

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund	<u>DOCKET NO. 17-R360-01</u> <u>NOTICE THAT PROPOSED RULES HAVE BEEN MADE EFFECTIVE AND ORDER OF CLARIFICATION</u>
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ISSUED: December 22, 2017

The Public Service Commission of Utah (“PSC”) has made effective the Notice of Proposed Rule, DAR File No. 42265, that was published in the November 15, 2017 (Vol. 2017, No. 22) Utah State Bulletin (“Proposed Rule”). CTIA filed comments on December 15, 2017, generally opposing the Proposed Rule. CenturyLink and the Utah Rural Telecom Association filed joint comments (“Joint Comments”) on December 15, 2017, generally supporting the Proposed Rule. We address those comments in this notice.

CTIA expresses concerns with our process, particularly our notice on October 11, 2017 that a currently pending publication of proposed rules was being made effective, while at the same time we were still in the process of receiving comments on potential further amendments to those rules (that we have now made effective as described in this Notice). We understand that this rule process has been complicated. That process has been driven partly by the complexity of the positions of various stakeholders, and partly by the requirements of the Utah Administrative Rulemaking Act.¹

In October, having made the decision following multiple rounds of comments to implement a per line/connection contribution method for the Utah Universal Public Telecommunications Service Support Fund (“UUSF”), but recognizing that our published rule

¹ Utah Code Title 63G, Chapter 3.

needed further refinement prior to the contribution method changing on January 1, 2018, we faced two choices. We could let the pending rule lapse without making it effective, and publish a new rule filing that could have been made effective prior to January 1, 2018. We chose a different path, to allow the existing filing to become effective, which still afforded us the opportunity to amend that rule further prior to January 1, 2018. We chose that option because it accomplished two objectives: it gave the stakeholders in the telecommunications industry as much advance notice as we were able to give that we had made a final decision to implement a per line/connection contribution method for the UUSF, and it still afforded us the opportunity for further refinements before the effective date of the contribution method change. Allowing the pending rule to lapse and re-starting the rule making process would have, in our judgment, created additional uncertainty about our intentions. We regret if that choice of process caused confusion among stakeholders.

CTIA continues to state its position that a per line/connection contribution method for the UUSF is unlawful, particularly because we do not have authority to require point-of-sale collection from third party resellers of prepaid wireless service. We agree with the Joint Comments that the rule language we have now made effective allows providers of prepaid wireless service to determine their own method of managing those contributions while clarifying their obligation to do so. We have taken no position on whether legislative changes are necessary or appropriate. We conclude that the current rule, with the amendments we have now made effective, is competitively neutral because it requires a contribution of a uniform amount for each line/connection without respect to the technology type. Exemptions are provided for a

line/connection that pays into a different state's fund, or that does not access Utah intrastate telecommunications services.

CTIA further alleges ambiguities about the rule language requiring UUSF contributions for prepaid wireless service. We are issuing an order of clarification to address those ambiguities, and recognize that we can include that clarification in the next UUSF rule publication (primarily addressing issues other than the surcharge method) we intend to publish in January 2018. The clarification is that the \$0.36 per month per access line/connection is both the maximum and minimum amount of contribution necessary for any single access line or connection. Multiple recharges of prepaid wireless service during a single month do not trigger multiple contribution requirements. R746-360-4(3)(e) applies to providers of prepaid wireless service in lieu of Subsection (3)(a). The rule does not require double contribution from a provider of prepaid wireless service.

The Joint Comments suggest that any exemptions claimed under R746-360-4(5)(i) and (5)(ii) be reported to the Division of Public Utilities to allow monitoring of the exemptions and better focus for any needed audits. We find this suggestion to be intuitive, but conclude that the requirement would not qualify as a clarification of existing rule language. Therefore, we intend to address this suggestion in our next UUSF rule publication.

Finally, while CTIA in its December 15, 2017 comments did not address concerns about burdening the federal Lifeline program, the Joint Comments address previous concerns expressed by CTIA on that issue. We agree with the Joint Comments and conclude that the UUSF contribution method we have now implemented will not burden the federal Lifeline

program. It will not require any modification to the amount of federal Lifeline support providers receive. At most, it may require wireless providers receiving Lifeline support, including those currently offering Lifeline service at no cost to the customer, to make a business decision about how to price its plans. But as the Joint Comments accurately note, “[t]he federal USF support will not increase to cover the UUSF charge.”²

ORDER OF CLARIFICATION

The \$0.36 per month per access line/connection is both the maximum and minimum amount of contribution necessary for any single access line or connection. Multiple recharges of prepaid wireless service during a single month do not trigger multiple contribution requirements. R746-360-4(3)(e) applies to providers of prepaid wireless service in lieu of Subsection (3)(a). The rule does not require double contribution from a provider of prepaid wireless service.

DATED at Salt Lake City, Utah, December 22, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#298694

² Joint Comments at 5.

CERTIFICATE OF SERVICE

I CERTIFY that on December 22, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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DOCKET NO. 17-R360-01

- 9 -

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