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Before the
NEBRASKA PUBLIC SERVICE COMMISSION

Nebraska
Public Service Commission

In the Matter of the Nebraska)
Public Service Commission, on)
its own motion, to determine) Application No. NUSF-113/PI-220
contribution requirements)
relative to prepaid wireless)
providers.)

COMMENTS OF CTIA IN RESPONSE TO THE
ORDER OPENING DOCKET AND SEEKING COMMENT

CTIA¹ respectfully submits its comments in response to the Nebraska Public Service Commission’s (“Commission’s”) Order Opening Docket and Seeking Comment entered August 28, 2018 in the above captioned docket (the “Prepaid Order”).²

I. Introduction.

CTIA appreciates the opportunity to provide input regarding the question the Commission posed in the Prepaid Order: “whether prepaid wireless services could be assessed on a connections basis rather than a revenue basis under the point-of-sale provision [in LB 157].”³

On April 4, 2018, the Governor signed LB 157, which, among other changes, created a mechanism for collecting at the point of sale Nebraska Telecommunications Universal Service

¹ CTIA – The Wireless Association (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *In the Matter Of the Nebraska Public Service Commission, on its own motion, to determine contribution requirements relative to prepaid wireless providers*, Application No. NUSF-113/PI-220, Order Opening Docket and Seeking Comment (August 28, 2018).

³ *Id.* at 2.

Fund (“NUSF”) surcharges for prepaid wireless service. Specifically, LB 157 amended Neb. Rev. Stat. §86-903(2) by adding subsection (c) which establishes a formula that includes as an input “the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission.” The Commission noted in the Prepaid Inquiry Order that proposed amendments were offered, but ultimately were withdrawn.

As CTIA explains below, Neb. Rev. Stat. §86-903(2)(c) plainly and obviously requires the Commission to set a percentage of revenue for the collection of NUSF surcharges for prepaid wireless service, and the Commission cannot instead assess prepaid wireless service on a connections basis.

II. The Plain Language of the Statute Requires the Commission to use a Percentage of Revenue to Determine Prepaid Carriers’ NUSF Contributions.

Nebraska law defines the methodology used to determine NUSF contributions for prepaid wireless service collected at the point of sale. Codified at Neb. Rev. Stat. §86-903(2)(c), that methodology is as follows:

The percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund *surcharge percentage rate set by the Public Service Commission* by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge.⁴

The plain and obvious meaning of the statute is that the Commission is required to set an NUSF percentage rate that will be used as part of the statutorily defined formula for determining prepaid wireless contributions. However, in the Prepaid Order, the Commission nonetheless

⁴ Neb. Rev. Stat. §86-903(2)(c) (emphasis added). The entirety of the methodology for determining the surcharges applicable to prepaid wireless service involves adding together three percentage surcharges (E-911, Nebraska Telecommunications Relay System Fund, and NUSF) to arrive at a single percentage surcharge (the “prepaid wireless surcharge”) that each seller is required to apply to each retail transaction in Nebraska for prepaid wireless service. *See* Neb. Rev. Stat. §86-903(2) – (4).

inquires “whether prepaid wireless services [can] be assessed on a connections basis rather than a revenue basis under the point-of-sale provision.”⁵

The Commission has authority over carriers only as provided by law, which means the Commission’s authority is only as prescribed or provided by statute.⁶ When implementing or interpreting a statute, in the absence of any ambiguity, the Commission must give the words of the statute their plain meaning.⁷ Because the prepaid wireless contribution methodology defined in § 86-903(2)(c) is clear on its face, the prepaid wireless surcharge must be determined by using a formula for which a NUSF “surcharge percentage rate” set by the Commission is one of the inputs. Accordingly, prepaid wireless service cannot be assessed on a flat fee per-connections basis, but must be assessed based on the NUSF “*surcharge percentage rate set by the Public Service Commission.*”

While not determinative, it also bears noting that prepaid wireless carriers will not be alone in having their contributions determined by use of a percentage rate rather than a flat-fee. In its NUSF-111 Order, the Commission determined that certain segments of the telecommunications industry will continue to have their contributions determined via a percentage rate rather than a flat-fee.⁸ The Commission indicated that “[f]or the present time, a revenue-based surcharge will continue to apply on business and government services, toll services, operator services, local private line, special access service, *prepaid wireless*, and radio paging service providers at the current NUSF percentage-based rate of 6.95 percent...”⁹

⁵ Prepaid Order at 2.

⁶ See, e.g., Neb. Rev. Stat. § 75-109 and *Neb. Pub. Serv. Comm. v. Neb. Pub. Power Dist.*, 256 Neb. 479, 590 N.W. 2d 840 (1999).

⁷ See e.g., *Chase 3000, Inc., v. Neb. Pub. Serv. Comm.*, 273 Neb. 133, 728 N.W.2d 560 (2007).

⁸ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism*, Application No. NUSF-111/PI-211 (entered August 7, 2018) (“NUSF-111 Order”).

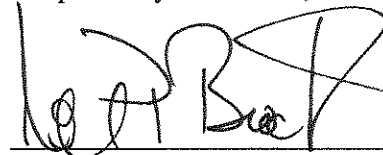
⁹ *Id.* at 28 (emphasis added).

In light of the Commission's determination that various segments of the telecommunications industry shall continue to contribute based on a percentage of revenues, there is no apparent necessity for the Commission to transition prepaid wireless to a flat-fee contribution methodology at this point in time, and even less so when one considers that to do so would require the Commission impermissibly to ignore Nebraska law. Accordingly, the Commission must conclude that prepaid wireless service cannot be assessed on a connections basis until such time as the legislature authorizes the Commission to do so.

III. Conclusion.

For all the reasons explained *supra*, prepaid wireless service must be assessed using a “[NUSF] surcharge percentage rate” of revenue and therefore cannot be assessed on a flat-fee connections basis.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 1st day of October 2018, one original and an electronic copy of the foregoing Comments of CTIA – The Wireless Association® in Response to the Order Opening Docket and Seeking Comment, in Application No. NUSF-113/PI-220, were delivered to:

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