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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Utah Administrative Code ) Docket No. 17-R360-01  
R746-360 Universal Public )  
Telecommunications Service Support Fund ) COMMENTS OF UTAH RURAL  
 ) TELECOM ASSOCIATION  
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On March 27, 2017, the Utah Public Service Commission (the “Commission”) issued a Request for Comments on the Utah Universal Service Fund (“UUSF”) surcharge including rule changes to R746-360-5 to state the amount of the UUSF surcharge and the method through which the UUSF surcharge shall be applied. The notice issued by the Commission provided that Comments should be submitted by April 26, 2017, and specifically directed the Division of Public Utilities (“Division”) to identify all access line providers and connection providers that are subject to the UUSF surcharge; to estimate the number of connections that are subject to the surcharge; and to recommend the amount of the surcharge if applied to (a) annual intrastate revenue; and (b) to access lines/connections. The Commission also requested that the Division provide data regarding the amount of UUSF funding that might be necessary to meet the statutory objectives of Utah Code Section 54-8b-15(3). Finally, the Commission

welcomed comments from other affected parties regarding any aspect of the rulemaking required under Senate Bill 130 (“SB 130”).

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 on the above referenced issues.

**I. Matters for Rulemaking Identified in SB 130.**

As the Commission is aware, SB 130, which amends Utah Code Ann. §54-8b-2; §54-8b-10; §54-8b-15; and §63J-1-602.3, requires or permits Commission rulemaking, consistent with the Title 63G, Chapter 3, Utah Administrative Rulemaking Act, on the following:

- A. Lines 222-225: The Commission may create disbursement criteria and procedures by rule made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act for administering funds under Subsection 5 [Telecom Relay Service];
- B. Lines 280-282: The Commission shall develop, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and procedures to govern the administration of the fund [Universal Public Telecommunications Service Support Fund];
- C. Lines 345-351: Commission should set criteria for one-time distributions from the UUSF;

D. Lines 375-386: The Commission shall calculate the amount of each explicit charge described in Subsection (8) [contribution to UUSF] using a method developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rule Act.

Pursuant to SB 130, broad rulemaking authority is granted to the Commission to determine “policies and procedures govern the administration” of the UUSF. URITA believes that the Commission’s Request for Comments in this docket has focused on the contribution method and amount, as required by lines 375-388 of SB 130, and believes that Commission is reserving other issues for a future rulemaking proceeding, for which the Commission will set a separate comment cycle and schedule.

URITA supports the Commission addressing the contribution method and amount now, and reserving additional issues for separate and future proceeding to permit the stakeholders to more adequately focus on contribution method and amount prior to July 1, 2017. However, if it is the Commission’s intent to address all possible rulemaking issues permitted or required by SB 130 at this time, URITA would request clarification from the Commission and additional time to provide supplemental comments related to such issues.

## **II. UUSF Contributors.**

As the Commission correctly noted in its Request for Comments, SB 130 applies the UUSF surcharge to all providers that facilitate telecommunications services, including through voice over internet protocol (VoIP) technology. Specifically, SB 130 provides, on lines 372-386, that:

(8) Each access line provider and each connection provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit charge assessed by the commission on the access line provider or connection provider.

(9) The commission shall calculate the amount of each explicit charge described in Subsection (8) using a method developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

- (a) does not discriminate against:
  - (i) any access line or connection provider; or
  - (ii) the technology used by any access line or connection provider;
- (b) is competitively neutral; and
- (c) is a function of an access line provider's:
  - (i) annual intrastate revenue;
  - (ii) number of access lined or connections in the state; or
  - (iii) a combination of an access line or connection provider's annual intrastate revenue and number of access lines or connections in the state.

By statute, the UUSF surcharge will be applied to every access line and connection provider in the state, regardless of technology used to provide such access lines or connections. Therefore, it is incumbent upon the Commission to identify all such access line or connection providers. Attached as Exhibit 1 is a list of all service providers to whom in-state numbers have been provided by the North American Numbering Plan Administration ("NANPA"). This list identifies all service providers with active and assigned operating company numbers ("OCNs") in the State of Utah as of March 1, 2017, who will, by statute, be required to pay the UUSF surcharge. While the companies identified on Exhibit 1 may sell their number to other providers, and such "other providers" may in turn provide such numbers to end users, identifying the companies who provide numbers to end users is a more cumbersome process and is not required under the revised statute. Rather, the NANPA list will identify the appropriate "source" companies who provide access lines and connections in the state. The Commission can assess the UUSF surcharge on such source companies who will choose whether to pass those costs downstream to their contracted parties. In other words, the Commission assesses the UUSF surcharge at the source, and the market then determines whether to pass the charges downstream.

Additionally, all companies with assigned and active OCNs are required to report on the use of their assigned numbers using Federal Communications Commission (FCC) Form 502 twice per year. As a result, the FCC Form 502 would be a good resource for the Commission and the Division, and would not require additional record keeping on the part of the providers.

### **III. UUSF Contributions**

#### **A. Contribution Method.**

Under SB 130, and Utah Code Section 54-8b-15(9), effective July 1, 2017, requires that the method of contribution developed by the Commission shall not discriminate against any access line or connection provider, or the technology used by such access line or connection provider, and shall be competitively neutral.<sup>1</sup> Based on data provided by the Division in Docket 16-360-02, the UUSF began suffering a significant decline in 2014. The decline in UUSF reported revenues was largely attributed to declining UUSF reported intrastate revenues in the wireless industry likely due to a shift in wireless revenue from voice to data.

While the Commission addressed the UUSF shortfall in 2016 by increasing the contribution rate for UUSF from 1% to 1.65% on intrastate retail revenues, this solution likely did not adequately address the root of the shortfall—declining intrastate retail revenues reported by providers. When the UUSF was established, nearly all the in-state retail revenues were subject to the UUSF surcharge. With the advent and explosion of data services and applications, the revenues allocated to in-state retail rates have declined and could continue to decline as “voice” service becomes just another “application” on an interstate data circuit.

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<sup>1</sup> Utah Code 54-8b-15(9), *effective July 1, 2017*.

Ultimately, if the contribution method remains based on intrastate retail revenue, carriers in Utah will be able to provide access to the public switched network, but may not be paying UUSF contributions to provide such access because the intrastate retail rates charged to their customers could be zero. Under such circumstances, the current revenues-based methodology is no longer non-discriminatory or competitively neutral, since different companies providing voice service using different technologies may charge very different rates for comparable services, leading to non-equitable surcharge rates that are discriminatory.

To ensure that contribution method of the UUSF is non-discriminatory and competitively neutral, URTA submits that the surcharge should be based on a per access line and per connection surcharge, rather than a percentage of billed intrastate retail revenue. First, a surcharge based on customer access lines and connections eliminates the impact that revenue shifting between voice and data will have on the UUSF. A per access line and per connection based surcharge is also immune to the downward pressure on wireless rates, thereby decreasing the likelihood that the surcharge rate will continually need to be increased. In fact, a surcharge based on lines and connections will eliminate variation in contribution rates that the UUSF currently experiences because of the particular technology used for the provision of the public telecommunications service. As indicated above, currently, end-user's contributions to the UUSF are dependent on the rates they pay for intrastate retail service. These rates can vary widely depending upon what technology a customer uses to make its voice calls and how a carrier prices that service. A per access line and per connection surcharge ensures non-discriminatory and competitively neutral contribution for all carriers who connect to the public switched network.

Second, implementing a surcharge based on a per line/per connection basis, like the 911 surcharge, will ultimately be easier to administer by the Division and the Commission. There is no dispute that the initial implementation of the changes required by SB 130 may present some logistical hurdles. As discussed above, effective July 1, 2017, Utah Code §54-8b-15 will require all providers of access lines and connections to pay into the UUSF. The first hurdle—determining the contributors—is the same regardless of the contribution method selected by the Commission.

However, if the Commission implements a per access line/per connection surcharge, the remaining issues of implementation and administration will be relatively easy. Ultimately, each telecommunications corporation's UUSF surcharge will be a factor of the number of access lines and connections that provide public telecommunications services, as defined by Utah Code, multiplied by the established surcharge amount. To determine if a telecommunications corporation has properly calculated the surcharge, the Division will only need to ascertain the number of access lines and connections that the carrier has in the state.

Ascertaining the number of access lines and connections in the State of Utah can be easily accomplished by requiring a quarterly report from all access line and connection providers in the State. As indicated above, attached as Exhibit 1 is a list of all service providers to whom in-state numbers have been provided by the North American Numbering Plan Association ("NANPA") as of March 1, 2017. This list represents the service providers in the state who provide access to the public switched network. This report is available from NANPA. The Division can use the NANPA list to contact service providers who are not appropriately providing the quarterly reports to the Division or the Commission. Further, the NANPA list identifies the largest possible number of access lines or connections that each company can have

because it represents the complete universe of numbers assigned to such company and available for use. As indicated above, twice per year each company identified in the NANPA list must report on the use of their assigned numbers using Federal Communications Commission (FCC) Form 502. Form 502 identifies, with particularity, the numbers in use; the purpose of such use; and the numbers held in reserve by the companies. Thus, the data regarding number use is already compiled and reported by the companies accessing the public switched network in Utah, and can be made available to the Commission upon request.

The Commission could also prepare a Commission approved reporting form to be submitted by service providers quarterly for identifying the appropriate numbers of access lines and connections. The service providers would submit the data, certify as to its accuracy, and the Commission and/or the Division would have audit rights to determine the accuracy of the information provided, as needed.

Finally, given that the Commission has historically collected the Telecom Relay Service (“TRS”) surcharge on a per line basis, the Commission could use the data already in its possession to identify currently reported access lines and connections for TRS purposes as a starting point. URTA submits that the number of TRS payers could be used as the “minimum” number of state access lines and connections, for calculation of the UUSF surcharge.<sup>2</sup>

While URTA’s members believe a per access line and connection surcharge is the most efficient method of contribution, regardless of the contribution method the Commission ultimately determines to use, as discussed above, the Commission is required by statute to

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<sup>2</sup> Additionally, the Utah State Tax Commission already receives reports from service providers for 911 Surcharge calculation purposes, the information provided to the Tax Commission and the Public Service Commission could ultimately be combined into one report, or at the very least, used for comparison.



identify providers who provide access lines and connection to the public switched network in the state.

#### **B. Contribution Method Rulemaking Procedure.**

In administering this rulemaking proceeding, URTA believes the Commission should first determine the method of contribution for UUSF surcharges in Utah. This is a policy determination from the Commission that can likely be made upon review of the Comments and Reply Comments filed in this docket. Once the Commission has determined the appropriate method of contribution by Commission Order, the Commission should schedule a technical conference or series of technical conferences, as needed, to work through the procedures, definitions, and compliance rules required for such contribution method. URTA believes this would result in a much more efficient process than if stakeholders are required to provide comments on definitions, procedures and compliance issues for all possible contribution methods.

#### **IV. Conclusion**

URTA believes that the Commission should adopt a per access line and connection surcharge for UUSF purposes. Such a surcharge will be competitively and technically neutral; will result in a more stable fund that is not subject to downward pressure on in-state retail revenue rates; and will be substantially easier to administer. Once the Commission has determined the desired method of contribution, URTA respectfully requests that the Commission schedule a technical conference or series of technical conferences, with additional comment cycles as needed on the definitions, procedures and rules related to such designated contribution method.

Finally, URTA requests that the additional matters that require rulemaking under SB 130 be addressed in a separate or future docket to permit the stakeholders to focus their efforts on establishing the required rules regarding contribution method prior to July 1, 2017. If it is the Commission's intent to address all required rules for all issues identified in SB 130 now, URTA respectfully requests clarification from the Commission and additional time to prepare and file supplemental comments on such issues.

Dated this 26<sup>th</sup> day of April 2017.

BLACKBURN & STOLL, LC



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Attorneys for Utah Rural Telecom  
Association

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of April, 2017, I served a true and correct copy of Utah Rural Telecom Association's Comments in the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund, Docket No. 17-R360-01 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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/s/Kira M. Slawson

Kira M. Slawson

EXHIBIT 1  
TO URTA INITIAL COMMENTS

Service Providers with activity in the State (56)  
Sorted by the number of NXXs assigned to provider  
March 1, 2017

Row Labels	Count of NXX
Qwest Corporation	1,187
Cellco Partnership dba Verizon Wireless-UT	1,069
T-Mobile USA, Inc.	853
New Cingular Wireless PCS, LLC	698
XO Utah, Inc.	692
Sprint Spectrum L.P.	556
Bandwidth.Com CLEC, LLC-UT	538
Electric Lightwave, LLC dba Integra Telecom-UT	349
Onvoy, LLC-UT	331
Level 3 Communications, LLC-UT	327
First Digital Telecom, LLC	279
Teleport Communications America, LLC-UT	198
Comcast Phone of Utah, LLC-UT	176
Veracity Communications, Inc.-UT	136
Neutral Tandem-Utah, LLC-UT	122
MCI Metro Access Transmission Services LLC-UT	118
MCLEODUSA Telecommunications Services, Inc.-UT	85
YMAX Communications Corp-UT	53
Metro PCS, Inc.	49
Citizens Telecom-Utah dba Frontier Comm of UT	47
Pac-West Telecom, Inc.-UT	47
AT&T Local	42
Peerless Network of Utah, LLC-UT	38
South Central Utah Telephone Assoc, Inc.	34
UBTA-UBET Communications, Inc. dba Strata Networks	22
Central Telcom Svcs dba Centracom Interactive-NV	19
USA Mobilitiy Wireless, Inc.	16
Beehive Tel Co.-UT	13
Union Telephone Company	7
Emery Telephone dba Emery Telecom	7
Manti Telephone Co.	7
Central Utah Telephone, Inc.	6
All West Communications, Inc.-UT	5
American Messaging Services, LLC	5
Carbon/Emery Telecom, Inc.-UT	5
Navajo Comm Co Inc-UT dba Navajo Comm UT	5
Union Telephone Co,-WY	4
South Central Comm-Telcom Services, LLC UT	4
Uintah Basin Electronic Telecom	3
Centurylink Communications LLC	3
All West-UT, Inc.	3
Free Beeper, Inc.	2
Gold Star Communications, LLC	2
Telnyx LLC	2
Emery Telecommunications & Video, Inc.-UT	2
RCLEC, Inc.-UT	2
365 Wireless, LLC	2
Hanksville Telecom, Inc.-UT	1
Bear Lake Communications	1
North County Communications Corporation-UT	1
Direct Communication Cedar Valley, LLC	1
Gunnison Telephone Co.	1
Smith Bagley Inc. dba Cellular One of NE Arizona	1
Commnet Wireless, LLC	1
Broadvox-CLEC, LLC-UT	1
Manti Tele Communications Company, Inc.	1
<b>Grand Total</b>	<b>8,179</b>