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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the 2017 Review of the
Idaho Universal Service Fund.

) CASE NO. GNR-T-17-05
)
) **REPLY COMMENTS OF CTIA**

CTIA files the following reply comments before the Idaho Public Utilities Commission (“Commission”) in response to the Staff Summary and Report (the “Staff Report”) filed by Commission Staff (“Staff”) on April 4, 2018, pursuant to the Commission’s Memorandum of February 7, 2018 in this docket. CTIA appreciates the opportunity to provide comment on Staff’s conclusions regarding the Idaho Universal Service Fund (“IUSF” or “Fund”).

I. THE STAFF REPORT CORRECTLY RESTS AUTHORITY TO MAKE ANY CHANGES TO THE IUSF MECHANISMS ON THE LEGISLATURE

CTIA appreciates Staff’s thorough review of stakeholders’ comments regarding the IUSF’s sustainability and contributions base. CTIA agrees with Staff’s main conclusions: namely, that the IUSF is not currently sustainable,¹ and that any changes to the IUSF assessment and distribution mechanisms must first be accomplished by the Idaho Legislature (“Legislature”).²

¹ Staff Report, at 3 (“The parties agree that the IUSF is unsustainable without major changes to the statute and funding methodology.”).

² Staff Report, at 2 (“The assessment and distribution methodologies [for the IUSF] are written into the statute, and the Commission has no express discretion to amend or revise the program outside of legislative action.”).

The Staff Report suggests three potential options for next steps for the IUSF, all of which would require legislative revisions to the controlling statutes:

- *Option 1:* Leave the IUSF as is but add a cap and adjust distributions accordingly;
- *Option 2:* Approach the Legislature about updating and revising the statute to add assessments on, and expand disbursements to include, all qualifying providers; or
- *Option 3:* Leave disbursements from the IUSF at their current level, but fund the IUSF out of general tax revenues, as the State of Washington does.

CTIA reiterates its belief, as expressed earlier in this proceeding, that the best option for achieving Idaho's universal service goals is funding the IUSF out of the state's general tax revenues.³ The use of general tax revenues to fund universal service programs is more appropriate, given the general benefit of such programs,⁴ and more economically efficient because the mechanism to extend the availability of telecommunications services will not suppress demand for those same services.⁵ AT&T's comments also agreed with this position.⁶

However, this shift does not necessarily call for IUSF disbursements at their current level, as suggested in Option 3 of the Staff Report. This assumes that the current Fund size is the appropriate one for the state's universal service goals, which is a conclusion that should be assessed and potentially adjusted as the Commission and Legislature determine a viable course of action for the future of the Fund. The Commission and Legislature should seek ways to minimize the economic burden of the IUSF on consumers by ensuring that the Fund is kept to the minimum size necessary to achieve universal service goals, and periodically review the Fund

³ Letter of CTIA, Re: Case No. GNR-T-17-05 *In the Matter of the 2017 Review of the Idaho Universal Service Fund* (January 31, 2018) ("CTIA Letter"), at 2.

⁴ See CTIA Letter, p.2, fn. 6.

⁵ See CTIA Letter, p.2, fn. 7.

⁶ Staff Report, at 4.

size to that end. Further, when the Commission and Legislature consider the future of the IUSF, they should take into account that Idaho ILECs receive from the federal USF tens of millions of dollars in universal service support annually, including nearly forty million dollars from the federal USF in 2016.⁷ And with telephone penetration in Idaho (96.4%)⁸ nearly identical to neighboring Montana (96.3%)⁹, the Commission and the Legislature should scrutinize the need for IUSF support, because Montana has achieved essentially the same telephone penetration rate without providing any state universal service support.

II. UNLESS SURCHARGES ON THIRD-PARTY SALE OF PREPAID SERVICE ARE COLLECTED AT THE POINT OF SALE, DISCRIMINATION WILL OCCUR

The Staff Report noted CenturyLink's position that "not mandating an end-user surcharge would eliminate the need for the legislature to establish a point-of-sale process for pre-paid wireless providers."¹⁰ In other words, CenturyLink believes that it is acceptable for post-paid wireless providers to be given the option to pass the IUSF surcharge through to end users, while pre-paid wireless providers, for whom such a pass-through is often impossible due to the nature of their business model, cannot. CTIA disagrees.

To start, that position is facially inconsistent with CenturyLink's position that all providers be required to pay into the IUSF on a non-discriminatory and competitively neutral basis.¹¹ Allowing some providers to pass through the surcharge while it is impossible for others to do so is both discriminatory and not competitively neutral. CenturyLink's position, if adopted

⁷ See Universal Service Fund Monitoring Report - 2017, CC Docket No. 96, 45, WC Docket Nos. 02-6, 02-60, 06-122, 10-90, 11-42, 13-184, 14-158, at Table 3.5 High Cost Support Fund Claims – States: 2016 (showing Idaho ILECs received \$39,886,000 in High Cost Support in 2016) (available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0413/DOC-350207A1.pdf).

⁸ *Id.* at 52, Table 6.6.

⁹ *Id.*

¹⁰ Staff Report, at 5.

¹¹ *Id.* (Staff's summary of CenturyLink's position: "The IUSF should not disadvantage or disadvantage any provider or technology in the collection of the IUSF surcharge or distribution of IUSF payments.")

by the Commission, would also conflict with federal statute, which only allows a state to adopt USF regulations if all eligible telecommunications carriers contribute “on an equitable and nondiscriminatory basis.”¹²

For states that assess wireless providers for state USFs, point-of-sale collection is the appropriate way to assess pre-paid wireless. It allows a level playing field for pre-paid wireless providers by allowing the surcharge to be collected directly from consumers when they purchase service through third-party retailers instead of from the prepaid providers themselves, and avoids putting pre-paid wireless providers at a competitive disadvantage. Alternatively, if such sales are not subject to surcharge, all other IUSF contributors suffer discrimination.

CTIA does agree with CenturyLink that a guiding principle of any IUSF reforms should be ensuring that the Fund is supported on a competitively neutral and non-discriminatory basis. Given the Staff Report’s conclusion that all options for IUSF reform require the Legislature to amend the controlling statutes anyway, if surcharges ultimately are applied to wireless carriers’ telecommunications revenues, the Commission should urge the Legislature to adopt point-of-sale IUSF collection for pre-paid sales by third-party retailers, because discrimination will occur unless surcharges are collected at the point-of-sale. (CTIA notes, however, that adopting its suggestion to move the IUSF to general tax revenues would solve this issue neatly.)

III: A FORWARD-LOOKING IUSF SHOULD NOT BURDEN NEW TECHNOLOGIES WITH INCREASED OBLIGATION TO SUPPORT OLD ONES

While CTIA reiterates that the ideal method to fund the IUSF is through general tax revenues, if the Commission and Legislature choose not to do so, CTIA believes any IUSF

¹² 47 U.S.C. §254(f).

reforms should embrace the principle that parity in contributions should be matched by parity in distributions.

CenturyLink has called for all wireless and Voice over Internet Protocol (“VoIP”) providers to pay into the IUSF without the accompanying conclusion that such providers should be eligible for disbursements as well.¹³ CenturyLink’s plan would merely shift the burden of subsidizing declining wireline revenues – revenues that are in decline as a result of increased telecommunications competition – to wireless consumers.

Any changes to the IUSF contribution base should acknowledge that consumers, including those in high-cost areas, have evolving preferences for telecommunications services, and voice services for high-cost consumers might be provided most efficiently by new technologies such as wireless, VoIP, or satellite. The Commission should not tether the IUSF to legacy technology, especially if consumers who have moved away from those technologies are going to bear the burden of supporting the IUSF. The Idaho Telecom Alliance’s comments aligned with this principle as well.¹⁴

Any changes to the IUSF should also adhere to a number of other sound policy principles:

- The IUSF should provide for appropriate accountability measures, including ensuring that support is not used to “overbuild” where an unsubsidized competitor is already serving a community.
- Recipients of IUSF funding should only receive state funding that is non-duplicative of federal funding, so that carriers are not “double-dipping” in areas

¹³ See Staff Report at 5-6.

¹⁴ Staff Report, at 10 (“...perhaps the Commission should consider: (1) a broader, technologically neutral IUSF... with the growth of the contribution base, ITA is open to expanding the potential recipients of funding.”).

that already receive federal support. This is consistent with comments from the Idaho Cable Broadband Association.¹⁵

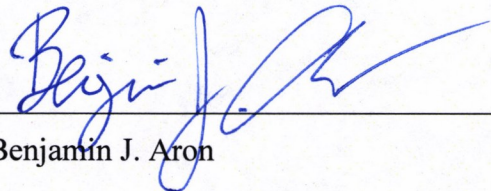
- Consistent with AT&T's comments, the IUSF surcharge should be set to the minimum level necessary to meet Idaho's universal service goals, and not used to subsidize competitive losses, which would distort the telecommunications marketplace in Idaho.¹⁶

IV. CONCLUSION

CTIA looks forward to working with the Idaho Commission, Legislature, and stakeholders to reform the IUSF so that it meets the state's universal service goals while minimizing the burden on consumers. To that end, CTIA believes that the Commission should advocate that the legislature fund universal service goals from general tax revenues and reform the IUSF consistent with the policy principles stated herein.

Respectfully submitted,

By:


Benjamin J. Aron

April 25, 2018

¹⁵ Staff Report, at 9 ("The ICBA agrees with the recommendation in the Commission's report that 'all federal funding in Idaho should be exhausted and then a reassessment of areas that still need broadband services could then be targeted.'")

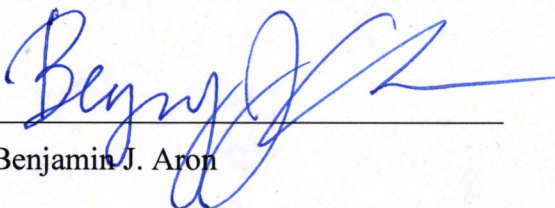
¹⁶ Staff Report, at 3-4 ("AT&T would like to see measurable objectives for the IUSF and then identify the smallest IUSF needed to achieve those objectives.").

PROOF OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April 2018, served the foregoing **Reply Comments of CTIA** in Case No. GNR-T-17-05 upon all parties of record in this proceeding by e-mail a copy thereof to the following:

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