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June 19, 2018

Public Service Commission of Utah
Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Re: Cooperative Rate-of-Return

Dear Commissioners:

Uintah Basin Telecommunications, Inc., Emery Telephone and South Central Utah Telephone Association, Inc. (collectively, the "Cooperatives"), have asked that I express to you, on their behalf, their appreciation for the Commission having taken its time to meet with them to hear their concerns regarding the cooperative rate-of-return and USF issues. The Cooperatives certainly better understand the Commission's concerns and hope that, as a result of the meeting, that the Commission can appreciate the concerns of the Cooperatives.

As the Cooperatives expressed in the meeting, there are a number of concerns which they have with any change in the traditional rate-of-return structure that has been applied to cooperatives generally. One of the immediate concerns is the impact of the uncertainty as to what the Commission may or may not do on various pending matters such as the UBTA-UBET Telecom merger application, potential loan restructures with the Cooperative's lenders, financing issues and others. Given the impact of the uncertainty, the Cooperatives ask that the Commission make its determination as expeditiously as possible.

The Cooperatives also ask the Commission to consider the following concerns which they expressed during the course of the meeting:

- <u>The owners of a cooperative should not be treated differently from the owners of a for-profit corporation</u>. The members of a cooperative are its owners. Under Utah law, member of a cooperative, even though the cooperative is a not-for-profit entity, are entitled to the margins generated by the operation of the business in the form of patronage. As such, those owners are entitled to share in the earnings of the cooperative as would the owners/shareholders of any for-profit corporation. Shareholders in a for-profit corporation receive dividends based on the earnings of the company. The amount of earnings, if any, which is distributed in any year to the shareholders of a for-profit corporation is at the reasonable discretion of the company's board of directors. Likewise, the patronage allocated to the members of a cooperative is at the reasonable discretion of the cooperative's board of directors. Unlike a for-profit corporation in which dividends are paid in the year in which they are declared, however, a cooperatives members may not receive patronage distributions for an extended period of time. Those earnings not distributed are invested in capital projects of the cooperative. Using earnings reduces the company's dependence on borrowed funds to make such investments. The owners of a public utility, whether a cooperative or investor-owned, are entitled to a return of, and a return on, invested capital. In the case of both a cooperative and an investor-owned utility, earnings which are used for capital investment by the company are earnings to which the owners are entitled but which they have deferred distribution in order to benefit the company. Accordingly, such earnings constitute additional capital investments by those owners.

- <u>Patronage distributions do not constitute a reduction of the amount which members pay for telecommunications services</u>. There seems to be a mis-perception that patronage distributions result in an across-the-board reduction in the amounts which subscribers pay for services provided by a cooperative. In reality, there is no direct relationship between patronage distributions and the amounts which members pay for services during any given year. The members of a cooperative delay receipt of patronage which have been allocated based on the operating margins of the cooperative for up to twenty or more years in order that the company have the ability to make capital investments in the company from internally-generated funds. In some years patronage is paid and other years it is not, depending on the capital needs of the company from year-to-year. Ultimately, the amount which members receive in distribution may not even equal what the earnings would have been on the principal amount which the members have deferred receipt. In substance, given the substantial delays in receipt of patronage, the members don't even realize a reasonable rate of return on their deferred distributions let alone a return of those deferred distributions.

- Reducing a cooperative's rate-of-return will result in a reduction of the retained earnings in which the cooperatives may invest in broadband and other emerging technologies. The cooperatives have traditionally utilized a substantial portion of their earnings to reinvest in the development and deployment of plant and facilities with a focus on broadband and other emerging technologies. As noted above, a cooperative does not distribute all of its earnings from year-to-year but retains those earnings for capital investment. As a result, patronage is distributed on a delayed basis; in some cases, up to twenty years. Reducing the rate-of-return for cooperatives will result in lower levels of retained earnings for such capital investment and effectively deny the cooperatives' subscribers the benefits of the deployment of broadband and other emerging technologies in their service territories.

- Reducing a cooperative's rate-of-return will result in a loss of borrowing power. In addition to a decrease in available, internally-generated capital with which to invest in plant, facilities and emerging technologies, a reduction in the cooperatives' rate-of-return will also make it much more difficult, if not impossible, for cooperative to borrow funds with which to implement expansion of plant, facilities and services. Cooperatives have traditionally relied upon a combination of earnings and borrowed funds in order to fund capital investment. Without the availability of borrowed funds, any development and deployment of plant and facilities, particularly those associated with broadband and emerging technologies, will be dramatically curtailed, if not eliminated.

- Reducing a cooperative's rate-of-return may result in increased costs of borrowing funds. A reduction in the cooperative's authorized rate-of-return may result in the cooperative's lender increasing the risk rating of the cooperative and, as a result, increasing the interest rate and other borrowing costs on the cooperative's loans.

- <u>Reducing a cooperative's rate-of-return will result in the violation of existing loan covenants</u>. A reduction in a cooperative's rate-of-return, and the concomitant reduction in revenues resulting therefrom, will result in the violation of existing loan covenants with the cooperative's lenders. The structure of the loans from the cooperatives' lenders have been based on traditional rate-of-return regulation in which there is no differentiation between the levels of return for a cooperative and those for a investor-owned utility. Further, a reduction in revenues may result in the cooperatives' inability to service debt which has been borrowed for the purpose of acquiring, expanding, and modernizing plant and facilities and developing and deploying broadband and other emerging technologies.

- <u>Reducing a cooperative's rate-of-return may adversely impact the quality of services as well as the range of services available</u>. As noted above, any reduction in the rate-of-return for cooperatives which would necessarily reduce the revenue requirement for the companies would result in a decrease in internally-generated funds available for capital investment as well as adversely impact the ability of the cooperatives to borrow funds with which to invest in acquiring, expanding, developing, replacing and maintaining the plant and facilities of the cooperatives. As such, the subscribers of the cooperatives will be denied the new services and technologies which the subscribers of investor-owned utilities will enjoy. Also, without sufficient capital, cooperatives will not be able to replace and modernize older facilities thereby ultimately affecting not only the types of services available but also the quality of those services. Further, decreases in revenues resulting from a reduction in the rate-of-return may force the cooperatives to utilize funds which would have otherwise been earmarked for maintenance, repair and replacement to be used to service the debt which the companies had incurred in reliance on the traditional rate-of-return structure which the Commission has employed since the beginning of the cooperative efforts.

As you could probably sense at the meeting, the issue of the rate-of-return is one that is very near and dear to the hearts of the Cooperatives, their respective members and lenders. Clearly, the Cooperatives would prefer that the rate-of-return structure remain as it is and has been over the years.

We appreciate you consideration. If you have any questions concerning the above, please feel free to contact me at your convenience.

Very truly yours,

BLACKBURN & STOLL, LC

Stanley K. Stoll

cc: Michael Ginsberg, Esq.
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