

**Before the
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission, on its own)
motion, seeking to establish Title 291,) Rule and Regulation No. 202
Chapter 16, to adopt Reverse Auction and)
Wireless Registry rules and regulations in)
accordance with Nebraska Legislative Bill)
994 [2018].)

COMMENTS OF CTIA

CTIA¹ respectfully submits its comments in response to the Nebraska Public Service Commission's ("Commission's") Order Opening Docket, Releasing Proposed Rules, Seeking Comments, ("Order"), entered March 12, 2019 in the above-captioned docket.

In the Order, the Commission offered proposed rules² to implement Nebraska Legislative Bill 994 (2018) ("LB994").³ With regard to the Proposed Rules addressing the Nebraska Universal Service Fund ("NUSF") directly (Proposed Rules 291.16.01-04), CTIA has no amendments to suggest. CTIA commends the Commission for establishing greater accountability for NUSF recipients⁴ and working to ensure that the reverse auction process is technology-neutral.⁵

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 See Order at pp. 3-7 (the "Proposed Rules").

³ See L.B. 994, 105th Leg. (Neb. 2018).

⁴ See, e.g., Proposed Rule 291.16.001.03 (allowing the Commission to withhold NUSF funding based on failure to meet standards).

⁵ See, e.g., Proposed Rule 291.16.001.04(C)(v) (requiring reverse auction applicants to describe the "technology or technologies" used for each bid).

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CTIA and its members are concerned, however, about the Commission's implementation of the "wireless registry" provision of LB994 (*i.e.*, Proposed Rule 291.16.001.05). LB994, Sec. 5 states: "(1) The Public Service Commission shall establish and maintain a registry of *locations* within the State of Nebraska for complaints made to the commission regarding the lack of appropriate coverage for wireless telecommunications service. (2) The commission may utilize the information maintained in the registry *only* for making any determination related to the granting of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities. (3) For purposes of this section, lack of appropriate coverage means a geographic area where a wireless device is not able to receive a signal from the wireless service provider's network whereby an individual is unable to use a wireless device." (emphasis added)

In response the Commission has drafted Proposed Rule 291.16.001.05, which states that "The Commission will maintain a wireless registry to be used for the purpose specified in Neb. Rev. Stat. §86-579" and "The Commission will make available on its website or through paper filing a repository for any person or company to file information indicating a lack of appropriate coverage as defined in Neb. Rev. Stat. 86-579 section 5(3)."⁶

While LB994, Section 4, does instruct the Commission to adopt rules to implement the registry of locations that may lack appropriate coverage for wireless telecommunications service, any such rules must be viewed through limitations on the Commission's authority, chiefly, Neb. Rev. Stat. §86-124(2), which clearly states that "The commission shall not regulate... mobile radio services, radio paging services, and wireless telecommunications service." LB994 further limits the use of the wireless registry "*only* for making any determination related to the granting

⁶ Order at pp. 6-7.

of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities.”⁷ The Commission operates only one fund or program for the deployment of “wireless telecommunications service facilities:” the Dedicated Wireless Broadband Program (“Wireless Program”). As the Commission has no general jurisdiction over wireless carriers or services, the Commission should clarify its rules governing the registry to affirm the very narrow scope the Legislature outlined in LB994: “establishing and maintaining a registry of locations” about which it has received information regarding a lack of “appropriate” wireless coverage, to be used “only for making any determination related to the granting of funds” from the Wireless Program.⁸

Furthermore, based on the express wording of LB994 (using the specific term “wireless *telecommunications* services” exclusively), the Commission’s wireless registry must be limited to locations upon which it has received information on wireless *voice* service. The FCC has classified both wireless broadband services and text messaging as information services, mutually exclusive from telecommunications.⁹ Therefore, because wireless voice service is the only applicable telecommunications service for which LB994 grants such authority, the Commission must collect information regarding wireless voice service coverage only.

⁷ LB994 at Sec. 5(2) (emphasis added).

⁸ See *id.*

⁹ See *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (rel. Jan. 4, 2018), *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, Declaratory Ruling, FCC 18-178 (rel. Dec. 13, 2018) (“*Text Messaging Declaratory Ruling*”), available at <https://docs.fcc.gov/public/attachments/FCC-18-178A1.pdf> (affirming that text messaging is an information service); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11523 ¶ 43 (1998) (“[T]elecommunications services and information services are mutually exclusive categories.”); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24029 ¶ 34 n.50 (1998) (“Under the 1996 Act, any service with a communications component must be either a ‘telecommunications service’ or an ‘information service[.]’”).

The collection of location information for the registry is limited to the purpose of making NUSF funding determinations, and it does not vest in the Commission general consumer protection authority necessary to resolve “informal complaints” about wireless service. While the Commission may receive information relevant to “appropriate” coverage for purposes of future NUSF funding determinations, inherent limitations on the Commission’s jurisdiction over wireless preclude it from adjudicating or resolving complaints regarding wireless service. Wireless carriers remain non-jurisdictional entities under Nebraska law for most purposes, and whatever narrow authority is conveyed by LB994, it does not include the authority to adjudicate or resolve complaints about wireless service.

The aforementioned clarifications will help to ensure that the Commission’s rules reconcile the limited scope of LB994 with the Commission’s statutory authority and provide clarity for wireless carriers in Nebraska regarding their response to any inquiries. Accordingly, CTIA has attached a suggested redline of changes to the Proposed Rules.

Respectfully submitted,

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ATTACHMENT A – CTIA PROPOSED REDLINE

001.05 WIRELESS REGISTRY.

001.05(A) The Commission ~~will~~ shall establish and maintain a wireless registry of locations about which a wireless subscriber has filed information indicating a lack of appropriate coverage for wireless telecommunications service to be used for the purpose specified in Neb. Rev. Stat. §86-579.

001.05(B) The Commission will make available on its website or through paper filing a process for submission of locations repository for any about which a wireless subscriber has person or company to filed information indicating a lack of appropriate coverage for wireless telecommunications service as defined in Neb. Rev. Stat. ~~86-579~~ 75-160 section 5(3). The ~~form~~ will filer shall include the following information:

001.05(B)(i) The name of the ~~person~~ wireless subscriber filing the ~~informal complaint information~~;

001.05(B)(ii) The name of the wireless carrier, if applicable;

001.05(B)(iii) The address or locations ~~where service was at issue~~ at which there was an alleged lack of appropriate wireless coverage;

001.05(B)(iv) A description of the services purchased and equipment used by the ~~complainant~~ filer; and

001.05(B)(v) The relevant date or dates for which appropriate wireless service coverage was allegedly lacking.

~~001.05(C) The wireless provider may challenge this information by providing evidence of adequate coverage in the relevant location(s).~~

001.05(C ~~Đ~~) The Commission shall use the registry of locations only for the purpose specified in Neb. Rev. Stat. §§ 75-160 and 86-579. ~~may further investigate to determine the existence of or the lack of adequate coverage. In doing so, the Commission may utilize other publicly available data and crowd-sourced data to determine the reliability of the information provided for purposes of the registry.~~

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of April, 2019, an original and five copies of the Comments in CTIA in Rule and Regulation No. 202 were hand-delivered 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:

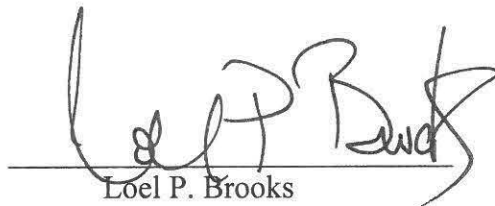
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