

House Revenue Committee

March 14, 2013

Mr. Chairman and members of the committee:

My name is John C. Powell representing AT&T in support of HB 2454. I am an attorney and associate at John Powell & Associates. Our offices are at 2015 State Street, Salem, Oregon.

(1) THE WIRELESS INDUSTRY SUPPORTS EXTENDING THE 911 TAX TO PREPAID CUSTOMERS.

So there is no confusion – AT&T and all wireless carriers SUPPORT extending Oregon's 911 tax to prepaid customers. We have supported this extension of the tax from the initial time the issue was brought before the legislature in the 2011 session and continue to support it today. In fact, the extension of the tax in a fair, equitable and uniform manner to prepaid is a #1 priority for us. We are committed to leading the way and continuing our support for public safety in Oregon. As far as we are aware – there is no opposition to extending the 911 tax to prepaid customers.

- An agreement was reached and a commitment by the industry was made to the House Revenue Committee during the 2011 session that we would work in good faith as an industry to develop workable solutions that we could support and present them to a workgroup. In addition, we committed to work with retailers to gain their support for our solutions. We kept this commitment and began an industry workgroup in the spring of 2011.
- In the fall of 2011, we presented, through our trade Association (CTIA) two options for collecting the tax from the customer/taxpayer to Representative Berger (*See Appendix 1*).

(2) THE ONLY ISSUE IS THE METHODOLOGY FOR COLLECTION OF THE TAX.

Historically, the industry has proudly been a partner of the public safety community and the State of Oregon by collecting 911 taxes from our customers through the standard postpaid monthly billing process. The tax was simply added to the customer's monthly bill. This method worked well for many years and continues to

work well for postpaid customers. However, a gap has developed as technology has advanced (while the law in effect was written before prepaid was widely used) and the traditional method of collecting the 911 tax does not work for prepaid because **prepaid customers pay in full at the point of sale for their service.** In other words, prepaid customers are not billed monthly like postpaid customers. So the challenge is developing a methodology to collect the tax from the customer/taxpayer in the prepaid environment.

- Since the money exchanges hands at the point of sale and there are no monthly bills, the only fair and equitable way to collect the tax from the customer/taxpayer is at the point of sale. Again, the prepaid customer pays in full for their service at the point of sale, so there is no reasonable method available to collect the tax from the customer/taxpayer other than at the point of sale.
- We cannot support a methodology such as that proposed in HB 2036 and HB HB 2415 because is not fair, equitable, uniform and has the end result of forcing the industry to pay the tax for and subsidize prepaid customers merely because they pay for their service up front while postpaid customers pay for their service each month. This method is not fair and equitable to the industry because this always has been and remains a tax on the customer, the one who benefits from 911 services. The 911 tax was never intended to be a tax on the industry. Further, such a method is not fair to postpaid customers as those individual customers have to pay the tax, but under HB 2036 and HB 2415 the industry would be forced to subsidize and pay the tax for prepaid customers (*See Appendix 2 on the problems associated with the other proposed methodologies such as “decrementing,” which result in forcing wireless carriers to pay the tax for prepaid customers*).

(3) THE SOLUTION.

The industry has taken the initiative to develop a methodology to collect the 911 tax from the taxpayer (prepaid customers) through a method that is fair, equitable, uniform, clearly disclosed to the customer and will provide more revenue for public safety. We urge your support of HB 2454.

FROM: CTIA and its Members
TO: Representative Berger
DATE: October 25th, 2011
RE: Industry Discussions on Prepaid 9-1-1 Alternatives in Oregon

Dear Representative Berger:

On behalf of CTIA and its members, thank you for providing the wireless industry an opportunity to participate in the process of exploring options for the collection of prepaid 9-1-1 fees from customers. During the 2011 legislative session, the wireless industry made a commitment to you to formulate alternatives to the approach proposed in HB 2075. As a result, a working group of representatives of the major prepaid wireless telecommunications providers held four meetings this spring and summer to explore alternative methods to collect 9-1-1 fees from Oregon prepaid wireless consumers. The two approaches are:

1. Collection of 9-1-1 fees on the State Income Tax Return
2. Transaction - based collection

A fundamental premise of our discussions is that 9-1-1 fees in Oregon should be borne by the end user, not the wireless provider. This "user fee" principle has been a longstanding feature of the 9-1-1 fee system in Oregon, and we believe strongly that equity requires that it should apply to both prepaid and postpaid users alike. Since the inception of the state's 9-1-1 emergency telecommunications program, the incidence of the tax has been clearly placed on the end user, or the subscriber. In accordance with existing statutory provisions:

ORS 403.200 Imposition of tax; rate. (1) There is imposed on each paying retail subscriber who has telecommunications services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month. The tax must be applied on a telecommunications circuit designated for a particular subscriber. (2) The subscriber is liable for the tax imposed by this section.

The State of Oregon funds its 9-1-1 program using a \$.75 per month fee that is billed to users of wireless and wireline service by the service provider and remitted to the state. This longstanding methodology has worked well for traditional billed wireless and wireline service plans, but does not work for prepaid wireless service. Prepaid wireless customers pay for their service in advance and do not receive monthly bills. With national distribution and pricing of prepaid service, there is no way to add the Oregon 9-1-1 fee to the wholesale or retail price because providers distribute prepaid wireless cards nationally and have no way to know whether these cards will be sold in Oregon or another state. The majority of prepaid wireless purchases are "cash and carry" transactions completed by retailers who are not prepaid wireless providers.

1. Collection on the Income Tax Return

The wireless industry proposes repealing all existing 9-1-1 fees on telecommunications service and instead collecting 9-1-1 surcharges on the Oregon personal income tax form. This could be accomplished by adding an additional line on the Oregon state income tax form to collect fees directly from taxpayers who file income tax returns, beginning with forms filed in 2013 for the 2012 tax year.



In tax year 2009, there were 1,768,397 income tax returns filed that included a total of 3,565,302 personal exemptions. During the most recent fiscal year, approximately \$ 40.2 million in 9-1-1 fees were collected from Oregon residents and businesses. This suggests that Oregon could replace the current 9-1-1 fees by requiring filers to pay approximately \$11.25 for each personal exemption claimed on the Oregon personal income tax form. An alternative suggestion would be to combine the direct collection proposal above with a self-reported fee imposed on each business line, to be reported and collected on the Oregon corporation income tax return.

Including businesses would reduce the amount that would need to be collected from personal income tax filers. The industry believes that a detailed analysis of this proposal would reveal that the distributional impacts of this proposal would not differ significantly from the current 9-1-1 fee. Given the dramatic increase in families where most or all family members have their own wireless device, we believe that the personal exemption basis for the imposition of the surcharge mirrors the existing payment of 9-1-1 fees. For example, an Oregon family of four with four wireless lines plus a landline phone currently pays \$3.75 per month (5x\$.75) or \$45.00 annually in 911 fees. Under the proposal, this family would pay the same \$45 annually.

It is important to note that this proposal would not be a tax / fee increase. The current fees that appear on Oregon telecommunications users' bills would be repealed and replaced with the funds collected via the personal income tax form. This proposal would be revenue neutral.

Replacing the current 9-1-1 fee collection process with a line item on the Oregon income tax form gives flexibility to the state to easily allow for exemptions or differing rates based on a myriad of criteria (i.e. income levels, age, disabled, etc). Only the state has the ability to verify or track these types of potential exemptions. Allowing varies exemptions based on economic status has the potential of making this fee less regressive.

Rate changes can be adjusted annually without costly system changes by multiple aggregators, retailers, and/or industry.

We believe that, given adequate time to implement this proposal, additional costs on the Department of Revenue would be minimal. The Department already has experience administering various voluntary income tax check-off programs. Additionally, the Department would no longer have the administrative costs associated with administration of the existing 9-1-1 fees.

Revenues under this proposal would be stable and predictable. The Legislature would not need to constantly update the Oregon statutes to reflect changing technology or consumer preferences. Finally, there is a precedent for using this methodology, although in a different context. The Internal Revenue Service used the personal income tax return to refund federal telephone excise taxes that were improperly collected on bundled wireless plans in the early-2000s. The IRS determined that using the number of dependents claimed on the income tax would be the least burdensome and fairest way to refund the excise tax to wireless users.

2. Transaction-based Approach

The "user fee" principle is what prompted the National Conference of State Legislatures (NCSL) to adopt model Point-of-Sale legislation for collection of 911 taxes and fees, and subsequently 18 states, the District of Columbia and the Virgin Islands adopted this approach for prepaid services. With respect to the extension of the tax to new forms of telecommunication services, we understand that Oregon, along with four other states (Alaska, Montana, Delaware, New Hampshire) does not impose a state sales tax, thus making the implementation of the new fee more challenging. It should likewise be noted that these other non-sales tax states have chosen not to impose any 9-1-1 fees on prepaid wireless service.

Approximately 80 percent of prepaid services are marketed through traditional retail channels, such as Wal-Mart, Best Buy and Target. The remaining percentage of the prepaid market is nearly evenly divided by online retail sales and the direct wireless carrier retail store. Eighteen states have enacted a transaction-targeted, point-of-sale approach which the major retailers have incorporated in their collection systems.

Determine fixed, transparent, and easy to administer charge on prepaid customers.

Our proposal would impose a point-of-sale fee of \$.50 on each retail purchase of prepaid wireless service. The fee would be paid by the purchaser and collected by the seller and remitted to the state Department of Revenue.

The rate of \$.50 per retail transaction reflects the fact that the typical prepaid wireless consumer uses approximately half of the average minutes used by a postpaid customer and pays about half of what a postpaid customer pays each month for wireless service. The \$.50 charge recognizes that imposing the full \$.75 monthly charge would result in a disproportionate share of the 9-1-1 funding from prepaid customers, some of whom purchase prepaid service more frequently than monthly.

Additional provisions

Provide for parallel reporting and remittance procedures with existing provisions for traditional providers (see: ORS 403.215)

- Establish a collection and administration percentage for all retailers who market prepaid cards or packages (3.0 percent of aggregate retail transactions).
- Establish an administration fee dedicated to the Oregon Department of Revenue for administration and auditing services (2.0 percent of aggregate retail transactions).
- Include a "sunset" of the tax to facilitate a thorough review of the program and efficacy of the new tax (sunset January 1, 2014).
- Include provisions directing a formal review of any new forms of telecommunication services capable of accessing the 9-1-1 emergency system in an effort to assure equity among all subscribers.

Appendix 2

WHY “DECREMENTING” MINUTES FROM THE WIRELESS PRE-PAID CUSTOMER’S ACCOUNT IS NOT A FAIR AND EQUITABLE 911 FUNDING SOLUTION

A few states have statutory language related to “decrementing” 911 taxes from pre-paid wireless accounts. The “decrement” method refers to deducting minutes from pre-paid wireless accounts each month as a proxy for the amount of the 911 tax, PROVIDED the customer has a sufficient balance of minutes in the account.

The problems of this method are:

- Minutes are only deducted if the customer has a sufficient balance at the end of the month. Customers have the ability to deplete their minutes and wait until the beginning of the next month to replenish (if they replenish at all). Decrementing simply provides a means for consumers to time the use of their service to avoid collection altogether.
- 911 taxes are assessed on a monthly basis. This concept has no meaning for pre-paid wireless services.
- Embedding the tax by deducting minutes precludes adequate disclosure of the collection of the tax from the customer and to the public safety community.
- The wireless carrier is not getting money from the customer and thereby winds up having to pay the tax for the customer even though the tax has always been on and is intended to be on the customer.
- Decrementing does not work with the fasted growing segment of the pre-paid market, “pre-paid unlimited plans,” which allow customers to purchase unlimited minutes for a fixed time period. A provider cannot decrement minutes from an unlimited plan.

The only effective and equitable solution to assessing 911 taxes on pre-paid wireless consumers is at the time the financial transaction takes place, which is when the service is sold. This ensures that (1) all pre-paid wireless customers bear some cost to support the emergency communications system, and (2) collection of the fee is clearly disclosed to the consumer, providing for transparency and accountability in the cost of supporting 911 services.