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Testimony of Ed Crockett in support of
**LD 1056, An Act to Clarify the Tax Treatment of Prepaid Wireless
Telecommunications Services in Maine**
Before the Joint Standing Committee on Taxation

Chair Grohoski, Chair Cloutier and esteemed members of the Taxation Committee, my name is Ed Crockett, and I am proud to serve as a member of the House of Representatives in District 112 on behalf of the good people of Portland and Falmouth. Today, it is my pleasure to introduce **LD 1056, An Act to Clarify the Tax Treatment of Prepaid Wireless Telecommunications Services in Maine.**

I agreed to put in this bill prior to session when I learned that there was disagreement over a very narrow area of the sales and service provider tax, specifically, whether retailers who sell prepaid wireless phone service should charge a sales tax of 5.5% as opposed to a service provider tax of 6%. There is also a history to this issue that goes back nearly a decade, or more. There are people who follow me who can better explain the issue and that history. But I will try to provide a high-level overview.

But, before I get into the bill itself, it is important for this Committee to know that there is a chance this bill could become moot if Maine ends up repealing the service provider tax, which was proposed in the biennial budget and is something this Committee supported in our report-back to the Appropriations Committee. I think we all agreed, for various reasons, that the service provider tax had outlived its usefulness and needs to go away. That said, LD 1056 – which has to do with the scope of the service provider tax – was submitted before it was known that the service provider tax would be slated for elimination in the biennial budget.

Since the outcome of the budget and the future of the service provider tax may not be known for weeks or even months, it makes sense to proceed with this bill. Obviously, if we do end up repealing the service provider tax, this bill is no longer needed because there would be no question that prepaid wireless phone services would be taxed under the sales tax, not the service provider tax.

Turning to the bill itself, the goal is to clarify that retailers who sell prepaid wireless phone services should charge a 5.5% sales tax, not a 6% service provider tax. The confusion comes in part from the fact that telecommunications services, in general, have fallen under the service provider tax since the tax was first developed in Maine in the 1990s. But in the case of prepaid phone service, there has been a longstanding exemption from the service provider tax, and it is taxed under the sales tax.

At the time this basic split between phone service and prepaid phone service was established decades ago, there was no such thing as “prepaid wireless service.” That is why the original exemption simply says “prepaid calling service” without qualifying whether the service is provided wirelessly or by wire. But as time went on and prepaid wireless services came into being, most retailers selling the service treated it as “prepaid calling service,” and they assessed a sales tax. This made sense also because there were no bulletins or guidelines from Maine Revenue Services saying otherwise, and it was simply not an issue.

In recent years, there has been disagreement between phone service retailers and Maine Revenue Services over which tax should apply, even though the law has not changed in this arena for decades. This bill would resolve the disagreement by making clear that the proper tax to apply to all “prepaid calling services” is the sales tax, regardless of whether the service comes wirelessly or over a wire.

In support of this position, there are several retailers who have historically charged the sales tax and keeping it as the sales tax would avoid their need to change systems and accounting. At the same time, there are no court cases that say it must be the service provider tax. In addition, several years ago, the State Board of Tax Appeals found that the sales tax should apply, although this decision was not finalized, as I understand it, for unrelated legal reasons. Finally, from an equity and fairness perspective, the demographics of people who rely on prepaid wireless service tend to be low- and moderate-income individuals, so it is not clear why we would choose to tax their service at a higher rate.

For these reasons, I was happy to bring this bill forward so that the Maine Legislature would have the opportunity to clarify what we meant nearly thirty years ago when we said in the tax code that “prepaid calling service” was exempt from the service provider tax. I think the answer should be yes; we meant to exempt all prepaid calling services, regardless of whether they are provided by wire or wireless. If you agree, I hope you will join me in supporting LD 1056.

Thank you again.