CTIA
The Wireless Association®

Expanding the Wireless Frontier

March 14, 2013

Representative Phil Barnhart
Chair, House Revenue Committee
900 Court St NE, H-383
Salem, OR 97301

Representative Jules Bailey
Vice-Chair, House Revenue Committee
900 Court St NE, H-274
Salem, OR 97301

Representative Vicki Berger
Vice-Chair, House Revenue Committee
900 Court St NE, H-479
Salem, OR 97301

RE: Opposition to HB 2036 & HB 2415; Support HB 2454

Dear Chair Barnhart and Vice-Chair Bailey and Berger,

CTIA-The Wireless Association®, the trade association for the wireless communications industry, respectfully opposes House Bills 2036 and 2415 related to collection of the E-911 surcharge from prepaid cellular telephones. House Bills 2036 and 2415 would require prepaid wireless providers to remit 911 fees with no proper way to collect those fees from prepaid wireless users. In lieu of these troublesome bills, CTIA respectfully endorses and supports passage of House Bill 2454, legislation that would codify national model legislation for collection of 911 fees on prepaid wireless service at the point of sale.

The wireless industry, both traditional "postpaid" and prepaid wireless providers, is committed to supporting state 911 programs. All wireless providers recognize that the ability to call 911 is a key aspect of the safety and convenience that wireless users demand from their service.

Prepaid wireless service differs from traditional wireless plans, with monthly service contracts, in two very important ways. Firstly, because prepaid users purchase their service in advance, they are not required to sign a monthly contract. Without this contract, there are no monthly bills sent to a prepaid consumer and the prepaid provider does typically not know in advance how long it will take the user to exhaust those minutes. Secondly, the majority of prepaid sales are through third-party retail channels (*i.e.: Wal-Mart, Best Buy).* From the prepaid provider's perspective, this means the provider does not receive payment directly from the consumer, and, consequently may not know who the consumer is or where he/she lives. Since the provider does not receive payment directly from the customer, there is no way to collect the 911 fee from the subscriber.

Having outlined the relationship between the prepaid provider and prepaid consumer above, or lack thereof, House Bills 2036 and 2415 are inherently flawed as there is no proper 911 collection mechanism from the end-user, the customer. House Bills 2036 and 2415 would require that prepaid providers pay the 911 fee from revenues with no way to recoup the fee from customers. Historically, 911 fees have always been paid by the users of the service who benefit from the ability to use the 911 system.

Additionally, House Bills 2036 and 2415 have major compliance and enforcement problems. For example, both pieces of legislation would require prepaid providers to "collect an amount equal to the tax

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from each active prepaid telecommunications service customer that is authorized to access the service and whose account balance is equal to or greater than the tax." This method is problematic on two accounts: 1.) it presumes a prepaid customer has a sufficient balance to pay the tax, and, 2.) it presumes that prepaid providers have the technology to decrement (deduct minutes) each month from a customer's account in the amount of the 911 fee. This method does not work with the rapidly-growing "prepaid unlimited plans" which allow customers to purchase unlimited minutes for a fixed time period. This method is also not practical or enforceable as most carriers lack the technological capability to comply with the decrementing provision.

The problems noted in House Bills 2036 and 2415 are not unique to Oregon. There has been a longstanding acknowledgement by the wireless industry and public safety that the current prepaid wireless 911 fee collection methods, which are based on the postpaid wireless model, are not working. When the current methodology was first adopted in states over 10 years ago, prepaid wireless was a very small portion of the overall wireless market. However, in 2007, the wireless industry recognized that the growth in popularity of prepaid wireless required a new urgency to develop a workable methodology to collect 911 fees from prepaid users. In this case, the wireless industry believed that developing model legislation for the states would be preferable to asking for federal legislation.

The industry reached out to both the public safety community and our retail partners to develop a fair, uniform and effective system for collecting 911 fees. The wireless industry spent a year working with these groups to develop a proposal to collect fees at the point-of-sale, while minimizing new costs and burdens on retailers. This resulted in model legislation that was presented to the National Conference of State Legislatures (NCSL) for consideration in December 2008. Following three public hearings on the proposal and, after discussion and debate, NCSL endorsed the model legislation in July 2009.

In lieu of enactment of House Bill 2036 and 2415, we respectfully request that the Committee pursue passage of House Bill 2454, legislation that would codify national model legislation for collection of 911 fees on prepaid wireless service at the point of sale. Notable components of the legislation include:

Key Provisions of House Bill 2454

House Bill 2454 implements the provisions of the NCSL model legislation. Following are the key provisions of the bill:

- Imposes a 911 fee of 50 cents per retail transaction.
- Requires the seller to collect the fee from the customer on each retail transaction and remit the fee to the Department of Revenue.
- Provides a methodology for sourcing transactions to the state of Oregon that is consistent with other states, in order to eliminate tax avoidance or double taxation. This methodology also ensures that the fee is collected not only on face-to-face transactions in the state but also on Internet and other remote sales to Oregon customers.
- Permits retailers to keep 3% of collected fees to offset ongoing compliance costs.
- Permits the Department of Revenue to retain 2% of remitted fees to offset administrative costs.

The attached table shows the enactment of the point-of-sale model bill in legislatures throughout the country. Since NCSL's adoption of the model legislation, 25 states, the District of Columbia and the

Virgin Islands have adopted the point-of-sale model, including other Western states of Utah, Arizona and Colorado. The legislation is also pending in 13 state legislatures across the country, including the Western state legislatures of California, Washington, Montana, Idaho and North Dakota.

In closing, House Bills 2036 and 2415 are extremely troublesome to the wireless industry for the reasons outlined herein. Enactment of this legislation is also counter to the trend in the rest of the country, which is moving toward a point-of-sale model for prepaid wireless 911 fees. In order to ensure a transparent and predictable source of funding for vital 911 services and to ensure that all consumers who have access to the 911 system are also contributors, House Bill 2454 is the legislative solution. Accordingly, CTIA respectfully submits that House Bill 2454 should be approved for Committee passage.

Thank you for your consideration in this matter.

Sincerely,

Bethanne Cooley

Bethanne Cooley
Director, State Legislative Affairs
CTIA-The Wireless Association ®

Prepaid Point of Sale Status Sheet
As of January 1, 2013

Enacted Law (25 States and the District of Columbia):

- ME LD 1056 (signed 06/15/2009; effective date 1/1/2010)
- LA HB 782 (signed 07/10/2009; effective date 1/1/2010)
- TX HB 1831 (signed 06/19/2009; effective date 6/1/2010)
- IN HB 1086 (signed 3/25/2010; effective date 7/1/2010)
- SC H 4551 (signed 3/30/2010; effective date 7/1/2011)
- VA HB 754 (signed 4/11/2010; effective date 1/1/2011)
- TN SB 2497 (signed 4/16/2010; effective date 7/1/2011)
- OK HB 2556 (signed 5/4/2010; effective date 1/1/2011)
- MS SB 2938 (signed 5/13/2010; effective date 7/1/2010)
- CO SB 120 (signed 6/7/2010; effective date 1/1/2011)
- RI HB7397, Article 9 (became law 6/12/10; effective date 8/1/2010)
- DC Bill 18-0731 (signed 7/2/2010; effective date 10/1/2010)
- PA HB 2321 (signed 11/23/2010; effective date 7/1/2011)
- UT HB 303 (signed 3/23/2011; effective date 7/1/2011)
- GA HB 256 (signed 5/11/2011; effective date 1/1/2012)
- KS SB 50 (signed 5/18/2011; effective date 1/1/2012)
- NC H571 (signed 6/13/2011; effective date 7/1/2013)
- IL SB2063 (signed 8/19/2011; effective date 1/1/2012)
- SD SB174 (signed 3/2/2012; effective date 7/1/2012)
- AZ HB 2094 (signed 4/5/2012; effective date 1/1/2014)
- NE LB 1091 (signed 4/11/2012; effective date 1/1/2013)
- IA SF2332 (signed 5/1/2012; effective date 1/1/2013)
- AL HB89 (signed 5/8/2012; effective date 1/1/2013)
- CT SB354 (signed 6/15/2012; effective date 1/1/2013)
- MI HB5468 (signed 6/26/2012; effective date 1/1/2013); amended by HB5952 (signed 12/20/2012; immediate effect)
- OH HB360 / HB472 (signed 12/20/2012; effective date 1/1/2014)

Oregon POS Revenue Analysis		
(using Maine, Louisiana, and Colorado actuals)		
Maine		
(Point of sale enacted in 2010; rate $.45 per retail transaction)		
FY 2012 Actual Revenue Reported by Maine Revenue Services	$	709,957
FCC Reported Total Wireless Subscribers -- Maine		1,090,000
FCC Reported Total Wireless Subscribers -- Oregon		3,355,000
Ratio of subscribers -- OR to ME		3.078
Expected OR revenue using POS @ $.45 using ME experience	$	2,185,235
Adjustment factor to reflect higher OR rate ($.75 vs $.45)		1.67
Expected OR POS revenue using Maine experience	**$**	**3,642,058**
Louisiana		
(Point of sale enacted in 2009; rate is 2% of sales price)		
CY 2011 Actual revenue from DOR	$	4,323,501
FCC Reported total Wireless Subscribers -- Louisiana		4,861,000
FCC Reported total Wireless Subscribers -- Oregon		3,355,000
Ratio of subscribers -- OR to LA		0.69
Expected OR revenue using POS @ 2% using LA experience	$	2,984,025
Adjustment for lower rate -- 2% rate = approx $.55 flat rate		1.36
(2% times $27.50 average monthly spend)		
Expected OR revenue using LA experience	**$**	**4,069,125**
Colorado		
(Point of Sale enacted in 2011; rate is 1.4% of sales price)		
CY 11 Revenue from FCC report (11 months)	$	1,907,087
add 1/11 for missing month	$	173,372
CY11 Annualized Revenue	$	2,080,459
FCC Reported total Wireless Subscribers -- Colorado		4,705,000
FCC Reported total Wireless Subscribers -- Oregon		3,355,000
Ratio of subscribers -- OR to CO		0.71

Expected OR revenue using POS @ 1.4% using CO experience	$	1,483,515
Adjustment for lower rate -- 1.4% = $0.385 flat rate		1.948051948
(1.4% times $27.50 average monthly spend)		
Expected OR revenue using CO experience	**$**	**2,889,964**
AVERAGE OREGON REVENUE USING 3 STATES ACTUALS	**$**	**3,533,716**