

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Utah Administrative Code R746-8, Proposing to Repeal R746-360, R746-341, and R746-343	<u>DOCKET NO. 17-R008-01</u>  <u>NOTICE OF RULE FILING AND</u> <u>NOTICE OF SCHEDULING CONFERENCE</u>
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ISSUED: January 2, 2018

On July 5, 2017, we issued a Notice of Proposed Rulemaking and Request for Comments to implement administrative rule changes pursuant to S.B. 130, Universal Service Fund Amendments (2017 G.S.). On July 20, 2017, pursuant to an unopposed request of multiple parties, we vacated the comment and reply comment deadlines until we completed rulemaking on the contribution method for the Utah Universal Public Telecommunications Service Support Fund (“UUSF”).<sup>1</sup>

On October 11, 2017, we reopened the comment period in this docket and received comments on November 16, 2017 from the Division of Public Utilities (“DPU”), TracFone Wireless, Inc. (“TracFone”), CTIA – The Wireless Association® (“CTIA”), the Utah Rural Telecom Association (“URTA”), and Qwest Corporation d/b/a/ CenturyLink QC and CenturyLink Communications, LLC (“CenturyLink”). On December 7, 2017, we received reply comments from the DPU, CTIA, TracFone, URTA, and CenturyLink. This notice addresses the issues included in those comments and describes the accompanying rule draft, which we have submitted to the Division of Administrative Rules for publication in the January 15, 2018 Utah State Bulletin.

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<sup>1</sup> The UUSF contribution methodology rulemaking was conducted within PSC Docket No. 17-R360-01, *Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*.

## **I. TIMING OF RULE FILING AND WORKSHOPS**

Multiple parties have requested workshops to further investigate specific issues before establishing administrative rules. Additionally, we have delayed this rule filing while we completed rulemaking on issues related to the UUSF contribution method.<sup>2</sup> While we agree with the need for further workshops on some issues, we do not consider it appropriate to delay any longer the establishment of rules to enact a Lifeline program consistent with Utah Code Ann. § 54-8b-15(15).

## **II. LIFELINE ISSUES**

### **A. Certificate of Public Convenience and Necessity (“CPCN”) Requirement for Lifeline**

The rule we published in July 2017 included a CPCN requirement within the definition of an eligible telecommunications carrier (“ETC”), and we appreciate the thorough comments we have received from multiple parties on the issue. We agree with URTA and conclude that current law authorizes us to impose that requirement; particularly Utah Code Ann. § 54-8b-15(15)(b) authorizes us to impose reasonable conditions on lifeline distributions. We recognize the policy issues the DPU argues will be furthered by a CPCN requirement such as availability of information and cost recovery for regulatory costs related to the UUSF. We also appreciate general issues of regulatory equity, considering that Lifeline recipients who do not obtain a CPCN will be utilizing regulatory resources without paying for a portion of those resources

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<sup>2</sup> See *Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, PSC Docket No. 17-R360-01, available at: <https://psc.utah.gov/2017/03/28/docket-no-17-r360-01/>.

through either a CPCN fee or through paying into the Public Utilities Regulation Fee established in Utah Code Ann. § 54-5-1.5.

Nevertheless, after considering those issues, we decline to impose a CPCN requirement within the definition of an ETC at this time. We conclude that as a matter of policy, such a requirement would more appropriately be implemented in statute. We are mindful of the need, as an administrative agency, to avoid unnecessary regulatory burdens. While many of the comments we have received articulate the benefit that would result from the burden associated with obtaining a CPCN, we decline to impose it at this time in the absence of a clearer statutory directive.

**B. Lifeline Distributions for Broadband Service and Distribution Amount**

We agree with the concerns expressed by CenturyLink with respect to the administrative burden associated with two levels of Lifeline support. We are publishing the proposed rule with a single distribution amount of \$3.50, eliminating the two-tiered distributions. We recognize that the expansion of Lifeline benefits to broadband only service may place unexpected stress on the UUSF revenues, and we anticipate that the issue of the distribution level, and whether it should be raised or lowered based on factors including changes to the Federal Lifeline program, should be a topic of ongoing consideration in our future workshops or other forums. Nevertheless, we conclude that the most reasonable path forward to effectuate Utah Code Ann. § 54-8b-15(15) is to move forward with a single distribution amount at this time while anticipating future ongoing consideration of the issue.

The DPU suggested in its comments that we delete the portion of the definition of an ETC that references the Federal Communications Commission (“FCC”) Lifeline Broadband Provider designation because of a recent notice from the FCC that it might eliminate that designation. However, it is unclear what the DPU intends as the consequences of that deletion on broadband only Lifeline distributions. Considering that the FCC notice has not yet been effectuated, and that Utah Code Ann. § 54-8b-15(15)(a) requires our Lifeline program to be consistent with the FCC program, we decline to make that deletion from the ETC definition at this time but anticipate continued evaluation of the issue, and final action by the FCC, in our future workshops.

**C. ETC Showing of Public Interest as a Requirement for Lifeline Distributions**

We conclude that the concept and language suggested by URTA, that Lifeline participation be contingent on a specific finding of public interest, is intuitive and consistent with both the Federal and Utah Lifeline program. Because of the income eligibility requirement for Lifeline participation, we infer the Lifeline program is designed to provide a benefit to customers. We conclude that we cannot interpret or implement the program in a way that the benefit might flow only to a provider. We have included URTA’s suggested language in our proposed rule.

We have not included language interpreting that requirement further. The issue could be developed on a case-by-case basis in individual dockets, with state ETC applicants bearing the burden to demonstrate that they meet the public interest standard. Alternatively, or in

conjunction with that process, our future workshops might identify ways to add more specificity and clarity to our rule.

**D. National Verifier System (“NVS”) and Recertification**

There seems to be consensus that the NVS, when operational, is the preferred method to establish eligibility. Our first possible effective date for our proposed rule, February 21, 2018, is close in time to the currently anticipated operational date for the NVS, March 13, 2018. We recognize, though, that the anticipated operational date for the NVS has been a moving target. We decline to delay our implementation of Utah Code Ann. § 54-8b-15(15) further in the event additional NVS delays occur. Consistent with the suggestion of the DPU, we have included rule language allowing an alternative process in the event the NVS is not operational on schedule.

**E. Reporting**

CTIA argues that monthly reporting is unnecessary and duplicative. No party contested that recommendation, and we have removed the monthly reporting requirement from our proposed rule. The DPU suggested modified language with respect to the semi-annual reports. The DPU’s suggestions relate to administrative expenses, interest accrual, and outreach expenses, and seem to presume that items required on the semi-annual report are reimbursable to the provider. Neither the rule we issued for comment in July 2017, nor the proposed rule we are now publishing, make any of those expenses reimbursable. Lifeline distributions are simply \$3.50 per Lifeline subscriber.

Considering that our proposed rule does not provide any provider reimbursement in excess of the \$3.50 Lifeline distribution, and considering the DPU’s comments, we conclude that

there is no need for the semi-annual reports. Our proposed rule therefore does not include any requirement for semi-annual reports.

No stakeholder other than the DPU commented on reimbursement of administrative expenses or other expenses. If a Lifeline provider can make a showing that reimbursement of additional costs is necessary to make the Lifeline program available in a specific area, we invite that provider to present that issue in our workshop process.

**F. Calculation of Lifeline Subscribers**

The DPU recommends a clarification that Lifeline distributions be based on Lifeline subscribers enrolled in the National Lifeline Accountability Database (“NLAD”) as of the first day of each month, with no prorated discounts. We have included that clarification in our proposed rule.

**G. Offsetting Lifeline Distributions with UUSF Contributions to be Paid to the UUSF**

URTA recommends, with support from CenturyLink, language to allow the deduction of the UUSF contribution amount required from any Lifeline support paid to a provider. TracFone argues this provision would discriminate against providers of prepaid wireless service. Based on the limited information we have at this point with respect to this proposal, we decline to implement it at this time. Participants may choose to address the issue further in our workshop process.

### **III. OTHER UUSF ISSUES NOT RELATED TO LIFELINE**

#### **A. Depreciation Calculation for Rate-of-Return Regulated Providers**

Depreciation calculation disputes between URТА and the DPU remain unresolved. The issue was highly litigated at the PSC prior to the enactment of S.B. 130, and the PSC has not had an adjudication addressing the issue since the bill was enacted. We conclude that the best way to continue to address this difference of position is to publish a rule at this time that simply references to the current requirements of Utah Code Ann. § 54-8b-15(5) and (6).

Our resolution of depreciation issues and the interpretation of those two statutory subsections could occur in individual adjudications from providers seeking adjustments to their UUSF distributions. We recognize, though, that time and expense for all parties could be saved if the issue is clarified further in administrative rule. Therefore, while we understand the positions of URТА and the DPU, we see benefit to exploring those positions further in our workshop process to help identify if any further common ground is possible.

#### **B. Annual Review of UUSF Distribution Amounts Based on FCC Rate-of-Return**

The DPU suggested a concept that would require all rate-of-return regulated providers to first have their UUSF distribution set after we complete our rulemaking process. URТА provides alternate rule language that would not require those initial full evaluations of UUSF distributions. After reviewing those two similar proposals, we conclude that the issue could benefit from further development in our workshop process.

We see a need to evaluate annual changes to the FCC rate-of-return, but we decline to find, at this point, that initial full adjudication of the UUSF distribution for each rate-of-return

regulated provider is an appropriate or necessary first step. We have included in our proposed rule language based on URTA's proposal, but giving more flexibility to the DPU to provide recommendations. We hope this language can be clarified further if additional common ground can be discovered during the workshop process.

**C. Non-Rate-of-Return Regulated Providers**

We have included in our proposed rule the language proposed by URTA and CenturyLink. We will address this issue upon application by a non-rate-of-return regulated provider.

**D. One-Time UUSF Distribution**

We agree with the suggestion of CenturyLink to allow the workshop process to develop this issue further. Our proposed rule repeals the existing language related to one-time UUSF distributions and does not yet enact replacement language.

**E. Frequency of UUSF Contributions**

The DPU in its reply comments recommended lowering the threshold for making UUSF contributions every six months, as opposed to monthly, from our originally proposed \$1,000 to \$100. While the DPU provides statistics on the percentage of contributing providers who would be able to submit contributions every six months, it does not provide analysis on how that issue would compromise management of the UUSF.

We have a significant policy interest in reducing regulatory burdens to the extent practical. While there is a meaningful number of providers whose monthly contributions would be less than \$100 (7.13% according to the DPU), or less than \$1,000 (16.7% according to the



DPU), the vast majority of the revenue that is contributed to the UUSF is contributed by providers who would exceed the \$1,000 threshold. In the absence of a more specifically articulated benefit to fund management, we decline to impose a monthly contribution burden on providers whose average monthly contribution amount is less than \$1,000. Our proposed rule maintains the \$1,000 threshold.

**F. Self-Effectuating Budget Mechanism and Evaluation of the Need for High-Cost Support**

CTIA recommends a self-effectuating budget mechanism and a separate proceeding to evaluate the ongoing need for the high-cost program for rate-of-return regulated providers.

URTA opposes this recommendation. As we address this recommendation, we first re-state our position expressed in our October 30, 2017 Report to the Public Utilities, Energy, and Technology Interim Committee of the Utah Legislature:

One issue worth highlighting is whether the Legislature should consider implementing a statutory cap on the UUSF contribution amount. We recognize that it is unusual for the Legislature to delegate to the PSC both the authority to set the contribution amount that creates the revenue flow into the UUSF, and the authority to adjudicate distributions from those revenues. We take those joint responsibilities seriously and pledge to perform them in a deliberate and transparent way. Nevertheless, we believe it should be a conscious legislative decision whether to continue to leave both sides of UUSF administration solely to the regulatory arena, or whether there should ever be a statutory cap on UUSF contribution rates.

In that report, we did not take a position on whether the Utah Legislature should impose a statutory cap, but suggested that whether or not a cap exists should be a conscious legislative decision. We continue to conclude that a cap on UUSF revenues or distributions should be a statutory issue. Whether or not we have legal authority to impose such a cap administratively,

because the Utah Legislature has, to date, made the conscious decision not to include a cap in statute, we will not do so in contravention of that decision.

Additionally, CTIA makes recommendations with respect to the revenues we may consider when evaluating UUSF distributions to rate-of-return regulated providers. We agree with URTA that the revenues we may consider are already defined by statute in Utah Code Ann. § 54-8b-15(4)(a)(ii).

**G. UUSF Contribution Method**

We have stated that this docket and rulemaking are intended to primarily address issues other than the UUSF contribution method. However, when we approved our latest rule filing on the UUSF contribution method, we indicated our intent to address a few remaining issues from that docket in this rule filing. Our proposed rule contains the final version of the UUSF contribution method rule we made effective on December 22, 2017, with the following modifications: (1) a modification to address CTIA's concerns in the UUSF contribution method docket, clarifying that the \$0.36 per month per access line/connection is both the maximum and minimum amount of contribution necessary for any single access line or connection, that multiple recharges of prepaid wireless service during a single month do not trigger multiple contribution requirements, and that the rule does not require double contribution from a provider of prepaid wireless service; and (2) the inclusion of URTA's and CenturyLink's suggestion that providers be required to report to the DPU the number of exemptions they claim under the UUSF contribution method exemptions.

#### **H. Technical Changes and Clarifications to Definitions**

We have implemented into our proposed rule numerous technical changes and clarifications to definitions.

#### **IV. RULE FILING SCHEDULE**

Because our proposed rule was submitted to the Utah Division of Administrative Rules on January 2, 2018, we anticipate it should be published in the January 15, 2018 Utah State Bulletin. The public comment period will end on February 14, 2018, and the earliest possible effective date is February 21, 2018.

We suggest that anyone who files comments recommending further changes to our proposed rule address whether they are recommending that we: (1) make our proposed rules effective, and make a new rule filing if we choose to implement the recommendations; or (2) delay the effectiveness of our proposed rule until we publish the changes, which would also delay the implementation of the Utah Lifeline program for Utah ETCs.

Exhibit A to this notice is our proposed rule that was submitted for publication. Concurrently with that submission, we submitted proposed repeals of R746-341, R746-343, and R746-360, which should be published in the same Utah State Bulletin and eligible to be made effective on the same date.

#### **V. NOTICE OF SCHEDULING CONFERENCE**

This proposed rule has left numerous issues to potentially address in a workshop process. The Public Service Commission's ("PSC") designated Presiding Officer will conduct a Scheduling Conference in this docket on **Tuesday, January 30, 2018 at 10:00 a.m. (MST)**,

DOCKET NO. 17-R008-01

- 12 -

Fourth Floor Room 401, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah. Stakeholders should come prepared to discuss the issues they desire to address in a workshop process and a schedule for that process.

Individuals wishing to participate by telephone should contact the PSC two days in advance by calling (801) 530-6716 or (toll-free) 1-866-PSC-UTAH (1-866-772-8824) to receive a bridge number and participant passcode. Participants attending by telephone should then call the bridge number five minutes before the conference, entering the passcode followed by the # sign to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during any proceeding should notify the PSC at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6716, at least three working days prior to the conference.

DATED at Salt Lake City, Utah, January 2, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#298742

CERTIFICATE OF SERVICE

I CERTIFY that on January 2, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

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Administrative Assistant



# Exhibit A

**R746. Public Service Commission, Administration.**

**R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).**

**R746-8-100. Authority, Purpose, and Organization.**

- (1) This rule is adopted under:
  - (a) Utah Code § 54-8b-10; and
  - (b) Utah Code § 54-8b-15.
- (2) This rule:
  - (a) governs the methods, practices, and procedures by which:
  - (b) the UUSF is created, maintained, and funded; and
  - (c) funds are disbursed from the UUSF to qualifying access line providers.
- (3) This rule is organized into the following Parts:
  - (a) Part 100: Authority, Purpose and Organization;
  - (b) Part 200: Definitions;
  - (c) Part 300: UUSF Funding; and
  - (d) Part 400: UUSF Distributions.

**R746-8-200. Definitions.**

- (1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.
- (b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.
- (c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."
- (ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."
- (2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
- (b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:
  - (i) the applicable UUSF surcharge;
  - (ii) mandatory extended area service fees; or
  - (iii) state subscriber line fees.
- (c) "Affordable base rate" does not include:
  - (i) municipal franchise fee(s);
  - (ii) tax(es); or
  - (iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
    - (A) included in a Commission-approved tariff; or
    - (B) authorized under these rules.
- (3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
- (4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
- (5) "Eligible telecommunications carrier" or "ETC" means a

provider that, if seeking to participate in the state Lifeline program:

(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or

(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).

(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.

(7) The acronym "FCC" means the Federal Communications Commission.

(8) "Facilities-based provider" means a provider that uses:

(a) its own facilities;

(b) essential facilities or unbundled network elements obtained from another provider; or

(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.

(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.

(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.

(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.

(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

**R746-8-300. UUSF Funding.**

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

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission \$0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.  
(c) A provider may collect the surcharge:  
(i) as an explicit charge to each end-user; or  
(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission \$0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.

(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(B) \$0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge; or

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

**R746-8-302. UUSF Surcharge Remittances.**

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total \$1,000 or more, the provider shall remit the funds:

- (a) on a monthly basis; and
- (b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than \$1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

**R746-8-400. UUSF Distributions.**

**R746-8-401. Rate-of-Return Regulated Providers.**

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

- (a) is a carrier of last resort;
  - (b) is in compliance with Commission orders and rules;
  - (c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, \$18 per access line;
  - (d) offers Lifeline service on terms and conditions prescribed by the Commission;
  - (e) operates as a facilities-based provider, not a reseller;
- and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

- (i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or
- (ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(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, as of the date of the provider's application for support, and as follows:

- (A) beginning July 1, 2016: 11.0%
- (B) beginning July 1, 2017: 10.75%;
- (C) beginning July 1, 2018: 10.5%;
- (D) beginning July 1, 2019, 10.25%;
- (E) beginning July 1, 2020, 10.0%; and

(F) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

**R746-8-402. Non-rate-of-return Regulated Providers.**

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

**R746-8-403. Lifeline Support.**

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed \$3.50 per Lifeline subscriber per month of subscription to a service that:

(i)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

(i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet

operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(ii) within any 12-month period, the first nonrecurring service charge for:

(A) changing local exchange usage service to Lifeline service;

and

(B) changing from flat rate service to message rate service;

and

(d)(i) add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

#### **R746-8-404. One-time UUSF Distribution.**

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

#### **R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.**

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d). "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "Speech language pathologist" means a person who:

(i) has a master's or doctoral degree in Speech Language Pathology; and

(ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.

(h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a key board;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, applicants shall demonstrate that they:

(i) live within the State of Utah;

(ii) are

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii) are eligible for assistance under a low-income public assistance program; and

(iv) are able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

(i) a person who is licensed to practice medicine;

(ii) an audiologist;

(iii) an otolaryngologist;

(iv) a speech/language pathologist; or

(v) qualified personnel within a state agency.

(4) Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:

(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the



Commission; and

(ii) report, as instructed by the Commission, for training and receipt of the approved device.

(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

(5) Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.

(ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.

(b) A recipient shall be solely responsible for the costs of:

(i) repair of an assistive device, other than for normal wear and tear;

(ii) replacement of an assistive device;

(iii) paper required by an assistive device;

(iv) telephone and internet service; and

(v) light bulbs required by an assistive device.

(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:

(a) no longer intends to reside in Utah;

(b) becomes ineligible pursuant to R746-8-405(3); or

(c) is notified by the Commission to return the device.

**R746-8-405a. New Technology Equipment Distribution Program (NTEDP).**

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2018.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) hardness of hearing; or  
(C) severe speech impairment;  
(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;  
(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or  
(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and  
(v) certify that the individual is able and willing to comply with Subsection (4).  
(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.  
(c) An applicant who is not selected to participate may request to be placed on a waiting list.  
(d) Participation shall be limited as follows:  
(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:  
(A) no more than 8 deaf individuals who are at least 13 years old;  
(B) no more than 8 hard of hearing individuals who are at least 13 years old;  
(C) no more than 8 severely speech impaired individuals who are at least 13 years old; and  
(D) at least one deaf, hard of hearing, or severely speech impaired individual who is under 13 years of age.  
(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.  
(4) Participant obligations.  
(a) An individual who is chosen to participate in the NTEDP shall:  
(i) participate in an entrance interview with the Relay Utah office;  
(ii) complete online surveys as instructed by the Relay Utah office;  
(iii) promptly comply with all instructions from the Relay Utah office to download apps;  
(iv) promptly respond to requests from the Relay Utah office for information and feedback;  
(v) maintain the device in the storage case provided;  
(vi) retain all original device packaging, instructions, and information;  
(vii) contact the manufacturer's customer service department for assistance with technical support;  
(viii) promptly report to the Relay Utah office:  
(A) software and hardware failures; and  
(B) damage to the device;  
(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and  
(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;  
(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or  
(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

- (i) reformat or attempt to reformat the device;
- (ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or
- (iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

**KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology**  
**Date of Enactment or Last Substantive Amendment:**  
**Notice of Continuation:**  
**Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10**