BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Support Fund	DOCKET NO. 17-R360-01

COMMENTS OF CTIA

CTIA[1] files these initial comments in response to the Utah Public Service Commission's ("Commission's" or "PSC's") Request for Comment in the above-captioned Docket issued March 27, 2017.

I. INTRODUCTION AND SUMMARY

As previously noted by CTIA before the Commission, any changes to the Utah Universal Public Telecommunications Service Support Fund ("UUSF") should be based on a broad examination of the UUSF, and be tailored to minimize the impact on Utah consumers and align state and federal support.[2] Given that the PSC is not focused on broader UUSF reform now, and the UUSF needs to remain coordinated with the federal USF, which is based on interstate telecommunications revenues, the PSC should retain the current UUSF contribution mechanism based on intrastate telecommunications revenues.

The passage of Senate Bill 130 ("S.B. 130") provides an important opportunity to consider changes to how UUSF support is distributed. The PSC should consider how best to align the UUSF with actual needs and with the FCC's Connect America Fund ("CAF"), and recipients

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[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] *See* CTIA Comments in Response to the Commission's April 13, 2016 Request for Comments, Docket No. 16-R360-02 (May 16, 2016) ("CTIA UUSF Comments"), and Reply Comments of CTIA In Response to the Commission's April 13, 2016 Request for Comments, Docket No. 16-R360-02 (June 2, 2016) ("CTIA UUSF Reply Comments").

should be accountable for using UUSF support to serve end-users. The PSC should also consider whether to cap the fund, whether UUSF funds are being used as intended, whether the fund is sized appropriately, and whether to sunset support once build-out milestones are met.

II. THE PSC SHOULD CONTINUE TO COLLECT UUSF SURCHARGES AS A PERCENTAGE OF INTRASTATE TELECOMMUNICATIONS REVENUES.

In its Request for Comment, the Commission signaled that its current priority is to modify the UUSF contribution mechanism,[3] but contributions are only one piece of broader UUSF reform. Accordingly, the PSC should wait to make any changes to the contribution mechanism until after it has addressed the preliminary issue of UUSF support distribution. Delaying any changes to the UUSF contribution mechanism will also ensure that it remains coordinated with the federal mechanism, as is required by federal law.

A. It Would Be Premature To Change The UUSF Contribution Mechanism Until The PSC Focuses On UUSF Support Distribution.

S.B. 130, which generally amends provisions related to the Universal Public Telecommunications Service Support Fund in Utah, addresses both reform of the UUSF contribution mechanism and distribution issues.[4] The PSC has rightly agreed that S.B. 130 requires changes to "the amount of the surcharge and the method through which it will be applied," but the PSC's Request for Comment states that "establishing the surcharge amount and mechanism is the PSC's top priority," and primarily directs the Division of Public Utilities (the "Division") to collect data and report on surcharge levels relevant to revenue-based and connections-based UUSF collection.[5] This focus is inconsistent with the broad scope of S.B. 130,

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[3] *In re the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Order, Docket No. 17-R360-01, at 1-2 (Mar. 27, 2017) ("Utah PSC Order").

[4] S.B. 130, Utah Reg. Session 2017 (Utah 2017).

[5] Utah PSC Order at 1-2.

and accordingly, adopting changes to the contribution mechanism would be premature without an examination of the UUSF more broadly.

It makes little sense to consider significant changes to the UUSF contribution mechanism until the PSC considers questions about the size and scope of the UUSF fund. As discussed below, CTIA believes that reform is warranted for various aspects of UUSF distribution.[6] Those reforms could change the size of the UUSF and affect the equities of how it is collected and distributed. The PSC can best assess the issues associated with other changes to the UUSF contribution mechanism in the context of a broader consideration of the purpose and direction of the UUSF generally. Thus, the PSC should not consider modifying the current approach of surcharging intrastate telecommunications revenue at this time.

B. Retaining The Current UUSF Surcharge Approach Ensures That UUSF Surcharges Remain Coordinated With The Federal USF Contribution Mechanism.

Under Section 254(f) of the federal Communications Act, as amended, state universal service mechanisms such as the UUSF must be "not inconsistent" with the federal mechanism and may not "rely on or burden" the federal mechanism.[7] Thus, it is important that UUSF assessments remain coordinated with the federal mechanism to avoid unlawful assessment of state and federal USF contributions on the same revenues. Further, Section 254(f) has been found to prohibit state funds, like the UUSF, from assessing interstate revenues.[8] As a result, the state and federal approaches to allocating revenue for mixed-use services must be coordinated. The FCC's decision

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[6] *See infra* Section III.

[7] *See* 47 U.S.C. § 254(f). Also, although later deleted, Section 54-8b-15(4) of the Utah Code at one point required state consistency with the Communications Act. Regardless of the deletion, the federal directive still controls.

[8] *See, e.g., AT&T Corp. v. Public Utility Commission of Texas*, 373 F.3d 641 (5th Cir. 2004) (finding "assessment on both interstate and intrastate calls creates an inequitable, discriminatory, and anti-competitive regulatory scheme. … PUC assessment of interstate and international calls is discriminatory, conflicts with § 254(f), and thus is preempted by federal law.").

in permitting states to assess state USF contributions on interconnected voice over Internet protocol ("VoIP") revenues is instructive. To prevent violation of Section 254(f), the FCC concluded that "state universal service contribution requirements do not conflict with federal rules to the extent that states calculate the amount of their universal service assessments in a manner that is consistent with" federal rules for allocating revenues between the state and federal jurisdictions.[9] The same principle applies here.

Federal USF contributions are currently based on interstate end-user telecommunications revenues, and there is no activity in the FCC's USF contribution methodology reform docket suggesting that any changes are imminent.[10] Wireless carrier contributors currently allocate revenues from connections that carry both interstate and intrastate traffic based on the inverse of the factor that they use for federal USF contributions – based either on a traffic study or the wireless safe harbor.[11] As a result, the current UUSF surcharge, based on intrastate end-user telecommunications revenues, aligns neatly with the federal mechanism and ensures that the UUSF does not violate federal law per the bright-line rule adopted in the *Kansas-Nebraska Order*.

If the PSC exceeds this bright-line rule in pursuing questions raised by S.B. 130 about "a surcharge that is applied to the number of access lines or connections maintained by a provider"[12] while the federal mechanism remains assessed on interstate revenues, it runs a considerable risk of imposing UUSF assessments on the same revenue base that is assessed by the federal mechanism. Such an outcome would be both "inconsistent" with the federal mechanism and impose a "burden"

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[9] *Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, 25 FCC Rcd 15651, 15658 ¶ 17 (2010) ("*Kansas-Nebraska Order*").

[10] *See generally* Federal Communications Commission, WC Docket No. 06-122.

[11] *See* Utah Administrative Code § R746-360.

[12] *See* Utah PSC Order at 1.

on the federal mechanism, in violation of federal law.[13] This is an important reason why Utah should not consider state contribution methodology reform, pending FCC action on federal contribution methodology reform.[14]

In addition, premature changes to the State contribution methodology would place a costly and wasteful burden on carriers to make significant changes to their billing and accounting systems more than once – first when the PSC revises the UUSF rules, and again when the FCC later revises its rules. This waste of resources would undermine the very rural deployment and other universal service goals that the UUSF seeks to advance. It also raises important questions about whether carriers would be entitled to reimbursement from the State for implementation of a new mechanism – particularly if the mechanism had to be changed again in a short time once federal reform proceeds.

For all these reasons, the Commission should refrain from "going it alone" and postpone making any decision on UUSF contribution methodology reform pending clarity on the FCC's federal contribution methodology reforms.

III. S.B. 130 PROVIDES AN OPPORTUNITY TO ASSESS THE APPROPRIATE SIZE AND SCOPE OF THE UUSF

The Request for Comment also seeks comment on "any aspect of the rulemaking that is required under Senate Bill 130."[15] Beyond the contribution issues that are directly addressed in the Request for Comment, S.B. 130 raises significant questions about the ways that UUSF support should be used to support service in rural and high-cost areas. In particular, S.B. 130 directs

[13] 47 U.S.C. § 254(f) ("A State may adopt regulations … only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.").

[14] *See generally In re Federal State Joint Board on Universal Service, Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, Order, WC Docket Nos. 96-45 and 06-122, GN Docket No. 09-51 (2014).

[15] Utah PSC Order at 2.

promulgation of rules governing distribution of support from the Fund to qualifying carriers of last resort.[16] It also establishes principles suggesting that support should be available only where it is truly needed.[17]

Consistent with CTIA's previous comments on the UUSF,[18] the Commission should ensure that UUSF recipients are receiving no more funding than the minimum necessary to ensure universal service in Utah and that the Commission account for and align the UUSF with federal universal service programs. The Commission has not conducted a comprehensive review of how much state universal service support actually is necessary, and the language in S.B. 130 effectively invites the Commission to do so. Indeed, it is hard to imagine how the Commission can appropriately determine the appropriate level of UUSF support for any given carrier without such an assessment.

Moreover, since the rules for distributing support from the UUSF last were reformed, the FCC has made major changes to its support mechanisms for rural and high-cost areas, including the adoption of CAF Phase II model-based support for price cap ILECs,[19] the CAF Phase II competitive bidding process for areas in which CAF support has not been accepted, the outline for the Remote Areas Fund ("RAF"),[20]and reform of support mechanisms for rate-of-return carriers.[21] Currently, rate-of-return carriers in Utah are receiving over $32 million per year, and the FCC's

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[16] S.B. 130 at lines 274 *et seq.*, new §§54-8b-15(2)(b), (c)-(d).

[17] For example, carriers receiving support from the Fund may only use the funds per the rules and within the area where it has a carrier of last resort obligation (*id.* at lines 369-71, new § 54-8b-15(7)), and rate-of-return carriers may only receive support in order to make a reasonable rate-of-return based on customer revenues and federal USF (*id.* at lines 330 *et seq.*, new § 54-8b-15 (4)-(5).

[18] CTIA UUSF Reply Comments, at 6.

[19] *See, e.g., Connect America Fund, et al.*, Report and Order, 29 FCC Rcd 15644 (2014).

[20] *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 949 (2016).

[21] *Connect America Fund, et al.,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016).

recent reforms represent an increase of almost $5.3 million per year as compared to the amount of federal support prior to the reforms.[22] Price cap carriers in Utah receive over $4.4 million per year from the reformed federal mechanisms, which represents an increase of over $1.5 million per year as compared to the amount of federal support they received prior to the federal reforms.[23]

The PSC must assess whether, in light of this substantial and recently increased federal support, UUSF support for ILECs remains necessary at all, or should be reduced. At minimum, the PSC should adopt rules that align distribution of UUSF support more closely with the federal program and with actual needs. This reform should ensure that carriers do not receive duplicate support from both the state and federal programs for the same network facilities in the same geographical areas.

To the extent that the PSC determines that UUSF support remains necessary, the PSC's rules for its distribution should be consistent with, and complement, the CAF rules. Support should be available for extending service to unserved end-users, but it should not be available, for example, for gold-plating middle-mile facilities that may never result in bringing service to a single unserved end-user customer. Support should be offered only in areas in which broadband service is not expected to be provided within a reasonable period of time, and in which no carrier is receiving CAF support.

The Commission's UUSF rules also should hold recipients accountable for their use of funds to serve end-users. The CAF rules can be a model in this regard, in that they include

[22] *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, News Release, 32 FCC Rcd 842 (2017); Universal Service Administrative Company, Funding Disbursement Search, available at http://www.usac.org/hc/tools/disbursements/ ("USAC High-Cost Disbursement Tool").

[23] *State, County and Carrier Data on $9 Billion, Six-Year Connect America Fund Phase II Support for Rural Broadband Expansion*, News Release, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-335269A1.pdf (linking to data); USAC High-Cost Disbursement Tool.

specific obligations to offer defined services to end-users and to provide specific build-out milestones.[24]

The high-cost component of the UUSF, like the CAF, should be subject to a self-effectuating budget mechanism. Once the UUSF has met its objectives – for example, once Utah carriers have met whatever defined deployment obligations the PSC sets for them pursuant to S.B. 130 – the UUSF should sunset. The PSC must bear in mind that extending or expanding the UUSF beyond the level of need threatens one of the core objectives that universal service programs are designed to achieve: the availability of services at affordable rates. The people of Utah ultimately bear the costs of the UUSF. Utah's wireless consumers already face the 16th-highest taxes and fees on wireless service among the fifty states and the District of Columbia, at a combined state and federal rate of 19.37 percent.[25] The UUSF must therefore be sized no larger than necessary to meet specifically-defined universal service objectives.

IV. CONCLUSION

Reform of the UUSF contribution mechanism would be premature before the direction of reform of the federal contribution mechanism is clearer, and before the PSC undertakes a thorough review of how much UUSF support continues to be necessary. Accordingly, the PSC should not alter the UUSF contribution mechanism at this time.

Respectfully submitted April 26, 2017,

By: /s/

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[24] *See, e.g.*, 47 C.F.R. § 54.310.

[25] The Tax Foundation, "Wireless Tax Burdens Rise for the Second Straight Year in 2016" (October 2016), *available at* https://taxfoundation.org/wireless-tax-burdens-rise-second-straight-year-2016 (last accessed April 25, 2017).

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