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Division of Public Utilities

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Date: March 8, 2018

To: Public Service Commission

From: Division of Public Utilities
Chris Parker – Director
William Duncan – Manager, Telecommunications
Joseph Hellewell, Utility Analyst

Re: Docket 18-2302-01 Carbon/Emery Telcom Application for recovery of UUSF Application costs

RECOMMENDATION

The Division of Public Utilities (Division) recommends the Commission deny Carbon/Emery Telcom Inc.'s (Carbon/Emery) request to be reimbursed for costs related to its application in Docket 15-2302-01.

BACKGROUND

On March 27, 2015, Carbon/Emery filed an application for an increased subsidy from the state's universal service fund (USF). The application in Docket 15-2302-01 originally requested an increase in annual USF of \$563,262; it was later amended to request an annual increase of \$816,909 plus a one-time lump-sum payment from the USF to Carbon/Emery to cover its costs associated with filing the application.

On March 31, 2016, the Public Service Commission of Utah (Commission) ordered a reduction in the subsidy received by Carbon/Emery of \$152,645.70 to a total of \$886,068.30 per year through the end of 2019 and an additional reduction of \$185,546.64 to take place on Jan. 1, 2020. That order did not include a grant of the requested one-time lump sum payment for costs.

On April 29, 2016, Carbon/Emery filed a petition for review, rehearing or reconsideration of the Commission's March 2016 order. The Commission denied the petition on May 19, 2016.

On June 16, 2016, Carbon/Emery appealed to the Utah Supreme Court to review the Commission's orders. On appeal, Carbon/Emery did not raise the Commission's failure to grant

the requested one-time lump sum payment for costs. This appeal was later withdrawn by Carbon/Emery.

On January 23, 2018, Carbon/Emery filed the current request seeking a lump sum payment from the USF to cover the costs associated with the prosecution of the case initiated in March of 2015. Carbon/Emery requested \$159,169.48, consisting of \$116,047.48 in attorneys' fees and \$43,091.00 in consultant fees. Later, on February 21, 2018, the attorney fees requested were reduced by \$254.50, making the total requested payment by Carbon/Emery to be \$158,914.98.

COMMENTS

The Commission should deny Carbon/Emery's request because Carbon/Emery did not appeal the Commission's earlier order, which did not grant the request. Additionally, payment of the costs in this case is not in the public interest.

After the Commission issued its March 31, 2016 order, which lowered Carbon/Emery's USF subsidy, Carbon/Emery filed a petition for review, rehearing or reconsideration on April 29, 2016. This petition listed six reasons for Carbon/Emery's appeal. None of the six reasons cited by Carbon/Emery included a review or reconsideration request for expenses associated with filing their USF application. If Carbon/Emery had issue with the Commission's initial decision, the filed petition would have been an appropriate place to address such issues. At a minimum, the matter should have been included in the later-withdrawn appeal.

Furthermore, it is inconsistent with the public interest for the USF to reimburse a company's costs for bringing a losing case with dubious support. The Commission's order in the earlier case denied the significant increase sought. Given that the company's USF funding was actually decreased, it is clear that the company was not entitled to additional funds it requested. To be clear, the Division is not suggesting that success in a rate case or USF case is the sole measure by which prudent expenses are judged. Had the Commission ordered the filing of the case resulting in reduced funding, an award of costs might be warranted.

However, awarding costs for utility-initiated cases such as the one Carbon/Emery filed in 2015 creates an incentive for companies to make dubious requests. The increase was not prudently sought. Thus, this request should be denied entirely because it would result in "inefficient use of USF funds" and would be "inconsistent with the public interest." (Utah Admin. Code R746-360-8(A)(1))(2016).

CONCLUSION

The Commission should deny Carbon/Emery's request for reimbursement of costs from its previous case because it failed to appeal the Commission's earlier order, which did not grant the earlier funding request, and because it would be inconsistent with the public interest.