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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Utah Universal Service Fund Surcharge	DOCKET NO. 16-R360-02 **REPLY COMMENTS OF THE AT&T COMPANIES**

The certificated AT&T Companies, together with AT&T wireless providers, including AT&T Corp., Teleport Communications America, LLC, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, and Cricket Wireless, LLC (collectively, the "AT&T Companies") submit these Reply Comments in response to the Request for Comments dated April 13, 2016 (the "Request"). The AT&T Companies only wish to clarify a couple of points which arose from the initial comments filed by other parties.

At the outset, the AT&T Companies reiterate their support with continuing the current USF revenues-based methodology. That is still the approach followed for the federal USF, as well as almost every other state. It would appear simpler to adjust the amount of the assessment than to develop a new body of rules to implement a new methodology. Several commenters, including CTIA and URTA, have urged that further record development would be needed before moving more seriously in the direction of a new assessment methodology.

1. VoIP is not currently assessable for USF under Utah law.

In addition to comments on the USF methodology, two commenters appear to urge the Commission to start assessing VoIP. Specifically, CenturyLink ("CL") and the Utah Rural Telecommunications Association ("URTA") contend that VoIP providers should be required to pay into the state USF, and either explicitly or by implication seem to argue that the Commission has current authority to assess VoIP. CL does this by turning to UC 54-19-103, saying that VoIP assessment is "consistent" with the statute, which "allows" for application of the surcharge to VoIP. URTA takes a different course, trying to argue flatly that VoIP is telecommunications under Utah law. Both arguments are either misleading or in error in describing the current state of Utah law on VoIP assessment.

To be clear, the AT&T Companies take no position on whether VoIP *should* be assessed. Instead, our position is merely that, under current Utah law, it is not assessable for USF. Action by the legislature would be required to change that policy.

A. The VoIP Regulatory Preemption Statute at UC 54-19-103 is not affirmative authority for assessing VoIP.

As already noted, CL asserts that UC 54-19-103 "allows" for applying the USF surcharge to VoIP. This statement should not be interpreted to mean that UC 54-19-103 actually confers any affirmative authority to assess VoIP for USF. UC 54-19-103, enacted recently in 2012, is a statute that generally preempts state and local regulation of VoIP. It then carves out exceptions, saying that the preemption does not "affect, limit, or prohibit the current or future assessment" of certain taxes and charges, including USF. Saying a broad prohibition on regulation does not "affect, limit or prohibit" a surcharge cannot be read as affirmative authority to apply the surcharge. To do so would violate the statement that the section does not "affect" the surcharge. Instead, the transparent and common sense interpretation of the provision is that it is only

preserving the status quo on these surcharges. In a legislative sense, this was simply taking the issue off the table. Trying to read it affirmatively violates the statement that the section does not "affect" the assessment of USF against VoIP.

B. Reinterpreting telecommunications to include VoIP is contrary to state precedent and would invite a whole host of problems and issues.

For different reasons, URTA's approach of wanting to reclassify VoIP as a telecommunications service is an argument that goes well beyond the simple question of USF. The implications go well beyond the scope of this docket. Fortunately, there is no support in precedent for such an expansive read. The definition of "public telecommunications service" is contained in UC 54-8b-2, last visited by the Legislature in 2005. At that time, federal law treated VoIP as an informational service and not a telecommunications service. (It is worth noting that UC 54-8b-2 contains multiple references to federal law.) Consistent with that, we are unaware of any prior occasion where the Commission has interpreted this phrase to include VoIP technology. The Commission, for instance, has never required VoIP providers to be certificated by the Commission.

The text of UC 54-8b-15 supports this, where the Legislature saw fit to separately address and include wireless voice service, a move that would be unnecessary if the broad definition URTA now urges were applied. There is, in fact, no evidence or interpretation contemporary with that statute that would support URTA's expansive read. URTA's interpretation appears to be unlimited, and could be applied to all sorts of internet applications involving any two party interaction, such as gaming, messaging, etc.

If any parties want to revise Utah law to apply USF to VoIP, then the proper venue for that change is the Utah Legislature. For these reasons, the AT&T Companies encourage the Commission to continue with the existing rate or revenue based assessment.

The AT&T Companies appreciate the opportunity to provide these comments.

Submitted June 1, 2016.

By:_____/s/_____
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MAILING CERTIFICATE

I hereby certify that on the 1st day of June 2016, I caused to be served a copy of the REPLY COMMENTS OF THE AT&T COMPANIES on the following person by overnight delivery and electronic mail:

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I also hereby certify that on the 1st day of June 2016 I caused to be served a copy of the REPLY COMMENTS OF THE AT&T COMPANIES on the following persons by electronic mail:

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