

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	)	Docket No. 17-R360-01
Code R746-360 Universal Public	)	
Telecommunications Service Support Fund	)	REPLY COMMENTS OF UTAH
	)	RURAL TELECOM ASSOCIATION
	)	IN RESPONSE TO NOTICE OF
	)	RULEMAKING
	)	

---

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 the Commission’s Notice of Rulemaking on Rule R746-360-4 Docket.

**I. PROCEDURAL HISTORY**

On May 15, 2017, the Commission issued proposed Rule R746-360-4 (the “Proposed Rule”) to address the mechanism of assessing and collecting the Utah Universal Service Fund

(“UUSF”) as required by SB 130, and the statutory modifications to the UUSF enacted by the legislature. The Commission proposed an assessment of a \$0.36 surcharge on access lines and connections in the state, which URTA and CenturyLink support. URTA, in its initial Comments, proposed four modifications to the rule as drafted to add clarity and to reflect the statutory language and intent. URTA provided the proposed modifications as a redline attached to its initial Comments. CenturyLink, AT&T, Comcast, and CTIA-The Wireless Association (“CTIA”) each filed initial Comments on the Commission’s Proposed Rule. After the initial round of Comments, at the request of CenturyLink, the Commission permitted the interested parties to prepare and file Reply Comments to address issues raised by the parties in the initial round of Comments.

## **II. CONCERNS AND ISSUES FROM INTERESTED PARTIES’ COMMENTS**

URTA and its members have reviewed the Comments provided by the interested parties. While AT&T and CTIA seem to continue to argue against a Utah Universal Service Fund (UUSF) charge based on access lines and connections, Utah Code 54-8b-15, as revised by SB 130 specifically authorizes the Commission to determine the mechanism for the UUSF charge and specifically states the Commission may adopt a UUSF charge based on access lines and connections.<sup>1</sup> In the Commission’s Notice of Proposed Rule issued May 15, 2017, the Commission determined, after receiving comments from interested parties, to adopt a per access line/per connection UUSF charge. URTA supports a UUSF charge based on access lines and connections as more efficient, competitively neutral, non-discriminatory, and easier to administer, collect, and audit. Thus, the focus of this rulemaking should be on

---

<sup>1</sup> U.C.A. Section 54-8b-15(9).

promulgating rules that implement a per access line/per connection UUSF charge in a manner that addresses the valid concerns of the parties. The Commission should not entertain arguments for retaining the revenue based surcharge mechanism. In addition to that issue already having been decided by the Commission, many of the particular issues raised by AT&T, Comcast, and CTIA are relevant whether the UUSF charge is based on revenues, or access lines and connections. The issues that the Commission must deal with in this rulemaking proceeding are the implementation of rules that are competitively neutral and non-discriminatory which result in a stable UUSF.

The issues relating to a UUSF charge based on access lines and connections that have been raised by the interested parties can be distilled as follows:

1. The Commission's proposed definition of access lines refers to technology and equipment rather than service.
2. How will prepaid wireless be assessed a UUSF charge?
3. The Commission's Proposed Rule requires providers to assess the UUSF charge directly to their customers as a separate charge, thus interfering with "all-inclusive rate plans."
4. How to assess the UUSF charge on "connections"?
5. The definition of access lines and connections "with a physical endpoint in Utah or to which the provider has a record of an associated Utah address" may be inconsistent with, or in violation of the Mobile Telecommunications Sourcing Act ("MTSA").
6. The flat rate UUSF charge may apply to interstate revenues or otherwise burden the FUSF because there may be no nexus upon which the UUSF charge is applied.
7. The waiver process is logistically impractical and burdensome.

In addition to the issues raised by the parties, the Commission in its July 12, 2017 Order permitting Reply Comments specifically indicated it is "most interested in comments

that (a) address the legal issues raised in the comments submitted by AT&T and CTIA; and (b) that analyze federal case law, including orders issued by the FCC, regarding whether states are permitted to assess providers that facilitate telecommunications through voice over internet protocol technology which to date is legally considered to be an ‘information service’ rather than a ‘telecommunications service.’”

URTA agrees that many of the above issues merit consideration. The above issues are addressed in a redline version of the Commission Proposed R746-360-4, attached hereto as Exhibit 1.<sup>2</sup> The modifications, as well as the positions of the various parties are discussed in detail below.

### **III. PROPOSED MODIFICATIONS OF THE PROPOSED RULE TO ADDRESS THE CONCERNS AND ISSUES RAISED IN THE COMMENT CYCLE.**

At the outset, URTA recommends all references to “surcharge” in the Proposed Rule be changed to “charge” so that the terminology is consistent with Utah Code Section 54-8b-15 which speaks in terms of UUSF “charges”, rather than “surcharges.”

#### **A. R746-360-4(1)(b).**

##### **1. Eliminating the Reference to “Equipment and Technology.”**

Moving through the Proposed Rule from the beginning, as indicated in the initial Comments of URTA, 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, as indicated by both URTA and AT&T, the language in the

---

<sup>2</sup> Exhibit 1 was prepared jointly by URTA and CenturyLink and shows the URTA/CTL changes to the Commission’s Proposed R746-360-4. URTA is also attaching Exhibit 2, which shows the URTA/CTL changes to the original R746-360-4.

definition contained in the Proposed 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 assessing a UUSF charge 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 charge will be assessed on providers of access lines and connections—as AT&T points out, a *service*, not equipment.<sup>3</sup> In other words, if a carrier or company provides interconnection with the public switched network via an access line or a connection, such carrier or company should be assessed the UUSF charge on that access line or connection. 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 UUSF charge unless they also provide the *service* that permits connection to the public switched network.<sup>4</sup> As demonstrated in Exhibit 1, URTA and CenturyLink recommend deleting the current Subsection (1)(b) from R746-360-4 to avoid such confusion and any unintended consequences. This modification will address the concerns of AT&T<sup>5</sup>. Moreover, this issue is the same whether the UUSF charge is based on intrastate retail revenue or on a per access line/per connection basis because under the terms of

---

<sup>3</sup> See AT&T Comments, p. 3.

<sup>4</sup> As the Commission is likely aware, end-users can utilize apps to send or receive real-time voice communications. Some of the apps permit an end-user to send and receive calls to and from the public switched network (interconnected VoIP). Other apps do not permit the end-user to send and receive calls to and from the public switched network (e.g. Facetime and Skype). For example, under Utah Code Section 54-8b-15 as modified by SB 130, such a call would not be subject to the UUSF charge. On the other hand, if the app permits an end-user to make and receive a call to or from the public switched network, there is an interconnected VoIP provider furnishing numbers and interconnection to the public switched network. In this instance, that interconnected VoIP provider would be subject to the UUSF charge for such connection to the public switched network. The statutory focus is whether the end-user can make and receive a call to or from the public switched network.

<sup>5</sup> This issue is the same whether the UUSF charge is based on instate retail revenue or on a per access line/per connection basis because under the terms of U.C.A. Section 54-8b-15 “each access line or 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. Section 54-8b-15 “each access line or 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.” So, if the provider is furnishing a service that permits interconnection with the public switched network that provider is required to pay the UUSF charge. Assessing the UUSF charge on the app provider that furnishes access line or connection that permits interconnection with the public switched network is just easier to manage, administer and audit than trying to determine the intrastate retail revenue associated with such calls to and from the public switched network utilizing an app provider who may not have any revenue associated with such call.

## **2. Adding a Reference to the Statutory Definition of “Connection.”**

Subsection 1(b) of the Proposed Rule should include a reference to the statutory definition of “connection,” consistent with the statutory reference to the definition of “access line” contained in subsection (1)(a). “Connection” is defined in the Utah Code Section 54-8b-15(1)(c) as “an authorized session that uses internet protocol or a functionally equivalent technology standard to enable an end-user to initiate 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 Proposed Rule. (See Exhibit 1, R746-360-4(1)(b)). Additionally, to address the parties’ concerns regarding how to count or assess connections, URTA proposes including language which defines the number of “authorized sessions” identified in the statute as “each possible simultaneous call to the public switched network permitted by the provider.” (See Exhibit 1, R746-360-4(1)(c)). This language eliminates the concern of CTIA that “a large business today is likely to buy a single high capacity data line over which it could easily support hundreds of voice calls” but only face one UUSF charge. If

the connections are defined as the number of possible calls to the public switched network permitted by the provider, a large business customer whose data line permits one hundred simultaneous calls to the public switched network would be assessed one hundred separate UUSF charges. This proposed modification is also consistent with the initial Comments of Comcast which suggest that counting access lines and connections should be based on the number of concurrent call that can be made to or received from the public switched network.

B. R746-360-4(1)(c).

The additional reference to “and functionally equivalent connections” in Subsection (1)(c)<sup>6</sup> 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.”<sup>7</sup> To avoid confusion and to add clarity, the reference in the Proposed Rule should be to “access line providers” or “connection providers.”<sup>8</sup> As indicated in URTA’s initial Comments, 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 Proposed Rule could be read to require a provider to provide access lines *and* connections in order to be included in the definition of “providers.” This would be inconsistent with the statute.

C. R746-360-4(1)(d)

Subsection (1)(d) (formerly (1)(c) of the Proposed Rule) should be modified to delete “and functionally equivalent” and simply refer to “connections” since that is a defined term

---

<sup>6</sup> In Exhibit 1, this would be Subsection 1(d) because of the addition of the definition of “connection” in 1(b).

<sup>7</sup> U.C.A. §54-8b-15.

<sup>8</sup> See Exhibit 1, R746-360-4(1)(d).

specifically used in the U.C.A. Section 54-8b-15(1)(c).

D. R746-360-4(2)

Subsection (2) of the Proposed Rule should be modified to address the new dates set by the Commission (December 31, 2017), and to add “as the Universal Public Telecommunications Service Support Fund charge” at the end of the section.

E. R746-360-4(3)

Subsection (3) of the Proposed Rule needs to be rewritten to address various issues. As drafted, the Proposed Rule provides that:

(3)(a) 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:

- (i) that has a physical end-point within the State of Utah; or
- (ii) as to which the provider has a 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.

This entire Section (3) should be modified to (1) change the referenced date; (2) eliminate the requirement that providers collect the \$.36 UUSF charge from their end-users; (3) clarify that the UUSF charge is applicable to access lines *and* connections; and (4) modify the method for identifying the correct access lines and connection to eliminate inconsistency with the MTSA.

Specifically, URTA suggests Section 3 of the Proposed Rule be revised to read as follows:

(3)(a) As of January 1, 2018, each provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit monthly charge of \$0.36 assessed on each access line and connection with a place of primary use in the state of Utah.

(b) Place of primary use as used in this rule shall be:

- (i) For an access line or connection provider that provides mobile telecommunications services, consistent with the Mobile Telecommunications



Sourcing Act, 4 U.S.C. Sec. 116 et seq., the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(A) the residential street address or the primary business street address of the customer; and

(B) within the licensed service area of the home service provider; and

(ii) For all other access line or connection providers, the street address representative of where the end-user's use of the access line or connection primarily occurs which must be:

(A) the residential street address or the primary business street address of the end-user; or

(B) the end-user's registered location for 911 purposes.

(c) The Universal Public Telecommunications Service Support Fund charge shall be assessed by the Commission on the provider of each access line or connection identified in subsections 3(a) above that a provider has as of the last calendar day of each month.

This language identifies the correct date when the per access line/connection charge will be effective—January 1, 2018. This language further clarifies that the UUSF charge is assessed on the **provider** for each access line *and* connection the provider has as of the last calendar day of the month<sup>9</sup>.

This language further eliminates the requirement that providers collect the UUSF charge from their end users. Utah Code Section 54-8b-15(8), as amended by SB 130, requires that the UUSF charge be assessed to each provider of access lines and connections. There is no requirement that this charge be collected from end-users. Under the statute, providers are not prohibited from collecting this from end-users, but there is no requirement that they do so.

URTA supports a rule that permits providers to collect the UUSF charge from their end users, but does not require it because such rule would eliminate several of the issues raised by AT&T and CTIA.<sup>10</sup> Specifically, if the UUSF charge is assessed on providers of access lines and

---

<sup>9</sup> The Commission could choose the particular day of the month on which the snapshot of access lines and connections will be taken. URTA offers the last calendar day of the month by way of illustration only.

<sup>10</sup> In Exhibit 1, URTA suggests the addition of Subsection (6) which explicitly provides that providers may, but are not required to recover the UUSF charge from its end-users as a separate charge." See Section H, below.

connections without a requirement that such charge be collected from the end-users, the issue of how to assess the UUSF charge to prepaid wireless providers is resolved. The prepaid wireless providers would be assessed the UUSF charge on all plans with a positive cash balance as of a predetermined date each month. Because the UUSF charge may, but is not required to be charged to the end-users, the prepaid wireless providers can determine the best way to handle the UUSF charge based on their individual business model.

Further, permitting providers to determine whether to collect the UUSF charge from their customers eliminates the issues addressed in CTIA's and AT&T's Comments regarding "all-inclusive rate plans." Providers would be at liberty to maintain their "all-inclusive rate plans" if so desired, but would have the flexibility to pass the cost through to their end-users. This method of assessing the UUSF charge is consistent with the statute, and enables providers to retain flexibility.

Finally, the modifications to Section (3) of the Proposed Rule offered by URTA provide that each access line and connection with a place of primary use in the state of Utah shall be subject to the UUSF charge. This addresses CTIA's and AT&T's concerns regarding conflict with the MTSA and the imposition of the UUSF charge on wireless customers who do not live within the state of Utah. In its Comments, AT&T recommended that the definition of assessable lines (and presumably connections) be made consistent with the MTSA by assessing the charge on the customer's place of primary usage as defined by the MTSA.

As AT&T states in its Comments, defining the access lines and connections consistent with the MTSA also eliminates the need for the waiver process. URTA agrees. Rather, URTA suggests that the Proposed Rule specifically authorize the Division of Public Utilities ("Division") to develop payment and reporting procedures, including a form for providers to

use to report on access lines and connections consistent with the UUSF Statute, the Commission Rules, and applicable federal law. URТА suggests that Proposed Rule provide that these procedures and form be approved by the Commission.<sup>11</sup>

F. R746-360-4 (new subsection (4))

URТА further recommends the addition of a new subsection (4) in the Proposed Rule that would authorize the Division to develop the payment and reporting requirements for the providers, including a form that providers can use for reporting. URТА anticipates the providers could work with the Division in a working group to develop appropriate payment and reporting requirements and to develop the appropriate form which would be approved by the Commission. This process would eliminate the need for excessive detail in the rule and would also permit flexibility to the Commission and Division to work with providers to develop a useful reporting form. URТА believes that a Division developed, Commission approved reporting form and instructions would be invaluable to providers and is a better place to include the details necessary for reporting and payment. Such a form would help ensure accuracy and consistency among providers which would meet the “neutrality” and “non-discrimination” requirements of the statute. Further, as indicated in the rule, the Division would establish a process for parties to exclude any access line or connection from their count if said access line or connection is subject to an assessment of a state universal service charge in another state.

G. R746-360-4(4) (renumbered as shown in Exhibit 1, Section R746-360-4(5))

---

<sup>11</sup> URТА suggests the Rule also be amended to authorize the Division to develop a reporting form for use by providers to ensure providers are consistent with their reporting of access lines and connections. See Section F below.

URTA proposes minor modifications of what was previously Subsection 4 (now Subsection 5) as shown on Exhibit 1 to add payment dates and make minor corrections consistent with the rest of the rule.

H. R746-360-4(5) (renumbered as shown on Exhibit 1, Section R746-360-4(6))

Finally, URTA proposes an elimination of the waiver process identified in Section (5) of the Proposed Rule. As indicated in the Comments of the various parties, the waiver process is cumbersome and burdensome on providers. More importantly, however, the waiver process is not needed if the UUSF charge is assessed to providers; on access lines and connection with a primary place of use in the state of Utah, consistent with the MTSA; and the providers use a Division developed, Commission approved reporting form as suggested by URTA and CenturyLink. The addition of URTA's proposed subsection (6) provides that a provider may, but is not required to recover the Universal Public Telecommunications Service Support Fund charge from its end-users which addresses the concerns of AT&T and CTIA regarding all-inclusive plans discussed above.

The changes proposed to the Proposed Rule by URTA eliminate or address each of the logistical and many of the legal concerns of AT&T, CTIA and Comcast in a simple straight-forward logical manner. URTA urges the Commission to adopt these redlines in the final rule.

#### **IV. REMAINING LEGAL ARGUMENTS.**

With regard to the legal issues the Commission has asked the parties to address, CTIA and AT&T raise legal concerns whether the proposed method of UUSF charge assessment is inconsistent with or burdensome to the federal universal service fee mechanism. In particular, CTIA and AT&T seem to be claiming that Utah's assessment of a flat charge on each access line or connection that is capable of making a call to or receiving a call from the public

switched network may conflict with Federal Code Section 47 USC 254(f) requires that State Universal Service programs must be “not inconsistent with” the federal Universal Service Fund (“USF”) mechanism, and must not “rely on or burden” the federal USF mechanism. CTIA and AT&T both correctly state that a State UUSF charge that is based on in-state retail revenues is both consistent with, and does not burden, the federal mechanism. URTA does not dispute this. But this does not end the inquiry. There is no dispute that Utah is ***not required*** to mirror the federal USF mechanism. Therefore, the question is, does Utah’s utilization of a per access line/per connection flat fee USSF charge burden or rely on the federal mechanism. The answer to this question is no.

The Commission has determined that providers who furnish access lines or connections with a primary place of use in Utah that enable end-users to make and receive calls to or from the public switched network are subject to a flat fee of \$.36 per access line or connection. As set forth in Utah Code Section 54-8b-15(8), a provider of an access line or connection that enables an end-user to initiate or receive a call from the public switched network is subject to the UUSF charge. It is irrelevant whether the end-user actually places or receives such a call. Competitive neutrality requires, that the UUSF charge not be based on whether such calls are made or received, but rather on the ability of the end-user to make and receive such calls.

CTIA and AT&T want the focus to be on the calls made by the end-user. Under a revenue based approach CTIA and AT&T seem to be saying that if no in-state calls are made to or received from the public switched network, no UUSF charge would be assessed. This is not what the Utah statute says, however. The statute requires that providers of access lines (defined in terms of permitting circuit switched connection from an end-user to the public

switched network) and connections (defined in terms of an authorized session that enables an end-user to initiate or receive a call from the public switched network) contribute to the UUSF. In this way, the UUSF charge can be thought of in terms like the E911/911 fee, in that access lines that enable an end-user to make a 911 call are subject to the 911 fee, whether or not, a 911 call is ever made with that access line. The focus is on the ability to make the call, not the call.

Moreover, the current system (based on in-state retail revenues) illustrates the competitive problems with the intrastate retail revenue approach. Currently (and historically) rate of return regulated landline providers have been required to assess a 1.65% surcharge on the affordable base rate in Utah whether or not its landline customers ever actually place or receive a call to or from the public switched network. A base amount of in-state revenue (affordable base rate) has been set by the Commission for rate of return regulated providers. Rate of return regulated carriers are required to charge UUSF on at least the affordable base rate. No such base rate has been set for wireless providers. Wireless providers have been at liberty to identify or allocate “in-state revenue” and as a result UUSF revenues have been declining. To achieve a non-discriminatory and competitively neutral mechanism for UUSF charges, as required by Utah Code Section 54-8b-15(1)(a) and (c), the focus must be on the *ability* to place or receive such call to the public switched network, not whether any such calls were actually placed or received.

With regard to the Commission’s request that parties address whether states are permitted to assess providers that facilitate telecommunications through VoIP technology, it does not appear that any party that has filed comments is claiming that Utah is not permitted to charge state UUSF on interconnected VoIP. In fact, on Nov. 5, 2010, the Federal

Communications Commission (FCC) issued a Declaratory Ruling determining that states may assess state-level universal service fees (USFs) on nomadic interconnected voice over Internet protocol.<sup>12</sup> As the Commission is aware, 47 USC §254(b), like the U.C.A. Section 54-8b-15, provides that contributions to the Federal Universal Service program should be equitable and non-discriminatory, and should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. Interconnected VoIP service is defined in federal law as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN.<sup>13</sup> Interconnected VoIP can be nomadic or fixed.

In 2006, the FCC adopted rules requiring interconnected VoIP providers to contribute to Federal USF. States followed suit and began requiring interconnected VoIP providers to contribute to state USFs. One issue that arose was in the context of nomadic interconnected VoIP and separating revenues for purposes of determining contribution amounts based on federal or state revenues since it can be difficult to ascertain in-state revenues with a nomadic VoIP provider. Ultimately, the FCC elected not to preempt states on the imposition of state USF charges on nomadic VoIP carriers concluding that “extending the state contribution requirements to nomadic interconnected VoIP providers promotes the principle of competitive

---

<sup>12</sup>In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket 06-122, Declaratory Ruling, 25 FCCRed.25651, FCC 10-185 (rel. Nov. 5, 2010).

<sup>13</sup> 47 USC §9.3.

neutrality by reducing the possibility that carriers with universal service obligations will compete directly with providers without such obligations.”<sup>14</sup> The FCC concluded that state universal contribution requirements do not conflict with federal rules to the extent that states calculate the amount of their universal service assessments in a manner that is consistent with federal rules.<sup>15</sup> To address concerns about double assessment of state USF assessments on interconnected VoIP providers, the FCC has indicated that an assessment policy modeled on the MTSA, that would provide interconnected VoIP providers a means of determining a customer’s primary place of use of service, could be a method of ensuring against double assessment of state universal service charges for interconnected VoIP providers<sup>16</sup>. In footnote 58 of the Order, the FCC indicated that:

a number of states use a customer’s primary place of use for state universal service contribution assessments, consistent with the Mobile Telecommunications Sourcing Act). We note that to the extent an interconnected VoIP provider cannot determine a customer’s primary place of use, it would be reasonable if a state allowed the provider to use a proxy for the primary place of use, such as the customer’s registered location for 911 purposes. See 47 C.F.R. § 9.5(d).<sup>17</sup>

URTA’s proposed redlines incorporates “primary place of use,” thus maintaining competitive neutrality, as required by Federal and State law, and avoiding double assessment of interconnected VoIP providers, by using the customer’s registered location for 911 purposes as a proxy for primary place of use.

Finally, Utah Code Section 54-19-103 explicitly permits the Utah universal service fund fee be assessed on VoIP service. Finally, no party has raised the issue that Utah is not

---

<sup>14</sup> Id. at ¶16.

<sup>15</sup> Id. at ¶17.

<sup>16</sup> Id. at ¶21.

<sup>17</sup> Id. at FN 58.



permitted to charge UUSF on interconnected VoIP service.

### **CONCLUSION**

The Commission's proposed flat rate UUSF charge based on access lines and connection in the State of Utah does not overlap with, or burden the federal system. Moreover, it provides a competitively neutral UUSF charge mechanism that is easier to administer, collect and audit, and which provides a more stable revenue source than a method based on declining in-state retail revenues. For the reasons stated in URТА's previous Comments and these 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.

Dated this 2<sup>nd</sup> day of August, 2017.

BLACKBURN & STOLL, LC



---

Kira M. Slawson  
Attorneys for Utah Rural Telecom  
Association

## CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of August, 2017, I served a true and correct copy of Utah Rural Telecom Association's Reply 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:

### Division of Public Utilities

Bill Duncan  
Chris Parker  
Erika Tedder  
[wduncan@utah.gov](mailto:wduncan@utah.gov)  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)  
[etedder@utah.gov](mailto:etedder@utah.gov)

James Farr  
[James.Farr@centurylink.com](mailto:James.Farr@centurylink.com)

The AT&T Companies  
Gary Dodge  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

### Office of Consumer Services

Michelle Beck  
[mbeck@utah.gov](mailto:mbeck@utah.gov)

CTIA  
Benjamin Aron  
[baron@ctia.org](mailto:baron@ctia.org)

### Assistant Utah Attorneys Generals

Justin Jetter  
Robert Moore  
[jjetter@utah.gov](mailto:jjetter@utah.gov)  
[rmoore@utah.gov](mailto:rmoore@utah.gov)

Matthew DeTura  
[mdetura@ctia.org](mailto:mdetura@ctia.org)

Comcast  
Sharon Bertelsen  
[bertelsens@ballardspahr.com](mailto:bertelsens@ballardspahr.com)

### CenturyLink

Torry Somers  
[Torry.R.Somers@centurylink.com](mailto:Torry.R.Somers@centurylink.com)

Jerry Oldroyd  
[oldroydj@ballardspahr.com](mailto:oldroydj@ballardspahr.com)



---

Kira M. Slawson

EXHIBIT 1  
TO URTA'S REPLY COMMENTS  
REDLINE SHOWING URTA'S PROPOSED CHANGES TO THE COMMISSION  
PROPOSED R746-360-4

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

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

**R746-360-4. Application of Fund ~~Surcharges~~Charges 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).

(c) For purposes of applying the statutory definition of "access line," the "functional equivalent of a circuit-switched connection," in determining the number of authorized sessions, each possible simultaneous call connecting to or 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. permitted by the provider shall be counted as a connection for assessment of Universal Public Telecommunications Service Support Fund charge purposes.

(ed) Providers of access lines and functionally equivalent or connections are hereafter referred to jointly as "providers."

(2) Through ~~July~~December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates as the Universal Public Telecommunications Service Support Fund charge.

(3)(a) — As of ~~August~~January 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:

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

— (ii) as to which the 2018, each provider has record of shall contribute to the Universal Public

Telecommunications Service Support Fund through an associated address within the State of Utah.

~~(b) The surcharge shall apply directly to each end-user as a separate explicit monthly charge and shall not be included of \$0.36 assessed on each: access line or connection with a place of primary use in, nor paid from, the provider's rates or telecommunications revenues.— the state of Utah.~~

(4)(a) ~~Ab~~ Place of primary use as used in this rule shall be:

(i) For an access line or connection provider that provides mobile telecommunications services, consistent with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq., the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(A) the residential street address or the primary business street address of the customer; and

(B) within the licensed service area of the home service provider; and

(ii) For all other access line or connection providers, the street address representative of where the end-user's use of the access line or connection primarily occurs which must be:

(A) the residential street address or the primary business street address of the end-user; or

(B) the end-user's registered location for 911 purposes.

(c) The Universal Public Telecommunications Service Support Fund charge shall be assessed by the Commission on the provider of each access line or connection identified in subsections 3(a) above that a provider has as of the last calendar day of each month.

(4) The Division shall develop the payment and reporting requirements for the providers which shall be approved by the Commission.

(a) In establishing the payment and reporting requirements, the Division shall establish a process for providers to exclude any access lines or connections that are being assessed a state universal service fund charge in another state from the Universal Public Telecommunications Service Support Fund charge.

(b) The requirements developed by the Division shall not conflict with applicable federal law.

(c) Included in the requirements developed by the Division shall be a reporting form which shall be used by providers.

(5)(a) A Provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge

~~collections~~ Universal Public Telecommunications Service Support Fund charge assessment on or before the 15<sup>th</sup> of each month.

(b) A ~~provider~~ Provider may retain a maximum of 1.31 percent of its total monthly ~~surcharge collections~~ Universal Public Telecommunications Service Support Fund charge assessment 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.~~

(6) A provider may, but is not required to, recover the Universal Public Telecommunications Service Support Fund charge from its end-users.

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)~~]

EXHIBIT 2

TO URTA'S REPLY COMMENTS

REDLINE SHOWING URTA'S PROPOSED CHANGES TO THE ORIGINAL R746-360-4



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

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

**R746-360-4. Application of Fund Charges 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).

(c) For purposes of applying the statutory definition of "connection", in determining the number of authorized sessions, each possible simultaneous call connecting to or from the public switched network permitted by the provider shall be counted as a connection for assessment of Universal Public Telecommunications Service Support Fund charge purposes.

(d) Providers of access lines or connections are hereafter referred to jointly as "providers."

(2) Through December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates as the Universal Public Telecommunications Service Support Fund charge.

(3)(a) As of January 1, 2018, each provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit monthly charge of \$0.36 assessed on each: access line or connection with a place of primary use in the state of Utah.

(b) Place of primary use as used in this rule shall be:

(i) For an access line or connection provider that provides mobile telecommunications services, consistent with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq., the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(A) the residential street address or the primary business

street address of the customer; and

(B) within the licensed service area of the home service provider; and

(ii) For all other access line or connection providers, the street address representative of where the end-user's use of the access line or connection primarily occurs which must be:

(A) the residential street address or the primary business street address of the end-user; or

(B) the end-user's registered location for 911 purposes.

(c) The Universal Public Telecommunications Service Support Fund charge shall be assessed by the Commission on the provider of each access line or connection identified in subsections 3(a) above that a provider has as of the last calendar day of each month.

(4) The Division shall develop the payment and reporting requirements for the providers which shall be approved by the Commission.

(a) In establishing the payment and reporting requirements, the Division shall establish a process for providers to exclude any access lines or connections that are being assessed a state universal service fund charge in another state from the Universal Public Telecommunications Service Support Fund charge.

(b) The requirements developed by the Division shall not conflict with applicable federal law.

(c) Included in the requirements developed by the Division shall be a reporting form which shall be used by providers.

(5)(a) A Provider shall remit to the Commission no less than 98.69 percent of its total monthly Universal Public Telecommunications Service Support Fund charge assessment on or before the 15<sup>th</sup> of each month.

(b) A Provider may retain a maximum of 1.31 percent of its total monthly Universal Public Telecommunications Service Support Fund charge assessment to offset the costs of administering this rule.

(6) A provider may, but is not required to, recover the Universal Public Telecommunications Service Support Fund charge from its end-users.

**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)~~]