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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In The Matter of Carbon/Emery Telcom Inc.'s Application for an Increase in Utah Universal Service Fund Support	)))))	DOCKET NO. 15-2302-01 RESPONSE TO OBJECTIONS TO THE AT&T COMPANIES' PETITION TO INTERVENE

On July 27, 2015, AT&T Corp., Teleport Communications America, Inc., SBC Long Distance, LLC, BellSouth Long Distance, Inc., Cricket Communications, Inc., Cricket Wireless, LLC, and New Cingular Wireless PSC, LLC (collectively, the "AT&T Companies") petitioned the Public Service Commission of Utah (the "Commission") for intervention in Carbon/Emery Telcom, Inc.'s ("Carbon/Emery") application for increased Universal Service Fund Support. In response, on August 12, the Division of Public Utilities ("Division") filed an Objection to the AT&T Companies' Petition. On August 12, 2015, Carbon/Emery also filed an Objection. This Response will speak to both Division's and Carbon/Emery's Objections.

The Division essentially seems to be arguing that the AT&T Companies' interest is too generalized for standing. The Division also stresses that the USF surcharge is in

addition to the rate, and is levied on the end-user instead of the provider. Carbon/Emery, in addition to these same points, seems to imply that the intervention is late, pointing out that “AT&T has not participated in this case from its inception.” Carbon/Emery also says that there is “no evidence” that the requested USF increase will result in an increase in the end-user surcharge. Significantly, neither set of Objections refer to any pertinent precedent of this Commission or any other state utility commissions on this type of intervention.

The standard for intervention is set forth in Utah Code Section 63G-4-207, which requires a finding that “the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and . . . the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.” Both prongs are satisfied by the current petition. As payers into the USF fund and competitors of Carbon/Emery, the AT&T Companies interest may be “substantially affected” by the increased USF funding sought by Carbon/Emery. In addition, the “interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.” It is the intention of the AT&T Companies to work with the present schedule to the extent Carbon/Emery is reasonably cooperative in responding to the limited discovery intended by the AT&T Companies. Finally, the precedent for USF interventions in this state and elsewhere strongly support the current intervention Petition of the AT&T Companies.

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A. The AT&T Companies' legal interests may be substantially affected by this proceeding.

Both Carbon/Emery and the Division challenge the AT&T Companies standing to participate in the current docket. The Division relies almost wholly on the precedent of Jenkins v. Swan, 675 P.2d 1145, 1151 (Utah 1983) to assert that taxpayer standing is insufficient. There is some irony here, since Jenkins did actually grant a taxpayer standing to prosecute several claims, noting:

> This Court has long held that a taxpayer has standing to prosecute an action against municipalities and other political subdivisions of the state for illegal expenditures. It is precisely this type of standing that the AT&T Companies claim in the present docket, to ensure that proposed USF payments to Carbon/Emery comport with state law.

The AT&T Companies, in fact, have a much stronger claim than being a mere taxpayer. They are also a competitor of Carbon/Emery. They are among a rather limited group of telecommunications companies required by law to contribute to the state USF fund. Carbon/Emery and the Division try to make much of the fact that the assessment is on the end-user as a surcharge, but this ignores the ultimate obligation of the AT&T Companies to assess, collect, and remit this surcharge. Whether the charge is on the AT&T Companies or the end-user, the direct and negative impact on the AT&T Companies from increasing the cost of service is the same. It is also a subsidy to competitors, since at least New Cingular Wireless PSC, LLC operates in the same service area.

This is also consistent with the statutory language. Utah Code Ann. §54-8b-15 requires all wireline and wireless providers to "contribute to the fund," making clear that this is a provider obligation. In addition, penalties for providers failing to meet their

obligation are provided, but no such penalties are set forth for subscribers. The section further provides that:

> Operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.

The AT&T Companies believe that, as payees into the fund and competitors of Carbon/Emery, that they have a right to ensure that the standards set forth in the statute are observed, that the fund is operated in a "nondiscriminatory and competitively and technologically neutral fashion in the . . . distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon" other telecommunications providers such as the AT&T Companies. This is wholly consistent with the result of Jenkins, granting standing to enforce restrictions on the usage of levied monies. It is even more appropriate here, where the group of payees and payers is significantly more restricted than a general tax, and is in fact limited to direct competitors of the AT&T Companies. These competitors have access to these funds while the wireless AT&T affiliates, by reason of their technology, are barred from receiving such state subsidies, making the importance of enforcing nondiscriminatory and proper distribution of the funds all the more important.

The potential impact of this filing, particularly when considered with other pending USF requests, is significant. According to the 2015 audit, rural carriers received slightly less than $8 million dollars in state USF support. See, Performance Audit No. 15-01 (Utah State Auditor, March 23, 2015). If the three pending USF funding requests were granted, the new fund size, again based on the audit chart for 2013 and the requests,

would be slightly less than $13M, an increase of more than 62%. Carbon/Emery's suggestion that there is no evidence that this filing will impact the USF surcharge, is simply wrong. It is self-evident because of the fairly large impact these dockets could generate that the AT&T Companies are interested in this proceeding.

B. The Interests of Justice and the Orderly and Prompt Conduct of this Proceeding will not be Materially Impaired by the Intervention of the AT&T Companies.

The AT&T Companies have already tried to minimize the impact their intervention might have on these proceedings. In early June, they first contacted counsel for Carbon/Emery to propose a voluntary production of documents, subject to a mutually negotiated protective agreement, that might allow the AT&T Companies to conduct an appropriate review and satisfy their concerns without even needing to participate in this docket. This offer was declined by Carbon/Emery, prompting the current intervention petition. The AT&T Companies' filing for intervention was, in fact, a few weeks ahead of the deadline set forth in the scheduling order, making it timely under Commission rules. The AT&T Companies currently intend to obtain copies of all data requests responses and documents already provided by Carbon/Emery, and not to seek further discovery unless necessary.

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C. Interventions of Other Carriers are generally allowed by this Commission and other state utility commissions in USF proceedings.

Utah Commission precedent—which even includes Carbon/Emery on the other side of the intervention issue—supports granting standing in this matter. In 2011, the Utah Rural Telecom Association ("URTA") petitioned on behalf of itself and its individual members—which included Carbon/Emery—for intervention in an application of All West Communication, Inc. for state USF eligibility. Intervention was granted to URTA, and by extension to Carbon/Emery, to participate in another company's USF proceeding. The grounds claimed by URTA in that case were arguably not as strong as those advanced by the AT&T Companies in the present case. URTA asserted that the proceeding might have precedential effect on the URTA companies. Of course, as non-parties, any such precedent would not be legally binding and they would have the legal right to relitigate such matters on their own with the Commission. In the present case, if the AT&T Companies are not allowed to intervene, there is no apparent recourse for them to subsequently claim that that the USF surcharge is improper because payouts were discriminatory or otherwise excessive. Unlike the URTA intervention, this seems to be the only bite at the apple allowed to the AT&T Companies. Finally, it might be inconsistent with the statutory directive to ensure "nondiscriminatory" distribution of the USF funds to allow ILEC wireline companies and organizations like URTA to intervene in USF proceedings, but to deny such intervention to wireless carriers and CLECs.

Interventions by carriers in USF proceedings of other carriers are generally allowed by other state commissions. AT&T affiliates, for instance, have been granted intervention in USF proceedings of other companies in several states. *E.g.,* In re

Universal Access Fund, De Minimus Claims, Georgia Public Service Commission Docket 17142 (Ga. 2008) (in larger USF docket, specific intervention sought and granted for AT&T affiliate to receive RLEC financial information related to USF claim); Geneseo Telephone Company, *et al.*, Illinois Commerce Commission Docket 11-0210 and Illinois Rural Carriers, Illinois Commerce Commission Docket 11-0211 (Ill. 2011) (AT&T affiliates granted intervention in two USF proceedings, later consolidated); Alhambra-Grantfork Telephone Company, Illinois Commerce Commission Docket 04-0354 (Ill. 2004); Northern New England Telephone Operations LLC, Maine Public Utilities Commission Docket 2013-00340 (Maine 2013); Home Telephone Company of Pittsboro, Inc., Indiana Utility Regulatory Commission Docket 42144-S2VAR (Ind. 2007) and Communications Corporation of Indiana, Indiana Utility Regulatory Commission Docket 42144-S2VAR2 (Ind. 2007) (Subparts of larger investigation docket regarding USF grants to particular providers, with intervention granted in each to AT&T affiliate); In the Matter of the Application of Medicine Park Telephone Company, Corporate Commission of the State of Oklahoma Dockets 06-374-2-14 and 07-370-10-4 (Okla. 2006 and 2007); In the Matter of the Arkansas Universal Service Fund, Arkansas Public Service Commission Docket 06-0101-U (Ark. 2006); Application of Rio Virgin Telephone Company, Public Utility Commission of Nevada Docket 13-06007 (Nev. 2013). It is not clear if any state commission refuses standing in a USF proceeding to another carrier who is paying into the USF fund.

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Conclusion

The AT&T Companies satisfy the requirements for intervention set forth by Utah law. It is not the intention of the AT&T Companies to be a hindrance in this proceeding, but merely to be another set of eyes to review the pertinent materials and to ensure that the Commission has all pertinent and useful information in evaluating the USF application of Carbon/Emery.

Submitted August 18, 2015.

By:______________________________

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MAILING CERTIFICATE

I hereby certify that on the 18th day of August, 2015, I caused to be served a copy of the OF THE AT&T COMPANIES PETITION TO INTERVENE on the following person by overnight delivery and electronic mail:

Melissa Paschall
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I also hereby certify that on the 18th day of August, 2015, I caused to be served a copy of the RESPONSE TO OBJECTIONS TO THE AT&T COMPANIES' PETITION TO INTERVENE on the following persons by electronic mail:

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