

I. REGULATORY BACKGROUND

A. Federal Local Rate Floor.

In the 2011 Universal Service Fund/Intercarrier Compensation Transformation Order, the Federal Communications Commission (“FCC”) adopted reforms to phase out Federal High Cost Loop Support payments to telecommunications carriers who are not charging their customers local rates that meet the FCC local rate floor. The FCC’s reforms were designed to gradually eliminate federal high cost loop support (“HCLS”) to companies whose local rates are not at least the amount of the local rate floor, as determined by the FCC. On April 16, 2015, the FCC’s Wireline Competition Bureau (“WCB”) announced the 2015 local rate floor that rate of return carriers who receive HCLS must charge their subscribers. Based on the most recent urban rate survey, the WCB announced that the 2015 rate floor for voice services is \$21.22, up from \$20.46 in 2014.

Under the FCC’s rules, in June of 2016, all recipients of HCLS must report the number of residential voice lines with monthly rates plus state fees (mandatory extended area service fees, state subscriber line charges, and state Universal Service fees) that fall below the \$21.22 local rate floor. The FCC requires that this filing must be made with the National Exchange Carriers’ Association (“NECA”) by July 1 (based on June 1, 2016 data). NECA will then file the information with the FCC and USAC. Carriers are also required to file the data with their respective state commission.

Under FCC rules, the rate floor has been, and is being phased in as follows:

- July 1, 2012: support reductions for rates below \$10 (rates in effect by June 1, 2012)
- July 1, 2013: support reductions for rates below \$14 (rates in effect by June 1, 2013)
- July 1, 2015: support reductions for rates below \$16 (rates in effect by June 1, 2015)
- July 1, 2016: support reductions for rates below \$18 (rates in effect by June 1, 2016)
- July 1, 2017: support reductions for rates below \$20 (or survey amount if lower)
(rates must be in effect by June 1, 2017)

July 1, 2018: newly calculated rate floor in effect (currently \$21.22, but will be recalculated annually)

Telecommunications carriers who do not meet the federally mandated rate floors on the phased in schedule identified above have faced, and will face a reduction of federal HCLS on a dollar-for-dollar basis.

The federal local rate floor regulations affect eight URTA members who receive federal HCLS: All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Skyline Telecom, South Central Utah Telephone Association, Inc., and UBTA-UBET Communications Inc. (dba Strata Networks). The remaining URTA members do not currently receive federal HCLS and are therefore unaffected by the federal rate floor.

B. Utah Affordable Base Rate.

Utah law speaks about rate benchmarks in terms of “affordable” rates, and directs the Commission to establish rates that are just, reasonable, and affordable. Specifically, Utah Code Section 54-8b-1.1 declares that it is the policy of the state to:

(2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;

In order to accomplish this and other policies of the state, the legislature has established a state Universal Public Telecommunications Service Support Fund (“UUSF”). Specifically, Utah Code Section 54-8b-15 provides that the UUSF shall be designed to:

“(a) promote equitable cost recovery through imposition of just and reasonable rates for telecommunications access and usage; and

(b) preserve and promote universal service within the state by ensuring that customer

have access to affordable basic telephone service.”

Further pursuant to Utah Code Section 54-8b-15(7), the UUSF is designed to defray the costs of a qualifying telecommunications corporation in providing telecommunications services to:

(7)(b) customers where the basic telephone service rate considered affordable by the Commission in a particular geographic area is less than the costs, as determined by the Commission for that geographic area, of basic telephone service.

By statute, the Commission is authorized and required to establish rules governing the administration of the UUSF. These rules are codified at R746-360. R746-360-1 provides that funds are collected for and disbursed from the UUSF to “qualifying telecommunications corporations so that they will provide basic telecommunication service at just, reasonable and affordable rates.”

Affordable rates are defined by the rules set by the Commission. Specifically, R746-360-2 defines the “affordable base rate:”

A. Affordable Base Rate (ABR) — means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

The definition of Affordable Base Rate as set forth in the rules, appoints the Commission to determine the just, reasonable and affordable rates for a designated support area. In Utah, under current rules, the Affordable Base Rate is established at a rate ceiling. In particular, R746-360-6.B provides:

B. Rate Ceiling -- To be eligible [for state Universal Service Fund distribution], telecommunications providers may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

Through the adjudication process, the Commission has set the Affordable Base Rate throughout the entire state of Utah for residential service at \$16.50 and \$26.00 for business service.¹ URTA notes that the constituent parts of Utah’s Affordable Base Rates differs from the federal HCLS rate floor: the HCLS rate floor includes the basic local rate, mandatory EAS fees, state subscriber line charges, and state universal service surcharges.

Although the rule speaks in term of “rate ceiling,” the Commission and the Division of Public Utilities (“Division”) have routinely treated the affordable base rate as a floor and a ceiling. If the Affordable Base Rate were truly a ceiling rate, above which the companies could not charge, and still receive UUSF funds, then companies whose rates for local service exchanges fall below the “rate ceiling” of \$16.50 would be eligible for UUSF based on the rates they were actually charging. This does not happen. Rather, as a matter of routine, companies who are not charging the affordable base rate have the rate imputed against them when they seek distribution of UUSF dollars. For example, if a company has an exchange that where the local rate is set at \$12/month for residential service, and the company does not believe that the local economy can sustain an increase in basic local rates without resulting in substantial line loss, the Commission has permitted the company to maintain the rate below the Affordable Base Rate, but for purposes of receiving UUSF dollars, the Commission has imputed the Affordable Base Rate against the company.

1. Geographic Area.

While the statute and rule prescribed analysis addresses a “particular geographic area”

¹ While not all telecommunications companies in Utah charge the affordable base rate in all exchanges, Utah Universal Service Funds disbursements are based on telecommunications companies charging the affordable base rate, or having the affordable base rate imputed against those companies whose rates for service are below \$16.50 (residential) and \$26.00 (business).

and “designed service area,” past adjudicative treatment has applied the affordable base rate at a statewide level. This practice does not take into consideration the economic realities in each geographic area of the State, and does not appropriately set the affordable base rate for a particular geographic area as required by State law. URTA maintains that under State law, the affordable base rate should be determined on a particular geographic area, not on a statewide basis. As cited above U.C.A. Section 54-8b-15(7)(b) provides that the Commission must consider the affordability of basic telephone service rate “in a particular geographic area,” and that the Commission must consider the costs for providing basic telephone service for that “geographic area.”

According to the Utah Supreme Court, “the first step of statutory interpretation is to evaluate the best evidence of legislative intent—the plain language of the statute itself.” *State v. Martinez*, 2002 UT 80, ¶8, 52 P.2d 1276. “When examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning.” *Id.* In this instance, the legislature has tasked the Commission with determining the rate for basic telephone service in a particular geographic area based on the costs for that geographic area, as also determined by the Commission. First, if the legislature had contemplated a statewide affordable base rate, the legislature could have used language indicating “statewide basis” rather than using the phrase “a particular geographic area.” The legislature did not use such language, and from a telecommunications perspective, the reference to geographic area makes sense.

The cost to provide telecommunications service varies based on the geographic area where such services are to be provided. The costs associated with providing telecommunications services are sensitive to population density and geographical terrain. In

addition, the rates considered “affordable” for particular customers are highly dependent upon the economic conditions facing the particular geographic area where such customer lives. Cost of living, average wages, economic opportunity, and employment opportunities all affect the rate that a consumer can afford, and will pay, for basic telephone service. These conditions vary throughout the state. The language used in the statute demonstrates that the legislature acknowledged that affordable rates for telephone service might vary depending on the geographic area being considered. As a result, the Commission is required by statute to determine the affordable base rate for particular geographic areas in Utah.

2. High Cost Loop Support.

The federal government has already acknowledged that certain geographic areas are “high cost” areas with regard to the provision of basic telephone service; and the federal government provides federal support for such “high cost” areas in the form of HCLS. Unless the Commission approves an increase in the state affordable base rate in these high cost areas, certain telecom providers in Utah who receive HCLS and whose rates (including mandatory EAS fees, state subscriber line charges, and state universal service fund fees) are below the federal rate floor, will face a reduction of HCLS on a dollar-for-dollar basis. To understand these issues, it may be helpful to review briefly the federal HCLS process.

HCLS is also known as the loop expense adjustment. Part 36 of the FCC’s rules, provides federal universal service support to carriers with high loop costs based on the extent that an individual company’s cost per loop (“CPL”) exceeds the national average.² In order to qualify for HCLS companies must determine their CPL annually. As the Commission is aware, there are two types of companies: (1) “cost companies” or (2) “average schedule

² See 47 C.F.R. Part 36, Subpart F.

companies.” Cost companies perform a detailed cost study which calculates a company’s particular expense adjustment each year. The cost studies are submitted to the National Exchange Carriers Association (“NECA”) each year and if a company’s CPL exceeds 115% of the national average CPL, the company is entitled to receive federal USF support. The national average CPL is currently frozen at \$647.87, so in order to qualify for HCLS, a company has to have study area loop costs in excess of \$745.05.

Average schedule companies are not required to perform company specific cost studies. Rather the FCC permits expense adjustments for average schedule companies to be calculated pursuant to a formula developed by NECA and approved annually by the Wireline Competition Bureau (WCB)³.

This formula is developed by NECA using data from a sample group of average schedule carriers and similarly situated companies that file cost data (cost companies) in addition to data (access line and exchange information) obtained from the entire population of average schedule carriers; once approved, the formula is used to determine support amounts for all average schedule carriers.⁴

As indicated above, NECA uses the cost data compiled from cost companies’ cost studies to establish the formula for average schedule companies. Thus the cost studies are rigorously reviewed by NECA prior to any HCLS being received, and all companies who receive HCLS have CPLs that exceed the national average CPL. The FCC has determined that these high cost exchanges must charge a local rate that meets or exceeds the established rate floor in order to continue receiving HCLS.

As noted above, only certain URTA members receive federal HCLS. URTA urges the

³ See National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, ASD 98-96, Order, 15 FCC Rcd 1819, 1819-20, para. 2 (1999). Average schedule companies have been permitted by the Commission to estimate their access settlements and universal service support through the use of average schedules to avoid company-specific cost studies. See, e.g., ALLTEL Corp. v. FCC, 838 F.2d 551, 553 (D.C. Cir. 1988)

⁴ FCC Order dated December 16, 2015, WC Docket No. 05-337,

Commission to acknowledge the detailed federal process in designating certain areas as high cost areas and permit regulated telephone companies to increase their local rates in such high cost areas⁵ to the federally mandated rate floor. This will enable the telecom providers to continue to receive federal HCLS in the established high cost areas.

II. IMPLEMENTING CHANGE.

Utah law currently provides for implementation of rate increases as contemplated by an increase in the federal rate floor. Utah Code Section 54-7-12 sets forth the procedure for implementing rate increases in Utah. The procedure for rate increases for telephone corporations having less than 30,000 subscriber access lines in the state are set forth in Utah Code Section 54-12-7(8):

(8)(a) (i) The proposed rate increase by a telephone corporation subject to this Subsection (8) may become effective on the day the telephone corporation files with the Commission the proposed tariff revisions and necessary information to support a determination by the Commission that the proposed rate increase is in the public interest.

(ii) The telephone corporation shall notify the Commission and all potentially affected access line subscribers of the proposed rate increase 30 days before filing the proposed rate increase or change.

(b) (i) The Commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the Commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the Commission may establish rates, charges, or classifications that the Commission finds to be just and reasonable.

(c) The Commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing.

⁵ The areas recognized federally are identified on a study area or on an exchange basis. URITA recommends the Commission follow the federal designations to remain consistent with how the HCLS and federal rate floor interact.

URTA suggests that telephone corporations who receive federal HCLS and whose rates do not reach the federal rate floor (basic rate, mandatory state EAS, state subscriber line charge, and state USF fees) shall file proposed tariff revisions⁶ increasing the rate for basic telephone service as needed to meet the federal rate floor for exchanges that receive federal HCLS. The rate increase for these high cost exchanges that receive federal HCLS is in the public interest because the rate increase ensures that companies providing service in federally determined high cost areas are charging what the FCC has determined to be a reasonable rate for such high cost areas based on an urban rate floor study. Thus, the HCLS these carriers receive comes from the federal program and it is in the public interest to maximize the receipt of federal USF support and thereby avoid a carrier request to replace these federal funds with state UUSF disbursements. Such a policy maintains the balance between federal USF and Utah USF received by URTA members and this is in the public interest.

Said another way, the increase in the basic rate will allow the telephone company to continue to receive federal HCLS support thereby minimizing additional pressure on the state UUSF. As the Commission is aware, the UUSF is used to defray the costs of providing telecommunications service that are not funded by customer revenues, network elements, and federal Universal Service Funds, and other support or funding mechanisms used to assist in recovering costs of providing telecommunications services. (See Utah Code 54-8b-15, R746-360-2, R746-360-8). Thus, costs that are not recovered in customer rates and federal support can be recovered from the state UUSF. This means that a company that receives HCLS that is prohibited by the Commission from raising its basic telephone rate to meet the federal rate floor

⁶ Under 54-7-12(7) telephone cooperatives are permitted to increase their rates by holding a public meeting of the cooperative customers to inform them of the rate increase; having the board of directors and any appropriate federal agency approving the proposed rate increase; and then filing the appropriate tariff revisions reflecting the rate increase. This process would remain intact.

by June 1, 2016, will be foregoing federal support dollars. Those federal dollars lost may be requested from the State UUSF.

As the Commission is aware, Utah Code Section 54-7-12(8) permits a telephone company with fewer than 30,000 access lines to implement a rate increase by tariff filing. While the Commission is permitted to investigate whether the proposed rate increase is in the public interest under Section 54-7-12(8)(b), the Commission is not required to so investigate particularly if the company provides information that permits the Commission to determine that the rate increase is in the public interest. As indicated above, companies' CPLs are based on rigorous cost studies reviewed by NECA. Thus state implementation of a local rate in federal high cost supported areas that mirrors the federal HCLS local rate benchmark floor is in the public interest and the fact that a carrier is receiving HCLS is a *per se* indicator that it is high cost. The Commission can determine without further investigation or hearing that increasing the local rates in the federally supported high cost areas—areas that receive HCLS—are in the public interest.

Additionally, however, as the Commission knows, not all of the exchanges in Utah served by URTA members receive federal HCLS. URTA suggests that for these exchanges, the current affordable base rate should remain at \$16.50 for residential service, until the affordability of basic telephone service has been specifically considered in these particular exchanges. This approach is consistent with Utah law, and is thus in the public interest. This approach would likely require the Commission to modify its rule R746-360-6.B to reflect the actual regulatory practice of treating the affordable base rate at a rate floor, rather than a rate ceiling. URTA and its members would be in support of such rule change.

A. Effect of Rate Increase on Current UUSF Disbursements.

URTA and its members acknowledge that an increase in rates in certain exchanges could have an impact on a company's UUSF distribution. However, URTA also notes that a rate increase will also have an effect on landline loss. Clearly, there are market price sensitivities for basic local exchange service, and as customers' rates increase, they analyze the usefulness and the value of the service. Certain customers may opt to terminate their landline as the local rates increase and this will reduce a carrier's local revenues. Based on this expectation, URTA urges the Commission to permit the rate increase without any reduction in UUSF, and to commission a 2-year study of the price sensitivity and landline loss effect that may result from increased rates.⁷ In the meantime, the companies will continue to file their PSC Annual Reports so the Division (and the Commission) can review the revenues and expenses of the companies and take any action that may be necessary in the event of an overearning situation. However, given the ongoing increase in company costs and the declining access lines, URTA is confident that overearning by these high cost companies will not present a widespread problem.

III. CONCLUSION

URTA and its members believe it is in the public interest for the Commission to permit the companies receiving federal HCLS to increase the rates for local service in the high cost exchanges to mirror the federal rate floor benchmark. Further, and perhaps most importantly, approving a process by which the companies are permitted to utilize tariff sheets and notice to effectuate these rate changes, where the costs have been fully vetted by the FCC and NECA, will save the companies thousands of dollars of contested rate case expenses; and will save the Division and the Office of Consumer Service thousands of dollars in contested rate case

⁷ A two-year study will span both the increase to \$18.00 and then to \$20.00 of the HCLS rate floor and should provide important data that will inform the Commission on the effect of these rate increases.

expenses; and will permit companies to maximize their federal support. All of these benefits are in the public interest.

However, with regard to the areas in the state that are not currently receiving federal HCLS support, the Affordable Base Rate should be maintained at the current \$16.50 (residential) and \$26.00 (business).

Respectfully submitted this 25th day of March, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2016, I served a true and correct copy of Utah Rural Telecom Association's Comments on the Affordable Base Rate Rule R746-360 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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