CenturyLink®

CARLA M. BUTLER

May 11, 2017

Via Electronic Filing Only

Gary Widerburg
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111
psc@utah.gov

Re: Docket No. 17-R360-01

Dear Mr. Widerburg:

Attached for filing please find CenturyLink's Reply Comments, along with a Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Carla

Carla Butler
Lead Paralegal

Attachment
cc: Service List

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

CENTURYLINK REPLY COMMENTS

I. INTRODUCTION

Qwest Corporation d/b/a CenturyLink QC and CenturyLink Communications, LLC ("CenturyLink") respectfully respond to the initial comments filed by other parties on April 26, 2017. Following a review of the other comments, particularly those of the Division of Public Utilities (the "Division"), it is apparent that in order to apply a Utah Universal Service Fund ("UUSF") assessment in an equitable manner, and ensure the long term viability of the fund, the Commission must immediately move away from a revenue based assessment and adopt an assessment based on a per line/per connection methodology. This approach is supported by the Division, the Office of Consumer Services (the "Office"), the Utah Rural Telecom Association ("URTA"), and CenturyLink. Uncontroverted evidence shows that the current assessment methodology is not sustainable (without unnecessarily increasing the surcharge and disproportionately impacting certain providers over others). Nonetheless, AT&T, CTIA (the wireless association), and Comcast want to continue down the current path; a path that is no longer viable.

The Commission is statutorily required to adopt the assessment mechanism by January 1, 2018.[1] The Commission has correctly stated that "the surcharge amount and mechanism is the PSC's top priority."[2] CenturyLink encourages the Commission to stay focused on this priority and not be distracted by extraneous issues brought up by others who are motivated to delay this proceeding. As stated in CenturyLink's initial comments, the Commission should immediately adopt the per line/per connection approach. After the Commission selects the surcharge method the focus can shift to determining the surcharge amount and any implementation issues.[3] If the Commission does not first select the method it will be less efficient for parties to discuss implementation issues associated with multiple methods, which will give some parties the opportunity to cause further unnecessary delay.[4]

II. THE CURRENT ASSESSMENT APPROACH IS NOT SUSTAINABLE

The Commission specifically requested that the Division answer certain questions about a revenue based assessment versus the per line/per connection assessment. The Division's analysis shows a consistent decline year over year of assessable revenues. At the same time the Division estimates the demand on the UUSF will grow substantially over the next several years. A decrease in assessable revenues and an increase in the demand on the fund demonstrate that the current assessment approach is not sustainable.

During the same time that the assessable revenues for the UUSF have been declining[5], overall voice subscriptions have increased, including significant increases in mobile telephony that have more than offset the significant declines in wireline access lines and VoIP.[6] While non-ILEC voice subscriptions have been increasing, ILEC voice subscriptions have declined.[7] This

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[1] SB 130 requires the Commission to establish the *"method . . . before January 1, 2018."*
[2] Commission *Request For Comments*, March 27, 2017, Footnote 1.
[3] CenturyLink recommends that once the Commission has selected the surcharge method that it schedule a technical conference to determine the surcharge amount and other implementation issues.
[4] Even if the Commission determines to remain with the current revenue based surcharge, there are a number of implementation issues that will need to be addressed to ensure that VoIP providers pay into the UUSF.
[5] Division Comments, chart on page 5.
[6] Division Comments, chart on page 3.
[7] CenturyLink Comments, Exhibit C (FCC Voice Telephone Service Report), lines 5 and 6.

inconsistent result of overall increases in voice subscriptions, yet significant decreases in intrastate billed revenue is illogical, and highlights the need to change the assessment methodology.

Under the per line/per connection surcharge method, UUSF assessable revenues will not be subject to a provider's pricing decisions or how they decide to categorize their revenues. Although wireless providers currently pay the UUSF surcharge based on intrastate revenues, it is difficult if not impossible for the Commission to independently verify how carriers determine intrastate assessable revenues. Further, SB 130 now explicitly permits the assessment on VoIP providers. Similar to wireless providers, it will be difficult to for the Commission to monitor what VoIP providers consider "assessable" revenues.

III. THE PER LINE/PER CONNECTION ASSESSMENT METHODOLOGY IS SUSTAINABLE AND NON-DISCRIMINATORY

The Commission must consider an alternative assessment method since the current approach is not sustainable, and is not competitively neutral. SB 130 specifically permits the UUSF assessment be based on a per line/per connection approach. CenturyLink, the Division, the Office, and URTA all recommend the Commission adopt a per line/per connection based surcharge. This recommendation is the preferable method based on the following:

- It ties the UUSF surcharge to a growing base rather than a declining revenue base.
  - Overall lines and connections are increasing as indicated in the Division's comments.[8]
  - In comparison, reported intrastate billed revenue continues to decline, and there is no indication that this trend is going to change.[9]
  - The per line/per connection approach eliminates the impact of revenue shifting between voice and data. As data becomes more important to customers, assessable voice revenues have been declining. The per line/per connection approach simply looks at whether there is a connection to the Public Switched Telephone Network.

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[8] Division Comments, Chart on page 3 (data from FCC Form 477).
[9] The reasons for the declining revenues are outlined in CenturyLink's initial comments, Exhibit A.

- o The per line/per connection approach separates contributions to the UUSF from carrier pricing and other decisions impacting intrastate voice revenues. It is possible that in the future voice service will be treated like a feature offered to customers subscribing to a data plan at little or no charge. If this happens, and the assessment methodology is not changed, this will further erode the UUSF assessable base.
- o Because total lines/connections are a growing base rather than declining, the surcharge will be more stable in comparison to the current revenue based method.

- The per line/per connection approach is competitively neutral and does not discriminate against providers and customers.
  - o The current revenue based method is discriminatory and not competitively neutral. Basing the assessment on revenues permits some providers to control what they deem an assessable revenue for comparable voice services, resulting in disparities and competitive advantages. A customer using a cell phone should make the same contribution to the UUSF as a customer who uses a traditional land line phone. They both have equal access to the Public Switched Telephone Network.
  - o Comcast's comments emphasize the importance of assessing the surcharge in a competitively neutral manner.[10] Despite this comment, Comcast supports the discriminatory revenue based approach. The ability for certain carriers to easily dictate what is, or is not, an assessable revenue results in the current surcharge method being discriminatory and not competitively neutral.
- AT&T, CTIA and Comcast allege that it will be costly and difficult to impose a per line/per connection assessment. This allegation is unsupported.
  - o Parties already collect the 911 surcharge and the Telecom Relay Service ("TRS") surcharge on a per line/per connection basis. Making a change to collect the UUSF surcharge on a per line/per connection basis will not be difficult.[11]
  - o AT&T, Comcast and CTIA want the status quo, but even that approach would need further work based on SB 130. SB 130 specifically states VoIP providers should

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[10] Comcast Comments, page 1.

[11] CenturyLink will also need to make changes to its billing system to start collecting the UUSF on a per line/per connection basis similar to the existing TRS surcharge, however, this should not be a difficult change to make. The process will likely involve combining the UUSF into the existing TRS surcharge line item on the bill, change the description, and eliminate the current percentage based line item for the UUSF.

pay into the UUSF. Based on the directive from the legislature, even if the revenue approach continues, the Commission will need to determine how much VoIP providers should be paying.[12]

- A per line/per connection approach will be easier to administer and simpler to audit.[13]
  - In its comments the Division discussed its coordination with the Utah Tax Commission ("UTC"). The UTC collects the 911 surcharge from the same providers that are required to pay the UUSF. CenturyLink agrees that the Commission, the Division, and the UTC should consider all opportunities to collect the 911, TRS and UUSF surcharges in as efficient manner as possible since they would be collecting from the same providers on a per line/per connection basis.
- Implementation issues can be addressed in a technical conference after a determination is made to switch to the per line/per connection approach.
  - The Division and URTA state one way to ensure that all lines/connections are accounted for in the assessment is to collect surcharges from "wholesale" providers.[14]
  - Further, the "DPU recommends an initial monthly surcharge of $.38 per connection."[15]
  - These issues identified by the Division and URTA, although supportive of the per line/per connection approach, are best addressed in a technical conference after the Commission makes a decision to adopt the per line/per connection assessment methodology. These issues are dealing with implementation, not selection of the appropriate assessment method.

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[12] For example, in CenturyLink's comments, it provided information (Exhibit B) concerning a VoIP provider Ooma which does not charge for "Base Phone Service." In situations like this the Commission will need to establish a "fixed" charge so that Ooma pays into the UUSF. This would result in a hybrid method where some providers pay based upon a percentage of revenue and some providers pay a fixed surcharge.

[13] It will be significantly more difficult for the DPU to audit revenues of providers, especially those who do not currently report revenues to the Commission. For example an auditor would need to look at in detail the various revenues to ensure that all revenues subject to the UUSF are included. In comparison, it will be less complicated to audit the number of lines and connections of a provider since they are already required to report that to the FCC.

[14] Division Comments, page 3, and URTA Comments, pages 4 and 5.

[15] Division Comments, page 6

IV. CONTINUED ASSESSMENT BASED ON INTRASTATE REVENUES IS NO LONGER VIABLE

In an effort to delay the needed assessment change to the UUSF, AT&T, Comcast, and CTIA make several unsubstantiated allegations, all ignoring the realities of the UUSF. A change is necessary in order to ensure the UUSF assessment is competitively neutral, and done in a manner that reflects the realities of a declining revenue base, coupled with an increase in connections.

It is alleged that the UUSF needs to remain coordinated with the federal USF revenue based method. AT&T claims that if the Commission changes the current assessment approach it runs a risk that the new method is impermissible and vulnerable to legal challenges.[16] AT&T also claims that "[c]omprehensive USF contribution methodology reform should first be addressed nationally by the Federal-State Joint Board on Universal Service and the FCC, and state USF programs should then be harmonized with FCC requirements to ensure the greatest possible consistency across states with the federal program and to avoid an undue administrative burden on telecommunications carriers."[17] These claims are unfounded.

A change to a per line/per connection surcharge is agnostic to the allocation/determination of intrastate and interstate revenue and is disassociated from the revenue of the various providers. The Commission will establish an appropriate amount to collect in order to fund the UUSF and assess the appropriate per line/per connection surcharge based upon the number of lines and connections.[18] Therefore it will not result in a UUSF double assessment on the same interstate revenue used as the basis to determine the amount owed to the federal USF, and will not "rely upon or burden" the federal UUSF as alleged.

Further, the Commission cannot afford to wait and see if the FCC makes changes. The FCC has had the issue of USF contribution reform teed up for years and has yet to act. SB 130 specifically permits the per line/per connection based assessment. AT&T, Comcast and CTIA participated in the legislative process. It was never alleged that the State of Utah was preempted from imposing the per line/per connection method. AT&T's threat of legal action should not deter the Commission from enacting the statutorily permitted per line/per connection based approach. The Commission does not need guidance from the FCC to make the necessary decisions to

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16 AT&T Comments, page 5 and 6
17 AT&T Comments, page 2
18 Total required UUSF revenue divided by the number of lines and connections will equal the per line/per connection surcharge.

implement SB 130 consistent with the legislative intent. By changing to a per line/per connection surcharge the Commission will be adopting a method that is non discriminatory and competitively neutral, unlike the current percentage of revenue based method. Under a per line/per connection surcharge method, a customer with a cell phone, or VoIP phone service will pay the same surcharge as a customer with traditional phone service, thus recognizing the common value to all of universal service. Wireless and VoIP providers will not be able to unilaterally control what is, or is not "assessable revenues", but instead will pay into the UUSF in a competitively neutral manner.

AT&T and Comcast claim a shift to the per line/per connection based method "would impose a heavy administrative burden"[19] on providers, and it would be time consuming and expensive to change the mechanism.[20] These claims are just another attempt by the wireless and cable industry to delay the needed change to the assessment methodology, and avoid addressing the heart of the matter (the fact that assessable revenues are declining and the per/line connection base is increasing). The reality is that parties already collect the 911 surcharge and the TRS surcharge on a per line/per connection basis, and can easily make the same change for the UUSF.

AT&T alleges that the per line/per connection approach unfairly burdens wireless carriers. AT&T claims it would shift "an even greater portion of the UUSF contributions burden to wireless carriers. Assessable revenues from wireless carriers may have dropped over the last few years, but assessable revenues from ILECs have also dropped at a similar rate. While wireless carriers' assessable revenues dropped 33% dropped from January 2009 to December 2015, ILECs assessable revenues also dropped 35% over the same period."[21]

AT&T's claim that the drop in ILEC revenues is akin to the loss of wireless revenues is disingenuous. The reason for the reduction in ILEC revenues subject to the UUSF is attributable to competitive losses and wireless substitution. In other words, the decline of ILEC access lines is consistent with the drop in ILEC assessable revenues. Wireless carriers are not in the same position. The number of wireless lines have increased over the past many years at the same time that there has been a decrease in the amount that these carriers attribute to "assessable" revenues, resulting in the wireless carriers contributing less to the UUSF at a time when their customer base is increasing. This is not a logical result and cannot be compared to the ILEC loss of access lines.

[19] AT&T Comments, page 6
[20] Comcast Comments, page 3
[21] AT&T Comments, page 6.

The current approach unequally penalizes the declining revenue base of wireline providers. Under a per line/per connection surcharge, providers will not be able to unilaterally reduce their "assessable" revenues, thus lowering their UUSF surcharge payments.

Further, the Commission should not be concerned that wireless providers pay most of the UUSF surcharge revenue, because these providers also have most of the customers that are connecting to the Public Switched Telephone Network. The reason wireless providers pay a large majority of the UUSF is attributable to the shift from traditional phone lines to wireless that has taken place the last several years. Under a per line/per connection UUSF surcharge, customers with cell phone service will be charged the same per line/per connection UUSF surcharge as customers using VoIP phone service or traditional landline phone service. This is the way it should be. All of these customers have the same access to the Public Switched Telephone Network on a per line/per connection basis, and therefore should support this access in a competitively neutral manner, regardless of the price their customers pay for phone service.

CTIA and Comcast want to delay the matter to further investigate the assessment mechanism and even address other UUSF issues. CTIA claims the "PSC should wait to make any changes to the contribution mechanism until after it has addressed the preliminary issue of UUSF support distribution.[22] And, Comcast states that the Commission "should conduct a full investigation before making such changes."[23] It is unnecessary for the Commission to address all UUSF issues before making a decision on the surcharge method. To do so would only cause a delay and overly complicate the process, and may by default unnecessarily force the Commission to stay with the current flawed method, because there will not be enough time to change within the statutorily imposed deadline. CenturyLink agrees there are other important issues that the Commission needs to consider regarding the UUSF, but those issues can be addressed in a technical conference and in subsequent phases of this docket.

Comcast states that a per line/per connection surcharge has inherent problems. They claim, "it can be difficult, if not impossible, to determine the number of lines or connections." They go on to state that it will be "difficult to ensure that all competitors are counting lines or connections in the same way, and this can upset competitive neutrality." [24] Comcast's arguments are discredited by the fact that other programs in Utah are already based on a per line/per

[22] CTIA Comments, page 2
[23] Comcast Comments, page 2
[24] Comcast Comments, page 4

connection approach. As indicated in the Division's comments, the UTC is currently collecting the E911 surcharge from more than 3.5 million lines and connections, in comparison to the 3.6 million lines and connections reported to the FCC on the Form 477. The UTC has already determined the lines and connections subject to the E911 surcharge and the same lines and connections subject to the E911 are also subject to the UUSF surcharge. This should eliminate any concern that it can be difficult, if not impossible, to determine the number of lines or connections that should be counted. By changing to a per line/per connection method, the Commission is not starting from scratch, especially since it already collects the TRS on a per line and per connection method. Further, Comcast's concern about upsetting competitively neutrality is flawed, as previously stated the current assessment method is severely flawed and far from competitively neutral.

To further contradict Comcast's allegations, adopting the per line/per connection approach will create efficiencies. By adopting the per line/per connection assessment mechanism, the Commission is establishing a surcharge mechanism consistent with the collection of the E911 surcharge. As suggested in the Division's comments, if the Commission, the Division and UTC can coordinate collection efforts, it will create efficiencies in comparison to the current processes. For example, having the UTC also collect the UUSF along with the E911 surcharge, through an electronic payment system, it is more efficient for the state along with providers in comparison to the current manual UUSF payment process. These efficiencies will actually reduce the "administrative burden" and offset the impact of the initial changes that will be required.

Lastly, the Commission should not be concerned that wireless providers currently do not receive UUSF distributions. This is not a relevant factor in determining the surcharge method.

V. THE COMMISSION SHOULD WAIT TO A LATER PHASE OF THIS DOCKET TO CONSIDER OTHER PROPOSED UUSF RULE CHANGES

The determination of the assessment methodology is the only issue in this docket that has time constraints. Although other parties raise legitimate issues relating to the UUSF, those issues should be addressed in a subsequent phase of this docket. Trying to resolve all UUSF issues in this initial, time constrained phase runs the risk of unnecessarily delaying the process, creates confusion, and too easily would cause a distraction from determining the assessment methodology. CenturyLink's initial comments even identified at a high level other issues that need to be addressed, including changes to the one time distribution rule (R746-360-9) and changes to Lifeline rules (R746-341), nonetheless, it is best if these issues are dealt with in a later phase.

CenturyLink is providing a brief response to other UUSF issues raised by the parties, but respectfully requests that the Commission provide interested parties the opportunity for additional comments at a later date. The following are some of the other issues raised by parties:

- The Office "recommends that the Commission should approach the issue of allowing wireless ETCs . . . to receive state USF through rulemaking."[25] The Division's comments demonstrate the dramatic impact that will result from permitting wireless ETCs to receive Utah Lifeline support.
    - The Division's Comments identify the huge impact on the UUSF if wireless ETC providers start drawing on the fund for Lifeline. There are significant issues associated with wireless ETCs receiving Utah Lifeline support, such as determining the minimum requirements for the wireless plans of the ETCs to qualify for Utah Lifeline support; whether as a policy matter the Utah Lifeline program should be used to implicitly subsidize data services; and whether there should be minimum charges to customers before the wireless ETC provider can get a Lifeline subsidy. CenturyLink agrees that this and other Lifeline issues will need to be addressed in a separate Lifeline rulemaking, or later phase in this docket. For example, the Commission needs to determine if the Utah Lifeline rules should be changed to allow support for High Speed Internet (HSI) consistent with the federal Lifeline program. Additionally, when the national verifier is available in Utah the upfront Lifeline verification and the annual recertification, currently handled by a Utah state administrator, will need to be addressed.
- AT&T in its comments states that the UUSF "rules should ensure that the UUSF targets the areas with the greatest broadband internet access needs – areas where end users have

[25] Office of Consumer Services' Comments, page 4

no access to broadband internet access service at 10/1 speeds that are not receiving CAF support."[26]

- The Commission can adopt changes to its one time UUSF distribution rules that will ensure end users with the greatest broadband internet access needs, those areas not covered by CAF support, have a reasonable opportunity to obtain HSI. But again, this issue is best explored in a later phase or a new docket that is not time constrained by the legislature.

VI. CONCLUSION

CenturyLink respectfully requests that the Commission adopt the per line/per connection UUSF surcharge, supported by the Division, the Office, URTA, and CenturyLink. Details regarding implementing the new assessment methodology can be addressed in a technical conference. Lastly other UUSF and Lifeline issues can be addressed in a later phase of this docket or another docket.

RESPECTFULLY SUBMITTED this 11th day of May 2017.

CENTURYLINK

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[26] AT&T Comments, page 10

CERTIFICATE OF SERVICE
VIA EMAIL TRANSMISSION
Docket No. 17-R360-01

I hereby certify that on the 11th day of May, 2017, I caused a true and correct copy of the foregoing CENTURYLINK'S REPLY COMMENTS to be served upon the following persons via electronic mail at the e-mail addresses shown below.

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