

Kira M. Slawson (7081)
BLACKBURN & STOLL, L.C.
Attorneys for Utah Rural Telecom Association
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 521-7900
Fax: (801) 578-3579

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Potential Amendments to Utah Administrative Code R746-100) DOCKET NO. 16-R100-02
)
) COMMENTS OF UTAH RURAL
) TELECOM ASSOCIATION
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On May 17, 2016, the Utah Public Service Commission (the “Commission”) issued a Request for Comments on proposed amendments to Commission Rule R746-100 titled “Practices and Procedures Governing Formal Hearings.” The purpose of the proposed amendments is to:

1. Remove duplicative language;
2. Eliminate explanations of internal Commission procedures;
3. Simplify the language contained in the rules;
4. Modify the numbering system; and
5. Remove and update obsolete provisions.

The Commission requested that Comments be filed by Monday, July 18, 2016, with reply comments to be submitted by August 15, 2016.

Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Emery Telephone, Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., Strata Networks, and Union Telephone Company, hereby files these comments to address its concerns regarding the proposed amendments.

In its comments below, URTA identifies particular sections of the rules for which URTA has concerns, and provides a general explanation of URTA’s concerns. Specific proposed language changes are identified by URTA in the attached Exhibit A, which is a redlined Word version of the Commission’s proposed R746-100:

R746-1-103--Definitions

(5) “Initial Pleading”. The definition of initial pleading provides that an initial pleading is “a request for agency action, which includes...” It is more streamlined to eliminate the term “initial pleading” and use “Request for Agency Action” directly since as the amendment is proposed, an initial pleading is defined as a request for agency action. Additionally, there is no definition for “Request for Agency Action” in the amendments as proposed. The change in the defined term would then be carried through the entire rule.

(7) “Intervenor”. The word “timely” should be removed from subsection (a) because the Commission can determine the timeliness when considering whether to grant intervention. This leaves the Commission with some discretion to determine the timeliness of a petition for intervention based on the circumstances of the particular petition.

(11) “Petitioner”. This defined term does not appear to be used in the rule and does not appear

to be needed.

See URTA's proposed changes in Exhibit A.

R746-1-104

(1) The proposed amended language does not appear to be consistent with other sections of the rule. It appears from R746-1-103(5) that applications, petitions, orders to show cause are all types of requests for agency action. Additionally, there is a catch all "any other filing reasonably calculated to initiate an adjudicative proceeding," but according to R746-1-103(5)(b) a complaint is not an initial pleading (or a request for agency action). URTA proposes that the language of R746-1-104 be modified as set forth in Exhibit A.

Subsection (d). With regard to those matters to be handled informally, URTA would like to ensure that only "unopposed" requests for approval of a merger, acquisition, or similar organizational restructuring be handled informally. Further, the rule, as drafted, would require a Commission determination that the merger, acquisition or similar restructuring would not alter or affect the services provided before adjudicating the matter informally.

URTA also proposes a section (3) that evidences the intent that the Commission can, pursuant to U.C.A. Section 63G-4-202, convert an informal proceeding to a formal proceeding and vice versa. See URTA's proposed changes in Exhibit A.

R746-1-106. Computation of Time.

URTA proposes some language changes for clarity. The language changes do not substantively change the rule, but do further simplify the language. See URTA's proposed changes in Exhibit A.

R746-1-109. Deviation from Procedural Rules.

The amendments proposed by the Commission substantively change this provision.

Whereas, the original language permitted a party to seek deviation from any rule, the proposed modifications would permit deviation only from procedural rules. URTA opposes this modification and would like parties to continue to have the ability to seek deviation from any rule on a showing that the benefit of the rule is outweighed by a hardship to be suffered by the moving party. See URTA's proposed changes in Exhibit A.

R746-1-202. Title of Pleadings.

The amendments proposed by the Commission remove a table demonstrating an appropriate pleading heading, and attempt to use descriptions to convey the same information. URTA finds the sample heading contained in the table to be substantially easier to understand, and requests that the table be reinserted in lieu of the language. See URTA's proposed changes in Exhibit A.

R746-1-203. Form of Complete Filing.

URTA acknowledges that the Commission indicated the language regarding paper filings would be amended if the Commission approves paperless filing in Docket 16-R100-01. URTA had made language changes to reflect paperless filing. See URTA's proposed changes in Exhibit A.

R746-1-205. Content of Initial Pleading.

URTA questions the usefulness of this entire section. The particular content of a Request for Agency Action will depend on the nature of the action requested. Additionally, much of the information referenced in this section is contained in R746-1-202. URTA suggest that this section be deleted. See URTA's proposed changes in Exhibit A.

R746-1-206. Amendment of Complaint or Initial Pleading.

In addition to changing "initial pleading" to "request for agency action," URTA

modifies the language to conform to the concept in R746-1-203 that a complaint is not required to comply with the Complete Filing rule. Additionally, URITA added proposed language to indicate that leave of the Commission would be required for amendments sought after the responsive pleading has been filed or is due. See URITA's proposed changes in Exhibit A.

R746-1-401. Pre-hearing Briefs, Comments, and Testimony – General Requirements.

URITA modified this section to eliminate paper filing. See URITA's proposed changes in Exhibit A.

R746-1-501. Discovery.

URITA modified this section to eliminate the references to interrogatories, requests for admission, and request for production of documents in informal discovery. Historic practice has been for the parties to use data requests for informal discovery. Data requests, by their nature, include interrogatories and requests for production of documents. The use of more traditional discovery methods should be reserved for formal discovery, and is covered in subsection (2) with the reference to Rules 26-37 of the Utah Rules of Civil Procedure.

Additionally, URITA suggests that subsection 4 is not needed because an intervenor is a "party" after being granted intervention. See URITA's proposed changes in Exhibit A.

R746-1-601. Identification of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

URITA made two minor replacements of "the" with "a" to reflect that paper filings are not necessary. See URITA's proposed changes in Exhibit A.

R746-1-602. Persons Entitled to Review Confidential and Highly Confidential Information.

URTA suggests deleting “this” in subsection 1(a) since it is not accurate that “this” is Subsection 602(2). See URTA’s proposed changes in Exhibit A.

R746-1-603. Treatment of Confidential and Highly Confidential Information.

URTA proposed a modification to subsection (1)(b). Confidential and highly confidential information should not be disclosed in interrogatories or other forms of discovery, or administrative investigative requests for information or documents. Rather, confidential and highly confidential information should only be disclosed pursuant to a valid subpoena, court order, or GRAMA request. See URTA’s proposed changes in Exhibit A.

R746-1-604. Challenges to Claims of Confidentiality.

URTA proposes a modification to this section to reflect that a Commission Order on a challenge to a claim of confidentiality should be the same as any other Commission Order. See URTA’s proposed changes in Exhibit A.

R746-1-704. Public Witness Evidence.

URTA proposes minor modifications to this section to reflect that if a person petitions for intervention and intervention is granted, that person is a “party.” If the intervention is not granted, such person should still be entitled to act as a public witness. Further, if a public witness provides sworn testimony, the public witness should be subject to cross examination as previously provided in the rule. See URTA’s proposed changes in Exhibit A.

For the above stated reasons, URTA respectfully requests that the Commission modify the proposed rules as set forth on Exhibit A.

Respectfully submitted this 18th day of July, 2016.

BLACKBURN & STOLL, LC

Kira M. Slawson
Attorneys for Utah Rural Telecom
Association

CERTIFICATE OF SERVICE
Docket No. 16-R100-02

I hereby certify that on the 18th day of July, 2016, I served a true and correct copy of Utah Rural Telecom Association's Comments on the Revised Proposed Rules R746-100 via e-mail transmission to the Public Service Commission Distribution list in this docket and the following persons at the e-mail addresses listed below:

Division of Public Utilities

Bill Duncan

Chris Parker

Erika Tedder

wduncan@utah.gov

chrisparker@utah.gov

etedder@utah.gov

dpudatarequest@utah.gov

Office of Consumer Services

Michelle Beck

Danny Martinez

mbeck@utah.gov

dmartinez@utah.gov

Assistant Utah Attorneys Generals

Justin Jetter

Rex Olsen

Robert Moore

jjetter@utah.gov

rolsen@utah.gov

rmoore@utah.gov

Kira M. Slawson