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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**IN THE MATTER OF EMERY  
TELEPHONE'S APPLICATION FOR AN  
INCREASE IN UTAH UNIVERSAL  
SERVICE FUND SUPPORT**

Docket No. 15-042-01

**DIVISION OF PUBLIC UTILITIES'  
OBJECTION AT&T COMPANIES'  
PETITION TO INTERVENE**

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Pursuant to Utah Code Ann. § 54-4a-1 and Utah Admin. Code r746-100 the Utah Division of Public Utilities (“Division”), hereby submits this Objection to AT&T Companies’ (“AT&T”) Petition to Intervene. The Public Service Commission of Utah (“Commission”) should deny AT&T’s Petition to Intervene in Docket No. 15-042-01. AT&T does not have a distinct and palpable injury or interest that provides standing under Utah’s common law and AT&T’s intervention fails to satisfy the statutory requirements for intervention specified in Utah Code § 63G-4-207.

**I. AT&T’s Petition to Intervene Should Be Denied Because AT&T Lacks Standing to Intervene Where AT&T Has Not Suffered a Distinct and Palpable Injury**

Standing for purposes of judicial review is applicable to the adjudicative functions of administrative agencies. *See Utah Chapter of Sierra Club v. Utah Air Quality Board*, 2006 UT 74, ¶ 12 148 P.3d 960. (finding “the same policies that apply to standing before the judicial branch also apply to controversies before administrative agencies.”) In the instant case the Commission is acting in an adjudicative role. Under the traditional test for standing, a party must be able to show “[1] that he has suffered [or will suffer] some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute . . . [2] some causal relationship [between the actions challenged and the injury suffered] . . . and [3] the relief requested is substantially likely to redress the injury claimed.” *Jenkins v. Swan*, 675 P.2d 1145, 1148-1150 (Utah 1983). “It is generally insufficient for a plaintiff to assert only a general interest he shares in common with members of the public at large.” *Id.* at 1149.

AT&T fails the first part of the analysis. It is not bringing a claim of injury specific and personal to AT&T but rather is asserting a generalized interest shared by all telecommunications service providers and users subject to the provisions of the Utah Universal Service Fund (“UUSF”). The UUSF fees are substantially similar to the generalized application of taxes and AT&T’s interest is similar to a claim of tax payer standing where such a generalized grievance does not meet the personalized injury requirement for AT&T to have standing to intervene. *See Ex. Jenkins v. Swan*, 675 P.2d 1145, 1151 (Utah, 1983) (finding that “...general status as a taxpayer and citizen does nothing to distinguish [the plaintiff] from any member of the public at large”). The instant case is slightly different from a typical claim of tax payer standing because UUSF surcharges are not directly paid by AT&T. Rather they are the responsibility of consumers through an end user surcharge. Utah Code Ann. § 54-8b-15(10)(a)(iv). AT&T’s role in UUSF is that of collecting the charges and remitting them to the fund. AT&T is one step further removed from the claim of a tax payer who directly pays taxes. As such the interests of AT&T are too generalized to support standing under the traditional test.

An alternative standing test has been developed in Utah Courts for those parties unable to meet the traditional test. *Sierra Club*,. To meet the alternative standing test, the party must “first establish that it is an appropriate party to raise the issue in the dispute before the court. A party meets this burden by demonstrating that it has the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions and that the issues are unlikely to be raised if the party is denied standing.” *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 36, 148 P.3d 960, 972.

AT&T has not identified issues that are unlikely to be raised if it is denied standing. Rather the Division of Public Utilities and the Office of Consumer Services are likely to raise such issues as the two agencies have done in past proceedings. Because the issues raised by AT&T are likely to be raised by other parties to the proceeding AT&T has not satisfied the burden of the alternative standing test. Indeed, the Division’s and OCS’s statutes both include the protection of various public interests. Utah Code Ann. §§ 54-4a-6; 54-10a-201(3).

While participation in Commission proceedings by other entities can be productive and even necessary, the Division is concerned that such broad intervention as that sought by AT&T, a potential competitor of the applicant, will create problems instead of aiding the process. In telecommunications cases, loose intervention guidelines could allow intervention by nearly every telecommunications company operating in Utah. Such intervention might include the revelation of the applicant’s confidential business information to its potential competitors.

AT&T’s generalized claims fail both the traditional test and the alternative standing tests. Furthermore, any generalized interest AT&T may have is outweighed by the potential damage of allowing a competing telephone company access to confidential business information, even with a protective order limiting use of the information. AT&T should be denied intervention.

## **II. AT&T's Petition to Intervene Should Be Denied Because the Requirements of Utah Code § 63G-4-207 for Intervention Have Not Been Satisfied**

In addition to the common law standing, Utah also has statutory requirements for granting intervention. The statutory requirements for granting intervention in a formal adjudicative proceeding are that the presiding officer finds:

- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
- (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

Utah Code § 63G-4-207(2). Allowing AT&T to intervene in this docket would violate both provisions of Utah Code § 63G-4-207(2).

First, AT&T's legal interests will not be substantially affected by the formal adjudicative proceeding of Emery Telephone's application for increase in UUSF support. As discussed above in Section I, AT&T's potential harm, if any, as a result of the outcome of this docket would not be a particularized harm specific to AT&T but rather a generalized harm suffered by all telecommunications providers and users. A change in the level of UUSF fees to be collected seems unlikely to cause any new or additional burden to AT&T in the collection and remittance of such fees. As a result AT&T will be in the same legal position with respect to UUSF regardless of the outcome.

Second, allowing AT&T and other telecommunications providers to intervene would materially impair the orderly and prompt conduct of this adjudicative proceeding. Allowing one telecommunications provider to intervene in a third party's application for increase of UUSF support without a compelling reason (i.e. a particularized harm) would open the door for all telecommunications providers to attempt to intervene, which would in turn materially impair the efficiency and effectiveness of such administrative proceedings. Business documents that are necessary to the evaluation of UUSF

support are likely to be subject to confidentiality and discovery disputes as competitors will use the process to seek sensitive business information. Commission protective orders would be of limited value when the material is provided directly to a competitor. Additionally, the Commission would be bombarded with extraneous information, parties and issues that would not aid in the decision-making process for the particular issue under review.

For these reasons AT&T does not meet the statutory requirements for intervention in this docket. Likewise, the problems created by AT&T's participation suggest that even permissive intervention is unwarranted. AT&T's request for intervention should be denied.

#### CONCLUSION

AT&T's petition for intervention should be denied. AT&T has not claimed a distinct and palpable injury that is likely to result from this docket. AT&T's interest is general in nature and similar to all other telecommunications providers. It is insufficient to establish standing under the traditional or alternative common law standing tests. AT&T has similarly failed to establish that its legal interests will be substantially affected. Finally intervention by AT&T would be disruptive to the adjudication of this docket. The Commission should deny AT&T's Petition for Intervention.

Submitted this 12th day August, 2015.

/s/ Justin C. Jetter  
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