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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 Verizon in Response to Request for Comments**

Pursuant to the Public Service Commission's ("PSC's") Request for Comments issued November 2, 2012, Verizon[1] addresses actions Utah might undertake in light of significant changes that have occurred in the telecommunications market and regulatory policy, including comprehensive reforms of federal universal service policies adopted by the Federal Communications Commission ("FCC") in the past year. The PSC opened this docket to obtain information to help it prepare recommendations to the legislature regarding possible options for reforming Utah's Universal Public Telecommunications Service Support Fund (the "Fund").

[1] The Verizon affiliates that are participating in these comments include MCI Communications Services, Inc., d/b/a Verizon Business Services LLC; MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services; Teleconnect Long Distance Services and Systems Company d/b/a Telecom*USA; TTI National, Inc.; Cellco Partnership d/b/a Verizon Wireless; Cellular, Inc. Financial Corporation d/b/a Verizon Wireless; Cellular Inc. Network Corporation d/b/a Verizon Wireless; Verizon Wireless Telecom Inc. d/b/a Verizon Wireless; Verizon Wireless (VAW) LLC d/b/a Verizon Wireless; and Wasatch Utah RSA No. 2 Limited Partnership d/b/a Verizon Wireless.

The Verizon companies participating herein are required to collect Fund surcharges from their customers and remit those surcharges to the Fund, but none of these companies receive any funding from the program. Because Verizon's customers must subsidize the business of other providers, Verizon has a strong interest in how the Fund is structured and ensuring that it is used only to the extent necessary to satisfy legitimate public needs and in a manner that is consistent with federal universal service policies. The comments below address most of the topics that the PSC listed for consideration.

I. The Fund Should be Eliminated or at Least Substantially Reduced

In 1997, the legislature directed the PSC to establish a fund to "preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service." Utah Code Ann. § 54-8b-15(6)(b). Fifteen years later, that goal has been achieved, as basic telephone service is available to consumers throughout Utah at reasonable and affordable rates. Extensive intermodal competition has developed in the intervening years without Fund support and will continue to ensure that basic telephone service is available to Utah consumers at affordable rates. Because the original purpose of the Fund has been met, the program is no longer necessary and should be eliminated or at least substantially reduced. A re-examination of the Fund is also appropriate (indeed, required by statute) to ensure that any remaining program in Utah reflects the comprehensive reforms of universal service policy adopted on a national level by the FCC. *See* Utah Code Ann. § 54-8b-15(4). Among other things, this means that the Fund should not be used to provide support in areas that the FCC determines do not warrant support, or to carriers that maintain artificially low rates for retail voice services.

A. Increased Competition and New Technologies Have Fundamentally Changed the Telecommunications Market in Utah Since the Fund Was Established

The telecommunications market has changed radically since the Fund was created and implemented in a manner largely designed to support legacy analog voice wireline telephone networks. The state's universal service policies must be re-examined in light of numerous developments over the past 15 years – including shifts in consumer preferences, the rapid rise of competition, technical innovation and the proliferation of intermodal service providers – that have dramatically changed the communications landscape in Utah. The widespread and growing availability of wireless, Voice over Internet Protocol ("VoIP") and broadband services has resulted in greater choice and lower rates for consumers. This robust intermodal competition has helped ensure that affordable basic telephone service is available throughout the state -- thereby fulfilling the purpose of the Fund. Given the manner in which consumers choose to obtain and use telecommunications services today, use of the Fund to underwrite the operation of traditional analog wireline networks is unwarranted and counterproductive. Because the competitive market has developed with virtually no financial support from the Fund, perpetuating the Fund is not necessary to ensure that Utah consumers have access to affordable voice service.

The Fund was established in an era when basic telephone service was provided almost exclusively by a group of incumbent wireline telephone companies operating traditional copper networks. This is evident from the PSC's "First Biannual Report" on "The State of the Telecommunications Industry in Utah," prepared during the first year of the Fund's existence.[2] The PSC reported that only seven competitive local exchange carriers ("CLECs") were providing

[2] "The State of the Telecommunications Industry in Utah, First Biannual Report to the Governor, Legislature, the Public Utilities and Technology Committee, and the Information Technology Commission by the Public Service Commission of Utah" ("*1998 State of Competition*") (October 21, 1998).

local telephone service in 1998, all in US West's (now CenturyLink's) territory.[3] The CLECs were primarily serving business customers, with resellers of local service having entered the residential market only "on a very limited basis."[4] At the time, CLECs had approximately 18,000 access lines, while US West controlled more than one million, or 98 percent, of the access lines in its territory and more than 95 percent of the lines statewide.[5] Cable telephony and VoIP services did not yet exist. The PSC's report also minimized the role of wireless service, characterizing it as "an imperfect substitute for traditional wireline service," and asserting that "most customers do not consider it a direct competitor to traditional wireline service."[6]

That environment is long gone, replaced by a vibrant competitive market in which consumers have numerous choices of communications services and technologies. Over the past 15 years, numerous service providers have entered the market and radically changed the competitive landscape. By the middle of 2011, there were at least 77 non-ILEC service providers, including more than 60 providers of VoIP services, plus 12 facilities-based mobile telephone carriers, operating in Utah.[7] In addition, 39 percent of the landline switched access lines in Utah were provided by companies other than an incumbent LEC, and more than half of those were provided using VoIP.[8] As competitors have offered consumers increased choices, the

[3] *Id.* at 8.

[4] *Id.*

[5] *Id.* at 8-10.

[6] *Id.* at 8.

[7] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2011* ("*2011 Local Competition Report*") (June 2012), Tables 17 and 18.

[8] *2011 Local Competition Report*, Tables 9 and 15. By the middle of last year, CLECs were offering VoIP service to 201,000 customers and providing a total of 372,000 switched access lines in Utah, while the ILECs had a combined total of 586,000 switched access lines.

number of access lines that traditional ILECs serve has declined by almost half (48 percent) since 1998.[9]

Cable telephony and other VoIP services, which did not even exist in 1998, have flourished in recent years. More than 20 percent of the lines statewide are now provided using VoIP.[10] Moreover, cable telephony services are available to 94 percent of households in Utah that have access to cable TV service.[11] This is similar to the nationwide trend, in which the number of cable telephone subscribers more than quadrupled, from 5.9 to 25.3 million, between 2005 and 2011.[12] In addition to cable VoIP, other VoIP services are also being offered at attractive prices by other innovators, including Vonage, Skype and Google. For example, Skype users can take advantage of unlimited calling in the United States and Canada for only $2.99 per month, while Vonage offers unlimited local and long distance calling in the U.S., Canada and Puerto Rico for only $24.99 a month (following an even lower-priced three-month trial period).

Even more dramatic, as of June 2011, there were more than *twice* as many wireless subscribers in Utah as there were wireline switched access lines in service (2,276,000 vs. 959,000).[13] In fact, there were *3.9 times more* wireless phones than the number of local loops provided by ILECs (586,000).[14] Looked at another way, 70 percent of the 3.23 million voice "lines" in Utah are wireless. Moreover, wireless coverage is pervasive. According to the National Telecommunications & Information Administration's ("NTIA's") National Broadband

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[9] *Compare 1998 State of Competition*, Tables 2 and 3 *with 2011 Local Competition Report*, Tables 9 and 14.

[10] *See* note 8, *supra*.

[11] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of June 30, 2011* ("*Internet Access Services, 2011*") (June 2012), Table 24.

[12] National Cable & Telecommunications Assn. website at http://www.ncta.com/Stats/CablePhoneSubscribers.aspx.

[13] *2011 Local Competition Report*, Tables 9 and 18.

[14] *Id.*

Map, at the end of 2011, 98 percent of Utah's population was served by at least three wireless providers of broadband service, higher than the national average of 93.9 percent; only one-tenth of one percent of the population lacked any wireless service.[15] The fact that wireless carriers are providing a competitive alternative in historically difficult to serve "high-cost" rural areas demonstrates that access to "basic telephone service" no longer depends on the availability of analog voice service over traditional copper networks.

The tremendous growth of wireless services has had the most notable impact on traditional telephone services. Wireless usage -- for both local and long distance communications -- has exploded and this trend will only continue. The United States Centers for Disease Control and Prevention ("CDC") found that as of December 2011, wireless phones were either the exclusive or predominant form of voice communication in *more than half* (51.8 percent) of Utah households. Thirty-seven percent of the households were wireless-only, and an additional 14.8 percent used wireless, rather than landline, telephones for most of their calls.[16] In comparison, only 8.6 percent of Utah households use landline phones exclusively.[17] And low-income individuals are even more likely than higher-income individuals to use wireless services exclusively, proving that wireless services are an effective, affordable alternative to traditional landline services at all income levels.[18] Not only is wireless displacing traditional voice services

[15] *See* http://www.broadbandmap.gov/summarize/state/Utah.

[16] Blumberg SJ, Luke JV, Ganesh N., *et al, Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2010 - 2011*, National Health Statistics Report No. 61, National Center for Health Statistics, Centers for Disease Control (October 12, 2012), at 8.

[17] *Id.*

[18] More than half of adults living in poverty (51.4 percent) and nearly 40 percent of those that live near the poverty level resided in wireless-only homes at the end of last year. Blumberg SJ, Luke JV, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2011*, National Center for Health Statistics, Centers for Disease Control (June 20, 2012), at 3.

at an increasing rate, but the trend of lower prices (including flat-rate "any distance" pricing)[19] and greater value (*e.g.*, more features and higher speeds) makes wireless services an especially affordable option for obtaining basic voice (and other) services.

B. The Competitive Market Has Ensured the Availability of Affordable Basic Voice Service, Rendering the Fund Obsolete

Since the Fund was established, a fundamental revolution has reshaped the way in which individuals communicate. Consumers no longer depend on plain old voice telephone services offered by traditional service providers to meet their communications needs. Instead, they use a mix of services, applications, and providers to meet their overall communications needs, often substituting text messages,[20] email, social network updates and Twitter feeds[21] for voice messages. And they communicate over a variety of networks, such as traditional wireline arrangements, cable company IP networks, analog and digital wireless networks, and broadband connections. Indeed, the growing usage of wireless services, devices and applications shows that consumers' communications needs are not as well facilitated by traditional wireline networks.

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[19] Voice revenue per wireless customer (a proxy for the prices customers pay) declined 30 percent between 2005 and 2010. Roger Entner, *What is the price of a megabyte of wireless data?*, FIERCE WIRELESS, April 13, 2011, http://www.fiercewireless.com/story/entner-what-price-megabyte-wireless-data/2011-04-13.

[20] In recent years, there has been explosive growth in text messaging as an alternative to voice conversations. According to CTIA-the Wireless Association, the number of text messages nationwide reached 2.27 trillion during the 12-month period ending June 30, 2012. *CTIA's Semi-Annual Wireless Industry Survey* (2012), at 7 of 10; available at http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics-_final.pdf). In fact, the number of text messages was virtually equal to the number of wireless conversation minutes during the same time period, whereas, only four years earlier, the number of text messages was only about one-quarter of the number of wireless conversation minutes of use.

[21] Social media and other new forms of communications are also rapidly displacing traditional telephonic voice conversations. For example, there were more than 31 million "tweets" sent on the recent Election Day, including as many as 327,452 tweets per minute when election results were broadcast. This is up markedly since 2007, when individuals tweeted only 5,000 times a day. It is also noteworthy that more than half of all the people in North America use Facebook, and that there are 425 million mobile users of the service. The average user spends 20 minutes a day on the Facebook site. *See, e.g.*, http://ansonalex.com/infographics/facebook-user-statistics-2012-infographic/.

The methods of communication continue to evolve as competition drives communications companies to meet the evolving desires of consumers through deployment of innovative technologies and services.

The technological and marketplace developments described above have helped ensure that the state's universal service goals have been met. As of July 2011, 95.8 percent of Utah households had telephone service (either fixed or mobile), which is above the national average.[22] Additionally, telephone services are far more affordable than they were 12 years ago. Not only have the prices of wireless service declined substantially, but VoIP and other intermodal competitors are also providing voice services at attractive rates; indeed, these companies could not succeed if they did not offer consumers competitive prices.

A "universal service" program that is predicated on supporting legacy wireline services no longer makes sense given the strikingly different market conditions that exist today. Because Utah's consumers have access to affordable telephone service through various technologies and service providers -- that have developed without relying on Fund support -- there is no need to require consumers to continue subsidizing one class of service providers, nor is it reasonable to base support on the costs of one specific technology. Accordingly, the Fund should be eliminated, or at least dramatically restructured and reduced to focus only on those rare situations in which support might still be justified to ensure that *consumers* have access to basic voice service at affordable rates.

[22] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Telephone Subscribership in the United States* (December 2011), Table 2.

C. The Fund Should be Reduced and Revised Consistent with the Broad Universal Service Reforms Adopted by the FCC

The Fund also needs to be reassessed given the new national framework for universal service adopted by the FCC in November 2011.[23] According to the FCC, significant reforms were necessary because the existing programs were "based on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape."[24] The FCC found that existing policies were "outdated" and "ill-equipped" to address the modern telecommunications world in which consumers have access to and increasingly prefer to obtain voice services from a variety of providers, not just traditional narrowband, wireline system operators.[25] The agency also acknowledged that its rules were directing funds to recipients "in ways that may no longer make sense in today's marketplace[26] and that the current fund mechanisms did not ensure that carriers were using the funds in a prudent and efficient manner. Because the Fund in Utah has remained largely unchanged since its inception, the FCC's criticisms of longstanding federal universal service programs also apply to the situation in Utah.

The FCC was motivated by a desire to promote the growth of broadband services, and thus re-purposed traditional universal service programs to promote the universal availability of voice service over fixed and mobile networks that are capable of providing voice and broadband

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[23] *See Connect America Fund*, WC Docket No. 10-90, *et al*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), *petitions for review pending sub nom. Direct Communications Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[24] *USF/ICC Transformation Order*, ¶6.

[25] *Id.*, ¶¶6, 9.

[26] *Id.*, ¶¶6, 287.

services.[27] To accomplish these goals, the FCC established the Connect America Fund ("CAF"), which will ultimately replace all existing high-cost support mechanisms, and a Mobility Fund to promote mobile voice and broadband services in unserved areas. The FCC capped the amount of CAF funding at $4.5 billion annually, froze the amount of legacy high-cost support provided to price cap carriers (such as CenturyLink) pending the development of a new cost model, limited reimbursement for certain expenses, and established processes for phasing out or reducing certain high-cost programs over time. These changes are intended to rationalize and target federal support on a more granular level, by directing funds only to areas where subsidies are truly needed. In the long run, the FCC intends to rely on a competitive bidding system to choose the most efficient universal service providers and technologies.

The FCC's reforms were also designed to eliminate waste and inefficiency, improve incentives for rational investment and operation by recipients, and ensure better accountability.[28] By controlling the size of federal support programs, the FCC also aimed to provide support "that is sufficient but not excessive so as to not impose an excess burden on consumers and businesses who ultimately pay to support the Fund."[29] The FCC's reforms will be implemented over a transition period and some will require further implementation decisions, but three principles embodied in the FCC's decision warrant particular attention.

First, the FCC reforms are properly aimed at assuring and expanding service availability for *consumers*, and not at ensuring the continuing existence of support for particular carriers or business models.[30] Second, the FCC ruled that the CAF will not provide funding in areas where

[27] *Id.*, ¶¶1, 5, 17.

[28] *Id.*, ¶¶7, 11, 195, 286-289.

[29] *Id.*, ¶57.

[30] The FCC flatly rejected the concept that current recipients are entitled to continued support. "Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to

there is an unsubsidized competitor providing affordable voice and broadband service. Funding is to be directed instead to areas where providers would not deploy and maintain network facilities absent receipt of a subsidy. According to the FCC, providing universal service support in areas where another service provider that does not receive government subsidies is offering quality service "is an inefficient use of limited universal service funds."[31] If affordable service is already available through an unsubsidized provider, it is not necessary or desirable to subsidize another carrier's operation.

And third, the FCC sought to "ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates."[32] The FCC expects such carriers to recover more of their costs from their end user customers. The FCC explained that it is inappropriate to provide subsidies to carriers that are charging their customers local service rates that are lower than a prescribed benchmark level, to be set at "the national average of local rates plus such state regulated fees."[33] "Doing so places an undue burden on the Fund and consumers that pay into it."[34]

The rules governing the Fund in Utah are required to be consistent with the universal service policies adopted by the FCC. Utah Code Ann. § 54-8b-15(4). Accordingly, the Fund should be restructured so that it is not used to provide support in any area that the FCC has determined does not warrant subsidies. The FCC decided to eliminate funding in geographic areas where one or more unsubsidized competitors is already providing adequate service, and

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continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support." *Id.*, ¶293.

[31] *Id.*, ¶¶24, 27, 170, 280-281.

[32] *Id.*, ¶¶27, 197, 235-241.

[33] *Id.*, ¶238.

[34] *Id.*, ¶237.

Utah should adopt the same approach. Because unsubsidized competitors are operating in virtually all areas of the state, there will be, at most, only rare situations in which continued funding might be justified.

The FCC also emphasized that a carrier should not receive support from the universal service fund if the provider is charging unreasonably low (below-market rates) for local service and thus is not recovering a sufficient amount of its costs from its own end user retail customers. According to the FCC, providing subsidies to such carriers is unwarranted, and unfair to the customers of other carriers that are compelled to contribute the money used to subsidize the artificially low rates paid by other consumers. To ensure that the universal service program in Utah conforms to the new national guidelines, the Commission should incorporate these same principles in its administration of the Fund. This may involve a re-examination of the Affordable Basic Rate (*see* Utah Admin. Code R746-360.2.A, and a requirement that Fund recipients increase their local service rates to more reasonable levels.

Just as the FCC has sought to modernize the approach to universal service and implemented meaningful reforms on a nationwide basis, the Commission can best achieve Utah's universal service policy goals by harmonizing its efforts and policies with those of the FCC. Indeed, as the FCC's comprehensive solution for universal service reform is implemented and as competitors continue to expand the availability of voice services in Utah, it is clear that the Fund will no longer be needed.

II. Fund Support Should be Limited

As explained above, there is no continuing need for the Fund, given changes in consumer preferences, technology, and markets. However, if the Fund is maintained, any funding should be limited, consistent with the FCC's recent policy reforms. Support should be provided only in

geographic areas where no unsubsidized competitor is already providing service. In a multi-provider market, any area served by an unsubsidized provider should be assumed to be an area that can be served economically, *i.e.*, where rates cover the cost of providing service. Where one or more service providers has entered the market without reliance on government subsidies, the purpose of the Fund has been accomplished -- consumers have access to voice service at reasonable and affordable rates, and there is no need to subsidize any provider. The FCC made these points clearly in its *USF/ICC Transformation Order*:

> We now adopt a rule to eliminate universal service support where an unsubsidized competitor – or a combination of unsubsidized competitors – offers voice and broadband service throughout an incumbent carrier's study area, and seek comment on a process to reduce support where such an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area. Providing universal service support in areas of the country where another voice and broadband provider is offering high-quality service without government assistance is an inefficient use of limited universal service funds. We agree with commenters that "USF support should be directed to areas where providers would not deploy and maintain network facilities absent a USF subsidy, and not in areas where unsubsidized facilities-based providers already are competing for customers." For this reason, we exclude from the CAF areas that are overlapped by an unsubsidized competitor (*see infra* Section VII.C). Likewise, we do not intend to continue to provide current levels of high-cost support to rate-of-return companies where there is overlap with one or more unsubsidized competitors.[35]

Supporting a single legacy provider also violates the statutory requirement that the Fund be operated in a "nondiscriminatory and competitively and technologically neutral" manner and that it not provide a competitive advantage upon any entity. Utah Code Ann. § 54-8b-15(5).

To implement this policy, the Commission should establish a rebuttable presumption that, except in areas the FCC has found to be "unserved," an unsubsidized competitor is providing service in all areas that currently receive Fund support. To continue obtaining a subsidy from the

[35] *USF/ICC Transformation Order*, ¶281 (footnotes omitted).

Fund, a recipient would have to rebut the presumption by showing that, in fact, there is not an unsubsidized competitor in the area in which it seeks money from the Fund.

A carrier should also not receive support from the Fund if it is charging unreasonably low (below-market rates) for local service. As the FCC concluded in the *USF/ICC Transformation Order*, it is inequitable to require consumers to subsidize another service provider's decision to charge its customers rates that "are not minimally reasonable."[36] In addition to being unfair, subsidizing artificially low retail rates causes an unwarranted drain on the resources of the Fund and requires the program to be much larger than it otherwise should be. Accordingly, the Commission should require such carriers to recover more of their costs from their own customers by raising local rates to a more reasonable level (that the Commission needs to establish) before seeking support from the Fund.

III. The Commission Should Impute a Reasonable Amount of Revenue to Each Telephone Corporation, Representing the Revenue Potential of Each of its Lines, in Determining the Level of Fund Support

As stated above, a carrier should not receive support from the Fund if it is charging unreasonably low local service rates, *i.e.*, rates below a new affordable rate benchmark that the Commission should establish. If a carrier chooses not to increase its retail rates to the benchmark, the Commission should impute the additional revenues that the carrier would obtain were it to price its services at the benchmark and subtract that amount from the level of support for which the carrier might otherwise be eligible. Not taking this step will unfairly compel the customers of other service providers to continue subsidizing the below-market rates that the recipient tries to perpetuate.

[36] *Id.*, ¶915.

IV. The Commission Should Not Burden the Customers of Broadband and Other New Technologies by Requiring Them to Contribute to the Fund

Because the Fund is no longer necessary to achieve the goal of ensuring universal voice service, the amount of money needed to finance the program should be dramatically reduced and, indeed, eliminated. Because the size of the Fund is not sustainable and any remaining surcharge will dwindle, it would be counterproductive to now expand the program to include new groups of contributors. The PSC should instead be endeavoring to phase down the program, rather than impose new obligations on other service providers and their customers.

Because the purpose of the Fund is to support only basic local exchange telephone service,[37] there is no logical basis or public interest rationale for requiring providers of new, innovative broadband services, and the customers that use them, to fund those legacy services and network providers. This is particularly so where there is no evidence that basic telephone service would otherwise be unavailable or unaffordable. Because the goal of the Fund (providing basic telephone service to all consumers at reasonable rates) has already been met, there is no reason to impose new burdens on additional service providers to fund a program of dubious benefit and that is about to be down-sized.

Broadband services and the customers that use them should not be subject to new fees solely to support traditional voice services and the historical analog voice business models of other local exchange companies. These new fees would deprive consumers of the benefit of competition by requiring them to continue to pay for the older technologies and services they are abandoning. This would be akin to taxing the purchasers of electric cars to generate subsidies used to reduce the price of diesel gasoline. Requiring new broadband services to collect and

[37] *See* Utah Code Ann. §§ 54-8b-15(1)(a) and (6)(b), R746-360-1.A, R746-360.2.C and R746-360-7.B (funds shall be used to support "primary residential line[s] in active service").

remit Fund surcharges would result in higher prices, discourage innovation and investment in Utah, and the jobs investment brings. At a time when investment is critical to energizing Utah's economy, imposing additional surcharges on new technologies would be exactly the wrong direction to take. Moreover, that approach would be contrary to the legislature's policy to "encourage new technologies" and "the development of competition" in Utah.[38] The PSC should not hamper the continued growth of broadband services by forcing them to contribute to a Fund designed to support basic voice services.

V. The Commission Should Not Expand the Telecommunication Revenues to Which the Fund Surcharge Applies

For the reasons stated above, the PSC should be moving to reduce the size of the Fund. Doing so will necessarily cause the amount of the surcharge, now set at one percent of retail revenues, to drop. It makes no sense to expand the revenue base on which the surcharge is assessed at a time when the surcharge and the amount of funds it generates are declining.

VI. The Commission Should Not Increase the Fund to Offset Decreases in Federal USF Support

The FCC did not contemplate that state funding mechanisms, like the Fund, would serve as a vehicle for replacing any monies subject to the federal reforms. Instead, the FCC's order provides several means through which carriers can recover reductions in traditional federal USF funding and intercarrier compensation revenues (from both interstate *and* intrastate services). Carriers are expected to first look to limited recovery from their own end users by increasing retail rates (subject to the residential rate ceiling). Additional support is available through CAF funding and a federal replacement access recovery charge ("ARC").[39] If a particular RLEC is negatively affected by the federal USF reforms, the FCC also established a waiver process

[38] Utah Code Ann. §§ 54-8b-1.1(3), (8) and (9).

[39] *USF/ICC Transformation Order*, ¶849.

through which a carrier can obtain an exemption from some or all of the reforms upon a showing of good cause.[40] By creating an integrated package of universal service and intercarrier compensation reforms, and establishing mechanisms that will provide carriers sufficient recovery for revenue reductions, the FCC concluded that "states will not be required to bear the burden of establishing and funding state recovery mechanisms" to compensate carriers for changes resulting from those reforms.[41] Accordingly, there is no reason to increase the Fund to offset any decreases in traditional federal USF support.

VII. The Commission Should Not Redirect the Fund to Broadband Support

The PSC should not attempt to transform the Fund into a program that supports broadband networks and services. State law limits use of the Fund to ensuring that customers have access to affordable "basic telephone service" and promoting cost recovery for "basic telephone service." Utah Code Ann. § 54-8b-15(6)(a) and (b). Thus, the Fund may not be repurposed or enlarged to support broadband.

The PSC (and legislature) should decline to establish a new broadband support program in Utah for other reasons, as well. The federal government is in the process of implementing various programs to stimulate broadband investment and deployment throughout the country, as part of the FCC's universal service fund reforms. These include the FCC's Connect America Fund Phase I, which has already begun, Connect America Fund Phase II, which is in the planning stages, the Mobility Fund, and the NTIA's Broadband Technology Opportunities Program and Broadband Initiative Program. It would be imprudent to create a new, state-level broadband program when these federal programs are newly underway and there has been no real opportunity to measure their effects in Utah. It is too early to know whether any new program

[40] *Id.,* ¶¶539-544.

[41] *Id.,* ¶795.

would be appropriate, or whether it might unnecessarily duplicate or conflict with plans being developed nationally.

It is also highly questionable whether there is even a need to subsidize broadband in Utah. There are currently 51 facility-based broadband providers in Utah, many of which are not traditional LECs.[42] The NTIA's National Broadband Map shows that as of December 31, 2011, 85 percent of Utah's population was served by two or more wireline broadband providers, and only 2.5 percent of the population lacked any wireline broadband service.[43] The same federal government report shows that 98 percent of Utah's population is served by at least three wireless providers of broadband service, which is higher than the national average of 93.9 percent.[44] As of June 30, 2011, these broadband providers were providing nearly 1.7 million high-speed (wireline and wireless) connections in Utah.[45] The number of cable modem high-speed connections in Utah alone rose by 43% from 2008 to mid-2011, to 303,000.[46] Service providers are deploying these advanced broadband capabilities to satisfy customer needs without universal service support, so there is no evidence that a new state-sponsored subsidy program is needed to further encourage such investment.

This does not mean that policy makers in Utah should do nothing. They can productively focus their energies on fostering public/private partnerships that can bring together interested state and local governments and motivated broadband providers to maximize access to the

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[42] *Internet Access Services, 2011*, *supra,* Table 23.

[43] *See* http://www.broadbandmap.gov/summarize/state/Utah.

[44] *Id.*

[45] *Internet Access Services, 2011*, Table 18.

[46] *Compare id. with* FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2008* (updated Sept. 2011), Table 17, and *2011 Local Competition Report*, Table 14.

benefits of broadband service,[47] and adopting tax and other financial incentives for broadband deployment to maximize the benefits of investment in the state.[48] These measures will help support broadband investment in Utah without imposing on consumers the costs associated with a new broadband capital investment program that may not even be needed in the wake of federal reforms and subsidies**.**

VIII. The Commission Should Re-evaluate its Use of Cost Studies to Determine Levels of Fund Support

It is not clear from the PSC's Request for Comments what the issue identified as "restrict the types of service costs for which Fund support is available" is intended to encompass. Nevertheless, it is apparent that the methods currently used to calculate the amount of distributions from the Fund[49] may no longer be appropriate. As the industry has evolved, most carriers are proceeding to deploy broadband and IP-based networks. Thus, it is questionable whether reliance on traditional approaches to calculating the "costs" of traditional wireline networks remains a viable approach for purposes of determining levels of support. Indeed, the FCC abandoned use of its longstanding cost model for purposes of determining future CAF support in the *USF/ICC Transformation Order*.

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[47] One such early effort was in Kentucky, where the non-governmental entity "ConnectKentucky" was charged with identifying broadband needs and identifying funding mechanisms to encourage development of broadband infrastructure, successfully increasing broadband availability from 60% to 90% in a short time. *See* ConnectKentucky Success Spurs Growth (available at http://www.connectkentucky.org/_documents/Press Release_Legg_True_Final.pdf). Other states, including Maine, Ohio and West Virginia have followed this model and developed similar programs.

[48] For example, the Wisconsin legislature enacted 2005 Wisconsin Act 279, which offered time-limited tax incentives to stimulate broadband deployment in underserved areas of the state. Such incentive programs help when capital expenditures are necessary to achieve desired outcomes.

[49] *See* R746-360.2.J, R746-360.7.C, and R746-360.8(A)(1).

To distribute future funding, the FCC will use a combination of competitive bidding and a new forward-looking model of the cost of constructing modern networks.[50] A competitive bidding process would "ensure the most efficient and effective use of public resources,"[51] and also further the legislature's goal that Fund resources be distributed in a "competitively and technologically neutral" manner.[52] If, however, the PSC decides not to implement a competitive bidding process to determine the level of Fund support, it could establish a methodology patterned after the new costing approach that the FCC is currently developing for use in the permanent Connect America Fund. Either approach would maximize the value of the Fund's resources and benefit consumers in Utah.

Respectfully submitted,

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[50] *USF/ICC Transformation Order*, ¶¶156, 164-192, 195.

[51] *Id.* ¶165.

[52] Utah Code Ann. § 54-8b-15(5).

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