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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: Request for Rulemaking Regarding Utah Universal Service Fund	REPLY COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION 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 Reply 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 August 4, 2021, URTA filed Comments on the Division of Public Utilities (the “Division”) proposed procedural rules (“Proposed Rules”) which purported 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.

URTA, in its Comments, supported the procedural changes contained in the Proposed Rules, but disagreed with the Division’s proposed imputation of revenue to the regulated company at \$35/per customer per month for use of the local loop for standalone broadband. URTA suggested that when viewed from the lens of affordability, an imputation of \$28 per customer per month for use of the local loop for standalone broadband was consistent with the amount received by the regulated companies for use of the local loop for voice service. URTA further suggested a rate of \$12 for use of the local loop for broadband as part of a bundled package with voice service. In URTA’s Comments, URTA indicated it was compiling data to demonstrate the effect of each such imputations on the UUSF. The purpose of these Reply Comments is to provide that data so the Commission can determine the rates and/or amounts that should be adopted for R746-8-401(1)(d) and R746-8-401(1)(e).

II. RATES OF IMPUTATION FOR USE OF THE LOCAL LOOP FOR BROADBAND SERVICE

A. Imputed Wholesale Revenue for CBOL Service.

As previously indicated in URTA’s original Comments, and as the Commission is aware, for subscribers of voice only service, the regulated company recovers the regulated phone charges

from the customer, approximately \$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”). The question the Commission is being asked to consider in this docket is what amount should be imputed to the regulated company for the use of the local loop for broadband service, both standalone broadband service (“CBOL”) and broadband service provided in a bundle with voice service (“Bundled Service”).

URTA suggested that for carriers who provide CBOL service, the Commission should impute \$28 per month for use of the local loop to provide broadband service because this is the amount the Commission has determined is affordable and reasonable for the regulated company to receive for use of the local loop for voice only service. URTA believes that the Commission should adopt a connection-based agnostic approach. In other words, 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. The Commission has already determined that approximately \$28 per connection for voice is just, reasonable, and affordable for the voice customer. The same theory should hold true for a broadband connection. When determining the amount that should be imputed against the regulated company for use of the local loop, \$28 is an affordable and service-agnostic rate.

B. Imputed Wholesale Revenue for Bundled Service.

The Division omitted comments on a rate for bundled service, but URTA in its initial Comments suggested a wholesale imputation of \$12 per bundled line for use of the line for broadband service. To model different scenarios, URTA has created an Excel spreadsheet that allows the user to view the estimated effects of different wholesale revenue imputation rates. See URTA

Reply Comments, Exhibit 1 which is a manipulable worksheet that allows modeling of the impacts of wholesale revenue imputations on the UUSF (“Exhibit 1”). When modeling wholesale revenue imputations of \$28 (CBOL) and \$12 (data portion of Bundled Service), however, URTA observes that a Bundled Wholesale Rate of \$12 (in cell F14 on Exhibit 1) has a significant negative impact on the UUSF (estimated additional cost to the UUSF of \$1,125,592) (See Exhibit 1, Cell S25) due to the varying rates currently charged by the URTA companies. After reviewing the data, URTA has determined that the amounts charged by the regulated companies for the use of the local loop for broadband service in a bundle are cost-based rates either determined by the company’s cost study or set by NECA. Therefore, rather than standardize these “rates” across the board, URTA suggests that it is reasonable and prudent to continue to allow the companies to set these rates rather than trying to determine a standardized rate for the data portion of the Bundled Service amongst all the companies. URTA suggests the Commission should modify the language of R746-8-401(1)(d) of the currently proposed rule to ensure the amounts received by the regulated company for use of the local loop for broadband in a Bundled Service remain cost-based. Specifically, URTA proposes that the language in the Proposed Rule, R746-8-401(1)(d) should be changed as set forth in Exhibit 2. The revisions proposed by URTA ensure that the imputed amounts will be reasonable. URTA believes this is a better approach with no new impact on the UUSF since this is status quo.

III. IMPACT OF REVENUE IMPUTATION ON THE UUSF

As demonstrated in Exhibit 1, by maintaining the current average wholesale data bundled rate per month and standardizing the CBOL wholesale revenue imputation at \$28 per connection, there is an immediate revenue benefit to the UUSF in the amount of \$1,963,611 (as demonstrated in Cell S25 by populating Cells F14 and F18 with \$18.40 (the current average rate which is maintained by not

standardizing a rate amongst the companies) and \$25¹ respectively). However, URTA acknowledges that such analysis does not consider the impact to the UUSF associated with the loss of Regulated Phone Charges as carriers migrate customers from a Bundled Service to CBOL service. With a wholesale revenue imputation for CBOL at \$28 per connection, due to demand from customers and competitive pressures, URTA estimates that URTA members would convert customers from Bundled Service to CBOL. Therefore, in Scenarios 2 and 3 in Exhibit 1, URTA examines the revenue impact of adopting the service-agnostic affordable wholesale CBOL revenue imputation of \$28 while factoring in migration from Bundled Service to CBOL. As customers are migrated from Bundled Service to CBOL, there is a significant impact to the UUSF. URTA has modeled the CBOL imputation rate of \$28 with a 33% migration of existing bundled customers (Exhibit 1, Scenario 2, Lines 28-31) and a 50% migration of existing bundled customers (Exhibit 1, Scenario 3, Lines 34-37). With 33% of the Bundled Service customers converting to CBOL at the imputed revenue rate of \$28, the aggregate annual impact on the UUSF would be a reduction in UUSF disbursements of \$882,349; with a 50% conversion the aggregate annual impact on the UUSF would be a reduction in UUSF disbursements of \$98,072. Maintaining the current average wholesale bundled rate for data and setting the CBOL rate at \$28 (\$25 + \$3 ARC) shows an immediate and ongoing benefit to the fund as customers are converted from Bundled Service to CBOL.

It should also be noted, however, that these impacts are not adjusted for federal Universal Service Fund (“FUSF”) impacts in the form of additional CAF-BLS support for Legacy Providers² that would offset these UUSF increases as carriers are incented to move customers from Bundled Service to CBOL. As a result, the forecasting contained in Exhibit 1 is conservative. URTA did not

¹ By using \$25 in Cell F18, we end up with a \$28 rate because of the Federal ARC which is accounted for in Cell F19.

² As the Commission is aware, ACAM Providers are not eligible for additional federal CAF-BLS support as customers are migrated from Bundled Services to CBOL.

think it was prudent to factor in such potential federal support when there is no obligation for any carrier to provide CBOL service, and thus, no guarantee that the Legacy Providers would receive additional CAF-BLS support. Therefore, in an effort to be conservative when modeling the effect on the UUSF, URITA has not included any adoption of CBOL by companies not currently offering it or any possible CAF-BLS support associated therewith.³

However, URITA estimates that as Legacy Providers move to offer CBOL Service, they could, in the aggregate, receive between \$500,000 and \$2,000,000 in CAF-BLS support which they are not currently receiving. This additional FUSF support would reduce the state UUSF that such Legacy Provider is currently receiving, thereby decreasing the burden on the UUSF.

Because URITA's conservative modeling shows revenue benefit to the UUSF when maintaining the current average wholesale bundled rate for data and standardizing a wholesale revenue imputation for CBOL at \$28 (\$25 + ARC), URITA believes the Commission should eliminate a standardized rate for Proposed Rule R746-8-401(d) and set the revenue imputation for R746-8-401(1)(e) at \$25 plus the ARC charged by the carrier. URITA's proposed modifications to the Proposed Rule are set forth in Exhibit 2, attached herewith.

III. MINOR LANGUAGE CHANGES TO R746-8-401(2) AND R746-8-401(3)

In URITA's final review of the proposed rule, URITA believes Section R746-8-(2) needs to be modified to reflect the proposed changes to R746-8-401(1)(d). Specifically, since URITA is proposing that R746-8-401(1)(d) not set revenue minimums, the language in Subsection 401(2) needs to be changed to refer to the requirements of Subsections 401(1)(d) and (e), rather than the revenue

³ In the Technical Conference on September 13, 2021, Brock Johansen indicated that he estimates that if Emery Telephone, Carbon/Emery Telcom, Inc., and Hanksville Telcom, Inc. (collectively the "Emery Companies") began offering CBOL service, the Emery Companies could expect between \$510,000 and \$958,000 in additional federal support which would decrease their current level of support received from the UUSF. These are estimated numbers received from Emery's cost consultants and are included for illustrative estimates only.

minimums. See Exhibit 2 attached.

Additionally, R746-8-401(3) could benefit from some minor clarifications which are included in Exhibit 2. Specifically, URTA would like to clarify that the Lifeline subscriber is entitled to the reduction between the revenue minimums in R746-8-401(1)(e) and the affordable base rate of \$18, plus the State Lifeline support (currently \$3.50). URTA believes the language modifications suggested in Exhibit 2, make this clarification.

IV. CONCLUSION

As indicated above, URTA generally supports the Divisions' Request for Agency Action, but suggests that R746-8-401(1)(d)(1) be modified to maintain the status quo, and that the wholesale revenue imputation for CBOL service in R746-8-401(e) be set at \$25 + the ARC as charged by the carrier for the reasons set forth herein. Additionally, URTA suggests that conforming changes should be made to R746-8-401(2)(b) in light of the proposed changes to Subsection 401(1)(d). Finally, URTA suggests that the language in R746-8-401(3) be clarified to ensure Lifeline subscribers receive the full intended discount for service.

Dated this 21st day of September, 2021.

Respectfully submitted,

UTAH RURAL TELECOM ASSOCIATION



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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2021, I served a true and correct copy of URTA's Reply 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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EXHIBIT 1
URTA Modeling Workbook

EXHIBIT 2
URTA Proposed Modifications to the Proposed Rule

R746-8-200. Definitions.

- 1) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.
 - a) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.
 - b) Access lines and connections are referred to jointly as "access line" or "access lines."
- 2) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
 - a) Affordable base rate may include, if itemized in the provider's Commission-approved tariff:
 - i) the applicable UUSF surcharge;
 - ii) mandatory extended area service fees; and
 - iii) state subscriber line fees.
 - b) "Affordable base rate" does not include:
 - i) municipal franchise fee(s);
 - ii) tax(es); or
 - iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
 - (1) included in a Commission-approved tariff; or
 - (2) authorized under these rules.
- 3) "Average remaining life" used in a group depreciation method, means the average of the future life expectancy of the various items in an asset group. Average remaining life is based upon estimates that require periodic review to ensure reasonableness.
- 4) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
- 5) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
- 6) "Depreciation" means the gradual conversion of the cost of a tangible capital or fixed asset into an operational expense over the asset's estimated useful life to reflect the reduction in the book value of the asset over time due to use, wear and tear, or obsolescence.
- 7) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.
- 8) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:
 - a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or
 - b) is designated by the FCC as a Lifeline Broadband Provider (LBP).
- 9) "Facilities-based provider" means a provider that uses:
 - a) its own facilities;
 - b) essential facilities or unbundled network elements obtained from another provider; or a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.
- 10) "FCC" means the Federal Communications Commission.
 - a)
- 11) "FCC adjusted depreciation rate" means a prescribed depreciation rate that has been adjusted by

R746-8-401. Rate-of-Return Regulated Providers

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code § 54-8b-15 if the provider:

- (a) is a carrier of last resort;
- (b) complies with Commission orders and rules;
- (c) charges, at a minimum, the affordable base rate of \$18 per access line; unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication;
- (d) includes as revenue for purposes of calculating UUSF support, a reasonable cost-based value per connection per month at a minimum, \$(TBD) per connection per month for the sale of wholesale broadband internet access service or broadband internet access service if sold in combination with a voice service access line to the same end user; unless:

(+) a petition is brought pursuant to R746-8-401(2)(b) is granted after adjudication, or

(ii) as set forth in Section (3) below.

(e) includes revenue for purposes of calculating UUSF support, at a minimum, \$25 (TBD) per connection per month plus the Access Recovery Charge as calculated pursuant to 47 C.F.R. §51.917(e) and reflected in the rate-of-return regulated provider's annual Tariff Review Plan for the sale of stand-alone wholesale broadband internet access service or stand-alone broadband internet access service; unless:

- (i) a petition is brought pursuant to R746-8-401(2)(b) is granted after adjudication; or
- (ii) as set forth in Section (3) below.

- (f) offers Lifeline service on terms and conditions prescribed by the Commission;
- (g) operates as a facilities-based provider, not a reseller; and
- (h) complies with R746-8-401(4), demonstrating that its costs exceed its revenues as required by Utah Code Section 54-8b-15.

(2) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c) or the wholesale broadband Internet access service and broadband Internet access service revenue minimums set forth in R746-8-401(1)(d) and (e) respectively. A petition to deviate will be granted if:

- (a) For a petition to deviate from the affordable base rate, the rate-of-return regulated provider demonstrates to the satisfaction of the Commission that:
 - (i) the affordable base rate is not reasonable in the provider's designated support area; or
 - (ii) imputes income up to the affordable base rate in calculating the rate-of-return regulated provider's UUSF disbursement; or
 - (iii) the Commission determines that deviation from the affordable base rate is otherwise in the public interest.
- (b) For a petition to deviate from the wholesale broadband Internet access service or broadband Internet access service requirements, revenue minimums as set forth in in R746-8-

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(e) respectively, the Commission determines that the deviation ~~from the minimum revenue amount~~ is in the public interest.

(3) (a) If the rate-of-return regulated provider elects to offer a stand-alone wholesale broadband Internet rate to provide a reduced cost broadband Internet access service for eligible Lifeline subscribers, the stand-alone 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 ~~any~~ the state monthly Lifeline support received by the rate-of-return regulated provider for the Lifeline subscriber, provided that the full amount of thise wholesale reduction is ~~provided~~credited to the end-user-eligible Lifeline subscriber~~customer~~ as a 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 has received the benefit identified in R746-8-401(3)(a).

(4) The Division of Public Utilities shall, consistent with R746-400 et seq., prepare an annual report form to be completed by the rate-of-return regulated providers each year, which shall include an estimate of UUSF support, and shall provide the annual report form to providers by February 14 of each year.

(5) A rate-of-return regulated provider:

(a) shall file its annual report, in the form provided by the Division in a company specific docket by April 15;

(b) shall provide, when available, audited financial statements for the year matching the Annual Report;

(c) shall file a trial balance matching the audited financial statement and Annual Report; and

(d) may identify and include additional required or needed adjustments.

(6) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall be made annually and shall conform to the following standards:

(a) 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) The rate-of-return regulated provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated providers, for the year in which the UUSF will be disbursed.

(c) The rate-of return regulated provider's depreciation costs shall be calculated using a method of depreciation allowed by the FCC and prescribed depreciation rates or FCC adjusted depreciation rates.

(d) The rate-of-return regulated provider may file a petition with the Commission to modify its prescribed depreciation rates.

(e) A rate-of-return regulated provider shall include with its annual report the following depreciation information which shall be included in the annual report form provided by the Division:

- (i) the depreciation method used by the rate-of-return regulated provider for each account;
- (ii) the current depreciation rate being applied to each account;
- (iii) an indication of whether the depreciation rate being applied is the Commission prescribed depreciation rate or an FCC adjusted depreciation rate;

(f) A rate-of-return regulated provider using a group asset depreciation method shall, in compliance with FCC orders, periodically apply the FCC adjustment formula to its groups of assets to ensure that the average remaining life and future net salvage value estimates are reasonable and that the resulting effective depreciation rate for assets in each group is reasonably similar to the prescribed rate for the group when considering remaining net value and average remaining life.

(i) When applying the FCC adjustment formula, the rate-of-return regulated provider shall determine the average remaining life of the asset group for use in the FCC adjustment formula by reviewing its continuing property records and noting relevant additions, disposals, repairs, obsolescence, and refurbishment of the asset group units associated with an asset group; then identifying whether the asset group unit additions have historically remained in each asset group longer or shorter than the asset group's commission prescribed life; and from this data determining an estimated life for typical group additions.

(ii) When applying the FCC adjustment formula, the rate-of-return provider shall:

(I) provide with its annual report a narrative summary and a spreadsheet (with formulas intact) demonstrating the calculation of the average remaining life of the asset group when it applies an FCC adjusted depreciation rate including narrative support for any management assumptions used in the calculation; and

(II) certify to the Commission, in the annual report, that its management:

(A) has reviewed the depreciation rates applied, asset additions, asset retirements and salvage values;

(B) has complied with this Subsection; and

(C) states that the resulting estimated depreciation expense is consistent with the average remaining life of each asset group.

(7) The Division shall make a recommendation each year regarding whether and how each rate-of-return regulated provider's monthly UUSF distribution should be adjusted. The Division shall use the following criteria and inputs in calculating its recommended UUSF:

- (a) the current FCC rate-of-return as set forth in R746-8-401(6)(b);
- (b) the provider's financial information from its last annual report addressed in R745-8-401(4);
- (c) the corporate tax rate to be applied shall be the tax rate in effect during the year of operations identified in the annual report;
- (d) any other adjustments not specifically addressed in this rule that are necessary to maintain the public interest, except adjustments that are related to capital structure or cost of capital are not permitted.

(7) Division Filing

- (a) The Division shall file a non-confidential, non-binding estimate of any UUSF by September 1 in the rate-of-return regulated provider specific docket assigned by the Commission. The Division shall also provide to the rate-of-return regulated provider additional analyses and documents (which may contain confidential information) which clearly identify any adjustments made by the Division which it believes to be in the public interest consistent with Subsection (6)(d) above.
- (b) Interested parties may seek intervention within 15 days of the Division's filing of the preliminary, non-binding estimate referred to in Subsection 7(a).
- (c) After filing the preliminary recommendation, the Division, the rate-of-return regulated provider, and any other party shall review and analyze the preliminary recommendation to attempt to resolve any contested issues.
- (d) The Division shall file a final recommendation with the Commission by November 1.
- (e) After the Division files the final recommendation with the Commission, any party may challenge the Division's recommendation by notifying the Commission no later than November 15.
- (f) If the Division's recommendations are not challenged and the Commission finds the rate-of-return regulated provider's costs and UUSF disbursements to be reasonable, the new UUSF distribution amounts will begin on January 1 of the following year.

(g) If the Division's recommendations are challenged or the Commission does not approve the recommendations, the Commission will convene a scheduling conference and determine the appropriate process for resolving the contested issues.

(h) If the Division's recommendation for a rate-of-return regulated provider's UUSF amount has been challenged or the Commission does not approve the recommendations, the rate-of-return regulated provider may continue to receive its current UUSF until the Commission has ruled on the challenge.

(i) The over or under payment of UUSF during the time adjudicating the challenge will be calculated as the difference between UUSF payments received starting January 1 and the UUSF amount ultimately determined by the Commission.

(i) The overpayment or underpayment difference will be recovered or distributed respectively as an adjustment to each monthly disbursement spread evenly over the remaining months of the calendar year.

(ii) If the approved UUSF monthly distributions are less than the monthly recovery for an overpayment, the rate of return regulated carrier will be ordered to repay the balance in monthly payments to the UUSF spread evenly over the remaining months of the calendar year.