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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
Investigation into Management of the Utah Universal Service Fund Contribution Method	UTAH RURAL TELECOM ASSOCIATION’S COMMENTS DOCKET NO. 18-999-15

The Utah Rural Telecom Association (“URTA”), on behalf of itself and URTA 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, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc. UBTA-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URTA Members”) hereby files these Comments in response to the Notice of Investigation and Comment Period issued by the Utah Public Service Commission (the “Commission”) on October 9, 2018.

URTA COMMENTS

In 2017 the Legislature passed Senate Bill 130 (“SB 130”). SB 130 set a clear mandate that Utah supports the deployment and management of networks capable of providing access lines, connections, and wholesale broadband Internet access service. In setting this mandate, the

Legislature made significant changes the Utah Public Telecommunications Service Fund (“UUSF”) including, among other things, adopting the federal rate of return for rate of return regulated carriers in Utah;¹ clarified the way disbursements from the UUSF shall be calculated;² and provided that wireless eligible telecommunications carriers (“Wireless ETCs”) are eligible for State Lifeline support.³ Pursuant to SB 130, the Commission promulgated administrative rules related to UUSF contribution⁴ and disbursement⁵ and State Lifeline.⁶ Specifically, with regard to contribution to the UUSF the Commission modified the UUSF contribution method to a per access line/connection surcharge as of January 1, 2018.⁷ With regard to distribution of UUSF, the Commission identified the rate of return applicable for a particular period, and mandated that the Division of Public Utilities (“Division”) should annually review each rate of return company’s annual report and make a determination on each company’s UUSF disbursement.⁸

On October 4, 2018, the Division submitted preliminary recommendations for UUSF for each company to the Commission.⁹ On or about October 9, 2018, the Commission issued a Notice of Investigation and Comment Period (“Notice of Investigation”). In the Notice of

¹ Utah Code §54-8b-15(5)(a).

² Utah Code §54-8b-15(4).

³ Utah Code §54-8b-15(15).

⁴ Utah Admin. Code R746-8-301.

⁵ Utah Admin. Code R746-8-401.

⁶ Utah Admin. Code R746-8-403.

⁷ Utah Admin. Code R746-8-301.

⁸ Utah Admin. Code R746-8-401(4).

⁹ Commission Dockets Nos. 18-040-01, 18-041-02, 18-042-01, 18-043-01, 18-046-01, 18-050-02, 18-051-01, 18-052-01, 18-053-01, 18-576-01, 18-2180-01, 18-2201-01, 18-2302-01, 18-2303-01, 18-2419-01 (the “High Cost Dockets”). In the recommendation filed for Direct Communications Cedar Valley, LLC the Division did not make a numerical recommendation because the Division needed additional information from the company.

Investigation, the Commission notes that there are several dockets open at the Commission that may impact the amount of the surcharge. the Commission, in its Notice, indicated that:

The Utah Legislature has expressed a preference that the PSC maintain a UUSF balance of at least three months of UUSF payments, and that the PSC not modify the UUSF contribution method more than once every three fiscal years.¹⁰

The Commission cited to Senate Bill 4, Business, Economic Development, and Labor base Budget, 2018 General Session (“SB 4”), Item 80, Lines 12-4-1220¹¹ as support for this “preference.” The Commission indicated it addition to the High Cost Dockets, there are several Wireless ETC state lifeline dockets¹² pending that could increase the UUSF distributions to an extent that could require a modification to the UUSF contribution method sooner than three fiscal years.

On November 12, 2018, URТА filed a Request for Clarification related to the Commission’s Notice of Investigation in which URТА requested that the Commission clarify what issue, in particular, it was seeking comments on. Specifically, URТА inquired as to whether the Commission was seeking comments on the amount of the UUSF contribution surcharge, and why it is or is not appropriate to modify the amount of the surcharge; or whether the Commission was seeking comments on the method of UUSF contribution.

On November 13, 2018, the Commission issued a Notice clarifying that the Commission is seeking comments on the UUSF surcharge and confirming the Commission is not seeking to revisit the propriety of a per access line surcharge as established in Utah Admin. Code R746-8-

¹⁰ Commission Notice of Investigation, p. 1.

¹¹ See <https://le.utah.gov/~2018/bills/sbillenr/SB0004.pdf>, Senate Bill 4, Business, Economic Development, and Labor Base Budget, 2018 General Session, Item 80, lines 1204-1220.

¹²Commission Dockets Nos. 17-2511-01, 18-2521-02, 18-2597-01, 18-2549-02, and 18-2526-01 (“Wireless ETC State Lifeline Dockets”).

301. Therefore, URTA offers these Comments on the Commission's management of the UUSF surcharge.

As the Commission is aware, the Commission has plenary statutory authority to set the amount of the UUSF surcharge under Utah Code §54-8b-15(8) which provides:

Each access line provider and each connection provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit charge assessed by the commission on the access line provider or connection provider.

URTA has reviewed SB 4. Lines 1204 through 1216 discuss a report that the Commission is required to file with the Legislature by October 15, 2019 on certain performance measures for the UUSF. Specifically, the Commission is asked to report on:

(1) Number of months within a fiscal year during which the Fund did not maintain a balance equal to at least three months of fund payment (Target = 0); (2) Number of times a change to the **fund surcharge** occurred more than once every three fiscal years (Target = 0) . . . (emphasis added)

As indicated in the quoted language above, the Legislature has set a target goal of no more than one surcharge change every three fiscal years. However, this target does not take precedence over the statutory mandates of SB 130. So, while URTA believes that SB 4, reporting targets are a worthy goal to which the Commission should endeavor, the Commission is correct that there are many dockets currently open or recently decided that are likely to affect the UUSF surcharge requirements.

The current surcharge that was made effective January 1, 2018, was established based on initial estimates provided by the Division of Public Utilities ("Division") regarding number of contributors and then current disbursements from the UUSF. The initial surcharge was established without reference to potential increases in the UUSF due to the application of other factors established in SB 130 and codified in Utah Code Section 54-8b-15. Specifically, the

initial surcharge was determined without consideration of potential changes to the UUSF that might result from adoption of the federal rate of return, and the inclusion of Wireless ETCs in state lifeline payments. This is not the fault of the Division or the Commission, but rather was a factor of timing. In establishing a per access line/per connection surcharge, the Commission set the surcharge based on the information available to it at the time with the understanding, and the express statutory authority,¹³ to modify the surcharge as more information became available to the Division and the Commission, and as needed by the circumstances.

According to the monthly reports filed by the Division regarding the status of the UUSF, the high-cost UUSF disbursements remained stable in 2018, at \$893,620 per month. In fact, the high-cost UUSF disbursements have remained stable at \$893,620 per month since June 2016. With the implementation of surcharge of \$0.36 assessed on each access line/connection, the UUSF increased by approximately 19.16% in the past 10 months. This increase in the fund demonstrates that the \$0.36 surcharge on each access line/connection has recaptured a portion of the declining contributions to the UUSF and has resulted in a more stable fund.¹⁴

Now, however, as the Commission has indicated there are several open dockets and several recently concluded dockets that will have an impact on the UUSF including the High Cost Dockets and the Wireless ETC State Lifeline Dockets. As a result, the Commission is wise to consider the impact these dockets will have on the UUSF.

¹³ Utah Code §54-8b-15(8).

¹⁴ While URTA notes that the number of connections reported in 2018 seems to be on an upward trend, URTA notes that the number of connections/access lines reported can vary by nearly 500,000 connections in a single month. Therefore, URTA believes that to the extent possible the Division and/or the Commission should work with the Tax Commission to capture the full number of connections/access lines. To the extent legislation is needed to facilitate this, URTA would be in support of such legislation.

As indicated above, the high-cost disbursements have remained constant since June of 2016 while fiber deployment and capital investment by rate of return providers have substantially increased. Historically, the rate of return companies have been reluctant to seek frequent adjustments to their UUSF disbursement because the process has been inefficient, cumbersome, unpredictable, and expensive. As a result, several companies have not sought a UUSF change in 5+ years, even as they have engaged in significant capital expenditure with fiber deployment.

However, because of the efforts undertaken by the Legislature, with SB 130, and the Commission with administrative rule changes, each of the URTA members is now having its operations reviewed, and its UUSF disbursement calculated on an annual basis. As expected, the first year of such review will see an overall increase in the UUSF. In fact, the Division has noted in the preliminary recommendations it has made to the Commission that the amount of the annual high-cost disbursements will increase approximately \$3,995,700¹⁵ in 2019.¹⁶ This increase can be explained by several factors:

- The UUSF is right-sizing itself after many years without any increase to the UUSF disbursement.
- URTA members significant capital expenditures associated with fiber deployment over the past 5-10 years; and
- Application of the statutorily mandated rate of return.

These factors should be considered a “right sizing” of the UUSF, and URTA expects that subsequent years will not see similar increases involved in the “right sizing.” In fact, as the prescribed rate of return continues to decline over the next several years, and the efficiencies in

¹⁵ This figure is based on the preliminary recommendations filed by the Division and is subject to further revision pending the actual outcome in the associated dockets. Additionally, this figure does not include a recommendation for Direct Communications Cedar Valley, LLC at this time.

¹⁶ This amount does not account for the new program established in SB 130 for wireless State Lifeline disbursements from the UUSF.

UUSF administration contemplated by SB 130 are realized,¹⁷ the disbursements from the UUSF for high cost support will likely decrease.¹⁸ To the extent the UUSF surcharge needs to be adjusted to account for these statutory mandates, the Commission is well within its statutory authority to adjust the UUSF surcharge as needed.

The Division has estimated the increase in UUSF associated with the increase in high-cost UUSF disbursement to be \$0.12 per access line/connection per month.¹⁹ While URTA does not have any particular issue with this estimate, URTA has not seen the numerical analysis behind this conclusion. Before adopting a surcharge increase, URTA believes this process should be transparent and that the numerical analysis (method and calculations) related to UUSF surcharge adjustments should be shared with the stakeholders.

Other increases to the UUSF should be expected from the Wireless ETCs now seeking UUSF support for state Lifeline pursuant to Utah Code §54-8b-15(15). As these applications are made by Wireless ETCs, and resolved by the Commission, the UUSF can expect to see an increase in Lifeline support paid out of the UUSF. Again, the state Lifeline support is permitted by Utah Code, and the Commission is statutorily authorized to set the UUSF surcharge to meet the UUSF obligations as set forth in Utah Code §54-8b-15. Therefore, URTA would support an analysis of the Wireless ETC impact into the surcharge increase in terms of both the Lifeline support and the increased administrative costs associated with the increase in applications.

¹⁷ Efficiencies expected as a result of SB 130 include a more efficient annual review of a company's annual report and lower litigation costs.

¹⁸ Disbursements to wireless ETCs for State Lifeline will likely continue to increase.

¹⁹ The total number of access lines/connections at the end of September 2018 was reported as 3,313,562. Dividing the recommended increase of \$3,995,700 amounts to a surcharge increase of \$0.10 per access line/connection per month (this calculation does not factor in any UUSF for Direct Communications).

URTA, as always, believes the impact analysis should be transparent and shared with stakeholders prior to implementing a surcharge increase.

CONCLUSION

The Commission is statutorily authorized to set the UUSF surcharge by Utah Code §54-8b-15(8). The legislative target of not modifying the surcharge more than once every three years is ultimately a good goal, but in the short term as the Commission implements the various mandates from SB 130, codified in Utah Code §54-8b-15, more frequent adjustments to the fund may be required—this is expected and reasonable. While the number of contributors to the fund should be predictable and should not vary widely from year to year, disbursements from the fund are in a state of flux in the short term as the Commission adjusts high cost UUSF support and approves Wireless ETC Lifeline support. If the Commission were prohibited from making changes more than once every three years, the Commission would have to base the UUSF surcharge on long-term guesses and projections related to disbursements from the fund, and it is likely that to ensure adequate UUSF availability, increases to the fund would be more pronounced and less gradual. More frequent modifications during these early years will enable the Commission to adapt to changing circumstances as these matters settle in.

DATED this 15th day of November, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of URTA's Comments, Docket 18-999-15 was served the 12th of November, 2018 as follows:

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