

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment X; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Rule or Section Number:

R746-349

Filing ID: Office Use Only

Agency Information

1. Department:	Public Service Commission	
Agency:	Public Service Commission	
Room number:		
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, Utah 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, Utah 84114-4558	
Contact persons:		
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R746-349. Competitive Entry and Reporting Requirements.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

A recent Public Service Commission decision interpreted the relevant statutes to allow competitive telecommunications providers to obtain "carrier of last resort" certificates in overlapping service areas. This created a need to ensure that the Utah Universal Service Fund (UUSF) does not support multiple, redundant sets of infrastructure in the same area. Following the PSC decision allowing overlapping service areas, interested stakeholders met for over a year to negotiate rule language to prevent duplicative UUSF support. Section R746-349-10 is the consensus result of that process. This filing also corrects typographical errors and makes other nonsubstantive changes to bring R746-349 into compliance with the Division of Administrative Rules' rulewriting manual and checklist.

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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Section R746-349-10 establishes requirements if a certificated carrier of last resort seeks UUSF support for a service area for which another provider is also a certificated carrier of last -resort. Section R746-349-10 establishes the information and plans that the telecommunications provider must include with an application for UUSF support, the notice that must be provided to the competing certificated telecommunications provider, and the guidelines under which all interested parties may intervene and participate, and the criteria that the PSC will consider when determining UUSF support. This filing also corrects typographical errors and makes other nonsubstantive changes to bring R746-349 into compliance with the Division of Administrative Rules' rulewriting manual and checklist.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

Section R746-349-10 will not directly impact the state budget. The state agencies involved will adjudicate the applications contemplated under this rule within the existing processes governing UUSF distributions. Implementation of this rule could increase distributions from the UUSF overall, but the total amount is impossible to predict in advance. UUSF distributions have no impact on any other state budget accounts, including the education and general funds. All other changes to the rule are nonsubstantive.

B) Local governments:

Section R746-349-10 will not have any fiscal impact on local governments. While local governments have an interest in the availability of adequate telecommunications services for their residents, Section R746-349-10 does not impose any requirements or burdens on those governments. All other changes to the rule are nonsubstantive.

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

Section R746-349-10 will not have any fiscal impact on small businesses. Nothing in Section R746-349-10 is mandatory unless a telecommunications provider (which in some instances might be a small business) chooses to seek to serve an area already served by another provider. Section R746-349-10 does not impact existing UUSF distributions, but only potential future distributions in the event a provider chooses to take advantage of the opportunity provided by Section R746-349-10. All other changes to the rule are nonsubstantive.

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

Section R746-349-10 will not have any fiscal impact on non-small businesses. Nothing in Section R746-349-10 is mandatory unless a telecommunications provider (which in some instances might be a non-small business) chooses to seek to serve an area already served by another provider. Section R746-349-10 does not impact existing UUSF distributions, but only potential future distributions in the event a provider chooses to take advantage of the opportunity provided by Section R746-349-10. All other changes to the rule are nonsubstantive.

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**):

Section R746-349-10 will not have any fiscal impact on any other persons. Nothing in Section R746-349-10 is mandatory unless a telecommunications provider chooses to seek to serve an area already served by another provider. Section R746-349-10 does not impact existing UUSF distributions, but only potential future distributions in the event a provider chooses to take advantage of the opportunity provided by Section R746-349-10. Customers of telecommunications providers that take advantage of Section R746-349-10 will not face any mandatory compliance costs, but may benefit from the availability of new telecommunications infrastructure supported by the UUSF, if they choose to purchase the services supported by that infrastructure. All other changes to the rule are nonsubstantive.

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

Section R746-349-10 will not have any compliance costs. Nothing in Section R746-349-10 is mandatory unless a telecommunications provider chooses to seek to serve an area already served by another provider. Section R746-349-10 does not impact existing UUSF distributions, but only potential future distributions in the event a provider chooses to take advantage of the opportunity provided by this rule. Customers of telecommunications providers that take advantage of Section R746-349-10 will not face any mandatory compliance costs, but may benefit from the availability of new telecommunications infrastructure supported by the UUSF, if they choose to purchase the services supported by that infrastructure. All other changes to the rule are nonsubstantive.

G) 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

Fiscal Cost	FY2023	FY2024	FY2025
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
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
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
Total Fiscal Benefits	\$0	\$0	\$0

Net Fiscal Benefits	\$0	\$0	\$0
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H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Chair of the Public Service Commission, Thad LeVar, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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:

Section 54-8b-2.1	Section 54-8b-15	Sections 54-7-25 through 28
Section 54-8b-2	Section 54-8b-3.3	Title 63G, Chapter 4

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

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*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

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*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. 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: 11/14/2022

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

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

9. This rule change MAY become effective on: 11/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

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.

Agency head or designee and title:	Thad LeVar, PSC Chair	Date:	10/06/2022
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R746. Public Service Commission, Administration.

R746-349. Competitive Entry and Reporting Requirements.

R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a provider of local exchange services or other public telecommunications services in ~~[all or part of]~~ the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in this rule:

~~[A-]~~(1) "CLEC" stands for competitive local exchange carrier and means a public telecommunications service provider that did not hold a certificate to provide public telecommunications service as of May 1, 1995.

~~[B-]~~(2) "COLR" means carrier of last resort.

~~[B-]~~(3) "Division" means the Division of Public Utilities.

~~[C-]~~(4) "GAAP" means generally accepted accounting principles.

~~[D-]~~(5) "ILEC" stands for incumbent local exchange carrier and means an incumbent telephone corporation which held a certificate to provide public tele[~~o~~]communications service as of May 1, 1995.

R746-349-3. Filing Requirements.

~~[A-]~~(1) In addition to any other requirements of the Commission or of Title 63G, Chapter 4, Administrative Procedures Act, and pursuant to Section 54-8b-2.1, each applicant for a certificate, as defined in Section 54-8b-2(4), shall file, in addition to its application:

~~[1-]~~(a)(i) testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest~~[-]~~; and

~~[1-]~~(ii) informational requirements made elsewhere in ~~[these rules]~~ Section R746-349-3 can be included in testimony and exhibits;

~~[2-]~~(b)(i) proof of a bond in the amount of \$100,000~~[-]~~;

~~[2-]~~(ii) this bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation or liabilities to the Utah Public Telecommunications Service Support Fund, Section 54-8b-15, or the Hearing and Speech Impaired Fund, Section 54-8b-10~~[-A-]~~; and

~~[2-]~~(iii) an applicant may request a waiver of ~~[this requirement]~~ Subsection R746-349-3(1)(b) from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer and state fund liabilities;

~~[3-]~~(c) a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the ~~[incumbent local exchange carrier]~~ ILEC, or whether it intends to resell an ~~[incumbent local exchange carrier]~~ ILEC's and other telecommunications corporation's services;

~~[4-]~~(d) a statement regarding the services to be offered including:

~~[a-]~~(i) which classes of customer the applicant intends to serve~~[-]~~;

~~[b-]~~(ii) the locations where the applicant intends to provide service~~[-]~~; and

~~[c-]~~(iii) the types of services to be offered;

~~[5-]~~(e) a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911;

~~[6-]~~(f) an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

~~[7-]~~(g) summaries of the professional experience and education of ~~[all]~~ each managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

~~[8-]~~(h) an organization chart listing ~~[all]~~ each of the applicant's employees currently ~~working~~ or that plan to be working in or for Utah operations and their job titles;

~~[9-]~~(i) a chart of accounts that includes account numbers, names, and brief descriptions;

~~[10-]~~(j) financial statements that ~~[at a minimum]~~ include at least:

~~[a-]~~(i) the most recent balance sheet, income statement and cash flow statement, and any accompanying notes, prepared according to GAAP~~[-]~~;

~~[b-]~~(ii) a letter from management attesting to their accuracy, integrity, and objectivity, and that the statements were prepared in accordance with GAAP~~[-]~~;

~~[c-]~~(iii) if the applicant is a start-up company, a balance sheet following the ~~[above]~~ principles in Subsection R746-349-3(1)(j) must be filed~~[-]~~; and

~~[d-]~~(iv) if the applicant is a subsidiary of another corporation, financial statements following the ~~[above]~~ principles in Subsection R746-349-3(1)(j) must also be filed for the parent corporation;

~~[11-]~~(k) financial statements to demonstrate sufficient financial ability ~~[on the part]~~ of the applicant~~[-At a minimum]~~ that must show at the least~~[-the applicant's statements must show]~~:

~~[a-]~~(i) positive net worth for the applicant~~[-CLEC]~~;

~~[b-]~~(ii) sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations~~[-]~~; and

~~[c-]~~(iii) proof of bond as specified in Subsection R746-349-3(1)(b);

~~[12-]~~(l) a five-year projection of expected operations including the following:

~~[a-](i)~~ pro forma income statements and pro forma cash flow statements~~[-]~~;

~~[b-](ii)~~ when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities~~[-]~~; and

~~[e-](iii)~~ when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

~~[13-](m)~~ an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

~~[14-](n)~~ evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

~~[a-](i)~~ proof of certification in other jurisdictions~~[-]~~ and that service is currently being offered in other jurisdictions by the applicant~~[-]~~; or

~~[b-](ii)~~ ~~[o-]~~the corporation has had at least two years of recent experience in providing public telecommunications services related to the type of services the CLEC intends to provide;

~~[15-](o)~~ a statement as to why entry by the applicant is in the public interest;

~~[16-](p)~~ proof of authority to conduct business in Utah;

~~[17-](q)~~ a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction~~[-This statement]~~ that should include the following:

~~[a-](i)~~ sanctions imposed against the applicant for any of these activities~~[-]~~;

~~[b-](ii)~~ copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons~~[-]~~; and

~~[e-](iii)~~ the applicant's responses to any of these issues; and

~~[18-](r)~~ a statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant~~[-s]~~ to prevent unauthorized switching of Utah local service by the applicant, its employees, or its agents.

~~[B-](2)~~ Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with Section R746-1-501, Discovery.

R746-349-4. Reporting Requirements.

~~[A-](1)~~ When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling, or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

~~[B-](2)~~ Each certificated telecommunications corporation shall file an updated chart of accounts by March 31~~[-]~~ of each year.

~~[C-](3)~~ Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include ~~[a-]~~each of the areas where the corporation is providing or offering to provide service in Utah. These maps will, at ~~[a minimum]~~the least, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

~~[D-](4)~~ Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the telecommunications corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within [10]ten days after changes to the service territory occur. The map shall be made available for public inspection.

~~[E-](5)~~ At least five days before offering any public telecommunications service through pricing flexibility, under Section 54-8b-2.3, a telecommunications corporation shall file with the Commission its proposed price list or if ordered by the Commission, the prices, terms, and conditions of a competitive contract. Each filing may be made electronically, shall be made available to the public through the Division, and shall be in compliance with Subsection 54-8b-2.3(3).~~[-]~~

- ~~1. describe the public telecommunications services being offered;~~
- ~~2. set forth the terms and conditions upon which the public telecommunications service is being offered;~~
- ~~3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and~~
- ~~4. be made available to the public through the Division.~~

~~[F-](6)~~ The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and ~~[obtains]~~gets an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

- ~~[1-](a)~~ annual revenues from operations attributable to Utah by major service categories~~[-F]~~;
- ~~(b)~~ that information would be provided on a "Total Utah" and "Utah Intrastate" basis~~[-]~~ as follows:
 - ~~(i)~~ "Total Utah" will consist of the total of interstate and intrastate revenues~~[-]~~; and
 - ~~(ii)~~ "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts~~[-B]~~; and
 - ~~(c)~~ both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:
 - ~~[a-](i)~~ private line and special access~~[-]~~;
 - ~~[b-](ii)~~ business local exchange~~[-]~~;
 - ~~[e-](iii)~~ residential local exchange~~[-]~~;
 - ~~[d-](iv)~~ measured interexchange~~[-]~~;
 - ~~[e-](v)~~ vertical services~~[-]~~; and
 - ~~[f-](vi)~~ business local exchange, residential local exchange, and vertical service revenue will be reported by geographic area,

to the extent feasible;

~~[2-](d)~~ annual expenses and estimated taxes attributed to operations in Utah;

~~[3-](e)(i)~~ year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah~~[-F]; and~~

~~(ii)~~ the actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

~~[4-](f)~~ financial statements prepared in accordance with GAAP~~[-These financial statements]~~ that shall, at ~~[a minimum]~~the least, include an income statement, balance sheet, and statement of cash flows and include a letter from management attesting to their accuracy, integrity, and objectivity and that the statements follow GAAP;

~~[5-](g)(i)~~ list of services offered to customers and the geographic areas in which those services are offered~~[-F]; and~~

~~(ii)~~ this list shall be current and shall be updated when~~[ever]~~ a new service is offered or a new area is served;

~~[6-](h)~~ number of access lines in service by geographic area, segregated between business and residential customers;

~~[7-](i)~~ number of messages and minutes of services for measured services billed to end users;

~~[8-](j)~~ list of officers and responsible contact personnel updated annually; and

~~[9-](k)(i)~~ a report of gross revenue on a form supplied by the Division~~[-F]; and~~

~~(ii)~~ this report shall be used in calculating the Public Utility Regulat~~ion~~ory Fee owed by the CLEC.

~~[G-](7)~~ The annual report and the report of gross revenue filed by a CLEC may be considered protected documents under Title 63G, Chapter 2, the Government Records Access and Management Act, if the CLEC complies with the requirements of that act.

R746-349-5. Change of Service Provider.

~~[A-](1)~~ ~~[All]~~Each request~~[s]~~ for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new ~~[carrier]~~telecommunications corporation must be in compliance with ~~[47 CFR 64.1100 and 47 CFR 64.1150[-1996],~~ incorporated by ~~[this]~~reference.

~~[B-](2)~~ A telecommunications ~~[provider]~~corporation will be held liable for both the unauthorized termination of a customer's service with an existing ~~[carrier]~~telecommunications corporation and the subsequent unauthorized transfer to the ~~[providers]~~telecommunications corporation's own service. Telecommunications ~~[providers]~~corporations are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A ~~[carrier]~~telecommunications corporation that engages in the unauthorized activity shall restore the customer's service to the original ~~[carrier]~~telecommunications corporation without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original ~~[provider]~~telecommunications corporation or the unauthorized ~~[provider]~~telecommunications corporation. Violators may be punished pursuant to Sections 54-7-25 through 54-7-28. The telecommunications ~~[provider]~~corporation responsible for the unauthorized transfer shall reimburse the customer or the original ~~[carrier]~~telecommunications corporation for reestablishing service to the customer at the applicable tariff, price list, or contract rate of the original ~~[carrier]~~telecommunications corporation.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

~~[A-](1)~~ Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding ~~[instituted]~~initiated by an ILEC, the Commission, or other party, a CLEC or ILEC subject to pricing flexibility pursuant to Section 54-8b-2.3 is exempt from the following ~~statutes~~ and rules. A~~[H]ny~~ other rules of the Commission and a~~[H]ny~~ other duties of ~~[public utilities]~~a telecommunications corporation not specifically exempted by these rules or by a Commission order apply to a CLEC or ILEC subject to pricing flexibility pursuant to Section 54-8b-2.3. A~~[H]ny~~ powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to Section 54-8b-2.3.

~~[1-](a)~~ ~~[E]~~exemptions from Title 54, Public Utilities:

Sections 54-3-8~~[7]~~ and 54-3-19 -- Prohibitions of discrimination

Section 54-7-12 -- Rate increases or decreases

Section 54-4-21 -- Establishment of property values

Section 54-4-24 -- Depreciation rates

Section 54-4-26 -- Approval of expenditures; and

~~[2-](b)~~ ~~[E]~~exemptions from Commission rules:

Subsection R746-340-2~~[-](D)~~ -- Uniform System of Accounts (47 CFR 32)

Subsection R746-340-2~~[-](E)~~~~[-](1)~~ -- Tariff filings required

Subsection R746-340-2~~[-](E)~~~~[-](2)~~ -- Exchange ~~[M]maps~~

~~[R746-341 -- Lifeline (CLEC with ETC status)~~

Section R746-344 -- Rate case filing requirements

Section R746-401 -- Reporting of construction, acquisition, and disposition of assets

Section R746-405 -- Tariff formats

Section R746-600 -- Accounting for post-retirement benefits]

~~3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule].~~

R746-349-7. Informal Adjudication of Certain CLEC Merger and Acquisition Transactions.

~~[A-](1)(a)~~ A CLEC may ~~[obtain]~~get approval of a transaction subject to Section 54-4-28, ~~[c]~~merger, consolidation or

combination~~[7]~~; Section 54-4-29, [~~acquiring voting stock or securities~~]; and Section 54-4-30, [~~acquiring properties~~], in the following manner~~[7]~~; ~~Such~~; and

(b) these adjudicative proceedings are designated as informal adjudicative proceedings pursuant to Section 63G-4-203 unless converted to formal adjudicative proceedings.

~~[1-](2)~~ The CLEC shall submit an application which includes~~[7]~~, ~~but is not limited to~~:

~~[a-](a)~~ identification that it is not an ILEC~~[7]~~;

~~[b-](b)~~ identification that it seeks approval of the application pursuant to ~~[this rule]~~ Section R746-349;

~~[c-](c)~~ a reasonably detailed description of the transaction for which approval is sought~~[7]~~;

~~[d-](d)~~ a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction~~[7]~~; and

~~[e-](e)~~ copies of any notices, correspondence, or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

~~[2-](3)~~ Upon receipt of the CLEC's application, the Commission will issue a public notice stating that the application has been filed, that any interested party may submit comments on the application within 14 days following public notice, and may submit reply comments within 21 days following public notice, and provide notice of the date and time for a hearing on the application~~[7]~~ which shall be scheduled to occur within 30 days following the issuance of the public notice.

~~[3-](4)~~ If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

~~[4-](5)~~ The Commission may convert the proceeding on an application into a formal adjudicative proceeding based upon an objection made in comments or reply comments, evidence submitted, or other reasonable basis, which may include failure of the transaction to qualify for streamlined treatment from a federal agency, or its own motion, and may continue the hearing on the application as needed.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

~~[A-](1)~~ The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

~~[1-](a)~~ the CLEC's obligation to furnish service to customers ~~[is dependent on]~~ depends on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

~~[2-](b)~~ the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

~~[3-](c)~~ the CLEC will furnish service if it ~~[is able to]~~ can get ~~[obtain]~~, retain keep, and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

~~[4-](d)(i)~~ at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service~~[7]~~; and

~~(ii)~~ those charges will be in addition to the normal rates and charges applicable to the service being provided;

~~[5-](e)~~ when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges; and

~~[6-](f)~~ a~~[H]~~ ny construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

~~[A-](1)~~ The Commission may initiate or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by Subsection 54-8b-2.3(8).

~~[1-](2)~~ A request to initiate any proceeding pursuant to ~~[this rule]~~ Section R746-349-9 shall:

~~[a-](a)~~ ~~[H]~~ identify the telecommunications corporation ~~[or corporations]~~ and the public telecommunications service ~~[or services]~~ whose pricing flexibility the requesting ~~[party]~~ person believes may be subject to revocation or imposition of conditions or restrictions;

~~[b-](b)~~ ~~[F]~~ the basis for the belief; and

~~[c-](c)~~ ~~[F]~~ the relief sought.

~~[2-](3)~~ A request to initiate a proceeding shall be served upon the telecommunications corporation ~~[or corporations]~~ the requesting ~~[party]~~ person has identified in the request, the Division, and the Committee.

~~[3-](4)~~ The telecommunications corporation ~~[or corporations]~~ against whom the request is directed and any other interested ~~[party]~~ person may respond to the request in accordance with the Commission's procedural rules and standard practices.

~~[4-](5)(a)~~ ~~[H]~~ if a proceeding is initiated, an interested ~~[party]~~ person may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning, or restriction under Subsection 54-8b-2.3(8)~~[7]~~;

~~(b)~~ the ~~[party]~~ person shall certify that it seeks to review that confidential information solely ~~[for purposes of]~~ to determine~~[ing]~~ whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any person~~[s]~~ who may be able to use the confidential information in business decisions to any ~~[party]~~ person's

competitive advantage~~[-Prior to]~~; and

~~(c) before disclosing any confidential information, the Commission or the Division:~~

~~[a-](i) [S] shall require the requesting [party] person to execute an appropriate non-disclosure agreement;~~

~~[b-](ii) [S] shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing [such] the information; and~~

~~[e-](iii)(A) [S] shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if [such] the telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of [such] the confidential information within [10] ten calendar days after receiving the notice required by Subsection R746-349-9(5)[-](c)[-](i)[-F]; and~~

~~(B) the Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.~~

~~[5-](6) In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.~~

~~[6-](7) Nothing in this rule limits the ability of any [party] person or the Commission to raise or address any issue in any other proceeding or as permitted by law.~~

R746-349-10. Competitive Entry into an Area Eligible for Universal Public Telecommunications Service Support Fund Requirements.

(1) Applications for competitive entry to any area eligible for Universal Public Telecommunications Service Support Fund (UUSF) pursuant to Section 54-8b-2.1 and consistent with Section 54-8b-15 shall comply with Section R746-349-10.

(2) In addition to the requirements set forth in Section R746-349-3, each applicant for a certificate as a COLR in a certificated area eligible for support from the UUSF shall include in its application:

(a) a statement identifying the exchanges where the applicant is planning to serve;

(b) a statement confirming that the applicant intends to provide public telecommunications services to any customer or class of customer who requests service within each exchange;

(c) a statement identifying:

(i) the services to be offered by the applicant;

(ii) the technology to be installed by the applicant; and

(iii) performance metrics of the offered services including projected upload and download speed, latency, capacity, and any other applicable measures;

(d) a pro forma detailed build-out plan for serving as the COLR in the local exchanges that identifies, with particularity:

(i) the areas where facilities will be installed including a detailed map;

(ii) projected costs;

(iii) projected revenue; and

(iv) an overall timeline for completion of the build-out that includes a beginning date, completion date, and relevant major milestone dates; and

(e) an estimate of the required UUSF support using the relevant tabs of the current Utah Division of Public Utilities' Incumbent Local Exchange Carrier Annual Report form, found on the Division's website.

(3)(a) Notice provided to the existing telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where the applicant is seeking to provide service, the existing COLR, made pursuant to Subsection 54-8b-2.1(3)(b) shall include a copy of the application; and

(b) the application provided to the existing COLR with the initial notice may be redacted pursuant to Sections R746-1-601 through R746-1-606, but it shall include at least:

(i) a detailed map identifying areas within each exchange served by the existing COLR where the applicant's facilities will be installed;

(ii) the services provided by the applicant;

(iii) the technology to be installed by the applicant;

(iv) performance metrics of the offered services including projected upload and download speed, latency, capacity, and any other applicable measures;

(v) the projected timeline for the build-out that includes a beginning date, completion date, and relevant major milestone dates; and

(vi) projected UUSF support.

(4) Claims of confidentiality with respect to the application and any additional information to be provided pursuant to Subsections R746-349-10(2), R746-349-10(3), and R746-349-10(5), will be addressed consistent with Sections R746-1-601 through R746-1-606.

(5) The existing COLR:

(a) pursuant to Subsection 54-8b-2.1(3)(b), shall be granted automatic status as an intervenor in the proceeding addressing the application of competitive entry; and

(b) may challenge the applicant's application with the Commission on the following grounds:

(i) the information provided by the applicant is flawed or otherwise insufficient to justify competitive entry;

(ii) affordable high quality public telecommunications service is available in the relevant service areas and the applicant's proposed service offering is unlikely to materially improve the service quality or affordability for customers;

(iii) the existing COLR has a reasonable build-out plan that will result in the investment in more efficient development, more timely deployment, or both, of telecommunications infrastructure and facilities in the proposed local exchange that are superior to the investments proposed by the applicant; or

(iv) granting the application is otherwise not in the public interest.

(6) If an existing COLR seeks to challenge the application on the grounds that it has a competing plan pursuant to Subsection R746-349-10(5)(b)(iii), 90 days after the filing of the application unless otherwise modified by the Commission, the existing COLR shall submit a filing with the Commission which contains the information required by Subsection R746-349-10(2), including information required by Section R746-349-3, and provide notice to the applicant that includes the information required by Subsection R746-349-10(3).

(7) Other interested persons may seek intervention pursuant to Commission rules to challenge an application on the grounds that the application is not in the public interest.

(8) In determining whether granting the application is in the public interest, and whether the proposed expenditures are reasonable, the Commission shall consider the following factors:

(a) whether the proposed infrastructure duplicates current telecommunications infrastructure in the proposed service area;

(b) the current service quality in the proposed service area;

(c) the commitment level of both the applicant and the existing COLR in the proposed service territory; and

(d) any other factor the Commission considers appropriate.

(9) If the Commission grants the applicant competitive entry in a certificated area eligible for support from the UUSF:

(a) the Commission shall, except as otherwise provided in Section R746-349-10:

(i) approve the build-out plan of the applicant as contained in the application, as may be amended by the applicant, or agreed to by the parties, including a finding of total projected costs, initial milestones, and reporting requirements;

(ii) include a provision that, subject to Subsections R746-349-10(9)(b) and R746-349-10(9)(c), the applicant will reasonably adhere to the approved build-out plan and shall be entitled to recovery of the costs reasonably incurred in completion of the build-out plan as determined by the Commission pursuant to Section 54-8b-15;

(iii) provide that the existing COLR, to the extent that it remains a rate of return regulated utility, shall continue to be eligible for ongoing UUSF support on existing used and useful rate base consistent with Section 54-8b-15 and Section R746-8-401;

(iv) provide that the existing COLR will not be entitled to recover capital expenditures for facilities that duplicate any portion of the approved build-out plan of the applicant without a showing of good cause and a specific finding by the Commission that the existing COLR's proposed expenditures are cost effective and reasonable costs for UUSF support. If the existing COLR is not permitted to upgrade facilities pursuant to Subsection R746-349-10(9), service to the customer who receives a reasonably comparable quality of service from the other COLR will be provided at the customer's request pursuant to a line extension tariff as set forth in Subsection R746-349-10(13); and

(v) provide that the applicant will not be entitled to recover capital expenditures for facilities not approved as part of the order that duplicate existing facilities without a showing of good cause and a specific finding by the Commission that the applicant's proposed expenditures are cost effective and reasonable costs for UUSF support;

(b) if a person reasonably believes that the applicant is materially departing from the approved build-out plan, that person may file a request for agency action with the Commission pursuant to Section 54-7-9; and

(c) notwithstanding Section R746-349-10, the Commission may conduct a hearing to disallow any of the costs incurred by the applicant associated with an approved build-out plan upon a finding by the Commission that the applicant is responsible for intentional underbidding, material misrepresentation, or concealment associated with the competitive entry process.

(10) In a proceeding where an existing COLR challenges an application for competitive entry with an alternative build-out plan, pursuant to Subsection R746-349-10(5)(b)(iii), the existing COLR shall petition the Commission for pre-approval of proposed expenditures in the local exchanges.

(a) If the Commission denies competitive entry, the Commission shall:

(i) approve the alternative build-out plan of the existing COLR, including a finding of total projected costs, initial milestones, and reporting requirements;

(ii) require the existing COLR to proceed with its alternative build-out plan; and

(iii) include a provision that, subject to Subsections R746-349-10(10)(b) and R746-349-10(10)(c), the existing COLR will reasonably adhere to the approved build-out plan and shall be entitled to recovery of the costs reasonably incurred in completion of the build-out plan as determined by the Commission pursuant to Section 54-8b-15;

(b) if a person reasonably believes that the existing COLR is materially departing from the approved build-out plan, that person may file a request for agency action with the Commission pursuant to Section 54-7-9; and

(c) notwithstanding Section R746-349-10, the Commission may disallow any of the costs incurred by the existing COLR associated with an approved build-out plan upon a finding by the Commission that the existing COLR is responsible for intentional underbidding, material misrepresentation, or concealment associated with the competitive entry process.

(11) The Commission in its order on the application may:

(a) establish additional reporting requirements for the applicant or existing COLR; and

(b) schedule a final review of the applicant's or existing COLR's build-out or capital projects to ensure the approved plan was implemented prudently.

(12) In a local exchange where the Commission has granted competitive entry to more than one COLR, any COLR may

petition the Commission for relief from its COLR obligations in a competitive local exchange pursuant to Section 54-8b-3.

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

(a) To achieve this objective, the COLR's line extension tariffs shall include language that ensures that a customer who has access to functionally equivalent public telecommunications service at a reasonably comparable quality of service from another provider, but who seeks service from a COLR not currently serving the customer, the non-serving COLR, may request service from the non-serving COLR; and

(b) if service is requested from the non-serving COLR, the non-serving COLR's obligation to provide the service shall be subject to the non-serving COLR's line extension tariff.

KEY: essential facilities, imputation, public utilities, telecommunications, UUSF, carrier of last resort, competitive entry

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