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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of:</p> <p>Administration of Utah Universal Service Fund Distributions to Carriers of Last Resort with Overlapping Telecommunications Service Exchanges</p>	<p><b>COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION</b></p> <p>Docket 21-R008-03</p>
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The Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc. Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications Inc. (dba Strata Networks), and Union Telephone Company, appreciate the opportunity to file comments in response to the Notice of Comment Period issued June 16, 2021 (“Notice”) by the Utah Public Service Commission (the “Commission”) in Docket No. 21-R008-03.

**I. INTRODUCTION AND BACKGROUND**

In the Notice, the Commission seeks Comments on whether it is necessary to modify existing administrative rules to address the administration of the Utah Universal Service Fund (“UUSF”) distributions to carriers of last resort (“COLRs”) with overlapping

telecommunications service exchanges. Utah Code §54-8b-2.1 (the “Competitive Entry Statute”) allows competitive entry in Utah and competitive COLR entry into exchanges of fewer than 5,000 access lines (“Small Rural Exchanges”) in Utah provided the Commission determines competitive entry to be in the public interest. As previously indicated by URTA in the E Fiber Docket 20-2618-01 (the “E Fiber Docket”), URTA believes that competitive COLR entry into an exchange of fewer than 5,000 access lines should only be permitted in rare circumstances. Specifically, in the E Fiber Docket, URTA identified a ten-point public interest test that the Commission should consider before allowing competitive COLR entry into the Small Rural Exchanges.<sup>1</sup> URTA reiterates here that it would support the Commission identifying particular public interest factors, as suggested by URTA in the E Fiber Docket by rule.

Once the Commission has determined that it is in the public interest to permit competitive COLR entry, URTA and its members believe that the existing statute (Utah Code 54-8b-15), and existing administrative rules (R746-8-401) permit the Commission to appropriately administer the UUSF to COLRs with overlapping local exchanges. However, URTA and its members

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<sup>1</sup> The ten-point public interest factors identified by URTA in Docket No. 20-2618-01 are as follows: (1) whether the incumbent local exchange carrier currently operating in the designated area is receiving or has received state UUSF in the past five (5) years; (2) whether the competitive applicant is planning to serve all the exchanges of the incumbent local exchange carrier in Utah; (3) whether the incumbent local exchange carrier has invested in the efficient development and deployment of advanced telecommunications infrastructure and facilities in the Small Rural Exchange(s) where competitive entry is sought; (4) whether the incumbent local exchange carrier is providing high quality, affordable public telecommunications services to all residents and businesses in the Small Rural Exchange(s) where competitive entry is sought; (5) whether the incumbent local exchange carrier is in compliance with the Service Quality for Telecommunications Corporation Rules; (6) whether there are material unresolved service complaints filed against the incumbent local exchange carrier in the Small Rural Exchange(s) where competitive entry is sought; (7) whether the incumbent local exchange carrier has a reasonable plan for providing high quality telecommunications services; (8) whether the competitive applicant is seeking to invest in the efficient development and deployment of advanced telecommunications infrastructure and facilities equal to or better than the infrastructure and facilities of the incumbent in the Small Rural Exchange(s) where competitive entry is sought; (9) whether the competitive applicant will provide high quality, affordable public telecommunications services to all residents and businesses in the Small Rural Exchange(s) where competitive entry is sought; and (10) whether the competitive entry is seeking UUSF support to construct the facilities and provide the services, and if so, is the support sought reasonable and necessary to provide high quality telecommunications services. See *20-2618-01 Direct Testimony of Douglas Meredith, dated 9-25-20*.

believe the Commission can add clarity to the process by amending its rules to specifically address the administration of the UUSF amongst competing COLRs. URTA has several suggestions as indicated below.

#### **IV. AMENDMENT OF EXISTING RULES**

As indicated in the comments filed by the E Fiber entities in this matter, URTA believes that the current statutory framework and Administrative Rules permit the Commission to adequately and fairly administer the UUSF in areas that have competing COLRs. However, URTA believes that additional rules and or modification of existing rules could add clarity to the process of administering the UUSF in areas that have competing COLRs. The Commission should consider amending its current rules to include the following:

- Provide that consistent with and pursuant to Utah Code §54-8b-2.1, the Commission will permit application for competitive entry by another COLR into the small rural exchanges. While this would be merely a restatement of the requirements of existing Utah Code 54-8b-2.1, it would offer clarity to include such in the administrative rule.

- Provide that all applications for competitive entry into the small rural exchanges are required to include the proposed competitor's a build-out plan for serving as the carrier of last resort in the local exchange(s). Current rules already require statement of services to be offered; classes of customers to be served; locations of service; detailed maps of proposed facilities and locations; technical descriptions of types of technology, services, and facilities, but requiring a specific build out plan for competitors seeking entry as a second carrier of last resort would provide clarity. The Commission could amend Utah Admin. Rule R746-349-3(3 through 17) to add this provision.

- Allow the incumbent (existing) carrier to contest the need for competitive entry by demonstrating through specific testimony and evidence how adequate infrastructure exists, is being deployed, or is scheduled to be deployed in the subject area. The incumbent is already granted automatic intervenor status. See Utah Code 54-8b-2(3)(b). The Commission could add a provision indicating the information that would be required by an incumbent to mount an effective challenge of the competitive entry.

- Provide that the Commission shall hear evidence relevant to whether the application is in the public interest (Already required under Utah Code 54-8b-2.1(2)(b)), including a listing of public interest factors that the Commission will consider. URTA recommends the ten-point public interest factors identified previously in the E Fiber Docket and in footnote 1 above.

- Provide that if the Commission determines that allowing competitive entry (and the entry of a second COLR) in the application area is in the public interest, the Commission shall approve competitive entry and require the competitor to work with the Division of Public Utilities to adopt a specific and detailed build out plan with milestones and reporting requirements to be approved the Commission.

- Provide that the applicant who is granted competitive entry shall be entitled to build out the area and shall be entitled to recover its reasonable costs, net of revenues from all sources, for building out such areas from the UUSF, pursuant to, and consistent with Utah Code §54-8b-15. In other words, the granting of the competitive entry to the COLR applicant serves as pre-approval of the construction of the proposed facilities.

- Provide that the Incumbent will not be entitled to recover capital expenditures for fiber facilities that duplicate the approved build-out plans of the Competitive Entrant, without a

specific determination by the Commission that such costs are “reasonable costs” for UUSF determination. The incumbent provider can seek this determination in advance of any substantive investment to ensure adequate recovery may be available for reimbursement of reasonably incurred costs. In the alternative, the incumbent can merely include the investment in the annual report after the fact, in which case the incumbent risks that its investment will be deemed unreasonable and/or investment in duplicate facilities. This process could be spelled out by rule for predictability, and provides clarification of reasonable costs, consistent with Utah Code 54-8b-15(4).

- Provide that the Incumbent would continue to be entitled to earn a rate of return on its existing, non-depreciated plant, but once the existing plant is fully depreciated and removed from rate base, expenditures to replace such facilities (which would duplicate the competitive entrant’s facilities) are unlikely to be reasonable costs and would, therefore, not be included in the UUSF calculation. This provides additional clarification regarding reasonable costs consistent with Utah Code 54-8b-15(4).

## **V. CONCLUSION**

As indicated above, while URTA believes that the existing statutory framework and administrative rules are sufficient to permit the Commission to properly administer the UUSF in the unlikely event that two COLRs in a local exchange both seek UUSF disbursements for deploying overlapping equivalent technology, URTA believes the Commission can provide further clarity and transparency to the process by amending its rules as set forth above. URTA appreciates the ability to participate in this docket.

Dated this 2<sup>nd</sup> day of August, 2021.

Respectfully submitted,

UTAH RURAL TELECOM ASSOCIATION



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## CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of August, 2021, I served a true and correct copy of URTA's Comments in the Matter of Administration of Utah Universal Service Fund Distributions to Carriers of Last Resort with Overlapping Telecommunications Service Exchanges, Docket 21-R008-03, via e-mail transmission to following persons at the e-mail addresses listed below:

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/s/Kira M. Slawson