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**Pennsylvania Senate
Joint Hearing of the Veterans Affairs and Emergency Preparedness Committee
and the Communications and Technology Committee**

on the

9-1-1 Emergency Call System

Testimony in Support of HB1789

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Thank you for the opportunity to testify today. We applaud the chairs for looking at the overall issue of 911, as the wireless industry believes that it is helpful to periodically review the structure and funding of the 911 system. Today I am here to address what the industry thinks is one very important 911 issue – the fair and efficient collection of 911 fees from prepaid wireless users. Therefore, I am testifying in favor of HB1789, legislation to adopt national model legislation for collection of 911 fees on prepaid wireless service at the point of sale.

I speak today on behalf of the following wireless carriers – AT&T, Sprint Nextel, T-Mobile, US Cellular, and Verizon Wireless – as well as the national Cellular Telecommunications and Internet Association (CTIA – the Wireless Association).

We believe that the National Conference of State Legislatures' (NCSL) model legislation, embodied in HB1789, is the best way to ensure that all users of wireless service contribute to the maintenance and operation of the Pennsylvania

911 system. With the rapid growth of prepaid service, it is imperative that Pennsylvania 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;
- What are the problems with Pennsylvania’s current law;
- The origin, development, and approval of the national model legislation by the National Conference of State Legislatures (NCSL);
- The key provisions of HB1789;
- The current status of the 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 be locked into a long-term service contract.

Some prepaid providers – namely AT&T, Sprint (via Boost Mobile), T-Mobile and Verizon Wireless – own their own 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 Pennsylvania 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 minutes. The card includes a phone number and a code that the purchaser uses to add the 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 80% of all prepaid wireless transactions occur in these third party retail locations.

Another option is to go to a wireless provider 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. An estimated 11% of prepaid transactions occur in these provider-owned stores.

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. An estimated 9% of transactions occur on the Internet.

National Trends in the Prepaid Market

Prepaid wireless has been the fastest growing segment of the fast-growing wireless industry for the past two years. According to CTIA:

- Prepaid subscribers are now 19.2% of all wireless subscribers, up from 15% in 2007;
- There are now over 53 million prepaid wireless subscribers, an increase of 5 million subscribers between December 2008 and June 2009;
- 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 10-15%, 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 to the 911 system. HB1789 would implement such a system.

What Are the Problems With the Current Law?

Current Pennsylvania law imposes a \$1.00 monthly 911 surcharge on each wireless service customer. The law was expanded to include wireless service customers in 2003, and the General Assembly added the following provision to address prepaid wireless service:

In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by this section shall be remitted based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities, such as customer address, location associated with the MTN [Mobile Telephone Number], or reasonable allocation method based upon other comparable relevant data and associated with Pennsylvania, for each customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of the month, if such information is available. [35 PS 7021.4(b)(4)]

Unfortunately, the current law in Pennsylvania and other states poses significant equity and compliance problems.

First, the requirement that a customer must have a sufficient positive balance on the last day of the month provides an opportunity for legal avoidance of the fee by customers. It does not take the customer long to figure out that if they wait to recharge their minutes until the first day of the month, they can avoid the loss of those minutes.

Second, the law states that the legal incidence of the fee is on the customer. However, the practical effect of the law for most prepaid wireless provider is that the provider ends up paying the fee because in at least 80% of the transactions, the prepaid provider has no way to collect the fee from the customer. In third

party transactions, the prepaid provider sells the recharge cards to the retailer at wholesale and never receives money from the consumer.

Some have suggested that the cost of the fee could be built into the wholesale price of the service. However, such a practice will not work because prepaid wireless cards are sold in bulk in a national marketplace at nationally negotiated prices, and are purchased and distributed nationally by major retail chains. The prepaid provider has no way of knowing in which state the cards will ultimately be sold. Since 911 fees vary across the states, from \$0 in Missouri to \$2.50 in Chicago or Atlanta, it is impossible to set a single uniform national price without requiring customers in states with no or low 911 fees to subsidize customers in states with high 911 fees.

Finally, the current law contains legal ambiguities that hinder compliance with the current law. In most transactions, the prepaid provider does not know the customer address and may not have the operational or technological capabilities to accurately determine which subscribers meet the legal requirement for remitting the prepaid fees. Such compliance issues have resulted in revenues that are lower than what would otherwise be expected under the current law. This revenue gap makes it more difficult for Pennsylvania's public safety community to maintain and improve its existing 911 system.

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

The problems outlined in the current law are not unique to Pennsylvania. There has been a longstanding acknowledgement by the wireless industry and public safety that the current prepaid wireless 911 fee collection methods, which are based on the postpaid wireless model, are not working. When the current methodology was first adopted in states 10 years ago, prepaid wireless was a very small portion of the overall wireless market that there was little focus on finding a solution. However, in 2007, the wireless industry recognized that the

growth in popularity of prepaid wireless required a new urgency to develop of 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, we 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 HB1789

House Bill 1789 implements the provisions of the NCSL model legislation. Following are the key provisions of the bill:

- Imposes a \$1.00 911 fee on each retail purchase of prepaid wireless telecommunications service;
- 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 Pennsylvania that is consistent with the state sales and use tax. This

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 Pennsylvania customers;

Provides that all current rules and procedures for the sales tax shall apply to the prepaid 911 fee, in order to minimize additional burdens on retailers who already must collect the sales and use tax on prepaid wireless transactions;

- Retailers would remit the 911 fee to the Department of Revenue, where they currently remit sales taxes. The Department would forward the money to the 911 fund. This avoids retailers having to remit sales taxes and 911 fees to two separate state agencies;
- Permits retailers to keep their first six months of collections in order to offset up-front costs of compliance with the new system, then allows retailers to keep 3% of collected fees on a going forward basis to offset ongoing compliance costs;

Status of Prepaid Point of Sale Model Bill in Other States

The attached table shows the status of the bill in legislatures throughout the country. Three states have enacted the POS model into law: Louisiana, Maine, and Texas. The bill is awaiting the Governor's action in Indiana and Virginia and is working its way through the legislative process in 14 other states.

We are hopeful that the success of this legislation in states across the country will convince the remaining states to adopt the model legislation later in 2010 and in the 2011 sessions. It took two years for states to conform to the federal Mobile Telecommunications Sourcing Act and we hope that this model bill will follow a similar timetable.

Conclusion: Key Reasons to Support HB1789

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 capture additional revenue to support the 911 system in Pennsylvania.
3. The bill piggybacks on the existing sales and use tax collection system to minimize additional costs on retailers. Retailers already collect the sales and use tax on prepaid wireless service, so this approach leverages existing processes.

Thank you again for the opportunity to testify today.



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

**NCSL RESOLUTION ON THE COLLECTION OF E911 FEES ON WIRELESS
PREPAID SERVICE AT THE POINT-OF-SALE ACT**

**EXECUTIVE COMMITTEE TASK FORCE ON STATE & LOCAL TAXATION OF
COMMUNICATIONS AND ELECTRONIC COMMERCE**

WHEREAS, E9-1-1 fees have historically been collected from telecommunications users on their monthly bills and remitted to governments by telecommunications providers; and

WHEREAS, the lack of a billing relationship between the prepaid wireless user and the sellers and providers of prepaid wireless service means that the existing collection methodologies are not well suited to prepaid wireless, causing administrative and legal disputes that inhibit collection of E9-1-1 fees on prepaid wireless service; and

WHEREAS, the number of prepaid wireless users has grown from less than 6% of the wireless marketplace in 2003 to over 18% in 2009; and

WHEREAS, the growth in popularity of prepaid wireless service has led states to consider methods to impose E9-1-1 fees on prepaid wireless service; and

WHEREAS, prepaid wireless users benefit from the access to the 9-1-1 system and should therefore contribute proportionately to funding the 9-1-1 system; and

WHEREAS, the prepaid wireless industry has approached the states with model legislation to create a uniform collection methodology that would collect prepaid wireless E9-1-1 fees on end users at the retail point of sale; and

WHEREAS, the adoption of a uniform methodology for collecting E9-1-1 fees from prepaid wireless consumers would provide needed funding for E9-1-1 systems while minimizing administrative costs for states and providers of prepaid wireless service; and

WHEREAS, the adoption of variations of the model legislation by the states of Maine, Texas, Louisiana and Wisconsin in 2009 legislation demonstrates the need for the National Conference of State Legislatures to endorse a single model to encourage states to adopt an uniform approach; and

WHEREAS, consistent state action through enactment of a model legislation for the collection of E9-1-1 fees on prepaid will forestall federal government intrusion or preemption.

THEREFORE, LET IT BE RESOLVED, that the National Conference of State Legislatures endorses the point-of-sale model legislation, the "Prepaid Wireless Charge," and calls upon State legislatures to pass legislation that implements point-of-sale-collection of E911 fees.

Adopted by the NCSL Executive Committee on State and Local Taxation of Communications and Electronic Commerce, July 20, 2009

Prepaid Point of Sale Status Sheet

March 18, 2010

Enacted into law in 2009 session:

- ME LD1056
- LA HB856
- TX HB 1831

2010 Action

Passed both Houses:

- The IN point of sale provision was included in an omnibus tax bill (HB1086), which passed both houses on 3/13 and now goes to the Governor.
- The SC POS bill passed the House and the Senate (H4551) with slight differences and is currently in the House pending concurrence with Senate changes.
- The VA bill has been passed by both houses and is awaiting governor's action (HB754).
- The Mississippi bill has passed both the Senate (2/4) and House (3/8) overwhelmingly and is awaiting reconciliation of minor differences (SB2938)

Passed one House:

- The Oklahoma bill passed the House 87-6 (HB2556) and is pending in Senate committee
- The PA bill passed the House 3/8 and will be heard in Senate committee 3/24 (HB1789)
- The KS bill has passed the House and is pending in the full Senate (SB 48)
- The CO bill passed the Senate 3/18 on a 24-8 vote (SB 120)

Passed Committee:

- The TN bill passed its first House and Senate committee (3/9) and is pending in Finance, Ways and Means in the House and Senate (HB 3533/SB2497)
- The FL bill passed its second Senate Committee unanimously 3/17 (SB 1202)
- The NY bill passed its first committee unanimously on 2/24 and is pending in Ways and Means (AB8830)
- The IL bill is pending third reading with substantive amendment awaiting committee approval (SB 120)

Introduced, pending committee action:

- The RI bill was heard 3/9 in House committee (HB7257)
- The MA bill was heard in the House Revenue Committee on 3/3 (HB 4514)