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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

CARBON/EMERY TELCOM, INC.'S
POSITION STATEMENT ON THE
APPLICABILITY OF U.C.A. SECTION
54-7-12(3)

DOCKET NO. 15-2302-01

Pursuant to the Utah Public Service Commission's (the "Commission") Order dated September 23, 2015, Carbon/Emery Telcom, Inc. ("Carbon/Emery") files this position statement addressing the question of whether Section 54-7-12(3) applies to an application for Utah Universal Service Fund ("UUSF") support.

CARBON/EMERY'S POSITION

Carbon/Emery does not believe that Section 54-7-12(3) of the Utah Code applies to Application for Distributions of UUSF that do not also contain a request for a general rate increase or decrease. Section 54-7-12of Utah Code provides, in pertinent part:

(1) As used in this section:

(a)(i) "Base rates" means those charges included in a public utility's generally applicable rate tariffs, including:

- (A) a fare;
- (B) a rate;
- (C) a rental;

- (D) a toll; or
- (E) any other charge generally applicable to a public utility's rate tariffs. . .
- (b)(i) "Complete filing" means an application filed by a public utility that substantially complies with minimum filing requirements established by the commission, by rule, for a general rate increase or decrease. . .
- (c) "General rate decrease" means:
 - (i) any direct decrease to a public utility's base rates; or
 - (ii) any modification of a classification, contract, practice, or rule that decreases a public utility's base rates.
- (d) "General rate increase" means:
 - (i) any direct increase to a public utility's base rates; or
 - (ii) any modification of a classification, contract, practice, or rule that increases a public utility's base rates. . .
- (3)(a) Within 240 days after a public utility submits a complete filing, the commission shall issue a final order to:
 - (i) grant the proposed general rate increase or decrease;
 - (ii) grant a different general rate increase or decrease; or
 - (iii) deny the proposed general rate increase or decrease.
- (b) If the commission does not issue a final written order within 240 days after the public utility submits a complete filing in accordance with Subsection (3)(a):
 - (i) the public utility's proposed rate increase or decrease is final; and
 - (ii) the commission may not order a refund of any amount already collected or returned by the public utility under Subsection (4)(a). . . (*U.C.A. Section 54-7-12*)

The plain language of Section 54-7-12 provides that it applies to applications for general rate increases or decreases. There is no dispute that Carbon/Emery's Application does not include any provisions or request for a general rate increase or decrease as defined in the statute. Carbon/Emery's Application only seeks an increase in Utah Universal Service Fund ("UUSF") distributions. Therefore, the 240 day deadline provided in Section 54-7-12(3) is not applicable to Carbon/Emery's request for increase in UUSF distribution, or any request for UUSF distribution that does not also include a request for rate adjustment.

Moreover, the fact that this 240 day deadline should only apply to general rate increase or decrease applications is supported by review of the consequence contained in U.C.A. §54-7-12(3)(b) for failure to issue an order within 240 days of the filing of the complete filing.

Basically, if the Commission does not issue an order within 240 of the complete filing of an application for general increase or decrease in base rates, the rate increase (or decrease) is “final,” and the commission may not order a refund of any amount already collected or returned by the public utility. This “consequence” has no application in UUSF only cases since the public utilities are not seeking an increase or decrease in rates in such filings.

Rather, the statute governing UUSF applications is contained in Utah Code Ann. Section 54-8b-15, which establishes the Universal Public Telecommunications Service Support Fund, and authorizes the Commission to establish rules governing the administration of the fund. Pursuant to U.C.A. §54-8b-15, the Commission established Utah Administrative Rule R746-360. Utah Admin. Code R746-360-6 sets forth the eligibility requirements for UUSF distributions, and R746-360-8 provides for the process for calculation of such distributions for rate of return incumbent telephone carriers. The Administrative Rules contained in R746-360 are the rules that apply to UUSF applications, such as those filed by Carbon/Emery and Strata Networks, and none of these rules provide for the application of Utah Code §54-7-12 to UUSF only proceedings.

CONCLUSION

It is Carbon/Emery’s position that the 240 day deadline contained in Utah Code Annotated Section 54-3-7(3) is not applicable in applications for UUSF support that do not include a request for a general rate increase or decrease.

Dated this 24th day of September, 2015.

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Carbon/Emery Telcom, Inc.'s Position Statement, Docket No. 15-2302-01 was sent to the following individuals by email and/or mailing a copy thereof via first-class mail, postage prepaid (as indicated), this 24th day of September, 2015:

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