COMMENTS OF CTIA

CTIA\(^1\) respectfully submits the following comments in response to the memo issued by Public Utility Commission of Texas (“Commission”) Chairman Walker on May 13, 2020 (“Memo”) regarding the Texas Universal Service Fund (“TUSF”).

In the Memo, Chairman Walker notes that unless the Commission increases the TUSF surcharge, the Fund is likely to become insolvent by the end of the year should current trends continue. The Memo speculates that by increasing the surcharge to 6.4% the Fund would be able to maintain current expenditure levels.\(^2\) Chairman Walker asks for feedback on a number of TUSF issues, including the funding mechanism.

The Commission should not change the TUSF funding mechanism from revenue-based to connections-based. Such a change would fail to address a number of possible problems with the existing structure of the TUSF. While telecommunications revenues may be in decline in Texas, both inputs and outputs from the fund need to be considered by the Commission. Further, there are a number of issues such a change would create, including potential federal and state legal

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\(^2\) Memo at 2.
conflicts. When considering any TUSF reforms, the Commission’s goals and guiding principles should be to use recent data to modernize the program, minimize the burden on consumers, and ensure that the program is as efficient and equitable as possible.

I. THE COMMISSION SHOULD NOT CHANGE THE TUSF FUNDING MECHANISM FROM REVENUE-BASED TO CONNECTIONS-BASED

The diminishing telecommunications revenue trend experienced in Texas mirrors those across the nation with regard to state USF funding: telecommunications revenues continue to decrease. But while the Commission may need to increase the TUSF surcharge to keep pace with current fund demands, the Commission must not lose sight of the fact that the overall intrastate telecommunications revenue subject to TUSF surcharge is still significant: $3.925 billion as of February 2020.\(^3\) A change to the TUSF funding mechanism would only address the inputs to the TUSF without looking at a number of issues regarding expenditures from the fund, including some cited within the Memo. Such a move would not solve the problems inherent in the TUSF, and in fact, would create new ones. Accordingly, there is no reason to change the TUSF funding mechanism at this time.

Even looking solely at contributions to the TUSF rather than broadly considering both contributions and expenditures, moving to a connections-based mechanism would not collect more money for the TUSF - it would only disguise the necessary surcharge increase. By calculating the connections-based surcharge at the level required to keep the fund solvent, monthly bill amounts will spike sharply, even if no apples-to-apples comparison is available for the surcharge levels. The issues raised in the Memo cannot be addressed in a vacuum. Without a

\(^3\) Estimate based on figures reported in Texas Universal Service Fund Financial Report, December 2019 – February 2020, Pursuant to Project 39939, available at [http://www.puc.texas.gov/agency/resources/reports/tusf/TUSF_Dec-Feb_2020_Q2.pdf](http://www.puc.texas.gov/agency/resources/reports/tusf/TUSF_Dec-Feb_2020_Q2.pdf) (last accessed May 29, 2020). This calculation is based on a sum of quarterly receipts, as found in the cited report, and the current 3.3% surcharge rate for the TUSF.
comprehensive assessment of the TUSF that addresses the Commission’s goals for universal service, existing federal funding, and the outputs from the fund (among other issues), a change in mechanism would not solve the real issues confronting the program.

A change in the connection mechanism would also raise a number of legal and policy issues not applicable under the current revenue-based regime. On the state level, for example, such a change is likely to require legislative changes. The Commission is bound by the Public Utility Regulatory Act (“PURA”), which provides that the fund be supported by “telecommunications providers” only. ⁴ According to the PURA, however, providers of “enhanced or information services only” are explicitly excluded from that definition. ⁵ This implicates providers who are providing connections but not voice services, such as, for example, interexchange carriers (“IXCs”). Further, it suggests that assessments on non-voice portions of connections are not intended by the Legislature – as they are not assessable now. Under the connections-based approach, the surcharge can be applied to non-telecommunications service revenues that are not lawfully subject to TUSF surcharges under PURA. While the Memo noted that at least part of the decline in TUSF revenue was due to wireless providers calculating their assessments without the inclusion of information services revenue, ⁶ that revenue was not lawfully assessable to begin with and therefore the solution should not be a funding mechanism that may in fact surcharge the same exempt revenue. The Legislature’s intent is further underscored by its mandate to the Commission that the “uniform charge” it is to assess “is on services,” ⁷ not a uniform charge on a “connection” – however defined.

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⁵ See id. at § 51.0002(10)(B).
⁶ See Memo at 1.
⁷ Tex. Util. Code § 56.022(c) (emphasis added).
Further, federal law bars state programs that are “inconsistent” with the federal USF mechanism.\(^8\) Beyond the facial inconsistency of a state program assessing connections while the federal program assess revenues, without appropriate safeguards a state USF that assesses on the basis of connections runs the risk of assessing more intrastate revenue than a provider generates. That would mean the state would be collecting interstate revenue and illegally burdening the federal USF system. Federal law also requires that state USF collections be made on an “equitable and nondiscriminatory basis” from providers.\(^9\) A connections-based mechanism, which de-couples the amount and type of services provided by a carrier from the assessment made, discriminates against low-volume providers and those with lines that provide a higher proportion of information services as compared to telecommunications services.

From a policy perspective, a connections-based mechanism shifts the overall USF burden from business to residential consumers because businesses generally pay higher rates for telecommunications services. It also penalizes low-usage consumers disproportionately. As such, it is less equitable to consumers than a revenue-based mechanism. Additionally, diverging from the federal revenue-based system runs the risk of significant inefficiencies (and therefore, increased costs) because carriers would potentially have to switch their Texas billing systems multiple times: once if the TUSF changes methodologies and again if any forthcoming changes to the federal system impact the TUSF.

Accordingly, the Commission should not change the TUSF funding mechanism from revenue-based to connections-based. To the extent the Commission is required to fund the TUSF at its current level of expenditures, the Commission should increase the surcharge to such a level

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\(^8\) 47 U.S.C. § 254(f).

\(^9\) See id.
as is necessary to keep the TUSF solvent, a step that would not require any additional authority from the Legislature or create potential legal conflicts. As suggested in the Memo, the Commission should also investigate the means to allow rate-regulated carriers to recover funds from their own customers by raising basic local service rates. This would decrease the burden on the fund, lessening the need for a surcharge increase.

II. ANY CHANGES TO THE TUSF SHOULD ENCOURAGE AN EFFICIENT, EQUITABLE PROGRAM

The potential for surcharge increases and the overall trends in the TUSF should lead the Commission to broadly consider its goals for universal service in 2020 and tailor changes in the program to identify the means to achieve TUSF goals at the lowest possible cost. As suggested by the Memo, that may include an investigation of what areas are currently being supported by the TUSF. The Commission should also verify that areas targeted for TUSF support still have the characteristics that warrant support. Economic development over time may be such that some communities that may have warranted support in the past no longer require support at past levels, or support at all. Given the TUSF mandate “to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas,” the Commission should consider prioritizing areas where no unsubsidized competitor is providing service, and determine whether currently supported areas require TUSF funding to guarantee service at reasonable rates, especially if the competitive marketplace is performing the same function.

10 See Memo at 3 (Question 7).
11 See id. at 2-3 (Questions 5-6).
Any comprehensive look at the TUSF should consider expenditures as well as contributions, and any changes made to the TUSF should keep in mind the burden on consumers, especially the wireless consumers who are major TUSF contributors today and would bear the largest surcharge burden under a connections-based surcharge collection methodology.\textsuperscript{13} Based on The Tax Foundation’s state tax and fee data, increasing the state USF surcharge to 6.4\% would mean Texas consumers would be paying one of the top ten highest (by state) combined tax and fee rates on their wireless service.\textsuperscript{14}

The Commission should also promote competitive parity by supporting a point-of-sale collection mechanism for the TUSF surcharge from prepaid wireless services. While postpaid wireless customers can pay the TUSF assessment directly on their monthly bills, accurate monthly collection of the assessment from prepaid wireless customers purchasing service at third-party retailers is not feasible due to the general lack of a direct and ongoing billing relationship between prepaid wireless providers and customers purchasing service in this manner. The result is that prepaid wireless providers are forced to pay the surcharge themselves, creating competitive distortions. This distortion contradicts provisions of the PURA that require the Commission to establish a uniform charge that “may not subject a telecommunications provider to unreasonable prejudice or disadvantage.”\textsuperscript{15} CTIA realizes that this contradiction cannot be fixed directly by the Commission and will require legislative changes. That said, a point-of-sale methodology for collecting the TUSF assessment from prepaid services is the most

\textsuperscript{13} According to the most recent FCC data, there are over ten times as many wireless voice connections in Texas (over 29.4 million) as there are local exchange telephone connections (2,914,000). See FCC, “Voice Telephone Services as of 12/31/2018” (Mar. 6, 2020), available at https://www.fcc.gov/sites/default/files/vts_state_table_1.xlsx (last accessed May 26, 2020).


\textsuperscript{15} Tex. Util. Code § 56.022(c)(3).
accurate, modern, and equitable approach. The Commission should raise this issue with the Legislature and support such changes to better reflect the Legislature’s cited goal in the PURA.

III. CONCLUSION

CTIA urges the Commission to recognize that changing the TUSF collection methodology to a connections-based mechanism is unnecessary and would merely mask the extraction of subsidy funds from competitive markets while raising legal and equitable issues. Texas consumers will continue to bear the full burden of funding the TUSF regardless of methodology, but the burden of TUSF funding will fall disproportionately on wireless customers under a connections-based surcharge. The Commission should maintain a revenue-based approach while considering its overall goals for the present-day TUSF program, including both contributions and expenditures. In the meantime, it should increase the surcharge to such a level as is necessary to keep the TUSF solvent, and/or investigate allowing rate-regulated carriers to recover funds from their own customers by raising basic local service rates.

Respectfully submitted,

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