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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**
)
) **STAFF SUMMARY AND**
) **REPORT**
)

STAFF OF the Idaho Public Utilities Commission (Commission), by and through its Attorney of record, Sean Costello, Deputy Attorney General, submits the following Staff summary and report.

BACKGROUND

On February 27, 2018, the Commission Staff convened a Public Workshop to explore various options for the Idaho Universal Service Fund (IUSF or Fund). The IUSF is a statutory mechanism designed to enable all Idaho consumers “without regard to their location . . . [to] have comparable accessibility to basic telecommunications services at just and reasonable rates.” Idaho Code § 62-610A.

The IUSF is experiencing a significant cash-flow problem, due largely to antiquated statutes that govern assessments to and disbursement from the Fund, which are based on assessments to land line telecommunications services that are steadily declining in use and prevalence. *See* Order No. 33851.

Staff thanks all the participants who attended the workshop and all those who took the time to submit comments. The input was very helpful and Staff submits this summary for the Commission's consideration.

THE FUND

The IUSF is funded through a surcharge assessed to all residential and business local exchange service, message telecommunications service (MTS), and wide area telecommunications service (WATS). *See* Idaho Code § 62-610(2). As technology has moved forward into wireless services and voice over internet protocol (VoIP) services, these funding sources – local exchange service and MTS and WATS-type service – are significantly declining in use. Therefore, as the IUSF-assessed telecommunications services decline, so too does the balance of the Fund, making it increasingly difficult for the Fund to remain solvent and fulfill its underlying statutory intent.

Currently, eight rural high-cost telephone companies collectively receive \$1,699,000 per year from the Fund. *See* Order No. 33851. Again, these disbursements are based on a statutory regime that is now antiquated, given the massive changes in telecommunications since its enactment in 1988. The underlying technologies that are assessed to fund the IUSF have become increasingly obsolete.

A common thread among all comments in this case was to cap the surcharge at the current rates of \$.25 per residential line, \$.44 per business line, and \$.009 per intrastate MTS/WTS service. In so doing, the Fund would maintain an annual disbursement of \$1,699,000 to the eight qualifying rural high-cost telephone companies, however the question of sustainability would still remain unanswered. While Staff agrees in principle that the surcharge rate should be frozen at the current rates established in Commission Order No. 33851 on August 22, 2017, the IUSF statutes provide no mechanism for capping, sun setting, or otherwise changing the assessment and distribution methodologies. *See* Idaho Code 62-610(4) and IDAPA 31.46.01.10. The assessment and distribution methodologies are written into the statute, and the Commission has no express discretion to amend or revise the program outside of legislative action.

Staff thus recommends that a task force or working group be convened among the parties, with the goal of bringing this matter to the Idaho legislature so the statutory Fund requirements

can be amended and revised to reflect the current landscape of universal service in Idaho in light of the fundamental underlying shift in telecommunications technology.

SUSTAINABILITY OF THE FUND

The parties agree the IUSF is unsustainable without major changes to the statute and funding methodology. Staff believes that, given that technology is rapidly changing the telecommunications landscape, more participants—specifically, VoIP and cell providers—must contribute to the Fund if the Fund’s purpose is to be maintained. On the other hand, if the technologies and purpose underlying the Fund have changed so much that the notion of universal service should also change, Staff would support an update to the universal service statutory regime.

These changes will require major legislative action both to: (1) address the ongoing validity of the universal service structure by updating the definition of basic telecommunications services given the technological revolution that has occurred since the statute’s enactment; and (2) updating the way and from whom the Commission or Administrator collects and distributes assessments from the Fund. Additionally, disbursement should be refocused to target specific unserved and underserved areas.

Legislative action is needed so the IUSF can continue to accomplish its original purpose of ensuring Idaho consumers have comparable access to reasonably priced basic telecommunications services, regardless of where they live. Idaho Code § 62-610A.

SUMMARY OF STAKEHOLDERS’ POSITIONS

Association of Idaho Cities

The Association of Idaho Cities recommends the Commission expand this case beyond the remaining scheduled workshop, and engage a broader group of stakeholders, including the public and other public organizations, to ensure both consumers and the telecommunications industry are fairly represented. The Commission should guide that stakeholder group towards agreeing on basic terms upon which legislative action may be commenced.

AT&T

AT&T has not taken a position on retiring the IUSF. But if the IUSF is reformed, AT&T would like to see measurable objectives for the IUSF and then identify the smallest IUSF needed

to achieve those objectives. AT&T said the IUSF burdens contributing providers, and ultimately their customers, and that the Fund should account for, and avoid duplicating, any federal Universal Service Fund (USF) funding and support mechanisms and Idaho recipients' other revenues. Further, if the Commission intends to continue assessing telecommunications customers to fund the IUSF, the Commission should calculate the assessment rate to support the IUSF's funding goals. AT&T suggested that the legislature consider supporting the IUSF through the general fund. The Company said this would provide a broader, more stable, and competitively neutral base that is less burdensome on current telecommunications customers and more equitably spread across all consumers who benefit from having a more robust broadband ecosystem. AT&T's suggestion was the first mention of broadband in these proceedings. The IUSF currently doesn't fund broadband.

AT&T recommended capping and sun setting the current IUSF if a larger fund with a broader base and distribution is contemplated. Because Idaho's consumers ultimately bear the costs of funding the IUSF, the IUSF's objectives should be clearly articulated, and the State's progress in achieving those objectives should be regularly monitored. AT&T suggested the legislature specify a sunset date for the Fund to ensure that the continuing need for support is periodically evaluated. Also, every carrier receiving support should have to demonstrate a need for that support. Again, AT&T suggested that any changes to the IUSF should take federal funding into account and use it to determine the IUSF's size.

CenturyLink

CenturyLink recognizes the IUSF has significant problems and that it is unsustainable to continue increasing the surcharges on access lines. CenturyLink also believes a legislative solution is needed. Meanwhile, the Commission should not approve additional increases to the access line surcharges that would worsen the situation and harm remaining customers who subscribe to traditional phone service. As IUSF revenues decline because of access line loss, the Commission should reduce IUSF distributions to providers based on demonstrated need, and not increase the burden on the remaining customers who pay the IUSF access line surcharge.

CenturyLink highlighted several problems with the current IUSF.

First, the IUSF's funding mechanism is broken because the surcharge is collected on a declining base. The decline in access lines will continue due to migration to wireless and VoIP services. Increasing the IUSF surcharges on the declining base is unsustainable.

Second, the IUSF is not competitively and technology neutral, since wireless and VoIP providers do not have to pay into the IUSF. The IUSF should not advantage or disadvantage any provider or technology in the collection of the IUSF surcharge or distribution of IUSF payments. And rural telecom providers, who are rate-of-return regulated and receive ongoing draws from the IUSF, should have to demonstrate a continued need for the support they receive.

CenturyLink suggested two options for the legislature to consider in addressing IUSF problems: (1) Reforming the IUSF; and (2) Changing the IUSF to a High-Speed Internet (HIS) investment program. These two options are summarized below.

CenturyLink Option 1 – Reform the IUSF: CenturyLink suggested that all providers of voice lines/connections could be required to pay into the IUSF on a non-discriminatory and competitively neutral basis. Wireless and VoIP providers would have to start paying into the IUSF. Providers would be allowed to recover the IUSF surcharge from their end-user customers, but would not be mandated to do so (CenturyLink believes 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). Obtaining parity would allow the Idaho Public Utilities Commission to significantly reduce the IUSF surcharge, making the surcharge the same for business and residential lines/connections and eliminating the need for the MTS/WATS minutes of use (MOU) surcharge. If all providers of Idaho voice lines/connections paid into the IUSF, at the current level of funding of \$1.7 million a year, the per line/connection surcharge would only need to be \$.07 per month.

CenturyLink also feels that all wireless and VoIP voice service providers should have to pay the same fees and surcharges that access line voice service providers must pay. Besides paying into the IUSF, all providers should pay into the Telecom Relay Service and Idaho Telephone Service Assistance Program, and regulatory fees should be assessed on all voice service providers in Idaho based upon the number of voice lines/connections they provide in Idaho. To fund all four items would only require a per line/connection surcharge of \$.15 per month.

The legislature must ensure the Commission has the resources to conduct frequent rate cases/audits of the rate-of-return regulated telecom providers who receive ongoing draws from the IUSF. The Commission also should have the resources to adopt a cost model or other cost methodology as an option in rate cases/audits, and to allow non-rate-of-return, carriers of last resort (COLRs) to receive support for the high-cost areas they serve.

CenturyLink recommended the Commission be provided with the authority to approve targeted, one-time IUSF distributions as an aid to construction, to help COLRs fund specific projects to construct High-Speed Internet (HSI) facilities, capable of supporting voice service, in high-cost areas that are underserved or unserved.

Option 2 – Change the IUSF to a HSI investment program. As a second option, CenturyLink suggested allowing one-time distributions to help COLRs build HSI networks that could support voice service in unserved or underserved high-cost areas that otherwise would not get HSI. These distributions can also help fund the backbone fiber facilities that COLRs need to serve wireless cell sites in high-cost areas with a significant public safety/public interest need for wireless service. Initial funding would come through grants from the Idaho general fund. Depending upon the program's success, the legislature could consider funding it through a per voice line/connection based surcharge on providers, implemented in a competitively and technologically neutral manner. CenturyLink also proposed increasing the Broadband Tax Credit in urban and suburban areas, and significantly increasing it in rural areas. Lastly, Century Link suggested sales and property tax abatement incentives for HSI investment.

Conclusion: CenturyLink supports the legislature either reforming the existing IUSF and fixing the problems, or changing the IUSF to a HSI investment program. CenturyLink defers to the legislature as to the better approach. But CenturyLink strongly recommends the Commission not increase the IUSF surcharge on access lines in the interim before the legislature acts. CenturyLink states an interim increase would only harm customers who subscribe to voice services currently subject to the access lines surcharges. CenturyLink suggests the Commission can adjust IUSF payments to account for any interim IUSF revenue decreases.

City of Ammon

The City of Ammon recommends a new model be developed to address the changes that make the current IUSF model unsustainable. Technology improvements affect the IUSF by enabling service competition in a traditionally monopolistic model. These competing services often use the same underlying infrastructure as the regulated service, providing adequate equal functionality to the consumer for a lesser cost. Increasing the contributors to the IUSF pool to include these new technology providers, like VoIP and wireless providers, will not halt service evolution or the established trend of repurposing infrastructure formerly dedicated to an analog service to data.

Introducing new contributors to the IUSF pool will likely create increased complexity as pressure to provide parity between Fund contributors and Fund recipients evolves. The foregoing demonstrates the need to unbundle services from infrastructure, because the essential service provided today is the infrastructure, not any specific service. This is especially true with the rapid evolution of services and functionality happening across our communications infrastructure.

The City believes a new model is required that includes infrastructure cost recovery while unbundling services from the supported infrastructure. This would open up the services, not the infrastructure, to competition for the benefit of the infrastructure owner and the public contributors supporting the infrastructure.

These realities suggest that the State recognize broadband as an essential service, and require utility treatment for the high-cost wireline infrastructure. Failure to treat the infrastructure as the regulated utility and continuing to tie cost recovery to either the service or operations will tie universal support benefits to the regulated service's market. This will continue to encourage disruption as technology evolves to deliver the same functionality outside of the regulated service, and will entice an artificial consumer shift to avoid the fees necessary to support wireline ubiquity. Any such model will prove unsustainable in the face of technology advancement.

The City of Ammon believes that the State should include a broad and diverse set of stakeholders in developing this new model, which also needs to include logical migration paths for infrastructure owners to systematically transition from the current model to the new model as desired.

CTIA The Wireless Association

CTIA believes the Commission is unlikely to find consensus on a different contribution scheme given widely differing industry views on how to equitably fund universal service programs. Similar proceedings in other states have borne this out.

To the extent that the Commission seeks a legislative solution to funding the IUSF, CTIA urges the Commission look to the State of Washington for a prudent, durable solution for universal service funding. Taxpayers alone fund Washington's state USF. Using general revenues to fund universal service is more appropriate given the general benefit of such

programs, and also more economically efficient because the effort to extend the availability of communications services does not suppress demand for those same services.

Idaho Cable Broadband Association (ICBA)

Because of the accelerating decline in the market for basic circuit-switched local exchange service, the ICBA recommends that the Commission phase down IUSF distributions to parallel the continuing expected decline in IUSF receipts. Simply raising IUSF charges will not save the Fund. Any other significant change to the IUSF requires legislation, and the debate of fundamental changes to the IUSF – to support broadband services, expand the contributor base or change the contribution method – should occur at the Idaho legislature and not at the Commission.

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.” This would ensure the State’s scarce resources are efficiently administered to serve unserved areas, and reduces the contribution burden on Idaho citizens.

CenturyLink will receive \$6,279,869 in federal Connect America Fund (“CAF”) Phase II model support each year for five years (2016-2020) to deploy broadband in Idaho. Frontier will receive \$5,233,121 in federal funds each year for the same period to deploy broadband in the State. In addition, 13 Idaho rate-of-return carriers collectively were offered \$20,780,910 in annual A-CAM federal model-based broadband support for ten years, but turned it down. Those 13 Idaho rate-of-return carriers will continue to receive substantial legacy high-cost federal and state universal service funding.

Additional federal broadband funding will become available because of the CAF Phase II reverse auction, which will provide support in eligible geographic areas in Idaho. Further, there will be additional support through the federal Mobility Fund and, about a year after the CAF Phase II reverse auction, a separate Remote Areas Fund funding process.

If the Idaho legislature ultimately determines that State broadband subsidies are needed, any system of awarding grants should be based on a reverse auction approach that does not duplicate federal USF (CAF, A-CAM or Legacy) subsidies and does not provide grants for areas served by unsubsidized competitors.

Idaho Telecom Alliance (ITA)

ITA members rely on the federal and State USF to build communications services networks throughout rural Idaho. They believe these networks will fail without continued IUSF support. Network failure would preclude the rural citizens from having access to wireline voice services. Further, because wireless and broadband providers use the same network, network failure would preclude rural Idahoans from having their communications needs supplied by wireless or broadband providers. Without the network that enables communications services, rural Idaho citizens will exist on the wrong side of the digital divide and be unable to keep pace with the rest of the country.

The ITA's position is that the IUSF must be maintained, and that the Commission and interested stakeholders should work together to forward the goal of providing universal service to all Idahoans at comparable prices. Because of the IUSF, many areas in Idaho that would not have communications services now have those services. If IUSF support ceased, providing communications services to these high-cost areas in Idaho would not be sustainable. If a provider is forced to maintain the current rate structure and simply sustain the losses, that provider would cease to be viable, its network would fail, and Idaho citizens would suffer. It might be suggested that the provider could charge the actual cost of service to customers in the high-cost areas. But that would defeat the goal of universal service at comparable costs throughout the State. Further, the cost to the customer would be prohibitive, the customer base would shrink, and the network would not be sustainable. Either way, rural areas ultimately would lose communications capabilities. The argument that urban Idahoans should not have to support rural Idahoans access to telecommunications because rural Idahoans choose to live in these areas, is as simplistic as saying that rural Idahoans should not have to pay taxes that fund infrastructure in primarily urban areas. Just like highway infrastructure, communications infrastructure is useful both to those who live in these areas and to those traveling through.

Besides the necessity of IUSF funding to sustain services already provided in high-cost areas, the need for IUSF funding likely will exist as long as high-cost areas exist. The Federal Communication Commission recently announced the CAF Phase II Auction (Auction 903) to award nearly \$2 Billion to service providers that will commit to offer voice and broadband services to fixed locations in unserved high-cost areas. The list of unserved high-cost locations includes over 2,000 locations in Idaho. Many of these areas received no bids in earlier auctions because, even with federal funding, many bidders believed the areas were too expensive to serve.

The likelihood of all such areas in Idaho being awarded funding in the Auction 903 is, therefore, slim.

As noted above, ITA recognizes that the current funding sources or funding levels for the IUSF are inadequate to sustain the Fund. ITA acknowledges that change must occur, and short of simply increasing the per line/per-minute charges, any change will require legislation and rulemaking. With the primary goal of maintaining universal and affordable service to Idaho residents, ITA is open to exploring all reasonable recommendations that will allow the continued viability of the Fund. Some states have different funding mechanisms and may not be affected by decreasing line counts, and other states have recently changed their universal service funds to address issues the IUSF is now facing. Changing who is eligible to receive funding, or otherwise allowing limited distributions to currently ineligible recipients could help improve service in other eligible high-cost areas.

If the IUSF is failing because of decreases in line counts and presumably a decrease in using traditional landline voice services, then perhaps the Commission should consider: (1) a broader, technologically neutral IUSF, (2) any communications services provider with ETC status and obligations being eligible for funding the network in the highest-cost areas; and (3) all customers who use communication services that are delivered over the network having to pay for the network.

The ITA acknowledges that not all of Idaho's unserved or underserved areas are within the service territories of companies receiving IUSF funding. ITA believes in the overall goal of universal service at comparable rates for all Idahoans, and perhaps expanding the pool of eligible recipients can fairly accomplish that goal. The Commission would have to consider what comparable requirements the expanded pool of companies would have to meet to receive funding.

In summary, ITA continues to support the goal of universal service for all Idahoans at comparable rates. That goal can only be reached if the IUSF is maintained. The IUSF can only be maintained if the Fund's contribution base expands. With the growth of the contribution base, ITA is open to expanding the potential recipients of funding. Finally, the ITA would like the Commission to expand this case beyond the remaining scheduled workshop. The ITA believes it would be beneficial for the Commission to guide discussions to help interested stakeholders agree on basic terms upon which legislative action may be commenced.

STAFF FINDINGS AND RECOMMENDATIONS

Staff has reviewed the stakeholders' position papers and determined that the stakeholders do not agree on a single course of action. But Staff and all those who provided position papers agree the IUSF is not sustainable in its current state. Staff and stakeholders agree that the current surcharge amount should not be raised until a viable course of action has been determined for the future of the Fund. Staff and stakeholders also agree that any potential changes to the Fund's assessment and distribution mechanisms must be accomplished by the legislature, because those mechanisms are in the statute and not in a rule or otherwise within the Commission's discretion to change.

Staff foresees three potential options for addressing the IUSF's problems:

Staff Option 1: Leave the IUSF as is, cap the Fund based on the projected surcharge revenue collected each year, and adjust the distribution to the current recipients accordingly. This option would be hard to execute, because Fund assessment and distribution methodologies are codified in the Telecommunications Act of 1988 and, therefore, the Commission may be in conflict with the statute.

Staff Option 2: Seek statutory revisions. Specifically, approach the legislature about updating and revising the statute. These changes would most likely include adding assessments on, and expanding disbursements to include, all qualifying providers, so long as they are serving unserved and underserved areas according to the amended statute.

Staff Option 3: The third option would be to leave disbursement of the Fund at its current level and fund the IUSF out of the general fund as the State of Washington does. This would also require involving the Idaho legislature to update and revise the statute.

Respectfully submitted this 4th day of April 2018.



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[i:umisc/comments/gnrt17.5scchdk staff summary and report](https://www.idaho.gov/communications/comments/gnrt17.5scchdk%20staff%20summary%20and%20report)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4th DAY OF APRIL 2018, SERVED THE FOREGOING **STAFF SUMMARY AND REPORT**, IN CASE NO. GNR-T-17-05, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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