

Kira M. Slawson (7081)3-049-01  
 BLACKBURN & STOLL, LC  
 257 East 200 South, Suite 800  
 Salt Lake City, Utah 84111  
 Telephone (801) 521-7900  
[kslawson@blackburn-stoll.com](mailto:kslawson@blackburn-stoll.com)

Attorneys for Utah Rural Telecom Association

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
In the Matter of  QWEST CORPORATION d/b/a CENTURYLINK QC  Petition for Statewide Exemption from Carrier of Last Resort Obligations	UTAH RURAL TELECOM ASSOCIATION’S PRE-HEARING BRIEF  DOCKET NO. 23-049-01

The Utah Rural Telecom Association (“URTA”), on behalf of itself and URTA members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, E Fiber Moab, LLC, E Fiber San Juan, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URTA Members”) hereby submits this Pre-Hearing Brief on the following two issues, as permitted by the Order of the Utah Public Service Commission (“Commission”) dated January 8, 2024.

- I. **Does the term “captive customers” in Utah Code § 54-8b-3(6) refer to present customers only, or does it include present and potential customers in CenturyLink’s certificated exchange areas, including new/potential customers who move into locations presently served by CenturyLink?**

Utah Code 54-8b-3(6) provides “In determining if the proposed exemption is in the public interest, the commission shall consider, in addition to other relevant factors, the impact of the proposed exemption would have on captive customers of the telecommunications corporation.” “Captive customer” is not defined in Utah Code. The question is whether “captive customer” refers only to current customers

of the utility, or whether it refers to current and potential customer of the utility. Utah code Section 68-3-11 provides that “words and phrases are to be construed according to the context and the approved usage of the language; but technical words and phrases, and such other as have acquired a peculiar and appropriate meaning in law, or are defined in statute, are to be construed according to such peculiar and appropriate meaning or definition.”<sup>1</sup>

When interpreting a statute, the primary objective of the court is “to ascertain the intent of the legislature.” *McKitrick v. Gibson*, 2021 UT 48, ¶19 (quoting *Castro v. Lemus*, 2019 UT 71, ¶17). “The best evidence of the legislature’s intent is the plain language of the statute itself,”<sup>2</sup> but “we do not interpret statutory text in isolation.”<sup>3</sup> Rather, the court must “determine the meaning of the text given the relevant context of the statute (including, particularly, the structure and language of the statutory scheme.”<sup>4</sup>

The Utah Legislature did not define captive customer. However, in utility regulation, and in the law, the term “captive customer” means “a customer who does not have realistic alternatives to buying power from the local utility, even if that customer had the legal right to buy from competitors.”<sup>5</sup> There is no limitation in the Black’s Law Dictionary definition that limits the definition’s applicability to only those customers who actually take the service, rather “captive customer” refers to any customer who has no meaningful choice. If a customer wants a particular service but has no choice as to who provides the service, they are a “captive customer” - whether they actually subscribe to the service or not.

This interpretation is bolstered by reviewing the structure and language of the statutory scheme as discussed by the Supreme Court in *McKitrick v. Gibson*. Utah Code Section 54-8b-15 defines a carrier of last resort (“COLR”) as an incumbent telephone corporation; or a telecommunications corporation that,

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<sup>1</sup> Utah Code Section 68-3-11

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, quoting *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶12.

<sup>4</sup> *Id.*

<sup>5</sup> *Blacks Law Dictionary*, 2<sup>nd</sup> Ed.

under Section 54-8b-2.1: (A) has a certificate of public convenience and necessity to provide local exchange service; and (B) has an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.” Utah Code 54-8b-15(1)(b). An “incumbent telephone corporation” is defined as a telephone corporation, its successors or assigns, which, as of May 1, 1995 held a certificate to provide local exchange services in a defined geographic service territory in the state.” Utah Code 54-8b-2(9). Historically, the COLR is a monopoly provider of the public telecommunications service in the local exchange. While some residents may not subscribe to a COLR service, a customer’s act of not subscribing to service at any given time does not indicate that the customer is not served by the COLR. When there is a COLR identified in a particular service area of the state, that COLR has an obligation to serve any customer or class of customer who requests service in that area. Imagine a customer moves into a rural location in January where there is only one choice for landline telephone service – the COLR. This customer comes from an urban area and believes that she can rely on her cell phone for voice coverage at her new home. After living at the location for a month, however, the customer learns that the cell coverage at her new house is patchy and unreliable. The customer calls the COLR to obtain landline service so she can obtain reliable voice service. The provider, as the designated COLR, is required to provide service to the customer. If that provider were relieved of its COLR obligation, the provider would have no obligation to provide service to the requesting customer and the customer would be left with no meaningful choice of providers. Such a customer is a captive customer. She has no choice of provider – if this customer wants reliable service, she is captive to the only provider serving the area – whether or not she takes service from the provider.

**II. Whether a public telecommunication service’s eligibility for UUSF support pursuant to Utah Code § 54-8b-15 makes that service a “functionally equivalent” service to landline service, as the term “functionally equivalent” is used in Utah Code § 54-8b-3(5)(b).**

Utah Code Section 54-8b-3(5)(b) provides that “the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions.” The Legislature did not

define “functionally equivalent.” CenturyLink argues that all services that explicitly qualify for COLR funding,<sup>6</sup> must be considered “functionally equivalent.” There is absolutely no statutory support for this position. The UUSF statute, Utah Code Section 54-8b-15, merely states that the UUSF shall be used to support networks capable of providing: (i) access lines; (ii) connections; and (iii) broadband internet access service. Nothing in Utah Code 54-8b-15 suggests that these are functionally equivalent services, and the fact that each is eligible for UUSF has nothing to do with the functional equivalence of the service. The fact that a service may be eligible for UUSF support under Section 54-8b-15 does not address the functional equivalence standard that the Commission needs to address under Section 54-8b-3(5).

Moreover, a basic understanding of the various services clearly demonstrates that such services are not the functional equivalent of each other. The plain meaning of “functionally equivalent” services means the function of the services are the same, or the services perform the same function. Access lines and connections allow a customer to send and receive telephone messages using the public switched telephone network. Broadband internet access service allows a customer to send and receive data over the Internet. The COLR obligations relate to public telecommunications service, including voice service. Broadband service by itself cannot satisfy a COLR’s duty to offer basic local exchange service in a defined service area. Therefore, even though access lines and broadband internet access service are both eligible for UUSF support, they are not “functionally equivalent” services.

### **III. CONCLUSION**

For the foregoing reasons “captive customers” must include existing and potential customers who do not have a meaningful choice in service; and being eligible for UUSF support does not make services functionally equivalent.

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<sup>6</sup> URTA is not aware of what “COLR funding” is, but suspect, based on the reference to Utah Code 54-8b-15, this should be “UUSF funding.”

DATED this 25<sup>th</sup> day of January, 2024.

BLACKBURN & STOLL, LC



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Kira M. Slawson  
Attorneys for Utah Rural Telecom Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of URTA's Pre-Hearing Brief, Docket 23-049-01, was served the 25<sup>th</sup> day of January, 2024, as follows:

DIVISION OF PUBLIC UTILITIES (by email)

Patricia Schmid  
[pscmid@agutah.gov](mailto:pscmid@agutah.gov)

Patrick Grecu  
[pgrecu@agutah.gov](mailto:pgrecu@agutah.gov)

Chris Parker  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)

Brenda Salter  
[Bsalter@utah.gov](mailto:Bsalter@utah.gov)

OFFICE OF CONSUMER SERVICES (by email)

Robert Moore  
[rmoore@agutah.gov](mailto:rmoore@agutah.gov)

Michele Beck  
[mbeck@utah.gov](mailto:mbeck@utah.gov)

Alyson Anderson  
[akanderson@utah.gov](mailto:akanderson@utah.gov)

Qwest Corporation (by email)

Katie Wagner  
[Katie.wagner@lumen.com](mailto:Katie.wagner@lumen.com)



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Kira M. Slawson