

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

COMMONWEALTH OF KENTUCKY)	
COMMERCIAL MOBILE RADIO SERVICE)	
EMERGENCY TELECOMMUNICATIONS)	
BOARD,)	Case No. 3:08-CV-660-JGH
)	
PLAINTIFF,)	
)	
v.)	
)	(ELECTRONICALLY FILED)
TRACFONE WIRELESS, INC.)	
)	
DEFENDANT.)	
)	

**BRIEF *AMICUS CURIAE* OF
CTIA – THE WIRELESS ASSOCIATION®
IN SUPPORT OF DEFENDANT**

Introduction

This case arises from a dispute between Plaintiff, Commercial Mobile Radio Services Emergency Telecommunications Board of Kentucky (“CMRS Board”), and Defendant, Tracfone Wireless, Inc. (“Tracfone”), as to, *inter alia*, whether or not the statutory provisions for Wireless Enhanced Emergency 911 Systems, set forth in KRS 65.7621 to 65.7643 as in effect from roughly July 1998 through June 2006 (the “E-911 Statutes”), authorize the levy and collection of a \$0.70 per month CMRS service charge for each CMRS connection within Kentucky to apply to not only postpaid wireless services, but also prepaid wireless services.¹

As discussed below, this issue is of concern to all prepaid wireless service providers that have conducted their respective businesses in reliance on the statutory language of the E-911 statutes. *Amicus Curiae*, CTIA – the Wireless Association®, is the industry trade association

¹ This brief does not address the scope and effect of the E-911 statutes after they were amended by the Kentucky General Assembly in 2006.

whose members seek the Court's declaration that the pre-June 2006 wording of the E-911 statutes means what it says, which is that prepaid wireless services are not subject to the CMRS service charge.

Identity and Interest of Amicus Curiae

CTIA - The Wireless Association® ("CTIA") is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 700 MHz, cellular, Advanced Wireless Service, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products. The Kentucky CMRS Board's proposed application of the CMRS service charge to prepaid wireless service will have industry-wide significance to providers, such as Tracfone Wireless, Inc. ("Tracfone") and others, as well as their customers.

Amicus has a strong interest in this case because several other prepaid wireless service providers, in addition to Tracfone, that are members of CTIA have disputed the propriety of the imposition of the CMRS service charge on prepaid wireless services under Kentucky's pre-July 2006 E-911 Statutes. Consequently, CTIA submits this Brief to provide the wireless industry's perspective on the application and scope of Kentucky's CMRS service charge.

Statement

1. Postpaid Wireless Services (Billed Monthly) Versus Prepaid Wireless Services (No Bill)

Tracfone and other members of CTIA provide wireless service.² There are two primary

² See generally KRS 65.7621(4) ("CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term wireless and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line....").

methods of providing and billing wireless service: postpaid and prepaid.

Postpaid wireless service is the traditional method of providing and billing wireless service wherein the customer “signs-up” with a provider. This typically involves entering into a service contract that may require, as a prerequisite, either an acceptable credit history or a security deposit. The contract normally specifies the number of minutes, text messages, etc. for which the customer is billed at a flat rate and an additional charge for usage above the specified levels; as such, the customer has, in effect, virtually unlimited credit. As a matter of course, the provider bills the customer each month for wireless services used.

In contrast, prepaid wireless service, such as that provided by Tracfone, is an alternative method of delivery and billing where the customer pays in advance, and the prepayment is consumed by their use of wireless services. In this model, a purchaser buys a prepaid wireless handset with a fixed number of prepaid minutes at a retail outlet (*e.g.*, a big box retail store, etc.). The purchaser activates the wireless service via a toll free number or website to enable the user to obtain access to the respective provider’s wireless network. A user can buy more minutes at a participating retail store by purchasing another prepaid wireless service card to “reload” the handset. Under this model, prepaid customers are customers of the provider only when they have unused prepaid wireless service minutes.

Note that because of this delivery and billing methodology, a prepaid wireless service user may or may not be the purchaser. For example, the user may be the purchaser’s college student child, elderly parent, etc. And, the state of purchase may not necessarily be the place of primary use. For example, the primary place of use of a phone purchased in Louisville, Kentucky could very well be across the Ohio River in Southern Indiana.

Prepaid wireless service programs enable customers to obtain wireless services as needed or as they can afford it. Prepaid wireless service customers need not enter into contracts, have an

acceptable credit history, shell out a security deposit or otherwise commit to pay fees on monthly bills. Because prepaid wireless services are, as this designation suggests, paid for by customers in advance (sometimes with cash), there is no need for bills; so, providers do not send bills.

2. The Pre-July 2006 Statutory Scheme Authorizing the Levy and Collection of the CMRS Service Charge

The statutory provisions for Wireless Enhanced Emergency 911 Systems are set forth in KRS 65.7621 to 65.7643 (the, “E-911 Statutes”). The powers and duties of the Commercial Mobile Radio Services Emergency Telecommunications Board of Kentucky (“CMRS Board”) [KRS 65.7621(5)] are set forth in KRS 65.7629.

The one most relevant to the issue here is the CMRS Board’s “levy” of the CMRS emergency telephone service charge (“CMRS service charge”), which is “levied under KRS 65.7629(3) and collected under KRS 65.7635.” KRS 65.7621(10). The CMRS Board has the power to:

To collect the CMRS service charge³ from each CMRS connection [with a place of primary use, as defined in 4 U.S.C. sec. 124,]⁴ within the Commonwealth. The CMRS service charge shall be seventy cents (\$0.70) per month per CMRS connection, and shall be collected in accordance with KRS 65.7635 beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly....

KRS 65.7629(3) (as enacted by 1998 Ky. Acts, c. 535, § 5; [] supplied to reflect an amendment

³ “The term ‘charges for mobile telecommunications services’ means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer’s home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.” 4 U.S.C. § 124(1) (added by the Mobile Telecommunications Sourcing Act [“MTSA”], Pub. L. No. 106-252, 14 Stat. 626 (2000), applicable only to customer bills issued after the first day of the first month beginning more than 2 years after July 28, 2000).

⁴ “The term ‘place of primary use’ means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be--(A) the residential street address or the primary business street address of the customer; and (B) within the licensed service area of the home service provider.” 4 U.S.C. § 124(8) (added by the MTSA in 2000). Notably, “[Section 116] through 126 of [the MTSA - including Section 124] do not apply to the determination of the taxing situs of prepaid telephone calling services....” 4 U.S.C. § 116(c)(1).

made by 2002 Ky. Acts, c. 69, § 3; footnote added).⁵ Notice that the CMRS service charge is a per month charge of \$0.70 and levied from each CMRS connection, essentially, from each CMRS customer -- it is not levied on each CMRS provider.⁶

Each billing CMRS provider, however, does [per KRS 65.7621(10) and KRS 65.7629(3)] collect from each CMRS connection/customer the CMRS service charge, which is to be listed as a separate entry on each bill that includes such a charge:

Each CMRS provider shall act as a collection agent for the CMRS fund and shall, as part of the provider's *normal monthly billing process*, collect the CMRS service charges levied upon CMRS connections under KRS 65.7629(3) from each CMRS connection to whom the *billing* provider provides CMRS. Each *billing* provider shall list the CMRS service charge as a separate entry *on each bill* which includes a CMRS service charge. If a CMRS provider receives a partial payment for *a monthly bill* from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider.

KRS 65.7635(1) (emphasis added).⁷ Observe that when a CMRS customer short pays a CMRS

⁵ As amended by the 2006 General Assembly, KRS 65.7629(3) now provides:

To collect the CMRS service charge from each CMRS connection:

(a) With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth; or

(b) **For prepaid CMRS connections:**

1. **With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth; or**

2. **With a geographical location associated with the first six (6) digits, or NPA/NXX, of the mobile telephone number is inside the geographic boundaries of the Commonwealth.**

The CMRS service charge shall be seventy cents (\$0.70) per month per CMRS connection, and shall be collected in accordance with KRS 65.7635 beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly; KRS 65.7629(3) (emphasized text added by 2006 Ky. Acts, c. 219, § 4).

⁶ KRS 65.7623(6) defines a "CMRS connection" to mean "a mobile handset telephone number assigned to a CMRS customer..." KRS 65.7623(7) defines a "CMRS customer" to mean "a person to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation."

⁷ As amended by the 2006 General Assembly, KRS 65.7635(1) now provides:

Each CMRS provider shall act as a collection agent for the CMRS fund. ~~and~~ **From its customers, the provider** shall, as part of the provider's ~~normal monthly~~ billing process, collect the CMRS service charges levied upon CMRS connections under KRS 65.7629(3) from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider. **For CMRS customers who purchase CMRS services on a prepaid basis, the CMRS service charge shall be determined according to one (1) of the following methodologies as elected by the CMRS provider:**

(a) **The CMRS provider shall collect, on a monthly basis, the CMRS service charge specified in**

provider, the partial payment goes first to amounts owed to the CMRS provider – not against any CMRS service charge due.

It is important to highlight that a CMRS provider has no obligation to enforce collection of CMRS service charges billed to CMRS customers who fail to remit the CMRS service charge. The Commonwealth, however, may pursue CMRS customers in the Circuit Court of the Kentucky county where the bill for CMRS service is regularly delivered:

A CMRS provider has no obligation to take any legal action to enforce the collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

KRS 65.7635(2) (emphasis added).

Each CMRS provider remits CMRS services charges “collected” (less a cost of collection administrative fee of 1.5% of CMRS charges collected each month [KRS 65.7635(4)]) to the CMRS Board.

All CMRS service charges imposed under KRS 65.7621 to 65.7643 collected by each CMRS provider, less the administrative fee described in subsection (4) of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

KRS 65.7629(3) from each active customer whose account balance is equal to or greater than the amount of service charge; or

(b) The CMRS provider shall divide its total earned prepaid wireless telephone revenue received with respect to its prepaid customers in the Commonwealth within the monthly 911 emergency telephone service reporting period by fifty dollars (\$50), multiply the quotient by the service charge amount, and pay the resulting amount to the board; or

(c) In the case of CMRS providers that do not have the ability to access or debit end user accounts, and do not have retail contact with the end-user or purchaser of prepaid wireless airtime, the CMRS service charge and collection methodology may be determined by administrative regulations promulgated by the board to collect the service charge from such end users.

KRS 65.7635(1) (emphasized text **added** or ~~deleted~~ by 2006 Ky. Acts, c. 219, § 4)

KRS 65.7635(5) (emphasis added). This subsection does not obligate a CMRS provider to remit uncollected fees.

Argument

I. THE CLEAR TEXT OF THE PRE-JULY 2006 CMRS SERVICE CHARGE STATUTES DO NOT AUTHORIZE THE IMPOSITION OF A CMRS SERVICE CHARGE ON PREPAID WIRELESS SERVICE PROVIDED BY NON-BILLING PROVIDERS SUCH AS TRACFONE

During the time periods relevant herein, Kentucky's CMRS service charge statutory scheme authorized the CMRS Board to levy a \$0.70 per month CMRS service charge from each CMRS connection within Kentucky collected by each billing CMRS provider as a part of their normal monthly billing process from their CMRS customers. *See* KRS 65.7621(10); KRS 65.7629(3); KRS 65.7635. Accordingly, the CMRS service charge has been properly levied on postpaid wireless service, collected by CMRS providers from their postpaid wireless service customers on their monthly bills and remitted to the CMRS Board.

This statutory scheme, however, did not impose an obligation on a non-billing CMRS provider, such as Tracfone, to collect a CMRS service charge from a prepaid wireless customer to whom no monthly bills were sent. Thus, the involved statutes did not authorize the levy or collection of the CMRS service charge on prepaid wireless service. This is evident in the clear text of the statutes authorizing the imposition of the CMRS service charge.

The statutory text of the CMRS service charge statutes [KRS 65.7629(3) and KRS 65.7635 and the definitions provided in KRS 65.7621] authorize the CMRS Board to levy the CMRS service charge on CMRS connections and requires each billing CMRS provider to collect this charge from their customers via monthly bills. KRS 65.7629(3) required the per month CMRS service charge to be collected in accordance with KRS 65.7635, and that statute quite specifically required collection of this charge via a CMRS service provider's normal monthly

billing process – a process that occurs only in the context of postpaid wireless service. For prepaid wireless service, there is no monthly billing process and thus no billing CMRS provider, and so, KRS 65.7635 provides for no mechanism to collect the CMRS service charge for prepaid wireless service.

The Kentucky General Assembly has not given CMRS Board the authority to levy the CMRS service charge on prepaid wireless service. In this regard, “It is fundamental that administrative agencies are creatures of statute and must find within the statute warrant for the exercise of any authority which they claim.” *Dep’t for Natural Res. & Envtl. Prot. v. Stearns Coal & Lumber Co.*, 563 S.W.2d 471, 473 (Ky. 1978) (quotation omitted); *see also Kerr v. Kentucky State Bd. of Registration for Prof’l Eng’rs & Land Surveyors*, 797 S.W.2d 714, 717 (Ky. App. 1990) (“Regulatory agencies are creatures of statute, and have no powers of their own....”). An administrative agency, such as the CMRS Board, cannot exercise authority that the General Assembly did not vest in it. *Stearns Coal*, 563 S.W.2d at 473.

An administrative agency’s attempted exercise of a power beyond that authorized by statute – such as the CMRS Board’s attempted levy of a CMRS service charge on prepaid wireless service – is *ultra vires* and void. *See Id.*; *Martin v. Chandler*, 318 S.W.2d 40, 44-45 (Ky. 1958). A case example in the context of a levy demonstrates that this rule operates to prohibit an administrative governmental agency from collecting charges when it is without statutory authority to do so as the CMRS Board is here without statutory authority to levy and collect the CMRS service charge.

In *Stierle v. Sanitation Dist. No. 1 of Jefferson County*, 243 S.W.2d 678, 680 (Ky. 1951), Kentucky’s then highest court held that although a statute granted the Sanitation District, a governmental entity, “the power to make and collect charges for services from ‘users’ of its sanitary works,” the statute did not grant it “the power to collect charges from persons who

[we]re not using its sanitary works.” As such, property owners were entitled: [i] to be relieved of charges from the Sanitation District until it actually furnished sewer services to them; and, [ii] to recover sums for unauthorized charges made by the Sanitation District. *Id.* at 681.⁸

The relevant statutes [KRS 65.7629(3) and KRS 65.7635] must clearly and explicitly grant the CMRS Board the authority to validly impose the CMRS service charge on prepaid wireless services. *See Stearns Coal*, 563 S.W.2d at 473; *Stierle*, 243 S.W.2d at 680. Thus, the issue of whether or not the CMRS service charge can be imposed on prepaid wireless services turns on the construction of these two statutes.

The “goal in construing a statute is to give effect to the intent of the General Assembly, and...that intent [is derived], if at all possible, from the plain meaning of the language the General Assembly chose.” *King Drugs, Inc. v. Revenue Cabinet*, 250 S.W.3d 643, 645 (Ky. 2008). It has long been the law that, “The best way in most cases to ascertain such intent or to determine the meaning of a statute is to look to the language used....” *Gateway Const. Co. v. Wallbaum*, 356 S.W.2d 247, 249 (Ky. 1962); *see also Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005).

The discernment of the legislative intent underlying the levy and collection of the CMRS service charge requires an examination of the whole act. “The presumption is that the Legislature intends an Act to be effective as an entirety.” *George v. Scent*, 346 S.W.2d 784, 789 (Ky. 1961). Multiple references to collection of the CMRS service charge via monthly bills permeate the E-911 Statutes.

The CMRS service charge is levied under KRS 65.7629(3) and collected under KRS 65.7635. *See* KRS 65.7621(10). KRS 65.7629(3) provides for a “per month” charge to be

⁸ *See also State Highway Comm’n v. County Bd. of Educ.*, 264 Ky. 95, 94 S.W.2d 302 (Ky. 1936) (holding that statutory text did not support the extension of the State Highway Commission’s authority to authorize toll charges to payment of toll by students for travel on a toll road while attending school so that such toll charge was invalid).

collected under KRS 65.7635, and that statute explicitly requires collection of the charge by the CMRS “billing provider” via the “normal monthly billing process.” References to bills or billing [7 times], monthly bills or billing [2 times], and months [6 times] are spread throughout KRS 65.7635. But, there is a notable absence of any mention of anything that could be construed to authorize the imposition of the CMRS service charge on prepaid wireless service for which there is no bill. Moreover, prepaid wireless service is, consistent with its nomenclature, prepaid; so, there is no “monthly billing process” [KRS 65.7635] and thus falls completely outside of the intended scope of the statutorily mandated CHMR service charge collection mechanism.

No text in these statutes authorized the CMRS Board to hold a non-billing CMRS provider of prepaid wireless services, such as Tracfone, liable for CMRS service charges that it did not bill or collect. KRS 65.7635(1) requires the “billing provider” to collect the CMRS service charge – not a non-billing provider. Even when a “billing provider” actually bills the CMRS service charge, that provider need only pay the CMRS Board those monthly CMRS service charges that it actually collected. *See* KRS 65.7635(1)&(5).

In drafting the E-911 Statutes, the General Assembly left no room for conjecture or guesswork as to the extent of the CMRS service charge defined in KRS 65.7621(10) to be levied under KRS 65.7629(3) and collected under KRS 65.7635. And, in ascertaining the Legislative intent of statutory text, it is inappropriate to “surmise[e]” [*O’Daniel*, 153 S.W.3d at 819] or to “guess what the Legislature intended but did not express...” [*Gateway*, 356 S.W.2d at 249]. “In other words, [it is] assume[d] that the Legislature meant exactly what it said, and said exactly what it meant.” *O’Daniel*, 153 S.W.3d at 819 (quotations and alterations omitted; [] supplied).

“If a plain reading of [a] statute yields a reasonable legislative intent, then that reading is decisive and must be given effect....” *King Drugs*, 250 S.W.3d at 645. Here, a plain reading of the E-911 Statutes yields a reasonable legislative intent, *i.e.*, the CMRS Board is authorized to

collect the CMRS service charge when the billing CMRS provider bills and collects it from a CMRS connection/customer as in the case of postpaid wireless service, but not when it does not, *i.e.*, in the case of prepaid wireless service. This is reasonable because, *inter alia*, the CMRS service charge is collected only on “each CMRS connection...*within* the Commonwealth” [KRS 65.7629(3) (emphasis supplied)], and the place of the purchase of prepaid wireless service does not always coincide with the place of the CMRS connection; thus, an attempt to impose the CMRS service charge on prepaid wireless service, which was obviously designed to be imposed on postpaid wireless service would result in extraterritorial CMRS service charges. Accordingly, it is reasonable to give effect to a plain reading of the involved E-911 Statutes as not authorizing the levy and collection of the CMRS service charge on prepaid wireless service.

That plain reading “must be given effect regardless of the canons [of statutory construction] and regardless of [an] estimate of the statute’s wisdom.” *Id.* ([] supplied from case). In this regard, the wisdom of imposing the CMRS service charge on postpaid but not prepaid wireless service has no bearing on the construction of the involved E-911 statutes. By selecting and using the words that it did, the General Assembly has designated postpaid wireless service to be subject to the CMRS service charge, but not prepaid wireless services.

II. THE INVOLVED E-911 STATUTES ARE UNAMBIGUOUS, BUT ASSUMING ARGUENDO THAT THEY WERE AMBIGUOUS, THEY WOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE POTENTIAL OBLIGEE CMRS PROVIDER AND STRICTLY CONSTRUED AGAINST THE GOVERNMENT SO AS TO NOT IMPOSE THE CMRS SERVICE CHARGE ON PREPAID WIRELESS SERVICE

The unambiguous text of KRS 65.7621, KRS 65.7629(3) and KRS 65.7635 does not authorize the CMRS Board to hold a non-billing CMRS provider, such as Tracfone, liable for a CMRS service charge on prepaid wireless service that the CMRS provider neither billed nor collected, as demonstrated above.

“A statute is ambiguous when it is capable of being understood in two or more different

senses by reasonably well-informed persons.” 3A Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 66:03 (6th ed. rev. 2003). There are two species of ambiguity: patent and latent. See *Shewmaker v. Commonwealth*, 30 S.W.3d 807, 809 (Ky. App. 2000). A patent ambiguity is one that clearly appears on the face of the involved statute, and in contrast, a latent ambiguity is one that does not appear on the face of the statute but is known to exist only when the words are invoked in light of the collateral facts. See *Whitley Whiz, Inc. v. Whitley County*, 812 S.W.2d 149, 150-51 (Ky. 1991); *Black’s Law Dictionary* 710-11 (8th ed. 2004).

The E-911 statutes are unambiguous on their face, as discussed *supra*. KRS 65.7621 provides statutory definitions for all relevant terms used in KRS 65.7629(3) and KRS 65.7635. Cf. *GTE, Inc. v. Revenue Cabinet*, 889 S.W.2d 788, 793 (Ky. 1994) (finding that a lack of a statutory definition for a term created an ambiguity). Thus, reasonable minds cannot differ as to its plain terms.

Likewise, the CMRS Board’s attempt to expand the scope of the CMRS service charge to include not only postpaid wireless service, but also prepaid wireless service requires textual contortions unsupported by the statutory text of KRS 65.7621(10), KRS 65.7629(3) and KRS 65.7635. The CMRS Board’s strained reading would “breath into the statute that which the Legislature has not put there.” *Gateway Const.*, 356 S.W.2d at 249. This the CMRS Board cannot do. For the reasons set forth above, the unambiguous statutes authorizing the CMRS service charge simply do not encompass prepaid wireless service.

Assuming *arguendo* that the involved E-911 Statutes are ambiguous, Kentucky law is clear that ambiguous statutes imposing liabilities are liberally construed in favor of the potential obligee and strictly construed against the governmental entity seeking to impose the liability. See *Courtney v. Island Creek Coal Co.*, 474 F.2d 468, 472 (6th Cir. 1973) (“[A]ny doubt concerning the existence of a particular power [of an administrative agency] should be resolved

against such agency.”); *Henry v. Parrish*, 307 Ky. 559, 211 S.W.2d 418, 422 (Ky. 1948) (“If there is any fair or reasonable doubt concerning the existence of the particular power here sought to be invoked [to impose a permit fee], it should be resolved against the Board.”); *Kentucky Utils. Co. v. Carlisle Ice Co.*, 279 Ky. 585, 131 S.W.2d 499, 504 (Ky. 1939) (“No statute...prescribing severe rules for the conduct of the citizen, is ever extended by implication.”). As is evident from the preceding case law, no ambiguous statute imposing liabilities is extended by implication.

One more specific category of the rule requiring the strict construction of ambiguous statutes imposing liabilities is the requirement of the strict construction of ambiguous revenue laws that impose a liability for a fee (or a tax) on citizens. See *Henry v. Parrish*, 211 S.W.2d at 422; *George v. Scent*, 346 S.W.2d at 789 (strictly construing an ambiguous statute imposing a tax); *Brown-Forman Distillers Corp. v. Dep’t of Revenue*, 346 S.W.2d 752, 753 (Ky. 1961); *Martin v. F.H. Bee Shows*, 271 Ky. 822, 113 S.W.2d 448, 451 (Ky. 1938). As explained in *George v. Scent*, *supra*:

Taxing laws should be plain and precise, for they impose a burden upon the people. That imposition should be explicitly and distinctly revealed. If the Legislature fails so to express its intention and meaning, it is the function of the judiciary to construe the statute strictly and resolve doubts and ambiguities in favor of the taxpayer and against the taxing powers. This is particularly so in the matter of pointing out the subjects to be taxed.

Id. at 789 (citations removed).

Under this canon of construction, the scope of the CMRS service charge must be strictly construed to encompass only that which the relevant E-911 Statutes clearly impose it on – postpaid wireless service. Thus, it cannot be construed to apply to prepaid wireless service.

Extending the CMRS service charge to prepaid wireless service can only be accomplished by extending the scope of KRS 65.7621(10), KRS 65.7629(3) and KRS 65.7635 by reading these statutes to imply that a non-billing CMRS provider such as Tracfone must levy

and collect a \$0.70 per month CMRS service charge when there is no monthly bill. This would violate the venerable rule that, “[T]he act must be considered as presented by the Legislature without the interpolation of words which it may appear to some were intended to be but were not employed by the lawmaking body in the enactment of the statutes....” Commonwealth v. Lippinski, 212 Ky. 366, 279 S.W. 339, 341 (Ky. 1926)); see Hatchett v. City of Glasgow, 340 S.W. 2d 248, 251 (Ky. 1960). As such, the involved E-911 Statutes can only be construed to encompass postpaid wireless service, but not prepaid wireless service.

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Respectfully submitted,

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