

**Testimony of  
Bethanne Cooley  
Director, State Legislative Affairs  
CTIA – The Wireless Association®  
December 2<sup>nd</sup>, 2015  
Support for H3747**

**Before The Massachusetts Joint Committee on Public Safety and Homeland Security**

Chairman Timilty, Chairman Naughton and members of the Committee, thank you for the opportunity to testify today. I am here today on behalf of CTIA-The Wireless Association ®, the trade association for the wireless communications industry, to testify in support of H3747. H3747 directs the 9-1-1 Department to promulgate regulations to collect the 9-1-1 fee from prepaid wireless users at the point-of-sale (“POS”). Such regulations are consistent with the Massachusetts General Court’s directive that wireless end-users who have access to and benefit from the Commonwealth’s 9-1-1 system also contribute to that system. Similar legislation has been adopted in 38 jurisdictions, including Connecticut, Maine, New Hampshire and Rhode Island.

The wireless industry believes that H3747 is the best way to meet the Legislature’s clear directive that users of the Massachusetts 9-1-1 system contribute to the maintenance and operation of the system. With 1 in 5 wireless users choosing prepaid service, it is imperative that Massachusetts adopt 9-1-1 prepaid POS legislation that brings parity between prepaid and postpaid customers while efficiently and effectively collecting 9-1-1 fees from those consumers who benefit from this vital and proven emergency communications system.

In 2002<sup>1</sup>, the Massachusetts Legislature funded the Enhanced 9-1-1 system through a direct surcharge on business and residential telephone customers. The Legislature further clarified in 2008<sup>2</sup> that Enhanced 9-1-1 would be funded by “each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system.” This included traditional landline, wireless, and Internet-based voice services.

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<sup>1</sup> Chapter 239 of the Acts of 2002

<sup>2</sup> Section 8 of Chapter 223 of the Acts of 2008

The Legislature charged the State 911 Department in 2008 with creating “an equitable and reasonable method for the remittance and collection of the surcharge or surcharge amounts” for prepaid wireless services<sup>3</sup>. Unfortunately, the subsequent regulations did not result in prepaid end-users equitably sharing the costs of the Enhanced 9-1-1 system. Thus, **contrary to the Legislature’s clear mandate, prepaid wireless end-users do not pay any fees to support 9-1-1 services in Massachusetts.**

### **How Prepaid Wireless Differs from Postpaid Wireless**

Prepaid wireless service allows customers to pay in advance for a fixed number of minutes or for unlimited minutes for a fixed time period. Since customers pay in advance, there is no need to run a credit check on the purchaser and there is no need for the customer to sign a contract for a fixed term of service.

In contrast, traditional postpaid wireless service is sold directly by the wireless service provider, or its agent, to the consumer. Consumers are billed monthly and must pay that monthly bill, including taxes and fees, in order to receive service. Under federal and Massachusetts law, the wireless provider must receive and record the address for each user’s “place of primary use,” which is the residential street address or business location where the use of the wireless service primarily occurs. For this reason, the wireless provider has a straightforward mechanism to determine the location where the service should be subject to taxation and a billing mechanism to collect the fee from the user and remit it to the proper 9-1-1 agency. Unfortunately, that same sourcing methodology doesn’t work for prepaid wireless service.

### **The Prepaid Business Model Makes It Difficult To Track Transactions & Accurately Assess 9-1-1 Fees**

Prepaid wireless service is marketed and sold differently than postpaid. The initial purchase of prepaid service occurs at 3<sup>rd</sup> party retail stores (like Wal-Mart, Target, 7-11 or Best Buy) or at a

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<sup>3</sup> A relatively new product in 2008, prepaid wireless service is similar to traditional postpaid wireless service; however, there are no long term contract requirements and no monthly bills on which an Enhanced 9-1-1 fee can be assessed.



prepaid wireless provider's retail store or website. This initial purchase typically includes a phone bundled with a fixed number of minutes or units for a single price. When those minutes or units are exhausted, the customer has several options.

After the initial purchase, a customer can “recharge” their service by purchasing a card with a fixed number of minutes or units from a 3<sup>rd</sup> party retail store or from a wireless provider’s retail store. The card may include a phone number and a code that the purchaser uses to add the minutes or units to the phone. It is important to note that the customer -- and not the retailer -- adds the minutes or units to the customer’s phone. Also, neither the wireless provider nor the retail store knows where the customer lives.

The vast majority of prepaid wireless transactions are made at locations that have successfully implemented prepaid point-of-sale in the 38 other states. In fact, about half of all retail transactions occur at large retailers (Wal-Mart, Target, 7-11 or Best Buy) that have already implemented the POS system in other states. Most of the remaining transactions occur at wireless providers’ stores or websites, leaving a very small percentage of transactions that occur at “Mom and Pop” retail locations.

With respect to sales at third party retail locations, the wireless provider does not know where the customer purchased the initial service or the recharge card. This makes it impossible for the carrier to accurately assess the correct state’s 9-1-1 fee from the customer. For this reason, nearly every state that assesses a 9-1-1 fee on prepaid wireless has adopted the point-of-sale method.

The adoption of the point-of-sale method to collect the E9-1-1 fee from prepaid subscribers has not resulted in any significant problems that have caused any state to change its collection methodology or any widespread rejection by retailers selling the cards because of new collection or reporting requirements.

### **The Growth of Prepaid Nationwide Supports The Efficient & Accurate POS Methodology for 9-1-1 Fees**



With the significant growth in the prepaid wireless market over the last decade, it becomes paramount that 9-1-1 fees are efficiently and accurately collected from prepaid wireless consumers in order to ensure adequate funding to maintain the Enhanced 9-1-1 system.

According to CTIA's recent figures:

- At over 20%, 1 in 5 wireless subscribers are prepaid subscribers;
- There are now over 76 million prepaid wireless subscribers, an increase of 27 million subscribers between December 2008 and December 2014.

### **What H3747 Means for Massachusetts**

H3747 would follow the Legislature's clear directive that end-users contribute to support the 9-1-1 system and also ensure that current wireline and wireless users don't pay more than their fair share of 9-1-1 fees because prepaid users don't contribute.

The 911 Department recently sought and received approval for a \$43M increase in annual 9-1-1 fees to support the deployment of Next Generation 9-1-1 technology. If prepaid users had been contributing from the beginning under the point-of-sale methodology, it's likely that such a significant increase would not have been needed.

According to an analysis by Scott Mackey of KSE Partners, LLP, enactment and full implementation of H3747 –currently adopted in 38 jurisdictions – would have increased 9-1-1 revenues by \$3.9 million over the current method during fiscal year 2015 at the rate of \$0.75 per transaction. This analysis is based on experience with prepaid POS in states like Maine, Pennsylvania and Tennessee. Now that the Department of Telecommunications and Cable has approved an increase in the 9-1-1 fee to \$1.25 effective July 1<sup>st</sup>, 2015, H3747 would increase revenue by an estimated \$6.5 million over the current law. <sup>4</sup>

### **Status of 9-1-1 Prepaid POS Legislation in Other States**

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<sup>4</sup> See Scott Mackey memo dated June 25, 2015.



The attached map shows the enactment of 9-1-1 prepaid point-of-sale legislation in states throughout the country. Since the National Conference of State Legislatures' (NCSL) endorsement of the 9-1-1 prepaid POS legislation, 37 states, the District of Columbia and the Virgin Islands have adopted the point-of-sale model, including the nearby states of Connecticut, New Hampshire, Maine and Rhode Island.

### **Conclusion: Key Reasons to Support H3747**

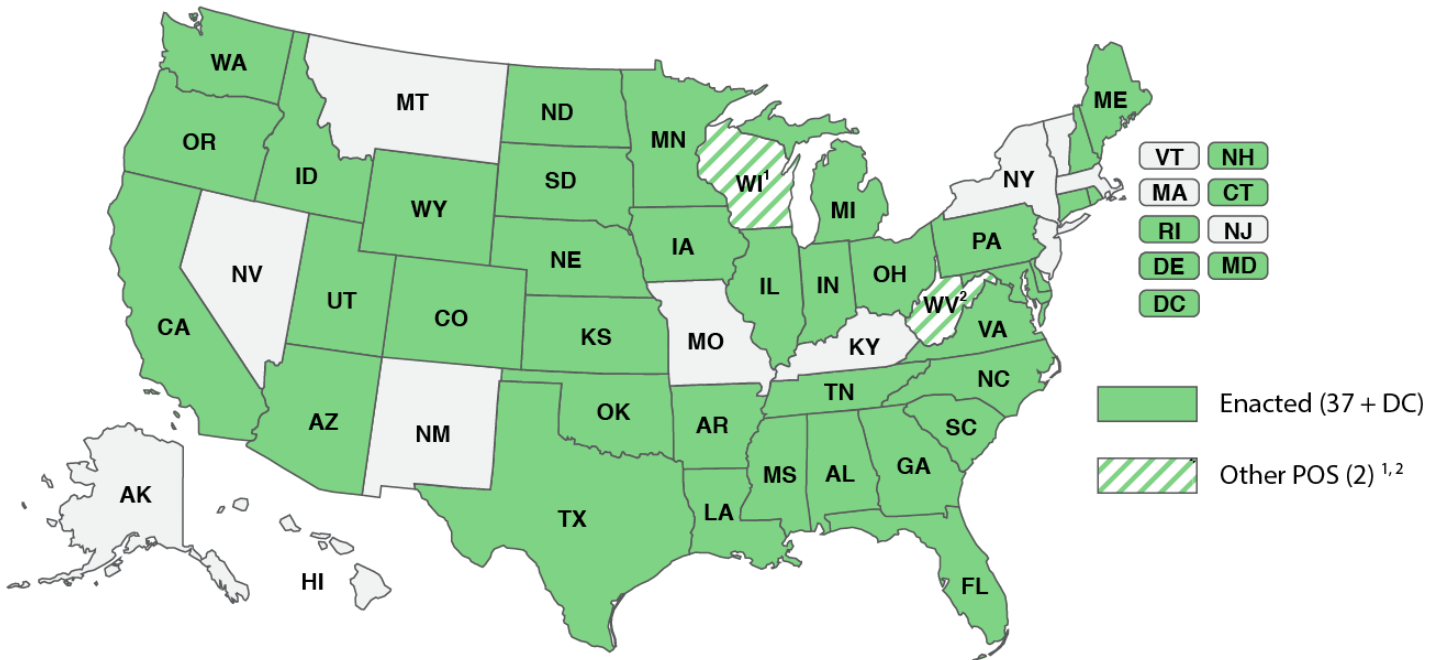
1. H3747 is consistent with the directive of the Massachusetts Legislature that end-users shall support the 9-1-1 system.
2. Collection of the 9-1-1 fee at the point-of-sale is based on actual sales, is transparent to the consumer, accurately sources the transaction to the proper state, is a more efficient methodology for collecting the surcharge from prepaid end-users and is fair to postpaid consumers.
3. The prepaid point-of-sale method will provide stable and predictable revenues to support the 9-1-1 system in Massachusetts.
4. The bill piggybacks on the existing sales and use tax collection system to minimize additional costs on retailers. Retailers already collect the sales and use tax on prepaid wireless service, so this approach leverages existing processes.

In closing, the wireless industry believes the fair and equitable funding of 9-1-1 systems is paramount to our consumers and the citizens of the Commonwealth. As such, we strongly urge your support and passage of H3747.



# Prepaid Point of Sale As of July 21<sup>st</sup>, 2015

## Prepaid Point of Sale Status



<sup>1</sup> Wisconsin: Police and fire protection fee at POS

<sup>2</sup> West Virginia: Sales tax in lieu of 911 fee