

Consumer Electronics Retailers Coalition



April 20, 2009

State 911 Department
1380 Bay Street, Building C
Taunton, MA 02780
ATTN: Michael Kass, General Counsel
michael.kass@state.ma.us

Dear Mr. Kass:

The Consumer Electronics Retailers Coalition (CERC) is a public policy organization consisting of the major retailers of consumer electronics products and two of nation's major retail industry trade associations. Our members are among America's favorite places to shop for electronic devices which make our lives more productive and enjoyable.

CERC members have combined to focus our unique and expert market perspective on the critical policy issues facing the consumer electronic retail industry and our customers. Individually our members operate in all 50 states, U.S. territories and worldwide, employing well over three million people.

I am writing to express CERC's views on E-911 fee collections. Pre-paid wireless services offer consumers a valuable and flexible option to meet their mobile telecommunications needs. Pre-paid wireless services represent approximately 17% of the wireless telephone market.

CERC members sell pre-paid wireless phones and pre-paid wireless calling cards. However, our members are not carriers or telecommunications resellers. They merely provide a means of distribution for wireless service providers to make their products widely available.

When a pre-paid phone leaves one of our members' stores, the phone does not provide service and it does not have a phone number. The consumer activates the phone through the carrier's on-line web site or from a working phone. Carriers generally request a zip code, home phone or some other geographic information to assign a telephone number to the phone. The activation process sets up the account for the user to which minutes are added.

Similarly, when a pre-paid wireless calling card is purchased, it does not credit minutes to an account until the customer - after their purchase associates the card with an active

account. Outside of the store setting, consumers can add minutes to their phones on a recurring basis, over the internet, by calling the carrier or by authorizing a direct to phone option.

CERC understands that E-911 fees on pre-paid wireless services pose some unique challenges for carriers who have an obligation to collect and remit these important fees. We understand that the Commonwealth of Massachusetts is considering utilizing a mathematical formula based on a ratio of pre-paid revenues to average revenues per user. CERC has no objection to using such an approach.

As an organization representing retailers who sell phones and pre-paid calling cards, we have expressed firm opposition to legislative and regulatory proposals that would require retailers to collect and remit E-911 fees on prepaid wireless phones and pre-paid time cards which can be used to subsequently add minutes to such phones.

Proposals to require retailers to become collection agents for E-911 fees are bad for retailers, consumers, states 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 unwilling retailers will impose an unnecessary cost on retailers and states. 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.

For states, retail collection dramatically increases the cost of collection, enforcement and administration. Rather than collect a fee from a handful of carriers, States would be burdened by collecting fees from thousands of retailers, some very small.

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 to collect and remit fees on a more efficient and rational basis.

Wireless carriers often have retail outlets of their own. CERC members have no objection to a voluntary fee collection at retail under a contractual relationship between carrier and retailer. Mandatory collection would be strongly opposed.

I have attached a white paper * which more fully outlines CERC's opposition to mandatory retail 911 fee collection. If you have any questions, please do not hesitate to contact me at 202.292.4600.

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
chris@cercteam.com

E-911 Fees
**Shifting the Burden of Collection to Retailers is Bad Public Policy and
Bad for Retailers, States and Public Safety**

The following points should be fully considered when reviewing legislative and regulatory proposals from wireless service providers to shift E-911 fees from carriers to retailers.

1. **The location of the selling retailer of a prepaid phone or prepaid time bears little relation to where a phone or 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 a zip code or other geographic reference to the carrier when a phone is activated. The carrier uses that reference to determine the proper area code and phone number for the pre-paid phone. For example, a prepaid phone purchased from a Nebraska retailer can be activated and primarily used in Iowa 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. 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 benefits at the expense of the 911 system 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. Many of those transactions would completely escape the jurisdiction of the State attempting to impose a transaction fee.
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. **Moving from a time tested carrier based system to an unwieldy retail system is burdensome on the State.** Shifting from monthly fees collected from a handful of wireless carriers to attempting to collect fees from tens of thousands of retailers would impose significant administrative, accounting, compliance and enforcement burdens on the state and retailers.
5. **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.
6. **Carriers have all the information needed to rationally assess E911 fees.** They know the zip code and area code of the pre-paid wireless phone. They know where a phone is used. They know how long a phone is used in any particular location. They know when a caller adds minutes to a phone. They have direct contact with the user when a phone is activated. They know every minute remaining on a phone's account. All of these factors are much more closely related to the burden an individual phone places on a community's 911 service than where a phone is sold.

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 lower-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.