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Attorney for the Commission Staff

**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'S SECOND SUMMARY  
) AND REPORT  
)**

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**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**

In Order No. 33951, the Commission opened a generic docket to allow interested stakeholders to provide insight and commentary on the continued viability of the Idaho Universal Services Fund. *See* Order Nos. 33851 and 33951. The Commission ordered a schedule to be adopted, including two public workshops, and a deadline for interested stakeholders to submit position papers. *See* Order No. 33951 at 2. The first public workshop occurred on Wednesday, January 17, 2018, and interested stakeholders submitted position papers by January 31, 2018. *See id.*

In lieu of conducting the second workshop, Staff then proposed that it would compile and file a summary and report on the stakeholders' position papers, including its own analysis, and proposed that the Commission order a reply deadline for stakeholders' to respond to said summary and report. *See* Staff Summary and Report, Case No. GNR-T-17-05. Based on the party's positions and its own analysis related to the sustainability of the Fund, Staff, in its Summary and Report, provided three outcomes for interested stakeholders to respond to in their Reply Comments:

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; and

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.

*Id.* at 11.

Four stakeholders provided reply commentary, which is summarized below.

#### **SUMMARY OF STAKEHOLDERS' REPLY COMMENTS**

##### ***AT&T***

AT&T noted that some stakeholders advocated funding the expansion of broadband internet access services with the IUSF, which AT&T does not support. *See* AT&T Reply Comments at 1. AT&T concluded that if the Idaho legislature wants to fund internet access availability initiatives at the state level it should establish a separate, stand-alone incentive based funding mechanism, with funding from the Idaho general fund. AT&T maintains that any broadband funding from the IUSF would be inherently inequitable and contrary to federal law. *Id.* at 1.

Instead, AT&T concludes that 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 changes is non-discriminatory and comports with federal law.” *Id.* at 1-2. AT&T believes that the Commission is not the proper forum for debate related to IUSF reform and believe any further debate or workshops should only be held with participation of the legislature.

AT&T took issue with CenturyLink’s proposal that the Commission be given legislative 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.” *Id.* at 5. Instead, AT&T argued that if the legislature decides to establish a support mechanism, it should track its proposal, and be a general framework intended to be a competitively neutral, competitive bidding process that would complement the federal Connect America Fund (CAF). *See Id.* at 3-5.

AT&T also took issue with the City of Ammon's suggestion that broadband be recognized as an essential service and receive utility treatment for high-cost wireline infrastructure because, AT&T argued, Idaho has no jurisdiction over internet access services, citing to the FCC's 2015 Open Internet Order, ¶ 43. *Id.* at 5-6.

Next, AT&T reiterated its Position Paper in this matter, stating that "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 objections." *Id.* at 6.

AT&T also disagreed with CenturyLink that it is adequate to permit IUSF contributions to be recoverable without a mechanism for all providers of assessable services. *Id.* Because federal law requires contributions to state USFs to be equitable and nondiscriminatory, IUSF contributions should be collected at the point of sale by modifying Idaho's existing 911 contribution POS mechanism to collect IUSF surcharges simultaneously. *Id.*

Finally, AT&T concluded, along with CenturyLink, that: (a) no surcharge increase should occur; (b) distributions should be appropriately decreased; and (c) IUSF participants should be required to demonstrate continued need until a legislative solution is achieved. *Id.*

### ***CenturyLink***

CenturyLink found one area of agreement among the various stakeholders to this proceeding: "the Idaho legislature need to determine the long term/permanent solution addressing the problems with the [IUSF]." CenturyLink Reply Comments at 1. CenturyLink appreciated Staff's proposed Option 1, which would cap the IUSF upon projected surcharge revenue collected each year and adjust distribution to the current recipients accordingly. It also shared Staff's concern with this approach because the IUSF statute does not specifically state that the Commission may cap the surcharge amount. However, it argued, other provisions within the IUSF statute may be considered, namely, *Idaho Code* §§ 62-610A, 610(2), and 610(4). At base, CenturyLink agreed with Staff's Option 2. *Id.* at 3.

More specifically, CenturyLink concluded that the existing IUSF funding mechanism is not competitively and technology neutral as wireless and VoIP providers are not required to pay into it. *Id.* at 2. Increasing the existing surcharge before this problem is fixed by the legislature will only exacerbate the existing discriminatory surcharge assessed on residential and business local exchange voice service and not assessed on VoIP and wireless voice services. CenturyLink maintains that an increase to the existing surcharge would violate the mandate that the surcharge be non-discriminatory, arguing that the Commission should not take action to make the situation worse. Instead it believes that the funding mechanism not being competitively and technologically neutral provides greater public harm than capping the surcharge at

current levels, and that the Commission has the authority, by necessity, to decline to take further action, even if in contravention of the statute. *Id.*

Further, CenturyLink stated that it has been many years since any analysis has been done demonstrating that each of the eight rural telecommunications companies that currently receive IUSF support are within the 75% - 100% residual revenue requirement range outlined in statute. *See id.* at 2; and *Idaho Code* § 62-610(4). Instead of continuing to raise the surcharge to keep the IUSF funding at current levels, CenturyLink counseled the Commission to determine the level of funding at the current surcharge level and adjust each of the eight rural telecommunications companies' ongoing support downward accordingly. *Id.* If any of the eight companies object, the Commission could then require them to provide evidence demonstrating where they are in comparison to the statutorily required range. After an evidentiary hearing the level of ongoing support would be adjusted and the surcharge would be modified to achieve the required level of funding based upon the Commission's findings. *Id.*

CenturyLink offered that another option for the Commission would be to move forward and adopt/implement the transition described in *Idaho Code* § 62-610F. CenturyLink counseled that, again, if any of the eight companies objected to having their disbursements lowered, the Commission could move forward with implementing the statute by requiring interested parties to propose the appropriate forward-looking cost methodology that the Commission should utilize to determine support. *Id.* at 3. Simultaneously, the Commission could expand the surcharge to all "end users of all retail telecommunications services originating and terminating within the state of Idaho and collected by the telecommunications carrier providing telecommunications services to end users." *See id.*; and *Idaho Code* § 62-610F(2). CenturyLink presumes that wireless telecommunications carriers would then be required to start collecting and paying the IUSF surcharge which would have the effect of significantly increasing the contribution base and would allow the Commission to significantly lower the IUSF surcharges unless there was a significant increase in draws. *Id.*

CenturyLink maintains that it is critical for the Commission to take the appropriate action in the interim to prevent increasing the disparity and discrimination currently inherent in the IUSF surcharge mechanism. At base CenturyLink agreed with pursuit of Staff's Option 2, as described above, but noted the legislative reform of the IUSF will be a difficult task. *Id.* at 3.

## **CTIA**

Much like AT&T, CTIA first reiterated its position that the IUSF should be funded out of the state's general tax revenue. Reply Comments of CTIA at 1. It also believes the Commission and the legislature should determine a viable course of action for the future of the Fund. The Commission and the 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 size toward that end. *Id.* at 2-3.

CTIA noted that when the Commission and legislature work toward reform of the IUSF, they should take into account that Idaho ILECs receive tens of millions of dollars in annual universal support through the federal USF. *Id.* at 3. Further, the Commission and legislature should analyze the need for any universal state support, where, for example, Idaho and Montana have almost identical telephone penetration rates while Montana does not have a state universal service fund.

CTIA also believes that, contrary to CenturyLink's opinion, in terms of assessing the surcharge to pre-paid wireless providers, "allowing some providers to pass through the surcharge while it is impossible for others to do so is both discriminatory and not competitively neutral," as well as being in conflict with the federal statutes. *Id.* at 3-4. CTIA found that the proper assessment collection should occur at the point of sale for pre-paid wireless. *Id.* at 4. Therefore, where the Commission should encourage the legislature to reform from a technology and competitively neutral stance, funding the IUSF through general fund dollars would simplify the process of assessing, for example, pre-paid wireless providers. *Id.*

CTIA believes that any IUSF "reforms should embrace the principle that parity in contributions should be matched by parity in distributions." *Id.* at 5. If the contribution base is expanded then the distribution recipients should expand also. *Id.* Distribution should not just go to legacy technology, but to new technologies such as wireless, VoIP, or satellite. *Id.*

In conclusion, CTIA offered a set of policy principles, including the use of accountability measures, non-duplicate state and federal funding, and surcharge setting at lowest level necessary to accomplish universal service goals without subsidizing competitive losses. *Id.* at 6.

#### **Idaho Cable Broadband Association (ICBA)**

ICBA argued that IUSF support is limited to telecommunications services, and does not include VoIP or broadband internet access services. Idaho Cable Broadband Association Reply to Staff Summary and Report at 1. Because contributions are set and limited by statute, ICBA agreed with Staff that any change to the IUSF's purpose, contribution methodology, or pool of contributors, or the inclusion of non-telecommunications services as IUSF supported services, would require legislative action. *Id.* at 2. However, ICBA disagreed that legislative action is necessary for the IUSF to continue to meet its intended, original purpose. *Id.*

Without evidence of a showing of inadequacy of support to the eight qualifying rural high-cost telephone companies, ICBA recommended that the Commission first determine the necessary cumulative cost of eligible high-cost support. *Id.* at 3. Only once that amount is determined should the Commission explore the various options Staff and commenters offer to "modernize" the IUSF, including the addition of



broadband service as eligible for high-cost support. *Id.* ICBA argued that broadband in high-cost areas of Idaho is already receiving considerable amounts of federal CAF Phase II (and more through the CAF Phase II reverse auction, the Mobility /fund, and the Remote Areas Fund) model support, and state efforts would duplicate federal efforts. *Id.* at 3-4.

### STAFF FINDINGS AND RECOMMENDATIONS

Staff has reviewed the stakeholders' reply comments and determined that the stakeholders seem most in line with Staff's Option 2 from Staff's Summary and Report:

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 now recommends that those stakeholders desiring to do so should provide proposed legislative changes to the various stakeholders (under Case No. GNR-T-17-05) on or before October 4, 2018, for consideration at an informal settlement meeting with stakeholders to be set for October 17, 2018, at 10:00 a.m., during which stakeholders will propose and agree to additional process or, after which Staff will compile a final summary and report to the Commission.

Respectfully submitted this <sup>7<sup>th</sup></sup> day of September 2018.




Sean Costello  
Deputy Attorney General

Technical Staff: Carolee Hall  
Daniel Klein

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT I HAVE THIS 7<sup>th</sup> DAY OF SEPTEMBER 2018, SERVED THE FOREGOING **STAFF'S SECOND SUMMARY AND REPORT**, IN CASE NO. GNR-T-17-05, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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