

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	)	COMMENTS OF UTAH RURAL
	)	TELECOM ASSOCIATION IN
	)	RESPONSE TO THE UTAH PUBLIC
	)	SERVICE COMMISSION’S REQUEST
	)	FOR COMMENTS AND DRAFT
	)	RULE LANGUAGE RELATED TO
	)	UUSF ASSESSMENT OF PREPAID
	)	WIRELESS AND NOTICE OF
	)	PROPOSED 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 Comments in response to Commission’s Request for Comments and Draft Rule Language: UUSF Assessment of Prepaid Wireless and Notice of Proposed Rulemaking.

I. PROCEDURAL HISTORY

On September 5, 2017 the Utah Public Service Commission (“Commission”) issued a Request for Comments on three discrete issues:

1. What forms of telecommunications service are considered prepaid wireless service in the current market place?
2. Of the different forms of prepaid wireless service, which are assessable under the PSC’s proposed per-access line mechanism for funding the Utah Universal Service Fund (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 Comments are due on or before October 4, 2017, and the Commission has requested Reply Comments and Draft Rule language on or before October 17, 2017.

II. URTA COMMENTS ON PREPAID WIRELESS

A. What forms of telecommunications service are considered prepaid wireless service in the current marketplace?

Prepaid wireless is not a distinct form of telecommunications service, rather it is a traditional wireless voice and/or data service that is paid for in advance by its end users. With prepaid wireless service, users prepay to have a certain number of minutes of access to the public switched network and/or a certain amount of data available for their use, or they pay to have access to the public switched network and data for a certain period of time. Generally speaking the prepaid minutes and/or data are available for use until they are used or until they expire, at which time more minutes and data can then be purchased or added by the end user.

While there are a number of different billing arrangements in use with prepaid (and post-paid) service plans, the underlying telecommunications service provided by access lines or connections—providing access to the public switched network—is the same as postpaid telecommunications service regardless of the billing method.

B. Of the different forms of prepaid wireless service, which are assessable under the PSC’s proposed per-access line mechanism for funding the UUSF?

As indicated above, the differences in prepaid wireless service are really differences in billing arrangements only, and do not amount to differences in the underlying telecommunications service. To the extent the Commission is asking whether some form of prepaid wireless telecommunications service would not be subject to the UUSF charge, the answer is that any form of telecommunication service that enables an end user to access the public switched network is subject to the UUSF charge. Pursuant to Utah Code “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.”¹ Access line is defined by reference to statute in the rule as “a circuit switched connection or the functional equivalent of a circuit-switched connection, from an end user to the public switched network.”² “Connection,” likewise, is defined in by reference to statute in the rule 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.”³ Thus, to the

¹ §54-8b-15(8).

² U.C.A. §54-8b-2(1).

³ U.C.A. §54-8b-15(1)(c).

extent a prepaid wireless carrier provides an end user with the capability to access the public switched network, the provider⁴ should be required to pay the UUSF charge for such access line or connection, and all such access lines or connections are “assessable.”

To the extent the Commission is asking whether it will be impossible for certain prepaid billing methods to assess the UUSF charge to the providers or end-users on a monthly basis without further legislative action permitting a point of sale surcharge, the answer is no.

As the Commission is aware, certain fees and assessments mandated by the State are collected differently from prepaid wireless providers than they are from other types of providers of in-state telecommunications services. The 911 fee is charged to prepaid wireless customers as a percentage of the sales price per transaction.⁵ On the other hand, non-prepaid wireless customers pay a flat fee for the 911 service charge—it is assessed on each access line. While the 911 fee is collected differently from prepaid wireless service, there is no requirement that the UUSF fee be collected in a different manner from prepaid wireless providers than it is for the postpaid telecommunications providers. Both AT&T and CTIA state that additional legislation is required to permit the prepaid wireless customers to pay the UUSF charge at the point of sale, and that the Commission does not have the authority to assess retail providers who sell prepaid wireless phones and plans. There are several things wrong with these arguments.

First, as indicated in URITA’s Comments filed on the proposed rule R746-360-4 (“Proposed Rule”), on October 2, 2017 (“URITA Proposed Rule Comments”), the Commission should assess the UUSF charge on the actual providers of access lines and connections as set

⁴ Or end user as proposed by the Commission.

⁵ U.C.A. §69-2-405(2)

forth in Utah Code Section 54-8b-15(8); and, consistent with the FCC, permit, but not require the UUSF charge be collected from end users. As indicated in the URTA Proposed Rule Comments, the UUSF should be assessed to the providers of the access lines and connections based on the number of access lines and/or connections that enable end users to connect to the public switched network as of the last calendar day of each month. Under this method, the UUSF contribution is made by providers regardless of whether or how such providers collect the UUSF from their end users. There is absolutely no reason the UUSF contributions cannot be handled in this manner for all providers, including prepaid wireless providers. Providers would submit a report to the Division of Public Utilities that would identify the number of access lines and connections to the public switched network as of the last calendar day of the month; would multiply that number by the proposed \$.36 UUSF charge; and would submit their required contributions. The providers would be permitted to collect such amounts from their end users, but would not be required to do so. Therefore, the burden of determining how to collect such amounts from the end-users would be on the providers, who are in the best position to make such determination. Obviously, under this approach, no “point of sale” legislation is needed. Additionally, under this approach there is no assessment of the UUSF surcharge on the “retail seller.” When Walmart sells a prepaid wireless phone and/or phone plan, it is not the “provider” who is enabling the end user to connect to the public switched network. Rather it is just a sales conduit for the underlying provider such as Verizon, T-Mobile, AT&T, TracFone, etc. By assessing the UUSF surcharge on the underlying provider any issue associated with assessing the “retail sellers” is avoided.

As suggested in URTA’s Proposed Rule Comments, in order to adopt this approach, the Commission merely needs to modify the language in R746-360-4(3) to read as follows:

“As of January 1, 2018, the Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

- (a) Unless Subsection R746-360-4(5) applies, providers shall be assessed \$0.36 per access line that as of the last calendar day of each month has a primary place of use within the State of Utah.”⁶

Second, even if the Commission does not modify the rule to assess the providers rather than the end users,⁷ additional legislation is not needed. Prepaid wireless providers typically sell their services in terms of minutes of use or amounts of data (*e.g.*, 150 minutes/20MB) or in terms of time (unlimited calls and 200MB of data for three months). For plans that are based on time (*e.g.*, three months), the provider can simply include three months of UUSF service fees in the price of the plan or as an additional “surcharge” to the customers. For plans that are based on minutes of use and/or a block of data that does not expire in certain period of time, the provider could merely debit the account of each such subscriber that has a positive balance of minutes or money on the account as of the last calendar day of the month. A subscriber with a positive balance as of the last calendar day of the month who will have access to the public switched network should be liable for such UUSF charge. Similarly, when a customer buys additional minutes of use or a period of access (via “top-up” minutes), their underlying access line and/or connection maintains the capability to access the intrastate

⁶In the event the Commission adopts the suggestion to assess the UUSF charge to providers, the Commission would need to make additional modifications to the rule including:

(1) either eliminating subsection (3)(c) of the Proposed Rule in its entirety or modifying it to reflect that providers are permitted, but not required to recover the UUSF charge from their end users; or modifying the current language in R746-360-4(3)(c) to read as follows:

- (c) A provider may, but is not required to:
 - (i) recover the UUSF charge from its end users as an explicit charge; or
 - (ii) include the UUSF charge in an all-inclusive plan.

(2) changing references to the UUSF “surcharge” to UUSF “charge” or “assessment”.

⁷ In the URТА Proposed Rule Comments, URТА has addressed in detail the reasons why an end-user surcharge is not legally required. URТА incorporates those arguments here by reference.

public switched network, and such access line or connection is liable for the monthly UUSF charge⁸. Prepaid wireless providers already have the ability to debit their customers' accounts for fees and surcharges, either in terms of money or the minute equivalent.

Finally, even if the Commission were inclined to adopt a point of sale collection method for prepaid wireless, there is no reason additional legislation would be required. Utah Code §54-8b-15(9) specifically authorizes the Commission to calculate the amount of the UUSF charge "using a method developed by the Commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act." Prior to SB 130, Utah Code Section 54-8b-15(10) provided:

- (10) (a) Subject to Subsection 10(b):
 - (i) each telecommunications corporation that provides intrastate public telecommunications service shall contribute to the fund on an equitable and nondiscriminatory basis;
 - (ii) for purposes of funding the fund, the commission shall have the authority to require all corporations that provider intrastate telecommunications services in this state to contribute money to the fund through explicit charges determined by the commission;
 - (iii) any charge described in Subsection 10(a)(ii) may not apply to wholesale service, including access and interconnection; and
 - (iv) charges associated with being a provider of public telecommunications service shall be in the form of end-user surcharges applied to intrastate retail rates.

Therefore, consistent with previous Utah statute and Commission rules, prepaid

⁸ URTA believes that when the UUSF charge of \$0.36 per month goes into effect on January 1, 2018 it would not be assessed on existing minutes or data because that pre-purchased access to the intrastate public switched network was already assessed the 1.65% of the retail revenues for UUSF. Rather, when a new prepaid wireless phone is purchased, or when additional data or minutes are purchased after January 1, 2018, the monthly UUSF charge will be assessed on that access line or connection.

wireless providers were required to collect the UUSF from their customers at the rate of 1.65% of the intrastate retail revenues. The prepaid wireless providers either collected this at the point of sale (even in the absence of specific legislation authorizing a point of sale collection), or they “collected” this surcharge in some other way.⁹ In either event, even though there was no separate statutory mandate or authority for a point of sale collection, the prepaid wireless providers were expected to collect this money from their end users, and presumably were in compliance and properly collecting this money from their end users. Therefore, it is simply another delay tactic to argue that additional legislation is needed to adequately permit prepaid wireless providers to remit, or collect and remit, the UUSF charge on a per access line/per connection basis.

C. Which forms of prepaid wireless service are arguably excluded from UUSF assessment under the proposed rule language?

As indicated above, no forms of prepaid wireless service are, or should be excluded from UUSF assessment under the Proposed Rule. As indicated in URTA’s Proposed Rule Comments, the language of the rule itself does not eliminate any provider from application of the Proposed Rule. Rather it is the language utilized by the Commission in its Notice of Change to Proposed Rule and Response to Reply Comments, issued August 14, 2017 (“August 14 Notice”), that implies that the Proposed Rule may be interpreted by the Commission to not apply to prepaid wireless providers. Specifically, on page 3 of the Commission’s August 14 Notice, the Commission states:

The PSC is willing to consider all issues concerning prepaid wireless through a

⁹ A third possibility is that the prepaid wireless providers didn’t pay the UUSF, but URTA members would have no way of knowing or ascertaining this.

separate rule-making docket and/or through legislative action. However, the PSC considers that implementing a per-access line charge cannot be delayed beyond January 1, 2018. That date is mandated by statute, and is also necessary to allow the PSC to move forward on other rulemaking related to the 2017 legislation. Current Utah law does not allow a point-of-sale assessment, and for reasons discussed in this notice the PSC has determined to assess the UUSF charge as an end-user charge, a model into which URITA's suggestion does not easily fit. However, the PSC invites further comment about URITA's suggestion during the next phase of the rulemaking required by statute, which the PSC intends to commence after the charge rule is effective.¹⁰

URITA does not believe that a second rulemaking is required so long as the Commission clarifies that its Proposed Rule applies to all providers. As explained above, the current Proposed Rule can (and must) apply to all providers (or as the Commission has suggested, all end users) in order to be technologically neutral and nondiscriminatory. As URITA suggested in its URITA Proposed Rule Comments, the prepaid wireless provider (or end user) would pay \$0.36 for each month the subscriber has intrastate access to the public switched network. No end-user point-of-sale assessment is required, and the prepaid wireless provider pays the exact same as every other provider—a \$0.36 per month for every subscriber that has intrastate access to the public switched network.

III. CONCLUSION

Again, URITA urges the Commission to reconsider assessing the UUSF charge to providers, and permitting, but not requiring, providers to pass the charge through to customers in whatever way the provider deems appropriate. Assessing the providers eliminates many of the logistical issues raised by the Commission and the stakeholders, and is very much

¹⁰ August 14 Notice, p. 3.

consistent with both SB 130 and the federal rules.

Nevertheless, prepaid wireless service is the same service as postpaid wireless service except for how it is billed to the end user. No separate rule is needed for prepaid wireless service. The Proposed Rule as drafted is technologically neutral and nondiscriminatory against any provider. However, the language used by the Commission in its August 14 Notice needs to be amended to reflect that the Proposed Rule shall be applicable to all providers, including prepaid wireless providers or else the Proposed Rule, as applied will be discriminatory.

Dated this 4th day of October, 2017.

BLACKBURN & STOLL, LC



Kira M. Slawson
Attorneys for Utah Rural Telecom
Association

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2017, I served a true and correct copy of Utah Rural Telecom Association's Comments in Response to the Utah Public Service Commission's Request for Comments and Draft Rule Language Related to UUSF Assessment Of Prepaid Wireless And Notice Of Proposed 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
chrisparker@utah.gov
etedder@utah.gov

James Farr
James.Farr@centurylink.com

The AT&T Companies
Gary Dodge
gdodge@hjdllaw.com

Office of Consumer Services

Michelle Beck
mbeck@utah.gov

CTIA
Benjamin Aron
baron@ctia.org

Assistant Utah Attorneys Generals
Justin Jetter
Robert Moore
jjetter@utah.gov
rmoore@utah.gov

Matthew DeTura
mdetura@ctia.org

Comcast
Sharon Bertelsen
bertelsens@ballardspahr.com

CenturyLink
Torry Somers
Torry.R.Somers@centurylink.com

Jerry Oldroyd
oldroydj@ballardspahr.com



Kira M. Slawson