

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 23, 2010, in Room 548-S of the Capitol.

All members were present except
Sen Emler, excused
Sen. McGinn, excused
Sen. Petersen, excused

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Ann McMorris, Committee Assistant
Jeannine Wallace, Sen. Apple's Office Assistant

Conferees appearing before the Committee: none

Others attending: See attached list.

Chair opened for continued committee discussion on
House Substitute for Substitute for SB 48 - Emergency telephone service, fees, charges, collection and distribution.

Chair called on the committee members assigned to report on possible amendments to certain components of the bill.

Senator Masterson provided a paper entitled "The telecommunications industry believes the collection of 911 fees on prepaid wireless is best applied at the point of sale" and discussed the options that had been offered. (Attachment 1)

Senator Bruce reported on immunity and suggested taking a more prudent approach.

Chairperson Apple provided a balloon on the coordinating council amendment and explained the criteria for this amendment. (Attachment 2)

Senator Brownlee's charge was to come up with cost figures for PSAPs and recommendation for appropriate funding levels. She found the difference in equipment used by each PSAP made this a challenge. Some discussion on software and hardware used and use of the grant fund for equipment. Consolidation of PSAPs was discussed.

Senator Petersen is working on definitions and will report later.

More discussion and coordination of the work on various sections of the **House Substitute for Substitute for SB 48** will be continued on February 24 with amendments being prepared and committee action taken in a future meeting.

The next meeting is scheduled for February 24, 2010.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris
Committee Assistant

Attachments - 2

**SENATE UTILITIES
COMMITTEE GUEST LIST
FEBRUARY 23, 2010**

| NAME | REPRESENTING |
|--------------------|--------------------|
| TOM DAY | KCC |
| Crista Haas | Gov Office |
| Dena Frisk | Veizen & Deussen |
| Bob Keller | JCSO |
| Nelson Krueger | Sare West |
| Ed Kump | KAP/KPA/KSA |
| Tom Caches | SPRINT |
| SEAN MILLER | CAPITOL STRATEGIES |
| Sandy Braden | Sprint |
| Berend Koops | Horn Law Firm |
| Joe Mosimann | PACA |
| Troy Grotzner | AT&T |
| Walter Way | Johnson County |
| Deane Gage | Sedgwick County |
| Adam Jernison | Coj |
| Whitney Jamm | City of Topeka |
| | |
| | |

THE TELECOMMUNICATIONS INDUSTRY BELIEVES THE COLLECTION OF 911 FEES ON PREPAID WIRELESS IS BEST APPLIED AT THE POINT OF SALE

- Retailers earn a very attractive margin on prepaid wireless services ... on average about 17% of the sales price.
- While these small retail stores will incur some cost to set up the collection of 911 fees, it is primarily software driven and can be accomplished at minimal expense.
- Retail stores already have automated sales receipt processes in place to handle sales and local tax collection, as well as ATM and credit card purchases, etc.
- In view of the fact that prepaid services are very profitable for Retailers, and prepaid devices are a growing part of the market, it isn't unreasonable to have them collect and remit this fee and significantly increase state 911 funding.
- Products sold by retailers are of their choosing. If a new 1.1% tax is assessed to support the E911 system by pre-paid wireless customers and Retailers do not feel it is worth their time or is too expensive to implement, they do not have to continue to sell the products. Alternatively, if it is a substantial piece of their business, they should be prepared to comply with collecting the E911 fees at the point of sale.
- Kansas is a participating member of the Streamlined Sales Tax program. Details of a vendor compensation arrangement are being worked out now at the federal level for Retailers to retain an administration fee. Therefore, a precedent is already being considered to allow for an administration fee for agents of the state to collect and process sales taxes and remit them to the Department of Revenue.
- Collection of 911 fees by the Retailer at point of sale will generate \$1.4 million in revenues that will be used to help fund Next Generation E911 systems.

IF THE KANSAS LEGISLATURE IS NOT INCLINED TO PERMIT POINT OF SALE COLLECTION OF 911 FEES ON PRE PAID WIRELESS, THE INDUSTRY SUGGESTS THE FOLLOWING:

- Avoid a decrementing or embedded fee requirement.
- Avoid a collection methodology that exposes wholesale prepaid service providers to potential litigation (i.e. current method).
- Do not collect any 911 fees on prepaid wireless service now, but revisit the point of sale proposal after one or two years when more states will have implemented it. Please note that the state of Hawaii has adopted this policy approach and currently excludes prepaid wireless from their state's 911 fee.

Note* It is imperative that the 2% Administration Fee for Service Providers be retained in the bill, as well as the remittance of the 911 taxes/fees to a single Local Collection Point Administrator.

**Senate Utilities Committee
February 23, 2010
Attachments 1-1**

COLLECTION OF 911 FEES ON PREPAID WIRELESS

GOAL: A fair, efficient, and effective method of collecting 911 fees from wireless prepaid services that provides transparency to a consumer and easily administered.

METHOD OF CURRENT COLLECTION:

[Wholesaler remits an amount equal to 1% of the retail price]

1. Provider not able to collect fee from the end-user who benefits from the ability to access the 911 systems.
2. Retail price unknown – provider does not control the final price of prepaid services sold by third party retailers – forcing providers to make assumptions on the retail price.
3. Prepaid cards coming in from out-of-state retail distribution centers unknown to provider and therefore, unable to remit 911 fees for cards sold in Kansas until customer activation.
4. Unfair to wireless consumers:
 - Postpaid wireless consumers pay fees to fund 911 systems
 - Prepaid wireless consumers do not pay fees to fund 911 systems
 - Postpaid wireless consumers mandated to be reported for not paying 911 fee
 - Prepaid wireless consumers do not pay 911 fees and privileged to anonymity
5. Unfair to provider:
 - Providers pay the fee with no way to recoup it from customers
 - Providers may be paying more (or less) than required because the retail price is not known on wholesale transactions
6. Current method of collection exposes wholesale providers to potential legal actions due to inability to collect 911 on retail markup.

METHOD OF EMBEDDING:

1. Providers sell prepaid products (handsets and wireless cards) to retailers in bulk that are shipped in bulk to retailers for further distribution that could be in or out of the state.
2. 911 Fees vary across the states where the handset or card may be used. It is not possible to embed the Kansas fee because providers do not know where the cards will ultimately be sold.

3. Fees assessed to prepaid consumers would not be clearly disclosed when they purchase the service from retailers.
4. Embedding does not provide adequate disclosure regarding the amount of the fee or the jurisdiction the fee is being collected for.
5. A consumer could challenge the sales tax charged on the retail price that includes the "embedded" fee. (double taxation – cannot charge tax on a tax)
6. Embedding exposes wireless providers to potential class action lawsuits.

METHOD OF DECREMENTING:

1. A sufficient positive balance may not be available to cover the 911 fees, providing opportunities for consumers to legally avoid the fee.
2. The fee is not clearly disclosed to consumers, and cannot be disclosed since 911 fees vary across the country.
3. Inequitable collection of fee from prepaid wireless consumers since it would be imposed only upon customers that have a sufficient balance at the end of the month.
4. Not all providers have a functional system to identify whether the customer's account has a sufficient balance remaining to apply the 911 fees.
5. Such method does not provide a sound audit trail to support assumptions, compared to the standards required and used for other taxation models, e.g. sales tax, fuel, cigarette, liquor, etc.
6. A consumer could challenge the sales tax charged on the portion of decremented minutes.
7. Decrementing minutes is not popular with consumers.
8. Decrementing the fee from the consumers account after the service is purchased has raised concerns with State Attorney General's offices and The Federal Trade Commission¹ for reasons such as:
 - Cards that don't deliver the number of calling minutes advertised
 - Cards that debit minutes for hidden charges, taxes, fees, surcharges
9. Decrementing exposes wireless providers to potential class action lawsuits².

¹ Federal Trade Commission on Prepaid Calling Cards, December 3, 2009, Washington, D.C.

² *FTC v. Alternatel, Inc.*, No. 08-01433-CIV- Jordan/McAliley (S.D. Fla.) (Compl. filed May 19, 2008), and *FTC v. Clifton Telecard Alliance One LLC*, 2:08-CV-01480-PGS-ES (D.N.J.) (Compl. filed March 25, 2008)

COLLECTION AT THE POINT OF SALE:

1. A uniform approach that replaces the current ineffective and inefficient method.
2. Consistent with laws requiring collection from end-users who benefit from access to 911 services.
3. Consistent with laws placing financial obligation on the customer/taxpayer to pay for such services at time of purchase.
4. Consistent with laws requiring disclosing and collecting as a separate charge from the end-user.
5. Consistent with laws requiring that all consumers who benefit from the ability to access the 911 system from their wireless devices fairly contribute to the costs of the system.
6. Consistent with laws requiring the rate of collection be based on retail price.
7. Consistent with laws that obligates retailers to collect taxes on products at the time of sale, including special taxes on products such as cigarettes, gasoline, liquor, etc.
8. Transparent to the consumer – no hidden fees.
9. Cards deliver the number of calling minutes they advertise.
10. Easy for consumer to compare the rate-per-minute.
11. Fee is separate charge from sales tax to avoid taxing a tax.
12. Easily administered by all types of retail sellers.
13. Very small “mom and pop” stores have the option of not selling prepaid cards if they don’t want to incur the cost of compliance.
14. Eliminates future litigation challenges in applying 911 fees to prepaid services.

ONLY ONE FEASIBLE ALTERNATIVE TO COLLECTION AT POINT-OF-SALE:

Exclude wireless prepaid from KS 911 fee.

RadioShack Earnings Jump by 26%

FEBRUARY 22, 2010, 4:52 P.M. ET WSJ By JAY MILLER

RadioShack Corp.'s fourth-quarter earnings surged 26% as the retailer's stronger emphasis on cellphones resonated with consumers. However, the company's shares were down 4.5% at \$19.70 in after-hours trading on the New York Stock Exchange. The stock is up about 80% over the past year. After years of working to stay relevant in a marketplace dominated by big-box retailers like Best Buy Co. and Wal-Mart Stores Inc., RadioShack is scoring with a wider selection of wireless phones, including Apple Inc.'s iPhone. Lately, the company has re-launched its brand as "The Shack" to get consumers thinking again about a retailer many remember as the place that required shoppers to give up their phone numbers to buy batteries.

RadioShack reported a quarterly profit of \$75.7 million, or 60 cents a share, compared with \$60.1 million, or 48 cents a share, a year earlier. Revenue increased 4.7% to \$1.32 billion as same-store sales rose 6.1% at company-operated stores and kiosks. The increase in comparable same-store sales was driven by higher Sprint Nextel Corp. postpaid wireless sales, the addition of T-Mobile as a third postpaid wireless carrier and higher sales of prepaid wireless handsets and airtime. Gross margin widened to 43.9% from 41.8%, helped by an improved product mix combined with fewer markdowns as a result of more effective promotional productivity, inventory management and higher sell-through of seasonal products. For 2010, the company is planning capital expenditures of between \$100 million and \$120 million, up from \$81 million last year.

1 use information provided by the providers and 18% shall be redistributed
2 PSAPs located in counties with less than 75,000 in population pursuant
3 to rules and regulations established by the 911 coordinating council. Mon-
4 eys which cannot be attributed to a specific PSAP shall be transferred to
5 the LCPA grant fund.

6 (b) Moneys collected from the fee on prepaid wireless service pur-
7 suant to section 5, and amendments thereto, shall be transferred to the
8 LCPA grant fund.

9 (c) The LCPA shall keep accurate accounts of all receipts and dis-
10 bursements of moneys from the 911 fees.

11 (d) Information provided by providers to the LCPA or to the 911
12 coordinating council pursuant to this act will be treated as proprietary
13 records which will be withheld from the public upon request of the party
14 submitting such records.

15 (e) This section shall take effect on and after January 1, 2011.

16 New Sec. 9. (a) The proceeds of the 911 fees imposed pursuant to
17 this act, and any interest earned on revenue derived from such fee, shall
18 be used only for necessary and reasonable costs incurred or to be incurred
19 by PSAPs for: (1) Implementation of 911 services; (2) purchase of 911
20 equipment and upgrades; (3) maintenance and license fees for 911 equip-
21 ment; (4) training of personnel; (5) monthly recurring charges billed by
22 service suppliers; (6) installation, service establishment, and nonrecurring
23 start-up charges billed by the service supplier; (7) charges for capital
24 improvements and equipment or other physical enhancements to the 911
25 system; (8) the acquisition and installation of road signs designed to aid
26 in the delivery of emergency service. Such costs shall not include ex-
27 penditures to lease, construct, expand, acquire, remodel, renovate, repair,
28 furnish or make improvements to buildings or similar facilities. Such costs
29 shall also not include expenditures to purchase subscriber radio
30 equipment.

31 (b) This section shall take effect on and after January 1, 2011.

32 New Sec. 10. (a) There is hereby created a 911 coordinating council
33 which shall monitor the delivery of 911 services, develop strategies for
34 future enhancements to the 911 system, and distribute available grant
35 funds to PSAPs. In as much as possible, the 911 coordinating council shall
36 include individuals with technical expertise regarding 911 systems, inter-
37 net technology, and GIS technology. The coordinating council shall con-
38 sist of 12 members to be appointed by the governor. Two members rep-
39 resenting wireless telecommunications providers; one member
40 representing a local exchange provider to be recommended by the Kansas
41 telecommunications industry association; one member representing a ru-
42 ral telecommunications company recommended by the Kansas rural in-
43 dependent telephone companies; one member representing VoIP pro-

(1)

(2) The coordinating council shall consist of 11 voting members to be appointed by the governor: two members representing information technology personnel from government units; one member representing a law enforcement officer; one member representing a county fire chief; one member recommended by the adjutant general; one member recommended by the Kansas emergency medical services board; two members representing PSAPs located in counties with less than 75,000 in population; two members representing PSAPs located in counties with greater than 75,000 in population; one member representing a PSAP without regard for size.

(3) The coordinating council shall also include non-voting members to be appointed by the governor: one member representing wireless communications providers; one member representing a local exchange provider as recommended by the Kansas telecommunications industry association; one member representing rural telecommunications company recommended by the Kansas rural independent telephone companies; one member representing VoIP providers; one member recommended by the league of Kansas municipalities; one member recommended by the Kansas association of counties; one member recommended by the Kansas geographic information systems policy board; one member recommended by Kan-ed; one member recommended by the Mid-America regional council. The governor shall designate, from among the voting members, one such member as chair of the council.

(h) This section shall take effect on January 1, 2011.

New Sec. 6. (a) Prepaid wireless 911 fees collected by sellers shall be remitted to the department by electronic filing that is consistent with the provisions of chapter 79, article 36 of the Kansas Statutes Annotated. The department shall establish registration and payment procedures for the collection of the prepaid wireless 911 fee.

(b) A seller shall be permitted to retain an administrative fee not to exceed 2% of prepaid wireless 911 fees that are collected by the seller from consumers.

(c) To minimize additional costs to the department, the department may conduct audits of sellers in conjunction with sales and use tax audits. The department is authorized to provide the LCPA with information obtained in such audits if such information indicates that a seller may not be complying with the provisions of this section and section 5, and amendments thereto. The LCPA may request the department to initiate collection or audit procedures on individual sellers if collection efforts by the LCPA are unsuccessful.

(d) The department shall establish procedures by which a seller may document that a sale is not a retail sale, which procedures shall substantially coincide with procedures for documenting sale for resale transactions for chapter 79, article 36 of the Kansas Statutes Annotated.

(e) The department shall transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt for distribution as provided in section 8, and amendments thereto. Prior to such transfer, the department may retain up to 1% of remitted charges for use in administering the provisions of this section.

(f) In addition to retaining 1% of remitted charges for administrative uses, the department may retain up to \$70,000 of remitted funds in fiscal year 2011 only for use in paying for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee.

(g) This section shall take effect on January 1, 2011.

New Sec. 7. (a) The prepaid wireless 911 fee imposed in this act shall be the only 911 funding obligation imposed with respect to prepaid wireless service in this state. No tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency for 911 funding purposes upon any prepaid wireless service provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless service.

(b) This section shall take effect on January 1, 2011.

New Sec. 8. (a) Not later than 30 days after the receipt of moneys from providers pursuant to sections 3 and 4, and amendments thereto, the LCPA shall distribute such moneys to PSAPs based upon the following ratio: 82% shall be distributed to PSAPs based upon place of primary

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1 providers; two members recommended by the league of Kansas
2 municipalities; two members recommended by the Kansas association of
3 counties; one member recommended by the Kansas commission for the
4 deaf and hard of hearing; one member recommended by the Kansas
5 emergency medical services board; and, one member recommended by
6 the adjutant general. The council shall also include two members of the
7 Kansas house of representatives as appointed by the speaker of the house;
8 one member of the Kansas house of representatives as appointed by the
9 minority leader of the house; two members of the Kansas senate as ap-
10 pointed by the senate president and one member of the Kansas senate
11 as appointed by the senate minority leader. The governor shall designate
12 one member as chair of the council.

voting

each voting member

13 (b) The terms of office for members of the 911 coordinating council
14 shall commence January 1, 2011 and shall be subject to reappointment
15 every three years.

No voting member shall serve longer than two three year terms. A voting member appointed as a replacement for another voting member may finish the terms of the predecessor and may serve two additional three year terms.

16 (c) The 911 coordinating council is hereby authorized to adopt rules
17 and regulations necessary for effectuation of the provisions of this act,
18 including, but not limited to, assessing civil penalties.

Any rules and regulations necessary to effectuate this act, shall be promulgated by June 30, 2010.

19 (d) No civil penalty shall be imposed pursuant to this section except
20 upon the written order of the 911 coordinating council. Such order shall
21 state the violation, the penalty to be imposed and the right of such pro-
22 vider to appeal the penalty in accordance with the provisions of the Kansas
23 administrative procedure act.

24 (e) Any civil penalty recovered pursuant to this section shall be de-
25 posited with the LCPA grant fund.

26 (f) So long as the provider is working in good faith to comply with
27 the provisions of this act, no civil penalty shall be imposed prior to January
28 1, 2012.

29 (g) The LCPA shall provide staff support to the 911 coordinating
30 council. Members of the 911 coordinating council may receive reimburse-
31 ment for meals and travel expenses, but shall serve without other com-
32 pensation. All expenses related to the 911 coordinating council shall be
33 paid from the LCPA grant fund.

34 (h) This section shall take effect on and after January 1, 2011.

35 New Sec. 11. (a) PSAPs, the LCPA, providers and sellers shall not
36 be liable for any form of damages resulting directly or indirectly from the
37 performance of installing, maintaining or providing 911 service.

38 (b) This section shall be in force and effective on and after January
39 1, 2011.

40 New Sec. 12. (a) The receipts and disbursements of the LCPA shall
41 be audited yearly by a licensed municipal accountant or certified public
42 accountant.

43 (b) The LCPA may require an audit of any provider's books and re-

ords concerning the collection and remittance of fees pursuant to this act. The cost of any such audit shall be paid from the LCPA grant fund.

3 (c) On or before December 31, 2011, and at least once every three
4 years thereafter, the division of post audit shall conduct an audit of the
5 911 system to determine: (1) Whether the moneys received by PSAPs
6 pursuant to this act are being used appropriately; (2) whether the amount
7 of moneys collected pursuant to this act is adequate; and (3) the status of
8 911 service implementation. The auditor to conduct such audit shall be
9 specified in accordance with K.S.A. 46-1122, and amendments thereto.
10 The post auditor shall compute the reasonably anticipated cost of provid-
11 ing audits pursuant to this subsection, subject to review and approval by
12 the contract audit committee established by K.S.A. 46-1120, and amend-
13 ments thereto. Upon such approval, the LCPA grant fund shall reimburse
14 the division of post audit for the amount approved by the contract audit
15 committee. The audit report shall be submitted to the 911 coordinating
16 council, the LCPA, the house energy and utilities committee and the
17 senate utilities committee.

18 (d) The legislature shall review this act at the regular 2015 legislative
19 session and at the regular legislative session every five years thereafter.

20 (e) This section shall take effect on and after January 1, 2011.

21 New Sec. 13. (a) Nothing in this act shall be construed to limit the
22 ability of a provider from recovering directly from the provider's custom-
23 ers its costs associated with designing, developing, deploying and main-
24 taining 911 service and its cost of collection and administration of the
25 fees imposed by this act, whether such costs are itemized on the cus-
26 tomer's bill as a surcharge or by any other lawful method.

27 (b) This section shall take effect on and after January 1, 2011.

28 New Sec. 14. (a) The LCPA shall establish and maintain a grant fund
29 for PSAPs, which shall not be part of the state treasury. Such money and
30 any interest earned on such money may only be expended for the follow-
31 ing purposes: projects involving the development of next generation 911
32 services; costs associated with PSAP consolidation or cost-sharing pro-
33 jects; expenses related to the 911 coordinating council; the costs of audits
34 conducted pursuant to section 12 on its effective date, and amendments
35 thereto; and other purposes as defined in section 9 on its effective date,
36 and amendments thereto.

37 (b) The 911 coordinating council shall develop criteria for grant ap-
38 plicants and make the final determination as to the distribution of grant
39 funds.

40 New Sec. 15. On the effective date of this act, all funds remaining
41 in the wireless enhanced 911 grant fund established pursuant to K.S.A.
42 12-5323, and amendments thereto, shall be transferred to the LCPA. Any
43 funds received on or after the effective date of this act and prior to January

2-4