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Testimony of Scott Mackey in Support of HB2454 House Revenue Committee March 14, 2013

Chairman Barnhart, and members of the Revenue Committee, 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 in favor of HB2454, legislation that provide for the collection of 911 fees on prepaid wireless service at the point of sale.

The wireless industry believes that HB2454 is the best way to ensure that all users of wireless service contribute to the maintenance and operation of the Oregon 911 system. With the rapid growth of prepaid service, it is imperative that Oregon and other states adopt a collection methodology that brings parity between prepaid and postpaid consumers while efficiently and effectively collecting 911 fees from the consumers that benefit from the 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 HB2454.
- 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 and Verizon Wireless – own their wireless networks and sell prepaid service as an alternative to their traditional “postpaid” offerings. Other prepaid providers, like TracFone, do not own their own wireless networks and instead purchase network capacity at wholesale from wireless network owners. Companies like TracFone are known in the industry as MVNOs (Mobile Virtual Network Operators).

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 the customer’s 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 70-80% 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. HB2454 would implement such a 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 HB2454

The following are the key provisions of HB2454:

- Imposes a 911 fee of 50 cents per retail transaction, although I understand that the industry supports an amendment to set the fee at \$.75, the same rate as the postpaid fee.
- 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.
- Twenty-six states have adopted the NCSL model act, as shown in the table at the end of this testimony. Bills to adopt the point of sale model are currently pending in California, Idaho, and Washington.

Conclusion: Key Reasons to Support HB2454

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 March 11, 2013

Enacted Law (26):

- 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)
- 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)

Pending 2013 sessions (13 states):

- AR SB500
- CA AB300
- FL HB807 / S1070
- ID HB193 – Passed House 57-0; in Senate
- MD SB 745 – Passed Senate 47-0 on 2/27/13; in House Health & Govt. Operations
- MA H2131
- MN HF389 / SF 367
- MT HB509
- NH HB284
- ND SB2261 – Passed Senate 47-0 on 2/13/13; in House Finance & Taxation
- OR HB2454
- VT HB 297
- WA SB5422/ HB1971