

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Utah Universal Fund
Surcharge

Docket No. 16-R360-02

**CTIA COMMENTS
IN RESPONSE TO THE COMMISSION'S APRIL 13, 2016
REQUEST FOR COMMENTS**

I. INTRODUCTION

CTIA¹ appreciates the opportunity to comment in response to the Public Service Commission of Utah's ("Commission's") April 13, 2016 Request for Comments ("RFC") in the above-captioned proceeding. The RFC identifies "a recent trend of declining revenue in the Utah Universal Service Fund ('UUSF') and requests comment on two issues: first, on "industry trends or other circumstances that might explain why the current [UUSF] surcharge is generating less revenue"; and second, on mechanisms to maintain funding of the UUSF, of which two are proposed, to be effective by October 1, 2016.²

With regard to the first issue, CTIA supports the Commission's efforts to gather information on declining UUSF revenues. Such data is valuable to commenters and all parties affected by the state of the UUSF surcharge, and the Commission is in a good position to gather such information and make it available to commenters. CTIA believes that the present

¹ CTIA – The Wireless Association® is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association's website at <http://www.ctia.org/about-us>.

² RFC, at 1.

proceeding is an appropriate forum to develop a record on the financial state of the UUSF in order to responsibly guide the future of the fund.

However, the Commission's request for comment on mechanisms to increase the USF surcharge seems to be founded on an assumption for which no support is provided: that there is a need to maintain the UUSF at its current level which demands an increase in the surcharge. Without an understanding of the factors leading to a decline in UUSF revenues and an assessment of the progress towards the Commission's universal service goals, commenters cannot accurately determine whether an increase in the surcharge is truly necessary. It is possible that such information may lead to a determination that the current surcharge is appropriate, or should even be reduced, so as to minimize the impact on Utah consumers while still achieving the Commission's goal of universal service in the state.

For those reasons, CTIA recommends that the Commission delay any consideration of adjustment to the UUSF surcharge until after commenters and parties have had the opportunity to review the data gathered regarding declining revenues in the UUSF.

II. CTIA SUPPORTS THE COMMISSION'S GOAL OF GATHERING INFORMATION ON DECLINING USF REVENUES

CTIA supports the Commission's goal, as stated in the RFC, of determining what industry trends and circumstances might explain why the current UUSF surcharge is generating less revenue. Such data is valuable to help the Commission determine the current state of the UUSF and the factors leading to a decline in revenues, as well as the current state of competition in the Utah telecommunications marketplace and the Commission's progress towards achieving its universal service goals.

While the Utah State Auditor presented a report on the status of the UUSF in March 2015, that report did not provide much granularity on the reasons behind the decline in revenues beyond the transition of RLEC customers away from landlines and towards wireless and VoIP devices.³ As the administrator of the fund, the Commission is uniquely situated to gather and provide information on what RLECs are using their UUSF funds for, the factors leading to the decline in revenues, and any other facts that may provide insight into the financial condition of the fund at present. By developing a fulsome record on the state of the UUSF, the Commission will help to provide important transparency and accountability for Utah consumers who pay into the fund, and help to ensure that they are only paying what is truly necessary to achieve the Commission's goal of universal service.

III. THE COMMISSION SHOULD NOT PROCEED WITH ADJUSTING THE SURCHARGE UNTIL A SUFFICIENT RECORD ON THE STATE OF THE UTAH USF HAS BEEN DEVELOPED

The RFC seeks comment on mechanisms to increase the UUSF surcharge, but does not ask a crucial threshold question: is such an increase necessary? As previously noted, that question cannot be answered without a sufficient record on the state of the UUSF that addresses why revenues are declining and what funding is truly needed by the UUSF to support universal service. As such, the Commission should not proceed with adjusting the UUSF surcharge until that record has been developed.

The Audit Report noted that “as the cost of the program has increased, additional attention has been given to the impact of charging fees to all customers,” including wireless

³ Office of the Utah State Auditor, *Performance Audit No. 15-01: A Limited Review of the Utah Universal Service Fund* (March 23, 2015), available at <http://financialreports.utah.gov/saoreports/2015/PA15-01UtahUniversalServiceFundPublicServiceCommission.pdf> (“Audit Report”) at 6.

consumers, “to subsidize rural telephone service.”⁴ Indeed, any increase to the UUSF surcharge would have a significant impact on Utah’s wireless consumers. Utah consumers already face the 12th-highest taxes and fees on wireless service among the fifty states and the District of Columbia, at a combined state and federal rate of 19.23%.⁵ This attention to the impact on Utah’s wireless consumers is particularly important in light of the statutory UUSF requirement that “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.”⁶

CTIA also notes that the Audit Report’s recommendations did not call for an increase in the UUSF surcharge to address the decline in revenues. Instead, it recommended that “the Public Service Commission adopt additional rules, or strengthen existing rules, to encourage efficient use of the UUSF, as the FCC has already begun to implement with the federal subsidy,”⁷ and the Commission agreed with the findings of the report, promising to review and adopt such rules.⁸ The Commission was also tasked with reporting to the Legislature the impact of changes to federal subsidies on the UUSF, not so the fund could be adjusted upward to make up any shortfall, but rather “so the committee can determine if the practice of defraying all RLEC costs is in the best interest of ratepayers.”⁹ If there are systemic issues with the current UUSF, if the root cause of the shortfall is recipient-carrier inefficiency, or if the fund is currently being funded

⁴ *Id.*

⁵ ACTWireless, “State Tax Rankings” (July 2015), available at <http://www.actwireless.org/taxes-and-fees/state-tax-rankings/>.

⁶ Utah Code §54-8b-14(5).

⁷ Audit Report, at 8.

⁸ *Id.*, at 9 (attached letter from PSC Chairman Ron Allen dated March 17, 2015).

⁹ *Id.*, at 8.

at a level that subsidizes RLECs beyond what is necessary to guarantee universal service in Utah, it may be more appropriate for the Commission to maintain the UUSF surcharge at its current level or even decrease the surcharge so as to minimize impacts on Utah consumers.

The current schedule in this proceeding calls for a surcharge increase to be effective by the start of October 2016.¹⁰ Such a timeline may not provide ample opportunity to build the appropriate record to determine if a surcharge increase is necessary. For that reason, and the reasons stated above, CTIA recommends that the Commission not proceed with adjustments to the surcharge until after the Commission has gathered and provided ample data regarding declining UUSF revenues and all commenters and parties have had appropriate time to review such data. CTIA leaves to the Commission's discretion the appropriate procedural mechanism, whether an extended timeline in this proceeding, a bifurcation of the data collection and the surcharge increase, or some other method.

¹⁰ RFC, at 1.

IV. CONCLUSION

By focusing efforts on determining what industry trends and circumstances might explain why the current UUSF surcharge is generating less revenue, the Commission can help create more accountability and transparency for Utah's wireless consumers who pay into the fund. The Commission should not proceed with adjusting the UUSF surcharge until that data has been collected and all parties have had an opportunity to analyze it.

Submitted May 16, 2016

By: _____ /s/

Matthew DeTura
Counsel, External and State Affairs
CTIA
1400 16th St. NW, Suite 600
Washington, DC 20036
(202) 736-3228
MDeTura@ctia.org

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2016, I served a true and correct copy of CTIA's Comments in Response to the Commission's April 13, 2016 Request for Commission via e-mail transmission to the Public Service Commission at psc@utah.gov.

/s/
Matthew DeTura