

# PENNSYLVANIA SENATE

## JOINT PUBLIC HEARING ON 9-1-1

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Joint PA APCO/PA NENA Government Affairs Committee

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Good Morning, my name is Timothy Baldwin and I am the President of the Keystone State Chapter of National Emergency Number Association (PA NENA), with me is Michael McGrady, Chairman of the Joint APCO/NENA Government Affairs Committee. The Pennsylvania Chapters of NENA and the Associated Public Safety Communications Officials wish to thank you for the opportunity to provide input on House Bill 1789 deliberations, as well as funding and other challenges facing 9-1-1 operations in the Commonwealth. Our two 9-1-1 organizations have a total combined industry membership of over 22,000 nationwide.

We believe it is critical to the operation of 9-1-1 in the Commonwealth to begin to capture the revenues lost with prepaid wireless cards and phones. As consumers watch their budgets looking for more ways to save money, prepaid wireless services have become increasingly popular. Prepaid wireless services currently comprise over 19% of the total wireless marketplace. In the third quarter of 2009, 4.5% of new wireless accounts were prepaid services!

Pennsylvania's 9-1-1 centers (Public Safety Answering Points, or PSAPs) rely upon surcharge fees on wireless and wireline telecommunications services to fund their operations. Due to inefficiencies in current collection methods, as well as legal questions surrounding whether prepaid carriers must remit the 9-1-1 surcharge, 9-1-1 industry and PEMA analysis show that **PSAPs are losing between \$8-10 million dollars per year in revenue.** House Bill 1789 would solve this problem.

Traditional facilities-based wireless providers like AT&T, Sprint, T-Mobile, US Cellular, and Verizon operate and maintain their own networks and sell prepaid services, while Mobile Virtual Network Operators (MVNO) such as TracFone and Metro PCS pay wholesale rates directly to the facilities providers to use a portion of their network to provide service to end-user customers.

The purchase of prepaid wireless service includes both the purchase of a phone or device and/or the purchase of minutes (typically in the form of a card) to “recharge” the phone with minutes of airtime. In these instances, a billing relationship does not exist between the prepaid wireless provider and the consumer. **The prepaid service is cash-and-carry. There are five basic methods to buy prepaid service:**

**Provider Direct to Customer (face-to-face transaction)** - The provider sells directly to the customer from a company owned store (AT&T, Verizon, T-Mobile, etc.) Activation may occur on site or later when the customer calls the number on the card and provides the activation code and address. The provider receives payment directly from the customer.

**Provider Direct to Customer (remote sale)** - The provider sells directly to the customer by phone or internet (TracFone, Virgin Mobile, AT&T, Verizon, etc). Activation occurs when the customer calls the number on the card and provides the activation code and address; payment information is gathered when the transaction occurs. In both methods, the provider receives payment directly from the customer.

**Provider Direct to Retailer (sold at retailer’s store location - see “4” below)**

**Provider Direct to Retailer (remote sale by retailer)** - In methods 3 & 4, the provider, whether facilities-based or MVNO, sells prepaid services in bulk at wholesale to a retailer (WalMart, Target, Best Buy, Sheetz, Wawa, etc.) who, in turn, sells to the end user customer. In such a transaction, the provider does not know the ultimate location of the sale because the “cards” are sold in bulk to the retailer for distribution across the country. The provider does not know the customer’s location until activation and relies on information provided by the customer (however accurate or not) to assign the mobile telephone number and activate the account. At no point does money change hands between the customer and the provider. In both scenarios, the prepaid wireless provider does not receive payment from the customer.

**Provider Sells to Aggregator** - The provider sells “cards” in bulk at wholesale to an “aggregator” who purchases cards from many different providers and resells them to a retailer. This method is used for smaller retail establishments that offer multiple brands (both facilities-based and MVNO) of prepaid services at a single point of sale display. Smaller-scale retailers may lack the buying power, volume, personnel and/or expertise to deal directly with the providers, so the aggregator serves that function. The provider does not know the customer’s location until activation and relies on information provided by the customer to assign the mobile telephone number and activate the account. At no

point does money change hands between the customer and the provider and the prepaid provider does not receive payment from the customer.

House Bill 1789 affirms that prepaid wireless is subject to the same \$1.00 fee as traditional (post-paid or contractual) wireless and that the surcharge on the sale of prepaid wireless services must be collected at the point-of-sale by the retailer and remitted to the Department of Revenue (DOR) in a manner that is very similar to the present sales tax collection system. The fee will be transferred by the DOR to PEMA for distribution to counties for support of their PSAPs through the process currently used with other telecommunications services. House Bill 1789 provides allowances to the DOR and retailers to offset the costs of compliance and system upgrades. PA NENA and PA APCO believe that prepaid wireless surcharges in the amount 2% for DOR and 3% for retailers is adequate to cover their costs. We do not believe that it is necessary for either party to retain 25% of revenue for 6-months.

Some members of retail associations have expressed concern about collecting the fee at the point of sale, citing challenges and costs with upgrading their systems. They suggest inefficiencies would be fixed by forcing all prepaid wireless carriers to collect the fees themselves. While not precise, many carriers are trying to collect and remit the fee by either averaging the number of customers' on-hand in a month or decrementing (taking) minutes from a customer's account on a date certain of a month. In spite of those attempts, the deficit in collections still exist, and the process of taking minutes from a customer's account at retail activation is not technically possible since no financial relationship exists at that point between the carrier and the customer.

It has been suggested by retail associations that the proposed surcharge is inequitable and those that cannot afford to purchase higher amount prepaid cards pay more in the long run. Yes, there is some inequity in the proposed system. However, no reasonable alternatives to alleviate this have been identified and any type of percentage system places a huge burden on the retailers for collection of the surcharge. Furthermore, low income users have the option to acquire subsidized wireless phones from most of the major providers at little or no cost. This is the "Lifeline" program authorized by the FCC and available from most providers.

Other states have used the National Conference of State Legislatures (NCSL) adopted model legislation that closely resembles House Bill 1789. Maine, Louisiana, Texas, and Wisconsin have passed legislation that implements a point-of-sale process to collect 9-1-1 fees. In Wisconsin, retailers and carriers have implemented the process developed in House Bill 1789 with few problems. The systems that nationwide retailers and carriers

are building to comply with the laws in these states will make compliance easier for Pennsylvania retailers.

In summary, 80% of all prepaid wireless service is sold through third party retailers and, in those cases; the prepaid wireless carrier has no role in the transaction with the customer. The current collection system for 9-1-1 fees on prepaid wireless services is inefficient, broken, and needs to be fixed.

The collection of 9-1-1 fees at retail point of sale would generate millions of dollars for the 9-1-1 and public safety community when they need it most.

The only effective and equitable solution to assessing 9-1-1 fees on prepaid services is at the time when the transaction takes place, which is when the service is sold. House Bill 1789 accomplishes this goal and should be passed.

Although House Bill 1789 is one of our highest priorities at this time, there are other issues we want to share with you.

- 1) Act 78 became law in 1990. It remains the focal point of 9-1-1 funding. Although it has been amended several times, including in 2003 which added Act 56 (wireless funding), you can imagine how many things have changed in 20 years. Our PSAPs are caught in the middle of two funding sources (wireline and wireless) and their associated processes.
  - a. Wireline involves submitting a three-year plan to PEMA and the PUC. Although many facets of 9-1-1 operations are discussed in the plan, the main purpose of the plan is to justify the wireline surcharge on telephone bills to fund the PSAPs. Wireless funding requires an annual funding application to be submitted to PEMA, followed by a reconciliation of wireless funds for the previous fiscal year.
  - b. In both cases, purchases are made if they qualify as eligible under their respective funding source. A shared expense is a possibility, but you can run into trouble if an item is deemed eligible under one funding source, but not under another. Such a scenario leaves you with half the money needed for a purchase. Both processes require a great deal of time in completing forms and spreadsheets.
- 2) Future legislation should include combining the funding sources and eligibility lists. After all, these expenses are for 9-1-1 regardless of the technology

generating the funds. Regardless of the funding source, auditing of PSAP expenditures should rest with the county with state review of the final report.

- 3) Most in the 9-1-1 community recognize that Act 78 requires significant revision to bring it in-line with today's technology and changes in consumer telecommunication markets. Future legislation must be broad enough to cover devices and processes capable of generating requests for help and communicating with PSAPs. This will be a daunting task and will take time to complete. The more immediate concern is how 9-1-1 is funded in the Commonwealth. Specifically, how it is grossly underfunded.
  - a. Consider the fact that the funding model for wireline phones has not been updated since 1990. Wireline phone revenue is falling at an ever increasing rate and wireless phones now constitute about 60% of all calls to 9-1-1 today in the Commonwealth. PSAPs have suffered significant financial losses from wireline.
  - b. Act 56 (wireless) amended Act 78 and provided a separate funding source to help offset the lost revenue from wireline. The contribution of Act 56 has helped, but it produces funding less than wireline and has more restrictive eligibility rules. Wireless also presents a constant and rapidly evolving technology that challenges current funding models. Voice over Internet Protocol (VoIP) is the latest challenge.
- 4) A critical issue facing PSAPs both nationally and across Pennsylvania is the demand by citizens to be able to access 9-1-1 as they have always expected regardless of the new and emerging technologies. Make no mistake about it, people are used to picking up the phone, calling 9-1-1 and the PSAP has all the information necessary to locate the caller. Now, PSAP's are faced with texting, various cellular variations, VoIP, imaging, and whatever new technology is around the corner. Regardless, the caller demands the same type of access they have been using for years. All of these technological advances cost money. Most PSAPs don't have the funds available to keep up with these necessary changes.

In short, the funding model for PSAPs in Pennsylvania needs a major overhaul. Not only is it fragmented and unequal, it's inadequate and too rigidly structured.

PA NENA, PA APCO, CCAP, PEMA, and the Keystone Emergency Management Association (KEMA) have paid for an independent audit of the costs of operating 9-1-1

in the Commonwealth. It is attached for your review. It is a well-detailed analysis of revenues and expenditures. In general, it shows that 9-1-1 in Pennsylvania is underfunded by over 202%. The report is all encompassing, including wireline, wireless, and VoIP. It affects all classes of counties, first through eighth class. The deficit is either picked-up by the county's General Funds, or not funded at all. This means improvements are not implemented.

Our long term goal is to rewrite Act 78 and bring it up-to-date with current technology, accepted operating standards, and the future path of 9-1-1 (Next Generation 9-1-1). The more important short term goal is to restructure the funding model currently used. Our proposals are:

- 1) All forms of telecommunications that can contact 9-1-1 now or in the foreseeable future should pay a fair and equitable surcharge to support 9-1-1 operations and the constant upgrades to technology required by the residents of the Commonwealth.
- 2) The surcharge should be able to fund a significant portion of the costs of operating 9-1-1 in the Commonwealth. We don't propose 100% funding but it must be a significant portion of the costs to relieve the burden of counties and cities with approved PSAPs.
- 3) The surcharge must be as equitable as possible across the spectrum of telecommunications devices. This will never be 100% equal due to the diversity of technology, access, and payment methods, but we should be able to design funding models that are close to equitable.
- 4) The funding model must have a mechanism for regular reviews and adjustments. We cannot wait for 20 years to adjust funding levels.
- 5) Formulas must be developed to help fund smaller counties based of their population and call volumes.
- 6) All counties must be affected by the funding model. No one county should benefit at the expense of the others.
- 7) Include language that prevents governmental bodies from raiding 9-1-1 funds for use on unrelated expenditures.

We look forward to working with the Legislature to build a new funding model for 9-1-1 operations in Pennsylvania. Thank you for your interest in the service we provide.