

**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>  x  </u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R746-8</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Public Service Commission	
<b>Room no.:</b>		
<b>Building:</b>	Heber M. Wells	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Yvonne Hogle	801.530.6709	yhogle@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
<p>R746-8-401, Rate-of-Return Regulated Providers. This rule is being published pursuant to a four-month public stakeholder process that began on July 2, 2021 when the Division of Public Utilities filed with the Public Service Commission (PSC) a request for agency action asking for the rules related to the Utah Universal Service Fund (UUSF) to be updated and modified. The request to the PSC addressed three issues: codifying current operating procedures in rule, establishing a standard rate for wholesale broadband only loops, and establishing a reduced rate for broadband only service for qualifying low-income customers. After the stakeholder process during which the PSC requested and invited comments from any interested person (and which received some attention in nationwide trade press), this rule being published represents a consensus where all who provided comments expressed support for the changes, and where no person filed comments objecting to the rule changes being filed.</p> <p>R746-8-200, Definitions. This rule adds or amends the definitions of certain terms that are referenced in the amendments to R746-8-401.</p> <p>R746-8-100, R746-8-301, R746-8-402, R746-8-403, R746-8-404, and R746-8-405 – Correction of grammatical errors and other non-substantive changes.</p>
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
<p>This rule change (1) modifies definitions to be consistent with other changes; (2) establishes in rule the current operating process for annual reviews of the UUSF; (3) sets a standard rate of \$25 per line (per month) for wholesale "consumer broadband only loops" (which is an increase from the current \$8.97 rate); and (4) establishes a broadband option of \$18 per line (per month) to provide UUSF-subsidized Internet at a reduced rate for qualifying low-income customers. Absent future public comments that alter this intention, the PSC anticipates making these rule amendments effective on or about January 1, 2022.</p>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
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**A) State budget:**

Under current rules (i.e., "Base Case"), rate-of-return regulated providers that qualify for Utah Universal Service Fund (UUSF) disbursements serve approximately 65,650 customers in Utah, with different services provided as follows: 15,218 standalone voice customers; 40,224 bundled service customers, and 10,208 standalone broadband customers. They collect revenues from these customers as follows: (1) \$28 per month from 15,218 standalone voice customers for a total of **\$5,113,248** per year; (2) \$18.40 per month for data and \$28.00 per month for voice from 40,224 bundled service customers for a total of **\$8,881,459** for data per year and **\$13,515,264** for voice per year, respectively; and (3) \$8.97 per month for standalone data from 10,208 standalone broadband customers for a total of **\$1,466,277** per year. In total, the rate-of-return regulated providers collect \$28,976,248 annually from these customers in Utah. (the sum of the total annual revenues referenced in (1) + (2) + (3)).

This rate change will generally increase the balance accruing in the UUSF, helping maintain the objective to encourage rate-of-return regulated providers to deploy broadband service in rural areas.

Scenario 1: Assuming the Base Case number of 10,208 standalone broadband customers (i.e., no customers switch to standalone broadband service) and everything else being equal to the Base Case, increasing the rate for wholesale consumer broadband only loops from \$8.97 to \$25 will result in an increase to the balance accruing in the UUSF of approximately \$1.96m, calculated as follows: Rather than collect \$8.97 plus a \$3.00 federal access charge from the standalone broadband customers per month (10,208\*(\$8.97+\$3.00)X12), the providers would collect \$25 plus a \$3.00 federal access charge per month, or (10,208\*(\$25+\$3.00)X12). Because the providers would collect this amount from the customers, they would not collect it from the USSF. The only other possible impact on the state budget is the impact on state offices being served by the providers that qualify for UUSF distributions, that may experience an increase in their rates depending on the service taken from their provider.

Scenario 2: Assuming 4,897 of the 40,224 bundled service customers switch to standalone broadband service (resulting in a change to the Base Case numbers of 15,105 standalone broadband customers and 35,327 bundled service customers), increasing the rate for wholesale consumer broadband only loops from \$8.97 to \$25 will result in a net increase to the balance accruing in the UUSF of approximately \$882K. While providers would collect more revenue from standalone broadband customers, they would collect less revenues from the bundled service customers; thus, the net impact would be less revenues collected, as compared to Scenario 1. Specifically, providers would collect \$25 plus a \$3.00 federal access charge per month, or (15,105\* (\$25+\$3.00)X12) = \$5,075m per year. However, the provider would collect less revenue from bundled service customers because only 35,327 will pay for bundled service, as compared to the Base Case 35,327\*\$18.40 X12 = \$7,800,197 for data bundle, and 35,327\*\$28x12= \$11,869,865 for voice bundle. Adding these amounts to the original \$5,113,248 in revenues from standalone voice customers which amount did not change, results in total net revenues of \$29,858,597, as compared to Base Case revenues of \$28,976,248. Because the providers would collect this amount from the customers, they would not collect it from the USSF. The only other possible impact on the state budget is the impact on state offices being served by the providers that qualify for UUSF distributions, that may experience an increase in their rates depending on the service taken from their provider.

Scenario 3: Assuming 8449 of the 40,224 bundled service customers switch to standalone broadband service (resulting in a change to the Base Case numbers of 18,657 standalone broadband customers and 31,775 bundled service customers), increasing the rate for wholesale consumer broadband only loops from \$8.97 to \$25 will result in a net increase to the balance accruing in the UUSF of approximately \$98K. While providers would collect more revenue from standalone broadband customers, they would collect less revenues from the bundled service customers; thus, the net impact would be less revenues collected, as compared to Scenarios 1 and 2. Specifically, providers would collect \$25 plus a \$3.00 federal access charge per month, or (18,657\* (\$25+\$3.00)X12) = \$6,269m per year. However, the provider would collect less revenue from bundled service customers because only 31,775 will pay for bundled service, as compared to the Base Case 31,775\*\$18.40 X12 = \$7,015,920 for data bundle, and 31,775\*\$28x12= \$10,676,400 for voice bundle. Adding these amounts plus the original \$5,113,248 in revenues from standalone voice customers which amount did not change, results in total net revenues of \$29,074,320 per year, as compared to Base Case revenues of \$28,976,248. The only other possible impact on the state budget is the impact on state offices being served by the providers that qualify for UUSF distributions, that may experience an increase in their rates depending on the service taken from their provider.

**B) Local governments:**

The only impact on local governments may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. Depending on the service, they will experience an increase in their monthly rate from \$8.97 to \$25 if the only service they take is standalone broadband service.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

The only impact on small businesses may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. Depending on the service, they will experience an increase in their monthly rate from \$8.97 to \$25 if the only service they take is standalone broadband service.

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

The only impact on non-small businesses may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. Depending on the service, they will experience an increase in their monthly rate from \$8.97 to \$25 if the only service they take is standalone broadband service.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The only impact on other persons may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. Depending on the service, they will experience an increase in their monthly rate from \$8.97 to \$25 if the only service they take is standalone broadband service.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Customers that are served by rate-of-return regulated providers that qualify for UUSF, and that currently only take broadband service only will experience an increase in their monthly rate from \$8.97 to \$25.00.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

These proposed rule amendments comprise the consensus result from an open and public stakeholder process, and they make the PSC's administration of the UUSF more transparent and more consistent with current technology needs and practices. As outlined in the fiscal analyses for this rule change, the impact on individual customers and on the UUSF balances will depend on individual customer choices about the types of service they choose to receive, and on choices made by telecommunications providers who receive UUSF support. For example, providers could charge a different amount than the standard rate established in this rule, but their UUSF support would be calculated as if they charged the standard rate. The PSC is responsible to monitor the rolling balance in the UUSF, and to make future changes to the customer surcharge that provides the UUSF funding in the event the rolling UUSF balance warrants that action. Comments provided by Thad LeVar, PSC Chair.

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

PSC Chair, Thad LeVar, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Utah Code Ann. Section 54-3-1	Utah Code Ann. Section 54-4-1	Utah Code Ann. Section 54-8b-15
Utah Code Ann. Section 54-8b-10		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

<b>First Incorporation</b>	
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Admin. Code R746-8-200 - Definitions
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

<b>Second Incorporation</b>	
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Admin. Code R746-8-401 – Rate of Return Regulated Providers
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 12/15/2021

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

**10. This rule change MAY become effective on** (mm/dd/yyyy): 01/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Thad LeVar, PSC Chair	<b>Date</b> (mm/dd/yyyy):	11/01/2021
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**R746. Public Service Commission, Administration.**

**R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).**

**R746-8-100. Authority, Purpose, and Organization.**

- (1) This rule is adopted under:
  - (a) ~~[Utah Code]~~Section 54-8b-10; and
  - (b) ~~[Utah Code]~~Section 54-8b-15.
- (2) This rule:
  - (a) governs the methods, practices, and procedures by which:
  - (b) the UUSF is created, maintained, and funded; and
  - (c) funds are disbursed from the UUSF to qualifying access line providers.
- (3) This rule is organized into the following Parts:
  - (a) Part 100: Authority, Purpose, and Organization;
  - (b) Part 200: Definitions;
  - (c) Part 300: UUSF Funding; and
  - (d) Part 400: UUSF Distributions.

**R746-8-200. Definitions.**

(1)~~(a)~~ "Access line" is as defined at ~~[Utah Code]~~Subsection 54-8b-2(1), and is used in this rule, Rule R746-8, to the extent consistent with federal law.

~~(b)~~(a) ~~[For purposes of]~~In applying the statutory definition of "access line," the term "connection" is as defined at ~~[Utah Code]~~Subsection 54-8b-15(1) and is used in this rule, Rule R746-8, to the extent consistent with federal law.

~~(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."~~

~~(ii)~~(b) Access lines and connections are ~~[hereafter]~~referred to jointly as "access line" or "access lines."

(2)~~(a)~~ "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]~~per access line basis ~~[in order]~~to receive ongoing disbursements from the UUSF.

~~(b)~~(a) ~~["Affordable base rate"]~~"ABR" may include, if itemized in the provider's Commission-approved tariff:

- (i) the applicable UUSF surcharge;
- (ii) mandatory extended area service fees; or
- (iii) state subscriber line fees.

~~(c)~~(b) ~~["Affordable base rate"]~~"ABR" does not include:

- (i) municipal franchise ~~[fee(s)]~~fees;
- (ii) ~~[tax(es)]~~taxes; or
- (iii) any incidental ~~[surcharge(s)]~~surcharges other than those identified in Subsection R746-8-200(2)(b):
  - (A) included in a Commission-approved tariff; or
  - (B) 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.

~~(3)~~(4) "Broadband internet access service" is as defined at ~~[Utah Code]~~Subsection 54-8b-15(1).

~~(4)~~(5) "Carrier of last resort" is as 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 Utah.

~~(5)~~(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 [e]Commission in accordance with 47 U.S.C. Section 214(e); or

(b) is designated by the FCC as a Lifeline Broadband Provider[~~(LBP)~~].

~~[(6) "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.]~~

~~[(7) The acronym "FCC" means the Federal Communications Commission.]~~

~~[(8)](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

(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.

~~[(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.]~~

~~[(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.]~~

(10) "FCC" means the Federal Communications Commission.

(11) "FCC adjusted depreciation rate" means a prescribed depreciation rate that has been adjusted by application of the FCC adjustment formula.

(12) "FCC adjustment formula" means the following formula promulgated by the FCC to be applied periodically to groups of assets in a group asset depreciation method to ensure that the average remaining life and future net salvage value estimates are reasonable and result in the depreciation of a provider's investments on a straight-line basis over the life of the associated plant:

$$\text{FCC adjusted depreciation rate} = 100\% - \frac{\text{Accumulated Depreciation}\% - \text{Future Net Salvage}\%}{\text{Average Remaining Life}}$$

(13) "FCC approved depreciation method" or "depreciation method allowed by the FCC" means a method of asset depletion for accounting purposes that is approved or permitted by the FCC.

(14) "Future net salvage value" means the estimated gross salvage of the plant less any estimated cost of removal. Future net salvage value is based upon estimates that require periodic review to ensure reasonableness. Future net salvage value may be positive or negative depending on the gross salvage value and the cost of removal.

(15) "Group asset depreciation method" means the depreciation accounting method established in 47 CFR, Subsection 32.2000(g)(1)(i). Group asset depreciation allows the accumulation of multiple similar fixed asset units into a group. The group is treated as a single asset with the aggregate in-service cost base used for depreciation calculations.

~~[(16)](16) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.~~

~~[(17)](17) "Non-rate-of-return regulated" is as defined at [Utah Code]Subsection 54-8b-15(1).~~

(18) "Prescribed depreciation rate" means the most recent depreciation rate set by the Commission for the provider.

(19) "Provider" means a carrier that provides access lines or functionally equivalent connections.

~~[(20)](20) "Rate-of-return regulated" is as defined at [Utah Code]Subsection 54-8b-15(1).~~

~~[(21)](21) "Wholesale broadband internet access service" is as defined at [Utah Code]Subsection 54-8b-15(1).~~

### **R746-8-300. UUSF Funding.**

The following sections in the 300 series address UUSF Funding.

### **R746-8-301. Calculation and Application of UUSF Surcharge.**

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission \$0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) Except as provided in Subsection R746-8-301(1)(e)(ii):

(A) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission \$0.36 per month per access line for such service, such as new access lines or connections, or recharges for existing lines or connections, purchased on or after January 1, 2018.

(B) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(C) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(ii) The charge described in Subsection R746-8-301(1)(a) does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Subsection 69-2-405(2)(b).

(iii) \$0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69%~~o~~[percent] of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31%~~o~~[percent] of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to Subsection R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to ~~each~~ Subsections R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

### **R746-8-302. UUSF Surcharge Remittances.**

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total \$1,000 or more, the provider shall remit the funds:

- (a) on a monthly basis; and
- (b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than \$1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

#### **R746-8-400. UUSF Distributions.**

The following sections in the 400 series address UUSF Distributions.

#### **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]~~Section 54-8b-15 if the provider:

- (a) is a carrier of last resort;
- (b) ~~[is in compliance]~~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)(3) is granted after adjudication[;];~~~~charges, at a minimum, \$18 per access line;~~
- (d) includes as revenue, in calculating UUSF support, the amounts described in Subsection R746-8-401(2);

~~[(d)](e) offers Lifeline service on terms and conditions prescribed by the Commission;~~

~~[(e)](f) operates as a facilities-based provider, not a reseller; and~~

~~[(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.]~~

(g) demonstrates, in the report filed by the rate-of-return regulated provider under Subsection R746-8-401(6), that its costs exceed its revenues as required by Section 54-8b-15.

(2) A rate-of-return regulated provider shall include as revenue, in calculating UUSF support:

(a) for the sale of wholesale broadband internet access service or broadband internet access service sold in combination with a voice service access line to the same end-user, a reasonable cost-based value per connection per month; and

(b) for the sale of stand-alone wholesale broadband internet access service or stand-alone broadband internet access service a minimum, \$25 per connection per month plus an access recovery charge calculated under 47 C.F.R. Subsection 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) the Commission approves a petition to deviate from the revenue minimum under Subsection R746-8-401(3); or

(ii) the rate-of-return regulated provider offers wholesale broadband internet access service to a Lifeline subscriber in accordance with Subsection R746-8-401(4).

[(2)(a)](3) 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 minimum described in Subsection R746-8-401(2)(b), and the Commission shall grant the petition if:

~~[(b) A rate-of-return regulated provider that files]~~

(a) for a petition to deviate from the affordable base rate ~~[shall]~~described in Subsection R746-8-401(1)(c), the rate-of-return regulated provider demonstrates to the satisfaction of the Commission:

(i) ~~[demonstrate]~~that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) the rate-of-return regulated provider imputes income up to the affordable base rate in calculating the 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 revenue minimum described in Subsection R746-8-401(2)(b), the Commission determines that the deviation from the minimum revenue amounts is in the public interest.



(4)(a) For calculating UUSF support, a rate-of-return regulated provider may include in revenue a minimum of \$18 per connection per month, plus an access recovery charge calculated in accordance with 47 C.F.R. Subsection 51.917(e), if the rate-of-return regulated provider :

(i) elects to offer a stand-alone wholesale broadband internet rate to provide a reduced cost broadband internet access service for eligible Lifeline subscribers, and

(ii) provides the full amount of the wholesale reduction in included revenue to each eligible Lifeline subscriber as a discount to the cost of a broadband internet access service plan.

(b) A rate-of-return regulated provider that elects to provide a reduced cost broadband internet access service or offer a wholesale broadband internet Lifeline rate shall:

(i) provide information to the Division and the Commission detailing the reduced cost broadband internet access service offering or the wholesale broadband internet customer; and

(ii) annually certify that each Lifeline subscriber who subscribes to the reduced cost broadband internet access service offering has received the discount described in Subsection R746-8-401(4)(a)(ii).

(5) The Division shall, consistent with Rule R746-400,

(a) prepare an annual report form to be completed by the rate-of-return regulated provider annually that includes an estimate of UUSF support, and

(b) provide the annual report form to each provider, by February 14 each year.

(6) A rate-of-return regulated provider shall file its annual report, in the form provided by the Division in a company specific docket by April 15 including, when available, audited financial statements for the year matching the annual report.

(a) The provider shall include a trial balance matching the audited financial statement and annual report.

(b) The provider may identify and include additional required or needed adjustments.

[~~(3)~~](7) For[~~The calculation of~~] calculating a rate-of-return regulated provider's ongoing UUSF distribution[~~shall conform to the following standards~~]:

(a) Alternative Connect America Cost Model Funds are considered federal universal service fund revenue under Subsection 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 carriers, for the year in which the UUSF distribution is made.[~~as of the date of the provider's application for support, and as follows:~~

(i) beginning July 1, 2016: 11.0%

(ii) beginning July 1, 2017: 10.75%;

(iii) beginning July 1, 2018: 10.5%;

(iv) beginning July 1, 2019, 10.25%;

(v) beginning July 1, 2020, 10.0%; and

(vi) beginning July 1, 2021, 9.75%.]

[~~(b)~~](c) The rate-of-return regulated provider's depreciation costs [~~shall be~~]are calculated [~~as established in Utah Code Section 54-8b-15.~~]using an FCC-allowed depreciation method 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.

[~~(4)~~](8) A rate-of-return regulated provider shall include with its annual report, in the form prepared by the Division under Subsection R746-8-401(5)(a), for each of its accounts:

(a) the depreciation method used;

(b) the current depreciation rate applied; and

(c) an indication of whether the depreciation rate being applied is the Commission prescribed depreciation rate or an FCC adjusted depreciation rate.

(d) A rate-of-return regulated provider using a group asset depreciation method that complies with Subsection R746-8-401(7)(c) and FCC orders, shall 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 by reviewing its continuing property records; considering 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 using the data to determine an estimated life for typical group additions.

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

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

(B) certify to the Commission in the annual report that:

(I) its management has reviewed the depreciation rates applied, including any changes to its asset groups and salvage values;

(II) its estimated depreciation expense is consistent with the average remaining life of each asset group;

(III) its depreciation method is an FCC-allowed depreciation method; and

(IV) it has complied with Section R746-8-401. [~~Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement,~~]

(9)(a) Annually, the Division shall make a recommendation [~~of~~] regarding whether and how each rate-of-return regulated provider's monthly UUSF distribution should be adjusted. [~~according to:~~]

(b) The Division shall use the following criteria and inputs in calculating its recommended UUSF distribution:

[~~(a)~~](i) the current FCC rate-of-return as set forth in Subsection R746-8-401[~~(3)(a)~~](7)(b); and

[~~(b)~~](ii) the provider's financial information from its last [~~A~~] annual [~~R~~] report [~~filed with the Commission,~~] described in Subsection R746-8-401(8).

(10) Division Filing

(a) The Division shall file annually, 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.

(b) The Division shall provide to the rate-of-return regulated provider any analyses and documents, including confidential information, in addition to the information described in Subsection R746-8-401(9), that clearly identifies any adjustments that the Division believes are in the public interest.

(c) Interested parties may seek intervention within 15 days of the Division's filing of the preliminary estimate referred to in Subsection R746-8-401(10)(a).

(d) After filing the preliminary recommendation, the Division, the rate-of-return regulated provider, and any other party shall review and analyze the preliminary recommendation.

(e) The Division shall file a final recommendation with the Commission by November 1.

(f) 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.

(g) 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.

(h) 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.

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

(j) While the challenge is being adjudicated, the difference between UUSF payments received starting January 1 and the UUSF payment amounts ultimately determined by the Commission, is the overpayment or underpayment of UUSF amounts.

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

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

#### **R746-8-402. Non-rate-of-return Regulated Providers.**

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

- (a) is a carrier of last resort; and
- (b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under Section R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

#### **R746-8-403. Lifeline Support.**

(1) In addition to any disbursement calculated under Section R746-8-401 or Section R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this ~~S[ubs]~~ection R746-8-403 may not exceed \$3.50 per Lifeline subscriber per month of subscription to a service that:

- (i) provides service over landlines; or
- (ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and  
(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or
- (iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and  
(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

- (a) provide potential Lifeline subscribers with application materials and information;
- (b) provide service to any customer who is verified as eligible for participation through:
  - (i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

- (i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and
- (ii) within any 12-month period, the first nonrecurring service charge for:
  - (A) changing local exchange usage service to Lifeline service; and
  - (B) changing from flat rate service to message rate service; and

(d)(i) add the Lifeline discount to a customer's account within five ~~[(5)]~~business days of notification of the customer's eligibility under FCC Lifeline requirements; and~~;~~

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five ~~[(5)]~~business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

- (a) disconnect Lifeline telephone service for nonpayment of toll service;
- (b) require a Lifeline subscriber to purchase additional services from the ETC; or
- (c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

(5) For an access line for which the UUSF surcharge is omitted pursuant to Subsection R746-8-301(3)(a)(iii), the UUSF surcharge amount that otherwise would have been remitted pursuant to Section R746-8-301 shall be deducted from the state Lifeline support paid to the provider.

#### **R746-8-404. One-time UUSF Distribution.**

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to ~~[Utah Code]~~ Subsection 54-8b-15(3)(d).

#### **R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Persons.**

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons.

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinical Competence in Audiology from the American ~~[Speech/Language/Hearing]~~ Speech-Language-Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d)[-] "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "~~[Speech language]~~ Speech-Language pathologist" means a person who:

(i) has a master's or doctoral degree in ~~[Speech Language]~~ Speech-Language Pathology; and

(ii) holds a Certificate of Clinical Competence in ~~[Speech/Language]~~ Speech-Language Pathology from the American ~~[Speech Language Hearing]~~ Speech-Language-Hearing Association or its equivalent.

(h) "Severely ~~[Speech Impaired]~~ speech impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a ~~[key board]~~ keyboard;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, an applicant shall demonstrate that the applicant:

(i) lives within ~~[the State of]~~ Utah;

(ii) is:

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii)(A) receives assistance from a low-income public assistance program administered by a state agency; or

(B) has an income of 200% of the ~~[Federal Poverty Guideline]~~ federal poverty guideline or less for the current year; and

(iv) is able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

- (i) a person who is licensed to practice medicine;
  - (ii) an audiologist;
  - (iii) an otolaryngologist;
  - (iv) a [~~speech/language~~]speech-language pathologist; or
  - (v) qualified personnel within a state agency.
- (4) Distribution process.
- (a) If approved by the Commission to receive an assistive device, the applicant shall:
- (i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and
  - (ii) report, as instructed by the Commission, for training and receipt of the approved device.
- (b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.
- (5) Ownership and [~~Liability~~]liability.
- (a)(i) An assistive device provided under this rule remains the property of the [S]state[~~of Utah~~].
- (ii) A recipient shall not remove an assistive device from the state [~~of Utah~~]for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.
- (b) A recipient shall be solely responsible for the costs of:
- (i) repair of an assistive device, other than for normal wear and tear;
  - (ii) replacement of an assistive device;
  - (iii) paper required by an assistive device;
  - (iv) telephone and internet service; and
  - (v) light bulbs required by an assistive device.
- (c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.
- (6) Termination of [~~Use~~]use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:
- (a) no longer intends to reside in Utah;
  - (b) becomes ineligible pursuant to Subsection R746-8-405(3); or
  - (c) is notified by the Commission to return the device.

**KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology**

**Date of Last Change: [July 1,] 2021**

**Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10**