

# PREMPTION OF VOIP REGULATION IN IDAHO

## CENTURYLINK COMMENTS

### Background Information

On March 28, 2016, Senator Brent Hill (President Pro Tempore, Idaho Senate) and Representative Scott Bedke (Speaker, Idaho House of Representatives) sent a letter to Commissioner Kjellander of the Idaho Public Utilities Commission regarding the potential preemption of regulation for Voice over the Internet Protocol (VoIP) service and IP-Enabled Services. The letter asked the Commission:

- What effect the preemption of regulation for Voice over the Internet Protocol (VoIP) service and IP-Enabled Services might have on the need for revision of other Idaho statutes?
- To consider convening a group of interested parties to evaluate VoIP and IP-Enabled Service regulation preemption, and determine whether it should be enabled via legislation, and, if so, what form it can and should take.

The letter also clarified that it was not asking the Commission to undertake a comprehensive review that would lead to a broad sweeping rewrite of Idaho's code related to communications or telecommunications services.

The Commission hired Joseph Cusick as a consultant and a meeting was held with interested parties on July 12, 2016 at the Commission offices to discuss this issue. During the meeting, Mr. Cusick requested that interested parties file comments.

### Summary of CenturyLink's Position

Historically VoIP has not been considered a "telecommunications service" and has not been regulated at the state level. CenturyLink agrees that VoIP should not be regulated by the Idaho Commission. However, VoIP providers, along with traditional telecommunications providers and wireless providers should be required to pay the various taxes, fees and surcharges that traditional telecommunication service providers pay, including but not limited to:

- Idaho Universal Service Fund
- Idaho Telecommunications Service Assistance Program (ITSAP)
- Idaho Telecommunications Relay Service (TRS) Fee
- Regulatory fee to support Idaho PUC

Today, VoIP providers are not required to pay surcharges for any of these programs, and wireless providers only pay surcharges for ITSAP while traditional telecommunications providers like CenturyLink pay each of these surcharges. It is clear that payers into the funds like CenturyLink are competing vigorously with VoIP and wireless carriers. For example, traditional landlines continue to decline, primarily due to wireless substitution.<sup>1</sup> In addition, for customers that continue to have landline phone service, VoIP has proven to be effective alternative to traditional phone lines. As of June 2015, interconnected VoIP represented 23.7% of the total landlines in Idaho.<sup>2</sup>

It is discriminatory for some voice providers to pay for these state programs while other voice providers do not, as this provides a competitive advantage for some providers over others. Payment of the various taxes, fees and surcharges, should be nondiscriminatory and competitively and technologically neutral; neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any voice service provider<sup>3</sup> operating in Idaho. For example, all voice service providers traditional— wireline, wireless and VoIP—should be required to contribute to the Idaho Universal Service Fund (IUSF) that supports voice services.

If the legislature wants to move forward with “preemption of regulation of VoIP and IP-enabled services” legislation, it should also at a minimum require VoIP and IP-Enabled Services to pay all of the same taxes, fees and surcharges as other telecommunication service providers currently pay.

### **Utah VoIP legislation experience**

The Idaho legislature may want to consider what occurred when VoIP services were deregulated in Utah. In 2012, legislation was passed in Utah that preempted the regulation of VoIP.<sup>4</sup> This legislation was actively supported by Verizon, AT&T and other providers. CenturyLink and other rural telecommunications providers argued that the bill should include language that would mandate that VoIP providers to pay all the various taxes, fees and surcharges that telecommunication service providers pay.

---

<sup>1</sup> During the second half of 2015, nearly one half of American homes (48.3%) had only wireless telephones. *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015*, NHS Early Release Program, Released December, 2015, page 1. See: <http://www.cdc.gov/nchs/nhis/releases.htm>

<sup>2</sup> Calculated from the FCC Voice Telephone Services Report, State-Level Subscriptions (Excel file): June 2015: <https://www.fcc.gov/wireline-competition/voice-telephone-services-report>

<sup>3</sup> Voice service" means local voice service (landline and wireless) provided through any technology that interconnects with the Public Switched Telephone Network, or its functional equivalent and can reach an emergency service provider such as 911.

<sup>4</sup> Utah Statute: Title 54 Chapter 19, Regulation of Internet Protocol Services: [http://le.utah.gov/xcode/Title54/Chapter19/54-19.html?v=C54-19\\_1800010118000101](http://le.utah.gov/xcode/Title54/Chapter19/54-19.html?v=C54-19_1800010118000101)

As a compromise, the legislation was modified with language inserted that did not *preclude* the payment of various taxes, fees and surcharges by VoIP providers.<sup>5</sup> The original intent by the legislature was to address the tax parity issue the next year. However, after four years there has not been any additional legislation addressing any of the taxes, fees and surcharges, under the jurisdiction of the Utah Public Service Commission, and many VoIP providers continue to not pay the various taxes, fees and surcharges that telecommunication service providers pay (Those taxes, fees and surcharges under the direction of the Utah State Tax Commission, such as the 911, have now been applied to VoIP service). VoIP and wireless providers that previously actively supported the 2012 VoIP legislation have not supported efforts by telecommunications providers to obtain parity in the payment of the taxes, fees and surcharges in Utah.

If the Idaho legislature does not mandate that VoIP providers must pay the various taxes, fees and surcharges as part of any pre-emption of regulation legislation, it can expect a similar outcome as the experience in Utah. Additionally, it would be easier for the legislature to address this issue at the same time and ensure parity in the payment of the various taxes, fees and surcharges by all providers of voice service<sup>6</sup> regardless of the technology used to provide the voice service.

### **Discussion of Specific taxes, fees and surcharges**

The following discussion describes the taxes, fees and surcharges that are under the jurisdiction of the Idaho Public Utilities Commission (IPUC).<sup>7</sup> These surcharges should apply to all voice providers, including traditional providers like CenturyLink, wireless providers and VoIP providers.

---

<sup>5</sup> Utah Statute: 54-19-103 Authority over Internet protocol-enabled services and voice over Internet protocol services. (1) A state agency and political subdivision of the state may not, directly or indirectly, regulate Internet protocol-enabled service or voice over Internet protocol service; (2) The regulatory prohibition in Subsection (1) does not (a) **affect, limit, or prohibit the current or future assessment of (i) a tax; (ii) a 911 fee; (iii) a universal service fund fee; (iv) telecommunications relay fee; or (v) a public utility regulatory fee.** (emphasis added)

<sup>6</sup> "Voice service" means local voice service (landline and wireless) provided through any technology that interconnects with the Public Switched Telephone Network, or its functional equivalent and can reach an emergency service provider such as 911.

<sup>7</sup> Examples of other taxes, fees and surcharges not listed; local 911 surcharge of \$1.00 per access line and state sales tax at 6%.

## Idaho Universal Service Fund

The Idaho Universal Service Fund (IUSF) came into existence through the Telecommunications Act of 1988 (Title 62, Chapter 6 of the Idaho Code), and the specific authority is provided in § 62-610. The Commission established a universal service fund for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable rates throughout the state of Idaho.”<sup>8</sup>

The IUSF is currently funded by a surcharge on residential and business switched access telephone lines (traditional phone service). Additionally, there is surcharge on long distance services on a per minutes-of-use (MOU) basis. However, VoIP and wireless providers currently are not required to pay this surcharge.

This disparate treatment is discriminatory. In addition, since the surcharge is assessed on traditional business and residential landline telephone service, and not VoIP and wireless service, the source of funding is being significantly reduced. Attachment A contains information regarding the IUSF. This attachment shows that since 2000, residential access lines have declined about 68% and business lines has increased about 3%, for a combined total line decrease of almost 50%. VoIP and wireless are replacing traditional landlines, but the responsibility for universal service funding remains with the providers of declining landlines.

It is worth noting that the FCC now assesses its Universal Service Surcharge to all voice service providers, including telecommunications providers, wireless providers and VoIP providers. In making the determination that VoIP should start paying the federal USF, the FCC stated the following:

*“[W]e recognize that interconnected VoIP service "is increasingly used to replace analog voice service." We expect that trend to continue. If we do not require interconnected VoIP providers to contribute, the revenue base that supports the Fund will continue to shrink, while these providers continue to benefit from their interconnection to the PSTN. We believe that this trend threatens the stability of the Fund and our action to extend contributions obligations to interconnected VoIP providers is "reasonably ancillary to the effective performance of [our] responsibilities" under section 254. Thus, we determine, as required, that the approach we adopt today "will further the achievement of long-established regulatory goals" to preserve and advance universal service through specific, predictable, and sufficient contribution mechanisms.”*  
*Interconnected VoIP Order , para. 48.*

---

<sup>8</sup> Language in the 2016 Idaho Universal Service Fund Annual Report and Recommendation, Case No. GNR-T-16-12: <http://www.puc.idaho.gov/fileroom/cases/tele/GNR/GNRT1612/staff/20160819DECISION%20MEMO.PDF>

The Idaho legislature should mandate that VoIP and wireless providers pay into the IUSF.

### **Idaho Telecommunications Service Assistance Program (ITSAP)**

ITSAP supplements the federal Lifeline program benefits provided to qualified low-income customers. ITSAP currently provides a \$2.50 monthly discount on basic residential service. The federal Lifeline program provides an additional \$9.25 monthly discount.<sup>9</sup> Currently all telecommunications and wireless service providers in Idaho—but not VoIP providers—are required to pay into the ITSAP. The legislature also should mandate that VoIP providers pay into ITSAP.<sup>10</sup>

Attachment B provides information regarding ITSAP. This attachment shows that as wireline continues to decline, wireless is increasing and overall wireline and wireless lines combined increased 7.7% since 2008. The current \$.01 per month per line surcharge has decreased 87.5% since 2001.

### **Telecommunications Relay Service (TRS) Fee**

The TRS program allows citizens who are hearing or speech impaired to engage in telephone communications in a manner functionally equivalent to that of individuals without hearing and speech impairments. (Idaho Code § 61-1301)

Currently the TRS program is funded through a monthly per access line surcharge of \$.02 and a \$.0002 Minute-of-Use (MOU) surcharge on toll services.<sup>11</sup> Attachment C provides information about the TRS program. Since 2000, access lines subject to the surcharge have decreased over 50% and toll MOU have declined about 28%. The annual expenses for TRS have declined over 73%, allowing a 50% reduction in the access line surcharge and a 71.4% decrease in the toll MOU charge. The reason for the TRS program expense reduction is attributable to technology changes providing other options for communication with the hearing and speech impaired.<sup>12</sup>

Currently wireless and VoIP providers are not required to pay into the TRS fund. The legislature should require them to do so.

---

<sup>9</sup> A qualified low-income customer currently can have the \$9.25 discount applied to basic residential service or to a wireless service.

<sup>10</sup> CenturyLink has a digital voice service (VoIP) that it is now starting to offer. In the near future this could be offered to low-income customers qualified for ITSAP and the federal Lifeline program.

<sup>11</sup> Providers are not currently allowed to bill the surcharge on the monthly customer bills. The legislature should change this and allow providers the choice to do so.

<sup>12</sup> For example, the increase use of texting on wireless phones and use of CapTel phone sets.

## **Regulatory Fees to Support IPUC**

While telecommunications providers like CenturyLink continue to pay Idaho regulatory fees, wireless providers and VoIP providers do not.<sup>13</sup> The statutes should be modified to require wireless and VoIP providers to pay Idaho regulatory fees, just as they are required to pay regulatory fees at the federal level.

The regulatory fee was originally established when telecommunications was a monopoly, and the Commission only dealt with issues that involved traditional telecommunications carriers. However, today the Commission addresses issues that do impact wireless and VoIP providers. The IPUC continues to have many critical responsibilities necessary to support telecommunications and voice service, based on both state and federal law. For example the wireless providers that want to participate in the federal Lifeline program, must be approved as an Eligible Telecommunications Carrier (ETC) through a state regulatory filing. Over the last several years, several wireless providers have filed for ETC status from the IPUC and they do not pay regulatory fees for the resources they utilize. Some of the most important responsibilities for the IPUC are related to universal service and universal calling. To ensure all customers can communicate with others, the IPUC has many responsibilities related to IUSF, ITSAP and the TRS program. The IPUC also is responsible for approving and arbitrating interconnection agreements between voice service providers and resolving disputes to ensure that calls are not blocked.

Unlike traditional telecommunications companies like CenturyLink and the rural telecommunications providers, wireless and VoIP providers are not required to report their Idaho voice service revenues to the IPUC. The reported revenue of a provider is the basis used by the IPUC to calculate the regulatory fee owed by that provider. Because wireless and VoIP providers do not report the revenues, they do not pay the regulatory fee.

Attachment D contains information about regulatory fees and provides a new option for voice service providers, better than a revenue based method. This option is a non-discriminatory way for assessing regulatory fees to all telecommunications and voice service providers. This illustrates that the regulatory resources necessary to support telecommunications and voice service can be funded through a very minimal (\$.05 per month per line) surcharge applied to all voice service lines.

---

<sup>13</sup> Note: Providers like CenturyLink who offer both switched access line service (traditional phone service) and also VoIP service do pay Idaho regulatory fees.

## **Minimal customer impact of implementing parity of taxes, fees and surcharges**

Attachment E provides information regarding the taxes, fees and surcharges under the jurisdiction of the IPUC. It also illustrates that a non-discriminatory assessment of these fees on a per voice service line basis, would have a minimal impact to customers. Some customers would actually experience a reduction in the total amount of the surcharges they currently pay. An estimated **\$0.15** per month per line surcharge to all voice service customers in comparison is significantly less than the existing \$1.00 per month per line 911 surcharge. This will enable nondiscriminatory treatment of customers and providers. Additionally it will ensure adequate funding for the various programs and regulatory resources.

## **Conclusion**

CenturyLink supports the legislative efforts to make it clear in the statutes that VoIP is not a regulated service at the state level as long as there is parity in taxes, fees and surcharges. The legislature should mandate VoIP and wireless providers to pay all of the taxes, fees and surcharges that telecommunication providers pay, including those under the jurisdiction of the IPUC.

## **Other necessary changes that need to be made by the legislature**

### **USF reform**

CenturyLink also believes there is a need for USF reform, making necessary changes to the Idaho USF program. Consistent to what is happening with the federal USF, the Idaho USF needs to transition to supporting on a targeted basis both voice service and high speed internet service capable of supporting voice service in high cost areas. Without reform of the Idaho USF, rural high cost areas in Idaho will fall behind in the services available to them in comparison to less rural areas. This will diminish the value of universal service to all Idaho citizens.

## **ITSAP reform**

There is a need for ITSAP reform and the Idaho legislature should approve the required changes necessary to align ITSAP with the federal Lifeline program. The growing inconsistency between the programs creates problems for both low-income customers and for ITSAP/Lifeline providers.<sup>14</sup> For example, today the \$9.25 monthly benefit can be applied to either basic residential service or to a wireless service. The FCC is changing the federal voice only Lifeline program to provide support for high speed internet service. Over time the support for voice service is being phased out. Additionally, the qualification requirements for ITSAP are not the same as for the federal Lifeline program. It would be easier and much better for low-income customers if the qualification requirements of ITSAP were the same as the federal Lifeline program. To not make the necessary changes puts the ITSAP program in jeopardy.

---

<sup>14</sup> The FCC has made changes to the qualification requirements for the federal Lifeline program. Currently A low-income customer that qualifies for various federal and state low-income programs can also qualify for federal Lifeline. ITSAP has different qualification requirements than the federal Lifeline program, qualified based only on income levels and not participation in other low-income programs.