
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Utah Administrative
Code R746-360 Universal Public
Telecommunications Service Support Fund

Docket No. 17-R360-01

COMMENTS OF CTIA

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CTIA files these comments in response to the Notice of Proposed Rule Amendment¹ in the above-captioned Docket (“October 25 Notice”), issued by the Public Service Commission of Utah (“Commission”) on October 25, 2017.

I. INTRODUCTION AND SUMMARY

Since the Commission first proposed in May 2017 to change the Universal Public Telecommunications Service Support Fund (“UUSF”) contribution mechanism, commenters in this proceeding have noted flaws with how the Commission intended to assess prepaid wireless services. As CTIA has previously observed, this is a significant issue: prepaid wireless services, long favored by many consumers, including vulnerable, low-income consumers, have rapidly grown in popularity such that prepaid customers now represent approximately one-third of all mobile consumers.² On September 5, 2017, the Commission, conceding that it does not have the

¹ Notice of Proposed Rule Amendment, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01(issued Oct. 25, 2017) (“October 25 Notice”).

² Application for Rehearing and Request for Stay of CTIA at 4, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01(filed Nov. 13, 2017) (“Rehearing Application”).

authority to assess surcharges on prepaid services sold by non-carrier retailers,³ solicited comment and draft rule language on this issue by October 17, 2017. However, less than one week before it would receive this stakeholder input, the Commission released a Notice stating that the rule still under debate had been made effective (“Effective Rule”).⁴ As a result, CTIA filed an Application for Rehearing and Request for Stay (“Rehearing Application”) on November 30, 2017 to challenge the implementation of the Effective Rule and to preserve its rights for rehearing and judicial appeal.⁵ On November 30, 2017, the Commission denied CTIA’s Request for Stay and indicated that, in light of the ongoing nature of this proceeding, it did not intend to grant CTIA’s Rehearing Application, and the Rehearing Application was therefore denied by operation of statute on December 3, 2017.⁶ Meanwhile, after the Effective Rule had already come into effect, the Commission published in the Utah Bulletin on November 15, 2017 a similar rule that included further amendments addressing the issue of prepaid wireless UUSF contributions (“Proposed Rule”).⁷

CTIA continues to believe that the connections-based methodology for UUSF contributions in the Effective Rule and the Proposed Rule is unlawful for all of the reasons it has already stated in this proceeding – at least until such time as the legislature empowers the Commission to impose competitively-neutral point-of-sale surcharges on third-party retailers.

³ Request for Comments and Draft Rule Language: UUSF Assessment of Prepaid Wireless; Notice of Proposed Rulemaking at 3, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01(issued Sept. 5, 2017).

⁴ Notice that Proposed Rules Have Been Made Effective at 1, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01 (issued Oct. 11, 2017).

⁵ Rehearing Application, *passim*.

⁶ Notice Application for Rehearing Will Be Denied by Operation of Statute and Order Denying Request for Stay at 1, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01(issued Nov. 30, 2017).

⁷ Notice of Proposed Rule Amendment, *In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Docket No. 17-R360-01 (rel. Oct. 25, 2017) (“Proposed Rule”).

However, in the event that the Commission chooses to go forward with the Effective Rule or some variation of the Proposed Rule without accompanying legislative action, the Commission should clarify the rules for remittances by prepaid providers. Left unresolved, these issues would leave prepaid carriers unsure as to their regulatory obligations, make the Proposed Rule vulnerable to further legal challenge, and could imperil the funding of the UUSF.

II. CTIA REITERATES THE OBJECTIONS RAISED IN ITS REHEARING PETITION

To the extent that the Proposed Rule is substantively the same as the Effective Rule to which CTIA objected in its Rehearing Application, CTIA reiterates those objections and incorporates them here by reference.⁸ In particular, CTIA wishes to emphasize its continuing concern that the Commission still lacks the requisite authority to collect UUSF remittances from third-party retailers, which sell millions of dollars of prepaid wireless services. Without legislative action enabling point-of-sale collection from third party retailers, prepaid providers cannot collect UUSF contributions from end users for third party sold services, while contributions for all other services, including prepaid wireless services sold directly by prepaid carriers, can be collected directly from end users. Thus, the Commission's decision to proceed with a connections-based methodology for UUSF collection without appropriate legislation contravenes Utah Code Section 54-8b-15 by discriminating against connections purchased from prepaid carriers via third party retailers.⁹

⁸ See e.g. CTIA's Application for Rehearing and Request for Stay, Docket 17-R360-01 (filed December 14, 2017) (arguing that the Commission's rules are discriminatory (pgs. 2-8), inconsistent with the Mobile Telecommunications Sourcing Act (pg. 9), and burdens illegally the federal program (pgs. 10-11)).

⁹ Utah Code § 54-8b-15(9)(a)-(b). See also *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009) (Competitive neutrality requires that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another") (quoting Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 47 (1997)).

III. IF THE COMMISSION DOES NOT WAIT FOR LEGISLATIVE ACTION ON POINT OF SALE COLLECTION, THE COMMISSION SHOULD FURTHER CLARIFY THE RULES FOR REMITTANCES BY PREPAID PROVIDERS

Although this Proposed Rule represents an improvement from earlier iterations, the Proposed Rule introduces ambiguities via its new subsection 3(e) and fails to resolve all issues pertaining to UUSF contributions from prepaid wireless services.¹⁰ Subsection (3)(e) of the Proposed Rule reads: “A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission \$0.36 per month per access line for such service (*new access lines or connections, or recharges for existing lines or connections*) purchased on or after January 1, 2018.”¹¹

The Commission must clarify regarding prepaid accounts the scope of the \$0.36 per month remittance under subsection (3)(e). It is evident that the subsection requires monthly remittance on a per-access-line basis for prepaid accounts, but it is unclear how the language about “new access lines or connections, or recharges for existing lines or connections” applies to “per month per access line” assessments. The language describing assessments on “new access lines,” “connections,” or “recharges for existing lines or connections” is ambiguous regarding how providers are expected to calculate assessments. If remittances are “per month per access line,” then the language in the parenthetical appears to be contradictory to that intent. As CTIA and others have noted, prepaid recharge sales often occur on an as-needed basis, which may mean that they may occur more often than once a month, or less often.¹² A customer may

¹⁰ In addition to the specific objections discussed herein, CTIA reiterates and incorporates by reference its arguments regarding the discriminatory nature of the Proposed Rule with respect to prepaid service. *See* Rehearing Application at 3-7.

¹¹ Proposed Rule at 2 (emphasis added).

¹² *See, e.g.*, Reply Comments of CTIA at 4 (filed Aug. 2, 2017) (“Prepaid subscribers do not purchase service on a monthly basis, and thus are not billed for service on a monthly basis. Some prepaid subscribers may purchase multiple top-up cards in a month, and some may purchase no top-up cards at all. Because each consumer effectively

purchase top-up minutes more than once in a month, or may skip a calendar month due to the customer's particular needs. Similarly, a customer might purchase a new prepaid phone in one month and then purchase top-up minutes for the same prepaid account in the same month, or skip a month before purchasing minutes again.

Therefore, the Proposed Rule raises a number of unanswered questions. For example, would both the new phone (a "new access line") and the top-up minutes (a "recharge for [an] existing line[]") both be subject to a \$0.36 assessment if they occurred in the same month, double-charging a prepaid connection? Are prepaid consumers not subject to assessment in a given month if those customers do not make any purchases in that month, but continue to use minutes purchased in the prior month? What is the relevance or meaning of the "new access line" language given that all access lines are subject to a monthly surcharge? Given these ambiguities, it is not clear when and how prepaid providers are required to remit under the Proposed Rule. The rule should therefore make clear that prepaid providers are only obligated to remit once per month for each active access line pursuant to the prepaid provision, and no remittances are due for top-up minutes purchases.

Finally, subsection (3)(e) does not make clear that it applies to prepaid providers *in lieu of* subsection (3)(a), which requires a monthly remittance "per access line." This leaves open the possibility that the rules could facially require prepaid providers to remit twice. Because this would be inequitable, discriminatory, and run afoul of Utah Code § 54-8b-15(8)-(9), the Commission should modify the rule to make clear that subsection (3)(e) applies to prepaid providers *to the exclusion of* subsection (3)(a).

controls his or her own billing cycle, there is no way to incorporate a UUSF collection mechanism that assumes a monthly billing cycle for each subscriber.")

IV. CONCLUSION

CTIA continues to believe that the Commission should reconsider the connections-based methodology for UUSF collection in the Effective Rule and the Proposed Rule, as these changes cannot be made consistent with the governing statute at this time. However, if the Commission remains committed to adopting the connections-based methodology, CTIA urges the Commission to modify the Proposed Rule such that prepaid wireless providers may clearly understand their UUSF contribution obligations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 15, 2017, a true and correct copy of the foregoing Comments of CTIA in Docket No. 17-R360-01 was delivered to the following by electronic mail:

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