

Torry R. Somers
CenturyLink
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
torry.r.somers@centurylink.com

Attorney for CenturyLink

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Universal Service
Fund Surcharge

DOCKET NO. 16-R360-02

CENTURYLINK'S REPLY COMMENTS

I. INTRODUCTION

On April 13, 2016, the Public Service Commission of Utah (“Commission”) issued a *Request For Comments*, seeking comments in regards to Utah Universal Service Fund (“UUSF”) surcharge issues. On May 16, 2016, Qwest Corporation d/b/a CenturyLink QC and CenturyLink Communications, LLC (collectively referred to as “CenturyLink”) and other parties provided initial comments. CenturyLink now provides its reply to the filed comments of the Utah Rural Telecom Association (“URTA”), the AT&T Companies (“AT&T”), CTIA – The Wireless Association (“CTIA”) and the Division of Public Utilities (“Division”). CenturyLink will respond to several issues raised by these parties, and continues to support a technical conference to further examine these issues.

II. THE COMMISSION SHOULD TRANSITION TO A PER LINE / PER CONNECTION UUSF SURCHARGE

A. Response to Utah Rural Telecom Association (“URTA”)

CenturyLink agrees with URTA that, when compared to a revenues-based surcharge, “a transition to a public telecommunications services surcharge on per line/per connection basis is a better approach.”¹ URTA is correct that a per line/per connection based surcharge is superior

¹ URTA comments, bottom of page 6.

because this method: (1) eliminates the impact of revenue shifting between voice and data, (2) is immune to the effect of downward pressure on wireless rates, thus decreasing the need to continually increase the surcharge, (3) will ensure that the collection of the UUSF is consistent with the statute,² and (4) is simpler to audit and administer once implemented.³

CenturyLink also concurs with URTA that before the Commission establishes the specific per line/per connection surcharge amount, it needs to evaluate more information to assure that the surcharge is set at the correct level. Additionally, as discussed below, the Commission and Division should make sure that VoIP providers are paying into the fund, which would hopefully result in a per line/per connection rate lower than \$0.32.

B. Response to AT&T

AT&T advocates that the Commission should not migrate from the current revenues-based surcharge methodology.⁴ First, AT&T argues that “the statutory assessment appears to contemplate a rate- or revenue- based assessment.”⁵ This argument is based on AT&T’s interpretation of Utah Code Section 54-8b-15(10)(a)(iv), which reads: “charges associated with being a provider of public telecommunications service shall be in the form of end-user surcharges applied to intrastate retail rates.” AT&T concludes that use of the words “retail rates” somehow precludes a per line/per connection methodology. This is not a reasonable interpretation of the statute. A fixed surcharge based on lines/connections would also be applied to retail rate elements and is not prohibited by the statutory language. Further, a complete reading of the statute shows that it provides the Commission with a significant level of flexibility: “The commission shall have the authority to require all corporations that provide intrastate telecommunication services in this state to contribute money to the fund through **explicit charges determined by the commission.**”⁶

² Utah Code Section 54-8b-15(5), “*Operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of the funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.*”

³ CenturyLink believes that staying with the current surcharge methodology will require extensive audits and review to ensure consistency between providers. This can be avoided if the Commission changes to a per line/per connection methodology. URTA states on page 7 of its comments that “*the Division will only need to ascertain the number of lines/connections that the carrier has.*” CenturyLink concurs that it should be easier to audit lines/connections in comparison to revenues.

⁴ AT&T Comments, page 2

⁵ AT&T Comments, page 2.

⁶ Utah Code Subsection 54-8b-15(10)(a)(ii). (Emphasis added).

A per line/per connection surcharge would allow the Commission to ensure that other very important requirements in the UUSF statute are also met. The Statute requires that: (1) collections for the fund from carriers “shall be nondiscriminatory and competitively and technology neutral”⁷ and that (2) “each telecommunications corporation that provides intrastate public telecommunication service shall contribute to the fund **on an equitable and non discriminatory basis.**”⁸ The current revenues-based methodology does not satisfy these existing requirements, since different companies providing voice service using different technologies may charge very different rates for comparable services, leading to non-equitable surcharge rates that are discriminatory. For example, some providers could treat voice service as a “feature” or “add-on” to other services such as data or video, and provide the voice service for a nominal charge or even at no additional charge. In this situation there may be little or no UUSF surcharge assessed to the customer because the provider is charging a very low “voice” rate or even a \$0.00 rate. Yet the customer who purchases voice service on a stand-alone basis from another provider may pay a much higher rate and thus be assessed a much higher UUSF surcharge. In addition, voice service may be provided at little or no extra charge to customers who buy equipment. For example, consider a customer who subscribes to voice service from Ooma,⁹ an interconnected VoIP provider. With Ooma, a customer can buy equipment for a one-time charge¹⁰ but there is a \$0.00 monthly rate for voice service and the customer only pays a monthly fee for taxes and fees. (Exhibit A provides an example of an actual Ooma customer bill.) Unlike the Federal Universal Service Charge, there is no detail on the bill showing that the UUSF surcharge is being assessed.¹¹ This is an example of a situation where the intent of the non discriminatory and competitively neutral language of the UUSF statute is not being met under the current revenue-based methodology.

⁷ Utah Code Subsection 54-8b-15(5) “Operation of the fund shall be nondiscriminatory and competitively and technology 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.”

⁸ Utah Code Subsection 54-8b-10(a)(i). (Emphasis added).

⁹ Ooma website link: <http://www.ooma.com/>

¹⁰ For example, Ooma equipment can be purchased at Costco for \$119.99: website link: <http://www.costco.com/Ooma-Telo-Air-Phone-System.product.100136755.html?catalogId=10701&keyword=ooma&langId=-1&storeId=10301&refine=>

¹¹ The Division recently told CenturyLink that Ooma is not paying into the UUSF. Even if Ooma was paying into the UUSF, under the current surcharge methodology, it is not clear what Ooma should be paying. A charge based upon the existing \$0.00 rate for “Base Phone Service” would be \$0.00. .

AT&T also alleges that it is “less expensive for carriers to adjust the rate on an existing collection methodology” than to move to a new method, such as assessing the UUSF on a per line/per connection basis.¹² CenturyLink does not disagree that carriers may incur initial costs to change the surcharge methodology, but this is not a reason to continue a surcharge that is contrary to the principles set forth by law.¹³ Regardless, in the long run, a per line/per connection surcharge will be more stable, predictable, easy to assess, and is consistent with the legislative principles that are not being met by the current approach. Over time, the ease of application and the savings from not having to make as many adjustments would offset the higher initial costs. Additionally, most providers already collect the current Telecommunications Relay Service (TRS) surcharge of \$.02 per month, which is based on a per line assessment.¹⁴ Thus, carriers have the systems in place, or at least the knowledge as to how to implement the per line assessment, making the implementation easier.

Finally, AT&T argues that “for Utah to adopt a per line assessment might risk the FCC later concluding that such a methodology impermissibly relies on or burdens the federal USF.”¹⁵ Implementing a per line / per connection method does not put any burdens on the federal USF. The intent of the FCC requirements “that state USF contribution methodologies must not rely on or burden federal universal support mechanism,” can be met with a per line/per connection based surcharge, as long as it does not result in over-collection. The purpose of the surcharge—whether based on revenues or connections/lines—is to collect the appropriate level of funds needed, and if the UUSF surcharge is set at the appropriate level, there is no burden placed on the federal USF.

III. ALL WIRELINE VOICE PROVIDERS, WIRELESS VOICE PROVIDERS, AND INTERCONNECTED VOIP PROVIDERS SHOULD BE REQUIRED TO PAY INTO THE UTAH USF

Currently, wireline and wireless voice providers, and some interconnected VoIP providers contribute to the UUSF. In its comments, URTA cited language from the statute that provides the

¹² AT&T comment, page 2.

¹³ CenturyLink in its comments indicated that carriers will need adequate time to adjust to a new surcharge methodology, and if the October 1, 2016 is a firm date for the Commission, it may need to on an interim basis adjust the surcharge under the current methodology and later change to a per line/per connection based surcharge.

¹⁴ Also, the various 911 surcharges are fixed surcharges collected on a per line/per connection basis.

¹⁵ AT&T Comments, page 2.

basis for assessing the UUSF on all interconnected VoIP providers.¹⁶ In addition, the initial comments of both URITA and CenturyLink cited statutory language indicating that interconnected VoIP providers should be paying into the UUSF.¹⁷ This will increase the contribution base and thus reduce the pressure to increase the UUSF surcharge.

Both URITA¹⁸ and CTIA¹⁹ believe that additional information is needed before the Commission makes any adjustment to the UUSF surcharge. URITA believes that: “Another factor that could be affecting the UUSF revenues is the failure of some telecommunications corporations to contribute to the UUSF.”²⁰ CenturyLink concurs that the Commission should investigate whether all carriers that *should* be contributing *are* contributing to the fund.

CTIA “supports the Commission’s efforts to gather information on declining UUSF revenues” and “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.”²¹ CTIA states that the Commission is “uniquely situated” to study the “factors leading to the decline in [UUSF] revenues.”²² CenturyLink agrees that the Commission should investigate the reasons for the decline in UUSF revenues; however CenturyLink is mindful that this may take time and the Commission may need to take short term action to shore up UUSF revenues while this investigation takes place. It is interesting that neither the AT&T nor CTIA comments offer any insight as to why wireless UUSF contributions have declined of late, despite the fact that wireless providers are in the best position to explain why these contributions are declining.

¹⁶ URITA Comments, page 3. Utah code subsection 54-8b-2(18): “Telecommunications corporation” means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service. Also Utah code subsection 54-8b-2(16): “Public telecommunications service” means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

¹⁷ Utah code subsections, 54-8b-15(5), 54-8b-15(6), 54-8b-15(10) and 54-19-13.

¹⁸ URITA comments, page 6: “Prior to implementing an increase in the UUSF surcharge, URITA believes the Commission should require further investigation from the Division as to the specific reason for the decline, and a determination of whether all telecommunications corporations are properly contributing end-user surcharges to the fund as required by Utah Code.”

¹⁹ CTIA comments, page 3.

²⁰ URITA comments, page 5.

²¹ CTIA Comments, page 2.

²² CTIA Comments, page 3.

IV. THE COMMISSION SHOULD SCHEDULE A TECHNICAL CONFERENCE

In its comments URTA “requests that the Commission hold a technical conference on the transition.”²³ CenturyLink concurs.²⁴ CenturyLink also believes a technical conference will provide an opportunity for the Commission to further examine why reported UUSF revenues by wireless carriers are declining at the same time the wireless industry continues to grow. This information is critical for the Commission to understand what the likely result is going forward under the current surcharge methodology.

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, interconnected VoIP providers and wireless providers in a competitively neutral and nondiscriminatory manner.

RESPECTFULLY SUBMITTED this 2nd day of June 2016

CENTURYLINK



Torry R. Somers
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
torry.r.somers@centurylink.com

Attorney for CenturyLink

²³ URTA comments, page 7.

²⁴ On page 4 of its initial comments, CenturyLink states: “CenturyLink would support the Commission scheduling a technical conference to further discuss the transition.”