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August 2, 2017

*Via Electronic Filing Only*

Gary Widerburg  
Commission Administrator  
Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> 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 in Response to Notice of Rulemaking, along with a Certificate of Service.

If you have any questions, please call me.

Sincerely,

A handwritten signature in blue ink that reads "James B. Farr".

Attachment  
cc: Service List

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Attorney for CenturyLink

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Utah Administrative  
Code R746-360 Universal Public  
Telecommunications Service Support Fund

**DOCKET NO. 17-R360-01**

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**CENTURYLINK REPLY COMMENTS IN RESPONSE TO NOTICE OF RULEMAKING**

Qwest Corporation d/b/a CenturyLink QC and CenturyLink Communications, LLC (CenturyLink) appreciate the opportunity to file reply comments relating to the proposed rule implementing a per-connection charge<sup>1</sup> as the funding mechanism for the Utah Universal Service fund (UUSF). On one hand the reply comments give parties an opportunity to respond to the scare tactics used by AT&T and CTIA in an effort to derail the Commission's decision to implement a per-connection charge for the UUSF. On the other hand, AT&T, CTIA, and other parties identified genuine issues that should be clarified in the proposed rule and addressed in implementation. Given the Commission's decision to delay implementation of a per-connection charge for the UUSF from August 1, 2017 to January 1, 2018, the Commission now has the opportunity to make modifications to the proposed rule to better ensure it is not subject to legal

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<sup>1</sup> A charge is the UUSF fee assessed on the provider by the Commission based upon the number of lines/connections they provide. This is not to be confused with a surcharge, which is if a provider decides to recover the UUSF charge from their customers.

challenge and allow for implementation of the per-connection charge in a competitive and technology neutral manner.

In its order permitting parties to file reply comments, the Commission stated that it was “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.” The Comments filed by AT&T and CTIA clarify that their legal challenge is not directed at the validity of Utah Code 54-8b-15.<sup>2</sup> Rather, AT&T and CTIA are concerned about the legality of the manner in which the Commission wants to implement the connection based charge. CenturyLink agrees that there are potential risks with the proposed rule as originally drafted. However, with modifications (even assuming AT&T and CTIA’s legal analysis is correct), the concerns raised can all be effectively addressed in the rule and in the manner that the Division of Public Utilities (Division) implements the rule to permit the Commission to reasonably move forward with a connection-based contribution mechanism for the UUSF.<sup>3</sup>

To address the legal concerns raised by the parties, CenturyLink is providing a redlined proposed rule attached as Attachment A.<sup>4</sup>

**THE COMMISSION HAS ALREADY DECIDED TO MOVE FORWARD WITH THE CONNECTION BASED APPROACH**

AT&T and CTIA reargue the need to move forward with the connection based approach to the UUSF assessment. AT&T continues to assert that Utah will be “*the first state to experiment*

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<sup>2</sup> See, CTIA Comments, p. 10 (CTIA is not questioning the legality of S.B. 130, but rather the legality of the Commission’s proposed implementation of it.) S.B. 130 was codified in 54-8b.

<sup>3</sup> CenturyLink did not initially raise concerns because it did not interpret the proposed rule in same broad scope as AT&T and CTIA. However, after reviewing AT&T and CTIA’s comments, CenturyLink can see how the proposed rule set forth in the Exhibit A to the Commission’s May 16, 2017 Notice Of Rulemaking And Response to Comments, can be interpreted in a manner that potentially raises some legal concerns.

<sup>4</sup> CenturyLink worked with URITA to achieve consensus in the attached proposed redlined rule.

*with switching to a per line contribution base.*"<sup>5</sup> According to a report from the National Regulatory Research Institute (NRRI) there are other states that use a per line method as at least one of the ways to fund a state USF, which can include high cost support, Lifeline and Telecom Relay Service support.<sup>6</sup> For example, in Idaho a per line surcharge has been in place since the 1990s.<sup>7</sup> The Utah Lifeline program, before the funding was incorporated into the UUSF, was funded through a per line surcharge. Further, the Utah TRS program, prior to July 1, 2017, was funded through a per line surcharge.

AT&T and CTIA want the Commission to believe that there are so many fundamental problems with the proposed rule that the only way to fix the issue is to continue with the flawed revenue based surcharge mechanism for the UUSF. This is not true, particularly since the legal issues raised can be addressed with simple changes to the draft rule, and by the Division implementing the rule in a manner that is not contrary to federal law.

The Commission has already determined to move forward with a rule change that will fund the UUSF through a per-connection charge rather than through a revenue-based remittance.<sup>8</sup> All parties must now move away from rehashing the merits of the connection based approach, and instead focus on the issue at hand, and that is developing a rule that implements the connection based UUSF charge in a legal, competitively-neutral and technology-neutral manner.

It's ironic that AT&T and CTIA are so concerned that the proposed rule as written may provide an unfair competitive advantage to prepaid wireless providers.<sup>9</sup> As set forth in earlier comments, wireline providers have been at a competitive disadvantage for many years under the revenue based approach, and AT&T and CTIA don't seem to care if this competitive disadvantage

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<sup>5</sup> AT&T Comments, p. 2 (July 3, 2017).

<sup>6</sup> NRRI Report No. 15-05, State Universal Service Funds 2014 June 2015, chart on pages vi and vii, website link to sign up to download report: <http://nrri.org/download/nrri-15-05-state-usf/>

<sup>7</sup> Idaho USF rules, IDAPA 31.46.01: Website link: [http://www.puc.idaho.gov/laws/usf\\_00.pdf](http://www.puc.idaho.gov/laws/usf_00.pdf)

<sup>8</sup> Notice of Rulemaking, P. 4.

<sup>9</sup> AT&T Comments, pp. 5- 6 (July 3, 2017); CTIA Comments, pp. 4 – 6 (July 3, 2017).

continues. CTIA even claims the existing contribution mechanism “remains legally sound and demonstrably successful.”<sup>10</sup> They go on to state that “the record shows that there is no reason to change the contribution mechanism now.”<sup>11</sup> There are multiple rounds of comments and reply comments that set forth the problems with the revenue based contribution approach, and the fact that it is not sustainable.<sup>12</sup> Further, the same rule that AT&T and CTIA rely on to state the UUSF must not be inconsistent with the FUSF or burden it, also requires “every telecommunications carrier to contribute to the state fund on an equitable and nondiscriminatory basis.”<sup>13</sup> The record in this docket demonstrates that the current approach is not equitable and discriminates against certain types of providers versus others.

Lastly, even if the Commission made the decision to remain with the revenue based charge, it would have been faced with many of the same implementation issues/concerns, in addition to many more issues/concerns related to the many problems with the declining revenue based charge.

#### **AREAS OF CONCERN RAISED BY AT&T AND CTIA ARE EASILY ADDRESSED**

In Senate Bill 130 (S.B. 130), the 2017 Utah Legislature made it clear that the Commission can use a connection based approach to finance the UUSF. It is apparent from reviewing AT&T and CTIA’s comments that they are not challenging the legality of S.B. 130. Rather, AT&T and CTIA want to continue to dispute the merits of moving to the connection based approach, but as just discussed, it is time to move on. CenturyLink agrees with AT&T and CTIA that the legislature did not mandate the Commission move to a connection based approach. The

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<sup>10</sup> CTIA Comments, p. 4 (July 3, 2017).

<sup>11</sup> *Id.*, at p. 14.

<sup>12</sup> The Division, the Office of Consumer Services, CenturyLink, and URTA filed comments and/or reply comments that support and establish a record of the need to move away from the revenue based approach and go to a more stable and sustainable connection based approach. Additionally, CenturyLink’s April 26, 2017 comments cite to Docket 16-R360-02, where there are also significant comments demonstrating the need to create a new UUSF contribution mechanism.

<sup>13</sup> *See*, 47 U.S.C. §254(f)(2).

legislature left it to the Commission to determine the appropriate collection mechanism, which can include a connection based charge. After reviewing significant comments in this docket, the Commission decided to move forward with the connection based approach.

AT&T and CTIA did point out several areas of concern with respect to the proposed rule. For example, the proposed rule adds to the statutory definition of “access line” which may create issues by potentially broadening the scope of contributors to the UUSF. Further, the proposed rule attempts to identify how an end user customer will pay the surcharge. This goes beyond the statutory language, which specifies that the provider pay the assessed charge, and creates issues with respect to prepaid wireless and all-inclusive plans. These types of concerns can easily be fixed in the rule. The UUSF statute is clear, and the Commission’s rule should mirror the statute to the maximum extent possible. CenturyLink and URTA’s proposed revisions to the draft rule are attached as Attachment A.

### **ACCESS LINES AND CONNECTIONS**

Utah statute clearly defines “Access line” and “Connection” as follows:

**Access line:** 54-8b-2(1) *“Access line” means a circuit-switched connection, or the functional equivalent of a circuit-switched connection, from an end-user to the public switched network.*

**Connection:** 54-8b-15(1)(c) *“Connection” means an authorized session that uses Internet protocol or a functionally equivalent technology standard to enable an end-user to initiate or receive a call from the public switched network.*

Despite these unambiguous statutory definitions, the proposed rule attempts to further define “access line” in a manner that is unnecessary, and goes beyond the legislature’s intent. The proposed rule provides in part that “the functional equivalent of a circuit-switched connection from an end-user to the public switched network’ means equipment or technology that allows an end-user to place or receive a real-time voice communication.” CenturyLink agrees with AT&T and CTIA that adding the language “means equipment or technology that allows an end-user to



place or receive a real-time voice communication” is problematic, and may improperly bring in some non-interconnected VoIP providers. Further the additional language may attempt to assess “equipment or technology” that also was not intended to be assessed.<sup>14</sup>

The key language from the statute is the reference to an end-user’s access to the “public switched network.” This should clear up what type of VoIP services are to be counted by an access line/connection provider in determining their payment into the UUSF. Interconnected VoIP will be counted because it enables end-user calls to and from the “public switched network,” AT&T does not challenge the assessment on interconnected VoIP providers.<sup>15</sup> Other services, such as a computer to computer Skype service will not be subject to assessment since it does not involve the “public switched network” for the video communication to complete. AT&T’s comments spend a great deal of time analyzing the KS/NE Declaratory Ruling, and indicating non-interconnected VoIP providers should not be assessed UUSF.<sup>16</sup> CenturyLink agrees that S.B. 130 was not attempting to assess non-interconnected VoIP providers, and the additional language added in the proposed rule about placing or receiving a real time voice communication should be removed or made clear it does not apply to non-interconnected VoIP providers.

CTIA challenges the use of “equipment or technology” in the rule, and believes it may unlawfully include broadband lines.<sup>17</sup> CenturyLink agrees that broadband should not be subject to assessment, and reference to “equipment or technology” should be removed so no legal argument

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<sup>14</sup> Even though Ooma utilizes equipment to provide an interconnected nomadic VoIP service, it is the VoIP service that counts as a line/connection for the UUSF and not the equipment.

<sup>15</sup> See, AT&T Comments, p. 3 (July 3, 2017).

<sup>16</sup> *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*, Declaratory Ruling, FCC 10-185, 25 FCC Rcd 15651, WC Docket No. 06-122 (rel. Nov. 5, 2010)(States are permitted to require state universal service contributions on interconnected VoIP, so long as the requirements are consistent with the FCC’s interconnected VoIP contribution rules and do not cause double assessment of the same interconnected VoIP revenue with another state.)

<sup>17</sup> CTIA Comments, p. 13 (July 3, 2017).

can be made that the Commission is exceeding its jurisdiction.<sup>18</sup> The statute clearly defines “Connection” as “an authorized session that uses Internet protocol or a functionally equivalent technology standard to enable an end-user to initiate or receive a call from the public switched network.”<sup>19</sup> It is the connection (as unambiguously defined by statute) that should be assessed, not the technology or equipment.

### **Prepaid Wireless and All-Inclusive Plans**

AT&T and CTIA express concerns about prepaid wireless having a perceived advantage under the Commission’s proposed rules. AT&T recommends a “UUSF assessment that piggybacks on the existing state E911 point of sale methodology to collect from prepaid wireless”<sup>20</sup> as the solution to make sure prepaid wireless contributes to the UUSF. AT&T also states that they believe that a point of sale methodology would likely require additional legislation which AT&T would support to make sure prepaid wireless pays into the UUSF.<sup>21</sup>

This issue can easily be addressed in the rule, and does not require additional legislation. The issue raised by AT&T and CTIA is the result of the proposed rule stating that “providers **shall collect from their end-user customers** \$0.36 per month per access line.” The language from the proposed rule is not consistent with the statute. The statute states that “[e]ach access line provider and each connection provider shall contribute to the Universal Public Utilities

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<sup>18</sup> At this time, states may not require state universal service contributions on broadband internet access service because the FCC has preempted such state requirements until it has an opportunity to evaluate whether to permit such contributions. (Open Internet Order, FCC 15-24, ¶432).

<sup>19</sup> 54-8b-15(1)(c).

<sup>20</sup> AT&T Comments, P. 6 (July 3, 2017).

<sup>21</sup> CenturyLink has made recommendations over the last several years for legislative changes to ensure parity of the payment of the various taxes, fees and surcharges including those under the jurisdiction of the Commission. During the 2017 legislative session, CenturyLink supported S.B. 130 partly because it made clear that payment into the UUSF would be competitively neutral and non-discriminatory, requiring interconnected VoIP to pay. However, it did not resolve payment disparity with regards to the Public Utility Regulatory Fee (PURF). CenturyLink invites AT&T to support future legislation that ensures parity of payment of the PURF, which funds the Commission, the Division and Office of Consumer Services. Wireless providers, like AT&T do not currently pay the PURF even though they are involved in this proceeding and other regulatory proceedings and they utilize and benefit from the regulatory resources necessary to support universal service and telecommunications.



Telecommunications Service Support Fund through an **explicit charge assessed by the commission on the access line provider or connection provider.**<sup>22</sup>

The statutory language makes clear that it is the “access line provider or connection provider” who is assessed by the Commission and who is responsible to pay the \$0.36 per month charge per access line/connection it provides. The statute leaves it to the provider to determine how they will collect the contribution from their end user. It doesn’t distinguish between facility based access line/connection providers and providers who resell access lines/connections. Based upon the UUSF statute, prepaid wireless must contribute to the UUSF since it resells a service that is a “Connection”.

The Commission’s rule should not require a provider to have a line item on the bill for the UUSF charge. Unlike the 911 statute,<sup>23</sup> the UUSF statute does not require this. The Commission need not care how or if a provider decides to collect from the end user customer the assessed amount to the provider based upon the number of lines and connections.<sup>24</sup> The UUSF statute is different from the 911 statute which does contain language requiring a surcharge to the end user customer and this most likely is the reason for the point of sale process for collection of the 911 surcharge. Therefore, the Commission need not concern itself with the point of sale process for the collection of the UUSF funds from access line/connection providers.

Giving providers the flexibility about how they collect the charge not only resolves the issue with prepaid wireless, but also will permit providers to continue offering all-inclusive plans. The proposed rule states that “the surcharge shall apply directly to each end-user as a separate charge and shall not be included in, nor paid from, the provider’s rates or telecommunications

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<sup>22</sup> 54-8b-15 (8) (emphasis added).

<sup>23</sup> 69-2-402(2)(a): *Subject to Subsection (6), there is imposed on each access line in the state a 911 emergency service charge of 71 cents per month. 69-2-402(3)(a): Subject to Subsection (6), the person that provides service to an access line shall bill and collect the 911 emergency service charge.*

<sup>24</sup> Prepaid wireless providers can figure out how to collect from their customers. For example, they know the average usage per customer per month and can develop a factor included in their rates that will allow recovery of the money they must pay into the UUSF.

revenues.” Once again, it is the provider, not the end-user that is statutorily obligated to contribute to the UUSF. The Commission should leave it to the providers to determine how it will collect the surcharge from the end user customer. The rule can allow providers the flexibility to recover the assessed charge if they want to do so, but it is not mandatory.<sup>25</sup>

### **Connection Location**

AT&T raises the issue about how to apply the UUSF assessment to wireless (mobile) and interconnected VoIP providers and recommends that the Commission make its rules consistent with the E911 service address determination for interconnected VoIP and with the Mobile Telecommunications Sourcing Act as required by S.B. 130.<sup>26</sup> CTIA raises similar issues.<sup>27</sup> The Commission attempted to address this issue by providing a waiver process, and putting the burden on the end-user to show they do not use their Connection for intrastate telecommunications services. The FCC explained that to avoid a conflict with the FCC’s rules the state contribution requirement must “not be imposed on the same revenue on which an interconnected VoIP provider is basing its calculation of federal contributions.”<sup>28</sup> CenturyLink agrees it is an important issue to ensure the UUSF is not in conflict with the FUSF, and it is not assessing interstate revenues, and this is not happening with the connection based approach. Where a provider is contributing into a state USF based on a flat charge for a connection, that charge is not calculated based on the provider’s revenue and thus is not burdening or relying upon the federal universal service contribution mechanism.

Further, these are issues that need to be addressed by the Division in developing the payment and reporting requirements for access line and connection providers. Even under the

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<sup>25</sup> This would also give providers the flexibility to not itemize separately the UUSF surcharge on the bill. For example, T-Mobile, is currently advertising a ONE plan with a \$40 rate per line that includes taxes and fees. Website link: <https://www.t-mobile.com/cell-phone-plans/>

<sup>26</sup> AT&T Comments, P. 8 (July 3, 2017).

<sup>27</sup> CTIA Comments, pp. 8-10 (July 3, 2017).

<sup>28</sup> See, NE/KS Declaratory Ruling, FCC 10-185 ¶17.

current revenue based approach, the Commission leaves it to the Division to develop the payment and reporting requirements associated with the UUSF assessment. This should not change.<sup>29</sup> In developing the payment and reporting requirements, the Division will have the opportunity to ask wireless providers how they handle various situations to ensure consistency in the requirements.<sup>30</sup>

Even though it is implied that the USSF rules will be in compliance with the UUSF statute and federal law, the Commission rules can state that the Division must develop the payment and reporting requirements in a manner that does not conflict with the UUSF statute and applicable federal law.

### **Impact on residential versus business connections**

CTIA alleges it is unjust and regressive to Utah's telecommunications consumer to impose a connection based charge.<sup>31</sup> This argument goes towards the merits of implementing a connection based approach, and this issue has been decided. Just as important, the Utah legislature, where the Commission often gets its policy direction, already determined that a connection based charge is an appropriate assessment mechanism. Moreover, CenturyLink anticipates that most of its residential subscribers will see a decrease in their UUSF assessment. Given the inequity in taxes, fees and surcharges that has persisted for many years, CenturyLink's customers (along with those of other wireline providers), have paid an unfair amount into the UUSF. This inequity has now partially been addressed by the legislature. It will be implemented by the Commission as part of this rulemaking, and the Division's implementation of the rule. Moreover, allowing this inequity to continue is a violation of 47 U.S.C. §254(f)(2).

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<sup>29</sup> CenturyLink would support the Division conducting informal workshops with interested parties to help develop the procedure for payment and reporting.

<sup>30</sup> When implementing the rules, the Division will of course have to follow the law, that provides in part, "[a]n access line or connection provider that provides mobile telecommunications service shall contribute to the Universal Public Telecommunications Service Support Fund only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et. seq." Utah Code. 54-8b-15(11). AT&T and CTIA are challenging the rule, yet they have not even provided the Division an opportunity to implement the rule in a manner permitted by federal and state law.

<sup>31</sup> CTIA Comments, p. 7 (July 3, 2017).

AT&T recommends that this issue be addressed by a higher assessment to providers for business lines/connections as compared to residential lines/connections. The Commission has the authority to make this determination if it chooses to do so. This is something the Commission could direct the Division to consider in developing the payment and reporting requirements. As part of the implementation process the Division can meet with the parties and try and reach consensus on issues like this. If not the Division can report back to the Commission so it can make that determination.

Despite having the ability to have a different assessment on business and residential customers, maintaining consistency between business and residential access lines/connections is the best and most efficient approach. Business customers generally have more lines/connections than residential customers and so if the assessed per line/connection charge is passed on by the provider to the end user customers, the business customer would pay more than the residential customer even if the assessment amount was the same. Also, it is becoming more difficult for providers to know whether a customer is using its lines/connections primarily for business purposes or for personal (residential use). In the past the distinction between business and residential use was much clearer.<sup>32</sup> Today, with wireless, how does a wireless provider decide whether it is providing a business service or residential service?

In regards to the special access example that AT&T uses, CenturyLink does not agree that a special access service would count as a line/connection for the UUSF.<sup>33</sup> Additionally,

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<sup>32</sup> For example, in Qwest Corporation's Exchange and Network Service Price List, 5.2.A.4, page 16, basic telephone service can be rated as a residential service, if the customer has an eating and sleeping facilities at the service location and the customer is not requesting a business listing in the White and Yellow Pages of the directory. The value of paper directories to both residential and business customers continues to diminish. Businesses today no longer rely on Yellow Pages advertising, but use many other internet and website based services. A work at home business can receive residential telephone service because it no longer needs or wants a business listing in the directory.

<sup>33</sup> For the most part, special access service is considered an interstate service and is not included in the calculated intrastate telecom revenue subject to the current revenue based USSF surcharge. Additionally, a wireless provider that does not have facilities to connect to a cell site would purchase special access from another facility based provider. The special access service to the cell site is a transport facility, and this should not count as a line or

businesses with special access service often have other lines/connections that would count for the UUSF assessment charge to their provider.

### **HOW TO RESOLVE IMPLEMENTATION ISSUES AND CONCERNS**

In its comments, AT&T states that the *“Proposed Rule leaves open many questions that should be addressed before a final rule is promulgated.”* It then provides a list of questions, all of which can and should be addressed through an implementation process involving the Division. The Division has been given the responsibility by the Commission to implement and manage the UUSF for many years, and should continue to be given the opportunity to implement and enforce the Commission’s rules in a manner that does not conflict with federal and state law.

CenturyLink believes that the UUSF rules do not need to be made voluminous and overly complicated by an excessive amount of detail. The statute is clear, and the rule can remain clear and concise. The Commission has addressed more complicated issues in other rulemaking proceedings, and has not attempted to codify every issue and detail in its rules. For example the Commission’s Pole Attachment Rule (R746-345), was a very complicated rule making proceeding. One of the requirements specified in the pole attachment rule is that *“A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval”*<sup>34</sup> In that rulemaking the Commission did not attempt to include all of the detail regarding pole attachments in the rule itself, but referenced separate documents that would be approved by the Commission that contained all of the necessary detail.

The Commission should do the same in this rulemaking. It can require the Division to develop a document that specifies the requirements for all access line/connection providers who

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connection for the UUSF. Just as a wireless provider with its own facilities to connect to a cell site, would not count that as a line/connection for the UUSF, a leased transport service, such as special access should also not count.

<sup>34</sup> Commission Pole Attachment Rule R746-345-3A.

are required to pay into the UUSF.<sup>35</sup> Other state agencies implement their rules in a similar manner, without burdening the rule with every minute detail.<sup>36</sup> The Division's document would contain sufficient detail so that a provider would know the requirements. This document would help assure consistency in the payment of the UUSF charge, thus meeting the requirements of the UUSF statute that the funding of the UUSF be done in a manner that is competitively neutral and non-discriminatory.<sup>37</sup>

## **CONCLUSION**

CTIA and AT&T state that the UUSF assessment methodology must not be inconsistent with and not burden the FUSF contribution methodology. CenturyLink does not dispute this proposition. If the changes to the proposed rule as set forth in these reply comments and Attachment A are made, and the Division implements the rule in a manner that does not conflict with federal law, the concerns expressed by CTIA and AT&T are sufficiently addressed. The Commission needs to adopt a rule, and the rule needs to be implemented before a challenge can be made that it is inconsistent with the FUSF.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of August 2017.

CENTURYLINK



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Attorney for CenturyLink

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<sup>35</sup> The Division could periodically update this document as needed and resubmit it to the Commission.

<sup>36</sup> The Utah Tax Commission has the statutory requirement to collect the 911 surcharge payment. The Utah Tax Commission not only has rules addressing this requirement, but also utilizes bulletins to provide additional detail. State Tax Commission Publication 62 (Revised 6/17): <http://www.tax.utah.gov/forms/pubs/pub-62.pdf>.

<sup>37</sup> See, Utah Code §54-8b-15(9).

# **ATTACHMENT A**

To

CENTURYLINK REPLY COMMENTS IN RESPONSE TO NOTICE  
OF RULEMAKING

Docket No. 17-R360-01

August 2, 2017

**Proposed Changes To The Commission's  
Published Rule Changes (R746-360-4)**

**Same Proposed Changes Made To The  
Existing Rule (R746-360-4)**



**Proposed Changes To The Commission's  
Published Rule Changes (R746-360-4)**

R746. Public Service Commission, Administration.

R746-360. Universal Public Telecommunications Service Support Fund

R746-360-4. Application of Fund ~~Surcharges~~Charges to Customer Billings.

~~[— A. Commencement of Surcharge Assessments — Commencing June 1, 1998, end user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.~~

~~— B. Surcharge Based on a Uniform Percentage of Retail Rates — The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.~~

~~C. Surcharge — The surcharge to be assessed is as follows:~~

~~1. through September 30, 2016, 1 percent of billed intrastate retail rates; and~~

~~2. beginning October 1, 2016, 1.65 percent of billed intrastate retail rates.]~~

~~(1) (a) — "Access line" is defined at Utah Code Subsection 54-8b-2(1).~~

~~(b) "Connection" is defined at Utah Code Subsection 54-8b-15(1) (c).~~

~~(c) For purposes of applying the statutory definition of "access line," the "functional equivalent of a circuit-switched "connection—", in determining the number of authorized sessions, each possible simultaneous call connecting to or from an end-user to the public switched network" means equipment or technology that allows an end user to place or receive a real-time voice communication. permitted by the provider shall be counted as a connection for assessment of Universal Public Telecommunications Service Support Fund charge purposes.~~

~~(ed) Providers of access lines and functionally equivalent or connections are hereafter referred to jointly as "providers." —~~

~~(2) Through ~~July~~December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates as the Universal Public Telecommunications Service Support Fund charge.~~

~~(3) (a) — As of ~~August~~January 1, 2017, and unless Subsection R746-360-4(5) applies, providers shall collect from their end user customers \$0.36 per month per access line:~~

~~(i) that has a physical endpoint within the State of Utah; or~~

~~(ii) as to which the 2018, each provider has record of shall contribute to the Universal Public~~

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Telecommunications Service Support Fund through an associated address within the State of Utah.

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(b) The surcharge shall apply directly to each end user as a separate explicit monthly charge and shall not be included of \$0.36 assessed on each: access line or connection with a place of primary use in, nor paid from, the provider's rates or telecommunications revenues. the state of Utah.

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(4) (a) (b) Place of primary use as used in this rule shall be:

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(i) For an access line or connection provider that provides mobile telecommunications services, consistent with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq., the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

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(A) the residential street address or the primary business street address of the customer; and

(B) within the licensed service area of the home service provider; and

(ii) For all other access line or connection providers, the street address representative of where the end-user's use of the access line or connection primarily occurs which must be:

(A) the residential street address or the primary business street address of the end-user; or

(B) the end-user's registered location for 911 purposes.

(c) The Universal Public Telecommunications Service Support Fund charge shall be assessed by the Commission on the provider of each access line or connection identified in subsections 3(a) above that a provider has as of the last calendar day of each month.

(4) The Division shall develop the payment and reporting requirements for the providers which shall be approved by the Commission.

(a) In establishing the payment and reporting requirements, the Division shall establish a process for providers to exclude any access lines or connections that are being assessed a state universal service fund charge in another state from the Universal Public Telecommunications Service Support Fund charge.

(b) The requirements developed by the Division shall not conflict with applicable federal law.

(c) Included in the requirements developed by the Division shall be a reporting form which shall be used by providers.

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(5) (a) A Provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge

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collectionsUniversal Public Telecommunications Service Support Fund charge assessment on or before the 15<sup>th</sup> of each month.

(b) A ~~provider~~Provider, may retain a maximum of 1.31 percent of its total monthly ~~surcharge collections~~Universal Public Telecommunications Service Support Fund charge assessment to offset the costs of administering this rule.

(5)(a) An end user may petition the Commission for a waiver of the surcharge set forth in Subsection R746-360-4(3). Any such petition shall be adjudicated as an informal administrative proceeding.

(b) An end user that petitions for a waiver of the surcharge has the burden to provide billing records or other substantial documentary evidence demonstrating that, at all times and continuously during the six calendar months preceding the date of petition, the access line being assessed was not used to access Utah intrastate telecommunications services.

(6)(a) An exemption granted under Subsection R746-360-4(5) is valid for a period of one calendar year from the date of issuance.

(b) Following the expiration of an exemption, and upon notice from the Commission, the end user's provider shall assess the surcharge each month, until such time as the provider is notified by the Commission that a renewed exemption has been granted.

(c) Any assessment remitted to the Commission between the expiration of an exemption and the approval of a petition for renewal of the exemption shall be non-refundable.

(d)(i) The end user shall bear the sole responsibility to know the expiration date of an exemption granted to the end user and to ensure that an application for renewal is filed at least 30 days prior to the date of expiration.

(ii) At any proceeding to review a petition for renewal of an exemption, evidence that the end user was unaware of the expiration date shall be inadmissible.

(iii) A petition for renewal of an exemption is deemed granted unless the Commission issues an order of denial within 30 days of the date on which the petition is filed.

(6) A provider may, but is not required to, recover the Universal Public Telecommunications Service Support Fund charge from its end-users.

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KEY: affordable base rate, public utilities, telecommunications  
universal service fund  
Date of Enactment or Last Substantive Amendment: ~~[October 24  
2016]~~  
Notice of Continuation: November 13, 2013  
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1  
54-8b-15 ~~[(8)]~~

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**Same Proposed Changes Made To The  
Existing Rule (R746-360-4)**

R746. Public Service Commission, Administration.

R746-360. Universal Public Telecommunications Service Support Fund

R746-360-4. Application of Fund Charges to Customer Billings.

~~[ A. Commencement of Surcharge Assessments — Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.~~

~~— B. Surcharge Based on a Uniform Percentage of Retail Rates — The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.~~

~~— C. Surcharge — The surcharge to be assessed is as follows:~~

~~— 1. through September 30, 2016, 1 percent of billed intrastate retail rates; and~~

~~— 2. beginning October 1, 2016, 1.65 percent of billed intrastate retail rates.]~~

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1).

(b) "Connection" is defined at Utah Code Subsection 54-8b-15(1)(c).

(c) For purposes of applying the statutory definition of "connection", in determining the number of authorized sessions, each possible simultaneous call connecting to or from the public switched network permitted by the provider shall be counted as a connection for assessment of Universal Public Telecommunications Service Support Fund charge purposes.

(d) Providers of access lines or connections are hereafter referred to jointly as "providers."

(2) Through December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates as the Universal Public Telecommunications Service Support Fund charge.

(3)(a) As of January 1, 2018, each provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit monthly charge of \$0.36 assessed on each: access line or connection with a place of primary use in the state of Utah.

(b) Place of primary use as used in this rule shall be:

(i) For an access line or connection provider that provides mobile telecommunications services, consistent with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq., the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:



(A) the residential street address or the primary business street address of the customer; and

(B) within the licensed service area of the home service provider; and

(ii) For all other access line or connection providers, the street address representative of where the end-user's use of the access line or connection primarily occurs which must be:

(A) the residential street address or the primary business street address of the end-user; or

(B) the end-user's registered location for 911 purposes.

(c) The Universal Public Telecommunications Service Support Fund charge shall be assessed by the Commission on the provider of each access line or connection identified in subsections 3(a) above that a provider has as of the last calendar day of each month.

(4) The Division shall develop the payment and reporting requirements for the providers which shall be approved by the Commission.

(a) In establishing the payment and reporting requirements, the Division shall establish a process for providers to exclude any access lines or connections that are being assessed a state universal service fund charge in another state from the Universal Public Telecommunications Service Support Fund charge.

(b) The requirements developed by the Division shall not conflict with applicable federal law.

(c) Included in the requirements developed by the Division shall be a reporting form which shall be used by providers.

(5) (a) A Provider shall remit to the Commission no less than 98.69 percent of its total monthly Universal Public Telecommunications Service Support Fund charge assessment on or before the 15<sup>th</sup> of each month.

(b) A Provider may retain a maximum of 1.31 percent of its total monthly Universal Public Telecommunications Service Support Fund charge assessment to offset the costs of administering this rule.

(6) A provider may, but is not required to, recover the Universal Public Telecommunications Service Support Fund charge from its end-users.

KEY: affordable base rate, public utilities, telecommunications,

universal service fund

Date of Enactment or Last Substantive Amendment: [~~October 24,~~  
2016]

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Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1;  
54-8b-15 [~~(8)~~]

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

I hereby certify that on the 2nd day of August, 2017, I caused a true and correct copy of the foregoing CENTURYLINK'S REPLY COMMENTS IN RESPONSE TO NOTICE OF RULEMAKING to be served upon the following persons via electronic mail at the e-mail addresses shown below.

**Public Service Commission:**

[psc@utah.gov](mailto:psc@utah.gov)

**Utah Division of Public Utilities:**

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Bill Duncan – [wduncan@utah.gov](mailto:wduncan@utah.gov)

Chris Parker – [chrisparker@utah.gov](mailto:chrisparker@utah.gov)

Erika Tedder – [etedder@utah.gov](mailto:etedder@utah.gov)

**Office of Consumer Service:**

Michele Beck – [mbeck@utah.gov](mailto:mbeck@utah.gov)

Cheryl Murray – [cmurray@utah.gov](mailto:cmurray@utah.gov)

**AT&T Companies**

Gary A. Dodge – [gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

**Utah Rural Telecom Association**

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**CTIA - The Wireless Association**

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