

# MEMORANDUM

## State of Alaska Department of Law

TO: Jim Chase  
Deputy Commissioner  
DES/DMVA

DATE: July 18, 2000

FILE NO: 661-00-0626

TEL. NO: (907) 269-5178

SUBJECT: Municipal "911 Surcharges"  
on Cellular Telephones

FROM: Michael G. Mitchell  
Assistant Attorney General  
Governmental Affairs Section -  
Anchorage

### Introduction and Factual Background

By memorandum dated April 21, 2000, you forwarded a request for advice from the State Emergency Response Commission (SERC) regarding the authority of local governments to impose a "911 surcharge" on cellular telephones. The issue was discussed at the April 19, 2000, SERC meeting, which focused on the Kenai Peninsula Borough's (KPB's) desire to impose a 911 surcharge on cellular telephones.

I clarified with John Alcantra of KPB that the particular 911 surcharge under consideration is a surcharge on cellular telephone accounts within the municipality, as distinguished from a surcharge on all cellular telephone calls within the municipality or a surcharge on all 911 calls made from cellular telephones to the KPB's 911 system.<sup>1</sup> According to Mr. Alcantra, presently KPB's 911 surcharge generates revenues of about \$260,000 annually, which are not sufficient to fund KPB's enhanced 911 system. He

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<sup>1</sup> Mr. Alcantra also clarified that KPB does not fund its participation in the Community Alert Network (CAN) with 911 surcharge revenues, which may not have been clear from the discussion at the SERC meeting. Use of 911 surcharge revenues to fund CAN participation could be problematic because the CAN system does not appear to fall within the definition of "enhanced 911 system." "Enhanced 911 system" is statutorily defined to mean "a telephone system consisting of network, database, and enhanced 911 equipment that uses the single three digit number, 911, for reporting a police, fire, medical, or other emergency situation, and that enables the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911." AS 29.35.137(3).

stated that several municipalities including the Municipality of Anchorage also impose a 911 surcharge on local exchange access lines.

**Analysis**

Alaska Statute 29.35.131 provides in part:

(a) A municipality may, by resolution or ordinance, elect to provide an enhanced 911 system . . . and may impose a 911 surcharge, in an amount to be determined by the municipality, on all local exchange access lines in the area to be served by the enhanced 911 system. For a municipality with a population of 100,000 or more, the surcharge may not exceed 50 cents per month per local exchange access line. For a municipality with fewer than 100,000 people, the surcharge may not exceed 75 cents per month per local access line. . . .

The terms "local exchange access line," "local exchange service," and "local exchange telephone company" are defined as follows in AS 29.35.137:

(4) "local exchange access line" means a telephone line that connects a local exchange service customer to the local exchange telephone company switching office and has the capability of reaching local public safety agencies, but does not include a line used by a carrier to provide interchange services;

(5) "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a local exchange telephone company within a local exchange area, including access to enhanced 911 systems; in this paragraph, "local exchange area" means a geographic area encompassing one or more political subdivisions as described in maps, tariffs, or rate schedules filed with the Regulatory Commission of Alaska, where local exchange rates apply;

(6) "local exchange telephone company" means a telephone utility certificated by the under AS 42.05 to provide local exchange service.

In our opinion, AS 29.35.131, which authorizes 911 surcharges on “all local exchange access lines in the area to be served by the enhanced 911 system,” does not authorize a 911 surcharge on cellular telephones. The term “local exchange access lines” does not encompass cellular telephones, since they are not line-based equipment. Further, the companies providing cellular telephone service do not provide and are not certificated to provide local exchange service. This conclusion is supported by statutory and regulatory provisions that distinguish between local exchange service and cellular service.<sup>2</sup>

We do not see any legal impediment to an amendment to AS 29.35.131 to include cellular telephone accounts in the area to be served, if sufficient support can be found in the legislature. A legislative change should be straightforward, such as by inserting “and all cellular telephone accounts in the area to be served by the enhanced 911 system” at the end of the first sentence of AS 29.35.131, *supra*, and elsewhere as appropriate in AS 29.35.131, and by providing an appropriate definition of “cellular telephone accounts” in AS 29.35.137.

Please call if you have any questions.

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<sup>2</sup> *E.g.*, AS 29.35.133(a) (providing for immunity for 911 systems for a “service supplier, local exchange telephone company, or mobile phone telephone company including a cellular service company”); 3 AAC 51.010(a) (certain hearing and speech impaired service requirements apply to all local exchange carriers but do not apply to cellular radiotelephone carriers and radio common carriers”); 3 AAC 53.340 (providing for universal service surcharges for cellular telephone service, private line service, and local exchange service).