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ROCI/Wireless Industry Work Group

Prepaid Wireless Service

Point of Sale E911 Tax/Fee Charge - Legislative Principles

Overview – Emergence of the Prepaid Wireless Service Product:

Traditional 911 tax and fee (e.g., “charge”¹) administration is based on the monthly billing and collection processes used by landline and wireless carriers. This model is simple, efficient, and transparent and has worked well for customers that have a monthly bill and also have a definitive “usage” address.

Wireless industry growth and expansion to new types of customers in recent years has created new methods of distribution through retail channels. Traditional 911 charge administration does not fit this new model of retail distribution.

This is particularly evident with the emergence of “no strings attached” prepaid wireless services that have a purchasing experience far more similar to that of buying a toaster or a DVD than that of the traditional “signing up” for phone service. The prepaid wireless buyer simply walks into a retail store, picks out the “brand”, pays for it, and walks out with activated service. This contract-free, anonymous (no name or address information), “cash & carry” product satisfies a consumer demand that has been growing at over 15% annually in the last several years. Retailers play a significant role in this growth, with well over 80% of prepaid wireless sales occurring in retail stores.

The wireless industry and a group of representative retailers (“Retailers of Common Interest” or “ROCI”) have formed a working group to explore solutions for administering E911 charges to prepaid wireless customers. A significant goal of this effort is to identify a solution that leverages existing retail processes and that follows principles of sound taxation policy. The “ROCI/Wireless Industry Work Group” has developed the following concepts for a legislative solution.

Point of Sale E911 Charge - Legislative Principles

End User Charge – the charge will apply to end users, consistent with the majority of existing E911 charges in the United States. This is also consistent with policy to disclose government charges to the consumer/taxpayer.

Flat Charge – The proposed retail point of sale E911 charge will be a single flat amount per transaction. A flat charge works for the majority of retailers’ point of sale systems as a practical matter, and it will also be consistent with most 911 jurisdictions in the United States that currently impose a flat charge on traditional monthly billed landline and wireless customers. The retail point of sale proposal will seek to establish the E911

¹ “Charge” will be used throughout this document as a generic term for “tax” or “fee”.

charge on the prepaid customer in a fair manner equivalent to the charge imposed on their monthly billed counterparts.

Collection at Retail Point of Sale – the charge will be collected by the retail seller at the point of purchase. It will be separately identified and disclosed on the invoice/cash register receipt. The retail seller may also be allowed, consistent with existing sales tax² laws for collection of sales tax, to absorb the charge into the sales price and disclose to the purchaser that the E911 charge is included in the sales price.

Sourcing – the charge will be sourced to the retail point of sale location (e.g., the state jurisdiction where the sale takes place). This is in recognition of the retail “cash & carry” nature of the transaction, as well as the anonymous nature of the purchaser (since the prepaid wireless customer does not sign up for a contract or provide any address information). The point of sale is the most reasonable and appropriate sourcing for this type of transaction.

One Statewide Charge – the retail point of sale E911 charge will be a single statewide charge and reporting will be for the state in total. Many states currently have a statewide charge for wireless service and other states are following this trend. With regard to distribution of funds, the state will have the responsibility for allocation or attribution of funds within the state (e.g., each individual state will determine the methodology to distribute E911 charge funds among state/local public service agencies based on population or other criteria that the state may establish).

No Exemptions – the Work Group recommends that the states not provide exemptions from the point of sale E911 charge. As a practical matter the majority of prepaid wireless service purchasers will not generally qualify for exempt status. It is further recommended that should a state decide to provide E911 charge exemptions to certain organizations, that a process should be adopted for the organization to seek refund of the charges after purchase. This will allow minimal disruption of the retail sale process and will enhance control of any such exemptions granted.

Administration/Compliance – reporting will be by state total and remittance will be to one central reporting entity in the state. It is preferable that this central reporting function be handled by the state tax reporting agency³ on behalf of the 911 authority. This will utilize procedures and processes already in place for retailers for compliance with sales tax requirements.

Audits and Audit Trail – The E911 charge separately stated and recorded by the retail business at the retail point of sale provides a sound transaction trail that is subject to efficient and cost effective audit by the government. The retail business transactions will

² The term “sales tax” is used in this document to represent the applicable transaction tax that is applied to retail purchases in a given state.

³ The proper agency will vary from state to state, but should be the agency (e.g., Department of Revenue, Comptroller, etc.) that administers the referenced tax (e.g., “sales tax”) and provides registration, resale-exemption, audit and appeal procedures for said tax.

be the subject of the audit. It is recommended that such audits be conducted by the state tax reporting agency, on behalf of the 911 agency, to leverage existing processes and practices that exist for the sales tax.

Vendor Compensation – costs to comply with E911 charge requirements will be recognized by providing “vendors comp” to retailers. E911 charge “vendors comp” is already provided for in most states. It is the recommendation of this Work Group that the state provide appropriate vendors comp that will also compensate sellers for any incremental setup costs incurred to adapt existing systems to collect the new E911 charge.

Indemnification/Liability Protection – Retail sellers will have the same liability protection and indemnification provided by states for acts or omission related to collecting of E911 charges and for handling of 911 calls as that provided to wireless service providers.

No Alternate or “Cafeteria” E911 Charge Plans – the Retail Point of sale E911 charge structure is proposed as the only means for administering the E911 charge for prepaid wireless customers. This will ensure that all customers/taxpayers pay the charge consistently and that there is a level playing field for all prepaid wireless sellers.

Online or Phone-In “Remote” Prepaid Wireless Sales – the proposal will include procedures for sourcing the remote prepaid wireless customer consistent with those provided for in the Streamlined Sales Tax Agreement for prepaid telecommunications, for purposes of applying the E911 charge. Those sourcing rules follow the general sourcing rules for sales of tangible personal property but allow an option to the vendor to use the mobile telephone number.

Key Tax Policy Factors:

1. “Adequacy of Funds for the Particular Governmental Purpose” - the proposed E911 charge will be structured to produce adequate funds from the prepaid wireless customer/taxpayer base. The charge will be set to produce results for states that currently apply a E911 charge to prepaid wireless customer/taxpayers such that revenues will not decline, either relative to current levels that they receive or projected future levels under the current methodology. (Note: Another consideration, beyond the scope of this Work Group, will be to evaluate the funding impact of an expanded base, in particular but not exclusively, for states that currently do not impose a charge on prepaid wireless for possible revision and lowering of the overall E911 charge in a particular state).

2. “Horizontal” Fairness – Establishing a point of sale E911 charge will help ensure that all prepaid wireless customers/taxpayers pay. This in turn will provide equity among prepaid and postpaid (e.g., monthly billed) wireless customers (e.g., both types of wireless customers will be subject to an end user E911 charge and will therefore be treated equivalently under this plan).

3. "Vertical" Fairness" - the proposed flat charge will be structured to take into account the average purchase price of prepaid service when compared to average monthly-billed service (e.g., industry average monthly revenue per prepaid user is approximately \$28 compared to postpaid user revenue of \$50 per month). Therefore the E911 charge will be proportional to the average purchase price of the prepaid card so that the prepaid customer is not unduly burdened.

4. "Flat Charge and Potential Regressivity" - As a matter of tax policy it can be argued that a monthly flat charge can be regressive and unfair to those landline and wireless customers that have relatively low monthly rate plans (e.g., a monthly billed customer that has a \$20 per month landline or wireless plan will generally pay the same E911 charge as a \$100 per month plan). However, most jurisdictions arguably tend to impose charges that are reasonable relatively to the average monthly landline or wireless customer bills. The retail point of sale E911 charge proposal will therefore seek to establish the charge on the prepaid customer in a similar manner to reach a "rough justice" in comparison to the charge imposed on their monthly billed counterparts.

5. "Market/Consumption Impact" - in addition to setting a flat charge that does not unduly burden the lower income customer/taxpayer, the established charge should ideally be evaluated and set at a level that limits the degree of any negative impact that the charge may have on consumer purchasing decisions. This was not necessarily a critical issue when phone service was provided to customers through a monopoly enterprise, but it is an important consideration in the competitive environment of today.

6. "Simplicity" (both in actual application and in understanding by average taxpayer) - the retail point of sale model is relatively simple to administer and understand. The cash register receipt/invoice or related disclosure will also provide the customer with an easy to understand description of the type and amount of the charge.

7. "Exportability" - part of the E911 point of sale charge proceeds will be generated by non-residents who purchase prepaid wireless services at retail locations within a given state. This is equitable given that the non-residents also benefit from the public safety services and the ability to call "E911" while in that state.

8 - "Earmarking" - "E911" provides benefit and service to the entire community. Therefore it is appropriate to expand the current E911 charge payer base to specifically include prepaid wireless customers through the adoption of a retail point of sale E911 charge.