

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Investigation into Management of the Utah
Universal Service Fund Contribution Method

DOCKET NO. 18-999-15
NOTICE OF RULE FILING

ISSUED: February 27, 2019

1. Background

On January 3, 2019, the Public Service Commission (“PSC”) issued a Notice and Action Request to the Division of Public Utilities (“Action Request”) in this docket, explaining the PSC “anticipate[s] a pending need to increase the [Utah Universal Service Fund or “UUSF”] contribution surcharge” as a consequence of several recent dockets that modified disbursements as required by Senate Bill 130, Universal Service Fund Amendments (2017 GS) (“S.B. 130”). The Action Request asked the Division of Public Utilities (“DPU”) to provide an updated estimate of the amount at which the surcharge should be set in light of these changes and to presume an effective date of July 1, 2019 for any change to the surcharge.

On January 11, 2019, the DPU filed its response to the Action Request (“DPU’s Recommendation”). On January 14, 2019, the PSC issued a Notice of Comment Period, inviting interested parties to file comments on the DPU’s Recommendation. The Utah Rural Telecom Association (“URTA”) and CTIA – The Wireless Association (“CTIA”) subsequently filed comments and the DPU and URTA filed reply comments.

2. The DPU’s Recommendation and Positions of the Parties

The DPU recommends the PSC increase the UUSF surcharge to \$0.60 per month per access line, explaining that as result of increased costs the UUSF will otherwise incur a substantial monthly deficit with costs significantly exceeding contributions to the fund. (DPU's Recommendation at 1 and Ex. A.) Specifically, the DPU estimates the UUSF's annual costs will average \$21,648,861 from 2019 through 2021, after factoring in the increased costs stemming from S.B. 130 and its implementation. (*Id.* at 4.) On a monthly basis, the average costs are \$1,804,072.

Because the UUSF is funded through a monthly surcharge on access lines, monthly contributions to the UUSF are a function of the number of access lines paying the charge and the amount of the surcharge. The DPU represents it has recorded "an average [of] 3,084,787 connections paying into the UUSF each month."¹ (*Id.*) At the current monthly surcharge per access line, \$0.36, the DPU projects monthly contributions to total \$1,110,523, yielding a significant monthly deficit in light of the increased costs. (*See id.* at Ex. A.) To balance monthly costs with contributions and to meet the legislative goal of maintaining a balance approximately equal to three months' expenses, the DPU recommends a \$0.24 increase in the surcharge. The DPU further recommends the PSC make the new \$0.60 rate effective May 1, 2019 to prevent monthly deficits from excessively eroding the account balance.

As noted above, the PSC received comments from two parties concerning the DPU's Recommendation, URTA and CTIA. URTA supports the DPU's Recommendation and

¹ This is the average from the months March through November, 2018. (DPU's Recommendation at 4.)

represents “increasing the surcharge to \$0.60 per access line/connection should result in a stable fund.” (URTA Comments filed Feb. 6, 2019 at 4.)

CTIA opposes the DPU’s Recommendation and argues the PSC should “in place of the surcharge increase, initiate a review of the UUSF program to ensure that it is sustainable and the burden on consumers is the minimum necessary to achieve UUSF goals.” (CTIA Comments filed Feb. 6, 2019 at 4.) URTA argues the “UUSF surcharge seems to be increasing at an unsustainable pace” and expresses concern that unless support is capped additional increases may be necessary in the near future. (*Id.* at 3-4.) In so arguing, CTIA emphasizes “the main stress on the Fund is the addition of broadband eligibility for disbursements.” (*Id.* at 3.)

Responding to CTIA’s concerns, the DPU points out the Legislature conducted a comprehensive review of the UUSF during the 2017 legislative session when it passed S.B. 130, mandating changes to the UUSF that “have generally increased UUSF estimated distributions.” (DPU Reply Comments filed Feb. 20, 2019 at 5.) In light of these legislative mandates, the DPU expresses concern as to whether the PSC has authority to “make meaningful changes” with respect to the increase in projected costs.²

URTA similarly argues “the Legislature already did a comprehensive review of the UUSF in 2017” and “determined comprehensive changes to the UUSF were needed.” (URTA Reply Comments filed Feb. 20, 2019 at 2.) URTA maintains the PSC does not “set the policy

² See DPU Reply Comments at Feb. 20, 2019 (suggesting CTIA present its concerns to the Legislature and representing the PSC’s authority to make “meaningful changes in accordance with CTIA’s position” is “not obvious in light of [S.B. 130].”)

goals related to the size and scope of the UUSF,” rather the PSC’s role is to set the surcharge at a rate that will cover the UUSF’s costs “based on the mandates of the Legislature.” (*Id.* at 2, 4.)

3. Findings, Conclusions, and Notice of Rule Filing

Having reviewed the DPU’s Recommendation, the parties’ comments, and the parties’ reply comments, the PSC finds and concludes that the existing surcharge of \$0.36 per month per access line is insufficient to cover the costs the UUSF is obliged to pay under Utah Code Ann. § 54-8b-15. The PSC finds increasing the monthly surcharge to \$0.60 per month per access line, consistent with the DPU’s Recommendation, is reasonable, appropriate, and necessary to maintain a responsible UUSF balance consistent with legislative goals. The PSC further finds, in light of the monthly deficits being generated under the extant rate, that implementation of the increase as of May 1, 2019 is reasonable, appropriate, and necessary.

While the PSC acknowledges CTIA’s concerns about the significant rise in UUSF costs and the potential for those costs to further rise, these concerns offer no basis upon which to delay or refuse to implement the necessary increase to the surcharge. The Legislature made numerous changes to the UUSF, in S.B. 130, that significantly increased its costs, including the addition of broadband internet service to the scope of services eligible for UUSF disbursements. It is not the PSC’s role to second guess or undermine these clear legislative mandates.

Further, owing to its recent enactment in 2017 and the time required for subsequent rulemaking proceedings, many of S.B. 130’s changes to the UUSF have only recently been implemented. At this early juncture, the review CTIA argues is a requisite to the surcharge increase would be redundant of policy arguments and considerations already made before and

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determined by the Legislature. The PSC concludes it would be inappropriate and irresponsible to delay an increase in the surcharge, allowing the UUSF to incur significant monthly deficits, pending the completion of the “comprehensive review” for which CTIA advocates.

For the reasons stated here, the PSC adopts the DPU’s Recommendation to increase the UUSF contribution surcharge to \$0.60 per month per access line. To effectuate the increase, the PSC gives notice it has, on this date, filed an amendment to R746-8-301 with the Division of Administrative Rules to be published in the Utah State Bulletin on March 15, 2019. The comment period will conclude on April 15, 2019. As stated above, barring unforeseen developments that require a different result, the PSC intends to make the amendment effective on May 1, 2019.

DATED at Salt Lake City, Utah, February 27, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#306815

CERTIFICATE OF SERVICE

I CERTIFY that on February 27, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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