

Consumer Electronics Retailers Coalition



January 30, 2009

Mr. Neal Osten
Federal Affairs Counsel
National Conference of State Legislatures
444 North Capitol Street, NW, Suite 515
Washington, D.C. 20001

RE: E911 Fee Collection

Dear Mr. Osten:

The Consumer Electronics Retailers Coalition (CERC) is a public policy organization consisting of the major retailers of consumer electronics products including Amazon.com, Best Buy, Circuit City, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading retail industry trade associations – National Retail Federation and RILA. I am writing to express CERC's firm opposition to legislative proposals that would require retailers to collect and remit Enhanced 911 (E-911) fees on prepaid cellular (wireless) phones and E-911 fees on the prepaid time subsequently added to such phones.

Proposals to require retailers to become collection agents for E-911 fees are bad for retailers, consumers and public safety. Unlike state and local taxes, E-911 fees are designed to defray the costs of emergency services in the jurisdiction of the caller and unrelated to the location of the seller.

E911 fees, Universal Service Fees and other telecommunications related fees and taxes have long been the responsibility of the carrier. There is nothing about pre-paid wireless service that justifies changing that. Recent proposals which seek to shift the burden to collect and remit E911 fees on pre-paid wireless services to retailers will impose an unnecessary cost on retailers. Even proposals to compensate retailers for their collection and administration of these fees are insufficient to cover the real cost of collection, remittance, auditing, and risk involved with this responsibility.

Retail collection is also harmful to public safety. In our mobile society, the location of a phone purchase is unrelated to where a phone is used. Our members' stores attract customers from large areas and multiple jurisdictions. Where a phone is purchased bears little relationship to where that phone will access 911 services.

While pre-paid wireless services may cause challenges for the carriers, they possess all the infrastructure and information needed collect and remit fees on a more efficient and rational basis.

Please consider the following points when reviewing the legislation proposed by these carriers:

1. **The location of the selling retailer of a prepaid phone and prepaid time is at best a vague and tenuous connection to where the phone is activated or the time is used.** Prepaid wireless phones are activated by calling the carrier's toll free number or by accessing the carrier's web site. The customer provides the zip code in which primary use of the phone and any added prepaid time will occur. The carrier uses the zip code to determine the proper area code and phone number. For example, a prepaid phone purchased from a Nebraska retailer can be activated and primarily used in Minnesota or any zip code covered by the carrier.
2. **The location of the retailer is a very poor method to properly allocate E-911 fees.** The zip code of activation is different from retailer's zip code in many, if not most, cases. While a different zip code may not be in another state or area code, a countless number are. Thousands Eastern Kansas prepaid phones are purchased in Kansas City, MO. The same is true of Western Illinois phones purchased in St. Louis, MO and Western Iowa phones purchased in Omaha, NE and on and on. In these cases, with a retailer collection scheme, the 911 system in the jurisdiction of the seller benefit at the expense of the 911 systems in jurisdiction of the caller. The unfairness of such a system is even more dramatic when you consider on-line purchases of pre-paid wireless phones.
3. **To be properly allocated, E-911 fees must be collected and remitted by the wireless carrier.** The wireless carrier is the only entity that knows where the prepaid phone and time are being used. Allocating it any other way would be inaccurate and unfair to the governmental entities involved.
4. **Carriers have systems to collect and remit fees.** Creating a new elaborate retail – based collection system is duplicative and wasteful in light of the fact that wireless carriers all have existing systems in place to collect and remit a host of fees and taxes from subscribers. They have also implemented means to pay federal universal service fees from pre-paid calling cards. There is no need for retailers to duplicate this effort.
5. **Carriers have all the information needed to rationally assess E911 fees.** They know the zip code and area code of the pre-paid wireless phone. They know where a phone is used. They know how long a phone is used in any particular location. They know when a caller adds minutes to a phone. They have direct contact with the user when a phone is activated. All of these factors are much more closely related to the burden an individual phone places on a community's 911 service than where a phone is sold.

Another large concern to our members is this legislation could easily expand the role of the state entity supervising telecommunications to include retailers (State Public Service Commissions or other regulatory agency) and open the flood gates to other proposals for retailers to collect other telecommunications taxes or fees which are the responsibility of the carrier or cell phone manufacturer.

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

The current economic climate has been especially difficult on retailers. There could be no worse time to add new costly burdens on our industry. There is a persistent misconception that adding new fees, taxes or information distribution at the point of sale is an easy and inexpensive thing for retailers to do. It is not. Fee collections which vary from jurisdiction to jurisdiction are complicated and expensive to implement, operate, manage and audit. Every dollar of unnecessary expense hurts our members' ability to save jobs for workers and money for consumers.

Therefore, it is CERC's position that the collection and remittance of E911 fees should remain the responsibility of the wireless carrier on behalf of their subscribers. We have no objection to state efforts to streamline, harmonize, simplify or reduce the E911 fee collection burdens on pre-paid wireless carriers and users but not at the expense of retailers.

Thank you for the opportunity to share our views and welcome an opportunity to work with you on alternatives which will not hurt retailers or consumers.

Sincerely,

Christopher A. McLean
Executive Director
Consumer Electronics Retailers Coalition
317 Massachusetts Avenue, NE, Suite 200
Washington, DC 20002
(tel.) 202.292.4600
christopher.mclean@e-copernicus.com