ROBERT J. MOORE (5764)
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone: (801) 366-0158
rmoore@agutah.gov
Attorney for Utah Office of Consumer Services

BEFORE THE PUBLIC SERVICE COMMISION OF UTAH	
Investigation into Possible Repeal of Utah Admin. Code R746-347, Extended Area Service	Docket No. 23-R347-01 Office of Consumer Services Comments

Pursuant to Utah Code § 54-10a-301, UTAH ADMIN. CODE r. 746-1-101 to -801 and the Public Service Commission of Utah's (PSC) February 21, 2023, Notice and Request for Comments, the Office of Consumer Services (OCS) submits these Comments on the possible repeal of UTAH ADMIN. CODE r. 746-347 (Rule 347) governing the establishment and restructuring of Extended Area Service (EAS) for incumbent telecom corporations. At present there is not enough information to determine how the possible repeal of Rule 347 will impact the Utah Universal Service Fund (UUSF) and the billing for intrastate toll calls for the OCS to make a recommendation as to whether Rule 347 should be repealed or, possibly, amended. However, given the substantial uncertainties associated with the repeal of Rule 347 coupled with the fact that the rule as written does not currently create difficulties in Utah telecom regulation, the OCS notes that the best approach may be to leave the rule intact. Nevertheless, if the PSC believes that an investigation into the repeal of Rule 347 is warranted, given the lack of information and uncertainty associated with the repeal of the rule, the OCS requests that the PSC schedule a technical conference and/or allow for discovery as the next step in this investigation.

DISCUSSION

More information is needed to determine if Rule 347 has outlived its usefulness and relevancy in today's telecom industry or if the repeal would have an appreciable impact on the UUSF or billing for intrastate toll service. Specifically, because of Rule 347's interrelationship with Rule 746-8-200(2)(a)(ii), whether the repeal of Rule 347 will have any appreciable impact on the UUSF is dependent on factors that are presently unknown at this stage of the proceedings, i.e., how the incumbent telecoms tariffs are presently written and if and how the incumbent telecoms change their billing practices in response to the repeal of Rule 347. It is also unclear how the repeal of Rule 347 will affect the intrastate toll service. For example, will the telecoms lose all their extended area service and have to charge a toll for calls outside of a single central office, or will the existing tariffs with the extended area service still be in effect, or should another mechanism be employed for determining when an intrastate call will be subject to a long-distance toll? Problems caused by these uncertainties can be avoided by leaving the rule intact, but if the rule is to be repealed or amended these questions must be answered before the PSC can move forward.

A. The Repeal of Rule 347's Impact of the UUSF

Whether Rule 347 should be repealed, and the EAS fee eliminated, depends to a large extent on the impact of the elimination of the fee on the UUSF, which in turn is dependent on the interrelationship between Rule 347 with Rule 746-8-200(2)(a)(ii). Rule 746-8-200(2)(a)(ii) provides that the $18 affordable base rate, the minimum amount an incumbent telecom must charge to be eligible for ongoing UUSF support, may or may not include EAS fees. Rule 746-8-401(1)(c); 746-8-200(2)(a)(ii). Therefore, an incumbent telecom's tariffs may or may not incorporate any EAS charge into the $18 affordable base rate.

This fact results in four possible circumstances resulting from the repeal of Rule 347.

- If an incumbent telecom's tariff incorporates the EAS fee into the affordable base rates and the EAS charge is eliminated, the incumbent telecoms could amend their tariffs to continue charging the $18 base rate, in which case there would be no impact on the UUSF.
- Or the incumbent telecom could continue to charge an amount that represent $18 dollar affordable rate base minus the amount formal charge by the EAS. Under these circumstances, however unlikely, if the telecom is going to continue to draw from the UUSF, the difference between the amount charged to the customers and the affordable base rate will be imputed to the telecom for UUSF purposes. Rule 746-8-401(3)(a)(ii). Again, in these circumstances, the repeal of Rule 347 would not impact the UUSF.
- Another possible circumstance is where an incumbent telecom's tariff does not incorporate the EAS fee into the affordable base rate and therefore charges customers the $18 affordable base rate plus the EAS fee. Under these circumstances, if the EAS fee is eliminated with the repeal of Rule 347, an incumbent telecom could amend its tariff to continue to charge its customers the same amount as the affordable base rate plus the EAS and the UUSF would not be impacted.

- However, if the incumbent telecom does not amend its tariff to raise the amount it charges customers and simply charges customers the $18 affordable base rate, the difference from what the telecom previously charged its customers—the affordable base rate plus the EAS charge—and the affordable base rate will be made up for by disbursement from the UUSF. This approach should have no economic impact for the telecom but would have an impact on the UUSF.

In this fourth circumstance, whether the impact on the UUSF would be material depends on how many incumbent telecoms have elected to charge an EAS fee in addition to the affordable rate base, the dollar amount of the EAS fees for the subject telecoms, and how many of these telecoms' will elect not to change their tariffs to charge customers the amount of the EAS on top of the affordable rate base. This information must be obtained to determine if the repeal of Rule 347 would have any appreciable impact on the UUSF and the OCS would be likely to recommend against repeal if it would appreciably impact the UUSF. Accordingly, if the PSC is going to continue its investigation beyond the scheduled comments, the OCS recommends that the PSC schedule a technical conference and/or allow for discovery before determining how to proceed.

A. Intrastate Toll Service

The other side of the coin to the elimination of the ESA service fee is the question of how incumbent telecom's charge toll fees for intrastate long distance if Rule 347 is repealed. However, a repeal of Rule 347 will not answer this question, the issue will simply be unresolved. At present the extent of a telecom's area service and the fee for extended area service is set by the procedures outlined in Rule 347. Each incumbent telecom has the opportunity to set its own extended area(s) and its own EAS fee(s) and charge toll fees for intrastate calls outside of its service area. If Rule 347 is repealed, the PSC must undertake some process to establish standards for determining if: (1) the telecoms lose their entire extended area service and therefore must charge a toll for calls terminating outside of a single exchange, (2) existing tariffs with the extended area service will remain in place but no new EAS should be established or existing EAS modified, or (3) some other mechanism be established to determine when incumbent telecoms' bill for intrastate toll service. This would require a substantial amendment of Rule 347 rather than a simple repeal.

Again, how telecoms should charge for intrastate toll service largely depends on information not presently available. Specifically, this issue should turn on costs. Under Rule 347, the determination of whether to expand a local calling service area is based on the costs of expanding that service area and the cost to customers of paying an EAS fee or the cost of paying a toll fee. Rule 746-347-4. Accordingly, the question of how toll fees would be charged should also depend on the cost of providing intrastate long-distance services. This information is not presently at hand. Therefore, the OCS repeats its recommendation that the decision on the repeal or amended Rule 347 should be postponed until the parties can uncover additional information.

However, the complexities and the costs—in time and effort—of completely reworking the rules for establishing the process for the charging of intrastate toll service coupled with the fact that the present state of the rules does not seem to cause any regulatory problems, suggests that the PSC should consider keeping Rule 347 intact and neither repealing nor amending the rule. Nevertheless, if the PSC determines to extend its investigation beyond the scheduled comments, the first step should be to schedule a technical conference and/or allow discovery to uncover information necessary to grapple with the myriad issues arising from the proposition that Rule 347 should be repealed or amended.

CONCLUSION

Whether Rule 347 should be repealed depends on information not presently available at this stage of the proceedings, i.e., the impact of the repeal on the UUSF and on intrastate long distance toll charges. The uncertainties created by a repeal of Rule 347 and the fact that the rule as presently written does not cause regulatory problems suggest that Rule 347 should remain intact rather than be repealed or amended. However, if the PSC determines the investigation should proceed beyond the comment stage, the PSC should schedule a technical conference and/or allow for discovery to uncover the information needed before determining whether to repeal or amend Rule 347.

Respectfully submitted, March 23, 2023.

Robert J. Moore
Robert J. Moore
Assistant Attorney General
Attorney for the Office of Consumer Services