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December 8, 2009

**Via Electronic and U.S. Mail**

Mr. Harry A. Green, Executive Director

Tennessee Advisory Commission on Intergovernmental Relations

226 Capitol Blvd. Bldg., Suite 508

Nashville, TN 37243

**tacir@tn.gov**

RE: TACIR Request for Stakeholder Comments Concerning HB 0204 and  
Tennessee's Emergency Communications Funding in General

Dear Mr. Green:

Sprint Nextel appreciates the opportunity to provide these comments to the Tennessee Advisory Commission on Intergovernmental Relations ("TACIR" or "Commission") for consideration as it prepares its study of the 911 Emergency Communications Fund in Tennessee for the House State and Local Government Committee. Sprint Nextel may provide additional comments before the January 31, 2010 deadline as appropriate.

Sprint Nextel respectfully urges that the Commission and the General Assembly give careful consideration before allowing substantial changes to current policies that balance funding responsibilities for 911 services in Tennessee. Two changes in particular threaten to greatly increase the burden on wireless consumers in the state.

- First, the Tennessee Emergency Communications Board ("TECB") recently decided to cut carrier cost recovery by 95% effective January 1, 2010 and has recommended that the General Assembly eliminate it entirely. This action taken by the TECB at its September 24, 2009 meeting would cut \$7.6 million of an estimated \$8 million in funds that otherwise would be available to carriers to reimburse them for the costs associated with 911 service and redistribute them to provide additional operational funding for Emergency Communications districts.<sup>1</sup>

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<sup>1</sup> See Transcript of September 24, 2009 TECB meeting ("Transcript"), pp. 15-48.

- Second, House Bill 204 proposes to increase the monthly 911 service fee for wireless consumers by 50%, from \$1.00 to \$1.50. According to the TECB staff, the average 911 fee for wireless customers nationwide is \$0.80.<sup>2</sup> The increase proposed by HR 204 would place Tennessee in a tie for third-highest wireless 911 fee nationwide.<sup>3</sup>

Either of these developments would increase costs to Tennessee wireless consumers and make them bear a greater portion of the burden of funding 911 service. Taken together, the effects are punitive to wireless consumers. Wireless providers and their customers have always paid their fair share of 911 expenses in Tennessee. Under the policy set by the General Assembly for funding wireless 911 mandates, wireless carriers assess the 911 fee to customers and remit the fees to the state 911 fund administered by the TECB. In fact, the emergency telephone service charge on non-wireline phone service is the TECB's sole revenue source. Most of those funds go to Emergency Communications Districts ("ECDs"). According to the Board's 2007-2008 Annual Report, 74% (\$30.8 million) of the TECB's available non-wireline revenue was distributed to ECDs, including \$13 million to fulfill the statutory 25% contribution, \$14 million for operational funding, \$1 million in grants, and \$3 million in equipment, trunking, and Automatic Location Information charges. Only 23% was used for carrier cost recovery and 3% was used by the Board for administration.<sup>4</sup>

Sprint Nextel incurs costs associated with implementation of Phase I and Phase II of the Federal Communications Commission's E911 requirements but only seeks cost recovery for Phase I costs. Specifically, the cost recovery Sprint Nextel may receive helps pay for monthly contractual obligations to third party vendors, the automatic location information ("ALI") gateway, database and service support, payments to local exchange carriers for selective router connections, and Sprint Nextel E911 engineering support to the Public Safety Answering Point ("PSAP") community for implementation, periodic testing of the

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<sup>2</sup> *Id.*, p. 20-21.

<sup>3</sup> According to TECB staff analysis, only two states have 911 fees above \$1.50 (West Virginia - \$3.00 and Alaska - \$2.00) and two states currently have fees of \$1.50 (Oklahoma - \$1.50; and Georgia - \$1.50).

<sup>4</sup> See 2007-2008 Annual Report of the Tennessee Emergency Communications Board, pp. 5-6 and 20.

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network and outage support. For every additional site in Tennessee, there are additional Phase I costs.

All stakeholders will agree that E911 service is not free. While it may be tempting to assume the so-called "deep pockets" of wireless carriers can absorb greater and greater burden for funding 911, policymakers must consider the effect of rising costs. When cost recovery is eliminated, 911 mandates are not. Wireless providers will have to shift recovery for this unavoidable cost of doing business to the customer in one form or another, either through increased plan rates or as additional fees to recover government-mandated costs. House Bill 204 would increase the direct fees Tennessee consumers are charged for E911 service and ensure they pay the third highest wireless 911 fees in the nation.

The Commission should consider carefully whether another increase in operational funding for Emergency Communications Districts is needed given the support currently received, including \$14 million in operational funding. The TECB appears to have surveyed some districts on funding issues and it was reported during the September 24, 2009 meeting that "the additional \$14 million operational funding program, recurring program added to ECD revenue in 2007, has had a significant effect. The number of districts that had a negative change in net assets dropped from 22 to 0 after that program was initiated."<sup>5</sup> Additional E911 funds should be collected from consumers only if there is a valid need for additional funding. Likewise, reapportionment of funds from carrier cost recovery to operational support for ECDs should occur only if the recent increases are not sufficient to cover costs. Also, funds collected should be used for E911 service and not other purposes. As the Commission is aware, E911 funding was used in 2008 to close the state budget gap; \$10 million in interest generated from the E911 fund was transferred to the state "general fund" instead of being applied to E911 costs. Before recommending an increase in the burden on wireless consumers, the Commission should carefully consider whether the funds are being applied appropriately and whether additional funding is needed.

Sprint Nextel urges the Commission to recommend that the General Assembly act to retain the traditional balance of responsibilities for E911 costs and permit reasonable carrier cost recovery. E911 service is an interdependent system in which PSAPs, local exchange carriers and wireless carriers incur costs, and wireless carriers should not be prohibited from recovering their costs. The Commission should also consider carefully the consumer effects of substantially increasing E911 fees as prescribed in HB 204. Sprint Nextel asserts that if an increased level of funding is needed, a modest increase in the 911 fee may be reasonable, as long as carriers are permitted to recovery their Phase I

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<sup>5</sup> See Transcript, p. 19.

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costs. If wireless carrier cost recovery is eliminated (or nearly eliminated as with the TECB's 95% reduction) there should be no increase whatsoever in the E911 fee.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

*Douglas C. Nelson / by whp  
with permission*

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State Regulatory Affairs