

DISCUSSION

1. Manti Has Failed to Show Legal Error to Justify Rehearing on the Issue of Manti's Annual UUSF Distribution of \$41,561

Manti argues it is in the public interest to reconsider the Commission's Order concerning the finding that Manti is entitled to \$41,561 from the Utah Universal Service Fund ("UUSF"), annually. Manti asserts this error is due to its expert witness failing "to provide meaningful testimony to rebut the testimony offered by the Office and the Division."³ The Commission is not responsible for the quality of the Company's witnesses or the testimony they provide. The Company, as the applicant, bears the burden to prove the rate increase and other relief it requests are in the public interest and will produce just and reasonable rates. The unsubstantiated assertion in Manti's motion that the Company may not be able to continue its operations without a stay of the Order does not constitute legal error of the Commission, but is due to the Company's failure to provide testimony supporting the outcome it seeks. We, therefore, find no legal basis for granting Manti's first argument for rehearing. Further, the fact that Manti asserts it has hired a new consultant, post-hearing, is of no relevance in this docket. Manti, of course, is free to file a new rate case, if and when it believes it can produce the operating cost information and other evidence necessary to meet its burden of proving the reasonableness of higher rates or higher UUSF support.

2. Manti Has Failed to Show Legal Error Regarding the Division's Payback Calculation

³ Id. at 3.

Manti's second claim of error is that the Division's "Payback" calculation adopted in the Order is inaccurate.⁴ Manti claims "[t]he Division's Payback Analysis failed to take into consideration the final award of \$41,561 per year."⁵ Manti claims "the final award should be deducted from the interim amount to accurately determine the amount of payback."⁶ The Division contends it did not err in calculating the payback schedule. "The [Division] calculated payback based on the difference between interim [U]USF payments and the pre-application [U]USF amount of \$296,226."⁷

The 2008 and 2011 Stipulations both reference a previously approved UUSF distribution which would not be subject to payback.⁸ The amount of UUSF which must be paid back is determined by subtracting the greater of either the previously approved UUSF distribution (\$296,226) or the Commission's final UUSF amount in this docket (\$41,561) from the yearly UUSF distributions paid under the terms of the 2008 and 2011 Stipulations. Thus, the final UUSF distribution in this docket could only reduce the required payback amount if it exceeded the previously approved UUSF distribution (\$296,226). Because \$41,561 is less than \$296,226, the payback calculation is unaffected by the final UUSF distribution (\$41,561). Therefore, the Division properly calculated the UUSF amount to be refunded. Accordingly, we find no legal error to support Manti's second argument for rehearing.

⁴ Id. at 6.

⁵ Id.

⁶ Id.

⁷ Division's Response to Manti's Motion for Reconsideration and Review or Rehearing, filed February 12, 2012, at 5.

⁸ See Stipulation of Manti Telephone Company and the Division of Public Utilities, at 2, ¶ 11, dated July 2, 2003 (Docket No. 03-046-01).

3. Manti Has Failed to Show Legal Error Concerning the Effect of the Rate Change on the Payback Amount

Manti is requesting an imputation of revenue Manti would have received if the applicable base rate had been raised at the time of the 2008 Stipulation, to be deducted from the required payback amount. Manti asserts that had the Commission finalized rates in a timely manner in this docket, Manti would have had these revenues available and would not have needed as much UUSF. Therefore, Manti contends it should not have to repay the incremental revenue it would have received had the applicable base rate been increased in 2008.

The Division states, “[Manti’s] filing misunderstands the potential application of the clause [contained in paragraph 16 of the 2008 Stipulation]. If accounted for[,] the clause operates to increase [U]USF payback rather than decrease it. Paragraph 16 of the . . . 2008 Stipulation in this docket included a provision that indicated an agreement between the parties to maintain the base rate in effect. The [Division’s] position at that time was that [Manti] was charging below the affordable base rates and should have raised rates to increase revenue and offset [the] [U]USF distribution. [Manti] at the time believed that it should not [raise] base rates for various reasons. The parties agree[d] that rates would not change, but if the Commission did find [Manti] should have been charging higher base rates, the revenue gap would be offset against [U]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 [U]USF distributions** for Manti.’ (Emphasis added.) In other words[,] [Manti] agreed that if it should have been charging

more as the [Division] believed at the time, the [U]USF would not make up for that amount of foregone revenue.”⁹

Paragraph 16 of the 2008 Stipulation reads,

16. The Division believes that Manti’s residential and business rates are currently below the affordable base rate and should be increased as an offset to any additional [U]USF distribution. Manti believes that changes in its EAS rates, its vertical services and its access rates may affect its [U]USF distribution. Manti and the Division have agreed that rates should not be changed in the interim for customers until a final review of Manti’s revenue requirement occurs. Manti and the Division agree that any increase in the revenue requirement of Manti’s rates ultimately determined by the Commission to be just and reasonable will be imputed back to October 1, 2008 as revenues available to reduce [U]USF distributions for Manti.¹⁰

The plain language of the provision above does not support Manti’s interpretation because it only addresses reducing the UUSF distribution by the amount of the revenue requirement **increase** which would be “imputed back” as revenues to reduce the UUSF distribution. In this case, the facts are different because the Order **decreased** the authorized revenue requirement. Therefore, the provision of the Stipulation calling for an increase in the revenue to be “imputed back” does not apply. Manti’s argument also fails because Manti and the Division agreed not to change the rates, even though the Division “believe[d] that Manti’s residential and business rates [were] . . . below the affordable base rate and should be increased as an offset to any additional [U]USF distribution.”¹¹ To now reward Manti’s unwillingness to raise rates is counterintuitive and would set a poor precedent for future UUSF dockets. Therefore, we find the Stipulation does not support Manti’s interpretation. Manti has raised no legal error, and rehearing is not warranted.

⁹ Supra n.7, at 5-6.

¹⁰ Stipulation at 3, ¶16, filed December 11, 2008 (emphasis added).

¹¹ Id.

4. Manti's Request to Stay or Suspend the Commission's Order

While the Commission finds no legal error as a result of the issues raised in Manti's motion, the Commission will consider whether the 12-month payback schedule provided for in the stipulation is in the public interest, in light of the size of the UUSF repayment amount. The Division, in its January 15, 2013 memorandum filed in this docket, stated: "Due to the magnitude of the payback relative to the size of . . . Manti's operations, the Division believes that the 12-month payback period may not be feasible for Manti to comply with and continue to provide reliable basic telephone service to its customers. The Division believes that it may be in the public interest for the Commission to allow an extended payback schedule."¹² Based on Manti's representations that the payback schedule may lead to the insolvency of the Company, the public interest warrants additional examination. Therefore, we order a 120-day stay of the repayment obligation to allow the Commission to receive testimony on the issue of the duration of the repayment schedule. This stay will allow parties to meet and discuss alternatives to the 12-month stipulated payback schedule, and to file testimony on the Company's financial capability to repay the ordered refund. We condition this stay on the Company's commitment to quickly bring the Company into compliance with GAAP and all other relevant legal, financial, accounting and regulatory standards ("compliance plan"). We encourage Manti to involve the Division in determining the adequacy of the compliance plan. We direct the Division to report on the adequacy of the Company's progress in bringing its records and accounting practices into compliance as part of the direct testimony it files in this review phase.

¹² Division Memo, filed January 15, 2013, at 1.

DOCKET NO. 08-046-01

- 7 -

In addition, we note the Order made reductions to several accounts because of the joint use of the network among Manti and its unregulated affiliates. As we evaluate Manti's ability to repay the UUSF amount to be refunded, we will restrict our analysis to the costs and revenues associated with the provision of basic telephone service. For example, on pages 39-40 of the Order, the Company's rate base was significantly reduced to reflect the joint use by Manti and its unregulated affiliates. Our evaluation of Manti's capability to repay the required refund will require all of the accounts involving jointly used assets or expenses to be similarly adjusted.

Unless and until otherwise ordered, the UUSF distributions to Manti authorized in the Commission's Order will be used to pay down the refund due until the balance is paid in full.

NOTICE OF SCHEDULING CONFERENCE

Notice is hereby given that a Scheduling Conference in the above-entitled matter will be conducted by the Administrative Law Judge for the Public Service Commission of Utah on **Thursday, February 21, 2013, beginning at 1:00 p.m. (MST), Fourth Floor Room 401,** Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah. The purpose of this scheduling conference is to set a hearing to review the 12-month repayment schedule for the UUSF that was paid on an interim basis and has been found to be in excess of the Company's previously allowed UUSF distribution. Parties should come prepared to discuss a schedule for the filing of testimony and setting of a hearing date for the review phase of this docket. Parties should be mindful that the Commission intends to have its final order on the repayment scheduled issued on or before the expiration of the 120-day stay.

Individuals wishing to participate by telephone should contact the Public Service Commission two days in advance by calling (801) 530-6716 or call toll-free 1-866-PSC-UTAH

DOCKET NO. 08-046-01

- 8 -

(1-866-772-8824). Participants attending by telephone should then call the Public Service Commission at one of the numbers posted above five minutes prior to the conference to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during any proceeding should notify the Commission at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6716, at least three working days prior to the scheduling conference.

DATED at Salt Lake City, Utah this 15th day of February, 2013.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 15th day of February, 2013, as the Order Granting Limited Review and Notice of Scheduling Conference issued by the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#241838

DOCKET NO. 08-046-01

- 9 -

Notice of Opportunity for Agency Review or Rehearing

Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February, 2013, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic Mail:

Paul Cox (paul@manti.com)
Manti Telephone Company

Kira Slawson (kiram@blackburn-stoll.com)
Blackburn & Stoll, L.C.

Justin Jetter (jjetter@utah.gov)
Paul Proctor (pproctor@utah.gov)
Assistant Utah Attorneys General

By Hand Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
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Office of Consumer Services
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Administrative Assistant