



February 3, 2017

The Honorable D. Gregg Buxton
Chairman, Senate Transportation, Public Utilities, and Technology Committee
Utah State Capitol
Salt Lake City, UT 84114-5155

Re: Opposition to Senate Bill 130

Dear Senator Buxton:

On behalf of CTIA – The Wireless Association,¹ we are writing to express our opposition to Senate Bill 130, legislation that would expand the Universal Public Telecommunications Service Support Fund (state USF) to subsidize Broadband Internet access service. If enacted, this legislation could dramatically expand the size and scope of the state USF and result in significant new taxes on wireless consumers.

As you know, the state USF is currently limited in scope to subsidizing the state lifeline program, the TDD program for hearing and speech impaired citizens and the costs of keeping basic telephone service affordable in high cost areas. All of these purposes are related to the provision of telecommunications, so there is a nexus between the fees imposed on users of telecommunications service and the expenditure of state USF funds. SB 130 would dramatically expand the uses of the fund to pay for the deployment of Broadband Internet access service. If enacted, SB 130 would require wireless telecommunications customers to subsidize investments in non-wireless networks when the wireless industry is already deploying broadband in the state without subsidies. This is fundamentally unfair.

¹ CTIA- The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.



SB 130 also subsidizes the public safety radio communications services via the Utah Universal Service Fund. This is also inequitable. While radio communications are indeed important for public safety, the legislature should designate funding from the general fund for this, and not hide it in the Utah Universal Service Fund which should be used for promoting access to telecommunications services. The proposed subsidy is also duplicative of other proposals to increase the 911 fee to pay for this statewide radio network.

The proposal would also significantly increase the already high taxes and fees on Utah wireless telecommunications consumers, who currently pay federal, state and local taxes averaging in excess of 19% – nearly three times higher than the sales and use tax rates that apply to other taxable goods and services. These taxes and fees include the following:

- Sales and use taxes averaging 6.85%
- Local utility taxes of 3.5%
- State and local 911 and related fees of \$.76 per line per month
- The current state USF of 1.0% of intrastate charges
- The federal USF of about 6.6%

In addition to these existing taxes and fees, there are proposals to increase the 911 fee to pay for the statewide radio network discussed above that would add another \$0.40 per month to Utah wireless consumers' bills.

SB 130 would change the current basis for contribution to the state USF from a percentage of intrastate charges to a flat per line basis without any limitation or cap on the amount of the charge. Given the tens of millions of dollars (or more) in potential costs associated with subsidizing Broadband Internet access in rural Utah, this could result in significant new burdens on wireless consumers by many multiples (the current fund size is approximately \$10 million). Moreover, requiring wireless carriers to move to a flat per line charge would impose burdens on all carriers, requiring that they modify their billing systems to accommodate the change, from which they derive no benefit. In fact, this change may well result in imposing a greater state USF funding burden on wireless customers than they bear today.

It is unclear whether the intent of the legislation, which includes language defining an access line subject to the USF assessment to include "the functional equivalent of a circuit-switched connection," is to include Broadband Internet access connections that



enable the use of Internet Protocol-based voice services. Without clarification, some will argue that the USF surcharge applies to Broadband Internet access services. However, in its 2015 Open Internet Order, the FCC reaffirmed its “longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes,” and “preempt[ed] any state from imposing any new state USF contributions on broadband—at least until the Commission rules on whether to provide for such contributions.”² In addition, the federal Internet Tax Freedom Act (ITFA) prohibits state and local governments from imposing taxes and fees on Broadband Internet access service.

In summary, SB 130 could result in Utah USF supporting Broadband Internet access service providers who do not contribute to Utah USF. Wireless customers will be forced to pay more for services that will not necessarily benefit them. For these reasons, it is inequitable to support Broadband Internet access service by the telecommunications ratepayer-funded state USF. In addition, both federal law and the ITFA ban prevent Utah from imposing state USF assessments on Internet access connections, which are interstate services.

For these reasons, we respectfully ask that the Committee not advance SB 130.

Sincerely,

Lisa McCabe
Director, State Legislative Affairs

² *In re Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5803-04, ¶¶ 431-32 (2015) (emphasis added).