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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)	<u>DOCKET NO. 12-999-10</u>
Utah Universal Public Telecommunications)	Reply Comments of Verizon
Service Support Fund, in Response to)	
Recent Changes in the Federal Universal)	
Service Fund Program)	

Verizon¹ hereby submits these reply comments in connection with the Commission’s review of Utah’s Universal Public Telecommunications Service Support Fund (the “Fund”).

In its opening comments, Verizon described the extensive intermodal competition that has developed since the Fund was established, enabling consumers throughout Utah to have access to basic telephone service at reasonable and affordable rates. Because the purpose of the Fund has been achieved, Verizon explained that the program is no longer necessary and can be eliminated or at least substantially reduced. Importantly, no other party supported enlarging or increasing the scope of the program at this time. For example, AT&T recommended that “no

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.

legislative changes or regulatory changes expanding the Fund’s uses or assessment” should be considered at this time. Comments of the AT&T Companies at 1-2. In response to the Commission’s question of whether the Fund should be re-directed to support broadband networks and services, no party supported such an undertaking, especially now. AT&T emphasized that it does “not advocate state USF support for broadband.” *Id.* at 2. Both AT&T and the Utah Rural Telecom Assn. (“URTA”) recommended that the state refrain from taking any action with respect to broadband until more is known about the success of federal programs in driving broadband availability and until after the FCC has finalized reforms to the federal USF program and specifically determines how broadband will be funded at the federal level. *Id.*; Comments of URTA at 19, 32, 35. CenturyLink suggested that “*ultimately*, the Utah USF may need to include broadband,” but it did not recommend such action now. Instead, it stated that the Commission’s initial priority should be to make sure that gaps in funding for voice service in truly high cost areas are appropriately addressed. Comments of Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) at 12. The parties also acknowledged the importance of coordinating efforts to reform the Fund here with the policy changes and reforms being implemented by the FCC on a national level. URTA at 31; CenturyLink at 3. Although there was broad consensus on these key issues, the parties’ comments also reflect some disagreement and different perspectives on other issues. Verizon’s reply comments focus on those other issues.

I. The Commission Must Recognize the Important Role That Wireless and Other Technologies and Services Play in Achieving Utah’s Universal Service Goals

Verizon provided specific data on the rapid growth and extensive availability of wireless, VoIP and other alternative services that are helping to make affordable voice service available to consumers throughout Utah. For example, Verizon showed that there are nearly four times more

wireless phones than ILEC-provided local wireline loops in the state, and that wireless phones are the exclusive or predominant form of voice communication in 51.8% of Utah households. Verizon Comments at 5-6. URTA, however, tried to minimize the importance of wireless communications in achieving the state's universal service policy goals. It claimed that wireless services "certainly complement wireline service" but "cannot substitute for the reliability and dependability" of traditional wireline service. URTA at 16. This is incorrect and, more important, misses the point. Indeed, CenturyLink recently emphasized this in a report it submitted to the Oregon Public Utility Commission:

Some parties have also argued that wireless service should not be considered to be a functionally equivalent substitute for wireline voice service because it is not *identical* to wireline service. They argue that since it is not identical, it is not *functionally equivalent* and should not be considered as a competitive substitute. However, wireless service does not need to be *identical* to wireline service in order for it to be *functionally equivalent* or serve as an *effective substitute* for wireline services that constrain CenturyLink QC's retail wireline prices. There will *always* be some differences between wireline and wireless service in terms of quality of transmission, data capability, mobility, ergonomics, etc. For example, a wireless phone will always have more mobility than a wireline phone, and handsets are likely to be smaller. This does not mean that they are not substitutes for voice services. ...

The bottom line is that wireless does not have to be identical to wireline service, nor does it have to be a substitute for all customers, in order for it to constrain CenturyLink QC's pricing of local exchange service. Wireless providers today are making functionally equivalent or substitute services readily available at competitive rates, terms and conditions.²

The data provided by Verizon demonstrate that most consumers in Utah do, in fact, view wireless service as a reliable, dependable and affordable replacement for traditional wireline service. If they did not, wireless services would not have achieved the significant level of penetration they have. It is consumers' actual purchasing decisions and usage habits that the Commission should consider in determining whether universal service is being achieved – *i.e.*,

² Qwest Corporation dba CenturyLink QC's Price Plan Performance Report, filed in Oregon PUC Docket UM-1354, November 13, 2012, at 13-14 (emphasis in original).

that consumers are obtaining voice service at reasonable rates. The reality is that consumers are relying on wireless technology and service providers to satisfy their voice communications needs regardless of whether those services may not have the identical technical characteristics and quality as traditional, copper-based wireline networks. Consumers presumably consider the technical characteristics of different technologies and services when making their purchasing decisions; the existence of such differences does not negate the fact that, *from the individual's perspective*, consumers in Utah have access to and can obtain voice service of sufficient quality for their communications needs through various means at reasonable and affordable rates.

“Universal service” requires the availability of quality service at reasonable rates, but there is no statutory mandate or public policy basis for insisting that universal service cannot be achieved by means other than over traditional wireline networks. The fact that the FCC and some other states have deemed wireless service providers (and, more recently satellite services) eligible for USF funding further undermines URTA’s suggestion that the existence of wireless services should be disregarded when evaluating the state’s success in achieving its universal service objective. In fact, as Verizon explained, that basic policy goal has been met, given that, as of July 2011, 95.8 percent of Utah households had telephone service, which is higher than the national average. Verizon Comments at 8.

The fact that wireless carriers have achieved the level of success described above *without* receiving subsidies from the Fund shows that it is not necessary to subsidize other service providers where competition exists and that eliminating the Fund will not imperil anyone. In fact, the Colorado Public Utilities Commission decided earlier this month to eliminate support from the state’s high cost fund in areas that are classified as an “effective competition area” (or

ECA), which Colorado defines as an exchange in which multiple facilities-based providers (including wireless carriers) are providing basic service.³

II. State Law Requires the Universal Service Program to be Nondiscriminatory and Competitively and Technologically Neutral

When it authorized the creation of the Fund, the legislature mandated that it be operated in a “nondiscriminatory and *competitively and technologically neutral*” manner, “neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.” Utah Code Ann. § 54-8b-15(5) (emphasis added). URITA’s comments overlook these key principles. Its dismissal of the role of wireless services in meeting the state’s universal service goals is one example of this. Targeting funding only to legacy wireline companies affords those carriers a competitive advantage over unsubsidized competitors that are also providing voice services in the same geographic areas. Verizon does not advocate extending funding to more companies in order to promote competitive “fairness,” rather, its position is that Utah consumers should not be compelled to provide funding in areas where consumers already have access to affordable voice services, regardless of the technology used to provide them.⁴ Verizon’s position is aligned with the purpose of the Fund (that it be used only where needed to make quality voice service available at

³ *In the Matter of the Proposed Rules Regulating Telecommunications Providers, Services, and Products*, 4 Code of Colorado Regulations 723-2, Order Adopting Rules, Decision No. C12-1442 (December 17, 2012), at ¶¶ 23-27, 48-49, 59-71. Under the new Colorado rules, a carrier’s high cost support will be eliminated in any ETC unless it files an application that includes sufficient cost support information demonstrating that it still requires funding to recover its costs. *Id.* at ¶¶ 71, 75-80.

⁴ CenturyLink argues that Fund support should not be provided in high cost areas where one or more unsubsidized wireline competitors are committed to providing basic service. According to CenturyLink, “[i]t is reasonable for the Commission to conclude that the presence of such competition in a given area demonstrates that the cost of providing basic service are not likely to be greater than the revenues expected from that basic service.” CenturyLink at 7. The principle it espouses is consistent with the FCC’s policy to eliminate funding in areas served by an unsubsidized competitor, however, by focusing only on the existence of wireline carriers and disregarding the presence of wireless providers, CenturyLink ignores the requirement of Utah state law that the fund operate on a competitively and technologically neutral basis.

reasonable rates), and with the policy that any state program must be competitively and technologically neutral.

URTA also asserts that “[t]he ultimate goal of Utah universal service policy should be to provide adequate incentives for investment so that every residence, business and government location has access to fiber optic cable infrastructure and the services that can be provided over fiber optic cables.” URTA at 6, 17. This focus on a particular technology is misplaced.⁵ The goal of the program is “to make available high-quality, universal telecommunications *services* at just and reasonable rates.” Utah Code Ann. § 54-8b-11 (emphasis added). The Fund is not intended to promote one specific technology over others.⁶ Indeed, emphasizing a single technological approach or network architecture is contrary to the mandate that the fund be operated in a “competitively and technologically neutral” manner. It is also inconsistent with the legislative policy that the state “encourage new technologies” and competition through the deployment of multiple “networks.” Utah Code Ann. § 54-8b-1.1(3), (5), (8) and (9).

III. All Recipients of Fund Support Should be Required to Demonstrate a Specific Need for Funding

Although URTA spends considerable time discussing rate-of-return regulation (URTA at 10-16), the type of economic regulation that governs particular service providers is not central to the discussion of whether the state’s universal service goals are being met. Carriers eligible for universal service funding under the FCC’s traditional programs include, for example, local exchange carriers that are subject to rate-of-return and price cap regulation, wireless entities that

⁵ Moreover, other technologies are, in fact, capable of providing many of the services that can be provided over fiber optic cables.

⁶ Nor, as explained above, should the Fund favor one type of service provider over another. Thus, URTA’s concern that changes in the Fund might “weaken the ability” of certain carriers to improve or provide service (URTA at 35) is misplaced, particularly in areas where consumers have access to affordable, reasonably priced voice services from unsubsidized service providers, and the purpose of the universal service program is being satisfied.

are not subject to any rate regulation at all, and CLECs, which are subject to different forms of relaxed regulation depending on the state. Thus, while the type of regulation is not particularly relevant (and, if it were, it would raise a question of whether the funding mechanism is “competitively neutral”), Verizon does agree with URTA that recipients of Fund support should be “required to demonstrate their financial need before support is disbursed.” URTA at 10.

This is consistent with policies being pursued in other states in the wake of the FCC’s substantial reform efforts. For example, regulatory commissions in Texas, Maine and Colorado recently announced their intent to have carriers demonstrate a need for continuing support from the state fund by providing sufficient cost data.⁷ Utah should do likewise. Verizon also explained previously that a carrier cannot establish a “need” for funding if it is charging unreasonably low rates for local service. Instead, the carrier should first look to its own end users for cost recovery before turning to a fund that is subsidized by all other consumers in the state. Verizon at 14.

IV. The Fund Should Not Be Used to Offset the Results of Changes in Federal Universal Service and Intercarrier Compensation Policies.

URTA discusses the evolution of the FCC’s universal service policies over several decades, culminating in its November 2011 *USF/ICC Transformation Order*. URTA at 19-31. As URTA explains, in 2011, the FCC concluded that existing USF mechanism were “ill-equipped” and irrelevant, and it took meaningful steps to close loopholes in the federal USF in order to eliminate waste, fraud and abuse, and to increase accountability. *Id.* at 25. URTA makes a number of general statements about the concerns of rural carriers, and the effects and obligations imposed by, the new federal policies, but does not provide any specific details about

⁷ September 13, 2012 Open Meeting Agenda Item 3, Projects Relating to the Texas Universal Service Fund, Memorandum (Public Utility Commission of Texas, Sept. 6, 2012); *Inquiry into Telecommunications Regulatory Reform Plan*, Draft Report (Maine Public Utilities Commission, Nov. 28, 2012) at 12-13; Colorado PUC Decision No. C12-1442, *supra*, note 3, at ¶¶ 71, 75-80.

any specific potential impacts on individual carriers or consumers in Utah. Absent such specifics, the Commission has no basis on which to draw any reliable conclusions about the actual changes that will occur in Utah over time as a result of last year's FCC decision.

URTA claims that “[i]t is consistent with federal and state universal service policy to have the state offset decreases in Federal USF caused by reform of the federal USF programs,” and that the state fund should “step in to fill the void.” URTA at 32. This is incorrect. To the contrary, 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 Connect America Funding and a federal replacement access recovery charge (“ARC”).⁸ The FCC also established a waiver process that is available to individual RLECs that are negatively affected by the federal USF reforms, through which a carrier can obtain an exemption from some or all of the reforms based on a showing of good cause.⁹ 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

⁸ *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), at ¶849.

⁹ *Id.*, ¶¶539-544.

compensate carriers for changes resulting from those reforms.¹⁰ Accordingly, there is no reason to increase the amount of support made available from the Utah Fund to offset any decreases in traditional federal USF support.

CenturyLink agrees. It explains that the Utah Fund is not a “make whole” mechanism for ILECs to recover all revenues lost from federal high cost funding. CenturyLink at 2, 4.

CenturyLink states further that 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. *Id.* at 9.

Because there is no legal or policy basis, let alone a demonstrated need, for converting the Utah Fund to a mechanism that compensates carriers for changes in regulatory policy occurring at the national level, the Commission should reject URTA’s suggestion that the Fund be used for that purpose.

V. The Contribution Base Should Not be Expanded to Include Broadband Providers or Providers of Voice over Internet Protocol (“VoIP”) Services

CenturyLink asserts that if the legislature decides to expand the Fund to support broadband services, then broadband providers should pay into the Fund. CenturyLink at 9-10. URTA and CenturyLink also suggest that the contribution base for the Fund should be expanded to include revenues from VoIP services. URTA at 33, CenturyLink at 10. It is telling, however, that neither party provides any cogent explanation for imposing this new obligation on VoIP providers or the customers of such services. The legal basis for doing so is also dubious, as even CenturyLink acknowledges (“the existing statute (54-8b-15) does not explicitly identify broadband services for support.”) CenturyLink at 9. The Commission also recently concluded

¹⁰ *Id.*, ¶795.

that VoIP services “are unquestionably interstate in nature,”¹¹ which likewise calls into question whether such services should be tapped to subsidize the purely local services of conventional local exchange carriers.

The Commission and legislature should reject these vague and unsubstantiated proposals for other reasons as well. There are no valid factual, legal or policy reasons for requiring providers of new, competitive VoIP or other broadband services to contribute to a “high cost support” fund that predominantly benefits incumbent wireline local exchange carriers that VoIP customers have abandoned. Doing so would force consumers that have chosen to use these advanced applications to pay higher, unwarranted charges, and also deter providers from investing to deploy and offer such services.

As Verizon has shown, the rapid growth of intermodal services has helped fulfill the state’s universal service objectives, which should allow for a substantial reduction, if not complete elimination, of the Fund. Because the level of funding should be significantly reduced, it would be counterproductive to expand the program now to include new groups of contributors. If anything, the Commission should be reducing the number of firms required to generate subsidy payments as the size of the fund shrinks. AT&T also agrees that the contribution base should not be expanded to include either new services or additional service providers. AT&T at 2.

There is no public policy rationale for requiring new innovative services and technologies, and the customers that use them, to help fund the historical business models of other telephone companies. Indeed, it would be antithetical to the legislative policy “to encourage the growth of the economy of the state through increased competition in the

¹¹ *In the Matter of the Request for Agency Action of Carbon/Emery Telcom, Inc., v. 8x8, Inc.*, Order of Dismissal for Lack of Jurisdiction, Docket No. 12-2302-01 (Nov. 27, 2012).

telecommunications industry”¹² to compel new and innovative services to shore up the legacy operations of traditional networks and service providers. Burdening VoIP services and their customers with unnecessary new fees would punish these consumers for choosing to use competitive services. Requiring these new services to contribute to the Fund would result in higher prices, and deprive consumers of the benefit of competition by requiring them to continue to pay for the older technologies and services they are abandoning. The new fees would also discourage other customers from adopting new innovative services that spur competition in the communications market. Such an approach would not be competitively neutral, as CenturyLink suggests.

Imposing new fees on VoIP services would deter investment and innovation, and undermine the legislature’s policies designed to encourage new technologies and competition and the deployment of an advanced telecommunications infrastructure. Utah Code Ann. § 54-8b-1.1 (5), (8) and (9). At a time when investment is critical to energizing Utah’s economy, imposing additional fees on new technologies would be exactly the wrong direction to take. The result would be fewer competitive options and fewer benefits for consumers. For all these reasons, the Commission should not hamper the continued growth of VoIP services by imposing new fees on the customers of those services.

VI. Conclusion

Verizon has demonstrated there is no continuing need for the Fund, given changes in consumer preferences, technology, and markets. If, nevertheless, the Fund is maintained, it should be modified to reflect the FCC’s recent policy reforms, and any funding should be limited and carefully targeted. In areas where one or more service providers has entered the market without reliance on government subsidies, the purpose of the Fund has been accomplished --

¹² Utah Code Ann. § 54-8b-1.1 (9).

consumers have access to voice service at reasonable and affordable rates, and there is no need to subsidize any provider. Thus, support should be provided only in geographic areas where no unsubsidized competitor is already providing service and a potential recipient demonstrates a need for such funding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December 2012, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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