



ALAN WILSON
ATTORNEY GENERAL

October 10, 2011

The Honorable Leon Joe Howard
SC House of Representatives
District No. 76
2425 Barhamville Road
Columbia, SC 29204

Dear Representative Howard:

We received your letter requesting an opinion of this Office concerning E911 fees. As a way of background, you provided the following information:

South Carolina statutes impose E911 fees on both billed subscribers of wireless service under Section 23-47-50 and on consumers of prepaid wireless service purchased in a retail transaction under Section 23-47-68. SafeLink Wireless service is provided completely free to qualifying low-income citizens of South Carolina and is subsidized in its entirety by the federal Universal Service Fund. Citizens submit applications directly to SafeLink Wireless and if they are duly qualified, they receive the service free of charge. Accordingly, qualifying recipients of SafeLink Wireless service are neither billed subscribers, nor do they purchase prepaid wireless service in a retail transaction.

An opinion from the Tennessee Attorney General on the issue of whether that state's emergency telephone service charge imposed under Tenn. Code Ann. § 7-86-108(a)(1) applied to participants in the SafeLink program is instructive. See, Opinion 09-87 (May 18, 2009). Tennessee's emergency telephone service charge statute is functionally identical to South Carolina's E911 statute, in that fees are imposed on wireless subscribers billed retrospectively as well as on prepaid customers. The Tennessee Attorney General found it "peculiar for persons who are supplied a free phone to be subjected to a monthly service charge." He concluded that liability for the E911 charge is tied to the payment for the service and is implicitly limited to those who must make such payments. The Tennessee statute, just like the South Carolina E911 statute, provides no mechanism for payment of the E911 charge by someone who is neither charged nor billed for their wireless service.

You specifically requested that our Office address the question of "whether low-income recipients of SafeLink Wireless service are subject to E911 fees in South Carolina."

Law/Analysis

As mentioned above, S.C. Code § 23-47-50 addresses subscriber billing, explaining that the statute imposes an E911 fee on billed subscribers of wireless service. The statute reads as follows:

< Section effective July 1, 2011. See, also, section effective until July 1, 2011 . >

- (A) The maximum 911 charge that a subscriber may be billed for an individual local exchange access facility must be in accordance with the following scale:
Tier I--1,000 to 40,999 access lines--\$1.50 for start-up costs, \$1.00 for on-going costs.
Tier II--41,000 to 99,999 access lines--\$1.00 for start-up costs, \$.60 for on-going costs.
Tier III--more than 100,000 access lines--\$.75 for start-up costs, \$.50 for on-going costs.
Start-up includes a combination of recurring and nonrecurring costs and up to a maximum of fifty local exchange lines an account.
- (B) **Every local telephone subscriber served by the 911 system is liable for the 911 charge imposed.** A service supplier has no obligation to take any legal action to enforce the collection of the 911 charges for which a subscriber is billed. However, a collection action may be initiated by the local government that imposed the charges. Reasonable costs and attorney's fees associated with that collection action may be awarded to the local government collecting the 911 charges.
- (C) The local government subscribing to 911 service is ultimately responsible to the service supplier for all 911 installation, service, equipment, operation, and maintenance charges owed to the service supplier. Upon request by the local government, the service supplier shall provide a list of amounts uncollected along with the names and addresses of telephone subscribers who have identified themselves as refusing to pay the 911 charges. Taxes due on a 911 system service provided by the service supplier must be billed to the local government subscribing to the service. State and local taxes do not apply to the 911 charge billed to the telephone subscriber.
- (D) Service suppliers that collect 911 charges on behalf of the local government are entitled to retain two percent of the gross 911 charges remitted to the local government as an administrative fee. The service supplier shall remit the remainder of charges collected during the month to the fiscal offices of the local government. The 911 charges collected by the service supplier must be remitted to the local government within forty-five days of the end of the month during which such charges were collected and must be deposited by and accounted for by the local government in a separate restricted fund known as the "emergency telephone system fund" maintained by the local government. The local government may invest the money in the fund in the same manner that other monies of the local government are invested and income earned from the investment must be deposited into the fund. Monies from this fund are totally restricted to use in the 911 system.

- (E) The “emergency telephone system” fund must be included in the annual audit of the local government in accordance with generally accepted auditing standards.
- (F) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier. A monthly CMRS 911 charge is levied for each CMRS connection for which there is a mobile identification number containing an area code assigned to South Carolina by the North American Numbering Plan Administrator. The amount of the levy must be approved annually by the board at a level not to exceed the average monthly telephone (local exchange access facility) 911 charges paid in South Carolina. The board and the committee may calculate the CMRS 911 charge based upon a review of one or more months during the year preceding the calculation of telephone (local exchange access facility) charges paid in South Carolina. The CMRS 911 charge must have uniform application and must be imposed throughout the State; however, trunks or service lines used to supply service to CMRS providers shall not be subject to a CMRS 911 levy. On or before the twentieth day of the second month succeeding each monthly collection of the CMRS 911 charges, every CMRS provider shall file with the Department of Revenue a return under oath, in a form prescribed by the department, showing the total amount of fees collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall place the collected fees on deposit with the State Treasurer. The funds collected pursuant to this subsection are not general fund revenue of the State and must be kept by the State Treasurer in a fund separate and apart from the general fund to be expended as provided in Section 23-47-65.
- (G)
 - (1) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier.
 - (2) **A 911 charge**, including a CMRS 911 charge, **shall be added to the billing by the service supplier to the service *subscriber*** and may be stated separately.
 - (3) A billed subscriber shall be liable for any 911 charge, including a CMRS 911 charge, imposed under this chapter until it has been paid to the service supplier.

S.C. Code § 23-47-50 (emphasis added).

Also, S.C. Code § 23-47-68 explains that the statute imposes E911 fees on consumers of prepaid wireless service purchased in a retail transaction:

- (A) There is hereby imposed a prepaid wireless 911 charge in the amount equal to the average 911 charges calculated pursuant to Section 23-47-50(F).
- (B) **A prepaid wireless seller must collect the prepaid wireless 911 charge** established in subsection (A) **from a *prepaid wireless consumer*** with respect to each prepaid

- wireless retail transaction occurring in this State. The amount of the prepaid wireless 911 charge shall be either: separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller or otherwise disclosed to the prepaid wireless consumer.
- (C) For the purposes of this section, a prepaid wireless retail transaction must be sourced as provided in Section 12-36-910(B)(5)(b).
 - (D) The prepaid wireless 911 charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or of any prepaid wireless provider. However, the prepaid wireless seller is liable to remit to the department all prepaid wireless 911 charges that the prepaid wireless seller collects from prepaid wireless consumers as provided in this section.
 - (E) The amount of the prepaid wireless 911 charge collected by a prepaid wireless seller from a prepaid wireless consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the prepaid wireless consumer by the prepaid wireless seller, shall not be included in the base for measuring any tax, fee, prepaid wireless 911 charge, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount shall not be considered revenue of the prepaid wireless seller.
 - (F) A prepaid wireless seller is entitled to retain three percent of the gross prepaid wireless 911 charges remitted to the department as an administrative fee. A prepaid wireless seller must remit the remainder of the prepaid wireless 911 charges collected to the department on a monthly, quarterly, or annual basis.
 - (G) The audit and appeal procedures applicable under Chapter 36, Title 12 shall apply to the prepaid wireless 911 charge.
 - (H) The department shall establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under Section 12-36-950.
 - (I) The department shall transfer all remitted prepaid wireless 911 charges to the State Treasurer in the same manner as provided in Section 23-47-50(F). These funds are not general fund revenue of the State and must be kept by the State Treasurer in a fund separate and apart from the general fund to be expended as provided in Section 23-47-65.

S.C. Code § 23-47-68 (emphasis added).

The Tennessee Attorney General issued an opinion dated May 18, 2009 which specifically addressed the SafeLink Wireless service which is a federally-funded program:

[SafeLink Wireless] provides free mobile phones to eligible low-income households. The provided phones permit unlimited access to emergency (911) services, over an hour of air time each month, and other features.

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Op. Tenn. Atty. Gen., May 18, 2009. Similar to our statute, S.C. Code § 23-47-50, Tenn. Code Ann. § 7-86-108(a)(1)(B) provides that “[e]ffective April 1, 1999, commercial mobile radio service (CMRS) **subscribers** and users shall be subject to the emergency telephone service charge, a flat statewide rate, not to exceed the business classification rate established in subdivision (a)(2)(A).” Tenn. Code Ann. § 7-86-108(a)(1)(B) (emphasis added). Also, Tenn. Code Ann. S.C. Code § 7-86-108(a)(1)(B)(iv) is comparable to our S.C. Code § 23-47-68, indicating that **prepaid customers** shall be required to pay a 911 charge. Tenn. Code Ann. S.C. Code § 7-86-108(a)(1)(B)(iv) (emphasis added).

While SafeLink program participants may use the emergency telephone service, such participants would not be considered “subscribers” or “prepaid customers” within the context of S.C. Code § 23-47-50 or S.C. Code § 23-47-68. Both S.C. Code § 23-47-50 and S.C. Code § 23-47-68 indicate that the 911 charge is associated with the subscribers or prepaid wireless customers, not persons to whom a free phone is supplied.

Conclusion

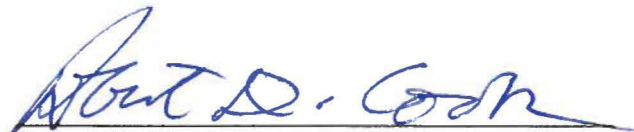
Similar to the findings of the Tennessee Attorney General, this Office finds that low-income recipients of SafeLink Wireless service are not subject to E911 fees in South Carolina. We agree that it would be “peculiar for persons who are supplied a free phone to be subjected to a monthly service charge.” Op. Tenn. Atty. Gen., May 18, 2009. Since these individuals are not billed or charged for the phone service like subscribers of wireless service or consumers of prepaid wireless service purchased in a retail transaction, they do not fall under the provisions of S.C. Code § 23-47-50 or S.C. Code § 23-47-68. Therefore, the low-income recipients at issue should not be charged an E911 fee.

Very truly yours,



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Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General