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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

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To: Public Service Commission of Utah

From: Office of Consumer Services
Michele Beck, Director
Cheryl Murray, Utility Analyst

Date: October 30, 2018

Subject: 2019 Utah Universal Service Fund Preliminary Recommendations

Docket Nos. 18-040-01, 18-041-02, 18-042-01, 18-043-01, 18-046-01, 18-050-02, 18-051-01, 18-052-01, 18-053-02, 18-054-01, 18-576-01, 18-2180-01, 18-2201-01, 18-2302-02, 18-2303-01, and 18-2419-01

History and Background

On July 1, 2017, the provisions of new legislation passed by the 2017 Utah Legislature, designated SB 130 – Universal Service Fund Amendments, became effective. The provisions of this new law are codified within various sections of Utah Code Section 54-8b. Of specific interest in the proceedings noted above are the provisions of Utah Code Section 54-8B-15 (5) (a) and (b) which provide:

> (5) A rate-of-return regulated carrier of last resort that qualifies for funds under this section:
> (a) is entitled to a rate of return equal to the weighted average cost of capital rate of return prescribed by the Federal Communications Commission for rate-of-return regulated carrier; and
> (b) may use any depreciation method allowed by the Federal Communications Commission.

On February 21, 2018, the Public Service Commission of Utah promulgated new rules related to the Utah Universal Service Fund. These new rules can be found in the Public Service Commission's Rules at R746-8. Of specific interest in these proceedings are the provisions of Rules R746-8-401 subsections (3) and (4).

Subsection (3) sets forth the Federal Communications Commission's prescribed rates of return for regulated carriers as of specifically listed dates. The provisions of subsection (3) (a) (iii) and (iv) state that beginning July 1, 2018, the rate of return should be 10.5% and that beginning July 1, 2019, the rate of return should be 10.25%.

Subsection (4) states:

> Yearly following a change in the FCC rate-of-return, unless the provider files with the commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:
> (a) The current FCC rate-of-return as set forth in R746-8-401(3)(a); and
> (b) The provider's financial information from its last Annual Report filed with the Commission.

On October 4, 2018, the Division of Public Utilities made several filings related to various providers of rural telecommunications services containing its preliminary recommendation as to whether the company's monthly distribution of UUSF funds should be adjusted.

On October 9, 2018, in Docket No. 18-999-09, the Division sent comments to the Commission identifying three issues that may need to be resolved:

- Interest Synchronization
- Prospective or Retroactive UUSF payments
- Excess Deferred Income Tax (EDIT)

On October 12, 2018, the Commission issued a scheduling order indicating that responses to the Division's recommendations are due Tuesday, October 30, 2018 with replies due Thursday, November 15, 2018.

Office of Consumer Services Response to DPU Recommendations

The Office has reviewed the Division's recommendations for each of the service providers identified in these consolidated proceedings, as well as its comments outlining three more global issues. The Office has not identified additional issues that need to be addressed at this time but has some reservations about the full scope of issues that might be raised considering the limited information that has been included in each of the initial filings and the quick timeline that has been established. The Office's specific positions on the global issues identified by the Division are described below.

Interest Synchronization and related issues

The Office has an interest in issues related to interest synchronization as it has supported similar adjustments in previous cases. However, based upon the limited information provided by the Division in its Preliminary Recommendations and related workpapers, the Office has not been able to determine whether the Division's use of interest synchronization is required or necessary as an equitable adjustment in light of the changes that have been required by the enactment of SB130. There is no testimony and related evidence which would address the appropriateness or necessity of making interest synchronization adjustments. Thus, the Office must wait to review the comments of other parties, and presumably additional supporting information from the Division, before it can be in a position to take a specific position on this issue.

The Office also notes that the Division references a possible new Utah rule regarding depreciation that might affect the use of group depreciation. The record contains no additional information related to such a rulemaking procedure, no description as to what might be addressed, and no justification or explanation as to why a new rule might be necessary. The Office is concerned about the Division's casual reference to a potentially significant change since no other party can take a position on the matter without additional information.

Prospective or Retroactive UUSF Payments

The recently promulgated rule requires the Division to make an annual filing to update rate of return and to restate a service provider's monthly assessment based on the currently effective FCC rate of return and on the service providers' financial information from its last Annual Report filed with the Commission. It appears that the Division has followed the recently promulgated rule, which is also consistent with the enabling statute, in deriving its recommended assessments.

The Office acknowledges that the Division's resulting recommendation is not the equivalent of a full rate case or UUSF request proceeding filed by a service provider or filed by the Division. If the Division sees that other adjustments need to be made to ensure that rates are just and reasonable, it should initiate a separate, full-blown investigation into the rates and charges being assessed by the service provider. Similarly, if the service provider sees that there are inadequacies not being addressed in the Division's annual assessment related to rate of return, the service provider has the opportunity to file its own request for more comprehensive UUSF proceeding where its rates can be fully reviewed and evidence submitted as to whether such rates are just and reasonable.

Excess Deferred Income Taxes

Along with the recognition of the changes in future tax rates is the recognition that changes will necessarily have to be made to regulatory accounts that have been created to capture deferred taxes. The Office supports the adjustments recommended by the Division to address EDIT.

To the extent that any service provider may not be entitled to UUSF funding on a going forward basis, other equitable adjustments may need to be considered in order to recapture the tax effects of the changes being made in EDIT and ensure that those benefits are appropriately passed through to customers. Thus, the Office recommends that this Commission enter an order for Union Telephone Company, Skyline Telecom, Bear Lake Communications, Citizens Telecom Company of Utah, Navajo Communications Company, Inc. and Direct Communications Cedar Valley[1] establishing deferred accounting for the EDIT funds such that they can be returned to the ratepayers of each of the applicable providers over an appropriate period.

Office Recommendations

The Office generally supports the Division's Recommendations concerning changes in UUSF assessments, with the following exceptions and additions:

- The administrative record contains insufficient supporting information regarding the interest synchronization issue. The Office will review other comments filed and take a position in reply comments.
- The Commission should establish necessary deferred accounting orders for Union Telephone Company Inc., Skyline Telecom, Bear Lake Communication, Direct Communication Cedar Valley, Citizens Telecom Company of Utah and Navajo Communications Company, Inc. to facilitate appropriately returning the EDIT funds to ratepayers.

[1] The Division recommends reducing the UUSF to $0 effective January 1, 2019, for Union Telephone Company Inc. – Docket No. 18-054-01, Skyline Telecom – Docket No. 18-576-01, and Bear Lake Communication - Docket No. 18-2201-01. The Division recommends that UUSF for Direct Communication Cedar Valley be suspended pending receipt of additional information (Docket No. 18-2419-01). Citizens Telecom Company of Utah – Docket No. 18-041-02 and Navajo Communications Company, Inc. – Docket 18-050-02 do not currently receive UUSF and do not qualify for 2019.