

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 46

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

4
5
6
7
8
9
10 AN ACT

11 RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING
12 SECTIONS OF THE ENHANCED 911 ACT AND AMENDING A SECTION OF THE
13 ENHANCED 911 BOND ACT TO PROVIDE FOR SURCHARGES TO BE IMPOSED
14 ON COMMUNICATIONS SERVICES, INCLUDING VOICE-OVER-INTERNET
15 PROTOCOL SUBSCRIPTIONS AND ELECTRONIC DATA NETWORKS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 63-9D-3 NMSA 1978 (being Laws 1989,
19 Chapter 25, Section 3, as amended) is amended to read:

20 "63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

21 A. "911 [~~emergency surcharge~~" means the monthly
22 ~~uniform charge assessed on each access line in the state and on~~
23 ~~each active number for a commercial mobile radio service~~
24 ~~subscriber whose billing address is in New Mexico]~~ call" means
25 any real-time communication, message, signal or transmission

.206531.1

underscored material = new
[bracketed material] = delete

1 between a person needing assistance and a public safety
2 answering point call-taker by dialing 9-1-1 or its equivalent;

3 B. "911 service area" means the area designated by
4 the fiscal agent, local governing body or the division to
5 receive enhanced 911 service;

6 C. "access line" means a telecommunications
7 company's line that has the capability to reach local public
8 safety agencies by dialing 911, but does not include a line
9 used for the provision of interexchange services or commercial
10 mobile radio service;

11 D. "commercial mobile radio service" means service
12 provided by a wireless real-time two-way voice communication
13 device, including:

14 (1) radio-telephone communications used in
15 cellular telephone service;

16 (2) the functional or competitive equivalent
17 of radio-telephone communications used in cellular telephone
18 service;

19 (3) a personal communications service; or

20 (4) a network radio access line;

21 E. "commercial mobile radio service provider" means
22 a person who provides commercial mobile radio services,
23 including a person who purchases commercial mobile radio
24 service from a provider and resells that service;

25 F. "commission" means the public regulation

1 commission;

2 G. "communication service" means any service that:

3 (1) is capable of accessing, connecting with
4 or interfacing with the enhanced 911 system by dialing,
5 initializing or otherwise activating the enhanced 911 system
6 regardless of the transmission medium or technology employed;
7 and

8 (2) provides or enables real-time or
9 interactive communication;

10 H. "communications service provider" means any
11 entity that provides communication services;

12 I. "database" means information that is collected,
13 formatted and disseminated and that is necessary for the
14 functioning of the enhanced 911 system, including geographic
15 information system (GIS) addressing and digital mapping
16 information;

17 [~~H.~~] J. "department" means the taxation and revenue
18 department;

19 [~~I.~~] K. "division" means the local government
20 division of the department of finance and administration;

21 L. "enhanced 911 surcharge" means the monthly
22 uniform charge assessed on each access line in the state, on
23 each active number for a commercial mobile radio service
24 subscriber and on each active number for a VoIP service
25 subscriber in New Mexico and the charge assessed on any other

.206531.1

1 consumer purchase of communication service provided by a
2 communications service provider that enables communication
3 between a person needing assistance and a public safety
4 answering point call-taker by dialing 9-1-1 or its equivalent.
5 The enhanced 911 surcharge shall be assessed to the retail
6 customer based upon the maximum number of active telephone
7 numbers, assigned to the customer by the communications service
8 provider, capable of simultaneously contacting the local public
9 safety answering point; provided that an enhanced 911 surcharge
10 shall not be assessed on the provision of broadband internet
11 access service;

12 ~~[J-]~~ M. "enhanced 911 system" means a landline,
13 ~~[ø-]~~ wireless, NG-911 or ESInet system consisting of network
14 switching equipment, database, mapping and on-premises
15 equipment that uses the single three-digit number 911 for
16 reporting police, fire, medical or other emergency situations,
17 thereby enabling a caller to reach a public safety answering
18 point to report emergencies by dialing 911, and includes the
19 capability to:

20 (1) selectively route incoming 911 calls to
21 the appropriate public safety answering point operating in a
22 911 service area;

23 (2) automatically display the name, address
24 and telephone number of an incoming 911 call on a video monitor
25 at the appropriate public safety answering point;

.206531.1

1 (3) provide one or more access paths for
2 communications between users at different geographic locations
3 through a network system that may be designed for voice or
4 data, or both, and may feature limited or open access and may
5 employ appropriate analog, digital switching or transmission
6 technologies; and

7 (4) relay to a designated public safety
8 answering point a 911 caller's number and base station or cell
9 site location and the latitude and longitude of the 911
10 caller's location in relation to the designated public safety
11 answering point;

12 [~~K.~~] N. "enhanced 911 equipment" means the public
13 safety answering point equipment directly related to the
14 operation of an enhanced 911 system, including automatic number
15 identification or automatic location identification controllers
16 and display units, printers, logging recorders and software
17 associated with call detail recording, call center work
18 stations, training, latitude and longitude base station or cell
19 site location data and GIS equipment necessary to obtain and
20 process locational map and emergency service zone data for
21 landline and wireless callers;

22 [~~L.~~] O. "equipment supplier" means a person who
23 provides or offers to provide [~~telecommunications~~]
24 communications equipment necessary for the establishment of
25 enhanced 911 services;

.206531.1

1 ~~[M-]~~ P. "ESInet" means emergency services internet
2 protocol network, an internet-protocol-based, multipurpose
3 inter-network supporting local, regional, state and national
4 public safety communications services in addition to 911;

5 Q. "fiscal agent" means the local governing body
6 that administers grants from the fund for a given locality or
7 region by agreement;

8 ~~[N-]~~ R. "fund" means the enhanced 911 fund;

9 ~~[O-]~~ S. "local governing body" means the board of
10 county commissioners of a county or the governing body of a
11 municipality as defined in the Municipal Code;

12 T. "NG-911" means a next generation 911 system
13 consisting of network, hardware, software, data and operational
14 policies and procedures that:

15 (1) provides standardized interfaces from call
16 and message services;

17 (2) processes all types of emergency calls,
18 including non-voice (multimedia) messages;

19 (3) acquires and integrates additional data
20 useful to call routing and handling;

21 (4) delivers the calls, messages and data to
22 appropriate public safety answering points and other
23 appropriate emergency entities;

24 (5) supports data and communications needs for
25 coordinated incident response and management; and

1 (6) provides a secure environment for
2 emergency communications;

3 [P-] U. "proprietary information" means customer
4 lists, customer counts, technology descriptions or trade
5 secrets, including the actual or development costs of
6 individual components of an enhanced 911 system; provided that
7 such information is designated as proprietary by the
8 ~~[commercial mobile radio]~~ communications service provider ~~[or~~
9 ~~telecommunications company]~~; and provided further that
10 "proprietary information" does not include individual payments
11 made by the division or any list of names and identifying
12 information of subscribers who have not paid the surcharge;

13 [Q-] V. "public safety answering point" means a
14 twenty-four-hour local communications facility that receives
15 911 service calls and directly dispatches emergency response
16 services or that relays calls to the appropriate public or
17 private safety agency;

18 [R-] W. "subscriber" means a person who ~~[is a~~
19 ~~retail purchaser of telecommunications]~~ purchases communication
20 services at retail from a communications service provider that
21 are capable of originating a 911 call;

22 [S-] X. "surcharge" means the 911 emergency
23 surcharge;

24 Y. "surcharge collected" means the amount of
25 enhanced 911 surcharge billed or received or deemed to have

.206531.1

1 been received by the seller or provider, consistent with the
2 seller's or provider's method of accounting, including accrual
3 or cash;

4 ~~[F.]~~ Z. "telecommunications company" means a person
5 who provides wire telecommunications services that are capable
6 of originating a 911 call; ~~[and~~

7 ~~H.]~~ AA. "vendor" means a person that provides 911
8 equipment, service or network support;

9 BB. "VoIP" means "interconnected voice-over-
10 internet protocol service" as defined in the Code of Federal
11 Regulations, Title 47, Part 9, Section 9.3, as amended; and

12 CC. "VoIP service provider" or "interconnected
13 voice-over-internet protocol service provider" means an entity
14 that provides interconnected voice-over-internet protocol
15 service to end users."

16 SECTION 2. Section 63-9D-5 NMSA 1978 (being Laws 1989,
17 Chapter 25, Section 5, as amended) is amended to read:

18 "63-9D-5. IMPOSITION OF SURCHARGE.--

19 A. There is imposed a 911 emergency surcharge in
20 the amount of fifty-one cents (\$.51) to be billed to each
21 subscriber access line by a ~~[telecommunications company and]~~
22 communications service provider, on each active number for a
23 commercial mobile radio service subscriber ~~[whose billing~~
24 address] and on each active number for a VoIP service
25 subscriber that allows communication between a person needing

1 assistance and a public safety answering point call-taker. The
2 surcharge is imposed on all subscribers whose place of primary
3 use, as defined in the federal Mobile Telecommunications
4 Sourcing Act, is in New Mexico; provided, however, that the
5 surcharge shall not be imposed upon subscribers receiving
6 reduced rates pursuant to the Low Income Telephone Service
7 Assistance Act; and provided further that the surcharge shall
8 not apply to prepaid wireless communication service; and
9 provided further that a 911 emergency surcharge shall not be
10 assessed on the provision of broadband internet access service.

11 B. [~~Commercial mobile radio~~] All communications
12 service providers shall be required to bill and collect the
13 surcharge from their subscribers whose places of primary use,
14 as defined in the federal Mobile Telecommunications Sourcing
15 Act, are in New Mexico. [~~Telecommunications companies shall be~~
16 required to bill and collect the surcharge from their
17 subscribers.] The surcharge required to be collected by the
18 [~~commercial mobile radio service provider or telecommunications~~
19 ~~company~~] communications service provider shall be added to and
20 stated clearly and separately in the billings to the
21 subscriber. The surcharge collected by the [~~commercial mobile~~
22 ~~radio service provider or telecommunications company~~]
23 communications service provider shall not be considered revenue
24 of the [~~commercial mobile radio~~] communications service
25 provider [~~or telecommunications company~~].

.206531.1

1 C. A billed subscriber is liable for payment of the
2 911 emergency surcharge until it has been paid to the
3 [~~commercial mobile radio~~] communications service provider [~~or~~
4 ~~telecommunications company~~].

5 D. A [~~commercial mobile radio~~] communications
6 service provider [~~or telecommunications company~~] has no
7 obligation to take legal action to enforce the collection of
8 the surcharge; an action may be brought by or on behalf of the
9 department. A [~~commercial mobile radio~~] communications service
10 provider [~~or telecommunications company~~], upon request and not
11 more than once a year, shall provide to the department a list
12 of the surcharge amounts uncollected, along with the names and
13 addresses of subscribers who carry a balance that can be
14 determined by the [~~commercial mobile radio~~] communications
15 service provider [~~or telecommunications company~~] to be
16 nonpayment of the surcharge. The [~~commercial mobile radio~~]
17 communications service provider [~~or telecommunications company~~]
18 shall not be held liable for uncollected surcharge amounts.

19 [~~E. The surcharge shall commence with the first~~
20 ~~billing period of each subscriber on or following July 1,~~
21 ~~2005.]"~~

22 SECTION 3. Section 63-9D-7 NMSA 1978 (being Laws 1989,
23 Chapter 25, Section 7, as amended) is amended to read:

24 "63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

25 A. The surcharge collected shall be remitted

1 monthly to the department, which shall administer and enforce
2 collection of the surcharge in accordance with the Tax
3 Administration Act. The surcharge shall be remitted to the
4 department no later than the twenty-fifth day of the month
5 following the month in which the surcharge was imposed. At
6 that time, a return for the preceding month shall be filed with
7 the department in such form as the department and
8 ~~[telecommunications company or commercial mobile radio]~~
9 communications service provider shall agree upon. A
10 ~~[telecommunications company or commercial mobile radio]~~
11 communications service provider required to file a return shall
12 deliver the return together with a remittance of the amount of
13 the surcharge payable to the department. The
14 ~~[telecommunications company or commercial mobile radio]~~
15 communications service provider shall maintain a record of the
16 amount of each surcharge collected pursuant to the Enhanced 911
17 Act. The record shall be maintained for a period of three
18 years after the time the surcharges were collected.

19 B. From a remittance to the department made on or
20 before the date it becomes due, a telecommunications company or
21 commercial mobile radio service provider required to make a
22 remittance shall be entitled to deduct and retain one percent
23 of the collected amount or fifty dollars (\$50.00), whichever is
24 greater, as the administrative cost for collecting the
25 surcharge."

.206531.1

1 SECTION 4. Section 63-9D-8 NMSA 1978 (being Laws 1989,
2 Chapter 25, Section 8, as amended) is amended to read:

3 "63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--
4 DISBURSEMENT--REPORTS TO LEGISLATURE.--

5 A. There is created in the state treasury a fund
6 that shall be known as the "enhanced 911 fund". The fund shall
7 be administered by the division.

8 B. All surcharges collected and remitted to the
9 department shall be deposited in the fund.

10 C. Money deposited in the fund and income earned by
11 investment of the fund are appropriated for expenditure in
12 accordance with the Enhanced 911 Act and shall not revert to
13 the general fund.

14 D. Payments shall be made from the fund to, or on
15 behalf of, participating local governing bodies or their fiscal
16 agents upon vouchers signed by the director of the division
17 solely for the purpose of reimbursing local governing bodies or
18 their fiscal agents [~~commercial mobile radio~~] and
19 communications service providers [~~or telecommunications~~
20 ~~companies~~] for their costs of providing enhanced 911 service.

21 A person who purchases [~~commercial mobile radio services or~~
22 ~~telecommunications~~] communication services from a [~~commercial~~
23 ~~mobile radio~~] communications service provider [~~or~~
24 ~~telecommunications company~~] for the purpose of reselling that
25 service is not eligible for reimbursement from the fund. Money

.206531.1

1 in the fund may be used for the payment of bonds issued
2 pursuant to the Enhanced 911 Bond Act.

3 E. Annually, the division may expend no more than
4 five percent of all money deposited annually in the fund for
5 administering and coordinating activities associated with
6 implementation of the Enhanced 911 Act.

7 F. Money in the fund may be awarded as grant
8 assistance to provide enhanced 911 service and equipment upon
9 application of local governing bodies or their fiscal agents to
10 the division and upon approval by the state board of finance.
11 If it is anticipated that the funds available to pay all
12 requests for grants will be insufficient, the state board of
13 finance may reduce the percentage of assistance to be awarded.
14 In the event of such reduction, the state board of finance may
15 award supplemental grants to local governing bodies that
16 demonstrate financial hardship.

17 G. After requesting enhanced 911 service from a
18 [~~telecommunications company or commercial mobile radio~~]
19 communications service provider, a local governing body may, by
20 ordinance or resolution, recover from the fund an amount
21 necessary to recover the costs of providing the enhanced 911
22 system in its designated 911 service area. The division, on
23 behalf of local governing bodies, shall directly pay or
24 reimburse [~~commercial mobile radio~~] communications service
25 providers [~~and telecommunications companies~~] for their costs of

.206531.1

1 providing enhanced 911 service. If a [~~commercial mobile radio~~]
2 communications service provider [~~or telecommunications company~~]
3 does not receive payment or reimbursement for the costs of
4 providing enhanced 911 service, the provider is not obligated
5 to provide that service.

6 H. The division shall report to the legislature
7 each session the status of the fund and whether the current
8 level of the 911 emergency surcharge is sufficient, excessive
9 or insufficient to fund the anticipated needs for the next
10 year."

11 SECTION 5. Section 63-9D-8.1 NMSA 1978 (being Laws 1990,
12 Chapter 87, Section 3, as amended) is amended to read:

13 "63-9D-8.1. DIVISION POWERS.--

14 A. The division may adopt reasonable rules
15 necessary to carry out the provisions of the Enhanced 911 Act.

16 B. The division may fund enhanced 911 systems
17 pursuant to the provisions of the Enhanced 911 Act.

18 C. Division powers are limited and do not include
19 power to intervene between two vendors or restrict marketing
20 efforts of vendors.

21 D. The division and the local governing body may
22 establish 911 service areas.

23 E. Unless otherwise provided by law, no rule
24 affecting any person, agency, local governing body [~~commercial~~
25 ~~mobile radio~~] or communications service provider [~~or~~

1 ~~telecommunications company~~] shall be adopted, amended or
 2 repealed without a public hearing on the proposed action before
 3 the director of the division or a hearing officer designated by
 4 the director. The public hearing shall be held in Santa Fe
 5 unless otherwise permitted by statute. Notice of the subject
 6 matter of the rule, the action proposed to be taken, the time
 7 and place of the hearing, the manner in which interested
 8 persons may present their views and the method by which copies
 9 of the proposed rule or proposed amendment or repeal of an
 10 existing rule may be obtained shall be published once at least
 11 thirty days prior to the hearing in a newspaper of general
 12 circulation and mailed at least thirty days prior to the
 13 hearing date to all persons or agencies who have made a written
 14 request for advance notice of the hearing and to all local
 15 governing bodies [~~telecommunications companies and commercial~~
 16 ~~mobile radio~~] and communications service providers.

17 F. All rules shall be filed in accordance with the
 18 State Rules Act."

19 SECTION 6. Section 63-9D-10 NMSA 1978 (being Laws 1989,
 20 Chapter 25, Section 10, as amended) is amended to read:

21 "63-9D-10. IMMUNITY.--Enhanced 911 systems are within the
 22 governmental powers and authorities of the local governing body
 23 or state agency in the provision of services for the public
 24 health, welfare and safety. In contracting for such services
 25 or the provisioning of an enhanced 911 system, except for

.206531.1

1 willful or wanton negligence or intentional acts, the local
2 governing body, public agency, equipment supplier,
3 [~~telecommunications company, commercial mobile radio~~]
4 communications service provider and their officers, directors,
5 vendors, employees and agents are not liable for damages
6 resulting from installing, maintaining or providing enhanced
7 911 systems or transmitting 911 calls."

8 SECTION 7. Section 63-9D-11 NMSA 1978 (being Laws 1989,
9 Chapter 25, Section 11, as amended) is amended to read:

10 "63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

11 A. Private listing subscribers waive the privacy
12 afforded by nonlisted or nonpublished numbers only to the
13 extent that the name and address associated with the telephone
14 number may be furnished to the enhanced 911 system for call
15 routing or for automatic retrieval of location information in
16 response to a call initiated to 911.

17 B. Information regarding the identity of private
18 listing subscribers provided by a communications service
19 provider, including names, addresses, telephone numbers or
20 other identifying information, is not a public record and is
21 not available for inspection.

22 C. Proprietary information provided by a
23 [~~commercial mobile radio~~] communications service provider [~~or~~
24 ~~telecommunications company~~] is not public information and may
25 not be released to any person without the express permission of

1 the submitting provider, except that information may be
 2 released or published as aggregated data that does not identify
 3 the number of subscribers or identify enhanced 911 system costs
 4 attributable to an individual [~~commercial mobile radio~~
 5 communications service provider [~~or telecommunications~~
 6 ~~company~~]."

7 **SECTION 8.** Section 63-9D-11.1 NMSA 1978 (being Laws 1993,
 8 Chapter 48, Section 13) is amended to read:

9 "63-9D-11.1. VIOLATION--PENALTIES.--

10 A. Any person who knowingly dials 911 for the
 11 purpose of reporting a false alarm, making a false complaint or
 12 reporting false information that results in an emergency
 13 response by any public safety agency is guilty of a petty
 14 misdemeanor and shall be punished by a fine of not more than
 15 five hundred dollars (\$500) or imprisonment for a term not to
 16 exceed six months, or both.

17 B. A municipality or a county may adopt an
 18 ordinance making it a violation for any person to knowingly
 19 dial 911 for the purpose of reporting a false alarm, making a
 20 false complaint or reporting false information that results in
 21 an emergency response by any public safety agency. The
 22 municipality may adopt and enforce the ordinance pursuant to
 23 the authority provided in Section 3-17-1 NMSA 1978. The county
 24 may adopt and enforce the ordinance pursuant to the authority
 25 provided in Section 4-37-1 NMSA 1978."

.206531.1

1 SECTION 9. Section 63-9D-14 NMSA 1978 (being Laws 1990,
2 Chapter 61, Section 3, as amended) is amended to read:

3 "63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE
4 OF REVENUES--LIMITATION ON ISSUANCE.--

5 A. In addition to any other law authorizing the
6 board to issue revenue bonds, the board may issue enhanced 911
7 bonds pursuant to the Enhanced 911 Bond Act for the purposes
8 specified in this section.

9 B. Enhanced 911 bonds may be issued for:

10 (1) acquiring, extending, enlarging,
11 bettering, repairing, improving, constructing, purchasing,
12 furnishing, equipping or rehabilitating the enhanced 911
13 system, the payment of which shall be secured by enhanced 911
14 revenues;

15 (2) reimbursing a [~~commercial mobile radio~~
16 communications service provider [~~or telecommunications company~~]
17 for its reasonable costs of providing enhanced 911 service, the
18 payment of which shall be secured by enhanced 911 revenues; or

19 (3) reimbursing a local governing body or its
20 fiscal agent for its reasonable costs of providing the enhanced
21 911 system, the payment of which shall be secured by enhanced
22 911 revenues.

23 C. The board may pledge irrevocably enhanced 911
24 revenues in the manner set forth in Subsection B of this
25 section to the payment of the interest on and principal of

.206531.1

1 enhanced 911 bonds. Any general determination by the board
 2 that expenditures are reasonably related to and constitute a
 3 part of a specified enhanced 911 project shall be conclusive if
 4 set forth in the proceedings authorizing the enhanced 911
 5 bonds."

6 SECTION 10. A new section of the Enhanced 911 Act is
 7 enacted to read:

8 "[NEW MATERIAL] PREPAID WIRELESS ENHANCED 911 SURCHARGE--
 9 COLLECTION AND ADMINISTRATION OF SURCHARGE--LIABILITY OF
 10 SELLERS--EXCLUSIVITY OF SURCHARGE.--

11 A. As used in this section:

12 (1) "consumer" means a person who purchases
 13 prepaid wireless communication service in a retail transaction;

14 (2) "prepaid wireless communication service"
 15 means a wireless communication service that allows a caller to
 16 dial 911 to access the 911 system, which service must be paid
 17 for in advance and is sold in predetermined units or dollars of
 18 which the number declines with use in a known amount;

19 (3) "prepaid wireless enhanced 911 surcharge"
 20 means the charge that is required to be collected by a seller
 21 from a consumer in the amount established under Subsection B of
 22 this section;

23 (4) "provider" means a person that provides
 24 prepaid wireless communication service pursuant to a license
 25 issued by the federal communications commission;

.206531.1

1 (5) "retail transaction" means the purchase of
2 prepaid wireless communication service from a seller for any
3 purpose other than resale;

4 (6) "seller" means a person who sells prepaid
5 wireless communication service to another person; and

6 (7) "wireless communication service" means
7 commercial mobile radio service as defined by Section 20.3 of
8 Title 47 of the Code of Federal Regulations, as amended.

9 B. A prepaid wireless enhanced 911 surcharge of one
10 and thirty-eight hundredths percent is imposed on the gross
11 value of each retail transaction. The prepaid wireless
12 enhanced 911 surcharge shall be collected by the seller from
13 the consumer with respect to each retail transaction occurring
14 in this state. The amount of the prepaid wireless enhanced 911
15 surcharge shall be either separately stated on an invoice,
16 receipt or other similar document that is provided to the
17 consumer by the seller, or otherwise disclosed to the consumer.

18 C. For purposes of Subsection B of this section, a
19 retail transaction that is effected in person by a consumer at
20 a business location of the seller shall be treated as occurring
21 in this state if that business location is in this state, and
22 any other retail transaction shall be treated as occurring in
23 this state if the retail transaction is treated as occurring in
24 this state for purposes of the Gross Receipts and Compensating
25 Tax Act.

.206531.1

underscoring material = new
~~[bracketed material] = delete~~

1 D. The prepaid wireless enhanced 911 surcharge is
2 the liability of the consumer and not of the seller or of any
3 provider, except that the seller shall be liable to remit all
4 prepaid wireless enhanced 911 surcharges that the seller
5 collects from consumers as provided in this section, including
6 all such surcharges that the seller is deemed to collect where
7 the amount of the surcharge has not been separately stated on
8 an invoice, receipt or other similar document provided to the
9 consumer by the seller.

10 E. The amount of the prepaid wireless enhanced 911
11 surcharge that is collected by a seller from a consumer, if
12 such amount is separately stated on an invoice, receipt or
13 other similar document provided to the consumer by the seller,
14 shall not be included in the base for measuring any tax, fee,
15 surcharge or other charge that is imposed by this state, any
16 political subdivision of this state or any intergovernmental
17 agency.

18 F. When prepaid wireless communication service is
19 sold with one or more other products or services for a single,
20 non-itemized price, the percentage specified in Subsection B of
21 this section shall apply to the entire non-itemized price
22 unless the seller elects to apply such percentage to:

23 (1) if the amount of the prepaid wireless
24 communication service is disclosed to the consumer as a dollar
25 amount, such dollar amount; or

.206531.1

1 (2) if the seller can identify the portion of
2 the price that is attributable to the prepaid wireless
3 communication service by reasonable and verifiable standards
4 from its books and records that are kept in the regular course
5 of business for other purposes, including non-tax purposes,
6 such portion.

7 G. However, if a minimal amount of prepaid wireless
8 communication service is sold with a prepaid wireless device
9 for a single, non-itemized price, the seller may elect not to
10 apply the percentage specified in Subsection B of this section
11 to such transaction. For purposes of this subsection, an
12 amount of service denominated as ten minutes or less, or five
13 dollars (\$5.00) or less, is minimal.

14 H. Prepaid wireless enhanced 911 surcharges
15 collected by sellers shall be remitted to the department at the
16 times and in the manner provided with respect to the Gross
17 Receipts and Compensating Tax Act. The department shall
18 establish registration and payment procedures that
19 substantially coincide with the registration and payment
20 procedures that apply to the Gross Receipts and Compensating
21 Tax Act. A seller shall be permitted to deduct and retain
22 three percent of prepaid wireless enhanced 911 surcharges that
23 are collected by the seller from the consumer.

24 I. The audit and appeal procedures applicable to
25 the Gross Receipts and Compensating Tax Act shall apply to

.206531.1

1 prepaid wireless enhanced 911 surcharges.

2 J. The department shall establish procedures by
3 which a seller of prepaid wireless communication services may
4 document that a sale is not a retail transaction, which
5 procedures shall substantially coincide with the procedures for
6 documenting sale for resale transactions for the Gross Receipts
7 and Compensating Tax Act.

8 K. No provider or seller of prepaid wireless
9 communication services shall be liable for damages to any
10 person resulting from or incurred in connection with the
11 provision of, or failure to provide, 911 or enhanced 911
12 service, or for identifying, or failing to identify, the
13 telephone number, address, location or name associated with any
14 person or device that is accessing or attempting to access 911
15 or enhanced 911 service.

16 L. No provider or seller of prepaid wireless
17 communication services shall be liable for damages to any
18 person resulting from or incurred in connection with the
19 provision of any assistance to any investigative or law
20 enforcement officer of the United States, this or any other
21 state, or any political subdivision of this or any other state,
22 in connection with any investigation or other law enforcement
23 activity by such law enforcement officer.

24 M. In addition to the protection from liability
25 provided by Subsections K and L of this section, each provider

.206531.1

1 and seller shall be entitled to the further protection from
2 liability as provided pursuant to Section 63-9D-10 NMSA 1978.

3 N. The prepaid wireless enhanced 911 surcharge
4 applies to retail transactions occurring on or after July 1,
5 2017."

6 SECTION 11. REPEAL.--Section 63-9D-4.1 NMSA 1978 (being
7 Laws 2003, Chapter 339, Section 1) is repealed.