

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Utah Universal Fund
Surcharge

Docket No. 16-R360-02

**REPLY COMMENTS OF CTIA
IN RESPONSE TO THE COMMISSION’S APRIL 13, 2016
REQUEST FOR COMMENTS**

I. INTRODUCTION

CTIA¹ appreciates the opportunity to offer reply comment in response to the Public Service Commission of Utah’s (“Commission’s”) April 13, 2016 Request for Comments (“RFC”) in the above-captioned proceeding examining changes to the Utah Universal Service Fund (“UUSF”). In its RFC, the Commission requested comment on two issues: “industry trends or other circumstances that might explain why the current [UUSF] surcharge is generating less revenue,” and “mechanisms to maintain funding of the UUSF ... contemplated to be effective by October 1, 2016.”²

The Utah Legislature tasked the Commission with creating a UUSF that is “nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive

¹ CTIA – The Wireless Association® is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association’s website at <http://www.ctia.org/about-us>.

² RFC, at 1.

disadvantage upon, any telecommunications provider operating in the state.”³ Despite the requirement of neutrality in collecting and distributing UUSF funds, and the fact that wireless consumers are the fund’s primary contributors, wireless carriers do not receive UUSF funding. As the Commission examines the current status of UUSF funding and considers future changes to the funding mechanism, it must not lose sight of the overarching principle that the UUSF be competitively and technologically neutral and nondiscriminatory. That principle must guide the Commission’s evaluation of the status of the fund and any changes it considers implementing.

Every party submitting comments in this proceeding has expressed at least some degree of uncertainty regarding the root causes of declining revenues in the UUSF. This lack of clarity emphasizes the need, as CTIA stated in its initial comments, for an unhurried investigation into the cause of declining UUSF revenues, within the boundaries of the Commission’s jurisdiction over contributors.

Some commenters noted the decline in wireless revenues remitted to the UUSF to subsidize wireline services. There are systemic factors that explain such declines. Such declines must also be noted in the larger context of the telecommunications landscape in Utah, which commenters correctly note has seen customers abandon wireline services *en masse*. A broad view of this landscape calls into question the UUSF program’s reliance on wireless consumers’ subsidization of the wireline service they have chosen to abandon. The Commission should consider that issue seriously as it continues to investigate the financial state of the UUSF.

With regard to the contribution methodology for the program, CTIA notes disagreement among commenters. While CTIA takes no stance on the appropriate contributions model for the

³ Utah Code §54-8b-15(5).

UUSF, the Commission should take into account forthcoming recommendations from the Federal Communications Commission's ("FCC's") Federal-State Universal Service Joint Board ("Joint Board") regarding contribution reforms to the federal USF before it commits to a contributions model. By waiting for these recommendations, the Commission can better align state and federal support to the benefit of the state's consumers.

II. INITIAL COMMENTS SHOW UNCERTAINTY REGARDING WHY REVENUES GENERATED BY SERVICES ASSESSED TO FUND THE UUSF ARE DECLINING

Based on the initial round of comments, there seems to be little certainty regarding why revenues generated by services assessed to fund the UUSF are declining. As a result, the Commission should not proceed with any adjustment to the surcharge until it has conducted a fuller investigation, within the boundaries of its jurisdiction over UUSF contributors, into the specific reasons for the decline.

Nearly all commenters, including CTIA, AT&T, the Utah Division of Public Utilities ("DPU"), and the Utah Rural Telecom Association ("URTA") noted a lack of data with regard to the declining revenues.⁴ This uncertainty reinforces CTIA's position, as stated in its initial comments, that a delay is warranted in this proceeding before consideration of any surcharge increase.⁵ CTIA is not the only commenter to take such a position. URTA also makes the same request, asking that "prior to implementing an increase in the UUSF surcharge," "the

⁴ Comments of the AT&T Companies, Docket No. 16-R360-02 (May 16, 2016) ("AT&T Comments") at 2 ("Not enough is known, perhaps, of the reasons for this decline"); Comments of Utah Rural Telecom Association on the Utah Universal Service Fund Surcharge, Docket No. 16-R360-02 (May 16, 2016) ("URTA Comments") at 9 ("URTA contends that more data is needed and the record needs to be more fully developed to support an increase in the UUSF surcharge or a change in contribution mechanism"); Comments of the Utah Division of Public Utilities, Docket No. 16-R360-02 (May 16, 2016) ("DPU Comments") at 1 ("The Division does not have a complete picture of all of the reasons for why the UUSF surcharge revenue is in decline").

⁵ CTIA Comments in Response to the Commission's April 13, 2016 Request for Comments, Docket No. 16-R360-02 (May 17, 2016) ("CTIA Comments") at 2.

Commission should require further investigation from the Division as to the specific reason for the decline”.⁶

While commenters offer mostly speculation with regard to the root causes of the overall decrease in contributions, initial comments do reveal some broader trends. Multiple commenters point to a decline in wireline revenues as a result of broad customer defection to wireless. For example, CenturyLink points out that its access lines have decreased 60% over the last ten years, while nearly half of American homes are now wireless-only for phone service.⁷ Despite the migration from wireline to wireless service, both CenturyLink and URTA note a decline in wireless revenues remitted to the Fund.⁸ While CTIA is unaware of the specific assessable revenues of its member companies, as a representative of the wireless industry as a whole, CTIA has noted multiple trends which could potentially contribute to the decrease in wireless revenues for the UUSF.

For one, CTIA agrees with URTA’s assertion that consumers have expressed a growing preference for data services over voice services.⁹ That preference has likely led to a decrease in voice revenues assessed for the UUSF. Additionally, due to competition, rates for wireless voice service have been steadily declining for years, and the decline in rates likely has resulted in decreased UUSF revenues as well.

Along these lines, many consumers view their options for communications as extending beyond facilities-based mobile providers to include a vast array of non-assessable services such

⁶ URTA Comments, at 6.

⁷ CenturyLink’s Comments, Docket No. 16-R360-02 (May 16, 2016) (“CenturyLink Comments”) at 2.

⁸ CenturyLink Comments, at 2; URTA Comments, at 4.

⁹ URTA Comments, at 4 (“URTA believes the decline in wireless revenues likely stems from a shift in wireless revenue from voice to data”).

as video-chat, messaging, and social media apps, many of which dwarf traditional providers in reach, customer base, consumer usage, popularity, and revenue. More than 50 million smartphone users in the U.S. now use a video calling application such as FaceTime, Skype, or Google Hangouts.¹⁰ Consumers have more options for over-the-top text-based communications and messaging apps like WhatsApp, Facebook Messenger, and Viber, and their use of those options has soared.¹¹ This phenomenon has led to dramatic shifts in the marketplace. For example, a recent study illustrated that the total messaging volume of a single app, WhatsApp, was 50 percent larger than the messaging volume of the entire carrier-based SMS market.¹² These trends have moved telecommunications further away from the traditional voice-centric model.

Additionally, wireless consumers have increasingly expressed a preference for alternative equipment financing models, including no-contract plans and equipment leases, which wireless providers have offered in response to the consumer demand that drives a highly competitive wireless marketplace. These models have led to increased decoupling of equipment revenues – which were not intended to be captured by the UUSF – from revenues for voice service. Under previously prevalent service plans, such as a two-year contract plan, the cost of equipment was

¹⁰ See Press Release, “Gartner Says More Than a Third of U.S. Adult Smartphone Users Use Their Smartphones for Video Calling,” (Nov. 24, 2014), <http://www.gartner.com/newsroom/id/2921317> (last accessed May 26, 2016).

¹¹ See, e.g., Bill Siwicki, *Should retailers prepare to go over the top?* Internet Retailer (Mar. 19, 2015), <https://www.internetretailer.com/2015/03/19/mobile-messaging-apps-research-mtv-mgage> (last accessed May 26, 2016).

¹² See Benedict Evans, *WhatsApp sails past SMS, but where does messaging go next?* (Jan. 11, 2015), <http://ben-evans.com/benedictevans/2015/1/11/whatsapp-sails-past-sms-but-where-does-messaging-go-next> (last accessed May 26, 2016); see also, Zaw Thiha Tun, *How WhatsApp Is Killing SMS Texting*, Investopedia (July 15, 2015), <http://www.investopedia.com/articles/investing/071515/how-whatsapp-killing-sms-texting.asp> (last accessed May 26, 2016) (“WhatsApp currently boasts more than 800 million active users. With numbers like these, it is no wonder that WhatsApp and other messaging services are largely responsible for the decline of traditional cell phone carrier-based SMS”).

embedded in recurring monthly service charges. This resulted in inflated wireless remittances to the UUSF, which could now be becoming more accurate as more consumers adopt voice plans that do not include an equipment component.

As the Commission determines the root causes of the decline in UUSF revenues, it should not lose sight of the appropriate goals for the UUSF program as a whole. As CTIA noted in its initial comments, the Commission should ensure that UUSF recipients are receiving no more funding than the minimum necessary to ensure universal service in Utah, that the impact of UUSF surcharges on Utah consumers¹³ is taken into account, and that the Commission account for and align the UUSF with federal universal service programs.¹⁴ Initial comments provide some insight into the broad picture of the telecommunications landscape in Utah and can be instructive to the Commission as it seeks to balance programmatic goals with potential changes it may consider. URTA's comments, for example, note that both wireless and wireline have seen revenue decreases in Utah,¹⁵ and CenturyLink highlights the large-scale abandonment of its customers to other competing services.¹⁶ The trend of consumers leaving wireline for wireless is consistent with what CTIA has seen nationwide, and, as previously noted, with Centers for Disease Control statistics on the issue.¹⁷

As it investigates the root causes of UUSF revenue decline, the Commission should not lose sight of these important facts: consumers have expressed an overwhelming preference for

¹³ Utah consumers already face the 12th-highest taxes and fees on wireless service among the fifty states and the District of Columbia, at a combined state and federal rate of 19.23%. *See* ACTWireless, "State Tax Rankings" (July 2015), available at <http://www.actwireless.org/taxes-and-fees/state-tax-rankings/>.

¹⁴ *See* CTIA Comments at 3 – 5.

¹⁵ *See* URTA Comments at 4, noting an 8% decrease for wireline revenues assessed by the fund and a 14% decrease for similar wireless revenues.

¹⁶ *See* fn. 5, *supra*.

¹⁷ *Id.*

wireless, but in spite of that preference, the UUSF does not fund wireless service even though wireless consumers contribute significantly to the Fund. In fact, wireless consumers supply *nearly two-thirds* of the overall revenues to support the UUSF – and over triple what Incumbent Local Exchange Carrier (“ILEC”) consumers provide.¹⁸

Those facts should move the Commission to consider carefully the UUSF’s overall goals and the appropriateness of subsidizing the competitive losses of wireline carriers on the backs of wireless consumers. As even CenturyLink notes, the Commission’s operation of the fund should be “competitively neutral and nondiscriminatory” and consistent with Utah Statute 54-8b-15(5),¹⁹ which requires that “operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.”²⁰

III. THE COMMISSION SHOULD CONSIDER COORDINATION BETWEEN FEDERAL AND STATE EFFORTS WITH REGARD TO CONTRIBUTIONS

Commenters took varying positions on the subject of contribution reform, although some also noted that due to the lack of data on UUSF revenue declines, it may be premature to consider an increase in the size of the fund or a change in the contribution methodology.²¹ While CTIA has no stance on the type of contribution mechanism the Commission should adopt at this

¹⁸ URTA Comments, at Exhibit A. Assessable wireless revenues in December 2015, the most recent data provided, were \$46,937,103 out of a total of \$71,235,170, or 65.8% of the total assessable UUSF revenues. ILEC revenues for that time period were only \$14,071,288.

¹⁹ CenturyLink Comments, at 4.

²⁰ Utah Stat. §54-8b-15(5) (emphasis added).

²¹ *See, e.g.*, URTA Comments at 9 (“more data is needed [...] to support an increase in the UUSF surcharge or a change in contribution mechanisms”).

time, it does believe that the Commission should conduct a comprehensive, data-driven analysis before acting.

With respect to contribution methodology in particular, the FCC's Joint Board is due to produce recommendations on contribution methodology in the near future that could have a significant impact on federal and state USF programs.²² Should the Commission make significant changes to its contribution methodology that changes to the federal program then render inadvisable, further adjustments could be required. This would create major inefficiencies for both the Commission and for companies attempting to maintain compliance, who could have to change their reporting systems multiple times depending on the outcome of the federal and state proceedings.

Further, the only commenter calling for prompt action on contribution reform at this time is CenturyLink,²³ which draws from the Fund. Its pecuniary interests, of course, are not necessarily aligned with the interests of ratepayers, consumers more broadly, or competition generally. No other commenter calls for a change in the mechanism on the aggressive timetable the Commission has set for action in this case, nor does any other commenter allege that any significant harm would result from maintaining the status quo until sufficient data can be collected regarding the financial status of the UUSF.

²² See Federal Communications Commission, Order, *In the Matter of Federal State Joint Board on Universal Service*, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51 (August 7, 2014), https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-116A1.pdf (last accessed May 26, 2016).

²³ See CenturyLink Comments, at 3.

As a result, CTIA believes that it is premature for the Commission to consider adjustments to the contribution mechanism at this time, both in light of the lack of data regarding revenues and the forthcoming recommendations from the Joint Board.

IV. CONCLUSION

The lack of clarity regarding the root causes behind UUSF revenue declines reinforces the need for the Commission to undertake a fuller investigation of the state of the UUSF, its underlying goals, and the UUSF's place in a telecommunications landscape that has seen wireless adoption steadily climb. By taking the time to gather more data before implementing any changes to the UUSF surcharge, the Commission can better serve the consumers who bear the burden of that surcharge, especially wireless consumers who are currently subsidizing the competitive losses of wireline programs through the UUSF fee.

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By: _____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2016, I served a true and correct copy of the Reply Comments of CTIA in Response to the Commission's April 13, 2016 Request for Commission via e-mail transmission to the Public Service Commission at psc@utah.gov.

_____/s/_____
Matthew DeTura