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Telecommunication Issues Requiring 2016 Legislative Changes

Utah Public Telecommunications Service Support Fund
(Universal Service Fund or **USF**)

Telecommunications Relay Services (**TRS**)

Public Utilities Regulation Fee (**PURF**)

WHAT THE PROPOSED CHANGES ACCOMPLISH

Combines 3 existing fees/surcharges - into the existing USF surcharge.

Simplifies reporting requirements for many providers.

Provides additional language detail to fully accomplish the intent of existing language in the USF statute. (Broadens and fixes the funding base.)

- Existing language: *“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.”*
- Ensures that payment is collected/remitted in a fair/equitable way. (Minimal impact on a per customer basis.)

Does not result in a major change to the USF.

- The funding base needs to first be fixed and broadened so in the future as the Legislature considers other more significant changes to the Utah USF, it can evaluate the impact on a per customer basis.
 - Before making major changes to the USF, policy makers need to understand the funding gaps being created by changes at the federal level.
 - The Legislature needs to first understand what un-served and underserved broadband areas remain before explicitly expanding the USF to include broadband.
 - Evaluate the public safety/public interest ramifications of either serving or not serving these areas.

Telecommunications – Fix Funding

What is needed:

- Policy makers need to **ensure that adequate funding continues** and determine the best way to **fund in a fair/equitable way**.
- Utah Universal Service Fund (**USF**).
- Telecommunications Relay Services (**TRS**).
- Public Utilities Regulation Fee (**PURF**) (**Telecommunication portion**).

Telecommunications – Fix Funding

Why is this needed:

- The use of **older technologies**, such as traditional phone lines are **declining**, creating the need for other technologies to help fund.
- **Disparity** provides advantages to some technologies and providers over other technologies and providers.
 - For example, many Voice over Internet Protocol (VoIP) providers do not pay the USF, TRS and PURF. Wireless does not pay the PURF.

Existing State/Local Taxes, Fees and Surcharges

Specific example from an actual bill:

	Monthly per line surcharge:
State 911	\$.61 per line
Local 911	\$.09 per line
Utah Poison Control	\$.06 per line
*Telecommunications Relay Services (TRS)	\$.02 per line

Percentage based taxes/fees:

Recovery of Municipal Telecommunications Tax (3.5%)

*Utah Universal Service Fund (USF) (1%)

State Sales Tax (4.7%)

City Sales Tax (1.1%)

County Sales Tax (.3%)

Special District Sales (.5%)

Not itemized on the bill:

*Public Utilities Regulation Fee (PURF)

- In 2014, .269% of Utah revenue. In 2015, .2548% of Utah revenue.
- 2014 – Total PURF - \$9.6 million (Telecom portion - \$1.6 million)
- 2015 – Total PURF - \$9.6 million (Telecom portion - \$1.5 million.)

*These items are collected by the Public Service Commission and Division of Public Utilities.

Follow the example of the Utah State Tax Commission

- The Utah State Tax Commission has already fixed the funding for those items under their jurisdiction by including VoIP.
- Pursuant to 69-205, and the Utah State Tax Commission - Publication 62 (revised 2/14) states that VoIP is assessed various taxes, such as sales tax and 911.
- Need to do the same thing for the surcharges/fees under the jurisdiction of the Utah Public Service Commission.

54-19 Regulation of Internet Protocol Services

54-19-103. Authority over Internet protocol-enabled services and voice over Internet protocol services.

- VoIP is not a regulated service. (Nothing is being proposed to change this.)
- The VoIP statute already allows for the payment of fees and surcharges (TRS, USF and PURF). Utah Tax Commission has already included VoIP.
 - *b) affect, limit, or prohibit the current or future assessment of: (i) a tax; (ii) a 911 fee; (iii) a universal service fund fee; (iv) a telecommunication relay fee; or (v) a public utility regulatory fee;*

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Telecommunications Relay Services (TRS) Surcharge

54-8b-10 Imposing a surcharge to provide hearing and speech impaired persons with telecommunication devices.

TRS SURCHARGE

Prior to SB 209 in 2011

- **\$.10** per line per month surcharge on business and residential traditional phone lines.
- The PSC had a need to increase the surcharge to **\$.25** per line per month because of the declining traditional phone lines.
 - **Instead went after a legislative solution to widen the funding base.**

After SB 209

- **Surcharge expanded to include wireless.**
 - Did not include VoIP.
- Surcharge reduced multiple times:
 - 08/01/11 reduced from **\$.10** to **\$.06**.
 - 07/01/13 reduced from **\$.06** to **\$.05**.
 - 05/01/14 reduced from **\$.05** to **\$.02**.

What is Needed:

- **Fund the program through the Universal Public Telecommunications Service Support Fund (USF) in 54-8b-15.**
- **Eliminate the separate surcharge that now funds TRS.**

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Public Utilities Regulation Fee (PURF) 54-5-1.5 Telecommunications Portion

What is the PURF:

- 54-5-1.5(2)(c): *The fee shall be assessed as a uniform percentage of the gross operating revenue for the proceeding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business.*
 - To be collected on gross operating revenue (both regulated and non-regulated) within the state.
- This fee covers the cost of Utah regulatory resources.

PURF AND BUDGETS

- **The Legislature establishes the annual budgets for the regulatory agencies.**
 - Utah Public Service Commission.
 - Division of Public Utilities.
 - Office of Consumer Services.
 - Resources from the Utah Office of the Attorney General necessary to support these regulatory agencies.
- **PURF is the current funding source for these budgets.**
 - 2014, the fee was .269%, total PURF collected - \$9.6 million
 - **Portion paid by telecommunications - \$1.6 Million**
 - 2015, the fee is .2548%, total PURF collected - \$9.6 million
 - **Portion paid by telecommunications - \$1.5 million**

PURF - The problem with the telecommunications portion

The PURF is broken for telecommunications. Needs to be fixed or eliminated.

- The fee was established when telecommunications was a monopoly environment.
- Some providers pay because they have historically been required to pay.
- Some providers like wireless, utilize regulatory resources and their customers benefit from the regulatory resources necessary to support telecommunications and universal service, but they do not pay.
- It is not competitively neutral, creating an advantage for some providers and a disadvantage for others.
 - The Legislature by fixing this is not picking winners and losers, but is helping to level the playing field. (To do nothing results in winners and losers.)

PURF - The problem with the telecommunications portion

- The telecommunication providers that pay the PURF are subsidizing the competitive entry of other providers who directly utilize regulatory resources but do not pay.
 - For example the wireless providers that want federal Lifeline (USF) funds must be approved as an Eligible Telecommunications Carrier (ETC) by the PSC. This is done through a regulatory proceeding.
- There is a lack of consistency and discrepancies in the reported gross operating income of those who pay.
 - For example, CenturyLink is paying regulatory fees on its non-regulated revenues from marketing wireless and DIRECTV services and its high-speed Internet service.

PURF – Telecommunications Portion

- All customers benefit from the Utah regulatory resources.
 - Regardless of their provider (landline, wireless, VoIP, etc.)
 - Regardless of the regulatory status of their provider.
 - Wireless and VoIP services are not regulated at the state level and this will not change.
- Utah regulatory resources (PSC, DPU, OCS) will continue to be needed to ensure universal service and support telecommunications.
 - Elements of universal service:
 - Being able to call other customers, including those in high-cost areas.
 - Being able to call low-income (Lifeline) customers.
 - Being able to communicate with the speech/hearing impaired. (TRS)
 - Being able to call other customers served by other providers.

What is needed (changes to 54-8b-5):

- Policy makers need to determine an equitable way to fund the regulatory resources needed to support universal service and telecommunications.
- All providers who utilize and/or benefit from state regulatory resources should help pay the ongoing costs of the regulatory resources.
 - Many providers, like wireless providers, who pay regulation fees at the federal level do not pay regulation fees in Utah.
 - VoIP providers also benefit from these regulatory resources and should pay regulation fees.
- There are different options that the Legislature can consider.

Options - Fix the telecommunications portion of the PURF

Option 1 – Have all providers, including wireless, pay the PURF.

- All providers (including VoIP and wireless) file annual reports necessary for the PURF to be calculated. (This would be a form of regulation for VoIP and wireless.)
- Ensure consistency in the reported gross operating revenues subject to the PURF.

Option 2 - Eliminate non-regulated revenues from the PURF calculation.

- This is only a partial solution and does not address or completely resolve the inequitable issue that currently exists since wireless would not pay the PURF.
- Over time, as regulated telecom revenues continue to decline the costs to support the regulatory resources necessary to support telecom and universal service would be shifted to the other public utilities. (Power, gas and water companies.)

Option 3 – General Fund to pay the telecommunications portion.

- Paying the PURF out of the General Fund creates significant concerns for the Utah regulatory agencies (PSC, DPU, OCS).
 - It makes the funding of regulation potentially a political issue every year.
 - Funding/budget fluctuations can cause significant staffing and resource issues for the regulators potentially negatively impacting the effectiveness and efficiency of regulation.

Options - Fix the telecommunications portion of the PURF

- **Option 4 – USF to pay the telecommunications portion of the PURF.**
 - Utah regulatory resources related to telecommunications are utilized primarily to support universal service.
 - A portion of the PURF is already paid for by the USF for the rural ILECs that receive ongoing USF support. This would expand it to include all of the telecommunications portion of the PURF.
 - The cost of Utah telecommunications regulatory resources will be paid for by all customers who benefit from the regulatory resources necessary to support universal service.
 - Providers collect/remit the USF surcharge. Customers pay the USF.
 - Will not change the non-regulated status of VoIP and wireless in Utah.
 - Result in reduced regulation for most telecommunications providers who pay the PURF by eliminating the need for filing financial reports.
 - The rural ILECs, especially those who receive Utah USF will continue to file financial reports.
 - Will not cause a significant increase in the USF surcharge per customer.
 - Most likely only a few cents per month increase in the USF surcharge per line per customer.
 - This increase could be offset through the other proposed changes.

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Utah Universal Service Fund (USF)

54-8b-15 Universal Public Telecommunications Service Support Fund.

HISTORY OF UNIVERSAL SERVICE

Theodore N. Vail - **Champion of universal service:**

- First President of American Telephone and Telegraph Company (AT&T). He retired in 1919.
- “*One policy, one system, and universal service.*”
- He convinced the public and the government that the best possible phone system was one that could provide "**universal service**" around the country. (Telephone service became a monopoly.)
- Universal service was achieved through **implicit subsidies**:
 - Long-distance service rates subsidizing local service rates.
 - Business service rates subsidizing residential service rates.
 - Urban service rates subsidizing rural service rates.

1934 Communications Act established the FCC with instructions to:

“make available, so far as possible, to all people of the United States, ... a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication...”

EVENTS AND TECHNOLOGY - CHANGING TELECOMMUNICATIONS

- **1984 - Break-up of the Bell System** (Modified Final Judgment).
- **1995/1996 - Utah and federal telecommunications reform legislation.**
 - Opening up the local telecommunications market to competition.
 - Competitive pressure eliminating implicit subsidies.
- **Establishing the Utah (1997) and federal (1996) USF programs.**
 - Explicit subsidies to support universal service in replacing the diminishing implicit subsidies in a competitive telecommunications marketplace.
- **2011 – FCC USF/Intercarrier compensation transformation order.**
- **Significant advances in wireless, high-speed Internet and VoIP technologies.**

The goals of universal service remain consistent.

Funded through explicit subsidies such as the USF.

- To promote the availability of quality services at just, reasonable, and affordable rates.
- To increase access to advanced telecommunications services throughout the nation.
- To advance the availability of such services to all consumers, including those in low income, rural, insular, and high-cost areas at rates that are reasonably comparable to those charged in urban areas.

USF Surcharge and Cost History

UTAH USF SURCHARGE HISTORY

6/1/1998	1/1/2000	9/1/2001	11/3/2003	7/20/2006	10/1/2008	11/1/2009	9/1/2011
1.00%	0.67%	0.34%	0.90%	0.50%	0.45%	0.25%	1.00%

UTAH USF COST HISTORY

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
High Cost	\$ 6,828,586	\$ 6,118,552	\$ 4,184,302	\$ 4,429,882	\$ 5,305,412	\$ 5,376,359	\$ 6,446,100	\$ 9,002,663	\$ 7,766,076	\$ 9,145,072
Low Income	\$ 725,086	\$ 1,232,851	\$ 1,419,339	\$ 1,465,854	\$ 1,374,997	\$ 1,347,503	\$ 1,297,382	\$ 1,246,054	\$ 1,016,472	\$ 541,353
TOTAL	\$ 7,553,672	\$ 7,351,403	\$ 5,603,641	\$ 5,895,736	\$ 6,680,409	\$ 6,723,862	\$ 7,743,482	\$ 10,248,717	\$ 8,782,548	\$ 9,686,425

Source: Utah Division of Public Utilities

Utah Universal Service Fund (USF)

- *54-8b-15(5): Operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds.*
- “Utah Code Subsection 54-8b-15(10) defines who should contribute to the fund. Currently the customers of all ILECs, CLECs, toll resellers and wireless companies contribute to the fund. Some VoIP providers contribute, some do not. (Footnote 9) **There is some dispute about the current status of the law relative to required contributions from VoIP providers. While some providers pay, the Division has reason to believe that various other VoIP providers with a variety of technologies do not contribute to the UUSF.** Currently paying VoIP providers claim to be paying voluntarily, not conceding the applicability of the charge to their services.” (Page 8 and Footnote 9 of the July 8, 2013, report by the Utah Division of Public Utilities to the Utah Public Service Commission, in Docket No. 12-999-10.)

Utah Universal Service Fund (USF)

What is Needed - Changes to 54-8b-15:

- Change “basic telephone service” to “voice telephony service.”
 - Definition is more broad and includes all local voice service provided through any landline or wireless technology.
- Fix the funding base: Additional language will make the existing language more clear so there is no doubt that VoIP and any “voice telephony service” pays into the USF.
 - The requirement for those who pay into the Utah fund will be consistent with those who pay into the federal USF.
- Ensure that the USF promotes efficient and equitable cost recovery, supplementing any federal support to:
 - Continue to support “voice telephony service” in high-cost areas.
 - Including areas where there is a significant public interest and public safety need.
 - For example, help facilitate wireless service availability in Canyon areas where it is not currently available. (Logan Canyon, American Fork Canyon, etc.)
 - USF to fund the TRS programs and continue to fund Lifeline.
- The telecommunications portion of the PURF to be paid by the USF.
- Make clear that with funding comes obligations:
 - An Eligible Telecommunications Carrier (ETC) is obligated to provide voice telephony service or continue to provide voice telephony service only in the geographic areas for which they receive Utah USF support.

Utah Universal Service Fund (USF)

Significant need for the Utah USF to continue:

- Because of widespread wireless availability, some may say “*declare victory and eliminate the Utah USF.*” This would be a major change having significant impact on many existing customers.
 - Without the existing federal and Utah USF, wireless would have had to pay more to connect their cell sites and most likely there would not be as many cell sites in rural areas.
 - With help of the federal and Utah USF, rural ILECs have placed facilities, including fiber optics technology, into high-cost areas that otherwise would not have facilities. Many of these same facilities have been used to connect wireless cell sites.
 - There continues to be high-cost areas in Utah where wireless is not currently available and where there is a significant public safety/public interest need.
- FCC recognizes the important role that states will continue to have to ensure universal service. (December 18, 2014, Report and Order, section 28.)
 - “We also note that the states have an important role to play in advancing universal service goals. We welcome and encourage states to supplement our federal funding, whether through universal service funds or other mechanisms.”

SUMMARY OF THE PROPOSED CHANGES

Combine 3 existing fees/surcharges - into the existing USF surcharge.

- Eliminate telecommunications part of the PURF and fund it through the USF.

Additional language detail to fully accomplish the intent of existing USF statute.

- Broaden and fix the funding base.

Does not result in a major change to the USF.