Gary A. Dodge, #0897
Phillip J. Russell, #10445
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdlaw.com
prussell@hjdlaw.com

Attorneys for the AT&T Companies

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 IN RESPONSE TO ORDER ON REQUEST TO FILE REPLY COMMENTS**

The certificated AT&T Companies, together with AT&T wireless providers, including AT&T Corp., Teleport Communications America, LLC, New Cingular Wireless PCS, LLC, and Cricket Wireless, LLC (collectively, "AT&T" or the "AT&T Companies") submit these Reply Comments in response to the Order on Request to File Reply Comments issued July 12, 2017 (the "Order"). The Order invited reply comments from affected parties by August 2, 2017 regarding Proposed Rule R746-360-4 ("Proposed Rule"), meant to comply with Senate Bill 130 ("SB 130") which gives the Public Service Commission of Utah ("Commission") more flexibility in funding the Utah Universal Public Telecommunications Service Support Fund ("UUSF"). According to the Order, the PSC is "most interested in comments (a) that address the legal issues raised in the comments submitted by AT&T and by CTIA – The Wireless Association; and (b) that analyze federal case law, including orders issued by the Federal Communications Commission, regarding whether states are permitted to assess providers that facilitate telecommunications through voice over internet protocol technology, which to date is legally considered to be an 'information service' rather than a 'telecommunications service.'"

Introduction

The Commission should address the concerns raised in CTIA's comments before revising the Proposed Rule or drafting any new rule in response to S.B. 130. In particular, the Commission must address issues relating to prepaid wireless service that the Proposed Rule fails to acknowledge. Additionally, while states may assess interconnected VoIP services for state USF purposes, states must ensure that their assessment methodology does not "rely upon or burden" the federal USF scheme as a general matter, a risk run by the Proposed Rule as currently written. As discussed herein, because it appears that momentum is gathering to address USF reform at the federal level, AT&T recommends that Utah work with its state representatives on the Federal-State Joint Board on Universal Service to address federal level reform first to avoid possibly promulgating UUSF rules that may later be determined to impermissibly "rely upon or burden" the federal USF.

I. The Commission should address concerns regarding prepaid wireless service raised in CTIA's comments.

A. The Proposed Rule does not adequately address prepaid wireless service.

We agree with CTIA that omitting prepaid wireless from contributing to the UUSF would unfairly advantage providers of those services, discriminating against providers who do contribute to the UUSF.[1] In addition, forcing prepaid wireless providers to remit surcharges without providing a regulatory or legislative mechanism for those providers to recover their contributions from end users would also be unfair and discriminatory.[2] As discussed in our July 3 comments, AT&T recommends revising the Proposed Rule to provide a point of sale collection mechanism for prepaid wireless and would also support additional legislation to equitably assess *all* retailers of prepaid wireless services at the point of sale, without omitting third-party retailers over whom the PSC does not have authority.[3] This would result in all prepaid wireless services purchased by Utah's consumers being assessed their fair share on an equal and nondiscriminatory basis.

B. The requirement that contributions be collected as a "separate charge" prevents wireless providers from offering all-inclusive rate plans.

As discussed in our July 3 comments,[4] AT&T agrees with CTIA's position that the Proposed Rule's requirement that UUSF contributions be collected as a "separate charge" interferes with the ability of providers to offer all-inclusive single-rate service plans.[5] The ability of wireless carriers to offer all-inclusive rate plans on a nationwide basis enables those carriers to rely on a few basic methods of calculations for such plans, thereby minimizing the need to customize customer billing on a state-by-state basis. Limiting or depriving wireless carriers' ability to include the UUSF surcharge in all-inclusive rate plans would sacrifice the simplicity

---

[1] Comments of CTIA, p. 6 (July 3, 2017) ("CTIA July 3 Comments").
[2] *Id.*
[3] Comments of the AT&T Companies in Response to Notice of Rulemaking, pp. 5-6 (July 3, 2017) ("AT&T July 3 Comments").
[4] *Id.* at 10.
[5] CTIA July 3 Comments, pp. 6-7.

and general uniformity of the very national rate plans that the FCC has lauded as benefitting consumers and spurring wireless penetration.[6]

II. <u>The Commission must ensure that the Proposed Rule does not conflict with the federal USF regime or other relevant laws.</u>

A. VoIP is neither an "information service" nor a "telecommunications service"; however, states may assess interconnected VoIP, but not one-way VoIP.

As an initial matter and in response to the Commission's specific request for comment, states are permitted to assess interconnected VoIP for state USFs pursuant to the FCC's Declaratory Ruling In the Matter of Universal Service Contribution Methodology ("*KS/NE Declaratory Ruling*").[7] Note that, to date, the FCC has not classified VoIP as either an "information service" or "telecommunications service."[8] However, states are not unconstrained

---

[6] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660, 17669 (2000) ("*Fifth Competition Report*") (describing the benefits of nationwide footprints which "permit companies to introduce and expand innovative pricing plans such as digital-one-rate type ("DOR") plans, reducing prices to consumers").

[7] *In the Matter of 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*, WC Docket No. 06-122, *Declaratory Ruling*, 25 FCC Rcd. 25651, FCC 10-185 (rel. Nov. 5, 2010) ("*KS/NE Declaratory Ruling*").

[8] *See, e.g.*, *In the Matters of IP-Enabled Services [and] E911 Requirements for IP-Enabled Service Providers*, WC Dkt. Nos. 04-36 & 05-196, *First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd. 10245, 36 Communications Reg. (P&F) 1, FCC 05-116 (rel. June 3, 2005), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-116A1.pdf ("*VoIP E911 Order*"), ¶ 24 ("We make no findings today regarding whether a VoIP service that is interconnected with the PSTN should be classified as a telecommunications service or an information service under the Act."); *In the Matters of IP-Enabled Services [and] E911 Requirements for IP-Enabled Service Providers, etc.*, WC Dkt. Nos. 04-36 etc., *Report and Order*, 30 FCC Rcd. 6835, 62 Communications Reg. (P&F) 1358, FCC 15-70 (rel. June 22, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-70A1.pdf ("*VoIP Direct Access to Numbers Order"),* n. 282 ("The Commission has not classified interconnected VoIP services

in their ability to assess VoIP. As discussed in our July 3 comments, one-way VoIP is not assessed by the FCC for federal USF purposes, and state USF requirements must be consistent with the federal USF.[9] Because the FCC does not do so, Utah is therefore also limited in its ability to assess one-way VoIP.

The FCC has identified how it assesses interconnected VoIP for the federal USF based on interstate revenues, not on a per line/per connection basis.[10] Conversely, the FCC has provided clear guidance on how states may assess interconnected VoIP *revenues* for their state USFs, *i.e.*, by assessing interconnected VoIP revenues allocated to the *intrastate* jurisdiction, using allocation methodologies approved by the FCC. The FCC has not provided any guidance on how states may permissibly assess interconnected VoIP on a per line basis, without "rely[ing] upon or burden[ing] the federal USF." Any attempt to do so in the absence of such FCC guidance risks the state double-assessing revenues already assessed at the federal level, thereby "rely[ing] upon or burden[ing]" the federal USF.[11] Finally, CenturyLink suggests that a per line charge

---

as either telecommunications services or information services, and the issue remains pending before the Commission.").

[9] AT&T July 3 Comments, p. 4.

[10] *In the Matter of Universal Service Contribution Methodology, etc.*, WC Dkt. Nos. 04-36 etc., *Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518, 38 Communications Reg. (P&F) 1018, FCC 06-94 (rel. June 27, 2006), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-06-94A1.pdf ("*2006 Report and Order*"), ¶ 52 ("Interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) they may use the interim safe harbor established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies, subject to the conditions described below.").

[11] *See* Initial Comments of the AT&T Companies, pp. 5-6 (Apr. 26, 2017) ("AT&T April 26 Comments"). *See also KS/NE Declaratory Ruling*, ¶ 17 ("[T]o avoid a conflict with the Commission's rules, a state imposing universal service contribution obligations on interconnected VoIP providers must allow those providers to treat as intrastate for state universal service purposes the same revenues that they treat at intrastate under the

mechanism is the only way to assess VoIP.[12] Given the FCC's explicit guidance in its *KS/NE Declaratory Ruling* on how states may permissibly assess interconnected VoIP revenues for their state USFs, this is clearly untrue. The Commission's ability to assess interconnected VoIP should not be erroneously conflated with the necessity of a per line surcharge.

B. The Proposed Rule may not "rely upon or burden" the federal USF.

As AT&T has previously discussed,[13] as a general matter, state USFs may not "rely upon or burden" the federal USF.[14] AT&T acknowledges that that UUSF should be "coordinated" with the federal USF regime, as CenturyLink states,[15] but AT&T has not argued that the Commission must "utilize the same funding mechanism used for the Federal USF."[16] Rather, as CTIA discusses, "by using the same revenue-based mechanism, the Commission can ensure that Utah does not run afoul of the prohibition against inconsistency with or burdening of the federal mechanism."[17] The FCC has offered plentiful guidance on how states can structure their USF assessments to assess only intrastate, and not interstate, telecommunications revenues, so as not to "rely upon or burden" the federal USF, such as using FCC-specified safe harbor percentages to allocate total revenues between interstate and intrastate jurisdictions, using company-specific traffic studies to allocate revenues between interstate and intrastate jurisdictions, or using actual

Commission's universal service contribution rules. This will ensure that state contribution requirements will not be imposed on the same revenue on which an interconnected VoIP provider is basing its calculation of federal contributions. *To the extent a state fails to comply with this limitation in the future, it may be subject to preemption consistent with the prospective declaratory ruling we issue today.*") (emphasis added).

[12] Comments of CenturyLink in Response to Notice of Rulemaking, p. 2 (June 30, 2017) ("CenturyLink June 30 Comments").

[13] AT&T April 26 Comments, p. 5.

[14] 47 U.S.C. § 254(f).

[15] CenturyLink June 30 Comments, p. 3.

[16] *Id.*

[17] CTIA July 3 Comments, p. 9.

interstate versus intrastate revenues.[18] However, to date, there is no FCC guidance on how states can structure state USF assessments on a per line basis in a manner that avoids "rely[ing] upon or burden[ing]" the federal USF. AT&T agrees with CTIA that if Utah proceeds to establish a flat fee per connection assessment in the absence of guidance from the FCC – similar to the guidance offered in the *KS/NE Declaratory Ruling* – Utah runs the risk that such an assessment "may inadvertently apply to interstate revenues or otherwise burden the federal USF"[19] resulting in Utah's assessment being found to be impermissible.[20]

C. The Proposed Rule should define assessable "access line" consistently with the MTSA and S.B. 130.

As discussed in our July 3 Comments,[21] AT&T agrees with CTIA[22] that the definition of assessable lines in the Proposed Rule violates S.B. 130's requirement that lines and connections be assessed "only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq."[23] The Proposed Rule risks double assessment by Utah of consumers who are subject to USF assessment by another state that has adopted the MTSA's PPU determination.[24] As such, the Proposed Rule should define assessable locations consistent with the MTSA's definition of "place of primary use."[25] AT&T also agrees with CTIA that adoption

---

[18] *2006 Report and Order*, ¶ 52.
[19] CTIA July 3 Comments, p. 9.
[20] *See also* AT&T April 26 Comments, pp. 5-6 ("…Utah risks a later determination that Utah's [per line/per connection] assessment is impermissible, making the state's assessment vulnerable to legal challenge.").
[21] AT&T July 3 Comments, pp. 6-8.
[22] CTIA July 3 Comments, pp. 11-12.
[23] S.B. 130, Section 54-8b-15(11).
[24] *See* AT&T July 3 Comments, pp. 6-8.
[25] *See* CTIA July 3 Comments, p. 11; AT&T July 3 Comments, p. 8.

of such a definition renders the Proposed Rule's waiver process, which is cumbersome and impracticable, unnecessary.[26]

D. The Proposed Rule must explicitly exclude internet access services from its definition of assessable lines or connections.

We agree with CTIA that the Proposed Rule's definition of assessable lines and connections (R746-360-4(1)(b)) could be read to include fixed and mobile internet access service to the extent such service enables "plac[ing] or receiv[ing]…real-time voice communications."[27] As previously discussed, internet access service is an inherently interstate service that has been specifically preempted by the FCC from state USF assessment.[28]AT&T agrees with CTIA that "…the Commission should make clear that data-only connections are excluded and only voice lines are assessed"[29] and that "an assessment based on intrastate telecommunications revenues would avoid this problem."[30] To the extent that the revisions to R746-360-4(1)(b), (1)(c), and (3)(a) proposed by URTA could still include internet access service as a service assessable by UUSF,[31] AT&T opposes URTA's proposed revisions.

---

[26] CTIA July 3 Comments, pp. 12-13; *see also* AT&T July 3 Comments, p. 9.
[27] CTIA July 3 Comments, p. 13.
[28] *See In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, *Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd. 5601, 62 Communications Reg. (P&F) 1, FCC 15-24 (rel. Mar.12, 2015) ("*FCC's 2015 Open Internet Order*"), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf, ¶ 43 ("Today, we reaffirm the Commission's longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes.").
[29] CTIA July 3 Comments, p. 13.
[30] *Id.*
[31] Comments of Utah Rural Telecom Association ("URTA") in Response to Notice of Rulemaking, pp. 2-4 (July 3, 2017).

III. The Commission should work with the Federal-State Joint Board on Universal Service to address UUSF reform.

As discussed in previous comments,[32] AT&T continues to recommend that Utah work with its state representatives on the Federal-State Joint Board on Universal Service ("Joint Board") to address USF contribution methodology reform at the federal level, and to address state USF contribution reform thereafter. Members of Congress increasingly recognize the need for reform of how universal service is funded and are urging the FCC to move forward to address these needs. In the July 13, 2017 committee report from the U.S. House Appropriations Committee on the bill containing the FCC's budget, the committee "urge[d]" the FCC to move "aggressively" to address USF contribution methodology reforms, in light of concerns "that continuing to base contributions only on legacy telecommunications service revenues (and a limited number of other service revenues) will undermine, and ultimately threaten universal access to advanced communications by eroding the sustainability of the USF program and placing unfair and inequitable burdens for support of the program on a small subset of communications network users."[33] Because state USFs must "not [be] inconsistent with"[34] the FCC's universal service rules, AT&T believes that contribution reform is most efficiently and effectively undertaken first at the federal level then at the state level. AT&T urges Utah to work

---

[32] AT&T April 26 Comments, pp. 2-5.

[33] Staff of U.S. House of Representatives, Committee on Appropriations, 115th Congress, Report on Financial Services and General Government Appropriations Bill, 2018 (Comm. Print July 13, 2017), available at https://appropriations.house.gov/uploadedfiles/fsgg.report.07.13.17.pdf, p. 47.

[34] 47 U.S.C. § 254(f).

with its state representatives on the Joint Board to address contribution reform in a comprehensive manner – first at the federal level, then subsequently at the state level.

Conclusion

For the reasons argued herein, AT&T urges the Commission to retain Utah's current intrastate revenue based UUSF contribution methodology while simultaneously working with the Joint Board to address comprehensive USF reform at the federal then state levels. Should the Commission decide nevertheless to proceed with a change in contribution methodology, AT&T asks the Commission to support legislation ensuring equitable treatment of prepaid wireless services and to ensure that any proposed rule does not exceed the Commission's authority and does not conflict with federal law or any other relevant laws. The AT&T Companies appreciate the opportunity to provide these comments.

DATED this 2nd day of August 2017.

HATCH, JAMES & DODGE

/s/______________________________
Gary A. Dodge
Attorney for AT&T Corp., Teleport
Communications America, LLC, New Cingular
Wireless PCS, LLC, and Cricket Wireless, LLC

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Reply Comments of the AT&T Companies this 2nd day of August 2017 on the following by electronic mail:

Utah Division of Public Utilities
- Patricia Schmid (pschmid@utah.gov)
- Justin Jetter (jjetter@utah.gov)
- Chris Parker (chrisparker@utah.gov)
- William Duncan (wduncan@utah.gov)
- Erika Tedder (etedder@utah.gov)

Utah Office of Consumer Services
- Steven Snarr (ssnarr@utah.gov)
- Robert Moore (rmoore@utah.gov)
- Michele Beck (mbeck@utah.gov)
- Cheryl Murray (cmurray@utah.gov)

Bob Kraut (bob@atcnet.net) - Albion Telephone Company, Inc.
Jenny Prescott (jenny.prescott@allwest.com) - All West Utah, Inc.
Janet McFarland (j.mcfarland@centracom.com) - Bear Lake Communications
Bryan Scott (bscott@beehive.net) - Beehive Telecom, Inc.
Brock Johansen (bjohansen@emerytelecom.com) - Carbon-Emery Telecom Inc.
Blake Madsen (bmad@cut.net) - Central Utah Telephone
Ted Hankins (ted.hankins@centurytel.com) - CenturyTel of Eagle, Inc.
Kirk Lee (kirk.lee@ftr.com) - Citizens Telecommunications Company of Utah
Diane (diane@directcom.com) - Direct Communications Cedar Valley, LLC
J. Frandsen (jfrandsen@emerytelcom.com) - Emery Telephone
Douglas G. Pace (dpace@ftitel.net) - Farmers Telephone Company, Inc.
Kent Sanders (kent@gtelco.net) - Gunnison Telephone Company
D. Woolsey (dwoolsey@emerytelcom.com) - Hanksville Telecom, Inc.
Dallas Cox (dallasc@mail.manti.com) - Manti Telephone Company
Barbara Saunders (west.consumer.relations@czn.com) - Navajo Communications Company, Inc.
Jim Farr (james.farr@centurylink.com) - Qwest Communication, QC dba CenturyLink QC
Blake Madsen (bmad@cut.net) - Skyline Telecom
Alan Torgersen (alant@socen.com) - South Central Utah Telephone Association, Inc.
Jerilyn Hyder (jhyder@stratanetworks.com) - UBTA-UBET Communications, Inc.
John Woody (jowoody@union-tel.com) - Union Telephone Company
James Woody (jwoody@union-tel.com) - Union Telephone Company
Brett N. Anderson (bretta@blackburn-stoll.com)
Vicki Baldwin (vbaldwin@parsonsbehle.com)
Sharon Bertelsen (bertelsens@ballardspahr.com)
Jerold G. Oldroyd (oldroydj@ballardspahr.com)
Larry Bowman (larry.bowman@charter.com)
Brian W. Burnett (bburnett@kmclaw.com)
cflregulatory@chartercom.com
Eddie L. Cox (ecox@cut.net)
William J. Evans (bevans@parsonsbehle.com)

Torry R. Somers (torry.r.somers@centurylink.com)
James Farr (james.farr@centurylink.com)
Amy Gross (agross@tminc.com)
Alan Haslem (ahaslem@mleainc.com)
Ray Hendershot (ray.hendershot@beehive.net)
William Huber (william.huber@questar.com)
Bill Hunt (williamp.hunt@dish.com)
David R. Irvine (D@aol.com)
Kristin L. Jacobson (Kristin.l.jacobson@sprint.com)
Brock Johansen (bjohansen@emerytelcom.com)
Dawn Kubota (kubotad@ballardspahr.com)
Jasen Lee (jlee@desnews.com)
Kirk Lee (kirk.lee@ftr.com)
Shirley Malouf (srmalouf@stoel.com)
Jennifer H. Martin (jhmartin@stoel.com)
Steve Mecham (sfmecham@gmail.com)
Gregory Monson (gbmonson@stoel.com)
Thorvald Nelson (tnelson@hollandhart.com)
Sheila Page (spage@utah.gov)
Mike Peterson (mpeterson@utahcooperatives.org)
Pam Pittenger (pam.pittenger@ftr.com)
Jenny Prescott (jenny.prescott@allwest.com)
Bruce Rigby (bruce@ucmc-usa.com)
Gary Sackett (gsackett@joneswaldo.com)
Kira Slawson (kiram@blackburn-stoll.com)
Alan L. Smith (alanakaed@aol.com)
Ted D. Smith (tsmithlaw@earthlink.net)
Kendra Thomas (kthomas@kfrservices.com)
Bruce H. Todd (btodd@stratanetworks.com)
Jake Warner (jakew@beehive.net)
Lance Brimhall (lbrimhall@jive.com)
Benjamin J. Aron (baron@ctia.org) - CTIA
Matthew DeTura (mdetura@ctia.org) - CTIA
Margaret Thomson (mt4348@att.com) - AT&T
Janice Ono (jo5243@att.com) – AT&T
John Sisemore (js2023@att.com) – AT&T

Gary A Dodge

/s/______________________________
Gary A. Dodge