

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH )  
DIRECTOR OF THE PUBLIC UTILITY )  
DIVISION FOR A DETERMINATION )  
REGARDING REVENUES GENERATED )  
FROM PREPAID WIRELESS ) Cause No. PUD 201400094  
TELECOMMUNICATIONS SERVICES AND )  
THEIR ASSESSMENT FOR PAYMENT INTO )  
THE OKLAHOMA UNIVERSAL SERVICE )  
FUND )

**EXCEPTIONS OF CTIA TO THE  
REPORT OF THE ADMINISTRATIVE LAW JUDGE**

In accordance with OAC 165:5-13-5, CTIA<sup>1</sup> hereby files these exceptions to the Report Of The Administrative Law Judge (“ALJ Report”) filed January 23, 2017 in the above captioned docket.

**INTRODUCTION**

CTIA asks the Commission to reject the ALJ’s recommendation that “prepaid wireless revenues are retail-billed Oklahoma intrastate telecommunications revenues and as a result, should be included when determining the amount of contribution to the OUSF required of a telecommunications carrier.”<sup>2</sup> The recommendation is erroneous in light of its conflict with Federal law, as well as a complete reading of applicable Oklahoma statutes and rules. The Commission should further reject the Public Utility Division’s

<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://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, suppliers as well as apps 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. CTIA files these Exceptions on behalf of member companies i-wireless, Sprint, Telrite Corporation d/b/a Life Wireless, T-Mobile, TracFone Wireless, Inc., U.S. Cellular, and Verizon.

<sup>2</sup> Report of the Administrative Law Judge, January 23, 2017, p. 22.

(“PUD’s”)<sup>3</sup> argument that Federal Lifeline subsidies should be considered as retail-billed prepaid wireless revenue for purposes of calculating contributions to the OUSF,<sup>4</sup> as assessment of Federal Lifeline subsidies would violate federal law.

### ARGUMENTS AND AUTHORITIES

#### **I. The Commission Should Reject the ALJ Report’s Interpretation of the Relevant Statutes, Which Would Violate both Federal and State Law**

The ALJ Report settles on an interpretation that 17 O.S. §139.106(C), 17 O.S. §139.107 and OAC §165:59-3-40 require all telecommunications carriers, as that term is defined under Oklahoma law, to contribute to the OUSF. This interpretation specifically targets prepaid wireless carriers, despite the fact that such carriers are unable to collect surcharges from their customers as do other telecommunications carriers. This fundamental difference between prepaid wireless carriers and postpaid wireless carriers renders the ALJ Report’s interpretation of the relevant rules and statutes a form of rate regulation for wireless services, which is impermissible under Federal law. Further, the ALJ Report fails to give adequate weight to Section 139.107’s requirement that the OUSF “shall be funded in a competitively neutral manner,” or to OAC § 165:59-3-40’s requirement that telecommunications carriers shall contribute to the OUSF on a “nondiscriminatory basis.” For these reasons, the Commission should reject the ALJ Report’s recommendations.

The ALJ Report implies that wireless providers are attempting to interpret the term “retail-billed” in a manner to avoid assessment and focuses on the definition and intent of “all telecommunications carriers” without appropriate context. Specifically, the

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<sup>3</sup> Reply Brief of the Public Utility Division, pp. 6-7

<sup>4</sup> Report of the Administrative Law Judge, January 23, 2017, p. 8.

ALJ Report fails to consider the interaction of its interpretation with 17 O.S.

§139.106(E), which generally permits carriers to recover OUSF charges from their customers, and OAC §165:59-3-46, which allows such recovery only if the carrier explicitly states the amount of the recovery as a line item on its customers' bills.

The ALJ Report's scheme would create a significant issue for prepaid wireless carriers. In the vast majority of cases, prepaid wireless carriers do not interact directly with their customers and have no opportunity to issue bills. Further, their customers purchase additional increments of service from entities other than the prepaid wireless providers themselves. Due to these factors, prepaid wireless providers cannot place a line item on their customers' bills and, therefore, are seemingly barred from recovering OUSF surcharges under O.S. §139.106(E).

This conflict inherent in the ALJ Report's interpretation creates an additional direct conflict with Federal law. Section 332 of the Telecommunications Act of 1996 explicitly prohibits states from regulating the rates charged by wireless carriers.<sup>5</sup> Because the ALJ's recommendation would have the effect of prohibiting prepaid wireless carriers from adjusting their rates to recover the OUSF surcharge from customers, the resulting regulatory scheme amounts to rate regulation that is preempted by Section 332.<sup>6</sup>

Even if the ALJ Report's interpretation did not conflict with Federal law, it would still conflict with the entirety of the relevant Oklahoma rule and statute. In citing 17 O.S. §139.107 and OAC §165:59-3-40 for the proposition that all telecommunications carriers

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<sup>5</sup> See 47 U.S.C. § 332(c)(3)(A) ("... no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service.").

<sup>6</sup> CTIA concedes that an exception in 47 U.S.C. § 332(c)(3)(A) allows states to regulate billing, in many cases, as "other terms and conditions" of wireless service. However, because prepaid consumers are generally not billed by their provider, such an exception could not apply in the present instance.

must contribute to the OUSF, the ALJ Report fails to consider that the statute and rule require that the OUSF be funded “in a competitively neutral manner” and “on a nondiscriminatory basis,” respectively. The ALJ Report’s conclusion would not result in collection of OUSF surcharges in a nondiscriminatory, competitively neutral manner as so required since, unlike all other carriers, prepaid wireless carriers would be unable to pass the surcharge through to their customers.

The ALJ Report’s construction of the statute thus violates 17 O.S. §139.107 and OAC §165:59-3-40 by discriminating against a class of carriers and distorting competition between both prepaid and postpaid wireless providers and between prepaid wireless providers and all manner of telecommunications providers that render bills to their customers. The Commission must interpret Oklahoma’s USF statutes in their entirety, and harmoniously. The interpretation espoused in the ALJ Report fails to do so by ignoring the obvious intent and import of a key statutory provision and thereby creates a single class of service providers, prepaid wireless carriers, that cannot collect OUSF surcharges from their customers. This creates a scenario amongst carriers akin to that of which the ALJ Report complains: “Some would contribute and others would get a free ride.”<sup>7</sup> Further, in the words of the ALJ Report: “This would be a construction which would “defeat the real or obvious purpose of a legislative enactment.”<sup>8</sup> The real and obvious purpose of the legislative enactment is to devise a competitively neutral, nondiscriminatory method of OUSF assessment that can be collected from retail customers.

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<sup>7</sup> Report of the Administrative Law Judge, January 23, 2017, p. 22.

<sup>8</sup> *Id.* citing *TRW/Reda Pump v. Brewington*, 1992 OK 31, at ¶5.

CTIA noted in its previous comments, as did other wireless carriers, that “point-of-sale” assessment for OUSF prepaid revenues would solve this issue. It would assess OUSF contributions at an appropriate rate and collect the assessment from the retail customers on a nondiscriminatory basis both as to customers and as to prepaid wireless providers. Unfortunately, no such system yet exists in Oklahoma. In the interim, the Commission should reject the ALJ Report’s recommendations, as they would violate Federal law, in addition to Oklahoma statute and rule.

**II. The Commission Should Reject the PUD’s Assertion that Federal Lifeline Subsidies are Subject to OUSF Assessment**

The ALJ Report does not make a recommendation regarding the PUD’s assertion that Federal Lifeline subsidies are “retail-billed” revenues for purposes of OUSF calculations and contributions. The ALJ Report describes this as an “ancillary issue” not to be dealt with in the ALJ Report. However, the PUD made the assertion in its filing<sup>9</sup>, and it is repeated in the ALJ Report.<sup>10</sup> Accordingly, CTIA takes this opportunity to voice its strong disagreement with PUD on this issue.

The Federal Lifeline program enables eligible low-income consumers to procure telephone services by providing a subsidy to participating providers. The PUD’s assertion that Federal Lifeline subsidies are “retail-billed” revenues for purposes of OUSF calculations and contributions would require a portion of the Federal subsidies paid to participating providers to be remitted to the OUSF. Requiring any portion of Federal Lifeline subsidies to be remitted to the OUSF would interfere with the Federal

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<sup>9</sup> Reply Brief of the Public Utility Division, pp. 6-7

<sup>10</sup> Report of the Administrative Law Judge, January 23, 2017, p. 8.

program directly by reducing the revenue carriers receive from the Federal government as an inducement for their participation in the program. Such a requirement would be an impermissible burden on Federal universal service support mechanisms, and it also represents poor public policy.

47 U.S.C.A. §254(f) bars states from adopting regulations “inconsistent with the [FCC’s] rules to preserve and advance universal service,” and states may adopt regulations “only to the extent that such regulations ...do not rely on or burden Federal universal service support mechanisms.” Imposing OUSF assessments upon federal Lifeline subsidies clearly and overtly burdens the federal universal support mechanism. As such, they are impermissible.

The Commission should, therefore, reject the PUD’s assertion that Federal Lifeline subsidies are “retail-billed” revenues for purposes of OUSF calculations and contributions.

### **CONCLUSION**

CTIA respectfully requests that the Commission not adopt the ALJ’s findings and recommendations to which CTIA has taken exception, and that the Commission find and order that prepaid wireless revenues are not “retail-billed Oklahoma intrastate telecommunications revenues” for the purpose of calculating and assessing contributions to the OUSF.

CTIA further respectfully requests that the Commission determine that Federal Lifeline subsidies are not “retail-billed Oklahoma intrastate telecommunications revenues” for the purpose of calculating and assessing contributions to the OUSF.

Respectfully submitted,

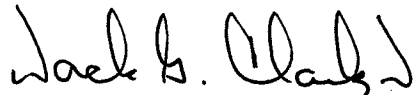


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**Certificate of Service**

The undersigned hereby certifies that on this 6th day of February, 2017, a true and correct copy of the above and foregoing Exceptions of CTIA to the Report of the Administrative Law Judge was hand delivered, mailed, postage prepaid, or sent via electronic mail or facsimile to each party of record in this cause and the Administrative Law Judge.



JACK G. CLARK, JR.