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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Universal Service) Docket No. 16-360-02
Fund Surcharge)
) REPLY COMMENTS OF UTAH
) RURAL TELECOM ASSOCIATION
) ON THE UTAH UNIVERSAL
) SERVICE FUND SURCHARGE
)

On April 13, 2016, the Utah Public Service Commission (the “Commission”) issued a Request for Comments on the Utah Universal Service Fund (“UUSF”) surcharge. Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Emery Telephone, Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications Inc. (dba Strata Networks), and Union Telephone Company, filed initial comments on May 16, 2016. URTA hereby files its Reply Comments to the comments filed by CenturyLink, the AT&T Companies, CTIA – The Wireless Association (“CTIA”), and the Division of Public Utilities (“Division”) in this docket.

I. All Carriers Who Provide Voice Services Are Required to Contribute to the Utah Universal Service Fund.

URTA agrees with the Comments of CenturyLink that all voice providers—including wireless, cable and VoIP providers—should contribute to the state Universal Service Fund (“State USF”).¹ CenturyLink accurately states in its comments that the legislature clearly intended the State USF to be “nondiscriminatory and competitively and technologically neutral in the collection and distribution of the fund.”^{2 3} As indicated by URTA in its initial comments and by CenturyLink, if interconnected VoIP providers do not contribute to the State USF when providing voice service to their customers, the State USF is not being operated in a technologically neutral manner. Customers who pick up the phone to make a voice call may or may not be subject to the State USF surcharge, depending on the technology used by their provider. This is inconsistent with current Utah law.

AT&T claims, in its Reply Comments that VoIP is not currently assessable for USF under Utah law.⁴ In support of this argument AT&T relies on the fact that the definition of public telecommunications service contained in Utah Code Annotated Section 54-8b-2 was “last visited by the Legislature in 2005” when federal law treated VoIP as informational service and not a telecommunications service.” However, the Legislature defined telecommunications services in Utah Code 54-8b-2 without specific reference to the Federal Communications Commission’s distinction between information service and telecommunications service. In fact, the Legislature selected a definition of public telecommunications service that was technologically neutral speaking only in terms of “two-way transmission of signs, signals,

¹ Comments of CenturyLink, p. 4.

² *Id.* at p. 5.

³ *See also* Utah Code Annotated Section 54-8b-15(5).

⁴ AT&T Reply Comments, p. 2.

writing, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.”⁵ There is no distinction made for any particular type of technology used in the two way transmission. Further, with regard to the State USF, the Legislature confirmed its intent for neutrality when it plainly stated in the USF statute that “each telecommunications corporation that provides intrastate public telecommunications service shall contribute to the fund on an equitable and nondiscriminatory basis.”⁶

AT&T claims that VoIP providers do not fall into the category of telecommunications corporations who provide public telecommunications service. IN support of this contention, AT&T states only that the text of U.C.A. Section 54-8b-15 supports this because 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.”⁷ This argument is flawed, however, because the “separate” reference to wireless service contained in U.C.A. Section 54-8b-15(10)(b) is just offered to ensure wireless providers who are already included as contributors to the State USF by definition in U.C.A. Section 54-8b-15(10)(a) are only required to contribute to the fund to the extent permitted by the Mobile Telecommunications Sourcing Act. In other words, the mobile wireless providers are required to contribute to the State USF under Subsection 10(a), subject to the restrictions of Subsection (10)(b)—as evidenced by the wording “subject to Subsection (10)(b)” that is contained in Subsection (10)(a).

⁵ U.C.A. Section 54-8b-2(16).

⁶ U.C.A. Section 54-8b-15(10)(a).

⁷ Reply Comments of AT&T, p. 3.

Under Utah law, as currently enacted, VoIP providers should be paying into the UUSF. Contribution by all voice providers is required so that the operation of the fund is nondiscriminatory and competitively and technologically neutral.

II. The Commission Should Transition to a Per Line/Per Connection Surcharge.

As indicated in the comments of URTA and CenturyLink, implementing a surcharge based on a per line/per connection basis will: (1) eliminate the impact on the State USF of revenue shifting between voice and data; (2) eliminate the effect of downward pressure on wireless rates; (3) ensure that the collection of the State USF is consistent with Utah law and done on a technologically neutral basis; and (4) be easier to monitor, audit, and administer for the Division.

While AT&T argues that the Commission should not move to a per line/per connection methodology, there is nothing that statutorily prohibits the Commission from adopting this approach. AT&T merely notes that the statute as drafted seems to contemplate a percentage surcharge. However, there is nothing in the statute that would prohibit the Commission from adopting a per line/per connection surcharge as it does with TRS or 911 surcharges. Although there will be some effort involved in moving to a per line/per connection surcharge, in the long run the administration of the surcharge on this basis would be easier and more efficient. Auditing would only require a report by each company of the lines/connections which would then be multiplied by the surcharge. Under Utah Code Section 54-8b-10(a)(ii) the commission has the “authority to require all corporations that provide intrastate telecommunications services in this state to contribute money to the fund through explicit charges determined by the commission.”

III. Conclusion

URTA contends that more data is needed and the record needs to be more fully developed to support an increase in the UUSF surcharge or a change in contribution mechanism. The Commission should schedule a technical conference to address these issues. The Division, as the administrator of the fund, should determine the reason for the decline in revenue and should ascertain that all telecommunication corporations are properly contributing to the fund as required by Utah law. This information is critical to the proper development of the record prior to implementing an increase in the surcharge, or modification of the mechanism of the surcharge.

Respectfully submitted this 2nd day of June, 2016.

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Association

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2016, I served a true and correct copy of Utah Rural Telecom Association's Reply Comments on the Universal Service Fund Surcharge via e-mail transmission to the Public Service Commission Distribution list in this docket and the following persons at the e-mail addresses listed below:

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