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July 26, 2005

Dear Stakeholder:

Attached is a white paper prepared by the Minnesota Department of Commerce regarding the issue of a per number fee for collecting 911, TAM and TAP funds. This white paper is intended as an initial step in the Department's process to prepare a report to the Legislature, as required by Minn. Stat. §237.491, on 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 white paper contains background information and identifies issues that the Department believes need to be addressed. As a stakeholder in how 911, TAM and TAP fees are collected in Minnesota, the Department would appreciate your review of the white paper and any comments you wish to provide. It would be most useful to have all comments on the white paper submitted by September 30, 2005. Comments may be submitted via e-mail to [diane.wells@state.mn.us](mailto:diane.wells@state.mn.us) or in writing to the Minnesota Department of Commerce, attention Diane Wells, 85 7<sup>th</sup> Place East, Suite 500, St. Paul, MN 55101-2198.

If you have any questions, you may contact Diane Wells at the above e-mail address or via telephone at 651-284-4213; or feel free to contact me at [edward.garvey@state.mn.us](mailto:edward.garvey@state.mn.us) or via telephone at 651-296-9325.

Thank you in advance for your participation in this process.

Sincerely,

A handwritten signature in black ink that reads "Edward A. Garvey". The signature is written in a cursive, flowing style.

EDWARD A. GARVEY  
Deputy Commissioner, Energy and Telecommunications

EAG/DW/cw  
Enclosure

## INTRODUCTION

The Department of Commerce (Department or DOC) must report to the Legislature by January 15, 2006 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.<sup>1</sup> Such a fee would be set at an amount needed to generate enough revenue to fund:

- the Telephone Assistance Plan (TAP),<sup>2</sup>
- the Telecommunications Access Minnesota Program (TAM)<sup>3</sup> at the levels established by the Public Utilities Commission (PUC), and
- 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.

Currently these programs are funded on a per access line fee, with 911 (\$0.65 as of July 2005) and TAM (\$0.07 as of July 2005) fees assessed on both wireline and wireless access lines and TAP (\$0.05) assessed on only wirelines. The aggregate annual amount collected will be approximately \$51.6 million for FY06 using the new fees and Department of Public Safety projections on the number of wireless and wireline access lines during the fiscal year.

In its report to the Legislature, the Department's recommendations are to include any changes to Minnesota Statutes necessary to establish the procedures under which each service provider would collect and remit the fee proceeds to the Commissioner of Revenue. The Commissioner of Revenue would then allocate the fee proceeds to the three funding areas.

As part of the process for developing recommendations and preparing the report to the Legislature, the DOC is to consult regularly with the departments of Public Safety, Finance, and Administration, the Public Utilities Commission, service providers, the chairs and ranking minority members of the senate and house committees, subcommittees, and divisions having jurisdiction over telecommunications and public safety, and other affected parties.

The purpose of this paper is to provide interested stakeholders with background information on why changes to how 911, TAM and TAP fees are collected may be necessary; alternative mechanisms that could collect such fees; and, to begin to frame the issues that need to be debated.

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<sup>1</sup> Minn. Stat. § 237.491 or HF 1, Article 10, See Attachment A.

<sup>2</sup> TAP is the Minnesota lifeline program that provides a subsidy or credit for local telecommunications service to certain low-income residents. The program was implemented by law, Minn. Stat. § 237.69 to 237.711.

<sup>3</sup> TAM is the Minnesota Relay service and equipment distribution program that assists an individual that is communications impaired to communicate using the telecommunications network. The program was implemented by law, Minn. Stat. § 237.50 to 237.56.

At the end of this white paper are preliminary and implementation issues that the Department has identified. The Department invites all interested stakeholders to provide responses to these issues, and any other pertinent issues that stakeholders identify. Any responses received will be used by the Department in preparing its report to the Legislature. Responses should be submitted by September 30, 2005. Questions may be directed to Diane Wells at the Department of Commerce at 651/284-4213 or [diane.wells@state.mn.us](mailto:diane.wells@state.mn.us).

## BACKGROUND

### A. Concern With Current Funding Source

The Department of Commerce had a 2005 legislative initiative that would change the funding for 911, TAP and TAM from a per access line fee to a per telephone number fee. The per number fee would have been assessed on any telephone numbers beginning with a Minnesota area code, regardless of the technology used to provide the underlying telecommunications service.

The DOC's initiative grew out of a concern that the current per access line fee was based on a dwindling number of "access lines" as customers moved to voice over internet protocol (VoIP) service or eliminated second lines as they moved to DSL or cable modems and that fees were not being assessed across all types of providers, giving certain providers a competitive advantage. The Department of Public Safety (DPS), which collects the 911, TAP and TAM fees, shared the DOC's concern over the shrinking number of access lines based on its revenue projections. DPS figures show that the number of wirelines has been decreasing steadily since late 2001. The decrease in wirelines has been offset by the increase in wireless lines. However, the DPS calculates that by mid 2006, the increase in wireless lines will barely offset the loss of wirelines and that by early 2009, the total number of wireline and wireless access lines will actually begin to decrease.

Other states recognize the need to review funding sources for their public safety and service programs. The *Future of 911 Coalition* in Michigan has issued a white paper that explains the many industry changes that have occurred that impacts how 911 is funded.<sup>4</sup> While the 911 funding mechanism in Michigan varies by county, many of the same arguments for change also apply to Minnesota: Because of the importance of 911, funding must be reliable, predictable and sustainable. When 911 was first introduced, there was little, if any, competition in the telecommunications market. In addition to the increased competition of today, there are additional technologies being used to communicate. If all competitors or new technologies don't pay the 911 fee, then a higher fee has to be assessed against a smaller and smaller base. The fee structures that were developed when telephone service was a monopoly service don't tend to treat all groups,

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<sup>4</sup> See the 2004 paper "Michigan's System of Financing 911 Service: Early Signs of a Looming Crisis" included as Attachment B or at [www.telecommich.org/Documents/911\\_white\\_paper.pdf](http://www.telecommich.org/Documents/911_white_paper.pdf)

such as senior citizens, the low income population, and businesses, fairly in today's competitive telecommunications marketplace.

## B. Change Was Made in the 2005 Session

The Department of Public Safety's concerns led the 2005 legislature to increase the 911 fee from \$0.40 to \$0.65 and expanded the definition of the type of service providers that must pay the 911 fee. The new law now requires any "switched or packet-based" providers that are "connected to the public switched telephone network" and that furnish service "capable of originating a 911 emergency telephone call" to pay the \$0.65 911 fee. (The actual language changes are shown in Attachment A.) Since collections for the TAM program are statutorily linked to the methodology used to collect 911 fees it is likely that the law change should result in service providers using voice over internet protocol (VoIP) technology to also contribute to TAM funding.

The 2005 law changes begin to address the concerns that led the Department to seek a change from funding based on a per access line basis to uniform funding on a per telephone number basis. TAM and 911 fees should be collected from all providers that offer or provide access to these services, regardless of the technology used.

## C. How Other States Fund 911, Lifeline, Relay Services

The DOC has conducted a review of the methods other states currently use to fund their 911, lifeline and relay programs. The results of that review are included as Attachment C. Some of these methods have been in place for years, others have been recently adjusted. Across the states, there is no dominant method being used, but numerous ways for collecting the funding necessary to support 911, lifeline, and relay services, including:

- Flat fees per access line (similar to what Minnesota currently does);
- Fees based on a percentage of the tariffed rate for basic telephone service;
- Fees based on a percentage of the intrastate portion of an end user's telephone bill;
- Several states have 911 fees that are billed by the telephone companies but set by the individual counties, so vary widely across the state;
- Several states fund their lifeline and/or relay programs from a state universal service fund, which is funded by a percentage of each provider's intrastate retail revenues and which the provider may or may not be allowed to pass on to the end user as a line item on the end users' bills;
- Several states have different mechanisms for the three types of fees (for example, the 911 fee may be a fixed amount per access line while the relay and lifeline fees are based on a percent of the service provider's intrastate retail revenues). And,
- Thirteen states (Alaska, Arkansas, Connecticut, Delaware, Florida, Illinois, Iowa, Massachusetts, New Hampshire, New Mexico, Ohio, South Carolina and Wisconsin) and the District of Columbia already have requirements in place to collect their 911 fees from wireless providers based either on wireless numbers with that state's telephone numbers as assigned by NANPA or wireless numbers billed to addresses within that state. (Relevant language from the laws/rules of these states are included as Attachment D.)

#### D. How Minnesota's Funding Mechanism Compares

Having reviewed the various methods in place, it appears that the current Minnesota fees have the benefit of being assessed using the same method (i.e. a fixed fee per access line) and thus can be billed as one line item on the end user bill. Since they are fixed fees, they also don't fluctuate from month-to-month. The fees are the same statewide. The system is also set up in Minnesota so that one agency handles all of the revenue rather than having three different agencies involved in the collection process.

That is not to say that the Minnesota system cannot be improved. Currently, the TAP fees are not assessed on wireless lines. Further, current law refers to an assessment per line, when an assessment per number would be more encompassing of the technologies that connect to the public switched telephone network.

### ISSUES

#### A. Preliminary Issues

With the above background information in mind, the Department of Commerce believes that there are some preliminary issues that should be addressed to determine the best manner in which to proceed. The Department's preliminary response to these issues is also provided. Stakeholders are invited to provide their responses.

*1. Given the changes made in the 2005 session to broaden the definition for the types of service providers that must pay the 911 and TAM fees, does more need to be done at this time?*

DOC Answer: It is probably still appropriate to move to a per number fee to fund 911, TAP and TAM as such a funding mechanism is stable, is technology and competitively neutral, and is administratively comparable to the current funding mechanism. The DOC also believes that it would be easier to define a telephone number than it is to define an access line.

*2. If the answer is that more does need to be done, is a per number fee initiative the best option or is there another mechanism that would be better?*

DOC Answer: In reviewing how other states recover the costs for the provision of 911, TAM and TAP, the DOC has not identified another mechanism that is superior. In fact, in assessing 911 fees to wireless providers, several states have adopted a per number fee mechanism.

*3. If a new mechanism is adopted, should it apply to all three services (911, TAM and TAP)?*

DOC Answer: From a policy perspective, DOC believes it would be appropriate to make changes that would enable all subscribers using a communications device that is assigned a telephone number to pay into all three funds and to ensure that all subscribers are able to benefit from all three funds. This also puts the providers of the services on an even competitive footing.

*4. If a new mechanism is adopted, should it apply to all types of technologies or should there be exceptions?*

DOC Answer: DOC believes that any new mechanism should apply to all technologies unless a provider can clearly show that customers using that technology could in no way benefit from the service(s) being funded. Using a per number fee mechanism is probably the best way to do this.

## B. Specific Per Number Fee Implementation Issues

If it is determined that a per number fee initiative should be pursued, there are some details to the proposal to discuss to ensure that any legislative language proposed is clear and addresses all implementation issues. Those issues are:

1. Whether the fee should be based on telephone numbers with Minnesota area codes as assigned by NANPA or telephone numbers billed to addresses in Minnesota? The State of Wisconsin has adopted language to assess a surcharge on wireless numbers billed to addresses in Wisconsin. It is very likely that there are wireless customers with telephone numbers that have 651 or 612 area codes that reside in Hudson or Prescott, so that they can call locally into the Twin Cities. These customers would be billed by Wisconsin as they have Wisconsin addresses but would also be billed by Minnesota because they have a Minnesota telephone number. On the other hand, if the fee is based on the billing address, there could be large wireline customers with locations in Minnesota but the bill is directed to an out of state address.
  - Are there legal reasons to go with telephone numbers assigned by NANPA or telephone numbers with a Minnesota billing address?
  - Under a per number fee, the definition of a “number” must be established. Currently, providers must file with NANPA twice a year the quantity of telephone numbers that they have assigned, which are defined as “numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.” Should this definition and the quantity reported to NANPA be used to assess a per number fee?

2. Fees based on a per access line have had a factor developed for “trunk equivalency” (like Centrex customers) so that they are not billed for every single line. If large business and government customers are now charged for every number they have, they could see an increase in the 911/TAP/TAM fees that they pay. While certain 911 costs are incurred by telephone number (for example, to maintain the 911 database), is that justification for customers with a large concentration of numbers to pay a greater proportion of the total cost of these programs than they do today? In reviewing how the various states assess fees, it is worth noting that several of them cap the number of lines that are billed at 25, 75 or 100 per customer or per location.
3. Currently wireless providers are not eligible to collect lifeline support because they do not fit the statutory definitions for telephone company and access lines under Minn. Stat. 237.69. However, under a per number fee regime for the collection of 911/TAM/TAP, wireless providers could be required to contribute to the TAP fund. Should changes be made to the statutes so that wireless providers could receive lifeline funding?
4. Wireless service is provided on a monthly subscription basis, but also on a prepaid basis. If no monthly bill is sent, as is the case for prepaid service, should prepaid wireless service be assessed a per number fee.
5. Should there be one funding mechanism for 911, TAM and TAP (i.e. under a per number fee mechanism, should every number that is assessed the amount for one fund be automatically assessed the amounts for all three funds, or should there be exceptions)? Is there a policy reason and/or a legal reason to support having the fee be the same or different?
6. The benefits of recovering the fees for all three programs via the same mechanism include administrative ease and to reduce customer confusion. Should language be included in the statutes to ensure that changes to the three programs that would impact the fee collected for that program must all be done at the same time annually?

Stakeholders are also invited to share their views on these more specific implementation issues. The Department expects that those stakeholders that are companies that hold telephone numbers would be especially interested, and would have valuable ideas on, these detailed issues.

## CONCLUSION

Hopefully this paper generates further thoughts and ideas on the best funding mechanism for Minnesota’s 911, TAM and TAP programs. The Department of Commerce looks forward to receiving responses from stakeholders on the issues. Based on those responses, the Department will determine the appropriate next step(s) in the preparation of the report to the Legislature.

ATTACHMENT A

173.31 ARTICLE 10  
173.32 911 EMERGENCY TELECOMMUNICATIONS SERVICES  
173.33 Section 1. [237.491] [COMBINED PER NUMBER FEE.]  
173.34 Subdivision 1. [DEFINITIONS.] (a) The definitions in this  
173.35 subdivision apply to this section.  
173.36 (b) "911 emergency and public safety communications program"  
174.1 means the program governed by chapter 403.  
174.2 (c) "Minnesota telephone number" means a ten-digit  
174.3 telephone number being used to connect to the public switched  
174.4 telephone network and starting with area code 218, 320, 507,  
174.5 612, 651, 763, or 952, or any subsequent area code assigned to  
174.6 this state.  
174.7 (d) "Service provider" means a provider doing business in  
174.8 this state who provides real time, two-way voice service with a  
174.9 Minnesota telephone number.  
174.10 (e) "Telecommunications access Minnesota program" means the  
174.11 program governed by sections 237.50 to 237.55.  
174.12 (f) "Telephone assistance program" means the program  
174.13 governed by sections 237.69 to 237.711.  
174.14 Subd. 2. [PER NUMBER FEE.] (a) By January 15, 2006, the  
174.15 commissioner of commerce shall report to the legislature and to  
174.16 the senate Committee on Jobs, Energy, and Community Development  
174.17 and the house Committee on Regulated Industries,  
174.18 recommendations  
174.19 for the amount of and method for assessing a fee that would  
174.20 apply to each service provider based upon the number of  
174.21 Minnesota telephone numbers in use by current customers of the  
174.22 service provider. The fee would be set at a level calculated  
174.23 to  
174.24 generate only the amount of revenue necessary to fund:  
174.25 (1) the telephone assistance program and the  
174.26 telecommunications access Minnesota program at the levels  
174.27 established by the commission under sections 237.52,  
174.28 subdivision  
174.29 2, and 237.70; and  
174.30 (2) the 911 emergency and public safety communications  
174.31 program at the levels appropriated by law to the commissioner  
174.32 of  
174.33 public safety and the commissioner of finance for purposes of  
174.34 sections 403.11, 403.113, 403.27, 403.30, and 403.31 for each  
174.35 fiscal year.  
174.36 (b) The recommendations must include any changes to  
175.1 Minnesota Statutes necessary to establish the procedures  
175.2 whereby  
175.3 each service provider, to the extent allowed under federal law,  
175.4 would collect and remit the fee proceeds to the commissioner of  
175.5 revenue. The commissioner of revenue would allocate the fee  
175.6 proceeds to the three funding areas in paragraph (a) and credit  
175.7 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



175.8 number fee have been enacted into law and taken effect.  
175.9 (d) As part of the process of developing the  
175.10 recommendations and preparing the report to the legislature  
175.11 required under paragraph (a), the commissioner of commerce  
175.12 must,  
175.13 at a minimum, consult regularly with the Departments of Public  
175.14 Safety, Finance, and Administration, the Public Utilities  
175.15 Commission, service providers, the chairs and ranking minority  
175.16 members of the senate and house committees, subcommittees, and  
175.17 divisions having jurisdiction over telecommunications and  
175.18 public  
175.19 safety, and other affected parties.  
175.20 Sec. 2. Minnesota Statutes 2004, section 237.70,  
175.21 subdivision 7, is amended to read:  
175.22 Subd. 7. [APPLICATION, NOTICE, FINANCIAL ADMINISTRATION,  
175.23 COMPLAINT INVESTIGATION.] The telephone assistance plan must be  
175.24 administered jointly by the commission, the Department of  
175.25 Commerce, and the local service providers in accordance with  
175.26 the  
175.27 following guidelines:  
175.28 (a) The commission and the Department of Commerce shall  
175.29 develop an application form that must be completed by the  
175.30 subscriber for the purpose of certifying eligibility for  
175.31 telephone assistance plan credits to the local service  
175.32 provider. The application must contain the applicant's Social  
175.33 Security number. Applicants who refuse to provide a Social  
175.34 Security number will be denied telephone assistance plan  
175.35 credits. The application form must also include a statement  
176.1 that the applicant household is currently eligible for one of  
176.2 the programs that confers eligibility for the federal Lifeline  
176.3 Program. The application must be signed by the applicant,  
176.4 certifying, under penalty of perjury, that the information  
176.5 provided by the applicant is true.  
176.6 (b) Each local service provider shall annually mail a  
176.7 notice of the availability of the telephone assistance plan to  
176.8 each residential subscriber in a regular billing and shall mail  
176.9 the application form to customers when requested.  
176.10 The notice must state the following:  
176.11 YOU MAY BE ELIGIBLE FOR ASSISTANCE IN PAYING YOUR TELEPHONE  
176.12 BILL IF YOU RECEIVE BENEFITS FROM CERTAIN LOW-INCOME ASSISTANCE  
176.13 PROGRAMS. FOR MORE INFORMATION OR AN APPLICATION FORM PLEASE  
176.14 CONTACT .....  
176.15 (c) An application may be made by the subscriber, the  
176.16 subscriber's spouse, or a person authorized by the subscriber  
176.17 to  
176.18 act on the subscriber's behalf. On completing the application  
176.19 certifying that the statutory criteria for eligibility are  
176.20 satisfied, the applicant must return the application to the  
176.21 subscriber's local service provider. On receiving a completed  
176.22 application from an applicant, the subscriber's local service  
176.23 provider shall provide telephone assistance plan credits  
176.24 against  
176.25 monthly charges in the earliest possible month following  
176.26 receipt  
176.27 of the application. The applicant must receive telephone  
176.28 assistance plan credits until the earliest possible month

176.22 following the service provider's receipt of information that  
the  
176.23 applicant is ineligible.  
176.24 If the telephone assistance plan credit is not itemized on the  
176.25 subscriber's monthly charges bill for local telephone service,  
176.26 the local service provider must notify the subscriber of the  
176.27 approval for the telephone assistance plan credit.  
176.28 (d) The commission shall serve as the coordinator of the  
176.29 telephone assistance plan and be reimbursed for its  
176.30 administrative expenses from the surcharge revenue pool. As  
the  
176.31 coordinator, the commission shall:  
176.32 (1) establish a uniform statewide surcharge in accordance  
176.33 with subdivision 6;  
176.34 (2) establish a uniform statewide level of telephone  
176.35 assistance plan credit that each local service provider shall  
176.36 extend to each eligible household in its service area;  
177.1 (3) require each local service provider to account to the  
177.2 commission on a periodic basis for surcharge revenues collected  
177.3 by the provider, expenses incurred by the provider, not to  
177.4 include expenses of collecting surcharges, and credits extended  
177.5 by the provider under the telephone assistance plan;  
177.6 (4) require each local service provider to remit surcharge  
177.7 revenues to the Department of ~~Administration~~ Public Safety for  
177.8 deposit in the fund; and  
177.9 (5) remit to each local service provider from the surcharge  
177.10 revenue pool the amount necessary to compensate the provider  
for  
177.11 expenses, not including expenses of collecting the surcharges,  
177.12 and telephone assistance plan credits. When it appears that  
the  
177.13 revenue generated by the maximum surcharge permitted under  
177.14 subdivision 6 will be inadequate to fund any particular  
177.15 established level of telephone assistance plan credits, the  
177.16 commission shall reduce the credits to a level that can be  
177.17 adequately funded by the maximum surcharge. Similarly, the  
177.18 commission may increase the level of the telephone assistance  
177.19 plan credit that is available or reduce the surcharge to a  
level  
177.20 and for a period of time that will prevent an unreasonable  
177.21 overcollection of surcharge revenues.  
177.22 (e) Each local service provider shall maintain adequate  
177.23 records of surcharge revenues, expenses, and credits related to  
177.24 the telephone assistance plan and shall, as part of its annual  
177.25 report or separately, provide the commission and the Department  
177.26 of Commerce with a financial report of its experience under the  
177.27 telephone assistance plan for the previous year. That report  
177.28 must also be adequate to satisfy the reporting requirements of  
177.29 the federal matching plan.  
177.30 (f) The Department of Commerce shall investigate complaints  
177.31 against local service providers with regard to the telephone  
177.32 assistance plan and shall report the results of its  
177.33 investigation to the commission.  
177.34 Sec. 3. Minnesota Statutes 2004, section 403.02,  
177.35 subdivision 7, is amended to read:  
177.36 Subd. 7. [AUTOMATIC LOCATION IDENTIFICATION.] "Automatic  
178.1 location identification" means the process of electronically

178.2 identifying and displaying ~~on a special viewing screen~~ the name  
178.3 of the subscriber and the location, where available, of the  
178.4 calling telephone number to a person answering a 911 emergency  
178.5 call.

178.6 Sec. 4. Minnesota Statutes 2004, section 403.02,  
178.7 subdivision 13, is amended to read:

178.8 Subd. 13. [ENHANCED 911 SERVICE.] "Enhanced 911 service"  
178.9 means the use of ~~selective routing~~, automatic location  
178.10 identification, or local location identification as part of  
178.11 local 911 service provided by an enhanced 911 system consisting  
178.12 of a common 911 network and database and customer data and  
178.13 network components connecting to the common 911 network and  
178.14 database.

178.15 Sec. 5. Minnesota Statutes 2004, section 403.02,  
178.16 subdivision 17, is amended to read:

178.17 Subd. 17. [911 SERVICE.] "911 service" means a  
178.18 telecommunications service that automatically connects a person  
178.19 dialing the digits 911 to an established public safety  
answering

178.20 point. 911 service includes:

178.21 (1) ~~equipment for connecting and outswitching 911 calls~~  
178.22 ~~within a telephone central office, trunking facilities from the~~  
178.23 ~~central office to a public safety answering point~~ customer data  
178.24 and network components connecting to the common 911 network and  
178.25 database;

178.26 (2) common 911 network and database equipment, as  
178.27 appropriate, for automatically selectively routing 911 calls in  
178.28 situations where one telephone central office serves more than  
178.29 one to the public safety answering point serving the caller's  
178.30 jurisdiction; and

178.31 (3) provision of automatic location identification if the  
178.32 public safety answering point has the capability of providing  
178.33 that service.

178.34 Sec. 6. Minnesota Statutes 2004, section 403.02, is  
178.35 amended by adding a subdivision to read:

178.36 Subd. 17a. [911 EMERGENCY TELECOMMUNICATIONS SERVICE  
179.1 PROVIDER.] "911 emergency telecommunications service provider"  
179.2 means a telecommunications service provider or other entity,  
179.3 determined by the commissioner to be capable of providing  
179.4 effective and efficient components of the 911 system, that  
179.5 provides all or portions of the network and database for  
179.6 automatically selectively routing 911 calls to the public  
179.7 safety  
179.7 answering point serving the caller's jurisdiction.

179.8 Sec. 7. Minnesota Statutes 2004, section 403.025,  
179.9 subdivision 3, is amended to read:

179.10 Subd. 3. [~~WIRE-LINE~~ CONNECTED TELECOMMUNICATIONS SERVICE  
179.11 PROVIDER REQUIREMENTS.] Every owner and operator of a  
179.12 wire-line or wireless circuit switched or packet-based  
179.13 telecommunications system connected to the public switched  
179.14 telephone network shall design and maintain the system to dial  
179.15 the 911 number without charge to the caller.

179.16 Sec. 8. Minnesota Statutes 2004, section 403.025,  
179.17 subdivision 7, is amended to read:

179.18 Subd. 7. [CONTRACTUAL REQUIREMENTS.] (a) The state,  
179.19 together with the county or other governmental agencies  
179.20 operating public safety answering points, shall contract with

179.21 the appropriate wire-line telecommunications service  
179.22 providers or other entities determined by the commissioner to  
179.23 be  
179.24 capable of providing effective and efficient components of the  
179.25 911 system for the operation, maintenance, enhancement, and  
179.26 expansion of the 911 system.  
179.27 (b) The state shall contract with the appropriate wireless  
179.28 telecommunications service providers for maintaining,  
179.29 enhancing,  
179.30 and expanding the 911 system.  
179.31 (c) The contract language or subsequent amendments to the  
179.32 contract must include a description of the services to be  
179.33 furnished ~~by wireless and wire-line telecommunications service~~  
179.34 ~~providers~~ to the county or other governmental agencies  
179.35 operating  
179.36 public safety answering points, ~~as well as compensation based~~  
180.1 ~~on~~  
180.2 ~~the effective tariff or price list approved by the Public~~  
180.3 ~~Utilities Commission.~~ The contract language or subsequent  
180.4 amendments must include the terms of compensation based on the  
180.5 effective tariff or price list filed with the Public Utilities  
180.6 Commission or the prices agreed to by the parties.  
180.7 (d) The contract language or subsequent amendments to  
180.8 contracts between the parties must contain a provision for  
180.9 resolving disputes.  
180.10 Sec. 9. Minnesota Statutes 2004, section 403.05,  
180.11 subdivision 3, is amended to read:  
180.12 Subd. 3. [AGREEMENTS FOR SERVICE.] Each county and any  
180.13 other governmental agency shall contract with the state and  
180.14 wire-line telecommunications service providers or other  
180.15 entities  
180.16 determined by the commissioner to be capable of providing  
180.17 effective and efficient components of the 911 system for the  
180.18 recurring and nonrecurring costs associated with operating and  
180.19 maintaining 911 emergency communications systems.  
180.20 Sec. 10. Minnesota Statutes 2004, section 403.07,  
180.21 subdivision 3, is amended to read:  
180.22 Subd. 3. [DATABASE.] In 911 systems that have been  
180.23 approved by the commissioner for a local location  
180.24 identification  
180.25 database, each wire-line telecommunications service provider  
180.26 shall provide current customer names, service addresses, and  
180.27 telephone numbers to each public safety answering point within  
180.28 the 911 system and shall update the information according to a  
180.29 schedule prescribed by the county 911 plan. Information  
180.30 provided under this subdivision must be provided in accordance  
180.31 with the transactional record disclosure requirements of the  
180.32 federal ~~Electronic Communications Privacy Act of 1986~~ 1932,  
180.33 United States Code, title ~~18~~ 47, section ~~2703~~ 222,  
180.34 subsection (c), ~~paragraph (1), subparagraph (B)(iv)~~ (g).  
180.35 Sec. 11. Minnesota Statutes 2004, section 403.08,  
180.36 subdivision 10, is amended to read:  
180.37 Subd. 10. [PLAN INTEGRATION.] Counties shall incorporate  
180.38 the statewide design when modifying county 911 plans to provide  
180.39 for integrating wireless 911 service into existing county 911  
180.40 systems. The commissioner shall contract with the involved  
180.41 wireless service providers and 911 emergency telecommunications

180.36 service providers to integrate cellular and other wireless  
181.1 services into existing 911 systems where feasible.  
181.2 Sec. 12. Minnesota Statutes 2004, section 403.11,  
181.3 subdivision 1, is amended to read:  
181.4 Subdivision 1. [EMERGENCY TELECOMMUNICATIONS SERVICE FEE;  
181.5 ACCOUNT.] (a) Each customer of a wireless or wire-line switched  
181.6 or packet-based telecommunications service provider connected  
181.7 to  
181.8 the public switched telephone network that furnishes service  
181.9 capable of originating a 911 emergency telephone call is  
181.10 assessed a fee based upon the number of wired or wireless  
181.11 telephone lines, or their equivalent, to cover the costs of  
181.12 ongoing maintenance and related improvements for trunking and  
181.13 central office switching equipment for 911 emergency  
181.14 telecommunications service, plus administrative and staffing  
181.15 costs of the commissioner related to managing the 911 emergency  
181.16 telecommunications service program. Recurring charges by a  
181.17 wire-line telecommunications service provider for updating the  
181.18 information required by section 403.07, subdivision 3, must be  
181.19 paid by the commissioner if the wire-line telecommunications  
181.20 service provider is included in an approved 911 plan and the  
181.21 charges are made pursuant to ~~tariff, price list, or contract.~~  
181.22 The fee assessed under this section must also be used for the  
181.23 purpose of offsetting the costs, including administrative and  
181.24 staffing costs, incurred by the State Patrol Division of the  
181.25 Department of Public Safety in handling 911 emergency calls  
made  
181.26 from wireless phones.  
181.27 (b) Money remaining in the 911 emergency telecommunications  
181.28 service account after all other obligations are paid must not  
181.29 cancel and is carried forward to subsequent years and may be  
181.30 appropriated from time to time to the commissioner to provide  
181.31 financial assistance to counties for the improvement of local  
181.32 emergency telecommunications services. The improvements may  
181.33 include providing access to 911 service for telecommunications  
181.34 service subscribers currently without access and upgrading  
181.35 existing 911 service to include automatic number  
identification,  
181.36 local location identification, automatic location  
181.37 identification, and other improvements specified in revised  
182.1 county 911 plans approved by the commissioner.  
182.2 (c) The fee may not be less than eight cents nor more than  
182.3 ~~40~~ 65 cents a month for each customer access line or other  
182.4 basic  
182.5 access service, including trunk equivalents as designated by  
182.6 the  
182.7 Public Utilities Commission for access charge purposes and  
182.8 including wireless telecommunications services. With the  
182.9 approval of the commissioner of finance, the commissioner of  
182.10 public safety shall establish the amount of the fee within the  
182.11 limits specified and inform the companies and carriers of the  
182.12 amount to be collected. When the revenue bonds authorized  
182.13 under  
182.14 section 403.27, subdivision 1, have been fully paid or  
defeased,  
182.15 the commissioner shall reduce the fee to reflect that debt  
182.16 service on the bonds is no longer needed. The commissioner

182.14 shall provide companies and carriers a minimum of 45 days'  
182.15 notice of each fee change. The fee must be the same for all  
182.16 customers.  
182.17 (d) The fee must be collected by each wireless or wire-line  
182.18 telecommunications service provider subject to the fee. Fees  
182.19 are payable to and must be submitted to the commissioner  
monthly  
182.20 before the 25th of each month following the month of  
collection,  
182.21 except that fees may be submitted quarterly if less than \$250 a  
182.22 month is due, or annually if less than \$25 a month is due.  
182.23 Receipts must be deposited in the state treasury and credited  
to  
182.24 a 911 emergency telecommunications service account in the  
182.25 special revenue fund. The money in the account may only be  
used  
182.26 for 911 telecommunications services.  
182.27 (e) This subdivision does not apply to customers of  
182.28 interexchange carriers.  
182.29 (f) The installation and recurring charges for integrating  
182.30 wireless 911 calls into enhanced 911 systems must be paid by  
the  
182.31 commissioner if the 911 service provider is included in the  
182.32 statewide design plan and the charges are made pursuant to  
182.33 ~~tariff, price list, or~~ contract.  
182.34 Sec. 13. Minnesota Statutes 2004, section 403.11,  
182.35 subdivision 3, is amended to read:  
182.36 Subd. 3. [METHOD OF PAYMENT.] (a) Any wireless or  
183.1 wire-line telecommunications service provider incurring  
183.2 reimbursable costs under subdivision 1 shall submit an invoice  
183.3 itemizing rate elements by county or service area to the  
183.4 commissioner for 911 services furnished under ~~tariff, price~~  
183.5 ~~list, or~~ contract. Any wireless or wire-line  
telecommunications  
183.6 service provider is eligible to receive payment for 911  
services  
183.7 rendered according to the terms and conditions specified in the  
183.8 contract. Competitive local exchange carriers holding  
183.9 certificates of authority from the Public Utilities Commission  
183.10 are eligible to receive payment for recurring 911 services  
183.11 provided after July 1, 2001. The commissioner shall pay the  
183.12 invoice within 30 days following receipt of the invoice unless  
183.13 the commissioner notifies the service provider that the  
183.14 commissioner disputes the invoice.  
183.15 (b) The commissioner shall estimate the amount required to  
183.16 reimburse 911 emergency telecommunications service providers  
and  
183.17 wireless and wire-line telecommunications service providers for  
183.18 the state's obligations under subdivision 1 and the governor  
183.19 shall include the estimated amount in the biennial budget  
183.20 request.  
183.21 Sec. 14. Minnesota Statutes 2004, section 403.11,  
183.22 subdivision 3a, is amended to read:  
183.23 Subd. 3a. [TIMELY CERTIFICATION.] A certification must be  
183.24 submitted to the commissioner no later than ~~two years~~ one year  
183.25 after commencing a new or additional eligible 911 service. ~~Any~~  
183.26 ~~wireless or wire-line telecommunications service provider~~

183.27 ~~incurring reimbursable costs under this section at any time~~  
183.28 ~~before January 1, 2003, may certify those costs for payment to~~  
183.29 ~~the commissioner according to this section for a period of 90~~  
183.30 ~~days after January 1, 2003. During this period, the~~  
183.31 ~~commissioner shall reimburse any wireless or wire line~~  
183.32 ~~telecommunications service provider for approved, certified~~  
183.33 ~~costs without regard to any contrary provision of this~~  
183.34 ~~subdivision~~ Each applicable contract must provide that, if  
183.35 certified expenses under the contract deviate from estimates in  
183.36 the contract by more than ten percent, the commissioner may  
184.1 reduce the level of service without incurring any termination  
184.2 fees.

184.3 Sec. 15. Minnesota Statutes 2004, section 403.113,  
184.4 subdivision 1, is amended to read:

184.5 Subdivision 1. [FEE.] (a) Each customer receiving service  
184.6 from a wireless or wire-line switched or packet-based  
184.7 telecommunications service provider connected to the public  
184.8 telephone network that furnishes service capable of originating  
184.9 a 911 emergency telephone call is assessed a fee to fund  
184.10 implementation, operation, maintenance, enhancement, and  
184.11 expansion of enhanced 911 service, including acquisition of  
184.12 necessary equipment and the costs of the commissioner to  
184.13 administer the program. The actual fee assessed under section  
184.14 403.11 and the enhanced 911 service fee must be collected as  
184.15 one  
184.16 amount and may not exceed the amount specified in section  
184.17 403.11, subdivision 1, paragraph (c).

184.17 (b) The enhanced 911 service fee must be collected and  
184.18 deposited in the same manner as the fee in section 403.11 and  
184.19 used solely for the purposes of paragraph (a) and subdivision  
184.20 3.

184.20 (c) The commissioner, in consultation with counties and 911  
184.21 system users, shall determine the amount of the enhanced 911  
184.22 service fee. ~~The fee must include at least ten cents per month~~  
184.23 ~~to be distributed under subdivision 2.~~ The commissioner shall  
184.24 inform wireless and wire-line telecommunications service  
184.25 providers that provide service capable of originating a 911  
184.26 emergency telephone call of the total amount of the 911 service  
184.27 fees in the same manner as provided in section 403.11.

184.28 Sec. 16. Minnesota Statutes 2004, section 403.21,  
184.29 subdivision 8, is amended to read:

184.30 Subd. 8. [SUBSYSTEMS.] "Subsystems" or "public safety  
184.31 radio subsystems" means systems identified in the plan or a  
184.32 plan  
184.33 developed under section 403.36 as subsystems interconnected by  
184.34 the system backbone in subsequent phases and operated by the  
184.35 Metropolitan Radio Board, a regional radio board, or local  
184.36 government units for their own internal operations.

185.1 Sec. 17. Minnesota Statutes 2004, section 403.27,  
185.2 subdivision 1, is amended to read:

185.2 Subdivision 1. [AUTHORIZATION.] ~~(a)~~ After consulting with  
185.3 the commissioner of finance, the council, if requested by a  
185.4 vote  
185.4 of at least two-thirds of all of the members of the  
185.5 Metropolitan  
185.5 Radio Board, may, by resolution, authorize the issuance of its  
185.6 revenue bonds for any of the following purposes to:

185.7 (1) provide funds for regionwide mutual aid and emergency  
185.8 medical services communications;  
185.9 (2) provide funds for the elements of the first phase of  
185.10 the regionwide public safety radio communication system that  
the  
185.11 board determines are of regionwide benefit and support mutual  
185.12 aid and emergency medical services communication including, but  
185.13 not limited to, costs of master controllers of the backbone;  
185.14 (3) provide money for the second phase of the public safety  
185.15 radio communication system;  
185.16 (4) to the extent money is available after meeting the  
185.17 needs described in clauses (1) to (3), provide money to  
185.18 reimburse local units of government for amounts expended for  
185.19 capital improvements to the first phase system previously paid  
185.20 for by the local government units; or  
185.21 (5) refund bonds issued under this section.  
185.22 ~~(b) After consulting with the commissioner of finance, the~~  
185.23 ~~council, if requested by a vote of at least two thirds of all~~  
185.24 ~~of~~  
185.25 ~~the members of the Statewide Radio Board, may, by resolution,~~  
185.26 ~~authorize the issuance of its revenue bonds to provide money~~  
~~for~~  
~~the third phase of the public safety radio communication~~  
~~system.~~  
185.27 Sec. 18. Minnesota Statutes 2004, section 403.27,  
185.28 subdivision 3, is amended to read:  
185.29 Subd. 3. [LIMITATIONS.] (a) The principal amount of the  
185.30 bonds issued pursuant to subdivision 1, exclusive of any  
185.31 original issue discount, shall not exceed the amount of  
185.32 \$10,000,000 plus the amount the council determines necessary to  
185.33 pay the costs of issuance, fund reserves, debt service, and pay  
185.34 for any bond insurance or other credit enhancement.  
185.35 (b) In addition to the amount authorized under paragraph  
185.36 (a), the council may issue bonds under subdivision 1 in a  
186.1 principal amount of \$3,306,300, plus the amount the council  
186.2 determines necessary to pay the cost of issuance, fund  
reserves,  
186.3 debt service, and any bond insurance or other credit  
186.4 enhancement. The proceeds of bonds issued under this paragraph  
186.5 may not be used to finance portable or subscriber radio sets.  
186.6 ~~(c) In addition to the amount authorized under paragraphs~~  
186.7 ~~(a) and (b), the council may issue bonds under subdivision 1 in~~  
186.8 ~~a principal amount of \$18,000,000, plus the amount the council~~  
186.9 ~~determines necessary to pay the costs of issuance, fund~~  
186.10 ~~reserves, debt service, and any bond insurance or other credit~~  
186.11 ~~enhancement. The proceeds of bonds issued under this paragraph~~  
186.12 ~~must be used to pay up to 50 percent of the cost to a local~~  
186.13 ~~government unit of building a subsystem and may not be used to~~  
186.14 ~~finance portable or subscriber radio sets. The bond proceeds~~  
186.15 ~~may be used to make improvements to an existing 800 MHz radio~~  
186.16 ~~system that will interoperate with the regionwide public safety~~  
186.17 ~~radio communication system, provided that the improvements~~  
186.18 ~~conform to the board's plan and technical standards. The~~  
186.19 ~~council must time the sale and issuance of the bonds so that~~  
186.20 ~~the~~  
186.21 ~~debt service on the bonds can be covered by the additional~~  
~~revenue that will become available in the fiscal year ending~~



186.22 ~~June 30, 2005, generated under section 403.11 and appropriated~~  
186.23 ~~under section 403.30.~~  
186.24 ~~(d) In addition to the amount authorized under paragraphs~~  
186.25 ~~(a) to (c), the council may issue bonds under subdivision 1 in~~  
186.26 ~~a~~  
186.27 ~~principal amount of up to \$27,000,000, plus the amount the~~  
186.28 ~~council determines necessary to pay the costs of issuance, fund~~  
186.29 ~~reserves, debt service, and any bond insurance or other credit~~  
186.30 ~~enhancement. The proceeds of bonds issued under this paragraph~~  
186.31 ~~are appropriated to the commissioner of public safety for phase~~  
186.32 ~~three of the public safety radio communication system. In~~  
186.33 ~~anticipation of the receipt by the commissioner of public~~  
186.34 ~~safety~~  
186.35 ~~of the bond proceeds, the Metropolitan Radio Board may advance~~  
186.36 ~~money from its operating appropriation to the commissioner of~~  
187.1 ~~public safety to pay for design and preliminary engineering for~~  
187.2 ~~phase three. The commissioner of public safety must return~~  
187.3 ~~these amounts to the Metropolitan Radio Board when the bond~~  
187.4 ~~proceeds are received.~~  
187.5 Sec. 19. [403.275] [STATE 911 REVENUE BONDS.]  
187.6 Subdivision 1. [BONDING AUTHORITY.] (a) The commissioner  
187.7 of finance, if requested by a vote of at least two-thirds of  
187.8 all  
187.9 the members of the Statewide Radio Board, shall sell and issue  
187.10 state revenue bonds for the following purposes:  
187.11 (1) to pay the costs of the statewide public safety radio  
187.12 communication system backbone identified in the plan under  
187.13 section 403.36 and those elements that the Statewide Radio  
187.14 Board  
187.15 determines are of regional or statewide benefit and support  
187.16 mutual aid and emergency medical services communication,  
187.17 including, but not limited to, costs of master controllers of  
187.18 the backbone;  
187.19 (2) to pay the costs of issuance, debt service, and bond  
187.20 insurance or other credit enhancements, and to fund reserves;  
187.21 and  
187.22 (3) to refund bonds issued under this section.  
187.23 (b) The amount of bonds that may be issued for the purposes  
187.24 of clause (1) will be set from time to time by law; the amount  
187.25 of bonds that may be issued for the purposes of clauses (2) and  
187.26 (3) is not limited.  
187.27 (c) The bond proceeds may be used to to pay up to 50  
187.28 percent of the cost to a local government unit of building a  
187.29 subsystem. The bond proceeds may be used to make improvements  
187.30 to an existing 800 MHz radio system that will interoperate with  
187.31 the regionwide public safety radio communication system,  
187.32 provided that the improvements conform to the Statewide Radio  
187.33 Board's plan and technical standards. The bond proceeds may  
187.34 not  
187.35 be used to pay for portable or subscriber radio sets.  
187.36 Subd. 2. [PROCEDURE.] (a) The commissioner may sell and  
188.1 issue the bonds on the terms and conditions the commissioner  
determines to be in the best interests of the state. The bonds  
may be sold at public or private sale. The commissioner may  
enter any agreements or pledges the commissioner determines  
necessary or useful to sell the bonds that are not inconsistent  
with sections 403.21 to 403.40. Sections 16A.672 to 16A.675

188.2 apply to the bonds. The proceeds of the bonds issued under  
188.3 this  
188.4 section must be credited to a special 911 revenue bond proceeds  
188.5 account in the state treasury.  
188.6 (b) Before the proceeds are received in the 911 revenue  
188.7 bond proceeds account, the commissioner of finance may transfer  
188.8 to the account from the 911 emergency telecommunications  
188.9 service  
188.10 account amounts not exceeding the expected proceeds from the  
188.11 next bond sale. The commissioner of finance shall return these  
188.12 amounts to the 911 emergency telecommunications service account  
188.13 by transferring proceeds when received. The amounts of these  
188.14 transfers are appropriated from the 911 emergency  
188.15 telecommunications service account and from the 911 revenue  
188.16 bond  
188.17 proceeds account.  
188.18 Subd. 3. [REVENUE SOURCES.] The debt service on the bonds  
188.19 is payable only from the following sources:  
188.20 (1) revenue credited to the 911 emergency  
188.21 telecommunications service account from the fee imposed and  
188.22 collected under section 237.491 or 403.11, subdivision 1, or  
188.23 from any other source; and  
188.24 (2) other revenues pledged to the payment of the bonds.  
188.25 Subd. 4. [REFUNDING BONDS.] The commissioner may issue  
188.26 bonds to refund outstanding bonds issued under subdivision 1,  
188.27 including the payment of any redemption premiums on the bonds  
188.28 and any interest accrued or to accrue to the first redemption  
188.29 date after delivery of the refunding bonds. The proceeds of  
188.30 the  
188.31 refunding bonds may, in the discretion of the commissioner, be  
188.32 applied to the purchases or payment at maturity of the bonds to  
188.33 be refunded, or the redemption of the outstanding bonds on the  
188.34 first redemption date after delivery of the refunding bonds and  
188.35 may, until so used, be placed in escrow to be applied to the  
188.36 purchase, retirement, or redemption. Refunding bonds issued  
188.37 under this subdivision must be issued and secured in the manner  
188.38 provided by the commissioner.  
188.39 Subd. 5. [NOT A GENERAL OR MORAL OBLIGATION.] Bonds issued  
188.40 under this section are not public debt, and the full faith,  
188.41 credit, and taxing powers of the state are not pledged for  
188.42 their  
188.43 payment. The bonds may not be paid, directly in whole or in  
188.44 part from a tax of statewide application on any class of  
188.45 property, income, transaction, or privilege. Payment of the  
188.46 bonds is limited to the revenues explicitly authorized to be  
188.47 pledged under this section. The state neither makes nor has a  
188.48 moral obligation to pay the bonds if the pledged revenues and  
188.49 other legal security for them is insufficient.  
188.50 Subd. 6. [TRUSTEE.] The commissioner may contract with and  
188.51 appoint a trustee for bond holders. The trustee has the powers  
188.52 and authority vested in it by the commissioner under the bond  
188.53 and trust indentures.  
188.54 Subd. 7. [PLEDGES.] Any pledge made by the commissioner is  
188.55 valid and binding from the time the pledge is made. The money  
188.56 or property pledged and later received by the commissioner is  
188.57 immediately subject to the lien of the pledge without any  
188.58 physical delivery of the property or money or further act, and

189.18 the lien of any pledge is valid and binding as against all  
189.19 parties having claims of any kind in tort, contract, or  
189.20 otherwise against the commissioner, whether or not those  
189.21 parties  
189.22 have notice of the lien or pledge. Neither the order nor any  
189.23 other instrument by which a pledge is created need be recorded.  
189.24 Subd. 8. [BONDS; PURCHASE AND CANCELLATION.] The  
189.25 commissioner, subject to agreements with bondholders that may  
189.26 then exist, may, out of any money available for the purpose,  
189.27 purchase bonds of the commissioner at a price not exceeding (1)  
189.28 if the bonds are then redeemable, the redemption price then  
189.29 applicable plus accrued interest to the next interest payment  
189.30 date thereon, or (2) if the bonds are not redeemable, the  
189.31 redemption price applicable on the first date after the  
189.32 purchase  
189.33 upon which the bonds become subject to redemption plus accrued  
189.34 interest to that date.  
189.35 Subd. 9. [STATE PLEDGE AGAINST IMPAIRMENT OF CONTRACTS.]  
189.36 The state pledges and agrees with the holders of any bonds that  
190.1 the state will not limit or alter the rights vested in the  
190.2 commissioner to fulfill the terms of any agreements made with  
190.3 the bondholders, or in any way impair the rights and remedies  
190.4 of  
190.5 the holders until the bonds, together with interest on them,  
190.6 with interest on any unpaid installments of interest, and all  
190.7 costs and expenses in connection with any action or proceeding  
190.8 by or on behalf of the bondholders, are fully met and  
190.9 discharged. The commissioner may include this pledge and  
190.10 agreement of the state in any agreement with the holders of  
190.11 bonds issued under this section.  
190.12 Sec. 20. Minnesota Statutes 2004, section 403.30,  
190.13 subdivision 1, is amended to read:  
190.14 Subdivision 1. [STANDING APPROPRIATION; COSTS COVERED.]  
190.15 ~~For each fiscal year beginning with the fiscal year commencing~~  
190.16 ~~July 1, 1997, The amount necessary to pay the following debt~~  
190.17 ~~service costs and reserves for bonds issued by the Metropolitan~~  
190.18 ~~Council under section 403.27 or by the commissioner of finance~~  
190.19 ~~under section 403.275 is appropriated to the commissioner of~~  
190.20 ~~public safety from the 911 emergency telecommunications service~~  
190.21 ~~account established under section 403.11:~~  
190.22 ~~(1) debt service costs and reserves for bonds issued~~  
190.23 ~~pursuant to section 403.27;~~  
190.24 ~~(2) repayment of the right of way acquisition loans;~~  
190.25 ~~(3) costs of design, construction, maintenance of, and~~  
190.26 ~~improvements to those elements of the first, second, and third~~  
190.27 ~~phases that support mutual aid communications and emergency~~  
190.28 ~~medical services;~~  
190.29 ~~(4) recurring charges for leased sites and equipment for~~  
190.30 ~~those elements of the first, second, and third phases that~~  
190.31 ~~support mutual aid and emergency medical communication~~  
190.32 ~~services;~~  
190.33 ~~or~~  
190.34 ~~(5) aid to local units of government for sites and~~  
190.35 ~~equipment in support of mutual aid and emergency medical~~  
190.36 ~~communications services to the commissioner of finance. The~~  
190.37 ~~commissioner of finance shall transmit the necessary amounts to~~  
190.38 ~~the Metropolitan Council as requested by the council.~~

190.35        This appropriation shall be used to pay annual debt service  
190.36 costs and reserves for bonds issued pursuant to section  
191.1        403.27 or 403.275 prior to use of fee money to pay other  
191.2 costs ~~eligible under this subdivision. In no event shall the~~  
191.3 ~~appropriation for each fiscal year exceed an amount equal to~~  
191.4 ~~four cents a month for each customer access line or other basic~~  
191.5 ~~access service, including trunk equivalents as designated by~~  
191.6 ~~the~~  
191.6 ~~Public Utilities Commission for access charge purposes and~~  
191.7 ~~including cellular and other nonwire access services, in the~~  
191.8 ~~fiscal year. Beginning July 1, 2004, this amount will increase~~  
191.9 ~~to 13 cents a month or to support other appropriations.~~  
191.10        Sec. 21. [REPEALER.]  
191.11        Minnesota Statutes 2004, section 403.30, subdivision 3, is  
191.12 repealed.  
191.13        Sec. 22. [EFFECTIVE DATE.]  
191.14        Sections 1 to 21 are effective the day following final  
191.15 enactment and apply to contracts entered into on or after that  
191.16 date. Notwithstanding Minnesota Statutes, section 403.11,  
191.17 subdivision 1, as amended by this act, a fee change under that  
191.18 subdivision in calendar year 2005 may become effective after a  
191.19 minimum of 30 days' notice.

How Other States Fund 911/Relay/Lifeline

Alabama

- 911: The 911 fee is 5% of basic tariffed rate for wireline service, applicable to a maximum of 100 lines per location. The fee may not exceed \$2.00 in counties with populations under 25,000. Under a 2005 law change, the fee is also applicable to service provided using VoIP or other similar technology with the provider paying the 911 fee for each 10 digit access number assigned to a user. Wireless fee is \$0.70 per month for each wireless connection with an Alabama billing address.
- Relay: Funded by a \$0.15 per access line charge (appears to be only on wireline).

Alaska

- 911: The wireline and wireless 911 fee for municipalities with populations greater than 100,000 is \$0.50 and for municipalities with populations less than 100,000 the fee is \$0.75 for both wireline and wireless. The wireline fee is assessed per access line and is capped at 100 lines per customer per municipality. The wireless fee is assessed per telephone number billed to an address in that municipality. The companies collect the fees and remit them to the municipalities.
- Relay: Funded by a surcharge of \$0.10 on residential and single line business customers and \$0.20 on multi-line business customers (per line or trunk).
- Lifeline: Funded by the Alaska USF (also funds DEM weighting and public interest pay phones). The surcharge is a 0.65% fee on intrastate telecommunications revenues.

Arizona

- 911: For both wireline and wireless access lines, the 911 fee ("Emergency Telecommunications Excise Tax") is \$0.37 in years 2001-2006; \$0.28 in 2006-2007, and \$0.20 after 2007.
- Relay: The relay fee is one and one-tenth percent of the provider's gross proceeds of sales or gross income derived from the business of providing exchange access services.

Arkansas

- 911: The 911 rate for wireline service is 5% of the tariffed rate and the wireless rate is \$0.50 per connection that has a billing address in Arkansas or contains an area code assigned to Arkansas by NANPA. The fee is capped at no more than 100 exchange access facilities per person per location. The wireline revenues are remitted to the governing authority of each political subdivision. The wireless revenues are remitted to the CMRS Emergency Telephone Services Board.
- Relay: The relay fee cannot exceed \$0.10 per access line and cannot be assessed on more than 100 lines per location. The TDD equipment fee cannot be more than \$0.03 per access line.

California

- 911: The 911 fee for wireline and wireless is a surcharge on the intrastate phone bill, currently at .65% (a maximum of .75% is allowed).

- Lifeline: The Universal Service Lifeline Telephone surcharge is 1.550% of intrastate telecommunications services revenues.
- Relay: Funded by a 0.30% surcharge on intrastate telecommunications services.

#### Colorado

- 911: The 911 fee is set by the counties and the surcharge is a maximum of \$0.70 per exchange access facility and may be assessed against users whose address is in those portions of the county's jurisdiction where emergency telephone service will be provided. The charge is not imposed on any state or local governmental entity. The surcharge must be the same for wireline and wireless.
- Relay: Funded by a \$0.06 surcharge on all residential and business access lines.
- Lifeline: Funded by a \$0.12 surcharge on all residential and business access lines (increased from \$0.10 in July 2004).

#### Connecticut

- 911: The Connecticut DPU sets the 911 fee each June and is capped by law at \$0.50 per subscriber (wireline and wireless). The fee varies by the number of lines and as of June 1, 2005 is assessed at a per wireless telephone number/access line fee of: one line = \$0.37, 2 lines = \$0.28, 3 lines = \$0.25, 4 to 5 lines = \$0.22, 6-10 lines = \$0.19, 11-25 lines = \$0.15, 26 to 50 lines = \$0.12, 51-99 lines = \$0.09, and 100+ lines = \$0.07 per line.
- Relay and Lifeline: Funded by an assessment based on market share as measured by total intrastate and interstate revenues.

#### Delaware

- 911: The wireline and wireless 911 surcharge can be up to \$0.60. For Centrex service, the rate is one-ninth of the surcharge except where a Centrex customer has less than nine lines, the maximum monthly charge for those lines is the surcharge imposed on each business exchange access line or trunk divided by the customer's Centrex lines. For each PRI-ISDN system the charge is five times the surcharge. The charge cannot be assessed against residence access lines provided to Lifeline subscribers or on wholesale services. The wireless surcharge is assessed on each wireless telephone number billed by the provider.

#### District of Columbia

- 911: The wireline fee for 911 is \$0.76 per exchange access line, \$0.62 per Centrex line and \$0.62 per PBX station. For wireless, the fee is \$0.76 for each telephone number that has a District of Columbia billing address.
- Relay and Lifeline: Funded by providers based on each carrier's share of local telecommunications service revenue.

#### Florida

- 911: The 911 fee is a maximum of \$0.50 wireline (and not to exceed 25 lines per billing address). The wireline fee is collected by telephone companies and remitted to counties. The wireless fee is \$0.50 statewide with no line limit. The wireless fee is collected by the wireless provider on each customer whose place of primary use is

within the state and the fee is assessed per each service number. Wireless fees are remitted to the state Wireless 911 Board.

- Relay: The fee for the Florida Relay is \$0.15 per access line. It is assessed per access line and may not be assessed on more than 25 lines per account.

#### Georgia

- 911: The 911 fees are a maximum of \$1.50 access charge per each wireline and \$1.00 for phase I and \$1.50 for phase II each wireless line. Money is collected by the companies and remitted directly to the local jurisdictions (counties or municipalities for both wireline and wireless).
- Relay: The TRS funding mechanism is a state mandated monthly maintenance surcharge on residential and business local exchange access facilities.

#### Hawaii

- 911: The 911 wireline fee is \$0.27 and the wireless fee is \$0.66 per connection.
- Relay: The relay is funded by a per access line fee of \$0.17 (2002).

#### Idaho

- 911: The Idaho PUC sets the 911 surcharge that is assessed on each end user's business, residential and wireless access service. The surcharge is a maximum of \$1.00 for both wireline and wireless.
- Relay: The relay system is funded by a surcharge of \$0.04 per wireline access line and \$0.0007 per toll minute of use.
- Lifeline: Low income assistance: Business, residential and wireless access lines are all assessed a surcharge of \$0.07 (reduced from \$0.12 on May 1, 2005).
- USF: Assistance to high cost wireline companies is provided by a surcharge on wireline services of \$0.10 per residential access line, \$0.15 per business access line, and \$0.003 per toll minute of use.

#### Illinois

- 911: The wireline 911 fee is set by each county and must be approved in a referendum. Current fees range from \$0.29 to \$5.00 per network connection. The wireless 911 surcharge is set statewide at a rate of \$0.75 and is assessed "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."
- Relay: Funded by an \$0.08 per access line fee.
- Lifeline: Low income assistance is funded through voluntary contributions from Illinois telephone consumers.
- USF: This fee is set at 0.3% of local and intrastate toll charges and is used to support rural and high cost companies.

#### Indiana

- 911: The 911 fee is a percentage of the basic wireline phone service charge, up to 10% for smaller jurisdictions to 3% for the 6 or 7 largest ones. The estimated average is \$1.25 per line per month. Funds are collected by telephone companies and remitted

directly to local jurisdictions (92 counties and some municipalities). For wireless, the monthly access charge is \$0.65 per month (it cannot exceed \$1.00) and goes to the state wireless board for distribution to carriers and PSAPs based on level of service. For a wireless standard subscriber, the fee is per service that has an Indiana bill address. For a prepaid wireless subscriber, the fee is per service assigned an Indiana telephone number or an Indiana identification number.

- Relay: Funded by a \$0.03 surcharge on each residential and business line (wireline and wireless).

#### Iowa

- 911: The 911 wireline fee is assessed per access line by county and ranges from \$0.25 to \$2.50, with most counties' fee at \$1.00. The 911 wireless fee is \$0.65 per customer per service number based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available.
- Relay: On April 6, 2005, Governor Vilsack signed into law an act, identified as Senate File 264 (SF 264) which amends Iowa Code §477C.7. SF 264 becomes effective on July 1, 2005. The amended statute requires that wireless communications service providers pay 3 cents per month per Iowa wireless number to fund the Dual Party Relay Service. The remainder of the assessment will be allocated proportionately based on intrastate revenues, one-half to local exchange service providers and one-half to interexchange carriers, centralized equal access providers, and alternative operator service companies.

#### Kansas

- 911: The 911 fee for wireline service is \$0.75. For wireless service, the fee is \$0.50 per wireless subscriber account with a primary place of use in Kansas. Prepaid wireless service is not assessed the 911 fee.
- Relay and Lifeline: Both programs are supported by the Kansas USF, which is an assessment on providers' intrastate retail revenues (wireline and wireless). For the year ending March 1, 2005, the assessment was 4.32%.

#### Kentucky

- 911: The wireline 911 fee varies from \$0 to \$4.00, as set by county. The wireless 911 fee is \$0.70 per connection.
- Relay: Funded by a fee of \$0.09 per access line. There is a fee of \$0.01 for TDD (equipment).
- Lifeline: Funded by a \$0.08 charge on all customers' bills.

#### Louisiana

- 911: The wireline 911 fee is a maximum of \$1.00 residential and \$2.00 per business line, capped at 100 exchange access facilities per person per location. The wireless 911 fee is a maximum of \$0.85 per CMRS connection for which the billing address is within the jurisdiction.
- Relay: A charge of \$0.05 per LEC access line funds the Relay service.



### Maine

- 911: The statewide 911 fee is \$0.50 per line or number and may not be imposed on more than 25 lines or numbers per customer billing account.
- USF: The current quarterly surcharge for the Maine USF is 1.25% (3Q05) and is collected on intrastate revenues for wireline and wireless providers and is used in part to support rural ILECs.

### Maryland

- 911: The 911 fee is a maximum of \$1.00 for each subscriber to switched local exchange access service or CMRS or other 911 accessible service. \$0.25 goes to the state 911 trust fund. Up to \$0.75 can be assessed by county.
- Relay: Funded by a \$0.20 per line charge (same fee since 1997).

### Massachusetts

- 911: For wireline service, the fee is \$0.85 for each voice grade residential and business line. This fee is used to fund wireline 911 and the relay program. For wireless, the fee is \$0.30 per wireless mobile telephone number based on the area code chosen by the subscriber. With the approval of the board, a wireless carrier may impose this surcharge based on the subscriber's billing address. The wireless fee may be increased to a maximum of \$0.75 per month.
- Relay: funded by the \$0.85 fee discussed above for wireline service.

### Michigan

- 911: The 911 fee for wireline service is assessed at a county's option and is broken into technical and operational charges. The tech surcharge cannot exceed \$0.80. Together, the tech and operational surcharges are over \$3.00 per month in some counties. They are both based upon a percentage of the rate for basic service and non-recurring charges. The 911 fee for wireless service is \$0.52 per CMRS connection and is scheduled to be reduced to \$0.29 at the end of 2005. Also, there is a group in Michigan called the Future of 911 Coalition (see white paper in Attachment C) that argues that the current method of financing 911 is not sustainable going forward and advocates for funding 911 through county government's general fund dollars or millages. A responsive paper, which agrees that challenges face the 911 system, was prepared by the Michigan Emergency Telephone Service Committee.
- Lifeline: In 2003 determined that a state USF was not necessary.

### Minnesota

- 911: The 911 fee is increasing from \$0.40 to \$0.65 per wireline and wireless access line effective mid-2005.
- Relay: The Relay fee, which is applied per wireline and wireless access line, is being reduced from \$0.10 to \$0.07 effective mid-2005.
- Lifeline: The Telecommunications Assistance Plan fee is assessed at \$0.05 per wireline access line.

### Mississippi

- 911: The 911 wireline fee is set by county and is not to exceed \$1.00 per residential telephone subscriber line and \$2.00 per commercial telephone subscriber line (capped at no more than 25 access lines per location). The 911 wireless fee is overseen by the state CMRS Board and the 911 fee is a \$1.00 surcharge on each wireless telephone connection whose place of primary use is in the state.
- Relay: Funded by a \$0.07 per access line fee.

#### Missouri

- 911: The 911 fee for wireline service is 15% of the tariffed local service rate or \$0.75, whichever is greater. There is no 911 fee on wireless service currently as it has been voted down twice (in 1999 and 2002).
- Relay: Currently at \$0.10 per access line. The PSC has a docket open where its staff is recommending an increase to \$0.15 per access line.
- Lifeline: Funded by a 0.18% assessment on basic local service and instate toll charges.

#### Montana

- 911: The 911 fee for wireline and wireless service is \$0.50 by telephone exchange access service, wireless telephone service, or other 911 accessible services. Funding is used to implement E911, with no reimbursement for wireless 911 expenses. Cost recovery for wireless 911 deployment is expected to be considered in the 2007 session.
- Relay: The Relay fee is \$0.10 for wireline and wireless service.
- Lifeline: Montana laws (69-3-1003) provide for a per residential access line surcharge to fund the telephone assistance program.

#### Nebraska

- 911: The wireline fee is \$0.25 to \$1.00. The wireless fee is not to exceed \$0.50 per access line.
- Relay: A surcharge of \$0.07 per access line is assessed for the Relay program, capped at 100 access lines per subscriber.
- Lifeline: The fund is combined with the universal service fund (assisting companies that serve high cost areas) and is funded by a 6.95% surcharge on the instate portion of the bill.

#### Nevada

- 911: The 911 fee is set by county. For wireline service, the fee may be no higher than \$0.25 per access line. The wireless fee must equal the wireline fee and is assessed to each customer whose primary use is within the county. In 2005, certain cities were given the authority to assess a \$0.75 surcharge on wireline and wireless lines to support 911 service within that city.
- Lifeline: Included in USF administered by NECA and supported by a tax of \$0.0471 on intrastate retail revenues.
- Relay: \$0.03 per line.

### New Hampshire

- 911: The 911 fee is \$0.42 for both wireline and wireless service. The fee is assessed on every residence and business exchange line and every CMRS number, and not on more than 25 business or CMRS lines per customer billing account.
- Relay: Funded by a \$0.04 per access line per month fee.
- Lifeline: No separate state program due to low local rates.

### New Jersey

- 911: The 911 fee is \$0.90 for wireline and wireless service.
- Relay: Paid for by LECs and IXC's based on each company's ratio of revenue to all revenues of New Jersey LECs and IXC's.
- Lifeline: Doesn't appear to have a separate program.

### New Mexico

- 911: The wireline and wireless 911 fee is \$0.51. The fee is billed to each subscriber line by a telecommunications company and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico, provided that subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act are not assessed the surcharge.

### New York

- 911: The 911 fee for wireline service is \$0.35 per access line. Cities over 1 million in population may assess a surcharge of \$1.00. No more than 75 access lines per customer location may be assessed the charge. It is also not assessed on lifeline customers. The wireless 911 fee is \$1.20 and is assessed on wireless communications service where the place of primary use is in New York state.
- Relay and Lifeline: The Targeted Accessibility Fund (TAF) was established to fund Lifeline, emergency services (911), and telecommunication relay service (TRS) for the hearing impaired. The fee is assessed on intrastate gross revenue and carrier access charges. The fee cannot be passed on to customers.

### North Carolina

- 911: Wireline monthly access fee varies by county of between \$0.25 to \$3.00 (average of \$1.00). Funds are collected by telephone companies and remitted directly to local jurisdictions (mainly counties). Wireless fee is \$0.70 (effective 10/1/05; reduced from \$0.80) per CMRS connection. Under changes made in 2005, by law the fee is also to be collected by prepaid wireless services providers either from each active prepaid account where the account balance is equal to or greater than the amount of the service charge or by dividing the total earned prepaid wireless revenue received by the CMRS provider with respect to each active prepaid wireless telephone service customer in the state within the monthly 911 reporting period by \$50.00 and then multiplying the quotient by the service charge amount. Money collected from wireless providers is disbursed 53% to reimburse CMRS providers for actual costs as shown by sworn invoices to comply with the wireless 911 requirements and 47% to eligible primary PSAPs. The money distributed to the PSAPs is further split with half divided equally to all eligible primary PSAPs and the

other half divided pro rata among the eligible primary PSAPs based on the population served by the PSAP.

- Lifeline: Commission rules and North Carolina statutes require any local provider authorized to provide service to contribute to any universal service fund.

#### North Dakota

- 911: The 911 fee in North Dakota is a maximum \$1.00 for wireline and wireless service, as approved by voters by county.
- Relay: The 2005-06 per access line surcharge is \$0.05 and is paid by both wireline and wireless carriers.
- Lifeline: On June 8, 2005, the North Dakota PSC rescinded its lifeline and link up plans because it did not believe it had clear legislative authority to adopt such plans. The PSC did require that the programs funded as a result of settlements with companies continue to be funded.

#### Ohio

- 911: The wireline fee is a maximum \$0.50 as established by county. The wireless fee will take effect August 1, 2005 and is \$0.32 for each wireless telephone number in the state.

#### Oklahoma

- 911: The 911 wireline fee is set by county and must be approved in a referendum. The county fees range from 3 to 15% of the monthly tariffed rate, capped at no more than 100 access lines per person per location. The wireless fee is \$0.50 and must be approved by county. Only five counties have approved a wireless 911 fee.
- Relay: By statute, a \$0.05 per access line surcharge is assessed to recover the costs of the relay and equipment.
- Lifeline: Low income, high cost, schools and library funds are all funded by a fee assessed on providers based on their intrastate revenues. Providers have the option of recovering their contributions from ratepayers, and if they choose to recover, it must be in a fair, equitable and nondiscriminatory manner.

#### Oregon

- 911: The 911 surcharge is \$0.75 for both wireline and wireless service. The wireline fee is applied to each line that has unrestricted connection to the switched network. The wireless fee is assessed on a per instrument basis if the primary use is in Oregon.
- Relay and Lifeline: Each Oregon access line must pay \$0.10 per month. For cellular, wireless, or other radio common carriers, the tax applies to each device
- USF: Oregon also has a high cost fund supported by carriers based on a percentage of their intrastate revenues.

#### Pennsylvania

- 911: The wireline 911 rate is set by county with a maximum allowed by law ranging from \$1.00 to \$1.50 depending on county size. The rate is assessed per line, up to 25 lines. For other multi-line customers, the amount billed per line is 0.75 of the rate for

26-100 lines, 0.50 of the rate for 101-250 lines, 0.20 of the rate for 251-500 lines, and 0.172 of the rate for over 500 lines. The wireless 911 fee is \$1.00 per wireless service customer, including resellers and prepaid service.

- Relay: The relay is funded by a per access line surcharge that through June 2005 was \$0.06 per residential line and \$0.12 per business line.

#### Rhode Island

- 911: Rhode Island provides 911 service on a statewide basis. The funding is by a \$1.00 surcharge on both wireline and wireless lines. The surcharge is applied to any service that “is capable of accessing, connecting with, or interfacing with RI E 911 by dialing or initializing or otherwise activating the RI E 911 Uniform Emergency Telephone System through the numerals “9-1-1” by means of a landline local telephone exchange device, cellular telephone device, wireless communications device, radio, or any other communications device or means (including computers). Data-only subscriber lines or cables and internet connection lines or cables which are capable of accessing, connecting with, or interacting with RI E 911 as aforesaid, are subject to the subscriber surcharge.”
- Relay: The Rhode Island relay is funded by a \$0.09 surcharge on all access lines.

#### South Carolina

- 911: The wireline 911 fee is between \$0.50 and \$1.50 per local exchange access facility depending on the tier of the local unit of government and whether the fee is for start up costs or ongoing operations. Start up costs are limited to the first 50 local exchange access lines in an account. The wireless 911 fee is \$0.60 and is assessed on every 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.

#### South Dakota

- 911: The wireline and wireless 911 charge is set by the county or municipality and is not to exceed \$0.75. For wireline service, the fee is assessed per line and is limited to 100 access lines per customer account billed. For wireless service, the fee is assessed per cellular telephone where the primary place of use is within that governing body’s designated 911 service area.

#### Tennessee

- 911: Wireline monthly access fee ranges from \$0.65/residential and \$2.00 business with a cap of \$1.50/month residential and \$3.00/month business by local referendum or state 911 board. Assessment limited to a maximum of 100 lines per location. The wireless 911 program is funded by a fee of \$1.00/month with 75% remitted to the Tennessee Emergency Communications Board and carriers and 25% to PSAPs based on population.

#### Texas

- 911: The wireline 911 fee is \$0.50 for the 911 programs that the Texas Commission on State Emergency Communications (CSEC) administers. For the 25 emergency

communications districts and 24 home rule municipalities that administer their own 911 systems, their governing bodies set the wireline rates and they vary. The wireline fee is assessed on a line defined as “the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, between an enduser customer’s premises and a service provider’s network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network.” Or, a provider that bills federal subscriber line charges on all its retail lines and services may use the federal subscriber line charge as an alternative definition for those lines that must pay the 911 fee. The wireless 911 fee is \$0.50 statewide. Wireless service is defined as any cellular telephone, communications channel, personal communications system, CMRS, cable/broadband services, or any other wire or wireless means that connects the customer to the public switched telecommunications network and provides the customer with the ability to reach a public safety answering point by dialing the digits 9-1-1. (Not included in the assessment are public payphones, paging or other one-way services, a communications channel suitable only for data transmission, a line from a telecommunications service provider to an ISP for the ISP’s data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages, a wireless roaming service or other non-vocal CMRS, or a private telecommunications system.) There is also an equalization surcharge, currently at 1.0% (increased from 0.60% on July 21, 2005), levied on intrastate long-distance charges and collected and distributed as needed on a statewide basis.

- Relay and Lifeline: Both are funded by the Texas USF (along with funding to high cost companies). The Texas USF is supported by local, interexchange and wireless carriers through a 3.6% assessment on their intrastate revenues. The companies are not required to pass through the assessment to their end users but most companies do.

#### Utah

- 911: The wireline and wireless 911 fee is \$0.65 for the county, city or town 911 system; a fee of \$0.13 for the statewide unified E-911 emergency service; and a fee of \$0.07 to support the University of Utah Poison Control Center. Wireline service is defined as a local exchange switched access line. Wireless service is defined as a revenue producing radio communications access line with a billing address within the boundaries of the county, city or town.
- Relay: Funded through a \$0.10 per access line charge.
- USF: Utah’s USF is funded through a 0.9% assessment against intrastate retail revenues. This fund supports high cost companies, which must have a retail lifeline offering in order to receive funds.

#### Vermont

- 911, Relay, Lifeline: The state USF is used to fund three programs: 911, the Relay, and Lifeline. The Public Service Board sets the USF rate each year to cover the needs of the Relay, Lifeline, and the 911 budget approved by the legislature. The USF rate is capped at 2% and the current rate is 1.27% of eligible intrastate telecommunications revenues. The Vermont Public Service Board has issued draft

rules that would specifically include cable modem service and VoIP as eligible intrastate telecommunications services to which the VUSF surcharge would apply.

#### Virginia

- 911: Wireline monthly access fee varies by county of between \$0.40 to a cap of \$3.00 (average of \$1.70). Funds are collected by telephone companies and remitted directly to local jurisdictions (mainly counties). Wireless fee is \$0.75 monthly access charge and goes to the state wireless board and is then distributed to counties based on applications.
- Relay: Funded by a \$0.16 per line fee.

#### Washington

- 911: Wireline and wireless fee for 911 is \$0.20/month state and \$0.50/month local. The state funds are intended to help small counties whose local charge revenue is low. The state portion is collected by the telephone companies and remitted to the state Department of Revenue. The county portion is collected by the telephone companies and remitted directly to each county treasurer.
- Relay: The telecommunications relay fee is \$0.14 (FY05) per switched line (i.e. no relay fee on wireless lines). The cap on the fee is \$0.19. The fund is administered by the state DSHS Office of Deaf and Hard of Hearing.
- Lifeline: The telecommunication assistance fee is \$0.14 per switched line. The fund is administered by the DSHS and a) provides assistance to telephone subscribers that qualify for other state assistance programs and b) up to 8% of the receipts go to the Department of Community, Trade and Economic Development as reimbursement for costs of providing community service voice mail services.

#### West Virginia

- 911: The 911 wireline fee is set by county and ranges from \$0.55 to \$3.75. The wireless fee is set by the WVPSC and is to be based on the weighted average of all of the counties that have adopted an E911 ordinance and fee. The wireless 911 fee is currently \$1.48 (adjusted every two years).
- Relay: Funded by a \$0.10 surcharge on all wireline access lines.
- Lifeline: Funded as a credit against the West Virginia telecommunications tax.

#### Wisconsin

- 911: The 911 wireline surcharge is set by each county and is determined by the telephone companies costs divided by the number of wirelines in the county. There is currently no wireless 911 surcharge. A law passed in 2004 requires the PSC to set the statewide wireless fee after receiving grant requests from wireless providers and local governments. The wireless 911 fee will be based on the amount of approved grants divided by the number of wireless telephone numbers with billing addresses in the state that are billed on a recurring basis and the number of wireless customers with prepaid service having an address within the state or sold within the state. The fee will be recovered on each telephone number of a customer that has a billing address in the state. The WPSC has received the grant requests and is in the process of calculating the fee.

- Relay: Funded through a surcharge of .1230414169 percent on all companies intrastate and interstate revenues. Not assessed on wireless providers.
- Lifeline: Part of the Wisconsin USF, which is funded by a surcharge on annual intrastate revenues of .02885 percent. By statute, wireless providers may be assessed but they are not currently.

#### Wyoming

- 911: The 911 wireline and wireless fee is set by the local government providing the 911 service and is capped at \$0.75 and must be the same for wireline and wireless service. No 911 emergency tax shall be imposed upon more than one hundred (100) local exchange access lines or their equivalent per customer billing
- Relay: Funded by a \$0.25 fee on wireline and wireless service, capped at 100 local exchange access lines (like 911 fee cap).
- Lifeline: Funded by the Wyoming USF. The lifeline rate requires that no customer pay more than 130% of the statewide average rate. For the year ending July 1, 2005, that rate (basic only, no taxes, fees, surcharges, etc.) was \$31.67. The USF is supported by a percent surcharge on gross intrastate retail revenues. For the year ending July 1, 2005, the assessment rate was 0 due to a surplus. (For the year ending July 1, 2004, the assessment rate was 1%.)



Alaska

Sec. 29.35.131. 911 surcharge.

(a) A municipality may, by resolution or ordinance, elect to provide an enhanced 911 system at public safety answering points, may purchase or lease the enhanced 911 equipment or service required to establish or maintain an enhanced 911 system at public safety answering points from a local exchange telephone company or other qualified vendor, and may impose an enhanced 911 surcharge, in an amount to be determined by the municipality, on all local exchange access lines that provide telephone service to wireline telephones in the area to be served by the enhanced 911 system. A municipality that provides services under an enhanced 911 system may also by resolution or ordinance impose an enhanced 911 surcharge on each wireless telephone number that is billed to an address within the enhanced 911 service area. For a municipality with a population of 100,000 or more, an enhanced 911 surcharge may not exceed 50 cents per month for each wireless telephone number or 50 cents per month for each local exchange access line for wireline telephones. For a municipality with fewer than 100,000 people, an enhanced 911 surcharge may not exceed 75 cents per month for each wireless telephone number or 75 cents per month for each local exchange access line for wireline telephones. An enhanced 911 service area may be all of a city, all of a unified municipality, or all or part of the area within a borough and may include the extraterritorial jurisdiction of a municipality in accordance with [AS 29.35.020](#) . The governing body of a municipality shall review an enhanced 911 surcharge annually to determine whether the current level of the surcharge is adequate, excessive, or insufficient to meet anticipated enhanced 911 system needs. The municipality may only use the enhanced 911 surcharge for the enhanced 911 system.

(b) A local exchange telephone company providing service in a municipality that has imposed an enhanced 911 surcharge shall bill each month and collect the surcharge from customers in the enhanced 911 service area. 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.

## Arkansas

### 12-10-318. Emergency telephone service charges - Imposition - Liability.

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per access line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of fewer than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per access line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) The governing authority of the political subdivision may, upon its own initiative, call such a special election.

(b)(1)(A) There is hereby levied a commercial mobile radio service emergency telephone service charge in an amount of fifty cents (50¢) per month per commercial mobile radio service connection that has a billing address within the State of Arkansas or with respect to which the mobile identification number for the commercial mobile radio service connection contains an area code assigned to Arkansas by the North American Numbering Plan Administrator.

(B)(i) After September 1, 2003, when authorized by a majority of persons voting within a political subdivision in accordance with the law, the governing authority of that political subdivision may levy an additional commercial mobile radio service emergency telephone service charge in an amount up to thirty cents (30¢) per month per commercial mobile radio service connection that has a billing address within the political subdivision.

(ii) The commercial mobile radio service provider may add any amounts approved by the voters and implemented under this subdivision (b)(1)(B) to the fifty cents (50¢) levied in subdivision (b)(1)(A) of this section so that the commercial mobile radio service emergency telephone service charges appear as a single line item on a subscriber's bill.

(C) The fees collected by commercial mobile radio service providers under subdivisions (b)(1)(A) and (B) of this section shall be remitted to the CMRS Emergency Telephone Services Board within sixty (60) days after the end of the month in which the fees are collected.

(D) The funds collected pursuant to this subdivision (b)(1) shall not be deemed revenues of the state and shall not be subject to appropriation by the General Assembly.

(E) The fee levied in subdivision (b)(1)(A) of this section and any additional amounts approved by the voters and implemented under subdivision (b)(1)(B) of this section and collected by commercial mobile radio service providers who provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing

Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act.

## Connecticut

Department of Public Utility Decision in Docket 05-01-04 of May 25, 2005

### Summary

Pursuant to §16-256b of the General Statutes of Connecticut (Conn. Gen. Stat.), the Department of Public Utility Control (Department) initiated this docket to conduct an annual proceeding to determine the monthly fee that will be assessed on each local telephone service and commercial mobile radio service (CMRS) subscribers to fund the development and administration of the state's Enhanced Emergency 911 (E-911) program. After review of the Department of Public Safety's (Public Safety) proposed E-911 program operating budget for Fiscal Year (FY) 05/06, the Department has determined that Connecticut local exchange and CMRS customers should be assessed an amount ranging from \$0.37 to \$0.07, depending upon the number of access lines or telephone numbers subscribed, effective January 1, 2005. This is an increase from the amount assessed of \$0.19 to \$0.04 in FY 04/05. The increase is due primarily to the substantial increase in Public Safety's FY 05/06 operating budget which contains many new expenses that were not included in the FY 04/05 operating budget.<sup>1</sup> Response to Interrogatory TE-7.

### Background

In accordance with §16-256b and § 28-24 of the Conn. Gen. Stat. and the Regulations of Connecticut State Agencies (Conn. Agencies Regs.) §§28-24-1 et al, the Department in conjunction with Public Safety directed the three incumbent local exchange companies (LEC), all competitive local exchange carriers (CLEC) and CMRS providers (collectively, the Companies) to provide their total number of access lines and active telephone numbers in service as of January 1, 2005. The Companies were also directed to provide the number of customers subscribing to multiple lines/telephone numbers. Pursuant to Conn. Agencies Regs. §28-24-10(h), Public Safety was required to submit to the Department its annual operating budget for the state's Enhanced Emergency 911 (E-911) program. Public Safety filed its budget with the Department on March 30, 2005, and a revised budget on April 5, 2005.<sup>2</sup> This information is necessary to determine the FY 05/06 funding requirements to administer the state's E-911 program.

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<sup>1</sup> FY04/05 budget was \$8,440,794 while the FY05/06 budget has increased to \$16,699,080, a difference of \$8,258,286.

<sup>2</sup> The April 5, 2005 budget was submitted to correct the Title of Item 13, CSP Subsidy.

## Delaware

### § 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.

District of Columbia

DISTRICT OF COLUMBIA OFFICIAL CODE 2001 EDITION

DIVISION V. LOCAL BUSINESS AFFAIRS

TITLE 34. PUBLIC UTILITIES.

SUBTITLE V. TELECOMMUNICATIONS.

CHAPTER 18. EMERGENCY AND NON-EMERGENCY NUMBER TELEPHONE  
SYSTEM ASSESSMENTS FUND.

§ 34-1803. Assessments.

(a)(1) There is imposed upon all local exchange carriers, including wireline and wireless carriers, a tax calculated on the basis of each individual telephone line sold or leased in the District of Columbia as follows:

(A) For wireline local exchange service:

(i) \$0.76 per exchange access line;

(ii) \$0.62 per Centrex line; and

(iii) \$0.62 per private branch exchange ("PBX") station; and

(B) For wireless telephone exchange service, \$0.76 for each telephone number that has a District of Columbia billing address.

Florida

365.172 Wireless emergency telephone number "E911."--

(8) WIRELESS E911 FEE.--

(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.

## Illinois

(50 ILCS 751/17)

(Section scheduled to be repealed on April 1, 2008)

Sec. 17. Wireless carrier surcharge.

(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 911 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 911 Board sets the monthly wireless surcharge. State and local taxes shall not apply to the wireless carrier surcharge.



## Iowa

### 911:

34A.7A Wireless communications surcharge - fund established - distribution and permissible expenditures.

1. a. Notwithstanding section [34A.6](#), the administrator shall adopt by rule a monthly surcharge of up to sixty-five cents to be imposed on each wireless communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all wireless communications service numbers as provided by rule of the administrator.
- b. The program manager shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The program manager, subject to the sixty-five cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.
- c. (1) The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. The surcharge shall appear as a single line item on a subscriber's periodic billing indicating that the surcharge is for E911 emergency telephone service. 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 mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. The wireless E911 service surcharge is not subject to sales or use tax.

### Iowa Wireless Fee for Funding Relay:

PAG LIN 1 1 Section 1. Section 477C.7, Code 2005, is amended to read as follows:  
477C.7 FUNDING. 1. The board shall impose an annual assessment to fund the programs described in this chapter upon all ~~telephone utilities~~ telecommunications carriers providing service in the state as follows: ~~1. 2. The total assessment shall be allocated one-half to local exchange telephone utilities and one-half to the following telephone utilities as follows:~~ a. Wireless communications service providers shall be assessed three cents per month for each wireless communications service number provided in this state.  
b. (1) The remainder of the assessment shall be allocated one-half to local exchange telephone utilities and one-half to the following: ~~a. (a) Interexchange carriers. b. (b) Centralized equal access providers. c. (c) Alternative operator services companies.~~ 2. (2) The assessment shall be levied allocated proportionally based upon revenues from all intrastate regulated, deregulated, and exempt telephone services under sections 476.1 and 476.1D. 3. The ~~telephone utilities~~ telecommunications carriers shall remit the assessed amounts quarterly to a special fund, as defined under section 8.2, subsection 9. The moneys in the fund are appropriated solely to plan, establish, administer, and promote the relay service and equipment distribution programs. 4. The ~~telephone utilities~~ telecommunications carriers subject to assessment shall provide the information requested by the board necessary for implementation of the assessment. 5. The local exchange telephone utilities shall not recover from intrastate access charges any portion of such utilities assessment imposed under this section. EXPLANATION This bill

relates to the funding of the dual party relay service through an assessment on telecommunications carriers providing telephone service in this state. Under current law, the dual party relay service is funded through an assessment that is allocated one-half to local exchange telephone utilities and one-half to interexchange carriers, centralized equal access carriers, and alternative operator services companies. The bill reallocates the assessment by providing that wireless communications service providers pay three cents per month per wireless number provided in this state. The remainder of the assessment is allocated proportionately based on revenues, one-half to local exchange service providers and one-half to interexchange carriers, centralized equal access providers, and alternative operator services companies. LSB 1790SV 81

Massachusetts

CHAPTER 6A. EXECUTIVE OFFICES

EXECUTIVE OFFICE OF PUBLIC SAFETY

Chapter 6A: Section 18H Wireless enhanced 911 service surcharge; Wireless Enhanced 911 Fund; disbursement of funds; quarterly reports; call volume and system performance  
*[ Text of section added by 2002, 61, Sec. 6 effective until June 30, 2007. Repealed by 2002, 61, Sec. 7. See 2002, 61, Sec. 9. See also, Section 18H added by 2002, 239, Sec. 1, below.]*

Section 18H. (a) There shall be imposed on each paying telecommunication service subscriber, whose telecommunication service is capable of directly accessing and utilizing a 911 emergency telephone system, a surcharge in the amount of 30 cents per month per wireless mobile telephone number, based on the area code chosen by the subscriber. With the approval of the board, a wireless carrier may impose this surcharge based on the subscriber's billing address. Based on the actual expenditures incurred in implementing a wireless enhanced 911 system, the statewide emergency telecommunications board may increase this monthly fee to a maximum of 75 cents per month. Any increase shall be justified in its annual report to the general court. The surcharge shall be collected by the wireless carrier or reseller providing the wireless enhanced 911 service and shall be shown on the subscriber's bill as "Wireless Enhanced 911 Service Surcharge", or the appropriate abbreviation. The surcharge shall not be subject to sales or use tax. The subscriber shall be liable for the surcharge imposed under this section. The wireless carrier or reseller shall have no obligation or authority to enforce the collection of the surcharge.

## New Hampshire

106-H:9 Funding; Fund Established. –

I. The enhanced 911 system 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.

Source. 1992, 165:1. 1997, 298:17, eff. July 1, 1997. 2003, 319:122, eff. Sept. 4, 2003.

New Mexico

63-9D-5. IMPOSITION OF SURCHARGE.—

A. There is imposed a 911 emergency surcharge in the amount of fifty-one cents (\$.51) to be billed to each subscriber access line by a telecommunications company and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico; provided, however, that the surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act.

B. Commercial mobile radio service providers shall be required to bill and collect the surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. Telecommunications companies shall be required to bill and collect the surcharge from their subscribers. The surcharge required to be collected by the commercial mobile radio service provider or telecommunications company shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the commercial mobile radio service provider or telecommunications company shall not be considered revenue of the commercial mobile radio service provider or telecommunications company.

## Ohio

Sec. 4931.61. (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.

(B) The wireless 9-1-1 charge shall be exempt from state or local taxation.

## South Carolina

### SECTION 23-47-50. Subscriber billing.

(A) The maximum 911 charge that a subscriber may be billed for an individual local exchange access facility must be in accordance with the following scale:

Tier I - 1,000 to 40,999 access lines - \$1.50 for start-up costs, \$1.00 for on-going costs.

Tier II - 41,000 to 99,999 access lines - \$1.00 for start-up costs, \$.60 for on-going costs.

Tier III - more than 100,000 access lines - \$.75 for start-up costs, \$.50 for on-going costs.

Start-up includes a combination of recurring and nonrecurring costs and up to a maximum of fifty local exchange lines an account.

(B) Every local telephone subscriber served by the 911 system is liable for the 911 charge imposed. A service supplier has no obligation to take any legal action to enforce the collection of the 911 charges for which a subscriber is billed. However, a collection action may be initiated by the local government that imposed the charges. Reasonable costs and attorney's fees associated with that collection action may be awarded to the local government collecting the 911 charges.

(C) The local government subscribing to 911 service is ultimately responsible to the service supplier for all 911 installation, service, equipment, operation, and maintenance charges owed to the service supplier. Upon request by the local government, the service supplier shall provide a list of amounts uncollected along with the names and addresses of telephone subscribers who have identified themselves as refusing to pay the 911 charges. Taxes due on a 911 system service provided by the service supplier must be billed to the local government subscribing to the service. State and local taxes do not apply to the 911 charge billed to the telephone subscriber.

(D) Service suppliers that collect 911 charges on behalf of the local government are entitled to retain two percent of the gross 911 charges remitted to the local government as an administrative fee. The service supplier shall remit the remainder of charges collected during the month to the fiscal offices of the local government. The 911 charges collected by the service supplier must be remitted to the local government within forty-five days of the end of the month during which such charges were collected and must be deposited by and accounted for by the local government in a separate restricted fund known as the "emergency telephone system fund" maintained by the local government. The local government may invest the money in the fund in the same manner that other monies of the local government are invested and income earned from the investment must be deposited into the fund. Monies from this fund are totally restricted to use in the 911 system.

(E) The "emergency telephone system" fund must be included in the annual audit of the local government in accordance with guidelines issued by the state auditor's office. A report of the audit must be forwarded to the state auditor within sixty days of its completion, and a copy sent to DIRM.

(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.

(G)(1) 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.

(2) A 911 charge, including a CMRS 911 charge, shall be added to the billing by the service supplier to the service subscriber and may be stated separately.

(3) A billed subscriber shall be liable for any 911 charge, including a CMRS 911 charge, imposed under this chapter until it has been paid to the service supplier.



## Wisconsin

### PSC 173.10 Wireless surcharge.

#### (1) CALCULATION.

(a) Upon the request of the commission, each wireless provider shall file with the commission a report setting forth the number of its wireless telephone numbers with billing addresses in this state that are billed on a recurring basis and the number of its wireless telephone numbers subject to a pre-paid service agreement with a customer with an address in this state or sold within this state, as of the date specified in the commission request.

(b) The commission shall determine the amount of the wireless surcharge by dividing the sum of the total amount of money requested from all grant and supplemental grant applications approved under s. PSC 173.09 and the reasonable administration costs under s. PSC 173.11 (2) by 36, and then dividing that result by the total number of telephone numbers served by wireless providers and reported under par. (a).

(2) ORDER. The commission shall set the amount of the wireless surcharge by an order pursuant to s. 227.47 (1), Stats. An interested party may petition to reopen the proceeding and amend the surcharge order under s. 196.39 (2), Stats., and s. PSC 2.28.

#### (3) COLLECTION.

(a) Each wireless provider shall impose the wireless surcharge for each telephone number of a customer that has a billing address in this state on each bill rendered during the surcharge period.

(b) The wireless surcharge shall be calculated and applied on a monthly basis. The wireless surcharge shall be the same for each wireless telephone number, regardless of the serving wireless provider, except that:

1. For a customer that is billed on a recurring basis other than monthly, the wireless provider shall impose a surcharge equal to the amount of the wireless surcharge times the number of months of service billed in that customer's billing statement times the number of telephone numbers billed or assigned to that customer.

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 \$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.

History: CR 04-026; *cr. Register November 2004 No. 587, eff. 1-1-05 except (1) (b) and (2), which are eff. 10-1-05.*



September 30, 2005

Mr. Edward Garvey  
Minnesota Dept. of Commerce,  
Deputy Commissioner  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101-2198

Dear Deputy Commissioner Garvey:

AARP appreciates this opportunity to provide our perspective on the examination of funding sources for 911, telephone assistance and telecommunications access. Telephone communications is a basic necessity that allows older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. In fact, people age 65 and older are more likely than any other age group to have traditional wireline telephone service. That's why 911, the TAP and TAM programs are so important to AARP.

AARP policy maintains that financing for telephone assistance and access programs must be preserved and enhanced in a competitively neutral manner as telecommunications markets are restructured. AARP agrees with the Department of Commerce that assessing all providers for all three programs promotes competitive neutrality.

Along with the changes suggested in the white paper, AARP also supports automatic enrollment of low-income consumers into the telephone assistance program. In 2001, AARP published "Energy and Telephone Assistance in the States" which examines the programs and participation rates for low-income consumers in state and federal assistance programs. The report shows that in 2000, only 20.7 percent of eligible Minnesota households received the Lifeline benefit, while 79.3 percent of eligible Minnesotans did not receive the benefit.

Because of poor participation rates in these programs across the country, AARP is supporting the implementation of automatic enrollment into these programs. Under automatic enrollment, any consumer who receives a means-tested benefit, whether it be Medicaid, SSI, TANF or school lunches, should be automatically enrolled in the TAP program.

We appreciate the opportunity to comment on these important programs. If you or your staff have any questions, please do not hesitate to contact AARP Minnesota Advocacy Director, Keith Weigel, at (651) 726-5643.

Sincerely,

*Michele H. Kimball*

State Director  
AARP Minnesota

## **COMMENTS OF CINGULAR WIRELESS AND MIDWEST WIRELESS**

Cingular Wireless LLC, by and on behalf of its subsidiaries and affiliates operating in Minnesota (collectively “Cingular”)<sup>1</sup> and Midwest Wireless Communications LLC (“Midwest”), collectively referred to herein as (“Cingular and Midwest”) hereby respectfully submit these comments in response to a July 26, 2005 request for comments by the Minnesota Department of Commerce (“Department” or “DOC”) on its proposal for a mechanism to fund the state’s 911, Telecommunications Access Minnesota Program (“TAM”) and Telephone Assistance Plan (“TAP”).

As noted in its White Paper, pursuant to a recently enacted Minnesota statute,<sup>2</sup> the Department must file a report with the Legislature with its recommendations on a preferred method for and amount of a combined fee applicable to each service provider based upon the number of telephone numbers in the state in use by current customers. Cingular and Midwest recognize the need to evaluate the funding base for existing Minnesota funds in light of new and emerging technologies. Cingular and Midwest, however, have a number of concerns with the proposed approach to utilize telephone numbers as the basis upon which to assess customers for these funds. Further, Cingular and Midwest have concerns with the Department’s proposal to expand the contribution base for the TAP fund by including wireless customers. Cingular and Midwest will discuss these concerns herein.

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<sup>1</sup> <sup>1</sup> The subsidiaries and/or affiliates of Cingular Wireless LLC operating in Minnesota are St. Cloud Cellular Telephone Company, Inc. and New Cingular Wireless PCS, LLC.

<sup>2</sup> Minn. Stat § 237.491

## **I. Per Number Fee Deserves Careful Consideration**

As noted in its White Paper, the Department of Commerce's (DOC) initiative to change from a per access line fee to a per telephone number fee for 911 and TAM "grew out of a concern that the current per access line fee was based on a dwindling number of 'access lines' as customers moved to voice over internet protocol (VOIP) service..." If the Department's intent is to include VoIP and emerging technologies into its funding base, it appears as if the goal has already been accomplished. In its White Paper, the Department cites legislation that was passed in 2005, which expanded the definition of service provider to effectively include carriers who connect to the public switched telephone network "PSTN" and are capable of placing a 911 call.<sup>3</sup> As the Department asserts, this expanded definition would include VoIP providers in the 911 and TAM fee funding mechanisms. This should effectively accomplish the Department's goal, while maintaining a consistent assessment methodology.

To assess customers in the same manner for TAP, the Legislature would need to make similar changes to the definition of "access lines."

Based on the Department's thorough research of how other states fund their respective 911, relay and Lifeline programs, it is apparent that states in large part fund these programs through a flat fee per access line or based on some percentage of carrier's revenues. If the Legislature, therefore, decides to move forward with such an assessment in Minnesota, it is likely to result in some consumers paying similar fees in more than one state. By way of example, if a customer has a billing address in Wisconsin, they would be subject to 911 fees in the state. Concurrently however, if the same customer

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<sup>3</sup> Minn. Stat. § 237.491 or H.F. 1 (2005-2006)

has a Minnesota telephone number, the customer may also be liable for Minnesota's 911 fee. This would impose undue and unfair financial burden on any such customer.

## **II. Inherent Difficulties Exist in Assessing on an "Assigned" Number Basis**

In its White Paper, the Department provided no guidance on its plans to implement a per-number assessment. One of the questions raised is whether the definition of an "assigned" number as reported to NANPA should be used to assess a per-number fee. It is not possible for Cingular or Midwest to assess the proposed fee based on all of its assigned numbers. As the Department is aware, carriers must manage their numbering resources in accordance with Federal Communications Commission ("FCC") rules.<sup>4</sup> Twice a year, carriers submit Numbering Resource Utilization/Forecast ("NRUF") data to the North American Number Plan Administration ("NANPA"). The FCC adopted the NRUF, a mandatory utilization data reporting requirement to establish a uniform set of numbering categories for carriers to manage and demonstrate utilization. One of the categories that must be included in this report is a carrier's "assigned" numbers. Under current numbering administration rules, the FCC has defined "assigned" numbers as, "numbers working in the Public Switched Telephone Network under and agreement such as a contract or tariff..."<sup>5</sup> The carrier that is required to report the "assigned" number is not necessarily the carrier that has an actual contractual relationship with the customer. This most often occurs in the porting context where the carrier that is originally assigned the code/block must report on all numbers in that code/block even if

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<sup>4</sup> Numbering Resources Optimization, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and in CC Docket No. 99-200, and Second Further Notice on Proposed Rulemaking in CC Docket No. 99-200, 16 FCC rcd 306, paras. 81-99 (2000) (NRO Second Report and Order). See 47 C.F.R. § 52.15(k).

<sup>5</sup> 47 CFR 52.15(f)(iii)

an individual customer or group of customers in that code/block have ported to another carrier. By way of example, numbers that have been ported from Carrier A to Carrier B are still considered “assigned” to Carrier A for the purposes of the NRUF report. Since Carrier A does not have a contractual or billing relationship with the customers that have ported to Carrier B, Carrier A, therefore, has no way to bill all “assigned” numbers for the proposed combined fee. This scenario also presents a problem for carriers with resale agreements, in which carriers resell service using numbers assigned to a different carrier. The carrier whose services are being resold has no contractual or billing relationship with the customer and thus, has no ability to bill any such resale customers for the fee.

### **III. Expanding TAP Assessments to Include Wireless Customers**

The Department’s proposal would also require wireless customers to help fund TAP, a program for which wireless carriers are currently not assessed and from which wireless consumers cannot currently benefit. TAP generally provides financial assistance to low-income citizens for residential local exchange service. Unless wireless carriers are able to draw from the TAP fund to offer discounted wireless services to low-income citizens as an Eligible Telecommunications Carrier (“ETC”), it is inequitable to compel wireless customers to pay into the fund. Similarly, it appears that the DOC has reached the same conclusion. In its White Paper, the Department states that “(f)rom a policy perspective the DOC believes it would be appropriate to make changes that would enable all subscribers using a communications device that is assigned a telephone number to pay into all three funds to ensure that all subscribers are able to benefit from all three funds. This also puts the provider of the services on an even competitive footing.” The

Department goes on to state, “DOC believes that any new mechanism should apply to all technologies unless a provider can clearly show that customers using that technology could in no way benefit from the service(s) being funded.” It is, therefore important for the Department to ensure that only that carriers can benefit from the fund should be required to pay into the fund.

### **III. Other Administrative Issues**

It is unclear as to what the Department believes the benefits would be of combining the state 911 fee, TAM and TAP. These are all separate programs with separate funding administration. The Department has failed to demonstrate the reasons why a combined fee is necessary or even desirable.

### **IV. Conclusion**

For the reasons stated above, Cingular and Midwest urge the Department to reconsider a per-number assessment mechanism and continue assessing wireless carriers on the current basis as that has been redefined by the new 911 legislation. Cingular and Midwest appreciate the opportunity to comment in this proceeding and look forward to continued dialogue on this matter.



Alcohol  
and Gambling  
Enforcement

ARMER/911  
Program

Bureau of  
Criminal  
Apprehension

Driver  
and Vehicle  
Services

Homeland  
Security and  
Emergency  
Management

Minnesota  
State Patrol

Office of  
Communications

Office of  
Justice Programs

Office of  
Traffic Safety

State Fire  
Marshal and  
Pipeline Safety

## ARMER/911 Program

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www.dps.state.mn.us

September 26, 2005

Diane C. Wells  
Public Utility Regulation Unit Manager  
Commerce Dept  
85 7th Place East Suite 500  
St Paul, MN 55101-2198  
Re: Per Number 911/TAM/TAP fee

Dear Ms. Wells:

Thank you for the opportunity to comment on the Department of Commerce white paper regarding the per number legislative report required by the 2005 legislature, Ch. 136, Art. 10, 2005 Laws of Minn. I will note that the white paper distributed on July 26, 2005 provided a comprehensive discussion of this issue, including approaches taken in other states.

### Background

A statewide 911 fee was first imposed in 1986 when the Minnesota legislature provided for the imposition of the fee on telephone access lines to fund the implementation and operation of the 911 program throughout the state. A history of the 911 fee from the Statewide 911 program web site is attached as Appendix A.

By subsequent legislation, the Telephone Access Minnesota program (TAM) (originally called Telecommunications Access for Communications Impaired Persons (TACIP)), Minn. Stat. §237.50 – 237.56 and Telephone Assistance Program (TAP), Minn. Stat. §237.69 - 237.711 were enacted with the Statewide 911 Program collecting the 911 fee, the TAM fee and the TAP together, Minn. Stat. §237.49. With all three programs, the basic fee is assessed against the customer, Minn. Stat. §403.11, subd.1(a), upon “access line or other basic access service, including trunk equivalents as designated by the Public Utilities Commission for access charge purposes...”, Minn. Stat. §403.11, subd.1 (c), with a requirement that each phone company collect the fee on behalf of the State. Current 911/TAM/TAP fee forms are attached as Appendix B, wired line, and Appendix C, wireless.

The basic structure of the 911 fee and the 911 system funding method has remained the same since the 911 fee was originally imposed. Although the telecommunication



industry has changed substantially over that period with the proliferation of Competitive Local Exchange Carriers (CLEC) and wireless carriers, the basic structure has remained the same with the 911, TAM and TAP fee assessment based upon access lines.

The first substantial indications of a potential problem with the 911 fee came when Vonage, a voice over internet protocol (VoIP) telecommunication provider, refused to submit to the jurisdiction of the Minnesota Public Utilities Commission, refused to provide 911 service and refused to collect a 911 fee from its customers despite offering telecommunications service within the state of Minnesota. The order of the federal district court enjoining the PUC in its efforts to regulate Vonage's telecommunication services, Vonage Holding Corp. v. Minnesota Pub. Utils. Comm'n, 290 F. Supp. 2d 933 (D. Minn. 2003), set the stage for a discussion of the future of telecommunication services. The Federal Communications Commission's decision preempting local regulation, Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22405, para.2 (2004) further complicated that question and cast serious doubt upon the future of 911 funding as VoIP technology for telecommunication service was allowed to expand.

The subsequent decision of the Federal Communications Commission in IP-Enabled Services, WC Docket 04-36, and E911 Requirements for IP-Enabled Service Providers, WC Docket 05-196, have provided some answers to some of the most pressing questions concerning this new technology. However, the initial inquiry upon the changing dynamics of the telecommunications industry has confirmed the fact that our traditional and historic paradigms of telecommunications services and our method of collecting 911, TAM and TAP fees are eroding.

#### Specific Questions – Preliminary Issues

1. Given the changes made in the 2005 session to broaden the definition for the types of service providers that must pay the 911 and TAM fees, does more need to be done at this time?

DPS Response: This question asked whether the 2005 inclusion of "packet-based telecommunication service provider" to Minn. Stat. §403.11, subd. 1 might resolve the issue of fee collection from VoIP telecommunications providers. The additional language would appear to address VoIP telecommunications technologies by enlarging the scope of technologies to which the fee assessment is applicable. This premise, however, fails to address continuing issues, as follows:

- The fact that the local regulation on this technology is still preempted leaves serious doubts over the extent of local regulation and methods of fee collection.

- The provision of telecommunications services to customers in the state of Minnesota using this technology no longer requires a physical presence of the provider within the state of Minnesota, or within the United States.
- The continued reliance upon “access lines” as the incident upon which the fee is assessed is no longer valid as this new technology no longer relies upon the provision of service over traditional access lines.

As VoIP telecommunications services are offered by telecommunications providers in Minnesota, the Statewide 911 Program has noted the potential increased application of the “trunk equivalent concept” to that network. The trunk equivalent concept evolved from private networks, where a single trunk circuit was required to service eighteen private branch exchange (PBX) or Centrex extensions from within a single private network. This same premise could be applied to eighteen broadband VoIP telecommunication customers operating on a common broadband network. Since the idea of broad geographic private networks were not possible when the “trunk equivalent” concept was originally devised, the premise was based upon an assumption that Centrex systems were normally connected to traditional trunk circuits in the public switched telephone network at an eighteen to one ratio reasonably close to their origin. As broadband networks have expanded to the point where wide area networks are commonplace and actually operated by the telecommunication service provider, the determination of individual “access lines” becomes meaningless. Similarly, as the telecommunications industry converts to a broadband VoIP environment the continued reliance upon this distinction places the entire funding mechanism in question.

2. If the answer is that more does need to be done, is a per number fee initiative the best option or is there another mechanism that would be better?

DPS Response: Based upon the fact that traditional hard wired “access lines” are no longer necessary to make the telecommunications network operate, the continued reliance upon that concept is ill advised. As an alternative, DPS supports the adoption of a transition to a per number approach for the following reasons:

- It is clearly technology neutral, having the same impact upon wired line, wireless and VoIP telecommunication providers.
- It intuitively provides a reasonable functional equivalent to the basic “access line” concept as that concept was applied to traditional telecommunications systems.
- The telephone number is recognized by all as the key to accessing the public switched telephone network.
- Application of a per telephone number fee is straight forward and can be objectively applied.

DPS would note that evolution of the telecommunications industry is an on-going process and that the telephone number based fee might require further refinement in the future. Yet, the existence and use of a North American Numbering Plan telephone number continues to be the one sustained requirement to operating in the public telephone network.

DPS is not aware of any alternate approach that might provide a better answer.

3. If a new mechanism is adopted, should it apply to all three services (911, TAM and TAP)?

DPS Response: It is noted that the current fee structure for 911, TAM and TAP is not applied to wired line and wireless carriers the same. Wireless subscribers are not subject to the TAP fee.

DPS suggests that the uniform application of 911, TAM and TAP fees would be beneficial in the following respects:

- It would be technology neutral treating all telecommunication service providers the same.
- It would make collection of the fee much easier to administer, regardless of whether a per number fee is implemented or the existing fee mechanism is retained.
- As the technology changes, it would avoid issues related to form over substance where telecommunications providers structure or call themselves something different in order to avoid or take advantage of regulatory definitions.

In addition to these reasons, DPS would agree with the Department of Commerce proposition that programs supported by TAM and TAP should be applied on a technology neutral basis to any existing and future telecommunication services.

4. If a new mechanism is adopted, should it apply to all types of technologies or should there be exceptions?

DPS Response: DPS would submit that the funding mechanism, namely a per number fee, should be applied to all telephone numbers irrespective of their usage. Although there may be certain classes of use that do not generally offer access to the 911 system or that are not associated with services provided by TAM or TAP, those uses are still part of the basic public switched telephone network. As is the case with telecommunication technologies, the fee should be applied without regard to the services being provided upon the network.

This premise becomes exceedingly important as this technology evolution continues. Today's pagers, for example, are transitioning into two way data communication devices that will be capable of accessing the 911 network.

As a point of comparison, facsimile lines and other services have not been exempt from 911, TAM or TAP fees in the past. Similarly, wireless telecommunication providers paid 911 fees for years before they were connected to the 911 network..

Specific Issues- Per Number Fee Implementation Issues

1. Whether the fee should be based on telephone numbers with Minnesota area codes as assigned by NANPA or telephone numbers billed to addresses in Minnesota?

DPS Response: DPS would suggest that the fee be based exclusively upon Minnesota area codes as it provides an objective basis to determine where the fee should be applied.

Administrative convenience is significant here, as one can objectively determine whether a phone number is Minnesota based without regard to a customer's choice of billing addresses in order to determine whether the fee should be applied to them.

DPS would suggest that the incidences of people obtaining Wisconsin or other state telephone numbers to avoid Minnesota's fees would be minimal. Similarly, the acquisition of a Minnesota telephone number by a Wisconsin or other state resident reflects an actual desire on behalf of that person to have access to the public switched telephone network in Minnesota. DPS would suggest that provisions could be made for people subjected to 911/TAM and TAP fees twice, but would also note that the 911, TAM and TAP fee are probably insubstantial amounts when compared to the rationale for having a wireline or wireless phone with a telephone number in another state. A similar argument might be raised when purchasing other services in Minnesota that require the payment of fees, yet no specific provisions are made for exemption of these payments based on residence or driving habits.

DPS is not aware of any constitutional issues that would prevent assessing the 911, TAM or TAP fee upon Minnesota telephone numbers. In fact, DPS would submit that using a Minnesota based telephone number constitutes sufficient purposeful contacts with the state of Minnesota to justify the imposition of the 911, TAM and TAP fee.

DPS would also suggest that reliance upon the NANPA telephone number assignment filings is the most objective and convenient way to assess the 911, TAM and TAP fee. It would be easily administered and reflects an arms length transaction between North American Numbering Plan Administrator and the telecommunication service provider based upon business needs independent of the assessment of 911, TAM and TAP fees. As previously indicated, DPS would suggest reliance upon the NANPA designation of "numbers working in the Public Switched Telephone Network" without any further refinement to assure uniform and verifiable numbers count for each telecommunications provider. Additional complex

exemption or exception factors would increase the administrative burden and cost to administer.

Considerations might be given to assessing the per number fee against the code holder that is required to report the number usage to NANPA. That codeholder could be specifically authorized to recover the costs of the fee from the end users of the numbers. Fee collection and submission would be kept simple and easy to administer for both government and fee payers.

2. While certain 911 costs are incurred by telephone number (for example, to maintain the 911 database), is that justification for customers with a large concentration of numbers to pay a greater proportion of the total cost of these programs than they do today?

DPS Response: DPS would suggest that the distinction of trunk equivalents is a vestige of the past that should be abandoned. The idea of limiting the fee to the number of lines has its origins in that same antiquated concept. It was developed long before the advent of direct dial numbers where those numbers also require 911 system resources.

Instead, DPS would suggest that a shift to a fee based upon telephone numbers may eliminate the need for separate Private Switch ALI charges to multiline telephone system users under Minn. Stat. §403.15. Where a 911/TAM and TAP fee is collected for each telephone number, the cost of maintaining those phone numbers and location records in the 911 database could be paid by the statewide 911 program. Similarly, incorporating those costs into the 911 network may encourage compliance with Minn. Stat. §403.15.

3. Should changes be made to the statute so that wireless providers could receive lifeline funding?

DPS Response: DPS has no particular interest in this area, except to note its interest in treating all telecommunication providers in a technology neutral manner.

4. If no monthly bill is sent, as is the case for prepaid service, should prepaid wireless service be assessed a per number fee?

DPS Response: DPS is of the opinion that all technologies, services and business models should be treated the same. In the case of pre-paid wireless, pre-paid cards are generally valid for a limited period of time and the 911, TAM and TAP fee should be applied over the period the telephone number is considered an active telephone number. DPS would submit that pre-paid telephone service providers are able to determine which numbers are active within their system and should be required to do so.

5. Is there a policy reason and/or a legal reason to support having the fee be the same or different?

DPS Response: DPS is not aware of any policy reason for exceptions and has no opinion upon the legal issues. We will note, however, that in our dealings with the wireless carriers it is not clear whether they recognize the state's right to regulate them directly or whether they contract with us to comply with FCC mandates. This issue has been raised in the case of VoIP providers where they seem to indicate they will contribute to the cost of the 911 system, but that they have no obligation to contribute to TAM or TAP.

6. Should language be included in the statute to ensure that changes to the three programs that would impact the fee collected for that program must all be done at the same time annually?

DPS Response: Over the last few years, the 911 fee has been set at the statutory maximum. This being the case, fee adjustments have only been implemented after a change in Minn. Stat. §403.11. DPS does support the idea that there should be a defined process for a fee adjustment. We would note that during the last fee adjustment process, DPS provided a 30 day notice as required by law. The PUC changed the TAM fee three days later and made the change retroactive to the effective date of the 911 fee increase. Since these fees are collected together, DPS had grave concerns over whether a change in its 30 day notice could make that notice ineffective or result in a change in the date of the notice.

In addition to this, it is not clear whether the notice requirements of Minn. Stat. §403.11 are applicable to the TAM or TAP fee. DPS would suggest that some clarity in the process would be beneficial but would not go so far as to say it should be limited to once a year. The clarity that is suggested would be as follows:

- Fee increases should be made effective on the first day of a month.
- There should be a prescribed number of days notice required.
- The same rules should apply to all three fees.

Additional clarity as to how notice should be given might be appropriate. Past practice has been to mail to all telephone companies based upon Department of Commerce addresses.

#### Additional Comments

Minn. Stat. §237.491 provides that the 911, TAM and TAP fee will be collected by the Commissioner of Revenue. These fees have been collected by the Statewide 911 Program (Department of Administration until 12/2003, Department of Public Safety since 12/2003)

since their inception. DPS would support transferring the fee collection process to the Department of Revenue for the following reasons:

- Department of Revenue has the resources and personnel to receive and collect fees.
- Department of Revenue has the resources to periodically audit the fees submitted by telephone companies and clear statutory authority to ensure compliance.
- Department of Revenue has the resources to evaluate any adjustments to the fees collected, such as bad debt reductions.

DPS will note that the current fee process is largely self reported and based upon voluntary compliance. DPS lacks the resources, clear legislative authority or expertise to challenge those reports. In recent submissions, for example, we have seen evidence that telephone companies are deriving their reported customer counts from the amount of fees collected, not from actual customer counts.

There is a concern that transferring the fee collection to the Department of Revenue would make it easier to shift excess 911, TAM and TAP revenues to other purposes. DPS would insist that should the 911 fee collect more revenue than anticipated, those funds should be maintained separately and available for reappropriation in succeeding years. Similarly, DPS would note concerns expressed by Minnesota Sheriff's Association members that funding to Public Safety Answering Points provided for under Minn. Stat. §403.113 is less certain than it was in the past and that a shift to fee collection by the Department of Revenue would result in even less certainty.

DPS will note some concern over the timing of this change, but will note that those concerns should not delay efforts to resolve current issues. As the 2005 Omnibus Public Safety bill provided for up to \$62.5 million in funding for the statewide public safety radio system from 911 fee based revenue bonds there is a concern that this structural change may impact the viability of those bonds. The fact that a per number fee structure does exist in other states, as indicated in your white paper and the review of funding mechanisms in other states, does reduce those concerns. Similarly, the language of Minn. Stat. §403.275 providing priority for existing and future bonds over all other uses of the 911 fee would appear to provide bond holders with adequate security.

With respect to fee collection, DPS would also suggest that the 911, TAM and TAP fee be assessed against the telecommunication service provider with authority for the telecommunication service provider to collect the fee from their customers. This approach would eliminate issues of whether the fee is collected on partial bill payments. DPS has encountered issues with telecommunication service providers who reduce their fee collection based upon a formula for bad debt write offs.

ARMER/911 Program

September 29, 2005

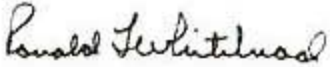
Page 9

If I can be of further assistance, please do not hesitate to contact me.

Respectfully Submitted,

Ronald L. Whitehead

ARMER/911 Program Director

A handwritten signature in cursive script, appearing to read "Ronald L. Whitehead".

Attachments



## APPENDIX A

**HISTORY:** The 911 Program provides technical assistance to the cities and counties implementing, maintaining, and improving 911 systems, and oversees system standards. The 911 Program also pays the state's share of wired and wireless 911 costs authorized by Minnesota Statutes, Section 403.11 and contracted for with each carrier, administers grant funds for 911 agencies in accordance with Minnesota Statutes, Section 403.113, and distributes funds to other public safety related programs as provided for by legislative appropriations.

As the December 1986 statewide mandate deadline neared, legislation was passed to change the method of funding to a telephone user fee starting in January of 1987. This funding mechanism helped assure a stable source of state funds for the ongoing 911 costs, and answered local government concerns regarding assured continued state funding.

The Department of Administration (see below for paragraph regarding Minnesota Statutes 403 change in 2003 which transferred the 911 Program to the Department of Public Safety) pays the state share of 911 costs from funds collected through a monthly statewide telephone fee which was initially set by statute at not less than eight cents nor more than 30 cents per month on each telephone line. The fee amount was set by the Commissioner of Administration with the consent of the Commissioner of Finance. Based on Fiscal Year 1994 budget needs, the 911 fee was decreased from 18 cents to 14 cents, effective July 1st, 1993.

Under legislation enacted in 1994, an enhanced component of the 911 fee was set at 10 cents beginning on the 1st of January, 1995, and is distributed monthly to agencies operating 911 centers to help pay costs of implementing and maintaining enhanced 911. In order to reduce a cumulative carryover fund balance at that time, the overall fee was left at 14 cents until carryover funds were exhausted. Effective with the October, 1995 collections, the overall 911 fee was increased to 22 cents per month. In order to cover the costs of improving wireless 911, and increases in the Metropolitan Radio Board budgets, the fee was increased to 27 cents July 1, 1998.

Other changes in the 911 fee involved cellular subscribers. Beginning in July of 1994, new law extended the basic 911 fee to include subscribers of any communications carrier that provides service capable of originating a 911 call and included, for the first time in Minnesota, cellular subscribers. Charging the 911 fee to wireless customers adds revenue to be used for the implementation and ongoing costs of enhanced 911 services for cellular throughout the state and levels the playing field regarding who pays for 911 (it should be noted that cellular subscribers place over 90,000 cellular 911 calls per month in Minnesota).

Likewise, beginning July, 1995, Admin transferred an amount equal to two cents a month from the fee assessed on cellular and other non-wire access services to the Commissioner of Public Safety to offset the costs, including administrative and staffing costs, incurred by State Patrol in handling 911 emergency calls made from cellular phones.

The 911 fee had been capped at 30 cents prior to 2001 legislation (First Special Session 2001, chapter 10, article 2, section 78), when it was changed in Minnesota Statutes, Section 403.11 to set the 911 fee at 27 cents. The 2002 Legislative Session changed the fee again by capping it at 33 cents and reinstating the authority to change the fees to the Commissioner of Administration with the consent of the Commissioner of Finance. Laws, 2003, First Special Session, Chapter 1,

changed the fee by increasing the cap to 40 cents and transferred the 911 program from the Department of Administration to the Department of Public Safety.

In its Order dated June 29, 2004, the Public Utilities Commission approved the request by the Telecommunications Access Minnesota (TAM) Program to decrease the TAM fee from 13¢ to 10¢ effective October 1, 2004.

Pursuant to Minnesota Laws, 2005 Chapter 136, the Omnibus Criminal Justice and Public Safety Appropriations Act, the fee cap was increased to 65 cents and appropriation amounts were created for fiscal years 2006 and 2007 to double the enhanced 911 amount sent to 911 centers, fund continued implementation of the Allied Radio Matrix for Emergency Response (ARMER) program, and provide grants to help fund medical Resource Communications Centers. Accordingly, the Commissioner of Public Safety, with the concurrence of the Commissioner of Finance, increased the 911 fee effective July 6, 2005. Concurrently, the Public Utilities Commission authorized the reduction of the TAM fee from 10¢ to 7¢.

The 911 fee mechanism has been a successful method of funding 911. The fee amount is based on the projected expenses as authorized by the Legislature and by the expected number of telephone and wireless telephone subscribers.

WIRED TELEPHONE SERVICE PROVIDER COMPANY NAME

DATE

9-1-1 = 40¢ / TAM = 10¢ / TAP = 5¢

TOTAL = 55¢

TO: Minnesota 9-1-1 Program

444 Cedar Street, Town Square, Suite 137

St. Paul, Minnesota 55101-5126

Fax: 651 296-2665

Email: marykay.frisch@state.mn.us

Company Contact:

Name:

Phone:

Fax:

Email:

*Fees are due to the Minnesota 9-1-1 Program by the 25th of the month following the month of collection.*

The 9-1-1 emergency telephone service fee, TAM (Telecommunications Access Minnesota), and TAP (Telephone Assistance Program) fees are remitted for the following period:

(Fees totaling less than \$25.00 per month will be submitted annually using a different form.)

☐ Month of \_\_\_\_\_ (\$250.00 or more).

OR

☐ \_\_\_\_\_ Quarter, \_\_\_\_\_ (less than \$250.00/month but more than \$25.00/month).

1. Total monthly local access customer lines.

- - includes trunk equivalents for centrex customers - -

(Quarterly reports - customers x number of months.)

2. Unadjusted fee amount (line 1 x 55¢)

\$

3. Adjustment for fees pro rated on a daily basis for partial monthly service.

+

-

\$

4. Adjustment for seasonal disconnects.

+

-

\$

5. \* Adjustment for bad debts.

Number of customers:

x 55¢ =

+

-

\$

6. \* Adjustment for customers who refuse to pay fee(s).

Enter Number of customers:

9-1-1 \_\_\_\_\_

TAM \_\_\_\_\_

TAP \_\_\_\_\_

x fee amount =

+

+

-

\$

7. \* Adjustment for exemptions (e.g. Federal).

-

\$

8. Other adjustments (please explain on reverse).

+

-

\$

9. Amount of remittance (line 2 plus/minus lines 3, 4, 5, 6, 7 & 8).

\$

I certify that I am a manager or officer of this telecommunications company and that this report is accurate and true and reflects the appropriate customer access line count including trunk equivalents, adjustments, and fee amount.

Certified by: \_\_\_\_\_ Date: \_\_\_\_\_

(signature of telecommunications company manager or officer)

Company manager's or officer's telephone # \_\_\_\_\_

\* Attach list of customer name, address, and phone number.

PLEASE MAKE CHECKS PAYABLE TO: MINNESOTA 9-1-1 PROGRAM

(If you have any questions regarding this collection, please contact Mary Frisch at 651-296-4032)

--- DO NOT WRITE BELOW THIS LINE - STATE OF MINNESOTA OFFICE USE ONLY ---

Check #

Amount \$

Date rec'd

Deposit #

E9-1-1 \$

9-1-1 \$

E9-1-1 WIRELESS \$

METRO RADIO BD \$

TAM \$

TAP \$

\$

## **9-1-1 / TAP / TAM MONTHLY SERVICE FEE FOR WIRED TELEPHONE SERVICE**

TAP = Telephone Assistance Plan / TAM = Telecommunications Access Minnesota

**What are the 9-1-1, TAP and TAM service fee?** They are an assessment against each local service access line and centrex trunk equivalent. The fee amounts through September 30, 2004 are 40¢ per month for 9-1-1, 13¢ for TAM, and 5¢ for TAP for a total fee collection of 58¢. Beginning October 1, 2004, the TAM fee decreases to 10¢ and the 9-1-1 fee remains at 40¢ and TAP fee remains at 5¢ for a total fee collection of 55¢.

### **NOTE CHANGES:**

- \* Effective for collections beginning October 1, 2004 the TAM fee decreases to 10¢.**
- \* Effective December 3, 2003, the 9-1-1 Program is transferred from the Department of Administration to the Department of Public Safety. New address is shown on upper left corner of the fee form.**
- \* Effective August 1, 2002, a manager or officer of the telecommunications company must certify on the fee forms submitted with each remittance, by signature and date, that the information being reported is accurate and true. If a designee of the manager or officer signs, a copy of the signed designee letter must be provided to our office.**

**When should collected fees be submitted?** Fees must be submitted with the form to the address indicated on the form by the 25<sup>th</sup> of each month following the month of collection. Example: June monthly collection or quarterly collections for April, May and June are due by July 25<sup>th</sup>. If fee collections are not received at the Department of Public Safety, Statewide 9-1-1 Program within 20 days after the due date, companies will be reported to the State Department of Revenue's Minnesota Collection Enterprise. Debt collection fees of 15 to 20% will be added to the total amount due in accordance with Minnesota Statutes 2002, Chapter 16D.

**Do the fees apply to federal customers?** No. The fees should not be collected from federal agencies. This is a constitutional matter involving a state's power to collect from the federal agencies.

**Do the fees apply to other tax-exempt organizations?** Yes. The fees are not taxes. Except for the cost of 9-1-1 program management, 9-1-1 receipts are allocated to pay for 9-1-1 call delivery, features, and other 9-1-1 related expenses. Likewise, the TAM and TAP fees pay only for the cost of administering and implementing the TAM and TAP programs.

**Do the fees apply to one-way trunks, such as used in a direct-inward-dial PBX system?** Yes. Although an incoming PBX trunk would not be used to dial out, it is part of a local premises system that can access the switched network.

**Do the fees apply to 9-1-1 outswitching charges?** No. Nine-one-one trunks are not local service access lines in that they do not access the switched network.

**Should the fees be applied to seasonal disconnect telephones?** No. During periods of disconnection, the fees do not apply to local service access lines temporarily disconnected for seasonal service reasons.

**What are the telephone company's options in collecting the fees?** At your option, the entire fee may apply for any period of service covering more than one-half of the applicable month, or it may be pro-rated on a daily basis. If you choose to pro-rate the fee, amounts less than \$.05 per customer need not be collected.

**How should the fees appear on customer bills?** Minnesota Statutes, Chapter 237, Section 49 states: "A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber." The Public Utilities Commission recommends that the surcharges be listed as "9-1-1, Tele-Relay, and TAP surcharges" on customer bills.

**Should the fees be billed until paid?** Yes. For example, if a subscriber refuses to pay the TAP fee for one month, the 5¢ balance should be carried forward and added to the normal fee amount on a subsequent bill.

**Is a telephone company responsible for submitting fees that are not collected?** No. If a customer refuses to pay the fee, however, report refusal to pay the fee to the Department of Public Safety on the form that accompanies the payment. The Public Utilities Commission also requires the reporting of TAP fee refusals as part of the quarterly/monthly TAP reports.

If you have further questions, or would like to discuss the fee or any 9-1-1 matter, please call Jim Beutelspacher at 651-296-7104

TAP questions should be referred to Lillian Brion, MN Public Utilities Commission, at 651-297-7864.

TAM questions should be referred to Rochelle Garrow, MN Department of Commerce, at 651-297-8941.

CELLULAR AND OTHER NONWIRE ACCESS PROVIDERS COMPANY NAME

DATE

9-1-1 = 40¢ / TAM = 10¢

TOTAL = 50¢

TO: Minnesota 9-1-1 Program  
444 Cedar Street, Town Square, Suite 137  
St. Paul, Minnesota 55101-5126  
Fax: 651 296-2665  
Email: marykay.frisch@state.mn.us

Company Contact:

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

*Fees are due to the Minnesota 9-1-1 Program by the 25th of the month following the month of collection.*

The 9-1-1 emergency telephone service fee and TAM (Telecommunications Access Minnesota) fees are remitted for the following period:

(Fees totaling less than \$25.00 per month will be submitted annually using a different form.)

☐ Month of \_\_\_\_\_ (\$250.00 or more).  
OR

☐ \_\_\_\_\_ Quarter, \_\_\_\_\_ (less than \$250.00/month but more than \$25.00/month).

1. Total monthly wireless customer lines. Include prepaid customers.  
(Quarterly reports - customers x number of months.)

\_\_\_\_\_

2. Unadjusted fee amount (line 1 x 50¢)

\$ \_\_\_\_\_

3. Adjustment for fees pro rated on a daily basis for partial monthly service.

+  
- \$ \_\_\_\_\_

4. Adjustment for seasonal disconnects.

+  
- \$ \_\_\_\_\_

5. \* Adjustment for bad debts. Number of customers: \_\_\_\_\_ x 50¢ =

+  
- \$ \_\_\_\_\_

6. \* Adjustment for customers who refuse to pay fee(s).

+

Enter Number of customers:

9-1-1 \_\_\_\_\_ TAM \_\_\_\_\_ x fee amount =

- \$ \_\_\_\_\_

7. \* Adjustment for exemptions (e.g. Federal).

+  
- \$ \_\_\_\_\_

8. Other adjustments (please explain on reverse).

+  
- \$ \_\_\_\_\_

9. Amount of remittance (line 2 plus/minus lines 3, 4, 5, 6, 7 & 8).

\$ \_\_\_\_\_

I certify that I am a manager or officer of this wireless telecommunications company and that this report is accurate and true and reflects the appropriate customer access line count including trunk equivalents, adjustments, and fee amount.

Certified by: \_\_\_\_\_ Date: \_\_\_\_\_

(signature of wireless telecommunications company manager or officer)

Company manager's or officer's telephone # \_\_\_\_\_

\* Attach list of customer name, address, and phone number.

PLEASE MAKE CHECKS PAYABLE TO: MINNESOTA 9-1-1 PROGRAM

(If you have any questions regarding this collection, please contact Mary Frisch at 651.296.4032)

--- DO NOT WRITE BELOW THIS LINE - STATE OF MINNESOTA OFFICE USE ONLY ---

|            |       |                 |    |       |          |
|------------|-------|-----------------|----|-------|----------|
| Check #    | _____ | E9-1-1          | \$ | _____ |          |
| Amount \$  | _____ | 9-1-1           | \$ | _____ |          |
| Date rec'd | _____ | E9-1-1 WIRELESS | \$ | _____ |          |
| Deposit #  | _____ | METRO RADIO BD  | \$ | _____ | \$ _____ |
|            |       | STATE PATROL    | \$ | _____ |          |
|            |       | TAM             | \$ | _____ |          |

## **9-1-1 / TAM Monthly Service Fee for Cellular and other Nonwire Access Customers**

**TAM** = Telecommunications Access Minnesota

**What are the 9-1-1 and TAM service fee?** They are an assessment against each cellular or other nonwire access services, local service access line, prepaid, or centrex trunk equivalent. Through September 30, 2004 the 9-1-1 fee is 40¢ per month and 13¢ for TAM for a total fee collection of 53¢. Beginning October 1, 2004, the TAM fee decreases to 10¢ and the 9-1-1 fee remains at 40¢ for a total collection of 50¢.

### **NOTE CHANGES:**

- ★ **Effective for collections beginning October 1, 2004, the TAM fee decreases to 10¢.**
- ★ **Effective December 3, 2003 the 9-1-1 Program is transferred from the Department of Administration to the Department of Public Safety. New address is shown on upper left corner of the fee form.**
- ★ **Effective August 1, 2002, a manager or officer of the wireless telecommunications company must certify on the fee forms submitted with each remittance, by signature and date, that the information being reported is accurate and true. If a designee of the manager or officer signs, a copy of the signed designee letter must be provided to our office.**

**When should collected fees be submitted?** Fees must be submitted with the form to the address indicated on the form by the 25th of each month following the month of collection. Example: June monthly collection or quarterly collections for April, May and June are due by July 25th. If fee collections are not received at the Department of Public Safety, Statewide 9-1-1 Program within 20 days after the due date, companies will be reported to the State Department of Revenue's Minnesota Collection Enterprise. Debt collection fees of 15 to 20% will be added to the total amount due in accordance with Minnesota Statutes 2002, Chapter 16D.

**Do the fees apply to federal customers?** No. The fees should not be collected from federal agencies. This is a constitutional matter involving a state's power to collect from the federal agencies.

**Do the fees apply to other tax-exempt organizations?** Yes. The fees are not taxes. Except for the cost of 9-1-1 program management, 9-1-1 receipts are allocated to pay for 9-1-1 call delivery, features, and other 9-1-1 related expenses. Likewise, the TAM fees pay only for the cost of administering and implementing the TAM program.

**Do the fees apply to one-way trunks, such as used in a direct-inward-dial PBX system?** Yes. Although an incoming PBX trunk would not be used to dial out, it is part of a local premises system that can access the switched network.

**Do the fees apply to 9-1-1 outswitching charges?** No. Nine-one-one trunks are not local service access lines in that they do not access the switched network.

**Should the fees be applied to seasonal disconnect telephones?** No. During periods of disconnection, the fees do not apply to local service access lines temporarily disconnected for seasonal service reasons.

**What are the carrier's options in collecting prepaid cellular fees?** The following describes two options companies have to collect and submit fees from prepaid wireless customers:

- 1) If a prepaid wireless card is purchased for a two month period, companies can deduct \$1.00 and submit that amount; or
- 2) If a prepaid wireless card is used during the month, companies can deduct 53¢ (or beginning Oct 2004, 50¢) from the card and submit that amount.

**What are the carrier's options in collecting the fees?** At your option, the entire fee may apply for any period of service covering more than one-half of the applicable month, or it may be pro-rated on a daily basis. If you choose to pro-rate the fee, amounts less than \$.05 per customer need not be collected.

**How should the fees appear on customer bills?** Minnesota Statutes 237, Section 49, regarding the 9-1-1 and TAM surcharges, states "A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber." Based on the Public Utilities Commission recommendation for wire line fees, we recommend that the surcharges be listed as "9-1-1 and Tele-Relay Surcharges" on the customer bills.

**Should the fees be billed until paid?** Yes. For example, if a subscriber refuses to pay the TAM fee for one month the balance should be carried forward and added to the normal fee amount on a subsequent bill.

**Is a carrier responsible for submitting fees that are not collected?** No. If a customer refuses to pay the fee, however, report refusal to pay the fee to the Department of Public Safety on the form that accompanies the payment.

If you have further questions, or would like to discuss the fee or any 9-1-1 matter, please call Jim Beutelspacher at 651-296-7104

TAM questions should be referred to Rochelle Garrow, MN Department of Commerce, at 651-297-8941.

CELLULAR FEES 40+10 (revised June, 2004) eff 10-1-2004



September 30, 2005

Edward A. Garvey  
Deputy Commissioner, Energy and Telecommunications  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
Saint Paul, MN 55101-2198

**Re: Collection of 911, TAM and TAP fees**  
**Attention: Diane Wells**

Eschelon Telecom, Inc. (Eschelon) submits the following comments in response to the Minnesota Department of Commerce's white paper regarding the issue of a per number fee for collecting 911, TAM and TAP funds.

Due to the recent changes expanding the definition for the types of service providers that must pay the 911 and TAM fees, Eschelon recommends that no additional changes be made at this time. Before changes are made the impact of the most recent changes should be determined. Changing the mechanism by which fees are collected can be costly to carriers as they update software and tracking mechanisms in order to apply the fee correctly.

Below Eschelon responds to the issues and questions raised in the Department of Commerce's white paper regarding the issue of a per number fee for collecting 911, TAM and TAP funds dated July 26, 2005.

***Preliminary Issues***

1. *Given the changes made in the 2005 session to broaden the definition for the types of service providers that must pay the 911 and TAM fees, does more need to be done at this time?*

No. Before any further changes are made, the impact of the 2005 changes should be studied to properly determine the need for additional changes. Changes in collection mechanisms impose internal costs upon service providers. These costs burden providers and ultimately harm consumers. Efficiency requires that changes should be made only upon a firm determination that the benefits of change exceed the costs. Without a clear baseline, no assessment of benefits is possible, and we lack a clear baseline at this time. The primary advantage cited for a change to a per number, rather than per access line, collection mechanism was to encompass newer technologies. However, changing the definition of the types of service providers responsible for collecting 911 and TAM fees,

significantly addressed this precise issue. No rational assessment of the need for additional change is possible until we understand how effective this recent change is.

2. *If the answer is that more does need to be done, is a per number fee initiative the best option or is there another mechanism that would be better?*

The current mechanism is easy to administer and is already in place for most carriers. Many of the methods used by other states are unnecessarily complicated and increase the cost on the service provider of administering and collecting the fees. Collection mechanisms where fees vary by county or where the mechanism varies by the type of fee (911, TAM and TAP) add unneeded complexity and thus the cost on service providers collecting the fees.

3. *If a new mechanism is adopted, should it apply to all three services (911, TAM and TAP)?*

If a new mechanism is adopted then it should apply to all three services – 911, TAM and TAP. A broad funding mechanism decreases the burden on any one service provider. Having a funding mechanism that applies uniformly to all three services is the easiest and most cost efficient to administer.

4. *If a new mechanism is adopted, should it apply to all types of technologies or should there be exceptions?*

It should apply to all types of technologies that provide access to the function the funding is intended for. The current definition appropriately captures the technologies to which the mechanism should apply. The rule states, “Each customer receiving service from a wireless or wireline switched or packet-based telecommunications service provider connected to the public telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee...” (Sec 15, Subdivision 1)

While in principle, funding based on the ability to access the functionality is clear, it should be realized that working telephone numbers are only a proxy for access to the functionality in certain circumstances. For example, one feature popular with some residential and business subscribers is Custom Ringing Service. Custom Ringing Service provides distinctive ringing patterns on incoming calls using one individual access line.

Distinctive ringing patterns are achieved by assigning up to three additional telephone numbers to the single access line. (See Qwest's Exchange and Access Services Price List, Section 5.4.10) Under a per number charge system for 911 the single access line would be charged multiple times even though the customer has only one line capable of making a 911 call.

A second example is that working telephone numbers are only an approximate measure of access to 911 functionality arises with voicemail boxes. Voicemail boxes may also have telephone unique numbers associated with them, but the numbers associated with these voicemail boxes cannot be used to place telephone calls. It is unclear whether changes to a per number system would exempt numbers associated with services that are incapable of making a 911 emergency call. Further, the number of telephone numbers actually contained in the 911 database is substantially less than the universe of working telephone numbers due to wireline voicemail, DID and wireless service.

Without knowing in the first place the entire realm and extent of exceptions to the assessment principle, and in the second place, the costs of implementing exceptions in collection mechanisms used by providers, policymakers cannot rationally address exceptions.

## **Implementation Issues**

1. *Whether the fee should be based on telephone numbers with Minnesota area codes as assigned by NANPA or telephone numbers billed to addresses in Minnesota.*

Due to internal administrative costs associated with changing collection mechanisms, Eschelon recommends that any new assessment methodology be as closely linked to the existing methodology as possible.

2. *While certain 911 costs are incurred by telephone number, is that justification for customers with a large concentration of numbers to pay a greater proportion of the total cost of these programs than they do today?*

Yes. Customers should contribute to 911 based on their ability to make 911 calls and the burden they impose on the 911 infrastructure. A customer's ability to make 911 calls is tied to the quantity of trunks or access lines in service for that customer. This is the basis for the current 911 surcharge.

3. *Should changes be made to the statutes so that wireless providers could receive lifeline funding?*

Yes. Wireless providers should be able to receive lifeline funding under the following conditions: 1) the wireless carrier is the least cost provider of basic telephone service; 2) the customer willingly chooses wireless service over wireline service; and 3) the customer does not purchase both wireline and wireless service.

4. *If no monthly bill is sent, as is the case for prepaid service, should prepaid wireless service be assessed a per number fee?*

Yes. Prepaid wireless phones have the ability to make 911 calls and should thus contribute to the fund.

5. *Should there be one funding mechanism for 911, TAM and TAP?*

No. There is no immediate need to make changes to the current mechanism. However, if changes are made then having one funding mechanism for 911, TAM and TAP appears to be the most efficient process.

6. *Should language be included in the statutes to ensure that changes to the three programs that would impact the fee collected for that program must all be done at the same time annually?*

911, TAM and TAP Surcharge Methodology  
Eschelon Telecom, Inc. Comments  
September 30, 2005  
Page 5 of 5

Yes. Annual changes in the fee collected, if necessary, are best done at the same time for all three programs. This would minimize the implementation costs for service providers.

Eschelon appreciates the opportunity to comment on methodological changes regarding surcharges used to fund 911, TAM and TAP.

Sincerely,

Douglas Denney  
Senior Manager, Pricing & Policy  
Eschelon Telecom, Inc.  
Phone: (612) 436-1606  
Fax: (612) 436-1706  
E-mail: [dkdenney@eschelon.com](mailto:dkdenney@eschelon.com)

September 29, 2005

Diane Wells  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East  
Suite 500  
St. Paul, MN 55101

Re: Comments Regarding Department of Commerce White Paper on  
Per Number Fee for 911, TAM, and TAP Funds

Dear Ms Wells:

Citizens Telecommunications Company of Minnesota, LLC ("Citizens") and Frontier Communications of Minnesota, Inc. ("Frontier") submit these Comments to the Minnesota Department of Commerce ("Department") in response to the Department's July 26, 2005 white paper regarding a per number fee for collecting 911, TAM, and TAP funds (the "White Paper"). The White Paper was developed in response to the Minnesota State Legislature's actions which require the commissioner of commerce to "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."<sup>1</sup> Further, the legislature directed that "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."<sup>2</sup>

In the White Paper, the Department discusses four "preliminary issues", and then addresses six "specific per number fee implementation issues". The Department sought comments on all these points. These Comments will respond to those points, respectively.

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<sup>1</sup> Minn. Stat. §237.491, Subd. 2 (a)

<sup>2</sup> Minn. Stat. §237.491, Subd. 2 (b)

## **Preliminary Issues**

The White Paper lists four preliminary issues:

1. *Given the changes made in the 2005 session to broaden the definition for the types of service providers that must pay the 911 and TAM fees, does more need to be done at this time?*
2. *If the answer is that more does need to be done, is a per number fee initiative the best option or is there another mechanism that would be better?*
3. *If a new mechanism is adopted, should it apply to all three services (911, TAM, and TAP)?*
4. *If a new mechanism is adopted, should it apply to all types of technologies or should there be exceptions?*

Citizens and Frontier believe that the Legislature has already answered these questions explicitly in the legislation it enacted. The Legislature specifically asked the Department for “recommendations for the amount of and method for assessing a fee that would apply to each service provider based upon the number of current customers of the service provider”. Thus, the legislature clearly expected that more needed to be done, and directed the Department to provide recommendations on the further action to be taken.

The Legislature clearly expects recommendations that will facilitate the implementation of a “per number” fee mechanism. The Legislature did not ask for recommendations on any other type of framework for funding.

The Legislature specified that this “per number” fee would be set so as to generate revenue sufficient to fund the telephone assistance program (the TAP program), the telecommunications access Minnesota program (the TAM program), and the 911 emergency and public safety communications program.

Finally, the Legislature indicated that this new “per number” fee would “apply to each service provider”; no exemptions are suggested by that language.

## **Specific Per Number Fee Implementation Issues**

Rather than addressing the six implementation issues that the Department raises individually, Citizens and Frontier offer the following proposal. The proposal is described in such a fashion as to address the six issues. In developing this proposal, Citizens and Frontier

endeavored to create a framework that was conceptually simple , broadly based, and administratively efficient.

Citizens and Frontier propose that a “per number” fee mechanism be instituted that would generate sufficient revenue to support the TAM, TAP, and 911 programs, at their current funding levels. In accordance with the Legislature’s direction, this mechanism only addresses the “ fund collection” side of the equation, not the “fund distribution” side. The Legislature did not anticipate in changes in the eligibility for recipients of the TAM, TAP, and 911 funding. Attempting to modify the eligibility requirements for the TAM, TAP, and 911 programs is beyond the scope of this effort.

The responsibility for supporting this total funding need should be distributed equally over all assigned telephone numbers with Minnesota area codes. The White Paper suggests that reports to NANPA be used as a basis for determining the number of telephone numbers in use. Thus, all service providers using NANPA-assigned numbers will be included in this process; landline, wireless, and VoIP. Including all these types of service providers is appropriate. As the White Paper notes, attempting to use the billing address of wireless carriers as an indicator of whether the number should be included in the assessment base is problematic, since that address is changeable and may have no relationship to the geographic location where the service connects with the public network.

However, the reports filed with NANPA are not entirely appropriate for use in this context. For example, numbers ported out by a carrier to another carrier are still reported in the “assigned” numbers of the original carrier, even though the end user is being served by a different carrier. A similar situation may occur with respect to resold service. Thus, for purposes of implementing a “per number” surcharge, a reporting procedure distinct from the NANPA reporting will be necessary, but that procedure should capture information from all types of service providers which have numbering resources assigned to them.

All assigned numbers should be included in the assessment base. Attempting to develop exemptions or limitations for certain kinds of services (such as Centrex) or certain types of customers (such as large business customers) would significantly add to the administrative efforts, require additional reporting by carriers, and open the door to gamesmanship.



After determining these two figures, division of the TAP/TAM/911 funding requirement (as the numerator) by the quantity of assigned telephone numbers (as the denominator) will result in a per number charge. This charge will be the same for all service providers and all lines. The setting of the per number charge should be done annually, simultaneously for all three programs. This will minimize the administrative effort in setting the charge, and will be less confusing to customers since there will be, at most, only one change in the fee per year.

Each service provider would then be directed to collect the per number charge from its customers. The service provider would remit the amounts collected to the commissioner of revenue on a monthly basis. Since the remittance process would be transacted on a monthly basis between the service provider and the commissioner of revenue, the question of prepaid wireless service, raised in the White Paper, is moot. On a monthly basis, all service providers will be expected to collect and remit the per number charge for each assigned telephone number they have, regardless of the nature of service that the carrier provides via that number (prepaid or not). By authorizing service providers to recover the cost of the per number charge from their end user customers, each prepaid wireless provider could develop a mechanism for recovery, tailored to that provider's unique circumstances. Thus, a provider of prepaid service would be expected to remit to the commissioner of revenue an amount equal to the per number charge times the number of prepaid subscribers.

Citizens and Frontier appreciate the opportunity to comment on the issues highlighted in the White Paper, and look forward to additional discussion on these matters.

Please contact me with any questions at (952) 491-5534, or [sbohler@czn.com](mailto:sbohler@czn.com).

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott Bohler". The signature is fluid and cursive, with the first name "Scott" and last name "Bohler" clearly distinguishable.

Scott Bohler  
Manager, Regulatory Central Region

## **Comments of Legal Services Advocacy Project on Department of Commerce “Per Number Fee White Paper”**

### **I. Introduction**

The 2005 Minnesota Legislature directed the Minnesota Department of Commerce (“DOC”) to recommend to the Legislature, by January 15, 2006, “an amount of and method for assessing a fee that would apply to each [telecommunications] service provider based on the number of Minnesota telephone numbers in use by current customers of the service provider.”<sup>1</sup> The fee is to be used to fund three programs: the 911 Emergency and Public Safety Communications Program (“911”),<sup>2</sup> the Telephone Assistance Program (TAP), and the Telecommunications Access Minnesota program (“TAM”).<sup>3</sup> The TAM and TAP programs are to be funded at levels established by the Minnesota Public Utilities Commission (“PUC”).<sup>4</sup> The 911 program is to be funded at a level determined by statute.<sup>5</sup>

On July 26, 2005, the DOC issued a Per Number Fee White Paper (“White Paper”), in which the department identified a number of issues for comment. Legal Services Advocacy Project (“LSAP”), a statewide division of Mid-Minnesota Legal Assistance which advocates on behalf of low-income Minnesotans, respectfully submits the following comments on issues raised in and by the White Paper.

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<sup>1</sup> 2005 Minn. Laws, ch. 136, art. 10, sec. 1 (Chapter 136). The report is to be submitted to the House Regulated Industries Committee and the Senate Committee on Jobs, Energy and Community Development.

<sup>2</sup> Id. Chapter 136 defines 911 Emergency and Public Safety Communications Program to include all programs governed by Chapter 403, which includes both 911 and E911 (i.e., enhanced 911). Id.

<sup>3</sup> TAP is the state’s lifeline program, promoting universal service by providing discounts on basic telephone service. TAM is a state program that provides telecommunications access for hearing- or mobility-impaired Minnesotans by using a third party to relay communications between persons using traditional telephones and those using specialized telephone equipment.

<sup>4</sup> Id.

<sup>5</sup> Id.

## II. Legal Issues

The 2005 legislation requires the DOC to recommend an amount of a per number fee to be assessed for 911, TAP, and TAM – and the methodology of assessment – on “each service provider.”<sup>6</sup> “Service provider” is defined as “a provider doing business in [Minnesota] who provides real time, two-way voice service with a Minnesota telephone number.”<sup>7</sup>

The definition of “service provider” is sufficiently broad to encompass wireline, wireless,<sup>8</sup> and Voice over Internet Protocol (“VoIP”) providers. Whether the state has the legal authority to assess these providers for 911, TAP, and TAM is a threshold issue.

### **A. The State Has the Legal Authority to Assess All Providers for 911**

#### *1. Wireline Providers*

Federal law grants the Federal Communications Commission (FCC) exclusive authority over interstate service, by implication reserving to the states the authority to regulate intrastate service.<sup>9</sup> Minnesota has asserted that authority through statutes that require the assessment, collection, and remittance of fees by wireline providers to fund 911.<sup>10</sup> States may assess wireline providers for 911.

#### *2. Wireless Providers*

Federal rules require wireless providers to transmit 911/E911 calls and permit recovery of associated costs.<sup>11</sup> State law grants authority for the imposition of fees for

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Throughout these comments, the terms “wireless,” “cell phone(s),” and “mobile phones” are used interchangeably.

<sup>9</sup> 47 U.S.C. § 152 (West, WESTLAW through P.L. 109-71).

<sup>10</sup> See Minn. Stat. § 403.11, subd. 1 (2004) (911); Minn. Stat. § 403.113, subd. 1 (2004) (E911).

<sup>11</sup> 47 C.F.R. § 20.18 (2005), GPO Access (through August 25, 2005). *available at* <http://ecfr.gpoaccess.gov>. See also In re Wireless Tel. Fed. Cost Recovery Fees Litigation, 396 F.3d 922,

these services.<sup>12</sup> The FCC has affirmed states' authority to legislate how 911 costs imposed on wireless carriers are recovered.<sup>13</sup> The law in this area is well-settled. States may impose charges on wireline providers to fund 911.

### 3. *VoIP Providers*

Under federal rule, as of November 28, 2005, VoIP service is conditioned upon providing consumers with 911 service.<sup>14</sup> In a recent ruling, the FCC ordered VoIP providers to supply 911 capabilities to their customers,<sup>15</sup> and recognized funding contributions the VoIP providers have made to state 911 services, either directly or through interconnections with local exchange carriers.<sup>16</sup> The State may assess VoIP providers for 911 services.

#### **B. The State Has the Legal Authority to Assess Wireline Providers for TAM and TAP**

The State has jurisdiction over intrastate service provided by wireline carriers.<sup>17</sup> State law provides for the assessment of wireline providers for TAM and

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927 (8<sup>th</sup> Cir. 2005) (noting that federal regulations permit wireless providers to recoup costs associated with 911 by charging customers a fee).

<sup>12</sup> See Minn. Stat. § 403.11, subd. 1 (requiring wireless providers “capable of originating a 911 emergency call” to assess, collect, and remit to the state a fee to fund 911) and Minn. Stat. § 403.113, subd. 1 (requiring wireless providers to assess, collect, and remit to the state a fee to fund E911). It is curious that the provisions governing 911 affect only providers “capable of originating” a 911 call, whereas the provisions governing E911 seemingly affect all wireless carriers.

<sup>13</sup> *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Docket No. 94-102, Second Memorandum Opinion and Order, FCC 99-352, ¶ 54 (rel. Dec. 8, 1999) (refusing to limit or prohibit states in “the creation of cost recovery procedures” or preempt “existing [state] cost recovery legislation”).

<sup>14</sup> See 47 C.F.R. § 9.5(b) (through August 25, 2005), available at <http://ecfr.gpoaccess.gov>. See also *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, ¶ 73 (rel. June 3, 2005) (requiring VoIP providers to supply E911 capabilities to their customers). The rules and the order refer only to E911.

<sup>15</sup> First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, *supra*, note 14.

<sup>16</sup> *Id.* at ¶ 52.

<sup>17</sup> See note 9, *supra*.

TAP.<sup>18</sup> The State authority to assess wireless providers for these programs is unquestioned.

### C. The State Has the Legal Authority to Assess Wireless Providers for TAP

The extent of state regulatory authority over wireless providers has been the source of considerable debate and frequent litigation.<sup>19</sup> Federal law preempts states or local governments from “regulat[ing] the entry of or the rates charged by any [wireless provider].”<sup>20</sup> However, federal law also provides that “[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute...in a manner determined by the State to the preservation and advancement of universal service in that State.”<sup>21</sup> Further, states may regulate “other terms and conditions of [wireless] services.”<sup>22</sup>

The determinative issue is whether or not the state is attempting to regulate “rates.”<sup>23</sup> Industry challenges to state regulatory authority have relied on the argument that any attempt to regulate a wireless provider is rate regulation and is thus preempted.<sup>24</sup>

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<sup>18</sup> See Minn. Stat. § 237.52, subd. 3 (2004) (TAM); Minn. Stat. § 237.70, subd. 6 (TAP).

<sup>19</sup> See, e.g., Marcus v. AT&T Corp., 138 F.3d 46, 53 (2<sup>nd</sup> Cir. 1998) (holding that the Telecommunications Act does not completely preempt “‘traditional [state] common law’ claims”). But see, e.g., Gilmore v. Southwestern Bell Mobile Sys. Inc., 156 F.Supp.2d 916 (N.D. Ill. 2001) (holding that alleged contract violation was challenge to rates and therefore preempted by the Telecommunications Act).

<sup>20</sup> 47 U.S.C. § 332(c)(3)(A) (West, WESTLAW through P.L. 109-71).

<sup>21</sup> 47 U.S.C. § 254(f) (West, WESTLAW through P.L. 109-71).

<sup>22</sup> See note 22, *supra*.

<sup>23</sup> Compare Bastien v. AT&T Wireless Servs., Inc., 205 F.3d 983 (7<sup>th</sup> Cir. 2000) (holding that a claim involving service quality affects rates and is preempted under the Telecommunications Act) with Phillips v. AT & T Wireless, No. 4:04-CV-40240, 2004 WL 1737385, at \*5 (S.D. Iowa. July 29, 2004) (holding that early termination fee at issue is not a rate for purposes of complete preemption).

<sup>24</sup> See, e.g., Bastien, 205 F.3d at 986. But see Fedor v. Cingular Wireless Corp., 355 F.3d 1069 (7<sup>th</sup> Cir. 2004) (holding that plaintiff’s claim against a cellular telephone company for violation of billing arrangements were not preempted). In Fedor, the defendant invoked Bastien, but the court “reject[ed] the argument that any claims related to the billing amount are automatically preempted....” Id. at 1074. Instead, the court explained, the key determinant is whether the claim is about the “reasonableness of rates charged” or the “impact[s] market entry.” Id. If the claims address conduct, not rates, the court concluded that such claims are “precisely the type of state law contract and tort claims that are preserved for the states.” Id. See also Cellco P’ship v. Hatch, No. Civ. 04-2981 JRT/SRN, 2004 WL 2065807, at \*3 (D.

Federal courts have rejected this argument, upholding states' right to impose charges on wireless providers to support state lifeline (i.e., universal service) programs such as Minnesota's TAP.<sup>25</sup>

#### **D. The State Has the Legal Authority to Assess Wireless Providers for TAM**

States have clear authority to assess wireless providers for state universal service programs.<sup>26</sup> Minnesota statutes contemplate the state relay service for hearing-

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Minn. September 3, 2004) (finding that "a law is not preempted merely because [it] could increase wireless providers' costs of doing business").

<sup>25</sup> See Cellular Telecomm. Industry Ass'n v. F.C.C., 168 F.3d 1332 (D.C. Cir. 1999) (holding that Texas regulators' requirement that wireless carriers contribute to state universal service fund is not impermissible rate regulation and thus not preempted by the Telecommunications Act); Texas Office of Pub. Util. Counsel v. F.C.C., 183 F.3d 393, 432 (5<sup>th</sup> Cir. 1999) (upholding the FCC ruling permitting states to impose state universal service requirements on wireless providers); Sprint Spectrum, L.P. v. Corp. Comm'n of Kansas, 149 F.3d 1058 (10<sup>th</sup> Cir. 1998) (affirming lower court's ruling that mandatory contributions by wireless providers to state universal service fund do not constitute a regulation of rates or market entry and are thus not preempted by the Telecommunications Act); Bell Atlantic Mobile, Inc. v. Dep't. of Pub. Util. Control, 754 A.2d 128, 146 (Conn. 2000) (holding that federal law does not preempt the state utility regulator from imposing universal service contribution assessments on wireless providers). The matter of state jurisdiction over other terms and conditions of cell phone service is not fully settled, but the weight of authority suggests that the industry's argument that virtually any state action on wireless service constitutes impermissible rate regulation is unpersuasive. Courts have narrowly interpreted the preemptive language of the Telecommunications Act. See, e.g., Gattegno v. Sprint Corp., 297 F.Supp.2d 372 (D. Mass. 2003) (holding that the Telecommunications Act does not preempt plaintiff's state law claims regarding deceptive billing of 911 charges); Cedar Rapids Cellular Tel., L.P. v. Miller, No. C00-58 MJM, 2000 WL 34030836, at \*6 (N.D. Iowa. September 15, 2000) (holding that plaintiff's claim that service agreement violated state consumer law was not preempted); Brown v. Washington/Baltimore Cellular, Inc., 109 F.Supp.2d 421 (D. Md. 2000) (holding that allegations of unlawful late fee charges were not preempted by Telecommunications Act); Sanderson v. AWACS, Inc., 958 F.Supp. 947 (D. Del. 1997) (holding that plaintiff's claim alleging failure to disclose company's billing practices was not a challenge to rates and thus not preempted by the Telecommunications Act); Bauchelle v. AT&T Corp., 989 F.Supp. 636 (D. N.J. 1997) (holding that plaintiff's claim that the provider failed to disclose the least expensive plan was not preempted); In re Comcast Cellular Telecommunications Litigation, 949 F.Supp. 1193 (E.D. Pa. 1996) (holding that plaintiff's claims of inadequate disclosure of company's practices did not preclude state claim); Esquivel v. S.W. Bell Mobile Sys., Inc., 920 F.Supp. 713 (S.D. Tex. 1996) (holding that early termination of service is not a rate); Tenore v. AT & T Wireless Services, 962 P.2d 104 (Wash. 1998) (holding that plaintiff's challenges to service practices were not preempted by Telecommunications Act); Spielholz v. Superior Court, 104 Cal. Rptr.2d 197, 204 (Cal. Ct. App. 2001) (holding that a claim alleging false advertising is not an attempt to regulate rates and is not expressly preempted). The cell phone industry has recently challenged a 2004 Minnesota law requiring, *inter alia*, that cellular telephone companies provide written notice to customers of a proposed substantive change in the contract. Cellco P'ship v. Hatch, No. Civ. 04-2981 JRT/SRN, 2004 WL 1447914, at \*1 (D. Minn. June 29, 2004) (upholding the statute). The industry has appealed that ruling, which is currently under review by the Eighth Circuit.

<sup>26</sup> See note 25, *supra*.

impaired persons (i.e., TAM) as a component of universal service.<sup>27</sup> Moreover, wireless providers are mandated by state law to contribute to TAM.<sup>28</sup>

**E. Even if Assessments on Wireless Providers for TAP and TAM are Determined to be Impermissible Rate Regulation, the State May Impose Charges for Those Programs Under its General Power to Tax**

It is possible that the mobile phone industry will challenge the PUC's authority to assess carriers for TAP and TAM, asserting the Commission is engaging in impermissible rate regulation. However, even if these challenges succeed, the state may fund the TAP and TAM programs from the imposition of taxes on wireless providers. Although rate regulation by states of wireless providers is impermissible, state taxation of such entities is unquestionably lawful.<sup>29</sup>

**F. The State's Regulatory Authority Over VoIP is Unclear**

Despite Chapter 136's requirement that all providers be assessed for TAM and TAP, there is legal uncertainty as to the state's authority over VoIP providers. Recent federal judicial and regulatory rulings call into question the reach of the State's power. However, the question of whether the state can regulate VoIP is not completely settled.

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<sup>27</sup> Minn. Stat. § 237.16, subd. 9 (2004) (requiring the PUC to establish and require contributions to a universal service fund, to be supported by all providers of telephone services, including *cellular carriers*, and including the telecommunications relay service for the hearing-impaired as one of the services to be considered for inclusion in such a fund) (emphasis added).

<sup>28</sup> Minn. Stat. § 237.52, subd. 3 (requiring providers "capable of originating a telecommunications relay call, including *cellular communications*" to collect and remit to the state a fee to fund TAM) (emphasis added).

<sup>29</sup> See, e.g., City of Jefferson v. Cingular Wireless, LLC, No. 04-4099-CV-C-NKL, 2005 WL 1384062 (W.D. Mo. June 9, 2005) (holding that state may impose gross receipt taxes on mobile telephone company); Airtouch Communications, Inc. v. Wyoming Dep't of Revenue, 76 P.3d 342 (Wyo. 2003) (upholding state's authority to assess cellular telephone company for ad valorem taxes); Southwestern Bell Mobile Sys., Inc. v. Arkansas Pub. Svc. Comm'n, 40 S.W.3d 838 (Ark. Ct. App. 2001) (upholding commission's authority to assess cellular telephone company's property for ad valorem taxes); Central Kentucky Cellular Tel. Co. v. Kentucky Revenue Cabinet, 897 S.W.2d 601 (Ky. Ct. App. 1995) (upholding state's authority to assess cellular telephone company under property tax statute); Los Angeles SMSA Ltd. P'shp. v. State Bd. of Equalization, 14 Cal. Rptr.2d 522 (Cal. Ct. App. 1992) (holding that cellular telephone company was subject to annual assessment of taxable property); Nextel of New York, Inc. v. Vill. of Spring Valley, 771 N.Y.S.2d 853 (N.Y. Sup. Ct. 2004) (holding that cellular telephone company equipment is subject to state taxation).

The key determinant is whether telephony delivered through VoIP is considered “information” or “telecommunications.”

The issue has been litigated by Vonage Holdings Corporation (Vonage), a VoIP provider, after a ruling by the PUC that Vonage is subject to state regulation as a telecommunications provider.<sup>30</sup> In October 2003, the United States District Court of Minnesota, holding that Vonage is a “provider of ‘information services,’ and is not a ‘telecommunications carrier,” permanently enjoined the PUC from regulating Vonage.<sup>31</sup> The state appealed to the United States Court of Appeals for the Eighth Circuit.<sup>32</sup>

At the same time it petitioned for judicial relief, Vonage pled for regulatory relief, asking the FCC to preempt the PUC’s jurisdiction over the company’s services.<sup>33</sup> In November 2004, the FCC preempted the PUC from applying “traditional ‘telephone company’ regulations” to Vonage.<sup>34</sup> The FCC’s reasoned that, because it is impossible to distinguish between the interstate and intrastate characteristics of Vonage’s method of carrying telephony, the PUC order “conflict[ed] with federal rules and policies”<sup>35</sup> and offended the Commerce Clause, which preempts state regulation of interstate commerce.<sup>36</sup>

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<sup>30</sup> *In the Matter of Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108, Order Finding Jurisdiction and Requiring Compliance (issued Sept. 11, 2003).

<sup>31</sup> *Vonage Holdings Corp. v. Minnesota Pub. Util. Comm’n*, 290 F.Supp.2d 993 (D. Minn. 2003).

<sup>32</sup> 290 F.Supp.2d 993 (D. Minn. 2003), *appeal docketed*, No. 04-1434 (8<sup>th</sup> Cir. Dec. 22, 2004).

<sup>33</sup> Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC 03-211 (filed Sept. 22, 2003).

<sup>34</sup> *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Util. Comm’n*, Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, ¶ 47 (rel. Nov. 12, 2004).

<sup>35</sup> *Id.*, at ¶ 31.

<sup>36</sup> *Id.*, at ¶ 38.



However, the FCC refused to rule on the applicability of general state laws, such as tax laws, to VoIP.<sup>37</sup> Moreover, the FCC declined to determine whether VoIP is an information or telecommunications service, despite Vonage's explicit request for such a ruling.<sup>38</sup>

Following the issuance of the FCC order, the Eighth Circuit ruled on the state's appeal in Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n.<sup>39</sup> Significantly, the appellate court affirmed, but based its decision not on the lower court's finding that VoIP is an information service, but rather on the FCC's ruling invoking the Commerce Clause.<sup>40</sup>

In sum, the State may have the ability to assess VoIP providers for TAP and TAM if it is ultimately determined that VoIP is a telecommunications services subject to state regulation of the intrastate portion of its service. Alternatively, the state may assert authority to assess VoIP for TAP and TAM if these assessments are considered taxes, which are within the state's authority to impose.

### III. Policy Issues

The White Paper posed a series of questions, inviting responses from commenters. The following provides LSAP's response to some of these questions.<sup>41</sup>

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<sup>37</sup> Id., at ¶ 1.

<sup>38</sup> Id., at ¶ 14. In a subsequent ruling involving VoIP, the FCC also declined to classify VoIP as either an information or telecommunications service. *See In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, ¶ 24 (rel. June 3, 2005)

<sup>39</sup> Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n., 394 F.3d 568 (8<sup>th</sup> Cir. 2004).

<sup>40</sup> Id. The FCC filed an amicus brief in the proceeding. Brief of Amici Curiae the United States and the Federal Communications Commission, 394 F.3d 568 (2004) (No. 04-1434). On procedural grounds, the court declined to rule on the PUC's dispute of the merits of the FCC's filing as amici curiae in this matter. 394 F.3d 568.

<sup>41</sup> LSAP's comments in this section assume the PUC has the authority to assess wireless and VoIP providers for TAP and TAM.

**A. Competitive Neutrality**

LSAP agrees with the DOC that assessing all providers for all three programs maintains competitive neutrality. As currently constituted and for a variety of reasons, the proverbial telecommunications playing field is unlevel. Further imbalance will be avoided if the fee is imposed equally upon all providers.

**B. Eligibility of Wireless and VoIP Providers to Collect Lifeline Support**

The White Paper correctly points out that Minnesota's TAP law must be amended to ensure that the per number fee approach may be used. Currently, only providers using "access lines"<sup>42</sup> are covered by the TAP statute.<sup>43</sup> Wireless and VoIP providers are ineligible to access the TAP fund. The statute must be amended by replacing "access lines" with "telephone number" or the appropriate phrase. This change is required even if wireless carriers are not included to permit collection of fees even from wireline carriers on a per number rather than on an access line basis.

The policy question posed by the White Paper is whether allowing mobile phone service providers to access TAP. LSAP strongly supports the inclusion of non-wireline providers as part of the universe of carriers receiving lifeline support. Empirical evidence clearly suggests a significant increase in cell phone penetration among low-income customers.<sup>44</sup> Moreover, mobile phones are often a low-income household's

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<sup>42</sup> Defined as "telephone company-owned facilities furnished to permit switched access to the telecommunications network that extend from a central office to the demarcation point on the property where the subscriber is served." Minn. Stat. § 237.69, subd. 5 (2004).

<sup>43</sup> Minn. Stat. § 237.70, subd. 6 (2004).

<sup>44</sup> An informal survey conducted by LSAP during the week of September 12, 2005 of the legal services programs in Minnesota reveals that cell phone usage among low-income Minnesotans accessing legal services programs is not only prevalent among clients, but also has increased dramatically over the last several years. An average of 50% of clients have cell phones (many as their primary phone), while some programs estimate cell phone use among clients as high as 90%. Legal services programs surveyed include Anishinabe Legal Services, Central Minnesota Legal Services, Judicare of Anoka County, Legal Aid of Northeastern Minnesota, Legal Services of Northwest Minnesota, Mid-Minnesota Legal Assistance, Southern Minnesota Regional Legal

primary telephone.<sup>45</sup> With the continuing migration away from landlines, even greater mobile phone penetration among Minnesota's low-income population is expected. To the extent that VoIP is becoming a viable alternative means of telecommunications for low-income customers, there is no reason to exclude this technology from accessing the TAP fund. Therefore, amending state law to enable non-wireline providers (and their customers) to access TAP is sound public policy which reflects current industry trends.

### **C. Treatment of Prepaid Service**

Prepaid service should be subject to assessment. It is merely an alternative way of obtaining the same service. Public safety concerns underlie the need to assess for 911, and universal service goals underlie the development of TAP and TAM. Those important and shared policy objectives remain are driving forces whether service is paid for before or after its actual use. Further, a key goal of a per number fee is to create the broadest possible revenue base for 911, TAP, and TAM. Persons using prepaid service would have access to 911 and TAM. A mechanism could also be established to provide relief for TAP-eligible users of prepaid service. There is no reason why prepaid service should not be subject to assessment.

### **D. One Fee vs. Separate Fees**

There are sound arguments for a single fee. The three programs provide public goods. They are designed to serve all or a portion of the populace to further vital social policy goals. Therefore, having a single assessment makes sense. Further, additional

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Services, Centro Legal, Inc., Legal Assistance of Dakota County, Inc., Legal Assistance of Olmsted County, Inc., Farmers Legal Action Group, Inc., VETLAW, Minnesota Advocates for Human Rights, Minnesota Indian Women Resource Center, and Minnesota AIDS Project). *See also* Matthew Kam, Arianna Tibuzzi, Xinyu Hua, *Location-Based Services for Low-Income Communities in the California Central Valley*, available at <http://www.eecs.berkeley.edu/BEARS/2004/STARS/final/kam.pdf> (noting that anecdotal evidence indicates high cell-phone penetration among the low-income population as compared with personal computer ownership).

<sup>45</sup> *Id.*

line items segregating charges for similar programs unnecessarily clutter an already lengthy and confusing telephone bill.<sup>46</sup> Arguably, because the assessments are minimal and the programs relatively obscure, consumers will be neither better served nor better informed by separating out 911, TAP, and TAM charges on separate lines on the bill.

Proponents for segregating the charges may argue that the assessment for 911 is significantly higher than for TAP and TAM,<sup>47</sup> and that the 911 program serves every Minnesota, while the TAP and TAM programs serve only a discrete segment of the population. These arguments, while true, are not compelling. The facts that all three are public purpose programs and telephone bills are already too long and difficult to understand argue persuasively that one fee is appropriate.

#### **E. TAP Program Elasticity**

TAP participation is increasing. TAP enrollment has increased 66% since December 2002,<sup>48</sup> and participation is expected to further increase as both traditional

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<sup>46</sup> See Federal Communications Commission, Understanding Your Phone Bill Charges, Changes and Contracts: The FCC's Three C's for Consumer Protection, at <http://www.fcc.gov/cgb/consumerfacts/understanding.html> (stating that “[c]onsumer confusion over telephone bills has significantly contributed to the growth of slamming...and other types of telecommunications fraud”); Colorado Office of Consumer Counsel, Understanding Your Telephone Bill: Why is My Phone Bill So Hard to Figure Out? available at <http://www.dora.state.co.us/occ/Understanding.pdf> (asserting that “phone bills are more confusing than ever”); Siegel & Gale, Perplexity Poll: Confusing Information Costs Wireless Companies \$3 Billion Annually (2004), available at [http://www.siegelgale.com/company/news\\_article.asp?ID=42](http://www.siegelgale.com/company/news_article.asp?ID=42) (concluding that cell phone bills exacerbate customer confusion and frustration over incomprehensible communications to customers from wireless companies).

<sup>47</sup> The statutory cap on the 911 fee was raised to sixty-five cents in the 2005 session. 2005 Minn. Laws, ch. 1, art. 10, sec. 12. The statutory cap for the TAP assessment is ten cents. Minn. Stat. § 237.70, subd. 6 (2004). However, the current assessment is only five cents. *In the Matter of Annual Consideration Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2005*, Docket No. P-999/CI-05-334, Order Establishing Verification Procedures, Accepting TAP Reports, and Maintaining Current Surcharge and Credit Levels (issued June 10, 2005) (retaining the five cent surcharge on all telephone lines for TAP). The statutory cap for the TAM assessment is twenty cents. Minn. Stat. § 237.52, subd. 2 (2004).

<sup>48</sup> In December 2002, enrollment stood at 33,000. State of Minnesota Public Utilities Commission, 2003 Annual Report, Appendix J. By the fourth quarter of 2004, participation increased to nearly 55,000. *In the Matter of Annual Consideration Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2005*, Docket No. P-999/CI-05-334, Staff Briefing Papers (May 5, 2005).

outreach efforts continue and new ones get underway.<sup>49</sup> One primary outreach effort, for instance, entails coordination between the DOC, which also administers the Low Income Home Energy Assistance Program (LIHEAP), and the PUC's Consumer Affairs Office to notify all LIHEAP recipients of their eligibility for TAP.<sup>50</sup> In FY 2005, nearly 124,000 households received LIHEAP benefits.<sup>51</sup>

The PUC must retain the authority and flexibility to accommodate anticipated program growth. Toward that end, the DOC should recommend that the statutory surcharge cap of ten cents should be changed to twenty cents.<sup>52</sup> The cap has not been changed for 17 years.<sup>53</sup> In contrast, the maximum TAM surcharge, which was established at ten cents when the program was created in 1987, was increased to twenty

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<sup>49</sup> In 2003, the Minnesota Legislature expanded TAP eligibility by conforming state criteria to federal criteria. 2003 Minn. Laws, ch. 79. In 2004, the FCC expanded eligibility criteria. *In the Matter of Lifeline and Link-Up*, Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, ¶¶ 70, 71 (rel. April 29, 2004). In May 2004, the PUC requested that the Department of Commerce and Residential Utilities Division of the Office of the Attorney General convene a TAP Workgroup to evaluate and recommend methods to expand TAP participation. *In the Matter of Annual Consideration Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2004*, Docket No. P-999/CI-04-305, Order Deferring Action and Requesting the DOC and RUD-OAG to Convene Workgroup (issued May 20, 2004). In December, the TAP Workgroup recommended that existing outreach efforts be continued and new outreach efforts be conducted. Minnesota Department of Commerce, Residential Utilities Division of the Office of Attorney General, and Legal Services Advocacy Project, Comments of the TAP Workgroup, Docket No. P999/CI-04-305, December 22, 2004. The PUC adopted the Workgroup's recommendations at its meeting of February 24, 2005. In addition, the 2005 Legislature amended the TAP statute, raising the allowable administrative expenditures for the program, and providing express authority to conduct outreach efforts. 2005 Minn. Laws, First Special Session, ch. 1, art. 4, sec. 58. Further, the Minnesota Department of Human Services, the Minnesota Office of Economic Opportunity, and the Minnesota Department of Employment and Economic Development already distribute information to eligible households. Comments of the TAP Workgroup, December 22, 2004, note 52, *supra*. New initiatives include coordination with Minnesota's 150 Public Housing Agencies. *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Minnesota Department of Commerce, Energy Assistance Program Funding Recent History (unofficial report), 2005.

<sup>52</sup> Minn. Stat. § 237.70, subd. 6 (providing that the monthly surcharge to fund TAP shall not exceed ten cents per access line). Moving to a per number fee will require a modification in statutory language to reflect the changed methodology.

<sup>53</sup> The cap was established by the 1988 Legislature. *See* 1988 Minn. Laws, ch. 621.

cents in 1993.<sup>54</sup> Increasing the statutory cap for TAP provides PUC with the tools necessary to accommodate program growth.<sup>55</sup>

#### IV. Conclusion

The State has the legal authority to assess all providers for 911 costs. The State has the legal authority to assess wireless providers for TAP and TAM, but whether it has the regulatory power over VoIP to assess for those programs is an unsettled legal question. However, the State's general power to tax for the general welfare may provide sufficient authority to overcome obstacles to assessment.

Further, low-income customers are increasingly using cell phones as their primary means of telecommunications. VoIP service is also becoming more prevalent in society. Low-income customers who use these technologies should be able to participate in TAP, and providers of these services should be able to access the TAP fund. The law should be changed accordingly.

Finally, the PUC should retain its current statutory authority to annually set the TAP credits and surcharge. However, to accommodate program growth, the DOC should recommend that the statutory maximum surcharge for TAP be increased from ten cents to twenty cents.

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<sup>54</sup> See 1987 Minn. Laws, ch. 308 (establishing the surcharge at a maximum of ten cents); 1993 Minn. Laws, ch. 272 (amending the statute to increase the maximum surcharge to twenty cents).

<sup>55</sup> It is true that the TAP surcharge may fall if the state moves to a per number approach and non-wireline carriers are included. However, since statutory changes must be made to accommodate the change to a per number method, it makes sense to modify the cap at the same time.

Dated: September 30, 2005

Respectfully submitted,

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**MINNESOTA CHAMBER**  
*of Commerce*  
THE VOICE OF BUSINESS<sup>SM</sup>

October 10, 2005

Diane Wells  
Special Assistant to Deputy Commissioner  
Energy and Telecommunications Division  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101-2198

Dear Ms. Wells:

The Minnesota Chamber of Commerce supports the Department of Commerce's goal to ensure that all telephone customers pay an appropriate share of the funding for Minnesota's 911, Telephone Assistance Program (TAP) and Telecommunications Access Minnesota (TAM) programs. The reduction of the number of wire lines due to the advance of wireless technology and Voice over Internet Protocol (VoIP) will require a careful review of these programs and their funding source. We share the Department's priority that 911 funding should be "reliable, predictable, and sustainable."

However, representing business customers, the Chamber is concerned that changes in the 911/TAP/TAM funding structure would unfairly increase fees on businesses. Businesses are more likely than residential customers to have multiple telephone numbers, and it seems that moving to a per-number system would put business customers at increased risk, relative to residential customers.

The current system charges customers based on the access lines running to their home or business. Access lines carry multiple telephone numbers. For instance, the Minnesota Chamber of Commerce has at its offices fifteen lines (for both phone and internet service) that carry over ninety phone numbers. If a per number fee replaces a per access line fee, it would follow that the Chamber, a small, nonprofit company with thirty employees, would be charged on 90 phone numbers rather than 15 lines. We acknowledge that certain 911 costs (for instance, to maintain the database) may apply to each telephone number. We do not believe that it is justifiable that customers with a large concentration of phone numbers in the same location should pay a greater proportion, compared to other customers.

If a per-number fee is deemed necessary to ensure that all customers are paying for access to 911/TAP/TAM, the funding mechanism should be constructed to deliver substantial discounts to locations that have multiple telephone numbers. Businesses of any size with multiple wire lines should not face a proportionately unfair increase in their 911/TAP/TAM fees, relative to other customer classes. Many large users have their own emergency systems which are financed entirely on their own. These customers are not like homeowners, who rely on the public emergency systems.

Furthermore, we question why the 911 program is in need of additional investment, so soon after the 2005 legislature passed a \$0.25 per access line increase in its funding, from \$0.40 to \$0.65. The law change also applies the definition of the type of service providers to require any "switched or packet-based" providers "connected to the public switched telephone network" to pay the \$0.65 fee. This is a 63% per line increase in 911 funding. In the Department's white paper, it reports that the number of access lines (on which the increased fee is assessed) is still increasing, and not expected to begin to decrease until 2009.



In the Department's white paper, it also mentions that collections for the TAM program are statutorily linked to the methodology used to collect 911 fees," making it "likely that the law change should result in service providers using voice over internet protocol (VoIP) technology to also contribute to TAM funding."

The legislature's increase leads us to question the Department's haste in suggesting changes to the funding mechanism for 911/TAP/TAM based on a solvency problem. Consistent with our shared priority of ensuring the 911 program is "reliable, predictable, and sustainable," we are not convinced that the current level of funding jeopardizes the 911 program.

Perhaps the solution is to assess a new per-number fee on wireless customers, and keep the current fee structure in place for customers that use wire lines. This would keep fees predictable and stable for customers for whom wire lines are still a necessary feature of doing business, while ensuring that all customers are paying into the system.

The Minnesota Chamber of Commerce represents business customers of all sizes, with a variety of communications needs. We are not convinced that a change in the fee structure is necessary to adequately fund 911/TAP/TAM; in particular because we have not yet seen the impact of the increase passed by the 2005 legislature. However, if steps need to be taken to ensure that all customers (residential, individual wireless and business) are paying for the 911/TAP/TAM programs, and then the Department should recommend that the programs are funded using a mechanism that guarantees proportionately equal funding, regardless of customer class.

Sincerely,



Mike Franklin

Manager, Energy, Labor and Elections Policy

Cc: Bill Blazar, Senior Vice President, Public Affairs and Business Development  
Tom Hesse, Vice President, Government Affairs

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**Qwest Corporation**  
Law Department  
(612) 672-8905-Phone  
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**Jason D. Topp**  
Corporate Counsel



September 30, 2005

Ms. Diane Wells  
Minnesota Department of Commerce  
85 Seventh Place East  
Suite 500  
St. Paul, MN 55101-2198

Dear Ms. Wells:

Enclosed are Qwest Corporation's Comments regarding the Department of Commerce's White Paper.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jason D. Topp', with a large, sweeping flourish extending from the end of the signature.

Jason D. Topp

JDT/bardm

## **COMMENTS OF QWEST CORPORATION ON DEPARTMENT OF COMMERCE WHITE PAPER**

Qwest Corporation submits these comments regarding the Minnesota Department of Commerce's White Paper distributed on July 26, 2005. Qwest applauds attempts by the Department of Commerce (DOC) to widen the base from which 911, Telephone Assistance Programs (TAP) and the Telecommunications Access Minnesota Program (TAM) are funded. There can be no doubt that the world is changing. Traditional land line phones comprise a shrinking percentage of those that use the public switched telephone network. While assessment of a per line charge would have in the past served essentially the same function as support from the general fund, such an assumption is improper in today's world of wireless, cable and voice over internet protocol competition.

Despite Qwest's support of the general goal, the DOC's proposal raises a number of concerns that need to be addressed before such a program could be implemented. Primary among those problems are legal issues associated with applying the scheme to voice over internet protocol (VOIP) providers. In addition, there are significant policy concerns associated with a per-number charge, namely applying a tax to a large number of subscribers that could never be in a position to take advantage of the services. Such funding most appropriately should come from the general fund.

These comments will address the issues identified by the DOC, raise issues that require resolution prior to any implementation of such a per-number proposal, and suggest alternative methodologies of approaching this issue.

### **Discussion of Issues Raised in the White Paper**

#### **A. Preliminary Issues**

- 1. Given the changes made in the 2005 session to broaden the definition for the types of service providers that must pay the 911 and TAM fees, does more need to be done at this time?***

Minnesota has expressed interest in funding 911, TAP and TAM via a fee assessed on providers doing business in Minnesota who provide real time, two-way voice service with a Minnesota telephone number. The fee would be assessed per Minnesota telephone number.

Qwest believes that this plan is not within the limits carved out by the FCC in its November 2004 declaratory ruling regarding Vonage's service.<sup>1</sup> First, VOIP is a jurisdictionally mixed service, and the FCC has declared that such services are subject to regulation from only the federal jurisdiction. In the *Vonage Order*, the FCC made clear

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<sup>1</sup> *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404; FCC Comm'n Order No. 04-267 (2004) (*Vonage Order*).

that Vonage's service, and similar services, are jurisdictionally mixed. Accordingly, states do not have jurisdiction to regulate the services, which are to be regulated in the interstate jurisdiction. The FCC decided "that multiple state regulatory regimes would likely violate the Commerce Clause because of the unavoidable effect that regulation on an intrastate component would have on interstate use of this service or use of the service within other states."<sup>2</sup> The FCC made an exception for "Minnesota's general laws governing entities conducting business within the state, such as laws concerning taxation; fraud; general commercial dealings; and marketing, advertising, and other business practices."<sup>3</sup>

Second, with VOIP, a user's telephone number is not tied to the user's physical location, and thus Minnesota could end up assessing its fees on telephone numbers that have no nexus with Minnesota, in contrast to circuit switched calls.<sup>4</sup> Thus, under Minnesota's proposal, a user in New York who desired a Minnesota telephone number, perhaps for business reasons, would end up paying fees for Minnesota's 911, TAP and TAM programs, even though the user derived no benefit from them.

Additionally, there currently is a problem with administration of the Minnesota 911 Fund. The law requires telecommunications service providers to pay what is *collected* into the fund. However, almost all companies pay based on the amount that they bill. As a result, telephone companies are prepaying the fees and must collect them after the fact. Qwest has attempted to reduce payments by amounts that have proven to be uncollectible. Because uncollectible amounts are not tracked by location, Qwest has been allocating the uncollectible fees among the jurisdictions based upon the gross revenue collection. Although this seems like a reasonable approach, the authorities have objected and are attempting to deny Qwest this deduction. The manner in which uncollectible amounts are recognized and processed needs to be addressed in any fee legislation.

**2. *If the answer is that more does need to be done, is a per number fee initiative the best option or is there another mechanism that would be better?***

Qwest has a number of concerns about the DOC's proposal. First, as is discussed above, it is Qwest's view that voice over internet protocol providers are not telecommunication carriers and have been exempted from state regulation. Although it might be desirable from a state policy perspective to impose a charge on VoIP numbers, we do not believe that the PUC has the authority to impose such a tax.

A related concern with the DOC proposal is that it discusses fees "that would apply to service providers". Currently, these taxes are imposed upon the purchaser of the product and not the provider. In the event that the liability is shifted to the provider, it would cost the citizens of Minnesota an extra 3% Federal Excise Tax [FET]. The amount

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<sup>2</sup> Vonage Order, ¶ 14.

<sup>3</sup> *Id.*, ¶ 1.

<sup>4</sup> *Id.*, ¶ 9.

paid for local and toll services are subject to the FET. Under current practices with the fee on the customer, the line based taxes are NOT included in the FET base. If the fee is imposed upon the provider and passed through to the customer as either a line item on the bill or imbedded in the price, the fees would become subject to FET. This would be an extra cost to the citizens with all benefits going to the federal government.

A third concern is that if the fees were imposed upon telephone numbers, rather than access lines, companies having multiple access lines, but single numbers would pay smaller fees. For example, if an entity utilized a switch-board or extensions on a central telephone number, the fee might only apply to the single “call in” number.

The proposal also raises issues with respect to application of a per-number charge to large multi-line users. Such customers are assigned a large number of lines and the customer chooses which lines should be active at any one time. Accordingly, if the per-number proposal were implemented, the issue of how to apply the charge to such customers would need to be resolved. Identification of the appropriate amount of numbers is extremely difficult because there is no way for the service provider to determine the number of active numbers a Centrex customer, for example, has at any one time. One way to address this situation is to require that the end-user customer identify and self-report its active numbers. These difficulties emphasize the importance of identifying any per-number fee as a customer rather than as a service provider responsibility.

Given these problems, the ideal solution would be to pay for these programs out of the state general fund. This approach also makes policy sense. Traditional land line phones comprise a shrinking percentage of the use of the public switched telephone network. While assessment of a per-line charge would have in the past served essentially the same function as support from the general fund, such an assumption is invalid in today’s world of wireless, cable and voice over internet protocol competition.

Qwest recognizes the political issues raised by obtaining funding for these programs out of the general fund. Finding another workable solution in the face of the changing telecommunications landscape will provide numerous challenges for something that all Minnesotans benefit from and should bear the corresponding burden.

**3. *If a new mechanism is adopted, should it apply to all three services (911, TAM and TAP)?***

Qwest supports using the same funding mechanism for all three services.

**4. *If a new mechanism is adopted, should it apply to all types of technologies or should there be exceptions?***

To the extent legally possible, the mechanism should apply to all technologies.

## **B. Specific Per Number Fee Implementation Issues**

- **Are there legal reasons to go with telephone numbers assigned by NANPA or telephone numbers with a Minnesota billing address?**

In the event Minnesota adopts a per-number fee, Qwest recommends use of an “active service address” for fixed location numbers and the methodology established by the Mobile Sourcing Act, “primary place of use” (PPU) for mobile users. This would ensure that numbers are associated with Minnesota locations and would eliminate the dilemma resulting from the assignment of out-of-state numbers to Minnesota residents.

If, by contrast, fees are assessed to any number having a Minnesota NPA-NXX, VOIP technology would be placed in an inequitable position. Indeed, given the proliferation of VNXX usage, out of state users currently choose Minnesota numbers, and in state users currently choose out of state numbers. Thus, fees would be voided or incurred based upon an arbitrary selection of phone numbers.

- **Under a per-number fee, the definition of a “number” must be established. Currently, providers must file with NANPA twice a year the quantity of telephone numbers that they have assigned, which are defined as “numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.” Should this definition and the quantity reported to NANPA be used to assess a per number fee?**

Fees should be assigned based on “active service address” or wireless PPU as explained above, to address this situation.

- **Fees based on a per access line have had a factor developed for “trunk equivalency” (like Centrex customers) so that they are not billed for every single line. If large business and government customers are now charged for every number they have, they could see an increase in the 911/TAP/TAM fees that they pay. While certain 911 costs are incurred by telephone number (for example, to maintain the 911 database), is that justification for customers with a large concentration of numbers to pay a greater proportion of the total cost of these programs than they do today? In reviewing how the various states assess fees, it is worth noting that several of them cap the number of lines that are billed at 25, 75 or 100 per customer or per location.**

It is appropriate that only a limited number of lines should be subject to the fees since “blocked Centrex” can have only a limited number of calls reach the 911 authorities at the same time.

The cap proposal has proven unworkable when customers have multiple billing telephone numbers (BTNs). For example, if a building is occupied by a single company, but each department has its own billing number for budgetary purposes, the telecommunications service provider may be unable to aggregate the BTNs to determine if the cap is reached. Accordingly, Qwest suggests this issue poses a significant hurdle to implementation of the per-number fee proposal.

- **Currently wireless providers are not eligible to collect lifeline support because they do not fit the statutory definitions for telephone company and access lines under Minn. Stat. 237.69. However, under a per number fee regime for the collection of 911/TAM/TAP, wireless providers could be required to contribute to the TAP fund. Should changes be made to the statutes so that wireless providers could receive lifeline funding?**

It is Qwest’s position that if one is contributing to the funds, the provider should be eligible to receive lifeline support.

- **Wireless service is provided on a monthly subscription basis, but also on a prepaid basis. If no monthly bill is sent, as is the case for prepaid service, should prepaid wireless service be assessed a per-number fee.**

In general, our view is that if a prepaid card is tied to a single phone and no other payment is made, it should be subject to these fees. However, if the calling card can be used on any phone, it should not be subject to the fees. This is because it cannot by itself reach the 911 centers - a phone that has an “access line” upon which a fee is paid must be utilized.

It is difficult for companies selling calling cards to apply these general principles to a fee that is imposed monthly. Some companies assume that the card is fully used-up in a single month and only apply one fee. However, if the card is “topped-off” multiple times in the month, a new fee is applied each time the card is “refreshed”. Other companies look to see if the card has a remaining balance at the beginning of the next month. If a balance remains, another fee is charged. This can result in a card being totally utilized to pay the fees without ever having been used to purchase telephone service.

- **Should there be one funding mechanism for 911, TAM and TAP (i.e. under a per number fee mechanism, should every number that is assessed the amount for one fund be automatically assessed the amounts for all three funds, or should there be exceptions)? Is there a**

**policy reason and/or a legal reason to support having the fee be the same or different?**

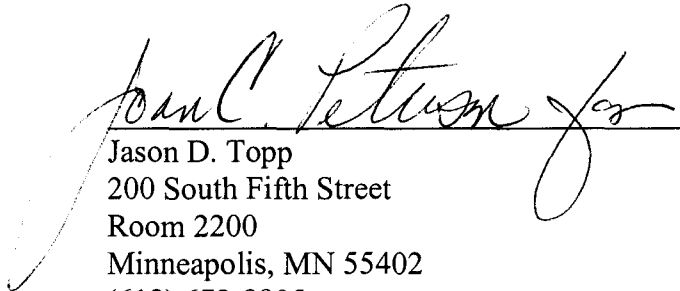
Qwest supports one funding mechanism and suggests the same fee should apply to all types of providers.

- **The benefits of recovering the fees for all three programs via the same mechanism include administrative ease and to reduce customer confusion. Should language be included in the statutes to ensure that changes to the three programs that would impact the fee collected for that program must all be done at the same time annually?**

Qwest supports this position.

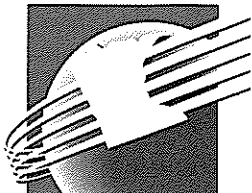
Dated this 30<sup>th</sup> day of September, 2005.

QWEST CORPORATION



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Minneapolis, MN 55402  
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September 30, 2005

Diane Wells  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East  
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St. Paul, Minnesota 55101

Re: In the Matter of the Department of Commerce Request for Comments in Response to  
The Department's White Paper on Changing to a Number in Use Fee to Fund the  
911, TAP and TAM Programs

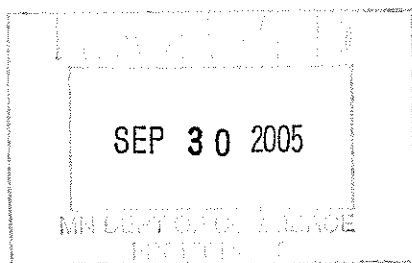
Dear Ms. Wells:

Attached are comments submitted by the Minnesota Telecom Alliance (MTA) in response to the Department of Commerce (DOC) white paper requesting service providers identify issues involved in the proposed change from a per access line fee to a per number in use fee to fund the 911, TAP and TAM programs. The MTA supports the change to a per number in use fee and has attempted to identify issues that should be considered from a policy, procedural and implementation standpoint.

The MTA looks forward to the opportunity to participate further with the DOC and other interested parties in the consideration of recommendations and the preparation of a report to the legislature.

Sincerely,

Michael J. Nowick, President  
Minnesota Telecom Alliance



By January 15, 2006 the Department of Commerce (DOC) must report to the legislature recommendations for the amount and method for assessing a fee that would apply to each service provider based upon the number of Minnesota telephone numbers in use by customers of the service provider. The fee must generate enough revenue to fund the 911, TAP and TAM programs.

The Minnesota Telecom Alliance (MTA) believes that the philosophy behind the 2005 legislative change that requires any service provider that furnishes a service “capable of originating a 911 emergency telephone call” to pay the 911 fee should be used as the basis for migrating to a fee based on per telephone numbers in use. The 2005 law provides a way in which a stable source of funding can be created for the 911, TAP and TAM programs. It is appropriate and fair that all subscribers using a communication device that is assigned a Minnesota telephone number pay into all three funds ensuring that all subscribers are able to benefit from all three funds.

In order to ensure fairness and competitive and technical neutrality among different service providers the new per number fee must be assessed on all types of providers and on any working telephone number that has the ability to access the public switched network. With the tenet of “treating all providers alike” the definition of “per number in use” becomes the key to making a successful transition. The definition should be based on the annual or semi-annual reports of working Minnesota telephone numbers reported by carriers to the North American Numbering Plan Administration (NANPA). The NANPA definition of “working number” and the quantity reported by carriers to NANPA should be used to assess the per number fee. The fee should be based on the location of the NANPA reported working telephone number. Information from NANPA affirms the fact that disaggregated service provider-specific Number Resource Utilization/Forecast (NRUF) data for carriers operating within Minnesota can be provided to state public utility commissions in an accurate and timely manner. Since the fee is competitively and technology neutral and based on NANPA reported working numbers there will be no need for creating formulas, caps or trunk equivalencies.

With good data available from NANPA, a working per number in use fee should be reviewed annually. As of December 31, 2004, NANPA records indicate that approximately 10.2 million numbers have been reported by carriers as working telephone numbers in Minnesota. As of March 31, 2005 the Minnesota 911 Program reported receiving surcharge revenue from carriers based on approximately 5.6 million access lines. The current fee levels are \$.65 per line per month for 911, \$.05 for TAP and \$.07 for TAM, for a combined total of \$.77 per line per month. Keeping with the legislative charge to recommend a per number in use fee that would keep the three programs revenue neutral with the current level of funding (approximately \$51.6 million in FY 06) the per number in use fee per NANPA reported working telephone number would reduce the current fee from \$.77 to approximately \$.42 per month.

In order to address the implementation issues and the numerous related statutory changes that would result from the change to a NANPA reported working telephone

number in use the DOC should create a working group of interested parties that could meet, review and recommend appropriate statutory changes and revisions before the 2006 legislature reconvenes in March. The following is an initial list of issues that MTA feels would be timely for such a working group to begin addressing.

1. Assign responsibilities for collection and distribution of revenue collected by the new fee to the Department of Revenue
2. Assign agency responsibility for coordinating/administering NANPA and carrier reporting
3. Language changes will be necessary relating to carrier assessment and eligibility
4. Create new definitions encompassing all types of technology and providers with NANPA working reported numbers as the new base, delete references in statutes unique to the current programs and access line base
5. Assign responsibility to a single agency to oversee the program and be responsible for the budgets and setting of the three fees annually
6. Clarifying language that allows carriers to recover their costs associated with providing the three programs
7. Statutory language that allows carriers to show the fee for the three programs as separate line items on a customer's bill
8. Language addressing how fees are to assessed on any prepaid services
9. An effective date for the new program far enough into the future that will allow carriers a reasonable transition time to change their billing systems. A July 1, 2006 date, as referenced in HF 1, Article 10 to begin collection of the new combined working NANPA reported per number in use fee is unrealistic.

**From:** Elizabeth Kohler [BethLK@unicel.com]  
**Sent:** Friday, September 30, 2005 2:19 PM  
**To:** Diane.Wells@state.mn.us  
**Cc:** Jdcresearch@aol.com  
**Subject:** Comments on Whitepaper dated July 26, 2005  
Dear Ms. Wells,

Rural Cellular Corporation dba Unicel is a small wireless carrier serving the more rural portions of Minnesota. We share many of the same concerns expressed by Cingular. In addition, we are concerned that any change in the mechanism to fund the state's 911, Telecommunications Access Minnesota Program and Telephone Assistance Plan may require onerous changes in the way we bill our customers. Modifications to our billing system can be extremely expensive and, as a small carrier, we cannot easily absorb those added expenses. We would like to continue to participate in this proceeding and look forward to a continual dialog on this important matter.

Sincerely,  
Elizabeth Kohler  
Vice President, Legal Services  
Rural Cellular Corporation  
Phone: (802) 654-5093  
Fax: (802) 654-5050

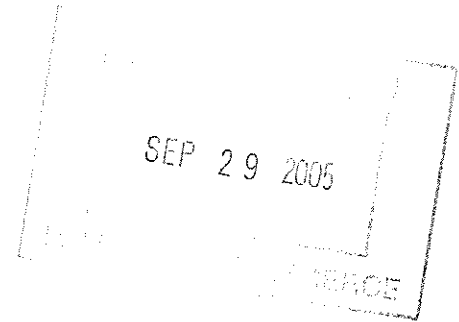
**UNICEL<sup>®</sup>** The Way Wireless Should Be.



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KSOPHN0212-2A511  
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**Diane C. Browning**  
Attorney

September 28, 2005



Ms. Diane Wells  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101-2198

Re: Proposal for Single Fee Per Telephone Number

Dear Ms. Wells:

Attached please find Sprint Nextel Corporation's comments in response to the Department of Commerce's correspondence dated July 26, 2005 concerning 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.

Should you have any questions, please feel free to call me.

Sincerely,

Diane C. Browning

Enclosure

## **COMMENTS OF SPRINT NEXTEL CORP.**

Sprint Nextel Corporation (“Sprint”) provides these comments in response to the Minnesota Department of Commerce (“Department”)’s correspondence dated July 26, 2005. In that correspondence, the Department requested comments on the Department’s white paper concerning 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. Such a fee would be set at an amount needed to generate enough revenue to fund the Telephone Assistance Plan (TAP), the Telecommunications Access Minnesota Program (TAM), and the 911 emergency and public safety communications program.<sup>1</sup>

Sprint understands the Department’s concern about the dwindling base of contributors to these funds as a result of rapid changes in the technological and competitive landscape. Sprint is not opposed to legislative or regulatory initiatives to reform the system to address these concerns. However, Sprint does not endorse any particular mechanism (such as a “per-number” based system) for implementing the reform. Moreover, Sprint believes that any reform initiative, regardless of the implementation mechanism chosen, should be competitively and technologically neutral.

Sprint believes the same underlying principles that apply to federal universal service under Section 254 of the Telecommunications Act of 1996 should apply to the TAP, TAM, and 911 funding mechanisms in Minnesota. Specifically, as the Federal Communications Commission stated in its *First Report and Order* on universal service, funding mechanisms and rules should “neither unfairly advantage nor disadvantage one

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<sup>1</sup> Department of Commerce white paper, p.1.

provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>2</sup> The market, and not local or federal regulators, should determine who will compete for and deliver services to consumers.

Should the legislature adopt the Department’s proposal, Sprint has a number of concerns about the implementation of a per-number based assessment. First, NRUF (Numbering Resource Utilization/Forecast) data may not be an appropriate basis for determining which numbers to assess. As customers leave one carrier and port their numbers to other carriers, the NRUF data may not accurately reflect the numbers actually in use by the customers of any particular carrier. Alternatively, if a different reporting mechanism were used (other than NRUF data), it is unclear how often carriers would be required to report the data to the assessing agency and how often the amount of the assessment could change. This could potentially create two problems. First, if the data reporting requirements are too frequent, it could overly burden the carriers and also substantially increase administrative costs attributable to frequent billing changes to accommodate the changed assessments. On the other hand, if the data reporting requirements are too infrequent, the accuracy of the data could be compromised, and the assessment might not accurately reflect each carrier’s subscriber base.

With regard to the issue of TAP support, it is not clear to Sprint that there is any need for wireless providers to receive TAP support because wireless consumers have an array of low-cost wireless options now available to them, such as prepaid plans and low-cost monthly plans. However, Sprint believes wireless consumers should not bear the costs of contributing to any funds to the extent those consumers are not eligible to benefit

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<sup>2</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 (1997) (“First Report and Order”).

from those funds. Accordingly, wireless providers who currently are not eligible to collect support from the TAP program should not be required to contribute to the TAP fund. It would unfairly disadvantage wireless consumers for them to bear the costs of paying into a fund from which they are not eligible to benefit, which would in turn violate the principle of competitive and technological neutrality.

Finally, Sprint notes that Minnesota law is broad enough to encompass VoIP and other emerging technologies within the current assessment methodology. The relevant statutory definitions have been changed to include “switched or packet-based” telecommunications service providers “connected to the public switched telephone network.”<sup>3</sup> Therefore, it is not clear that any changes to the current assessment methodology are necessary to address the Department’s concerns.

As a company that provides local, long distance, and wireless telecommunications service, Sprint recognizes that telecommunications solutions should be based on the needs of consumers, and not be limited to one technology. Accordingly, the state legislative and regulatory bodies should, as an initial matter, focus on creating a reform framework that treats both existing and developing technologies in a fair and competitively neutral manner, and reject proposals that have the effect of discriminating against discrete classes of technologies or competitors.

Sprint appreciates this opportunity to provide its comments to the Department on these issues.

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<sup>3</sup> Minn. Stat. §403.11(1).



Dated: September 29, 2005

Respectfully submitted,

SPRINT NEXTEL CORP.

A handwritten signature in cursive script, reading "Diane Browning", written over a horizontal line.

Diane C. Browning, Esq.  
State Government Affairs

6450 Sprint Parkway

Mailstop KSOPHN0212-2A511

Overland Park, KS 66251

Voice: 913-315-9284

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[diane.c.browning@mail.sprint.com](mailto:diane.c.browning@mail.sprint.com)

**Comments of TracFone Wireless, Inc.**  
**to the**  
**Minnesota Department of Commerce**  
**on the**  
**Proposed Per Number Fee to Fund 911 and Other Assistance Programs**  
**September 30, 2005**

TracFone Wireless, Inc. (“TracFone”) appreciates the opportunity to comment on the provisions of § 237.491 of HF 1, Article 10, which require the Minnesota Department of Commerce (the “Department”) to submit a report to the legislature on recommendations “for the amount 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.”

At the outset, TracFone would recommend that any method of funding approved by the legislature, including any continuation of the current method, should meet certain statutory standards that the method be equitable, non-discriminatory and competitively neutral. In fact, the Communications Act mandates that state telecommunications regulatory requirements meet these standards. Otherwise, the requirements may be subject to federal preemption.

TracFone believes that a number fee would not meet these standards or the funding goals of the 911, TAM and TAP programs and should not be adopted. However, as explained below, we do believe that reforms in the current funding method based on access lines are needed and hope that the Department’s report to the legislature will recommend such reforms.

**A Number Fee Is Regressive.** A number fee of \$0.77 per month to fund 911, TAP and TAM is unfair and regressive because it is imposed without regard to the customer’s usage of the number or the revenue derived by the service provider from the number. A flat fee disproportionately burdens low-volume wireless customers in comparison with high-volume wireless customers. For example, prepaid wireless services appeal to many low-volume consumers in Minnesota who many not be able to qualify for or afford conventional local telephone or cellular services. While a \$.77 per month fee seems to be a modest amount, it represents a tax of 10% to 5% for a prepaid customer spending only \$8 to \$15 per month. This contrasts with a fee of 1.5% to 0.7 % for high-volume customers spending \$50 to \$100 per month per wireless telephone number.

Regressive fees and other high taxes make it difficult or impossible for TracFone and other providers to offer wireless telecommunications services in underserved

markets. This conflicts with federal universal service goals in the Communications Act that “[q]uality services should be available at just, reasonable, and affordable rates” to all citizens at all income levels.

If the legislature does adopt a telephone number fee, the fee should be capped so that it could not exceed a reasonable percentage, e.g., .25%, of the telecommunications revenue associated with such number.

**A Percentage Fee Is A Fairer Fee.** Instead of a flat number fee or the current access line fee, TracFone asks the Department to consider and recommend a fee based on a percentage of revenues. The ability of a customer or a service provider to pay is better determined by revenues than by telephone numbers, and unlike flat fees, percentage charges are not regressive. A fee of approximately 1% of monthly charges per customer would generate the same amount of revenue for 911 and the other programs as the flat \$.77 per number fee. Customers with the greatest usage of the public switched network (“PSN”) would pay more, and small users would pay less, which is as it should be.

**The Fee Base Should Be Broadened.** Telephone numbers and access lines are a declining base and will become less important in an open network environment where customers can connect to the PSN or the Internet through mobile wireless connections that are now accessible at public locations like schools, coffee shops, airports and thousands of other places. These connections, now being used for Wi-Fi, Wi-MAX, VoIP and other technologies, do not depend on specific access lines or numbers that would be subject to a monthly fee. If Minnesota’s goal is to broaden the fees to cover new technologies, a number fee will not achieve this.

Telecommunications company revenues are accounted for and reported regardless of the technology used. These figures are collected and published by the Census Bureau, the Bureau of Labor Statistics, NTIA, the FCC and other agencies. Overall telecommunications industry revenues are growing, although the rate of increase or decrease varies by company and technology. In the long run, 911 assessments based on revenues or customer spending will be a fairer and more effective generator of revenue for the state than a tax on telephone numbers or access lines.

**911 Benefits The General Public.** The days have long since passed when 911 emergency communications were for the primary benefit of telephone subscribers. 911 is one of the keystones of homeland security and exists for the benefit of everyone, not just telephone customers or service providers. Therefore, 911 should be funded out of general revenues, just as police, fire, rescue and other emergency services are funded by the general base of taxpayers.

If Minnesota does not want to adopt this obviously needed reform, then it should at least expand the base of contributors who currently pay for 911, TAP, and TAM. The expanded base should include long distance services, VoIP, advanced telecommunications services, information services, Internet and other services that connect with or benefit from the PSN, including both voice and data. Such a reform

would insure a reliable source of revenue for these programs for many years to come, at a nominal cost to service users of around .25% or less of monthly charges. This would give needed relief to wireless and landline customers who have shouldered this burden for many years.

**Equitable Policy Changes Are Needed for Prepaid Wireless Services.** The fastest growing segment of the wireless industry is prepaid wireless. TracFone and other providers of prepaid wireless services, both resellers and facilities-based providers, now serve millions of customers nationwide. An estimated 500,000 Minnesotans rely on prepaid wireless for their telecommunications needs.

Prepaid differs in at least two major respects from traditional local exchange and postpaid wireless service providers. First, while telephone companies have traditionally been the retail sellers of their services to end-users, prepaid services are sold mainly through third-party retailers like Wal-Mart, K-Mart, Target and many other retailers. For example, TracFone's services are, for the most part, sold by these retailers in the form of prepaid airtime cards in denominations of 40, 100, 200, or 400 units or minutes. TracFone is not a party to the retail transaction between the retailer and the purchaser in Minnesota.

Secondly, traditional local telephone and wireless companies retail their services as monthly subscriptions and collect the charges for the service from the customer through monthly or other periodic billing, which may include surcharges for taxes and fees. The service provider may collect the taxes and fees, but they are the legal obligation of the customer. This contrasts with prepaid wireless, which is sold on a "pay-as-you-go" basis. There are no monthly subscriptions or bills involved. A customer purchasing a 40-minute wireless airtime card may use these minutes over the course of a day, week or month, but he or she is entitled to only 40 minutes of service, not a month's service.

These differences are important if Minnesota wants to draft legislation that is workable in terms of imposing the 911 and TAM fees on prepaid customers. Since a prepaid wireless reseller like TracFone is not a party to the actual retail sale at the point of purchase in Minnesota and has no billing mechanism, it is impossible for TracFone to collect a fee from the purchaser. Moreover, neither TracFone nor the retailer could compute or collect a monthly fee on a retail airtime card that is measured in minutes of use and not sold on a monthly subscription basis.

The only effective way to impose a 911 fee on a retail purchaser of prepaid airtime, which is not sold on a monthly subscription basis, is through a percentage surcharge collected by the retail merchant at the point of sale. After a customer has made his or her airtime purchase and left the store, any possibility of collecting a fee on a monthly or any other basis from that customer is lost.

For sales tax purposes, prepaid airtime cards are already taxed as tangible personal property. Sales tax statutes recognize that sales taxes can only be collected by a seller that transacts the retail sale with the end-user. A manufacturer or wholesaler that

markets its products through retail establishments is not expected to collect sales taxes. The same logic applies to the collection of 911, TAM or any other fees from purchasers of prepaid airtime – it can only occur at the retail point of sale.

In no case is it possible to apply a per number monthly fee to prepaid wireless services on any logical basis. Prepaid wireless services can contribute to 911 and TAM, but it has to be pursuant to a fair method that recognizes the fundamental differences between prepaid and traditional telephone services.

**The Current Access Line Fee Is Discriminatory Against Prepaid.** Current law provides that “[e]ach *customer* of a wireless or wire line telecommunications service provider . . . is assessed a fee” to cover the costs of 911 and that the “fee must be the same for all *customers* [emphasis added]”. However, the Minnesota ARMER/911 Program imposes a higher fee on prepaid wireless customers as shown by the following instructions on the 911 remittance form:

1. If a prepaid wireless card is purchased for a two month period, companies can deduct \$1.50 and submit that amount; or
2. If a prepaid card is used during the month, companies can deduct 50 cents (or beginning July 2005, 75 cents) from the card and submit that amount.

Thus, under option one, a Minnesota consumer purchasing a 40-minute prepaid wireless airtime card at a retail location in the state would pay in advance \$1.50 for 911 access and TAM while a local telephone exchange customer or a wireless customer receiving monthly service would pay only \$.75 on a postpaid basis. Moreover, the local telephone subscriber receives unlimited local service in connection with the \$.75 fee and the average postpaid wireless customer receives around 500 minutes of service per month. On a per minute basis, the low-volume prepaid consumer would pay 2,500 percent more in 911 and TAM fees than the average local telephone or wireless monthly subscriber.

Since many low-income prepaid customers may make several 40-minute purchases during the month as their income permits, their total 911 fee expense could run \$5.00 to \$10.00 per month if the \$1.50 were applied to each purchase as mandated by the ARMER/911 Program. This is unfair and discriminatory and contrary to Minnesota law requiring the fee to be the same for all customers. The fact that it is impossible for many, if not all, prepaid service providers, including TracFone, to actually collect the prepaid fees according to the method directed by ARMER/911 may lessen the actual impact on prepaid customers.

Although the statute and ARMER/911 policies provide a convenient method for traditional local telephone and wireless companies to collect the fees through surcharges on monthly bills, no such method is made available to prepaid service providers who do not have any mechanism to collect the fee either through monthly bills or at the retail

point of sale. ARMER/911 policy facilitates collections by traditional providers as follows:

A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber.

The agency has not indicated support for any workable collection methodology for prepaid wireless service providers. Retailers who are not service providers are not required to collect 911 and TAM, although they do collect sales taxes on prepaid airtime cards.

The policy of ARMER/911 has been to require and accept remittance of the fee from some prepaid service providers (e.g., TracFone) whether or not the fee was paid by customers as mandated by the statute. This is contrary to ARMER/911's own published policy that a carrier is not responsible for submitting fees that are not collected from customers. With respect to some prepaid wireless providers, the agency reportedly does not require any remittance.

TracFone recognizes that ARMER/911 administrators are trying conscientiously to administer a statutory framework that was designed and intended by the legislature to function only in situations where the wireless and wire line carriers are retailing their services directly to end-users and collecting payment for those services, along with taxes and fees, through monthly or other periodic billing. Until the statute is rewritten, TracFone urges ARMER/911 to adopt administrative regulations to insure that all wireless service providers and customers, prepaid and postpaid, are treated equally.

The cost recovery provisions of the 911 statute are also discriminatory. For example, TracFone has been denied cost recovery for handset upgrades that are legally mandated for Phase II. The handset costs are the same for all wireless companies, whether postpaid or prepaid, facilities-based or resellers. All carriers that incur costs under either Phase I or II should be eligible for reimbursement of those costs to the extent funds are available. It is unfair that a service provider has to pay into the 911 program but is then determined totally ineligible for cost reimbursement.

TracFone asks that the Department, as part of its legislative recommendations, ban discrimination against prepaid wireless resellers in terms of the level of fees imposed on prepaid customers, collection methodology, Phase II cost recovery and eligibility for Lifeline or other universal service support. TracFone recommends that there be full disclosure by the Department of Public Safety of which companies remit fees on prepaid services, how such fees are collected from end-users, the amounts of such payments, and cost recovery disbursements.

Public disclosure will enable the legislature, service providers, consumers, and regulators to monitor and evaluate program compliance to insure that state and federal statutory standards are being met.

**Conclusion.** 911 should be funded out of the state's general revenues because the program benefits the public at large. However, if a 911 fee system is continued, TracFone believes that a broadly based tax or fee based on revenues is preferable to either the proposed number fee or the existing access line fee. With regard to prepaid wireless services, such a percentage fee should be collected from retail purchasers of airtime at the point of sale. A revenue-based fee will be more effective in generating revenue for the 911, TAM and TAP programs. It will also be easier to administer and fairer to consumers and service providers.

\* \* \* \* \*

For further information contact:

**Leighton W. Lang**

Vice President & Assistant General Counsel - State Regulatory Affairs

TracFone Wireless, Inc.

8390 NW 25th Street

Miami, FL 33122

Phone: 305-640-2014

Fax: 305-640-2070

Cell: 404-229-3211

llang@tracfone.com

www.tracfone.com

Edward A. Garvey  
Deputy Commissioner, Energy and Telecommunications  
Minnesota Department of Commerce  
Attention: Ms. Diane Wells  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101-2198.

**RE: The issue of a per number fee for collecting 911, TAM and TAP funds**

Dear Deputy Commissioner Garvey:

OnStar appreciates the opportunity to offer comments regarding the use of numbers to assess various telecommunications fees.

As a reseller of prepaid wireless calling, we are particularly concerned that a numbers-based system cannot be equitably or technologically applied across all users of prepaid services. However, if the State chooses to impose the fees on users of prepaid wireless calling, we believe that it is possible to adjust the proposal in ways that can address these concerns, at least for some prepaid providers.

Please find attached OnStar's specific observations and recommendations.

Respectfully submitted,

Gregory E. Gursky  
Director - Property & Non-Income Taxes  
313-665-4049

William L. Ball  
Vice President-Public Policy  
313-665-2797

Mail Code 482-D39-B32  
OnStar Corporation  
400 Renaissance Center  
P.O. Box 400  
Detroit, MI 48265-4000

October 31, 2005



**BEFORE THE  
MINNESOTA DEPARTMENT OF COMMERCE  
SAINT PAUL, MINNESOTA**

**RE: The issue of a per number fee for collecting 911, TAM and TAP funds**

OnStar appreciates the opportunity to comment regarding the above referenced issue.

OnStar service includes access to CMRS interconnected wireless calling via resold, prepaid minute packages. Therefore, OnStar has an interest in the treatment of prepaid services in any E911 or other fee or taxation related proceeding and offers the following:

**(1) Any tax or fee on prepaid wireless calling should be explicit and structured to accommodate the differing technical approaches to implementing prepaid calling**

OnStar believes that it is important to recognize that imposition of fees on prepaid customers poses unique issues depending on the underlying technical approach to delivering the prepaid wireless service. For example, OnStar is configured in a way that the remaining calling minutes are accounted for at the vehicle level and are not known to OnStar. In the same way, some providers have handsets that maintain the remaining minute count. By contrast, other prepaid systems use different technological approaches whereby the provider knows each customer's remaining minute count at the end of a month. Recognizing the existence of these differing technological approaches, OnStar supports the use within a statute of alternative E911 assessment schemes that take into account the differing technological approaches by which prepaid services are offered.

Specifically, OnStar recommends offering prepaid CMRS providers a choice of one of at least two alternatives for calculating an E911 (or other fee) assessment:

- (i) Allowing the CMRS 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 amount of the service charge by decrementing the equivalent number of minutes from the subscribers' account; or
- (ii) Allowing the CMRS provider to divide the total earned prepaid wireless telephone revenue received by the CMRS provider with respect to prepaid customers in a jurisdiction within the monthly 911 reporting period by fifty dollars (\$50), and multiplying the quotient by the E911 service charge.

This latter approach has been informally referred to as the Average Revenue Per User (ARPU) approach. It was developed in recognition of the fact, as discussed earlier, that not all prepaid providers have access to remaining minute counts at month end. On the assumption that the average cellular bill is about \$50 per month, the provider's revenue from the jurisdiction is divided by \$50 to establish the approximate equivalent months of interconnected CMRS calling service sold. A fee is then levied accordingly. Notably, if a customer buys a large package of minutes, the customer may be assessed the equivalent of several months of the fee on the assumption that the minutes are likely to carry over for several assessment periods. By contrast, a subscriber buying a small number of minutes is assessed a smaller amount assuming that they may not carry over or that the customer will buy more in the next or even the same period. The intention is to insure each user pays some approximately fair amount into the E911 fund. Importantly, this approach is explicit and will not result in imposing a fee or tax on consumers who do not have active wireless interconnected calling service.

Two examples of this formulation are:

- Ohio Revised Code (ORC) Section 4931.61 (which is found in the Public Utilities section of the code. The specific cite to the ARPU method is ORC 4931.61(A)(3)); and
- North Carolina Session Law 2005-439 revising G.S. Section 62A-23.

**(2) Any fee should be a cost directly borne by the prepaid customer**

With respect to the structure of a fee, OnStar believes that any fee should be a cost borne by the wireless prepaid customer and the CMRS provider should have the option of identifying and recovering the fee from the wireless calling customer. Additionally, the CMRS provider should be entitled to retain some reasonable (1% to 3% is common) amount of its fee collections to cover the administrative costs associated with collection and remittance of the fees.

**(3) In considering whether to impose any fees or taxes, it is notable that states have taken different approaches to assessment of prepaid services or customers for support of E911.**

Some states have tended to regard prepaid interconnected calling services as offering wireless calling to individuals that might otherwise not enjoy the advantages of wireless service. Accordingly, these states have exempted consumers of prepaid services from E911 taxes or fees. Other states have taken the position that consumers of prepaid services should pay E911 assessments; but they have created a tiered assessment structure. In this structure, consumers of resold services pay a lower rate since their service provider, does not own any infrastructure that is eligible for reimbursement. Still other

states have disregarded the resale distinction and assessed the same tax rate against prepaid and post-paid services.

OnStar appreciates the Department's consideration of our views in this matter.

Respectfully submitted,

Gregory E. Gursky  
Director - Property & Non-Income Taxes  
313-665-4049

William L. Ball  
Vice President-Public Policy  
313-665-2797

OnStar Corporation  
Mail Code 482-D39-B32  
400 Renaissance Center  
P.O. Box 400  
Detroit, MI 48265-4000

October 31, 2005



Alcohol  
and Gambling  
Enforcement

ARMER/911  
Program

Bureau of  
Criminal  
Apprehension

Driver  
and Vehicle  
Services

Homeland  
Security and  
Emergency  
Management

Minnesota  
State Patrol

Office of  
Communications

Office of  
Justice Programs

Office of  
Traffic Safety

State Fire  
Marshal and  
Pipeline Safety

## ARMER/911 Program

444 Cedar Street • Suite 137 • Saint Paul, Minnesota 55101-5137

Phone: 651.282.6565 • Fax: 651.296.2665 • TTY: 651.282.6555

[www.dps.state.mn.us](http://www.dps.state.mn.us)

December 9, 2005

Diane C Wells  
Pub Utilities Regulation Unit Mgr  
Commerce Dept  
85 7th Place East, Suite 500  
St Paul, MN 55101-2198

Re: Per Number 911/TAM/TAP fee

Dear Ms. Wells:

On September 26, 2005, the Department of Public Safety provided comments in response to the Department of Commerce white paper regarding the per number legislative report required by House File 001 of the 2005 legislature, Laws, Ch. 136, Art. 10, Section 1. In reviewing our submission, we noticed that the wire line and wireless fee forms included with Appendix A were outdated.

Accordingly we are forwarding a new Appendix A. Please replace Appendix A of our September 26, 2005 letter with the attached.

Thank you. Please call me on 651 296-5778 if there are further questions.

Respectfully Submitted,

Ronald L. Whitehead  
ARMER/911 Program Director  
Attachment

## APPENDIX A

**HISTORY:** The 911 Program provides technical assistance to the cities and counties implementing, maintaining, and improving 911 systems, and oversees system standards. The 911 Program also pays the state's share of wired and wireless 911 costs authorized by Minnesota Statutes, Section 403.11 and contracted for with each carrier, administers grant funds for 911 agencies in accordance with Minnesota Statutes, Section 403.113, and distributes funds to other public safety related programs as provided for by legislative appropriations.

As the December 1986 statewide mandate deadline neared, legislation was passed to change the method of funding to a telephone user fee starting in January of 1987. This funding mechanism helped assure a stable source of state funds for the ongoing 911 costs, and answered local government concerns regarding assured continued state funding.

The Department of Administration (see below for paragraph regarding Minnesota Statutes 403 change in 2003 which transferred the 911 Program to the Department of Public Safety) pays the state share of 911 costs from funds collected through a monthly statewide telephone fee which was initially set by statute at not less than eight cents nor more than 30 cents per month on each telephone line. The fee amount was set by the Commissioner of Administration with the consent of the Commissioner of Finance. Based on Fiscal Year 1994 budget needs, the 911 fee was decreased from 18 cents to 14 cents, effective July 1st, 1993.

Under legislation enacted in 1994, an enhanced component of the 911 fee was set at 10 cents beginning on the 1st of January, 1995, and is distributed monthly to agencies operating 911 centers to help pay costs of implementing and maintaining enhanced 911. In order to reduce a cumulative carryover fund balance at that time, the overall fee was left at 14 cents until carryover funds were exhausted. Effective with the October, 1995 collections, the overall 911 fee was increased to 22 cents per month. In order to cover the costs of improving wireless 911, and increases in the Metropolitan Radio Board budgets, the fee was increased to 27 cents July 1, 1998.

Other changes in the 911 fee involved cellular subscribers. Beginning in July of 1994, new law extended the basic 911 fee to include subscribers of any communications carrier that provides service capable of originating a 911 call and included, for the first time in Minnesota, cellular subscribers. Charging the 911 fee to wireless customers adds revenue to be used for the implementation and ongoing costs of enhanced 911 services for cellular throughout the state and levels the playing field regarding who pays for 911 (it should be noted that cellular subscribers place over 90,000 cellular 911 calls per month in Minnesota).

Likewise, beginning July, 1995, Admin transferred an amount equal to two cents a month from the fee assessed on cellular and other non-wire access services to the Commissioner of Public Safety to offset the costs, including administrative and staffing costs, incurred by State Patrol in handling 911 emergency calls made from cellular phones.

The 911 fee had been capped at 30 cents prior to 2001 legislation (First Special Session 2001, chapter 10, article 2, section 78), when it was changed in Minnesota Statutes, Section 403.11 to set the 911 fee at 27 cents. The 2002 Legislative Session changed the fee again by capping it at 33 cents and reinstating the authority to change the fees to the Commissioner of Administration

with the consent of the Commissioner of Finance. Laws, 2003, First Special Session, Chapter 1, changed the fee by increasing the cap to 40 cents and transferred the 911 program from the Department of Administration to the Department of Public Safety.

In its Order dated June 29, 2004, the Public Utilities Commission approved the request by the Telecommunications Access Minnesota (TAM) Program to decrease the TAM fee from 13¢ to 10¢ effective October 1, 2004.

Pursuant to Minnesota Laws, 2005 Chapter 136, the Omnibus Criminal Justice and Public Safety Appropriations Act, the fee cap was increased to 65 cents and appropriation amounts were created for fiscal years 2006 and 2007 to double the enhanced 911 amount sent to 911 centers, fund continued implementation of the Allied Radio Matrix for Emergency Response (ARMER) program, and provide grants to help fund medical Resource Communications Centers. Accordingly, the Commissioner of Public Safety, with the concurrence of the Commissioner of Finance, increased the 911 fee effective July 6, 2005. Concurrently, the Public Utilities Commission authorized the reduction of the TAM fee from 10¢ to 7¢.

The 911 fee mechanism has been a successful method of funding 911. The fee amount is based on the projected expenses as authorized by the Legislature and by the expected number of telephone and wireless telephone subscribers.

WIRED TELEPHONE SERVICE PROVIDER COMPANY NAME

DATE

9-1-1 = 65¢ / TAM = 7¢ / TAP = 5¢

TOTAL = 77¢

TO: Minnesota 9-1-1 Program

444 Cedar Street, Town Square, Suite 137

St. Paul, Minnesota 55101-5137

Fax: 651 296-2665

Email: marykay.frisch@state.mn.us

Company Contact:

Name:

Phone:

Fax:

Email:

*Fees are due to the Minnesota 9-1-1 Program by the 25th of the month following the month of collection.*

The 9-1-1 emergency telephone service fee, TAM (Telecommunications Access Minnesota), and

TAP (Telephone Assistance Program) fees are remitted for the following period:

(Fees totaling less than \$25.00 per month will be submitted annually using a different form.)

☐ Month of \_\_\_\_\_ (\$250.00 or more).  
OR

☐ \_\_\_\_\_ Quarter, \_\_\_\_\_ (less than \$250.00/month but more than \$25.00/month).

1. Total monthly local access customer lines.

-- includes trunk equivalents for centrex customers --  
(Quarterly reports - customers x number of months.)

2. Unadjusted fee amount (line 1 x 77¢)

\$

3. Adjustment for fees pro rated on a daily basis for partial monthly service.

+

\$

4. Adjustment for seasonal disconnects.

+

\$

5. \* Adjustment for bad debts. Number of customers: \_\_\_\_\_ x 77¢ =

+

\$

6. \* Adjustment for customers who refuse to pay fee(s).

+

Enter Number of customers:

+

9-1-1 \_\_\_\_\_ TAM \_\_\_\_\_ TAP \_\_\_\_\_ x fee amount =

-

\$

7. \* Adjustment for exemptions (e.g. Federal).

-

\$

8. Other adjustments (please explain on reverse).

+

\$

9. Amount of remittance (line 2 plus/minus lines 3, 4, 5, 6, 7 & 8).

\$

I certify that I am a manager or officer of this telecommunications company and that this report is accurate and true and reflects the appropriate customer access line count including trunk equivalents, adjustments, and fee amount.

Certified by: \_\_\_\_\_ Date: \_\_\_\_\_

(signature of telecommunications company manager or officer)

Company manager's or officer's telephone # \_\_\_\_\_

\* Attach list of customer name, address, and phone number.

PLEASE MAKE CHECKS PAYABLE TO: MINNESOTA 9-1-1 PROGRAM

(If you have any questions regarding this collection, please contact Mary Frisch at 651-296-4032)

--- DO NOT WRITE BELOW THIS LINE - STATE OF MINNESOTA OFFICE USE ONLY ----

Check # \_\_\_\_\_

Amount \$ \_\_\_\_\_

Date rec'd \_\_\_\_\_

Deposit # \_\_\_\_\_

E9-1-1 \$

9-1-1 \$

E9-1-1 WIRELESS \$

ARMER \$

TAM \$

TAP \$

\$

FEES 65+7+5 effective 8-1-2005

## **9-1-1 / TAP / TAM MONTHLY SERVICE FEE FOR WIRED TELEPHONE SERVICE**

TAP = Telephone Assistance Plan / TAM = Telecommunications Access Minnesota

**What are the 9-1-1, TAP and TAM service fee?** They are an assessment against each local service access line and centrex trunk equivalent. The fee amounts continue through July 5, 2005 at 40¢ per month for 9-1-1, 10¢ for TAM, and 5¢ for TAP for a combined fee collection of 55¢. Effective July 6, 2005, the 911 fee increases to 65¢ and the Public Utilities Commission approves a TAM fee decrease to 7¢, and the TAP fee remains at 5¢. The combined fee collection upon implementation of the 911 and TAM fee changes is 77¢. This form is also available on the 911 website at [www.911.state.mn.us](http://www.911.state.mn.us).

### **NOTE THE FOLLOWING CHANGES:**

- \* Effective July 6, 2005 the 911 fee increases to 65¢.
- \* The Public Utilities Commissioner approved the TAM fee decrease from 10¢ to 7¢ effective July 6, 2005. The total monthly fee collection upon implementation of the 911 fee increase and TAM fee decrease is 77¢.
- \* Effective December 3, 2003, the 9-1-1 Program is transferred from the Department of Administration to the Department of Public Safety. The new address is shown on upper left corner of the fee form.
- \* Effective August 1, 2002, a manager or officer of the telecommunications company must certify on the fee forms submitted with each remittance, by signature and date, that the information being reported is accurate and true. If a designee of the manager or officer signs, a copy of the signed designee letter must be provided to our office.

**When should collected fees be submitted?** Submit fees with this form to the address indicated on the form by the 25<sup>th</sup> of each month following the month of collection. Example: June monthly collection or quarterly collections for April, May and June are due by July 25<sup>th</sup>. If fee collections are not received at the Department of Public Safety, Statewide 9-1-1 Program within 20 days after the due date, companies will be reported to the State Department of Revenue's Minnesota Collection Enterprise. Debt collection fees of 15 to 20% will be added to the total amount due in accordance with Minnesota Statutes, Chapter 16D.

**Do the fees apply to federal customers?** If federal government customers refuse to pay the fees, companies can consider them exempt. This is a constitutional matter involving a state's power to collect from the federal agencies.

**Do the fees apply to other tax-exempt organizations?** Yes. The fees are not taxes. Except for the cost of 911 program management, 911 receipts are allocated to pay for 911 call delivery, features, and other 911 related expenses. Likewise, the TAM and TAP fees pay only for the cost of administering and implementing the TAM and TAP programs.

**Do the fees apply to one-way trunks, such as used in a direct-inward-dial PBX system?** Yes. Although an incoming PBX trunk would not be used to dial out, it is part of a local premises system that can access the switched network.

**Do the fees apply to 9-1-1 outswitching charges?** No. Nine-one-one trunks are not local service access lines in that they do not access the switched network.

**Should the fees be applied to seasonal disconnect telephones?** No. During periods of disconnection, the fees do not apply to local service access lines temporarily disconnected for seasonal service reasons.

**What are the telephone company's options in collecting the fees?** At your option, the entire fee may apply for any period of service covering more than one-half of the applicable month, or it may be pro-rated on a daily basis. If you choose to pro-rate the fee, amounts less than \$.05 per customer need not be collected.

**How should the fees appear on customer bills?** Minnesota Statutes, Chapter 237, Section 49 states: "A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber." The Public Utilities Commission recommends that the surcharges be listed as "9-1-1, Tele-Relay, and TAP surcharges" on customer bills.

**Should the fees be billed until paid?** Yes. For example, if a subscriber refuses to pay the TAP fee for one month, the 5¢ balance should be carried forward and added to the normal fee amount on a subsequent bill.

**Is a telephone company responsible for submitting fees that are not collected?** No. If a customer refuses to pay the fee, however, report refusal to pay the fee to the Department of Public Safety on the form that accompanies the payment. The Public Utilities Commission also requires the reporting of TAP fee refusals as part of the quarterly/monthly TAP reports.

If you have further questions, or would like to discuss the fee or any 9-1-1 matter, please call Jim Beutelspacher at 651-296-7104

TAP questions should be referred to Lillian Brion, MN Public Utilities Commission, at 651-201-2213.

TAM questions should be referred to Rochelle Garrow, MN Department of Commerce, at 651-297-8941.



**CELLULAR AND OTHER NONWIRE ACCESS PROVIDERS COMPANY NAME**

**DATE**

**9-1-1 = 65¢ / TAM = 7¢ TOTAL = 72¢**

**TO:** Minnesota 9-1-1 Program  
444 Cedar Street, Town Square, Suite 137  
St. Paul, Minnesota 55101-5137  
Fax: 651 296-2665  
Email: marykay.frisch@state.mn.us

**Company Contact:**

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

*Fees are due to the Minnesota 9-1-1 Program by the 25th of the month following the month of collection.*

The 9-1-1 emergency telephone service fee and TAM (Telecommunications Access Minnesota) fees are remitted for the following period:

(Fees totaling less than \$25.00 per month will be submitted annually using a different form.)

☐ Month of \_\_\_\_\_ (\$250.00 or more).  
OR  
☐ Quarter, \_\_\_\_\_ (less than \$250.00/month but more than \$25.00/month).

|   |  |
|---|--|
| 1. Total monthly wireless customer lines. Include prepaid customers.<br>(Quarterly reports - customers x number of months.)   | _____  |
| 2. Unadjusted fee amount (line 1 x 72¢)   | \$ _____                                       |
| 3. Adjustment for fees pro rated on a daily basis for partial monthly service.  | + _____<br>- \$ _____                          |
| 4. Adjustment for seasonal disconnects.   | + _____<br>- \$ _____                          |
| 5. * Adjustment for bad debts. Number of customers: _____ x 72¢ =   | + _____<br>- \$ _____                          |
| 6. * Adjustment for customers who refuse to pay fee(s).<br>Enter Number of customers:<br>9-1-1 _____ TAM _____ x fee amount = | + _____<br>- \$ _____<br>+ _____<br>- \$ _____ |
| 7. * Adjustment for exemptions (e.g. Federal).  | + _____<br>- \$ _____                          |
| 8. Other adjustments (please explain on reverse).   | + _____<br>- \$ _____                          |
| 9. Amount of remittance (line 2 plus/minus lines 3, 4, 5, 6, 7 & 8).  | \$ _____                                       |

I certify that I am a manager or officer of this wireless telecommunications company and that this report is accurate and true and reflects the appropriate customer access line count including trunk equivalents, adjustments, and fee amount.

Certified by: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature of wireless telecommunications company manager or officer)  
Company manager's or officer's telephone # \_\_\_\_\_

**\* Attach list of customer name, address, and phone number.**

**PLEASE MAKE CHECKS PAYABLE TO: MINNESOTA 9-1-1 PROGRAM**

(If you have any questions regarding this collection, please contact Mary Frisch at 651-296-4032)

**--- DO NOT WRITE BELOW THIS LINE - STATE OF MINNESOTA OFFICE USE ONLY ---**

|                  |                          |          |
|------------------|--------------------------|----------|
| Check # _____    | E9-1-1 \$ _____          |          |
| Amount \$ _____  | 9-1-1 \$ _____           |          |
| Date rec'd _____ | E9-1-1 WIRELESS \$ _____ |          |
| Deposit # _____  | ARMER \$ _____           | \$ _____ |
|                  | STATE PATROL \$ _____    |          |
|                  | TAM \$ _____             |          |

## **9-1-1 / TAM Monthly Service Fee for Cellular and other Nonwire Access Customers**

**TAM** = Telecommunications Access Minnesota

**What are the 9-1-1 and TAM service fee?** They are an assessment against each cellular or other nonwire access services, local service access line, prepaid, or centrex trunk equivalent. Until July 6, 2005 the 911 fee continues at 40¢ per month and 10¢ for TAM for a total fee collection of 50¢. Effective July 6, 2005, the 911 fee increases to 65¢. The Public Utilities Commission approved the TAM fee decrease to 7¢. The total monthly fee collection upon implementation of the 911 fee increase and the TAM fee decrease is 72¢. This form is also available on the 911 website at [www.911.state.mn.us](http://www.911.state.mn.us).

### **NOTE THE FOLLOWING CHANGES:**

- \* **Effective July 6, 2005 the 911 fee increases to 65¢.**
- \* **The PUC approved the TAM fee decrease from 10 ¢ to 7¢ effective July 6, 2005. The total monthly fee collection upon implementation of the 911 fee increase and TAM fee decrease is 72¢.**
- \* **Effective December 3, 2003 the 9-1-1 Program was transferred from the Department of Administration to the Department of Public Safety. The new address is shown on upper left corner of the fee form.**

- \* **Effective August 1, 2002, a manager or officer of the wireless telecommunications service provider must certify on the fee forms submitted with each remittance, by signature and date, that the information being reported is accurate and true. If a designee of the manager or officer signs, a copy of the signed designee letter must be provided to our office.**

**When should collected fees be submitted?** Submit the fees with this form to the address indicated on the form by the 25th of each month following the month of collection. Example: June monthly collection or quarterly collections for April, May and June are due by July 25th. If fee collections are not received at the Department of Public Safety, Statewide 9-1-1 Program within 20 days after the due date, companies will be reported to the State Department of Revenue's Minnesota Collection Enterprise. Debt collection fees of 15 to 20% will be added to the total amount due in accordance with Minnesota Statutes, Chapter 16D.

**Do the fees apply to federal customers?** If federal government customers refuse to pay the fees, companies can consider them exempt. This is a constitutional matter involving a state's power to collect from the federal agencies.

**Do the fees apply to other tax-exempt organizations?** Yes. The fees are not taxes. Except for the cost of 9-1-1 program management, 9-1-1 receipts are allocated to pay for 9-1-1 call delivery, features, and other 9-1-1 related expenses. Likewise, the TAM fees pay only for the cost of administering and implementing the TAM program.

**Do the fees apply to one-way trunks, such as used in a direct-inward-dial PBX system?** Yes. Although an incoming PBX trunk would not be used to dial out, it is part of a local premises system that can access the switched network.

**Do the fees apply to 9-1-1 outswitching charges?** No. Nine-one-one trunks are not local service access lines in that they do not access the switched network.

**Should the fees be applied to seasonal disconnect telephones?** No. During periods of disconnection, the fees do not apply to local service access lines temporarily disconnected for seasonal service reasons.

**What are the carrier's options in collecting prepaid cellular fees?** The following describes two options companies have to collect and submit fees from prepaid wireless customers:

- 1) If a prepaid wireless card is purchased for a two month period, companies can deduct the amount for two months of fees and submit that amount; or
- 2) If a prepaid wireless card is used during the month, companies can deduct the amount for one month fees from the card and submit that amount.

**What are the carrier's options in collecting the fees?** At your option, the entire fee may apply for any period of service covering more than one-half of the applicable month, or it may be pro-rated on a daily basis. If you choose to pro-rate the fee, amounts less than \$.05 per customer need not be collected.

**How should the fees appear on customer bills?** Minnesota Statutes 237, Section 49, regarding the 9-1-1 and TAM surcharges, states "A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber." Based on the Public Utilities Commission recommendation for wire line fees, we recommend that the surcharges be listed as "9-1-1 and Tele-Relay Surcharges" on the customer bills.

**Should the fees be billed until paid?** Yes. For example, if a subscriber refuses to pay the TAM fee for one month the balance should be carried forward and added to the normal fee amount on a subsequent bill.

**Is a carrier responsible for submitting fees that are not collected?** No. If a customer refuses to pay the fee, however, report refusal to pay the fee to the Department of Public Safety on the form that accompanies the payment.

If you have further questions, or would like to discuss the fee or any 9-1-1 matter, please call Jim Beutelspacher at 651-296-7104

TAM questions should be referred to Rochelle Garrow, MN Department of Commerce, at 651-297-8941.