

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. 911-013/  
on its own motion, seeking to        ) PI-96  
investigate collection and            )  
remittance of enhanced 911           ) ORDER  
surcharges by prepaid wireless       )  
carriers.                               ) November 22, 2005

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission) opened the above-captioned investigation on April 19, 2005, to clarify whether certain prepaid wireless providers are required to collect and remit the Enhanced Wireless 911 Surcharge. Notice of the application was published in The Daily Record, Omaha, Nebraska, on April 21, 2005.

The Commission requested that interested persons submit written comments on or before May 20, 2005. Written comments were filed by: Verizon Wireless (Verizon); TracFone Wireless, Inc. (TracFone); OnStar Corporation (OnStar); and Cingular Wireless, LLC (Cingular).

After due notice, a hearing was held on November 8, 2005. Mr. Leighton Lang testified on behalf of TracFone; Ms. Laurie Itkin testified on behalf of Cricket Communications, Inc. (Cricket); Mr. Loel Brooks testified on behalf of Cingular; and Ms. Kara Thielen testified on behalf of the Commission Staff. Prepaid wireless providers offer wireless airtime through third party vendors on a prospective basis. Testimony received during the hearing and previously received written comments, expressed the opinion that prepaid wireless carriers are not required under Nebraska law to contribute to the Enhanced Wireless 911 Fund and further expressed concern as to the logistical and administrative problems of collecting and remitting the surcharge on prepaid accounts.

O P I N I O N     A N D     F I N D I N G S

The Commission is responsible for administration of the Wireless Enhanced 911 Fund (Fund), as directed under the Enhanced Wireless 911 Services Act (Act).<sup>1</sup>

Neb. Rev. Stat. § 86-457, states in part, "Each wireless carrier who has a **subscriber** with a **billing address** in Nebraska shall collect a surcharge of not more than fifty cents per month

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<sup>1</sup> See Neb. Rev. Stat. §§ 86-442 to 86-470 (2004 Cum. Supp.).

per access line."<sup>2</sup> The surcharge is currently fifty cents and must appear "as a separate line item charge the **subscriber's billing statement**" labeled "Enhanced Wireless 911 Surcharge".<sup>3</sup>

The Commission finds that § 86-457 in its current form is not applicable to prepaid wireless providers. Clearly the statute contemplates providers who have subscriber lists and issue monthly billing statements. Therefore, prepaid wireless providers are not required to collect or remit the Enhanced Wireless 911 surcharge to the state fund under the current statutory language in Nebraska.

The Commission further finds that prepaid wireless customers are benefiting from the Enhanced Wireless 911 system currently in place and will reap the benefits of any further expansions to the 911 system. Any wireless user, regardless of payment plan or provider can utilize 911 emergency services. Therefore, it is equitable that all benefiting from the Fund should contribute to the Fund.

We find that prepaid wireless carriers should be required to collect and remit the Enhanced Wireless 911 surcharge to the Fund. Therefore, it is our intent to seek to change the statutory language through the legislative process. To that end, we direct Commission staff, in conjunction with interested industry representatives and legislative staff, to draft language to make any needed changes to the pertinent statute to require prepaid wireless carriers to collect and remit to the Enhanced Wireless 911 Fund.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that under Nebraska's current statutory scheme, prepaid wireless carriers as described herein, are not required to collect and remit the enhanced wireless 911 surcharge.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that Commission staff develop legislation, with input from interested industry representatives and legislative staff, to require prepaid wireless carriers to collect and remit to the Enhanced Wireless 911 Fund for introduction in the Legislature in the 2006 session.

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<sup>2</sup> Neb. Rev. Stat. § 86-457 (emphasis added).

<sup>3</sup> Id.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of  
November, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director