

Point of Sale Collection of Prepaid Wireless 911 Fees: Questions and Answers about the Point of Sale Collection Proposal

FAQ's

What is the problem with the current system?

Most states impose 911 fees on wireless subscribers to finance and maintain the 911 emergency response systems. Typically, state law requires wireless providers to bill customers for the fee each month and remit funds collected from customers. However, most prepaid plans are sold “over-the-counter” by third-party retailers (like Wal Mart, Target, or Radio Shack) who are not the service provider and have no ongoing billing relationship with the customer. Since there are no monthly bills, traditional methods of billing customers monthly does not work.

What do other states currently do about prepaid wireless 911 fees?

Over the last several years, several states have adopted an uncoordinated approach to capturing prepaid wireless 911 fees from sellers or customers. As a result, compliance for national prepaid wireless providers and their third party retail partners is burdensome and inconsistent. Thirteen states have adopted the point-of-sale methodology that is currently being sought by prepaid wireless providers. About fifteen do not impose any prepaid 911 fees on wireless service. Most of the remaining states provide for a “menu” of methodologies that require prepaid wireless service providers to either: “eat” the tax based on an estimated monthly ARPU (“Tennessee method”); collect the tax from customers at the point of sale without specifying how; or “decrement” (deduct) minutes from prepaid wireless customer accounts that have a sufficient positive balance at a specified time of the month.

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

It results in inconsistent treatment of consumers depending upon the model chosen by the service provider. Furthermore, under some approaches, consumers do not know whether or how much they are paying in 911 fees. Inconsistent approaches can also lead to expensive and protracted administrative and legal disputes with administrative agencies. Some current methods also provide opportunities for consumers to legally avoid paying the fee.

What is the solution?

Prepaid wireless consumers benefit from the ability to access the 911 system, so there is broad agreement that prepaid wireless users should contribute to funding the system as do users of other services capable of accessing the 911 system. ACCG, the wireless industry and the 911 Director's

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Association have developed a proposal for a uniform, point-of-sale collection system that would create a single statewide collection methodology for prepaid wireless 911 fees. Under this system, each county or jurisdiction operating a 911 system would enact a local ordinance to impose a prepaid 911 fee and would receive a share of the fees collected through formula based on the population within each Public Safety Answering Point (PSAP). This is the same system that retailers currently use to impose sales taxes on prepaid wireless service. This model legislation has been endorsed by the National Conference of State Legislatures task force that works on telecommunications issues.

How will the fee be set?

The fee imposed on the prepaid wireless service would be .75 cents per transaction. Under the flat fee approach, the model calls for the rate to be set at one-half the postpaid rate. National data shows that the typical prepaid wireless customer spends about half of the amount that a typical postpaid wireless consumer spends each month. As prepaid wireless subscribers tend to have lower incomes, it is only fair that the monthly 911 fee be set at half of the postpaid rate. However, for prepaid wireless customers who reload minutes more frequently they may pay the .75 cent fee more than once a month.

Who will get the funds?

Fees will be remitted by the retail seller to the Department of Revenue in the same manner that sales tax is remitted. The Department of Revenue – not the retailers – will be responsible for remitting revenues to PSAPs on an annual basis on a population based formula.

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

Certain, stable, and predictable revenues from prepaid wireless customers.

An end to disputes and litigation over collection of prepaid 911 fees.

A level playing field with fair and equitable treatment for all prepaid wireless consumers.

Transparency – all customers will know exactly what they are paying.

Does the prepaid wireless point of sale 911 fee collection proposal comply with the Streamlined Sales and Use Tax Agreement?

Yes. The model legislation piggybacks on the definitions, sourcing rules, and administrative provisions of existing state sales and use taxes, and would not be considered a replacement tax under the recently adopted rules by the Streamlined Governing Board. Therefore, the proposal is fully compliant with SSTP. In addition, it also complies with the provision likely to be included in the federal streamlined legislation that requires states to simplify taxes on communications services because the model legislation requires a single statewide fee with central administration and collection. There is no need for states to modify the SSTP agreement or wait for the federal legislation to pass the model prepaid 911 fee legislation.

Where has the model act been adopted?

The model act has now been enacted in 13 states, as shown in the attached chart.

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