



MONTANA  
TELECOMMUNICATIONS  
ASSOCIATION

September 14, 2009

Dan Bucks, Director  
Montana Department of Revenue  
Mitchell Building  
Helena, Montana

Re: MAR Notice No. 42-2-47. Prepaid Wireless Telecommunications Providers

Dear Director Bucks,

As you are aware, a Negotiated Rulemaking Committee convened earlier this year to discuss proposed rules intended to establish a process by which “911” emergency telephone service fees could be collected and remitted to the Department of Revenue (“Department”) by prepaid wireless telecommunications providers. This letter is being submitted as a supplement to the Negotiated Rulemaking Committee Report being filed with you by the Committee.

The Montana Telecommunications Association (“MTA”), in whose behalf I served as a member of the Negotiated Rulemaking Committee, represents both member-owned telephone cooperatives and shareholder-owned commercial telecom companies serving rural Montana consumers. MTA members have invested hundreds of millions of dollars in Montana’s telecommunications infrastructure and continue to invest tens of millions each year in new facilities and advanced services including broadband Internet service to over three-quarters, and often nearly 100% of their customers. MTA members employ, with outstanding salaries and benefits, nearly 650 proud Montanans who are dedicated to their jobs, their communities and the state’s economic development.

Among the services Montana’s rural telecom providers are particularly proud to offer is a statewide, state-of-the-art 911 service platform serving 37 of Montana’s PSAPs. Montana’s 911 network provides vital emergency services to people living, working and visiting in Montana. To help fund this critical network infrastructure, MTA members assess a \$1.00 monthly fee on all their subscribers, and remit these 911 fee revenues to the Department, pursuant to Title 10, Chapter 4 of the Montana Code. Prepaid wireless telecommunications providers, however, have not been collecting and remitting these 911 fees.

The Negotiated Rulemaking Committee convened in an attempt to develop rules by which prepaid wireless providers could comply with the law and appropriately assess and remit 911 fees. Unfortunately, the Committee was unsuccessful, as a consensus among Committee members was not attained. Seven members of the Committee

endorsed proposed rules, while two members—representing two prepaid wireless telecommunications providers—opposed the proposed rules.

MTA encourages you expeditiously to initiate a formal rulemaking proceeding to establish rules by which prepaid wireless providers will collect and remit 911 fees for the support of Montana's 911 network and, most importantly, its consumers.

Such rules should be adopted soon as a matter of equity and consumer welfare. MTA members continuously have complied with the 911 statute by collecting and remitting 911 fees. Prepaid wireless telecommunications providers are no different than any other telecommunications providers; they have an obligation to collect and remit 911 fees. Current law requires "a fee of [\$1.00] a month per access line on each service subscriber in the state ... on the amount charged for telephone exchange access services, wireless telephone service, or other [9-1-1](#) accessible services." 10-4-201 M.C.A. (emphasis added). Nothing in the statute says, "except for prepaid wireless telecommunications providers." Prepaid wireless providers' refusal to collect and remit 911 fees effectively creates unequal treatment among providers of similar services, in violation of the principles of tax equity and competitive neutrality.

Consumers increasingly are subscribing to prepaid wireless services. The current economic recession has accelerated the rate at which consumers have dropped existing wireless (and wireline) service plans and subscribed to prepaid plans. Anecdotal evidence indicates that between ten and as much as 20 percent of all wireless subscribers currently subscribe to prepaid plans. Moreover, prepaid wireless providers aggressively are promoting service to consumers utilizing federal Low Income universal service support, further accelerating the rate at which prepaid wireless plans are being adopted. As more consumers migrate to prepaid plans, more money that *would* have been collected by carriers complying with existing law and *should* be collected for the support of Montana's 911 network and its consumers is *not* collected. It's important to note that the users of prepaid services have access to and frequently use the existing 911 network despite the fact that their service provider does not provide any support of the underlying network. Obviously, these calls result in cost to Montana's 911 network. One must ask if it is fair to ask Montanans who are assessed the lawful rate to foot the bill for prepaid customers simply because it's inconvenient for the prepaid carrier to assess the fee.

MTA encourages you to initiate a rulemaking expeditiously.

Respectfully submitted,

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