



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: Public Service Commission
From: The Office of Consumer Services
Michele Beck, Director
Eric Orton, Analyst
Date: July 11, 2012
Subject: Docket 12-999-05

In the Matter of a Request for Agency Action for Creation of a Telecom Working Group to Address Possible Streamlined Procedures for Approving Changes Mandated by the FCC.

BACKGROUND

On May 18, 2012 the Division of Public Utilities (Division) filed with the Utah Public Service Commission (Commission) a request for agency action seeking a technical conference to address the new requirements imposed by the Federal Communications Commission (FCC) Report and Order reforming the Federal Universal Service Fund (FCC Transformation Order), Intercarrier Compensation (ICC) as well as numerous other matters. The Utah Office of Consumer Services (Office) filed its Response to Division of Public Utilities Request for Agency Action (Office Response) on June 21, 2012. The Office Response requests the Commission direct the Division to revise and refile their Request for Agency Action to conform to Utah statute and Commission rules and practices.

On May 24, 2012 the Commission issued a Notice of Technical Conference later amended by a Notice of Change in Schedule for Technical Conference. The Office submits these comments in accordance with the schedule established by the Commission in these notices. Any and all statements by the Office within these comments are subject to the response and objections raised in the Office Response filed on June 21, 2012.

DISCUSSION

Although the Division's request did not create the appropriate process, it includes six examples of topics for inclusion in this docket. (See paragraphs 3 – 8.) The Office will specifically address the last two topics proposed by the Division and provide general comments on other technical issues.

Streamlined Process

The Division requested, in part, that this docket "should provide an avenue to address the implementation process for providing any permitted increase, including consideration of a streamlined process for replacing lost federal revenues with state funds where appropriate." Such a request is inappropriate. A request for agency action cannot alter the manner in which state USF funds are collected or distributed. To the extent the Commission has authority to make changes (rather than changes that would require legislation) such changes would be more appropriately examined within a separate forum which would quite likely involve rulemaking and not be aggregated with the discussion of technical issues that may require immediate actions.

The Office agrees that the impact of the FCC Transformation Order may include increasing pressure on the state USF. However, increasing demands for public money is not cause to increase the ease with which it is accessed. The state USF are public funds collected from ratepayers across the state and proper oversight must be maintained in order to ensure that the rates associated with the collection of state USF remain just and reasonable.

Affordable Base Rate

The Office disagrees that the affordable base rate is a topic that needs to be addressed by the Commission at this time for two primary reasons. First, the affordable base rate is well above the rate floors that have been established by the FCC for 2012 and 2013. Thus, the FCC Transformation Order results in no immediate conflicts or impacts on this rate concept. Second, the affordable base rate is not a formal concept addressed in Utah statutes or Commission rule. Thus, if any party wishes to argue for changes to the implementation of the affordable base rate it can simply be done within the structure of a rate case and does not require separate treatment.

Other Technical Issues

When and if a proper agency action is filed, technical issues such as those used for example in the Division's request should be identified with specificity such that all parties will have an equal opportunity to comment on the same scope of issues. In the event the Commission goes forward within this docket, the scope should be limited to the

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examination of specific technical issues that arose from the FCC Transformation Order and the process should allow for all parties to comment once the scope is identified.

Lifeline Issues

The Office notes that some of the technical issues raised by the FCC Transformation Order may relate to the provision of Lifeline service. Docket No. 10-2528-01 already exists as a forum for consideration of such issues. The Office strongly recommends that the Commission return its attention to that docket, address the unresolved and previously identified issues relating to the provision of Lifeline services, and direct any newly identified Lifeline issues to be addressed within Docket 10-2528-01. The Office is aware of ongoing activities related to Lifeline certification and other issues that are taking place on an ad hoc basis among the Division, in some instances Commission staff, other state agencies and potentially a subset of the parties to Docket 10-2528-01. This informal and ad hoc process is improper, does not provide all interested parties equal opportunity to participate and is particularly troubling given that the Commission has an open docket for the express purpose of addressing these issues.

RECOMMENDATION

The Office recommends that the Commission take the following actions:

- Dismiss the current docket.
- Direct any new Lifeline issues, as well as ongoing Lifeline activities, to be addressed within Docket 10-2528-01, where all interested parties have an opportunity to participate and contribute to resolutions.
- Schedule a Technical Conference for Docket No. 10-2528-01 as soon as practicable. The agenda for that Technical Conference could be to identify any new Lifeline issues arising from the FCC Transformation Order, evaluate unresolved issues previously identified in this docket, report on any progress made to date, and identify a process to bring the issues to conclusion. The Commission should provide notice to all parties in Docket 10-2528-01 as well as all parties who have requested ETC status for provision of Lifeline services since activity was suspended in that docket.
- Direct parties to address any other technical issues arising from the FCC Transformation Order either through a properly filed request for agency action or other appropriate forum so long as it facilitates participation from all interested parties.