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**BEFORE THE PUBLIC SERVICE COMMISSION OF
UTAH**

Administration of Utah Universal Service Fund Distributions to Carriers of Last Resort with Overlapping Telecommunications Service Exchanges	Docket No. 21-R008-03 Joint Comments and Proposed Rule from the Utah Division of Public Utilities, the Office of Consumer Services, the Utah Rural Telecom Association, and Frontier Communications Regarding Proposed Rule
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The Utah Division of Public Utilities (Division), the Office of Consumer Services (Office), the Utah Rural Telecom Association (URTA), and Frontier Communications (Frontier) hereby file these Joint Comments and Proposed Rule in the matter of the Administration of Utah Universal Service Fund (UUSF) Distributions to Carriers of Last Resort (COLRs) with Overlapping Telecommunications Service Exchanges as requested by the Public Service Commission of Utah (Commission) pursuant to the Utah Admin Code R746-1, Utah Code §54-4a-1, and §63G-4-201 of the Utah Administrative Procedures Act. The Division, Office, URTA, and Frontier respectfully request that the Commission amend certain provisions of Utah Administrative Code R746-349 to establish in rule the process distributing UUSF to COLRs with overlapping telecommunications service exchanges.

INTRODUCTION

As indicated above, a group of stakeholders including the Division, the Office, URTA, and Frontier¹ worked together on the proposed rule language which is attached hereto as Exhibit A (Proposed Rule). The Proposed Rule identifies: (i) the particular application process that a competitive applicant follow when applying to be a competing COLR in a local exchange; (ii) the particular requirements to be included in the application of the competing COLR; (iii) the notice that the applicant seeking to be a competitive COLR should provide; (iv) the intervention and challenge process; (v) certain public interest factors; (vi) the elements the Commission will include in an order permitting competitive COLR entry; (vii) a process for denying competitive entry and allowing the existing COLR to build out the local exchange; (viii) a procedure for enforcing compliance with the Commission's orders regarding build-out; and (ix) a requirement for using line extension tariffs to meet the COLR obligations to prevent the UUSF from supporting duplicative infrastructure. The Proposed Rule sets out a detailed process that will improve the efficiency of preparing and reviewing applications for COLR competitive entry. In addition, the Proposed Rule should maintain and preserve the stability of the UUSF by eliminating UUSF funding for duplicative infrastructure.

Section B of the Proposed Rule

In addition to the competitive entry application requirements identified in Utah Code §54-8b-2.1 and R746-349-3, Section B of the Proposed Rule identifies five additional elements that should be included in an application for a certificate of public convenience and

¹ The Division solicited stakeholders to assist with the drafting of the proposed rule. After notice given by the Division, the Office, URTA, and Frontier were the only stakeholders who participated in the drafting.

necessity as a COLR in a certificated area that is eligible for UUSF support. These five additional elements include the areas of proposed COLR service; the services to be offered; the technology to be used including performance metrics; a detailed pro-forma build-out plan including a map, projected costs, projected revenues, and timeline for completion; and an estimate of the UUSF impact. This information will enable the Commission to evaluate the proposed infrastructure to determine whether the competitive entry is in the public interest.

Section C of the Proposed Rule

Section C of the Proposed Rule requires the competitive applicant to provide notice to the existing telecommunications corporation holding a CPCN in the geographic area of the application (existing COLR). Section C identifies what information should be provided to the existing COLR to enable the existing COLR to intervene and participate in the process. Intervention and participation by the existing COLR will assist with development of a more robust record and will assist the Division and the Office in better evaluating the public interest of competitive entry.

Section D of the Proposed Rule

Section D of the Proposed Rule provides the process by which confidentiality of documents provided in the process will be addressed.

Section E of the Proposed Rule

Section E of the Proposed Rule grants the existing COLR automatic intervenor status and outlines the challenge process that the existing COLR can engage in regarding the competitive application. The existing COLR may challenge a competitive application on the grounds that (i) the information in the application is flawed or insufficient; (ii) affordable high quality public telecommunications service is already available in the area and the applicant's

proposed service is unlikely to materially improve the service quality or affordability for the customers; (iii) the existing COLR already has a reasonable build-out plan to improve the service quality for the customers and the existing COLR's build-out plan is more efficient or more timely; (iv) granting the application is otherwise not in the public interest. Identifying the challenge process should result in a more expeditious and predictable process.

Section F of the Proposed Rule.

Section F of the Proposed Rule requires that an existing COLR who is challenging an application on the grounds that the existing COLR has a better plan be required to submit the details of their "plan" within 90 of the filing of the application. This ensures that the process is not bogged down and permits the stakeholders and the regulators to review the competing plans in a timely manner to determine the public interest.

Section G of the Proposed Rule.

Section G of the Proposed Rule permits intervention by interested parties.

Section H of the Proposed Rule.

Section H of the Proposed Rule identifies certain public interest factors the Commission may consider in evaluating the application.

Section I of the Proposed Rule.

Section I of the Proposed Rule sets forth the information and/or findings that should be included in the Commission's Order if it approves the competitive application, including: (i) approval of the applicant's proposed build out plan including projected costs, initial milestones, and reporting requirements; (ii) a provision requiring the applicant to materially adhere to the build-out plan, and providing that the applicant will be entitled to recover the costs reasonably incurred in the build-out as determined by the Commission pursuant to Utah

Code §54-8b-15; (iii) providing that the existing COLR, so long as it remains a rate of return regulated carrier, shall continue to be eligible for ongoing UUSF support on existing used and useful rate base consistent with Utah Code §54-8b-15 and R746-8-401; (iv) a provision that the existing COLR cannot recover capital expenditures for facilities that duplicate any portion of the approved build-out plan of the applicant without a showing of good cause and a specific finding that the existing COLR's proposed expenditures are cost effective and reasonable; (v) a provision that the applicant will not be entitled to recover costs for facilities not approved as part of the application approval order without a showing of good cause.

These provisions go to the heart of the rule which is to avoid recovery from the UUSF for duplicative infrastructure. The Proposed Rule is consistent with Utah Code §54-8b-15 by requiring the Commission to determine the reasonableness of the expenditures before approving them for recovery from the UUSF. Additionally, Section I of the Proposed Rule provides a method for requesting agency action if the applicant appears to be materially departing from the approved build-out plan.

Section J of the Proposed Rule.

Section J of the Proposed Rule sets forth the procedure when an existing COLR challenges the application on the grounds that the existing COLR has an alternate buildout plan, and the Commission denies competitive entry. Section J provides that the Commission shall approve the existing COLR's alternate build-out plan including a finding of the total projected costs, initial milestones, and reporting requirements, and shall require the existing COLR to proceed with its alternate build-out plan.

Section K of the Proposed Rule.

Section K of the Proposed Rule provides that the Commission may establish additional reporting requirements and schedule a final review of the build-out or capital projects to ensure the approved plan was implemented prudently. This provision gives the Commission the flexibility to set additional reporting requirements and to ensure the prudence of the expenditures.

Section L of the Proposed Rule.

Section L of the Proposed Rule allows a COLR to petition for relief from its COLR obligations in a competitive local exchange.

Section M of the Proposed Rule.

Section M of the Proposed Rule sets forth the process by which both the existing COLR and/or the applicant can meet their COLR obligations by way of their line extension tariffs as needed to avoid the UUSF supporting duplicative infrastructure. For example, if the Commission approves a competitive application and the competitor builds-out a local exchange pursuant to the build-out plan, both the existing COLR and the applicant will have COLR obligations in the local exchange. If there is an area where the existing COLR has adequate infrastructure such that the applicant has not been approved to overbuild that area, the applicant can satisfy its COLR obligations in such area by agreeing to provide service to a requesting customer by way of its line extension tariff. Specifically, rather than build to a customer who is already able to be adequately served by the existing COLR, the applicant can provide service subject to its line extension tariff which will require the customer to pay a share of the build costs. This section prevents the UUSF from supporting duplicative infrastructure.

REQUEST FOR AGENCY ACTION

The Division, the Office, URTA, and Frontier respectfully request that the Commission initiate a rulemaking proceeding to review and adopt the Proposed Rule as attached.

Submitted this 17th of June, 2022.

/s/ Patricia E. Schmid
Patricia E. Schmid
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Utah Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that on June 17, 2022, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities.

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Competitive Entry into an Area Eligible for Utah Public Telecommunications Services Fund Support Requirements

R746-349-10

A. Applications for competitive entry to any area eligible for Utah Public Telecommunications Service Support Fund (UUSF) pursuant to Utah Code § 54-8b-2.1 and consistent with § 54-8b-15 shall be made in compliance with this Rule.

B. In addition to the requirements set forth in R746-349-3, each competitive applicant (applicant) for a certificate as a carrier or last resort (COLR) in a certificated area eligible for support from the UUSF shall include in its application:

1. A statement identifying the exchange(s) where the applicant is planning to serve.
2. A statement confirming that the applicant intends to provide public telecommunications services to any customer or class of customer who requests service within each exchange.
3. A statement identifying:
 - a. the service(s) to be offered by the applicant;
 - b. the technology to be installed by the applicant; and
 - c. performance metrics of the offered service(s) including projected upload and download speed, latency, capacity, and any other applicable measures.
4. A pro-forma detailed build-out plan for serving as the COLR in the local exchange(s) that identifies, with particularity:
 - a. the areas where facilities will be installed including a detailed map;
 - b. projected costs;
 - c. projected revenue; and
 - d. an overall timeline for completion of the build-out that includes a beginning date, completion date, and relevant major milestone dates.
5. An estimate of the required UUSF support using the relevant tabs of the most recent Utah Division of Public Utilities' Incumbent Local Exchange Carrier Annual Report form.

C. Notice provided to the existing telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where the applicant is seeking to provide service (existing COLR) made pursuant to Utah Code § 54-8b-2.1(3)(b) shall include a copy of the application. The application provided to the existing COLR with the initial notice may be redacted pursuant to R746-1-601 to 746-1-606, but it shall include at a minimum:

1. A detailed map identifying areas within each exchange served by the existing COLR where the applicant's facilities will be installed;
2. The services provided by the applicant;
3. The technology to be installed by the applicant;
4. Performance metrics of the offered service(s) including projected upload and download speed, latency, capacity, and any other applicable measures;

5. The projected timeline for the build-out that includes a beginning date, completion date, and relevant major milestone dates; and
6. Projected UUSF support.

D. Claims of confidentiality with respect to the application and any additional information to be provided pursuant to sections B, C and F, will be addressed consistent with R746-1-601 to 746-1-606.

E. The existing COLR:

1. Pursuant to Utah Code § 54-8b-2.1(3)(b), shall be granted automatic status as an intervenor in the proceeding addressing the application of competitive entry;
2. May challenge the applicant's application with the commission on the following grounds:
 - a. The information provided by the applicant is flawed or otherwise insufficient to justify competitive entry;
 - b. Affordable high quality public telecommunications service is available in the relevant service areas and the applicant's proposed service offering is unlikely to materially improve the service quality or affordability for customers;
 - c. Existing COLR has a reasonable build-out plan that will result in the investment in more efficient development and/or more timely deployment of telecommunications infrastructure and facilities in the proposed local exchange that are superior to the investments proposed by the applicant; or
 - d. Granting the application is otherwise not in the public interest.

F. If an existing COLR seeks to challenge the application on the grounds that it has a competing plan pursuant to E.2.c, 90 days after the filing of the application unless otherwise modified by the Commission, the existing COLR shall make a filing with Commission which contains all the information required by section B, including information required by R746-349-3, and provide notice to the applicant that includes the information required by section C.

G. Other interested parties may seek intervention pursuant to Commission rules to challenge an application on the grounds that the application is not in the public interest.

H. In determining whether granting the application is in the public interest, and whether the proposed expenditures are reasonable, the commission shall consider the following factors:

1. Whether the proposed infrastructure duplicates current telecommunications infrastructure in the proposed service area;
2. The current service quality in the proposed service area;
3. The commitment level of both the applicant and the existing COLR in the proposed service territory; and
4. Any other factor the Commission deems appropriate.

I. If the commission grants the applicant's competitive entry in a certificated area eligible for support from the UUSF,

1. the commission shall, except as otherwise provided in this section:
 - a. Approve the build-out plan of the applicant as contained in the application, as may be amended by the applicant or agreed to by the parties, including a finding of total projected costs, initial milestones, and reporting requirements;
 - b. Include a provision that, subject to subsections I.2 and I.3, the applicant will reasonably adhere to the approved build-out plan and shall be entitled to recovery of the costs reasonably incurred in completion of the build-out plan as determined by the commission pursuant to Utah Code § 54-8b-15.
 - c. Provide that the existing COLR, to the extent that it remains a rate of return regulated utility, shall continue to be eligible for ongoing UUSF support on existing used and useful rate base consistent with Utah Code § 54-8b-15 and R746-8-401.
 - d. Provide that the existing COLR will not be entitled to recover capital expenditures for facilities that duplicate any portion of the approved build-out plan of the applicant without a showing of good cause and a specific finding by the commission that the existing COLR's proposed expenditures are cost effective and reasonable costs for UUSF support. In the event the existing COLR is not permitted to upgrade facilities pursuant to this provision, service to the customer who receives a reasonably comparable quality of service from the other COLR will be provided at the customer's request pursuant to a line extension tariff as set forth in subsection M.
 - e. Provide that the applicant will not be entitled to recover capital expenditures for facilities not approved as part of the application approval order that duplicate existing facilities without a showing of good cause and a specific finding by the commission that the competitive entrant's proposed expenditures are cost effective and reasonable costs for UUSF support.
2. If a person reasonably believes that the applicant is materially departing from the approved build-out plan, such person may file a Request for Agency Action with the Commission pursuant to Utah Code § 54-7-9.
3. Notwithstanding any other provision of this rule, the commission may conduct a hearing to disallow some or all of the costs incurred by the applicant in connection with an approved build-out plan upon a finding by the commission that the applicant is responsible for intentional underbidding, material misrepresentation, or concealment in connection with the competitive entry process.

J. In a proceeding where an existing COLR challenges an application for competitive entry with an alternative buildout plan, pursuant to section E.2.c., the existing COLR shall petition the commission for pre-approval of proposed expenditures in the local exchanges.

1. If the commission denies competitive entry the commission shall:

- a. Approve the alternative build-out plan of the existing COLR, including a finding of total projected costs, initial milestones, and reporting requirements;
 - b. Require the existing COLR to proceed with its alternative build-out plan;
 - c. Include a provision that, subject to subsections J.2 and J.3, the existing COLR will reasonably adhere to the approved build-out plan and shall be entitled to recovery of the costs reasonably incurred in completion of the build-out plan as determined by the Commission pursuant to Utah Code § 54-8b-15.
2. If a person reasonably believes that the existing COLR is materially departing from the approved build-out plan, such person may file a Request for Agency Action with the Commission pursuant to Utah Code § 54-7-9.
 3. Notwithstanding any other provision of this rule, the commission may disallow some or all the costs incurred by the existing COLR in connection with an approved build-out plan upon a finding by the commission that the existing COLR is responsible for intentional underbidding, material misrepresentation, or concealment in connection with the competitive entry process.

K. The commission in its final order on the application may:

1. Establish additional reporting requirements for the applicant or existing COLR; and,
2. Schedule a final review of the applicant or existing COLR's build-out or capital projects to ensure the approved plan was implemented prudently.

L. In a local exchange where the commission has granted competitive entry to more than one COLR, any COLR may petition the commission for relief from its COLR obligations in a competitive local exchange pursuant to Utah Code § 54-8b-3.

M. In local exchange(s) served by two or more COLRs, the COLRs shall be required to implement line extension tariffs to prevent the UUSF from supporting duplicative infrastructure.

1. To achieve this objective, the COLR's line extension tariffs shall include language that ensures that a customer who has access to functionally equivalent telecommunications service at a reasonably comparable quality of service from another provider, but who seeks service from a COLR not currently serving the customer ("non-serving COLR") may request service from the non-serving COLR;
2. If service is requested from the non-serving COLR, the non-serving COLR's obligation to provide such service shall be subject to the non-serving COLR's line extension tariff.