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*Attorneys for Utah Office of Consumer Services*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-040-01
Central Utah Telephone, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-041-02
Citizens Telecommunications Company	)	
of Utah dba Frontier Communications	)	
of Utah	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-042-01
Emery Telephone	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-043-01
Gunnison Telephone Company	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-046-01
Manti Telephone Company	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-050-02
Navajo Communications Company, Inc., dba	)	
Frontier Navajo Communications Company	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-051-01
Beehive Telephone Company, Inc.	)	

2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-052-01
South Central Utah Telephone Association, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-053-02
UBTA-UBET Communications, Inc., dba	)	
Strata Networks	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-054-01
Union Telephone Company, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-576-01
Skyline Telecom	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-2180-01
All West Communications, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-2201-01
Bear Lake Communications, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-2302-02
Carbon/Emery Telcom, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-2303-01
Hanksville Telcom, Inc.	)	
2019 Utah Universal Service Fund	)	
Preliminary Recommendation for	)	Docket No. 18-2419-01
Direct Communications Cedar Valley, LLC	)	

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**REPLY COMMENTS OF THE OFFICE OF CONSUMER SERVICES**

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On October 30, 2018, the Public Service Commission (“Commission”) received initial comments in the above referenced dockets from the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), The Utah Rural Telecom Association (“URTA”), Union

Telephone Company (“Union”), and All West Communications, Inc., (“All West”). Various issues were addressed, some applicable to individual companies and some applicable to many of the rural telecommunication companies.

The Office provides the following Reply Comments addressing some of the critical issues presented. While the Office is not providing specific reply comments on each issue, the lack of comments should not be construed as an endorsement of any position.

### **Prospective or Retroactive determination of UUSF payments**

The requirements of Utah’s new UUSF statute show a legislative intent to have UUSF determinations updated and restated on an annual basis. Subsection (5)(a) of Utah Code Section 54-8B-15 specifically provides that for a telecom company that qualifies for UUSF funding, it 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.” Such rates of return are updated annually by the FCC.

The statute also provides that the Commission should promulgate rules to effectuate the new provisions of the law. Accordingly, the Commission promulgated new rule, R746-8-401. Subsection (4) of the new rule requires that “Yearly, . . . 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 . . . and (b) the provider’s financial information from its last Annual Report filed with the Commission.” Thus, consistent with the intent of the statute and the Commission’s new rule, the updating required in these filings should be based on information contained in the latest annual filing of the specific telecom company and restated to incorporate the currently effective FCC rate of return.

The Division notes in its initial comments the general prohibition against retroactive ratemaking. *See, MCI Telecommunications Corp. v. Public Service Comm'n of Utah*, 840 P.2d. 765, 770 (Utah 1992). More specifically, the process of setting rates utilizing cost and revenue data applicable to a prospective period is specifically addressed in *Utah Dept. of Business Regulation, Div. of Public Utilities v. Public Service Com'n of Utah*, 720 P.2d 420, (Utah 1986).

There the Court held:

In determining an appropriate rate, the PSC considers the utility's historical income and cost data, as well as predictions of future costs and revenues, and arrives at a rate which is projected as being adequate to cover costs and give the utility's shareholders a fair return on equity. To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rates retroactively to compensate for unanticipated costs or unrealized revenues.

*Id.* at 420. *See* U.C.A., 1953, § 54-4-4 (Repl.Vol. 6A, 1974, Supp.1985).

The Office agrees that the new Utah statute providing for restatements of UUSF determinations to be made on an annual basis should be done on a prospective basis and not be determined retroactively or as a balancing account.

However, as noted in the Office's initial comments, the Division or any service provider would retain the right to initiate a full-blown rate proceeding if this annual updating process seems inadequate to ensure a determination of just and reasonable rates for any specific service provider.

### **Interest Synchronization**

The Office has expressed interest in the issue of interest synchronization in the past and believes that in any ratemaking determination the Commission has the authority to make equitable, prudent adjustments to rates being set to ensure that they are just and reasonable.

Having reviewed the comments of the parties, there may be a legitimate question as to whether interest synchronization should apply under the circumstances of the new statute which

prescribes an overall rate of return without respect to a specific service provider's capital structure. The Office takes no position as to the current applicability of interest synchronization. However, in resolving this issue, the Office urges the Commission to ensure that the calculations are made consistently for each telecom company.

### **Excess Deferred Income Taxes**

While changes in tax rates are not an annual occurrence, they occur often enough that questions about how they should be accounted for have been clearly contemplated in the accounting rules applicable to telecom companies. *See* Utah Public Service Commission Rules, R746-340-2 (D) and 47 CFR 32 as prescribed by the Federal Communication Commission. Notwithstanding such guidance, the details of adjustments being made to accounts and examination of how such changes affect individual companies, including those companies who may not be currently entitled to new UUSF contributions, is sometimes an involved process.

The Office notes that parties to this proceeding have met and have discussed pending issues related to excess deferred income taxes and believe that they are close to resolving the issue. The Office supports a modification to the existing procedural schedule that would allow the parties to confer further with the expectation that parties could reach agreement on how issues related to excess deferred income taxes might be resolved instead of having the Commission address this issue at this time. Additional time will also allow for the record to be augmented with a more specific accounting of which companies are impacted by this issue. A modification to the procedural schedule might also aid in the resolution of other issues that have been raised which are fact specific to individual telecom companies.

## **Treatment subsidies supporting new broadband deployment**

Union Telecom raised an issue related to how subsidies received from the federal government in support of the deployment of new broadband services should be accounted for in determining an appropriate UUSF distribution. It is not clear based on the record evidence how those specific funds have been treated in the Division's recommendation. The Office also understands that this issue would potentially apply to other telecom companies also engaged in extending broadband services. The Office needs more information regarding the potential implications of the issue Union raises and the specific potential remedies before it can take a position. Presumably DPU and URTA will respond in their reply comments. Additional process will allow the office the opportunity to take a more considered position.

## **Recommendations of the Office of Consumer Services**

1. The Commission should confirm that the new UUSF statute should be construed as setting rates on a prospective basis utilizing recent historic data and incorporating the current FCC overall rate of return.
- 2 A modification to the procedural schedule is needed (1) to allow the parties to finalize their agreement on how EDIT issues should be resolved, and (2) to augment the record on the EDIT and Union Telecom issues. . The Office understands that URTA is making a request for an additional round of comments and supports this request. Depending on what is presented in this next round, the Office may find it necessary to request additional process.

**Respectfully submitted,**

\_\_\_\_\_/s/\_\_\_\_\_  
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