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September 6, 2018

Commissioner Thad Levar
Commissioner David Clark
Commissioner Jordan White
Utah Public Service Commission
160 East 300 South, 4th Floor
Salt Lake City, UT 84101

Re: Senate Bill 130 and R746-8-401

Dear Commissioners:

Since the passage of SB 130, we have been monitoring the administrative rules promulgated by the Utah Public Service Commission, as contemplated in SB 130. In many instances the Administrative Rules you have instituted mirror or refer to the language of the statute which avoids conflict on the face of the rule. As you are aware, however, even a rule that is facially consistent with its authorizing statute has the potential to be interpreted or applied in a manner that is inconsistent with the statute.

It has come to our attention that the Division of Public Utilities may be interpreting and/or applying R746-8-401 in a manner that is inconsistent with SB 130. As you are aware, the primary purpose for SB 130 was to provide clarity and regulatory certainty to the telecommunications corporations in Utah who receive distributions from the Utah Universal Public Telecommunications Service Fund ("UUSF"). To do this we wanted to eliminate by eliminating several issues that had historically been litigated over and over between the rate of return regulated carriers and the Division of Public Utilities before the Public Service Commission. In particular, we designed SB 130 to eliminate the following contested issues:

1. Capital Structure
2. State authorized rate of return; and
3. Choice of depreciation methods.

We understand that the capital structure of a rate of return regulated carrier comes into play in the rate of return element of the ratemaking formula. Basically, before SB 130, in telecommunications rate cases, the Commission would often apply a hypothetical capital structure (rather than the company's actual capital structure) in calculating the State rate of return. Because the hypothetical capital structure was not defined by rule, the rate of return regulated carriers had no regulatory certainty about the capital structure that would be applied to them. The correct "capital structure" to be applied was routinely a disputed issue between the carriers and the Division.

In passing SB 130, we sought to eliminate this regulatory uncertainty and determined that the state rate of return for rate of return regulated companies in Utah would, in all instances, equal the weighted average cost of capital as determined by the Federal Communications Commission ("FCC'). In other words, the state rate of return must mirror the federal rate of return. As a result, the capital structure of the rate of return regulated company became irrelevant for state purposes. By mirroring the FCC on this issue, we provided regulatory certainty to the rate of return regulated carriers.

Consistent with SB 130 (and the FCC), the Administrative Rule, R746-8-401 promulgated by the Commission provides as follows:

> *(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:*
>
> > *(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate- of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:*
> >
> > *(i) beginning July 1, 2016: 11.0%*
> >
> > *(ii) beginning July 1, 2017: 10.75%;*
> >
> > *(iii) beginning July 1, 2018: 10.5%;*
> >
> > *(iv) beginning July 1, 2019, 10.25%;*
> >
> > *(v) beginning July 1, 2020, 10.0%; and*
> >
> > *(vi) beginning July 1, 2021, 9.75%.*
> >
> > *(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b- 15.*
>
> *(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:*
>
> > *(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and*
> >
> > *(b) the provider's financial information from its last Annual Report filed with the Commission.*

It has come to our attention however, that the Division of Public Utilities is interpreting or applying this Rule in a manner that can result in a reduction of the rate of return regulated company's state authorized rate of return below the federal rate. This is inconsistent with the language of SB 130 and Utah Code Ann. Section 54-8b-15(5)(a).

In particular, it is our understanding that the Division of Public Utilities is imputing a hypothetical interest expense and making an adjustment to the operational expenses of the rate of return

return element" of the ratemaking formula. Where SB 130 has specifically identified the rate of return that the telecommunications corporations shall receive by specifically referring to the federal rate of return, the Commission does not need to calculate the rate of return for rate of return regulated telecom providers. On the contrary, that element of the ratemaking formula is set by statute. Any calculation that interferes with or adjusts the particularly identified rate of return is impermissible under Utah law.

Furthermore, in order to provide regulatory certainty we sought consistency with FCC practices and procedure. Interest synchronization is not performed by the FCC and is, therefore, not appropriate under SB 130. The intent of SB 130, and the plain language of SB 130 provide that a rate of return regulated company should receive the same rate of return from both the state and federal jurisdiction. Any interpretation and or application of SB 130 and/or an Administrative Rule that reduces the State authorized rate of return below the federally determined rate of return is not appropriate and is not permitted under Utah law.

While we believe that the statute and rule are quite clear, we want to ensure that the interpretation and application of the rule is consistent with the intent and plain language of SB 130. Interest synchronization by the State is not appropriate in the telecommunications context.

Sincerely,

Senator David P. Hinkins

Representative Francis D. Gibson

Representative Michael K. McKell