

**BEFORE THE  
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public Service  
Commission, on its Own Motion, to Consider  
Revisions to the Universal Service Fund  
Contribution Methodology.

Application No. NUSF-100  
Application No. PI-193

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**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®  
IN RESPONSE TO THE COMMISSION’S NOVEMBER 13, 2014 ORDER  
OPENING DOCKET AND SEEKING COMMENT**

**I. INTRODUCTION**

On November 13, 2014, this Commission issued its Order Opening Docket and Seeking Comment (the “Order”), initiating a proceeding “to consider revisions to the contribution mechanism of the Nebraska Universal Service Fund (“NUSF”).” CTIA – The Wireless Association® (“CTIA”) appreciates the opportunity to offer comment on the “significant changes in telecommunications” since the Commission’s NUSF contribution mechanism was established, and the Commission’s proposals “to modernize and reform the contribution mechanism to promote an equitable and sustainable framework in an evolving communications environment.”<sup>1</sup>

CTIA believes that one important way the Commission can achieve its goal of modernizing the NUSF contribution mechanism is to adopt a “point-of-sale” methodology for collecting the NUSF assessment from prepaid wireless service. Point-of-sale is the most equitable and accurate way to collect the NUSF assessment from prepaid wireless service.

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<sup>1</sup> Order, at 1.

Equitable universal service assessment for prepaid wireless consumers is important because of the significant shift in consumer preferences and the communications marketplace since the current NUSF contribution methodology was established over a decade ago. During that time, wireless consumers have adopted prepaid service in increasing numbers. Since CTIA began compiling statistics on prepaid subscriptions in 2007, the number of prepaid subscriptions in the United States has risen over 75%. At year-end 2013, there were more than 75.2 million reported prepaid and “pay-as-you-go” subscriptions in the U.S., equal to 22.4% of all estimated wireless connections nationwide.<sup>2</sup> A point-of-sale methodology for NUSF assessment from prepaid wireless consumers would serve to modernize Nebraska’s universal service rules by better accounting for this evolution in the communications marketplace. A point-of-sale collection methodology for prepaid wireless service would also be consistent with the Commission’s methodology for collection of 9-1-1 and telecommunications relay fees, and with the growing nationwide trend towards collecting similar fees from prepaid wireless consumers at the point-of-sale.

While CTIA reserves the opportunity to comment on the specific contribution mechanism types proposed by the Commission in the Order, CTIA notes that the FCC has referred the issue of contribution mechanisms under the federal universal service fund to the Federal-State Joint Board on Universal Service (the “Joint Board”), and the deadline for the Joint Board’s recommendation is very near to the reply comment deadline in this proceeding. As the Joint Board’s recommendations to the FCC could have an impact on the Commission’s findings in NUSF-100, CTIA encourages the Commission to allow parties the appropriate opportunity to consider whether the Joint Board’s recommendations would affect the proposed contribution

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<sup>2</sup> CTIA, *Prepaid Wireless Service in the United States – Year-End 2013 Results* (June 2014), at 6.

mechanism types in NUSF-100 should the recommendations be issued without sufficient time for all parties to review them prior to reply comments.

## **II. THE COMMISSION SHOULD ADOPT A POINT-OF-SALE METHODOLOGY FOR COLLECTING THE NUSF ASSESSMENT FROM PREPAID WIRELESS SERVICE**

CTIA believes that any new mechanism for the collection of NUSF contributions should include a “point-of-sale” methodology for the collection of the NUSF assessment from prepaid wireless service, which is the most equitable and accurate approach for collecting such fees. By adopting a point-of-sale methodology for the collection of the NUSF assessment from prepaid wireless service, the Commission can modernize Nebraska’s USF assessment consistent with the growing trend towards point-of-sale collection for similar fees, both in Nebraska and in thirty-four other states, the District of Columbia, and the U.S. Virgin Islands.

Currently, the NUSF assessment requires prepaid wireless providers to remit to the Commission an amount based on the face value of prepaid service sold.<sup>3</sup> However, this methodology predates the ways that consumers purchase prepaid wireless services, including at retail stores. While postpaid wireless consumers pay the NUSF assessment directly on their monthly bills, accurate collection of the NUSF assessment from prepaid wireless customers on a monthly basis is not technologically feasible due to the general lack of a direct and ongoing billing relationship between prepaid wireless providers and customers. Furthermore, the growing popularity of “unlimited” prepaid wireless plans would also make deduction of any fee or surcharge infeasible. As a result, prepaid wireless providers are required to pay the surcharge, creating an inequitable distribution of the contribution assessment between prepaid and postpaid wireless consumers.

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<sup>3</sup> Neb. Admin. Code 291-10.002.01B3a.

The most accurate and modern approach to collecting the NUSF assessment from prepaid wireless consumers is through a point-of-sale methodology that enables a more equitable assessment process among prepaid and postpaid consumers. A point-of-sale methodology is consistent with the Commission's stated goal of "reform[ing] the contribution mechanism to promote an equitable and sustainable framework,"<sup>4</sup> and with federal universal service policy, which is rooted in the principle that the universal service mechanism be equitable for all contributors.<sup>5</sup>

In addition to allowing both prepaid and postpaid wireless consumers to contribute directly to the NUSF, a point-of-sale methodology would be a more accurate approach to capturing the assessment. For example, prepaid wireless providers frequently sell products wholesale to retail store chains, which then distribute them to their retail locations. In those situations, because NUSF contributions are currently assessed on the face value of prepaid cards and services, the prepaid wireless provider would be assessed based on the amount paid to the retailer, not on the revenue received by the provider. Therefore, the current assessment system is inaccurate (and thus, inequitable between prepaid and postpaid wireless customers) because prepaid wireless providers are assessed on the retail price of service even though they may only be recouping a lower, wholesale revenue.

Further, because of this distribution model, it is difficult for a prepaid wireless provider to establish where its products are being bought or used. The majority of prepaid wireless transactions occur at national "big box" stores or other general retailers where the prepaid wireless provider generally lacks a direct and ongoing billing relationship with the customer.

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<sup>4</sup> Order, at 1.

<sup>5</sup> See 47 U.S.C. §254(d) (requiring that contributions to the federal USF be made "on an equitable and nondiscriminatory basis.")

While postpaid wireless consumers are billed to an address which is used to determine where their service is used most often, the nature of prepaid wireless generally makes it difficult to determine where a consumer is located. This issue also arises when prepaid wireless providers sell product wholesale to a “big box” retail chain, which then distributes the product nationwide. This general lack of a geographical nexus for prepaid wireless service creates difficulties under the current NUSF assessment methodology.

The Commission’s rules mandate that the NUSF surcharge shall not apply on the interstate portion of telecommunications revenue, but the typical process for consumers to purchase prepaid wireless service described above makes it difficult, if not impossible, to determine which service is local to Nebraska. As a result, prepaid wireless providers are required to request an allocation factor from the Commission or use an FCC safe harbor provision, both of which merely estimate the portion of intrastate revenue.<sup>6</sup> By adopting a point-of-sale methodology for the collection of the NUSF assessment from prepaid wireless service, the Commission would more accurately assess the surcharge on the retail value of prepaid service in Nebraska, and ensure that the surcharge is consistently and equitably collected on all prepaid wireless service sold in Nebraska.

Adopting a point-of-sale methodology for NUSF assessment would also be consistent with Nebraska’s approach for the collection of similar administrative fees from prepaid wireless service. Both the Nebraska 9-1-1 surcharge and the Nebraska telecommunications relay surcharge are collected from prepaid wireless consumers at the point-of-sale, as mandated by Nebraska’s Prepaid Wireless Surcharge Act.<sup>7</sup> The Prepaid Wireless Surcharge Act provides a working model for the Commission to establish a similar methodology for the NUSF assessment.

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<sup>6</sup> Neb. Admin. Code 291-10.002.01D1.

<sup>7</sup> Neb. Rev. Stat §86-903.

There is also a growing trend in other states to collect similar fees at the point-of-sale. For example, thirty-five states (including Nebraska), the District of Columbia, and the U.S. Virgin Islands collect 9-1-1 fees at the point-of-sale, and both California and Maine have recently adopted the point-of-sale model for the collection of state high-cost USF assessments.<sup>8</sup>

Additionally, a point-of-sale methodology would increase transparency for prepaid wireless consumers. The general lack of a direct and ongoing billing relationship between prepaid wireless providers and customers may mean the consumer is not aware that their service purchase is subject to the NUSF assessment. For postpaid wireless customers, the NUSF assessment is clearly delineated on their bill for service. With a point-of-sale methodology, the prepaid wireless consumer is informed of the surcharge at the time of purchase, similar to the transparent collection of 9-1-1 and telecommunications relay fees in Nebraska.

For the reasons above, CTIA believes that the Commission should adopt a point-of-sale methodology for the collection of the NUSF assessment from prepaid wireless service.

### **III. THE COMMISSION SHOULD ALLOW PARTIES TO CONSIDER THE POTENTIAL IMPACT OF THE FEDERAL-STATE JOINT BOARD'S RECOMMENDATIONS TO THE FCC IN THIS PROCEEDING**

As mentioned in the Order, the FCC is currently considering the issue of universal service contribution methodologies via a referral to the Federal-State Joint Board on Universal Service.<sup>9</sup> The Joint Board's recommendations are due to the FCC on or before April 7<sup>th</sup>.<sup>10</sup>

While not enough is currently known about the timeline of the Joint Board's progress to necessitate an extension of this proceeding, CTIA encourages the Commission to allow parties

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<sup>8</sup> See, e.g. Cal. Pub. Util. Code §319; Me. Rev. Stat Tit. 35-A, §7104-C.

<sup>9</sup> See *Federal State Joint Board on Universal Service, et al.* Order, 29 FCC Rcd 9784 (August 7, 2014). WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-116A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-116A1.pdf) (last accessed Feb. 9, 2015).

<sup>10</sup> *Id.*

the appropriate opportunity to consider whether the Joint Board's recommendations affect the proposed contribution mechanism types in NUSF-100. The Joint Board's recommendations may have an impact on the present proceeding, especially in light of the relationship between state and federal high-cost assessment mechanisms (as noted by the Commission in this proceeding),<sup>11</sup> and a desire to align state high-cost funding with federal high-cost funding, as noted in related proceedings.<sup>12</sup>

Further, there are only six days between the deadline for Joint Board recommendations and the deadline for reply comments in NUSF-100, which may not afford all parties an opportunity to properly analyze the Joint Board's recommendations and any potential impact they may have on NUSF-100 in those reply comments. By providing the opportunity for parties in this proceeding to fully consider and respond to the Joint Board's recommendations in relation to any Commission reforms to the NUSF contribution mechanism, the Commission can ensure a more complete record as it seeks to modernize the NUSF program.

#### **IV. CONCLUSION**

The Commission can take an important step to achieve its goal of modernizing Nebraska's universal service program by implementing a point-of-sale methodology for the collection of the NUSF assessment from prepaid wireless service. Point-of-sale is the most accurate and equitable way to collect the NUSF assessment from prepaid wireless service. By adopting this reform, the Commission would harmonize the NUSF collection methodology with the system used in Nebraska, and increasingly used nationwide, for the collection of similar fees from prepaid wireless consumers.

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<sup>11</sup> Order, at 1.

<sup>12</sup> NUSF-99 Order, at 2.

The Commission should also allow parties the appropriate opportunity to consider whether the Joint Board's recommendations affect the proposed contribution mechanism types in NUSF-100, should the recommendations be issued without sufficient time to review them prior to reply comments. By doing so, the Commission can ensure a more complete record as the Commission considers these important reforms to the NUSF.

Respectfully submitted this 13th day of February, 2015.



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