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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p><b>INVESTIGATION INTO MANAGEMENT OF THE UTAH UNIVERSAL SERVICE FUND CONTRIBUTION METHOD</b></p>	<p>Docket No. 18-999-15</p> <p><b>COMMETNS OF THE UTAH DIVISION OF PUBLIC UTILITIES</b></p>
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Pursuant to Utah Code Ann. §54-4a-1 and Utah Admin. Code r.746-1, the Division of Public Utilities (“Division”) submits these Comments in response to the Utah Public Service Commission’s (“Commission”) October 9, 2018 Notice of Investigation and Comment Period.

On October 9, 2018 The Commission issued a Notice of Investigation and Comment Period in this docket seeking comments regarding 2018 Senate Bill 4 (“2018 SB 4”). 2018 SB 4 requires that the Commission report by October 15, 2019 performance measures for the Universal Telecommunications Service Support Fund (“UUSF”). The request included reporting on the “[n]umber of months within a fiscal year during which the [UUSF] did not maintain a balance equal to at least three months of fund payments” with a target of 0 times and reporting of

the “[n]umber of times a change to the fund surcharge occurred more than once every three fiscal years” with a target of zero. The Commission’s Notice invited comments on these issues.

The Division believes that the Commission is not only authorized but also likely required to increase the UUSF contributions more frequently than once every three years given the current status of the fund. 2017 Senate Bill 130 (“2017 SB 130”) altered the UUSF such that the entitlements to recipients are significantly higher than they have previously been. The result of these changes is a large increase in UUSF distributions. Based on the Division’s projections current UUSF contribution rate of \$0.36 per access line is insufficient for the fund to remain solvent for desired period of three years. If the contribution rate is not increased the fund will not maintain a balance of three months of fund payments target also included in 2018 SB 4.

The Commission cannot meet both targets while also continuing to provide the UUSF distribution levels required by Utah Code §54-8b-15 as amended by 2017 SB 130. Utah Code Ann. § 68-3-11 states that “Words and phrases are to be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined by statute, are to be construed according to such peculiar and appropriate meaning or definition.” Similarly, the Utah Supreme Court has explained that statutory interpretation should “look first to the statute's plain language with the primary objective of giving effect to the legislature's intent.” *Martinez v. Media-Paymaster Plus* 2007 UT 42, ¶ 46, 164 P.3d 384. And that “[s]tatutes should be read as a whole and their provisions interpreted in harmony with related provisions and statutes. *Id.*

2018 SB 4 sets the three year period as a “target” while the language of §54-8b-15 provisions are mandatory. The Commission “shall calculate the amount of each explicit

charge...” and qualifying carriers are “entitled to” UUSF funds. The term target used in this context is typically used to mean a goal rather than a required outcome. In this instance where it is not possible to comply with the mandatory UUSF disbursements and also meet the targets, the only interpretation that is harmonious between the two is for the target to be considered non-mandatory.

As a result, the Commission is not prohibited from increasing the surcharge as necessary to maintain sufficient funds to continue UUSF payments at the levels mandated by §54-8b-15. The Division recommends that the Commission adjust the surcharge amount as necessary to ensure adequate funds are available as necessary even when it requires adjustments more frequently than the legislative target set in 2018 SB 4.

Submitted this 15th day of November 2018.

*/s/ Justin C. Jetter*

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments filed by the Utah Division of Public Utilities was emailed on 15 November 2018 to the following in Utah Dockets 18-999-15.

### BY Electronic-Mail:

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