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November 13, 2008

Ted Boyer, Chair
Ric Campbell, Commissioner
Ron Allen, Commissioner
Public Service Commission
Heber M. Wells Bldg., 4th Floor
Salt Lake City, Utah 84111

Re: Reconsideration of Commission's Denial of Petition for Rulemaking on Capital Structure in **Docket No. 07-999-09**

Dear Commissioners:

On behalf of the Utah Rural Telecommunications Association, ("URTA") I am writing to request that you reconsider your denial of the Division of Public Utilities' Petition for Rulemaking to enact a capital structure rule. The Commission's alternative solution suggesting that the Division can simply apply the provisions of the rule on a case by case basis is exactly what URTA was trying to address and overcome when it filed its Petition for Rulemaking December 20, 2007.

As you know, virtually all URTA member rate cases are stipulated among the parties before they are presented to the Commission. The proposed rule establishes a framework for negotiations with the Division on the issue of capital structure where none has existed. In the past, the outcome has been dependent on the views of Division staff which have changed with changes in personnel. For some time, the Division's approach was to impose a hypothetical capital structure of 50 percent equity and 50 percent debt for all companies. After a change in personnel, the Division continued imposing a 50 percent capital structure on companies with an equity ratio above 50 percent, but for companies with equity ratios below 50 percent, the Division used the company's actual capital structure. The treatment has been uneven and arbitrary. While a company could challenge this treatment before the Commission and in court, URTA has tried instead to reach compromise in the proposed rule rather than spend resources in litigation.

As the Division explained in its September 15, 2008 memorandum, the proposed rule strikes a balance for all companies to which the Division, the Committee of Consumer Services, URTA, and

Frontier agreed. All companies with equity ratios between 65 percent and 35 percent[1] would use their actual capital structures to determine their rates and universal service fund distributions. Companies exceeding 65 percent[2] would be reduced to 65 percent in a hypothetical capital structure and companies below 35 percent would be increased to 35 percent.[3] Any who remain below 20 percent would either have to have an acceptable explanation for not attaining higher levels or face the possibility of the imposition of a different capital structure.

The proposed rule gives URTA the predictability and fairness it has been seeking. The Commission may not remember that the companies with higher debt in their capital structures financed the acquisition of Qwest's rural exchanges with debt. The Commission found those acquisitions to be in the public interest because the URTA members who purchased the exchanges upgraded the switches and gave the customers better service. The acquisitions occurred during the period when the Division used a hypothetical 50/50 capital structure for all companies and the Division and the companies analyzed the acquisitions using that structure. The proposed rule will help these companies increase the equity in their capital structures with the objective of reaching the actual capital structure range of 65/35.

When the Commission denied URTA's December 20, 2007 Petition for Rulemaking, it created the Telecom Capital Structure Taskforce to make recommendations to the Commission by August 22, 2008. During 2008, this task force met April 9th, April 21st, May 5th, May 27th, June 16th, June 30th, July 14th (conference call), July 18th, and August 1st to meet the Commission's requirements. The Commission's decision has left the participants in the place they were in when they started based on a concern that somehow the proposed rule will limit the Commission's ability to set just and reasonable rates. If the Division's 50/50 capital structure regime resulted in just and reasonable rates before, the proposed rule should even more so. It is considerably more refined and fair than the 50/50 regime or the regime in which companies below 50 percent had to use their actual capital structure.

Given the amount of time spent and effort made by the task force to produce the rule through compromise, URTA requests that the Commission meet with the task force to express their concerns and see if the task force can address them. URTA would also ask that the Commission reconsider its denial and publish the rule to take comment. Thank you for your consideration.

CALLISTER NEBEKER & MCCULLOUGH

Stephen F. Mecham

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[1] Five companies are in this range.
[2] Seven companies have equity ratios above 65 percent.
[3] Five companies are in this category; two are just below 35 percent.