

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Proposed Amendment to Utah Admin. Code R746-8-301, Calculation and Application of UUSF Surcharge	<u>DOCKET NO. 23-R008-01</u>
Miscellaneous Correspondence and Reports Regarding Telecommunications Utility Services; 2023	<u>DOCKET NO. 23-999-03</u> <u>NOTICE OF INTENT TO MAKE PROPOSED ADMINISTRATIVE RULE AMENDMENT EFFECTIVE</u>

ISSUED: December 18, 2023

SYNOPSIS

The Public Service Commission (PSC) gives notice of its intent to make its proposed administrative rule amendment effective on December 29, 2023, increasing the monthly Utah Universal Public Telecommunications Service Support Fund (UUSF) surcharge to \$0.71 per access line.

On September 19, 2023, the PSC published in Docket Nos. 23-R008-01 and 23-999-03 a Notice of Proposed Rule Amendment (NOPRA) to increase the monthly UUSF surcharge to \$0.71 per access line.<sup>1</sup> The UUSF is funded from mandatory surcharges collected from Utah telecommunications customers and paid into the UUSF by telephone providers. The PSC subsequently distributes those funds to qualifying carriers pursuant to applicable statutes and rules. The statutory purpose of the UUSF is to provide a mechanism for a qualifying carrier of last resort to obtain specific, predictable, and sufficient funds to deploy and manage networks capable of

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<sup>1</sup> This NOPRA was based on multiple factors including a publicly available action request response issued by the Division of Public Utilities (DPU) in Docket No. 23-999-03 on September 12, 2023 that followed publicly available recommendations by the DPU for 2024 UUSF distribution amounts for each individual carrier the DPU determined to be eligible for those distributions.

providing end-user services including access lines, connections, or wholesale broadband internet access service. Utah law charges the PSC with establishing a nondiscriminatory and competitively neutral UUSF contribution to meet those statutory directives.

The NOPRA noted the statutory requirements for calendar year 2024 UUSF distributions and further stated the following: "If the PSC determines, after finalizing CY2024 distributions, that this proposed surcharge increase remains appropriate, it anticipates making this rule amendment effective on December 29, 2023, so that it will apply to all Utah access lines and connections for CY2024."<sup>2</sup> Public comments were accepted through December 15, 2023.<sup>3</sup>

CTIA – The Wireless Association® (CTIA) submitted comments to the PSC in opposition to the NOPRA on December 15, 2023.<sup>4</sup> The PSC did not receive any additional public comments on the NOPRA.

CTIA argues the process for determining UUSF distributions to carriers (that drives the need for a surcharge change) should be more transparent with greater public emphasis on the location of the individual dockets establishing distribution amounts and greater detail discussing the basis for each distribution award. CTIA

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<sup>2</sup> NOPRA, PSC Docket No. 23-R008-01, *Proposed Amendment to Utah Admin. Code R746-8-301, Calculation and Application of UUSF Surcharge*, September 19, 2023, p. 1.

<sup>3</sup> *Id.* at p. 3.

<sup>4</sup> CTIA submitted its comments to Docket No. 23-999-03, *Miscellaneous Correspondence and Reports Regarding Telecommunications Utility Services; 2023*. The PSC published the NOPRA in both that docket and in Docket No. 23-R008-01; accordingly, the PSC will post and consider CTIA's comments in both dockets.

notes the total impact of telecommunications taxes and fees in Utah in connection with that assertion. CTIA also states the UUSF distributions and the associated surcharge increase are inconsistent with the stated policy of the Utah Broadband Center, in connection with the deployment of BEAD<sup>5</sup> funding, to facilitate the phase-out of legacy copper facilities. CTIA urges the PSC, in its next annual report on the UUSF to the Utah Legislature, to highlight the potential inconsistency between the stated BEAD funding policy and the UUSF statutory requirements. And finally, CTIA urges the PSC, if it implements the surcharge contemplated in the NOPRA, to allow a minimum of 120 days for carriers to implement the change and update impacted systems.

The PSC appreciates the comments from CTIA and is mindful of the impact of a UUSF surcharge increase on Utah's telecommunications customers. Specifically, the PSC is particularly cognizant of assertions that the PSC processes could be more transparent. Transparency is of paramount importance to the PSC.

In each individual docket in which a carrier of last resort is receiving a 2024 UUSF distribution, the carrier submitted an annual report to the PSC. Those annual reports are filed as confidential documents and are analyzed by the Division of Public Utilities (DPU). The DPU then made recommendations in early September 2023 for each carrier. While respecting the confidentiality of commercially sensitive

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<sup>5</sup> Utah's Broadband Equity, Access, and Deployment.

information in the annual reports, the DPU filed a public memorandum in each instance outlining, with non-confidential data, the specific factors that contributed to the DPU's recommended distribution amount. Also in September, the PSC issued a notice of filing and comment period in each of those individual dockets, emailing that notice to every person who has signed up to be placed on the PSC's general telecommunications email list (in addition to posting each notice on the PSC website). Following the public comment period, the PSC issued an order approving each 2024 UUSF distribution amount. Those orders each outlined the findings of fact and conclusions of law that were the basis for the distribution amount. Furthermore, similar to the notices of filing and comment period the PSC issued in each UUSF distribution docket, when the PSC issued the NOPRA on September 19, 2023, it emailed that notice to every person who has signed up to be placed on the PSC's general telecommunications email list (in addition to posting the NOPRA on the PSC website, and ultimate publication of the NOPRA in the Utah State Bulletin).

The PSC considers its process for determining both UUSF distributions and surcharges to be exceedingly transparent. We respect CTIA's concerns around transparency but note they focus exclusively on one action request response issued by the DPU. That filing by the DPU was a meaningful, but single, component of a fulsome and transparent regulatory process that involved both the DPU, the PSC, and multiple opportunities for any interested person to provide comments.

The PSC does not have any reason to dispute CTIA's assertions regarding the stated policy of the Utah Broadband Center with respect to BEAD funding. Nevertheless, PSC decisions regarding UUSF distributions must be based on the statutes and administrative rules governing those distributions. Each individual docket establishing a 2024 UUSF distribution included public, written analysis by the DPU, multiple opportunities for public comment, and an order from the PSC containing findings of fact and conclusions of law outlining the reasons the PSC determined the carrier was entitled to the approved 2024 distribution amount. The PSC has followed a substantially similar process each year since the UUSF statute was revised in 2017. Nevertheless, the issues raised by CTIA with respect to BEAD funding and legacy copper facilities warrant meaningful consideration for inclusion in the PSC's next annual UUSF report to the Utah Legislature.

Finally, we empathize with CTIA's desire for its members to have as much notice as possible to implement a surcharge increase. That is the very reason we issued the NOPRA on September 19, 2023 with language as clear as we could conceive to provide notice of the likelihood of a surcharge increase at the end of December 2023. Given the distribution amounts we have approved for 2024, simple mathematics demands that any delay in that implementation date would necessitate an even larger increase to the surcharge. We have always endeavored to manage the surcharge responsibly, increasing it only when necessary and reducing it whenever circumstances warrant. For example, when the \$0.60 surcharge implemented on May

1, 2019 caused the UUSF rolling balance to exceed levels the PSC considered appropriate, the PSC lowered the surcharge to \$0.54 on July 8, 2020 and again to \$0.36 on July 1, 2021. While those two instances of lowering the surcharge make the current increase appear more drastic, we maintain that in both instances it was the responsible thing to do. Similarly, based on the orders we have issued approving 2024 UUSF distributions amounts, increasing the monthly UUSF surcharge to \$0.71 per access line at the beginning of 2024 is the appropriate way to continue to carry out our statutory mandate.

Accordingly, we give notice that as we indicated on September 19, 2023 was the likely outcome, we intend to make the NOPRA effective on December 29, 2023.

DATED at Salt Lake City, Utah, December 18, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#331313

CERTIFICATE OF SERVICE

I CERTIFY that on December 18, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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