



**Written Testimony of
Lisa McCabe
CTIA
Regarding Funding of the Public Utility Regulatory Fund
Before the
Utah State Legislature
Public Utilities, Energy, and Technology Interim Committee
September 18, 2019**

Chairs Winterton and Albrecht and Members of the Committee: on behalf of CTIA, the trade association for the wireless communications industry, I submit this written testimony to address the proposals by the Division of Public Utilities (“DPU”) to increase funding to the Public Utility Regulatory Fund (“PURF”). These proposals were discussed at the Public Utilities, Energy, and Technology Interim Committee (“Committee”) meeting held on June 19, 2019, in which representatives of the wireless industry were unable to participate and in a subsequent meeting organized by the DPU and attended by CTIA and other stakeholders on September 11, 2019.

During the June 19 Committee meeting, DPU suggested a number of options for shoring up the PURF.¹ In addition, at the September 11 stakeholder meeting, the DPU focused discussion on four options:

1. Eliminate the 0.3% cap, trusting the legislative appropriations process to act as a check on agency expenses
2. Change the 0.3% cap
3. Identify another funding source (including but not limited to the Utah Universal Service Fund (“UUSF”) or new fees)
4. Change the base of payors into the fund

While CTIA supports Options 1 and 2, we believe there are problems with Options 3 and 4.

Regarding Option 3, we believe appropriating UUSF monies to fund the PURF is inconsistent with federal law. Under 47 U.S.C. § 254(f), states may establish state USFs and require telecommunications carriers that provide intrastate telecommunications services to contribute to the state funds, to preserve and advance “universal service” so long as the relevant state regulations are “consistent with the [FCC]’s rules to preserve and advance universal service.”²

¹ See Slide 6: [javascript:openPage\('/interim/2019/pdf/00003163.pdf'\)](javascript:openPage('/interim/2019/pdf/00003163.pdf'))
<https://le.utah.gov/asp/interim/Commit.asp?year=2019&com=INTPUT>

June 19, 2019 Meeting Materials, Item 5: “Utility Regulatory Funding, Utah Department of Commerce”

² “A State may adopt regulations **not inconsistent with** the [FCC]’s rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement



47 U.S.C. § 254(c)(1)³ further defines “universal service” as “telecommunications services” which would exclude the preservation and advancement of state utility commissions. Arguably, the appropriation of UUSF monies to fund the PURF in order to support the administrative costs of the Utah PSC would not be funding “universal service” as a “telecommunications service” and would not be “consistent with the [FCC]’s rules to preserve and advance universal service” since the FCC itself does not fund its own general operations with federal USF monies but through FCC regulatory fees and application fees. Thus, funding the Utah Public Service Commission’s general operations with UUSF dollars is inconsistent with, and thus impermissible under, § 254.

Furthermore, regarding Option 4, Utah law is consistent with federal law and explicitly excludes wireless from the Public Service Commission’s jurisdiction. In 2002, Utah lawmakers made the policy decision to statutorily exclude wireless service from regulation by the Public Service Commission. See Utah Code § 54-2-1(32)(b). Therefore, there is no policy rationale for imposing a charge intended to recoup regulatory costs incurred by the Division of Public Utilities or the Public Service Commission on entities that do not provide regulated services, as suggested by Option 4 and previously to this committee in June. While there are a handful of states, such as California and Vermont, that impose regulatory surcharges on wireless providers, these states have chosen to retain limited regulatory jurisdiction over wireless service so there is a policy reason for imposing the surcharges on wireless providers in those states.

Utah’s decision not to regulate the wireless industry was a sound one. Competition in the wireless industry has led to dramatic improvements in service offerings, lower prices, more choice for consumers, and increased transparency and predictability in the terms and conditions of wireless service.⁴ The wireless industry’s competitive nature has spurred rapid wireless development that has

of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.” 47 U.S.C. § 254(f) (emphasis added).

³ “Universal service is an evolving level of telecommunications services that the [FCC] shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services-

“(A) are essential to education, public health, or public safety;

“(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

“(C) are being deployed in public telecommunications networks by telecommunications carriers; and

“(D) are consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 254(c)(1).

⁴ Since 2003, CTIA’s Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers. The Code – which is followed in all 50 states – has helped consumers make informed decisions when selecting a wireless plan and has contributed to the continued competitiveness within the wireless



witnessed a growth of subscriptions to over 330 million nationally and over 2.8 million subscriber connections in Utah⁵ with over 63 percent of Utah adults living in wireless-only households.⁶ This rapid development was ushered in by Congress' decision in 1993 to create a national regulatory framework for wireless service. This national framework allowed wireless providers to deploy their networks and services nationwide (and beyond), thus enabling them to offer innovative service options, which significantly lowered the cost of services and provided more consumers with greater access to wireless to an extent not achievable had wireless regulations been balkanized on a state-by-state basis.

Proponents of expanding the PURF fee to wireless service point to declining landline telecommunications revenues to justify imposing the fee on unregulated wireless service. However, other utility revenues are declining as well due to improvements in energy efficiency, a boon for consumers, resulting in decreased PURF-assessable revenue, as well as tax reform.⁷ It is unfair to expand the fee to one class of unregulated service providers in one sector, when revenues in all sectors appear to be declining.

A comprehensive review of activities funded by the PURF and perhaps a review of the amount of the assessment on regulated utilities under the state's regulatory authority may be the best course of action moving forward, not imposing yet another fee on consumers of non-regulated wireless service in Utah. CTIA supports DPU's proposal either to eliminate or to raise the cap on the PURF, which should eliminate funding issues for the DPU going forward and will maintain sound policy regarding the UUSF and wireless communications.

industry. See <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

⁵ FCC, Voice Telephone Services Report: Status as of June 30, 2017, at <https://www.fcc.gov/voice-telephone-services-report>, last accessed July 9, 2019.

⁶ CDC, National Center for Health Statistics, https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_201903.pdf, last accessed July 9, 2019.

⁷ Division of Public Utilities, Department of Commerce Presentation <https://le.utah.gov/interim/2019/pdf/00003204.pdf>