

September 21, 1994

Mr. Al Sandner
South Central Region E 911
P.O. Box 504
Jerome, ID 83338

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Emergency Communications Act

Dear Mr. Sandner:

You have requested an opinion from this office whether cellular phone users may be charged telephone line user fees by the South Central Region E 911 Board. For the reason set forth below, it is the opinion of this office that an emergency communications governing board does not have the authority to charge cellular phone users a telephone line user fee.

The Emergency Communications Act, chapter 48, title 31, Idaho Code, was enacted in 1988. The act was intended to provide a statutory means to finance emergency communication (911) systems. Idaho Code § 31-4801. To this end, counties, cities or jointly created emergency communication boards are authorized to charge a telephone line user fee not to exceed one dollar (\$1.00) per month. Those subject to the fee are set forth at Idaho Code § 31-4804, which provides in relevant part:

The telephone line user fee provided pursuant to the provisions of this chapter shall be a uniform amount not to exceed one dollar (\$1.00) per month per exchange access line, trunk line, network access register, or equivalent, and such fee shall be used exclusively to finance the initiation, maintenance, or enhancement of a consolidated emergency communications system within the boundaries of one (1) county or 911 service area

(Emphasis added.)

Before discussing whether cellular phone customers come within these categories of users, it must be noted that this office concluded in 1989 that the telephone line user fee provided for in Idaho Code § 31-4804 was, in fact, a tax in lieu of property taxes. 1989 Idaho Att'y Gen. Ann. Rpt. 35. The distinction is significant in this instance. Because the charge is a tax rather than a fee, our analysis does not have to determine whether the charge is reasonably related to the direct public service. See Brewster v. City

of Pocatello, 115 Idaho 502, 768 P.2d 765 (1988). More importantly, a statute authorizing the imposition of a tax must be construed "as favorably as possible to the taxpayer and strictly against the taxing authority." Futura Corporation v. State Tax Commission, 92 Idaho 288, 291, 442 P.2d 174, 177 (1968). Further, any ambiguities in a tax statute must be resolved in favor of the taxpayer. In re: Potlatch Forests, Inc., 72 Idaho 291, 240 P.2d 242 (1952).

In this instance, it must be determined whether a single cellular phone user constitutes an "exchange access line," "trunk line" or "network access register" capable of being charged a telephone line user fee. Unfortunately, these terms are not defined in the Emergency Communications Act, and its legislative history provides no guidance in construing the statute. Nevertheless, these terms do have accepted meanings in the telecommunications industry.

An "access line" is the circuit (often a pair of copper wires) that connects a customer with the switching system used to reach other customers. In non-technical terms, it is the part of the system (either a wire or a radio channel) that sends the message between the customer's home or business and the switch that connects the line to other customers' access line. It is the connection that gives the customer "access" to all other customers. A "trunk line" is a circuit (or circuits) that connects switches for more than one line. For example, a telephone company with customers in one town may route all calls in or out of that town through one or more switches. Those switches would be connected to other towns' switches through trunk lines that can carry a call from any line in one town to any line in the other town. The trunks in this case are not dedicated to any one customer, but may carry any customer's call.

Alternatively, a large customer with many telephones on the premises may have a private branch exchange (PBX), which will switch all of the customer's internal calls without using any of the telephone company's switching equipment. However, the customer will need connections between its internal telephone system and outside telephones. The connections between the customer's own system (its PBX) and the telephone company's switches are also called trunks. Like their counterpart described in the previous paragraph, the trunk can carry a call from any one of the customer's telephones connected to the PBX.

"Network access registers," or NARs, are a customer's connections in the telephone company's switch itself that permits telephones for a large customer to connect to the local telephone company directly. The difference between a PBX and trunk system and an NAR system is that the telephone company connects its own trunk to the customer's PBX at the customer's location, but the customer connects the NAR to the telephone company's switch.

The telephone line user fee for emergency service does not apply to cellular telephone operators. As written, Idaho Code § 31-4804 provides that such fees shall be collected "by all telecommunications entities, which provide local telephone line service." This section further recites that "[l]ocal exchange companies will be allowed to list the surcharge as a separate item bill" Cellular telephone companies do not provide actual "local telephone line service"; they only act as intermediary between the cellular customers and the local telephone company, which sells local telephone service to cellular companies, not to cellular telephone users. The cellular company is the actual "customer" of the local exchange company and the entity provided "local telephone line service." Cellular telephone companies are not local exchange companies. It is the local exchange company (*e.g.*, U.S. West) that collects the fees and remits them to the 911 administrator.

Moreover, the Telecommunications Act of 1988 (Idaho Code §§ 62-601, *et seq.*) defines local exchange service as the "provision of access lines to . . . customers [for] switched voice communications within a local exchange area." Idaho Code § 62-603(1) (emphasis added). The description of "access lines" in this statute supports our interpretation of "access line" as used in the Emergency Communications Act. It is a basic tenet of statutory construction that statutes dealing with the same subject matter be construed together to reach a harmonious result. Dewey v. Merrill, 124 Idaho 200, 858 P.2d 740 (1993). The access lines subject to the surcharge fee are the line or trunk connections between the local telephone company's switch and the cellular company's switch. Affording the terms used in both acts their normal meaning and construing all the terms together, leads this office to the conclusion that the telephone line user fee does not apply to cellular telephone users.

Although cellular telephone users may ultimately connect with the local telephone company's network, they are not directly connected to the network. All cellular customers obtain access to the local telephone network via a cellular switch. It is this cellular switch which is, in turn, connected to the public switch network via exchange access lines or trunks. Consequently, the telephone line user fee is assessed against the cellular company's access lines or trunks, not the ultimate cellular users. While it is undeniable that a cellular telephone user can dial 911 and access the emergency dispatch center, this access is not direct. Therefore, until the legislature makes clear that cellular telephone users are to be taxed pursuant to Idaho Code § 31-4804, our advice is that cellular telephone users should not be charged a telephone line user fee.

Yours very truly,

FRANCIS P. WALKER
Deputy Attorney General