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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Increase of Rates And Charges and Increase in USF Eligibility for Manti Telephone Company	**DIVISION OF PUBLIC UTILITY'S RESPONSE TO MTC'S MOTION FOR RECONSIDERATION AND REVIEW OR REHEARING** **Docket No. 08-046-01**

The Utah Division of Public Utilities ("DPU") hereby files its Memorandum in Response to Manti Telephone Company ("MTC") Motion for Reconsideration and Review or Rehearing. The DPU opposes the request for reconsideration, review, or rehearing. The DPU does not have sufficient information to object to or support the MTC request for temporary stay and requests that the Commission impose certain obligations and conditions upon any stay if granted.

Introduction

On April 25, 2008 MTC filed an Application for an increase in USF eligibility and a rate increase. Over the following nearly 5 years the DPU has struggled to evaluate the finances of MTC and calculate a proper USF distribution for MTC. Ultimately the parties to this docket were not able to reach an agreement and a hearing was held. Through written and oral testimony the parties presented evidence to the commission. On December 28, 2012, the Commission entered a Confidential Report and Order granting Manti [redacted] in USF annually, and ordering Manti to repay the interim USF it received in excess of the Company's prior-approved USF amount pursuant to two stipulations agreed to by the parties and accepted by the Commission. MTC has filed a Motion for Reconsideration and Review or Rehearing.

Discussion

MTC has requested reconsideration of the order for the following reasons: "(1) the Order is not in the public interest; (2) the pay back calculation provided by the Division is not accurate; and (3) Manti should not be required to pay back amounts that it could have received in the form of rate increases, had the Commission timely approved the requested rate increase."[1] This memo will address the arguments made by MTC in the same order.

The Commission should not Rehear or Reconsider the Order

MTC argues that the USF provided by the Commission's Order was in error. Without substantial USF support, MTC argues it will be unable to continue operations. MTC argues that it is entitled to more USF funds, but was unable to provide adequate supporting evidence. As a result the Order does not reflect the proper USF needs of MTC and is not in the public interest. MTC further requests a stay of the Order.

The DPU agrees with MTC that MTC's expert failed to provide meaningful testimony regarding the company's financial position, however this does not provide a basis for reconsideration or rehearing. The burden of proof is on the applicant. The failure to provide meaningful testimony is a reflection of the difficulties encountered throughout this docket. Over the course of almost 5 years of ongoing rate proceedings in this docket, MTC failed to keep

[1] MTC Request for Reconsideration or Rehearing p. 2.

adequate records, denied access to affiliate financial information, and generally provided so little information on the company's operations and financial position that it has been nearly impossible to accurately assess the financial position of MTC and its affiliates.[2] This has not changed. A rehearing or reconsideration would be of little value and the Commission should deny the request.

Temporary Stay of Payback

DPU cannot reach any conclusion as to whether a temporary stay of the Order is in the public interest. The DPU believes that it is not in the public interest for MTC to fail. If the Company is at immediate risk of failure as a result of the Order, it might be in the public interest to temporarily stay the Order. MTC claims this to be the case. The DPU has attempted to audit during the course of this docket and has no new information. The testimony filed and the facts provided at the hearing remain the best evidence that the DPU has of the financial standing of MTC.

The payback, if done according to the terms of the stipulations, requires substantial payments relative to the revenue of MTC. If the Commission is persuaded that MTC is at risk of failing due to the substantial payback required over a one year period, it would be in the public interest to allow an extended payback period. Moreover, MTC has experienced a significant cut to revenues from ongoing USF support. It may be in the public interest to temporarily stay the payback for a period to allow MTC to adjust to its new circumstances. The adequacy of the state USF fund balance suggests that swift repayment may not be required.

[2] MTC's affiliates position is relevant giving the questions raised concerning affiliate transactions.

In addition to a stay of the payback, while not explicit in the request for stay, the DPU understands the request to also include a stay of the Order's effect in reducing ongoing USF amounts from the prior approved USF distribution amount of $296,226 annually. However, as explained, the DPU has no new information that is materially different from that presented at trial upon which to base any opinion on this matter. Similarly there is no new evidence for the Commission to rely upon. Therefore the Division cannot endorse a stay of the USF reduction. Nevertheless, a stay could be in the public interest if MTC's financial state is as dire as it has indicated.

If the Commission were to approve of MTC's request for a stay either of the payback, the USF amount, or both it should do so with conditions. As the Commission is aware MTC has had ample opportunity to correct its record keeping and to provide the DPU and other parties with adequate documentation to support requested USF funds. As such the DPU recommends that, if a stay is granted, it be done only with conditions.

The DPU suggests that, if a stay is granted, conditions should include presentation of an aggressive plan to bring the company into compliance with the commission order, GAAP, and all other relevant financial and accounting standards required to provide regulators with sufficient information to better evaluate the company's operations. This might allow regulators to more accurately assess MTC's eligibility for USF funds. Any approval should be temporary and terminate upon failure to comply with any of the conditions and set a time frame within which MTC must submit a robust filing in support of a new USF request.

Payback Calculation

MTC raises two issues regarding the payback calculation submitted by the DPU. The first issue relates to treatment of the ordered ongoing [redacted] in annual USF. The DPU calculated payback based on the difference between interim USF payments and the pre-application USF amount of $296,226. MTC suggests that the calculation of the payback should be based difference on the interim USF amount and the sum of the $296,226 and the [redacted]. Effectively this would be the difference between interim USF and [redacted]. The [redacted] replaces the prior USF funding. There is no basis for including the [redacted] and the pre-application USF funds together to offset interim support. Therefore the Commission should reject this request.

MTC also raised the issue of whether the DPU had accounted for the $3 base rate increase in its calculation of payback. MTC's filing misunderstands the potential application of the clause. If accounted for the clause operates to increase USF payback rather than decrease it. Paragraph 16 of the December 2008 Stipulation in this docket included a provision that indicated an agreement between the parties to maintain the base rate in effect. The DPU's position at that time was that MTC was charging below the affordable base rates and should have raised rates to increase revenue and offset USF distribution. MTC at the time believed that it should not rates base rates for various reasons. The parties agree that rates would not change, but if the Commission did find MTC should have been charging higher base rates, the revenue gap would be offset against USF distributions retroactively. This is evidenced by the final sentence in the paragraph stating that "any increase in the revenue requirement of Manti's rates… will be imputed back to October 1, 2008 as **revenues available to reduce USF distributions** for Manti." (Emphasis added.) In other words MTC agreed that if it should have been charging more as the DPU believed at the time, the USF would not make up for that amount of foregone revenue.

The only potential application of this clause results in an increase in payback (decrease in USF support) to impute additional revenue to MTC for a period of charging a rate less than the affordable base rate. However, because the final USF distribution is less than the previous authorized USF amount, the DPU has only calculated the difference between interim USF payments and the previously authorized USF. The DPU does not believe that the agreement anticipated payback greater than the difference between those two values. As such the DPU has not calculated the additional revenue that could have been received had MTC increased its base rate in 2008.

The foregone revenue should not increase USF support. The Commission should deny the request for reduced payback based on MTC charging less than the affordable base rate.

Conclusion

The DPU does not believe that its filed calculations of payback amount are in error. The Commission should accept them as filed. MTC has not provided any new evidence or other basis for review or rehearing and its request should be denied. The DPU believes it would not be in the public interest for MTC to cease operations and a temporary stay with conditions may be appropriate if the Commission finds the company's continuing operations to be in jeopardy. The DPU does not have sufficient evidence to support a stay, and recommends that the Commission impose substantial conditions if a stay is granted.

Respectfully submitted this _12th__ day of February, 2013.

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