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PROJECT NO. 53808

REVIEW OF TUSF RATE

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PUBLIC UTILITY COMMISSION

OF TEXAS

CTIA’S EMERGENCY MOTION FOR RECONSIDERATION

CTIA¹ respectfully requests reconsideration of the Order Changing the TUSF Assessment (“Order”) issued by the Public Utility Commission of Texas (“Commission”) in Project No. 50796. The Order increased the Texas Universal Service Fund (“TUSF”) surcharge to 24%. CTIA requests relief on an expedited, emergency basis² to minimize or avoid unnecessary harm to customers that otherwise will result.

CTIA understands that the Commission issued the Order in response to the June 30, 2022 judgment rendered by the Austin Court of Appeals in *Texas Tel.*³ CTIA respectfully submits that the Commission can respond to *Texas Tel.* in a manner that better accommodates consumers’ needs and will be less disruptive to them, as described herein.

If implemented as written, the Order will result in significant bill shock for all Texas telecommunications customers and affordability concerns for low-income Texans. Specifically, Texas wireless telephone customers—who currently (before the Order becomes effective) pay the

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 16 Tex. Admin. Code §22.78(c).

³ *Texas Tel. Ass’n et al. v. Public Util. Comm’n, et al.*, No. 03-21-00294-CV (Tx. Ct. App. 3d Dist., Austin, June 30, 2022, no pet. history) (“*Texas Tel.*”). The court of appeals remanded the case to the trial court for further proceedings, but CTIA has not been able to obtain a copy of an order on remand, if such an order exists.

27th highest state tax, fees, and surcharge burden on their wireless bills—will be required to pay *the highest tax, fee, and surcharge burden in the entire nation*.⁴ This sudden increase in costs will come as a surprise to telephone customers because of the lack of time provided between the date of the Order and the required implementation date. The Order’s impact will be particularly acute for families with multiple-line plans (*i.e.* “family plans”) and low-income Texans. The timing of the imposition is concerning, as Texans are already dealing with the highest rate of inflation in decades.

To reduce the harm to consumers that will result from the Order, CTIA respectfully requests that the Commission, on an expedited, emergency basis, reconsider the Order in two specific ways.

First, the Commission should collect the USF arrearage amount over a longer and more reasonable period of time. Although it is unclear from available data exactly how quickly the 24% assessment rate will allow the Commission to collect the outstanding arrearage, *Texas Tel.* indicates that the full amount could have been collected over the past two years if the surcharge rate was in the 6%-7% range during that period.⁵ This suggests the Commission’s targeted time period for recovery is short, perhaps twelve months. However, there is nothing in *Texas Tel.* that specifies how soon the Commission must address the arrearages.⁶ That discretion remains with the Commission.

The Commission should extend the period over which it collects the TUSF arrearages to a period of no less than two years. This is the same timeframe over which those arrearages

⁴ See Tax Foundation, “Excise Taxes and Fees on Wireless Service Increase Again in 2021,” October 12, 2021, page 5. Available at: <https://taxfoundation.org/cell-phone-taxes-2021/>.

⁵ See *Texas Tel.*, slip op. at 8-9.

⁶ As noted in fn. 2, *Texas Tel.* remanded the case to the trial court for further proceedings, but CTIA is not aware that the trial court has taken further action.

developed. This should bring the monthly impact of the arrearage collection far closer to the amount that Texas consumers would have paid if the Commission had fully funded the TUSF. This will reduce the financial impact of the arrearage collection on Texas households with tight budgets and reduce consternation by all households that will see increased charges on their bills.

Second, the Commission should delay the implementation of the increased surcharge by at least one month to allow contributors, including CTIA's wireless provider members, to provide their customers with notice of the increase they will soon see in their monthly bills.⁷ The Order's direction to implement the increase in the assessment rate just 17 days after the Order was signed will make it very difficult for wireless carriers to provide their customers notice of increases to the amount of their total monthly bill in advance of the bill on which the first such charge appears. Allowing wireless carriers to provide advance notice to customers is important, particularly for low-income Texans that need time to prepare economically for the considerable surcharge increase they are about to experience on their wireless service.⁸ And even Texans that do not have an immediate economic need to prepare for the budgetary impact of the rate increase still will be quite surprised by the unexpected increase to the amount of their monthly bill.

CTIA asks the Commission to postpone the Order's implementation date by at least 30 days so wireless providers can notify their customers and those consumers can prepare appropriately. This notice period is particularly essential if the Commission declines to extend the arrearage recovery period, resulting in a significant increase in the assessment rate.

⁷ The Commission should delay the implementation whether or not it extends the arrearage collection period, because the assessment rate will increase in any event, creating a need for customer notice. However, if the Commission does not extend the arrearage collection period, adequate time for notice is particularly critical.

⁸ For precisely this reason, the principles of notice and opportunity for comment are deeply embedded in the Texas Administrative Procedure Act. *See Texas Tel.*, slip op. at 48-51.

Finally, CTIA recognizes that the ultimate source of the funding issue confronting the Commission is the outdated TUSF statute, and agrees that statutory reform is the necessary ultimate solution to bring the TUSF's expenditures down to appropriate levels. The TUSF statute has not been meaningfully reformed for over 25 years and contains multiple outdated and inefficient provisions. For example, the statute requires Texas telecommunications customers to pay subsidies to companies that may no longer need them to serve locations that may no longer be considered rural, such as Denton, Sugar Land, or Katy. The statute also requires Texans to replace, in perpetuity, subsidies the federal government has decided are no longer necessary or prudent. The Commission has voiced its frustration with the statutory structure of the TUSF in the past. CTIA shares that frustration and hopes to work with the Commission to realize the true TUSF reform that Texans deserve.

For all of these reasons, CTIA respectfully requests that the Commission reconsider the Order—on an emergency basis ahead of the August 1, 2022 implementation date—to reduce bill shock by allocating the recovery of arrearages over a longer period of time and, in any event, to delay implementation of the increased assessment rate for at least one month to allow time for consumer notice.

Respectfully submitted,

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