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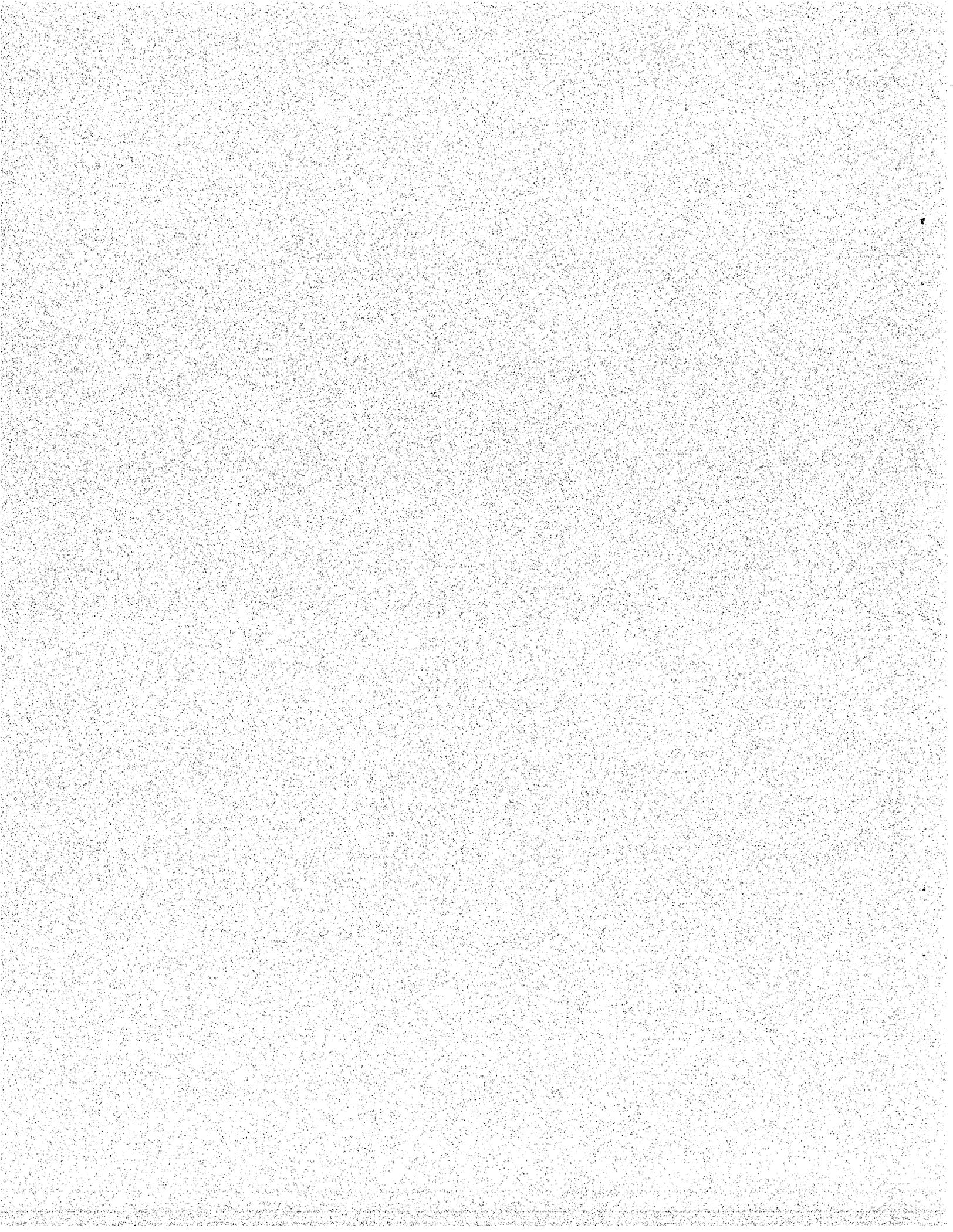
**ASSESSMENT OF A PER TELEPHONE NUMBER FEE TO
FUND MINNESOTA'S 911, TAM AND TAP PROGRAMS**

A REPORT TO THE MINNESOTA LEGISLATURE



MINNESOTA DEPARTMENT OF COMMERCE

JANUARY 2006



EXECUTIVE SUMMARY:

Legislation passed in the 2005 session (Minn. Stat. §237.491) requires the Department of Commerce to submit a report to the Legislature by January 15, 2006 regarding the details for implementing a per telephone number fee to fund Minnesota's 911 emergency and public safety communications program, and the Telecommunications Access Minnesota (TAM) and Telephone Assistance Plan (TAP) programs. Such a per telephone number fee would replace the current per telephone access line funding mechanism.

In preparing this report, the Department issued a white paper on the issues involved with a per telephone number fee, including information on how other states fund their 911/relay/lifeline programs and relevant laws from other states. The white paper was distributed to stakeholders in the Minnesota process. Feedback was received and is summarized in this report.

In order to implement a per telephone number fee, there are several policy decisions that need to be addressed, such as what types of telephone numbers would be the basis for the fee, whether there should be exceptions for numbers assigned to certain types of devices or providers, whether the amount of the fee should be capped for locations with many telephone numbers, and which agency should be responsible for the fee collection. In addition to identifying the policy issues that need to be decided before moving ahead with a per number fee, the report also cites the statutes that may require modification.

The report concludes that adoption of a per number fee would be a more technology and competitively neutral method for collecting the funds necessary to support the 911/TAM/TAP programs than the current per access line mechanism. However, given the disagreement over the implementation details, the potential adoption of a per number fee to support the federal universal service programs, and that the impact of changes made in the 2005 session (the 911 fee increase and expansion to packet switched providers) has not been fully evaluated, the Department of Commerce is recommending that the move to a per number fee not be pursued in the 2006 session.

INTRODUCTION:

In the 2005 legislative session, the Department of Commerce supported a bill that would change the manner in which funding is provided for Minnesota's 911 emergency and public safety communications program, Telecommunications Access Minnesota (TAM) relay program for the communications impaired, and Telephone Assistance Plan (TAP) program that provides a credit on the telephone bills of low income subscribers.¹ Currently these programs are funded on a per telephone access line fee, with 911 (\$0.65 as of July 2005) and TAM (\$0.07 as of July 2005) fees assessed on both wireline and wireless access lines and TAP (\$0.05) assessed only on wirelines. The Department of Commerce's proposal was to change the funding of these programs from a per access line basis to a per telephone number basis. The Department proposed this change in order to move to a more technology and competitively neutral funding basis.

At the same time that the Department of Commerce was interested in altering the funding mechanism, the Department of Public Safety also had concerns about the funding source. Public Safety proposed changes to existing statutory language to raise the 911 fee from a maximum of \$0.40 per access line to a maximum of \$0.65 per access line and also expanded the definition of "access line" to include not only switched but also packet-based telecommunications services connected to the public switched telephone network (PSTN). This latter change had the intent of requiring providers using Voice over Internet Protocol (VoIP) to also assess the fees to their end user customers.

The Legislature adopted both of the changes recommended by the Department of Public Safety. With regard to the changes proposed by the Department of Commerce, the Legislature, in Minn. Stat. §237.491, required the Department of Commerce to report to the Legislature by January 15, 2006 recommendations for the amount of and method for assessing a fee that would apply to each service provider based upon the number of Minnesota telephone numbers in use by current customers of the service provider. The fee would be set at a level calculated to generate only the amount of revenue necessary to fund TAP and TAM at the levels established by the Public Utilities Commission and the 911 emergency and public safety communications program at the levels appropriated by law to the commissioner of Public Safety and the commissioner of Finance. The recommendations were also to include any changes to Minnesota Statutes necessary to establish the process under which each service provider, to the extent allowed under federal law, would collect and remit the fee proceeds to the commissioner of Revenue. The recommendations are also to be designed to allow the combined per number fee to be collected beginning July 1, 2006, with the caveat that the current per access line fee used to collect revenues to support TAP, TAM and 911 would remain in effect until the statutory changes necessary to implement the per telephone number fee had been enacted into law and taken effect. In preparing this report to the legislature, the Department of Commerce was also to consult regularly with the Departments of Public Safety, Finance, and Administration; the Public Utilities Commission; service providers; the chairs and ranking minority members of the senate and house committees, subcommittees and divisions having jurisdictions over telecommunications and public safety; and other affected parties.

¹ Collectively, these three programs are frequently referred to in this report as 911/TAM/TAP.

In the following sections of this report, the Department of Commerce discusses the collaborative approach it used in preparing this report, identifies issues that need to be resolved before a per number fee can be adopted, and identifies specific statutory provisions that would need to be modified.

COLLABORATIVE PROCESS:

In anticipation of submitting this report, the Department commenced research on how other states collect revenues to support their 911, Lifeline (TAP) and Relay (TAM) programs; reviewed laws in other states where a per number fee is used to collect revenues to support one or more of these programs; and prepared a white paper summarizing the results of its research and identifying issues that it believed would need to be addressed. That white paper was distributed widely, to the individuals and groups identified in the legislation as those with which that the Department should consult. In response to the white paper, comments were filed, either individually or jointly, by AARP, Cingular and Midwest Wireless, the Minnesota Department of Public Safety, Eschelon Telecom, Citizens Telecommunications Company of Minnesota and Frontier Communications of Minnesota, the Legal Services Advocacy Project, the Minnesota Chamber of Commerce, OnStar Corporation, Qwest Corporation, Rural Cellular Corporation, Sprint Nextel Corporation and TracFone Wireless.

The complete white paper and comments are available on the Department of Commerce website at:

http://www.state.mn.us/mn/externalDocs/Commerce/Service_provider_fees_for_911TAMTAP_101205013135_TAM-TAP-911Comments.pdf

A summary of the comments is provided below:

AARP: AARP supports the changes suggested in the white paper and also supports automatic enrollment of low-income consumers into the TAP.

Cingular/Midwest Wireless: These two wireless providers cited a number of concerns.

- If the goal is to include VoIP among the types of providers that contribute to the funding base, changes in the 2005 session appear to address that concern for the 911 and TAM funds.
- Other states support their 911/Relay/Lifeline programs by a per access line charge or a percent of the carriers' revenues. If Minnesota moves to a per number fee, some customers may pay similar fees in more than one state.
- If NANPA's definition of "assigned" telephone numbers is used to assess the per number fee, Cingular and Midwest cannot assess the fee based on all of their assigned numbers because the carrier that is required to report the "assigned" number is not always the carrier with a contractual relationship with the end user. This most often occurs with ported numbers or carriers whose service is being resold.
- With regard to requiring wireless providers to support TAP, unless wireless carriers are able to draw from TAP to offer discounted wireless services to low income citizens as eligible telecommunications carriers (ETCs), it is inequitable to compel wireless customers to pay into the fund.

Minnesota Department of Public Safety (DPS):

DPS stated a number of continuing concerns with the current funding mechanism.

- While there were 2005 law changes to include packet switched providers, the fact that local regulation over VoIP is still preempted causes doubt over the extent of local regulation and methods of fee collection.
- The provision of VoIP service to customers in Minnesota does not require the physical presence of the provider within the state or even within the country.
- VoIP does not rely on the provision of service over traditional access lines.
- There is the potential for increased application of the “trunk equivalent concept” with VoIP.

DPS supports moving to a per number approach because it is clearly technology neutral, provides a reasonable functional equivalent to access lines, the telephone number is recognized by all as key to accessing the public switched telephone network (PSTN), and application of a per number fee is straightforward.

DPS supports applying the per number fee to collection of the funds for 911, TAM and TAP and that the fee should be applied to all telephone numbers irrespective of usage. DPS noted that facsimile (fax) lines have not been exempt from 911, TAM or TAP fees in the past and that wireless providers paid 911 fees for years before they were connected to the 911 network.

On the specific implementation issues raised in the white paper, DPS had the following comments. The fee should be applied to numbers with Minnesota area codes (as opposed to numbers billed to addresses in Minnesota, for example). The fees should be assessed using NANPA’s designation of “numbers working in the Public Switched Telephone Network.” Prepaid wireless providers should be assessed the per number fee. The fee should be assessed against the telecommunications service provider with authority for the provider to collect the fee from the end user. The 911/TAM/TAP fees should also be clarified so that any increases must take effect on the first of the month, there should be a specified number of days notice required to change the fee, and the same rules should apply to all three fees.

DPS had the additional comment that the fee collection process should be transferred from DPS to the Department of Revenue, with the funds maintained separately from general revenues. DPS stated that the Department of Revenue has the resources and personnel to receive and collect fees; the resources to periodically audit the fees submitted; and the resources to evaluate any adjustments to the fees collected, such as bad debt reductions.

Eschelon:

Due to the 2005 change to expand the definition of the types of service providers that must pay the 911 and TAM fees, Eschelon recommends that no additional changes be made at this time. Before any further changes are made, the impact of the 2005 change should be studied to properly determine whether there is a need for additional changes.

Eschelon also noted some issues with a per number fee. For example, Custom Ringing Service is a popular feature that provides for distinctive ringing patterns on incoming calls which is achieved by assigning up to three additional telephone numbers to one access line. The single

access line would be charged the 911/TAP/TAM per number fee multiple times when there is actually only one access line available from which to make a 911 call. Eschelon also noted that voicemail boxes are assigned telephone numbers but the numbers associated with those voicemail boxes cannot be used to place telephone calls.

Frontier/Citizens:

A per number fee mechanism should be instituted to generate sufficient revenue to support TAM, TAP and 911 at their current funding levels. Using the reports filed with the North American Numbering Plan Administrator (NANPA) for this purpose is not entirely appropriate. Telephone numbers that are ported or that are resold are still reported by the carrier assigned the code, thus a reporting procedure distinct from NANPA reporting is necessary. All assigned numbers should be included in the assessment base; there should not be exemptions for certain kinds of services (Centrex) or certain types of customers (large businesses). This is necessary because it would significantly add to the administrative efforts, require additional reporting and open the door to gamesmanship.

Once established, the TAP/TAM/911 revenue requirement can be divided by the quantity of assigned telephone numbers to calculate a per number charge. This charge would be the same for all service providers and all lines and should be set annually and simultaneously for all three programs. Each service provider would then be directed to collect the per number charge from its customers, tailored to that provider's unique circumstances.

Legal Services Advocacy Project (LSAP):

LSAP commented that the state has the authority to assess 911, TAM and TAP charges on wireline providers. And, that the state has the authority to assess 911, as well as TAM and TAP, charges on wireless providers. If wireless providers challenge the state's authority to assess TAM and TAP charges, the state can still do so by taxing wireless providers for these programs. LSAP notes that the state can assess 911 charges to VoIP providers, but its authority to assess TAM and TAP charges is less clear. The state may have the ability to assess VoIP providers for TAM and TAP if VoIP is determined to be a telecommunications service. Alternatively, the state may assert authority to assess VoIP for TAM and TAP if these assessments are considered taxes. Prepaid service should also be subject to the 911/TAM/TAP assessment.

LSAP also indicated its strong support to include non-wireline providers as part of the universe of carriers that can receive lifeline support. LSAP noted that mobile phones are often a low income household's primary telephone. To the extent that VoIP is also becoming a viable alternative means of telecommunications for low-income customers, this technology should not be excluded from accessing TAP funds.

Finally, LSAP also noted that enrollment in TAP has increased 66 percent since December 2002. The Department of Commerce should recommend that the statutory surcharge cap of ten cents be increased to twenty cents.

Minnesota Chamber:

The Minnesota Chamber is concerned that changes in the 911/TAP/TAM funding structure would unfairly increase fees on businesses. Business customers are more likely than residential customers to have multiple telephone numbers, putting businesses at increased risk relative to residential customers if a per number fee is adopted. The Minnesota Chamber noted that the current system of funding uses a fee per access line. Access lines carry multiple telephone numbers. For example, the Minnesota Chamber has 15 access lines with 90 telephone numbers. It is not justifiable to have customers with large concentrations of telephone numbers at one location pay a greater proportion than other customers. If a per number fee is determined to be necessary, there should be substantial discounts to locations with multiple telephone numbers. The Minnesota Chamber also noted that many large users also have their own emergency systems that are financed entirely on their own and that these customers do not rely on the public emergency systems to the extent that homeowners do.

The Minnesota Chamber also questions why the 911 program is in need of additional funding when the fee was just increased by \$0.25 per access line and the definition of service provider was just expanded to include any switched or packet-based providers. Further, the Department of Commerce's white paper indicates that the number of access lines is still increasing and is not expected to begin to decrease until 2009.

The Minnesota Chamber suggested that perhaps the solution is to assess a per number fee on wireless customers and keep the current fee structure in place for customers with wirelines.

Minnesota Telecom Alliance (MTA):

It is appropriate and fair that all subscribers using a communications device that is assigned a Minnesota telephone number pay into all three funds. The definition of working telephone number should be based on the semi-annual reports filed with NANPA when the number is located in Minnesota. Since the fee is competitively and technology neutral and based on NANPA reported working numbers there will be no need for creating formulas, caps or trunk equivalencies. With good data from NANPA the fee should be reviewed annually.

To address the implementation issues and the numerous related statutory changes that would result from the change to a NANPA reported working telephone number in use, the Department should create a working group of interested parties that could meet, review and recommend appropriate statutory changes and revisions before the 2006 legislature convenes in March.

OnStar:

OnStar provides access to wireless calling via resold, prepaid minute packages. Therefore, its concern is with how prepaid services are treated for collecting 911 or other fees or taxes. Because some prepaid wireless providers know how many minutes a customer has remaining at the end of a month and other providers do not, OnStar believes it would be appropriate to offer prepaid wireless providers options as to how any fee would be assessed. The first option would allow the provider to collect the fee on a monthly basis from each active prepaid customer that has an account balance equal to or greater than the amount of the service charge by deducting minutes from the subscribers account. The second option would be to divide the total earned

prepaid wireless telephone revenue received by the provider for its prepaid customers by \$50.00 and multiplying the quotient by the 911 service charge.

Any fee should be a cost borne by the wireless prepaid customer and the provider should have the option of identifying and recovering the fee from the wireless customer. The provider should also be entitled to retain some reasonable amount (1 to 3% is common) of the fees it collects to cover the administrative costs associated with the collection.

OnStar also noted that some states have regarded prepaid wireless service as a way to offer wireless service to customers that may not otherwise be able to afford such service, and have thus exempted prepaid wireless service from 911 fees or taxes.

Qwest:

Qwest supports the general goal of the Department's proposal, but a number of concerns are raised that need to be addressed before such a program could be implemented. Those concerns include the legal issues around applying the scheme to VoIP providers and the policy concern of applying a tax to a large number of subscribers that could never be in a position to take advantage of the services—such funding most appropriately should come from the general fund.

Qwest noted additional concerns:

- With VoIP, a user's telephone number is not tied to their physical location. Minnesota could end up assessing fees on telephone numbers that have no nexus with Minnesota.
- The current law requires telecommunications service providers to pay what is collected into the fund. However, almost all companies pay based on the amount they bill. As a result, companies are prepaying the fees and must collect after the fact. Qwest has attempted to reduce payments by the amounts that have proven to be uncollectible but the authorities have objected. The manner in which uncollectible amounts are recognized and processed needs to be addressed in any fee legislation.
- Currently the fees are imposed on the purchase of the product and not the provider. If the liability is shifted to the provider, it would cost the citizens of Minnesota an extra 3% Federal Excise Tax.
- If fees were imposed upon telephone numbers, rather than access lines, companies having multiple access lines, but single numbers would pay smaller fees.
- There are also issues with respect to application of a per number charge to large multi-line users. Such customers are assigned a large number of lines and the customer chooses which lines should be active at any one time. There is no way for the service provider to know how many active Centrex numbers the customer has at any one time.
- If a per number fee is adopted, it should be based on the active service address. This avoids the problem of Minnesota residents with out-of-state numbers assigned to them.
- Capping the amount of telephone numbers at a location subject to the fee has proven unworkable. For example, if a building is occupied by a single company but each division has its own billing number for budgetary purposes, the provider may be unable to aggregate all of the billing numbers to determine if the cap is reached.

Given the problems with implementing a per telephone number fee, Qwest believes the ideal solution is to pay for these programs out of the state general fund.

Rural Cellular Corporation (RCC):

RCC shares many of the same concerns as Cingular/Midwest. RCC also noted that any modifications to their billing system can be extremely expensive and not easily absorbed.

Sprint/Nextel (Sprint):

Sprint does not endorse any particular mechanism for implementing reform of the funding source for 911/TAM/TAP but believes that any reform chosen should be competitively and technologically neutral. If the legislature adopts the Department of Commerce proposal for a per number fee based assessment, Sprint has the following concerns:

- Numbering Resource Utilization/Forecast (NRUF) data from NANPA may not be an appropriate basis for determining which numbers to assess because of how ported numbers are accounted for. If another mechanism is chosen, Sprint has concerns over how often such data would have to be reported and how often the assessment would change.
- On the issue of TAP support, Sprint indicated that low income cellular users already have several low cost wireless options (prepaid plans, low cost monthly plans), so there may not be a need for wireless providers to receive TAP support. Wireless providers not eligible to receive TAP support should not be assessed the TAP fee.
- The current assessment law is wide enough to encompass VoIP and other emerging technologies. It is not clear that any changes are necessary to address the Department of Commerce's concerns.

Tracfone:

Any method of funding should be equitable, non-discriminatory and competitively neutral. A per number fee would not meet these standards for the following reasons:

- A per number fee is unfair and regressive because it does not take into account the customer's usage of the number or the revenue derived from that number. A flat fee disproportionately burdens low-volume customer v. high volume customers. (A fee of \$0.77 per number represents a tax of 10% to 5% for a prepaid customer spending only \$8 to \$15 per month while that is only 1.5% to 0.7% for customers spending \$50 to \$100 per month for service.) If a per number fee is adopted, it should be capped so as not to exceed, for example, 0.25% of the telecommunications revenue associated with that number.
- A fee based on a percentage of revenues would better reflect a customer and service provider's ability to pay.
- Telephone numbers and access lines are a declining base. The fees should be assessed based on revenues or customer spending.
- 911 is one of the keystones of homeland security and exists for the benefit of everyone. It should be funded out of the general fund like police, fire, rescue and other emergency services.
- If not funded by the general fund, then the base should be expanded to include long distance services, VoIP, advanced telecommunications services, information services, Internet and other services that connect with the PSTN.
- Prepaid wireless service needs special consideration because the provider is not always a party to the retail transaction between the retailer (Wal-Mart, K-Mart, Target) and the purchaser and, prepaid wireless is sold on a pay-as-you-go basis with

no monthly subscriptions or bills. Since Tracfone is not a party to the actual retail transaction, it is impossible for it to collect a fee from the purchaser. (For example, Tracfone is not responsible for collecting sales taxes on its service—the retail provider is.) It is impossible to compute a monthly fee on a service measured in minutes of use.

- The current instructions by the Minnesota ARMER/911 Program imposes higher fees on prepaid service. For example, if a prepaid wireless card is purchased for a two month period, companies can deduct \$1.50 and submit that amount. Someone might use three 40 minute cards in one month and pay \$4.50 for 911/TAM.
- The cost recovery provisions of the 911 statute are also discriminatory. Tracfone has been denied reimbursement for handset upgrades that are legally mandated under Phase II.
- There should be full disclosure by the Department of Public Safety of which companies remit fees on prepaid services, how such fees are collected from end users, the amounts of such payments, and cost recovery disbursements.

As evidenced by the summary of comments above, there is not a consensus that a per telephone number fee should be implemented at this time. Should the Legislature decide, however, that it is still appropriate to move ahead, the Department of Commerce identifies issues that must be addressed and then identifies existing laws that would need to be modified.

ISSUES TO BE RESOLVED:

1. Should a per number fee be based on working telephone numbers as reported by carriers and compiled in the North American Number Plan Administration's Numbering Resource Utilization/Forecast Report (NRUF)?

Twice a year, all carriers that are assigned telephone numbers from the North American Numbering Plan Administration (NANPA) report to NANPA on the quantity of telephone numbers that they have that are working, available, intermediate, reserved and aging. In discussing a per number fee, the general focus has been on assessing the fee to working telephone numbers.²

As a rough comparison, data from the Department of Public Safety shows that there were 2,801,617 wired and 3,018,047 wireless access lines in Minnesota for September 2005. That is a total of 5,632,909 access lines. For the reporting period ending June 30, 2005, NANPA data shows that there were 10,204,958 working telephone numbers with Minnesota area codes for the reporting period ending June 2005 (6,841,209 wireline and 3,363,749 wireless). If you assume that a 911/TAP/TAM fee of \$0.77 assessed on wireline access lines would generate \$2,157,245 and a \$0.72 911/TAM fee assessed on wireless lines would generate \$2,172,994, the total received for the three funds would be \$4,330,239. To collect the same amount of revenues under

² Numbers are assigned to providers in blocks of 10,000 or more recently in blocks of 1,000. Independent telephone companies may serve an exchange with, for example, 300 working telephone numbers, although they have a total of 10,000 telephone numbers available for use in that exchange due to the historical method of assigning telephone numbers. It would appear to make the most sense to assess any per number charge on the number of working telephone numbers rather than on the total numbers available in an exchange.

a per number fee, the fee based on working telephone numbers could be \$0.32 for wireline numbers and \$0.65 for wireless numbers or \$0.43 if assessed to all working telephone numbers.³

If it is determined that data from the NRUF reports should be used to assess a per telephone number fee, there are some specific issues that should be addressed.

First, should an exception be made for ported numbers. With local number portability, an end user customer that wants to change providers can retain their same telephone number. For purposes of a per number fee and NANPA reporting, however, that number may continue to look as if it is still assigned to the provider that was originally assigned that number in its block of 10,000 or 1,000 numbers. If carriers are only required to remit the fees that they are able to collect, then they would not be collecting for numbers for customers that have ported to another carrier. This will reduce the number of working telephone numbers attributable to that carrier and NRUF data will not be a perfect audit mechanism. Second, working telephone number data would be reported twice a year through the NRUF reports, rather than the monthly access line counts filed today. Working telephone number counts would therefore only change twice per year.

The Department of Commerce would note that the FCC is looking at NRUF reported working telephone numbers as a mechanism upon which to base funding for the federal universal service programs. If NRUF data is the method selected, the FCC would likely work to address both of the above issues to ensure better data. The FCC is expected to act within the next few months, assuming legislation is not passed at the federal level adopting a different funding mechanism.⁴

A few commenters indicated that NRUF data would not be appropriate as the basis for a per number fee. If NRUF data is not used, then another basis must be established for identifying telephone numbers.

Additional issues that should be addressed in any legislation include the following:

2. Should any per number fee be based on telephone numbers with Minnesota area codes or telephone numbers billed to a Minnesota address?

The Department's original proposal was to use telephone numbers with a Minnesota area code. The Department still supports this concept as it is in alignment with how carriers report their number usage to NANPA. Use of numbers with a Minnesota area code also assures that such numbers, which may be billed to an out-of-state corporate headquarters, are still assessed the fees. However, the Legislature should be aware that Wisconsin recently adopted a law that assesses a wireless fee for recovery of 911 costs based on telephone numbers billed to a Wisconsin address.

³ The Department of Commerce would note that its proposal to move to a per number fee assumed revenue neutrality, i.e. use of a different funding mechanism would still result in the same total dollars being collected.

⁴ Draft federal legislation to date appears to favor supporting federal universal service programs through assessments based on the amount of revenues from interstate and intrastate services rather than on an assessment based on telephone numbers.

Thus, for people living in Hudson with cell phones that have a 651 area code, they could be billed the Wisconsin wireless 911 fee and the Minnesota per number fee unless some exemption language is included.

3. Should every telephone number be billed the fee?

Telephone numbers are assigned for purposes of interconnecting with the public switched telephone network (PSTN). Devices that are assigned telephone numbers include telephones, cellphones, pagers, VoIP service, facsimile machines, credit card verification machines, etc. The question arises as to whether every working telephone number should be assessed the fee. If there are no exceptions allowed, a per number fee will obviously be easier to implement and audit. The Department of Public Safety also noted that facsimile lines have never been exempt from paying the 911 fee and that today's pagers are transitioning into two way data communications devices that will be capable of accessing the 911 network.

4. Should some cap be placed, for example, on the number of telephone numbers at the same address?

With the current per access line fee, for customers that receive service over trunks, there is a trunk equivalency factor that is used that favorably caps the amount of 911/TAP/TAM fees that these large users pay. With the evolving technology, however, the Department of Public Safety notes that it is no longer large business customers that receive service over trunks but that VoIP providers now purchase trunks to provide service to many end users and thereby avoid paying 911 fees on even a per customer basis. Public Safety supports abandoning the trunk equivalency concept and assessing the fees on a straight per number basis.

On the other hand, the Minnesota Chamber argues that a per number fee would unfairly increase fees on businesses that have multiline telephone systems. The Minnesota Chamber proposes that businesses that have a large number of lines at one location should receive a substantial discount on the per number fees that they are assessed.

5. Should all providers be required to pay a uniform fee amount?

Currently only wireline access lines pay into all three funds: 911, TAP and TAM. Wireless access lines only contribute to 911 and TAM. VoIP providers argue that by federal law, states may only require them to contribute to 911 program costs. Should state law be changed to establish a single fee that is used to fund 911, TAM and TAP? If wireless providers are required to contribute to TAP, should state law be changed to allow them to be eligible to offer TAP to their end users?

6. Should changes in the fee amounts be coordinated?

If the Legislature determines that the three separate fee amounts be retained, should the law be clarified that any changes made to the fee amounts be implemented at the same time? When the fee amounts have been changed in the past, the changes have often been only pennies per

customer. However, any change to the bills require companies to incur costs to have their billing software changed to bill the new amounts. If changes are implemented at the same time, then companies can make the necessary changes to their billing software at one time.

7. For wireless service, should prepaid providers be treated differently?

Prepaid wireless⁵ providers do not send a monthly bill to their end users where they can include a line item for recovery of 911, TAM and TAP (if TAP were extended to wireless) costs. Instead, prepaid service is paid for by end users purchasing minutes in a block either by purchasing a card at a retail store or by contacting the wireless provider and purchasing minutes by credit card.

Tracfone notes that the Department of Public Safety currently requires prepaid wireless providers to deduct \$1.50 from a prepaid wireless card that is purchased for a two month period and to submit that amount or, if a prepaid card is used during a month, to subtract \$0.75 from the card and submit that amount. Tracfone argues that prepaid customers that purchase more than one card in a month are assessed per card and pay an unfair and discriminatory amount.

Several commenters offered options on how prepaid wireless service could be treated. One option would be to exempt prepaid wireless from the per number fee as prepaid wireless is frequently used by low income customers. A second option would be to allow the prepaid wireless provider the option of collecting the charge from each active account by decreasing the account by an equivalent number of minutes or by allowing the provider to divide the total earned prepaid wireless telephone revenue received by the provider by \$50 and multiplying the result by the per number charge. (This latter method assumes the average prepaid wireless user spends about \$50 per month.) Other options suggested were to assess the charge based on revenues or to fund 911/TAM/TAP out of the general fund.

8. Should the Department of Public Safety's suggestion that fee collection be assigned to the Department of Revenue be incorporated?

Currently the Department of Public Safety is responsible for collecting the 911, TAM and TAP fees from the providers and depositing in the appropriate accounts. DPS supports transferring the fee collection process to the Department of Revenue as it has the resources and personnel to collect the fees, it has the resources to periodically audit the fees, and it has the resources to evaluate any adjustments to the fees such as for bad debt reductions. The Department of Commerce would note that Minn. Stat. §237.491, subd. 2(b) indicates that the fees would be collected and remitted to the Department of Revenue which would then allocate the fee proceeds to the three funding areas.

9. Miscellaneous.

In the comments, several miscellaneous issues were raised, including the establishment of an audit mechanism; whether the fee is assessed to the provider with authority to collect from their

⁵ Prepaid wireless service is "pay-as-you-go" and includes such service as Tracfone and Virginmobile. Tracfone estimates that as many as 500,000 Minnesotans rely on prepaid wireless to meet their wireless communications needs.

end users (Qwest indicates the 3% federal excise tax would then apply) or whether the fee is assessed to the end user and the provider serves as the fee collector; clarification for the treatment of uncollectible amounts if the provider is serving as a fee collector; if providers should be allowed to retain a percent of the fee to cover their costs of collection; and whether there should be full disclosure of what companies are paying the fee on prepaid service, how the fees are collected from end users, the amounts of the payments to the state, and what providers are reimbursed for 911 costs.

STATUTES THAT WOULD NEED TO BE MODIFIED:

Minn. Stat. §237.491, subd. 2(b) also directs that this report address changes to Minnesota Statutes necessary to establish a per number fee, with remittance of those fee proceeds to the commissioner of the Department of Revenue. The Department of Commerce has identified above a number of policy issues that must first be resolved before specific language can be recommended. The Department of Commerce attempts, below, to identify all statutes related to the collection of the current 911, TAM and TAP fees that would need to be modified dependent on how the Legislature chooses to address the various policy issues.

- Minn. Stat. §237.49 discusses the combined local access surcharge. It references the amounts currently collected per access line with remittance to the commissioner of the Department of Public Safety. The commissioner of the Department of Public Safety is to divide the amounts received proportional to the individual surcharges and deposit them in the appropriate accounts. This provision also directs companies or their billing agents to list the surcharges as one amount on the billing statement sent to the subscriber.

Minn. Stat. §237.49 would have to be modified to reflect the basis upon which the fee is collected (per telephone number), with any exceptions for certain types of numbers or certain types of providers. If the Department of Revenue is determined to be the more appropriate agency for collecting the fees, then Revenue should be substituted for Public Service.

- Minn. Stat. §237.50 addresses the TAM program. If separate funds are not maintained, then the definition in subd. 6 would need to be modified.
- Minn. Stat. §237.52 covers the TAM fund. Subdivision 1 refers to a separate TAM fund. Subdivision 2 addresses the assessment mechanism. The language would need to be modified to reflect policy decisions made by the Legislature, including when fee increases could be implemented (assuming coordination with 911 and TAP fee increases) and an appropriate cap per telephone number (the current cap is 20 cents per access line). Subdivision 3 addresses the types of providers that must collect the fee and also directs those providers to remit the fees to the commissioner of the Department of Public Safety. Both of these provisions may need to be modified.

- Minn. Stat. §237.69 covers the Telephone Assistance Plan. Definitions for access line, fund, telephone assistance plan and telephone company may need to be modified or replaced if the Legislature adopts policies that would implement a per number fee and that would expand the program to all providers (not just telephone companies).
- Minn. Stat. §237.70 addresses the development of the Telephone Assistance Plan. It would need to be changed to reflect policy decisions by the Legislature covering a per number fee, to apply to all providers, by adopting a new cap (the current cap is 10 cents per access line per month), and replacing the Department of Public Safety with the Department of Revenue as the fee collector.
- Minn. Stat. §237.701 discusses the telephone assistance fund and the expenses that may be covered by the fund. Subd. 1 includes a reference to the commissioner of Public Safety which would need to be changed to commissioner of Revenue if there is a transfer in who collects the fees from the providers.
- Minn. Stat. §403.11 addresses the 911 fee, including who pays the fee, the type of providers that must assess the fee, the range for the fee (between 8 cents and 65 cents per access line), the notice required for a fee change, and remittance of the fee to the commissioner of the Department of Public Safety. These provisions may need to be modified depending upon how the Legislature decides the policy issues identified above.
- Minn. Stat. §403.113, subdivision 1, addresses the enhanced 911 fee, including the types of providers that must assess the fee, and references the 911 fee collection provisions of Minn. Stat. §403.11. Subdivision 1 of Minn. Stat. §403.113 will have to be modified to be consistent with any changes made to Minn. Stat. §403.11.

CONCLUSION:

A per number fee mechanism would be more technology and competitively neutral for collecting the funds necessary to support Minnesota's 911, TAM and TAP programs. There is, however, disagreement over the details of how to implement any type of per number fee. There are also changes being considered at the federal level, possibly within the next few months, that could provide some guidance on how to implement a state per number fee. Finally, in 2005 there was a change in the amount of the 911 fee cap and application of the fees was expanded to include packet switched services. In fact, several commenters cited these changes as reasons not to change the fee collection process further until the impact of the 2005 changes can be fully understood. Thus, the need to move forward on a per number fee has been mitigated for the time being. The Department of Commerce would recommend that no changes be implemented during the 2006 session.