
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Emery Telephone's	:	Docket No. 15-2302-01
Application for an Increase in Utah	:	REVISED DPU Exhibit 1.0 R
Universal Service Fund Support	:	
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REVISED REBUTTAL TESTIMONY

OF

William Duncan
STATE OF UTAH
DIVISION OF PUBLIC UTILITIES

September 4, 2015
Revised Per October 26, 2015 Order

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I. INTRODUCTION

Q: Please state your name for the record.

A: My name is William Duncan.

Q: Are you the same William Duncan that filed direct testimony in this docket?

A: Yes.

II. PURPOSE AND SCOPE OF TESTIMONY

Q: What is the purpose of your rebuttal testimony in this proceeding?

A: My testimony will respond to certain issues raised by Mr. Ostrander and Mr. Brevitz in their direct testimony filed on behalf of the Office of Consumer Services (OCS).

Q: Please summarize the issues that the Division wishes to address.

A: The DPU would like to address the use of a hypothetical capital structure of 65% equity and 35% debt.

Q. Please address the use of a hypothetical capital structure and why the DPU is comfortable with this method.

A. Mr. Brevitz addresses this issue on lines 148-155 of his direct testimony. I do not disagree with his statement that the Utah PSC rejected this proposed rule. However, I believe that some context is needed to help the Commission understand why the DPU utilizes this proposed rule as policy. From my perspective, in 2008 when the Utah Rural Telephone Association (URTA) approached the Commission seeking a rulemaking in this matter, it really wanted one thing – regulatory consistency. Prior to 2008, the DPU had

23 used various policies about capital structure. These policies may have started from PSC
24 rule R746-344-5A which calls for the use of “an average rate base and capital structure.”
25 While this rule is not a part of R746-360, which defines how USF support is determined,
26 average (50/50) capital structures were apparently used for several years by the DPU.
27 Rural ILEC’s came to rely on the 50/50 hypothetical capital structure in making
28 investment decisions. As time passed, different management in the DPU utilized different
29 hypothetical and/or a mixture of hypothetical and actual capital structures to determine
30 USF support. Rural ILEC’s faced a confusing situation, never knowing what the “rules”
31 would be from case to case.

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33 The DPU saw this a reasonable request – to establish a rule that would provide certainty
34 and consistency from case to case in the regulatory process. The task force that was
35 formed to study this question consisted of a broad cross-section of interested parties,
36 including OCS. That task force met several times during 2008 to develop a rule that all
37 parties could support.

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39 Although the Commission rejected the proposed rule, in its reply to the DPU the
40 Commission stated “The general parameter of the rule accompanied by the variability
41 attempted to be included in the rule proposed may be applied by the Division itself in its
42 interaction with companies”.¹ Consequently, the DPU adopted the proposed rule as

¹ See letter to Phil Powlick, PSC Docket No. 07-999-09

43 policy, and has been consistent in the application of that proposed rule since that time.

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45 While the DPU understands the OCS concerns with the 65/35 hypothetical capital
46 structure, the DPU believes that this proceeding is not the place to make major policy
47 changes. Adoption of Mr. Brevitz's 50/50 hypothetical would once again introduce the
48 regulatory uncertainty the task force was trying to eliminate with the proposed rule. For
49 example, would the 50/50 hypothetical apply in all cases? This inconsistency in
50 regulatory practice makes investment decisions difficult in capital intensive industries.

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52 The DPU would support a much broader proceeding to examine this question that could
53 ultimately result in consistent practices that could be applied globally. Adoption and
54 application of a rule for capital structure would give predictability while also allowing
55 deviation if sufficient evidence shows the rule's general provision is not in the public
56 interest in a specific case.

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61 **Q. Conclusion:**

62 A: In recent years the DPU has generally attempted to treat all rural ILEC's in a consistent
63 manner and apply the same standards in all cases. The DPU's recommendation in this
64 case follows those same standards. There are other standards that are not unreasonable.

65 Generally speaking, the methods presented by Mr. Brevitz are not unreasonable, although
66 it is not clear that the final adjustments chosen are free from arbitrary values. They do
67 represent a significant departure from the consistency the DPU has tried to achieve.

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69 When the FCC issued its USF/ICC transformation order in November, 2011, it was
70 apparent that revenue sources traditionally relied upon by rural ILEC's would be reduced.
71 Unfortunately, those changes are not finalized². With no subsequent change in Utah State
72 law or PSC rules, it was apparent that requests for UUSF support would increase. Nearly
73 four years later, that scenario is playing out in the form of an increased number of
74 applications for increased UUSF support. The applications for UUSF support will likely
75 only continue. In rejecting the Capital Structure Task force recommendation the

76 Commission noted:

77 The Commission is also concerned of the impact of a rule in setting just and reasonable
78 rates under Title 54 where the Commission is required to make its determination based
79 upon the evidence presented in adjudicative proceedings, based upon the circumstances
80 facing each company and relevant to the time in which rates will be effective.³

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82 With this explanation, the Commission indicated a desire to evaluate each issue on a case
83 by case basis. This was three years before the FCC transformation order. With the change
84 in FCC policy, and sixteen rural ILECs to regulate, it may be time to examine methods
85 that provide a higher level of regulatory efficiency.

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2 The FCC has released seven orders on reconsideration since the original USF/ICC transformation order was released in November, 2011.

3 See PSC letter to Phil Powlick PSC Docket No. 07-999-09

87 At an appropriate time, it may be beneficial to consider these recurring issues in a
88 rulemaking to provide consistency and predictability. For now, the Commission should
89 reject the OCS's proposed adjustments in favor of the DPU's recommended methods,
90 which arrive at reasonable values in light of the regulatory burden and other
91 considerations that make other methods difficult.

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93 Q. Does this conclude your rebuttal testimony?

94 A. Yes.