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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Utah Affordable Base Rate for Telecommunications Services	) ) ) ) ) ) ) )	Docket No. 16-R360  <b>COMMENTS OF UTAH RURAL          TELECOM ASSOCIATION ON THE          PROPOSED RULE AMENDMENT          R746-360-6</b>
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On March 4, 2016, the Utah Public Service Commission (the “Commission”) issued a Request for Comments on whether Utah’s affordable base rate should be changed to match the Federal benchmark rate. 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., UBTA-UBET Communications Inc. (dba Strata Networks), and Union Telephone Company, filed comments regarding the affordable base rate in Utah on March 25, 2016.

On April 18, 2016, the Commission issued a Notice of Requirement to File a Petition to Amend Tariff or to Deviate from the Utah Affordable Base Rate (“Notice”), which

informed Utah rural telecommunications providers that the Commission was proposing to change the affordable base rate in Utah to \$18.00 for residential service and \$27.50 for business service, effective July 1, 2016.<sup>1</sup> The proposed rule Amendment was issued by the Commission on April 19, 2016, and provides that a telecommunications corporation will not be eligible for state universal service fund (“State USF”) support unless the telecommunications carrier charges the new affordable base rates as proposed in the rule, or has a petition to deviate from the Affordable Base Rate granted by the Commission. The Commission requested comments on the proposed rule to be filed by May 31, 2016, and notified interested parties that a hearing on the proposed rule will be held on May 31, 2016.

While URTA commends the Commission for taking these proactive steps, URTA has some concerns with the proposed rule, as drafted:

## **I. FCC LOCAL RATE FLOOR.**

As identified in URTA’s initial comments, the Federal Communications Commission (“FCC”) adopted reforms to limit Federal High Cost Loop Support (“HCLS”) payments to telecommunications carriers who are not charging their customers local rates that meet the FCC local rate floor. The 2016 rate floor for HCLS is \$18.00, inclusive of local rates, mandatory extended area service (“EAS”), and state subscriber line and state universal service charges.<sup>2</sup> On April 5, 2016, the FCC’s Wireline Competition Bureau (“WCB”) announced the

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<sup>1</sup> The Notice incorrectly states that the FCC will reduce federal support to any Utah rural telecommunications provider that, as of June 1, 2016, does not charge a base rate of \$18.00. As further discussed herein, the FCC’s local rate floor benchmark requires that the base rate plus specified state regulatory charges must be \$18.00, rather than the base rate alone.

<sup>2</sup> The schedule for phasing in the local rate floor is:

July 1, 2016: support reduction for rates below \$18;

July 1, 2017: support reductions for rates below \$20 (or survey amount if lower);

July 1, 2018: newly calculated rate floor in effect (calculated annually).

results of its 2016 urban rate survey, the WCB reported the 2016 local rate survey for voice services is \$21.93.

Under the FCC's rules, in June of 2016, all recipients of HCLS must report the number of residential service lines for which the sum of the local rate and state regulated fees (specifically mandatory extended area service fees, state subscriber line charges, and state Universal Service fees<sup>3</sup>) are below \$21.93, as of June 1, 2016.<sup>4</sup> The FCC is, however, phasing in the local rate floor. As a result, to the extent the local rates (plus state regulated fees) in 2016 are less than \$18.00, a recipient's HCLS shall be reduced on a dollar-for-dollar basis.

As indicated previously, the federal local rate floor regulations potentially affect eight URTA members who receive federal HCLS: All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Skyline Telecom, South Central Utah Telephone Association, Inc., and UBTA-UBET Communications Inc. (dba Strata Networks). However, of these companies, some rural exchanges are already at the benchmark rate of \$18.00 for June 1, 2016, when the mandatory EAS charges and State USF fees are added to the rates charged for basic residential service as required by the FCC<sup>5</sup>. Thus, no rate increase is required by the FCC for certain of the URTA companies' exchanges in 2016. Additionally, because the remaining URTA members do not currently receive federal HCLS, they are unaffected by the federal rate floor, and are not required by the FCC to raise their rates.

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<sup>3</sup> 47 C.F.R. §54.318(e).

<sup>4</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17751, para. 238. See also FCC Public Notice, DA 16-362, WC Docket 10-90, April 5, 2016.

<sup>5</sup> In fact, some of the Utah rural exchanges meet the federal benchmark floor of \$20.00 when the EAS and State USF are included in the rate.

## II. UTAH AFFORDABLE BASE RATE.

### A. The Proposed Rule Should Be Amended So that the Affordable Base Rate Does Not Determine a Company's Eligibility to Participate in UUSF.

While only certain URTA companies are affected by the Federal local rate floor, the Commission's proposed increase in the Affordable Base Rate in Utah would affect nearly all of URTA's members because, *as drafted*, the Affordable Base Rate in Utah would affect the *eligibility* of telecommunications corporations for State USF support. As drafted, if a telecommunications corporation does not charge the Affordable Base Rate, it is not *eligible* to receive State USF support unless and until the carrier submits a Petition for Deviation from the Affordable Base Rate, and such Petition is granted by the Commission. Thus, every company in Utah who is currently receiving State USF support would be required to raise their R-1 residential rates to \$18.00, and their B-1 business rates to \$27.50 effective July 1, 2016, to remain eligible for State USF support, unless such company has petitioned for, and been granted, a deviation from the Affordable Base Rate by July 1, 2016.

URTA has several concerns with this proposed rule. First, as the Commission is aware, this is a substantial departure from the current Commission rule and/or practice. Currently, if a company is not charging the Affordable Base Rate (\$16.50 residential and \$26.00 business), the company remains eligible for UUSF, but in determining the UUSF eligibility for such company, the Division of Public Utilities ("Division") will impute the difference between the rates charged by the company and the Affordable Base Rate as revenue to the company, and UUSF support is calculated using the imputed revenues. This enables companies to charge less than the Affordable Base Rate, but remain eligible for UUSF, without having the UUSF

subsidize the lower rates charged by the companies.<sup>6</sup> URTA urges the Commission to modify the proposed rule change so that the Affordable Base Rate is imputed to a company seeking UUSF support, but charging the Affordable Base Rate is not an *eligibility requirement* for receipt of UUSF.

Second, there appears to be a procedural inconsistency between the proposed amendments to R746-360-6 and the Notice. The Notice provides that a telecommunications provider that does not wish to adopt the Utah affordable base rates may petition the Commission to deviate from those rates. According to the Notice, “the telecommunications provider has the burden to demonstrate that the Utah affordable base rates are not reasonable in the particular geographic area served.” Further, “any such petition will be adjudicated in a formal proceeding. A telecommunications provider that does not file a revised tariff *risks* losing its UUSF subsidy unless a petition to deviate is on file with the Commission by June 7, 2016.” *See Notice, p. 2.* However, the proposed rule amendment as drafted by the Commission provides that charging the Affordable Base Rate or having a petition to deviate granted is a requirement for being eligible for UUSF. Logistically, it is will not be possible for any telecommunications corporation to file a petition to deviate from the Affordable Base Rate **and** have that petition granted prior to July 1, 2016, particularly where the Commission has indicated that the petition to deviate will be formally adjudicated. Thus, under the rule as proposed by the Commission, the company whose petition to deviate has been filed but not granted by July 1, 2016 will no longer be eligible to receive UUSF support.

URTA does not believe it is in the public interest to tie eligibility to UUSF to the Affordable Base Rate. Rather, URTA suggests that a more reasoned approach which is

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<sup>6</sup> A company may charge less than the affordable base rate in cases of employee discounts or emergency line tariff service, or when economic difficulties in the geographic area do not support a higher rate.

consistent with the Commission's prior practice (and the FCC benchmark rules) is to permit a company to continue receiving UUSF even if it fails to adopt the Affordable Base Rate, and to impute the difference between the rates charged by the company and the Affordable Base Rate as revenue to the company in determining the amount of UUSF. In other words, the Affordable Base Rate should be used in the **calculation of the amount of the UUSF award**, but not in **determining the initial eligibility for the UUSF**. Therefore, URТА urges the Commission to modify the proposed language of the rule amendment to reflect this policy. URТА's proposed amendments to R746-360-6 are attached hereto as Exhibit 1 (in redline form).

If the Commission is unwilling to make the modifications as requested by URТА, the Commission will need to carve out exceptions for the Affordable Base Rate for such things as emergency line service so that a company who has an emergency line service that is less than the Commission set Affordable Base Rate will still be eligible to participate in the state UUSF.

Additionally, as the Commission is aware, the FCC has recently promulgated the Alternative Connect America Model based support. Companies who elect the A-CAM support will not be required to meet any benchmark rate for federal purposes to be or remain eligible for the A-CAM support. The FCC's rate floor benchmark is adopted only for HCLS purposes, and is not a requirement for receiving all types of federal support. Thus, because there may be Utah rural carriers who adopt the A-CAM support, again URТА urges the Commission to modify the proposed rule to utilize the Affordable Base Rate in Utah for purposes of determining the amount of UUSF award, rather than a criterion for eligibility for receipt of any state UUSF.

**B. The Utah Affordable Base Rate is Inconsistent with the Federal Local Rate Floor Mandate.**

URTA is also concerned with the Commission' proposed Affordable Base Rate because it is not consistent with the Federal Benchmark rate. The residential rate proposed by the Commission is \$18.00 exclusive of EAS, State USF, and State SLC charges<sup>7</sup>. This means that a rural exchange that has an EAS charge will pay \$18.00 plus the EAS charge. In some instances this could result in a monthly rate in excess of \$27.00 for certain rural customers.<sup>8</sup> By way of comparison, CenturyLink has reported in the FCC's annual urban survey a monthly rate of \$17.00 plus mandatory EAS of \$2.50, plus State USF charges of \$0.20, for a total monthly residential rate of \$19.70. If the Commission sets the Affordable Base Rate in Utah at \$18.00 exclusive of EAS, rural residential customers will, in many instances, be paying substantially higher rates than the urban citizens. This is not presently supported by a finding of public interest, nor is it consistent with the basic public policy surrounding universal service.

The business rate of \$27.50 proposed by the Commission is also inconsistent with the Federal local rate floor benchmark. The FCC does not have a separate business local rate floor. Because the EAS rates vary widely throughout Utah, URTA recommends that the Affordable Base Rate in Utah mirror, and be tied to, the federal local rate floor benchmark rate as set by the FCC. The federal local rate floor benchmark includes the monthly per line retail local end-user rates plus mandatory EAS, State USF surcharges, and state subscriber line charges. URTA urges the Commission to adopt this federal local rate floor, as phased in by the FCC, as Utah's Affordable Base Rate. Because the Affordable Base Rate will be based on

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<sup>7</sup> Utah currently does not have any state subscriber line charges.

<sup>8</sup> EAS charges vary widely throughout the state. EAS ranges from a low of zero to a high in excess of \$9.00 per month.

the FCC's local rate floor, there is no need to have separate Affordable Base Rate for business. When the Affordable Base Rate was set for business service in Utah, it offered protection to business owners as a ceiling for rates. However, with the Commission's rule change to a "rate floor," a separate business rate is not required. Further, to be consistent with the FCC, URITA urges that the separate Affordable Base Rate for business service be eliminated, permitting companies to set their business rates as appropriate, with the Affordable Base Rate imputed against the companies if their business rates are below the Affordable Base Rate.

**C. Modification of R746-360-2.**

In order to include the mandatory EAS, State USF charge, and state subscriber line charges in the Affordable Base Rate as suggested by URITA, it will be necessary to modify Commission Rule R746-360-2, in addition to R746-360-6. URITA has attached its proposed modification of R746-360-2, as Exhibit 2 (in redline form) for the Commission's consideration.

**D. Implementation of New Rates.**

URITA is supportive of the procedure set forth in the Notice for revision of the telecommunications provider's rates by use of Petition for Increase in Rates adjudicated informally.<sup>9</sup>

**III. CONCLUSION**

The Rule Amendment to R746-360-6 proposed by the Commission as drafted, requires that a company either charge the Affordable Base Rate, or be granted a Petition to Deviate from

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<sup>9</sup> A telephone cooperative may change its rates without Commission approval pursuant to Utah Code Annotated Section 54-7-12(7).



the Affordable Base Rate in order to be eligible for participation in the UUSF. URТА submits that the proposed rule should be modified so that a company's eligibility for participating in the UUSF is not determined by the rates charged by such company. Rather, URТА proposes that the Affordable Base Rate should be used to calculate the amount of any UUSF distribution received by a company. Additionally, URТА members believe the state Affordable Base Rate should be tied to and mirror the Federal local rate floor as determined by the FCC. Specifically, the Utah Affordable Base Rate should include the local end-user retail rates, mandatory EAS, state subscriber line charge, and State USF surcharges. URТА has provided suggested modifications to R746-360-2 and R746-360-6 as Exhibits to these Comments. URТА and its members appreciate the opportunity to participate in this docket and will participate in the hearing on May 31, 2016.

Respectfully submitted this 25<sup>th</sup> day of May, 2016.

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Association

CERTIFICATE OF SERVICE

I hereby certify that on the 25<sup>th</sup> day of May, 2016, I served a true and correct copy of Utah Rural Telecom Association's Comments on the Affordable Base Rate Rule R746-360, Docket 16-R360-01, 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:

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Exhibit 1  
Proposed Modifications to R746-360-6

Exhibit 2  
Proposed Modifications to R746-360-2