

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Emery
Telephone's Application
for Utah Universal
Service Fund Support

Docket No. 14-042-01

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Thursday, February 5, 2015

TIME: 10:59 a.m.

REPORTED BY: Scott M. Knight, RPR

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APPEARANCES

ADMINISTRATIVE LAW JUDGE: MELANIE A. REIF

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1 Hearing Proceedings

2 February 5, 2015

3 PROCEEDINGS

4 THE HEARING OFFICER: Good morning,
5 everyone. We're on the record. I'm Melanie Reif
6 and this is the hearing for Docket 14-042-01,
7 entitled, In the Matter of Emery Telephone's
8 Application for Utah Universal Service Fund
9 Support. Let's start by taking appearances,
10 please.

11 MS. SLAWSON: Good morning. My name is
12 Kira Slawson. I'm from Blackburn & Stoll. I
13 represent the applicant, Emery Telephone. To my
14 right is Brock Johansen, the CEO of Emery
15 Telephone. And to his right is Brenden Stuart, who
16 is an intern in our office at Blackburn & Stoll.

17 MR. JETTER: I'm Justin Jetter
18 representing the Utah Division of Public Utilities.
19 And with me at counsel table is Bill Duncan with
20 the Division.

21 THE HEARING OFFICER: Thank you. And
22 welcome, everyone.

23 I do see that the Office is in the
24 audience. Do you wish to participate in the
25 hearing--you're welcome to take a position at the

1 table.

2 MR. OLSEN: No, your Honor. We'll be
3 available--the Office will be available for
4 comments if you require any.

5 THE HEARING OFFICER: Okay. Thank you.
6 Ms. Slawson, we'll let you go ahead.

7 MS. SLAWSON: Thank you. Good morning.
8 I've got Mr. Johansen to offer testimony in support
9 of the settlement stipulation that was filed.

10 THE HEARING OFFICER: Good morning, Mr.
11 Johansen.

12 MR. JOHANSEN: Good morning.

13 THE HEARING OFFICER: Will you please
14 raise your right hand? And do you swear that the
15 testimony you're about to give is the truth?

16 MR. JOHANSEN: Yes.

17 THE HEARING OFFICER: Okay. Before you
18 give your testimony, I just wanted to ask you: Are
19 you going to be reading from what you have in front
20 of you on the screen or--

21 THE WITNESS: Yes.

22 THE HEARING OFFICER: Okay.

23 MS. SLAWSON: If you prefer, I have a
24 piece of paper. Would you--

25 THE HEARING OFFICER: No, no, no. I

1 just wanted to better understand what--what--

2 THE WITNESS: What I'm doing? I'm
3 surfing the net.

4 THE HEARING OFFICER: Remember, you are
5 under oath.

6 MS. SLAWSON: And on the record.

7 THE HEARING OFFICER: Yes. So do you--
8 do you care to clarify that? Are you indeed
9 surfing the net?

10 THE WITNESS: How do I--how do I
11 answer?

12 MS. SLAWSON: Are you surfing the net?

13 THE WITNESS: Have I been?

14 MS. SLAWSON: No, right now.

15 THE WITNESS: Not at this moment.

16 THE HEARING OFFICER: Okay. Very good.

17 BROCK JOHANSEN, being first duly sworn,
18 was examined and testified as follows:

19 EXAMINATION

20 BY-MS.SLAWSON:

21 Q. Mr. Johansen, can you state your name
22 and position with Emery Telephone for the record.

23 A. My name is Brock Johansen. I'm the CEO
24 of Emery Telephone. My business address is 445
25 East Highway 29, Orangeville, Utah 84537.

1 Q. And what is the purpose for your
2 testimony here today?

3 A. I will offer support for the settlement
4 stipulation and the petition for USF distribution
5 filed by Emery Telephone in this matter and confirm
6 the Company's belief that the settlement
7 stipulation and the USF distribution agreed to in
8 the settlement are in the public interest.

9 Q. Did you file testimony in this matter?

10 A. Yes, I filed testimony to address the
11 current revenue requirements of Emery Telephone and
12 to offer support for the information contained in
13 the Company's application for Universal--Utah
14 Universal Service Fund distribution.

15 Q. And did anybody else file testimony on
16 behalf of Emery Telephone?

17 A. Yes. As indicated in detail in the
18 testimony filed in this matter by the Company,
19 Emery's currently experienced--sorry--yes.

20 Q. Darren Woolsey filed testimony?

21 A. Yes, Darren Woolsey, our CFO, filed
22 testimony also.

23 Q. And can you summarize Emery Telephone's
24 application for universal service distribution in
25 this matter?

1 A. Yes. As indicated in detail in the
2 testimony filed in this matter by the Company,
3 Emery is currently experiencing revenue deficiency,
4 which it seeks to recover from an annual
5 disbursement from the Utah Universal Service Fund.

6 Q. Can you provide the Commission with a
7 brief history in this application?

8 A. On September 29, 2014, after informal
9 discussions--

10 THE REPORTER: Sorry. Informal
11 discussions? Informal or formal?

12 THE WITNESS: Did I say "informal"?

13 THE REPORTER: I don't know.

14 THE WITNESS: Informal.

15 THE REPORTER: Thank you.

16 THE HEARING OFFICER: Mr. Johansen, I
17 think it would be helpful if you slowed down a
18 little bit.

19 THE WITNESS: Okay. I'll slow down.

20 THE REPORTER: And speak up.

21 THE WITNESS: And speak up. Okay. And
22 I'll move that forward (indicating the microphone).
23 That's louder now, right?

24 THE REPORTER: A little bit.

25 THE WITNESS: On September 29, 2014,

1 after informal discussions with the Division of
2 Public Utilities, Emery Telephone filed a petition
3 for USF distribution and supporting testimony
4 seeking approximately 623,706 in annual Utah USF
5 support. After filing the application for USF, the
6 division of Public Utilities and the Office of
7 Consumer Services issued several data requests and
8 participated in an on-site audit of the books,
9 records, operations, and facilities of Emery
10 Telephone. Subsequent to the on-site visit--on-
11 site audit, the Office of Consumer Services, the
12 Division of Public Utilities, and Emery Telephone
13 engaged in settlement discussions.

14 BY MS. SLAWSON:

15 Q. And as a result of the settlement
16 discussions, was a settlement reached?

17 A. Yes. Emery Telephone reached a
18 settlement with the Division of Public Utilities,
19 which resulted in the stipulation that was filed by
20 the Division of Public Utilities and Emery
21 Telephone on January 21, 2015.

22 Q. And are you familiar with the terms of
23 the stipulation that was filed on January 21, 2015?

24 A. Yes.

25 Q. I'd like to just briefly go over the

1 terms of that stipulation. In paragraph 4 of the
2 stipulation, the parties agree for purposes of
3 settlement that Emery's present tariff charges do
4 not provide sufficient revenues to cover Emery's
5 2013 test year costs to provide basic telephone
6 service to its customers which resulted in a
7 revenue shortfall. Is Emery experiencing a revenue
8 shortfall?

9 A. Yes. Emery's costs to provide basic
10 telephone service to its customers are in excess of
11 its rates, resulting in a revenue shortfall. The
12 parties have agreed that, for the purposes of
13 settlement, Emery's entitled to an annual USF
14 distribution in the amount of 561,000, or 46,750
15 per month, to permit Emery Telephone to continue to
16 provide telecommunications services at just and
17 reasonable rates and to recover its reasonable
18 costs of service and the reasonable rate of return
19 on the value of its property devoted to public use.

20 THE HEARING OFFICER: Mr. Johansen, one
21 moment, please.

22 THE WITNESS: Yes.

23 THE HEARING OFFICER: I realize you're
24 reading, and the tendency is to just not pause
25 and--

1 THE WITNESS: Okay.

2 THE HEARING OFFICER: --and the tendency
3 is probably to be a little faster than your normal
4 pace of speech. It would be very helpful for the
5 court reporter and for all of us listening and
6 absorbing what you're saying--

7 THE WITNESS: To slow down?

8 THE HEARING OFFICER: --if you would
9 slow down.

10 THE WITNESS: Okay. I will.

11 THE HEARING OFFICER: Take pauses
12 between the phrases, please.

13 THE WITNESS: Okay.

14 THE HEARING OFFICER: Thank you.

15 THE WITNESS: Parties also agreed that
16 Emery would be entitled to a onetime lump-sum
17 disbursement from the UU--from the Utah Universal
18 Service Fund in the amount of \$30,959.90 to cover
19 the reasonable costs associated with Emery's
20 application. We believe the annual Utah Universal
21 Service Fund distribution and the one-time lump-sum
22 from the Universal Utah Service Fund for costs
23 associated with the application are supported by
24 the books and records.

25 BY MS. SLAWSON:

1 Q. And I believe that you had indicated
2 that the one-time distribution for the costs
3 associated with the--the USF application were
4 \$30,959.90. In fact, I believe that the costs,
5 were they not 30,959.80--80 cents?

6 A. Yes, that is correct.

7 Q. Does the stipulation that was entered
8 into by the Division of Public Utilities and Emery
9 Telephone contemplate when the Universal--Utah
10 Universal Service payments would begin?

11 A. Yes, the parties have agreed that it is
12 just and reasonable that a monthly Utah Universal
13 Service Fund payments begin as of January 1, 2015.
14 The January payment shall be made in a lump-sum
15 payment together with a one-time lump-sum payment
16 from the Utah Universal Service Fund for reasonable
17 costs associated with the application within seven
18 days of the date of the release of the Commission's
19 order approving the stipulation. Thereafter,
20 monthly payments will be disbursed from the Utah
21 Universal Service Fund under the usual and
22 customary procedures of the Commission on or around
23 the first day of each month.

24 Q. And is Emery Telephone charging the base
25 affordable rate as set by the Commission?

1 A. No. Emery Telephone is a cooperative
2 telephone company. Currently, its rates are \$15
3 for residential service and 24.50--\$24.50 for
4 business service.

5 Q. And in connection with this application,
6 is Emery Telephone seeking to raise its rates?

7 A. No. We believe that the economic
8 realities in Emery County will not support a rate
9 increase, so we are not seeking a rate increase at
10 this time. Our application imputed the revenue we
11 would have received from a rate increase to the
12 affordable base rate, and the stipulated settlement
13 is based on the implication of income that would
14 have been received from an increase in the rates to
15 the base affordable rate. Therefore, the Utah
16 Universal Service Fund is not being used to
17 subsidize our cooperative decision not to raise
18 rates at this time.

19 Q. And do you believe an annual Utah
20 Universal Service Fund distribution in the amount
21 of 561,000 is just and reasonable and in the public
22 interest?

23 A. Yes.

24 Q. And to your understanding, is the Office
25 of Consumer Services a party to this settlement

1 stipulation?

2 A. It's my understanding the Office is not
3 a party to the stipulation, but they do not oppose
4 the settlement or the stipulation.

5 MS. SLAWSON: Thank you. I have no
6 other questions, and Mr. Johansen will be available
7 for cross-examination.

8 THE HEARING OFFICER: Thank you, Ms.
9 Slawson.

10 Mr. Jetter.

11 MR. JETTER: I have no questions.
12 Thank you.

13 THE HEARING OFFICER: Thank you.

14 Mr. Johansen, I have a few questions for
15 you, please.

16 THE WITNESS: Okay.

17 EXAMINATION

18 BY-THE HEARING OFFICER:

19 Q. Regarding the revenue shortfall that you
20 referred to in your testimony, do you have a sense
21 as to when Emery intends to bring a rate case
22 before the Commission?

23 A. You mean a future rate case?

24 Q. Yes, sir.

25 A. I do not have a sense. We are--we

1 always are looking at those numbers, and we are
2 closing the books for 2014 to determine if there is
3 a further shortfall or if there isn't. And so I
4 do not know--do not have a--any idea on that right
5 now.

6 Q. And given your testimony that you are
7 experiencing a shortfall, could you help me
8 understand why you're not seeking a rate increase?

9 A. As explained in my testimony, the
10 economics of the area--if you look at what's
11 happening in our area, we've had a lot of the mine
12 closures. We've had the power plant that's closing
13 in Castle Gate. A bunch of other economic
14 realities, just like a lot of the state, we're
15 experiencing. A lot of our customers are--are
16 really economically having a hard time right now.
17 And we don't feel that it would be a good idea
18 right now to raise rates, because of those--those
19 realities.

20 As a co-op, we--we have the right to
21 set those rates. And as stated in my testimony,
22 that amount was imputed against the amount of draw
23 against the Universal--Utah Universal Service Fund.
24 So it's not being made up out of that fund. We're
25 just choosing not to charge it at this point.

1 Q. You're referring to the affordable--

2 A. That increase--

3 Q. --affordable base rate?

4 A. --increase to the affordable base rate,
5 right.

6 THE REPORTER: Sorry. Can I just ask
7 for a--there was a bit of overlap there. "You're
8 referring to the affordable" . . .

9 THE WITNESS: Base rate. The question
10 was why are we not charging the affordable base
11 rate. We don't believe that the--the--the
12 economies of the area would justify or would be--
13 allow us to charge that increase in fees to our--
14 our subscribers.

15 BY THE HEARING OFFICER:

16 Q. Thank you, Mr. Johansen.

17 Is it correct that this is Emery's first
18 application for USF?

19 A. No.

20 Q. You are currently receiving USF?

21 A. We're not currently receiving it, but
22 it's not our first application. We were receiving
23 it--I think we--I'm not positive, but I think the
24 last time we received state USF was in 2006.

25 Q. Okay.

1 A. And so we have received it in the past,
2 but we haven't been receiving it in the past--or
3 the past since 2006.

4 Q. What were the circumstances that arose
5 that you no longer continued to receive USF?

6 A. I'm going--I'm going to give a vague
7 answer. I came on as the CEO two months before us
8 failing to receive USF. So in two thousand--I came
9 on in December of 2005 as the CEO. So when they
10 originally applied for USF, I wasn't employed by
11 the Company. So I don't have a lot of knowledge
12 on that, but I think it was a decrease in rate
13 base. The Company went through this through a time
14 when they--they weren't upgrading the plant and
15 for--for other reasons, but the rate base had
16 fallen, making them ineligible for state USF. And
17 when we came back on--when I came on in '06, we
18 started upgrading the plant to an IP-capable plant.
19 And as we did that, the rate base came back up,
20 making us eligible for state USF again.

21 THE HEARING OFFICER: Ms. Slawson, did
22 you want to supplement that? I realize you're not
23 providing testimony, but just for clarification.

24 MS. SLAWSON: Sure.

25 FURTHER EXAMINATION

1 BY-MS.SLAWSON:

2 Q. I just had a question: Was there a
3 formal proceeding when the Company lost its USF?

4 A. No. So when the USF was removed or no
5 longer given to the Company in 2006, it was a
6 decision--we just received a letter from the
7 Division saying we are no longer eligible. It
8 wasn't part of an application or a rate case.

9 MS. SLAWSON: Thank you.

10 THE HEARING OFFICER: Okay. Thank you
11 for that clarification.

12 FURTHER EXAMINATION

13 BY-THE HEARING OFFICER:

14 Q. Mr. Johansen, could you--could you help
15 me understand a little bit more--you testified that
16 the--that the USF, in your--in your opinion, based
17 on your testimony, does not amount to a subsidy.
18 What do you mean by that?

19 A. I've got to find the statement I made.

20 Q. I think you said "subsidize."

21 A. I think that was in relation to the
22 base affordable rate. And so I was saying the USF
23 was not going to subsidize the fact that we were
24 not charging the base affordable rate. That amount
25 was imputed against us--the fact that we were not

1 charging the base affordable rate, that revenue
2 difference was imputed against the amount that we
3 were getting out of the Utah State Universal--the
4 Utah Universal Service Fund. So it's not
5 subsidizing the fact that we are not charging that
6 base affordable rate. That's what I meant by that
7 statement. It was in that question on the
8 difference between what we're charging right now
9 and the base affordable rate. This USF application
10 does not subsidize the fact that we're not charging
11 base affordable rate.

12 Q. Okay. Thank you very much for that
13 clarification.

14 A. (To the reporter) Am I answering those
15 too quickly?

16 THE REPORTER: I'll tell you if I have
17 a problem.

18 BY THE HEARING OFFICER:

19 Q. Mr. Johansen, have you received any
20 comments or concerns from ratepayers concerning
21 this application that you've made to the Commission
22 for USF?

23 A. No.

24 Q. Okay. And regarding your statement
25 about the Office's participation--I realize that

1 the Office is here and can make a statement if they
2 choose to do so--but just-- just to clarify, your
3 understanding is that the Office does not object to
4 the stipulation as it's presented to the
5 Commission; is that correct?

6 A. Yes.

7 THE HEARING OFFICER: Very good. Thank
8 you very much, sir--

9 THE WITNESS: Thank you.

10 THE HEARING OFFICER: --for your
11 testimony today.

12 Mr. Jetter.

13 MR. JETTER: Thank you. The Commission
14 would like to call and have sworn in Mr. Bill
15 Duncan.

16 THE HEARING OFFICER: Good morning, Mr.
17 Duncan.

18 THE WITNESS: Morning.

19 THE HEARING OFFICER: Do you swear that
20 the testimony you're about to give will be the
21 truth?

22 THE WITNESS: Yes.

23 THE HEARING OFFICER: Thank you.

24 BILL DUNCAN, being first duly sworn, was
25 examined and testified as follows:

1 EXAMINATION

2 BY-MR.JETTER:

3 Q. Mr. Duncan, will you please state your
4 name and occupation for the record?

5 A. My name is Bill Duncan. I'm manager of
6 the telecommunication section at the Utah Division
7 of Public Utilities.

8 Q. Thank you. And have you prepared a
9 brief statement today?

10 A. Yes, I have.

11 Q. Please go ahead.

12 A. The Utah Division of Public Utilities
13 supports the settlement stipulation filed with the
14 Public Service Commission on January 21, 2015, and
15 requests that the Commission approve the
16 stipulation as filed. The settlement stipulation
17 resolves all issues associated with this docket.
18 The Division believes that this settlement is just
19 and reasonable and in the public interest.

20 And I'll go through some of the history
21 of this--of our participation in this docket.

22 On September 29, 2014, Emery Telephone
23 filed its application for USF support with the
24 Public Service Commission. During the ensuing
25 months, the Division conducted a thorough review

1 and audit of the books and records of Emery
2 Telephone. Throughout that time, the Division
3 issued four data requests seeking more information.
4 These data requests were promptly answered. The
5 Division also worked informally and in a
6 collaborative manner with Emery when clarifications
7 or explanations were needed.

8 On December 2nd through the 4th of 2014,
9 three members of the Division staff traveled to
10 Emery County and met with Emery Telephone personnel
11 in their offices in Orangeville, Utah, and further
12 reviewed the books--further reviewed and audited
13 the books and records of Emery Telephone. As a
14 result of this investigation, the Division proposed
15 a few adjustments to Emery's request.

16 On January 7, 2015, the Division, the
17 Office of Consumer Services, and Emery met in
18 settlement discussions. As a result of these
19 discussions, the Division and Emery were able to
20 resolve the issues and come to a mutually agreeable
21 solution. The result of that agreement is
22 presented in the settlement stipulation.

23 The Division has reviewed this case
24 using the same standards that have been applied in
25 other USF requests and believes that the amount

1 presented in the settlement stipulation of 561,000
2 per year will allow Emery to recover its operating
3 costs and earn a fair return on its investment.
4 The Division has also reviewed the invoices
5 submitted for rate case expenses and believes that
6 the amount of \$30,959.80 accurately represents the
7 costs incurred by Emery in this docket.

8 For these reasons, the Division believes
9 the settlement stipulation as presented is just,
10 fair, and reasonable in result and is in the public
11 interest, and requests the Commission approve the
12 stipulation.

13 Thank you.

14 Q. I have just one further question for
15 you: Are you aware--or have you been contacted by
16 any customers or are you aware of any outside
17 parties that are not present today that would
18 object to this stipulation?

19 A. No, I'm not.

20 MR. JETTER: Thank you. I have no
21 further questions, and Mr. Duncan is available for
22 cross-examination.

23 THE HEARING OFFICER: Ms. Slawson.

24 MS. SLAWSON: No questions. Thank you.

25 THE HEARING OFFICER: Thank you.

1 EXAMINATION

2 BY-THE HEARING OFFICER:

3 Q. Mr. Duncan, I do have a question or two
4 for you, please.

5 A. Okay.

6 Q. Concerning--did you hear Mr. Johansen's
7 testimony earlier regarding the Office's
8 participation in this matter?

9 A. Yes.

10 Q. In particular, that the Office does not
11 object to the stipulation?

12 A. That is my understanding.

13 Q. Okay. And is it your understanding that
14 the--just to clarify, is it your understanding that
15 the Office does not object?

16 A. Yes, that is my understanding as well.

17 Q. Okay. Regarding the effective date,
18 does that pose any problem for the Division as far
19 as--we've already gone beyond the January 2015
20 date. Does that create any problem for--assuming
21 that the stipulation is approved as drafted, does
22 that--does that create any problem for you in
23 meeting that request, the January 2015 date?

24 A. No, it does not.

25 Q. Okay. And regarding the testimony about

1 whether a rate case will be filed, or when it might
2 be filed in the future, have there been any
3 discussions between the Division and Emery about
4 that issue?

5 MR. JETTER: I'd just like to step in
6 real quickly. We had--there may have been
7 discussions, but we had confidential settlement
8 discussions that I think might be inappropriate to
9 discuss before the Commission at this time.

10 THE HEARING OFFICER: Okay. Okay.

11 MR. JETTER: I don't know if that's an
12 objection to the question or we call it that.

13 THE HEARING OFFICER: I think what
14 you're telling me is you don't want to answer the
15 question because it goes to the issue of settlement
16 discussions?

17 MR. JETTER: Yes.

18 THE HEARING OFFICER: So I can
19 appreciate that. Thank you for that. And--okay.
20 Very good.

21 BY THE HEARING OFFICER:

22 Q. Mr. Duncan, I think you already answered
23 this question, but just to be clear, have you
24 received any concerns from--on behalf of any of the
25 rate payers for Emery regarding this matter?

1 A. No, we have not.

2 Q. Okay. All right. Thank you for your
3 testimony.

4 A. You're welcome.

5 THE HEARING OFFICER: Thank you very
6 much.

7 Ms. Slawson, typically we would take
8 notice of the filings, so I'll leave it to you as
9 to what you choose to request to have admitted into
10 the record.

11 MS. SLAWSON: Thank you, your Honor.
12 Yes, we would move to have the application, the--
13 and the testimony of Darren Woolsey and Brock
14 Johansen admitted into the record.

15 THE HEARING OFFICER: And I assume you'd
16 also like the settlement stipulation?

17 MS. SLAWSON: Oh, absolutely.

18 THE HEARING OFFICER: Very good.
19 Is there any objection to that?

20 MR. JETTER: No objection.

21 THE HEARING OFFICER: Okay. And again,
22 I'd like to give the opportunity if--if the Office
23 wishes to make any statement whatsoever--I believe
24 it's not your intention to make a statement; is
25 that correct?

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MR. OLSEN: That's correct.

THE HEARING OFFICER: Okay. Thank you.
Is there anything further to come before
the Commission regarding this matter?

MS. SLAWSON: Not from the Applicant,
thank you.

MR. JETTER: No, your Honor.

THE HEARING OFFICER: Okay. Thank you.
This matter will be adjourned. We'll take the
matter under advisement and see you again here at
12:00 for the public witness hearing portion.
Thank you very much.

(Proceedings adjourned at 11:24 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight



Scott M. Knight, RPR
Utah License No. 110171-7801