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Opinion No. 13-109

Locally Collected 911 Fee for Wireline and Non-Wireline Telephones

QUESTION

Is there any legal impediment to changing the 911 funding model to authorize emergency communications districts ("ECDs") to collect the 911 service charge locally and at the current landline rates on both landline and all non-wireline telecommunications service capable of connecting a person dialing or entering the digits 911, with the single exception of cell-phone service?

OPINION

No. No such impediment exists in federal or Tennessee law.

ANALYSIS

The request provides the following background:

> Under the current funding model, the 911 fees on landlines and non-wireline telecommunications service differ. The law authorizes each of the State's 100 emergency communications districts (ECDs) to collect a 911 service charge on landlines. The current 911 fees on landlines range up to a maximum of $1.50 for each residential line and $3.00 for each business line up to a maximum of 100 lines per location. In contrast, the Tennessee Emergency Communications Board (TECB) collects the 911 fee on all non-wireline telecommunications service capable of connecting a person using or dialing the digits 911 to a 911 call center. The non-wireline fee is $1.00 per user or subscriber per month.

The request then proposes the following method of funding:

> The per line charge would be replaced by a per number charge up to a maximum of 100 numbers per business location for non-wireline telecommunications service. In short, the ECDs would collect 911 fees on all telecommunications service, both wireline and non-wireline, except cell phone service which would continue to be remitted to the TECB.

Currently, an ECD may impose "an emergency telephone service charge in an amount not to exceed sixty-five cents (65¢) per month for residence-classification service users, and not to exceed two dollars ($2.00) per month for business-classification service users." Tenn. Code Ann. § 7-86-108(a)(1)(A). An ECD may also "submit to the people of the district the question of whether to increase the emergency telephone service charge"; any such increase shall not exceed $1.50 per month for residence-classification service users and $3.00 per month for business-classification service users. Tenn. Code Ann. § 7-86-108(a)(2)(A). Those charges are, in effect, imposed only on users of wireline telephone service.

As to non-wireline service, Tenn. Code Ann. § 7-86-108(a)(1)(B)(i)(*a*) provides for "a flat statewide rate, not to exceed the business classification rate established in subdivision (a)(2)(A)." This statewide rate is set by the TECB, and the charge is paid to the TECB. Tenn. Code Ann. § 7-86-108(a)(1)(B)(i)(*a*) and (*b*). "Effective July 1, 2006," the statewide rate applies "to all subscribers and users of non-wireline service, to the extent such application is not inconsistent with the orders, rules and regulations of the federal communications commission." Tenn. Code Ann. § 7-86-108(a)(1)(B)(vi). Under Tenn. Code Ann. § 7-86-103(11),

> "[n]on-wireline service" means any service provided by any person, corporation or entity, other than a service supplier as defined in this part, that connects a user dialing or entering the digits 911 to a PSAP, including, but not limited to, commercial mobile radio service ["CMRS"] and IP-enabled services.

And, under Tenn. Code Ann. § 7-86-103(9),

> "IP-enabled services" means services and applications making use of Internet protocol (IP) including, but not limited to, voice over IP and other services and applications provided through wireline, cable, wireless, and satellite facilities, and any other facility that may be provided in the future through platforms that may not be deployable at present, that are capable of connecting users dialing or entering the digits 911 to public safety answering points (PSAPs).

"Non-wireline service," therefore, consists at a minimum of both CMRS and IP-enabled service, which is also called "voice over Internet protocol" or "VOIP" service.

The separation of 911 charges into charges imposed on landline subscribers and collected locally by ECDs and charges imposed on "non-wireline service" subscribers and collected by the TECB results merely from the General Assembly's decision to fund 911 service in this manner, and not from any known legal or other requirement. Federal law states that "[i]t shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service." 47 U.S.C. § 615a-1. That statute further provides:

> Nothing in this Act,[1] the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a

[1] The Wireless Communications and Public Safety Act of 1999, Pub. L. 106-81.

> fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.

47 U.S.C. § 615a-1(f)(1). Federal law, therefore, expressly preserves the ability of both state and local governments to impose 911 charges on IP-enabled subscribers, subject to the requirement that such charges be used exclusively for 911 operations and not discriminate within any particular class of subscribers. Some states have structured their funding models so that 911 charges on IP-enabled services are collected locally. *See, e.g.*, Colo. Rev. Stat. Ann. § 29-11-102(2)(a); Okla. Stat. Ann. tit. 63, § 2853; 35 Pa. Cons. Stat. Ann. § 5311.14; W. Va. Code § 7-1-3cc(b). Accordingly, nothing would prevent the General Assembly from restricting the funding mechanism in Tenn. Code Ann. § 7-86-108 to allow for local collection of 911 charges on IP-enabled subscribers.

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