

assessment methodology.⁴ As noted in the Order, however, prepaid wireless services are still assessed on the basis of revenues.⁵

The applicable statute is clear: Prepaid wireless services must be assessed on the basis of revenues. Absent explicit legislative action, the Commission does not have the authority to change that.

In general, CTIA reiterates its previous recommendation to the Commission: Any changes to the NUSF should minimize the consumer burden and keep the fund technology-neutral. In particular, these principles indicate that the Commission should not cap per provider access lines subject to NUSF assessment. The Commission should also maintain the definition of “connections” previously determined in Application No. NUSF-111.

I. THE COMMISSION DOES NOT HAVE AUTHORITY TO ALTER THE STATUTORY NUSF ASSESSMENT MECHANISM FOR PREPAID WIRELESS PROVIDERS

The Order notes that currently, prepaid wireless service is assessed on a revenues basis, and then presents, in part, the applicable statutory language of Neb. Rev. Stat. 86-903.⁶ The Order then asks whether the Commission should alter the NUSF assessment for prepaid wireless services to a connections-based surcharge.⁷ Although the Commission has previously made the same change for postpaid wireless services, it may not do so for prepaid wireless services.

The Commission has answered its own question: The plain language of the Nebraska statute prevents the Commission from assessing prepaid wireless service via a connections-based surcharge. Neb. Rev. Stat. 86-903 establishes that the prepaid surcharge is determined by

⁴ See, e.g., Direct Testimony of Don Price, Application No. NUSF-100/PI-193 (March 24, 2017) at p. 24-30.

⁵ See Order at p. 5, issues G (i) and (ii).

⁶ See Order at p.6, issue G (i).

⁷ See *id.*

applying a percentage rate set by the Commission to the total of a retail transaction.⁸ This clearly indicates a revenues basis, because a connections-based mechanism is independent of the cost of a transaction and uses a flat fee rather than a percentage. Similarly, because the overall “prepaid wireless surcharge shall be the sum of the following three percentages,”⁹ the Commission cannot ignore the plain and obvious meaning of “percentage” without upsetting the statutory formula. Nor does the language used by the Legislature (“shall be [a] ... percentage”) leave room for interpretation. The plain meaning of the terms involved, such as “Nebraska Telecommunications Universal Service Fund surcharge percentage rate,”¹⁰ would have to be ignored to use a connections-based mechanism — impermissibly rendering the statute meaningless. There simply is no room for the Commission to impose a flat fee rather than a percentage.

While not binding, the legislative history, to which both CTIA and the Commission were privy, underscores the conclusion. At the time the Legislature was considering establishing a point-of-sale connection mechanism for prepaid wireless (which was eventually enacted), CTIA offered an amendment that would have established a connections-based mechanism adapted for prepaid point of sale collection. The Commission made no public show of support for CTIA’s amendment at the time, and the Legislature rejected the amendment. So until such time as the Legislature declares otherwise, the legislative history supports the above conclusion that the Commission cannot modify the NUSF contribution mechanism for prepaid wireless service to a connections-based mechanism.

⁸ See Neb. Rev. Stat. §86-903 (2)(c) and (4) (emphasis added).

⁹ Neb. Rev. Stat. §86-903(2).

¹⁰ Neb. Rev. Stat. §86-903(2)(c) (emphasis added).

II. OTHER ISSUES RAISED FOR COMMENT IN THE ORDER

A. *Any Changes to the NUSF Should Limit the Already Disproportionate Burden on Wireless Consumers*

As CTIA has noted in previous proceedings, the Commission must remain mindful of the burden that universal service programs place on wireless consumers.¹¹ This is especially true as Nebraska unemployment has spiked sharply due to the COVID-19 pandemic.¹²

Although the Commission has inquired about a wide variety of NUSF issues in numerous dockets over the past decade, one constant has remained: Nebraska wireless consumers have faced some of the highest tax, fee, and surcharge rates in the country, and that unfortunate distinction continues at present. At the end of 2019, Nebraskan wireless consumers paid the third-highest state and federal tax, fee, and surcharge rate among U.S. states, at 28.07%, up one place and 2.5% from 2018.¹³ Nebraska's state and local tax, fee, and surcharge rate of 19.02% on wireless is nearly 300% higher than the state's general sales tax rate of 7.0%.¹⁴ As federal USF rates continue to escalate, it is even more important that state USF programs remain cognizant of the fact that wireless consumers bear a substantial, heavy burden of supporting both federal and state programs.

To the extent that any other changes to the NUSF arise as a result of this inquiry, CTIA reiterates that such changes should not increase the burden on wireless consumers, and changes

¹¹ See, e.g., Comments of CTIA in Response to the Order Seeking Comment, Application No. NUSF-92/PI-8 (June 20, 2019) at 4.

¹² As of July 2020, the seasonally adjusted unemployment rate for the state of Nebraska increased 55% year-over-year. See <https://www.dol.nebraska.gov/webdocs/Resources/Trends/July%202020/Monthly%20State%20Unemployment%20Rate.pdf> (last accessed August 25, 2020).

¹³ See The Tax Foundation, "Wireless Taxes and Fees Jump Sharply in 2019" (Nov. 2019), available at <https://files.taxfoundation.org/2019111150812/Wireless-Taxes-and-Fees-Jump-Sharply-in-2019-PDF.pdf> (last accessed August 25, 2020) at 5.

¹⁴ See *id.* at 7.

to the connections-based mechanism (or any other changes) should not be used to drive an overall expansion of the NUSF.

B. *The Commission Should Not Cap Business and Government Access Lines*

The Order asks whether the Commission should adopt a cap on the number of business and government access lines carriers are required to contribute for on a per-entity basis.¹⁵

As noted previously, CTIA has raised a number of issues regarding connections-based USF mechanisms, and one of these is that instead of solving the problems that give rise to funding issues (such as the size of the fund), they merely shift more of the contributions burden to wireless and residential consumers.¹⁶ If the Commission were to adopt a connections-based mechanism for business and government access lines, a cap on those connections would further exacerbate this issue by limiting their contributions without a similar limit for wireless and residential consumers. In turn, this discrimination would violate federal law.¹⁷ Accordingly, if the Commission chooses to adopt a connections-based mechanism for business and government access lines, it should not establish a cap on the number of those connections assessed.

C. *The Commission Should Not Alter the Definition of “Connections” Previously Agreed Upon in NUSF-111*

Finally, the Order seeks comment on how the term “connection” should be defined, and if the Commission should utilize the same definition it adopted in NUSF-111.¹⁸ The Commission should do so. The current NUSF definitions were arrived at via extensive discussion among and feedback from stakeholders. To use a different definition of “connection” for business and government lines would frustrate any purpose of aligning the types of contribution mechanisms,

¹⁵ See Order at p.5, issue E.

¹⁶ See, e.g., Reply Testimony of Don Price, Application No. NUSF-100/PI-193 (April 21, 2017) at p. 18-19.

¹⁷ See 47 U.S.C. 254(f) (“Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”) (emphasis added)

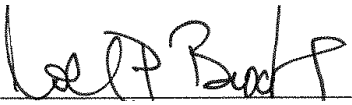
¹⁸ See Order at p.2, issue A.

create confusion and uncertainty, and increase the possibility that the differing definitions lead to competitive imbalance.

III. CONCLUSION

As discussed herein, the Commission has not been granted the legislative authority to assess prepaid wireless services on the basis of connections for the purpose of NUSF contributions. To the extent the Commission makes any other changes to the NUSF as a result of this proceeding, it should be mindful to minimize consumer burden and keep the fund technology-neutral.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of August, 2020, one original, five copies, and one electronic copy of the Comments of CTIA – The Wireless Association in Application No. NUSF-119/PI-233 were mailed to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln NE and a copy of the same has been e-mailed to the following:

psc.nusf-filings@nebraska.gov



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