

Service Date: April 4, 2016

Memorandum:

To: Commissioners, Will, Mike, Laura, Justin
From: Gary
RE: Staff Recommendation in Docket No. N2015.11.85 – IN THE MATTER Of the Investigation into Issues Related to Establishing a Universal Service Fund for Broadband Deployment
Attachments: Attachment A - State Universal Service Fund Statutes – MCA 69-3-802 through MCA 69-3-846

BACKGROUND

As part of the settlement agreement between CenturyLink QC, the Missouri River Residents for Improved Telecommunications Service, and the Montana Public Service Commission Advocacy Staff, that was approved by the Commission in its final order in Docket D2014.11.91, the Commission agreed that, prior to January 2016, it would:

... open an investigation docket, the purpose of which is to determine whether and how to establish, pursuant to the authority vested in the Commission by Mont. Code Ann. §§ 69-3-841 through 843, a Montana Universal Service Fund that would enable the deployment of broadband-capable telecommunications networks in locations in Montana that would not have access to broadband absent such support, and to consider changes in Montana law that may be necessary to accomplish greater broadband deployment.

Per Order No. 7388j, Joint Stipulation and Settlement Agreement at pp. 6-7 (Aug. 26, 2015) the Commission opened said investigation with a Notice of Investigation and Opportunity to Comment in Docket No. N2015.11.85 on December 14, 2015. The Commission sought initial comments by January 29, 2016 and reply comments by March 7, 2016.

State USF statutory background (the actual text of the Montana Code Annotated (MCA) sections referenced in this Notice are attached in Attachment A)

Mont. Code Ann. § 69-3-841 expresses a legislative finding that a Montana universal service fund (USF) should be created that complements the federal USF by providing additional funds as necessary to ensure universal service in Montana. Telecommunications carriers operating in Montana would contribute to the state USF. The USF would be competitively neutral in funding and distribution, would provide support for high-cost areas, and would allow the implementation of state support for telecommunications service provided to schools, libraries and health care providers.

Mont. Code Ann. § 69-3-842 provides that the Commission, either upon its own motion or upon petition by a telecommunications carrier or the Montana Consumer Counsel, will investigate the need for a state USF to assist eligible telecommunications carriers (ETCs) to provide affordable telecommunications services in high-cost areas. The Commission must consider the evolving nature of universal service as well as changes in federal and state policies,

including USFs and access reform. The Commission shall establish a state USF if it determines one is necessary and in the public interest. The state USF must provide support for the following services: voice grade access to the public switched network, including some usage; dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent; single-party service; and access to emergency services, including access to 9-1-1 or enhanced 9-1-1, operator services, long-distance telecommunications service, and directory assistance. Administration of the USF must be competitively and technologically neutral.

Mont. Code Ann. § 69-3-843 requires the Commission to use a competitive bidding process to select a fiscal agent and daily administrator to receive and distribute the funds. The fiscal agent may not be a telecommunications carrier. The Commission may adopt rules for the administration of the state USF.

Mont. Code Ann. §§ 69-3-844 through 846, although not mentioned in the settlement agreement, also pertain to establishment of a state USF. Among these provisions are requirements that a recipient of support from the state USF must offer the supported services to all customers in a designated support area and must use the funds for providing, maintaining, and upgrading the facilities and services for which the support is intended.

United States Code Title 47. §254(f) Regarding State Authority

“A State may adopt regulations not inconsistent with the Commission'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 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.”

NOI Issues for investigation

The purposes of the investigation were: (1) to determine whether and how to establish a state USF to fund deployment of networks capable of both voice and broadband in locations throughout the state where broadband would not be deployed without such support, and (2) to consider changes to state law that may be necessary to achieve statewide broadband deployment. To accomplish these purposes, the Commission sought comments from interested persons on the following issues:

- 1.) From a public policy perspective, is a Montana Universal Service Fund (MUSF) necessary and in the public interest?

- 2.) The current federal Universal Fund contributes approximately \$98 million annually to Montana Eligible Telecommunications Carriers for the deployment and maintenance of networks capable of providing both voice and broadband services (High-Cost Support \$92 million, Schools and Libraries – E-Rate \$5 million, Rural Health Care \$1 million). For each of the three federal USF programs listed above, is additional support from a Montana Universal Service Fund (MUSF) necessary to adequately address the broadband requirements of Montana rural and high

cost consumers and Montana anchor institutions? If commenters believe additional funding beyond the federal USF is necessary for any of the three programs, please explain why.

3.) The purpose of federal USF support was broadened significantly in the FCC November 18, 2011 Transformation Order No. FCC 11-161 to include support, not only for voice services, but also for broadband services. Should it be the goal or policy of the state of Montana that rural and high cost consumers and anchor institution have access to broadband services that are comparable in price and speed to broadband services available in urban areas? If so, would this require a change to the Purpose Section MCA 69-3-802 of the Montana Telecommunications Act (see Attachment A)? In addition, please comment on whether under MCA 69-3-842 (see Attachment A), a MUSF could provide support for broadband services, in addition to voice services. If not, would it require a statutory change in order to provide broadband support?

4.) MCA 69-3-844 defines the contribution base to a MUSF as being a “percentage of total intrastate retail revenue for all telecommunications carriers registered in the state.” The existing contributions for the federal USF are calculated as a percentage of the contributor’s projected collected interstate and international end-user telecommunications revenues, net of projected contributions. Thus, the FCC and Montana contribution systems are currently based on a percentage of retail or end user revenue. The FCC, in WC Docket No. 12-46, April 30, 2012, recognized that the contribution methodology for the federal USF needed reform and they opened a FNPRM to receive comments on proposals to reform and modernize how federal USF contributions are assessed and recovered. This matter was referred by the FCC to the Federal-State Joint Board on Universal Service on August 7, 2014 in FCC Order No. FCC 14-116. The FCC has suggested a contribution base using number of connections or phone numbers rather than a percentage of revenues. Please comment on whether the current Montana statute is still viable in light of the many complex changes to the telecommunications industry since the statute was adopted. Also, please comment, if it was found to be advantageous to Montana to implement a contribution based on number of connections or phone numbers, if adoption of such a methodology would require change in statute.

5.) Finally, the Commission invites comments regarding any other issues associated with whether the establishment of a MUSF is advisable or not, or any other issues or concerns associated with a MUSF.

PARTIES FILING COMMENTS

Parties filing comments in this docket were the Montana Telephone Association (MTA), CenturyLink QC (CenturyLink), Bresnan Broadband of Montana, LLC. (Bresnan), AT&T, and CTIA – The Wireless Association (CTIA). Those comments are summarized below.

SUMMARY OF COMMENTS

Note – the terms Montana Universal Service Fund (MUSF) and State Universal Service Fund (SUSF) are used by different parties but have the same meaning in the context of these comments.

AT&T Initial Comments

Issue No. 1 – “A Montana Universal Service Fund (MUSF) dedicated to broadband services exceeds the jurisdictional authority of the Commission and raises policy questions that should be addressed by the state legislature.” AT&T interprets the question more narrowly, asking whether a MUSF to support the availability of Internet access and services is necessary and in the public interest. AT&T argues that the Commission’s USF authority is limited to support for voice service and the legislative intent is to constrict the usage of the fund. AT&T states that a legislative change would be needed to establish a publicly-funded mechanism to support the availability of Internet access services in Montana if Montana policy makers wish to establish such a support mechanism.

Issue No. 2 – “Any state mechanism to support the availability of Internet access services in Montana must be coordinated with federal programs and must be funded at judicious levels, focusing only on unmet needs in unserved areas.” AT&T asserts Montana should refrain from establishing a MUSF until after the FCC has completed implementation of its most recent Connect America Fund (CAF) plans. AT&T points out that in Montana the FCC has just offered \$98-\$114 million over 6-7 years of CAF Phase II model support to price cap carriers CenturyLink and Frontier to provide broadband access in underserved and unserved areas. In addition, AT&T states they anticipate FCC action on the federal-high cost support mechanisms that support rate-of return carriers to address Internet access support issues in the near future. AT&T asserts that any Montana support mechanism should be coordinated with and complement the FCC CAF mechanisms and not duplicate the CAF efforts. AT&T warns that not doing this could impose an unreasonable funding burden on Montana consumers.

Issue No.3 – “Authority to establish an internet access availability support mechanism would require statutory changes to the limited USF purposes stated in the Montana Code Annotated. This question implicates broad, non-telecommunications policy questions that exceed the jurisdiction and current expertise of the Commission and which should be referred to the state legislature”

MTA Initial Comments

Introduction – The MTA states that “MTA believes that establishing a SUSF at this time is both premature and highly problematic, given the fluid nature of the federal universal service reform and the risk of duplication of federal support, and the costs of a state fund to Montana ratepayers and taxpayers and the complexity of such an undertaking.”

Issue No. 1 – The MTA does not believe a SUSF is necessary at this time. It states that it would be difficult at this time for a state SUSF to determine where deployment of broadband service is required that would not be duplicative of federal support. The MTA points to the CAF Phase II dollars recently awarded by the FCC to Frontier and CenturyLink to provide broadband in unserved areas. In addition, the MTA states that the FCC is in the process of reforming federal high-cost support mechanisms by which Montana’s rural ETCs receive FUSF support and the outcome is still uncertain. The MTA asserts that given the fluid nature of those current universal service reform discussions, it would be premature to establish a SUSF at this time.

Issue 2 – The MTA does not believe additional funding is necessary at this time. The MTA goes on to assert that if the Commission should determine that establishment of a SUSF is in the public interest, that there are a number of issues which would need to be addressed. These would include: a definition of broadband, should middle-mile access be funded, the timing of broadband deployment, coverage, quality of service, affordability, NECA tariffs, broadband adoption and education, eligibility, and accountability.

Issue #3. – The MTA asserts that Montana Code does not authorize support for broadband and that given the restrictive nature of MCA 69-3-842(2) the MTA believes it would require statutory change to authorize a broadband SUSF.

Issue No. 4. – The MTA believes it is essential to reform the manner in which universal service contributions are assessed and that the current funding mechanism is unsustainable. The Federal State Joint-Board is currently investigating contribution reform measures for the FUSF. Among those reforms mentioned is moving to an assessment on telephone numbers or connections which the MTA argues would be competitively neutral. However, the MTA states that any contribution reform to the SUSF would require amending state statute.

Issue No. 5. – The MTA opposes any use of SUSF or other public funds to support the construction, ownership and operations of telecommunications networks by state government or its political subdivisions.

Bresnan Initial Comments

Issue No. 1. - Bresnan asserts that the Federal Universal Service Fund (FUSF) for Montana in 2016 is projected to be \$98 million and that there is no evidence that the FUSF support amounts will not be sufficient to enable Montana ETCs to offer broadband internet access speeds of 10 mbps or greater downstream. Bresnan states that any SUSF must not provide subsidies where unsubsidized competitors are already offering broadband services. Bresnan argues that it is premature to assume federal funding and the FCC's other reforms are insufficient for broadband deployment. Any Commission decision regarding the establishment of a SUSF should be deferred until the completion of the FCC's CAF implementation.

Issue No. 2 – Bresnan reiterates that it is premature and therefore contrary to Montana statutes to conclude that federal funding will not be adequate to support broadband service in Montana and that until the effects of the FCC CAF programs for rate-of-return carriers is known, there is no basis for the Commission to establish a SUSF.

Issue No. 3 – Bresnan states that the services enumerated in MCA 69-3-842, which could be supported by a SUSF, are all basic voice telecommunications services. Bresnan asserts there is nothing in statute that suggests that any MUSF funding may be directed to supporting the availability of broadband, or indeed any non-voice services.

Issue No. 4 – Bresnan states that MCA 69-3-844 unambiguously provides that any contributions to an MUSF “must be determined on a percentage of total intrastate retail revenue”. There is no authorization for assessing MUSF contributions on any other basis.

Issue No. 5. – Bresnan asserts that MCA 35-18-104, which exempts telephone cooperatives from Commission jurisdiction, would also prevent the Commission from requiring them to contribute to a MUSF Fund. Thus the Commission would be unable to comply with MCA 69-3-844 and would be unable to create a MUSF.

ARM 35-18-104. Exemption from jurisdiction of public service commission.
Cooperatives and foreign corporations transacting business in this state pursuant to this chapter are exempt in all respects from the jurisdiction and control of the public service commission of this state.

CTIA Initial Comments

Issue No. 1 & 2 & 3 – CTIA asserts there is no public interest supporting a new tax to fund broadband until facilities relying on federal USF funding are deployed and other steps short of a state USF are exhausted. In addition, CTIA argues that a state USF to support broadband deployment would be premature and duplicative, given the status of the FCC’s CAF programs in Montana which are just starting to be implemented for price cap carriers such as Frontier and CenturyLink.

Issue No. 4 - Regarding contribution to a state USF CTIA states that the statutory language is clear: “contributions must be determined on a percentage of total intrastate retail revenue for all telecommunications providers registered in the state. The Commission lacks authority to adopt a contribution methodology based on the number of connections or phone number rather than retail revenue. Such a change would have to be made by the legislature.

CenturyLink Intimal Comments

Issue No. 1. – CenturyLink states that establishing a Montana Universal Fund (MUSF) is in the public interest, and is necessary to meet the public interest goals outlined in Montana Statute. CenturyLink states the FCC has terminated the previous Frozen High-Cost support mechanisms, replacing them with the Connect America Fund (CAF). CenturyLink states that it has received \$15.2 million per year in federal CAF II support to provide broadband service capable of 10 Mbps downstream and 1 Mbps upstream along with voice capability to 33,678 households and businesses in the specific high cost census blocks identified by the FCC as unserved. However, CenturyLink asserts that there are many additional high cost areas in the state that will not receive CAF II support, or any other federal high cost support. CenturyLink argues that in order to meet the Montana statutory directive to “Maintain universal availability of basic telecommunications service at affordable rate” a MUSF must be established.

Issue No. 2 – CenturyLink states that of the 2016 projected high-cost support for Montana, price cap carriers Frontier and CenturyLink will receive only \$16.3 million or 17% of the total. Meanwhile the rate-of return carriers will receive the remaining 83%. This disparity exists even

though both CenturyLink and Frontier both provision and maintain service in rural areas throughout the state. CenturyLink states that the FCC has identified 2,323 price-cap census blocks that are Extremely High Cost (EHC) areas containing 5,027 locations. CenturyLink states these EHC locations have no federal high-cost support directed towards the continued availability and affordability of voice or broadband capable networks. CenturyLink, however, does acknowledge that the FCC is in the process of establishing the rules and the extent of the areas that will be covered in a future auction which is scheduled to begin in late 2018. CenturyLink gives specific examples of the EHC areas it serves and the extremely high cost to do so. CenturyLink asserts that it no longer receives any federal high-cost support to serve these areas and can no longer fund these areas with implicit subsidies. They assert that if these customers are to receive ongoing high quality voice services or broadband services that there needs to be funding from a MUSF.

Issue No. 3 – CenturyLink argues that it would not be necessary to change the Montana statutes that govern MUSF in order to help fund the build-out of broadband capable networks. CenturyLink asserts there is no limitation whatsoever on what services the fund can support. CenturyLink argues the statute only describes the minimum set of services that funding must support.

Issue No. 4 – CenturyLink states that the current statute in Montana requires that contributions to a MUSF must be based on a “percentage of total intrastate retail revenue for all telecommunications carriers registered in the state.” CenturyLink asserts that unless the statute is revised, that a MUSF must be funded in this manner. CenturyLink agrees that the Commission should consider an assessment based on connections and would support a change in the Montana statute to accomplish this. However, in the meantime CenturyLink supports the establishment of a fund using the current assessment method.

Issue No. 5 – No comments

MTA Reply Comments

The MTA asserts that the initial comments filed by parties in this proceeding raised the following general themes:

1. It is premature to adopt a SUSF before knowing how federal support reform may affect infrastructure investment in Montana
2. With that uncertainty a SUSF would risk duplication of federal support
3. Montana statutes would need to be amended to authorize a SUSF that would support broadband services in addition to voice services.
4. Montana’s statute would need to be modernized to amend the contribution/funding mechanism.

In conclusion, the MTA argues that the Commission should urge both the FCC and the Federal-State Joint Board on Universal Service to develop immediately recommendations to reform the current contributions system for the federal USF program that could subsequently inform any future consideration of a SUSF.

Bresnan Reply Comments

Bresnan states that with the exception of CenturyLink, all of the parties filing initial comments in this proceeding have concluded that Montana's statutes clearly do not support or allow state universal funding for broadband deployment.

Bresnan asserts that CenturyLink has already asked the FCC for additional high cost support for the areas in Montana where it had received support before accepting CAF Phase II support and such federal support would duplicate the state universal service support that CenturyLink is seeking in this proceeding. CenturyLink's request for state funding is premature at this point.

Secondly, Bresnan argues that CenturyLink remarkably requests broadband funding at levels that would not require any investment whatsoever from CenturyLink. It is asking the Commission to fully socialize the costs – and risks- - of a universal service program allowing CenturyLink to fully privatize its profits. Bresnan asserts that any program of subsidies should require some meaningful level of investment by the carrier receiving the subsidy. Bresnan states that CenturyLink's proposal would assure it of a broadband monopoly and would violate the competitive neutrality requirement established by MCA 69-3-841(2) and is patently at odds with the purpose of the Montana Telecommunication Act to “encourage competition in the telecommunication industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology (MCA 69-3-802).

CTIA Reply Comments

CTIA states that with one exception, the parties that submitted comments in this proceeding agree that the Commission lacks statutory authority to establish a state universal service fund for broadband deployment, and that any such fund would be premature and impermissibly duplicative of federal efforts.

CTIA states the one exception is CenturyLink. CTIA argues that CenturyLink's contention that existing Montana statute contains no limitation on what services a SUSF could support is wrong as a matter of statutory interpretation. CTIA asserts offering broadband as part of a SUSF would require legislative changes.

Issues # 1 & 2. Regarding the question is there a current need for a SUSF, CTIA argues that such funding at this point would be premature and would potentially duplicate forthcoming federal USF support in contravention of the Legislature's explicit requirement that any Montana SUSF “not duplicate the federal universal funding mandated by the Telecommunications Act of 1996 (MCA 69-3-841(1)).” CTIA states that CenturyLink argues that further support is needed for CenturyLink extremely high cost areas which were excluded from the CAF Phase II support. However, CTIA points out that CenturyLink itself conceded that “[t]he FCC itself is in the process of establishing the rules and the extent of the areas that will be covered by an auction” that will “address some of or all of the high cost areas not included in CAF II.”

Finally, CTIA takes issue with the CenturyLink argument that its declining revenues over the last decade demonstrate the need for a SUSF. CTIA asserts that the loss of revenue from CenturyLink's prior peaks does not show either the necessity of a fund nor that it is impossible for broadband providers to serve additional consumers in the state. CTIA argues that in

determining whether to establish a SUSF, the Commission must determine whether a fund is necessary to provide universal access to consumers at affordable rates, not whether providers need subsidies to maintain higher profits.

CenturyLink Reply Comments

CenturyLink argues that there is a current need for a Montana Universal Service Fund, contrary to the initial comments of the other participants in this docket. CenturyLink states that there are currently many high cost and “Extremely High Cost (EHC) census blocks in price-cap carrier territory, such as their own areas, that will not receive any support under CAF Phase II funding. CenturyLink states that if there is no source of funding other than CAF II, it will not be possible to continue providing voice or broadband services in these areas in the long run. CenturyLink asserts that its current revenues received in a competitive market cannot provide the subsidies required to sustain the provision of services in EHC areas. They state that without federal or state support, carriers cannot continue to build and maintain networks in these areas. They assert that to require a carrier to do so would be an unfunded mandate that, in today’s competitive market environment, would result in an unconstitutional taking.

CenturyLink also takes issue with the MTA and the MTA’s belief that a SUSF is not needed at this time. CenturyLink states that MTA members are all rate-of-return carriers that they have received in the past the bulk of the high cost support in Montana. CenturyLink presents a number of statistics supporting this position including the fact that in 2015 the rate-of-return carriers (and the competitive carriers they own) received over 82% of all federal high cost support in Montana. CenturyLink argues that it and Frontier (the two Montana price-cap carriers) serve a large portion of rural Montana and have received far less support historically and now receive no federal support whatsoever for rural areas that are not CAF II eligible. CenturyLink asserts that because the MTA members receive high-cost support sufficient to allow them to deploy advanced networks does not obviate the need for support in price-cap high-cost areas that now receive none.

CenturyLink also rebuts several arguments presented by CTIA. CenturyLink argues that CTIA’s suggestion that increased efficiencies and new technologies could lead to broadband deployment throughout Montana is pure speculation and that without support, there is no economic basis for investment in sparsely populated rural areas.

Next, CenturyLink argues that CTIA’s statement that the federal government is poised to expend tens of millions of dollars to deploy ubiquitous broadband in Montana and that a MUSF and a funding tax on Montana consumers would be impermissibly duplicative is not correct. CenturyLink asserts that a MUSF would not be duplicative of federal support because it would only provide support in areas that are not supported by CAF Phase II.

CenturyLink takes issue with the CTIA statement that 97.3% of the rural population of Montana is served by two or more wireline or wireless carriers providing broadband. CenturyLink states that the FCC considers high-cost areas served only by wireless carriers as being unserved for CAF II purposes and that only 29% of the population of rural Montana have broadband available from two or more wireline carriers and only 83% have broadband available from at least one carrier.

Regarding the arguments by AT&T, MTA, and CTIA that the Commission does not have the authority to establish a MUST, CenturyLink asserts they are wrong on two points. CenturyLink contends that the Commission has the authority now to establish a MUSF and

nothing in the statutes prohibits a carrier from using funding to build broadband capable networks. CenturyLink argues that MCA 69-3-842 mandates a minimum set of services that must be supported but does not in any way limit additional services that the fund can support, including broadband.

CenturyLink also argues that the assertion by the other parties in this docket that the Commission should wait for the final outcomes of all federal broadband funding programs before establishing a MUSF, means that many high-cost CenturyLink customers may never receive support, or at the very least, will have to wait a very long time for support. CenturyLink asserts that the Commission should understand that arguments to “wait for the FCC” are made by parties that do not want to see a state high cost fund implemented under any circumstances—even in areas where there is no FCC support.

Regarding the statutory requirement that a MUSF be funded based on a surcharge on intrastate retail revenues (MCA 69-3-844) CenturyLink agrees that the surcharge is not an ideal assessment mechanism. However, CenturyLink argues that a MUSF should be established today with the current mechanism until a legislative change can be implemented to broaden the assessment. CenturyLink asserts that rural Montanans should not be punished by delaying high cost funding until the statute can be changed in 2017 at the earliest. CenturyLink asserts a connections-based assessment approach makes the most sense, with a broad recovery from all relevant providers.

Finally, CenturyLink states that if the Commission decides a broadband fund is not appropriate at this time, the Commission should establish a voice high cost fund as soon as possible. CenturyLink argues that there are no federal funds currently assigned to support the provision of voice service in EHCs, where costs are greater than revenues.

Discussion:

The Notice of Investigation (NOI) issued in this docket asked for comments on four specific issues, with the opportunity to also comment on other areas of concern. To summarize, Issues # 1 & 2 asked for comments on the need for a Montana State Universal Fund (MUSF). Issues # 3 & 4 asked for comments regarding the possible requirement for statutory reforms if the Commission wished to establish a MUSF to deploy broadband. First, parties were asked to comment if the Commission had the authority to establish a broadband MUSF under MCA §69-3-842. Secondly, parties were asked to comment on the contribution methodology described in MCA §69-3-844.

Regarding the current need for a state MUSF, four parties (AT&T, CTIA, MTA, and Bresnan) all assert that the Commission does not have the authority to establish a broadband MUSF, and that even if the Commission did have the authority, it would be premature to establish such a fund now. The main arguments put forward are that it would be difficult at this time to determine where deployment of broadband service is required that would not be duplicative of federal support, and that there is no public interest supporting a new tax to fund broadband deployment in Montana. CenturyLink, on the other hand, argues that establishing a MUSF is in the public interest to meet the public interest goals outlined in Montana statute. CenturyLink asserts that while the CAF II support they have accepted from the FCC will provide broadband to 33,768 locations in unserved census blocks, that there are another 2,323 price-cap census blocks containing 5,027 locations that have been identified by the FCC as unserved that are in Extremely High Cost (EHC) areas that have no current federal high-cost support directed towards the continued availability and affordability of voice or broadband capable networks.

However, CenturyLink does acknowledge that the FCC is in the process of establishing the rules and the extent of the area that will be covered in a future auction.

The extent of the unserved areas in Montana which will receive broadband service funded at the federal level is still very unclear. Any MUSF established at this time would very likely be duplicative of the CAF support. The FCC, in its November 18, 2011 Transformation Order FCC 11-161A, ¶ 533 ordered the establishment of a CAF Remote Area Fund to provide support for the deployment of broadband in the very EHC census blocks referenced by CenturyLink. In addition, the FCC on March 30, 2016 issued Order No. FCC 16-33 which established broadband build-out obligations for rate-of return carriers receiving federal high-cost support (both carriers that remain on the existing support mechanism and those carriers that elect to move to model based support (CAF ACAM)). The actual areas unserved by broadband which the rate-of return carriers will be obligated to serve are not known at this time. Staff agrees with CTIA, Bresnan, MTA and AT&T that the establishment of a MUSF at this time would be premature given the ongoing deployment of broadband supported by the federal FCC Connection America Fund (CAF) and the surrounding uncertainty regarding the actual census block areas in Montana which will be funded. Such a fund potentially would be duplicative of the federal fund which is expressly prohibited by MCA 69-3-841(1).

Regarding the statutory authority of the Commission to establish a MUSF to deploy broadband, CTIA, AT&T, MTA, and Bresnan all agree that MCA 69-3-842 lists the seven services which must be deployed by a MUSF and broadband is not a listed service. Therefore, the statute does not allow the deployment of broadband utilizing a MUSF. CenturyLink disagrees with that interpretation and argues that MCA 69-3-842 mandates a minimum set of services which must be deployed but in no way limits additional services from being deployed, including broadband. Staff chooses to interpret MCA 69-3-842 narrowly and agrees with CTIA, AT&T, MTA and Bresnan that the current statute does not grant authority to the Commission to establish a MUSF to support broadband deployment.

Regarding the contribution methodology for funding a MUSF as established in MCA 69-3-844, CTIA, MTA, Bresnan, and CenturyLink all agree that the statute is clear and funding for a MUSF must be based on ...”a percentage of total intrastate retail revenue or all telecommunications carriers registered in the state.”

Recommendation:

Staff recommends the Commission close this docket (N2015.11.85) and *not proceed* to establish a MUSF which would include the deployment of broadband service. Staff believes from the comments filed in this docket that any such fund would be premature, would probably be duplicative of future federal broadband funding, and not in the public interest. In addition, staff agrees with the commenters that under the current statutes, a MUSF which would include broadband service is prohibited. Finally, the current statutory methodology for funding a MUSF is outdated and unworkable.

It is clear that if statewide universal affordable broadband is a goal for the state of Montana, that such a goal must be articulated by the legislature in statute, and that if a MUSF is the vehicle of choice to achieve that goal, then legislative statutory reforms will be necessary.

ATTACHMENT A

69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services.

History: En. Sec. 2, Ch. 546, L. 1985; amd. Sec. 1, Ch. 210, L. 1991.

69-3-841. Universal service policies. The legislature finds that universally available telecommunications services are essential to the health, welfare, and economic well-being of the citizens of Montana. The federal Telecommunications Act of 1996, Public Law 104-104, requires a transition to local competition. Implicit subsidies have historically been used to further the public policy of keeping local rates to customers in high-cost areas at affordable levels. The federal act and the transition to competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally, the federal act's universal service provisions establish a system of discounts for schools, libraries, and health care providers. Securing these discounts can be dependent on state actions. In order to preserve and advance the goal of universal service in the new competitive environment established by the federal act, the legislature finds that a new Montana universal service fund, supported by contributions from the telecommunications carriers operating in Montana, should be created that will:

(1) not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but that will complement the federal fund by providing additional funding as necessary to ensure universal service in the state of Montana;

(2) be competitively and technologically neutral in both funding and distribution;

(3) provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and

(4) allow for implementation of the federal support system for telecommunications services provided to schools, libraries, and health care providers.

History: En. Sec. 11, Ch. 349, L. 1997.

69-3-842. Universal service fund established -- purpose. (1) Upon petition for good cause by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.

(2) If the commission determines that a state universal service fund is necessary to promote

the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

- (a) voice grade access to the public switched network, including some usage;
 - (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;
 - (c) single-party service;
 - (d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;
 - (e) access to operator services;
 - (f) access to interexchange services; and
 - (g) access to directory assistance.
- (3) The fund must support only access to the services listed in subsections (2)(d) through (2)(g) and not support the services themselves.
- (4) The fund must be administered to ensure that its operation is competitively and technologically neutral.
- (5) For the purposes of this section, "interexchange services" means telecommunications long-distance services.

History: En. Sec. 12, Ch. 349, L. 1997; amd. Sec. 1, Ch. 430, L. 2001

69-3-843. Fund administrator -- commission rulemaking authority. (1) A fiscal agent and daily administrator must be selected by the commission to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent may not be for a period greater than 3 years.

(3) The commission may adopt rules for the administration of the fund.

History: En. Sec. 13, Ch. 349, L. 1997; amd. Sec. 1, Ch. 187, L. 1999; amd. Sec. 2, Ch. 430, L. 2001.

69-3-844. Contributions to fund. (1) The fiscal agent shall collect contributions from all telecommunications carriers on a quarterly basis, based on a January 1 to December 31 calendar year. Those contributions must be determined on a percentage of total intrastate retail revenue for all telecommunications carriers registered in the state. If the high-cost mechanisms of the federal universal service program are eliminated, contributions must be determined on a percentage of total intrastate and interstate retail revenue for all telecommunications carriers registered in the state.

(2) The commission shall adopt rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana, and the prevailing party in an action is entitled to the recovery of

costs and attorney fees incurred in that action.

(3) Any funds received by an eligible telecommunications carrier from the state high-cost fund must be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(4) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana end-user customer retail rates.

History: En. Sec. 14, Ch. 349, L. 1997; amd. Sec. 2, Ch. 187, L. 1999; amd. Sec. 3, Ch. 430, L. 2001.

69-3-845. Payments from fund -- costs. (1) Payments from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a quarterly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in 69-3-842(2) to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

(3) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.

(4) Costs of administering the fund must be paid from the fund.

History: En. Sec. 15, Ch. 349, L. 1997; amd. Sec. 3, Ch. 187, L. 1999; amd. Sec. 4, Ch. 430, L. 2001.

69-3-846. Discounts for schools, libraries, and health care providers. The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

History: En. Sec. 16, Ch. 349, L. 1997.