



Hogan & Hartson LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
+1.202.637.5600 Tel  
+1.202.637.5910 Fax

[www.hhlaw.com](http://www.hhlaw.com)

October 28, 2008

David L. Sieradzki  
Partner  
+1.202.637.6462  
DLSieradzki@hhlaw.com

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., SW  
Washington, DC 20554

**Re: Universal Service Contribution Methodology, WC Docket No. 06-122;  
Federal-State Joint Board on Universal Service, CC Docket No. 96-45**

Dear Ms. Dortch:

OnStar Corporation (“OnStar”) made separate *ex parte* presentations regarding universal service contribution reform yesterday to Scott Deutchman, legal advisor to Commissioner Copps; Greg Orlando, legal advisor to Commissioner Tate; Nick Alexander and Angela Giancarlo, legal advisors to Commissioner McDowell; and Don Stockdale and Julie Veach of the Wireline Competition Bureau. OnStar made separate *ex parte* presentations today to Scott Bergmann, legal advisor to Commissioner Adelstein; and Julie Veach and Jennifer McKee of the Wireline Competition Bureau. William Ball of OnStar and Ari Fitzgerald and the undersigned of Hogan & Hartson LLP participated in these presentations on behalf of OnStar. We distributed the attached handout.

During these presentations, OnStar emphasized that if the Commission decides to apply a telephone number-based universal service assessment methodology for some or all telecommunications services, it should adopt reasonable adjustments or modifications to that methodology in the context of automotive telematics and prepaid wireless services.

1. *Background: Distinction Between Telematics and Prepaid Wireless Calling Service.* OnStar provides two separate categories of services: (i) its core telematics offerings, and (ii) adjunct prepaid wireless calling service, provided (via resale) as an optional add-on telematics subscribers. The prepaid wireless service is available only to telematics subscribers, but OnStar’s telematics subscribers need not purchase the prepaid wireless service. In fact, fewer than half of OnStar’s telematics subscribers opt to purchase bundles of minutes in prepaid calling plans.

Telematics is a suite of “information services” provided to customers in vehicles, including automatic notifications of crashes and airbag deployments and the provision of other emergency services as well as access to real-time vehicle diagnostics and monitoring, roadside assistance, remote door-unlock, stolen vehicle location service, and other valuable services. OnStar telematics customers receive services from the OnStar call centers and cannot access the Public Switched Telephone Network unless they separately purchase bundles of minutes for OnStar’s prepaid calling service. It is important to note that telematics is the only wireless service that can provide location with every call to a PSAP regardless of whether the PSAP is Phase II capable.

In order to provide its telematics service to its customers, OnStar purchases mobile wireless telecommunications, including airtime as well as access to telephone numbers, from facilities-based wireless carriers. When a subscriber opts to purchase the prepaid calling service as well as telematics, the same telephone number is used to deliver both services. However, OnStar prices and offers the two services on a separate, unbundled basis: telematics is sold at flat monthly or annual rates (*e.g.*, \$18.95 per month or \$199.00 per year for the basic Safe and Sound plan), while prepaid calling is sold based on bundles of minutes (*e.g.*, \$39.99 for 100 minutes).

For the basic telematics service, the only “telecommunications” transaction is the wireless carrier’s sale of connectivity and airtime to OnStar. OnStar is the end-user telecommunications customer in this business-to-business transaction. The retail telematics service that OnStar sells to motorists is an “information service” and is not subject to universal service contribution obligations.

By contrast, when a subscriber opts to buy a prepaid wireless calling plan, OnStar is the provider of “telecommunications” to the end-user customer. Such service is subject to universal service contribution requirements today, and OnStar files Form 499’s and makes the required payments with respect to such service.

2. Residential vs. Business Classification. Some of the universal service contribution reform proposals under consideration would apply different treatment to services purchased by residential customers than business customers, such as a per-telephone number assessment for residential services and a revenues-based or connection-based assessment for business services. If such a dichotomy is adopted, it is important to clarify that a telematics operator’s purchases of wireless telecommunications from underlying wireless carriers – such as when OnStar buys connectivity and airtime from Verizon Wireless – constitute business-to-business transactions. The separate, adjunct prepaid wireless calling service that OnStar provides to its retail customers, however, might be deemed a quasi-residential (or mass market) service.

3. Assessment Methodology for Prepaid Wireless. OnStar strongly supports the TracFone proposal to assess prepaid wireless services a per-minute of use basis rather than based on a count of working telephone numbers. This is not a “special exception” or carve-out (and should not require carriers or customers to submit reimbursement requests after the fact, as suggested by AT&T and Verizon in their Oct. 20, 2008 *ex parte* letter). Rather, an equivalency methodology such as the per-minute approach proposed by TracFone is the only technologically feasible way to collect assessments from prepaid wireless services. The assessment should apply to the total number of minutes purchased by the consumer regardless of whether or when the consumer uses them, because the provider realizes the revenue upon the sale of the bundle of minutes and may not be able to determine whether or when the minutes are used.

4. Assessment Methodology for Telecommunications Service Provided to Telematics Operators.

As discussed above, telematics is an information service, and telematics operators are not required to pay contributions directly into the universal service fund. However, telematics operators are end-users of telecommunications services provided by wireless carriers, and those wireless carriers may seek to recover the cost of their USF payments as pass-through surcharges to their telematics operator customers.

If a phone number-based system were adopted, and if wireless carriers were to pass through their contribution costs as per-phone number USF surcharges, OnStar and other telematics operators would face a huge increase in USF surcharge payments. The quantity of airtime used per telephone number is extremely small – less than 2 minutes per month (by comparison with the 700-800 minutes per month per telephone number typically used by post-paid wireless services customers). Thus, if OnStar were paying (for example) 10 cents per minute for the wireless airtime, and the average usage per phone number were 2 minutes per month,<sup>1</sup> then a per-phone number USF surcharge of \$1.00 per month would amount to a 500% tax on the 20 cents in telecommunications usage. The USF surcharge would amount to five times the amount paid in telecommunications revenues!

Like the FCC's original universal service methodology that was reversed by the Fifth Circuit Court of Appeals in 1999, under a per-telephone number methodology, OnStar and other telematics operators would "be forced to pay more than [they] can generate in interstate revenues.... [T]his result alone violates the equitable language of the statute.... [and] is 'arbitrary and capricious and manifestly contrary to the statute.'" *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999), *citing Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

Moreover, telematics plays a critical role in advancing public safety, as the Commission has recognized. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003). A contribution methodology that effectively imposes a prohibitive fee on telematics operators would run counter to this overwhelmingly important public policy goal.

Make no mistake: telematics service is highly price sensitive, and a substantial number of subscribers would opt not to take this life-saving service if the price were to increase by \$1.00 per month.<sup>2</sup> The cost of telematics service is not built into the price of the vehicle. Rather, vehicle owners must make an affirmative choice to subscribe to OnStar's telematics after the first year. A major price increase would lead to a significant reduction in telematics subscriptions, resulting in thousands fewer potentially life-saving calls being connected to PSAPs.

The Commission could adopt several alternative methods to address this concern. First, in the context of a telephone number-based assessment methodology, the Commission could determine that telephone numbers supplied to telematics operators are not "assessable numbers" or "working numbers," because basic telematics service is not interconnected with the public switched telephone network and cannot be used to place or receive calls. In the alternative, the

---

<sup>1</sup> These figures are hypothetical. OnStar supplied actual data in a confidential appendix to its *ex parte* filing dated June 14, 2006 in CC Docket Nos. 96-45, 98-171, 92-237, 99-200, 95-116, and 98-170.

<sup>2</sup> OnStar submitted specific data on price elasticity in its June 14, 2006 confidential appendix.

Commission could apply assessments to services provided to telematics operators on a per-minute of use basis, derived as an equivalent to the telephone number-based surcharge, consistent with the TracFone proposal for prepaid wireless service.<sup>3</sup>

Under any of these approaches, service providers or customers should not be forced to undergo the burdensome and costly approach of having to pay a full telephone number-based contribution (or pass-through surcharge) and then submit reimbursement requests to USAC after the fact, as suggested in AT&T's and Verizon's Oct. 20, 2008 *ex parte* letter. Instead, the Commission should make clear in advance how telematics and prepaid wireless service will be treated, and should ensure that the needed data are made available so that wireless carriers can report revenues accurately, pay appropriate amounts of contributions, and assess surcharges (if any) correctly on their customers' bills.

If you have any questions, please contact me.

Respectfully submitted,

David L. Sieradzki  
Counsel to OnStar Corporation

Enclosure

cc: Dan Gonzalez  
Amy Bender  
Scott Deutchman  
Scott Bergmann  
Greg Orlando  
Nick Alexander  
Dana Shaffer  
Don Stockdale  
Julie Veach  
Jennifer McKee

---

<sup>3</sup> Another alternative would be to determine that a wireless carrier's service to a telematics provider should be exempt from USF contributions, similar to a Lifeline service or a service provided by a non-common carrier exclusively to governmental/public safety entities, which are not subject to contribution obligations "because of the important public safety and welfare functions for which these services are used." *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 800 (1997).

# OnStar Background

Combine and integrate directly into the vehicle's electrical architecture

- Cellular technology
- GPS location capability
- Sophisticated voice recognition technology

Call center-based services

- Safety, security and peace of mind
- Routing and point of interest

One button hands-free calling

Over 5.0 million subscribers

- Multiple languages /TTY

Standard 2008 MY - most GM vehicles



# Monthly Subscriber Interactions



Automatic Crash  
Response  
*1,900/Month*



Emergency  
Services  
*6,000/Month*



Good  
Samaritan  
*5,000/Month*



Stolen Vehicle  
Location  
Assistance  
*700/Month*



Remote  
Unlock  
*65,000/Month*



Roadside  
Assistance  
*29,000/Month*



Turn-by-Turn  
Routes Delivered  
*930,000/Month*



OnStar Vehicle  
Diagnostics – Over  
*3.0 Million Emails  
Sent*

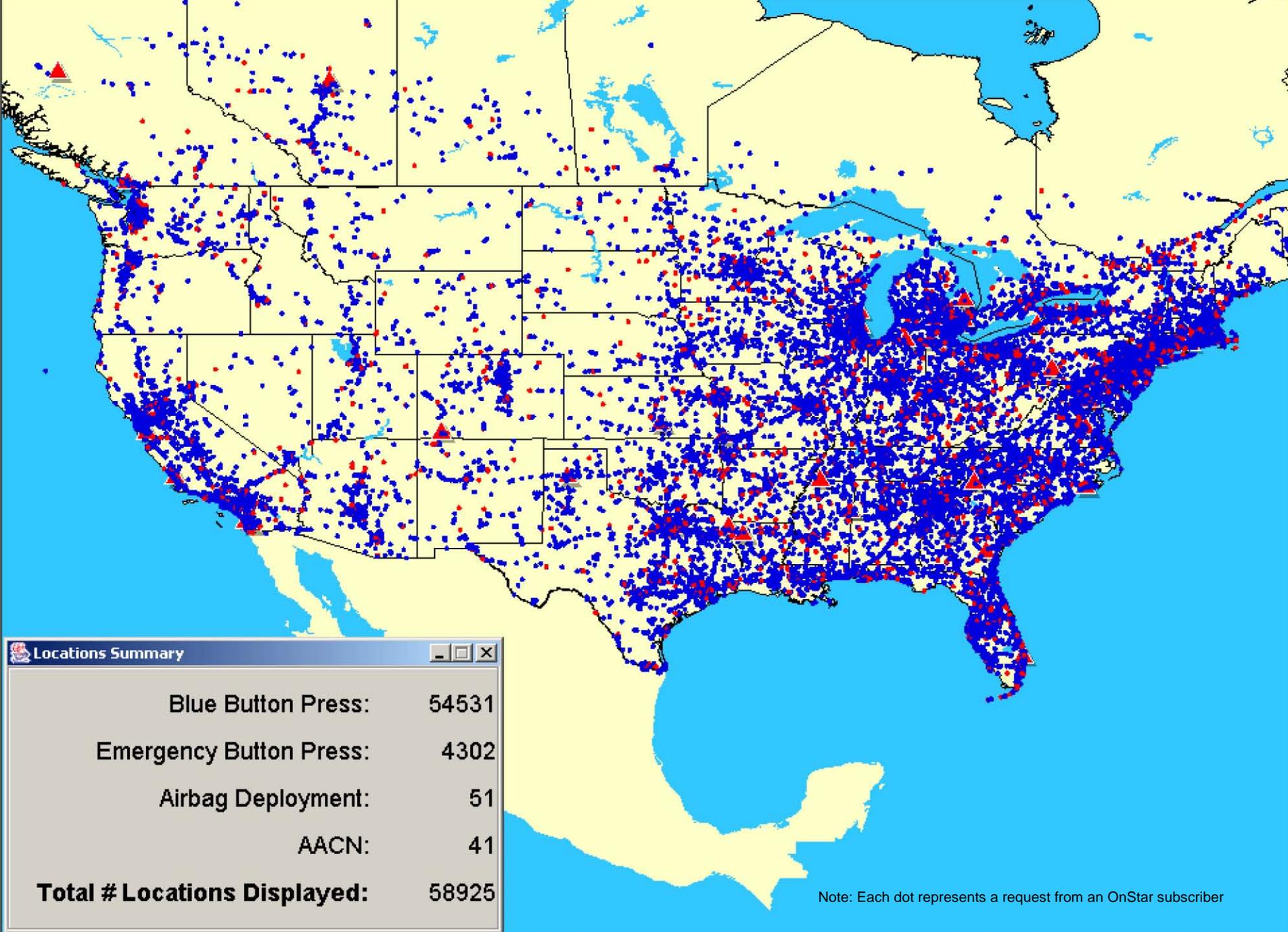


Remote  
Diagnostics  
(on demand)  
*55,000/Month*



OnStar Hands-  
Free Calling  
*Over 30 Million  
Minutes/Month*

*Monthly average (May - July 08)*



# OnStar's Contribution to Continuous Safety

## Avoiding a Crash

- Good Samaritan calls
- Diagnostics
  - On demand
  - Regular E-mail Diagnostics Report
- Navigation
  - Advisor delivered Instructions
  - Downloaded GPS guided TBT (Turn-by-Turn)
- Stolen Vehicle Slowdown

## During a Crash

- Engineering enhanced by AACN data

## After a Crash

- Automatic Crash Response
  - Automatic Airbag Deployment Notification (Gen 1)
  - ACR Including Real Time Crash Data (Gen 2)
- Emergency and Good Samaritan calls