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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Consideration of Potential)
Changes in the Regulation of the Utah) Docket No. 12-999-10
Universal Public Telecommunications Service)
Support Fund, in Response to Recent Changes) **REPLY COMMENTS**
in the Federal Universal Service Fund Program)

REPLY COMMENTS OF COMCAST PHONE OF UTAH, LLC

Comcast Phone of Utah, LLC (“Comcast”), hereby replies to the comments submitted in response to the Request for Comments and Notice of Technical Conference issued November 2, 2012, by the Public Service Commission of Utah (“PSC”) in the above-captioned matter concerning the consideration of potential changes in the regulation of the Utah Universal Public Telecommunications Service Support Fund (“Utah Fund”), in response to recent changes in the Federal Universal Service Fund (“USF”) Program by the Federal Communications Commission (“FCC”).

I. INTRODUCTION AND SUMMARY

The PSC opened this Docket as a result of a request from the Utah State Legislature to consider actions the State may take to address changes in the Federal USF Program initiated by the FCC in its order on USF reform, released November 18, 2011.¹ The comments and reply comments submitted in this Docket would then be considered by the Utah Division of Public Utilities (“Division”) in preparing a report to the Utah State Legislature with recommendations for changes in the public utility regulations or laws pertaining to the Utah Fund.

As the majority of commenters urge, the Utah Fund should not be expanded. The Utah Fund should be reduced by implementing measures consistent with the Federal USF reforms adopted by the FCC. With regard to the contribution base, any proposal that would increase the burden on Utah’s consumers and businesses of making contributions to the Utah Fund is unwarranted. With regard to the distribution of funds, the Utah Fund support should not be used to offset decreases in the Federal USF disbursements, to support carriers that maintain artificially low rates for retail voice services, or to support high cost areas in which an unsubsidized competitor is providing affordable basic services. The majority of the parties filing comments in this Docket recognize that there should be no changes to redirect the Utah Fund to support broadband networks and services. Finally, the PSC should ensure that the operation of the Utah

¹ See *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011) (the “FCC Order”).

Fund is “nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds.”²

II. THE RECORD DEMONSTRATES THAT THE UTAH FUND SHOULD NOT BE EXPANDED

The record provides evidence that Utah’s telecommunications marketplace is competitive and that the goal to promote universal service within the state has been achieved. The Utah Legislature, when it established the Utah Fund in 1997, directed the PSC to establish rules consistent with the Federal Telecommunications Act. *See* Utah Code Ann. § 54-8b-15. The Utah Fund was designed to “preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service” and “promote equitable cost recovery of basic telephone service.”³

A few of the commenting parties discussed the changing telecommunications market and technologies and how the FCC Order is about transitioning to new technologies. For instance, Verizon explained that increased competition and new technologies have changed the telecommunications marketplace in the fifteen years since the Utah Fund was established and that currently, “basic telephone service is available to consumers throughout Utah at reasonable and affordable rates.” According to Verizon, since the goal of the Utah Fund has been met, “the program is no longer necessary and should be eliminated or at least substantially reduced.”⁴ Although the Office of Consumer Services (“Office”) is not advocating elimination of the Utah

² *See* Utah Code Ann. § 54-8b-15(5).

³ Utah Code Ann. § 54-8b-15(6); *see also* Utah Admin. Code R746-360.

⁴ Verizon Comments at 2.

Fund at this time, the Office believes it would be appropriate to evaluate the intended purpose of the program and consider a suitable phase out of the high cost support use over a number of years.⁵

Verizon suggested a re-examination of the Utah Fund to ensure consistency with the comprehensive reforms of the federal universal service policies adopted by the FCC.⁶ Specifically, Verizon believes that the Utah Fund should not be used to provide support in areas that the FCC has determined do not warrant support. Comcast agrees with Verizon that the Utah Fund should not be used: (A) to offset decreases in the Federal USF support; (B) to support carriers that maintain artificially low rates for retail voice services; or (C) to support high cost areas in which an unsubsidized competitor is providing affordable basic services.

A. The Utah Fund Should Not be Used to Offset Decreases in Federal USF Support.

Comcast agrees with other commenters that the FCC Order reforming the Federal USF program is not related to the state universal service fund disbursements, and that the Utah Fund should not be expanded or increased to offset decreases in Federal USF support. The Office of Consumer Services, for example, stated that “[i]n the FCC’s November 18, 2011 order (Order), the reductions in federal USF support were not tied to offsetting increases by the State’s Funds. This federal-to-state shift was not the intent of the Order.”⁷ According to Verizon, “the FCC reforms are properly aimed at assuring and expanding service availability for *consumers*, and not

⁵ Office of Consumer Services Comments at 3-4. The Office noted that the Utah Fund should remain in place for Lifeline until a separate and detailed analysis is performed.

⁶ Verizon Comments at 2, citing Utah Code Ann. § 54-8b-15(4).

⁷ Office of Consumer Services Comments at 2.

at ensuring the continuing existence of support for particular carriers or business models.”⁸ Verizon correctly noted that the FCC rejected the notion that current USF recipients are entitled to continued support.⁹ The FCC Order specifically provided means through which carriers would be able to recover reductions in the traditional Federal USF support and intercarrier compensation revenues. Carriers are expected to increase retail rates and additional support is available through the Connect America Fund and a federal replacement access recovery charge (“ARC”).¹⁰ The FCC also has a waiver process to obtain an exemption from reforms upon a showing of good cause by the carrier.¹¹

CenturyLink expressed a similar concern “that as the federal funding of universal service is reduced and focused on granular areas, some carriers may seek to utilize the Utah USF as a ‘make whole’ mechanism, with the potential to drastically increase the size of the state fund, resulting in much higher contributions from CenturyLink’s customers.”¹²

Indeed, the Utah Fund was designed to ensure “that *customers* have access to affordable basic telephone service.”¹³ The purpose of the universal service fund, therefore, is to benefit *customers*, not *carriers*.¹⁴ There is no basis to expand the Utah Fund program at a time when the

⁸ Verizon Comments at 10 (emphasis in original).

⁹ *Id.*, citing to FCC Order, ¶293.

¹⁰ Verizon Comments at 16, citing to FCC Order, ¶849.

¹¹ See 47 C.F.R. § 1.3; see also FCC Order, ¶¶ 539-544; Verizon Comments at 16-17.

¹² CenturyLink Comments at 2.

¹³ Utah Code Ann. § 54-8b-15(6)(b) (emphasis added).

¹⁴ See *Alenco Communications, Inc. et al. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

PSC should be focused on reducing the Fund, consistent with the FCC reforms. Expansion of the program would “impose an excess burden on consumers and businesses who ultimately pay to support the Fund.”¹⁵ The FCC established sufficient recovery mechanisms for carriers to address reductions in revenue to ensure that states would not be required to establish state recovery mechanisms.¹⁶ Comcast agrees with Verizon that there is no reason to expand or increase the Utah Fund to offset any decreases in the Federal USF support.

B. The Utah Fund Should Not be Used to Support Carriers that Maintain Artificially Low Rates for Retail Voice Services.

Customers of rural carriers enjoy artificially low rates for basic telecommunications service and access to fiber to the home services. The FCC Order states that it is inappropriate to provide support to subsidize carriers that are charging customers local service rates that are unreasonably lower than a prescribed benchmark level, to be set at “the national average of local rates plus such state regulated fees” because this “places an undue burden on the Fund and consumers that pay into it” and requires the program to be larger than it otherwise would be.¹⁷ In such cases, the FCC expects carriers to recover more of their costs directly from their end-users. Since the rules governing the Utah Fund must be consistent with the universal service policies adopted by the FCC, Comcast agrees with Verizon that to implement this policy, the PSC should re-examine the Affordable Base Rate in Utah Admin. Code R746-360.2.A, and consider imposing a requirement that the Utah Fund recipients increase their local service rates

¹⁵ FCC Order, ¶57; *see also* Verizon Comments at 10.

¹⁶ Verizon Comments at 17, citing to FCC Order, ¶795.

¹⁷ Verizon Comments at 11-12, citing to FCC Order, ¶¶237-238.

to reasonable market rates before seeking support from the Utah Fund.¹⁸ The Utah Fund should not provide support in any area which the FCC has determined does not warrant support.¹⁹

C. The Utah Fund Should Not be Used to Support High Cost Areas in Which an Unsubsidized Competitor is Providing Affordable Basic Service.

Where voice service is available from an unsubsidized provider, the Utah Fund should not force customers of those providers to subsidize the operations of the incumbents with whom they compete. If the Utah Fund pays support to incumbent carriers in areas served by unsubsidized competitors, such support would be a disincentive to competition, would be an inefficient use of limited universal service funds, would conflict with the statutory mandate of being competitively neutral, and would impede the development of competition. Two commenters highlight the FCC's decision to adopt a rule to eliminate universal service support in areas where there is an unsubsidized competitor, or a combination of competitors, providing affordable basic service (voice and broadband) throughout an incumbent carrier's study area.²⁰ Comcast agrees with Verizon that Utah should adopt this approach.²¹ Since there are unsubsidized competitors operating in all areas of the State of Utah, there may be only a few rare situations in which funding would be justified. The Utah universal service policies should be

¹⁸ Verizon Comments at 12, 14, citing to FCC Order, ¶¶915.

¹⁹ In Verizon's opinion, when a carrier chooses not to increase its retail rates to the set benchmark, the PSC should take the additional revenues that the carrier would obtain if it priced its services at the benchmark and subtract that amount from the support for which the carrier would otherwise be eligible to collect. Verizon Comments at 14.

²⁰ Verizon Comments at 11-13, citing to FCC Order, ¶¶24, 27, 170, 280-281; CenturyLink Comments at 7 (where there is an unsubsidized *wireline* competitor).

²¹ Verizon Comments at 12.

consistent with the universal service policies of the FCC.²² Moreover, the current support calculation methodology pays for the total cost of a telecommunications network, failing to recognize that today's communications networks support both voice and broadband services. As a result, the Utah Fund overcompensates subsidized carriers by failing to consider their broadband revenues.

III. THE CONTRIBUTION BASE OF THE UTAH FUND SHOULD NOT BE EXPANDED TO INCLUDE NEW GROUPS OF CONTRIBUTORS

The PSC should reject proposals that would unnecessarily increase the burden on Utah's consumers and businesses of making contributions to the Utah Fund. The Office of Consumer Services raised the concern "that from the perspective of consumers, different types of providers from which they can purchase what appears to be the same services have different taxes and fees," and states that the "USF contribution base should be designed so that it does not set up any competitive advantage or disadvantage for any type of telecommunications provider."²³ Comcast agrees to the extent that the Office of Consumer Services advocates that the Utah Fund should not increase and that the operation of the Utah Fund should be competitively neutral.

Verizon urges the PSC to phase down the Utah Fund program because the purpose of the Fund (to provide basic telephone service to consumers at affordable rates) has already been met. In Verizon's opinion, there is no reason to impose new burdens on customers of broadband and other new technologies by requiring them to contribute to a Fund that should be dramatically

²² To implement this, Verizon suggests the PSC establish a rebuttable presumption that an unsubsidized competitor is providing service in areas that currently receive Utah Fund support, except areas found to be "unserved." In order to continue obtaining a subsidy from the Fund, a recipient must rebut the presumption by demonstrating there is no unsubsidized competitor in the area. Verizon Comments at 13-14.

²³ Office of Consumer Services Comments at 2.

reduced or eliminated, and that supports older technologies and services. According to Verizon, requiring providers of broadband and other new technologies to collect new universal service fees from customers would result in higher prices, and would discourage innovation and investment, an approach that is contrary to the Utah Legislature’s policy.²⁴

The FCC must ensure that competing services are subject to the same USF assessment.²⁵ The operation of the Utah Fund is similar in that the collection and distribution of funds must be nondiscriminatory and competitively and technologically neutral.²⁶ Any reforms that would result in competing services being treated differently for contribution purposes would be inconsistent with this statutory directive.

IV. THERE SHOULD BE NO LEGISLATIVE OR REGULATORY CHANGES TO REDIRECT THE UTAH FUND TO SUPPORT BROADBAND

Pursuant to state law, use of the Utah Fund is limited to “ensuring that customers have access to affordable basic telephone service” and promoting “cost recovery of basic telephone service.”²⁷ The majority of the parties filing comments in this Docket recognize that there should be no changes to redirect the Utah Fund to support broadband networks and services at this time. The Office of Consumer Services does not advocate use of the Utah Fund for broadband support.²⁸ The AT&T Companies recommend no legislative or regulatory changes

²⁴ Verizon Comments at 15-16, citing Utah Code Ann. §§ 54-8b-1.1(3), (8) and (9).

²⁵ See 47 U.S.C. § 254(d) (contributions must be assessed “on an equitable and nondiscriminatory basis”).

²⁶ Utah Code Ann. § 54-8b-15(5) (Fund must “be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.”)

²⁷ Utah Code Ann. § 54-8b-15(6).

²⁸ Office of Consumer Services Comments at 4.

establishing new funds or uses for the state USF, or transitioning state USF support for broadband at this time. According to the AT&T Companies, “states should stay the current course until there is data on how far the federal mechanisms drive broadband availability, and before determining whether additional state monies are appropriate.”²⁹ The AT&T Companies reference the pending FCC dockets for clarification of the FCC Order and a Further Notice of Proposed Rulemaking in connection with the new federal broadband support program, indicating that such matters could impact the proposals being considered in this Docket.

Verizon believes that the PSC should not redirect the Utah Fund to broadband support for several reasons. First, because state law limits the use of the Utah Fund for basic telephone service, the Fund may not be repurposed to support broadband.³⁰ Second, since the federal government is implementing programs to stimulate broadband investment and deployment, Verizon believes it would be imprudent to create a new, state-level program for broadband as it is too early to determine whether any new program would be duplicative or conflict with the plans being developed nationally. Third, Verizon references sources indicating that service providers in Utah are deploying advanced broadband capabilities to satisfy customer needs without universal service support and questions whether there is a need to subsidize broadband in Utah.³¹

²⁹ AT&T Companies Comments at 1-2.

³⁰ Comcast recognizes that there are state and federal jurisdictional issues.

³¹ Verizon Comments at 17-19; National Broadband Map at www.broadbandmap.gov/summarize/state/utah (as of December 31, 2011, 85% of Utah’s population was served by two or more wireline broadband providers, with 99.5% of Utah’s population served by two or more wireless providers of broadband); *see also* U.S. Department of Commerce, 2011 Report on *Computer and Internet Use at Home* (Utah ranked number one with the highest rate of home broadband adoption of any state at 80%).

V. THE PSC SHOULD IMPLEMENT A COMPETITIVE BIDDING PROCESS TO DETERMINE THE LEVEL OF UTAH FUND SUPPORT

The record in this Docket and the FCC Order establish that competitive bidding would be the most efficient and effective mechanism to award funding.³² In geographic areas where there are no unsubsidized competitors, a reverse auction would be the preferred method to determine the level of Utah Fund support. A reverse auction would be the most economically efficient mechanism and is an approach that is consistent with the FCC's universal service reforms and the PSC's statutory obligation to distribute Utah Fund resources in a competitively and technologically neutral manner.³³

VI. CONCLUSION

The record confirms that the telecommunications marketplace has changed since the Utah Fund was established to support access to affordable basic telephone service. The telecommunications marketplace is more competitive than ever, with robust competition from wireless, over-the-top VoIP services and fixed VoIP services. Moreover, service providers in Utah are already deploying advanced broadband capabilities and Utah residents have a high broadband adoption rate.³⁴ This supports Comcast's contention that there is no reason to further burden Utah consumers and businesses with an unnecessarily bloated Utah Fund. The record leaves little doubt that adopting proposals to increase the Utah Fund would expand beyond the

³² Verizon Comments at 20; *see also* FCC Order at ¶165.

³³ *See* Utah Code Ann. § 54-8b-15(5).

³⁴ *See supra* n.30 (availability of broadband and home broadband adoption in Utah).

legislative purpose of the Fund and would be anticompetitive and wasteful. Accordingly, as the majority of the commenters urged, the PSC should refrain from adopting any proposals that would unwisely increase the Utah Fund, and should amend its existing regulations by implementing measures consistent with the federal USF reforms adopted by the FCC.

Respectfully Submitted,

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December 21, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2012, an original, five (5) true and correct copies, and an electronic copy of the foregoing **REPLY COMMENTS OF COMCAST PHONE OF UTAH, LLC** were hand-delivered to:

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