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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Utah Administrative Code ) Docket No. 17-R360-01  
R746-360 Universal Public )  
Telecommunications Service Support Fund ) JOINT REPLY COMMENTS OF  
) CENTURYLINK AND UTAH RURAL  
) TELECOM ASSOCIATION IN  
) RESPONSE TO THE UTAH PUBLIC  
) SERVICE COMMISSION’S REQUEST  
) FOR COMMENTS AND DRAFT RULE  
) LANGUAGE RELATED TO UUSF  
) ASSESSMENT OF PREPAID  
) WIRELESS AND NOTICE OF  
) PROPOSED RULEMAKING  
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Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Emery Telephone, Gunnison Telephone Company, Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications Inc. (dba Strata Networks), and Union Telephone Company, together with Qwest Corporation d/b/a CenturyLink QC and CenturyLink Communications, LLC (“CenturyLink”) hereby file these Joint Reply Comments in response to Commission’s

Request for Comments and Draft Rule Language: UUSF Assessment of Prepaid Wireless and Notice of Proposed Rulemaking.

## **I. PROCEDURAL HISTORY**

On May 15, 2017, the Utah Public Service Commission (“Commission”) issued a Notice of Proposed Rule Amendment for R746-360-4. After taking Comments on the proposed rule, including Comments filed by URTA and CenturyLink, among others, the Commission, on August 14, 2017, issued a Notice of Change to Proposed Rule and Response to Reply Comments (the “August 14 Notice”). In the August 14 Notice, the Commission proposed several changes to its initial rule, and issued a revised proposed rule R746-360-4 (“Proposed Rule”). In the Commission’s August 14 Notice, the Commission expressed some concern regarding application of the rule to prepaid wireless service, though the language of the Proposed Rule did not carve out or exempt prepaid wireless service. Comments on the Proposed Rule were due on October 2, 2017. URTA and CenturyLink both filed Comments related to the Proposed Rule on October 2, 2017, as did CTIA and AT&T. All of the Comments filed by all parties expressed concern that the Proposed Rule must apply to all access line and connection providers in order for the Proposed Rule to be compliant with the statutory mandate to be non-discriminatory.

Additionally, on September 5, 2017, in this same docket, the Commission issued a Request for Comments on three discrete issues regarding prepaid wireless service. URTA, CenturyLink, the Division of Public Utilities (the “Division”), and CTIA filed Comments on October 4, 2017 on prepaid wireless in response to the Commission’s September 5, 2017

Request for Comments.<sup>1</sup> The Commission has requested Reply Comments and Draft Rule language on or before October 17, 2017 to address whether the UUSF assessment of prepaid wireless should be addressed further by administrative rule, and if so, the Commission has requested draft language to effect UUSF assessment of any prepaid wireless service that is arguably excluded under the proposed per-access line funding rule. On October 11, 2017, after reviewing the Comments on the Proposed Rule, but prior to receiving the reply comments and draft language, the Commission issued a Notice that the Proposed Rule has been made effective (“October 11 Notice”).

## **II. URTA AND CENTURYLINK’S REPLY COMMENTS ON PREPAID WIRELESS**

As stated in their Comments filed on October 2, 2017 and October 4, 2017, both URTA and CenturyLink believe that the best way to proceed with the UUSF contribution is to assess the UUSF charge on *providers* of in-state telecommunications service that enable end users to access the public switched network, and permit such providers (but not require them) to pass the UUSF charge to customers if desired. URTA and CenturyLink believe assessing the providers is consistent with the language of Utah Code §54-8b-15, enacted by Senate Bill 130, and is logistically simpler as discussed at length in the previously filed Comments. Nevertheless, the Commission has determined that the UUSF charge should be assessed to end users and has made the Proposed Rule R746-360-4 effective as drafted. Therefore, these Joint Comments will focus on whether the UUSF assessment of prepaid wireless should be addressed further by administrative rule.

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<sup>1</sup> URTA, CenturyLink, and the Division specifically addressed the questions posed by the Commission’s September 5, 2017 Notice.

As the Commission is aware, the Proposed Rule as drafted provides that providers of access lines or connections are required to collect from their end-user customers \$0.36 per month per access line (and connection) that has a primary place of use with the State of Utah. As discussed in the Comments (including Reply Comments) of URTA, CenturyLink, and the Division, the language of the Proposed Rule mandates that the UUSF charge shall apply to all access lines or connections that permit access to the public switched network. The Proposed Rule does not contain an exception or exemption for prepaid wireless service or customers. Therefore, prepaid wireless customers are, rightly, subject to the Proposed Rule.

Previously, URTA and CenturyLink had indicated that no separate rule for prepaid wireless service is required. Prepaid wireless service, in fact prepaid telecommunications service of any type (wireless or wireline), is not a distinct form of telecommunications service. Rather, prepaid service is merely service that is paid for in advance by its end-users. Like the end-users of a landline, a prepaid wireless customer is able to make and receive calls to the public switched network. While URTA and CenturyLink still believe that the Proposed Rule as enacted already applies to prepaid wireless, on further consideration, there is additional language that should be added to the Proposed Rule related to prepaid service. The Proposed Rule should include language that identifies when prepaid service will be subject to the \$0.36 per access line per month UUSF charge. Because prepaid service is, by definition, purchased in advance, the Proposed Rule should state that only prepaid wireless service purchased after January 1, 2018 shall be subject to the UUSF charge of \$0.36 per month.

It is URTA and CenturyLink's understanding, based on conversation with the Division, that prepaid wireless providers and/or customers are currently paying UUSF based on in-state

retail revenues.<sup>2</sup> Therefore, prepaid wireless service purchased prior to January 1, 2018 will already have been assessed (and presumably paid) UUSF in some fashion. Therefore, URTA and CenturyLink propose the following language be added to R746-360-4:

*(3)(e) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall collect the \$0.36 UUSF charge per month per access line or connection from its end-users for such service (new access lines or connections, or recharges for existing access lines or connections) purchased on or after January 1, 2018.*

This language will ensure that end-users are not assessed the UUSF on the same prepaid service twice. By way of illustration, if, on December 15, 2017, a prepaid wireless end-user purchases a “top up” card that includes 300 minutes of use (this is a recharge service for an existing access line or connection), the provider of the prepaid service (and the end-user) have presumably paid UUSF charges on the in-state portion of that purchase under the existing statute and rules.

Therefore, even if the minutes are used in 2018 and 2019, the \$0.36 UUSF charge per month per access line will not be charged for this end-user’s access to the public switched network for these pre-purchased minutes. Rather, the per access line UUSF charge will only be required to be applied to prepaid services (new access lines or connection or recharges to existing access lines or connections) that are purchased on or after January 1, 2018, since no UUSF charge will have previously been paid on that purchase or service.

In addition to clarifying *how* the per access line UUSF charge will be applied to prepaid services, the language that URTA and CenturyLink propose will clarify *that* the per access line UUSF charge will unequivocally apply to any access line or connection as defined by the statute, whether prepaid or postpaid. As indicated in previously filed Comments, the Commission used

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<sup>2</sup> Prepaid providers, like landline and wireless providers, are currently required to contribute 1.65% of their in-state retail revenues to the UUSF.

language in its August 14 Notice that could imply that that the Proposed Rule may be interpreted by the Commission to not apply to prepaid wireless service/customers. However, as the Commission has acknowledged in its October 11 Notice, and as each stakeholder who has filed Comments has stated, Utah Code §54-8b-15 requires that the method of contribution determined by the Commission not discriminate against any access line or connection provider, or any technology used by any such provider.<sup>3</sup> The language proposed by URTA and CenturyLink will ensure that the Proposed Rule is intended to apply to all access line and connection providers (and their end-users). This proposed language will eliminate potential confusion related to this issue.

### **III. CONCLUSION**

URTA and CenturyLink urge the Commission to reconsider assessing the UUSF charge to providers, rather than end-users, and permitting, but not requiring, providers to pass the charge through to end-users in whatever way the provider may deem appropriate. Such a change would be an improvement to the assessment mechanism since, assessing the providers eliminates many of the logistical issues raised by the Commission and the stakeholders, and is very much consistent with both SB 130 and the federal rules.

Nevertheless, the Proposed Rule, which has been made effective, requires the UUSF charge to be collected from end-users. As drafted, the Proposed Rule does not exempt prepaid service. Rather the Proposed Rule, as drafted, applies to all providers of access lines or connections that enable an end-user to make or receive a call from the public switched network. No separate rule is needed to address the method of contribution of the UUSF

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<sup>3</sup> U.C.A. §54-8b-15(9).

charge for prepaid service. The Proposed Rule as drafted is technologically neutral and nondiscriminatory against any provider. However, to dispel any doubt that the Proposed Rule is applicable to all providers, and to give direction to prepaid providers, the Proposed Rule should include the language proposed by URTA and CenturyLink, and state that only prepaid service purchased on or after January 1, 2018 shall be assessed the \$0.36 per access line or connection per month UUSF charge.

Dated this 17<sup>th</sup> day of October, 2017.

BLACKBURN & STOLL, LC



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Dated this 17<sup>th</sup> day of October, 2017.

CENTURYLINK



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CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of October, 2017, I served a true and correct copy of URTA and CenturyLink's Joint Comments and Draft Language in Response to the Utah Public Service Commission's Request for Comments and Draft Rule Language Related to UUSF Assessment Of Prepaid Wireless And Notice Of Proposed Rulemaking in the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund, Docket No. 17-R360-01 via e-mail transmission to following persons at the e-mail addresses listed below:

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