

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
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REPLY COMMENTS OF CTIA

CTIA – The Wireless Association (“CTIA”) files this reply to the initial comments submitted 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

CTIA and its members strongly support implementing Senate Bill (“S.B.”) 130 in a manner that ensures the achievement of legitimate universal service objectives in a cost-effective and technology-neutral way. It does not appear, however, that a per-line or per-connection contribution methodology would serve these goals. To adopt such an approach, Utah would be embarking into uncharted territory, separating itself from the Federal Communications Commission’s (“FCC’s”) methodology and taking a step that no other state has taken. This would impose a myriad of state-specific costs and burdens on providers that operate in Utah, increasing costs for Utah consumers. It also would create the risk of logistical problems that cannot be predicted at this stage, as well as potential litigation and other delays. These are compelling reasons not to move forward with modifications to the Utah Universal Service Fund (“UUSF”) contribution methodology at this time.

As discussed in more detail below, the initial comments illustrate the complexities and problems associated with modifying the UUSF contribution methodology. For example, implementing a connections-based approach while federal contribution reform remains pending risks imposing state assessments on the jurisdictionally interstate portion of services in

contravention of federal law. The record also shows that shifting to a per-line or per-connection charge may cause injury to consumers or competition.

The Commission should also recognize, as commenters suggested, that before the PSC can determine the appropriate level for the UUSF surcharge, it should carefully consider how to appropriately size the UUSF itself. To avoid burdening consumers and undermining the very universal service goals the fund is designed to advance, the Commission should ensure that the fund is no larger than necessary to achieve its legitimate goals. Since the Commission last considered support distributions, the FCC has begun sending substantial new Connect America Fund (“CAF”) payments to Utah telephone companies. This raises important questions about how much UUSF support is necessary and whether the fund should be more carefully aligned with the federal CAF program.

II. THE COMMENTS DEMONSTRATE THE PROBLEMS INVOLVED IN CHANGING THE CONTRIBUTION METHODOLOGY BEFORE FEDERAL REFORM

As commenters point out, the Commission could violate federal law if it attempts to switch to a per-line or per-connection assessment while the FCC is still assessing universal service contributions based on revenues. Simply stated, because “there is no clear FCC guidance on how a state should structure a per-line or per-connection contribution methodology in a manner such that the state USF will not ‘rely upon or burden’ the federal USF,” a Utah line-based or connection-based surcharge “risks a later determination that Utah’s assessment is impermissible, making the state’s assessment vulnerable to legal challenge.”¹ CTIA observed that it is important for the Utah and federal USF contribution methodologies to remain coordinated to ensure that the Utah contribution system does not “conflict with federal rules” by

¹ AT&T comments at 5-6.

not “calculate[ing] the amount of their universal service assessments in a manner that is consistent with” the federal rules.² Similarly, Comcast noted that “problems associated with changing contribution methodologies could be compounded if the Commission were to alter the existing revenue-based system before changes are made at the federal level.”³

Parties advocating for a per-line or per-connection methodology do not grapple at all with the requirement that the UUSF contribution methodology remain consistent with the federal mechanism. For example, CenturyLink observes that S.B. 130 resolves questions about whether the PSC has authority under state law to select a per-line or per-connection charge,⁴ but even if this were true, it does not address the very real possibility of impermissible conflict with federal law. Similarly, the Utah Rural Telecom Association’s (“URTA’s”) assertion that “[a]scertaining the number of access lines and connections in the State of Utah can be easily accomplished”⁵ does nothing to address the problems that would be associated with trying to assess UUSF contributions based on them.

As AT&T pointed out, “Utah should not attempt contribution reform in a vacuum without considering implications for other states and for the federal USF.”⁶ Without a coordinated national approach, in addition to the federal legal problems discussed above, a per-line or per-connection approach will cause significant problems with the allocation of contributions among state jurisdictions because of the mobile nature of wireless technology. For example, the

² CTIA comments at 4, quoting *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*”).

³ Comcast comments at 3-4.

⁴ CenturyLink comments at 2.

⁵ URTA comments at 7.

⁶ AT&T comments at 4-5.

Department of Commerce Division of Public Utilities (“DPU”) discussed the potential of using telephone number assignment data to assess surcharges.⁷ The assignment of a “Utah” number does not necessarily indicate, however, that a mobile connection is being used in Utah. Mobile customers tend to keep their numbers even after they move to other states. For example, a mobile customer may have been attending college in Utah when she first purchased mobile service, and therefore would have received a Utah number. The customer likely would keep this number, however, even if she took a job in Idaho, or subsequently moved to Nevada. Such a customer may not have any further connection to Utah, and therefore should not be subject to UUSF assessment. Similarly, customers with non-Utah numbers may permanently relocate to Utah while maintaining their non-Utah numbers. In these examples, Utah would over- or under-collect, and the UUSF’s contribution methodology likely would conflict with programmatic rules in other states and potentially cause uncertainty in collections in Utah and in other states. These and other state-to-state regulatory issues also would have to be addressed if the Commission wishes to pursue a per-line or per-connection charge.

For all of these reasons, the Commission should not consider moving away from a revenue-based surcharge until after federal reform has been ordered.

III. PARTIES ALSO RAISE CONCERNS ABOUT THE FAIRNESS AND COMPETITIVE NEUTRALITY OF A CONNECTIONS-BASED CHARGE

Attempting to adopt a per-line or per-connection UUSF contribution methodology at this time also raises significant concerns about fairness and competitive neutrality. Switching to a per-line or per-contribution contribution methodology could impose a considerable burden on Utah’s users of wireless services, and the Commission should be concerned about the competitive impact of that approach. As AT&T points out, “switching to a connection

⁷ DPU comments at 3.

contribution methodology might increase contributions from wireless carriers, it may also lead to lowered contributions from ILECs and other UUSF contributors, though ILECs alone are eligible for UUSF high-cost support.”⁸ This is inconsistent with the imperative, as Comcast points out, to “(1) ensure that the contribution method does not unfairly advantage or disadvantage one provider or technology over another; and (2) minimize the possibility that entities with universal service obligations will compete directly with entities without such obligations.”⁹ Utah’s tax surcharge burden for wireless service is already the 16th highest in the nation.¹⁰ The Commission should not consider increasing this burden – especially when the revenue generated will simply be shifted to other providers with whom wireless carriers sometimes compete.

A per-line or per-connection charge may treat unfairly different connections that have very different values. For example, the high-capacity connection serving a large enterprise user in Salt Lake City should not be subject to the same level of assessment as a wireless phone used only infrequently by a senior citizen in rural Utah. As Comcast observes, “it is difficult to ensure that all competitors are counting lines or connections in the same way, and this can upset competitive neutrality.”¹¹

In fact, the universal service system historically has relied upon urban customers to subsidize rural customers, business customers to subsidize residential customers, and long-distance customers to subsidize local customers. To transition to a per-line or per-connection assessment, the Commission would have to consider whether to continue such support paradigms and, if so, how to build them into its new assessment scheme. The record does not support any such decisions today.

⁸ AT&T comments at 7.

⁹ Comcast comments at 2.

¹⁰ AT&T comments at 3.

¹¹ Comcast comments at 4.

In this regard, the Department of Commerce Office of Consumer Services (“OCS”) correctly notes that “in many circumstances basing a fee on a per customer allocation rather than a percentage of revenue has the effect of unfairly shifting the burden of such a fee away from large users disproportionately burdening small users.”¹² However, OCS is incorrect that these concerns “are not particularly applicable in the current context” because of service bundling and a correlation between large users and larger numbers of lines.¹³ In fact, the transition to IP-based voice services, especially in the enterprise context, means that large users often buy a single connection or few connections for a very high volume of service. For example, a large business today is likely to buy a single high-capacity data line, over which it runs both an enterprise VoIP telephone system and its own Internet access. This single connection could easily support hundreds of voice lines. It would be patently inequitable to impose the same UUSF contribution burden on a high-capacity enterprise connection of this type as on a single wireless connection. Thus, there is often no correlation today between larger users and larger numbers of lines. It is similarly unclear how the bundling of telephone service with other services dispels the equitable concerns inherent in per-line or per-connection charges.

Concerns that some providers, such as interconnected VoIP providers, may not be contributing under the current revenues-based approach can be addressed without taking on all of the problems associated with a per-line or per-connection approach.¹⁴ For example, the Commission simply could require interconnected VoIP providers to contribute under the current mechanism. To the extent that the Commission believes that some entities that should be

¹² OCS comments at 3.

¹³ *Id.*

¹⁴ *See, e.g.,* CenturyLink comments at 3-4; URTA comments at 6.

contributing are not doing so, the solution is not to impose a greater burden on providers, such as wireless carriers, that have dutifully shouldered a substantial burden in funding the UUSF.

The administrative costs and burdens that would result from switching to a per-line or per-connection approach may be inequitable, and the Commission should consider the issue.¹⁵ Wireless carriers, like all current contributors, have invested in systems to track and report their revenues in order to remit their required contributions properly. To switch to a per-line or per-connection methodology, contributors would have to invest in new systems to track and report their revenues for purposes of the UUSF. Given that the federal USF and other state USFs are still based on revenues, the new systems would be entirely Utah-specific.¹⁶ Moreover, once the FCC addresses USF contribution reform, carriers may have to revise their systems again to reflect those changes, and such changes may be required to avoid impermissible misalignment of the UUSF with the federal program. If, after federal reform, Utah conformed its contribution mechanism to the federal approach, a third round of changes would be necessary. The costs of all of these systems changes will be borne by consumers, of course, and will reduce the resources that carriers have to invest in expanding their networks, thereby undermining the very universal service goals the UUSF was designed to advance.

Finally, the record shows that there is no compelling reason to change the contribution mechanism now. In fact, as the DPU notes, since the UUSF surcharge was increased to 1.65% in October 2016, the fund “has collected \$752,359 in revenue that is in excess of disbursements, a surplus averaging \$150,472 per month.”¹⁷ Thus, there is certainly no funding shortage that

¹⁵ See, e.g., AT&T comments at 6; Comcast comments at 3.

¹⁶ Under the circumstances, if the Commission decides to take a unique per-line or per-connection approach at this stage, the Commission should provide funding for carriers’ implementation of new systems to comply with the new rules.

¹⁷ DPU comments at 5.

would justify considering drastic action for Utah to get out ahead of the reform process at the FCC and in other states. Moreover, parties advocating a connections-based charge do not offer solutions to any of the problems discussed above.

For all of these reasons, the Commission should retain the current revenue-based contribution mechanism for the UUSF at this point in time.

IV. THE RECORD SHOWS SUPPORT FOR A PROPERLY-SIZED UUSF

The initial comments also show concurrence with CTIA's point that the passage of S.B. 130 also provides an important opportunity for the Commission to look into whether the UUSF is appropriately sized.¹⁸ The Commission cannot correctly set the UUSF contribution factor without determining the amount of support that is needed to achieve prescribed universal service goals.

As Comcast notes, "[f]or the system to be sustainable, the reforms should not increase the size of the UUSF. The Commission should investigate the minimum amount of funding necessary to achieve its universal service goals."¹⁹ Similarly, AT&T observes that "it is not clear that growing the UUSF is necessary to fulfill the objectives of the program."²⁰ The UUSF surplus currently amounts to \$752,359 and is growing at a rate of \$150,472 per month.²¹ Thus, the Commission should conclude, as illustrated by the record, that the fund and the surcharge currently are both larger than they need to be to achieve UUSF objectives.

The Commission should consider whether the UUSF is currently achieving universal service goals efficiently and effectively, and whether the current approach is sustainable. The DPU estimates that the high-cost fund for wireline telephone companies will grow from \$10.7

¹⁸ CTIA comments at 5-6.

¹⁹ Comcast comments at 2-3.

²⁰ AT&T comments at 7.

²¹ DPU comments at 5.

million to \$22 million based on “unadjusted DPU review of rural ILECs’ 2015 annual reports” using the FCC-prescribed 9.75% rate of return, but acknowledges that this estimate is “somewhat speculative.”²² More significant than the speculative nature of the estimate, however, is determining whether current and future support levels are the minimum necessary to achieve reasonable universal service goals. Moreover, as CTIA and AT&T observed, Utah carriers now receive more than \$36 million per year in federal CAF support.²³ The Commission should ensure that Utah consumers are not burdened, today or in the future, with funding UUSF support that duplicates federal CAF support. Thus, the Commission should carefully examine the efficiency and effectiveness of the fund today and ensure that UUSF support does not duplicate federal funding. Addressing issues regarding the future of the UUSF should be considered only after these key issues have been addressed.

CONCLUSION

The initial comments in this proceeding confirm that reform of the UUSF contribution mechanism would be premature before reform of the federal contribution mechanism is ordered,

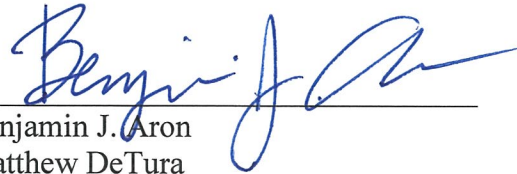
²² *Id.* at 4. DPU also projects “potential” growth in wireless Lifeline support to \$4.8 million. *Id.* Even if this estimate proves to be true, this funding is a direct pass-through to consumers in reduced rates, and this amount could be supported based on the current surplus growth without a change in the surcharge.

²³ AT&T comments at 8; CTIA comments at 6-7.

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 May 11, 2017,

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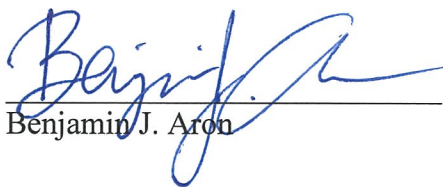
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