
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Increase of Rates	:	Docket No. 08-046-01
And Charges and Increases in USF	:	DPU Exhibit 4.0 SR
Eligibility For MTC Telephone	:	(REDACTED)
Company	:	
	:	

SURREBUTTAL TESTIMONY

OF

**ROBERT A. DAVIS
STATE OF UTAH
DIVISION OF PUBLIC UTILITIES**

NOVEMBER 9, 2012

1 **Q: Please state your name for the record.**

2 **A:** My name is Robert A. Davis.

3 **Q: Are you the same Robert A. Davis who previously filed testimony in this docket?**

4 **A:** Yes, I previously filed direct testimony in this docket on behalf of the Division of Public
5 Utilities (DPU).

6 **Q: What is the purpose of your surrebuttal testimony in these proceedings?**

7 **A:** My testimony addresses and summarizes specific issues and conditions pertaining to the
8 mischaracterization of the Office of Consumer Services-OCS's rebuttal, OCS-2R
9 Ostrander, of DPU's treatment of wages and compensation. Additionally, I will address
10 some of the issues OCS mentions regarding the compensation study compiled by Carter
11 and Kotter. Finally, I will address the issues mentioned by MTC's rebuttal testimony by
12 Mr. Dallas Cox and Mr. Ray Hendershot regarding feature services, Sterling property
13 taxes, the Sterling lease agreement between MTC & MTCC, and wage concerns.

14 **SUMMARY OF SURREBUTTAL (OCS)**

15 **Q: Do you believe Mr. Ostrander and the OCS have mischaracterized the DPU's**
16 **attempt to adjust MTC's wages to be more in line with the market? DPU Exhibit**
17 **4.4.**

18 **A:** Yes. Mr. Ostrander in his rebuttal testimony, lines 57-155, and the OCS mischaracterize
19 what the DPU is suggesting in regards to wages. The adjustments made to the healthcare
20 will not be addressed.

21 I believe the OCS fails to fully understand the overall adjustment made to the wages by

22 failing to include the [REDACTED] regulated/non-regulated adjustment, DPU Exhibit 1.1 R.
23 After adjusting the various positions to the market median, a portion of those wage
24 expenses are then allocated to non-regulated activities. As a result, the net adjustment to
25 the wages is a decrease of approximately [REDACTED] from the current wages. See DPU
26 Exhibit 4.2 SR. This results in an approximate difference of only [REDACTED] from the
27 OCS's original overall downward adjustment of [REDACTED] OCS Exhibit 2.4D Ostrander.

28 **Q: OCS-2R Ostrander rebuttal testimony lines 71-141. Do you believe DPU's**
29 **adjustments are reasonable in funding the overall wage expenses versus adjusting**
30 **individual employee salaries?**

31 **A:** Yes. It is not DPU's position to micro-manage the company. The suggested adjustment is
32 an attempt to find a reasonable level of payroll expense by providing funding at the
33 median for the company's various job titles. The DPU has no way of knowing and has
34 very little control over how the company will administer its compensation plan. The DPU
35 has no way of knowing the level of detail to make individual adjustments to payroll based
36 on performance, longevity and other factors. The company is regulated as an incumbent
37 local exchange carrier, the employees are not. MTC competes directly with every other
38 employer in the region for quality workers. The DPU is attempting to fund the company's
39 payroll to retain or hire qualified workers. How the company uses those funds is
40 dependent upon their discretion and not the responsibility of anyone but themselves.

41 **Q: Ostrander rebuttal testimony, lines 123-129. Should the difference between MTC's**
42 **current wages and DPU's adjusted wages for certain positions be capitalized to the**

43 **work in progress account and other accounts? OCS Exhibit 2.1R Ostrander.**

44 **A:** The DPU acknowledges that an allocation of the difference between current and
45 suggested market median wage expense of certain worker classifications be made to the
46 construction work in progress account with corresponding adjustments to plant in service
47 and depreciation. However with the current economy and future expectations, using
48 historical ratios for a forward looking adjustment without future plant build forecasts
49 could possibly result in erroneous adjustments.

50 **Q: Do you believe MTC's overall wages and Officer's compensation is trending**
51 **towards a more normal market wage? DPU Exhibit 4.2 SR.**

52 **A:** Yes. DPU Exhibit 4.2 SR demonstrates the historical trend of MTC's overall payroll with
53 Director's and Officer's compensations as reported in the respective annual reports. The
54 DPU uses the suggested median in an overall attempt to arrive at a reasonable payroll
55 budget for MTC. The wages are further reduced by the overall [REDACTED] regulated non-
56 regulated allocation as it is difficult to properly identify each employee's involvement
57 with non-regulated duties and to be more consistent with other expense categories.

58 **Q: Do you agree with the OCS that the compensation study performed by Carter &**
59 **Kotter is fundamentally flawed? DPU Exhibit 6.1.**

60 **A:** No. The OCS, Ostrander rebuttal testimony lines 94-121, 165-256, and 323-458, targets
61 the compensation study done by Carter & Kotter claiming that it is flawed and based on
62 subjective data. The OCS offers no study of its own and bases its objections to the study's
63 use on seemingly hearsay and one court case. The OCS's consultant Mr. Ostrander in his

64 testimony lines 109-121, criticizes the use of trending factors to bring historical data
65 within the study to the current date at the time of the study, which is an industry standard
66 when utilizing historical data in any analysis. However, in his analysis, he awards certain
67 “non-management” employees with a [REDACTED] COLA increase. He does not note how he
68 arrived at his [REDACTED] adjustment, whether or not it is derived nationwide, regionally or is just
69 a best guess. Nor does he offer his resources.

70 The information provided by MTC has often proven unreliable. The wages for certain
71 MTC employees have varied by as much as 100% within the course of this docket. As
72 such, the DPU does not believe it would be reasonable to rely upon MTC’s test year
73 wages as a basis for a reasonable wage expense for purposes of Utah USF calculation.
74 The DPU therefore looked to market based compensation levels in order to provide a
75 basis for wage expenses. The DPU believes Carter Consulting’s compensation study is a
76 more reliable starting point because it has been compiled by a reliable and reputable
77 consultant with supportable assumptions.

78 The DPU believes that it would be inappropriate to adjust wages based on the criteria
79 suggested by Mr. Ostrander.

80 **Q: Ostrander rebuttal testimony lines 269-298. Should the DPU fund positions that are**
81 **currently unfilled or part of a wish list to be funded by Utah USF? DPU Exhibit 4.4.**

82 No. Mr. Ostrander in his testimony criticizes the DPU for funding a position in prior
83 proceedings that was never filled and the money used elsewhere. Yet in his rebuttal, Mr.
84 Ostrander recommends funding the same position stating that it would help improve

85 MTC's bookkeeping efficiencies further reducing the need for outside consulting. See
86 Mr. Ostrander's rebuttal testimony lines 88-92 and 131-135. Mr. Ostrander can no more
87 guarantee that the position would be filled than the DPU could when it originally funded
88 the position in prior proceedings.

89 **Q: Ostrander rebuttal testimony lines 248-267. Should the DPU have adjusted the**
90 **wages based on the margin of error?**

91 **A:** No. Carter & Kotter were hired as compensation experts to determine a market derived
92 median wage for similar positions to those at MTC. They acknowledged that these studies
93 have margins of error. The errors are duly noted. The DPU decided how the study would
94 be used not Carter Consulting. Adjusting the employee wages that are outside the margin
95 of error above or below the median to the " " margin of error would create a range of
96 wages making determination of what to fund difficult, imprecise and counterintuitive to
97 what the DPU is trying to accomplish.

98 **SUMMARY OF SURREBUTTAL (MTC)**

99 **Q: Dallas Cox rebuttal testimony lines 179-189. Should Utah USF be used to fund caller**
100 **features that are not covered in the Affordable Base Rate-AFB? DPU Exhibit 4.1.**

101 **A:** No. The DPU is not opposed in principle to telephone companies offering services such
102 as Caller ID-Name and Number, Call Waiting, 3 Way Calling and Call Forwarding for no
103 cost. These services are considered to be competitive in nature and offered by other
104 telecommunication carriers at no charge. MTC proposes to include these services in the
105 Affordable Base Rate-ABR and have Utah USF compensate it for the lost revenue these

106 services currently generate. The DPU does not believe this is appropriate for a Rate of
107 Return company where prices should be cost based. The company is already receiving
108 rate of return on the cost associated with the equipment used for these services as they are
109 contained in central office switching.

110 **Q: Are there Utah State statutes and rules that offer guidance to the DPU in regards to**
111 **this matter?**

112 **A:** Yes. U.C. 54-8b-1.1(2) “Basic residential service” means a local exchange service for a
113 residential customer consisting of : (a) a single line with access to the public switched
114 network; (b) touch-tone or the functional equivalent; (c) local flat-rate unlimited usage,
115 exclusive of extended area service; (d) single-party service; (e) a free phone number
116 listing in directories received for free; (f) access to operator services; (g) access to
117 directory assistance; (h) access to lifeline and telephone relay assistance; (i) access to 911
118 and E911 emergency services; (j) access to long-distance carriers; (k) access to toll
119 limitation services; (l) other services as may be determined by the Commission; and (m)
120 specifies that this basic service has “no feature”. U.C. 54-8b-2(6)(a) “Feature” means a
121 custom calling service available from the central office switch, including call waiting, call
122 forwarding, three-way calling and similar services.

123 Rules for determining Utah USF eligibility use a similar definition in defining the
124 supported services. Rule R746-360-2(A) defines Affordable Base Rate (ABR) as the
125 monthly per line retail rates, charges or fees for basic telecommunications service which
126 the Commission determines to be just, reasonable, and affordable for a designated support

127 area. The Affordable Base Rate shall be established by the Commission. The Affordable
128 Base Rate does not include the applicable USF retail surcharge, municipal franchise fees,
129 taxes, and other incidental surcharges.

130 Additionally, R746-360-2(C) “Basic Telecommunications Services”-means a local
131 exchange service consisting of access to the public switched network; touch-tone, or its
132 functional equivalent; local flat-rated, unlimited usage, exclusive of extended area
133 service; single-party service with telephone number listed free in directories that are
134 received free; access to operator services; access to directory assistance, lifeline and
135 telephone relay assistance, access to 911 and E911 emergency services; access to long-
136 distance carriers; access to toll limitation services; and other services as may be
137 determined by the Commission.

138 Rule R746-360-6(1) “To qualify to receive USF support funds, a telecommunications
139 corporation shall be designated an “eligible telecommunications carrier,” pursuant to 47
140 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules.

141 *Each telecommunications corporation receiving support shall use that support only to*
142 *provide basic telecommunications service and any other services or purposes approved*
143 *by the Commission* (emphasis added).

144 MTC is a Rate of Return company. Rule R746-360-8 provides the mechanism for
145 determining fund distribution. (A)(1) “Incumbent telephone corporation-Monies from the
146 fund will equal the numerical difference between the Incumbent telephone corporation’s
147 total embedded costs of providing public telecommunications services, for a designated

148 support area, less the product of the Incumbent telephone corporation's Average Revenue
149 Per Line, for the designated support area, times the Incumbent telephone corporation's
150 active access lines in the designated support area. "Total embedded costs" shall include a
151 weighted average rate of return on capital of the intrastate and interstate jurisdictions"
152 The DPU believes that the costs of these features are imbedded in the costs subject to a
153 rate of return. Receiving additional Utah USF funding is outside the definition of AFB
154 and would result in a misuse of Utah USF unless this service is designated by the
155 Commission as being included in Basic Telecommunications Service.

156 **Q: Ray Hendershot rebuttal testimony page 4 and Dallas Cox rebuttal testimony lines**
157 **191-200 referring to DPU Exhibit 4.7 & 4.8. Does the lease agreement between MTC**
158 **and MTCC clarify who is responsible for the Sterling property tax expense and**
159 **whether the lease amount is reasonable compared to the market?**

160 **A:** No. The [REDACTED] monthly lease amount equates to [REDACTED] per year in MTC revenue. The
161 lease agreement between MTC and MTCC is vague making it difficult to fully understand
162 which party is responsible for what expenses and hardly seems to be arms length. The
163 agreement spells out certain expenses that MTC covers while others are covered by
164 MTCC. It's unclear where the property tax responsibilities lie. However, during the DPU
165 audit of MTC company expenses, it was found that MTC paid 100% of the property taxes
166 for this property. Since the lease is assumed not to be a gross lease, it is assumed to be
167 some type of net lease.

168 It is difficult to reconcile the economies of this lease to MTC given the use of the space

169 and the rent per month of roughly [REDACTED] per square foot [REDACTED]
170 [REDACTED] in a building that has a [REDACTED] Sanpete County market value (Utah
171 State Tax Commission assessed value). It should be noted that MTC rents warehouse
172 space from P&C Rental-owned by Paul and Connie Cox at a higher rate per square foot
173 of [REDACTED] per square foot. The P&C lease requires the Lessor to cover property taxes while
174 the Lessee is responsible for the utilities. This does not make sense. Mr. Hendershot on
175 page 4 of his rebuttal testimony justifies this rate by claiming that the Manti market pays
176 [REDACTED] per month for [REDACTED] square feet or [REDACTED] for street level small business space-twice what
177 MTCC pays MTC and less than half of the rate MTC pays for warehouse space.
178 Mr. Hendershot further states “Comparing rental rates in Utah County is not comparable
179 to Sanpete County”. The DPU believes this is a truthful statement. However, when there
180 are no comparables in the subject county, it is prudent to use comparables from another
181 neighboring county with adjustments. The Sanpete County Economic Adviser, Mr. Kevin
182 Christensen, commented that there has not been suitable comparables in Sanpete County
183 for years and the comparables of neighboring counties would be significantly higher than
184 those in Sanpete County. He also mentioned that this creates an opportunity for Lessors to
185 abuse rental rates due to supply and demand.
186 The DPU believes demonstrating the Sterling property tax adjustment, even though it has
187 no impact on expense relating to current operating taxes, is an indicator of the
188 incongruities of the various lease agreements between MTC and its affiliates. The amount
189 due the Utah State Tax Commission is what it is regardless of payment responsibility or

190 the adjustments made. The [REDACTED] of lease payments from MTCC is not enough to even
191 cover the [REDACTED] property tax related to the leased space let alone utilities, insurance, etc.

192 **Q: Mr. Ray Hendershot rebuttal testimony pages 8 and 9. Should the DPU adjust**
193 **wages based on individual time in position? DPU Exhibit 4.4.**

194 **A:** No. The wages have previously been discussed in response to OCS's rebuttal. The DPU
195 does not feel responsible to administer MTC's payroll and is not interested in the payroll
196 ranges or where the employees are currently at in those ranges. The DPU is suggesting a
197 market derived amount to fund MTC's overall payroll expense.

198 **Q: DPU Exhibit 4.1 SR. After further review, have you made any revisions to your**
199 **prior direct testimony?**

200 **A:** Yes. The DPU acknowledges and adopts the OCS's [REDACTED] revenue adjustment for
201 Access Recovery Charges (ARC). This results in a change to local service revenue from a
202 [REDACTED] to a [REDACTED].

203 CONCLUSIONS

204 The DPU believes that its adjustments to local service revenues, wages, and property tax
205 in this matter are reasonable and prudent. The DPU acknowledges and adopts the OCS's
206 Access Recovery Charge adjustment to local service revenues. The DPU acknowledges
207 OCS's recommended adjustments for certain incremental wages to be capitalized to
208 construction in progress and other accounts. However, no additional adjustments are
209 made for the reasons mentioned.

210 **Q: Does this conclude your Surrebuttal testimony?**

211 **A:** Yes it does.