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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Universal Service
Fund Surcharge

DOCKET NO. 16-R360-02

CENTURYLINK'S COMMENTS

I. INTRODUCTION

On April 13, 2016, the Public Service Commission of Utah (Commission) issued a *Request For Comments*, seeking comments as to the following Utah Universal Service Fund (“UUSF”) Surcharge issues:

1. *Industry trends or other circumstances that might explain why the current surcharge is generating less revenue.*
2. *Mechanisms to maintain funding of the UUSF, including but not limited to the following two options, either of which could be accomplished through a future administrative rule filing by the Commission, contemplated to be effective by October 1, 2016:*
 - a. *Increasing the current surcharge from 1% of billed intrastate retail rates to 1.65% of billed intrastate retail rates. See Utah Administrative Code R746-360-4(C).*
 - b. *Repealing the current surcharge and implementing a \$0.32 surcharge on:*
 - i. *each residential and business access line of each customer of local exchange telephone service in Utah; and*
 - ii. *each residential and business telephone number of each customer of a mobile telephone service in Utah, not including a telephone number used exclusively to transfer data to and from a mobile device.*

Qwest Corporation d/b/a CenturyLink QC and CenturyLink Communications, LLC (“CenturyLink”) respectfully provide comments and recommendations regarding these issues in addition to other recommendations.

II. CURRENT TRENDS IN UUSF SURCHARGE REVENUES

As the Commission has observed, revenues generated from the UUSF Surcharge have been declining. This decline has occurred because UUSF revenues are based on the application of a surcharge percentage to *intrastate retail telecommunications revenues*. These revenues are eroding; there has been a significant decline in CenturyLink and other ILEC intrastate revenues that are subject to the UUSF surcharge due to the evolution of technology and customer preferences. First, there continues to be a significant shift from traditional phone lines to wireless, cable and other Voice over Internet Protocol (“VoIP”) based services, as demonstrated by the 60% decline in CenturyLink access lines over the last ten years in Utah,¹ and the fact that as of the first half of 2015, nearly one half of American homes —47.4%— had only wireless phones.² Second, even when customers retain CenturyLink or other ILEC services, there is a migration from traditional intrastate regulated retail services to advanced services that are not subject to intrastate regulation.

When customers migrate from traditional wireline phone services to wireless, cable or other VoIP services, some of the revenues obtained by these providers may be subject to the UUSF surcharge. However, it is clear that the UUSF surcharge revenues derived from wireless and VoIP services to date have provided an inadequate replacement for the revenues derived from traditional voice services.

Wireless Service. Currently, wireless voice services in Utah are subject to the UUSF surcharge. However, even though the wireless market continues to grow, the Utah Division of Public Utilities (“DPU”), who tracks and monitors the UUSF, recently told CenturyLink that the total USF surcharge revenue submitted by the wireless providers has declined significantly in the last few years. Because CenturyLink is not a wireless provider, it cannot explain why the UUSF surcharge revenue collected and paid by wireless providers has declined at the same time that the wireless market continues to grow. At a technical conference or in subsequent comments, wireless

¹ CenturyLink retail access lines have declined over 60% in the last ten years, from 835,958 in December 2005 to 318,234 in December 2015.

² *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015*, NHS Early Release Program, Released December, 2015, page 1. See: <http://www.cdc.gov/nchs/nhis/releases.htm>

providers would be in the best position to identify how they assign revenues for purposes of the UUSF assessment. For example, at a technical conference the Commission can examine how wireless service providers may be addressing UUSF contributions for new technologies such as Voice over LTE and voice over WiFi.

VoIP Service. There are different types of VoIP services. Cable companies, like Comcast, generally offer what is considered fixed VoIP service using their own networks. While some cable VoIP providers are voluntarily remitting surcharge revenues for the UUSF, it is not clear that all cable VoIP providers are doing so. It is also not clear how the cable companies are determining the level of “voice” revenues that the surcharge is applied to. Similar to the wireless providers, cable companies may be assigning more revenues to their data or video services, and less to voice, thereby limiting the UUSF contributions.³ VoIP providers, like Vonage, offer voice service as an application to customers with a High Speed Internet (“HSI”) connection from another provider. This type of service is often called “nomadic VoIP.” CenturyLink does not believe UUSF surcharges are collected today from nomadic VoIP providers.

In sum, the traditional intrastate voice services that provided UUSF revenues in the past have in large part been replaced by alternative voice services that provide either a lower level of UUSF surcharge revenues or no revenues at all for the UUSF. This accounts for the decline in UUSF Revenues. If the Commission wants to examine this issue further it would need input from cable companies, wireless carriers, and others as to how, or if, they are remitting UUSF surcharge revenues.

III. COMMISSION SHOULD TRANSITION TO A PER LINE / PER CONNECTION SURCHARGE.

Given the decreasing UUSF base and the unfair burden that is placed on some technologies over others, it is apparent that the current process must change. Given the immediate need to fund the UUSF, CenturyLink would support an interim solution wherein the Commission increases the existing 1% revenue-based surcharge to the proposed 1.65% surcharge, to take effect on

³ “Utah Code Subsection 54-8b-15(10) defines who should contribute to the fund. Currently the customers of all ILECs, CLECs, toll resellers and wireless companies contribute to the fund. Some VoIP providers contribute, some do not. Page 8 of the July 8, 2013, report by the Utah Division of Public Utilities to the Utah Public Service Commission, in Docket No. 12-999-10. “There is some dispute about the current status of the law relative to required contributions from VoIP providers. While some provider pay, the Division has reason to believe that various other VoIP providers with a variety of technologies do not contribute to the UUSF. Currently paying VoIP providers claim to be paying voluntarily, not conceding the applicability of the charge to their services.” (Footnote 9 on Page 8 of the above listed report.)

October 1, 2016. However, in this docket the Commission should transition to a per line/per connection surcharge that adheres to a set of principles that recognizes a broad and growing base, competitive neutrality, flexibility, and predictability. CenturyLink believes this transition should occur within the next year, which would give providers an appropriate amount of time to make any necessary billing system changes to implement the per line/per connection surcharge. Further, CenturyLink would support the Commission scheduling a technical conference to further discuss the transition.

1. Broad and Growing Base. The contribution system should draw from a broad and growing assessment base in a technology neutral manner. This cannot be accomplished if the contribution is assessed based on the intrastate revenues of telecommunications carriers. The base must expand as new services and technologies are developed and mature. Based upon the trends over the last several years, traditional intrastate retail telecommunications revenues are highly likely to continue to decline. Under the current approach, even if there is no increase in the payout of the UUSF, the surcharge percentage will need to be increased regularly because the revenues subject to the UUSF are also declining. This places an unfair burden on certain providers. In contrast, since the number of voice connections, including traditional, cable, VoIP and wireless, have been increasing and should continue to increase, a surcharge applied to this base would minimize the need for surcharge increases in the future.⁴

2. Competitive Neutrality. Contributions must be assessed in a manner that is competitively neutral and nondiscriminatory, consistent with Utah Statute 54-8b-15(5): *“Operation of the fund shall 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.”*

Similar products and services should have similar contribution obligations, regardless of the technology used. All voice providers—including wireless, cable and VoIP providers—should be required to contribute to a state high cost fund that supports voice services. Further, since voice

⁴ While traditional wirelines have been declining, total voice connections—including traditional, cable, VoIP and wireless—have been increasing. According to the FCC, between 2010 and 2013, ILEC connections in Utah declined 27.2%, non-ILEC access lines increased 55.0%, and wireless connections increased 10.6%. Overall, voice connections increased 8.5%. See *Local Telephone Competition: Status as of December 31, 2013*, Industry Analysis and Technology Division, Wireline Competition Bureau, October, 2014, Tables 13, 14 and 18. See: <https://www.fcc.gov/general/local-telephone-competition-reports>

technology continues to evolve the rule should be flexible enough to include future voice technologies.

As indicated earlier, CenturyLink suspects that there are inconsistencies with how the current revenue based surcharge is applied to different types of voice providers, and it is not clear how various types of providers calculate and report the revenue subject to the UUSF.⁵ Additionally, it is not clear how VoIP providers who claim to be “voluntarily” paying into the UUSF calculate the revenue subject to the fund. If the Commission continues with the current revenue based approach, it would need to perform a detailed review to evaluate how the various types of providers are calculating the revenue subject to the UUSF and make changes in the rule to ensure consistency and neutrality.

All VoIP providers should be required to pay into the UUSF, and this should not be based on a “voluntarily” decision by providers. This is consistent with Utah Statute 54-19-103 which allows for the USF surcharge to be applied to deregulated VoIP services.⁶ In 1997, when Utah Statute 54-8b-15 (Universal Public Telecommunications Service Support Fund – Established) became law, it was not readily known there would be a significant decline in traditional phone lines and a migration by customers to wireless and VoIP services. Even though VoIP service is provided through a different technology than local exchange service, it can duplicate all of the features and functions of traditional phone service. Regardless of trends in technology, the legislature clearly intended that the UUSF be “nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds.” If all VoIP providers do not pay into the UUSF, then the operation of the UUSF is not “competitively and technology neutral.”

3. Flexibility. The contribution scheme must adapt to changes in technology in the marketplace. As described above, as technology has changed, the surcharge-based UUSF revenues from traditional voice providers have declined significantly. This demonstrates that the current surcharge mechanism does not have the flexibility to adjust to changes in technology.

⁵ For example it is not clear how the wireless Eligible Telecommunications Carriers (ETCs) who participate in the federal Lifeline program, and offer a free wireless option to qualified low-income customers, determine the revenue subject to the UUSF.

⁶ 54-19-103 Authority over Internet protocol-enabled services and voice over Internet protocol services. (1) A state agency and political subdivision of the state may not, directly or indirectly, regulate Internet protocol-enabled service or voice over Internet protocol service; (2) The regulatory prohibition in Subsection (1) does not (a) affect, limit, or prohibit the current or future assessment of (i) a tax; (ii) a 911 fee; (iii) **a universal service fund fee**; (iv) telecommunications relay fee; or (v) a public utility regulatory fee. (emphasis added)

Assessment of a surcharge based on connections regardless of technology gives the flexibility to provide adequate UUSF revenues, even as technology evolves.

4. Predictability. The assessment rate and the rules governing assessment calculations should be predictable. The contribution mechanism must afford all service providers the stability needed to plan and run their businesses. A connections-based surcharge methodology would provide the appropriate level of stability so that providers of all types will have an idea of the contributions they will need to make on an ongoing basis.

5. Easy, Simple and Reliable. The system should be easy to administer, simple to apply, and reliably enforceable. The current system based on intrastate revenues is anything but easy, simple and reliable, since there are “grey” areas as to what revenues are assessable and how these revenues should be calculated. The system must be redesigned to substantially reduce the excessive complexities and administrative burdens that characterize contributions based on intrastate revenues. A connections-based surcharge application is easy, simple and reliable.

In sum, CenturyLink believes that the current revenue based surcharge approach is obsolete, and does not comply with these principles. The Commission should move to a per line/per connection surcharge⁷ which would adhere to these principles.

IV. OTHER CHANGES TO THE UUSF RULES

While this proceeding is designed to address the UUSF surcharge methodology, CenturyLink believes the Commission should also consider other changes to its UUSF rules. CenturyLink believes the existing rule (R746-360-9) relating to one time distributions should be amended, so that funds can be more efficiently dedicated to specific projects that would benefit Utah consumers in high cost areas. While it may not be practical for the Commission to address these issues in the initial phase of this proceeding, given the October 1, 2016 deadline, CenturyLink believes the Commission should address these issues in a subsequent rulemaking phase.

⁷ The Commission already successfully uses a per line/per connection approach with the Telecommunications Relay Service (TRS) surcharge.

V. CONCLUSION

CenturyLink respectfully requests that the Commission adopt the recommendations provided herein, and move to a per line/per connection UUSF surcharge that would be applied to all traditional ILECs, VoIP providers and wireless providers in a competitively neutral and nondiscriminatory manner.

RESPECTFULLY SUBMITTED this 16th day of May 2016

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