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STEPHEN L. DIAMOND
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COMMISSIONERS

February 6, 2006

Honorable Philip L. Bartlett II, Senate Chair
Honorable Lawrence Bliss, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
August, Maine 04333

Re: Report on Prepaid Wireless Telephone Services

Dear Senator Bartlett and Representative Bliss:

In 2005, legislation was enacted requiring the Commission to examine issues relating to the collection of certain fees on subscribers to prepaid wireless telephone services (Resolves 2005, ch. 62). The Commission must submit a report of its findings to the Joint Standing Committee on Utilities and Energy by the first Monday in February 2006.

Enclosed is the above-mentioned report and four attachments.

The Commission looks forward to working with the Committee on this subject when the Committee considers the content of this report.

Sincerely,

Public Utilities Commission
Kurt Adams, Chairman
Stephen L. Diamond, Commissioner
Sharon M. Reishus, Commissioner

Attachments

cc: Utilities and Energy Committee
Jon Clark, Legislative Analyst



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**Report by the Maine Public Utilities Commission,
Emergency Services Communication Bureau to the
Utilities and Energy Committee on
Collection of Fees on Prepaid Wireless Telephone Services**

I. MAJOR ISSUES PRESENTED

Current Maine law provides that the E-9-1-1 system will be funded by a statewide surcharge levied on various telephone exchange and access lines and “cellular or wireless telecommunications service subscribers.”¹ Under the current law, postpaid wireless subscribers are contributing to the E-9-1-1 fund, but prepaid wireless subscribers are not. The threshold question the Committee must answer is: Should prepaid wireless subscribers be required to contribute to the E-9-1-1 fund? Our research indicates that at least 17 states have answered this question in the affirmative. As explained in section IV below, we believe that equity considerations require that both prepaid and postpaid wireless subscribers should be required to contribute to the E-9-1-1 fund. To the best of the Emergency System Communications Bureau’s knowledge, none of the prepaid service providers who participated in the Committee’s consideration of LD 1418 opposed the concept that both prepaid and postpaid subscribers should contribute to the E-9-1-1 fund.

The questions that generated the most disagreement during the Committee’s consideration of LD 1418 centered around the proper mechanism for assessing a surcharge on prepaid wireless subscribers. The mechanism we propose in this report is based on the “Tennessee Model” which is currently employed in five states and is discussed in section VI(C) of this report. The organizational structures and methods of doing business of the prepaid wireless providers operating in Maine differ from provider to provider. In recognition of these differences, we have crafted a proposed amendment to the existing E-9-1-1 funding law that offers some flexibility to the providers of prepaid wireless service by giving them the following two alternative methods for collecting the surcharge from their subscribers:

- Collect the surcharge at the beginning of each month during which time is left on the service, or
- Collect the surcharge for each month that the service can be used at the point of sale.

Our proposed amendment offers a third option for prepaid wireless providers who are either unable or unwilling to comply with the first two options. This third option would allow a prepaid wireless provider to calculate the amount its

¹ The current law governing E-9-1-1 funding is codified at 25 M.R.S.A. § 2927. A copy of section 2927 is attached to this report as **Attachment 1**.

subscribers owe to the E-9-1-1 fund by the use of a formula. The formula would require the provider to divide its total earned intrastate prepaid wireless telephone revenue during the monthly E-9-1-1 reporting period by the average revenue per customer for that month, multiply the quotient by the surcharge, and pay the resulting amount.

This proposed amendment, which is included as **Attachment 2** to this report, is intended to allow each prepaid wireless service provider to select the surcharge collection method, or combination of methods, that is preferable to that provider. Each of the above-listed options is discussed in detail in section VI(D) of this report.

II. BACKGROUND

A. LD 1418 and Resolves 2005, Chapter 62

Last session, the Utilities and Energy Committee (Committee) considered LD1418, An Act to Subject Prepaid Wireless Telephone Service to E-9-1-1 Funding Requirements. LD 1418 was submitted at the request of the Public Utilities Commission's Emergency System Communications Bureau (ESCB). As originally drafted, LD 1418 would have amended existing law governing E-9-1-1 funding to specifically require each prepaid wireless telephone service provider to collect from its customers a surcharge for the period of the prepaid service at a rate of 50 cents per month. The provider would have been given the option of collecting the surcharge at the time the customer purchased the service or at the beginning of each month for which time was left on the service.

After considering the issues raised by LD 1418, the Committee passed a Resolve, to Direct the Public Utilities Commission to Examine Issues Relating to the Collection of Certain Fees on Prepaid Wireless Telephone Services (Resolve).² The Resolve directs the Commission to "investigate methods for ensuring equity in funding the E-9-1-1 system, the Telecommunications Education Access Fund and the universal service fund ... through the collection of fees on prepaid wireless service." The Resolve further provides that the Commission must consider "methods that involve collecting fees from providers of the service and methods that involve collecting fees at the retail point of sale." The Commission must also consider "methods to establish the amount of fees and how or whether these should relate to the sale price or value of prepaid wireless service." Finally, the Resolve directs the Commission to "examine methods used in other jurisdictions to determine if suitable models have been created that have proven to be effective."

² Resolves 2005, ch. 62. A copy of the Resolve is included as **Attachment 3** to this report.

The Resolve requires the Commission to submit a report of its findings to the Committee on or before February 6, 2006. The Resolve also gives the Committee the authority to report out a bill during the second regular session of the 122nd Legislature relating to the subject matter of the report.

The purpose of this report is to satisfy the requirements of the Resolve.

B. Summary of Action by ESCB

This report has been prepared by the ESCB. To gather background information, the ESCB conducted a telephone survey of prepaid wireless providers doing business in Maine. The results of this survey are summarized in **section III** of this report. The ESCB also conducted a state-by-state review of statutes relating to the funding of E-9-1-1 services. As part of this review, the ESCB contacted state administrators for E-9-1-1 services across the country to determine how various states handle issues relating to prepaid wireless funding of E-9-1-1 services. **Attachment 4** to this report is a summary of our review of state statutes and operations.

C. Major Questions Raised During the Committee's Consideration of LD 1418

The following four major questions surfaced during the Committee's consideration of LD 1418.

- Is there a fundamental difference between prepaid and postpaid wireless service that justifies different treatment under the E-9-1-1 funding law?
- Is there a justification for amending the current law governing the E-9-1-1 surcharge on prepaid wireless service?
- If the law should be amended, how should the surcharge on prepaid wireless service be quantified?
- If the law should be amended, how should the surcharge on prepaid wireless service be collected?

This report will address and answer each of these major questions.

III. WIRELESS PROVIDERS IN MAINE

A. Regulation of the Wireless Industry

The cellular industry, which includes both prepaid and postpaid wireless providers, is essentially unregulated. In 1994, the Federal Communications Commission (FCC) determined that wireless providers were not

voluntarily providing access to the E-9-1-1 system. The FCC subsequently required that cellular telephones provide various location data and other emergency information along with an interface into E-9-1-1 PSAPs.

For the most part, the Maine Commission has no oversight responsibility over wireless providers. The only generally applicable reporting requirements for wireless service providers in Maine relate to funding the E-9-1-1 system and are found in 25 M.R.S.A. §2927.

With the exception of the FCC required E-9-1-1 interface, and the E-9-1-1 fund reporting requirement, cellular communications is a very competitive, unregulated market, and additional information about wireless service providers is generally considered to be proprietary in nature. The lack of oversight responsibility, limited reporting requirements and proprietary status of wireless provider information make it difficult to obtain details about the operations of wireless providers.

B. Background Information on Prepaid Wireless Service

There are two types of wireless providers in Maine: **postpaid wireless providers** who bill their subscribers on a monthly basis for calls that have already been made and **prepaid wireless providers** who require their subscribers to pay in advance of receiving service. As noted above, subscribers to postpaid wireless services in Maine are already paying into the E-9-1-1 fund. Therefore, this report does not focus on postpaid wireless service providers and our proposed amendment recommended in this report does not alter the requirements for postpaid subscribers.

Based on published information and trade journal reports, we understand that TracFone is the largest prepaid wireless provider in the United States with over 4.9 million subscribers. Unlike most other large wireless providers, TracFone does not have access to, nor does it operate or control, carrier switches. Instead, TracFone resells wireless service through a prepaid method from over thirty facilities-based wireless carriers across the nation. Telemac Cellular Corp. originally designed the technology used by TracFone for cellular rental services. This technology is atypical for the prepaid wireless industry because the actual account information is stored wholly in the phone itself. When a TracFone subscriber activates his/her phone, the user does so manually. Although the subscriber must contact TracFone customer service to activate the phone, this is done only to receive activation codes that the user then enters manually in the phone. TracFone does not activate the phone directly.

Prepaid wireless service is frequently associated with the purchase of a card by the subscriber. It is important to distinguish a prepaid wireless card from the typical prepaid access card. There are various styles and types of

prepaid access cards, which are commonly referred to as a retail “gift” card, phone card, calling card, long distance phone card or stored value card. These cards have a validation identifier and a specific monetary value within the magnetic swipe strip on the back of the card. These access cards retain any unused value after a purchase until such time the total card value is used.³

Prepaid wireless cards are different from prepaid access cards in several significant ways. Prepaid wireless cards do not store information on a magnetic swipe strip and have no monetary value that is tracked by the card during its usage. Prepaid wireless cards are not required to be inserted into or swiped on the cell phone and are used solely to provide the purchaser with a validation number for prepaid wireless telephone activation. This validation number may be provided to the prepaid wireless provider over the internet or through a voice telephone conversation. Prepaid wireless cards may be purchased at retail stores such as Radio Shack or Wal-Mart. In addition, some wireless providers operate their own retail stores at which their prepaid wireless cards may be purchased.

C. Estimated Number of Prepaid Wireless Subscribers in Maine

It is difficult to estimate the number of prepaid wireless subscribers in Maine because providers do not currently report this information to any state or federal agency. We do know that, due to the nature of the service, the number of prepaid wireless subscribers may vary significantly from month to month. In addition, from the trade press and other anecdotal information, we understand that prepaid service is becoming more popular and that the number of prepaid subscribers is growing.

We believe that a reasonable, conservative estimate for the current number of prepaid wireless subscribers in Maine is 100,000. This estimate is based on the following limited information. In the past, TracFone did provide subscriber information to the ESCB on a monthly basis. The highest number of Maine subscribers reported by TracFone for any month was 70,392 for the month of January 2005. The second highest number was 54,038 for the month of December 2004. During the hearing and work session on LD 1418, the ESCB suggested that 10,000 was a reasonable estimate for the number of Maine subscribers for each of the other five prepaid wireless providers operating in the State. Responses from the providers suggested that this number was likely low. For the purposes of this report, we have assumed 50,000 prepaid wireless subscribers for TracFone and 10,000 for each of the remaining five providers, for a total of 100,000. We emphasize that this is a very conservative estimate and that the actual number is probably higher. If the ESCB’s proposed amendment to the E-9-1-1 funding law were enacted, each prepaid wireless provider would be

³ There are different types of long distance calling cards. For instance, there are some long distance calling cards that do not use a magnetic strip, but do include a pin number that is used by the card holder to place long distance phone calls.

required by § 2927(1-B) to report its total number of prepaid wireless subscribers on a monthly basis.

D. Prepaid Wireless Providers Operating in Maine

There are six prepaid wireless service providers in Maine. The ESCB conducted a survey of these providers to gather information about the various wireless plans that are available in Maine. The results of the survey are summarized below.⁴

1. **TracFone.** TracFone is the largest digital prepaid wireless provider in the country. TracFone presents itself as a company that often appeals to the low-income, the elderly, young people, students, and the “credit impaired.” TracFone offers the following plans in Maine:

- \$19.99 (40 minutes) expires in 60 days
- \$29.99 (100 minutes) expires in 60 days
- \$49.99 (200 minutes) expires in 60 days
- \$79.99 (400 minutes) expires in 60 days
- \$89.99 (150 minutes) expires in 365 days
- \$14.99 *per month* – automatically charged to credit card

2. **Verizon Wireless.** Verizon Wireless offers prepaid service that requires a subscriber to pay an activation fee and “refill” the phone with prepaid minutes by purchasing Verizon Wireless refill cards. Verizon Wireless service deducts \$0.99 per day for the prepaid service when calling within the “Impulse Rate & Coverage Area.” All other calls cost \$0.10 a minute. Fifty dollars of service is included with the purchase of the actual mobile phone. Verizon Wireless offers the following plans in Maine:

- \$15 - \$29.99 expires in 30 days
- \$30 - \$74.99 expires in 60 days
- \$75 - \$149.99 expires in 90 days
- \$150 and above expires in 120 days

3. **Cingular.** Cingular’s prepaid plans either charge \$0.10 or \$0.25 per minute with the first option including a \$1.00 daily access charge on days the phone is used. There are additional charges for long distance and calls to Canada and Mexico. Service will expire depending on the value of the account deposits purchased. The following options are available from Cingular in Maine:

⁴ This summary is based on survey conducted by the ESCB during the summer of 2005. The specific terms of the various plans discussed in the summary may have changed or evolved since the survey was conducted.

- Cards less than \$25 expire in 30 days
- Cards \$25-\$75 expire in 90 days
- Cards \$100 or greater expire in 180 days

4. **US Cellular.** US Cellular's plans charge \$0.40 per minute with a \$30 activation fee. US Cellular's Trackerpack plan uses monthly charges with an allotment of time that must be used within thirty days. US Cellular's Trackerflex plan requires the user to refill the account every 60 days, but the balance from the previous period will roll over into the following balance period. US Cellular's plans charge monthly fees with the option to refill minutes. (Minimum of \$15) US Cellular offers the following options in Maine:

- Tracker Pack
 - \$40 with 400 minutes, expires in 30 days
 - \$50 with 500 minutes, expires in 30 days
 - \$75 with 750 minutes, expires in 30 days
 - \$100 with 1000 minutes, expires in 30 days
- Trackerflex
 - \$100 with no initial minutes, expires in 60 days (balance may rollover)

5. **Unicel.** Unicel offers prepaid service in Maine with its SmartPay Plan. Customers are charged a monthly fee and receive a set amount of minutes with the option to purchase more minutes. The following options are available from Unicel:

- 25 Minutes - \$9.99 (\$0.35 per additional minute)
- 50 Minutes - \$17.99 (\$0.30 per additional minute)
- 100 Minutes - \$27.99 (\$0.25 per additional minute)
- Smart Minute – No monthly Fee (\$0.49 per minute)

6. **Onstar.** Onstar provides a hands-free calling service for its customers. The service is prepaid annually with the option to purchase more minutes. The available plans from Onstar in Maine are as follows:

- 30 minutes – \$13.99
- 100 minutes - \$39.99
- 300 minutes - \$114.99
- 500 minutes - \$174.99
- 1,000 minutes – \$299.99

IV. IS THERE A FUNDAMENTAL DIFFERENCE IN THE SERVICE PROVIDED BY PREPAID AND POSTPAID WIRELESS PROVIDERS THAT JUSTIFIES DIFFERENT TREATMENT UNDER THE E-9-1-1 FUNDING LAW?

The ESCB believes the answer to this question is “no.” During the hearing on LD 1418, TracFone asserted that the prepaid wireless service it provides is “fundamentally different” from traditional postpaid wireless because (1) TracFone issues no bills, (2) the service is sold through a third-party retailer and (3) the service is sold as airtime cards measured in units or minutes of use, rather by monthly contracts. TracFone argued that these differences make it impossible for prepaid wireless providers to comply with the existing E-9-1-1 funding law, which is written to assess subscribers who are billed on a monthly basis.

TracFone is correct that there are differences in the way prepaid and postpaid wireless service is provided. The question is: Should these differences result in postpaid wireless customers paying an E-9-1-1 surcharge and prepaid customers being exempted from a comparable surcharge? The ESCB believes that for the purposes of E-9-1-1 funding, the only significant difference between prepaid and postpaid wireless services is that the former bills before the service is provided and the latter bills after the service is provided. The nature of the service provided by prepaid and postpaid wireless providers is essentially the same. The E-9-1-1 system is designed to work for any customer of any telephony service in the State, including prepaid wireless customers. The ESCB believes that all telephone customers, including prepaid wireless customers, should contribute to the costs of the E-9-1-1 system.

V. IS THERE A JUSTIFICATION FOR AMENDING THE CURRENT E-9-1-1 FUNDING LAW?

The ESCB believes the answer to this question is “yes.” There are two basic reasons for changing the existing law to make sure that subscribers to prepaid wireless services contribute to the E-9-1-1 fund. First, it is unfair that postpaid and prepaid wireless customers are treated differently. As noted above, both receive essentially the same service and both benefit equally from the E-9-1-1 system. Under the current law, prepaid customers are being subsidized by all other customers who are contributing to the E-9-1-1 fund. In addition, the providers of prepaid wireless services are receiving a competitive advantage over the providers of services whose subscribers are paying for the E-9-1-1 system. Equity requires that (1) the current E-9-1-1 funding law be changed to treat subscribers of prepaid and postpaid services fairly and (2) prepaid and postpaid service providers compete on a level playing field. To the best of the ESCB’s knowledge, none of the prepaid service providers who participated in the

Committee's consideration of LD 1418 opposed the concept that both prepaid and postpaid subscribers should contribute to the E-9-1-1 fund.

The second reason for changing the current E-9-1-1 funding law is that doing so will increase the level of revenues coming into the fund to help meet the needs of the E-9-1-1 system. This additional source of revenues will keep the surcharge as low as possible by reducing the need for future increases in the surcharge amount for all other subscribers. As discussed above, a conservative estimate for the number of prepaid wireless subscribers in Maine is 100,000. A 50 cent/month surcharge on these subscribers would produce \$50,000/month and \$600,000/year in revenues for the E-9-1-1 fund. This is a substantial contribution to the E-9-1-1 fund that, if realized, could significantly delay the need for an increase in the surcharge amount for all contributors to the fund.

TracFone is correct that the current E-9-1-1 funding law focuses on customers who are billed after service is provided and on a monthly basis. The current law raises administrative and compliance issues that make assessing a surcharge on subscribers of prepaid wireless service problematic. The challenge is to create a surcharge mechanism that is (1) fair to both subscribers and service providers and (2) workable.

VI. ALTERNATIVE SURCHARGE MECHANISMS

A. Limitations of Existing E-9-1-1 Funding Law

It is important to remember that the current E-9-1-1 law has evolved over time. When the initial statewide E-9-1-1 surcharge was created in 1993, many of today's telephone technologies, such as prepaid wireless service, did not exist. The E-9-1-1 funding law has evolved as the associated technologies have evolved. In fact, § 2927 has been amended 13 times since it was enacted in 1993. It is therefore not surprising that the current law contains anachronistic language that makes its applicability to evolving technologies problematic.⁵

During the Committee's consideration of LD 1418 last year, several prepaid wireless providers pointed out aspects of the existing law that impede the collection of the E-9-1-1 surcharge from prepaid wireless subscribers. For instance, § 2927(1-B) currently provides that the surcharge must be (1) billed on a monthly basis and (2) shown as a separate charge on the customer's bill. The prepaid wireless providers assert that each of these requirements is not applicable in the prepaid wireless context because their subscribers are not billed on a monthly basis.

⁵ The Commission is aware that there are other new technologies, such as Voice Over Internet Protocol, that raise questions about the applicability of E-9-1-1 funding requirements to the subscribers of those services. We have not discussed those technologies in this report because they were not addressed in LD 1418 and we believe are therefore beyond the scope of this report.

Another aspect of the existing law that raises issues about its applicability to prepaid wireless service subscribers is the provision in § 2927(1-B) that requires that the “E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account.” This requirement was initially included in the law in response to Private Branch Exchange (PBX) and Centrex technologies which deliver telephone conductivity to larger users/businesses of telephone service through “trunking.” “Trunking” allows for access to many more telephone numbers over two wires because it moves the equivalent of the telephone company hardware onto the business site or uses the telephone company’s PBX at the telephone company central office location. In other words, trunking does not represent a one-for-one telephone number equivalent of a standard business line or number and generally accounts for more than 25 lines or numbers. At the time the “25 lines or numbers per customer billing account” limitation was incorporated into § 2927(1-B), the Legislature determined that such systems should not have to pay the E-9-1-1 surcharge on any more than 25 lines or numbers.⁶

The “25 lines or numbers per customer billing account” limitation in § 2927(1-B) is significant in the prepaid wireless context because TracFone has asserted that the limiting language should also apply to TracFone. TracFone notes that it does not operate or control any wireless carrier telephone switching equipment and consequently is billed usage from the six wireless carriers doing business in Maine. TracFone asserts that it is a “customer” of the six wireless carriers and that it should only have to pay for 25 lines or numbers relating to the customer billing account it has with each of these six wireless providers. Thus, according to TracFone, the “25 lines or numbers per customer billing account” limitation in current law limits TracFone’s E-9-1-1 funding requirement to \$75.00 per month (25 lines x 50 cents x 6 customer billing accounts = \$75.00), regardless of how many subscribers TracFone has. As discussed below, the ESCB recommends that the law be amended to make sure that all prepaid wireless subscribers, including those of TracFone, pay the same surcharge paid by postpaid wireless subscribers.

B. State-By-State Review of E-9-1-1 Funding Mechanisms for Prepaid Wireless Providers

The issue of E-9-1-1 funding by subscribers of prepaid wireless services is not unique to Maine. Each state has addressed this issue in the past and many states are currently re-evaluating the way their laws should address this issue. In response to the Resolve passed by this Committee last session, the ESCB conducted an extensive review of how other states have answered

⁶ Some may argue that the existing “25 lines or numbers per customer billing account” limitation should be reconsidered by the Legislature because it exempts large users from paying their fair share into the E-9-1-1 fund and results in low-volume users paying a disproportion share of the costs. We have not addressed that issue here because it is beyond the scope of LD 1418 and this report.

questions relating to E-9-1-1 funding by subscribers of prepaid wireless services. **Attachment 4** to this report is a state-by-state summary of the results of our review. For each state included in Attachment 4⁷, we (1) indicate whether the state requires subscribers to prepaid wireless services to contribute to the state's E-9-1-1 fund, (2) provide information on any pending action in the state regarding this issue, including text from pending legislation, (3) include relevant information about compliance and enforcement issues and (4) provide the text of relevant statutes.

Attachment 4 was compiled during the summer of 2005. At that time, the following 17 states had enacted legislation that requires subscribers of prepaid wireless providers to fund the state's E-9-1-1 system: Alabama, California, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Minnesota, Montana, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, Washington and Wisconsin. Several other states, including Maine, are currently considering or reconsidering the issue.

As described in Attachment 4, the 17 states with prepaid wireless laws have adopted a variety of methods for ensuring that the subscribers of prepaid wireless providers contribute to the state's E-9-1-1 fund. Our interviews indicated that states were having varying degrees of success on compliance and enforcement issues. Because of the variety of implementation methods and the varying lengths of time those mechanisms have been in effect, it is difficult to draw any definitive conclusions about which existing mechanism or combination of mechanisms is the best. However, one general conclusion can be drawn from our state-by-state survey: the most commonly used mechanism is the model that has been developed by Tennessee. Of the 17 states that require subscribers of prepaid wireless service to contribute to the state's E-9-1-1 fund, the following five states employ the Tennessee model in their statutes: Tennessee, Iowa, Ohio, Virginia and Wisconsin. In addition, Rhode Island and South Carolina are considering adopting the Tennessee model.

C. Tennessee Model

The Tennessee Method places the burden of collecting the surcharge on subscribers of prepaid wireless service providers on the provider. The Tennessee model offers two collection options for the prepaid wireless provider. The first requires the prepaid wireless provider to "collect, on a monthly basis, the service charge from each active prepaid customer whose account balance is equal to or greater than the service charge." This option does not specify how the surcharge will be assessed or whether it will be collected at the

⁷ The information in Attachment 4 is a compilation of information gathered through telephone interviews and internet searches. Because we were not able to gather clear or complete information regarding the applicable laws and practices in New York and North Dakota, we have not included those states in the summary.

point of sale or in some other fashion. The option simply requires the prepaid wireless provider to collect the surcharge.

The second option offered by the Tennessee model focuses on calculating the number of subscribers. Presumably, this option was created in response to concerns raised by prepaid wireless service providers in Tennessee about (1) the difficulty in determining the number of prepaid wireless subscribers who should pay the surcharge and (2) the many problems associated with collecting the surcharge. This second option in the Tennessee model uses a formula to estimate how many of the prepaid wireless provider’s subscribers should be assessed a surcharge in a given month. This method divides the provider’s total intrastate monthly revenues by the average revenue per user (ARPU) of the wireless industry. The Tennessee model uses \$50 as the monthly ARPU, which represents an estimate for the national average for monthly wireless revenues. The result is the estimated number of subscribers for the month. This number of subscribers is then multiplied by the subscriber surcharge amount, which results in an overall amount that the wireless provider must pay to the E-9-1-1 fund for the month in question.

ILLUSTRATION:

Formula:

$$\frac{\text{Monthly Intrastate Revenue}}{\text{ARPU}} = \text{Number of Subscribers}$$

$$\text{Number of Subscribers} \times \text{Surcharge} = \text{Amount paid to E-9-1-1 Fund by Prepaid Wireless Provider}$$

Assumptions:

- Monthly intrastate revenue = \$500,000
- ARPU = \$50
- Surcharge = 50 cents

Calculation:

$$\frac{\$500,000}{\$50} = 10,000$$

$$10,000 \times 0.50 = \$5,000$$

The Tennessee model is relatively straightforward. It directs the prepaid wireless provider to collect the monthly surcharge from its subscribers. If the prepaid wireless provider is unable or unwilling to collect this amount from its subscribers under the first option provided by the Tennessee model, the Tennessee model includes the above-described formula by which the prepaid wireless provider can calculate the amount it must pay into the E-9-1-1 fund. As noted above, five of the 17 states that have laws requiring subscribers of prepaid wireless service providers to contribute to the state's E-9-1-1 fund use the Tennessee model. At the time we conducted our state-by-state survey, two additional states were considering adopting it.

The ESCB believes the Tennessee model provides a sound basis for assessing a surcharge on subscribers to prepaid wireless services in Maine. However, for the reasons described below, the ESCB believes the Tennessee model can be improved upon in two significant ways.

D. ESCB Recommended Amendment to Maine's E-9-1-1 Funding Law

The ESCB recommends two changes to the Tennessee model that are reflected in our proposed amendment to 25 M.R.S.A. § 2927 (**Attachment 2**). First, the Tennessee model uses \$50 for the Average Revenue Per Customer (APRU) in its formula for calculating the number of subscribers and the corresponding amount owed to the E-9-1-1 fund under the formula. This \$50 figure is based on the revenue per user for the *entire* wireless industry as a whole as reported by the Cellular Telephone Industry Association (CTIA). Our research suggests that the monthly bill for average *prepaid wireless* subscriber is considerably less than the \$50 amount determined by CTIA and used in the Tennessee formula. For instance, our review of the web site of America Movil, the parent company of TracFone, indicates that for the second quarter of 2004, the ARPU for all TracFone subscribers was \$15.00 and for the second quarter 2005, it was \$14.00. In light of this apparent discrepancy, our proposed amendment does not incorporate the \$50 ARPU amount used in the Tennessee model and instead requires the prepaid wireless provider to use its actual ARPU for calculating the number of its Maine subscribers and the corresponding amount owed to the Maine E-9-1-1 fund under the formula. Our research indicates that all of the prepaid wireless providers operating in Maine are able to calculate their Average Revenue Per User because they must include their ARPU in determining their stock price/rating and the overall value of their company.

The revenue impact of this shift from the \$50 ARPU figure in the Tennessee model to the actual ARPU amount used in our proposed amendment could be substantial. The following chart illustrates the potential revenue effects from the use of different ARPU amounts.

	# Subscribers	ARPU of \$50	ARPU of \$25	ARPU of \$15
TracFone	50,000/month	\$7,500	\$15,000	\$25,000
5 Other Carriers	50,000/month	\$7,500	\$15,000	\$25,000
Total Yearly for Six (Estimated)		\$180,000	\$360,000	\$600,000

The second difference between our proposed amendment and the Tennessee model is that our amendment includes an additional option for a prepaid wireless provider to collect the surcharge from its subscribers. Our research indicates that prepaid wireless providers in Maine operate in many different ways and offer many different plans. For instance, some wireless providers own their own facilities while others do not. Some wireless providers sell their services through stores that they own and operate, others do not. These differences among Maine’s prepaid wireless providers explain why these providers do not agree on how § 2927 should be amended to provide for E-9-1-1 funding by their subscribers. In an effort to accommodate as many of these differences as possible, we have tried to create a flexible mechanism that would allow each of Maine’s prepaid wireless providers to use the option, or combination of options, that is best matched to the nature of its organization and operation. We have therefore included three options in our proposed amendment, rather than the two in the Tennessee model. Our proposed amendment allows the prepaid wireless provider to either collect the surcharge from its subscribers at the beginning of each month or at the point of sale. If neither of these options is feasible, the proposed amendment would allow the prepaid wireless provider to determine the amount it must remit to the E-9-1-1 fund based on the ARPU calculation described above. Our proposed amendment allows the prepaid wireless provider to select the method that is best suited to the provider’s unique circumstances.

The ESCB’s proposed amendment includes two additional features that deserve note. First, the proposed amendment makes it clear that the E-9-1-1 funding requirement applies to the subscribers of prepaid wireless services by adding the phrase “including prepaid wireless telephone service” at several places in § 2927 and by adding a definition of prepaid wireless telephone service in 25 M.R.S.A. § 2921. Second, we have added a sentence to § 2927(1-B) to make it clear that the “25 lines or numbers per customer billing account” limitation discussed in section VI(A) above, does not apply to prepaid wireless providers.

VII. CONTRIBUTION BY SUBSCRIBERS OF PREPAID WIRELESS SERVICE TO MTEAF AND MUSF

Resolves 2005, Chapter 62, directed the ESCB to consider equity in funding issues relating to subscribers of prepaid wireless services and the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Education

Assessment Fund (MTEAF). We have reviewed existing law relating to the MUSF and the MTEAF and recommend no changes to those laws at this time.

Current law directs the Commission to establish through rule the assessment requirements relating to MTEAF and MUSF, and establishes guidelines for determining those requirements. Chapters 285 and 288 of the Commission's Rules establish assessment procedures, including requirements for mobile telecommunications providers. While the rules do not explicitly refer to revenues obtained from prepaid wireless service, the terms of the rule do not exclude those services. Should it become necessary to revise language regarding prepaid wireless service in the context of MTEAF and MUSF, the Commission has the authority to do so through the rulemaking process.

§2927. E-9-1-1 funding

1. Statewide E-9-1-1 surcharge. [1993, c. 566, §9 (new); T. 25, §2927, sub-§7 (rp).]

1-A. Statewide E-9-1-1 surcharge. [1997, c. 409, §1 (amd); T. 25, §2927, sub-§7-A (rp).]

1-B. Statewide E-9-1-1 surcharge. The activities authorized under this chapter are funded through a special statewide E-9-1-1 surcharge levied on each residential and business telephone exchange line, including private branch exchange lines and Centrex lines, cellular or wireless telecommunications service subscribers and semipublic coin and public access lines. The statewide E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account. In the case of cellular or wireless telecommunications service subscribers, the place of residence of those subscribers must be determined according to the sourcing rules for mobile telecommunications services as set forth in Title 36, section 2556. The statewide E-9-1-1 surcharge is 50¢ per month per line or number. The statewide E-9-1-1 surcharge must be billed on a monthly basis by each local exchange telephone utility or cellular or wireless telecommunications service provider and be shown separately as a statewide E-9-1-1 surcharge on the customer's bill. [2003, c. 673, Pt. V, §4 (amd); §29 (aff).]

2. Surcharge remittance. [1993, c. 566, §9 (new); T. 25, §2927, sub-§7 (rp).]

2-A. Surcharge remittance. [1997, c. 409, §1 (amd); T. 25, §2927, sub-§7-A (rp).]

2-B. Surcharge remittance. Each local exchange telephone utility and cellular or wireless telecommunications service provider shall remit the statewide E-9-1-1 surcharge revenues collected from its customers pursuant to this section on a monthly basis and within one month of the month collected to the Treasurer of State for deposit in a separate account known as the E-9-1-1 fund. Service providers shall provide, on a form approved by the bureau, supporting data, including but not limited to the following: [2001, c. 439, Pt. EEEE, §7 (amd).]

A. The calculation used to arrive at the surcharge remittance amount;

[2001, c. 439, Pt. EEEE, §7 (new).]

B. The calculation used to arrive at the uncollectible amount of surcharge;

[2001, c. 439, Pt. EEEE, §7 (new).]

C. The total surcharge;

[2001, c. 439, Pt. EEEE, §7 (new).]

D. The month and year for which surcharge is remitted;

[2001, c. 439, Pt. EEEE, §7 (new).]

E. The legal name of company and telephone number and, if applicable, the parent company name, address and telephone number; and

[2001, c. 439, Pt. EEEE, §7 (new).]

F. The preparer's name and telephone number.

[2001, c. 439, Pt. EEEE, §7 (new).]

3. Expenditure of funds. The bureau may use the revenues in the E-9-1-1 fund to fund staff and to defray costs associated with the implementation, operation and management of E-9-1-1 and transfer funds to the Other Special Revenue Funds, Emergency Medical Services account within the Department of Public Safety to defray the costs, including necessary staffing costs, of the Emergency Medical Services' Board in implementing the requirements of Title 32, section 85-A. The bureau, to the extent it determines sufficient funds are available in the E-9-1-1 fund, shall use revenues in the E-9-1-1 fund to reimburse local exchange carriers and cellular and wireless telecommunications service providers for eligible expenses incurred by the carriers and service providers. For purposes of this subsection, the term "eligible expenses" means expenses: [2005, c. 303, §1 (amd).]

A. Incurred in preparing, correcting, verifying or updating subscriber information for use in databases necessary to implement the E-9-1-1 system;

[2003, c. 194, §1 (amd).]

B. Determined by the Public Utilities Commission to meet the requirements of paragraph A and to be reasonable expenses for the services provided; and

[2003, c. 194, §1 (amd).]

C. When incurred by a cellular or wireless telecommunications service provider:

- (1) That are approved by the bureau to be properly incurred for the implementation of E-9-1-1 technologies and procedures;
- (2) That are not separately billed to customers; and
- (3) For which the provider is not reimbursed from any other source.

[2003, c. 194, §1 (new).]

The Public Utilities Commission, in consultation with the bureau, shall establish procedures for reviewing and approving expenses pursuant to paragraph B. [2005, c. 303, §1 (amd).]

3-A. Payment of emergency medical dispatch training costs. To assist public safety answering points in meeting the requirements of Title 32, section 85-A, the bureau shall provide free training courses for emergency medical dispatchers, as defined in Title 32, section 85-A, subsection 1, paragraph D, or reimburse public safety answering points for reasonable costs, as determined by the bureau, incurred for training courses approved by the bureau and attended by employees of the public safety answering point upon submission by the public safety answering point of adequate documentation of completion of the courses by the employees. The bureau shall provide each public safety answering point a sufficient number of approved Emergency Medical Dispatch Priority Reference System documents in printed or electronic format, as determined by the bureau pursuant to Title 32, section 85-A. All costs incurred by the bureau under this subsection must be paid from the E-9-1-1 fund. [2005, c. 303, §2 (new).]

4. Unexpended funds; interest. Any amount of the E-9-1-1 fund not expended at the end of the fiscal year may not lapse but must be carried forward to be expended for the purposes specified in this chapter in succeeding fiscal years. The Treasurer of State shall credit all interest on fund balances to the fund. [1993, c. 566, §9 (new).]

5. Legislative annual report. The bureau shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on: [1997, c. 409, §1 (amd).]

A. The bureau's planned expenditures for the year and use of funds for the previous year;

[1997, c. 409, §1 (amd).]

B. The statewide E-9-1-1 surcharge collected under this section;

[1997, c. 409, §1 (amd).]

C. The bureau's recommended statewide E-9-1-1 surcharge for the coming year; and

[1997, c. 409, §1 (new).]

D. The bureau's recommendations for amending existing and enacting new law to improve the E-9-1-1 system.

[1997, c. 409, §1 (new).]

5-A. Committee recommendations; budget. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding all expenditures from the E-9-1-1 fund. [1999, c. 790, Pt. A, §31 (amd).]

6. Violations. A telephone utility or a cellular or wireless telecommunications service provider subject to this section that intentionally and knowingly fails to remit the statewide E-9-1-1 surcharge revenues collected under this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged for each day that payment is not made after the due date. [1997, c. 409, §1 (amd).]

7. Repeal. [1997, c. 409, §1 (rp).]

7-A. Repeal. Subsections 1-A and 2-A are repealed 90 days after the adjournment of the First Regular Session of the 119th Legislature. [1997, c. 409, §1 (amd).]

MRSA , §T.25 SEC. 2927/7,7A (AMD) .

PL 1993, Ch. 566, §9 (NEW) .

PL 1995, Ch. 672, §1-4 (AMD) .

PL 1997, Ch. 409, §1 (AMD) .

PL 1999, Ch. 651, §1,2 (AMD) .

PL 1999, Ch. 651, §4 (AFF) .

PL 1999, Ch. 790, §A31 (AMD) .

PL 2001, Ch. 439, §EEEE6,7 (AMD) .

PL 2001, Ch. 584, §1 (AMD) .

PL 2001, Ch. 584, §10 (AFF) .

PL 2003, Ch. 194, §1 (AMD) .
PL 2003, Ch. 359, §4 (AMD) .
PL 2003, Ch. 673, §V29 (AFF) .
PL 2003, Ch. 673, §V4 (AMD) .
PL 2005, Ch. 303, §1,2 (AMD) .

**PROPOSED AMENDMENT TO 25 M.R.S.A. §§ 2921 AND 2927
OFFERED BY THE PUBLIC UTILITIES COMMISSION**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 25 MRSA §2921, sub-§6-C is enacted to read:

6-C. Prepaid wireless telephone service. "Prepaid wireless telephone service" means a wireless telephone service that is paid for in advance of activation.

Sec. 2. 25 MRSA §2927, sub-§1-B, as amended by PL 2003, c. 673, Pt. V, §4 and affected by §29, is further amended to read:

1-B. Statewide E-9-1-1 surcharge. The activities authorized under this chapter are funded through a special statewide E-9-1-1 surcharge levied on each residential and business telephone exchange line or number, including private branch exchange lines and Centrex lines, cellular or wireless telecommunications service subscribers, including prepaid wireless telephone service subscribers, and semipublic coin and public access lines. The statewide E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account. This 25 lines or numbers per customer billing account limitation does not apply to providers of prepaid wireless telephone service. In the case of cellular or wireless telecommunications service subscribers, the place of residence of those subscribers must be determined according to the sourcing rules for mobile telecommunications services as set forth in Title 36, section 2556. The statewide E-9-1-1 surcharge is 50¢ per month per line or number. The statewide E-9-1-1 surcharge must be billed on a monthly basis by each local exchange telephone utility or cellular or wireless telecommunications service provider and be shown separately as a statewide E-9-1-1 surcharge on the customer's bill. In the case of prepaid wireless telephone service, the surcharge amount shall be collected by one of the three following methods:

a) The prepaid wireless telephone service provider shall collect the surcharge at the beginning of each month during which time is left on the service;

b) The prepaid wireless telephone service provider shall collect the surcharge for each month that the prepaid wireless service can be used at the point of sale; or

c) The prepaid wireless telephone service provider shall divide its total Maine intrastate prepaid wireless telephone revenue within the monthly E-9-1-1 reporting period by its most recently calculated average revenue per user (ARPU), multiply the quotient by the surcharge, and pay the resulting amount to the E-9-1-1 fund.

Sec. 3. 25 MRSA §2927, sub-§2-B, as amended by PL 2001, c. 439, Pt. EEEE, §7, is further amended to read:

2-B. Surcharge remittance. Each local exchange telephone utility and cellular or wireless telecommunications service provider, including prepaid wireless telephone service providers, shall remit the statewide E-9-1-1 surcharge revenues collected from its customers pursuant to this section on a monthly basis and within one month of the month collected to the Treasurer of State for deposit in a separate account known as the E-9-1-1 fund. Service providers shall provide, on a form approved by the bureau, supporting data, including but not limited to the following:

- A. The calculation used to arrive at the surcharge remittance amount;
- B. The calculation used to arrive at the uncollectible amount of surcharge;
- C. The total surcharge;
- D. The month and year for which surcharge is remitted;
- E. The legal name of company and telephone number and, if applicable, the parent company name, address and telephone number; and
- F. The preparer's name and telephone number.

Sec. 4. 25 MRSA §2927, sub-§6, as amended by PL 1997, c. 409, §1, is further amended to read:

1. **Violations.** A telephone utility or a cellular or wireless telecommunications service provider, including a prepaid wireless telephone service provider, subject to this section that intentionally and knowingly fails to remit the statewide E-9-1-1 surcharge revenues collected under this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged for each day that payment is not made after the due date.

RESOLVES
First Special Session of the 122nd

CHAPTER 62
H.P. 982 - L.D. 1418

Resolve, To Direct the Public Utilities Commission To Examine Issues Related to the Collection of Certain Fees on Prepaid Wireless Telephone Services

Sec. 1. Public Utilities Commission to study collection of fees on prepaid wireless telephone service. Resolved: That the Public Utilities Commission shall investigate methods of ensuring equity in funding the E-9-1-1 system, the Telecommunications Education Access Fund and the universal service fund, established by the Public Utilities Commission, through the collection of fees on prepaid wireless telephone service. The commission shall consider, without limitation, methods that involve collecting fees from providers of the service and methods that involve collecting fees at the retail point of sale. The commission shall also consider methods to establish the amount of fees and how or whether these should relate to the sale price or value of prepaid wireless telephone service. The commission shall examine methods used in other jurisdictions to determine if suitable models have been created that have proven to be effective; and be it further

Sec. 2. Report date. Resolved: That the Public Utilities Commission shall submit a report of its findings under section 1 and recommendations together with any implementing legislation to the Joint Standing Committee on Utilities and Energy no later than the first Monday in February 2006; and be it further

Sec. 3. Authority to report out bill. Resolved: That the Joint Standing Committee on Utilities and Energy may report out a bill to the Second Regular Session of the 122nd Legislature relating to the subject matter of the report submitted by the Public Utilities Commission under section 2.

Effective September 17, 2005.

Attachment 4

Survey of State E-911 Surcharges Collected on Pre-Paid Wireless Service

ALABAMA

Alabama's legislation requires the E-911 surcharge to be collected on each and every 'connection', which includes prepaid service.

Relevant Statutes: 11-98-7(b)(1)

<http://alisd.b.legislature.state.al.us/acas/codeofalabama/1975/11%2D98%2D7.htm>

"(1) To levy a CMRS emergency telephone service charge on each CMRS connection that has a principal wireless service address (or billing address, if the principal wireless service address is not known) within the state. The rate of such CMRS service charge shall be seventy cents (\$.70) per month per CMRS connection beginning on May 1, 1998, which amount shall not be increased except by the Legislature. The CMRS service charge shall have uniform application and shall be imposed throughout the state. The board is authorized to receive all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to Section 11-98-8."

ALASKA

Alaska currently has a law pending in its legislature amending its statutes to include specific prepaid wireless language. The law was last referred to the State Senate Committee on Finance in May of 2004.

Relevant Legislation: HB 461

"...* Sec. 7. AS 29.35.131 is amended by adding new subsections to read:

(i) A municipality may by ordinance elect to impose a point-of-purchase 911 surcharge from prepaid wireless telephone accounts not to exceed one percent of the purchase value. The surcharge must apply to initial purchases and to subsequent purchases of airtime. The retailer of the wireless account is responsible for remitting the surcharge to the municipality..."

Relevant Statute: Title 29 Sec. 29.35.131.

<http://www.dced.state.ak.us/dca/pub/2004Title29.pdf>

"...(b) A wireless telephone company that provides telephone service to wireless telephone customers with billing addresses within the enhanced 911 service area shall impose an enhanced 911 surcharge each month and collect the surcharge from customers in the enhanced 911 service area. A local exchange telephone customer may not be subject to more than one enhanced 911 surcharge on a local exchange access line for a wireline telephone. A wireless telephone customer may not be subject to more than one enhanced 911 surcharge for each wireless telephone number. A customer that has more than 100 local exchange access lines from a local exchange telephone company in the municipality is liable for the enhanced 911 surcharge only on 100 local exchange access lines..."

ARIZONA

Relevant Statutes: 42-5252(A)

<http://www.azleg.state.az.us/legtext/45leg/1r/bills/hb2542s.htm>

1. For the fiscal years beginning from and after June 30, 2001 and ending before July 1, 2006, thirty-seven cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.
2. For the fiscal years beginning from and after June 30, 2006 and ending before July 1, 2007, twenty-eight cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.
3. For the fiscal years beginning from and after June 30, 2007, twenty cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

4. One and one-tenth per cent of the provider's gross proceeds of sales or gross income derived from the business of providing exchange access services for the purpose of financing telecommunication devices for the deaf and the severely hearing and speech impaired under the program established pursuant to section 36-1947.

ARKANSAS

Arkansas does not have statutory language specifically addressing the prepaid issue. However, prepaid companies are remitting the surcharge to the state authorities.

CALIFORNIA

California tax code is defined broadly to include an E-911 surcharge tax levied on all customers that access intrastate telephone communication service. California reports no issues with compliance by prepaid providers.

Relevant Statutes: California Tax & Revenue Code: 41020-41027

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=41001-42000&file=41020-41027>

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for intrastate telephone communication service in this state commencing on July 1, 1977.

(b) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

COLORADO

Colorado does not have prepaid wireless legislation.

Relevant Statutes: Title 29, Article 11

<http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>

29-11-102 (2) (a) The governing body is hereby authorized, by ordinance in the case of cities and by resolution in the case of counties or special districts, to impose such charge in an amount not to exceed seventy cents per month per exchange access facility or per wireless communications access in those portions of the governing body's jurisdiction for which emergency telephone service will be provided... (c) Regardless of the level at which the charge is set, the amount of the charge imposed per exchange access facility and the amount of the charge imposed per wireless communications access shall be equal.

29-11-103. (1) Any charge imposed under the authority of this article and the amounts required to be collected are to be remitted monthly. The amount of the charge collected in one month by the service supplier shall be remitted to the governing body no later than thirty days after the close of that month. On or before the sixtieth day of each calendar quarter, a return for the preceding quarter shall be filed with the governing body in such form as the governing body and service supplier shall agree upon. The service supplier required to file the return shall deliver the return, together with a remittance of the amount of the charge payable, to the office of the governing body. The service supplier shall maintain a record of the amount of each charge collected pursuant to this article. Such record shall be maintained for a period of one year after the time the charge was collected.

CONNECTICUT

Connecticut does not currently have legislation for collecting from prepaid providers. Legislators are hoping for the issue to be addressed in the 2006 legislative session.

Relevant Statutes: Chapter 518a, Chapter 283: Sec. 16-256g

<http://www.cga.ct.gov/2005/pub/Chap518a.htm#Sec28-24.htm>

<http://www.cga.ct.gov/2005/pub/Chap283.htm#Sec16-256g.htm>

Sec. 28-30a. Enhanced 9-1-1 Telecommunications Fund. (a) There is established a fund to be known as the "Enhanced 9-1-1 Telecommunications Fund". The fund shall contain any moneys required by law to be deposited in the fund, including, but not limited to, any federal funds collected pursuant to subsection (d) of section 28-24 and fees assessed against subscribers of local telephone service and subscribers of commercial mobile radio services, pursuant to section 16-256g. The Enhanced 9-1-1 Telecommunications Fund shall be held separate and apart from all other moneys, funds and accounts. Interest derived from the investment of

the fund shall be credited to the assets of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the fiscal year next succeeding.

Sec. 16-256g. Proceeding to determine monthly subscriber fee. Assessment of subscribers for Enhanced 9-1-1 Telecommunications Fund. (a) By June first of each year, the Department of Public Utility Control shall conduct a proceeding to determine the amount of the monthly fee to be assessed against each subscriber of local telephone service and each subscriber of commercial mobile radio service, as defined in 47 CFR Section 20.3, to fund the development and administration of the enhanced emergency 9-1-1 program. The department shall base such fee on the findings of the Commissioner of Public Safety, pursuant to subsection (c) of section 28-24, taking into consideration any existing moneys available in the Enhanced 9-1-1 Telecommunications Fund. The department shall consider the progressive wire line inclusion schedule contained in the final report of the task force to study enhanced 9-1-1 telecommunications services established by public act 95-318*. The department shall not approve any fee greater than fifty cents per month per access line nor shall it approve any fee that does not include the progressive wire line inclusion schedule.

(b) Each telephone or telecommunications company providing local telephone service and each provider of commercial mobile radio service shall assess against each subscriber, the fee established by the department pursuant to subsection (a) of this section, which shall be deposited in the Enhanced 9-1-1 Telecommunications Fund.

DELAWARE

It is of the opinion of the Delaware AG's office that all prepaid wireless providers are **exempt** from Delaware's E-911 surcharge legislation. Delaware's law specifies that the wireless provider shall collect from wireless customers for each number "for which they are billed" by such provider. There is no provision for non-billed wireless services.

Relevant Statutes: Title 16, Part 12, Chapter 101

<http://www.delcode.state.de.us/title16/c101/index.htm>

§ 10103. E-911 Emergency Reporting System Fund.

"(a) The Fund shall be funded by means of a monthly surcharge of up to 60 cents per month imposed by providers on subscribers of telecommunications services in this State as follows.

(1) Residential telephone service. -- The surcharge shall be imposed by each provider providing such service on all Delaware residential subscribers per residence exchange access line or per Basic Rate Interface ("BRI") ISDN arrangement, where the residence exchange access service is provided via a BRI ISDN arrangement. The surcharge shall not be applied to residence exchange access lines provided to Lifeline subscribers.

(2) Business telephone service. -- The surcharge shall be imposed by each provider providing such service on all Delaware business subscribers per business exchange access line and trunk or per BRI ISDN arrangement where the business exchange access service is provided via a BRI ISDN arrangement. Each Centrex access line shall be charged the equivalent of 1/9 of the surcharge; provided, however, that where a Centrex customer has fewer than 9 lines, the maximum monthly charge for those lines will be the surcharge imposed on each business exchange access line or trunk divided by the customer's Centrex lines. Each Primary Rate Interface ISDN system shall be charged a rate equal to 5 times the surcharge. The surcharge shall not be applied to lines provided under wholesale arrangements.

(3) Wireless service. -- The surcharge shall be imposed by each wireless provider on all wireless service customers for each wireless telephone number for which they are billed by such provider."

FLORIDA

Florida does currently have legislation to collect from prepaid wireless providers. The collection is based on the number of customers. TracFone has expressed concern over the legislation because it does not allow for collection based on the way that they conduct business (i.e. they are unable to comply given the technological limitations and the manner in which they provide service to customers).

Relevant Statutes: 365.172(8)(a) & (9)(b)

http://www.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0365/S EC172.HTM&Title=-%3e2001-%3eCh0365-%3eSection%20172

"8(a) Each home service provider shall collect a monthly fee imposed on each customer whose place of primary use is within this state. The rate of the fee shall be 50 cents per month per each service number, beginning August 1, 1999. The fee shall apply uniformly and be imposed throughout the state....

... (b) In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by subsection (8) shall be remitted based upon each prepaid wireless telephone associated with this state, for

each wireless service customer that has sufficient positive balance as of the last day of each month. The surcharge shall be remitted in any manner consistent with the wireless provider's existing operating or technological abilities, such as customer address, location associated with the MTN, or reasonable allocation method based upon other comparable relevant data. The surcharge amount or an equivalent number of minutes may be reduced from the prepaid subscriber's account since a direct billing may not be possible. However, collection of the wireless 911 surcharge in the manner of a reduction of value or minutes from the prepaid subscriber's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale."

GEORGIA

Georgia does not collect from prepaid providers. They are seeking to implement some form of legislation to do so in the 2006 legislative session. In the 2005 session, some legislators introduced a bill to collect from prepaid providers, but the measure failed after strong opposition from providers.

Relevant Statutes: 46-5-133

http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=46-5-133

(a) Subject to the provisions of subsection (b) of this Code section, the governing authority of any local government which operates or which contracts for the operation of an emergency '911' system is authorized to adopt a resolution to impose a monthly '911' charge upon each exchange access facility subscribed to by telephone subscribers whose exchange access lines are in the areas served or which would be served by the '911' service. Subject to the provisions of subsection (b) of this Code section and of subparagraphs (a)(2)(A) and (a)(2)(B) of Code Section 46-5-134, the governing authority of any local government which operates or contracts for the operation of an emergency '911' system which is capable of providing or provides enhanced '911' service to persons or entities with a wireless telecommunications connection, excluding a military base, is authorized to adopt a resolution to impose a monthly wireless enhanced '911' charge upon each wireless telecommunications connection subscribed to by telephone subscribers whose billing address is within the geographic area that is served by the local government or that would be served by the local government for the purpose of such an emergency '911' system. Such resolution, or any amendment to such resolution, shall fix a date on which such resolution and the imposition and collection of the '911' charge or wireless enhanced '911' charge, as provided in the resolution, shall become effective; provided, however, that such effective date shall be at least 120 days following the date of the adoption of such resolution or any amendment to such resolution by the local government. The '911' charge must be uniform, may not vary according to the type of exchange access facility used, and may be billed on a monthly or quarterly basis. The wireless enhanced '911' charge must be uniform, not vary according to the type of wireless telecommunications connection used, and may be billed on a monthly or quarterly basis.

HAWAII

Hawaii passed legislation effective on July 1, 2004 that **exempts** all prepaid providers from E-911 surcharge collection.

Relevant Statutes: HB 2883, Section 4(b)(2)

http://www.capitol.hawaii.gov/hrscurrent/vol03_ch0121-0200d/hrs0138/hrs_0138-0004.htm

- (a) "A monthly wireless enhanced 911 surcharge, subject to this chapter, shall be imposed upon each commercial mobile radio service connection.
- (b) (b) The effective date of the surcharge shall be July 1, 2004. The rate of the surcharge shall be set at 66 cents per month for each commercial mobile radio service connection. The surcharge shall have uniform application and shall be imposed on each commercial mobile radio service connection operating within the State except:
- (1) Connections billed to federal, state, and county government entities; and
 - (2) Prepaid connections."

IDAHO

Idaho does not currently collect an E-911 surcharge from prepaid providers. They may examine the issue in the near future.

Relevant Statutes: Title 31, Chapter 48

<http://www3.state.id.us/idstat/TOC/31048KTOC.html>

"31-4804. EMERGENCY COMMUNICATIONS FEE. (1) The emergency communications fee provided pursuant to the provisions of this chapter shall be a uniform amount not to exceed one dollar (\$1.00) per month per access line, and such fee shall be used exclusively to finance the initiation, maintenance, operation,

enhancement and governance of a consolidated emergency communications system and provide for the reimbursement of telecommunications providers for implementing enhanced consolidated emergency systems as provided for in section 31-4804A, Idaho Code. All emergency communications fees collected and expended pursuant to this section shall be audited by an independent, third party auditor ordinarily retained by the governing board for auditing purposes. The purpose of the audit as related to emergency communications systems is to verify the accuracy and completeness of fees collected and costs expended.

(2) The fee shall be collected from customers on a monthly basis by all telecommunications providers that make available access lines to persons within the county, or 911 service area, and may be listed as a separate item on customers' monthly bills."

ILLINOIS

Illinois has legislation and collects the E-911 surcharge "based upon the address associated with the point of purchase, the customer billing address, or the location associated with the MTN for each active prepaid wireless telephone that has a sufficient positive balance as of the last day of each month, if that information is available."

Relevant Statutes: 50 ILCS 751/17

"(a) Except as provided in Section 45, each wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. In the case of prepaid wireless telephone service, this surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the MTN for each active prepaid wireless telephone that has a sufficient positive balance as of the last day of each month, if that information is available. No wireless carrier shall impose the surcharge authorized by this Section upon any subscriber who is subject to the surcharge imposed by a unit of local government pursuant to Section 45. The wireless carrier that provides wireless service to the subscriber shall collect the surcharge set by the Wireless Enhanced 9-1-1 Board from the subscriber. For mobile telecommunications services provided on and after August 1, 2002, any surcharge imposed under this Act shall be imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. The surcharge shall be stated as a separate item on the subscriber's monthly bill. The wireless carrier shall begin collecting the surcharge on bills issued within 90 days after the Wireless Enhanced 9-1-1 Board sets the monthly wireless surcharge. State and local taxes shall not apply to the wireless carrier surcharge. "

INDIANA

Indiana reports that most companies have been complying with its current statutes. Indiana has seen a growth in subscribers to prepaid service as well as a growth in dollars remitted as part of their surcharge collection.

Relevant Statutes: IC 36-8-16.5

<http://www.in.gov/legislative/ic/code/title36/ar8/ch16.5.html>

"Sec. 14.5. As used in this chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in full prospectively for the service and is issued an Indiana telephone number or an Indiana identification number for the service...

...Sec. 30.5. (a) As used in this section, "customer" and "place of primary use" have the meanings set forth in IC 6-8.1-15.

(b) Except as provided in section 34 of this chapter, each CMRS provider shall collect the wireless emergency enhanced 911 fee assessed under section 25.5 of this chapter as follows:

(1) As part of its normal monthly billing process, a CMRS provider shall collect the fee from each standard subscriber that is a customer having a place of primary use in Indiana and may list the fee as a separate line item on each bill. A customer's place of primary use shall be determined in the manner provided by IC 6-8.1-15. If a CMRS provider receives a partial payment for a monthly bill from a CMRS standard subscriber, the CMRS provider shall apply the payment against the amount the CMRS standard subscriber owes to the CMRS provider before applying the payment against the fee.

(2) A CMRS provider shall collect and remit to the board under section 36 of this chapter fees from its prepaid subscribers in a total amount equal to the fee amount multiplied by the number of active prepaid subscriber accounts on the last day of each calendar month."

IOWA

Iowa adopted the Tennessee model for its legislation to collect from prepaid wireless providers.

Relevant Statutes: - Chapter 605-10.8(5)

http://www4.legis.state.ia.us/IAhtml/605.htm#rule_605_10_8

“The wireless service provider shall list the surcharge as a separate line item on the customer’s billing indicating that the surcharge is for E911 emergency telephone service. In the case of prepaid wireless service, this surcharge shall be collected under one of two methods:

- a) The wireless service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the surcharge; or
- b) The wireless service provider shall divide the total earned prepaid wireless telephone revenue received by the wireless provider within the calendar month and divide by 50 dollars, and multiply the quotient by the surcharge.

KANSAS

Kansas collects an E-911 surcharge fee from prepaid wireless providers by collecting from the wholesaler of the prepaid service a 1% grant fee of the retail price of **any** prepaid wireless service sold. It then exempts the prepaid providers from the standard 25-cent per month per subscriber fee placed on all other wireless providers.

Relevant Statutes: House Substitute for Senate Bill 153 amended K.S.A. 12-5302

New Sec. 4. (a) Subject to the provisions of section 18, and amendments thereto, effective July 1, 2004, there is hereby established a wireless enhanced 911 grant fee in the amount of \$.25 per month per wireless subscriber account with primary place of use in the state of Kansas. It shall be the duty of each wireless carrier to collect such fee from the wireless service user and remit such fee to the secretary as provided by section 11, and amendments thereto.

(b) Subject to the provisions of section 18, and amendments thereto, there is hereby established a wireless enhanced 911 grant fee in an amount equal to 1% of the retail price of any prepaid wireless service sold in the state. It shall be the duty of each wholesaler of prepaid wireless service to remit such fee to the secretary as provided by section 11, and amendments thereto.

(c) The secretary shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, any fees received pursuant to this section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the wireless enhanced 911 grant fund.

New Sec. 10. (a) Effective July 1, 2004, there is hereby imposed a wireless enhanced 911 local fee. Subject to the provisions of section 18, and amendments thereto, the amount of such fee shall be \$.25 per month per wireless subscriber account with primary place of use in the state of Kansas. Such fee shall not be imposed on prepaid wireless service.

KENTUCKY

Kentucky **was** receiving remittances from prepaid wireless providers. However, a large prepaid provider ceased payments based on its interpretation of the statute. During the 2005 legislative session, legislation was introduced (S.B. 159) that was intended to clarify perceived ambiguities in the existing statutes. But because of the short legislative session, the bill did not move out of committee. The Office of Homeland Security intends to pursue the issue in the future.

Relevant Legislation: S.B. 159 (Intended to amend K.R.S. 65.7621 – Proposed amendments are in bold/underscore)

<http://lrc.ky.gov/RECORD/05RS/SB159.htm>

“...(9) "CMRS provider" means a person or entity who provides CMRS to an end user

- (3) To collect the CMRS service charge from each CMRS connection:
(a) With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth;
or
(b) To which a Kentucky telephone number or Kentucky identification number has been assigned for the service.

LOUISIANA

Legislators had proposed amending Louisiana's Statutes to include prepaid wireless companies. But the measure was amended and those sections were not included in the final bill.

Relevant Statutes: R.S. 33:9109

<http://www.legis.state.la.us/>

"C. Service charge. The governing authority of any district may levy a CMRS emergency telephone service charge subject to and in accordance with the provisions of this Subsection. Such service charge:

(1) Shall be levied only on CMRS service which enables a service user to access the 911 emergency telephone number through the use of a CMRS connection.

(2) Shall not exceed eighty-five cents per month per wireless CMRS connection or the rate which the district levies or is authorized to levy on CMRS users on July 9, 1999, whichever is higher...

... (4) Shall be levied against each CMRS connection for which the billing address is within the district. In the absence of a billing address, the service charge shall be levied against each CMRS connection for which the primary use is within the district. Notwithstanding the foregoing, the application of a CMRS emergency telephone service charge to any mobile telecommunications service, as defined in R.S. 47:301(14)(i)(ii)(bb), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such CMRS emergency telephone service charge. "

MAINE

Maine does not currently collect E-911 surcharges from prepaid companies. The Maine Legislature has directed the Maine PUC to look into ways in which the state could collect the surcharge from prepaid providers.

Relevant Statutes: Title 25, Chapter 352, Section 2927

<http://janus.state.me.us/legis/statutes/25/title25ch352.pdf>

"1-B The activities authorized under this chapter are funded through a special statewide E-9-1-1 surcharge levied on each residential and business telephone exchange line, including private branch exchange lines and Centrex lines, cellular or wireless telecommunications service subscribers and semipublic coin and public access lines. The statewide E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account. In the case of cellular or wireless telecommunications service subscribers, the place of residence of those subscribers must be determined according to the sourcing rules for mobile telecommunications services set forth in Title 36, section 1816. The statewide E-9-1-1 surcharge is 50 cents per month per line or number. The statewide E-9-1-1 surcharge must be billed on a monthly basis by each local exchange telephone utility or cellular or wireless telecommunications service provider and be shown separately as a statewide E-9-1-1 surcharge on the customer's bill."

MARYLAND

Maryland's surcharge legislation is defined broadly to require any "communication device that connects a caller dialing the digits 911 to a PSAP" to collect and remit the E-911 fee. The surcharge is to be collected **per monthly bill**. TracFone **was** remitting the surcharge but ceased to do so as of October 2003. TracFone argued that it did not need to remit the surcharge because it does not bill monthly as other wireless providers do and that the surcharge places a severe burden on their business. Maryland's AG office has been trying to resolve the issue with TracFone.

However, many other prepaid companies **do** remit the E-911 surcharge on a monthly basis. These companies calculate the fee based on the National Numbering Plan and they use the local exchange to identify the County portion of our surcharge (25 cents for the state portion and up to 75 cents for the County portion) for every "active" phone number each month.

Maryland has no pending legislation. But the state is considering seeking new legislation in the next session should the problem with TracFone continue.

Relevant Statutes

<http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0>

§ 1-301 (k) 9-1-1-accessible service.- "9-1-1-accessible service" means telephone service or another communications service that connects an individual dialing the digits 9-1-1 to an established public safety answering point...

§ 1-310 (a) In general.- Each subscriber to switched local exchange access service or CMRS or other 9-1-1-accessible service shall pay a 9-1-1 fee.

(b) Amount; when payable.- The 9-1-1 fee is 25 cents per month, payable when the bill for the telephone service or CMRS or other 9-1-1-accessible service is due.

MASSACHUSETTS

Massachusetts has not aggressively pursued prepaid wireless companies for E-911 surcharge collection. They have hired a new general counsel and some sort of implementing legislation will be one of his chief priorities.

MICHIGAN

Michigan does not yet have any form of legislation to collect from prepaid providers. Legislators may be introducing some legislation later in this year. The draft of the legislation has been left open due to the question of how to calculate the number of customers per prepaid provider.

MINNESOTA

Minnesota's current legislation requires providers to remit the surcharge based on customer lines or trunk equivalents. It is applicable to **any** line that can access 911. However, new language from the legislature directs Minnesota's Department of Commerce to report on a move to a "per number fee" by July 1, 2006 (See Subdivision 2 below). TracFone argued that Minnesota should charge a fee of 65 cents per \$50 of sale. Minnesota was concerned that the average user of prepaid service uses only \$17-18 a month thus causing a loss of revenue of several thousand dollars.

However, TracFone is **still** paying the surcharge based on customer count (a count that is reported by the provider). The relative success of Minnesota's legislation may be due to the fact that the state enforces the regulation by empowering the Department of Revenue to make it impossible for the provider to do business in the state if the fee is not paid.

Relevant Statutes: 403.11

http://www.911.state.mn.us/PDF/2004_Ch_403_w_Laws_2005_Chaper_136.pdf

"Subdivision 1. Emergency telecommunications service fee. (a) Each customer of a wireless or wireline switched or packet-based telecommunications service provider connected to the public switched telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee based upon the number of wired or wireless telephone lines, or their equivalent, to cover the costs of ongoing maintenance and related improvements for trunking and central office switching equipment for 911 emergency telecommunications service, plus administrative and staffing costs of the commissioner related to managing the 911 emergency telecommunications service program...

... (c) The fee may not be less than eight cents nor more than 65 cents a month for each customer access line or other basic access service, including trunk equivalents as designated by the Public Utilities Commission for access charge purposes and including wireless telecommunications services."

Subd. 2. Per number fee. (a) By January 15, 2006, the commissioner of commerce shall report to the legislature and to the senate Committee on Jobs, Energy, and Community Development and the house Committee on Regulated Industries, recommendations for the amount of and method for assessing a fee that would apply to each service provider based upon the number of Minnesota telephone numbers in use by current customers of the service provider. The fee would be set at a level calculated to generate only the amount of revenue necessary to fund:

(1) the telephone assistance program and the telecommunications access Minnesota program at the levels established by the commission under sections 237.52, subdivision 2, and 237.70; and

(2) the 911 emergency and public safety communications program at the levels appropriated by law to the commissioner of public safety and the commissioner of finance for purposes of sections 403.11, 403.113, 403.27, 403.30, and 403.31 for each fiscal year.

(b) The recommendations must include any changes to Minnesota Statutes necessary to establish the procedures whereby each service provider, to the extent allowed under

federal law, would collect and remit the fee proceeds to the commissioner of revenue. The commissioner of revenue would allocate the fee proceeds to the three funding areas in paragraph (a) and credit the allocations to the appropriate accounts.

(c) The recommendations must be designed to allow the combined per telephone number fee to be collected beginning July 1, 2006. The per access line fee used to collect revenues to support the TAP, TAM, and 911 programs remains in effect until the statutory changes necessary to implement the per telephone number fee have been enacted into law and taken effect...”

MISSOURI

Missouri does not currently have prepaid wireless legislation.

MISSISSIPPI

Relevant Statutes: Mississippi Code § 19-5-333

<http://198.187.128.12/mississippi/lpext.dll?f=templates&fn=fsmain.htm&2.0>

“(2)The board shall have the following powers and duties

(a) To collect and distribute a CMRS emergency telephone service charge on each CMRS customer whose place of primary use is within the state. The rate of such CMRS service charge shall be One Dollar (\$1.00) per month per CMRS connection. The CMRS service charge shall have uniform application and shall be imposed throughout the state. The board is authorized to receive all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to [Section 19-5-335...](#)”

MONTANA

Montana’s statute requires that the surcharge be assessed on all ‘wireless services’, which implicitly includes prepaid services. TracFone filed a protest but the hearings examiner found their protest unwarranted. TracFone is appealing.

Relevant Statutes: Montana Code Annotated 10-4-201

<http://data.opi.state.mt.us/bills/mca/10/4/10-4-201.htm>

(1) Except as provided in [10-4-202](#):

(a) for basic [9-1-1](#) services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other [9-1-1](#) accessible services; and

(b) for enhanced [9-1-1](#) services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other [9-1-1](#) accessible services.

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

NEBRASKA

The Nebraska Public Service Commission has a docket (911-013/PI-96) opened on the issue of prepaid wireless. Comments have been submitted by TracFone, Verizon, OnStar, and Cingular protesting any rulemaking that would extend the surcharge to prepaid providers. The docket is concerned with whether or not the current statute (as set by the Nebraska’s Enhanced Wireless 911 Services Act) could be interpreted to be inclusive of Prepaid Wireless companies. The docket is still pending.

But because the ‘Enhanced Wireless 911 Services Act’ does not make an explicit mention of prepaid wireless and requires the surcharge to be submitted monthly by adding the surcharge to each subscriber’s bill, it is questionable whether the Commission has statutory authority to impose the assessment on prepaid service. This may become reflective of West Virginia, where Commission action was dismissed due to the language of the statute.

Relevant Statutes: R.S. 86.457

“Each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless carrier is not liable for any surcharge not paid by a subscriber and is not obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the subscriber's billing statement and shall be labeled as ‘Enhanced Wireless 911 Surcharge’ or a reasonable abbreviation of such phrase.”

NEVADA

Relevant Statute: NRS 244A.

<http://www.leg.state.nv.us/NRS/NRS-244A.html#NRS244ASec7641>

1. Except as otherwise provided in this section, the board of county commissioners in a county whose population is 20,000 or more but less than 400,000 may, by ordinance, impose a surcharge on:

- (a) Each access line or trunk line of each customer to the local exchange of any telephone company providing those lines in the county; and
- (b) The mobile telephone service provided to each customer of that service whose place of primary use is in the county, for the enhancement of the telephone system for reporting an emergency in the county.

2. The board of county commissioners of a county whose population is less than 100,000 may not impose a surcharge pursuant to this section unless the board first adopts a 5-year master plan for the enhancement of the telephone system for reporting emergencies in the county. The master plan must include an estimate of the cost of the enhancement of the telephone system and all proposed sources of money for funding the enhancement.

3. The surcharge imposed by a board of county commissioners pursuant to this section:

- (a) For each access line to the local exchange of a telephone company, must not exceed 25 cents each month;
- (b) For each trunk line to the local exchange of a telephone company, must equal 10 times the amount of the surcharge imposed for each access line to the local exchange of a telephone company pursuant to paragraph (a); and
- (c) For each telephone number assigned to a customer by a supplier of mobile telephone service, must equal the amount of the surcharge imposed for each access line to the local exchange of a telephone company pursuant to paragraph (a).

NEW HAMPSHIRE

Relevant Statutes: Chapter 106-H

<http://gencourt.state.nh.us/rsa/html/VII/106-H/106-H-9.htm>

I. The enhanced 911 systems shall be funded through a surcharge to be levied upon each residence and business telephone exchange line, including PBX trunks and Centrex lines, each individual commercial mobile radio service number, and each semi-public and public coin and public access line. No such surcharge shall be imposed upon more than 25 business telephone exchange lines, including PBX trunks and Centrex lines, or more than 25 commercial mobile radio service exchange lines per customer billing account. In the case of local exchange telephone companies, the surcharge shall be contained within tariffs or rate schedules filed with the public utilities commission and shall be billed on a monthly basis by each local exchange telephone company. In the case of an entity which provides commercial mobile radio service the surcharge shall be billed to each customer on a monthly basis and shall not be subject to any state or local tax; the surcharge shall be collected by the commercial mobile radio service provider, and may be identified on the customer's bill. Each local exchange telephone company or entity which provides commercial mobile radio service shall remit the surcharge amounts on a monthly basis to the enhanced 911 services bureau, which shall be forwarded to the state treasurer for deposit in the enhanced 911 system fund. The state treasurer shall pay expenses incurred in the administration of the enhanced 911 system from such fund. Such fund shall not lapse. If the expenditure of additional funds over budget estimates is necessary for the proper functioning of the enhanced 911 system, the department of safety may request, with prior approval of the fiscal committee of the general court, the transfer of funds from the enhanced 911 system fund to the department of safety for such purposes. The moneys in the account shall not be used for any purpose other than the development and operation of enhanced 911 services, in accordance with the terms of this chapter. Surcharge amounts shall be reviewed after the budget has been approved or modified, and if appropriate, new tariffs or rate schedules shall be filed with the public utilities commission reflecting the surcharge amount.

II. Imposition of the enhanced 911 services surcharge shall begin not later than 4 months from the approval of the budget, in order to provide adequate funding for the development of the enhanced 911 data base and other operations necessary to the development of the enhanced 911 system.

NEW JERSEY

New Jersey does not currently collect E-911 surcharges from prepaid wireless providers.

NEW MEXICO

Relevant Statutes: Chapter 63, Section 9D-9.2

<http://www.conwaygreene.com/NewMexico.htm>

“(A) There is imposed a wireless enhanced 911 surcharge in the amount of fifty-one cents (\$.51) that shall commence with the first billing period of each subscriber on or following ninety days after July 1, 2001.
(B.) Commercial mobile radio service providers shall be required to bill and collect the wireless enhanced 911 surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. The wireless enhanced 911 surcharge required to be collected by the commercial mobile radio service provider shall be added to and stated clearly and separately in the billings to the subscriber. The wireless enhanced 911 surcharge collected by the commercial mobile radio service provider shall not be considered revenue of the commercial mobile radio service provider.”

NORTH CAROLINA

A bill has been introduced (H.B. 1261) which has been adopted in the North Carolina House and sent to the North Carolina Senate. The bill was referred to the Senate Committee on Commerce. In the House, the bill passed 108-0.

Relevant Statutes: § 62A-23

http://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_62a.html

“(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

(c) The service charge shall not exceed eighty cents (80¢) per month.”

OHIO

Ohio currently has legislation that collects the surcharge from prepaid providers. Ohio uses Tennessee's methodology for collecting the surcharge but also allows for prepaid providers to collect at the point of sale as an alternative method for collection.

Relevant Statutes: Sec. 4931.61 (As amended by HB 361)

<http://www.legislature.state.oh.us/search.cfm>

(A) Beginning on the first day of the third month following the effective date of this section and ending December 31, 2008, there is hereby imposed, on each wireless telephone number of a wireless service subscriber who has a billing address in this state, a wireless 9-1-1 charge of thirty-two cents per month. The subscriber shall pay the wireless 9-1-1 charge for each such wireless telephone number assigned to the subscriber. Each wireless service provider and each reseller of wireless service shall collect the wireless 9-1-1 charge as a specific line item on each subscriber's monthly bill. The line item shall be expressly designated "State/Local Wireless-E911 Costs (\$0.32/billed number)." If a provider bills a subscriber for any wireless enhanced 9-1-1 costs that the provider may incur, the charge or amount is not to appear in the same line item as the state/local line item. If the charge or amount is to appear in its own, separate line item on the bill, the charge or amount shall be expressly designated "[Name of Provider] Federal Wireless-E911 Costs." For any subscriber of prepaid wireless service, a wireless service provider or reseller shall collect the wireless 9-1-1 charge in any of the following manners:

- (1) At the point of sale. For purposes of prepaid wireless services, point of sale includes the purchasing of additional minutes by the subscriber along with any necessary activation of those minutes.

- (2) If the subscriber has a positive account balance on the last day of the month and has used the service during that month, by reducing that balance not later than the end of the first week of the following month by the amount of the charge or an equivalent number of air time minutes.
- (3) By dividing the total earned prepaid wireless telephone revenue from sales within this state received by the wireless service provider or reseller during the month by fifty, multiplying the quotient by thirty-two cents, and remitting this amount pursuant to division (A)(1) of section 4931.62 of the Revised Code.

OKLAHOMA

Relevant Statutes: §63-2843.1

<http://www.lsb.state.ok.us/OKStatutes/CompleteTitles/os63.rtf>

“A. To provide for processing nine-one-one emergency wireless calls, the board of county commissioners of a county may by resolution submit to the voters of the county the question of the imposition of a nine-one-one emergency wireless telephone fee for each wireless connection in the county as determined by the subscriber’s place of primary use. The resolution shall include the amount of the fee which shall be fifty cents (\$0.50) per month for each wireless connection, and shall call for an election to be held within one (1) year from the date the resolution is adopted. If a majority of the votes cast in an election held approve the imposition of an emergency telephone fee, the fee shall be imposed. A political subdivision may not impose another fee on a wireless service provider or subscriber for nine-one-one emergency service. The proceeds of the fee shall be utilized to pay for the operation of emergency wireless telephone service as specified in this section.”

OREGON

Relevant Statutes: 401.792

<http://www.leg.state.or.us/ors/401.html>

“(1) There is imposed on each paying retail subscriber who has telecommunication services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month. The tax shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity or ownership of customer premise equipment connected to each circuit. For providers of central office based services, the tax shall be applied to each line that has unrestricted connection to the switched network. Those central office based service lines that have restricted connection to the switched network shall be charged based on software design in the central office that restricts the number of station calls to and from the network. For cellular, wireless or other radio common carriers, the tax shall apply on a per instrument basis and only if the subscriber’s place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.”

PENNSYLVANIA

Relevant Statutes: PA HB 1018 (Act No. 56) Dec. 30, 2003

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2003/0/HB1018P3140.HTM>

“(b) Wireless E-911 surcharge.--Each wireless service customer shall pay a fee, to be known as a wireless E-911 surcharge, in an amount of \$1 per month for each device that provides wireless service for which that customer is billed by a wireless provider for wireless service or receives prepaid wireless telephone service from a wireless provider. Such fee shall be collected apart from, and in addition to, any fee levied by the wireless provider in whole or in part for the provision of 911 services.

(1) Wireless providers shall collect the fee on behalf of the agency as part of their billing process and shall have no obligation to take any legal action to enforce the collection of the surcharge. Such action may be brought by or on behalf of the agency. Annually, upon written request of the agency, each wireless provider shall provide a list of the names and addresses of those wireless service customers carrying a balance that have failed to pay the wireless E-911 surcharge. The wireless provider shall not be liable for such unpaid amounts.

(2) If a wireless provider receives a partial payment for a monthly bill from a wireless service customer, the wireless provider shall apply the payment against the amount the wireless service customer owes the wireless provider first and shall remit to the State Treasurer such lesser amount, if any, as shall result there from.

(3) The fees collected under this subsection shall not be subject to taxes or charges levied by the Commonwealth or any political subdivision of this Commonwealth, nor shall such fees be considered revenue of the wireless provider for any purpose.

(4) 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, or reasonable allocation method based upon other comparable relevant data, and associated with Pennsylvania, for each wireless customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of each month, if such information is available."

RHODE ISLAND

Rhode Island does not have any current statute that requires collection from prepaid wireless providers. However, a bill has been submitted to the Rhode Island legislature that intends to collect the surcharge from prepaid providers. The bill is likely to pass and become law by July 2005. The bill uses the Tennessee Method in addition to allowing the provider to use the point-of-sale method.

Relevant Legislation: S 1101 Substitute As Amended, (Section 39-1-62 to be amended by lang. in italics)

(2) The surcharge is hereby determined to be twenty-six cents (\$.26) per wireless phone, *prepaid, cellular, telephony. Voice Over Internet Protocol, satellite, computer, data or data only wireless lines or Internet communication or data instrument device or means which has access to or connects with, activates or interfaces with or any combination of the above with the Rhode Island E-911 Uniform Emergency Telephone system* per month and shall be in addition to the wireless surcharge charged under section 39-21 1-14. *The Twenty-Six cents (\$.26) is to be billed to all wireless telecommunication service providers subscribers or prepaid service customers upon the inception of services...*

...(4) With respect to prepaid wireless telecommunications service providers and customers and notwithstanding anything to the contrary contained in this section, the surcharge shall be collected and remitted to the agency by the prepaid wireless telecommunications service provider under one of the three methods:

(i) the prepaid wireless telecommunication service provider shall collect the surcharge, on a monthly basis, from each active prepaid wireless telecommunication service customer whose account balance is equal to or greater than the amount of the service charge; or

(ii) the prepaid wireless telecommunications service provider shall collect the surcharge on a monthly basis at the point of sale; or

(iii) the prepaid wireless telecommunications service provider shall divide the total earned prepaid wireless telephone revenue received by the prepaid wireless telecommunication service provider within the monthly reporting period by fifty dollars (\$50.00) and multiply the quotient by the amount of the surcharge.

The surcharge amount or an equivalent number of air-time minutes may be reduced from a prepaid wireless telecommunication service customer's account when direct billing is not possible.

SOUTH CAROLINA

South Carolina gives its State Budget and Control Board the prerogative to calculate the CMRS 911 charge. The State's Budget and Control Board 911 Staff and the CMRS Emergency Telephone Advisory Committee is considering proposing an amendment to their statutes to clarify the issue with regard to prepaid wireless service. The proposed amendment uses the Tennessee Method. Below are the current statute and the proposed amendment.

Relevant Statutes: Chapter 47, Section 23-47

SECTION 23-47-50. (F) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier. A monthly CMRS 911 charge is levied for each CMRS connection for which there is a mobile identification number containing an area code assigned to South Carolina by the North American Numbering Plan Administrator. The amount of the levy must be approved annually by the board at a level not to exceed the average monthly telephone (local exchange access facility) 911 charges paid in South Carolina. The board and the committee may calculate the CMRS 911 charge based upon a review of one or more months during the year preceding the calculation of telephone (local exchange access facility) charges paid in South Carolina. The CMRS 911 charge must have uniform application and must be imposed throughout the State; however, trunks or service lines used to supply service to CMRS providers shall not be subject to a CMRS 911 levy. On or before the twentieth day of the second month succeeding each monthly collection of the CMRS 911 charges, every CMRS provider shall file with the Department of Revenue a return under oath, in a form prescribed by the department, showing the total amount of fees collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall place the collected fees on deposit with the State Treasurer. The funds collected pursuant to this subsection are not general fund revenue of the State and must be kept by the

State Treasurer in a fund separate and apart from the general fund to be expended as provided in Section 23-47-65.

PROPOSED AMENDMENT TO SECTION 23-47-50 (b) The ~~service~~-CMRS 911 charge shall also be imposed upon customers who pay for service prospectively (prepaid subscribers). CMRS providers shall remit to the board the CMRS 911 charge under one of two methods:

(1) The CMRS provider shall collect, on a monthly basis, the ~~service~~-CMRS 911 charge from each active prepaid subscriber whose account balance is equal to or greater than the amount of the ~~service~~ CMRS 911 charge; or

(2) The CMRS provider shall divide the total earned prepaid wireless telephone revenue received by the CMRS provider within the monthly 911 reporting period by fifty dollars (\$50), and multiply the quotient by the ~~service~~ CMRS 911 charge amount.

SOUTH DAKOTA

South Dakota does not currently collect from pre-paid wireless providers.

TENNESSEE

Tennessee does collect 911 surcharges from prepaid wireless companies. Its methodology for collection has been the model for many states. However, the Tennessee model relies largely on the honor system. It does require wireless carriers to report an account of the amounts billed and collected, but includes no enforcement measures for that provision. Additionally, the state has implemented a biennial audit procedure for carriers who opt for state reimbursement for implementation and operating costs of wireless E-911 service. But not all carriers seek this reimbursement and thus are not held to the audit requirement.

Relevant Statutes: TCA 7-86-108, Public Act, Chapter No. 205

<http://www.state.tn.us/commerce/911/pdf/ECBStatuteAuthorization.pdf>

“The service charge shall also be imposed upon customers who pay for service prospectively (prepaid customers). CMRS providers shall remit to the board the service charge under one of two methods:

- c) The CMRS provider shall collect, on a monthly basis, the service charge from each active prepaid customer whose account balance is equal to or greater than the service charge; or
- d) The CMRS provider shall divide the total earned prepaid wireless telephone revenue received by the CMRS provider within the monthly 911 reporting period by 50 dollars, and multiply the quotient by the service charge amount.

TEXAS

Relevant Statutes: Chapter 771 Health & Safety Code: Sec. 771.0711

<http://www.911.state.tx.us/browse.php/legislation>

(a) To provide for automatic number identification and automatic location identification of wireless 9-1-1 calls, the commission shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee. A political subdivision may not impose another fee on a wireless service provider or subscriber for 9-1-1 emergency service.

(b) A wireless service provider shall collect the fee in an amount equal to 50 cents a month for each wireless telecommunications connection from its subscribers and shall pay the money collected to the comptroller not later than the 30th day after the last day of the month during which the fees were collected. The comptroller may establish alternative dates for payment of fees under this section. The wireless service provider may retain an administrative fee of one percent of the amount collected. The comptroller shall deposit the money from the fees to the credit of the 9-1-1 services fee account. Until deposited to the credit of the 9-1-1 services fee account as required by Subsection (c), money the comptroller collects under this subsection remains in a trust fund with the state treasury.

UTAH

Relevant Statutes: Utah Code Title 69, Chapter 02, Section 5.6

http://www.le.state.ut.us/~code/TITLE69/69_02.htm

“(1) Subject to Subsection 69-2-5(3)(g), there is imposed a statewide unified E-911 emergency service charge of 13 cents per month on each local exchange service switched access line and each revenue producing radio communications access line that is subject to an emergency services telephone charge levied by a county, city, or town under Section 69-2-5 or 69-2-5.5.

(2) The emergency services telephone charge imposed under this section shall be:

- (a) subject to Subsection 69-2-5(3)(g);
- (b) billed and collected by the person that provides:
 - (i) local exchange service switched access line services; or
 - (ii) radio communications access line services.

VERMONT

Vermont does not currently have prepaid collection legislation.

VIRGINIA

Virginia first addressed the issue of prepaid wireless surcharges in 2003. The state revised its legislation in April (effective July 1, 2005). The original legislation provided the carrier with two methods of collection: point of sale and a monthly \$.75 charge per subscriber. (The latter method was to be remitted regardless of whether the provider could collect from customers.) TracFone requested a change be implemented because it felt the two methods were unfair. According to TracFone, customers may not use the phone for an extended period of time and so, even though TracFone would be receiving no revenue, the provider would still be required to pay the \$.75. The July 1, 2005 revision added a third methodology (The Tennessee method) which divides their total revenue by \$50 and multiplies the result by \$.75. Virginia has had success with its legislation and reports full compliance with remittance.

Relevant Statutes: Code 56-484.17(B)

“For CMRS customers who purchase CMRS service on a prepaid basis, the wireless E-911 surcharge shall be determined according to one of the following methodologies below:

- a. The CMRS provider shall collect, on a monthly basis, the wireless E-911 surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge; or
- b. The CMRS provider shall divide its total earned prepaid wireless telephone revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting period by fifty dollars (\$50), multiply the quotient by the surcharge amount, and pay the resulting amount to the Board without collecting a separate charge from its prepaid customers for such amount.”
- c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale. Collection of the wireless E-911 surcharge from or with respect to prepaid customers shall not reduce the sales price for purposes of taxes which are collected at point of sale.

WASHINGTON

Washington currently collects the E-911 surcharge from prepaid wireless providers through an E-911 excise tax imposed on **all** radio access lines. The amount is set at \$.20 per month for each radio access line. The Washington State method is unique in its use of an excise tax rather than a state imposed fee on consumers' bills. The Washington State Department of Revenue collects the excise taxes and says that it is the carrier's responsibility to guarantee collection for all access lines, regardless of how the consumer pays. But Washington's Department of Revenue requires carrier's to ensure that any customer is not to be charged more than once each month. Washington State has had good success with remittance.

Relevant Statutes: RCW 82.14B.030

<http://www.leg.wa.gov/RCW/index.cfm?section=82.14B.030&fuseaction=section>

“(4) A state enhanced 911 excise tax is imposed on all radio access lines whose place of primary use is located within the state in an amount of twenty cents per month for each radio access line. The tax shall be uniform for each radio access line. The tax imposed under this section shall be remitted to the department of revenue by radio communications service companies, including those companies that resell radio access lines, on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW [38.52.540](#). The tax imposed under this section is not subject to the state sales and use tax or any local tax.”

WEST VIRGINIA

On the urging of the West Virginia E-911 Council, the West Virginia Public Services Commission opened up a docket (04-1285) ordering the investigation of collection of E-911 surcharges from prepaid wireless services. The Order referred the matter to commission staff and required the Division of Administrative Law Judges to issue a recommended decision by May 5, 2005. Commission staff recommended that the issue be dismissed due to the vagueness of the West Virginia statute for E-911 surcharges on CMRS

providers and noted that the matter would be better suited for legislative action. The West Virginia PSC followed the staff's recommendation and dismissed the matter.

WISCONSIN

According to the Wisconsin statute, the Wisconsin Public Service Commission is given the prerogative to set the surcharge for prepaid wireless providers in administrative rules. The current set rule uses the Tennessee Method.

Relevant Statutes: Wisc. Statute: §146.70(3m)(f) & Administrative Rules: PSC 173.10(3)

- § 146.70(3m)(f) Wireless surcharge. 1. The commission shall promulgate rules requiring each wireless provider to impose the same monthly surcharge for each telephone number of a customer that has a billable address in this state, except that the rules shall adjust the amount of the surcharge that is imposed on customers who prepay for service to ensure that such customers pay an amount that is comparable to the monthly amount paid by other customers. The rules shall require the surcharge to be imposed during the 3-year period beginning on the first day of the 2nd month beginning after the effective date of the rules. The amount of the surcharge shall be sufficient for the commission to administer and make the grants under par. (d) and the supplemental grants under par. (e). The rules shall require wireless providers to pay the surcharge to the commission for deposit in the wireless 911 fund.
2. The commission may promulgate rules that increase or decrease the surcharge, except that the commission may not increase the surcharge more than once per year and any increase must be uniform statewide.
3. A wireless provider shall identify the surcharge on a customer's bill on a separate line that consists of the words "federal wireless 911 mandate fee."
4. The commission may bring an action to collect a surcharge that is not paid by a customer and the customer's wireless provider is not liable for the unpaid surcharge.

"PSC 173.10(3)(b)(2).For a customer with prepaid wireless telephone service, the wireless provider shall charge to that customer's prepaid account using one of the following methods:

- a. The provider shall charge the prepaid account the amount of the monthly surcharge when the telephone becomes an active prepaid wireless telephone, provided the balance of the prepaid account is greater than or equal to the monthly wireless surcharge.
 - b. The provider shall divide the total prepaid wireless telephone revenue earned and received in the state a calendar month during the surcharge period by fifty dollars (\$50), and multiply the quotient by the monthly wireless surcharge
- (c) Each wireless provider shall pay the full amount of the surcharge collected to the commission within 30 days of the end of the month in which the surcharge was collected for deposit in the fund. A wireless provider may not withhold any portion of the surcharge it collects as reimbursement for the cost of billing and collecting the surcharge, or for any other purpose. A wireless provider may include reasonable administrative costs as part of its grant application under s. PSC 173.06.

WYOMING

Relevant Statutes: Title 16, Chapter 9, Article 1

<http://legisweb.state.wy.us/statutes/titles/title16/chapter09.htm>

"(b) In accordance with the provisions of this subsection, and after a public hearing the governing body may, by ordinance in the case of cities and by resolution in the case of counties or special districts, impose a monthly uniform tax on service users within its designated 911 service area in an amount not to exceed seventy-five cents (\$.75) per month on each local exchange access line, per wireless communications access or other technological device that under normal operation is designed or routinely used to access 911. Only one (1) governing body may impose a 911 emergency tax for each 911 system. Regardless of the level at which the tax is set, if an assessment is made on both local exchange access facilities and wireless communications access, the amount of the tax imposed per local exchange access facility and the amount of the tax imposed per wireless communications access or access by other technological device that under normal operation is designed or routinely used to access 911, shall be equal. The proceeds of the 911 emergency tax shall be set aside in an enterprise fund or other separate accounts from which the receipts shall be used to pay for the 911 system costs authorized in W.S. 16-9-105, and may be imposed at any time following the execution of an agreement with the provider of the service at the discretion of the governing body. "

ACKNOWLEDGMENTS

Grateful acknowledgment to the following individuals for contributing information concerning their respective states:

R.D. PORTER, MO
KEN MITCHELL, KY
GORDON VANAUKEN, SD
JEFF RICHTER, WI
GARY KLUG, CO
JOAN RAFFETY, NE
BOB OENNING, WA
STEVE MARZOLF, VA
LYNN QUESTELL, TN
PAUL FAHEY, MA
JIM RION, SC
BILL GASPARO, RI

CRAIG REINER, NJ
ANN CRONIN, ID
GORDON DEANS, MD
JIM MARTIN, FL
GEORGE POHORILAK, CT
JIM BEUTELSPACHER, MN
HARRIET MILLER-BROWN, MI
ELAINE SEXTON, GA
CHRIS TERNET, IN
TERRY WHITHAM, DE
DAPHNE RHOE, CA
CARMEN BRYANT, AR
BECKY BERGER, MT