

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R746-8-301

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, 4 th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

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

3. Purpose of the new rule or reason for the change:

The purpose of this rule amendment is to ensure the Utah Universal Public Telecommunications Service Support Fund (UUSF) meets the fund's statutory obligations and does not incur deficits beyond those obligations. As provided in Subsection 54-8b-15(2), the UUSF provides a funding mechanism for qualifying telecommunications carriers "to obtain specific, predictable, and sufficient funds to deploy and manage" networks for end-users of certain telecommunications services. UUSF funding is provided by "an explicit charge assessed" – or surcharge – on each telecommunications access line or connection, pursuant to Subsection 54-8b-15(8). That surcharge is then remitted to the UUSF by telecommunications carriers who have collected the surcharge from their customers on a "per access line" basis, pursuant to Subsection 54-8b-15(9). The "per access line" basis allows the PSC, with the assistance of the Division of Public Utilities (DPU), to estimate UUSF revenue based on the number of customers of any given telecommunications carrier. In other words, the UUSF balance is a function of the revenue collected and remitted from the surcharge based on the projected number of access lines (Subsections 54-8b-15(8) & (9)), which is then offset by the projected costs attributable to deployment and management of the applicable telecommunications networks (Subsection 54-8b-15(2)). Accordingly, the projected "per access line" surcharge must be occasionally adjusted to meet the statutory obligations relating to the projected UUSF costs. Thus, this rule amendment increases the monthly UUSF surcharge remittance amount from \$0.71 to \$0.98 per access line.

DPU recently provided a recommendation to increase the current UUSF surcharge rate to meet the calendar year 2024 (CY2024) UUSF distributions previously ordered by the PSC and the estimated UUSF distributions for fiscal year 2025 (July 1, 2024 to June 30, 2025) (FY2025) so that, as required by Utah law, regulated Utah telecommunications carriers will "obtain specific, predictable, and sufficient funds to deploy and manage" networks for end-users of certain telecommunications services. The reason for DPU's recommended increase in the surcharge is, in part, to address a recently discovered error by New Cingular Wireless PCS, LLC ("AT&T") in its reporting of the number of access lines subject to the surcharge. According to DPU, AT&T overreported those numbers for approximately 23 months (August 2021 through July 2023), which in turn provided an inaccurate basis upon which DPU provided its baseline calculations for the UUSF surcharge which was implemented on December 29, 2023. Specifically, the UUSF surcharge of \$0.71 implemented on December 29, 2023, is inadequate to fund the CY2024 and estimated FY2025 statutory UUSF distribution requirements because, in part, after correcting AT&T's reporting error, the actual number of access lines subject to the surcharge have now been reduced by approximately 260,000 per month and thus results in less revenue to meet the costs associated with the UUSF statutory obligations. In addition, the estimated UUSF distributions for CY2024 were significantly underestimated. The PSC anticipates making this rule amendment effective on July 1, 2024, so that it will apply to all Utah access lines and connections for the remainder of CY2024 and all FY2025.

The PSC expresses appreciation to the Division of Public Utilities in the Department of Commerce for providing the analysis necessary to consider and implement this rule amendment.

4. Summary of the new rule or change:

This amendment increases the monthly UUSF surcharge from \$0.71 to \$0.98 per access line. The amendment makes three textual edits, revising the rule's three references to the \$0.71 surcharge to reflect the new \$0.98 surcharge. As explained in response to Question 3, the increase in the surcharge is necessary to ensure the UUSF can meet statutory obligations while remaining within policy norms. Unless public comment convinces the PSC to alter its plans, the PSC anticipates making this rule amendment effective on July 1, 2024.

Fiscal Information

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

A) State budget:

This surcharge change will increase the balance accruing in the UUSF, satisfying the performance objective set by the Utah Legislature to maintain at least three months' worth of fund distributions without incurring a deficit. The only other impact on the state budget is the impact on state offices that are telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.27 in their monthly bill.

B) Local governments:

The only impact on local governments will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.27 in their monthly bill.

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

The only impact on small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.27 in their monthly bill.

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

The only impact on non-small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.27 in their monthly bill.

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*):

Affected – All customers who are billed for an access line presently pay \$0.71 per month per access line for the UUSF surcharge. That rate was implemented on December 29, 2023, and represented an increase of \$0.35 per access line per month. Under the new \$0.98 rate, all such customers will pay \$0.27 more per month per access line. On April 4, 2024, the DPU recommended to the PSC various scenarios for increasing the surcharge rate to meet the statutory requirements for the UUSF fund for CY2024 and estimated for FY2025. The recommendations were based on different scenarios including estimated access lines numbers, distribution amounts, and costs. Based on estimates for FY2025, an average of 3,743,761 access lines will be assessed the surcharge every month. At the current rate of \$0.71, on average, approximately \$2,623,249 would be collected to fund the UUSF on a monthly basis, or approximately \$31,478,991 per year. At the new rate of \$0.98, approximately \$3,620,823, on average, would be collected per month, or approximately \$43,449,875 per year to fund the UUSF. The proposed rate increase will result in an approximate average increase of \$997,574 per month, or \$11,970,884 per year to fund the UUSF, as compared to the current rate. The dollar amounts include a 1.31% administrative fee that telecommunications providers are allowed to withhold. This will have a fiscal impact on Utah's regulated telecommunications providers that receive distributions from the UUSF. This rule amendment will enable the UUSF to make the distributions previously ordered by the PSC for CY2024 and as estimated for FY2025. The PSC presently does not have access to the commercially sensitive information that would be necessary to determine what portion of the access lines paying the surcharge are small businesses, larger businesses, or individuals. However, this increase should affect all customers and customer classes equally on a per access line basis.

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

All telecommunications customers currently paying this surcharge will experience an increase of \$0.27 in their monthly bill.

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	FY2024	FY2025	FY2026
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	\$11,970,884.00	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

All telecommunications customers in Utah will experience an increase of \$0.27 on their monthly telecommunications bill. This will enable the UUSF to satisfy the Legislative performance goal of maintaining a sufficient balance in the fund to pay three months' worth of disbursements, without incurring a deficit. This also will enable the UUSF to meet its statutory mandate to provide a funding mechanism for Utah's qualifying regulated telecommunications carriers to "obtain specific, predictable, and sufficient funds to deploy and manage" telecommunications networks. We appreciate the detailed analysis done by the Division of Public Utilities in the Department of Commerce that provided the PSC the necessary information. We have reviewed and approve this regulatory impact analysis. David R. Clark and John S. Harvey, Ph.D., PSC Commissioners.

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 54-3-1	Section 54-4-1	Section 54-8b-10
Section 54-8b-15		

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:	06/03/2024	
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):

To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	07/01/2024
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, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	David R. Clark and John S. Harvey, Ph.D., PSC Commissioners	Date:	04/15/2024

R746. Public Service Commission, Administration.

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

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 [~~\$0.74~~]\$0.98 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 [~~\$0.74~~]\$0.98 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) [~~\$0.74~~]\$0.98 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% of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31% 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 Subsections R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

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

Date of Last Change: [~~September 19, 2023~~]April 15, 2024

Notice of Continuation: February 16, 2023

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