

LEGISLATIVE BILL 661

Approved by the Governor April 4, 2007

Introduced by Transportation and Telecommunications Committee: Fischer, 43, Chairperson; Aguilar, 35; Louden, 49; Pedersen, 39; Schimek, 27; Mines, 18

FOR AN ACT relating to telecommunications; to amend sections 86-125, 86-140, 86-313, 86-316, 86-318, 86-322, 86-323, 86-420, 86-422, 86-433, 86-434, 86-435, 86-436, 86-442, 86-443, 86-456, 86-457, 86-459, and 86-461, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to registration of communications providers, access charges, surcharges, the Telecommunications Relay System Act, the Nebraska Telecommunications Universal Service Fund Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, and the Enhanced Wireless 911 Advisory Board; to define and redefine terms; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 86-427, 86-443.01, and 86-450.01, Revised Statutes Cumulative Supplement, 2006; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 86-125, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-125 Notwithstanding the provisions of section 86-124:

(1) A wireless carrier All communications providers providing telecommunications service in Nebraska shall file a registration form with and pay a registration fee to the Public Service Commission. A wireless carrier which provided communications provider which provides such telecommunications service prior to January 1, 2003, August 1, 2007, and which continues to provide such telecommunications service on and after January 1, 2003, August 1, 2007, shall register with the commission prior to April 1, 2003, no later than January 1, 2008. Any wireless carrier communications provider which begins to provide telecommunications service in Nebraska on or after January 1, 2003, August 1, 2007, shall register with the commission prior to providing such telecommunications service;

(2) The commission shall prescribe the registration form. It to be filed pursuant to this section. Communications providers as defined in subdivision (8)(a) of this section shall include: provide:

(a) The name, address, telephone number, and email address of a contact person concerning the Nebraska Telecommunications Universal Service Fund Act and related surcharges, if applicable;

(b) The name, address, telephone number, and email address of a contact person concerning the Telecommunications Relay System Act and related surcharges, if applicable;

(c) The name, address, telephone number, and email address of a contact person concerning the Enhanced Wireless 911 Services Act and related surcharges, if applicable; and

(d) The name, address, telephone number, and email address of a contact person concerning consumer complaints and inquiries;

(3) Communications providers as defined in subdivision (8)(b) of this section shall provide the commission with the name, address, telephone number, and email address of a person with managerial responsibility for Nebraska operations;

(3) (4) The wireless carrier communications provider shall submit a registration fee with at the time of submission of the registration form. The commission shall set the fee by rule and regulation in an amount sufficient to cover the costs of administering the registration process but not to exceed fifty dollars;

(4) (5) The wireless carrier communications provider shall keep the information required by this section current and shall notify the commission of any changes to such information within sixty days after the change;

(5) (6) The commission may administratively fine pursuant to section 75-156 any wireless carrier communications provider which violates this section; and

(6) (7) This section applies to all communications providers providing service in Nebraska except for those communications providers otherwise regulated under the Nebraska Telecommunications Regulation Act; and For purposes of this section, wireless carrier means any person offering mobile radio service, radio paging service, or wireless telecommunications service for a fee in Nebraska intrastate commerce.

(8) For purposes of this section, communications provider means any entity that:

(a) Uses telephone numbers or Internet protocol addresses or their functional equivalents or successors to provide information of a user's choosing by aid of wire, cable, wireless, satellite, or other like connection, whether part of a bundle of services or offered separately, (i) which provides or enables real-time or interactive voice communications and (ii) in which the voice component is the primary function; or

(b) Provides any service, whether part of a bundle of services or offered separately, used for transmission of information of a user's choosing regardless of the transmission medium or technology employed, that connects to a network that permits the end user to engage in electronic communications, including, but not limited to, service provided directly (i) to the public or (ii) to such classes of users as to be effectively available directly to the public.

Sec. 2. Section 86-140, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-140 (1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty ninety days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(2) Reductions made to access charges pursuant to subsection (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have has been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection (1) of this section are passed on in a manner that is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.

(3) For purposes of this section, access charges means the charges paid by telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Sec. 3. Section 86-313, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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 access line number or functional equivalent in Nebraska, including cellular telephone wireless service as defined in section 22 of this act. The Except for wireless service, the surcharge shall only be collected on the first one hundred telephone access lines numbers or functional equivalents per subscriber. The companies shall add the surcharge to each subscriber's local telephone bill.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber, and are not obligated to take legal action to collect the surcharge.

(2) Before April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on July 1 following the change. The amount appropriated for the specialized telecommunications equipment program from the fund shall not exceed the revenue generated by one cent of the surcharge per month.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing

for such purpose.

(4) The proceeds from the surcharge shall be remitted to the commission monthly no later than thirty days after the end of the month in which they were collected together with forms provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any telephone company collecting the surcharge pursuant to the act.

(6) This section shall not apply to subscribers who have no access to relay service.

Sec. 4. Section 86-316, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-316 Sections 86-316 to 86-329 and section 6 of this act shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Sec. 5. Section 86-318, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-318 For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 and section 6 of this act apply.

Sec. 6. Telecommunications means the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

Sec. 7. Section 86-322, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-322 Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association offering providing telecommunications or telecommunications service for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

Sec. 8. Section 86-323, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-323 The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.

Sec. 9. Section 86-420, Revised Statutes Cumulative Supplement,

2006, is amended to read:

86-420 Sections 86-420 to 86-441.01 and section 11 of this act shall be known and may be cited as the Emergency Telephone Communications Systems Act.

Sec. 10. Section 86-422, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-422 For purposes of the Emergency Telephone Communications Systems Act, the definitions found in sections 86-423 to 86-434 and section 11 of this act apply.

Sec. 11. Primary place of use means the residential or business street address that is representative of the primary location of the customer's use of a service that includes the provision of 911 service.

Sec. 12. Section 86-433, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-433 Service surcharge means a charge set by a governing body and assessed on each local exchange access line which physically terminates each telephone number or functional equivalent of service users whose primary place of use is within the governing body's designated 911 service area, with the exception of those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service.

Sec. 13. Section 86-434, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-434 Service user means any person who is provided local exchange access line 911 service in this state.

Sec. 14. Section 86-435, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-435 (1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each local exchange access line physically terminating in telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after:

(a) Publication of notices for a public hearing. Such notices shall:

(i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected;

(ii) Set forth the time, place, and date of such public hearing; and

(iii) Set forth the purpose of the public hearing and the purpose of the increase; and

(b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911 service through an agreement as provided in the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each local exchange access line physically terminating in telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service, shall be the same as the amount allowed in subsections (1) and (2) of this section.

(5) Funds generated by the service surcharge shall be expended

only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

Sec. 15. Section 86-436, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-436 (1) A service user shall pay service surcharges in each 911 service area where the service user has ~~local exchange access line service its primary place of use~~ and receives 911 service, except that an individual service user shall not be required to pay on a single periodic billing service surcharges on more than one hundred ~~local exchange access lines, or their equivalent, telephone numbers or functional equivalents~~ in any single 911 service area. Every service user shall be liable for any service surcharge billed to such user until the surcharge has been paid to the service supplier.

(2) The duty of a service supplier to bill a service surcharge to a service user shall commence at such time as may be specified by the governing body. A service surcharge shall be collected as far as practicable at the same time as and along with the charges for ~~local exchange access lines service~~ in accordance with the regular billing practice of the service supplier.

(3) A service supplier shall have no obligation to take any legal action to enforce the collection of any service surcharge imposed pursuant to section 86-435. Such action may be brought by or on behalf of the governing body imposing the charge or the separate legal entity formed pursuant to such section. A service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be for nonpayment of any service surcharge. The service supplier shall not be liable for such uncollected amounts.

Sec. 16. Section 86-442, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~86-442 Sections 86-442 to 86-470 and sections 18, 19, 20, and 22 of this act~~ shall be known and may be cited as the Enhanced Wireless 911 Services Act.

Sec. 17. Section 86-443, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-443 For purposes of the Enhanced Wireless 911 Services Act, the definitions found in sections ~~86-443.01 86-444 to 86-456 and sections 18, 19, 20, and 22 of this act~~ apply.

Sec. 18. Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide wireless service.

Sec. 19. Prepaid wireless service means a wireless service for which the user pays prospectively and for which the wireless carrier does not have an ongoing monthly billing relationship with the user of such service.

Sec. 20. Primary place of use means: (1) For users of wireless service other than prepaid wireless service, the street address representative of where the use of wireless service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the user of the wireless service and shall be within the service area of the home service provider; and (2) for users of prepaid wireless service, the location associated with the telephone number assigned to the user.

Sec. 21. Section 86-456, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-456 Wireless carrier means (1) any carrier of mobile service as referenced in 47 U.S.C. 153(27), as such section existed on January 1, 2006, ~~2007~~, (2) any carrier of commercial mobile service as referenced in 47 U.S.C. 332(d)(1), as such section existed on January 1, 2006, ~~2007~~, (3) any carrier of commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2006, ~~2007~~, or (4) any cellular radiotelephone service, licensees of a personal communications service, and specialized mobile radio services as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2006, ~~2007~~.

Sec. 22. Wireless service means: (1) Any mobile service as defined in 47 U.S.C. 153 and 47 C.F.R. 27.4, as such section and regulation existed on January 1, 2007; (2) any commercial mobile service as defined in 47 U.S.C. 332(d), as such section existed on January 1, 2007; or (3) any commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

Sec. 23. Section 86-457, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-457 (1) Each wireless carrier who has a customer, other than a prepaid customer or a customer in a county containing a city of the

metropolitan class, whose primary place of use is in Nebraska, shall collect a surcharge of up to seventy cents per month per access line. Each wireless carrier who has a customer in a county containing a city of the metropolitan class shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each customer's billing statement. The wireless carrier is not liable for any surcharge not paid by a customer and is not obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the customer's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase. The commission may take any legal action as it deems necessary to collect unpaid surcharges in its own name, as a real party in interest, or by assigning such debt for collection to a third party.

(2) If a wireless carrier resells its services through other entities, each reseller shall collect the surcharge from its subscribers and shall remit the surcharge in accordance with section 86-459.

(3) Beginning on July 1, 2007, each wireless carrier who has a prepaid customer shall remit a surcharge from each prepaid customer in the amount established in subsection (1) of this section. A wireless carrier may collect such surcharge from prepaid customers using one of the following methods:

(a) The wireless carrier shall divide the total earned prepaid wireless telephone revenue received by the wireless carrier within the monthly reporting period by fifty dollars and multiply the quotient by the surcharge amount;

(b) The wireless carrier shall collect on a monthly basis the surcharge from each customer's active, prepaid account. A customer with two or more active, prepaid accounts shall be assessed a separate surcharge for each active, prepaid account; or

(c) A wireless carrier shall remit the surcharge upon the activation of the active, prepaid account and upon each replenishment of additional minutes purchased by the prepaid customer.

(1) Each wireless carrier shall collect:

(a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection and as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service and shall remit the surcharge in accordance with section 86-459; or

(b) A surcharge of up to fifty cents, except as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service whose primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459.

The wireless carrier is not liable for any surcharge not paid by a customer.

(2) Except as otherwise provided in this section, the wireless carrier shall add the surcharge to each user's billing statement. The surcharge shall appear as a separate line-item charge on the user's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase.

(3) If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.

(4) It is the intent of the Legislature that, effective July 1, 2007, all users of prepaid wireless services pay an amount comparable to the amount paid by users of wireless services that are not prepaid in support of statewide wireless enhanced 911 service. It is also the intent of the Legislature that whenever possible such amounts be collected from the users of such prepaid wireless services.

(5) The commission shall establish surcharges comparable to the surcharge assessed on other users of wireless services and shall develop methods for collection and remittance of such surcharges from wireless carriers offering prepaid wireless services.

(6) The duty to remit any surcharges established pursuant to subsection (5) of this section is the responsibility of the wireless carrier.

(7) This section shall not apply to users who have no 911 service.

Sec. 24. Section 86-459, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-459 (1) Each wireless carrier shall remit monthly to the commission the amount of surcharge amounts collected pursuant to section

86-457 together with any forms required by the commission no later than sixty days after the last day of the month. The commission shall remit the funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund.

(2) As the commission may require, each wireless carrier shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of wireless lines, including prepaid customers, telephone numbers or functional equivalents served; by county; (b) the number of wireless lines, including active, prepaid accounts, telephone numbers or functional equivalents from which it has collected surcharge revenue; by county; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain surcharge all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of two five years after the date of remittance to the fund. The commission may at its own expense require an audit of any wireless carrier's books and records concerning the collection and remittance of the surcharge any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

Sec. 25. Section 86-461, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-461 (1) The Enhanced Wireless 911 Advisory Board is created to advise the commission concerning the implementation, development, administration, coordination, evaluation, and maintenance of enhanced wireless 911 service. The advisory board shall be composed of ten nine individuals appointed by the Governor, including:

- (a) One sheriff;
- (b) Two county officials or employees;
- (c) Two municipal officials or employees;
- (d) Two representatives One representative from the state's wireless telecommunications industry;

- (e) One manager of a public safety answering point not employed by a sheriff;

- (f) One representative of the state's local exchange telecommunications service industry; and

- (g) One commissioner from the Public Service Commission or his or her designee who shall serve as an ex officio member; and

- (g) One member of the public.

(2) The advisory board shall also include two ex officio members:

- (a) One commissioner from the Public Service Commission or his or her designee; and

- (b) The Chief Information Officer or his or her designee, who shall serve as an ex officio member.

(2) (3) Members of the board as described in subdivisions (1)(a) through (1)(f) (1)(g) of this section shall be appointed for a term of three years. Each succeeding member of the board shall be appointed for a term of three years. The board shall meet as often as necessary to carry out its duties. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 26. Sections 16, 17, 18, 19, 20, 21, 22, 23, and 29 of this act become operative on July 1, 2007. Sections 1, 2, and 28 of this act become operative on August 1, 2007. The other sections of this act become operative on their effective date.

Sec. 27. Original sections 86-313, 86-316, 86-318, 86-322, 86-323, 86-420, 86-422, 86-433, 86-434, 86-435, 86-436, 86-459, and 86-461, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 28. Original sections 86-125 and 86-140, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 29. Original sections 86-442, 86-443, 86-456, and 86-457, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 30. The following sections are outright repealed: Sections 86-427, 86-443.01, and 86-450.01, Revised Statutes Cumulative Supplement,

2006.

Sec. 31. Since an emergency exists, this act takes effect when passed and approved according to law.