State of Utah

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Division of Public Utilities

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Recommendation

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

William Duncan, Manager

Date: February 20, 2019

Re: **Division of Public Utilities Reply Comments**, Docket No. 18-999-15

Recommendation (Approve)

The Division of Public Utilities (DPU) continues to recommend that the Public Service Commission of Utah (PSC) increase the Utah Universal Service Fund (UUSF) surcharge to $0.60/month/connection

Issue

The DPU submits the following reply comments in this docket to respond to the comments filed by the Utah Rural Telecom Association (URTA) and CTIA. The DPU also seeks to clarify some issues raised in the URTA comments concerning the DPU's recommendation.

Background

On January 11, 2019 the DPU filed comments in this docket recommending the PSC increase the UUSF surcharge to $0.60/month/connection. On January 14, the PSC issued a Notice of Comment Period. On February 6, 2019, URTA and CTIA filed comments pursuant to the PSC notice.

Discussion

The DPU will respond to and clarify concerns raised by other parties:

Reply to the comments of URTA

Number of Connections

URTA believes it would be "reasonable to review the growth in access lines/connections and factor some growth into the equation". The DPU agrees it is reasonable to do so after there is enough historical data to make a valid assumption of the growth rate. At the time of the January 11, 2019 memo the DPU had only nine months of data where providers reported connections. With less than a full year of connection data, any assumption about an annual growth rate would be just a guess.

Relay Utah Fund

URTA questions the need for $1 million/year for this program based on the actual costs over the last 17 months. Actual costs for administering the Relay Utah Fund have varied over the last 10 calendar years, from a high of $1,599,091 to a low of $606,635 with an annual average expenditure of $1,095,579, making it difficult to estimate future cost based on long term historic data. In recent years (FY 2016 to FY 2018) the costs have averaged $986,893. The actual budget authorized by the legislature is $1,213,400. The accrued liabilities mentioned in the original recommendation have now been paid.

The DPU based the projection of $1,000,000/year from conversations with PSC staff. The DPU believes that the cost of that program is best estimated by the agency that administers the program.

Lifeline Expense

URTA questions the need to include an annual expense or $1,344,000 in the calculation of the monthly surcharge stating that "not all of the wireless ETC's have applied for the state Lifeline support" and "that it will take some time to ramp up to the full estimate of $1,344,000". It is correct that not all wireless ETC's have applied for state lifeline support. However, to date the following ETC's have been approved for state lifeline support by the PSC; iwireless, Q Link Wireless, TracFone, Virgin Mobile, and Assist Wireless. Together these companies serve 89% of the wireless lifeline market. Combined with the wireline ETC's, over 90% of the eligible participants are served by a provider eligible for UUSF support.

The DPU notes that due to a recent recertification by the National Verifier completed in November 2018, the number of lifeline participants in Utah declined to 25,000. The DPU believes this number is likely at a low point and will begin to climb as providers market new packages that include data.

One Time Distributions

URTA "believes it is unlikely that one-time distributions will have an effect on the UUSF in 2019." The DPU agrees. However, some parties working a draft of the proposed rule have discussed the possibility of having a rollover provision that if adopted, would allow the PSC to move unused funds from one year into the subsequent year.

The larger question is whether or not these funds will be used at all. The current rule for one-time distributions has not been used in over ten years. Until the rules are finalized and the regulatory agencies gain some experience with this process, it is unknown the amount of funding to include in calculating the surcharge. The DPU considers inclusion of funding for this element of UUSF to have the greatest degree of uncertainty of any element in the UUSF program.

High Cost Support

Rate of Return and Investment

URTA notes that the Rate of Return that each carrier is entitled to receive reduces by a quarter of a percent per year through 2021 and states "It does not appear that this reduction has been factored into the estimate". While that statement is correct, it is also incomplete. Utah Code 54-8b-15(2)(b) requires recipients "to deploy and manage …networks" and Utah Code 54-8b-15(7) provides they “may only use the funds … within the area for which the carrier of last resort has a carrier of last resort obligation.” It is only reasonable to assume that providers receiving UUSF will increase investment in the networks that will offset the decreases in the rate of return and partially neutralize the impact on the UUSF.

Taxes

URTA states that it “cannot independently verify the reductions to the UUSF” based on the Tax Act of 2017. URTA members receive 100% of the high cost support element of the UUSF. URTA and its members have access to the work papers the DPU used in the recent UUSF change dockets. URTA or its members could have easily completed the same calculation as the DPU.

The impact of lower tax rates is the only change the DPU used in calculating future high cost disbursements. It is the only variable that could be classified as a known and measurable change. The DPU felt this significant change should be included in the calculation of high cost support.

Operating Costs

The DPU did not attempt to estimate the potential for increased operating costs experienced by UUSF recipients that are normally requested in past UUSF cases. To do so would require another unfounded assumption. It is reasonable to expect increases in operating cost will be reported in subsequent years. Increasing operating costs will put upward pressure on UUSF disbursements.

Revenues

The DPU did not attempt to estimate the potential for decreased operating revenues that are normally requested in past UUSF cases due to the declining number of access lines served. To do so would require another assumption. It is reasonable to expect decreases in operating revenues will be reported in subsequent years. Declining local service revenues will put upward pressure on UUSF disbursements.

Reply to the comments of CTIA

In its comments, CTIA "urges the Commission to initiate a comprehensive review of the UUSF program to ensure that the Commission limits the burden on Utah's consumers." During the 2017 legislative session, the Legislature completed such a review and mandated certain elements such as Lifeline for both wireline and wireless provides, as well as one-time distributions, be funded in the UUSF. The Legislature also mandated certain elements in calculating high cost support such as rate of return and depreciation methods. All of these items have generally increased UUSF estimated distributions. At the time the legislation was passed it was unknown the impact each provision would have on UUSF distributions. It was therefore unknown the surcharge amount needed to sustain the program. If CTIA believes that a comprehensive review is needed, now that costs are more fully known, it should present that information to the Legislature. The Commission could undertake such a review if it believes it has the authority to make meaningful changes in accordance with CTIA's position. The existence of this authority is not obvious in light of the recent legislation.

Conclusion

The DPU realizes the limitations of using static data to make three year projections. To do otherwise would have required a number of assumptions, some that would increase UUSF disbursements and some that would decrease UUSF disbursements. Hopefully, these opposing variables will offset. The PSC could consider requiring UUSF recipients to annually submit a three year projection of UUSF entitlement that the PSC could use in assessing the surcharge.

In January, the UUSF balance decreased by $550,686. Projections are that there will be significant decreases in the fund balance over the next several months. At the time of the January 11, 2019 memo, the DPU believed it was urgent to provide the PSC with a reasonably accurate projection and assessment of a new surcharge rate before the UUSF balance dropped to a level that would require a more severe correction to restore the needed balance.

The DPU believes that a surcharge of $0.60/connection/month will provide funding that will stabilize the fund for the next three years.