



GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

State of Utah  
DEPARTMENT OF COMMERCE  
Office of Consumer Services

MICHELE BECK  
Director

To: Public Service Commission

From: The Office of Consumer Services

Copies to: Michele Beck, Office of Consumer Services

Chris Parker, Division of Public Utilities

Service List

Date: April 26, 2017

Subject: Docket 17-R360-01, In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund

---

### Background

In Docket 16-R360-02, the Public Service Commission of Utah (Commission) initiated proceedings to review the Utah Universal Service Fund (UUSF) surcharge. The Commission issued a Request for Comments asking parties to respond to the following issues:

1. Industry trends or other circumstances that might explain why the current surcharge is generating less revenue.
2. Mechanisms to maintain funding of the UUSF, including but not limited to the following two options, either of which could be accomplished through a future administrative rule filing by the Commission, contemplated to be effective by October 1, 2016:
  - a. Increasing the current surcharge from 1% of billed intrastate retail rates to 1.65% of billed intrastate retail rates. See Utah Administrative Code R746-360-4(C).
  - b. Repealing the current surcharge and implementing a \$0.32 surcharge on:
    - i. each residential and business access line of each customer of local exchange telephone service in Utah; and

- ii. each residential and business telephone number of each customer of a mobile telephone service in Utah, not including a telephone number used exclusively to transfer data to and from a mobile device.

The Office filed reply comments recommending to the Commission that a technical conference should be convened to present additional information and analysis to enable parties to take more informed positions and make recommendations as to what surcharge rate and methodology should be implemented.

During the 2017 legislative session, Senate Bill 130 (SB 130) was passed which addressed some of the issues brought forth by parties in Docket 16-R360-02. To date the UUSF has been funded through a surcharge to each provider's billed intrastate retail rates. With the passage of SB 130, the Commission has more flexibility on how to fund the UUSF. The new law allows the UUSF to be funded as follows:

1. through a surcharge that is applied to a provider's annual intrastate revenue;
2. through a surcharge that is applied to the number of access lines or connections maintained by a provider; or
3. through a combination of the above two methodologies.

Furthermore, the UUSF surcharge applies to all providers that facilitate telecommunications services, including those providing voice over Internet protocol (VoIP) technology.

On March 27, 2017, the Commission issued a Request for Comments (Request) related to the Utah Universal Service Fund (UUSF) surcharge. In its Request, the Commission directed the Division of Public Utilities (Division) to identify all access line providers and connection providers that are subject to the surcharge, to estimate the number of connections that are subject to the surcharge, and to recommend the amount of the surcharge if applied (a) to annual intrastate revenue; and (b) to access lines/connections. In addition, the Commission requests any data the Division can provide regarding the amount of funding that might be necessary to meet the statutory objectives set forth in Utah Code § 54-8b-15(3).

The Commission also requested comments from all parties regarding the surcharge amount and methodology as well as any aspect of rulemaking required under SB 130.

## Discussion & Analysis

### *UUSF Surcharge Methodology & Amount*

The Office will need to review the information presented by the Division and other parties before taking a definitive position, especially with respect to the specific level at which the UUSF surcharge should be set. However, it is our preliminary position that the surcharge should be changed to a per line or connection method. The Office views this method as being the best for having a sustainable level of collections, comparable treatment of providers who collect the surcharge from customers, and transparency for reporting and auditing.

The Office specifically notes that in many circumstances basing a fee on a per customer allocation rather than a percentage of revenue has the effect of unfairly shifting the burden of such a fee away from large users disproportionately burdening smaller users. However, any such concerns are not particularly applicable in the current context because most telecom customers pay a monthly rate for bundled services, the percentage of those services attributable explicitly to telephone service is dwindling, and large users are typically correlated with a larger number of lines or connections.

Finally, the Office commends the Commission for its intention to promulgate rules with a July 1, 2017 effective date. Unless the comments received in this first round present an unexpected scope of issues, the Office recommends that the Commission go forward with that date. Even if the scope of rulemaking expands, the Office suggests that the Commission could move forward with initial rules in place by July 1 and follow up with refinements and additional rules until the full scope of topics is covered. For example, the Office anticipates that the specific definition of lines or connections will end up in dispute. If so, the Commission could move forward with July 1 rules that use the definition of lines or connections currently used in collection of the relay fund. The Commission could then follow up with a revised rulemaking with a more comprehensive definition of lines or connections after an appropriate amount of input and analysis is complete.

### *Other Rulemaking Issues*

Overall, the Office recommends that the Commission consider approaching the rulemaking required from the passage of SB130 in segments, especially if it appears

that the overall scope is too broad to be appropriately addressed in rules that become effective July 1, 2017.

Further, the Office recommends that the Commission should approach the issue of allowing wireless ETCs (see lines 420 – 430 of the legislation) to receive state USF through rulemaking. The Office acknowledges that the Commission could likely wait until the first such request is received to address the topics. However, in our view, addressing the issue through rulemaking would be the most efficient and fair manner to ensure equal treatment of wireless providers and proper protections for customers.