

Kira M. Slawson (7081)
BLACKBURN & STOLL, L.C.
Attorneys for Utah Rural Telecom Association
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 521-7900
Fax: (801) 578-3579

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Administrative Code) Docket No. 17-R008-01
R746-8, Proposing to Repeal R746-360,)
R746-341 and R746-343) REPLY 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 Reply Comments in response to the Comment filed by the Division of Public Utilities (the “Division”), CenturyLink, CTIA and TracFone 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. Comments were filed by URTA, CenturyLink, CTIA, the Division, and TracFone.

II. URTA COMMENTS AND PROPOSED MODIFICATIONS

URTA provided Exhibit A to its initial Comments which set forth in detail URTA's specific proposed modifications to the Proposed Rule. URTA continues to support those modifications and will not repeat them here in these Reply Comments. URTA has reviewed the Comments filed by the interested parties in this matter and the proposed modifications to proposed rule R746-8 ("Proposed Rule") and responds to the issues raised as follows:

1. **R746-8-200(4) - Requiring the Eligible Telecommunications Carriers to Obtain a CPCN to Receive State Lifeline Subsidies.**

The Proposed Rule, R746-8-200 states that:

(4) "Eligible telecommunications carrier" or "ETC" mean a provider that, if seeking to participate in the state Lifeline program:

- (a) holds a certificate of public convenience and necessity from the commission;
- and
- (b) is designated by the FCC as a Lifeline Broadband Provider (LBP)¹

URTA, and the Division support this requirement.² Both CTIA and TracFone oppose the Commission's proposal to require ETCs to obtain a CPCN as a condition of receiving state Lifeline support. CenturyLink did not specifically address this issue in their Comments, and offered no proposed amendment to this section of the Proposed Rule.

¹ R746-8-200(4).

² URTA Comments, p. 10; DPU Comments Docket 17-R008-01, p. 1.

CTIA/TracFone argue against requirement that ETCs be required to obtain CPCN as a prerequisite for receiving State Lifeline. CTIA and TracFone argue that there is no specific statutory authority for allowing the Commission to require the wireless ETC's to obtain a CPCN, and therefore, the Commission is not permitted to impose such a rule. URTA disagrees that the Commission is prohibited from implementing this requirement.

Current Utah Code §54-8b-2(4) defines a "certificate" as:

"a certificate of public convenience and necessity issued by the Commission authorizing a telecommunications corporation to provide specified telecommunications services within a defined geographic service territory in the state."³

Utah Code §54-8b-2(20) provides:

"Telecommunications corporation" is defined as any corporation or person and their lessees, trustees, receivers, or trustees appointed by any court, owing, controlling, operating, managing, or reselling a public telecommunications service.⁴

Finally, Utah Code §54-8b-2(18) provides:

"Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.⁵

Using the above statutory definitions, wireless providers would fall within the definition of "telecommunications corporation," and "telecommunications corporation" set forth in 54-8b-2(20) does not exempt wireless providers.

In order to determine whether the Commission has the authority to require wireless ETCs who seek State Lifeline funds to obtain a CPCN, the Commission must look at Utah Code §54-8b-15(15) which provides that:

³ U.C.A. §54-8b-2(4).

⁴ U.C.A. §54-8b-2(20)

⁵ U.C.A. §54-8b-2(18)

(a) A facilities-based or nonfacilities-based wireless telecommunications provider is eligible for distributions from the [UUSF] under the lifeline program described in Subsection (3)(b) for providing lifeline service that is consistent with the FCC's lifeline program for low-income consumers.

(b) Except as provided in subsection (15)(c), the Commission may impose reasonable conditions for providing a distribution to a wireless telecommunications provider under the lifeline program described in Subsection (3)(b).

(c) The commission may not require a wireless telecommunications provider to offer unlimited local calling to a lifeline customer as a condition of receiving a distribution under the lifeline program described in subsection (3)(b).

Utah Code §54-8b-1, cited above, gives the Commission broad authority to impose reasonable conditions on the wireless telecommunications provider. The statute notes one exception in §54-8b-15(15)(c) which prohibits the Commission from requiring a wireless provider to provide unlimited local calling. Other than the one exception, the only other requirement is that the condition to receiving State Lifeline be "reasonable." This is a broad grant of authority that could include requiring a wireless ETC to obtain a CPCN before being eligible to receive state lifeline funds.

CTIA, in its Comments, states that "because wireless and broadband-only providers are not subject to certification under state law, the imposition of CPCN requirements on such providers would be inappropriate." In support of this CTIA offers Utah Code Ann. §§54-2-1(31), 54-21[sic]-1(21) which according to CTIA, "exclud[e] commercial mobile radio service and "Internet service" from the definition of "telecommunications corporation," and consequently the definition of public utility.

Unfortunately for CTIA, while the definition of "telephone corporation" under UCA 54-2-1(31) excludes wireless providers, as demonstrated above, the definition of "telecommunications corporations" set forth in Utah Code §54-8b-2(20) does not exempt

wireless providers. Further, the definition of “certificate” contained in Utah Code §54-8b-2(4) speaks in terms of “telecommunications corporation” not “telephone corporation.” Thus, the Commission’s authority with regard to “certificates” is not limited to telephone corporations, but rather extends to telecommunications corporations. Accordingly, with the broad statutory grant of authority contained in Utah Code §54-8b-15(15), the commission can require Wireless ETCs to have a state issued CPCN before they are eligible for state lifeline.

TracFone makes a similar argument when it states that Utah Code §54-4-25 only requires public utilities, which include telephone corporations, to obtain CPCNs. TracFone argues since wireless service providers are not telephone corporations under Utah statutory law, they are not subject to the CPCN requirement. While TracFone may be correct that wireless providers are not required under Utah Code §54-4-25 to obtain CPCNs, TracFone’s argument that wireless providers cannot be required to obtain a CPCN for some other reason is not supported, or supportable.

Further, TracFone mistakenly states that “the only other section of the Utah Code regarding the Commission’s authority to issue CPCNs to telecommunications corporations is similarly inapplicable to wireless service providers.” While TracFone is correct that Utah Code §54-8b-2.1 entitled “Competitive Entry” permits the Commission to issue a certificate to a telecommunications corporation, TracFone has not cited any Utah statute that states that Utah Code §§54-4-25 and 54-8b-2.1 are the only circumstances under which the Commission is authorized to issue or require a CPCN. Utah Code §§54-4-25 and 54-8b-2.1 would be two circumstances under which the Commission could require a CPCN, but there is certainly no prohibition against the Commission considering other circumstances where a CPCN might also be appropriate. In fact, when the Legislature states that the Commission can impose “reasonable

conditions” upon a wireless telecommunications provider for receiving a distribution for lifeline purposes, the legislature has given the Commission broad authority to impose such conditions, which may include obtaining a CPCN.

TracFone argues that under federal law the Commission cannot impose any entry requirements on wireless service providers because such regulation is explicitly preempted by 47 U.S.C. §332 (c)(3)(A) (“ . . .no state or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service . . .”).⁶ TracFone concludes that “requiring a wireless service provider to obtain a CPCN as a condition for providing Lifeline service is precisely the type of entry regulation prohibited by Section 332.”⁷ This is an erroneous conclusion. TracFone has been providing Lifeline service in Utah for several years without a CPCN. TracFone, and other wireless carriers, could continue providing Lifeline service in Utah without obtaining a CPCN, if they don’t seek to receive support from the State USF for Lifeline service. The definition of ETC contained in Proposed Rule, R746-8-200(4) specifically states that it applies to providers “if seeking to participate in the state Lifeline program.” Therefore, the CPCN requirement only applies to providers who are seeking to receive state USF monies for Lifeline. The CPCN requirement is not an entry regulation. On the contrary, wireless ETCs are entitled to provide Lifeline service in Utah without a CPCN, they are just not permitted to receive state USF funds for Lifeline without a CPCN under the Proposed Rule.

The Commission and the Division are correct that requiring a state CPCN prior to receiving state lifeline funds is appropriate. The Commission should be able to exercise authority over the providers that receive state funds, and should be permitted to audit them,

⁶ TracFone Comments, p. 6.

⁷ Id.

collect regulatory fees, request data from such providers, and oversee their eligibility for such funds. Additionally, it makes sense that the Commission should impose similar regulations on companies who are seeking to receive state funds. If wireless ETCs are not required to obtain a CPCN, they would be the only providers to receive state universal service funds in Utah without having to obtain a CPCN. It is not unreasonable that with the benefit of receiving state funds, comes the burden of state oversight. As demonstrated above, Utah law permits the Commission to establish a rule requiring wireless ETCs to have a CPCN before obtaining State Lifeline funds, thus no change to the Proposed Rule is needed. URTA supports the CPCN requirement and from a policy perspective. However, if the Commission decides to eliminate this requirement, it should modify the Proposed Rule to make it clear that the Division and the Commission have audit powers and oversight of any company that obtains State USF Funds.

2. R746-8-302 – UUSF Surcharge Remittance.

The Proposed Rule requires remittance of the surcharge monthly for companies whose remittance is over \$1,000 per month, and permits companies whose remittance is under \$,1000 per month to submit their remittance payments every six months. URTA believes this is a reasonable approach. Additionally, URTA had suggested several other modifications to this section which it continues to believe will clarify the rule. Those modifications can be found in URTA's Redline of the Proposed Rule attached to URTA's Initial Comments and will not be repeated here.

3. R746-8-401 – Rate of Return Regulated Incumbent Providers.

URTA incorporates by reference its proposed Redlines attached to its initial Comments for this Section. In addition to those modifications, which shall not be repeated here, URTA addresses issues raised by other parties in their Comments related to R746-8-401.

a. R746-8-401(3)(a)(ii) – Depreciation.

As indicated in URTA’s initial Comments, and as echoed in the DPU Comments the Commission’s Proposed Rule regarding depreciation is ambiguous. Utah Code §54-8b-15(5) permits a rate-of-return regulated carrier that qualifies for UUSF to use any depreciation method allowed by the FCC or rate-of-return regulated carriers. As noted by the Division, the FCC approves the use of mass asset or group depreciation which does not always conform to straight-line depreciation methods. The concept that each individual unit within an asset group be depreciated using a uniform rate over the full period 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). As a result, Subsection R746-8-401(3)(a)(ii)(B)(II) must be eliminated.

Additionally, according to Utah Code §54-8b-15(6), 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.⁸ 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.

Therefore, to resolve the ambiguity in R746-8-401(3), URTA suggests that the Commission use the language contained in URTA’s Proposed Redline, attached to URTA’s Initial Comments.

⁸ U.C.A §54-8b-15(6)(a).

With regard to the Division’s suggestion that the Commission should consider requiring a provider to submit a recent depreciation study prior to opting into a formulaic method of UUSF determination, URTA does not believe that is necessary given the fact that the Commission has already set and approved depreciation rates for each provider. The providers should be entitled to utilize those depreciation rates unless and until the Commission sets new rates for an individual provider, or engages in a depreciation study to set safe-harbor rates for all providers.

b. R746-8-401(4) – Annual Review of UUSF Distribution Amounts.

The Division, in its Comments, seeks clarification of the provision that requires the Division to adjust each provider’s monthly UUSF distribution annually based on the current FCC rate of return and the provider’s financial information from its last UUSF review. URTA believes the Division’s point is well taken. URTA suggests that the Commission should revise this section as follows:

- (4) (a) Beginning July 2017, and yearly thereafter, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall adjust each provider's monthly distribution according to:
 - (i) the current FCC rate of return as set forth in R746-8-401(3)(a); and
 - (ii) the provider's financial information from its last [Annual Report filed with the Commission.](#)~~UUSF review.~~
- (b) Unless a petition for review of its UUSF disbursement is filed by the provider, the adjustments, if any, shall be effective on January 1 of the year following the Annual Report so reviewed.

This language modification clarifies the process and provides a mechanism for further review.

c. R746-8-401(4)(iii) - The Cap Proposed by CTIA.

CTIA, in its Comments suggests that the Commission should establish a “self-effectuating budget mechanism for the high-cost program and initiate a proceeding to consider

whether and to what extent high-cost support remains necessary from the UUSF.⁹ To that end, CTIA proposes a modification to R746-401(4)(iii) which provides:

(iii) any amount necessary to ensure that total disbursements to rate-of-return regulated incumbent providers do not exceed the annual cap set by the commission.

This provision should be stricken and should not be included as an amendment to the proposed rule. First, CTIA or its members proposed a cap on the UUSF fund during the legislative session. The legislature declined to include a cap in the legislation. Rather, to specifically address the concern of CTIA and others, the legislature included a reporting requirement for the Commission so that the legislature could monitor the UUSF fund and determine if additional legislation is needed to address concerns with the UUSF. Utah Code §54-8b-15(16) provides:

The commission shall report to the Public Utilities, Energy and Technology Interim Committee each year before November 1 regarding:

- (a) The contribution method described in Subsection (9);
- (b) The amount of distributions from and contributions to the Universal Public Telecommunications Service Support Fund during the last fiscal year;
- (c) the availability of services for which Subsection (3) permits Universal Public Telecommunications Service Support Fund funds to be used; and
- (d) the effectiveness and efficiency of the Universal Public Telecommunications Service Support Fund.

Under Utah Code §54-8b-15, the Commission does not have the statutory authority to set a cap on the UUSF and CTIA's requested modification should be ignored.

CTIA also makes an argument that "the proposed rules rightly consider rate-of-return carriers' receipt of federal support in consideration of whether additional support is needed. The

⁹ CTIA Comments, p. 5.

proposed rules would only consider regulated revenues, but the Commission should consider whether it would be appropriate to consider all of a carrier's revenue in an analysis of whether it actually needs support to remain viable." The footnote contained in this section of CTIA's comments refer to R746-8-403 which is the Lifeline Section of the Rules, so URTA is not clear on what, if any, modification CTIA is suggesting to the Proposed Rule. However, CTIA's suggestion that the Division look at "all revenues," rather than just regulated revenues demonstrates CTIA's fundamental misunderstanding of both Utah Code §54-8b-15 and the regulated telecommunications industry. The Commission cannot enact a rule that considers any revenues except for those specifically enumerated in Utah Code §54-8b-15(4)(a)(ii):

- (A) the rate-of-return regulated carrier of last resort's revenue from basic residential service considered affordable by the Commission;
- (B) the rate-of-return regulated carrier of last resort's revenue derived from providing other public telecommunications service;
- (C) the rate-of-return regulated carrier of last resort's revenue 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 receive from federal universal service funds.

CTIA's suggestion that the Commission consider other revenues should be rejected. The Commission does not have the authority to make such rule.

4. R746-8-403. Lifeline Support.

As stated in URTA's initial Comments, URTA agrees that the Utah Lifeline Rules should be consistent with the federal rules. This position is consistent with all stakeholders who filed comments on this issue. Additionally, as URTA suggested in its initial Comments, 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 continues to believe that more time is likely needed to adequately address this issue and would support a workshop or technical conference on this issue.

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

URTA’s Comments filed on One-time UUSF Distributions are consistent with both the Division and CenturyLink.¹⁰¹¹ All parties who filed comments on this issue believe 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.

III. CONCLUSION

URTA appreciates the opportunity to work with the Commission and the stakeholders on these rules. URTA urges the Commission to adopt the modifications as discussed herein and in URTA’s Initial Comments and Exhibit A. URTA believes these modifications improve the Proposed Rule. 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.

¹⁰ DPU Comments, p. 4; CenturyLink Comments, p. 6-7.

¹¹ CTIA and TracFone did not address this issue in their comments.

Dated this 7th day of December, 2017.

BLACKBURN & STOLL, LC



Kira M. Slawson
Attorneys for Utah Rural Telecom
Association

CERTIFICATE OF SERVICE

I hereby certify that on the 7th of December, 2017, I served a true and correct copy of URTA Reply 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:

Division of Public Utilities

Bill Duncan
Chris Parker
Erika Tedder
wduncan@utah.gov
chrisparker@utah.gov
etedder@utah.gov

James Farr
James.Farr@centurylink.com

The AT&T Companies
Gary Dodge
gdodge@hjdllaw.com

Office of Consumer Services

Michelle Beck
mbeck@utah.gov

CTIA
Benjamin Aron
baron@ctia.org

Assistant Utah Attorneys Generals

Justin Jetter
Robert Moore
jjetter@utah.gov
rmoore@utah.gov

Matthew DeTura
mdetura@ctia.org

Comcast
Sharon Bertelsen
bertelsens@ballardspahr.com

CenturyLink

Torry Somers
Torry.R.Somers@centurylink.com

Jerry Oldroyd
oldroydj@ballardspahr.com



Kira M. Slawson