SDAO Special Districts Association of Oregon

Oregon APCO NENA 9-1-1

TO: House Revenue Committee

FROM: Hasina E. Squires, Special Districts Association of Oregon/APCO-NENA

DATE: February 4, 2014

RE: **Testimony in Support of House Bill 4055 and Opposition to HB 4080**

INTRODUCTION

Members of the House Revenue Committee, thank you for the opportunity to appear before you today. For the record my name is Hasina Squires and I appear before you today on behalf of the Special Districts Association of Oregon (SDAO) and APCO/NENA to provide testimony in **support of House Bill 4055 and in opposition to HB 4080**. The Special Districts Association's membership consist of approximately 950 special service districts that provide a range of services (including but not limited to water, wastewater, irrigation, parks and recreation, 9-1-1 and rural fire protection) to citizens who reside within cities and residents of unincorporated communities. APCO/NENA is a professional organization that consists of 9-1-1 professionals who manage public safety answering points.

BACKGROUND

Prior to the advent of the 9-1-1 system, callers in need of emergency assistance would consult local telephone directories that contained listings of multiple telephone numbers for various police, fire, and emergency medical agencies. The first 9-1-1 system in Oregon was a basic 9-1-1 system established in March 1971 in the small town of Milton-Freewater. By 1980 the number of basic 9-1-1 systems grew to 39; and by the end of 1981, the number had more than doubled to 80. Legislation directed toward statewide implementation of 9-1-1 was introduced in 1975, 1977, and 1979 but failed for a lack of a well-defined funding mechanism and industry and local government support.

In 1981 the Oregon State Legislature issued a mandate for statewide 9-1-1 service *[Every public and private safety answering agency in this state shall establish or participate in a 9-1-1 emergency reporting system. ORS 401.720 (2)]*. The 1981 mandate was issued based on the premise of local control despite the fact that in addition to the approximately 80 basic 9-1-1 systems, approximately 220 dispatch centers also existed. Central dispatch and consolidation of systems were encouraged throughout the initial implementation effort. Permanent 9-1-1 funding became the catalyst to make public safety more unified.

By the time the state mandate for basic 9-1-1 was completed (1991), 60 primary public safety answering points (PSAPs) and 31 secondary PSAPs were providing basic 9-1-1 service in the state of Oregon. These PSAPs provided the facilities for receiving and processing calls for police, fire, and medical service for over 800 agencies. On January 1, 1991, Oregon became only the sixth state in the United States to have 9-1-1 service available on a statewide basis.

The initial implementation effort encouraging cooperation and consolidation has resulted in an extremely efficient public safety system including: 47 primary PSAPs, 14 standalone secondary PSAPs, and 2 regional dispatch centers (operated by OSP)

BACKGROUND – TAX AND FUNDING

In 1981 the Oregon Legislature issued a mandate for statewide 9-1-1 services and instituted a 3% surcharge on subscriber's telephone lines. At that time there were over 280 Public Safety Answering Points (PSAPs) in Oregon with only a few providing basic 9-1-1 service and none provided Enhanced 9-1-1 service.

The 1991 legislature increased the surcharge to 5% and mandated Enhanced 9-1-1 service (9-1-1 caller's address and responsible police, fire and EMS provider displayed to the call-taker). However, in 1995 the 5% surcharge was converted to an approximate equivalent 75-cent surcharge to provide the 9-1-1 program with greater revenue stability and predictability. Revenue is distributed as follows:

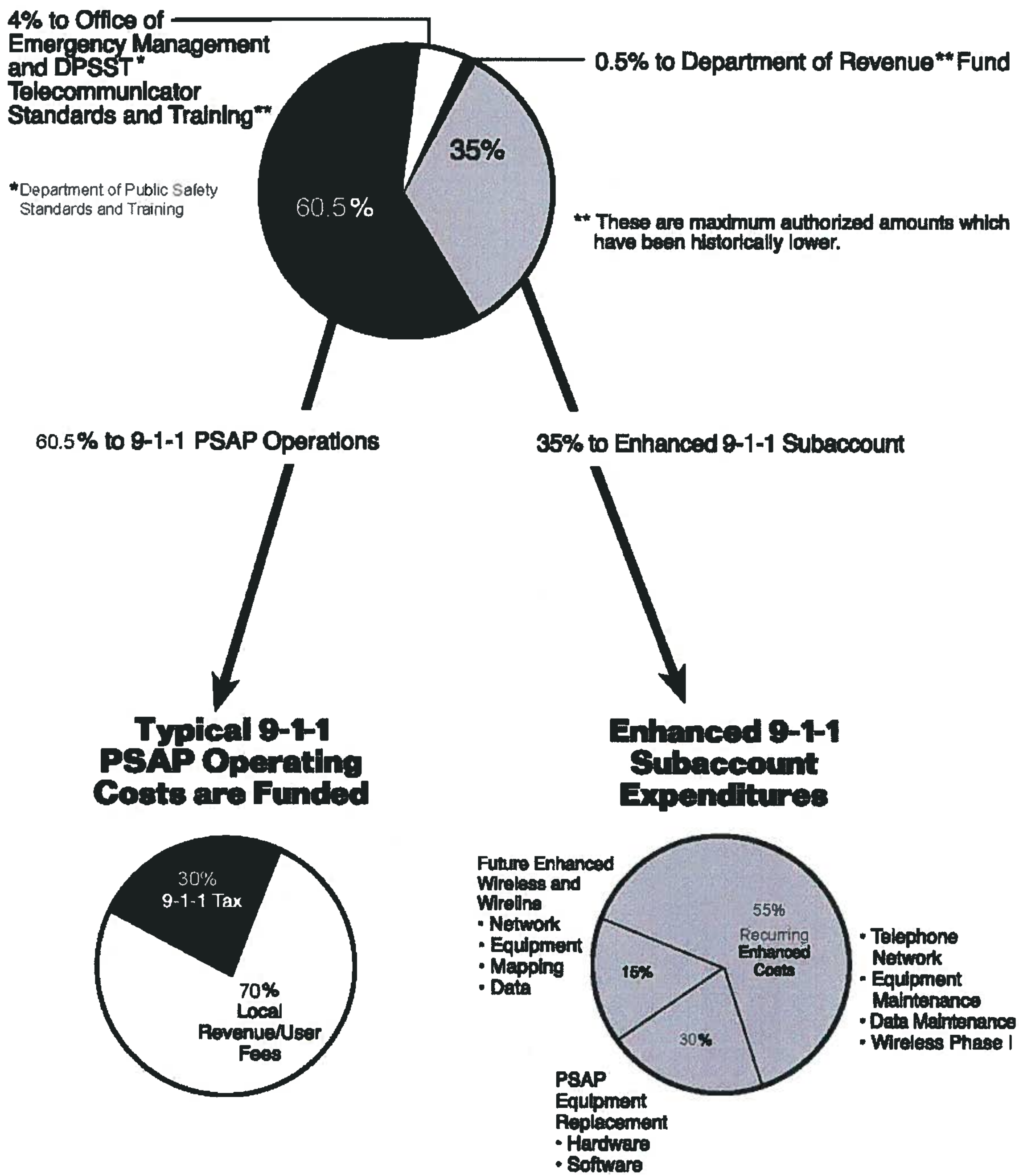
- ✓ Sixty and one-half percent (60.5%) of the revenues are distributed to counties and cities for operation of the state's 49 PSAP's. Distribution is in proportion to population, except that no county receives less than 1% of the distribution. The funds may not be used for PSAP operations unless they are directly related to 9-1-1.
- ✓ Thirty-five percent (35 %) of the revenues are managed by Oregon Emergency Management (OEM) a Division of Oregon Military Department to pay for PSAP common network services, Federal Communications Commission Phase I and II wireless services, costs associated with the Enhanced 9-1-1 program which include network, database, equipment and other costs related to providing state-wide wire line and wireless 9-1-1 services.
- ✓ Four percent (actual costs or no more than 4% maximum) of revenues may be used by the Oregon Emergency Management to pay for OEM 9-1-1 program administration and Telecommunicator training at the Department of Public Safety Standards and Training (DPSST).
- ✓ One-half percent (actual costs or no more than 0.5% maximum) of the revenues are distributed to the Department of Revenue for administrative processing cost recovery.

The current tax makes up approximately 30% (on average) of a 9-1-1 center's operating budget (user fees and property taxes fund the remaining 70%). HB 3317 would extend the existing 9-1-1 tax for three biennium (it would sunset on December 31, 2021). In addition, SDAO encourages the legislature to require all systems that are capable of accessing 9-1-1 services to pay the 75-cent surcharge that other landline and wireless consumers and businesses currently pay.

The Funding of 9-1-1 Public Safety Answering Points (PSAPs) in Oregon

(2009)

Allocation of the 75¢ Tax on Access to 9-1-1 Services



PREPAID PHONE TAXATION

The current statute is unclear as it relates to the taxation of prepaid phone service. A prepaid mobile phone (also commonly referred to as pay-as-you-go, pay-as-you-talk, "pay and go", prepaid wireless, or Prepay) is a mobile phone for which credit is purchased in advance of service use. The purchased credit is used to pay for mobile phone services. If there is no available credit on the account then access to the requested service is denied by the mobile phone network provider. Users have the option to purchase credit at any time using a variety of payment mechanisms.

Consumer trends show that customers appear to be abandoning contract-based plans offered by major carriers such as AT&T, Verizon Wireless, Sprint and T-Mobile in favor of cheaper prepaid service plans. According to a recent Wall Street Journal article the average household spends just over $100 a month on telephone service—last year spending on phone services rose more than 4% (the fastest rate since 2005).

We encourage the committee to add provisions to the existing statute that require taxation of prepaid phones by passing HB 4055. We believe that the intent of the statute is to require any line capable of accessing 9-1-1 to pay the 75 cent tax. The legislature failed to act last session and provide additional clarity on the issue of prepaid taxation. We urge you to clarify the statute and require prepaid devices to pay the same tax that landlines and wireless devices currently pay.

With respect to HB 4080 I have attached a chart to my testimony that articulates the concerns with the construct of the bill. The main concerns are as follows:

- The bill does not contain a definition of VOIP.
- The bill contains several issues that the Department of Justice has raised equal protection clause and commerce clause issues with (see attached comments from 2013 legislative session).
- Preempts local governments' ability to impose prepaid 911 taxes locally.
- Does not ensure individual purchases are each charged the prepaid tax.
- Does not contain an out of state filing requirement to cover online retailers.
- Does not align the definition of prepaid with other states or the federal definition.
- Has no legislative reporting back mechanism.

CONCLUSION

The state 9-1-1 tax is an essential revenue source that provides approximately 30% of each agency's total budget for 9-1-1 services. Should the tax not be extended, Oregon PSAPs would have approximately nine months to develop alternative funding for 9-1-1 or reduce the current level of services being provided to the citizens of Oregon.

This legislation is supported by fire, police, emergency medical service providers, cities, counties, special districts, and the 9-1-1 providers of the State of Oregon. I urge the committee's support to continue the 9-1-1 tax. Thank you for the opportunity to testify before you today, I would be happy to answer any questions you may have.

Prepaid 911 Options (Carrier Remit/Tax Compliance HB 4055 vs. Point of Sale 4080)

HB 4055—Carrier Remit/Tax Compliance

Clarify existing statute to ensure tax compliance that clearly subjects prepaid tax to existing 911 tax remittance requirements. Provide an additional 0.25% to DOR for admin costs (estimated $200,000) to undertake enhanced enforcement and collection of 911 tax (explicitly include definition of VOIP).

HB 4080 Point of Sale Tax and Potential Fixes

HB 4080 Point of Sale Tax Proposal	Suggested Options/Fixes to HB 4080
Rate: 75 cents per transaction (no equal protection addressed)	Rate: $1.35 per individual purchase until 12/31/15 $1.15 after (equal protection addressed *DOJ written advice indicated issue)
Trigger guarantee net revenue $1.9 m ends 2015-2017 biennium	Trigger guarantee net revenue $1.9 m biennium no end date
Guarantee rate increase 5 cents increments if $1.9 m not met	Rate set at $1.35 and $1.15 (no escalator $1.9 met)
Net revenue includes those voluntarily remitting (Sprint)	Net revenue excludes those voluntarily remitting (Sprint)
Preemption of local prepaid 911 tax: Y	Eliminate Preemption of local prepaid 911 tax
DOR estimate revenue generated	DAS estimate revenue generated
VOIP Included: No	Include definition of VOIP
Federal Definition of Prepaid Used: No	Align prepaid definition with MTSA definition (minutes that expire) *DOJ written advice indicated issue
Retail Transaction Covers Individual Purchase: No	Ensure individual purchases are covered (e.g. 6 cards pay six times not once as in a per transaction charge) *DOJ written advice indicated issue
DOR Implementation Cost: 0.25% prepaid only (DOR reports $200,000 not sufficient)	DOR Implementation Cost: 2.5% all 911 funds (DOR/LRO estimate $1.8 m cost to implement point of sale)
Consumer filing requirement: N (no commerce addressed)	Cover out of state online retailers (commerce addressed) *DOJ written advice indicated issue
Legislative Report Back: No	Legislative Report Back: 2/2016

Testimony of Assistant Attorney General Melisse S. Cunningham Regarding –A17 Amendment to HB 3317A Public Safety Subcommittee, Ways and Means Committee June 24, 2013

Co-chairs Winters and Williamson and members of the subcommittee, my name is Melisse Cunningham, and I am an Assistant Attorney General in the Tax & Finance Section of the Department of Justice. I have been asked to testify before the subcommittee today regarding potential legal issues that could arise under the –A17 amendment to HB 3317A.

While this proposed amendment would add language making the 9-1-1 tax in ORS 403.200 explicitly applicable to prepaid wireless telecommunications, there are several legal issues that may hamper the implementation of the –A17 provisions.

--On page 2, lines 11-13, the amendment provides a definition of "prepaid wireless telecommunication services" that limits the definition in part to services that are sold in "predetermined units or dollars" but this definition is not completely consistent with the definition of prepaid telecommunications services in the federal Mobile Telecommunications Sourcing Act (MTSA). If the intent is that the bill encompass all of those prepaid telecom services that are not covered by the MTSA, Oregon's definition should be very consistent with the federal definition in the MTSA.

--On page 3, lines 1-2, the amendment contains a definition of "seller" as a person who sells prepaid wireless telecommunications services, and "wireless telecommunications service" is in turn defined (at lines 16-17) as "commercial mobile radio service, as defined in 47 CFR 20.3." In turn "mobile service" is generally defined in the federal regulation as a "radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves."

Under this definition of "seller," the entity subject to the new requirement to collect the 9-1-1 tax at the point of sale, at least arguably, must be the person that is providing the telecommunications services. An argument could be made that a retail store that sells only prepaid telephone cards, for example, is not selling the telecommunications services, because a prepaid phone card, by itself, does not qualify as commercial mobile radio service under federal law. In which case, the retail store would not be required to collect the 9-1-1 tax under this amendment.

--On page 4, lines 22-23, the amendment would impose the 9-1-1 tax at a rate of 75 cents per "retail transaction." However, for all other land-line and wireless telecommunications services the tax would remain one imposed at a rate of 75cents per month. This difference could raise potential Equal Protection Clause violation arguments under the US Constitution along with issues under Article 1, sections 20 and 32 of the Oregon Constitution, because of the lack of tax parity between wireless telecommunications "subscribers" (who have long term contracts and pay monthly) versus prepaid wireless telecommunications "consumers" (who receive the same services but just pay up front for them). For example, a cell phone "subscriber" who has a contract with a company and pays 75 cents every month would potentially pay much more over the course of a year than a prepaid "customer" who buys a single prepaid card that grants the customer a certain number of minutes of access that may be used over the course of a year but who only pays 75 cents in 9-1-1 tax for that one "retail transaction." In that case, the "subscriber" would pay up to twelve times as much 9-1-1 tax as the prepaid "consumer" for the same privilege, i.e., a year's worth of access to the 9-1-1 system.

In addition, there is no limitation in the proposed amendment on how many prepaid card or minutes may be purchased in one "retail transaction." Thus, a prepaid "consumer" could potentially pay only 75 cents in 9-1-1 tax, but purchase a huge amount of access time, as long as it was done in one "retail transaction."

--On page 5, lines 11-30, the amendment requires the tax to be collected by the seller "with respect to each retail transaction occurring in this state." While these provisions may not present significant issues for sales that are made by retail sellers who have a physical presence in Oregon, they do not address the potential dormant Commerce Clause issues that arise under the US Constitution with regard to the state's ability to require out of state entities to collect and remit the 9-1-1 tax on retail transactions that may occur over the Internet and where the seller has no physical presence in the state. *See Quill v. North Dakota,* 504 US 298, 112 S Ct 1904, 119 L Ed 2d 91 (1992). One way that states deal with this problem is to have a collection mechanism for direct collection from the consumer, but there is no current mechanism in the 9-1-1 tax statutes that explicitly provides for reporting or direct collection from the consumers of prepaid wireless telecommunications services.

--On page 6, lines 28-30, the amendment grants sellers of prepaid telecom services compensation for expenses incurred in collection of the 9-1-1 tax, in the amount of three percent of the taxes collected. However, there is no similar compensation under the 9-1-1 tax statutes for other wireless telecom service providers who are also required to, and presumably incur expense in, collecting and remitting the 9-1-1 tax. Thus, this provision may also lead to arguments of unequal treatment of taxpayers under the Equal Protection Clause of the US Constitution along with issues under Article 1, section 20 of the Oregon Constitution.

These are a few of the issues that we have preliminarily identified in a very short review of the –A17 amendments. The Department of Justice has not undertaken a more in-depth analysis of the risks associated with any of these issues, but offers this summary of issues as information for the subcommittee's consideration.