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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 REPLY 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 Reply Comments to address, specifically, the Comments filed by CTIA in this docket on November 16, 2018.

### **URTA REPLY COMMENTS**

CTIA’s urges the Commission to refrain from increasing the Utah Universal Public Telecommunications Service Support Fund (“UUSF”) surcharge until 2021 and encourages the Commission to take the next two years to carefully examine and establish the Commission’s goals for the size and the scope of the UUSF, including determining whether UUSF is necessary

given the size of the federal universal service fund.<sup>1</sup> CTIA appears to be confused about the Commission's role in this process. The Commission doesn't set the policy goals related to size and scope of the UUSF. Rather, the Commission administers and implements the UUSF pursuant to the goals set by the Legislature in statute. The time or place for these policy discussions was at the Legislature, and the Legislature has already spoken on these policy issues with SB 130.

Specifically, SB 130 includes a mandate that Utah, through the UUSF supports the deployment and management of networks capable of providing access lines, connections, and wholesale broadband Internet access service; and a mandate that a rate of return carrier of last resort is eligible for payment from the UUSF if its reasonable costs to provide public telecommunications service and wholesale broadband internet service, as determined by the Commission, plus the federally prescribed rate of return are greater than the carrier's revenues from basic residential service, other public telecommunications service, wholesale broadband service, and federal universal service funds.<sup>2</sup>

The Legislature, in SB 130, provided the Commission with a framework for determining the contribution method to the UUSF and the contribution rate. The Commission, by rule, adopted a per access line/connection charge and set the original rate at \$0.36 per access line/connection.<sup>3</sup> The Legislature also provided the Commission with a framework for determining distributions from the UUSF,<sup>4</sup> and required the Commission to promulgate rules to

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<sup>1</sup> CTIA Comments, Docket 18-999-15, filed November 16, 2018 ("CTIA Comments"), pp. 3, 4.

<sup>2</sup> Utah Code §54-8b-15(4) and (5).

<sup>3</sup> Utah Code §54-8b-15(8) and (9).

<sup>4</sup> Utah Code §54-8b-15(4) and (5).

govern the administration of the fund consistent with the statute.<sup>5</sup> In compliance with this mandate, the Commission, by rule, determined that the Division shall review the annual reports of the carriers and make a recommendation for distributions from the fund.<sup>6</sup> Consistent with this statutory and regulatory mandate, the Division submitted preliminary recommendations for UUSF disbursements to the Commission on October 4, 2018.

As indicated in URTA's initial Comments, the increase in certain UUSF disbursements as noted in the Division's recommendations results from a right-sizing of the fund that accounts for increased capital investment in fiber builds in the past five+ years and a change to the rate of return. As expected, the first year of such review will likely see an overall increase in the UUSF. However, contrary to the assertions of CTIA, the proposed increase in certain companies' disbursements from the fund is not "attributable to newly eligible broadband services." In fact, this statement illustrates CTIA's ongoing misunderstanding of UUSF eligibility in Utah. The network that provides telephone service in rural Utah has, for years, also provided wholesale broadband internet access service, and as a result costs associated with constructing, operating and maintaining that network have historically been eligible for support from the UUSF, subject to prudence review by the Commission. SB 130 merely updated that statutory language to reflect that policy. Therefore, CTIA's arguments about the Commission not rushing the implementation of broadband funding are misplaced. The Legislature, through SB 130, mandates the support of networks capable of providing access lines, connections, and wholesale broadband Internet access service. The Commission does not have the statutory authority to impede or delay such funding.

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<sup>5</sup> Utah Code §54-8b-15(2)(c).

<sup>6</sup> Utah Admin. Code R746-8-401.

Additionally, CTIA's Comments continue to argue for a statutory cap of the UUSF. CTIA previously made this same argument at the Legislature and tellingly, the Legislature declined to adopt a statutory cap on the UUSF. Rather, the Legislature monitors the size of the fund by requiring the Commission to report annually to the Public Utilities, Energy and Technology Interim Committee on the contribution method; the amount of distributions from the UUSF; the availability of services for which the UUSF is used; and the effectiveness and efficiency of the fund.<sup>7</sup> CTIA is not satisfied with the Legislature's refusal to set a statutory cap on the UUSF and now argues that the Legislature has issued a "de facto cap" when it expressed a target of "0" in SB 4 (2018) related to the Commission's report of the Number of times a change to the UUSF surcharge occurred more than once every three fiscal years. In fact, the Legislature's "Target" in SB 4, is a target, not a Legislative mandate. The Legislative mandates related to UUSF were found in SB 130 and are now codified in Utah Code §54-8b-15 as discussed above. The Commission should not be persuaded by CTIA's "de facto cap" argument. Utah Code §54-8b-15(8) gives the Commission plenary authority to set the contribution method and requires the Commission to calculate the contribution rate as may be required to accomplish the policy goals set forth in Utah Code §54-8b-15(2) and (3).

Finally, CTIA, in its Comments, suggests that rather than administer the UUSF as statutorily mandated, the Commission should work to develop certain guidelines related to UUSF. While some of the guidelines suggested by CTIA are appropriate for the Commission to establish, CTIA's suggestions again illustrate CTIA's lack of familiarity with the UUSF process in Utah. For example, CTIA suggests that the Commission should bar support for gold-plating of middle mile facilities. This "suggestion" presumes that the Commission does not already do

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<sup>7</sup> Utah Code §54-8b-15(16).

that. In fact, the Division and the Commission have always, and continue to review the costs and expenses of each rate of return company for reasonableness and prudence as required by Utah Code §54-8b-15(4). Similarly suggesting that the Commission should implement appropriate measures for accountability from UUSF recipients implies that the Commission does not already require accountability from UUSF recipients. This could not be farther from the truth. In each instance before a UUSF disbursement is approved, the Division and the Commission require review of the company's costs, allocation procedures, and depreciation for reasonableness.

The issue that the Commission sought comment on is whether the Commission should increase the surcharge if needed in light of the target contained in SB 4. As indicated by URTA, the Division of Public Utilities, the Office of Consumer Services, and CenturyLink in their respective original comments, to the extent the UUSF surcharge needs to be adjusted to account for the statutory mandates of SB 130, including the disbursement of lifeline funds to wireless companies, the Commission is well within its statutory authority to adjust the UUSF surcharge, notwithstanding a legislative "target" of not increasing the UUSF surcharge more than once every three years.

### **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 may ultimately be 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.

DATED this 6<sup>th</sup> day of December, 2018.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of URTA's Reply Comments, Docket 18-999-15 was served the 6<sup>th</sup> of December, 2018 as follows:

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