

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own)
motion, seeking to establish methods for)
the collection and remittance of the)
Telecommunications Relay System)
Surcharge by carriers offering prepaid)
wireless services.)

Application No. C-4281/PI-171 NPS-Comm. Dept.

CTIA COMMENTS

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association® (“CTIA”), together with New Cingular Wireless PCS, LLC d/b/a/ AT&T Mobility, Cellco Partnership and its commercial radio service provider subsidiaries operating in the state of Nebraska d/b/a Verizon Wireless, Sprint Nextel Corporation, and TracFone Wireless, Inc., hereby submit the following comments to the Nebraska Public Service Commission (the “Commission”) in response to the Commission’s Order Opening Docket Setting Comment and Setting Workshop (the “Order”) entered on June 15, 2010, in the above captioned proceeding.

CTIA acknowledges that Telecommunications Relay Service (“TRS”) surcharges fund critical programs that ensure communications capabilities for deaf and hearing-or-speech-impaired citizens, programs that CTIA supports.¹ However, the current language in the Nebraska TRS Statute does not address prepaid wireless service, nor does it give the Commission the authority to assess the TRS surcharge to prepaid wireless service for the reasons set forth below.² Consequently, CTIA respectfully requests that the Commission join with the

¹According to a 2009 study by the Rehabilitation Engineering Research Center for Wireless Technologies (“Wireless RERC”), more than 86% of individuals with disabilities own or have access to a wireless communications device. The study also reports that text-based wireless services such as short message service (“SMS”) and instant messaging (“IM”) are more commonly used than TTYs and other traditional communications services by the deaf and hearing impaired. For more information, *see* Wireless RERC Study, available at: http://www.broadbandexpanded.com/policymakerfiles/disabilities/Disabilities_Stats&Data.pdf (last visited July 12, 2010).

² *See* Neb. Rev. Stat. §§ 86-313 *et seq.* (the “TRS Statute”).

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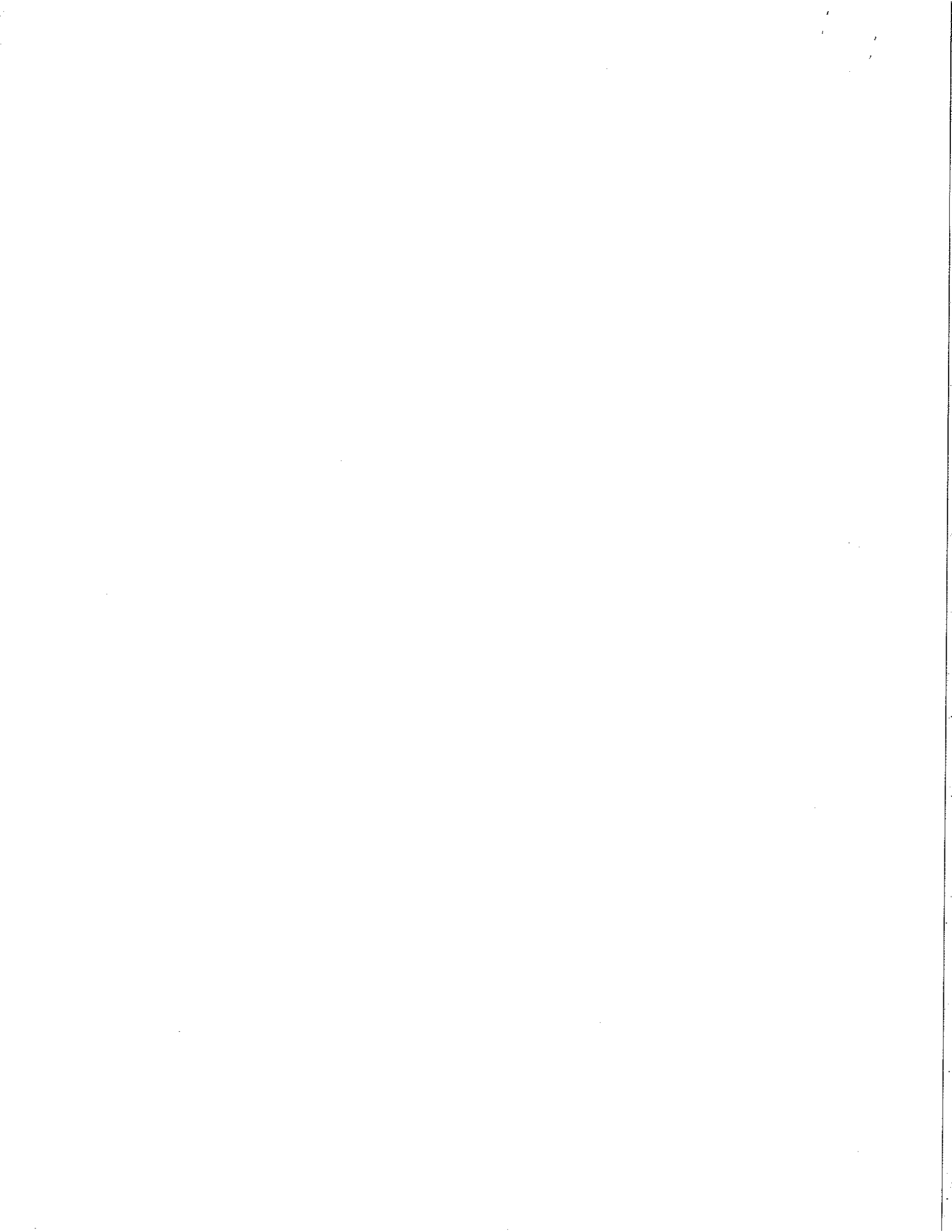
industry to amend the TRS Statute to provide a method of collection from prepaid wireless end-users.

As the Commission notes in the Order, there is confusion among wireless service providers regarding the applicability and methodology of TRS surcharge collection and remittance. The TRS Statute defines wireless service by reference to the same definition used in the Enhanced 911 Wireless statute.³ In the Enhanced 911 Wireless context, prepaid wireless service is defined separately.⁴ However, the TRS Statute *does not* incorporate the definition of prepaid wireless service in its definition of services subject to TRS collection and remittance. In addition, the TRS Statute *does not* address how TRS surcharges are to be collected and remitted from prepaid wireless end-users, as prepaid wireless end-users do not receive bills for their service. Moreover, because prepaid wireless end-users do not receive a bill the statutory language itself excludes prepaid wireless service from the assessment of the TRS surcharge. The Commission recognized this characteristic of prepaid wireless services in its 2005 order regarding Enhanced 911 Wireless surcharges when it stated the following:

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

³ See TRS Statute § 86-313(1)(a) (“Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone number or functional equivalent in Nebraska, including wireless service as defined in section 86-456.01”).

⁴ See Neb. Rev. Stat. § 86-450.02 (defining prepaid wireless service).



statutory language in Nebraska.⁵

Specifically, the statute requires the TRS surcharge be added to “each subscriber’s bill”⁶, but again, prepaid wireless end-users do not receive a bill. Additionally, the Commission’s own rules concerning the TRS surcharge support the exclusion of the assessment of the TRS surcharge to prepaid wireless service.⁷

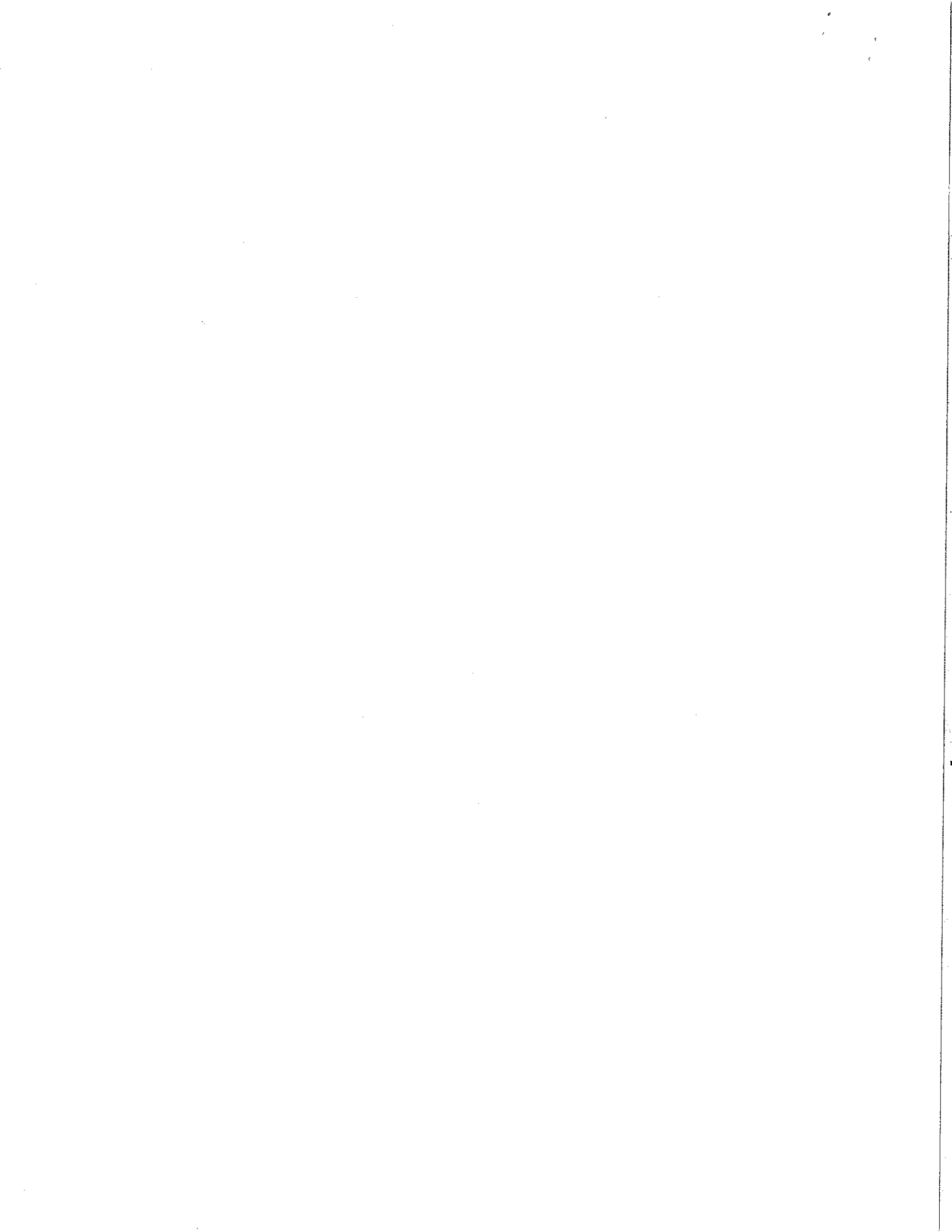
Fortunately, the Commission’s actions in the Enhanced 911 Wireless proceeding offer policy recommendations for a statutory solution that addresses the TRS Statute’s omission. In a 2005 proceeding to determine the applicability of Enhanced 911 Wireless surcharges to prepaid wireless services, the Commission determined 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.”⁸ To this end, the Commission expressed its intent to seek legislative solutions to remittance and collection of Enhanced Wireless 911 surcharges from prepaid wireless services, and directed its staff to collaborate with “interested industry representatives and legislative staff” in furtherance of this goal. We respectfully submit that such policy recommendations are needed to ensure clear application of TRS surcharges to prepaid wireless services. We request that the Commission work with industry representatives to draft legislative amendments to amend the TRS Statute in a way that addresses the prepaid wireless service collection and remittance issue described herein.

⁵ See *In the Matter of the Commission, on its own motion, seeking to investigate collection and remittance of enhanced 911 surcharges by prepaid wireless carriers*, Application No. 911-013/PI-96, Commission Order (Nov. 22, 2005) (the “Enhanced 911 Order”) at 2.

⁶ Neb. Rev. Stat. §§ 86-313(1)(a).

⁷ See Rule 010.06A of the Nebraska Administrative Code, Title 291, Chapter 5, Telecommunications Rules and Regulations. Rule 010.06A states “[t]he surcharge shall appear as a separate line-item charge on the subscriber’s billing statement and shall be labeled as “Telecom Relay Surcharge” or “Relay Surcharge.””

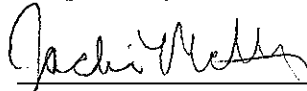
⁸ Enhanced 911 Order at 2.



As set forth above, CTIA recognizes and supports the Commission's efforts to make sure that the TRS fund is properly funded in order to ensure continued support of the critical programs that provide communications capabilities for deaf and hearing-or-speech-impaired citizens. However, in light of the issues raised above, CTIA believes the more appropriate solution is a legislative one. Therefore, CTIA respectfully requests that the Commission direct its staff to work with industry representatives and legislative staff to amend the TRS Statute to specifically address the collection and remittance of TRS surcharges from prepaid wireless end-users. To the extent the Commission seeks a review of policies governing TRS surcharges, CTIA looks forward to a careful approach that measures consumer benefits, existing regulatory regimes, and competitive incentives.

Dated this 14th day of July 2010.

Respectfully Submitted,



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