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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Administrative Code R746-8, Proposing to Repeal R746-360, R746-341 and R746-343	)))))	Docket No. 17-R008-01 COMMENTS OF UTAH RURAL TELECOM

Utah Rural Telecom Association ("URTA") on behalf of its 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, Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications Inc. (dba Strata Networks), and Union Telephone Company, hereby files these Comments in response to Commission's Request for Comments and Draft Rule Language on rule R746-8.

I. PROCEDURAL HISTORY

On July 5, 2017, the Utah Public Service Commission ("Commission") issued a Notice of Proposed Rulemaking for Rule R746-8. On July 20, 2017, at the request of several parties,

the Commission vacated the comment deadlines. On October 11, 2017, the Commission issued a Request for Comments and Reply Comments on proposed Rule R746-8.

II. URTA COMMENTS AND PROPOSED MODIFICATIONS

URTA has reviewed the proposed rule R746-8 ("Proposed Rule") carefully and believes certain modifications to the Proposed Rule as drafted are necessary to reflect the statutory language and intent, and to avoid potential confusion in the implementation of the Proposed Rule. The modifications proposed by URTA are discussed below, and are set forth in Exhibit A, which contains URTA's proposed redline of the Proposed Rule, as requested by the Commission.

URTA notes as the outset that the Commission has published an amended R746-360-4 in the Utah State Bulletin on November 15, 2017. The changes contained in R746-360-4 should be incorporated in the Proposed Rule. URTA has included those modifications in its redline attached hereto as Exhibit A, but will not discuss those changes other than to indicate where the changes were found in R746-360-4.

A. R746-8-200(1)

Moving through the Proposed Rule from the beginning, the definition of "access line" contained in R746-8-200(1) should be modified to reflect the definition contained in R746-360-4(1)(a). The definition of "connection" should be modified to reflect the definition contained in R746-360-4(1)(b). The definition of providers should be modified to reflect the language contained in R746-360-4(1)(c).

B. R746-8-200(2)(b)

R746-8-200(2) addresses the definition of Affordable base rate. URTA does not have any objections to subsection R746-8-200(2)(a) of the Proposed Rule, but subsection R746-8-200(b) of the Proposed Rule should be modified. As the Commission is aware, the Commission modified the Affordable base rate rule in May of 2016, Docket Number 16-R360-01, to reflect an affordable base rate of $18.00.[1] On June 7, 2016, the Commission issued an order related to the affordable base rate that permitted providers to include mandatory extended area service ("EAS") fees, state subscriber line charges, and/or state Universal Service Fees in the $18.00 affordable base rate. This means that providers have the option to include those fees in the $18.00 rate (sum up to $18.00), or they can charge such fees in addition to the $18 rate. As demonstrated on Exhibit A, URTA recommends that R746-8-200(b) be amended to reflect this concept.

C. R746-8-200(3)

The current Subsection R746-8-200(3) of the Proposed Rule contains the definition of "average revenue per line." This definition is not used elsewhere in the Proposed Rule and does not appear elsewhere in the Commission rules. Therefore, this definition is not needed and can be deleted. On the other hand, the Proposed Rule does not contain a definition of "Broadband internet access service." URTA suggests that R746-200(3) be amended to include a reference to the statutory definition of "broadband internet access service."

D. R746-200(4)

[1] The initial rule on the affordable base rate included a separate rate for business lines, but that separate rate was eliminated by Commission Rule in Docket Number 16-R360-06.

The Proposed Rule does not contain a definition of "carrier of last resort." URTA suggests that R746-200(4) be added to include a reference to the statutory definition of "carrier of last resort."

E. R746-200(4) through (7)

The numbering in this section would be amended to account for the changes discussed above.

F. R746-8-200(7)[2]

Subsection R746-8-200(7) of the original Proposed Rule contains the definition of "group depreciation methodology." As the Commission is aware, the FCC allows the use of a group depreciation methodology, and several rate-of-return regulated providers use a group depreciation methodology. URTA has proposed several changes to this section to reflect the FCC treatment of group depreciation methods. URTA proposes adding language from 47 CFR § 32.2000(g)(ii) and (iii) to add clarification to the Commission rule since this is a methodology employed by many of the rate-of-return regulated providers. The language added by URTA makes it clear that, consistent with federal rules, a group depreciation method must factor in the loss in the service value of the property, and the actual remaining life of the group. The proposed changes also identify the documents that should be kept by the providers regarding retirement, mortality, and/or turnover of assets within the composite group. Finally, the proposed definitional changes make it clear that salvage value and cost of removal of the property should be factored into the calculation. Because group depreciation is a methodology

[2] The original numbering from the Commission in the Proposed Rule is subsection (7). However, in the Exhibit A attached hereto, due to the additions of other definitions, this is Subsection (9).

allowed by the FCC, URTA believes it is important that the definition provided in this rule be consistent with the federal allowable method.

G. R746-8-200(8) through (9)

The numbering in these sections would be amended.

H. R746-8-200(12)

The Proposed Rule does not contain a definition of "non-rate-of-return regulated." URTA suggests that R746-200(12) be added to include a reference to the statutory definition of "non-rate-of-return regulated."

I. R746-8-200(13)

The Proposed Rule does not contain a definition of "rate-of-return regulated." URTA suggests that R746-200(13) be added to include a reference to the statutory definition of "rate-of-return regulated."

J. R746-8-200(14)

The Proposed Rule does not contain a definition of "wholesale broadband internet access service." URTA suggests that R746-200(14) be added to include a reference to the statutory definition of "wholesale broadband internet access service."

K. R746-8-301. Calculation and Application of UUSF Surcharge

Subsection R746-8-301 needs to be amended to reflect the changes adopted by the Commission for R746-360-4. URTA has taken the liberty of incorporating those changes in this subsection of the Proposed Rule. URTA has identified, on Exhibit A, where each change is found in R746-360-4. Additionally, as the Commission will see, in Exhibit A, URTA proposed that a new Subsection R746-8-301(4)(c) be added to ensure that providers account for and/or report to the Division of Public Utilities all access lines or connections that are omitted from the

surcharge. Specifically, URTA proposes that providers should report separately all access lines or connections that are not subject to the UUSF surcharge based on (1) the access line or connection generating revenue that is subject to a universal service fund surcharge in another state; or (2) the access line or connection not being used to access Utah intrastate telecommunications services. Providers reporting this information will enable the Division of Public Utilities to monitor the use of the exemptions, and will permit the Division to efficiently allocate its resources in auditing omissions from the surcharge. For example, if the Division knows that a provider has omitted two lines from the surcharge, the Division may not believe it efficient to audit the omissions. On the contrary, if the Division learns that a provider has omitted a quarter of its lines from the surcharge, the Division can allocate more resources to auditing the exemption/omission process. URTA believes that the language proposed in Subsection R746-8-301(4)(c) will permit the efficient and effective allocation of resources with very little burden to providers.

L. R746-8-302. UUSF Surcharge Remittances

URTA proposes several modifications to this section. First, URTA recommends that "collect and" be omitted from the first sentence to reflect the fact that the Commission has adopted a surcharge on providers of access lines and connections, rather than on the end-user. The provider may, but is not required to, collect the surcharge amount from the end user. Therefore, the language of the rule should be amended to speak in terms of remittance, rather than collection. Additionally, URTA proposes that the use of "surcharge revenues" or "surcharge collections" throughout this subsection be amended to "surcharge assessments" to further reflect that the surcharge is an assessment on providers, rather than revenue or collections from end-users.

1. R746-8-301(3)

URTA further suggests adding Subsection R746-8-301(3) which would give the Commission the discretion to deduct the per access line UUSF surcharge assessment from any Lifeline support to be paid to the provider. The addition of this section would give the Commission flexibility to offset Lifeline support paid from the UUSF with UUSF surcharges to be paid to the UUSF.

M. R746-8-401. Rate-of-Return Regulated Incumbent Providers

1. R747-8-401(1)(a)

URTA suggests that "incumbent" be removed from this subsection of the Proposed Rule. SB 130, and the statutory changes occasioned thereby, do not speak in terms of incumbent providers. Rather, the statute speaks in terms of rate-of-return regulated providers that are carriers of last resort. As a result, URTA suggests that "incumbent" be removed and a requirement that a provider be a "carrier of last resort" be added as identified in Exhibit A.

2. R746-8-401(1)(f)

URTA has made several modifications to Subsection R746-8-401(1)(f) to more accurately reflect the statutory provisions of Utah Code 54-8b-15. Utah Code §54-8b-15(4)(a) provides that:

> A rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund if:
>
> (i) the rate-of-return regulated carrier of last resort provides the services described in Subsection (3)(c)(i) through (iii) [access lines, connections, or wholesale broadband internet access service]; and
>
> (ii) the rate-of-return regulated carrier of last resort's reasonable costs, as determined by the commission, to provide public telecommunications service and wholesale broadband internet access services are greater than the sum of:
>
> (A) the rate-of-return regulated carrier of last resorts' revenue from basic residential service considered affordable by the commission;

(B) the rate-of-return regulated carrier of last resort's regulated revenue derived from providing other telecommunications service;

(C) the rate-of-return regulated carrier of last resort's revenues from rates approved by the Federal Communications Commission for wholesale broadband internet access service; and

(D) the amount the rate-of-return regulated carrier of last resort received from federal universal service funds.[3]

In keeping with the statutory requirements, therefore, the Proposed Rule should reflect that the costs to provide access lines, connections, and wholesale broadband internet access should be included in the calculation. Further, URTA believes it is beneficial to delineate the various sources of revenues identified in the statute.

3. R746-8-401(3)

URTA notes that the Commission has included the annual step-down weighted average cost of capital rates as established by the FCC in Subsection R746-8-401(3). URTA notes that it is somewhat administratively easier to follow the step-down established by the FCC. However, URTA understood that Utah would immediately move to the FCC prescribed weighted average cost of capital which is 9.75% for the state return. URTA will defer to the Commission on this issue.[4]

4. R746-8-401(3)(a)(ii)

First, URTA is suggesting a number change to this section as indicated in Exhibit A. Additionally, Subsection R746-8-401(3)(a)(ii)(A) should be modified to reflect "a single-asset straight-line depreciation methodology" rather than "the single-asset straight-line methodology."

[3] U.C.A. Section 54-8b-15(4)(a).

[4] If the Commission eliminates the step-down, R746-8-401(3)(a) would need to be amended to indicate:

(a) "the provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, 9.75%.

Additionally, Subsection R746-8-401(4)(i) would need to be eliminated.

These modifications better reflect the appropriate nomenclature and to be consistent with Subsection (B). Additionally, Subsection R746-8-401(3)(ii)(B) should be modified to reflect "a group depreciation methodology" rather than "a group methodology" to better reflect the appropriate nomenclature.

5. R746-8-401(3)(a)(ii)(B)

Subsection R746-8-401(3(a)(ii)(B)(I) should be modified. It is not necessary to state that the group depreciation methodology must comply with FCC Part 32, Subpart 32.2000 because that requirement is contained in the definition of "group depreciation methodology."

Additionally, as the Commission is aware, Utah Code §54-8b-15(5)(b) provides that a rate-of-return regulated carrier of last resort "may use any depreciation method allowed by the Federal Communications Commission." The Commission's authority is limited to determining whether the rate-of-return regulated carrier of last resort is correctly applying the method of depreciation allowed by the FCC.[5] Therefore, Subsection R746-8-401(3) should be modified to permit any FCC allowable method of depreciation. While it is not objectionable to list various methods of FCC allowable methods of depreciation, the Proposed Rule needs to reflect that any depreciation method allowed by the FCC is permitted.

Finally, Subsection R746-8-401(3)(a)(ii)(B)(II) must be eliminated. The concept that each individual unit within an asset group be depreciated at an even rate over the full period of time prescribed in the provider's Commission approved depreciation schedules is inconsistent with the FCC allowed group depreciation methodology as set forth in 47 C.F.R. 32.2000(g).

N. R746-8-402. Non-rate-of-return Regulated Incumbent Providers.

[5] U.C.A §54-8b-15(6)(a).

As indicated above, the use of "incumbent" should be deleted. The statute, Utah Code Section 54-8b-15 speaks in terms of "carriers of last resort," not incumbents. In Exhibit A, URTA has provided draft language which would serve as a placeholder for a non-rate-of-return regulated provider's disbursement from the UUSF. The language provided by URTA contemplates that if an application is brought be an eligible non-rate-of-return regulated provider, the Commission shall establish the appropriate criteria for the entitlement to, and disbursement of, UUSF funds to such provider. URTA believes more time is needed to adequately address this issue. URTA also believes that a workshop or technical conference would assist in this matter.

O. R746-8-403. Lifeline Support.

At the outset, URTA believes that the state lifeline rules should be consistent with the federal rules and procedures. URTA also believes that a wireless ETC that seeks state lifeline funds should hold a certificate of public convenience and necessity. Additionally, a wireless ETC that seeks state lifeline funds should be required to show that its entitlement to such funds is in the public interest. For example, a wireless ETC that is seeking state lifeline funds should be required to show that it is giving some additional value to the end-users. To that end, URTA has proposed adding "upon a specific finding of public interest by the Commission" to Subsection R746-8-403(1). Additionally, URTA believes that more time is likely needed to adequately address this issue and would support a workshop or technical conference on this issue.

1. R746-8-403(2)(C)

URTA has also suggested the addition of Subsection R746-8-403(2)(C) that would permit the Commission to offset Lifeline support by the per access line surcharge for UUSF as discussed above.

2. Additional modifications.

URTA has made additional minor modifications to the Lifeline Rule as set forth in Exhibit A. Many of these modifications are self-explanatory and do not require further explanation. However, in Subsection R746-8-403(3)(A), URTA believes that the Commission should consider modification of the language regarding "foregone revenue" in favor of a simplified reference to lifeline revenue received from UUSF.

P. R746-8-404. One-time UUSF Distributions.

URTA believes that a workshop or technical conference is imperative for the development of one-time UUSF distribution rules. URTA is supportive of repealing the current rule and participating in a separate rulemaking, after workshop, on this issue.

II. CONCLUSION

URTA appreciates the opportunity to work with the Commission and the stakeholders on these rules and believes that the modifications discussed herein improve the Proposed Rule and should be adopted by the Commission. Also, URTA believes that workshops or technical conferences would be very helpful in developing rules related to Lifeline, Non-rate-of-return regulated UUSF disbursements, and One-time UUSF Disbursements.

Dated this 16th day of November, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2017, I served a true and correct copy of URTA Comments In the Matter of the Utah Administrative Code R746-8, Proposing to Repeal R746-360, R746-341 and R746-343, Docket No. 17-R008-01 via e-mail transmission to following persons at the e-mail addresses listed below:

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