



are discussed below and are set forth in Exhibit A, which contains URTA's proposed redline of the rule.

### **PROPOSED MODIFICATIONS**

First, for clarity, the proposed rule R746-360-4 (the "Rule") should specifically reference "connections," as defined in the Utah Code Section 54-8b-15(1)(c). Utah provides that "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." *U.C.A. §54-8b-15(8)*. The Rule refers to the statutory definition of "access line," but does not refer to the statutory definition of "connection." Utah Code §54-8b-15(1)(c) defines "connection" as "an authorized session that uses internet protocol or a functionally equivalent technology standard to enable an end-user to initial or receive a call from the public switched network." URTA submits that a reference to the statutory definition of "connection" would add clarity and consistency to the Rule. (See Exhibit A, R746-360-4(1)(b)).

Second, the definition of "functional equivalent of a circuit-switched network" contained in R746-360-4(1)(b) should be deleted. The definition is not needed given the language and specific definitions contained in Utah Code Sections 54-8b-2 and 54-8b-15. However, more importantly, URTA believes that the language in the definition contained in the Rule, which refers to "equipment and technology that allows an end-user to place or receive a real-time voice communication" could be construed as inconsistent with Utah Code Section 54-8b-15, particularly when used in conjunction with "provider." Utah Code Section 54-8b-15 does not contemplate assessing a Utah Universal Public Telecommunications Service Support Fund (UUSF) surcharge on providers of *equipment* that allow an end-user to

place or receive real-time voice communications. Rather, Utah Code Section 54-8b-15 provides that the UUSF surcharge will be assessed on providers of access lines and connections. In other words, if a carrier or company provides interconnection with the public switched network, such carrier or company should be assessed the UUSF surcharge. The modifications to Utah Code Section 54-8b-15 were specifically drafted such that equipment providers whose equipment merely facilitates connection to the public switched network would not be subject to the surcharge unless they also provide the service that permits connection to the public switched network. URTA is concerned that referring to “equipment” may be confusing, and may have the unintended consequence of assessing the surcharge on, for example, the provider of iPads, rather than the provider of the service that permits the iPad to connect to the public switched network (the provider with the interconnection agreement that permits the end-user to originate and terminate calls on the public switched network). As demonstrated in Exhibit A, URTA recommends deleting the current Subsection (1)(b) from R746-360-4 to avoid such confusion and any unintended consequences.

Third, the additional reference to “and functionally equivalent connections” in Subsection (1)(c) should be replaced with “or connections” since “connections” is the defined term under Utah Code §54-8b-15. The statute specifically refers to “providers of access lines” and “providers of connections.” *U.C.A. §54-8b-15*. To avoid confusion and to add clarity, the reference in the Rule should be to access line providers or connection providers. See Exhibit A, R746-360-4(1)(c). It is important also that the conjunction used in this Subsection be “or” rather than “and” so that it is clear that the reference is to a provider that provides *either* access lines *or* connection. As drafted with the “and,” the Rule could be read to require a provider to provide access lines *and* connections in order to be included in the definition of

“providers.”

Finally, Subsection (3)(a) of R746-360-4 needs to be modified. As drafted, the rule provides that: “As of August 1, 2017, and unless Subsection R746-360-4(5) applies, providers shall collect from their end-user customer \$0.36 per month per access line.” While providers are defined in the Rule as “providers of access lines and functional equivalent connections,<sup>1</sup>” the surcharge assessment as proposed only appears to apply to each “access line.” Subsection 3(a) should be modified to add “connections” to the end of the subsection to reflect that the surcharge should be assessed on all access lines and connections that enable connection to the public switched network.

### **CONCLUSION**

For the reasons stated in URТА’s previous Comments and Reply Comments, and as stated above, URТА supports a per access line/per connection surcharge. URТА believes with the above modifications, the proposed rule R746-360-4 is consistent with the statute and is competitively neutral and non-discriminatory.

URТА looks forward to working with the Commission and the interested parties on other UUSF and Lifeline issues in subsequent rulemaking proceedings.

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<sup>1</sup> As stated above, URТА believes “functional equivalent connections” should be changed to “connections.”

Dated this 3<sup>rd</sup> day of July, 2017.

BLACKBURN & STOLL, LC



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Association

CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of July, 2017, I served a true and correct copy of Utah Rural Telecom Association's Comments on Notice of Rulemaking 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 following persons at the e-mail addresses listed below:

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EXHIBIT A  
TO URTA'S REPLY COMMENTS

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

**R746-360. Universal Public Telecommunications Service Support Fund**

**R746-360-4. Application of Fund Surcharges to Customer Billings.**

~~[ A. Commencement of Surcharge Assessments — Commencing June 1, 1998, end user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.~~

~~— B. Surcharge Based on a Uniform Percentage of Retail Rates — The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.~~

~~— C. Surcharge — The surcharge to be assessed is as follows:~~

~~— 1. through September 30, 2016, 1 percent of billed intrastate retail rates; and~~

~~— 2. beginning October 1, 2016, 1.65 percent of billed intrastate retail rates.]~~

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1).

(b) "Connection" is defined at Utah Code Subsection 54-8b-15(1)(c). For purposes of applying the statutory definition of "access line," the "functional equivalent of a circuit-switched connection from an end user to the public switched network" means equipment or technology that allows an end user to place or receive a real-time voice communication.

(c) Providers of access lines ~~and or connections functionally equivalent connections~~ are hereafter referred to jointly as "providers." (2) Through July 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates.

(3)(a) As of August 1, 2017, and unless Subsection R746-360-4(5) applies, providers shall collect from their end-user customers \$0.36 per month per access line ~~or connection~~:

(i) that has a physical endpoint within the State of Utah; or

(ii) as to which the provider has record of an associated address within the State of Utah.

(b) The surcharge shall apply directly to each end-user as a separate charge and shall not be included in, nor paid from, the provider's rates or telecommunications revenues.

(4)(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.



(5)(a) An end-user may petition the Commission for a waiver of the surcharge set forth in Subsection R746-360-4(3). Any such petition shall be adjudicated as an informal administrative proceeding.

(b) An end-user that petitions for a waiver of the surcharge has the burden to provide billing records or other substantial documentary evidence demonstrating that, at all times and continuously during the six calendar months preceding the date of petition, the access line being assessed was not used to access Utah intrastate telecommunications services.

(6)(a) An exemption granted under Subsection R746-360-4(5) is valid for a period of one calendar year from the date of issuance.

(b) Following the expiration of an exemption, and upon notice from the Commission, the end-user's provider shall assess the surcharge each month, until such time as the provider is notified by the Commission that a renewed exemption has been granted.

(c) Any assessment remitted to the Commission between the expiration of an exemption and the approval of a petition for renewal of the exemption shall be non-refundable.

(d)(i) The end-user shall bear the sole responsibility to know the expiration date of an exemption granted to the end-user and to ensure that an application for renewal is filed at least 30 days prior to the date of expiration.

(ii) At any proceeding to review a petition for renewal of an exemption, evidence that the end-user was unaware of the expiration date shall be inadmissible.

(iii) A petition for renewal of an exemption is deemed granted unless the Commission issues an order of denial within 30 days of the date on which the petition is filed.

**KEY: affordable base rate, public utilities, telecommunications, universal service fund**

**Date of Enactment or Last Substantive Amendment: [~~October 24, 2016~~]**

**Notice of Continuation: November 13, 2013**

**Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15[~~(8)~~]**