- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Direct Communications Cedar Valley, LLC, for a Review of Rates and Support from the State Universal Service Support Fund	)	DOCKET NO. 09-2419-01 REPORT AND ORDER APPROVING STIPULATION

ISSUED: May 26, 2010

SYNOPSIS

Having found the Stipulation between Direct Communications Cedar Valley, LLC and the Division of Public Utilities, attached hereto as Exhibit A, is just and reasonable in result and is in the public interest, the Commission approves the same and thereby approves the Company's rates and charges for telecommunications services and support from the state Universal Service Support Fund as contained in the Stipulation.

By The Commission:

I. PROCEDURAL HISTORY

On September 14, 2009, Direct Communications Cedar Valley, LLC ("DCCV" or "the Company") filed a Petition with the Commission seeking a review of its rates and an increase in state Universal Service Fund support ("state USF") based on the Company's National Exchange Carrier Association ("NECA") settlements and federal Universal Service Fund ("federal USF") payments. The Company proposed an increase of $2,092,638 in State USF support based on a test year of 2008, and considering only the intrastate revenues and rate base. On September 14, 2009, the Company filed a Motion for a Protective Order, which was issued on September 30, 2009.

After an initial review of the request by the Division of Public Utilities ("the Division"), the Company revised its request to a total USF distribution of an additional $130,151 when total company financials were considered and certain significant corrections were made. The Petition proposed no change in the rates charged to customers, but proposed certain changes to its revenue requirement calculations.

Subsequent to the filing of the Company's Petition in this Docket, the Division, with the Company's assistance, has been engaged in a review of the books and records of the Company. As a result of this review, certain issues were clarified, disputed, and negotiated at length between the Division and the Company. On April 21, 2010, as a consequence of these discussions and negotiations, the Division and the Company (jointly referred to as "the Parties" hereinafter) filed a Stipulation for presentation to the Commission as a resolution of the issues presented in this docket.

On April 22, 2010, the Administrative Law Judge ("ALJ") held a duly-noticed evidentiary hearing on the Company's Petition, including the Stipulation. DCCV was represented by David R. Irvine. Michael L. Ginsberg, Assistant Attorney General, appeared for the Division. Ms. Shauna Springer, Division utility analyst, presented testimony in support of the Stipulation, with which DCCV concurred. No party appeared in opposition to the Stipulation.

II. THE STIPULATION

The Stipulation contains the following principal terms and conditions. This description of the Stipulation is made for convenience of reference only and is not intended to modify the terms and conditions of the Stipulation appended to this Order.

In Paragraph 1 of the Terms of Stipulation, the Parties agree that DCCV's rates and charges for telecommunications services shall remain in effect with no change, as presently stated in the tariffs on file with the Commission.

In Paragraph 2 of the Terms of Stipulation, the Parties agree that the current amount of state USF received by the Company, $49,025.00 per month, shall continue to be paid to the Company until modified by the Commission in a subsequent proceeding.

In Paragraph 3 of the Terms of Stipulation, both Parties agree that they will not seek a true up of any amounts collected as a direct result of payments made to the Company from the State USF fund pursuant to paragraph 7 and 8 of the Stipulation between the Division and the Company in Docket 07-2419-03.

In Paragraph 4 of the Terms of Stipulation, the Parties agree for this Stipulation only, the following are reasonable:

a. A cost of debt of 5.05% and an authorized Return on Equity of 12.24%.

b. A hypothetical capital structure of 35% equity.

In Paragraph 5 of the terms of Stipulation, the Parties agree that the Company can file for an increase in its State USF or its rates at any time by filing an appropriate petition with the Commission. The parties agree that any issues may be raised by the parties for resolution in a subsequent proceeding for changes in the Company's State USF. This includes, without limitation, the Company's need to maintain a Times Interest Earned Ratio (TIER) of 1.5 with Rural Utilities Service (RUS). The Company is dependent on RUS for low cost loans that the Company may need to provide safe and adequate service. The company asserts that maintaining this TIER with RUS may be necessary in order to obtain low cost access to capital. The TIER is calculated in the following manner: TIER = (interest expense+net income)/interest expense.

In Paragraph 6 of the Terms of Stipulation, the Parties acknowledge that the company's revenue requirement and state USF distribution is based on a hypothetical capital structure. The intent of this hypothetical capital structure is to provide an opportunity for the Company to increase the equity component, and reduce the debt component, of its existing capital structure. In measuring improvements made in reducing the debt component in its capital structure, the company will demonstrate, at the time of its next filing for a change in its USF distribution, annual increases in its equity component, comparable to the change demonstrated between 2008 and 2009, when its actual equity increased from 1.98% to 4.67%. If comparable annual increases in equity are not realized prior to the next rate case, the company understands and agrees that the Division may utilize the actual capital structure of the company in developing their recommendation to the Commission. Comparable increases in equity will be defined as increases of 2-3% annually.

III. DISCUSSION

Settlement of matters before the Commission is encouraged at any stage of the proceedings.[1] The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation

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[1] Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm'n.* 658 P.2d 601, 613-14 (Utah 1983).

or settlement in the public interest.[2] Parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.[3] No party or person has done so in this case. The Commission may approve a stipulation or settlement if the Commission finds on the basis of the evidence presented that the settlement proposal is just and reasonable in result and is in the public interest.[4] In reviewing a settlement stipulation, the Commission may also consider whether it was the result of good-faith, arms-length negotiations.[5]

The Commission has reviewed the record in this matter including the evidence of the Parties presented at the hearing. Based upon this review, the Commission finds the Stipulation and its terms and conditions contained therein to be in the public interest, reasonable in result, and, therefore the Commission approves the Stipulation and its terms and conditions. contained therein.

As the Commission has indicated in previous orders approving settlement stipulations, Commission approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

Based upon the foregoing Commission enters the following Order

IV. ORDER

1. The Stipulation appended hereto is approved and adopted, and incorporated in its entirety by reference.

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[2] *Id.*
[3] Utah Code Ann. § 54-7-1(3)(e)(ii).
[4] Utah Code Ann. § 54-7-1.
[5] *Utah Dept. of Admin. Services, supra, at 614, n.24.*

2. The rates and charges for telecommunications services and support from the state Universal Service Support Fund as contained in the Stipulation, and referenced above, are approved.

This Order constitutes final agency action in this docket. Pursuant to Utah Code Ann. §§ 63-46b-12 and 54-7-15, agency review or rehearing of this Order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Utah Code Ann. §§ 63-46b-14 and 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 26th day of May, 2010.

/s/ Ruben Arredondo
Administrative Law Judge

Approved and confirmed this 26th day of May, 2010, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#66660

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Direct Communications Cedar Valley, LLC, for a Review of Rates and Support from the State Universal Service Fund	))))))	STIPULATION Docket No. 09-2419-01

Pursuant to Utah Code Ann. § 54-7-1 and Utah Administrative Rule R746-100-10(F) (5) Direct Communications Cedar Valley, LLC ("Petitioner" or "the Company" hereinafter) and the Division of Public Utilities ("the Division" hereinafter) enter into this Stipulation to resolve all outstanding issues in the Company's Petition in this Docket.

PROCEDURAL HISTORY

On September 14, 2009, the Company filed its Petition with the Commission seeking a review of its rates and an increase in state Universal Service Fund ("state USF" hereinafter) support based on the Company's National Exchange Carrier Association ("NECA" hereinafter) settlements and federal Universal Service Fund ("federal USF" hereinafter) payments. The Company proposed an increase of $2,092,638 in State USF support based on a test year of 2008, and considering only the intrastate revenues and rate base. After an initial review of the request by the Division, DCCV revised their request to a total USF distribution of an additional $130,151 when total company financials were considered and certain significant corrections were made. The

Petition proposed no change in the rates charged to customers, but proposed certain changes to its revenue requirement calculations. In support of its Petition, the Company filed supporting documentation making representations as follows:

PROCEDURAL HISTORY

1. On December 5, 2007, the Company filed its petition with the Commission for a rebalancing of the Company's rates and charges for telecommunications services provided in the state of Utah and for support from the state Universal Service Support Fund in Docket No. 07-2419-03. In support of this petition, the Company filed supporting documentation making representations as follows:

    a. The Company is the certificated provider of telecommunications services within the city of Eagle Mountain, Utah. It was issued a Certificate of Convenience and Necessity on August 9, 2004, and it commenced operations on February 1, 2006.

    b. In its application for certification, the Company represented that it could not operate the Eagle Mountain system without federal and state USF support.

    c. Immediately following the Company's receipt of this Commission's Order in 2004 approving the Company's purchase of the Eagle Mountain system, the Company filed a petition with the Federal Communications Commission ("FCC" hereinafter) requesting immediate support for its operations through the federal USF. [6]

d. The Company operated without support from the Utah USF (except for Lifeline service) until May 2008.

e. Pursuant to the terms of the Stipulation and Order approved by this Commission on August 9, 2004, the Company was required to operate without receiving Utah USF for a period of eighteen months from the date it commenced operation. The stated reason for this delay was to permit the collection of actual data necessary to support the Company's revenue requirement and rate structure over that period of time (Stipulation in Docket No. 04-2419-01, paragraph 8(k) at page 26.)

f. That eighteen-month period ended on August 1, 2007, based on the Company's commencement of operations as of February 1, 2006.

g. The Company's rates [were] higher than the base affordable rate for certain other independent telephone companies in the state who are eligible for and receive Utah USF support. The Company requested that it receive $2,317,889 annually from the Utah USF.

h. As a result of a review by the Division of Public Utilities ("the Division" hereinafter) the Company and the Division agreed to the

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[6] The Company filed a request for waiver of Sections 36.611 and 36.612 of the FCC's Rules on August 29, 2006, in CC Docket 96-45, and asked for an *expedited decision* because of the system's drain on available operating funds. On January 12, 2010, the FCC issued its Order denying the Company's request.

use of a 2007 test year (ending December 31, 2007) with certain 2008 and 2009 adjustments.

i. Based on a stipulation between the Company and the Division, this Commission, on July 15, 2008, ordered that the Company would receive Utah USF in the amount of $732,972 for 2008, beginning in May 2008 at the rate of $61,081 per month. The same Order provided for a reduction of Utah USF to $49,025 per month beginning January 1, 2009, and further provided paragraph 7 for a "one-year USF true-up for the year ending December 31, 2008 and for the portion of 2009 preceding the review." The bases for the true up were defined in paragraph 7 of the Stipulation. The true up could have resulted in either additional payments of State USF to the Company or refunds of State USF collected by the Company back to the State USF fund.

j. Paragraph 8 of the Stipulation between the parties, provided:

> The Division will review the Company's NECA settlements and federal USF payments beginning on June 15, 2009, which is the earliest estimated time that the Company will have actual payment information. On this date, the Company will file with the Commission and all parties its actual Federal USF payments and NECA Settlement payments, which the Division will validate through its review. The Division will make its best efforts to complete its review in no more than 30 days. Once completed, the Division will file its recommendations with the Commission. This review shall establish the Company's state USF payment going forward, and will establish any amount subject to true-up as provided herein.

k. The Company, on July 20-21, 2009, informally filed the above-required information with the Division staff in the form of three confidential exhibits [filed pursuant to the Protective Order in the above-referenced case]. Upon issuance of the Protective Order in this Docket on September 30, 2009, the Company again filed the same confidential exhibits in this Docket. In this filing, the Company not only requested the review outlined in the Stipulation between the Division and the Company, but also requested an increase in its State USF support of $2,092,638 based on a test year of 2008 .

2. Subsequent to the filing of the Company's Petition in this Docket, the Division, with the Company's assistance, has been engaged in a review of the books and records of the Company. As a result of this review, certain issues were clarified, disputed, and negotiated at length between the Division, the Company, and the Office of Consumer Services. As` a consequence of these discussions and negotiations, the Division and the Company have reached a stipulation for presentation to the Commission as a resolution of the issues raised in this case.

TERMS OF STIPULATION

1. The rates and charges of the Company shall remain in effect with no change as presently stated in the tariffs on file with the Commission.

2. The current amount of state USF received by the Company, $49,025.00 per month, shall continue to be paid to the Company until modified by the Commission in a subsequent proceeding.

3. Both the Division and the company agree to not seek a true up of any amounts collected as a direct result of payments made to the Company from the State USF fund pursuant to paragraph 7 and 8 of the Stipulation between the Division and the Company in Docket 07-2419-03.

4. The parties agree for this Stipulation only, that the following are reasonable:

   a. A cost of debt of 5.05% and an authorized Return on Equity of 12.24%;

   b. A hypothetical capital structure of 35% equity;

5. The parties agree that the Company can file for an increase in its State USF or its rates at any time by filing an appropriate Petition with the Commission. The parties agree that any issues may be raised by the parties for resolution in a subsequent proceeding for changes in the Company's State USF. This includes, without limitation, the Company's need to maintain a Times Interest Earned Ratio (TIER) of 1.5 with Rural Utilities Service (RUS). The Company is dependent on RUS for low cost loans that the Company may need to provide safe and adequate service. The company asserts that maintaining this TIER with RUS may be necessary in order to obtain low cost access to capital. The TIER is calculated in the

following manner: TIER = (interest expense+net income)/interest expense.

6. The parties acknowledge that the company's revenue requirement and state USF distribution is based on a hypothetical capital structure. The intent of this hypothetical capital structure is to provide an opportunity for the Company to increase the equity component, and reduce the debt component, of its existing capital structure. In measuring improvements made in reducing the debt component in its capital structure, the company will demonstrate, at the time of its next filing for a change in its USF distribution, annual increases in its equity component, comparable to the change demonstrated between 2008 and 2009, when its actual equity increased from 1.98% to 4.67%. If comparable annual increases in equity are not realized prior to the next rate case, the company understands and agrees that the Division may utilize the actual capital structure of the company in developing their recommendation to the Commission. Comparable increases in equity will be defined as increases of 2-3% annually.

7. The parties agree that the terms of this Stipulation are just and reasonable, and that the rates currently charged the customers of the Company are just and reasonable and that the current amount of State USF provided to the Company is just and reasonable and adequate. The Division and the Company shall provide a witness to support the terms and conditions of

this Stipulation and provide to the Commission an explanation of the terms and conditions. With respect to the Division and the Office any explanation and support of this Stipulation will be consistent with their statutory responsibilities.

8. All negotiations related to this Stipulation are privileged and confidential. No party shall be bound by any position asserted in these negotiations. Neither the execution of this Stipulation or the Order adopting this Stipulation shall be an admission by any party of the validity or invalidity of any principle of this Stipulation. The execution of this Stipulation or the Order approving it shall not constitute estoppel or waiver by a party of any position in this Stipulation.

This Stipulation shall not be final and binding on the parties until the Commission has approved it without material change or condition. This Stipulation is an integrated whole, and any party may withdraw from it if it is not approved without material change or condition by the Commission, or if the Commission's approval is rejected or materially conditioned by a reviewing court.

If the Commission rejects any part of this Stipulation or imposes any material change or condition, or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the parties agree to meet and discuss the applicable Commission or court order within ten business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any party withdraws from the Stipulation, any party retains the right to seek additional procedures before the Commission, including requiring the filing of testimony and the cross-examination of witnesses. With respect to any issues resolved by the Stipulation prior to its modification by the Commission or a reviewing court, no party shall be bound or prejudiced by the terms and conditions of the Stipulation in the event any party withdraws as provided herein.