

**Testimony presented by
Pennsylvania Retailers' Association**

**Before the
Senate Veterans Affairs and Emergency Preparedness
And
Communications and Technology
Committees**

March 24, 2010

On behalf of the Pennsylvania Retailers' Association, the statewide trade association representing retailers throughout the Commonwealth, I would like to take this opportunity to address our concerns with HB1789 which would shift emergency 911 fee collection and remittance responsibilities on prepaid wireless devices from wireless service providers to retail businesses. Our membership consists of small and large stores alike, and many of our member stores sell prepaid wireless devices for the convenience of their customers.

When a pre-paid phone leaves one of our members' stores, the phone does not provide service and it does not have a phone number. The consumer activates the phone through the carrier's on-line web site or from a working phone. Carriers generally request a zip code, home phone or some other geographic information to assign a telephone number to the phone. The activation process sets up the account for the user to which minutes are added. Similarly, when a pre-paid wireless calling card is purchased, it does not credit minutes to an account until the customer after purchase associates the card with an active account. Outside of the store setting, consumers can add minutes to their phones on a recurring basis, over the internet, by calling the carrier or by authorizing a direct to phone refill option.

PRA understands that E-911 fees on pre-paid wireless services pose some unique issues for carriers who have an obligation to collect and remit these fees. We are willing to work with carriers to solve those complexities. However, any current difficulty does not justify carriers shedding their obligations to 911 by imposing costly new burdens on retailers, the state and 911 authorities.

E-911 fees, Universal Service Fees and other telecommunications related fees and taxes have long been the responsibility of the carrier. There is nothing about pre-paid wireless service that justifies changing that. Recent proposals which seek to shift the burden to collect and remit E-911 fees on pre-paid wireless services to unwilling retailers will impose unnecessary costs on retailers and states and losses to 911. Even proposals to compensate retailers for their collection and administration of these fees are insufficient to cover the real cost of collection, remittance, auditing, and risk involved with this responsibility.

We oppose this E-911 Point of Sale (POS) fee legislation because:

- 1) **It would create complexity for retailers and the State.** The legislation would not only create a multi-million dollar uncompensated cost for the retail industry which includes hundreds if not thousands of retailers who sell pre-paid wireless cards. For the state, it would move from a time-tested collection and remittance system already in place with the handful of remaining national carriers to an expensive enforcement, auditing, collection and compliance nightmare seeking payments from countless large, small and casual retailers.
- 2) **It would place phone, credit card and on line sales beyond the reach of the State.** A state POS fee leaves countless transactions beyond the practical reach of the state. Without a nexus to the state,

on-line, phone sales, direct to phone, out of state and “free” transactions escape the practical reach of the proposed POS fee.

- 3) **The fee is regressive.** Low-income consumers and those without credit cards will have to pay the fee; those with computer access, a credit card, or the ability to cross state lines will avoid the fees or minimize the annual cost of such fees. This discrepancy will increase as pre-paid services grow in popularity and move up-scale. For example, the low-income user might only be able to afford \$10 worth of minutes at a time, so he would pay a \$1 or 10% tax per transaction, and he may make several purchases every month. Those with credit cards can buy enough minutes for the entire year and only pay the fee once – or likely not at all if he buys over the internet.
- 4) **It short-changes 911.** When another state looked at a similar proposal, the auditor found that tens millions of dollars for 911 would be lost for the State and local 911 jurisdiction if the retail fee were imposed in lieu of enforcing a monthly fee which is comparable to what wireless subscribers pay. HB1789, as currently drafted, does not entitle the Pennsylvania Emergency Management Agency (PEMA) to \$12 per year on pre-paid accounts. Instead, every pre-paid user would have to purchase one device per month (\$1 per month x 12 months) to simply bring PEMA's revenue entitlement in line with current law - and there is no proof the speculated number of transactions will occur.
- 5) **Moving from a time tested carrier based system to an unwieldy retail system is burdensome on the State.** Shifting from monthly fees collected from a handful of wireless carriers to attempting to collect fees from tens of thousands of retailers would impose significant administrative, accounting, compliance and enforcement burdens on the state and retailers.
- 6) **Carriers have systems to collect and remit fees.** Creating a new elaborate retail –based collection system is duplicative and wasteful in light of the fact that wireless carriers all have existing systems in place to collect and remit a host of fees and taxes from subscribers. They have also implemented means to pay federal universal service fees from pre-paid calling cards. There is no need for retailers to duplicate this effort.
- 7) **Carriers have all the information needed to rationally assess E911 fees.** They know the zip code and area code of the pre-paid wireless phone. They know where a phone is used. They know how long a phone is used in any particular location. They know when a caller adds minutes to a phone. They have direct contact with the user when a phone is activated. They know every minute remaining on a phone's account. All of these factors are much more closely related to the burden an individual phone places on a community's 911 service than where a phone is sold.

While pre-paid wireless services may cause challenges for the carriers, they possess all the infrastructure and information needed to collect and remit fees on a more efficient and rational basis. Similarly, another large concern to our members is this legislation could easily expand the role of the state entity supervising telecommunications to include retailers and open the flood gates to other proposals for retailers to collect other telecommunications taxes or fees which are the responsibility of the carrier or cell phone manufacturer.

There are already alternatives to retail POS in place. Two options that are currently being utilized by the providers include:

- 1) Carriers can deduct minutes in pre-paid accounts and if insufficient minutes exist on the collection date, run a negative balance which will be paid when additional minutes are purchased;
- 2) A mathematical formula (ARPU method) can be used to determine the number of active pre-paid accounts. Once determined, the monthly fee could be assessed against that number;

Other alternatives that would ensure full compliance with 911 fee responsibilities yet maintain complete fairness among providers include:

- 1) Strengthen current statute to ensure that all prepaid wireless providers – including those that resell other providers minutes (resellers) are remitting their share of 911 fees (this would likely bring in 100% of the revenue PEMA says its currently not receiving on prepaid accounts);
- 2) Prepaid wireless providers that resell other providers minutes could pay a wholesale tax on the minutes they buy in bulk to ensure that no resellers escape their current statutory obligation (this would reduce current remittance from a few dozen to only a handful – to the contrary, the POS model would increase remittance by an unknown number well in the 1000s as there are approximately 50,000 retailers operating in PA);
- 3) The fee could be assessed on the basis of active accounts with area codes that fall within the state, to be remitted by the provider of those accounts;
- 4) The fee could be assessed annually on the prepaid provider based on each providers' market share of prepaid subscribers

Prepaid wireless phones offer consumers great value, especially for low-income individuals and college students. If the regulatory and financial burdens on retailers becomes too large and the risks liability too great, some retailers – especially smaller entities – may simply not carry pre-paid wireless products.

The current economic climate has been especially difficult on retailers. There could be no worse time to add new costly burdens on our industry. There is a persistent misconception that adding new fees, taxes or information distribution at the point of sale is an easy and inexpensive thing for retailers to do. It is not. Fee collections that vary from jurisdiction to jurisdiction are complicated and expensive to implement, operate, manage and audit. Every dollar of unnecessary expense hurts our members' ability to save jobs for workers and money for consumers. The industry's cash registers should not be the wireless providers' tax collector, and a new law that would requires retailers to become collection agents for 911 fees is bad for businesses, consumers, states and public safety.

Therefore, it is PRA's position that the collection and remittance of E-911 fees should remain the responsibility of the wireless carrier on behalf of their subscribers. We have no objection to state efforts to streamline, harmonize, simplify or reduce the E-911 fee collection burdens on pre-paid wireless carriers and users, but we do not believe the appropriate solution is to abandon an established system that is not broken only to replace it with one that is inherently unjust and ultimately unenforceable