

560 CMR 3.00: ESTABLISHING AN EQUITABLE AND REASONABLE METHOD FOR THE REMITTANCE AND COLLECTION OF A SURCHARGE ON PREPAID WIRELESS TELEPHONE SERVICE

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3.01: Purpose

560 CMR 3.00 establishes an equitable and reasonable method for the remittance and collection of a surcharge on prepaid wireless telephone service.

3.02: Scope and Applicability

560 CMR 3.00 applies to all prepaid wireless telephone service capable of accessing and utilizing enhanced 911 service on or after July 1, 2009.

3.03: Definitions

As used throughout 560 CMR 3.00, the following terms shall have the following meaning:

Average Revenue per User means total revenue divided by the number of subscribers, end users, or customers.

Automatic Location Identification means an enhanced 911 service capability that allows for the automatic display of information relating to the geographical location of the communication device used to place a 911 call.

Automatic Number Identification means an enhanced 911 service capability that allows for the automatic display of a telephone number used to place or route a 911 call.

Customer means a subscriber or end user.

Department means the state 911 department.

End User means a person or entity who uses communication services.

Enhanced 911 Fund means the fund established under M.G.L. c. 10, § 35JJ.

Enhanced 911 Service means a service consisting of communication network, database and equipment features provided for subscribers or end users of communication services enabling such subscribers or end users to reach a PSAP by dialing the digits 911, or by other means approved by the department, that directs calls to appropriate PSAPs based on selective routing and provides the capability for automatic number identification and automatic location identification.

FCC means the Federal Communications Commission.

National Average Revenue per User means the average monthly revenue per user in all states where the prepaid wireless telephone service provider operates.

3.03: continued

Prepaid Wireless Telephone Service means wireless service that is activated in advance by payment for a finite dollar amount of service or minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service or minutes, unless the customer makes additional payments.

Prepaid Wireless Telephone Service Provider means an entity providing prepaid wireless telephone service at retail or wholesale.

Public Safety Answering Point or PSAP means a facility assigned the responsibility of receiving 911 calls and, as appropriate, directly dispatching emergency response services or transferring or relaying emergency 911 calls to other public or private safety agencies or other PSAPs.

Retail means sales by a prepaid wireless telephone service provider directly to the subscriber, end user, or customer or to a non-prepaid wireless telephone service provider through a voluntary contractual relationship in which the service is sold directly to the subscriber, end user, or customer by the non-prepaid wireless telephone service provider on behalf of the prepaid wireless telephone service provider.

Subscriber means a person or entity who uses communication services.

Universal Service Fund means a mechanism created by the FCC or a state to advance universal telecommunications service.

Wholesale means sales by a prepaid wireless telephone service provider to a non-prepaid wireless telephone service provider that sells service on behalf of the prepaid wireless telephone service provider.

3.04: Surcharge

On or after July 1, 2009, there shall be imposed on each subscriber, end user, or customer of prepaid wireless telephone services whose communications services are capable of accessing and utilizing an enhanced 911 system, a surcharge for expenses associated with services provided under M.G.L. c. 6A, §§ 18A through 18J, and M.G.L. c. 166, §§ 14A and 15E, in the amount of .75 cents per month through June 30, 2015; \$1.25 per month commencing July 1, 2015 through July 1, 2016; \$1.00 per month effective July 1, 2016; \$1.50 per month effective January 1, 2019, and \$1.00 per month effective January 1, 2029.

The surcharge shall apply to any and all prepaid wireless telephone services or minutes, whether such services or minutes are included with the initial purchase or receipt of a wireless telephone or other device or are recorded on a wireless telephone or other device by the purchase of a calling card, through an internet transaction, by means of a wireless communication directly to the subscriber, end user, or customer's wireless telephone or other device, by means of services supported by a universal service fund, or by any other means.

The surcharge shall apply to all sales by a prepaid wireless telephone service provider at retail or wholesale and shall include the resale of services by a prepaid wireless telephone service provider who purchases telecommunications services from another telecommunications service provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into a wireless telecommunications service.

The surcharge shall not be subject to sales or use tax.

The surcharge shall be subject to adjustment in accordance with M.G.L. c. 6A, § 18H.

3.05: Calculation and Remittance of the Surcharge

Each prepaid wireless telephone service provider shall:

- (1) collect the surcharge on a monthly basis from each subscriber, end user, or customer; or
- (2) calculate and remit the total surcharge owed for the month by:
  - (a) dividing its total Massachusetts revenue for prepaid wireless telephone service for the month by its national average revenue per user for prepaid wireless telephone service; and
  - (b) multiplying the result by .75 cents through June 30, 2015; multiplying the result by \$1.25 through June 30, 2016; multiplying the result by \$1.00 commencing July 1, 2016; multiplying the results by \$1.50 commencing January 1, 2019, and multiplying the result by \$1.00 commencing January 1, 2029.

3.05: continued

The total Massachusetts revenue shall include universal service fund reimbursements or any payments received by a prepaid wireless telephone service provider in exchange for delivery of services to the subscriber, end user, or customer.

Regardless of the method of collection, each prepaid wireless telephone service provider shall remit the surcharge on a monthly basis to the department not later than 30 days from the end of the month in which it is collected or for which it is calculated.

Regardless of the method of collection, each prepaid wireless telephone service provider shall be permitted to deduct from the surcharge remittance an administrative fee not to exceed 1% of the monthly surcharge revenue for administration costs to cover the expenses of calculating and remitting the surcharge during the preceding month.

3.06: Reports and Recordkeeping

Each prepaid wireless telephone service provider shall submit to the department and the department of telecommunications and cable on a form prescribed by the department information on its business entity, including name, business address, and the telephone number, fax number, and e-mail address of a contact person for such prepaid wireless telephone service provider and for any preparer of any report on behalf of such prepaid wireless telephone service provider. Each prepaid wireless telephone service provider shall update this information annually.

Each prepaid wireless telephone service provider shall report to the department on a monthly basis on a form prescribed by the department the total surcharge revenues calculated, collected, and remitted from its subscribers, end users, or customers consistent with the provisions of 560 CMR 3.05 during the preceding month; the calculation used to arrive at the amount of the surcharge remittance; the total uncollected surcharge revenues from its subscribers, end users, or customers during the preceding month, if applicable; the calculation used to arrive at the uncollectible surcharge amount, if applicable; and the total amount billed for administration costs to cover the expenses of calculating and remitting the surcharge during the preceding month, if any.

Each prepaid wireless telephone service provider shall provide to the department such additional information as may be reasonably requested by the department.

Each prepaid wireless telephone service provider shall maintain, and shall make available to the department for inspection, its books and records in a manner that will permit the department to determine whether the prepaid wireless telephone service provider has complied with or is complying with the provisions of 560 CMR 3.00.

3.07: Information Disclosure Requirements

Each prepaid wireless telephone service provider shall, to the extent that such information is available to the prepaid wireless telephone service provider, forward to any PSAP or any other answering point equipped for enhanced 911 service, or upon request consistent with federal law, to the department, the telephone number and street address or location of any telephone used to place a 911 call, and any other data or information required by the FCC to be transmitted to a PSAP.

3.08: Enforcement

The Attorney General may, at the request of the department or on the Attorney General's own initiative, institute civil proceedings to enforce the provisions of 560 CMR 3.00.

3.09: Severability

If any provision of 560 CMR 3.00, or the application thereof, is held, adjudged, or deemed invalid, such finding of invalidity shall not affect other provisions or application, and to that end the provisions of 560 CMR 3.00 are severable.

REGULATORY AUTHORITY

560 CMR 3.00: M.G.L. c. 6A, § 18H and c. 30A.