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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Utah Universal Service Fund Surcharge ) Docket No. 16-360-02  
)  
) COMMENTS OF UTAH RURAL  
) TELECOM ASSOCIATION ON THE  
) UTAH UNIVERSAL SERVICE FUND  
) SURCHARGE  
)

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On April 13, 2016, the Utah Public Service Commission (the “Commission”) issued a Request for Comments on the Utah Universal Service Fund (“UUSF”) surcharge. The notice issued by the Commission provided that Comments should be submitted by May 16, 2016, on the following issues:

1. Industry trends or other circumstances that might explain why the current surcharge is generating less revenue.
2. Mechanisms to maintain funding of the UUSF, including but not limited to the following two options, either of which could be accomplished through a future administrative rule filing by the Commission, contemplated to be effective by October 1, 2016:
  - a. Increasing the current surcharge from 1% of billed intrastate retail rates to 1.65% of billed intrastate retail rates. See Utah Administrative Code R746-360-4(C).
  - b. Repealing the current surcharge and implementing a \$0.32 surcharge on:

- i. each residential and business access line of each customer of local exchange telephone service in Utah; and
- ii. each residential and business telephone number of each customer of a mobile telephone service in Utah, not including a telephone number used exclusively to transfer data to and from a mobile device.

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, hereby files these comments on the above referenced issues.

**I. Background on Utah Universal Service Fund.**

Utah Code Section 54-8b-15 establishes the Utah Universal Public Telecommunications Service Support Fund (“UUSF”). The UUSF is designed to promote equitable cost recovery of basic telephone service through the imposition of just and reasonable rates for telecommunications access and usage, and to preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service.” *U.C.A. Section 54-8b-15(6)*. Additionally, as set forth in statute, “the operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon an telecommunications provider.” *U.C.A. Section 54-8b-15(5)*.

Telecommunications customers in Utah who receive intrastate public telecommunications service are required to contribute to the UUSF. Specifically, pursuant to *U.C.A. Section 54-8b-15*:

(10) (a) Subject to Subsection (10)(b):

(i) each telecommunications corporation that provides intrastate public telecommunications service shall contribute to the fund on an equitable and nondiscriminatory basis;

(ii) for the purposes of funding the fund, the commission shall have the authority to require all corporations that provide intrastate telecommunications services in this state to contribute money to the fund through explicit charges determined by the Commission;

(iii) any charge described in Subsection (10)(a)(ii) may not apply to wholesale services including access and interconnection;

(iv) charges associated with being a provider of public telecommunications service shall be in the form of end-user surcharges applied to intrastate retail rates.

(b) a telecommunications corporation that provides mobile telecommunications service shall contribute to the fund only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 USC Sec. 116 et seq.

Telecommunications corporation is defined as “any corporation or person . . . owning, controlling, operating, managing, or reselling a public telecommunications service.” *U.C.A. Section 54-8b-2.1(18)*. “Public Telecommunications Service” is defined as “the two way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.” *U.C.A. Section 54-8b-2.1(16)*.

Thus, pursuant to Utah Code, any corporation or person who provides the two-way transmission of signals, sounds, messages, or data by wire, radio, lightwaves or other electromagnetic means, is required to contribute to the UUSF.

## **II. Specific Issues Identified by the Commission**

The Commission, in its Request for Comments, has indicated that the revenue from the UUSF surcharge has significantly declined, though no specific information is provided by the Commission in the docket. The Commission in a letter to the Public Utilities, Energy, and Technology Committee dated April 14, 2016, estimates that to maintain current UUSF rural telephone subsidies, the current UUSF surcharge will need to be increased. The Commission invited the telecommunications stakeholders to provide comments on reasons for the decline and the method of assessing the surcharge.

### **A. Industry trends or other circumstances that might explain why the current surcharge is generating less revenue.**

Based on data provided by the Division of Public Utilities which tracks UUSF revenue by provider type, it would appear that the significant decline in UUSF reported revenues in the past two years is largely attributed to declining UUSF reported revenues in the wireless industry. According to the data provided by the Division, attached hereto as Exhibit 1, wireless revenues have declined 14% from 2014 to 2015. This is consistent with the overall UUSF revenue decline of 12% from 2014 to 2015. Moreover, the data on Exhibit 1 demonstrates that ILEC UUSF revenues have not experienced as large a decline from 2014 to 2015. Rather ILEC UUSF revenues have had annual decline of approximately 8% from 2014 to 2015. This decline is consistent with the rural companies' experience in access line loss in general.

URTA believes the decline in wireless revenues likely stems from a shift in wireless revenue from voice to data, rather than a 14% decline wireless lines from 2014 to 2015, but URTA does not have access to the data provided to the Division and/or Commission from wireless providers, and cannot confirm this hypothesis. The Division, on the other hand, as the

administrator of the UUSF, has access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenues assessed in end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule. *See R746-360-3.C.* Therefore, URTA would urge the Commission to review the data submitted by the carriers who provide public telecommunications services in the state, and request additional data, as needed, from such telecommunications corporations to determine the reason for the decline in revenues prior to adopting a rule change related to the end-user surcharge. These findings can be presented in the docket and discussed in a technical conference with the stakeholders prior to implementation of a rule change.

Another factor that could be affecting the UUSF revenues is the failure of some telecommunications corporations to contribute to the UUSF as required by Utah Code Section 54-8b-15(10). Under Utah Code, any carrier who provides the two way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by way of wire, radio, lightwaves, or other electromagnetic means to the public generally is required to contribute to the UUSF. *U.C.A. Sections 54-8b-2.1(16) and 54-8b-15(10).* This definition includes interconnected voice over internet protocol (VoIP) providers, and requires such providers to contribute to the UUSF<sup>1</sup>. The Division, as the administrator of the UUSF, is required to ensure compliance with the UUSF rules by providers of public telecommunications service. To the extent the Division is aware of telecommunication corporations who provide interconnected voice service, but who are not contributing to the UUSF, the Division should

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<sup>1</sup> Additionally, Utah Code Annotated Section 54-19-13 demonstrates the legislature's intent that VoIP service be subject to the Utah Universal Service Fund Fee, by explicitly exempting universal service fund fees from the prohibition on VoIP regulation contained in U.C.A. Section 54-19-13.

request data and or access to the books of account of such telecommunications corporations and enforce compliance with the rule, including assessment of penalties if necessary.

Prior to implementing an increase in the UUSF surcharge, URTA believes the Commission should require further investigation from the Division as to the specific reason for the decline, and a determination of whether all telecommunications corporations are properly contributing end-user surcharges to the fund as required by Utah Code. Once the Commission, through the Division, has determined the cause for the revenue decline, and has ascertained that contributions are being received as required by statute, the Commission can reasonably determine the surcharge increase, if any, that is required to maintain the UUSF and can implement a surcharge that is in the public interest to operate and maintain the UUSF.

## **2. Mechanisms to maintain funding of the UUSF.**

In addition to requesting comments on the decline in UUSF revenues, the Commission has requested comments on mechanisms to maintain funding of the UUSF. The Commission has suggested two mechanisms for maintaining funding of the UUSF:

- a. Increasing the current surcharge from 1% of billed intrastate retail rates to 1.65% of billed intrastate retail rates. See Utah Administrative Code R746-360-4(C); or
- b. Repealing the current surcharge and implementing a \$0.32 surcharge on:
  - i. each residential and business access line of each customer of local exchange telephone service in Utah; and
  - ii. each residential and business telephone number of each customer of a mobile telephone service in Utah, not including a telephone number used exclusively to transfer data to and from a mobile device.

Once the Commission has properly determined the required increase in surcharge, it is appropriate to look at the mechanism for increasing the surcharge. URTA believes a transition to a public telecommunications services surcharge on per line/per connection basis is a better approach. First, implementing a surcharge based on a per line/per connection basis will be easier

to administer by the Division and the Commission. Each telecommunications corporation's UUSF surcharge will be a factor of the number of lines/connections that provide public telecommunications services, as defined by Utah Code, times the surcharge amount. In order to determine if a telecommunications corporation has properly calculated the surcharge, the Division will only need to ascertain the number of lines/connections that the carrier has.

Second, a surcharge based on customer voice lines eliminates the impact that revenue shifting between voice and data will have on UUSF revenues. A per line/per connection based surcharge is also immune to the downward pressure on wireless rates, thereby decreasing the likelihood that the surcharge rate will continually need to be increased. In fact, a surcharge based on lines/connections will eliminate variation in contribution rates that the fund currently experiences because of the technology used for the public telecommunications service. Currently, end-user's contributions to the UUSF are dependent on the rates they pay for intrastate retail service. These rates can vary widely depending upon what technology a customer uses to make its voice calls and how a carrier prices that service.

Under Utah Code Section 54-8b-15(5), operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of the funds. In order to ensure that collection of the UUSF is technologically neutral, URTA submits that the surcharge should be based on a per line/per connection surcharge, rather than a percentage of billed intrastate revenue.

URTA requests that the Commission hold a technical conference on the transition, however, because based on the record developed in this docket to date, URTA cannot support the \$0.32 surcharge suggested by the Commission. There simply is no evidence presented in this docket to support a surcharge amount of \$0.32, or to indicate that such surcharge of that amount

is in the public interest. URTA urges the Commission to identify the correct per line/per connection surcharge based on data to be provided by telecommunications corporations, reviewed by the Division, and submitted to the Commission in this docket.

Additionally, URTA submits that the language suggested by the Commission for implementing a per-line surcharge needs revision. The language proposed by the Commission states that a surcharge would be implemented on:

- i. each residential and business access line of each customer of local exchange telephone service in Utah; and
- ii. each residential and business telephone number of each customer of a mobile telephone service in Utah, not including a telephone number used exclusively to transfer data to and from a mobile device.

The problem with the proposed language is that it fails to take into consideration that voice and fax traffic that have traditionally been carried over the dedicated circuit switched connections of the public switched telephone network are now becoming Internet Protocol packet-switched connections—data transfer. By eliminating mobile telephone numbers that exclusively transfer data to and from a mobile device, the Commission might inadvertently eliminate all mobile telephone numbers as traditional circuit switched information, including voice, becomes IP data. Therefore, as suggested above, URTA requests a technical conference to further discuss the transition to a per line/per connection surcharge for public telecommunications services.<sup>2</sup>

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<sup>2</sup> URTA suggests that during the technical conference one method of assessing the surcharge might be to review the FCC Form 477 subscription data submitted by providers to determine the lines/connections to be included.



### **III. CONCLUSION**

URTA contends that more data is needed and the record needs to be more fully developed to support an increase in the UUSF surcharge or a change in contribution mechanism. The Division, as the administrator of the fund, should determine the reason for the decline in revenue and should ascertain that all telecommunication corporations are properly contributing to the fund as required by Utah law. This information is critical to the proper development of the record prior to implementing an increase in the surcharge, or modification of the mechanism of the surcharge.

Respectfully submitted this 16<sup>th</sup> day of May, 2016.

BLACKBURN & STOLL, LC

/s/Kira M. Slawson

Kira M. Slawson

Attorneys for Utah Rural Telecom  
Association

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of May, 2016, I served a true and correct copy of Utah Rural Telecom Association's Comments on the Universal Service Fund Surcharge 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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Kira M. Slawson

Exhibit 1

URTA Comments on UUSF Surcharge

Docket No. 16-R360-02