



**Testimony of
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In Support of Massachusetts House Bill 2030

**Before the
Massachusetts Joint Committee on Public Safety and Homeland Security**

December 17, 2019

Chairs, Vice-Chairs, and committee members, on behalf of CTIA®, the trade association for the wireless communications industry, I submit this testimony in support House Bill 2030. H.2030 directs the Department of Revenue to promulgate regulations to collect the 9-1-1 fee from prepaid wireless users at the point-of-sale. Such regulations are consistent with the Massachusetts legislature's directive that wireless end-users who have access to and benefit from the Commonwealth's 9-1-1 system also contribute to that system. Forty-four jurisdictions, including Connecticut, Maine, New Hampshire, Vermont, Rhode Island, and New York, have adopted similar legislation. CTIA and the wireless industry would also like to thank Chair Naughton for sponsoring similar legislation to the bill before the committee today and support that legislation as well.

The wireless industry believes that prepaid point-of-sale collection is the best way to meet the legislature's clear directive that users of the Massachusetts 9-1-1 system contribute to the maintenance and operation of the system. With nearly 1 in 5 wireless users choosing prepaid service, it is imperative that Massachusetts adopt 9-1-1 prepaid point-of-sale legislation that brings parity between prepaid and postpaid customers while efficiently and effectively collecting 9-1-1 fees from those wireless consumers who benefit from this vital and proven emergency communications system.



In 2002, the Massachusetts legislature funded the Enhanced 9-1-1 system through a direct surcharge on business and residential telephone customers.¹ The legislature further clarified in 2008 that the Enhanced 9-1-1 would be funded by “each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system.”² This included traditional landline, wireless, and internet-based voice services.

The legislature charged the State 911 Department in 2008 with creating “an equitable and reasonable method for the remittance and collection of the surcharge or surcharge amounts” for prepaid wireless services.³ Unfortunately, the subsequent regulations did not result in prepaid end-users equitably sharing the costs of the Enhanced 9-1-1 system. Thus, contrary to the legislature’s clear mandate, prepaid wireless end-users do not pay any fees to support 9-1-1 services in Massachusetts.

How Prepaid Wireless Differs from Postpaid Wireless

Prepaid wireless service allows customers to pay in advance for a fixed number of minutes or for unlimited minutes for a fixed period. 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.

In contrast, the wireless service provider, or its agent, directly sells traditional postpaid wireless service to the consumer. Providers bill consumers monthly and must pay that monthly bill, including taxes and fees, in order to receive service. Under federal and Massachusetts law, the wireless

¹ Chapter 239 of the Acts of 2002

² Section 8 of Chapter 223 of the Acts of 2008

³ A relatively new product in 2008, prepaid wireless service is similar to traditional postpaid wireless service; however, there are no long-term contract requirements and no monthly bills on which an Enhanced 9-1-1 fee can be assessed.



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 9-1-1 agency. Unfortunately, that same sourcing methodology does not work for prepaid wireless service.

The Prepaid Business Model Makes It Difficult To Track Transactions & Accurately Assess 9-1-1 Fees

Wireless providers market and sell prepaid wireless service differently than postpaid. The initial purchase of prepaid service may occur at a third party retail store (like Wal-Mart, Target, 7-11, or Best Buy) or at a prepaid wireless provider's retail store or website. This initial purchase typically includes a phone bundled with a fixed number of minutes or units for a single price. When those minutes or units are exhausted, the customer has several options.

After the initial purchase, a customer can "recharge" their service by purchasing a card with a fixed number of minutes or units from a 3rd party retail store or from a wireless provider's retail store. The card may include a phone number and a code that the purchaser uses to add the minutes or units to the phone. It is important to note that the customer -- and not the retailer -- adds the minutes or units to the customer's phone. Additionally, neither the wireless provider nor the retail store knows where the customer lives.

Due to the unique business model of prepaid wireless services, the only way to accurately capture the 9-1-1 surcharge is to collect the surcharge at the point-of-sale at the time of the retail transaction, as the wireless provider does not know where the customer purchased the initial service or



the recharge card for third party sales. This makes it impossible for the carrier to accurately assess the correct state's 9-1-1 fee from the customer.

The adoption of the point-of-sale method to collect the 9-1-1 fee from prepaid subscribers has not resulted in any significant problems that have caused any state to change its collection methodology or any widespread rejection by retailers selling the cards because of new collection or reporting requirements.

The Growth of Prepaid Nationwide Supports the Efficient & Accurate Point-of-Sale Methodology for Collecting 9-1-1 Fees

With the significant growth in the prepaid wireless market over the last decade, it becomes paramount that Massachusetts efficiently and accurately collects 9-1-1 fees from prepaid wireless consumers to ensure adequate funding of the 9-1-1 system. According to CTIA's most recent figures:

- At almost 18% (17.6%), nearly 1 in 5 wireless subscriptions are prepaid;
- At 74.1 million, prepaid subscriptions are equal to 22.2% of the U.S. population;
- There are now over 74.1 million prepaid wireless subscribers, an increase of almost 26 million subscribers between December 2008 and December 2018.

Status of 9-1-1 Prepaid Point-of-Sale Legislation in Other States

The attached map shows the enactment of 9-1-1 prepaid point-of-sale legislation in states throughout the country. Since the National Conference of State Legislatures' (NCSL) endorsement of 9-1-1 prepaid point-of-sale legislation, 42 states, the District of Columbia, and Puerto Rico have adopted the point-of-sale model, including the nearby states of Connecticut, New York, New Hampshire, Vermont, Maine, and Rhode Island. As shown on the map, Massachusetts is the only state in the country that imposes 9-1-1 fees on prepaid wireless service that does not use the point-of-sale methodology.



Moreover, Congress passed legislation in 2018 prohibiting a state or local jurisdiction from imposing a collection or remittance obligation on a business unless the collection or remittance is in connection with a financial transaction (i.e., when a business receives consideration from a customer in exchange for the good or service). For prepaid wireless transactions, the financial transaction occurs at the point-of-sale, so the only opportunity for Massachusetts to impose collection of its 9-1-1 fee from a prepaid customer is at the point-of-sale.⁴ Failure to implement a point-of-sale collection system puts existing prepaid wireless 911 revenues at risk.

Conclusion: Key Reasons to Support H.2030

H.2030 is consistent with the directive of the Massachusetts legislature that end-users shall support the 9-1-1 system.

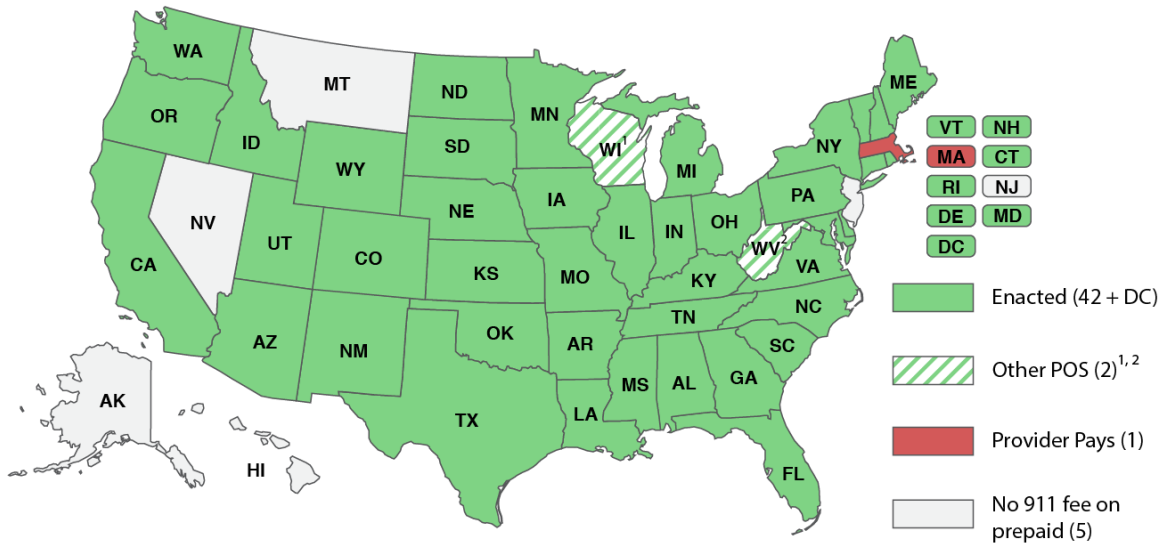
- 1.) Collection of the 9-1-1 fee at the point-of-sale is based on actual sales, is transparent to the consumer, accurately sources the transaction to the proper state, is a more efficient methodology for collecting the surcharge from prepaid end-users, and is fair to postpaid consumers.
- 2.) The prepaid point-of-sale method will provide stable and predictable emergency services revenue, critical to supporting the 9-1-1 system in Massachusetts.
- 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.

⁴ 47 U.S.C. § 1510



In closing, the wireless industry believes the fair and equitable funding of 9-1-1 systems is paramount to our consumers and the citizens of Massachusetts. As such, we strongly urge your support and passage of H.2030.

911 Prepaid Point of Sale Status



¹ Wisconsin: Police and fire protection fee at POS

² West Virginia: Sales tax in lieu of 911 fee