

Point of Sale Collection of Prepaid Wireless 9-1-1 Surcharges: Questions and Answers about the Point of Sale Collection Proposal

Q&A FOR LEGISLATORS

What is the problem with the current system?

Most states impose 9-1-1 surcharges on wireless subscribers to finance and maintain the 9-1-1 emergency response systems. Typically, state law requires wireless providers to bill customers for the surcharge each month and remit funds collected from customers. However, most prepaid plans are sold “over-the-counter” by third-party retailers (like WalMart, Target, or Radio Shack) who are not the service provider and have no ongoing relationship with the customer. Since there are no monthly bills, traditional methods of billing customers monthly do not work.

What do states currently do about prepaid wireless 9-1-1 surcharges?

In 2009, three states adopted the provisions of the wireless industry model bill (Louisiana, Maine, and Texas). In the remaining states, an uncoordinated approach to capturing prepaid wireless 9-1-1 surcharges from sellers or customers has developed over time. As a result, compliance for national prepaid wireless providers and their third party retailers is burdensome and inconsistent. Currently, about half the states do not impose 9-1-1 surcharges on prepaid service at all. Fifteen states provide optional methodologies that require prepaid wireless service providers to either: pay the tax from customer revenues based on an estimated monthly ARPU (“Tennessee method”); collect the tax from customers at the point of sale without specifying how; or “decrement” (deduct) minutes from prepaid wireless customer accounts that have a sufficient positive balance at the end of each month. In the remaining states, the law is unclear and some prepaid providers are in litigation over whether the surcharge applies. The end result of the current hodgepodge of state laws is expensive litigation, a lack of transparency, and an administratively burdensome system that has prompted third party retailers to resist efforts to collect surcharges at the point of sale.

What is the problem with the optional “menu” approach?

It results in inconsistent treatment of consumers depending upon the model chosen by the service provider. Furthermore, under some approaches, consumers do not know whether or how much they are paying in 9-1-1 surcharges. Inconsistent approaches can also lead to expensive and protracted disputes with administrative agencies. Some current methods also provide opportunities for consumers to legally avoid paying the surcharge.

What is the solution?

Prepaid wireless consumers benefit from the ability to access the 9-1-1 system, so there is broad agreement that prepaid wireless users should contribute to funding the system. With retailer input, the wireless industry and the 9-1-1 community has developed a proposal for a uniform, point-of-sale collection system that will create a single national collection methodology for prepaid wireless 9-1-1 surcharges. In Colorado, our proposal is for the 9-1-1 surcharge to be a percentage of each retail transaction that is set by dividing the postpaid rate by the average monthly postpaid customer bill (\$50). For example, a \$1.00 postpaid rate would result in a 2% prepaid rate per transaction (\$1.00/\$50.00).

In the past, state retail associations have opposed point of sale collection. Are they supporting this proposal? Most retailers continue to oppose this proposal. However, WalMart has publicly endorsed the proposal because the wireless industry has agreed to a methodology that will reduce the cost of administration and compliance. The proposal includes the following simplifications and uniformity:

- a single rate in each state;
- uniform collection and remittance rules;
- uniform definitions of key terms;
- a small vendor collection allowance that would offset some programming costs.

Many of these concepts have been adopted by the states are part of the ongoing Streamlined Sales and Use Tax Project (SSTP), a cooperative effort of the states to simplify sales taxes.

How will the system be implemented?

States are requested to adopt model legislation incorporating these key principles. Each state legislature will be asked to incorporate the model bill to their specific statutes *without deviating from the key principles outlined above.*

Who will get the funds?

Surcharges will be remitted to the Department of Revenue. That agency – not the retailers – will be responsible for remitting revenues to the E9-1-1 Authority Boards.

What are the benefits to the states and the PSAPs from adopting this approach?

- Certain, stable, and predictable revenues from prepaid wireless customers.
- An end to disputes and litigation over collection of prepaid 9-1-1 surcharges.
- A level playing field with fair and equitable treatment for all prepaid wireless consumers.
- Transparency – all customers will know exactly what they are paying.

What can the 9-1-1 funds be used for?

There are strict statutory constraints on the use of 9-1-1 surcharge revenue. The 9-1-1 surcharge funds can only be spent on equipment and programs that enhance and support 9-1-1. The surcharge is also constrained to not exceed \$.70 without approval from the Public Utilities Commission. In the HB 08-1249 legislative initiative an audit provision was added which requires all authorities to comply with auditing standards as well as making their audits publically accessible.

What happens when 9-1-1 authorities are underfunded?

- 9-1-1 standards and equipment replacement laps.
- 9-1-1 surcharge only funds a portion of the 9-1-1 operation. When these funds are reduced, there is a greater pressure on county, municipal, and special district general funds to make up the shortfall.
- Understaffing increases call answering and call processing response times.