

112TH CONGRESS
2D SESSION

H. R. 3788

To ensure that State and local E911 fees, taxes, and surcharges are imposed in a fair and equitable manner with respect to prepaid mobile services.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2012

Mr. DAVIS of Illinois introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure that State and local E911 fees, taxes, and surcharges are imposed in a fair and equitable manner with respect to prepaid mobile services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “E911 Surcharge Fair-
5 ness Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Wireless E911 was established by Congress
2 to provide for vital emergency communications sys-
3 tems for the benefit of end-users of mobile services
4 and the public, and funding methods and surcharges
5 are intended to be the responsibility of end-users
6 and fair, equitable, and competitively neutral among
7 all wireless providers and sellers of wireless service.

8 (2) Wireless services have traditionally been of-
9 fered on a monthly billed or postpaid basis, but in
10 recent years the offering of wireless services on a
11 “pay as you go” or prepaid basis, has grown to be
12 a significant share of the wireless marketplace and
13 this trend is continuing.

14 (3) Wireless E911 has been typically funded in
15 the postpaid model by a uniform monthly surcharge
16 on customer bills, but prepaid mobile services are
17 purchased by customers at retail on a “pay-as-you-
18 go” basis, and there are no bills.

19 (4) States have not adopted an effective uni-
20 form approach to collecting E911 surcharges from
21 retail “pay-as-you-go” customers of mobile services,
22 as has existed with postpaid mobile services, and so-
23 lutions have ranged from imposing and collecting no
24 surcharges from prepaid customers, to shifting the
25 burden to pay the surcharge to providers and sellers

1 of prepaid mobile services. The latter solution has
2 resulted in unfair and inequitable treatment of the
3 prepaid mobile service business model and reduced
4 funding for E911.

5 (5) Virtually all States require postpaid mobile
6 service providers to simply put the State's E911
7 charge on their monthly bills, and such providers are
8 statutorily exonerated from any failure to collect the
9 E911 charge from such customers. Those same
10 States require prepaid service providers and sellers
11 to serve as a financial guarantor of collection from
12 all prepaid mobile service customers, notwith-
13 standing the fact that there is no feasible method of
14 collection for such providers and sellers for most
15 customers.

16 (6) There needs to be a uniform feasible collec-
17 tion method for prepaid mobile service customers to
18 contribute to States' E911 funds just as has been
19 provided for postpaid customers via their monthly
20 bills.

21 (7) Congress, in House Report No. 110-442
22 and Senate Report No. 110-142, encouraged State
23 and local governments to apply E911 fees equitably
24 to communications services and to accommodate the
25 prepaid mobile service business model.

1 **SEC. 3. E911 SURCHARGES.**

2 (a) IN GENERAL.—Beginning on the date of enact-
3 ment of this Act, no State or local jurisdiction shall impose
4 a new unfair or inequitable E911 fee, tax, or surcharge
5 (“E911 fee”) with respect to any prepaid mobile service,
6 prepaid mobile service provider, or prepaid mobile service
7 customer, nor shall it enforce a new or existing E911 fee
8 in an unfair or inequitable manner.

9 (b) DEFINITIONS.—In this Act:

10 (1) E911 FEE.—The term “E911 fee” means
11 any 911 or E911 fee, tax, or surcharge specifically
12 imposed or designated by a State or local jurisdic-
13 tion for the support of 911 or E911 communications
14 systems and related public safety purposes, whether
15 or not actually appropriated and expended for such
16 purposes.

17 (2) MOBILE SERVICE.—The term “mobile serv-
18 ice” means commercial mobile radio service, as such
19 term is defined in section 20.3 of title 47, Code of
20 Federal Regulations, as in effect on the date of en-
21 actment of this Act, or any other service that is pri-
22 marily intended for receipt on, transmission from, or
23 use with a mobile telephone or other mobile device,
24 including but not limited to the receipt of a digital
25 good.

1 (3) PREPAID MOBILE SERVICE.—The term
2 “prepaid mobile service” means mobile service which
3 is paid for in advance, is sold in predetermined units
4 or dollars, or for use within a predetermined period
5 of time, and without the issuance of a monthly or
6 other periodic bill.

7 (4) POSTPAID MOBILE SERVICE.—The term
8 “postpaid mobile service” means a mobile service
9 which is paid for in arrears pursuant to monthly or
10 other periodic billing arrangements.

11 (5) NEW UNFAIR OR INEQUITABLE E911 FEE.—
12 The term “new unfair or inequitable E911 fee”
13 means—

14 (A) any E911 fee that cannot be collected
15 from end-users who are the intended payors of
16 the E911 fees under the existing wireless busi-
17 ness model of the prepaid mobile service pro-
18 vider; or

19 (B) any E911 fee that is enforced in a
20 manner that imposes strict liability on a pre-
21 paid mobile service provider for its inability to
22 collect such E911 fee as prescribed in subpara-
23 graph (A).

24 (6) UNFAIR OR INEQUITABLE MANNER.—The
25 term “unfair or inequitable manner” means—

1 (A) the imposition against a prepaid mo-
2 bile service provider or seller of any E911 fee
3 that the prepaid mobile service provider cannot
4 collect from its end-user customers who are the
5 intended payors of the fees under its existing
6 wireless business model;

7 (B) the enforcement of an E911 fee
8 against a prepaid mobile service provider in a
9 manner that creates strict liability for the pre-
10 paid mobile service provider or seller for its in-
11 ability to collect as prescribed in subparagraph
12 (A); or

13 (C) the imposition of a E911 fee in a man-
14 ner that results in the E911 fee being subject
15 to other State or local taxes when such other
16 State or local taxes are not equally imposed on
17 the E911 fees paid by postpaid mobile service
18 customers.

19 (7) PROVIDER.—The term “provider” means a
20 telecommunications carrier as defined in section 1 of
21 the Communications Act of 1934 (47 U.S.C.
22 153(44)) that offers mobile service.

○