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April 25, 2018

Commissioner Paul Kjellander
Commissioner Kristine Raper
Commissioner Eric Anderson
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83720-0074
Email: secretary@puc.idaho.gov

RE: Reply Comments re. Position Statements Addressing Case No. GNR-T-17-05, Public Workshops re. Idaho Universal Service Fund, Order No. 33951

Dear Commissioners:

On behalf of the certificated AT&T Companies in Idaho, together with AT&T wireless providers, including AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, and Cricket Wireless, LLC (collectively, "AT&T" or the "AT&T Companies"), we respectfully submit this letter in response to the Idaho Public Utilities Commission ("Commission") request for reply comments responding to the position papers submitted on January 31, 2018 addressing the ongoing viability of the Idaho Universal Service Fund ("IUSF"), potential solutions and outcomes, and other issues outlined in the Commission's Notice of Public Workshops and Order No. 33951 dated December 21, 2017.

I. INTRODUCTION

The Commission has stated that the present state of the IUSF is unsustainable – the IUSF must either be retired or reformed significantly. If it is reformed, legislative action will be necessary. Some commenters also advocate funding the expansion of broadband internet access services with the IUSF. AT&T supports the objective of getting internet service to those who are unable to access it. However, internet access availability initiatives should not be funded by the IUSF. Rather, if the Legislature decides that the state should establish a funding mechanism to provide incentives for increased internet access availability for areas that lack it, the Legislature should establish a separate, stand-alone state internet access fund that uses a competitive process to award support to no more than a single provider to make available internet access per unserved area; and that program should be funded by appropriations from the Idaho general fund – not from the IUSF.

In any event, the Legislature should review, then reaffirm or modify, the goals of the IUSF; establish a firm and self-effectuating budget for the IUSF; and then determine whether a

change to the contribution base is necessary and, if so, ensure that any such change is non-discriminatory and comports with federal law. Until and unless legislative reform is achieved, the Commission should refrain from any significant changes to the IUSF.

II. BROADBAND INTERNET ACCESS SERVICES

A. Debate regarding IUSF reform should occur at the Legislature and not at the Commission.

While we appreciate the Commission initiating the discussion regarding potential IUSF reform, AT&T believes this discussion is more appropriately held at the Legislature and not at the Commission because the reform contemplated will require a re-evaluation of Idaho's goals for the IUSF – issues that are properly determined by the Legislature. Any debate or workshops should be held before and with the participation of the decision-makers who will ultimately determine the future of the IUSF, Idaho's Legislature.

B. If the Legislature determines that Idaho should establish a funding mechanism to support broadband internet access availability, AT&T recommends against using the IUSF to support such availability.

Funding broadband availability from the Idaho USF would be inherently inequitable. The FCC has preempted states from imposing state USF assessments upon fixed and mobile broadband internet access service.¹ Because Idaho cannot compel broadband internet access providers or services to contribute to the IUSF, using IUSF funds to support broadband internet access is simply unfair. Moreover, because telecommunications revenues are declining, the primary impetus for this entire proceeding, the telecommunications industry and its customers

¹ See *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling, Report & Order, & Order*, FCC 17-166 n.1477 (rel. Jan. 4, 2018) (“[W]e conclude that any state requirements to contribute to state universal service support mechanisms that might be imposed on . . . broadband Internet access services would be inconsistent with federal policy and therefore preempted by section 254(f). . . .”); see also Remarks of FCC Commissioner Michael O’Rielly Before the Hudson Institute (February 6, 2018), available at <https://www.fcc.gov/document/commissioner-orielly-remarks-hudson-institute> (last checked Feb. 13, 2018) (“FCC Commissioner O’Rielly Remarks, February 6, 2018”) (“Since 2015, the FCC has specifically preempted states from imposing state USF contributions on broadband. Additionally...the FCC has declared that broadband is an interstate information service....[T]here is no severable intrastate component for states to assess. Therefore, any state that proceeds down that path is acting in a manner that is inconsistent with our rules and is subject to a possible preemption order or other challenges....”).

The FCC thus reiterated its prior 2015 decision preempting states from imposing USF contributions on broadband internet access services. See *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, *Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd. 5601, 62 Communications Reg. (P&F) 1, FCC 15-24 (rel. Mar.12, 2015) (“*FCC’s 2015 Open Internet Order*”), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf, (“[T]he imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with our decision at the present time to forbear from mandatory federal USF contributions, and therefore, we preempt any state from imposing any new state USF contributions on broadband – at least until the [FCC] rules on whether to provide for such contributions.... We...are not aware of any current state assessment of broadband providers for state universal service funds.”)

should not finance the growing internet access and internet-access-enabled services sector as a matter of fundamental fairness.

C. If the Idaho Legislature decides to support broadband internet access availability, AT&T recommends a properly-structured stand-alone state internet access availability program paid for by appropriations from the state's general fund revenues.

Some may suggest that mandating that mobile wireless voice and interconnected VoIP contribute to the IUSF would somehow make support for broadband internet access by the IUSF equitable. But this is not the answer. Doing so would still impose 100% of the funding burden on only telecommunications carriers and interconnected VoIP providers – just one small segment of the internet ecosystem whose intrastate revenues are declining significantly – to the financial benefit of virtually every segment of the economy that relies upon broadband and broadband-enabled technologies. A more equitable solution would be to require broader segments of the economy that benefit from ubiquitous fixed and mobile internet connections to contribute their fair share to support the availability of those connections in areas that lack them, as also advocated by CTIA.

If the Legislature decides to establish a support mechanism to address internet access availability needs, AT&T recommends the following general framework intended to complement, and not duplicate, federal Connect America Fund (“CAF”) support for Idaho:

1. We recommend a stand-alone state broadband availability program that is paid for by appropriations from Idaho's general fund.²
2. All businesses in Idaho, including those that use and depend on broadband and broadband-enabled technologies, are subject to various state taxes and fees that generate state general fund revenues. Paying for a broadband program from state general fund appropriations is thus the broadest, most fair and equitable funding base available to support the availability of internet access services.³
3. Any state broadband availability program should complement and not duplicate funding from sources like the CAF, Mobility Fund, and any other government infrastructure funding, and like the CAF support mechanisms, should be subject to a firm and self-effectuating budget. Policy makers should periodically review the program's progress toward achieving identified broadband availability objectives; and on that basis, evaluate whether the program continues to be needed.

Note: The total CAF support currently directed to broadband availability in Idaho

² See FCC Commissioner Michael O’Rielly Remarks, February 6, 2018 (“[S]tates that wish to fund broadband are free to do so through separate programs using their general revenues. That is an option that several states have already exercised when establishing their own broadband grant programs.”).

³ State policy makers in several states have historically raided state USFs – which are supported only by the telecommunications industry and their customers - to balance their state general fund budgets. Paying for a state broadband fund using general fund dollars guards against this inequitable possibility.

exceeds \$32 million per year. CAF model-based support mechanisms provide about \$11 million/year to price cap carriers⁴ and more than \$8 million/year to rate of return (“RoR”) carriers⁵ to support broadband availability to more than 33,000 locations in Idaho. Other rate of return carriers in Idaho receive CAF Broadband Loop Support (“BLS”) in lieu of CAF model-based support; this support totaled more than \$12 million in 2016.⁶ The CAF BLS RoR carriers must also expend defined percentages of their CAF BLS support on deploying and/or maintaining 10/1 broadband and must build out 10/1 to be built out to an identified number of locations according to formulas specified by the FCC. This means the total number of Idaho locations receiving CAF support directed to broadband availability exceeds the 33,000+ locations supported by the model-based CAF support mechanisms.⁷

4. The state program should target funding to areas that are unserved by broadband internet access and that are expected to remain unserved, defined as areas that lack internet service at speeds of at least 10 Mbps downstream and 1 Mbps upstream (“10/1 internet access”) from any fixed internet access service technology. Areas receiving federal CAF support, or any other federal infrastructure support, should be ineligible for support from the state program. Any other areas otherwise expected to receive 10/1 internet access in the foreseeable future should also be ineligible for state support.
5. Thereafter, a state broadband incentive program should award funding to no more than one recipient per unserved geographic area. Support should be awarded through a voluntary, competitively and technologically neutral competitive bidding process, with support awarded objectively on the basis of lowest cost to the program per location served, as also supported by the Idaho Cable Broadband Association.

⁴ See FCC News Release, State, County and Carrier Data on \$9 Billion, Six-Year Connect America Fund Phase II Support for Rural Broadband Expansion (Sept. 15, 2015), and accompanying attachments, specifically, attachment labeled DOC-335269A5, a hyperlink to which is included in the text of the press release. The press release and attachment are available at <https://www.fcc.gov/document/connect-america-fund-phase-ii-funding-carrier-state-and-county>; and https://apps.fcc.gov/edocs_public/attachmatch/DOC-335269A5.xlsx.

⁵ See FCC News Release, *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, DA 17-99 (released January 24, 2017), available at <https://www.fcc.gov/document/wcb-authorizes-182-companies-454m-annually-cam-support>, containing a hyperlink in FN3 to https://apps.fcc.gov/edocs_public/attachmatch/DOC-343180A1.xlsx (summarizing all carriers authorized to receive A-CAM, list of CBs eligible for A-CAM support, and the accompanying broadband location obligations).

⁶ The source of data regarding rate-of-return carriers’ CAF BLS, other legacy support, and CAF intercarrier compensation (ICC) support is the federal universal service administrator’s support distribution database, identifying actual 2016 support disbursements for each rate-of-return carrier. See Universal Service Administrative Co. (USAC) Funding Disbursement Search, <http://www.usac.org/hc/tools/disbursements> (“USAC Funding Disbursement Search”). To replicate the search, generate a funding disbursement, identifying the year as 2016 and the state as Idaho.

⁷ Rate-of-return ILECs in Idaho also receive federal CAF intercarrier compensation support, totaling about \$6 million/year in 2016. Competitive ETCs receive CAF I Frozen support, currently about \$3 million/year, subject to phase out following the planned Mobility Fund Phase II auction. USAC Funding Disbursement Search. *Id.* These support mechanisms impose no specific broadband availability obligations on funding recipients; however, they do provide high-cost support to the recipient carriers.

6. Funding recipients should be obligated to make 10/1 broadband internet access available to retail end users in the area for which funding is received.

D. Responses to other suggestions regarding internet access.

For the reasons discussed above, we oppose CenturyLink's suggestion to give the Commission authority to approve one-time IUSF distributions for carriers of last resort ("COLRs") to build high-speed internet facilities that are capable of voice service in unserved/underserved high cost areas. Without more details about CenturyLink's proposal, we recommend the competitively neutral, competitive bidding process described above to award support to no more than one funding recipient per area to get 10/1 retail internet access to eligible unserved areas to ensure that the most unserved locations get robust internet access at the lowest cost per location; and that any such broadband internet availability support mechanism be funded by appropriations from the Idaho general fund.

Alternatively, CenturyLink proposes a "split the baby" approach, suggesting that buildout of high speed internet be funded initially from Idaho's general fund with subsequent funding from the IUSF. Again, for the reasons already discussed, we advise against using any IUSF monies to support internet access. Any such initiatives should be funded by appropriations from the general fund. CenturyLink also suggests tax incentives for the buildout of broadband. We would need more information on CenturyLink's proposal to be able to comment.

We also strongly oppose the suggestion from the City of Ammon for Idaho to recognize broadband as an essential service and require utility treatment for the high-cost wireline infrastructure. Idaho does not have regulatory jurisdiction over internet access services. The FCC has reconfirmed that retail broadband internet access service is an interstate information service over which states cannot exercise regulatory jurisdiction.⁸

For these reasons, if the Idaho legislature decides to establish incentives to broaden internet access, we recommend that Idaho do so by establishing a new broadband fund, funded by the Idaho general fund, designed to complement and not duplicate federal CAF support. We strongly advise against expanding Idaho's USF to support broadband.

⁸ *FCC's 2015 Open Internet Order*, ¶ 43 ("Today, we reaffirm the Commission's longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes.").

III. OTHER CONTRIBUTION ISSUES

A. The needs of the IUSF must be assessed first before determining whether the contribution base needs to be expanded.

As discussed in greater detail in our January 31, 2018 position paper, because the IUSF imposes burdens on contributing providers and their customers, before any reform is contemplated, the Legislature should first establish measurable objectives of the IUSF and then identify the smallest IUSF needed to achieve these objectives. Only then should the Legislature decide whether expansion of the contribution base is necessary. And as discussed above, the Legislature should not use the IUSF to support internet access and should account for any federal USF funding and support mechanisms.

B. If the Legislature decides to assess wireless services for IUSF contributions, it must assess both prepaid and postpaid mobile wireless services should be assessed and a point of sale mechanism should be established that allows sellers of prepaid wireless services, including non-carrier retailers, to collect the assessment from consumers.

We disagree with CenturyLink that it is adequate to permit contributions to be recoverable without providing for a recovery mechanism for all providers of assessable services. This would discriminate against sellers who are unable to recover the surcharge without a point of sale ("POS") recovery mechanism in violation of federal law, 47 U.S.C. § 254(f) which requires contributions to state USFs be made "on an equitable and nondiscriminatory basis." To this end, if prepaid wireless services are assessed for IUSF contributions, we recommend collecting IUSF contributions at the point of sale by modifying Idaho's existing 911 contribution POS mechanism to collect IUSF surcharges in the same assessment. See Idaho Code § 31.4813. The POS mechanism will facilitate competitive neutrality and the broadest possible contribution base.

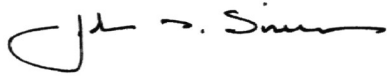
C. Until and unless the Legislature provides policy guidance regarding the IUSF, the Commission should refrain from making any significant changes to the IUSF.

We agree with CenturyLink's points generally that there should be no surcharge increase, that distributions should be appropriately decreased, and that IUSF recipients should be required to demonstrate continued need until and unless a legislative solution is achieved.

IV. CONCLUSION

In conclusion, AT&T appreciates the opportunity to provide these reply comments to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Sisemore". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

John D. Sisemore
Director – Regulatory

cc: Carolee Hall, ID PUC (via email)
Margaret M. Thomson, Esq., AT&T (via email)
Tara N. Thue, AT&T (via email)