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## Testimony of Scott Mackey on LD 1056 Taxation Committee

April 9, 2025

Chair Grohoski, Chair Cloutier, and members of the Taxation Committee, thank you for the opportunity to testify in favor of LD1056. I am the managing partner at Leonine Public Affairs, and over the past several decades, I have worked on tax issues within the telecommunications field in a wide variety of matters. Today I am pleased to testify in support of this bill on behalf of AT&T, T-Mobile, U.S. Cellular, and Verizon. Thanks also to Rep. Crockett for bringing this bill forward.

This legislation is necessary to clarify that prepaid wireless calling services are subject to the sales and use tax and not the Service Provider Tax. Since Maine first enacted the service provider tax over 25 years ago, “prepaid calling services” have been subject to the sales and use tax instead of the service provider tax. This is because prepaid calling services are not only sold by telecommunications providers but also third party retailers. The Legislature determined years ago that retailers should not be required to register for and collect a separate tax intended for telecommunications providers when they could simply collect the sales tax at the point of sale. I should also note that at the time, the rate of the two taxes was the same. Now they are different, with the sales tax being 5.5% and the service provider tax being 6%.

When the provisions governing prepaid calling services were first enacted, there were no “prepaid wireless calling services.” Prepaid services were land-line, long-distance services. However, in the years since, a substantial market has evolved to provide wireless service on a prepaid basis as a means for consumers to purchase wireless service without the necessity of entering into a contract plan. At the same time, landline prepaid calling cards that were used from pay phones have essentially disappeared. But whether these prepaid calling services are “wireless” or “land line,” they are all prepaid “calling” services, and the law draws no distinction.

Because there has been no distinction in Maine statutes between prepaid wireless and landline calling services wireless providers and retailers who sell prepaid wireless service have historically collected the sales and use tax. This practice was also consistent with guidance and bulletins issued by Maine Revenue Services which drew no distinction between prepaid wireless or landline services. As recently as 2016, Maine Revenue Services Bulletin #5, stated very simply that “prepaid calling services” were not included in the service provider tax, without further exception or limitation:

*The sale of prepaid calling service, including the sale or recharging of calling cards, is exempt from the Maine Service Provider Tax, but is subject to the Maine Sales and Use Tax. (page 6)*

It was not until the mid-2010s that the issue even arose as to whether prepaid wireless services should be considered “prepaid calling services.” The issue came about after Maine Revenue Services, for the first time, issued formal audits to carriers indicating that they should be collecting state fees and taxes

on the federal subsidy supporting Lifeline telephone service that helps indigent Mainers. That effort was strongly disputed by some carriers, and it resulted in an appeal to Maine’s Board of Tax Appeals that included a determination that, if any tax were to apply to such prepaid wireless service, it was the sales tax, not the service provider tax. In 2018, BOTA found as follows:

*Based on the evidence presented and the applicable law, we find that the Company's sales of PPW [prepaid wireless] Services, including Lifeline service, during the period December 1, 2012, through January 31, 2016, constituted "prepaid calling service" as defined under 36 M.R.S. §§ 1752(8-B) and 2551(9), and were therefore subject to Maine sales tax and not service provider tax.<sup>1</sup>*

In the year following the BOTA determination, MRS issued guidance to Maine businesses in 2019 directing that “prepaid calling services” were exempt from the service provider tax, without any caveats. A year later, in 2020, Maine Revenue Service issued new guidance that, for the first time, drew a distinction between “prepaid calling services” exempt from the service provider tax and “prepaid wireless telephone service.” The guidance document did not, however, expressly say that “prepaid wireless telephone service” was subject to the service provider tax.

It was not until 2022 that, for the first time, MRS updated its bulletins and expressly stated that, not only were “prepaid calling services” distinct from “prepaid wireless telephone services,” but also that “prepaid wireless telephone services” should be subject to the 6% Service Provider Tax, not the 5.5% sales tax. This bill seeks to undo the conclusion in this MRS bulletin which was not adopted by formal rulemaking with public comment and is not based on any change in statute.

Very simply, the goal of this bill is to restore the historic tax treatment of “prepaid calling services” in Maine where there has been no distinction between prepaid wireless and landline calling services, both of which have been exempt from the service provider tax. This has been true whether the services are sold by telecommunications providers or retailers – in both cases, the sales tax has been applied.

As a final note, if this legislation is not adopted, and MRS is successful in changing longstanding Maine tax policy on prepaid wireless services through bulletin rather than by rule or statute, retailers will be forced to pass through higher taxes to Maine consumers of prepaid wireless services, many of whom come from low- and moderate-income brackets. Allowing the MRS change in tax treatment would also require Maine retailers to reprogram their systems – at great cost -- to register for and collect the service provider tax. Finally, the MRS change will subject carriers and retailers to audits seeking penalties and interest for following a tax treatment that was historically legal, which is not fair.

As you know, the biennial budget issued in January proposed to repeal the SPT and impose the sales tax on services currently subject to the Service Provider Tax. This Committee through its “report-back” on the biennial budget recommended that the Appropriations Committee approve this recommendation. If the Appropriations Committee follows this Committee’s recommendation, this legislation would become moot. However, since the ultimate outcome of the biennial budget remains uncertain, we respectfully request that you approve this legislation as a backstop in case the service provider tax is not fully repealed.

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<sup>1</sup> *Tracfone Wireless Inc. v. Maine Revenue Services*, Docket No. BTA 2017-11, April 21, 2018. Note that, after this rule, the BOTA decision was appealed to the Superior Court which dismissed the issue on procedural grounds without making any findings about the substance of BOTA’s findings relative to the tax treatment of prepaid wireless telephone service.

Thank you for the opportunity to testify in support of LD 1056. We hope the Committee will see fit to provide this bill with an “ought to pass” recommendation.

And if you have any questions or need more information, please do not hesitate to let me know.