

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In The Matter of UBTA – UBET)	Docket No. 15-053-01
Communications, Inc.'s)	Surrebuttal Testimony of
(dba STRATA Networks) Application)	Michele Beck
for Utah Universal Service Fund)	For the Office of
Support)	Consumer Services
)	

November 17, 2015

1 **I. INTRODUCTION**

2

3 **Q. WHAT IS YOUR NAME, YOUR OCCUPATION AND YOUR BUSINESS**
4 **ADDRESS?**

5 A. My name is Michele Beck. I am the director of the Office of Consumer Services
6 (“Office”). My business address is 160 E. 300 S., Salt Lake City, Utah 84111.

7

8 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING?**

9 A. Yes, I filed direct testimony on September 25, 2015.

10

11 **Q. WHAT IS THE PURPOSE OF YOUR SUR-REBUTTAL TESTIMONY?**

12 A. I will provide the Office’s response on certain non-technical issues raised in the
13 rebuttal testimony of Strata witnesses Karl Searle and Bruce Todd.

14

15 **Q. MR. SEARLE ACCUSES ONE OF THE OFFICE’S EXPERT WITNESSES, MR.**
16 **OSTRANDER, OF CONFUSING THIS CASE WITH THAT OF CARBON EMERY.**
17 **WHAT IS YOUR RESPONSE?**

18 A. The typographical errors and other minor issues that Mr. Searle identifies do not
19 impact the underlying substance, calculations or conclusions contained in the
20 direct testimony filed on behalf of the Office. Mr. Searle attempts to overstate the
21 impact of these minor typographical errors by stating that our witness was
22 confused between the facts of the Strata and Carbon/Emery cases.¹ His

¹ Searle Rebuttal, p. 3, lines 52-53.

23 statements are incorrect and have no underlying basis for support. In my
24 experience, a more effective rebuttal would have been to provide supporting
25 evidence to demonstrate why one position is superior and another is inferior or
26 incorrect.

27

28 **Q. PLEASE ADDRESS THE SPECIFIC CONCERNS RAISED BY MR. SEARLE.**

29 A. The minor issues raised by Mr. Searle in an attempt to discredit the Office's witness
30 are easily explained. For example:

31

32 1) Mr. Searle states that Mr. Ostrander's testimony includes two different amounts
33 related to the "Total UUSF Allowed",² the correct amount is \$704,913³ and the
34 amount of \$698,561 is a typographical error of an immaterial amount.

35

36 2) Mr. Searle states that data request OCS 2.18(c) includes a typographical error
37 that refers to Emery Telecom instead of Strata,⁴ what he fails to explain is that
38 this data request refers to Strata in all other places throughout the data request
39 and this did not impact Strata's response because they understood that it was
40 a typographical error.

41

² Searle Rebuttal, p. 2, lines 41-51.

³ The correct amount of \$704,913 was also clearly set forth at other places in Mr. Ostrander's direct testimony, including p. 6, lines at 118 and 122 and at OCS Exhibit 1D-2 (Ostrander revenue requirement calculations).

⁴ Searle Rebuttal, p. 3, lines 56-58.

42 3) Mr. Searle states that the Office's direct testimony included confidential exhibits
43 from the Carbon/Emery and Emery cases,⁵ but Mr. Searle's statements are
44 misleading. What actually transpired on the September 25th, 2015 OCS direct
45 testimony filing date is that the Office gave Strata a CD which inadvertently
46 included some Carbon/Emery and Emery data, and then realizing this error
47 almost immediately, the Office sent a prompt e-mail at 4:19 pm notifying parties
48 to ignore the CD and that a replacement CD would be provided. The
49 Carbon/Emery and Emery exhibits were never actually included in any of the
50 Office's witness testimony and was never formally admitted to the official record
51 in this proceeding.

52
53 4) Mr. Searle criticizes Mr. Ostrander for inaccurately using the terminology "DSL
54 wholesale service" because he states that Strata does not have such a
55 service.⁶ But all that Mr. Ostrander actually did is use this same terminology
56 that Strata had previously used in its initial filing and in various responses to
57 OCS data requests - - and Strata has never corrected its use of this same
58 terminology.⁷

59
60 **Q. MR. SEARLE STATES THAT THE ONLY PURPOSE FOR ONE PORTION OF**
61 **ADJUSTMENT BCO-5⁸ IS FOR THE OFFICE TO BE ABLE TO SUM THE**

⁵ Searle Rebuttal, p. 3, lines 59-60.

⁶ Searle Rebuttal, pp. 4-5, lines 89-98.

⁷ Mr. Searle fails to acknowledge that it was Strata that first initiated the use of this terminology in his direct testimony at Confidential Exhibit 2.4(b) (at Column A, line 3) and Strata continued to use this same term in responses to various OCS data request responses (i.e., OCS 2-16, 2-17 and 2-21).

⁸ Searle Rebuttal, p. 14, lines 299-305.

62 **OFFICE’S TOTAL ADJUSTMENTS TO LIMIT OR ELIMINATE UTAH USF**
63 **PAYMENTS TO STRATA. WHAT IS YOUR RESPONSE?**

64 A. Mr. Ostrander rebuts the substantive elements at issue in this portion of Mr.
65 Searle’s testimony and clearly demonstrates that there is a purpose for this
66 adjustment other than Mr. Searle’s assumption. I will further address Mr. Searle’s
67 accusations. Mr. Searle accuses the Office of taking a “results-oriented approach”
68 that “ignores the purpose of the Utah USF Fund.”

69
70 First, I would like to make some general observations about the regulatory process.
71 It is expected in dockets before the Commission that different parties will take
72 different positions, advocate different methods, and propose different adjustments.
73 It is perfectly reasonable for the Commission to be faced with competing
74 recommendations upon which it must rule and set rates, or in this case determine
75 the USF disbursement. In fact, in most cases, a range of options or outcomes
76 would likely satisfy the public interest standard. However, in my view it is unhelpful
77 to the process to use testimony to try and discredit witnesses through personal
78 attacks making accusations about improper motives. In this case, it is also without
79 basis.

80

81 **Q. DID THE OFFICE USE A RESULTS-ORIENTED APPROACH WHEN**
82 **PROPOSING THIS ADJUSTMENT?**

83 A. No. I cannot recall a single instance in any case in the almost eight years I have
84 been in this position in which the Office used a results-oriented approach. We did

85 not do so for Category 2 of BCO-5 or any of the other adjustments proposed in this
86 case, individually or in total.

87

88 **Q. DID THE OFFICE IGNORE THE PURPOSE OF THE UTAH USF FUND?**

89 A. In my opinion, no. Furthermore, I believe that Mr. Searle provides a stretched and
90 incorrect interpretation of the purpose of the Utah USF fund and asserts a historical
91 purpose that is not contained within the actual statutory language. However, I think
92 that the Utah USF statute stands on its own and it will ultimately be up to the
93 Commission to decide what position best carries out the purpose of that statute.

94

95 **Q. STRATA WITNESS MR. TODD RAISES CONCERNS THAT THE PARTIES
96 WANT TO LITIGATE RATHER THAN STIPULATE⁹. WHAT IS YOUR
97 RESPONSE?**

98 A. In the Office's view, this case has multiple factors that have not been conducive to
99 reach settlement. First, the parties' positions are quite far apart. Second, Strata
100 has been strident in its objections to positions and in some cases focused its
101 rebuttal on discrediting individuals rather than rebutting positions. This established
102 an atmosphere that does not facilitate cooperative settlement discussions.

103

104 The statute encouraging settlements does not do so at the expense of the public
105 interest. To the contrary, the statute indicates that the Commission may only adopt
106 a settlement proposal if:

⁹ Todd Rebuttal, p. 3 lines 52 – 53.

107 (A) The commission finds that the settlement proposal is just and
108 reasonable in result; and

109 (B) The evidence, contained in the record, supports a finding that the
110 settlement proposal is just and reasonable in result¹⁰.

111
112 The Office does not have a preference for litigation. However, we will not sign a
113 stipulation that we do not believe meets the criteria quoted above. I am confident
114 that the Office's record during my tenure demonstrates that we are willing to enter
115 into stipulations when we believe it meets those criteria.

116
117 **Q. DO YOU HAVE ANY ADDITIONAL CONCERNS ABOUT MR. TODD'S STATED**
118 **DESIRE TO TRY AND REACH AGREEMENT INFORMALLY?**

119 A. Yes. Mr. Todd appears unconcerned about the magnitude of the UUSF request
120 made by Strata in this case. Strata's request for \$3,422,053 of additional UUSF is
121 quite significant in context of the overall size of the fund. In 2014, the last year for
122 which annual data is available, the total disbursements to ILECs was
123 \$9,145,072.11. If granted, Strata's request would increase that number by 37%.
124 If granted, Strata would be receiving the highest amount of USF in the state, more
125 than double the amount received by any other ILEC. The Commission recently
126 enacted new rules emphasizing that the USF will be disbursed in a manner
127 consistent with the public interest¹¹. In my opinion, unless agreement could be

¹⁰ Utah Code Ann. §§54-7-1(3)(d)(i)(A)(B)

¹¹ In the Office's opinion, these rules were simply codifying the Commission's longstanding practice to ensure that the public interest is upheld.

128 reached easily, the magnitude of this case warrants the scrutiny that a litigated
129 case provides.

130

131 **Q. MR. TODD INDICATES THAT PARTIES MADE SIGNIFICANT NEW**
132 **PROPOSALS AFTER THE CASE WAS UNDERWAY. DO YOU AGREE WITH**
133 **HIS CHARACTERIZATION?**

134 A. No. I do not understand what Mr. Todd's expectations could have been for when
135 proposals would be made. Direct Testimony is the first opportunity for any party
136 to make any proposal except for the initial application filed by Strata. The
137 presentation of proposals in this case is absolutely consistent with standard
138 regulatory practice.

139

140 **Q. MR. TODD RECOMMENDS THAT THE COMMISSION REQUIRE THE PARTIES**
141 **TO NEGOTIATE. WHAT IS YOUR RESPONSE?**

142 A. I disagree with his recommendation. Such a requirement would serve no purpose,
143 except to prolong this proceeding.

144

145 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

146 A. Yes it does.