

Torry R. Somers
CenturyLink
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
torry.r.somers@centurylink.com

Attorney for CenturyLink

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 12-999-10 COMMENTS OF QWEST CORPORATION D/B/A CENTURYLINK QC
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The Utah Public Service Commission (“Commission”) opened this docket to investigate what potential changes may be needed to the Utah Universal Public Telecommunications Service Support Fund (“Utah USF”) in response to the FCC’s Transformation Order (the “FCC Order”),¹ and its subsequent clarification and reconsideration orders. The Utah USF is established pursuant to Section 54-8b-15 of the Utah Code and administered according to Commission rule R746-360. Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) understands that the Commission is particularly interested in the impact the FCC Order will have on the Utah USF - an interest shared by CenturyLink. On November 2, 2012, the Commission issued a Request for

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rate for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011).

Comments and Notice of Technical Conference (the “Notice”) requesting that interested parties file comments on or before November 30, 2012. The Commission has directed the Division of Public Utilities (“DPU”) to study and report on the need for possible changes in public utility regulations or laws pertaining to the Utah USF, arising from the FCC Order. The Commission identified specific issues in the Notice that it wants the DPU to address in its report. In order to assist the DPU in preparing its report, CenturyLink will address the specific issues identified in the Notice, as well as other issues related to the Utah USF.

The concept of universal service is far from outdated and will play a critical role in enabling positive outcomes for consumers in rural and high costs areas as we transition from a voice to a broadband communications platform. Utah Code 54-8b-15(6) states, in part, that the fund is designed to “preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service.”² CenturyLink believes that this is still an important goal of the Utah USF. However, CenturyLink is concerned that as the federal funding of universal service is reduced and focused on granular areas, some carriers may seek to utilize the Utah USF as a “make whole” mechanism, with the potential to drastically increase the size of the state fund, resulting in much higher contributions from CenturyLink’s customers. While CenturyLink supports the ongoing need for the Utah USF, CenturyLink does not believe that the Utah USF is a mechanism for ILECs to recover all revenues lost from federal high cost funding, and believes this issue needs to be further examined by the Commission or Legislature.

I. USF OVERVIEW

Current law requires, consistent with settled public policy, that the Utah USF should support access to affordable basic service for all Utah consumers. The Legislature has properly determined that consumers in high cost areas should not bear all of the costs to serve those areas,

² Utah Code 54-8b-15(6)(b).

and that it is also unsustainable for carriers to bear those costs. These considerations have not changed over time. In fact, targeted support of high cost basic local exchange service may be more important now than ever because of competition and regulatory change.

Historically, when telephone service was a monopoly, policymakers supported universal service through implicit subsidies. Rates for “in-town” customers, business customers, and intrastate switched access were set higher than their actual costs, and the Commission required local exchange providers to use the surplus from those customers to fund service at affordable rates to high cost “out-of-town” customers. More recently, competition has eroded the ability of local exchange providers to support high cost customers with implicit subsidies. Competition for business customers and in-town customers has driven prices towards costs, and has driven customers to other providers. Local exchange providers can no longer rely on surpluses from low-cost customers to implicitly fund service to high cost customers.

The FCC Order creates a sea change in federal universal service support, driving the need for targeted support to high cost voice customers in Utah. The FCC determined that due to limited USF resources, only a single provider per area would be supported. Additionally, after a transition period, federal universal service support will be directed only to high cost service areas, including a requirement to build broadband networks.³ While it is true that facilities built or upgraded to provide broadband service can also provide voice services, the FCC Order indicates that given limited funds, federal voice support will not reach all high cost areas.⁴ The Utah USF should be reformed to complement federal broadband support, targeting support for voice services in high cost areas.

³ *E.g.*, *FCC Order*, ¶ 11. Under the *FCC Order*, ETCs must still provide voice services in supported areas, but the support is intended to encourage investment in broadband networks, and not all areas will be supported.

⁴ *FCC Order*, ¶ 1225 *et seq.* (establishing Remote Areas fund).

CenturyLink embraces free market principles and where regulatory outcomes permit, will compete aggressively for customers needing voice, data, video, and hosting services. In areas where competition has not developed or competition has developed but the high costs to serve would still burden consumers, this market failure must be recognized by policymakers. Accordingly, CenturyLink calls on the Legislature and the Commission to create investment incentives that will allow rural consumers to purchase reasonably comparable services at reasonably comparable prices.

Economic shortfalls in the ability of providers to offer service in high cost areas requires active engagement by the state and a review of the social compact between carriers and customers. Policymakers should work with local providers to create adequate economic incentives to fulfill state universal service policy objectives, which may ultimately include broadband as well as voice. Forward-looking state USF plans like the Utah USF are vital for the welfare of consumers in high cost areas and should be recognized as a necessary element to achieve universal service policy objectives. However, this must be accomplished in a manner that does not put undue burdens on the Utah USF, and does not create a “make whole” mechanism for a carrier that has lost some or all of its federal USF support. Further, USF support must be consistent with regulatory obligations. CenturyLink has Carrier of Last Resort (“COLR”) and other regulatory obligations that arose when it was a monopoly telephone provider. If support shortfalls are not corrected, then regulatory burdens such as COLR obligations must be eliminated because (1) they represent unfunded mandates and (2) they would not allow consumers to benefit from equitable competition among providers. Universal service policy must not distort competitive equity; funding obligations should be borne fairly by all providers and universal service obligations should be consistent with funding received.

Broadband and voice networks have not yet completely converged. However, traditional federal high cost funding for voice services is being replaced with new mechanisms focused on broadband. The Connect America Fund Phase I (“CAF I”) is an interim funding mechanism targeted only to broadband deployment. Connect America Fund Phase II (“CAF II”) is not a new bucket of incremental funding – it partially replaces both existing USF high cost support and implicit subsidies, which will leave funding gaps in rural and other high cost areas. Federal USF is being transformed through CAF II to support the build out of broadband networks in limited qualifying areas. Once CAF II commences in 2013 or 2014, federal USF will require comparably priced voice and broadband services, but because of budget restrictions will only partially fund the build-out and maintenance for these networks. In the highest cost areas, (about 1.2 million US households⁵) all federal USF support will be applied to satellite broadband service, leaving no federal support for existing voice networks in these areas.

These changes require a change in mindset of state Commissions and Legislatures. Where the high costs to serve causes a burden on consumers, the state needs to determine whether or not it will support the goals of universal service. CAF II changes the FCC model to what is essentially a contract for service where the ILEC chooses whether or not to accept the support. If it accepts the funding, it provides written affirmation that it will accept all the requirements and obligations laid out by the FCC. If a state decides to support universal service goals, the state should investigate fulfilling this social compact through a similar contract for service model. The contract for service should be limited to targeted high cost areas, and only one provider (a landline provider) should be funded in each area.

The eligible areas and funding amounts should be determined on the basis of a forward-looking cost model, which must not discriminate based on provider size or the regulatory model

⁵ FCC Order, Paragraph 535.

utilized by that provider. Regulatory mechanisms such as COLR and service regulation must be eliminated in any area where an ILEC does not receive USF support. As previously set forth, CenturyLink believes it is appropriate to maintain the Utah USF to preserve and promote universal service within Utah. However, this must be done in a prudent and fair manner.

II. PRINCIPLES FOR DEVELOPING A REFORMED UTAH USF

A. CONSIDER NEW COST MODELS

An important first step in targeting support is to develop a new and updated forward looking cost model. The FCC is currently developing a cost model as part of CAF II to determine *broadband* support for high cost areas. Utah should develop and use a forward looking cost model that supplements and complements the FCC cost model; however the Utah USF cost model should focus on areas where there are gaps in funding *voice* service in targeted high cost areas.

The first principle for developing a reformed universal service support model is to effectively target support. Reforms should sufficiently support high cost areas, but ensure that only consumers living in truly high cost areas benefit from this support. The FCC has previously described the benefits of a forward looking cost model:

Consistent with the Joint Board's recommendation, we find that a cost methodology based on forward-looking economic cost should be used to calculate the cost of providing universal service for high cost areas because it best reflects the cost of providing service in a competitive market for local exchange telephone service. We believe that a cost methodology can be designed based upon such consistent assumptions as economic depreciation, forward-looking cost of capital, and forward-looking outside plant cost, including reasonable profits.⁶

⁶ FCC 97-157 Released May 8, 1997 CC Docket No. 96-45, Report and Order, Par. 26.

B. TARGET SUPPORT TO HIGH COST AREAS NOT SERVED BY UNSUBSIDIZED WIRELINE COMPETITORS

Support should not be provided in otherwise high cost areas where one or more unsubsidized wireline competitors are accountably committed to providing basic service. It is reasonable for the Commission to conclude that the presence of such competitors in a given area demonstrates that the costs of providing basic service are not likely to be greater than the revenues expected from that basic service. But the Commission must carefully determine what constitutes sufficient “presence” of an unsubsidized wireline competitor in a given high cost area before determining not to provide high cost support for that area. Support should not be withheld if a competitor serves only a portion of a high cost area, such as the city limits of an otherwise high cost exchange.

C. SUPPORT ONLY ONE NETWORK IN ANY SPECIFIC HIGH COST AREA

The Utah USF should be a universal service fund, not a competition fund. The Utah USF should be focused on supporting consumer access to affordable basic local exchange service, not on supporting particular businesses or companies. Funds are limited, and must be targeted to the fundamental purposes of universal support. Thus, the Utah USF should be used only to make sure that consumers have access to basic service in high cost areas, not to support a variety of alternative services. While access to Utah USF support should be competitively neutral, supporting more than one network in a high cost area is a luxury that limited funds cannot sustain.

D. ENSURE UTAH USF RECIPIENTS ARE ACCOUNTABLE

Accountability and transparency are important concepts that should accompany high cost support. Current rules require accountability for Utah USF funds, and should not be changed.

E. LINK UTAH USF SUPPORT DETERMINATIONS TO CARRIER OF LAST RESORT OBLIGATIONS

COLR obligations should apply in areas where a carrier receives Utah USF support, but not in any other areas. Importantly, however, a carrier that receives support should be obligated to serve any customer in supported high costs areas who requests service, consistent with approved tariffs or price plans. It is important for the Commission to understand that CenturyLink is not advocating for any additional regulation on any provider, whether by imposing COLR obligations or otherwise. To the contrary, CenturyLink is saying only that the Commission should provide support only if a provider guarantees that it is committed to providing affordable basic service throughout an area. Otherwise, customers in those areas could be left without support and without a provider to serve them, despite the provision of funding for the area – based on the unregulated economic decisions of unaccountable providers.

F. GREATER COMMISSION FLEXIBILITY IS NEEDED WITH RESPECT TO ONE-TIME DISTRIBUTIONS

In addition to ongoing draws to assist in covering existing investment in high cost areas which can be addressed in the cost model, the regulations should continue to permit one-time distributions from the Utah USF. One-time distributions should be used to help fund unserved and underserved areas by providing an aid to construction. Each project will be reviewed and approved by the Commission, thus ensuring support consistent with the policy objectives.

The statutes and rules currently permit one-time distributions. However, the current rules do not adequately provide for funding in certain truly high cost situations. Once statutory changes are made to the Utah USF, CenturyLink requests that the Commission revisit its rules with respect to one-time distributions. For example, the current \$10,000 per line cap does not allow for adequate or realistic support in some situations, such as where existing rural customers

are served by obsolete facilities that cannot be simply upgraded and would be very expensive to replace. The regulations should allow the Commission greater flexibility in providing one-time distributions.

III. COMMISSION IDENTIFIED ISSUES

A. CONCERN REGARDING INCREASING THE FUND OVER TIME TO OFFSET CORRESPONDING DECREASES IN FEDERAL USF SUPPORT AVAILABLE FOR BASIC TELEPHONE SERVICE:

As set forth above, CenturyLink supports the ongoing need for the Utah USF, but not as a “make whole” mechanism. A make whole approach is not sustainable and may result in a large increase in the state fund, placing a large burden upon providers and their customers who pay the Utah USF surcharge. However, there may be legitimate need for modest growth in the fund over time. If the appropriate cost model is adopted, as discussed above, this would protect against unsustainable growth in the fund, while at the same time providing targeted Utah USF support. In any model that is adopted, the cost to serve Utah customers by specific high cost area should be the driving factor in determining which providers qualify for support, rather than the size of the provider.

B. INCREASE THE USF CONTRIBUTION BASE BY INCLUDING, FOR EXAMPLE, BROADBAND PROVIDERS:

All providers should pay into the Utah USF in a competitively and technologically neutral manner. Currently the Utah USF provides ongoing support to several rural ILECs, whose facilities, for the most part, are capable of providing broadband services in addition to basic telephone service. The existing statute (54-8b-15) does not explicitly identify broadband services for support. As discussed herein, the Legislature and the Commission may want to transition the Utah USF over time to include support for broadband. If the Legislature

determines that Utah USF, like the federal USF, should support broadband services in high cost areas, in a similar fashion to basic telephone service, broadband providers should also pay into the fund.

It should be noted that CenturyLink currently does not receive ongoing federal or Utah USF high cost support, yet CenturyLink's customers contribute to the federal USF and the Utah USF. Even if a provider does not draw money from the Utah USF, like CenturyLink, does not mean they should not continue contributing to the fund. Rather, CenturyLink wants to ensure that competitors providing voice service pay into the fund in a competitively and technologically neutral manner. Thus, voice providers, including VoIP providers, should continue to contribute to the Utah USF.

C. EXPAND THE TELECOMMUNICATION REVENUES TO WHICH THE FUND SURCHARGE APPLIES, BEYOND INTRASTATE TELECOMMUNICATIONS REVENUES:

If the Utah USF is expanded to explicitly support broadband services in high cost areas in a similar fashion to basic telephone service, then broadband service providers should pay into the USF. As discussed above, all providers of voice and broadband services, including the technological equivalent of voice service, should pay into the fund in a competitively and technologically neutral manner.

D. LIMIT THE AMOUNT OF FUND SUPPORT AVAILABLE, E.G., USING A SLIDING SCALE UP TO A CAPPED AMOUNT OF SUPPORT PER LINE:

It is appropriate to cap the amount of per line support to ensure that extremely high cost areas are not overburdening customers and the fund. However, it is appropriate to give the Commission the flexibility to deviate from the caps under appropriate circumstances that are reviewed by the Commission on a case by case basis. As described above, with regard to one-

time distributions, the Commission may need to deviate from the cap on one-time distributions when it is justified.

E. RESTRICT THE TYPES OF SERVICE COSTS FOR WHICH FUND SUPPORT IS AVAILABLE:

Use of a forward-looking cost model can help ensure that Utah USF support is reasonable. Since the FCC is still reviewing the forward-looking cost model that will be utilized for CAF II broadband support, the Commission and Legislature may want to defer any detailed decisions on the cost model pending FCC action. However, even if the details of the cost model are not determined at this time, the Legislature should immediately give the Commission the ability to establish a cost model. CenturyLink reserves the right to comment on this issue in its reply comments.

F. ESTABLISH ELIGIBILITY FOR FUND SUPPORT ON THE BASIS OF TOTAL COMPANY REVENUES, INCLUDING REVENUES OF CABLE/WIRELESS/INTERNET AFFILIATES: IMPUTE A SET AMOUNT OF REVENUE TO EACH TELEPHONE CORPORATION, REPRESENTING THE REVENUE POTENTIAL OF EACH OF ITS LINES, IN DETERMINING FUND SUPPORT ELIGIBILITY:

As set forth above, a better alternative is to develop/use a forward-looking cost model that supplements and complements the FCC cost model to determine the needed level of support.

G. DO NOT ELIMINATE THE FUND:

As set forth in these comments there is still a need for the Utah USF. If Utah wants to continue to support universal service it is necessary to maintain a state fund to provide support in high cost areas. This is especially critical as federal USF support moves from voice to broadband. However, if the Utah USF is eliminated, or if a carrier does not receive high cost support in a particular area, carriers should be treated as any other unsubsidized service provider,

and should not be burdened with COLR obligations or pricing/service regulations. These obligations and regulations should only remain for high cost areas receiving support.

H. OVER TIME, THE FUND MAY BE REDIRECTED TO BROADBAND SUPPORT:

Voice and broadband service are continuing to converge to a single network. However, the Legislature and Commission's priority initially should be to make sure that gaps in voice funding are appropriately covered for the truly high cost areas. Ultimately, the Utah USF may need to include broadband. The Legislature should give the Commission the flexibility to transition the Utah USF to fully or partially support high cost broadband over time. However, an immediate change to a state broadband fund may lead to gaps in funding for voice service in truly high cost areas. Further, by giving the Commission the flexibility to transition to a broadband fund, it will permit the Commission to examine the results of CAF II before implementing changes at the state level.

I. ASSESSING THE SURCHARGE ON REVENUES OR ON CONNECTIONS:

Although not identified as an issue in its Request for Comments, the Commission and Legislature may want to evaluate whether the USF assessment should be based on revenues, as is currently the case, or based on connections. The Utah USF statutes should be flexible and provide the Commission with the ability to determine whether it is appropriate to continue to assess the USF surcharge on revenues, or whether assessing it on connections is the best way to ensure that the USF is being funded in a technologically and competitively neutral manner.

IV. CONCLUSION

CenturyLink looks forward to continuing to work with the Commission and Legislature to develop Utah USF statutes and regulations that continue to meet the needs of Utah consumers.

The new framework must recognize the importance of universal service support, while at the same time appreciating the changes that have taken place in the communications market. As the convergence of voice and broadband networks continues, the fund must adapt, while protecting the availability of voice service in high cost areas. This framework must also make sure that the fund does not grow too large, placing an undue burden on all customers.

DATED this 30th day of November, 2012.

CENTURYLINK



Torry R. Somers
Associate General Counsel
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
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