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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund	DOCKET NO. 17-R360-01 **REPLY COMMENTS OF THE AT&T COMPANIES**

The certificated AT&T Companies, together with AT&T wireless providers, including AT&T Corp., Teleport Communications America, LLC, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, and Cricket Wireless, LLC (collectively, "AT&T" or the "AT&T Companies") submit these Reply Comments in response to the Request for Comments dated March 27, 2017 (the "Request"). The Request invited comments and reply comments from affected parties regarding any aspect of the rulemaking required under Senate Bill 130 ("S.B. 130") which gives the Public Service Commission of Utah ("Commission") more flexibility in funding the Utah Universal Public Telecommunications Service Support Fund ("UUSF") in addition to the Commission's general oversight of the fund.

I. <u>Introduction</u>

The haste to switch to a per line UUSF contribution methodology urged by some commenters is premature and unwarranted at this time. The UUSF surcharge was increased by

65% less than a year ago. Since then, contributions have exceeded disbursements by an average of more than $150,000 per month. The Utah Division of Public Utilities ("DPU") is currently identifying additional contributors, and new providers will start to contribute once SB 130 is in effect.

There is no urgency to make Utah the first state to experiment with switching to a per line contribution base, which would very likely hit Utah's consumers with yet another fee increase in less than a year's time, risk conflict with the federal USF contribution methodology, and impose new administrative burdens on carriers who must implement the change.

The goal of the proponents of a per line/connection methodology appears to be a gross increase in the size of the UUSF to potentially more than double its current size. While growth of the UUSF may be called for in the long run, there is no imminent need given the current surplus. The DPU admits its projections for the UUSF's "future" disbursements are speculative and does not indicate when the current rate of surplus accumulation may be outpaced by "future" need. These facts favor proceeding cautiously with UUSF reform, yet proponents of the per line method urge this Commission to switch to the per line contribution methodology almost immediately, by July 1, 2017, sorting out later the details and far-reaching impact of such an overhaul.

Moreover, focusing on contribution methodology before determining the appropriate size of and contributors to the UUSF puts the cart before the horse. Based on the initial comments, there is no estimate of contributions from new providers (either under SB 130 or newly identified by the DPU), and there is no estimated date for when disbursements will outpace contributions. Accordingly, the Commission should clearly articulate the measurable objectives of the UUSF; determine the most efficiently-sized UUSF needed to meet those objectives, accounting for supported carriers' other revenues and federal support; and then examine whether a change to the

UUSF contribution methodology is needed. Only then can the Commission determine whether an increase in contributions is needed and if so, whether an increase in the surcharge percentage or a change to a per line methodology (with its inherent additional costs and administrative burdens) is called for. Absent such analysis, any decision by the Commission to change the contribution methodology would lack factual support, the antithesis of a data-driven decision.

There is no unique emergency need for reform in Utah. Contribution reform is best addressed at the federal and national level to maximize consistency across the states and to ensure that the UUSF does not unlawfully "rely upon or burden" the FCC's federal methodology. The needless haste of those proposing to switch to a per line/connection methodology glosses over the fact that Utah's consumers ultimately foot the bill.

II. **The Commission should analyze UUSF funding needs and account for other sources of support before determining whether a change in UUSF contribution methodology is required.**

Before considering any change to the contribution methodology, the Commission's first task is to specify with particularity the measurable objectives of the UUSF, then, recognizing the burdens that funding the UUSF imposes upon contributing providers and their customers, to identify the smallest UUSF needed to achieve these objectives. The Commission should design the UUSF to account for, and to avoid duplicating, the significant support flowing to Utah through the federal Connect America Fund ("CAF") rate-of-return carrier and price cap carrier support mechanisms, as well as funding recipients' other revenues. As noted in AT&T's initial comments, pursuant to 47 USC Section 254(b)(1), "the state has an obligation to ensure the UUSF is no larger than needed to attain its core objectives, including the availability of services at affordable rates, since ultimately Utah consumers bear the costs of the UUSF."[1] While the

[1] Initial Comments of the AT&T Companies ("AT&T Comments"), p. 7, filed April 26, 2017, Utah Public Services Commission Docket No. 17-R360-01.

DPU projects "future" costs for the various components of the UUSF[2] and lists the declining intrastate amounts from 2007 to 2017,[3] the DPU does not articulate when those "future" costs will be realized or whether intrastate revenue will continue to decrease or stabilize. Nor does the DPU appear to factor in the more than $36 million in federal CAF support received annually by Utah's providers, as discussed in AT&T's initial comments.[4] The DPU admits the projected "future" UUSF costs are "speculative."[5] In any event, the Commission has not yet established a budget for the UUSF, so it is not possible to know how much money the UUSF contribution methodology must generate.

Once the Commission sets a UUSF budget, the Commission should identify the total intrastate telecommunications revenue base and the assessment rate needed to generate the identified fund budget. Neither has been done. As Utah Rural Telecom Association ("URTA") acknowledges, "[t]he first hurdle – determining the contributors – is the same regardless of the contribution method selected by the Commission."[6] Pursuant to SB 130, VoIP providers will be new contributors to the UUSF.[7] Moreover, the DPU is currently identifying providers who should be, but who are not, contributing to the UUSF.[8] The DPU's figures do not appear to account for the anticipated new contributions from VoIP providers and the other providers it is in the process of identifying. The Commission needs to set a budget and then clear that first hurdle

[2] Comments of Utah Division of Public Utilities ("DPU Comments"), p. 4, filed April 26, 2017, Utah Public Services Commission Docket No. 17-R360-01.
[3] DPU Comments, p. 5.
[4] See AT&T Comments, p. 8.
[5] DPU Comments, p. 4.
[6] Comments of Utah Rural Telecom Association ("URTA Comments"), p. 7, filed April 26, 2017, Utah Public Services Commission Docket No. 17-R360-01.
[7] SB 130, lines 257-259, 400-403.
[8] DPU Comments, pp. 2-3.

– that is, identify new contributors, and how much more they will contribute to the fund – before determining whether and how much contributions need to be increased and by which method.[9]

Without estimates in the record on how these changes will impact the UUSF contribution base or its revenues, calculating an intrastate telecommunications assessment rate to generate the necessary dollars is not possible. Similarly, there is no estimate in the record of the fund revenues that could be generated from the existing contribution methodology at various assessment rates. Yet the Commission needs this analysis before it can make an informed determination of whether the existing intrastate telecommunications revenue contribution base methodology can achieve the necessary UUSF budget. The Commission should first explore how the current methodology can achieve UUSF objectives before imposing the administrative burdens on contributing providers that would be necessary to implement a change to a per line or per connection assessment.

What is known is that, according to the DPU, the UUSF currently collects an average surplus of $152,472 per month, a total of $752,359 in the five months after the surcharge was increased in October 2016.[10] Given the current surplus, in the absence of any data, it is not possible to know what impact the expanded contributors newly identified by SB 130, and the enforcement of existing contribution obligations resulting from the DPU's review, will have on the existing surplus.

The Commission should also seek data on how much of the fund's resources are attributed to consumers versus businesses to inform its determination. Without sufficient data regarding fund size needs, the projected revenue base, and projected revenues, it is not possible for interested parties to make any data-driven decision analysis, nor for the Commission to make

[9] Indeed, as URTA observes, "…[R]egardless of the contribution method the Commission ultimately determines to use…the Commission is required by statute to identify providers who provide access lines and connections to the public switched network in the state." URTA Comments, pp. 8-9.
[10] DPU Comments, p. 2.

a data-driven decision on the UUSF contribution methodology. And such a data-driven analysis is needed to ensure that Utah's USF contribution methodology does not impose disproportionate burdens on consumers versus businesses (or vice versa) or on one industry segment relative to another.

In the absence of the process set forth here, the record lacks data that justifies a change in the existing intrastate telecommunication revenue-based contribution methodology – a change that will impose burdens and costs on the providers already contributing. AT&T recommends that the analysis described here be conducted before considering a move away from the existing intrastate telecommunications revenue-based UUSF contribution methodology.

III. **Overhaul of contribution methodology would be complicated and administratively burdensome.**

Proponents of the per line/connection contribution method mistakenly and dismissively underestimate the administrative burden inherent in overhauling the current UUSF methodology from the current intrastate revenue basis to a per line basis.

URTA proposes that all providers who have been assigned phone numbers with Utah area codes by North American Numbering Plan ("NANPA") submit a quarterly report to the Division or the Commission to determine the number of access lines and connections in Utah.[11] This is inappropriate and likely to impose burdens on consumers from whom Utah lacks the right to collect the UUSF surcharge. In today's mobile and competitive communications world, where phone numbers are portable across providers and geographies, an area code is not limited to a particular geographic area. A consumer who has an 801, 435, or 385 area code – area codes historically associated with Utah – may not live and work in Utah at all. Moreover, if providers'

[11] URTA Comments, pp. 7-8. URTA asserts that because companies identified in NANPA's list already report to the FCC on Form 502, providers should be able to make the same data available to the Commission. The DPU also proposes collecting the UUSF surcharge from "wholesale" providers who are registered with and assigned Utah numbers by NANPA. DPU Comments, p. 3.

UUSF assessments were based on the "assigned" Utah area code numbers reported on their federal Numbering Resource Utilization/Forecast Reports ("NRUF" or FCC Form 502), many questions and difficulties could result:

- A LEC may have "Type 1" interconnection and wholesale arrangements with other carriers, such as CLECs or wireless carriers. These Type 1 arrangements often allow a CLEC or wireless carrier to obtain numbers from the LEC for use by the CLEC's or wireless carrier's customers. However, the LEC must still include such numbers in the "assigned" category of its NRUF Reports. If the UUSF is assessed on the basis of assigned numbers, the LEC would be liable for contributing on the basis of these numbers, yet would have no ability to recover its contributions from the CLEC or wireless carrier's customers.

- Contractual arrangements between some carriers and enterprise customers require the carrier to hold an entire 100-number block or blocks for a particular customer, e.g., NPA-NXX-1101 through and including NPA-NXX-1199. However, the numbers actually used by that customer at any particular time may vary. For example, in some months, the customer might use 93 numbers, while in another month, only 89 numbers. In either case, however, the carrier is still required to report all 100 numbers in the "assigned" NRUF categorization. Would the provider (and the customer) be liable to the UUSF for contributing on the basis of all 100 numbers?

- Most providers today have been required to implement local number portability ("LNP"), meaning that when a customer wishes to switch from Phone Service Provider A to Phone Service Provider B, the customer may retain his/her telephone number. However, although the customer is now Phone Service Provider B's customer, Phone Service Provider A must continue to include that customer's number in Provider A's "assigned" number category. Under URTA's proposal, Provider A would still be liable to the UUSF for ported numbers and would have no ability to recover its contributions on the basis of these ported numbers from Provider B.

- Providers who obtain numbers from carriers under UNE-P type arrangements and resellers are not required to file NRUF Reports for the numbers they utilize to serve end-user customers. Such numbers remain in the underlying facilities-based carriers' number inventory and are reported in the "assigned" number category. Under URTA's proposal, the underlying facilities-based provider would be liable to contribute to UUSF on the basis of these numbers.

For these reasons, the NRUF Report is an inaccurate tool to assess whether the provider filing the report actually controls a telephone number and has an end-user customer associated with that number. Using the NRUF Report would have the net effect of inaccurately inflating providers' telephone numbers and thus the provider's UUSF contribution.

A switch to a per line contribution methodology would raise a host of other questions. Will providers be forced to remit fees on lines that they maintain for internal testing purposes and that do not generate revenue? On lines provisioned for home security systems that do not have voice service but which may contact 911 PSAPs?

As AT&T discussed in its initial comments, a per line contribution method also would impose new and wide-ranging administrative burdens on UUSF providers, especially those who operate across the United States and internationally. Such carriers would be forced to modify their necessary reporting for UUSF purposes, modify public facing materials, train their customer-facing representatives, and modify billing systems, among other things, to implement such a change.[12]

IV. A switch to per line UUSF contribution methodology could be inequitable.

Comments from some proponents of the per line contribution methodology suggest an intent to increase the contribution burden on wireless providers.[13] As discussed in AT&T's initial comments, wireless carriers and their customers already shoulder most of the UUSF funding burden, bearing approximately 66% of the UUSF in December 2015,[14] even though wireless carriers are not eligible for UUSF high cost support for either mobile wireless voice or broadband services. Note that ILEC contributions comprised only 20% of the UUSF in December 2015,[15] that ILECs alone are eligible for UUSF high-cost support, and that high cost

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[12] See AT&T Comments, p. 6.
[13] See, e.g., URTA Comments, p. 6 ("[A] surcharge based on customer access lines and connections eliminates that revenue shifting between voice and data will have on the UUSF. A per access line and per connection based surcharge is also immune to the downward pressure on wireless rates…").
[14] See Comments from Utah Rural Telecom Association, Exhibit A, filed May 16, 2016, Utah Public Services Commission Docket No. 16-R360-02.
[15] *Id.*

subsidy currently accounts for $10.7 million of the almost $13 million in total UUSF costs according to the DPU.[16] This relative burden borne by wireless carriers and their customers could well grow even greater if the Commission decides to adopt a per line contribution methodology, given that mobile wireless carriers comprised 76% of Utah's voice lines versus only 10% comprised by ILECs in December 2015.[17] Note that the DPU projects the "future" cost of high cost subsidy - for which only ILECs are eligible - to be $22 million of a total UUSF size of almost $28 million.[18]

Finally, because the DPU is in the process of identifying providers who should be but have not been contributing to the UUSF, changing contribution methodology with the intent to make already contributing providers contribute even more would effectively punish compliant providers who have properly collected and remitted UUSF contributions.

V. A switch to per line/connection will make the UUSF contribution mechanism more opaque to Utah's consumers.

If Utah decides to change from an intrastate telecommunications revenue based assessment to a per line methodology, it would be the first state to make such a change. This would make it difficult or impossible for consumers to compare the anticipated increase in a surcharge based on a per line method with the most recent October 2016 UUSF surcharge increase from 1% to 1.65%. A switch to a per line method would also make it difficult for Utah consumers to compare how their state ranks in terms of surcharge and tax burden to all the other states which employ intrastate revenue methodologies consistent with the FCC regime. A change to a per line contribution methodology would camouflage the fact that Utah's consumers

[16] DPU Comments, p. 4.
[17] See Comments from Utah Rural Telecom Association, Exhibit A, filed May 16, 2016, Utah Public Services Commission Docket No. 16-R360-02.
[18] DPU Comments, p. 4.

ultimately would be paying even more into the UUSF, even though Utah already has the 16th highest wireless surcharge and taxes.[19]

VI. Per line contribution methodology risks jurisdictional conflict with the FCC.

Although some commenters observe that SB 130 grants the Commission "authority to adopt a surcharge mechanism based on the number of lines and connections,"[20] the Commission is still obliged to ensure that whatever methodology is employed does not "rely upon or burden" the current FCC federal USF contribution methodology.[21]

Comments from some proponents of per line contribution methodology suggest an intent to impermissibly assess broadband internet access service. CenturyLink suggests that a per line contribution methodology will tie the UUSF surcharge to the "growing base" of data services.[22] As the FCC reiterated in the Open Internet Order, broadband internet access service is an interstate service,[23] and therefore cannot be subject to assessment by the states. Until the Joint Board determines otherwise, a state contribution methodology based on inherently interstate data services will impermissibly "rely upon or burden" the federal USF.

CenturyLink also asserts that "[t]he Commission will not need to determine how to specifically assess VoIP if it moves to a connection based approach."[24] That is incorrect. Again, any new state contribution methodology must not "rely upon or burden" the federal USF. While

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[19] Scott Mackey & Joseph Henchman, *Wireless Tax Burdens Rise for the Second Straight Year in 2016*, Tax Foundation, Oct. 11, 2016, https://taxfoundation.org/wireless-tax-burdens-rise-second-straight-year-2016/ (last visited Apr. 21, 2017) (ranking Utah as 16th highest state in the nation for taxes, fees, and government charges on wireless service).
[20] CenturyLink Comments, p. 2, filed April 26, 2017, Utah Public Services Commission Docket No. 17-R360-01.
[21] 47 U.S.C. § 254(f).
[22] CenturyLink Comments, p. 4 ("A per line and per connection surcharge methodology…[e]liminates the impact of revenue shifting between voice and data services. It ties the UUSF surcharge to a growing base and not a declining base."). See also, URTA Comments, p. 6 ("[A] surcharge based on customer access lines and connections eliminates that revenue shifting between voice and data will have on the UUSF. A per access line and per connection based surcharge is also immune to the downward pressure on wireless rates…").
[23] Report and Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, ¶ 431 (rel. Mar. 12, 2015).
[24] CenturyLink Comments, p. 4.

the FCC has provided bright line guidance on how states may determine what constitutes interconnected VoIP's intrastate revenues that may be permissibly assessed in an intrastate revenue contribution regime, the FCC has not yet provided guidance on how interconnected VoIP may be permissibly assessed in a per line contribution scheme, which has not been adopted by any state to date. Employing a per line contribution method without FCC guidance – whether for interconnected VoIP or for other services – may later be found impermissible, exposing Utah's assessment to future legal challenge.[25]

As discussed in AT&T's initial comments, USF contribution issues have been pending before the Federal-State Joint Board on Universal Service, and state members of the Joint Board recognize the need to address universal service contribution reform in a comprehensive manner for both the federal and state universal service funds.[26] Rather than Utah proceeding on its own to make such a significant contribution change at this time, this Commission and interested parties should urge the Federal-State Joint Board on Universal Service and the FCC to move forward to consider how the federal and state contribution methodologies should be updated for the 21st century communications world in a manner that is sustainable, fair, equitable, and efficient for providers.

VII. Summary

For the reasons argued herein, AT&T urges the Commission to retain Utah's current intrastate revenue based UUSF contribution methodology. Utah's consumers should not be made the subject of a rushed experiment.

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[25] See AT&T Comments, pp. 5-6.

[26] See *State Officials Concerned About Projected Rise in USF Contribution Factor,* COMMUNICATIONS DAILY (Warren Communications News, Inc., Washington, D.C.), May 5, 2017, at 3-4.

The AT&T Companies appreciate the opportunity to provide these reply comments.

DATED this 11th day of May, 2017.

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I hereby certify that I served a true and correct copy of the foregoing Reply Comments of the AT&T Companies this 11th day of May 2017, on the following by electronic mail:

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