

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of

Virgin Mobile USA, L.P.

Application for Limited Designation as an

Eligible Telecommunications Carrier.

Docket No. 14-0475

VIRGIN MOBILE USA, L.P.'S
OPENING BRIEF

EXHIBIT 1

January 14, 2015

Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as [Public Acts](#) soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the [Guide](#).

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

**LOCAL GOVERNMENT
(50 ILCS 753/) Prepaid Wireless 9-1-1 Surcharge Act.**

(50 ILCS 753/1)

Sec. 1. Short title. This Act may be cited as the Prepaid Wireless 9-1-1 Surcharge Act.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/5)

Sec. 5. Purpose. The General Assembly finds and declares that maintaining effective and efficient 9-1-1 systems across the State benefits all citizens. The fees imposed upon the consumers of telecommunication services that have the ability to dial 9-1-1 are an important funding mechanism to assist the State and units of local government with the deployment of enhanced 9-1-1 services to the citizens of this State.

Prepaid wireless telecommunication services are an important segment of the telecommunications industry and have proven particularly attractive to low-income and low-volume consumers. Unlike traditional telecommunication services, prepaid wireless telecommunications services are not sold or used pursuant to term contracts or subscriptions and monthly bills are not sent to consumers by prepaid wireless telecommunication service providers or retail vendors.

Prepaid wireless consumers have the same access to emergency 9-1-1 services from their wireless devices as wireless consumers on term contracts. Prepaid wireless consumers benefit from the ability to access the 9-1-1 system by dialing 9-1-1.

Consumers purchase prepaid wireless telecommunication services at a wide variety of general retail locations and other distribution channels. Such purchases are made on a cash-and-carry or pay-as-you-go basis from retailers.

It is the intent of the General Assembly to:

(1) ensure equitable contributions to the funding of 9-1-1 systems from consumers of prepaid wireless telecommunication services;

(2) collect 9-1-1 surcharges from purchasers of prepaid wireless telecommunications services at the point of sale;

(3) impose the collection and remittance obligation for 9-1-1 surcharges on sellers of prepaid wireless telecommunications services;

(4) impose a statewide administered 9-1-1 surcharge on point of sale transactions in order to minimize administrative costs on retailers.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/10)

Sec. 10. Definitions. In this Act:

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Department" means the Department of Revenue.

"Prepaid wireless E911 surcharge" means the charge that is required to be collected by a seller from a consumer in the amount established under Section 15 of this Act.

"Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 9-1-1 to access the 9-1-1 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the amount declines with use in a known amount.

"Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

"Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. 20.3.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/15)

Sec. 15. Prepaid wireless 9-1-1 surcharge.

(a) There is hereby imposed on consumers a prepaid wireless 9-1-1 surcharge of 1.5% per retail transaction. The surcharge authorized by this subsection (a) does not apply in a home rule municipality having a population in excess of 500,000. The amount of the surcharge may be reduced or increased pursuant to subsection (e).

(a-5) On or after the effective date of this amendatory Act of the 98th General Assembly and until July 1, 2015, a home rule municipality having a population in excess of 500,000 on the effective date of this amendatory Act may impose a prepaid wireless 9-1-1 surcharge not to exceed 9% per retail transaction sourced to that jurisdiction and collected and remitted in accordance with the provisions of subsection (b-5) of this Section. On or after July 1, 2015, a home rule municipality having a population in excess of 500,000 on the effective date of this Act may only impose a prepaid wireless 9-1-1 surcharge not to exceed 7% per retail transaction sourced to that jurisdiction and collected and remitted in accordance with the provisions of subsection (b-5).

(b) The prepaid wireless 9-1-1 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this State and shall be remitted to the Department by the seller as provided in this Act. The amount of the prepaid wireless 9-1-1 surcharge shall be separately stated as a distinct item apart from the charge for the prepaid wireless telecommunications service on an invoice, receipt, or other similar document that is provided to the consumer by the seller or shall be otherwise disclosed to the consumer. If the seller does not separately state the surcharge as a distinct item to the consumer as provided in this Section, then the seller shall maintain books and records

as required by this Act which clearly identify the amount of the 9-1-1 surcharge for retail transactions.

For purposes of this subsection (b), a retail transaction occurs in this State if (i) the retail transaction is made in person by a consumer at the seller's business location and the business is located within the State; (ii) the seller is a provider and sells prepaid wireless telecommunications service to a consumer located in Illinois; (iii) the retail transaction is treated as occurring in this State for purposes of the Retailers' Occupation Tax Act; or (iv) a seller that is included within the definition of a "retailer maintaining a place of business in this State" under Section 2 of the Use Tax Act makes a sale of prepaid wireless telecommunications service to a consumer located in Illinois. In the case of a retail transaction which does not occur in person at a seller's business location, if a consumer uses a credit card to purchase prepaid wireless telecommunications service on-line or over the telephone, and no product is shipped to the consumer, the transaction occurs in this State if the billing address for the consumer's credit card is in this State.

(b-5) The prepaid wireless 9-1-1 surcharge imposed under subsection (a-5) of this Section shall be collected by the seller from the consumer with respect to each retail transaction occurring in the municipality imposing the surcharge. The amount of the prepaid wireless 9-1-1 surcharge shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or shall be otherwise disclosed to the consumer. If the seller does not separately state the surcharge as a distinct item to the consumer as provided in this Section, then the seller shall maintain books and records as required by this Act which clearly identify the amount of the 9-1-1 surcharge for retail transactions.

For purposes of this subsection (b-5), a retail transaction occurs in the municipality if (i) the retail transaction is made in person by a consumer at the seller's business location and the business is located within the municipality; (ii) the seller is a provider and sells prepaid wireless telecommunications service to a consumer located in the municipality; (iii) the retail transaction is treated as occurring in the municipality for purposes of the Retailers' Occupation Tax Act; or (iv) a seller that is included within the definition of a "retailer maintaining a place of business in this State" under Section 2 of the Use Tax Act makes a sale of prepaid wireless telecommunications service to a consumer located in the municipality. In the case of a retail transaction which does not occur in person at a seller's business location, if a consumer uses a credit card to purchase prepaid wireless telecommunications service on-line or over the telephone, and no product is shipped to the consumer, the transaction occurs in the municipality if the billing address for the consumer's credit card is in the municipality.

(c) The prepaid wireless 9-1-1 surcharge is imposed on the consumer and not on any provider. The seller shall be liable to remit all prepaid wireless 9-1-1 surcharges that the seller collects from consumers as provided in Section 20, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided to the

consumer by the seller. The surcharge collected or deemed collected by a seller shall constitute a debt owed by the seller to this State, and any such surcharge actually collected shall be held in trust for the benefit of the Department.

For purposes of this subsection (c), the surcharge shall not be imposed or collected from entities that have an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act.

(d) The amount of the prepaid wireless 9-1-1 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency.

(e) The prepaid wireless 9-1-1 charge imposed under subsection (a) of this Section shall be proportionately increased or reduced, as applicable, upon any change to the surcharge imposed under Section 17 of the Wireless Emergency Telephone Safety Act. The adjusted rate shall be determined by dividing the amount of the surcharge imposed under Section 17 of the Wireless Emergency Telephone Safety Act by \$50. Such increase or reduction shall be effective on the first day of the first calendar month to occur at least 60 days after the enactment of the change to the surcharge imposed under Section 17 of the Wireless Emergency Telephone Safety Act. The Department shall provide not less than 30 days' notice of an increase or reduction in the amount of the surcharge on the Department's website.

(e-5) Any changes in the rate of the surcharge imposed by a municipality under the authority granted in subsection (a-5) of this Section shall be effective on the first day of the first calendar month to occur at least 60 days after the enactment of the change. The Department shall provide not less than 30 days' notice of the increase or reduction in the rate of such surcharge on the Department's website.

(f) When prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, then the percentage specified in subsection (a) or (a-5) of this Section 15 shall be applied to the entire non-itemized price unless the seller elects to apply the percentage to (i) the dollar amount of the prepaid wireless telecommunications service if that dollar amount is disclosed to the consumer or (ii) the portion of the price that is attributable to the prepaid wireless telecommunications service if the retailer can identify that portion by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, books and records that are kept for non-tax purposes. However, if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the percentage specified in subsection (a) or (a-5) of this Section 15 to such transaction. For purposes of this subsection, an amount of service denominated as 10 minutes or less or \$5 or less is considered minimal.

(Source: P.A. 97-463, eff. 1-1-12; 97-748, eff. 7-6-12; 98-634, eff. 6-6-14.)

(50 ILCS 753/20)

Sec. 20. Administration of prepaid wireless 9-1-1 surcharge.

(a) In the administration and enforcement of this Act, the provisions of Sections 2a, 2b, 2c, 3, 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 12 of the Retailers' Occupation Tax Act that are not inconsistent with this Act, and Section 3-7 of the Uniform Penalty and Interest Act shall apply, as far as practicable, to the subject matter of this Act to the same extent as if those provisions were included in this Act. References to "taxes" in these incorporated Sections shall be construed to apply to the administration, payment, and remittance of all surcharges under this Act. The Department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the Retailers' Occupation Tax Act.

(b) For the first 12 months after the effective date of this Act, a seller shall be permitted to deduct and retain 5% of prepaid wireless 9-1-1 surcharges that are collected by the seller from consumers and that are remitted and timely filed with the Department. After the first 12 months, a seller shall be permitted to deduct and retain 3% of prepaid wireless 9-1-1 surcharges that are collected by the seller from consumers and that are remitted and timely filed with the Department.

(c) Other than the amounts for deposit into the Municipal Wireless Service Emergency Fund, the Department shall pay to the State Treasurer all prepaid wireless E911 charges and penalties collected under this Act for deposit into the Wireless Service Emergency Fund. On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the amount available to the Illinois Commerce Commission for distribution out of the Wireless Service Emergency Fund. The amount certified shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body. The amount paid to the Wireless Service Emergency Fund shall not include any amount equal to the amount of refunds made during the second preceding calendar month by the Department to retailers under this Act or any amount that the Department determines is necessary to offset any amounts which were payable to a different taxing body but were erroneously paid to the Wireless Service Emergency Fund. The Illinois Commerce Commission shall distribute the funds in the same proportion as they are distributed under the Wireless Emergency Telephone Safety Act and the funds may only be used in accordance with the provisions of the Wireless Emergency Telephone Safety Act. The Department may deduct an amount, not to exceed 3% during the first year following the effective date of this Act and not to exceed 2% during every year thereafter of remitted charges, to be transferred into the Tax Compliance and Administration Fund to reimburse the Department for its direct costs of administering the collection and remittance of prepaid wireless 9-1-1 surcharges.

(d) The Department shall administer the collection of all 9-1-1 surcharges and may adopt and enforce reasonable rules relating to the administration and enforcement of the

provisions of this Act as may be deemed expedient. The Department shall require all surcharges collected under this Act to be reported on existing forms or combined forms, including, but not limited to, Form ST-1. Any overpayments received by the Department for liabilities reported on existing or combined returns shall be applied as an overpayment of retailers' occupation tax, use tax, service occupation tax, or service use tax liability.

(e) If a home rule municipality having a population in excess of 500,000 as of the effective date of this amendatory Act of the 97th General Assembly imposes an E911 surcharge under subsection (a-5) of Section 15 of this Act, then the Department shall pay to the State Treasurer all prepaid wireless E911 charges, penalties, and interest collected for deposit into the Municipal Wireless Service Emergency Fund. All deposits into the Municipal Wireless Service Emergency Fund shall be held by the State Treasurer as ex officio custodian apart from all public moneys or funds of this State. Any interest attributable to moneys in the Fund must be deposited into the Fund. Moneys in the Municipal Wireless Service Emergency Fund are not subject to appropriation. On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the amount available for disbursement to the home rule municipality out of the Municipal Wireless Service Emergency Fund. The amount to be paid to the Municipal Wireless Service Emergency Fund shall be the amount (not including credit memoranda) collected during the second preceding calendar month by the Department plus an amount the Department determines is necessary to offset any amounts which were erroneously paid to a different taxing body. The amount paid to the Municipal Wireless Service Emergency Fund shall not include any amount equal to the amount of refunds made during the second preceding calendar month by the Department to retailers under this Act or any amount that the Department determines is necessary to offset any amounts which were payable to a different taxing body but were erroneously paid to the Municipal Wireless Service Emergency Fund. Within 10 days after receipt by the Comptroller of the certification provided for in this subsection, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with the directions in the certification. The Department may deduct an amount, not to exceed 3% during the first year following the effective date of this amendatory Act of the 97th General Assembly and not to exceed 2% during every year thereafter of remitted charges, to be transferred into the Tax Compliance and Administration Fund to reimburse the Department for its direct costs of administering the collection and remittance of prepaid wireless 9-1-1 surcharges.

(Source: P.A. 97-463, eff. 1-1-12; 97-748, eff. 7-6-12.)

(50 ILCS 753/25)

Sec. 25. Liability of sellers and providers. The provisions of Section 50 of the Wireless Emergency Telephone Safety Act shall apply to sellers and providers of prepaid wireless telecommunications service.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/27)

Sec. 27. Home rule. A home rule unit may not impose a separate surcharge on wireless 9-1-1 service in addition to the surcharge imposed on wireless 9-1-1 service under this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/30)

Sec. 30. Exclusivity of prepaid wireless 9-1-1 surcharge. The prepaid wireless 9-1-1 surcharge imposed by this Act shall be the only 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications 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 9-1-1 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/90)

Sec. 90. (Amendatory provisions; text omitted).

(Source: P.A. 97-463, eff. 8-19-11; text omitted.)

(50 ILCS 753/95)

Sec. 95. (Amendatory provisions; text omitted).

(Source: P.A. 97-463, eff. 1-1-12; text omitted.)

(50 ILCS 753/97)

Sec. 97. (Amendatory provisions; text omitted).

(Source: P.A. 97-463, eff. 1-1-12; text omitted.)

(50 ILCS 753/997)

Sec. 997. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 97-463, eff. 1-1-12.)

(50 ILCS 753/999)

Sec. 999. Effective date. This Act takes effect January 1, 2012, except that this Section and Section 90 shall take effect upon becoming law.

(Source: P.A. 97-463, eff. 8-19-11.)