GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: Public Service Commission

Division of Public Utilities

From: The Office of Consumer Services
Michele Beck
Cheryl Murray
Eric Orton

Date: November 30, 2012

Subject: Docket 12-999-10

In the Matter of the Consideration of Potential Changes in the Regulation of the Utah Universal Public Telecommunications Service Support Fund, in Response to Recent Changes in the Federal Universal Service Fund Program.

<u>Background</u>

On November 2, 2012 the Utah Public Service Commission (Commission) opened this docket in response to an inquiry from the Utah State Legislature to gather information on alternative options for legislative reform of the Utah Universal Public Telecommunications Service Support Fund (Fund). Information provided from interested parties will be considered by the Division of Public Utilities (Division) when it makes its recommendation to the Commission.

<u>Discussion</u>

The Utah Office of Consumer Services (Office) offers these comments to the Commission and the Division as outlined on pages 2 and 3 of the Commission's order.

Specific Commission Points of Examination

- Increase the Fund over time as necessary to offset corresponding decreases in federal USF support available for basic telephone service.

  The Office does not support increasing the fund over time for the purpose of offsetting decreases in federal USF support. In the FCC's November 18, 2011 order (Order), the reductions in federal USF support were not tied to offsetting increases by the State's Funds. This federal-to-state shift was not the intent of the Order.

- Increase the USF contribution base by including, for example, broadband providers.

  The Office is concerned that from the perspective of consumers, different types of providers from which they can purchase what appears to be the same services have different taxes and fees. The USF contribution base should be designed so that it does not set up any competitive advantage or disadvantage for any type of telecommunications provider. The Office recommends that additional information is necessary to understand to what extent different types of providers are currently contributing to the fund. However, the Office notes that if establishing equity results in increasing the size of the fund, we do not necessarily support a corresponding increase in the purposes of the Fund. Rather, the percentage adder should be decreased to the level necessary to fund current uses.

- Expand the telecommunication revenues to which the Fund surcharge applies, beyond intrastate telecommunications revenues.

  The Office has no comment on this issue beyond what is stated above.

- Limit the amount of Fund support available, e.g., using a sliding scale up to a capped amount of support per line.

  This option has considerable merit. It is basically the option the FCC chose which specifies a cap with the possibility of exceptions. The FCC's order makes clear that the current open-ended methodology is not working. The sliding scale concept brings an increased measure of accuracy based upon actual per-line need. However, such a methodology could introduce additional complexity, at least in the initial establishment of the formulas and details of the approach. Such tradeoffs would have to be considered.

- Restrict the types of service costs for which Fund support is available.

Currently the statute limits the use of the Fund to the support of basic telephone service. The Office is unclear what further restrictions may involve and does not advocate any change at this time.

- Establish eligibility for Fund support on the basis of total company revenues, including revenues of cable/wireless/internet affiliates.

The Office believes evaluating eligibility for Fund support on the basis of total company revenues has some merit, but also some challenges. A fundamental issue in evaluating eligibility is proper allocation of shared facilities that are used to provide both regulated and non-regulated services. Evaluating total company revenues would eliminate the cumbersome and contentious process of determining proper cost allocations. However, using total company revenues for eligibility may create disincentives for companies to continue to provide good, basic telephone service. Further, such a policy may simply create an incentive for corporate owners to pursue a different corporate structure to limit the revenues that can be evaluated.

The Office asserts that it should be a bedrock principle underlying eligibility for Fund support to verify proper allocation of costs to nonregulated services and/or companies using the same facilities as those used in providing telephone service seeking Fund support. Further, companies seeking Fund support should be required to demonstrate compliance with standard regulatory principles and generally accepted accounting practices. The Office supports an evaluation of whether using total company revenues advances these principles.

- Impute a set amount of revenue to each telephone corporation, representing the revenue potential of each of its lines, in determining Fund support eligibility.

The Office is not initially supportive of the idea of imputing revenue potential of each of a telephone corporation’s lines. First, imputing this type of unknown quantity would be challenging. For example, the capacity of fiber optic cable is effectively limitless. Further, it would seem to unduly punish providers for line loss, which seems contrary to the purpose of the Fund.

- Eliminate the Fund.

The Office is not at this time advocating the elimination of the Fund, but also does not believe that the high cost support provided by the Fund should be necessary in perpetuity. At some point, the facilities necessary to provide basic telephone service should be completely depreciated and maintenance should be covered by actual revenues. Technology upgrades should not necessarily be paid for out of public funds, but rather based on whether the market demand can support the costs. Thus, the Office believes it would be appropriate to consider a suitable phase out of the high cost support use of the Fund (over a certain number of years.) and recommends that it would be appropriate to evaluate the intended purpose.

The Office notes that the Lifeline uses of the Fund are ongoing in nature and advocates that the Fund remain in place for that purpose, even in the event that high cost support is phased out.

- Redirect the Fund to broadband support.

The Office does not support the use of the Fund for broadband support. One primary concern is that the Fund is regulated, whereas broadband service is not. The Office asserts that efforts to expand broadband within the state, while laudable, should be based on a different funding source.

- Other alternative responses as suggested by interested parties.

The Office is concerned that the Commission's request for comments did not mention the Lifeline uses of the Fund. The Office suggests that the Lifeline uses remain in place unless and until a separate and robust analysis of those issues takes place.

The Office has no additional responses at this time, except for the process comments below.

Process Issues

The Office recommends that the Commission should establish additional process details for this docket. The Office appreciates the opportunity for interested parties to provide comments up front to help shape the Division's report and recommendations within this docket.

However, the Office asserts that interested parties should also be allowed the opportunity to comment on the Division's report before it is finalized and submitted to the Governor and legislature. Some comments could be helpful to refining and clarifying the work of the Division, may be received favorably by the Division and lead to desired changes and improvements to the final work product. Other comments may be opposing or challenging the work of the Division and could be either summarized or attached to the report to give a complete picture regarding the extent to which the report reflects consensus or majority opinion.

Absent these process additions, the Commission would be doing a disservice to the public interest. Any report to our policy makers will be more valuable if it is vetted with stakeholders, refined and clarified, and presented in such a way that it provides context as to whether the positions are broadly held or somewhat controversial.