S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

May 26, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the county law, in relation to wireless surcharges in certain counties

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The county law is amended by adding a new section 308-y to read as follows:

S 308-Y. ESTABLISHMENT OF COUNTY WIRELESS SURCHARGE. 1. NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, A COUNTY IN THIS STATE THAT HAS NOT ESTABLISHED A WIRELESS SURCHARGE PURSUANT TO THIS ARTICLE, ACTING THROUGH ITS LOCAL COUNTY LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL LOCAL LAWS TO IMPOSE A SURCHARGE IN AN AMOUNT NOT TO EXCEED THIRTY CENTS PER MONTH ON WIRELESS COMMUNICATIONS SERVICE IN SUCH COUNTY. THE SURCHARGE SHALL BE IMPOSED ON EACH WIRELESS COMMUNICATIONS DEVICE AND SHALL BE REFLECTED AND MADE PAYABLE ON BILLS RENDERED FOR WIRELESS COMMUNICATIONS SERVICE THAT IS PROVIDED TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS WITHIN THE COUNTY. FOR PURPOSES OF THIS SECTION, THE TERM "PLACE OF PRIMARY USE" SHALL MEAN THE STREET ADDRESS THAT IS REPRESENTATIVE OF WHERE THE CUSTOMER'S USE OF THE WIRELESS COMMUNICATIONS SERVICE PRIMARILY OCCURS, WHICH ADDRESS MUST BE: (A) RESIDENTIAL STREET ADDRESS OR THE PRIMARY BUSINESS STREET ADDRESS OF THE CUSTOMER; AND (B) WITHIN THE LICENSED SERVICE AREA OF THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER.

2. ANY LOCAL LAW ADOPTED PURSUANT TO THIS SECTION SHALL STATE THE AMOUNT OF THE SURCHARGE AND THE DATE ON WHICH THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BEGIN TO ADD SUCH SURCHARGE TO THE BILLINGS OF ITS CUSTOMERS. ANY WIRELESS COMMUNICATIONS SERVICE SUPPLIER WITHIN SUCH COUNTY WHICH HAS IMPOSED A SURCHARGE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE GIVEN A MINIMUM OF FORTY-FIVE DAYS WRITTEN NOTICE PRIOR TO THE DATE IT SHALL BEGIN TO ADD SUCH SURCHARGE TO

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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THE BILLINGS OF ITS CUSTOMERS OR PRIOR TO ANY MODIFICATION TO OR CHANGE IN THE SURCHARGE AMOUNT.

3. (A) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SERVING SUCH COUNTY SHALL ACT AS COLLECTION AGENT FOR THE COUNTY AND SHALL REMIT THE FUNDS COLLECTED PURSUANT TO A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION TO THE CHIEF FISCAL OFFICER OF SUCH COUNTY EVERY MONTH. SUCH FUNDS SHALL BE REMITTED NO LATER THAN THIRTY DAYS AFTER THE LAST BUSINESS DAY OF THE MONTH.

(B) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ENTITLED TO RETAIN, AS AN ADMINISTRATIVE FEE, AN AMOUNT EQUAL TO TWO PERCENT OF ITS COLLECTIONS OF A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION.

(C) ANY SURCHARGE REQUIRED TO BE COLLECTED BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ADDED TO AND STATED SEPARATELY IN ITS BILLINGS TO CUSTOMERS.

(D) EACH WIRELESS COMMUNICATIONS SERVICE CUSTOMER WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL BE LIABLE TO SUCH COUNTY FOR THE SURCHARGE UNTIL IT HAS BEEN PAID TO SUCH COUNTY EXCEPT THAT PAYMENT TO A WIRELESS COMMUNICATIONS SERVICE SUPPLIER IS SUFFICIENT TO RELIEVE THE CUSTOMER FROM FURTHER LIABILITY FOR SUCH SURCHARGE.

(E) NO WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL HAVE A LEGAL OBLIGATION TO ENFORCE THE COLLECTION OF ANY SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION, PROVIDED, HOWEVER, THAT WHENEVER THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER REMITS THE FUNDS COLLECTED TO SUCH COUNTY, IT SHALL ALSO PROVIDE SUCH COUNTY WITH THE NAME AND ADDRESS OF ANY CUSTOMER REFUSING OR FAILING TO PAY A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION AND SHALL STATE THE AMOUNT OF SUCH SURCHARGE REMAINING UNPAID.

(F) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL ANNUALLY PROVIDE TO SUCH COUNTY AN ACCOUNTING OF THE SURCHARGE AMOUNTS BILLED AND COLLECTED.

4. ALL SURCHARGE MONIES REMITTED TO SUCH COUNTY BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE EXPENDED ONLY UPON AUTHORIZATION OF THE LOCAL COUNTY LEGISLATIVE BODY AND ONLY FOR PAYMENT OF ELIGIBLE WIRELESS 911 SERVICE COSTS AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION THREE HUNDRED TWENTY-FIVE OF THIS CHAPTER. SUCH COUNTY SHALL SEPARATELY ACCOUNT FOR AND KEEP ADEQUATE BOOKS AND RECORDS OF THE AMOUNT AND SOURCE OF ALL SUCH MONIES AND OF THE AMOUNT AND OBJECT OR PURPOSE OF ALL EXPENDITURES THEREOF. IF, AT THE END OF ANY FISCAL YEAR, THE TOTAL AMOUNT OF ALL SUCH MONIES EXCEEDS THE AMOUNT NECESSARY FOR PAYMENT OF THE ABOVE MENTIONED COSTS IN SUCH FISCAL YEAR, SUCH EXCESS SHALL BE RESERVED AND CARRIED OVER FOR THE PAYMENT OF THOSE COSTS IN THE FOLLOWING FISCAL YEAR.

S 2. Subdivision 16 of section 325 of the county law, as added by section 1 of part G of chapter 81 of the laws of 2002, is amended to read as follows:

16. "Eligible wireless 911 service costs" shall mean costs eligible for reimbursement and shall include the actual costs incurred by the locality related to the design, installation, OPERATION, or maintenance of a system to provide enhanced wireless 911 service, including, but not limited to, hardware, software, consultants, financing and other acquisition costs.

S 3. This act shall take effect immediately.