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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF EMERY
TELEPHONE'S APPLICATION FOR
AN INCREASE IN UTAH UNIVERSAL
SERVICE FUND SUPPORT

EMERY TELEPHONE'S OBJECTION TO
THE PETITION TO INTERVENE OF THE
AT&T COMPANIES

DOCKET NO. 15-042-01

Emery Telephone ("Emery") hereby files this Objection to the Petition to Intervene filed by the AT&T Companies on July 27, 2015.

BACKGROUND

On March 27, 2015, Emery filed its Application for Increase in Utah Universal Service Fund Support ("Application") together with the Testimony of Darren Woolsey and Brock Johansen. The Public Service Commission issued an Action Request on March 27, 2015 and requested that the Division of Public Utilities ("Division") provide analysis, evaluation results, and the basis for conclusions and recommendations regarding Emery's Application. Under Section 54-10a-302 of the Utah Code, the Office of Consumer Services ("Office") is required to assess the impact of utility rate changes and other regulatory actions related to an applicable public utility on residential customers and small commercial consumers, and may intervene in

such matters. *UCA 54-10a-302*. Applicants are required to provide confidential information to the Division and the Office to permit them to perform their statutory functions. *See Utah Public Service Commission Rule R746-100-16*.

In addition to review of the Application, Testimony, and confidential information that Emery has provided in this case, both the Division and the Office have been very involved in this case. Both the Division and the Office participated in a site visit and field audit of Emery. The Division has issued four sets of data requests, and the Office has issued three sets of data requests to which Emery has responded with hundreds of pages of documents.

On July 27, 2015, the AT&T Companies petitioned for intervention pursuant to Rule R746-100-7 and Utah Code 63G-4-207.¹ The grounds for AT&T's Petition for Intervention are that²:

1. The AT&T Companies are required to make regular payment to the UUSF;
2. If the Commission grants Emery's request for increased UUSF support, this will substantially increase the amount of money that the AT&T Companies will have to pay into the UUSF; and
3. Customers of the AT&T Companies may be impacted if the AT&T Companies are forced to increase rates to cover the increased UUSF contributions that may be required as a result of the relief requested by Emery Telephone.

¹ Although the AT&T Companies claim to have filed their Petition to Intervene in accordance with Utah Code 63G-4-207, Section 63G-4-207 requires that the person who wishes to intervene shall mail a copy of the Petition to each party. Neither Emery, nor counsel for Emery received a copy of the Petition in the mail. Counsel for Emery and Emery learned of the Petition to Intervene on August 10, 2015 upon routine review of the Utah Public Service Commission website.

² *See Petition to Intervene of the AT&T Companies*.

ARGUMENT

I. Petitioners Do Not Meet the Statutory Elements of UCA Section 63G-4-207.

The AT&T Companies' Petition for Intervention should be denied. Section 63G-4-207 of the Utah Code governs intervention in a formal adjudicative agency proceeding. Under Section 63G-4-207, a party seeking intervention must include a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding or that the petitioner qualifies as an intervenor under any provision of law, and a statement of the relief that the petitioner seeks from the agency. The AT&T Companies have not met this requirement.

The grounds for the AT&T Companies' intervention are set forth above and do not demonstrate that the AT&T Companies' legal rights or interests in the Emery Application are substantially affected by the formal adjudicative proceeding. First, the AT&T Companies misstate their relationship with the UUSF. While it is accurate that under Utah Code Section 54-8b-15 "each public telecommunications corporation that provides intrastate public telecommunications service shall contribute to the fund on an equitable and non-discriminatory basis," UUSF surcharges "shall be in the form of end-user surcharges applied to intrastate retail rates." *U.C.A. Section 54-8b-15(10)(a)*. Thus, it is wholly inaccurate for the AT&T Companies to claim that they are payers into the UUSF. On the contrary, consumers of intrastate telecommunications services are the payers into the fund. Telecommunications companies, such as the AT&T Companies, merely collect such monies from their customers and remit such payments into the state Universal Service Fund.

Further, the AT&T Companies conclude, without offering any support for such conclusion, that if the Commission grants Emery's request for increased UUSF support, this will substantially increase the amount of money that the AT&T Companies will have to pay into the UUSF. There is no evidence provided by AT&T that Emery's requested increase will result in an increase in the contribution rate for end-users. The Commission reviews the contribution rate on an annual basis and AT&T has offered no evidence in support of its conclusion that the rate will increase if Emery's request is granted.

Additionally, the AT&T Companies' statement that "customer of the AT&T Customers may be impacted if the AT&T Companies are forced to increase rates to cover the increased UUSF contributions" again misstates the AT&T Companies' relationship with the UUSF. AT&T rates do not include UUSF. Rather, as required by Utah Code, the UUSF contribution is a surcharge to end-users and appears as a separate line item on the AT&T Companies' bills.

II. The AT&T Companies Lack Standing.

As set forth above, the AT&T Companies' Petition for Intervention must meet the requirements of Utah Code Section 63G-4-207. None of the grounds that the AT&T Companies have cited for intervention demonstrate that the AT&T Companies legal rights or interests are substantially affected by the formal adjudication of Emery's Application, as required by Utah Code Section 63G-4-207. The AT&T Companies must also demonstrate they have standing in this matter. The same rules of standing apply whether in court or in an administrative proceeding. *See Utah Chapter of Sierra Club v. Utah Air Quality Board*, 2006 UT 74, ¶19, 148 P.3d 960, 967 (Utah 2006). "Indeed the Utah Administrative Code requires that a party have standing." *Id.*, citing *Utah Admin. Code R.307-103-6(3)*.

There are two tests used to establish standing in Utah. The first requires a party to “allege that it has suffered or will suffer some distinct and palpable injury that gives it a stake in the outcome of the legal dispute,” which is determined by a three- step inquiry. *Id* (*internal quotations omitted*). The party seeking standing must assert that (1) it will be adversely affected by the action, (2) there is a causal relationship between the injury and the relief requested, and (3) the relief requested is substantially likely to redress the injury. *Id*. The AT&T Companies have failed to identify a distinct and palpable injury that the AT&T Companies will suffer, or that the AT&T Companies will be adversely affected by the formal adjudication of Emery’s request for UUSF. Therefore, the AT&T Companies have failed to meet the first test of standing.

The second test of standing is the “alternative test” which requires a party to demonstrate that it has “‘the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions’ and that the issues are ‘unlikely to be raised’ if the party is denied standing.” *Id. at* ¶ 36 (*quoting Jenkins v. Swan, 675 P.2d 1145, 1150 (Utah 1983)*). The AT&T Companies conclusively state that the “evidence to be presented by the AT&T Companies, if any, will be of material value to the Commission in its determination of the issues involved in this proceeding.” *See Petition to Intervene of AT&T Companies, p. 3*.

First, it should be noted that the AT&T Companies have not even suggested that they will actually be presenting evidence in this matter, let alone that such evidence is necessary to assist the Public Service Commission in developing and reviewing all relevant legal and factual questions. More importantly, however, the AT&T Companies cannot establish that the issues they *may* raise are unlikely to be raised if the AT&T Companies are denied standing. On the

contrary, AT&T's customers (the actual contributors into the UUSF) are, by and large, residential consumers in the state of Utah and their interests are squarely aligned with the Office of Consumer Services which is statutorily charged with assessing the impact of regulatory actions to an applicable public utility on residential consumers and small commercial consumers. The Office is statutorily required to advocate a position most advantageous to residential consumers and small commercial consumers. Additionally, the Division, which has been tasked by the Commission to evaluate Emery's Application, is statutorily obligated to "act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations." *U.C.A. Section 54-4a-6*.

As indicated above, both the Division and the Office are and have been actively involved in this proceeding with site visit, field audit, and numerous data requests submitted to Emery. Additionally, both the Division and the Office are expected to file testimony in this matter shortly. The AT&T Companies have not identified any interest or injury in this matter that is not already being represented by the Division or the Office or that is distinct to the AT&T Companies. Thus, the AT&T Companies Petition should be denied.

III. The Interests of Justice Do Not Compel Granting Intervention.

Additionally, in determining whether to grant intervention under Section 63G-4-207, the Public Service Commission must determine that "the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention." *U.C.A. Section 63G-4-207(2)(b)*. In support of this requirement, the AT&T Companies merely recite the terms of the statute in paragraph 6 of the Petition and state that "the interests of justice and the orderly and prompt conduct of this proceeding will not be materially

impaired by allowing the AT&T Companies to intervene.” *Petition to Intervene by the AT&T Companies*, ¶6. This is not accurate.

AT&T has not participated in this case from its inception. Undoubtedly, if granted intervention, the AT&T Companies will want copies of the thousands of pages of confidential documents provided to the Commission, the Division, and the Office; AT&T may have additional data requests that it would like to propound to Emery; and if AT&T files testimony, all parties will need to respond to such testimony, which may require additional data requests between the parties. There simply is no metric by which this intervention will not impair the prompt conduct of the adjudicative proceedings. More importantly, however, the interests of justice are not served by permitting this intervention. As demonstrated above, the AT&T Companies have not demonstrated that the legal rights or interests of the AT&T Companies are substantially affected by the formal adjudication of this proceeding. Thus, justice does not require permitting the AT&T Companies to intervene.

Furthermore, if AT&T’s intervention is granted on the tenuous grounds identified by the AT&T Companies in their Petition, all telecommunications providers in the State of Utah, will arguably have similar standing to intervene in Rate Cases and Petitions for UUSF Support. This will result in substantial delay and additional regulatory expense to the applicants for UUSF distributions, such as Emery, and is likely to substantially impair the prompt conduct of such adjudicative proceedings. As demonstrated herein, AT&T does not have standing in this matter and the interests of justice do not require AT&T’s intervention in this matter.

Finally, as the Commission is aware, the filings and information required by the Utah Rules contain confidential company information that could be used to the competitive advantage

of companies that can or may compete with Emery, such as the AT&T Companies. Given the potential for competitive harm that may result to Emery, the Commission should deny AT&T's intervention.

CONCLUSION

Where the Petition to Intervene does not and cannot show distinct harm to the AT&T Companies; where the interests of the AT&T customers are already aligned with the statutory functions of the Division and the Office; where the interests of justice do not compel intervention; where the intervention of the AT&T Companies is likely to impair the prompt adjudication of these matters; and where provision of Emery's confidential company information to the AT&T Companies could result in competitive disadvantage to Emery, the Commission should deny AT&T's Petition to Intervene for failing to meet the statutory requirements of Section 63G-4-207. The AT&T Companies lack standing in this matter, and the Petition for Intervention should be denied.

Dated this 12th day of August, 2015.

BLACKBURN & STOLL, LC

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Emery Telephone's Objection to the Petition to Intervene of the AT&T Companies, Docket No. 15-042-01 was sent to the following individuals by email and/or mailing a copy thereof via first-class mail, postage prepaid (as indicated), this 12th day of August, 2015:

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