HOUSE DOCKET, NO. 1144 FILED ON: 1/16/2013

HOUSE . . . . . No. 2131

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a prepaid wireless E911 surcharge.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Michael A. Costello	*1st Essex*	*1/16/2013*
Edward F. Coppinger	*10th Suffolk*	*1/23/2013*
Ann-Margaret Ferrante	*5th Essex*	*1/16/2013*
John W. Scibak	*2nd Hampshire*	*1/30/2013*
Martin J. Walsh	*13th Suffolk*	*1/16/2013*
Patricia A. Haddad	*5th Bristol*	*1/16/2013*
Michael J. Rodrigues	*First Bristol and Plymouth*	*1/16/2013*
Martha M. Walz	*8th Suffolk*	*1/16/2013*
Michael O. Moore	*Second Worcester*	*1/16/2013*
Tackey Chan	*2nd Norfolk*	*1/16/2013*
Michael D. Brady	*9th Plymouth*	*1/16/2013*
Mark J. Cusack	*5th Norfolk*	*1/16/2013*
Bruce J. Ayers	*1st Norfolk*	*1/16/2013*
Paul W. Mark	*2nd Berkshire*	*1/16/2013*
Tom Sannicandro	*7th Middlesex*	*1/16/2013*
Katherine M. Clark	*Fifth Middlesex*	*1/16/2013*
Michael J. Barrett	*Third Middlesex*	*1/16/2013*

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By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 2131) of Michael A. Costello and others relative to establishing a prepaid wireless enhanced 911 surcharge. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *643* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act establishing a prepaid wireless E911 surcharge.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 6A of the General Laws is hereby amended by striking out section 18A and inserting in place thereof the following new section:-

Section 18A. In this section, and in sections 18B to 18J, inclusive, of this chapter, and in section 14A of chapter 166, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Automatic location identification", 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", an enhanced 911 service capability that allows for the automatic display of a telephone number used to place or route a 911 call.

"Commission", the state 911 commission.

"Communication services", includes any of the following: (a) the transmission, conveyance or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless or other medium or method, regardless of the protocol used; (b) the ability to provide

two-way voice communication on the public switched network; (c) wireless enhanced 911 service; (d) wireline enhanced 911 service; (e) interconnected VoIP provider service as defined by the regulations of the FCC regulations; (f) IP -enabled service; or (g) prepaid wireless service.

"Communication service provider", an entity that provides communication services to a subscriber.

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

"Department", the state 911 department.

"Director", the executive director of the state 911 department.

"Emergency medical dispatch", the management of requests for emergency medical assistance by utilizing a system of: (a) tiered response or priority dispatching of emergency medical resources based on the level of medical assistance needed by the victim; and (b) pre-arrival first aid or other medical instructions given by trained personnel responsible for receiving 911 calls and directly dispatching emergency response services.

"Enhanced 911 Fund", the fund established under section 35JJ of chapter 10.

"Enhanced 911 service provider", any entity that provides 1 or more of the following 911 elements: network, database or PSAP customer premises equipment.

"Enhanced 911 service", a service consisting of communication network, database and equipment features provided for subscribers of communication services enabling such subscribers or consumers of prepaid wireless telecommunications service 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.

"Enhanced 911 network features", the components of enhanced 911 service that provide selective routing, automatic number identification and automatic location identification.

"Enhanced 911 systems", a distinct entity or geographical segment in which enhanced 911 service is provided, consisting of network routing elements serving as a control office and trunking connecting all central offices within a geographical segment, and including PSAPs and network used to deliver location data to PSAPs from a data base.

"FCC", the Federal Communications Commission.

"FCC order", all orders issued by the FCC under the proceeding entitled "Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems" (CC Docket No. 94-102; RM 8143), or any successor proceeding, including all other criteria

established therein, regarding the delivery of wireless enhanced 911 service by a wireless carrier, and all orders issued by the FCC under the proceeding entitled “In the Matter of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers”(WC Docket No 05-196), or any successor proceeding, including all other criteria established therein, regarding the delivery of enhanced 911 service by an IP-enabled service provider.

“Governmental body” shall include any governmental body as defined in section 11A of chapter 30A or section 23A of chapter 39.

“Interconnected VoIP service”, voice over the internet protocol services as defined by the FCC in 47 CFR 9.3.

“IP-enabled service”, a service, device or application which makes use of Internet Protocol, or IP, and capable of entering the digits 911, or by other means as approved by the department, for the purposes of interconnecting users to the enhanced 911 system including, but not limited to, voice over IP and other services, devices, or applications provided through or using wireline, cable, wireless, or satellite facilities or any other facility that may be provided in the future .“Limited secondary PSAP”, a PSAP equipped, at a minimum, with automatic number identification and automatic location identification display or printout capability. It receives 911 calls only if transferred from the primary PSAP. Data sent to a limited secondary PSAP cannot be re-routed to another location and may not necessarily be transmitted simultaneously with the voice call.

“Local exchange service”, telephone exchange lines or channels that provide local access from the premises of a subscriber in the commonwealth to the local telecommunications network to effect the transfer of information.

“Network components”, any software or hardware for a control switch, other switch modification, trunking or any components of a computer storage system or database used for selective routing of 911 calls, automatic number identification and automatic location identification, including a PSAP.

“Next generation 911”, an enhanced 911 system that incorporates the handling of all 911 calls and messages, including those using IP-enabled services or other advanced communications technologies in the infrastructure of the 911 system itself.

“Prepaid wireless telecommunications service”, a commercial mobile radio service as defined by section 20.3 of title 47 of the Code of Federal Regulations, as amended, that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. Such predetermined units may be measured in units of time, not to exceed one month.

“Prepaid wireless telecommunications service provider”, a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“PSAP customer premises equipment”, enhanced 911 call processing equipment located at a PSAP.

“Primary PSAP”, a PSAP equipped with automatic number identification and automatic location identification displays, and is the first point of reception of a 911 call. It serves the municipality in which it is located.

“Private safety department”, an entity, except for a municipality or a public safety department, that provides emergency police, fire, ambulance or medical services.

“Public safety answering point” or “PSAP”, 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.

“Public safety department”, a functional division of a municipality or a state that provides fire fighting, law enforcement, ambulance, medical or other emergency services.

“Regional emergency communication center”, a facility operated by or on behalf of 2 or more municipalities or governmental bodies, or combination thereof, as approved by the department, that enter into an agreement for the establishment and provision of regional dispatch and coordination of emergency services for all such municipalities or governmental bodies including, but not limited to, a regional PSAP that provides enhanced 911 service and police, fire protection, and emergency medical services dispatch, including services provided by a private safety department. The regional PSAP portion of the center shall be equipped with automatic number identification and automatic location identification displays, as approved by the department, and is the first point of reception of a 911 call.

“Regional PSAP”, a PSAP operated by or on behalf of 2 or more municipalities or governmental bodies, or combination thereof, approved by the department, for the operation of enhanced 911 call taking and call transfer activities. A regional PSAP may also be engaged in, by agreement, the dispatching or control of public safety resources serving some or all of the municipalities or governmental bodies that comprise the regional PSAP, including where services are provided by a private safety department. If the regional PSAP serves all such municipalities or governmental bodies for the operation of enhanced 911 call taking and call transfer activities and dispatch services including where dispatch services are provided by a private safety department, it shall be considered a regional emergency communication center for the purposes of section 18B. The regional PSAP shall be equipped with automatic number

identification and automatic location identification displays, as approved by the department, and is the first point of reception of a 911 call.

"Regional secondary PSAP", a facility operated by or on behalf of 3 or more municipalities or governmental bodies, or a combination thereof, approved by the department, that enter into an agreement for the establishment and provision of regional dispatch and coordination of either police, fire protection or emergency medical services, or any combination thereof. A regional secondary PSAP is equipped with automatic number identification and automatic location identification displays. It receives 911 calls only when transferred from a primary or regional PSAP or on an alternative routing basis when calls cannot be completed to the primary or regional PSAP.

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

"Ringing PSAP", a PSAP equipped for receipt of voice communications only, and may not operate 24 hours each day. It receives 911 calls that are transferred from the primary PSAP.

"Secondary PSAP", a PSAP equipped with automatic number identification and automatic location identification displays. It receives 911 calls only when they are transferred from the primary PSAP or on an alternative routing basis when calls cannot be completed to the primary PSAP.

"Selective routing", the method to direct 911 calls to the appropriate PSAP using a call routing database derived from the geographical location from which the call originated.

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

"Subscriber", a person who uses communication services; provided, however, that such term does not include a consumer of prepaid wireless telecommunications service.

"Telephone company", a person, firm, corporation, association or joint stock association or company, as defined in chapter 159 , furnishing or rendering local telephone exchange service.

"VoIP or voice over internet protocol", a type of IP-enabled service that allows for the two-way real time transmission of voice communications and has access to the public switched network.

"Wholesale", sales by the 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.

"Wireless carrier", a commercial mobile radio service, as defined in 47 U S C 332(d), including resellers and prepaid wireless telecommunications service providers.

"Wireless enhanced 911 service", the service required to be provided by wireless carriers under, and governed by, FCC order.

"Wireless state police PSAP", a state police facility assigned the responsibility of primarily or entirely receiving wireless 911 calls and, as appropriate, directly dispatching emergency response services or transferring or relaying emergency 911 calls to other public or private safety departments or other PSAPs.

"Wireline carrier", an incumbent local exchange carrier or local exchange carrier operating in the commonwealth, or a telephone company, or any other person, corporation or entity that provides local exchange service.

"Wireline enhanced 911 service", service provided by a wireline carrier that connects a subscriber dialing or entering the digits 911 to a PSAP.

SECTION 2. Said chapter 6A is hereby further amended by striking out section 18H, as so appearing, and inserting in place thereof the following section:-

Section 18H. (a1) There shall be imposed on each subscriber whose communication services are capable of accessing and utilizing an enhanced 911 system, a surcharge in the amount of 75 cents per month for expenses associated with services provided under sections 18A to 18J, inclusive, and sections 14A and 15E of chapter 166. For wireline enhanced 911 service, the charge shall be imposed on each voice grade exchange telephone line of business and residence customers within the commonwealth, but the surcharge applicable to centrex service and ISDN primary rate interface service shall be based on an equivalency ratio provided to each private branch exchange trunk. For wireless enhanced 911 service, the charge shall be imposed on the subscriber per their place of primary use as required pursuant to the Mobile Telecommunications Sourcing Act, Title 4 of US Code section 116 to 124. For interconnected VoIP provider service, the charge shall be imposed on each voice grade telephone line of business and residence customers within the commonwealth, but the surcharge applicable to such interconnected VoIP provider service that is comparable to centrex service and ISDN primary rate interface service associated with wireline enhanced 911 service shall be based on an equivalency ratio similar to that used for wireline enhanced 911 service. For IP-enabled service, the charge shall be imposed based on the subscriber's billing address in the commonwealth except for interconnected VoIP provider service, unless a different method is approved by the department.

The surcharge shall be collected by the communication service provider and shall be shown on the subscriber's bill as "Disability Access/Enhanced 911 Service Surcharge", or an appropriate abbreviation. The surcharge shall not be subject to sales or use tax. The subscriber

shall be liable for the surcharge imposed under this section, and the communication service provider shall not be financially liable for surcharges billed on behalf of the commonwealth but not collected from subscribers. Partial subscriber payments shall be first applied to outstanding communication service provider charges.

(a2) 1. There shall be imposed a prepaid wireless E911 surcharge. The prepaid wireless E911 surcharge shall be 75 cents per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under paragraph 6 of this subsection, such adjusted amount.

2. The prepaid wireless E911 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 surcharge shall be either separately stated on an invoice, receipt, or similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

3. For purposes of paragraph 2 of this subsection, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under Section 1 of Chapter 64H of Title IX of the General Laws.

4. The prepaid wireless E911 charge is the liability of the consumer and not of the seller or of any prepaid wireless telecommunications service provider, except that the seller shall be liable to remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in this subsection, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided by the consumer to the seller.

5. The amount of the prepaid wireless E 911 charge 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 entity.

6. The prepaid wireless E911 charge shall be proportionately increased or reduced, as applicable, upon any change to the surcharge imposed under subsection (a1) of this section as provided under subsection (b) of this section. Such increase or reduction shall be effective on the effective date of the change to the charge imposed under subsection (a1) or, if later, the first day of the first calendar month to occur at least 60 days after implementation of the change to the charge imposed under paragraph (a1). The Department of Revenue shall provide not less than 30 days of advance notice of such increase or reduction in its public website.

7. Prepaid wireless E911 surcharges collected by sellers shall be remitted to the Department of Revenue at the times and in the same manner as the tax imposed under Chapter 64H of Title IX of the General Laws. The Department of Revenue shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to Sections 3 and 7 of Chapter 64H of the Title IX of the General Laws.

8. A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 surcharges that are collected by the seller from consumers.

9. The audit and appeal procedures applicable under Chapter 64H of Title IX of the General Laws shall apply to prepaid wireless E911 charges.

10. The Department of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction. Such procedures shall substantially coincide with the procedures for documenting sale for resale transactions under section 8 of Chapter 64H of Title IX of the General Laws.

11. The Department of Revenue shall transfer all remitted prepaid wireless E911 surcharges to the state treasurer for deposit in the Enhanced 911 Fund for use as provided in this section within 30 days of receipt after deducting an amount, not to exceed two percent (2%) of remitted charges, that shall be retained by the Department of Revenue to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 surcharges.

12._No prepaid wireless telecommunications service provider or seller shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

13. In addition to the provisions of paragraph 12 of this subsection, each prepaid wireless telecommunications provider and seller shall be covered by the liability protections of subsection (g) of this section.

14. The prepaid wireless E911 surcharge imposed by this subsection shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state and not tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any prepaid wireless telecommunications service provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

(b) The department may petition the department of telecommunications and cable for an adjustment in the surcharge established in subsection (a1). The department of telecommunications and cable shall be responsible for establishing the new surcharge, and all

future surcharges, upon petition of the department. The department of telecommunications and cable, at its discretion but not more than once per calendar year, may investigate the prudence of the department's revenue and expenditures for the purpose of recalculating the surcharge, and may hire experts to assist in its investigation. The reasonable cost of such experts shall be charged to the Enhanced 911 F und, but in no event shall such cost exceed $200,000, which may be adjusted to reflect changes in the consumer price index. The department of telecommunications and cable shall conduct its review and issue a decision within 90 days of the date of the commencement of the investigation, but the surcharge shall be deemed approved if the department of telecommunications and cable does not issue its decision within such 90 days. The department of telecommunications and cable shall adopt rules that provide for the funding of prudently incurred expenses associated with services provided by sections 18A to 18J, inclusive, and sections 14A and 15E of chapter 166, by means of the surcharge. The department shall report annually to the department of telecommunications and cable on the financial condition of the Enhanced 911 F und and on the department's assessment of new developments affecting the enhanced 911 system. The report shall be submitted to the department of telecommunications and cable within 60 days of the end of each fiscal year. The department of telecommunications and cable shall file an annual report with the clerks of the house of representatives and the senate relative to the financial condition of the Enhanced 911 F und.

(c) The department shall seek the approval of the department of telecommunications and cable for projected total expenditures that exceed total expenditures of the previous fiscal year by 10 per cent or more. The department of telecommunications and cable may investigate the reasonableness of the expenditures and shall conduct its review and issue a decision within 90 days from the date the department files its request for approval, but the request for approval shall be deemed approved if the department of telecommunications and cable does not issue its decision within such 90 days. The department of telecommunications and cable shall notify the department of its intent to investigate within 20 days of the date the department files its request for approval. The department's request for approval shall be deemed approved in the absence of the department of telecommunication and cable's notification to the department of its intent to investigate. If the department of telecommunication and cable notifies the department that it intends to investigate an expenditure, the department of telecommunications and cable may hire experts to assist in its investigation. The reasonable cost of the experts shall be charged to the Enhanced 911 F und, but in no event shall such cost exceed $200,000, which may be adjusted to reflect changes in the consumer price index.

(d) Each communication service provider shall remit the surcharge revenues collected from its subscribers to the state treasurer for deposit in the Enhanced 911 F und. The surcharge revenues shall be expended for the administration and programs of the department including, but not limited to, salaries, enhanced 911 training programs, enhanced 911 public education programs, the creation of PSAP customer premises equipment for, and maintenance of, primary and regional PSAPs, the programs mandated by section 18B and sections 14A and 15E of

chapter 166, and for the implementation and administration of enhanced 911 service in the commonwealth.

(e) Each communication service provider required to remit surcharge revenues shall submit to the department and the department of telecommunications and cable information on its business entity including, but not limited to, name, business address, contact person and the telephone number, fax number and e-mail address of such contact person. Each such provider shall update this information annually.

(f) Each communication service provider shall report to the department on a monthly basis the total surcharge revenues collected from its subscribers during the preceding month, the total uncollected surcharge revenues from subscribers during the preceding month, the total amount billed to the department for administration costs to cover the expenses of billing, collecting and remitting the surcharge during the preceding month, and the total amount billed to the department for non-recurring and recurring costs associated with any service, operation, administration or maintenance of enhanced 911 service during the preceding month. Such monthly report shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66.

(g) A communication service provider shall forward to any PSAP or any other answering point equipped for enhanced 911 service, or upon request consistent with federal law, to a municipal, state, or federal law enforcement agency, the department of telecommunications and cable, the FCC or the department, the telephone number and street address or location of any telephone used to place a 911 call, and any other call data or information required by the FCC to be transmitted to a PSAP.

Subscriber information or data provided in accordance with this section shall be used, consistent with federal law, only for the purpose of responding to emergency calls, administering and operating the enhanced 911 system and providing enhanced 911 service, or for use in any ensuing investigation or prosecution, including the investigation of false or intentionally misleading reports of incidents requiring emergency service. No communication service provider or officers, directors, employees, vendors or agents shall be liable in any action to any person for releases of information authorized by this section or for civil action resulting from or caused by such providers for participation or omissions in the development, installation, operation, maintenance, performance or provision of enhanced 911 service except for wanton or willful misconduct. Release to or use by any person of a communication service provider’s subscriber information or data for any use other than the purposes enumerated in this subsection shall be prohibited. Notwithstanding any general or special law to the contrary, such information or data shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66, except that aggregated information that does not identify or effectively identify specific subscriber information or data may be made public.

(h) The department shall examine call volumes of all primary, regional and regional secondary PSAPs, and the population changes of the municipalities they serve, and may use such information in determining the disbursement of funds as set forth in section 18B.

SECTION 3. This act shall take effect on July 1, 2013.