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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| <p><b>Request for Rulemaking Regarding Utah<br/>         Universal Service Fund</b></p> | <p><b>Docket No. _____</b><br/><br/> <b>Request for Agency Action</b></p> |
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The Utah Division of Public Utilities (Division) hereby requests agency action from 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 respectfully requests that the Commission initiate a rulemaking proceeding pursuant to Utah Code §63G-3-301 and its authority under §54-8b-2(c) to amend certain provisions of Utah Admin Code R746-8-200 and R746-8-401 to establish in rule the process for annual reviews of Utah universal public telecommunications service support fund (UUSF) pursuant to the changes in Utah Code §54-8b-15 resulting from 2017 SB 130, set a standard revenue amount per line for wholesale consumer broadband only loops (CBOL), set a standard revenue amount per line for broadband loops when combined with voice service, create a reduced CBOL revenue option in rule to provide internet at a reduced rate for qualifying low-income customers, and amend certain

definitions as necessary for the wholesale broadband rule changes.

## INTRODUCTION

A group of stakeholders including the Office of Consumer Services (OCS), Utah Rural Telecom Association (URTA), and the Division worked together on the proposed rule language and the Division greatly appreciates the willingness of both parties to work together and the assistance and expertise of the stakeholders in the creation of the proposed rules. The proposed rule amendments will improve the efficiency of the Division's annual review of the rate of return regulated carriers that receive UUSF support. In addition, it is intended to improve the stability and predictability of funding for the carriers receiving support while also improving the stability of the fund.

The rule language is intended to align the rule with the current annual process that the Division has been following in its annual review of rate of return regulated telecommunications carriers. The process has been developed in coordination with the regulated carriers and the Division supports establishing the process in rule. Establishing the process in rule will provide clarity for all parties involved.

The language as proposed will also set a default uniform rate for wholesale broadband to be charged or imputed as revenue to the regulated utility for purposes of UUSF support. Like the affordable base rate currently in R746-8-401, the wholesale broadband rate in the proposed rule remains subject to Commission adjustment via petition by carriers to deviate. This is further discussed below.

## WHOLESALE BROADBAND RATES

The wholesale broadband CBOL rate charged by UUSF supported carriers to resellers currently varies significantly from \$1 per line to a high of \$42. The Federal Communications

Commission (FCC) has set a cap for purposes of certain federal support programs at \$42 per CBOL loop per month. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3089 (2016), 47 CFR §§ 69.132(c)-(d). The draft language contains two prices that will need to be determined by the Commission, the wholesale broadband revenue for voice and data service and the CBOL rate. Those two values are “TBD” in the draft rule language. The Division is recommending that the Commission adopt a rate for CBOL that results in a revenue collection or imputation of approximately \$35 per CBOL line per month. This value has not been agreed on by the parties that have worked on the drafting of this rule and the Division is not representing that it is a consensus recommendation. The Division recommends that the Commission set a schedule in this docket to accept written comments and make a determination on this rate.

While it may seem somewhat counterintuitive to set the rate lower than the FCC’s \$42, a lower rate is likely to benefit Utah customers by increasing federal support and ultimately lowering UUSF support while continuing to allow rate of return local exchange carriers to recover their full revenue requirements. The reason for this is because the FCC currently applies a separation factor of 25% to carrier costs for common line support assuming that 75% of costs are for intrastate service and 25% are interstate. 47 C.F.R. § 36.154(c). This factor applies to voice only and combined voice and internet service. However, for the CBOL loops, the FCC does not apply a factor when calculating federal support. The result is that a carrier who converts customers from combined voice and internet plans to CBOL will be eligible for federal support based on 100% of the revenue requirement for that loop rather than the 25% interstate portion of a common line.

Currently most rate of return carriers in Utah can offer customers a lower cost internet and

voice combination service than broadband only service because the combination of the affordable base rate for voice, access recovery charge, subscriber line charge, and the combination service wholesale broadband results in a net revenue for the combined offering of approximately \$39-\$40. This combined rate varies because the access recovery charge varies by company between approximately \$0.50 and \$3.00 and the combined service wholesale broadband rate varies. The result of the combined total being less than the \$42 FCC imputed revenue for a CBOL connection is that carriers can offer a lower cost combined voice and internet product to customers than a stand-alone internet service. However, opting for the combined service foregoes the additional federal CBOL support as compared to a common line. The additional federal support for CBOL will offset UUSF support.

The best result for Utah customers and the UUSF is to set a wholesale broadband rate for UUSF purposes that will provide incentive to the carriers to move customers from current internet and voice combined products to internet only service where the customers may not need the voice component. Setting a rate below the roughly \$39 combined revenue from the voice and internet service is likely necessary to incent carriers to transition customers to internet only and to provide lower rates for customers to further incent customers to make the switch.

The access recovery charge will continue to be charged on CBOL lines and as a result a fixed CBOL revenue will still result in some variation in total revenue collected from each loop. The Division's recommendation of a revenue minimum of approximately \$35 is intended to be inclusive of the access recovery charge and therefore the value set in the rule would be reduced by some amount to recognize that additional revenue. This results in a value set in rule of \$32 or \$33 being recommended by the Division. The Division again notes that the value it is recommending has not been agreed upon by the parties and recommends that the Commission

take comments on setting the correct rate before making the final rule.

#### BROADBAND ESSENTIALS PROGRAM

The proposed language in R746-8-401(3) of the draft rule creates a new program that has been informally referred to as a “broadband essentials” program. The purpose of this language is to carve out an exception to the default base rate for wholesale broadband for low-income customers. A carrier under this rule may offer wholesale broadband loops to an internet service provider that verifies that it will provide the full reduction in cost from the standard wholesale rate down to \$18 per line less the Utah lifeline support. The result is a significantly reduced-price option for lifeline qualifying customers to receive a broadband essentials service offering supported by the UUSF. When combined with the federal lifeline support, this program should offer an affordable high quality internet option for many rural lifeline qualifying customers. And the rule requires that a regulated carrier offering such a service verify that the internet service provider reduce customer rates by the same dollar amount that the wholesale broadband rate is discounted.

#### DEFINITIONS

Finally, the proposed rule amendments modify and add definitions to R746-8-200 necessary for the above-mentioned purposes.

#### REQUEST FOR AGENCY ACTION

The Division respectfully submits this Request for Agency Action and requests that the Commission initiate a rulemaking proceeding to review and adopt the proposed amendments and set a schedule to receive comments on the proposed rule and revenue values.

Redline and clean copy drafts of proposed Rules 746-8-200 and 746-8-401 are attached.

Submitted this 2<sup>nd</sup> day of July 2021.

/s/ Justin C. Jetter

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**Attachments**

## CERTIFICATE OF SERVICE

I certify that on July 2, 2021, 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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