, the wireless industry recognized that the growth in popularity of prepaid wireless required a new urgency to develop a workable methodology to collect 911 fees from prepaid users.

The industry knew that a workable solution for both the industry and its retail partners required a national scope in order to minimize compliance and administrative costs. The Mobile Telecommunications Sourcing Act has been a successful model where governments and providers have benefitted from a uniform set of rules for sourcing taxation of postpaid wireless service. However, in this case, the wireless industry believed that developing model legislation for the states would be preferable to asking for federal legislation.

The industry reached out to both the public safety community and our retail partners to develop a fair, uniform, and effective system for collecting 911 fees. The wireless industry spent a year working with these groups to develop a proposal to collect fees at the point of sale while minimizing new costs and burdens on retailers. This resulted in model legislation that was presented to the National Conference of State Legislatures (NCSL) for consideration in December 2008. Following three public hearings on the proposal and, after discussion and debate, NCSL endorsed the model legislation in July 2009 during its annual meeting in Philadelphia.

Key Provisions of the Point-of-Sale Model Bill

The following are the key provisions of the point of sale model:

- Imposes a 911 fee on each retail transaction.
- Requires the seller to collect the fee from the customer on each retail transaction and remit the fee to the Department of Revenue.
- Provides a methodology for sourcing transactions to the state of Oregon that is consistent with other states, in order to eliminate tax avoidance or double taxation. This methodology also ensures that the fee is collected not only on face-to-face transactions in the state but also on Internet and other remote sales to Oregon customers.

- Permits retailers to keep 3% of collected fees to offset ongoing compliance costs.
- Thirty states have adopted the NCSL model act, as shown in the table at the end of this testimony. Idaho adopted the point of sale act in the 2013 legislative session, and bills to adopt the model are currently pending in California and Washington.

Conclusion: Key Reasons to Support the Point of Sale Approach

1. The prepaid point of sale methodology is based on actual sales, is transparent to the consumer, accurately sources the transaction to the state and is a more efficient methodology for the collection of the surcharge directly from all prepaid end users and is fair to post-paid consumers;
2. The prepaid point of sale method will provide stable and predictable revenues to support the 911 system in Oregon. We believe, based on the actual experiences of other states, that the point of sale model will generate more money for the 911 program than alternative proposals that require carriers to remit fees out of their revenues.

Thank you again for the opportunity to testify today.

Prepaid Point of Sale Status Sheet
As of May 3, 2013

Enacted Law (30 states):

- ME LD 1056 (effective date 1/1/2010)
- LA HB 782 (effective date 1/1/2010)
- TX HB 1831 (effective date 6/1/2010)
- IN HB 1086 (signed 3/25/2010; effective date 7/1/2010)
- SC H 4551 (signed 3/30/2010; effective date 7/1/2011)
- VA HB 754 (signed 4/11/2010; effective date 1/1/2011)
- TN SB 2497 (signed 4/16/2010; effective date 7/1/2011)
- OK HB 2556 (signed 5/4/2010; effective date 1/1/2011)
- MS SB 2938 (signed 5/13/2010; effective date 7/1/2010)
- CO SB 120 (signed 6/7/2010; effective date 1/1/2011)
- RI HB7397, Article 9 (became law 6/12/10; effective date 8/1/2010)
- DC Bill 18-0731 (signed 7/2/2010; effective date 10/1/2010)
- PA HB 2321 (signed 11/23/2010; effective date 7/1/2011)
- UT HB 303 (signed 3/23/2011; effective date 7/1/2011)
- GA HB 256 (signed 5/11/2011; effective date 1/1/2012)
- KS SB 50 (signed 5/18/2011; effective date 1/1/2012)
- NC H571 (signed 6/13/2011; effective date 7/1/2013)
- IL SB2063 (signed 8/19/2011; effective date 1/1/2012)
- SD SB174 (signed 3/2/2012; effective date 7/1/2012)
- AZ HB 2094 (signed 4/5/2012; effective date 1/1/2014)
- ME LD1799 (signed 4/6/2012; effective date 1/1/2013) – expands existing 911 POS fee to include state USF and TAM charges
- NE LB 1091 (signed 4/11/2012; effective date 1/1/2013)
- IA SF2332 (signed 5/1/2012; effective date 1/1/2013)
- AL HB89 (signed 5/8/2012; effective date 1/1/2013)
- CT SB354 (signed 6/15/2012; effective date 1/1/2013)
- MI HB5468 (signed 6/26/2012; effective date 1/1/2013); amended by HB5952 (signed 12/20/2012; immediate effect)
- OH HB360 / HB472 (signed 12/20/2012; effective date 1/1/2014)
- **ND SB2261 (signed 3/21/2013; effective date 1/1/2014)**
- **ID HB193 (signed 4/2/2013; effective date 1/1/2014)**
- **AR SB500 (signed 4/4/2013; effective date 1/1/2014)**
- **MD SB745 (signed 5/2/2013; effective date 1/1/2014)**

(Bold = 2013 passage)

Pending 2013 sessions (4 states):

- CA AB300 – voted do pass 14-0 by House Utilities; now in House Revenue and Taxation
- MA H2131
- MN HF677 (Omnibus Tax bill) HF677 passed House 69-64 on 4/24/2013; passed Senate 35-31 on 4/29/2013; in Conference Committee
- WA SB5899/HB1971 – HB1971 passed House 74-22 on 4/16/2013; referred to Senate Ways and Means Committee. Died upon adjournment, but expected to be considered during special session on the budget beginning 5/13/2013.

OREGON PREPAID E911 REVENUE PROJECTION

The Oregon Legislature is considering legislation that will extend the E911 tax to prepaid wireless services. Estimates from the Legislative Revenue Office have significantly underestimated anticipated revenue resulting from this extension. According to the Revenue Impact Statement, the Legislative Revenue Office has projected an increase in revenue of between \$1.13 and \$1.19 million per year. The projection below, based on the actual number of prepaid wireless customers and the associated tax revenue, indicates revenue of more than \$4 million per year. And a comparison to revenue in two other states helps validate this projection.

ESTIMATED ACTIVE PREPAID USERS, OREGON

| | |
|---|------------------|
| Estimated Oregon Wireless Users, December 2011 | 3,427,000 |
| + Assumed Market Growth, December 2011 to June 2013 (3.27%) | +112,063 |
| Estimated Oregon Wireless Users, June 2013 | 3,539,063 |

| | |
|---|----------------|
| Estimated Prepaid Wireless Market Share (22%) | 778,594 |
| - Assumed Inactive and Zero Balance Users (20%) | -155,719 |
| Estimated Active Oregon Prepaid Users, June 2013 | 622,875 |

USER PROFILE & REVENUE PROJECTION, OREGON

| | |
|--|--------------------|
| Average User Transactions Per Year | 9.125 |
| Estimated Annual Prepaid Revenue Per User (9.6 transactions per year x \$.75 e911 fee) | \$6.84 |
| Estimated Gross Annual Prepaid e911 Revenue (\$7.20 in revenue per user x 623,056 active users) | \$4,262,801 |
| - Estimated Retail Compensation (-3%) | -\$127,884 |
| - Estimated DOR Cost (-2%) | -\$85,256 |
| Total Estimated Net Annual Prepaid E911 Revenue | \$4,049,661 |

MAINE COMPARISON – POINT OF SALE MODEL

(Maine E911 fee is \$.45)

| | |
|------------------------------------|-----------|
| Total Wireless Subscribers, Maine | 1,179,000 |
| Total Wireless Subscribers, Oregon | 3,427,000 |
| Ratio of Subscribers, OR to ME | 2.907 |

| | |
|--|--------------------|
| Actual Maine Prepaid E911 Revenue (as reported by Bureau of Revenue Services, FY 2012) | \$709,957 |
| Extrapolated Oregon Prepaid E911 Revenue (ME revenue x subscriber ratio, FY 2012) | \$2,063,632 |
| Adjusted for Higher E911 Rate (\$.45 in ME vs \$.75 in OR, FY 2012) | \$3,439,387 |
| - Less Retail Compensation (-3%) | -\$103,182 |
| - Less DOR Cost (-2%) | -\$68,788 |
| Extrapolated Oregon Prepaid E911 Revenue (FY 2012) | \$3,267,418 |
| Extrapolated Oregon Prepaid E911 Revenue (FY 2014, assuming 15% growth from 2012 to 2014) | \$3,757,531 |

MASSACHUSETTS COMPARISON – CARRIERS PAY MODEL

(E911 fee is \$.75)

| | |
|---|-----------|
| Total Wireless Subscribers, Massachusetts | 6,534,000 |
| Total Wireless Subscribers, Oregon | 3,427,000 |
| Ratio of Subscribers, OR to MA | 0.524 |

| | |
|--|--------------------|
| Actual Massachusetts Prepaid E911 Revenue (as reported by Mass. Dept. of Public Safety, FY 2012) | \$2,728,844 |
| Extrapolated Oregon Prepaid E911 Revenue (MA revenue x subscriber ratio, FY 2012) | \$1,431,244 |
| Extrapolated Oregon Prepaid E911 Revenue (FY 2014, assuming 15% growth from 2012 to 2014) | \$1,644,931 |

Oregonians Deserve a Fair E911 Funding Mechanism on Wireless



Taxpayer Fairness in Funding Wireless E911 in Oregon

ISSUE

The current approach to collecting E911 fees on wireless service is not working:

- The E911 tax is not being collected uniformly from wireless users
- All citizens are safer with wireless E911, but not all wireless users contribute to the cost of providing this life-saving service
- The State has not adopted a method for collecting the E911 tax from prepaid wireless users and, as a result, all other telecom users subsidize the E911 system for prepaid users
- Legislation to fix these issues through a retail "point-of-sale" solution has passed in 28 states and the District of Columbia

SOLUTION

Create a simple and transparent process to collect the existing E911 fee directly from **ALL** prepaid wireless consumers who benefit from E911 services today.

- Establish consistent, uniform tax treatment of wireless services
- Collect the E911 fee from prepaid wireless users in the same manner as other users: at their recurring payment transaction
- Provide full disclosure of the fee to prepaid wireless consumers
- Ensure that all users of wireless services pay their fair share for E911

Oregon should join other states in establishing a retail point-of-sale approach as the universal method for collecting E911 fees on all prepaid wireless service.

National Perspective – Prepaid E911 in the Other States

BY THE NUMBERS

- **49** states (including DC) assess a 911 fee on wireless users
 - **35** of those states impose the fee on both prepaid and postpaid users
 - **14** states (including OR) do not impose the fee on prepaid
- Of the **35** states that collect an E911 fee from prepaid users,
 - **29** states (including DC) use the point-of-sale method
 - **2** states use the provider-pays method
 - **4** states assert that the fee applies to prepaid although the statute does not address prepaid
- Of the **29** states (including DC) using a point-of-sale method,
 - **14** states shifted from provider-pays to point-of-sale
 - **15** states had not imposed the fee on prepaid prior to passing point-of-sale legislation
- **22%** of all wireless users are prepaid phone customers

ACCOUNTABILITY

States that have shifted from a "provider pays" model to a point of sale model for collection of prepaid E911 fees now have the ability to monitor, track, account for, and enforce payment of the fee on prepaid wireless service. In the "provider pays" model, the state has no visibility into the providers' methods of collecting, remitting and reporting.