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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of:  Request for Rulemaking Regarding Utah Universal Service Fund	<b>COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION</b>  Docket 21-R008-04
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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, appreciates the opportunity to file comments in response to the Notice of Filing and Comment Period issued July 6, 2021 (“Notice”) by the Utah Public Service Commission (the “Commission”) in Docket No. 21-R008-04.

**I. INTRODUCTION AND BACKGROUND**

On July 2, 2021, the Division of Public Utilities (the “Division”) submitted a Request for Agency Action. In the Division’s Request for Agency Action, the Division presented procedural rules asking the Commission 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.

The Notice issued by the Commission seeks Comments on the Division’s proposed rule changes (“Proposed Rule Changes”). As noted in the Request for Agency Action, URTA has been working with the Division and the Office of Consumer Services (“Office”) for a couple of years on the Proposed Rule Changes and by and large supports the text of the Proposed Rule Changes (with one typographical correction and three modifications as noted below). The substance of these Comments will focus on the rates which are currently denoted by “\$TBD” in the Proposed Rule Changes.

## **II. PROPOSED RULE CHANGES**

The Proposed Rule Changes reflect a positive step forward in clarifying certain processes utilized by the Division in the evaluation of the rate-of-return regulated carriers of last resorts’ annual reports and annual UUSF disbursements.

### **A. Modification and Correction of Typographical Error.**

URTA has two proposed modifications of the Proposed Rule Changes:

**1. The First Change is to R746-8-401(3).**

R746-8-401 (3) (a) and (b) need to refer to the “minimum in R746-8-401(1) (e)” only.

There is a reference to R746-8-401(1) (d) and (e), but the reference to subsection (d) is not appropriate because the broadband essentials plan will not be offered in a bundle with voice.

See below:

(3) (a) If the rate-of-return regulated provider elects to offer a wholesale broadband Internet rate to provide a reduced cost broadband Internet access service for eligible Lifeline subscribers, the wholesale broadband Internet access service or broadband Internet access service revenue minimums as set forth in R746-8-401(1)(~~d~~) and (e) shall be reduced to the affordable base rate of \$18 less the state Lifeline support, provided that the full amount of the reduction is credited to the end-user customer as discount to the cost of a broadband Internet access service plan.

(b) Rate-of-return regulated providers who elect to provide a reduced cost broadband Internet access service or offer a wholesale broadband Internet lifeline rate shall:

(i) provide information detailing the reduced cost broadband Internet access service offering by the rate-of-return regulated provider or the wholesale broadband Internet customer; and

(ii) annually certify that the reduction between the revenue minimums identified in R746-8-401(1)(~~d~~) and (e) and the affordable base rate of \$18 less the Lifeline support, is credited to the eligible Lifeline subscriber who subscribes to the reduced cost broadband Internet access service offering.

**2. The Second Change is to R746-8-401(5).**

The final modification to the language proposed by the Division is merely a correction of a typographical error. In Section R746-8-401(5), there is a reference to the Alternative Connect America Fund Cost “Mode”, “Mode” should be Model. See below:

(a) ~~The provider’s~~ Alternative Connect America Cost Model Funds shall be considered federal universal service fund revenue under Utah Code § 54-8b-15(4)(a)(ii)(D).

**B. Determination Of Imputed Wholesale Amounts**

The remainder of these comments will focus on the rates and/or amounts that the Commission should adopt for R746-8-401(1)(d) and R746-8-401(1)(e).

**1. Background**

As indicated by the Division, the language in Section R746-8-401(1)(d) and (e) as proposed will set a default uniform revenue imputation for use of the regulated telecommunications carrier's local loop for broadband service (either standalone/CBOL or in a bundle with telephone service). As the Commission is aware, historically, the regulated local loop was used for voice telephone service. For subscribers of voice only service, the regulated company recovers all of the regulated phone charges from the customer, approximately \$27-28/per month per loop, including affordable base rate (\$18), subscriber line charge (\$6.50), access recovery charge (up to \$3.00/varies by exchange), and any mandatory extended area service (varies by exchange) (collectively "Regulated Phone Charges").

Over the past several years, the regulated companies have leased the local loop to affiliated non-regulated internet service providers ("ISPs") so the customer can receive broadband service and telephone service over the local loop ("Bundled Service"). With Bundled Service, the customer is charged a bundled rate for the phone and internet. The regulated company receives all the Regulated Phone Charges from the customer, plus a wholesale rate ("Bundled Wholesale Rate") from the ISP for the ISP's use of the regulated loop to deliver the broadband service. The Bundled Wholesale Rate varies from regulated carrier to regulated carrier and has been dependent on a variety of factors, including whether the rate of return regulated carrier participates in the National Exchange Carriers Association (NECA) tariffs, and the costs allocated to broadband for shared network assets providing both voice and data services as determined by cost studies.

Carriers are also permitted to use the local loops for CBOL. For carriers that provide CBOL, the Federal Rules require the carrier to assess a charge on each line without regulated local exchange voice service that is used to provide fixed broadband internet access service. The amount to be assessed per line is dependent on whether the incumbent local exchange carrier has elected model-

based support (“ACAM Provider”) or not (“Legacy Provider”). For Legacy Providers the single-line rate or charge for CBOL use of the regulated loop without regulated phone service shall be computed by dividing one-twelfth of the projected annual revenue requirement for CBOL (net of the projected annual CAF-BLS) by the projected average number of CBOL lines in use during such annual period.<sup>1</sup> For ACAM providers the maximum monthly per line charge for CBOL lines is \$42.<sup>2</sup> In Utah, not all carriers provide CBOL service; several carriers still require their customers to take a bundled package (phone and internet).

## **2. Imputed Wholesale Revenue for CBOL**

For those carriers who provide CBOL service, the wholesale rate that the rate of return regulated carriers charge the non-regulated ISPs for a CBOL service use of the loop currently varies in Utah from a low of \$1.00 to a high of \$42.00. For carriers that elect to remain eligible for CAF-BLS support, pursuant to 47 C.F.R. §54.901, the FCC has identified \$42 as the amount it will impute to the carrier per CBOL loop per month for purposes of receiving CAF-BLS federal support. This means, on the federal side, for Legacy Providers whose costs exceed \$42 per month for a CBOL loop, the FCC will provide CBOL support for all costs above \$42.<sup>3</sup> It is important to note, however, that the FCC does not require a Legacy Carriers to charge the ISP \$42 per CBOL loop, rather it merely imputes that amount to the carrier before Federal support will be provided. As indicated above, for ACAM Providers the maximum monthly per line charge is \$42.

Currently in Utah, based on preliminary data reported to URTA, the average amount charged by the rate of return regulated carriers to the ISP for CBOL loops is significantly less than the amount the rate of return regulated carrier would receive if the loop were being used for voice only

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<sup>1</sup> 47 C.F.R. §69.132(b) and (c).

<sup>2</sup> 47 C.F.R. §69.132(d).

<sup>3</sup> Subject to federal budget control mechanisms.

(~\$27-28). The aggregated data obtained by URTA indicates that the rate of return regulated URTA members, on average, are receiving less than \$10 per line for use of the local loop for broadband when no voice service is provided. In other words, if the local loop were used for telephone service the URTA member companies receive approximately \$27-28 for each line from their phone customers, but when only broadband is provided using that loop the rate of return regulated URTA members are receiving on average across all companies less than \$10 per line from their respective ISPs.

One of the purposes for the Proposed Rule Change is to standardize the amount of revenue that the Division will impute against the regulated carrier for ISP use of the regulated loop for broadband only service when performing a UUSF calculation. Standardizing this for UUSF purposes will provide stability and predictability for the UUSF and the carriers.

In this proceeding the Commission is determining whether a certain amount of wholesale revenue that should be imputed to the regulated company for use of the local loop for standalone CBOL service in Utah, and if so, what that amount should be. As indicated above, the FCC set the rate at \$42. The FCC justified this rate using a cost-based approach based on NECA data from companies around the country to make this determination.

The Division, in its Request for Agency Action argues that the wholesale broadband rate for UUSF purposes should provide incentive to carriers to move customers from current internet and voice combined products to internet only service where the customers may not need the voice component. The Division suggests a rate of \$35 per CBOL line.<sup>4</sup> URTA agrees that Legacy Providers should be incented to move customer from bundles to CBOL to maximize federal CBOL support that is expected to offset this incentive and thereby reduce distributions of UUSF. URTA

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<sup>4</sup> Because the FCC imputes the ARC as well, this would effectively be between \$35-\$38 depending on the exchange.

also agrees that there are many customers for both Legacy Providers and ACAM Providers that do not want a phone line but still desire the Internet. The state should implement policies that recognize this trend and incentivize such an offering. This transition is consistent with Senate Bill 130 which was passed by the Utah Legislature in 2017, , which specifically provided support from the UUSF for wholesale broadband service. However, URTA does not agree that \$35 is the correct rate.

Additionally, URTA offers a different perspective on justification for its proposed rate.

URTA believes that rather than the FCC's cost-based approach, or the Division's incentive-based approach, a better approach is to set the rate based on affordability, like Utah has done with phone service. URTA believes that the amount received by the regulated company for use of the regulated loop should be the same regardless of whether the service provided over that loop is voice or broadband. This connection-based agnostic approach is also consistent with the legislative intent of Senate Bill 130. The Commission has already determined that it is reasonable that the regulated company will receive approximately \$27-28 when the local loop is used for voice service (\$18 ABR; \$6.50 SLC; up to \$3.00 for ARC; plus mandatory EAS). There is no reasonable justification for imputing more revenue to the regulated company when the local loop is used for CBOL service. If \$27-28 in revenue to the regulated company is reasonable and affordable for customer's use of the loop for phone, it should also be reasonable and affordable for the customer's use of the loop for broadband. For this reason, URTA supports imputation of \$28 per line to the regulated companies for use of the local loop to provide broadband service. If the data demonstrates that an affordable rate of \$28 across the board would have a significant negative impact on the UUSF, and the Commission is inclined to set a higher rate for imputation, the Commission may consider a rate is set so that Legacy Providers are incented to offer CBOL to maximize CAF-BLS support.

### **3. Imputed Wholesale Revenue for Bundled Service.**

The Division omitted comments on a rate for bundled service. However, for bundled service, URTA thinks it is reasonable that the regulated company should receive more for the use of the loop when two services are being provided using the loop than if only one (voice or CBOL) service is being provided using the loop. While URTA is in the process of compiling supportive data that will be provided in Reply Comments, URTA believes that the Bundled Wholesale Rate should be set at \$12 per bundled line. This means for a bundled service the regulated company would receive the Regulated Phone Charges of approximately \$27-28, plus the Bundled Wholesale Rate of \$12 for a total recovery of approximately \$40.00.

### **4. Remaining Issues Addressed by Rule.**

URTA supports the language of the proposed rule except as specifically identified herein, including but not limited to the broadband lifeline essentials program, and all changes to definitions and processes and procedures.

## **III. CONCLUSION**

As indicated above, URTA supports the Divisions' Request for Agency Action and recommends that the Commission set the amount in proposed R746-8-401(1)(d) at \$12 and the amount proposed in R746-8-401(1)(e) at \$28 for the reasons set forth herein. URTA is in the process of compiling data to demonstrate the impact of these proposed rates on the UUSF and will file such data in Reply Comments.



Dated this 5<sup>th</sup> day of August, 2021.

Respectfully submitted,

UTAH RURAL TELECOM ASSOCIATION



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## CERTIFICATE OF SERVICE

I hereby certify that on the 5<sup>th</sup> day of August, 2021, I served a true and correct copy of URTA's Comments in the Request for Rulemaking Regarding Utah Universal Service fund via e-mail transmission to following persons at the e-mail addresses listed below:

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