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# State of Utah

## Department of Commerce

### Division of Public Utilities

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Date: October 4, 2017

To: Public Service Commission of Utah

From: Utah Division of Public Utilities  
Chris Parker, Director  
Bill Duncan, Manager – Telecommunications

Re: Docket No. 17-R360-01 Comments of the Utah Division of Public Utilities (DPU)

On September 5, 2017, the Public Service Commission of Utah (PSC) issued a request for comments and draft rule language concerning the Utah Universal Service Fund (UUSF) assessment of prepaid wireless. In that request the PSC requested comments on three specific questions:

1. What forms of telecommunications service are considered "prepaid wireless" service in the current marketplace?
2. Of the different forms of prepaid wireless service, which are assessable under the PSC's proposed per-access line mechanism for funding the UUSF (published in the Utah State Bulletin Vol. 2017 No. 17)?
3. Which forms of prepaid wireless service are arguably excluded from UUSF assessment under the proposed rule language?

The DPU will respond to each question in order.

1. The DPU has no unique knowledge of the different forms of prepaid wireless service. The DPU is generally aware that there are many providers offering a variety of plans with a variety of terms and conditions. The DPU generally categorizes the variety of wireless service plans into prepaid and postpaid plans that are typically on a monthly basis, but

also is aware of a variety of plans that are not based on monthly billing cycles as well as some offerings that are advertised as being free to the end user.<sup>1</sup>

The DPU will defer to providers to provide a more detailed of description of what forms of prepaid wireless are available in the current marketplace.

2. The DPU believes that all prepaid wireless access lines are assessable for Utah USF under the proposed rule. However, the PSC could alter the application of the rule for all providers who do not bill customers in a way that makes monthly surcharges on customer bills a practicable method of collection by making a more specific rule allowing or requiring that the surcharge be paid by the service provider. Without a more specific rule, all of the forms of prepaid wireless that the DPU is aware of meet the definition of an access line as defined at Utah Code Subsection 54-8b-2(1) or a connection as defined at Utah Code Subsection 54-8b-15(1)(c). As a result, the rule as proposed would apply.

A plain language reading of the text would include all prepaid and free wireless services. The definition of an “access line” used in Utah Code § 54-8b-2(1) includes prepaid and free wireless plans. It defines an access line in relevant part as “the functional equivalent of a circuit switched connection, from an end-user to the public switched network.” Similarly, a “connection” as defined in Utah Code § 54-8b-15(1)(c) includes the ability to “enable an end-user to initiate or receive a call from the public switched network.” Any prepaid or free wireless service that is relying on or offering a telephone number that may be used for sending or receiving phone calls from the public switched network is included in those definitions. The proposed rule’s language does not exclude those access lines simply because the customer pays for the service before using it rather than after using it.

The application of the rule as it is proposed does cause some concern regarding its application to customers who purchase service through third party retailers in increments that are not based on monthly access such as blocks of minutes or data. The potential lack of authority to require the retailer to collect a separate monthly surcharge at the point of sale could pose problems. There are alternative methods of collecting the surcharge on prepaid wireless customers than just at the point of sale. These may be required if the current rule is applied to those customers.

The PSC may not *require* collection of the surcharge at the point of sale, but that does mean that wireless providers are *prohibited* from including the surcharge in the purchase price of their offerings so that they are part of an all-inclusive price or debited on a monthly basis against the prepaid service value. The proposed rule merely requires that the provider “collect from their end-user customers \$0.36 per month per access line.” The method is largely at the discretion of the provider. If the providers choose not to collect the surcharge at the point of sale or at the time they collect payments for service, they may be required to collect the surcharge in a separate billing. The relationship of the carrier with the customer does not end at the point of sale.

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<sup>1</sup> Freedompop is one example of a provider who advertises an offering of 500 texts, 200 minutes, and 500MB on a monthly basis with no charge to customers.

The DPU recognizes that some providers would be alarmed at the prospect of being required to identify and apply a surcharge to customers who had previously been at least partially anonymous to the provider. That alone should not act as exception to contributions to a public switched network that those providers and customers rely upon. It would likely be more efficient for some providers to combine the charges for service with the fees they collect as a requirement of this proposed rule for UUSF contributions at the time of sale, but if the provider chooses otherwise, a monthly billing may be appropriate. Prepaid or free wireless providers are not precluded from adjusting the offerings and billing rates to include the UUSF contribution as part of an all-inclusive rate plan as contemplated by proposed Rule 746-360-4(3)(c)(ii) and collect the contributions at the time of pre-payment for services. Placing the burden on the provider to determine the most efficient method of collecting the access line surcharge will allow the variety of different billing options to compete on a fair basis.

It is important to note that several prepaid wireless services that have applied for and received ETC status from the PSC currently contribute to the UUSF. All of these providers have agreed to contribute to the UUSF as a condition of receiving ETC designation.

3. The DPU does not believe that any forms of prepaid wireless are excluded under the current rule language. The providers of access lines that are relying on access to the public switched network should equally support the UUSF in a competitively neutral way with all other competing providers.