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SENATE BILL NO. 238

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 56-484.12 and 56-484.17 of the Code of Virginia, relating to the Enhanced Public Safety Telephone Services Act; collection of wireless E-911 surcharge.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 56-484.12 and 56-484.17 of the Code of Virginia are amended and reenacted as follows:**
 § 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"CMRS reseller" means a provider who purchases telecommunication services from another telecommunication service provider and then resells, uses a component part of, or integrates the purchased services into a mobile telecommunication service, and includes any mobile virtual network operator.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Mobile virtual network operator" or "MVNO" means a CMRS provider that does not own (i) a licensed frequency allocation of radio spectrum or (ii) the infrastructure required to provide mobile telephone service, and which purchases minutes from other operators for resale to retail customers.

"Place of primary use" has the meaning as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"VoIP service" means interconnected voice over Internet protocol service as defined in the Code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the

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wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of \$0.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia; provided, however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17 is not required to be billed.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Except as provided in § 2.2-2031, moneys in the Fund shall be used for the purposes stated in subsections C through D. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Information Officer of the Commonwealth.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. In addition, the wireless E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to the provisions in this subsection. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Board for deposit in the Fund. Each CMRS provider and CMRS reseller may retain an amount equal to three percent of the amount collected to defray the costs of collecting the surcharges. State and local taxes shall not apply to any wireless E-911 surcharge collected from customers. Surcharges collected from customers who do not purchase CMRS service on a prepaid basis shall be subject to the provisions of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. § 116 et seq., as amended).

For CMRS customers who do not purchase CMRS service on a prepaid basis, the CMRS provider and CMRS reseller shall collect the surcharge through regular periodic billing.

For CMRS customers who purchase CMRS service on a prepaid basis, (i) *CMRS resellers shall collect the wireless E-911 surcharge on all sales by retailers of prepaid CMRS service, which shall include any MVNO that resells minutes to customers at retail* and (ii) the wireless E-911 surcharge shall be determined according to one of the following methodologies:

a. The CMRS provider and CMRS reseller shall collect, on a monthly basis, the wireless E-911 surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge; or

b. The CMRS provider and CMRS reseller shall divide its total earned prepaid wireless telephone revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting period by \$50, multiply the quotient by the surcharge amount, and pay the resulting amount to the Board without collecting a separate charge from its prepaid customers for such amount; or

c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale.

Collection of the wireless E-911 surcharge from or with respect to prepaid customers shall not reduce the sales price for purposes of taxes which are collected at point of sale.

C. Sixty percent of the Wireless E-911 Fund shall be distributed on a monthly basis to the PSAPs according to the percentage of recurring wireless E-911 funding received by the PSAP as determined by the Board. The Board shall calculate the distribution percentage for each PSAP at the start of each fiscal year based on the cost and call load data from the previous fiscal year and implement this percentage by October 1 of the current year. Using 30% of the Wireless E-911 Fund, the Board shall provide full payment to CMRS providers of all wireless E-911 CMRS costs. For these purposes each CMRS provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it operates. The Board shall review such estimates and advise each CMRS provider on or before the following March 1 whether its estimate qualifies for payment hereunder and whether the Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. The remaining 10% of the Fund and any remaining funds for the previous fiscal year from the 30% for CMRS providers shall be distributed to PSAPs or on behalf of PSAPs based on grant requests received by the Board each fiscal year. The Board shall establish criteria for receiving and making grants from the Fund, including procedures for determining the amount of a grant and payment schedule; however, the grants must be to the benefit of wireless E-911. Any grant funding that has not been committed by the Board by the end of the fiscal year shall be distributed to the PSAPs based on the same distribution percentage used during the fiscal year in which the funding was collected; however, the Board may retain some or all of this uncommitted funding for an identified funding need in the next fiscal year.

121 D. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall audit the
122 grant funding received by all recipients to ensure it was utilized in accordance with the grant
123 requirements. ~~For the fiscal year ending June 30, 2005, the Board shall determine whether qualifying~~
124 ~~payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were~~
125 ~~less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or~~
126 ~~CMRS provider.~~ Each funding recipient shall provide such verification of such costs as may be
127 requested by the Board. Any overpayment shall be refunded to the Board or credited to payments during
128 the then current fiscal year, on such schedule as the Board shall determine. If payments are less than the
129 actual costs reported, the Board may include the additional funding in the then current fiscal year.

130 E. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the
131 Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the
132 Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the
133 Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on
134 Appropriations, and the Virginia State Crime Commission.

135 F. The special tax authorized by § 58.1-1730 shall not be imposed on consumers of CMRS.