

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF THE	)	Docket No.
APPLICATION OF	)	16-2302-01
CARBON/EMERY TELECOM INC.	)	
FOR AN INCREASE IN UTAH	)	Hearing
UNIVERSAL SERVICE FUND	)	
SUPPORT	)	VOLUME 2

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1 January 27, 2016

2 P R O C E E D I N G S

3 JUDGE JONSSON: Good morning. For the record,  
4 today is Wednesday, January 27th, 2016. It's just after  
5 nine o'clock in the morning. We've had some technical  
6 difficulties in getting going. But this is the date and  
7 time set for the continuation of the hearing, the formal  
8 hearing in docket No. 15-2302-01 in the matter of the  
9 application of Carbon/Emery Telecom, Incorporated, for  
10 an increase in Utah Universal Service Fund Support.

11 We are to the point in the proceeding where  
12 the Office of Consumer Services has the opportunity to  
13 present its case in chief. So Mr. Moore, if you're  
14 ready.

15 MR. MOORE: Yes, your Honor.

16 JUDGE JONSSON: Take it away.

17 MR. MOORE: Initially, if I may, at the  
18 pleasure of the record to correct an error.

19 JUDGE JONSSON: Please.

20 MR. MOORE: It's been brought to my attention,  
21 the very first words out of my mouth yesterday were  
22 incorrect. Apparently I testified that I was  
23 representing the Office of Community Services instead of  
24 the Office of Consumer Service. I'd like to make that  
25 correction on the record.

1 JUDGE JONSSON: Thank you.

2 MR. MOORE: The office calls David Brevitz.

3 DAVID BREVITZ,

4 called as a witness at the instance of the Office of  
5 Consumer Services, having been first duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MOORE:

9 Q. Could you state your name, employer and  
10 business address.

11 A. My name is David Brevitz. I'm an independent  
12 regulatory consultant employed on behalf the Office of  
13 Consumer Services in this matter.

14 Q. Have you reviewed the application and  
15 testimony presented in this docket?

16 A. Yes, I have.

17 Q. Have you filed direct rebuttal and surrebuttal  
18 testimony?

19 A. Yes, along with related exhibits.

20 Q. Do you have any changes to this testimony?

21 A. I have three changes. The first -- in each  
22 piece of testimony. The first change is in my direct,  
23 and it parallels the change that Mr. Coleman made  
24 yesterday. And it involves confidential numbers. But I  
25 think if I refer to Mr. Coleman's change, we can

1 accomplish that in public.

2 At Line 103 of my direct testimony, there is a  
3 table which derives the weighted average rate of return,  
4 and the separations factors in that table are slightly  
5 off what they should be. So if one puts in the  
6 separations factors that Mr. Coleman put in yesterday  
7 and runs the arithmetic, the weighted average return  
8 changes from the 8.45 percent shown in the direct as  
9 filed to 8.46 percent.

10 JUDGE JONSSON: Okay.

11 A. And that should be the change. If we're ready  
12 to move on to the next change, in my rebuttal at Line  
13 20 -- at Line 98, change 1984 to 1991.

14 JUDGE JONSSON: Okay. Tell me the line again.  
15 Sorry.

16 THE WITNESS: Line 98, change 1984 to 1991.

17 JUDGE JONSSON: Okay.

18 A. And then in my surrebuttal at Line 354, delete  
19 two words. Delete "expected future." And that  
20 completes my changes.

21 JUDGE JONSSON: Thank you.

22 **Q. (By Mr. Moore) Other than those changes, if I**  
23 **asked you the questions presented in your written**  
24 **testimony, would your answers be the same?**

25 A. Yes, they would.

1 Q. Have you prepared a summary of your testimony?

2 A. Yes, I have.

3 Q. Would you read that into the record please?

4 A. Yes, I will. My direct rebuttal and  
5 surrebuttal testimonies and related exhibits have been  
6 pre-filed on behalf of the Office of Consumer Services  
7 on the subject of the appropriate rate of return for  
8 Carbon/Emery's application for increased Utah universal  
9 service funds.

10 This case differs from a general rate case  
11 where a company seeks to collect its revenue requirement  
12 only from its customers. In this case Carbon/Emery  
13 seeks to transfer money from all consumers in Utah to  
14 the members of Emery Telcom. At least three rate return  
15 issues have been presented to the commission.

16 The first is, what is the investors' required  
17 return on equity for the state portion of the weighted  
18 average cost of capital? The second question is, what  
19 is the appropriate balance of debt versus equity to be  
20 assumed for the hypothetical capital structure for the  
21 state portion of the weighted average cost of capital  
22 since Carbon/Emery is now 100 percent equity on its  
23 books?

24 The third question is, what's the appropriate  
25 rate of return for the interstate portion of weighted

1 average cost of capital to be drawn from the FCC's Form  
2 492 rate of return report?

3 In my testimonies, I made the following  
4 observations and recommendations to the commission:  
5 First, Carbon/Emery presents its proposed rate of return  
6 and equity based on improper risk assessment that is  
7 contrary to modern portfolio theory, basic principles of  
8 finance and long-standing regulatory practice.

9 In particular, the company advocates that  
10 various premia be layered on top of determined rate of  
11 return based on individual company risk assessment.  
12 This advocacy is entirely inconsistent with modern  
13 portfolio theory under which investors are compensated  
14 only for systematic risk within an efficient portfolio  
15 but not for any unsystematic risk such as the specific  
16 risks of an individual company.

17 Systematic risk is measured by beta in the  
18 capital asset pricing model, which accounts for the  
19 firm's sensitivity to changes in macroeconomic factors  
20 such as inflation, the state of the economy, the term  
21 structure of interest rates, and the spread between  
22 yields on low and high grade bonds.

23 The investor-required return on a company's  
24 stock is a function only of the risk factors that affect  
25 all stocks, systematic risk. Under modern portfolio



1 theory, investors are not compensated for firm-specific  
2 or unsystematic risks since the investor can minimize  
3 these risks by adhering to the cardinal rule of  
4 investing, diversify.

5 Carbon/Emery's emphasis on firm-specific risk  
6 and various premia results in an inappropriately high  
7 requested rate of return on equity which should be  
8 rejected by the commission. Second, Carbon/Emery's  
9 advocacy of recognizing firm-specific risk in various  
10 premia is inconsistent with the efficient market  
11 principles which underlie the operation of global  
12 capital markets.

13 Were these various premia to actually exist,  
14 the implication would be that their investment  
15 strategies to profitably exploit them, efficient markets  
16 arbitrage away any apparent excess returns.

17 Third, Carbon/Emery's advocacy of recognizing  
18 firm specific risks and various premia as well as  
19 leverage beta are not accepted approaches to rate of  
20 return determination in state rate making proceedings.  
21 Carbon/Emery provides no citations to any decision by  
22 the State Regulatory Commission accepting this approach.

23 In my search I could not find any instances  
24 where a state regulatory commission accepted such  
25 recommendations. However, I did find instances where

1 state commissions explicitly rejected these type of  
2 approach.

3 If the commission accepts Carbon/Emery's  
4 advocacy in this case, it can expect many jurisdictional  
5 utilities across all sectors to seek higher rates of  
6 return based on various premia specifically seeking  
7 inclusion of a small company premium.

8 No. 4, Carbon/Emery's advocacy of recognizing  
9 firm specific risks in various premia is one directional  
10 and improperly ignores substantial offsetting additional  
11 benefits, which pertain to incumbent local exchange  
12 companies such as subsidy funds administered by state  
13 and federal regulators, subsidized long-term debt  
14 funding available from the RUS, subsidized long-term  
15 debt funding available from banks owned by incumbent  
16 local exchange companies such as CoBank, and the ability  
17 to raise rates by a general rate case and long-standing  
18 monopoly franchise originally granted to incumbent local  
19 exchange companies.

20 Fifth, Carbon/Emery fails to provide a rate of  
21 return calculation which is consistent and comports with  
22 long standing State Regulatory Commission practices and  
23 modern portfolio theory. My testimony provides a  
24 recommended return on equity of 10 percent based on  
25 appropriate and consistent rate of return estimations

1 from recent determinations for state universal service  
2 funding using both the standard CAPM, C-A-P-M and DCF  
3 methodologies.

4 The commission can appropriately rely on these  
5 estimations and recommendations in this case. DCU also  
6 provides a recommendation based on the standard CAPM  
7 methodology which again is consistent with long-standing  
8 regulatory practice.

9 Six, Carbon/Emery recommends a capital  
10 structure of 65 percent equity and 35 percent debt for  
11 the computation of the state portion of the weighted  
12 cost of capital. OCS recommends the commission employ a  
13 50-50 capital structure based on the fact that such a  
14 capital structure is more balanced in favor -- the  
15 requested capital structure is imbalanced in favor of  
16 the individual company and against the consumers which  
17 pay money into the UUSF.

18 Furthermore, the commission explicitly  
19 rejected the use of 65-35 hypothetical capital structure  
20 in favor of individual company determinations. The  
21 50-50 that the OCS recommends comes from an analysis of  
22 comparable companies.

23 No. 7, "The commission's rule requires  
24 calculation of a weighted average rate of return on  
25 capital of the intrastate and interstate jurisdiction."

1 That's a quote from the applicable rule. "From the  
2 FCC's Form 492 rate of return report, which is generated  
3 by the NECA administration on behalf of the NECA pool."

4 Carbon/Emery selects a return from this report  
5 which comprises only a small portion of the interstate  
6 jurisdiction and not the full interstate jurisdiction.  
7 The interstate jurisdiction is comprised of multiple  
8 services including common line, special access and  
9 switched access services.

10 The commission's rule evidently did not  
11 contemplate that the Form 492 report has more than one  
12 rate of return on it. And not -- and the rule is not  
13 specific on which rate of return to use from that form.  
14 OCS believes the proper application of the rule requires  
15 a rate of the return which covers all interstate  
16 services, and that return would be the 9.40 percent rate  
17 of return recommended in my testimonies.

18 The rule refers only to a rate of return on  
19 the Form 492, not any separate or additional rate of  
20 return calculations. It's reasonable for the commission  
21 to employ the rate of return on Form 492 which captures  
22 all interstate services and includes hundreds of rural  
23 telephone companies across the country such as  
24 Carbon/Emery.

25 There seems to be some confusion surrounding

1 the rule of NECA, the role of NECA and the Form 492  
2 report. All rural telephone companies are in NECA's  
3 common line pool. However, some companies, including  
4 Emery, have elected to withdraw from NECA's traffic  
5 sensitive and special access pools.

6 All companies offer common line special access  
7 and traffic-sensitive access services in the interstate  
8 jurisdiction. Each company has the choice of offering  
9 special access and traffic sensitive access services,  
10 either through the NECA pooling arrangements or by  
11 managing and administering their own interstate tariffs.

12 No. 8. Carbon/Emery makes various assertions  
13 that the company's access to capital is constrained and  
14 therefore, the much higher rate of return sought is  
15 justified. However, Carbon/Emery provides no specific  
16 evidence that access to capital is in fact constrained,  
17 and in fact, its financial results demonstrate the  
18 opposite.

19 Carbon/Emery's paid off all its long-term  
20 debt, and at the same time it has substantially grown  
21 member equity. Cooperative members continue to  
22 contribute to and benefit from growing member equity.

23 Lastly, Carbon/Emery's rate of return  
24 recommendations is imbalanced against the Utah statewide  
25 consumers that pay money to fund the UUSF. This

1 imbalance can be considered from the likely reaction of  
2 a Utah consumer to the fact that the company has  
3 suggested it's appropriate that the consumer pay a 16.83  
4 percent return to the company's member owners.

5 Such a consumer would no doubt refer to his or  
6 her experience with investments and returns and view  
7 such a request with dismay and perhaps anger, given that  
8 investment experience, and especially so since the  
9 consumer most likely cannot use Carbon/Emery services.

10 OCS's rate of the return recommendation of  
11 8.46 is properly balanced between the consumers which  
12 fund the UUSF and the need to fund appropriate cost of  
13 basic telephone service from the UUSF. Furthermore,  
14 this recommended rate of return is consistent with  
15 recent return on equity decisions of the commission.  
16 And therefore, we recommend that the commission adopt  
17 the 8.46 rate of return as recommended.

18 **Q. Does that complete your summary?**

19 A. Yes, it does.

20 MR. MOORE: Mr. Brevitz is available for  
21 cross.

22 JUDGE JONSSON: Ms. Slawson.

23 MS. SLAWSON: Carbon/Emery has no questions  
24 for Mr. Brevitz.

25 JUDGE JONSSON: Mr. Jetter.

1 MR. JETTER: I do have a few questions for  
2 Mr. Brevitz. I think they'll be relatively brief.

3 CROSS-EXAMINATION

4 BY MR. JETTER:

5 Q. Are you familiar with, and maybe counsel might  
6 have a copy, of OCS Exhibit 2R-2 which is a letter --

7 A. I have it.

8 Q. Okay. And I'm going to read briefly from that  
9 letter a sentence that appears about a little beyond  
10 halfway down. And this reads, "The general parameters  
11 of the rule accompanied by the variability attempted to  
12 be included in the rule proposed may be applied by the  
13 division itself in its interactions with companies."

14 Is that an accurate reading of what's included  
15 in that letter?

16 A. Yes.

17 Q. And I believe in your opening statement you  
18 had said that the commission rejected the rule; is that  
19 correct?

20 A. Yes. Uh-huh.

21 Q. Is it your understanding then that the  
22 commission also rejected the principles within the rule  
23 and rejected their use in the future?

24 A. No. I would not say that.

25 Q. Okay. And finally, would it be reasonable for

1 a rural utility, a rural telephone company, potentially  
2 to fall within the range of possible capital structures  
3 that could all be considered reasonable?

4 A. I don't know that I would put it that way. I  
5 would say that the commission can and will exercise its  
6 knowledge and judgment to determine what the appropriate  
7 capital structure is in this case. We recommended  
8 50-50. The department's recommended 65-35.

9 Q. Okay.

10 A. And the commission will make a decision.

11 Q. That's the only questions I have for you.

12 Thank you.

13 A. Uh-huh.

14 JUDGE JONSSON: Any redirect?

15 MR. MOORE: One quick one.

16 REDIRECT EXAMINATION

17 BY MR. MOORE:

18 Q. After the sentence that Mr. Jetter read to  
19 you, is the next question -- sentence, "The commission  
20 is also concerned of the impact of a rule in setting  
21 just and reasonable rates under Title 54 where the  
22 commission is required to make a determination based  
23 upon the evidence presented in adjudicated proceedings,  
24 based on circumstances facing each company relevant to  
25 the time in which rates will be affected"?



1 A. Yes.

2 Q. Do you believe that's consistent with a, an  
3 ongoing policy setting rates consistent throughout the  
4 local telephone companies?

5 A. Can you repeat that.

6 Q. Do you believe that's consistent with the  
7 notion that there should be a long-term policy setting  
8 capital structure for incumbent telephone companies?

9 A. I think the sentence that we just went over  
10 indicates that the commission desires to have the  
11 ability to make determinations based on the facts and  
12 circumstances in the individual cases as they arise,  
13 rather than have the outcome governed by a particular  
14 rule.

15 MR. MOORE: Thank you. I have no further  
16 questions.

17 JUDGE JONSSON: Recross?

18 MR. JETTER: No.

19 JUDGE JONSSON: Okay. Mr. Brevitz, I just  
20 want to make sure that I understand. So you're  
21 recommending that the interstate rate of return taken  
22 off of the NECA form is 9.4, correct?

23 THE WITNESS: Yes. For all the relevant lines  
24 of business in the interstate jurisdictions.

25 JUDGE JONSSON: Okay. And on the intrastate

1 where you're evaluating cost of debt and cost of equity,  
2 there's no dispute that the cost of debt is the 5.636  
3 that Carbon put in its application, right?

4 THE WITNESS: Yes, that's correct.

5 JUDGE JONSSON: The cost of equity is where we  
6 have the dispute. And your recommendation is for 10  
7 percent?

8 THE WITNESS: Yes.

9 JUDGE JONSSON: Right? And so your, your  
10 blend intrastate rate is then the 8.46, or is that the  
11 total overall?

12 THE WITNESS: 8.46 is the overall combined  
13 weighted average cost of capital for both jurisdictions.

14 JUDGE JONSSON: Okay.

15 THE WITNESS: 7.82 is the cost of capital for  
16 the state jurisdiction.

17 JUDGE JONSSON: That was my question.

18 THE WITNESS: Uh-huh.

19 JUDGE JONSSON: Okay. 7.82 percent for the  
20 intrastate cost of equity.

21 THE WITNESS: Yeah, cost of capital. That's  
22 the blended cost of debt and equity.

23 JUDGE JONSSON: Okay. Great. Thank you.

24 THE WITNESS: And then the interstate return  
25 of 9.40 is a comprehensive overall return for both debt

1 and equity.

2 JUDGE JONSSON: Okay. Thank you.

3 MR. MOORE: Office calls Bion Ostrander.

4 BION OSTRANDER,

5 called as a witness at the instance of the Office of  
6 Consumer Services, having been first duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MOORE:

10 Q. For the record, can you state your name, your  
11 employer and your business address.

12 A. Bion Ostrander, Ostrander Consulting, 1121 SW  
13 Chetopa Trail, Topeka, Kansas, 66615.

14 Q. Have you reviewed the application and the  
15 written testimony in this case?

16 A. Yes.

17 Q. Did you file pre -- written test -- written  
18 direct testimony and written surrebuttal testimony in  
19 this case?

20 A. Yes.

21 Q. Do you have any changes to this testimony?

22 A. Yes. I am going to start with my revised  
23 direct testimony, page 1, Line 3. After the reading  
24 that says, "I am an independent regulatory consultant,"  
25 there should be a period. And then the remainder of

1 that sentence and the related footnote should be  
2 stricken.

3 And in its place should be inserted, "I have  
4 previously practiced as a CPA in Kansas since 1990."  
5 But I am not presently holding myself out as a CPA in  
6 Kansas because I have not renewed my permit to practice,  
7 and I have not yet submitted the required hours of  
8 continuing education.

9 And that same change should also be made to my  
10 OCS Exhibit 1D-1 which is my CV. And if you go to that  
11 Exhibit, 1D-1, the second sentence and related footnote  
12 should be stricken. So where it says, "I am an  
13 independent regulatory consultant and have maintained an  
14 uninterrupted permit to practice as a certified public  
15 accountant in the state of Kansas since 1990," that  
16 should be stricken.

17 The reason I am making that change is just to  
18 make sure and to clarify in case there is any  
19 misunderstanding that I'm not holding myself out at this  
20 time as a CPA with a permit to practice. That will be  
21 renewed probably in the next few months, pending me  
22 getting my CPE continuing hours -- continuing education  
23 hours submitted.

24 **Q. Was that your only change?**

25 **A.** No. I have some other changes. Page 19 --

1 JUDGE JONSSON: Is this still in your revised  
2 direct?

3 THE WITNESS: Yes.

4 JUDGE JONSSON: Okay.

5 A. Page 19. If you go to table BC03, under the  
6 column that says allocation factors, if you go down to  
7 the third line that says CABS, that should be stricken  
8 and should be changed to "accounting in general." And  
9 then if you go to the 8th line down which currently says  
10 Human Resources, that should be stricken and again that  
11 should say, "accounting in general."

12 I'm making this change because there was a  
13 company document that had these allocation factors in  
14 that format that I think were all under the same  
15 assumption now that the accounting in general factor is  
16 applied to those particular department cost pools.

17 I have some more changes. If you go to page  
18 27, the sentence that starts on 5, on Line 581 through  
19 Line 585 should be stricken. That starts out, "If total  
20 revenues was adopted..." And the reason that I'm  
21 striking that sentence is because the sentence down on  
22 Lines 589 and 594 basically state the same thing and  
23 provide that -- state that with more clarity.

24 And now page 30, going to Footnote 37. And  
25 I'm going to add some words on the end of that sentence

1 so that sentence currently ends with OCS 2.36. And the  
2 remaining language after that should say, "...for Carbon  
3 and 2.40 for Emery, comma, with the related Excel  
4 spreadsheets for these data request responses provided  
5 with my direct testimony at work paper 1.5."

6 The reason I am making that change is because  
7 OCS data request 2.36 relates to Carbon, and OCS data  
8 request 2.40 relate to Emery. But they both provide the  
9 same information related to the overheads. And when you  
10 look at certain Excel files, they may say 2.36 or 2.40,  
11 but they're the same information. They're just for  
12 either company, although it's the same information.

13 Page 31 -- I'm sorry. Yes, page 31, footnote  
14 38, this will be the same change. After the current  
15 language it says, "OCS 2.36," and the language that  
16 should be added to that is, "...for Carbon and 2.40 for  
17 Emery, with the related Excel spreadsheets for these  
18 data request responses provided with my direct testimony  
19 in work paper 1.5."

20 Also on page 31, Line 669 the first word  
21 there, "Emery," that should be changed to  
22 "Carbon/Emery's." Page 34, Line 735, "Column H" should  
23 be changed to read "Column J." Page 35, Line 745  
24 "Column I" should be changed to "Column K." Page 36  
25 Line 781 after the word, "of," the two words, "triple

1 play" should be inserted there.

2 Page 37, Line 783, strike the word, "IP TV"  
3 and insert "digital TV." This change is made to reflect  
4 that the triple play bundle includes one regulated  
5 service and two nonregulated services. But that other  
6 nonregulated service is digital TV and not IP TV. And  
7 that concludes the changes for my direct.

8 And I have one change for my surrebuttal. And  
9 that is at page 20, Line 450, the word, "interstate"  
10 should be changed to "intrastate." And finally, the  
11 last change that I have to my testimony is, I'm  
12 withdrawing my adjustment related to the migration of  
13 cable TV customers from the cable TV affiliate to the  
14 Internet affiliate. This adjustment was originally  
15 proposed by DPU and then withdrawn. And now I've  
16 withdrawn that adjustment. That concludes my changes.

17 **Q. (By Mr. Moore) Other than those changes, if I**  
18 **were to ask you those questions in your prepared**  
19 **testimony, would your answers be the same?**

20 A. Yes.

21 **Q. Have you prepared a summary of your testimony?**

22 A. I have. In this case, Carbon seeks about  
23 800,000 of new UUSF, along with existing UUSF of about  
24 one million for total UUSF of about 1.8 million that it  
25 is seeking. Through its adjustments in this case, the

1 OCS proposes to eliminate all of the new UUSF of 800,000  
2 that Carbon is requesting and remove about 400,000 of  
3 the existing UUSF so that OCS's bottom line  
4 recommendation is that Carbon should get about 600,000  
5 of UUSF.

6 My testimony proposes adjustments that are  
7 consistent with state and federal law and regulatory  
8 best practices included in Section 254K of the Federal  
9 Telecom Act, Utah Code 54-8B-6 and the FCC's Part 32  
10 affiliate transaction rules, along with the FCC's Part  
11 64 cost allocation procedures.

12 The largest adjustment that I propose is  
13 related to an overhead adjustment. And if this  
14 adjustment is not made, it is my opinion that  
15 Carbon/Emery's regulated operations will be subsidizing  
16 its nonregulated operations for a fairly significant  
17 amount. And that would be in violation of Utah Code  
18 54-8B-6.

19 Regarding the overhead adjustment, I have a  
20 number of concerns. One is that Carbon has not provided  
21 a fully documented and supported Part 64 cost allocation  
22 manual. This manual is deficient in a number of ways.  
23 When the information was first submitted, it included  
24 basically some PDF pages that look like they'd been in  
25 Excel format, I think about 10 pages.



1           And those pages had no underlying Excel  
2     spreadsheets at that time that showed the calculations  
3     or explanation of how those factors were derived.  
4     Subsequently, through a data request that OCS sent  
5     asking for all supporting calculations and documentation  
6     for the CAM, the company did provide some Excel  
7     spreadsheets.

8           But once again, they provided these Excel  
9     spreadsheets without really any written explanation of  
10    what literally are hundreds of thousands of fields  
11    included in these spreadsheets.

12           Also some of these spreadsheets are  
13    database-type Excel documents. And they were not  
14    presorted to show the amount of cost pools and how much  
15    had been allocated to various expense accounts through  
16    various allocation factors. And that's also a  
17    requirement of the CAM.

18           So essentially the OCS is left with a CAM  
19    with -- that really doesn't have a lot of narrative  
20    explanation as to how the factors were derived along  
21    with the supporting calculations.

22           Some of the problems I have with the Carbon  
23    allocation factors are varied and numerous. First of  
24    all, Carbon, for the cost pools of chief executive  
25    officer, board of directors and public relations and

1 marketing, they allocate 75 percent of those costs to  
2 regulated operation and 25 percent to nonreg. I have  
3 made adjustments --

4 JUDGE JONSSON: Can I get the pools again.  
5 CEO, board...

6 THE WITNESS: And public relations slash  
7 marketing. And each one of those cost pools uses the  
8 same allocation factor, which is a single input  
9 allocation factor that is the number of billing records.  
10 For those three cost pools -- anyway, for the board of  
11 director and chief executive officer cost pools, I have  
12 changed that allocation factor to allocating 50 percent  
13 to regulated and 50 percent to nonregulated.

14 For the remaining cost pool, public relations  
15 and marketing, I have changed that to an allocation  
16 factor of 25 percent regulated and 75 percent  
17 nonregulated.

18 The loan remaining cost pool which I've  
19 adjusted is customer service representatives. And the  
20 company has allocated about 65 percent of those costs to  
21 regulated operations and about 35 percent to nonreg.  
22 And my adjustment basically flips those two allocations  
23 and allocates about 35 percent to regulated and 65  
24 percent to nonregulated.

25 The reason that I have opted to use a

1 corporate allocation factor that includes five inputs  
2 instead of one is because in my vast experience in  
3 telecommunications and regulation in general, I've never  
4 seen a corporate overhead allocator that uses customer  
5 records as one single input.

6 Corporate overhead costs are varied and kind  
7 of like a hodgepodge of various different expenses. And  
8 so it would not usually be anticipated that one single  
9 allocator could be cost causative or directly related to  
10 all of those different types of expenses. Also, Carbon  
11 is not provided any precedent in Utah cases or other  
12 regulatory cases to show that a single input billing  
13 records allocator has been accepted or adopted in a  
14 regulatory proceeding.

15 One of the examples that I've talked about is  
16 using Mr. Johansen, the chief executive officer, as an  
17 example. Mr. Johansen's salaries, benefits, travel  
18 costs, cell phone costs and miscellaneous travel costs  
19 and credit card costs are all included in the chief  
20 executive officer cost pool. And so they're all  
21 allocated by single input factor of number of billing  
22 records.

23 But I don't think that the manner in which  
24 Mr. Johansen spends his time is cost causative or  
25 directly related to the number of billing records. I

1 don't believe there's a director cost causative  
2 relationship in that regard.

3 The allocators that I have used or the inputs  
4 and drivers that I have used in my corporate overhead  
5 allocators consist of five elements. It's revenues,  
6 expenses, payroll, net plant, and number of billing  
7 records. So I have included the company's billing  
8 records as one component, but I've also included four  
9 other components.

10 The company has taken exception with my use of  
11 revenues as one of the inputs to the corporate overhead  
12 allocator. However, it was just as recent as May 2014  
13 that the company itself used revenues as a single driver  
14 for the business solutions allocator. So it's clear  
15 that despite their objection to me using revenues, they  
16 themselves were using the same revenues allocator as a  
17 driver in another overhead allocator -- or another  
18 allocator.

19 Also, around 19 -- I'm sorry. Around year  
20 2006, the company used three inputs, including payroll,  
21 number of customers and billing records, for the  
22 corporate overhead general and allocating -- accounting  
23 allocator.

24 So it's clear that the company has used  
25 revenues and has used multiple inputs in the past. But

1 for some reason they've changed that to a single unit  
2 allocator which is number of billing records. And  
3 coincidentally using that single allocator drives more  
4 cost to the regulated operations and assists the company  
5 in getting increased UUSF.

6 The company has also taken exception with my  
7 use of an allocator of 24 of 25 percent for allocating  
8 the public relations and marketing cost to regulated  
9 operations. One of the examples I give is the triple  
10 play bundle which the company offers to its customers,  
11 which includes one regulated service, which is basic  
12 local service, and two nonregulated services which are  
13 Internet and digital TV.

14 And for simplicity purposes, you could  
15 rationalize that I'm going to allocate a third of the  
16 advertising public relations costs to each one of these  
17 services, just on a common sense or reasonableness  
18 standpoint.

19 But when I further examine the type of  
20 advertising information the company provided me, I saw  
21 that there was no specific advertising or documentation  
22 that advertised basic local service as a stand-alone  
23 service. And even the advertising for triple play never  
24 specifically promoted local service. It just merely  
25 listed local service as one of the components of the

1 triple play package.

2           Regarding the customer service representatives  
3 factor, we also have a difference of opinion there. I  
4 have allocated 35 percent of those costs to regulated  
5 operations. Basically using some of the same rationale  
6 that I used for the 25 percent factor for payroll and  
7 marketing, except I ratcheted it up another 5 percent  
8 just to be conservative.

9           The company's claim that the amount that I  
10 have allocated of 900 -- I'm sorry. That's a  
11 confidential number. The company claims that the number  
12 that I have allocated is excessive and they said the  
13 amount should be less than that. And in rebuttal,  
14 Carbon/Emery provided an Excel spreadsheet with pivot  
15 table. However, when I attempted to open that pivot  
16 table and look at it, it was hard-wired or hard-coded.

17           So I could not open it up. I could not look  
18 at the formulas. I could not see how the company  
19 determined its calculations. So I'm not necessarily  
20 saying it's incorrect. I'm just saying I don't have  
21 adequate information at this point in time to audit that  
22 information. And the company subsequently never sent me  
23 an updated disk or information that would fix that  
24 information.

25           Another adjustment that I'm proposing is to

1 only include 50 percent of telephone plan under  
2 construction of materials and supplies and rate base,  
3 and I've basically used the same logic for removing 50  
4 percent of those costs in both cases. Those account  
5 balances have fluctuated significantly in recent years,  
6 and it appears a significant increase in these accounts  
7 is due to the company's placement of fiber.

8           However, my concern is, if we establish the  
9 level of telephone plan under construction materials and  
10 supplies at the highest level it may ever be because of  
11 the company's construction fiber placement plan, when  
12 those levels fall off, they will continue to recover  
13 UUSF at those unusually high levels. Therefore, I have  
14 removed 50 percent of those amounts to reflect what I  
15 think is a more reasonable level based on historical  
16 levels.

17           Another adjustment I have made is to remove  
18 the company's proposed three year projection of an  
19 access line loss. The company projects that it will  
20 lose access lines through three years outside the test  
21 period through December 17th. They have already made  
22 one true-up revision to that adjustment because their  
23 projection was not accurate, and that's an indication of  
24 the problems with using these projections.

25           There are a lot of other changes in revenues

1 expenses that could possibly occur in the next three  
2 years, and the company has not made any attempt to  
3 synchronize those adjustment. They've basically taken  
4 one single component and said that is going to change in  
5 the next three years and apparently assume that there  
6 will be no other changes for the next three years. And  
7 I don't think that's a reasonable manner to approach  
8 this. I think it's more reasonable just to go ahead and  
9 withdraw that adjustment or remove it.

10 Also, I'm proposing an Adjustment 8 for  
11 depreciation. My adjustment is somewhat similar to the  
12 DPU's adjustment in that we're both attempting to come  
13 to the reasonable depreciation expense amounts, except  
14 we're coming at it from different angles. I'm not  
15 opposed to the DPU adjustment. I just look at it as  
16 another methodology, an alternative to mine.

17 I've adjusted four accounts. And for the two  
18 larger accounts related to subscriber equipment and  
19 aerial cable, these accounts will be fully depreciated  
20 in the not-so-far future. And I have taken the amount  
21 of depreciation that remains to be depreciated on those  
22 accounts and amortized it over five years. So  
23 essentially I've delayed recovery of that depreciation  
24 from three years to five years.

25 And one thing I do want to make clear is that



1 I'm only temporarily stopping depreciation on these  
2 accounts. I'm not saying that these accounts will be  
3 permanently stopped from recording depreciation. If the  
4 company continues to make plan additions to these  
5 accounts in the future, I'm not opposed to them coming  
6 in and asking for increased UUSF if that occurs.

7           However, the problem that will occur if we  
8 don't deal with these depreciation issues now is, once  
9 again, the company will receive these elevated levels of  
10 depreciation expense in the -- through its UUSF funds  
11 that it draws down.

12           And then when these accounts do become fully  
13 depreciated and/or if they would stop depreciation on  
14 those themselves, they would continue to receive those  
15 elevated levels of UUSF without actually incurring the  
16 costs. And so those are some of the issues we are  
17 attempting to deal with.

18           Finally the last adjustment I propose is an  
19 interest synchronization adjustment. And the company is  
20 opposed to this adjustment because they say interest  
21 synchronization is not reasonable for a company that has  
22 a hypothetical capital structure.

23           But I provide an example of a case here in  
24 Utah, and I cited to a specific commission order which  
25 calculated synchronization on Gunnison Telephone

1 Company. And that was via a stipulation between  
2 Gunnison and the DPU, and the commission accepted that  
3 stipulation. So there's definitely some precedent  
4 there.

5 Also, the company has used the cost of debt in  
6 its cost of capital calculations, although it doesn't  
7 have any existing debt. So they are getting the  
8 advantage of using the cost of debt via an increased  
9 rate of return. So that benefits them, and they get  
10 increased UUSF.

11 But it appears the company wants the best of  
12 both worlds. They want to be able to include the cost  
13 of debt in rate of return, and receive an elevated rate  
14 of return and increased UUSF, but they don't want to  
15 recognize the interest synchronizations on that same  
16 cost of debt. So in a sense, they want to recognize  
17 cost of debt when it's beneficial to them, but they want  
18 to ignore the cost of debt also when it's beneficial to  
19 them. That concludes my summary.

20 MR. MOORE: Your Honor, before I submit  
21 Mr. Ostrander for cross, I want to state that the OCS  
22 had a different understanding with regard to the  
23 questions asked by the commission prior to this hearing.  
24 We understood that the answers should be in the form of  
25 evidence presented by a witnesses.

1 JUDGE JONSSON: That's fine.

2 MR. MOORE: Rather than a policy argument  
3 presented by attorneys. However, I would like to simply  
4 ask Mr. Ostrander these questions and have him reply  
5 quickly. If on cross policy issues comes up, we would  
6 like to object to Mr. Ostrander sending up the policies  
7 of the OCS and instead introduce those -- if this  
8 occurs, introduce the policies through the testimony of  
9 Michele Beck of the office.

10 JUDGE JONSSON: We'll deal with that if it  
11 comes up. If you feel like you need to change your  
12 witness, let me know, and we'll see where we are. To  
13 the statement you'd like to have Mr. Ostrander respond  
14 to those questions, that's fine. You can go ahead and  
15 do that now.

16 Q. (By Mr. Moore) Yes, Mr. Ostrander, in  
17 question No. 1, Utah Code 548-B, are you satisfied that  
18 the continued or increased disbursements of the UUSF  
19 would not serve to subsidize a nonregulated operations  
20 of Carbon/Emery, Carbon/Emery Telecom, Carbon/Emery?  
21 Why or why not?

22 A. OCS is concerned that continued and increased  
23 disbursements from the UUSF would cause nonregulated  
24 affiliate operations to be subsidized by Carbon/Emery's  
25 regulated operations. And this would be in violation of

1 the statutory language.

2 The adoption of OCS proposed adjustments will  
3 sufficiently mitigate the subsidization of nonregulated  
4 affiliate operations by Carbon/Emery's regulated  
5 operations to warrant continuation of the UUSF at the  
6 level we recommend in this case.

7 The commission should adopt OCS adjustments  
8 that reduce Carbon/Emery's total proposed UUSF from  
9 about 1.8 million to about .6 million, and this would  
10 consist of the following: Removing the entirety of OCS  
11 proposed new increase in the UUSF of about 816,909 and  
12 removing about \$428,897 of Carbon/Emery's existing UUSF  
13 to about 1,038,714, which results in a residual amount  
14 of 609,907 that Carbon would be able to recover from the  
15 UUSF.

16 Carbon/Emery assigns and allocates costs,  
17 including corporate overhead expense to its regulated  
18 operation that causes nonregulated affiliate services  
19 such as retail Internet service provided by  
20 Carbon/Emery's nonregulated affiliate to be subsidized  
21 by Carbon/Emery's regulated services.

22 As an example, the OCS proposed adjustment  
23 BC02 to revise Carbon/Emery's allocation of corporate  
24 overhead expenses and shift a certain amount of  
25 corporate overhead expenses from regulated operations to

1 nonregulated operations to prevent substantive cross  
2 subsidizations of nonregulated operations by regulated  
3 operations.

4 In addition, my testimony explains that I have  
5 proposed adjustments that are consistent with state and  
6 federal law, along with regulatory best practices to  
7 help mitigate the negative impact of Carbon/Emery's  
8 cross subsidization.

9 Citations to these are included in my  
10 testimony. For example, my testimony explains that  
11 controls subsidization concerns and related proposed  
12 adjustments are properly addressed via Utah Code Section  
13 54-8B-6 at Ostrander direct testimony, page 13, Line 292  
14 through page 14, Line 313.

15 Also, my direct testimony addresses concerns  
16 related to cross subsidization via Section 254K of the  
17 Federal Telecom Act of 1996 at my direct testimony page  
18 12, Line 261 through page 13, Line 290. Also my  
19 testimony addresses concerns related to cross  
20 subsidization via the FCC's Part 32 affiliate  
21 transaction rules, per FCC Section 32.27, and that's  
22 addressed in any direct testimony at page 14, Line 315  
23 to page 15, Line 335.

24 The final citation in my direct testimony  
25 addresses concerns related to cross subsidization via

1 the FCC's Part 64 allocation of cost rules at FCC  
2 Section 64.901-904. And that is cited at my direct  
3 testimony page 15, Line 337 to Line 347.

4 Q. The second question reads, "Utah Code Section  
5 54-8B-15-1A states, 'Base of phone service means local  
6 exchange services.' Utah Code section 54-8B-15-6A  
7 states, 'The UUSF shall be designed to promote equitable  
8 cost recovery of basic telephone services.'"

9 Are you satisfied that a continued or  
10 increasing disbursement from the UUSF -- UUSF to  
11 Carbon/Emery would comply with the statutory language?  
12 Why or why not?

13 A. OCS is satisfied that reduced level of UUSF  
14 that it recommends in this case will allow Carbon/Emery  
15 adequate cost recovery related to basic telephone  
16 service. The OCS further asserts than an increased  
17 disbursement or continued disbursement at current levels  
18 would be equitable because it would allow Carbon/Emery  
19 cost recovery for more than is necessary for basic  
20 telephone service.

21 Q. Question No. 3 reads, "Utah Code section  
22 54-8B-15-5 states, 'Operation of the UUSF shall be  
23 nondiscriminatory and competitive and technologically  
24 neutral in the collection and distribution of funds,  
25 neither providing a competitive advantage for nor

1 **imposing competitive disadvantage upon any**  
2 **telecommunication provider operating in the state."**

3 **Are you satisfied that continued or increased**  
4 **disbursement from the UUSF to Carbon/Emery would comply**  
5 **with the statutory language? Why or why not?**

6 A. OCS is concerned that the continued and  
7 increased disbursements from the UUSF would not promote  
8 nondiscriminatory, competitive and technologically  
9 neutral collection and distribution of UUSF, which would  
10 be in violation of this statutory language.

11 When nonregulated affiliated Internet  
12 operations are subsidized by Carbon/Emery's regulated  
13 basic local exchange operations, via excessive  
14 allocation of nonregulated affiliate cost to regulated  
15 operations, this provides the company with excessive  
16 UUSF which it can use to undermine competitors that do  
17 not have the ability to subsidize their competitive  
18 operations because they do not have access to UUSF  
19 revenues, and they do not have regulated operations  
20 which could be used to subsidize their competitive  
21 operations.

22 The adoption of OCS proposed adjustments will  
23 sufficiently mitigate any competitive advantage enjoyed  
24 by Carbon/Emery to warrant continued disbursement of  
25 UUSF funds at the level we recommend. OCS is satisfied

1 that the reduced level of UUSF disbursement that we  
2 recommend will not create any competitive disadvantages  
3 for Carbon/Emery.

4 MR. MOORE: Mr. Ostrander is available for  
5 cross.

6 JUDGE JONSSON: Ms. Slawson.

7 MS. SLAWSON: Thank you. I'm going to need to  
8 set up a projector. So it takes a few minutes to warm  
9 up. I don't know if you want to break.

10 JUDGE JONSSON: Sure. Let's take a break.  
11 Plan on about 10 minutes. See where we are then.

12 (Recess from 11:17 a.m. to 11:29 a.m.)

13 JUDGE JONSSON: All right. We're back on the  
14 record. Ms. Slawson, go ahead.

15 CROSS-EXAMINATION

16 BY MS. SLAWSON:

17 Q. Thank you. Good morning, Mr. Ostrander.

18 A. Good morning.

19 Q. I wanted to out -- at the outset, you are  
20 aware, are you not, that Carbon's current revised  
21 request for the UUSF in this case is \$573,643, correct?

22 A. Yes.

23 Q. Okay. I'm going to jump around a little bit  
24 in the sake of trying to be brief. You just testified  
25 that the imputed debt, 35 percent benefits the company.



1 In fact, if the actual company debt is zero, the  
2 calculation would show that the state rate of return  
3 would be the state return on equity; is that correct?

4 A. Yes.

5 Q. Okay. Will you turn in your testimony to OCS  
6 Exhibit 1D2 Schedule A3.

7 A. Okay.

8 Q. And I believe this is the schedule that you  
9 use as the basis for your table embedded in your  
10 testimony BC05; is that correct?

11 A. Yes.

12 Q. Okay. The revenues that you've listed in  
13 Column D on the schedule, because I'm going to talk  
14 about actual dollar numbers here, I'm not going to say  
15 the numbers. But I want you to look at the column that  
16 has the dollar figures in it.

17 A. Okay. So just for clarification, you're on  
18 page 2.

19 Q. Page 2 of the --

20 A. There's two pages to that particular --

21 Q. Yeah, let's make sure.

22 A. I just heard the word revenues, so...

23 Q. Yeah, page 2.

24 JUDGE JONSSON: Okay. And the exhibit number  
25 is OCS Exhibit 1D3. Is that what I heard?

1 MS. SLAWSON: I think it's 1 D-2, Schedule A3,  
2 page 2.

3 JUDGE JONSSON: Okay.

4 Q. (By Ms. Slawson) The revenues listed in Column  
5 D are annual revenue figures; is that correct?

6 A. Yes.

7 Q. Okay. And the operating expenses listed in  
8 Column F, those are annual expense figures, correct?

9 A. Correct. They exclude depreciation and income  
10 taxes.

11 Q. Right. Net plant that you have listed in  
12 Column H, those are annual net plant figures?

13 A. Well, trial balance is not an annual amount.  
14 It's -- it's an amount that carries forward. But it's  
15 the end of December 31st, 2014.

16 Q. Okay. In your net plant number, you did not  
17 reallocate the shared assets which were held 100 percent  
18 on the books of ETV, correct?

19 A. I did not do that.

20 Q. Okay.

21 A. And I don't think --

22 Q. And that --

23 A. -- that any of these --

24 Q. That was the question. Thank you. Also, by  
25 your --

1 A. Well, they didn't include any adjustments.

2 Q. It's going to go faster if I ask the  
3 questions, and you answer the ones that I ask.

4 A. Well, there's -- I have to explain that these  
5 amounts don't include any adjustments.

6 JUDGE JONSSON: If there's more that you want  
7 to explain, your counsel can help you with that on  
8 redirect.

9 THE WITNESS: Okay.

10 Q. (By Ms. Slawson) The -- by using the net plant  
11 figure, I believe you've testified this is net plant.  
12 So depreciation is eliminated from that; is that  
13 correct? Depreciation expense.

14 A. Accumulated depreciation is --

15 Q. Okay.

16 A. -- deducted from that.

17 Q. And by, by using net plant, you don't take  
18 into account the different depreciation methods applied  
19 to the regulated and the nonregulated companies that  
20 were testified to earlier, correct?

21 A. Correct.

22 Q. Okay. On payroll amounts listed in Column L,  
23 those are annual payroll figures?

24 A. Yes.

25 Q. Okay.

1 A. Without any adjustment.

2 Q. And then, then the billing records that you  
3 listed in Column J, you've got those listed as dollar  
4 figures, but those are not dollar numbers; is that  
5 correct?

6 A. Correct.

7 Q. The underlying data for those would be a  
8 number of billing records, correct?

9 A. Yes.

10 Q. Okay. And the billing records that you've  
11 listed there, if you -- if we eliminate the dollar sign,  
12 those are monthly billing records; is that correct?

13 A. I believe that's correct.

14 Q. Okay. So if we were going to be consistent  
15 with the analysis, the figure in Column J should be  
16 multiplied by 12 to get an annual figure, correct, on  
17 billing records?

18 A. Well, it's a matter of --

19 Q. All the other --

20 A. -- what's representative because the -- I'm  
21 relying on your allocation factors.

22 Q. Okay. All of the other columns are  
23 annualized. But the Column J is a monthly figure; is  
24 that correct?

25 A. That's correct.

1 Q. Okay. Let's see. You excluded the -- you  
2 just testified that you excluded the accumulated  
3 depreciation from the net plant number, correct?

4 A. Yes.

5 Q. And then on the operating expenses, did you  
6 include from Column F payroll from net operating  
7 expenses?

8 A. No, I didn't.

9 Q. Okay.

10 A. It's intended to be in there.

11 Q. So you've got payroll in Column J, and then  
12 you've also included payroll in Column F; is that  
13 correct?

14 A. Yes.

15 Q. Okay. And you would agree, would you not,  
16 that Carbon/Emery has plant that would be fully  
17 depreciated but still has costs associated with it?

18 A. Can you --

19 Q. Plant can be fully depreciated, but it still  
20 has costs associated with it. Not depreciation but  
21 other costs associated with it, correct?

22 A. Yes.

23 Q. Okay. Okay. I want to talk a little bit  
24 about -- in your surrebuttal testimony and then here  
25 today in your summary, you talked about on the one hand

1 Carbon/Emery gave you hundreds of thousands of fields of  
2 information, and then you testified that Carbon wasn't  
3 forthcoming with its data. So I want to touch on that a  
4 little bit.

5 Looking -- you indicated that Carbon/Emery  
6 gave you -- sent you a pivot table that was hard-coded;  
7 is that correct?

8 A. Excuse me.

9 Q. You said it wasn't working?

10 A. I was not able to open it up and look at the  
11 assumptions or the formulas in it.

12 Q. And that was sent to you how?

13 A. I received it -- that particular version, it  
14 was confidential, so I probably received it on a CD.

15 Q. And would it surprise you to know that it was  
16 confidential, sent by me and you received it by e-mail?

17 A. That would not surprise me.

18 Q. Okay. And are you saying -- when you're  
19 saying you couldn't open it, do you mean you couldn't  
20 open the attachment, or do you mean that you couldn't  
21 open the pivot table?

22 A. I couldn't open the pivot table.

23 Q. Okay.

24 A. I could open the broad Excel spreadsheet.

25 Q. And so when you opened it, the summary page

1 looked like this; is that correct?

2 A. I believe that's correct.

3 Q. Okay. And you're saying that when you went  
4 to, for example, Column C-20, CSR Distribution, and you  
5 clicked on that, it was hard-coded because the number  
6 appeared up in the formula bar but no formula. Is that  
7 what you're saying by hard-coded?

8 A. My version -- and maybe you have got this a  
9 little bit -- my -- the pivot table appeared like as a  
10 square like within the middle of the spreadsheet.

11 Q. Okay. So let's look at the exhibit that we've  
12 identified.

13 MS. SLAWSON: I'll make sure that you have the  
14 one that's been marked. May I?

15 COURT REPORTER: Yes.

16 Q. (By Ms. Slawson) I have turned to what's been  
17 marked as CE Exhibit 3.3R. I'll give you just a minute  
18 to get there. Okay. Does the exhibit that's printed in  
19 the book look like the exhibit that's on the screen?

20 A. Yes.

21 Q. Okay. And do you -- are you -- is it your  
22 testimony that you received the exhibit that looks like  
23 this, or are you testifying that you received an exhibit  
24 that looks different?

25 A. I received a particular schedule that had a

1 pivot table that was kind of inserted within the body of  
2 the exhibit. So you could appear like you could punch  
3 on it and open it up and select things.

4 Q. Okay. Well, let's just see because this is  
5 the one that was sent to you. Let's just see. If we go  
6 into that column and we double click it like you would  
7 do in a pivot table, doesn't that take you to all of the  
8 underlying data that the pivot table and that column in  
9 the pivot table is representing?

10 A. This particular spreadsheet does.

11 Q. So I guess I want to be clear. You're -- are  
12 you suggesting that you did not receive this particular  
13 spreadsheet in this particular form?

14 A. Yes.

15 Q. Okay. So I guess we might need to recall a  
16 witness or enter into evidence the e-mail that was sent.  
17 Let me ask you this. Did you have any -- did you call  
18 when you got the pivot table, and it was represented to  
19 be a pivot table, and you couldn't make it work, did you  
20 call the company?

21 A. I did better than that. I put it in my  
22 testimony. And I never got any response back from the  
23 company and never received a replacement disk.

24 Q. No. I'm talking about before under you filed  
25 your testimony. When you were in the process of filing



1 -- preparing your testimony, did you call the company?

2 A. No. I didn't know what to --

3 Q. Did you notify your counsel that the document  
4 was not as represented, and that he or she should make a  
5 call to Carbon/Emery's counsel?

6 A. I didn't know what I was supposed to have and  
7 not supposed to have. There's a lot of documents I  
8 received --

9 Q. Okay.

10 A. -- which did not have the required  
11 information. And so I don't know what Emery was  
12 intending to provide me. I never really know that.

13 Q. Well, they said in their testimony they were  
14 intending to provide you a pivot table. I would imagine  
15 that if the pivot table didn't work, you would contact  
16 the company. But you're saying, your testimony here  
17 today, is that you did not contact anybody at the  
18 company about the nonworking pivot table that you  
19 allegedly received; is that correct?

20 A. I did not contact them because it was in my  
21 testimony and they could have contacted me.

22 Q. Okay. Yes or no?

23 A. I did not contact them.

24 Q. Okay. That's the only question I have on the  
25 pivot table. You also indicated that you received the

1 cost allocation manual -- we're done with this. Have a  
2 seat if that's more comfortable for you.

3 You also testified that you received a PDF of  
4 the cost allocation manual; is that correct?

5 A. That was -- in the company's original filing,  
6 that was a document that was originally provided.

7 Q. Okay. And would, would it surprise to know  
8 that a copy of the Excel spreadsheet form of the cost  
9 allocation manual was sent by counsel to your counsel  
10 the day of the filing?

11 A. I don't know.

12 Q. Of the application.

13 A. I don't know, because sometimes there were  
14 documents I would receive, and I would not have a  
15 working version.

16 Q. So --

17 A. And some of those documents we got, and some  
18 of them we didn't.

19 Q. Would it surprise -- do you have anything to  
20 dispute that the document was sent in an Excel  
21 spreadsheet version to office for the division and  
22 office for the -- I mean counsel for the division and  
23 counsel for the office the date it was filed on March --  
24 April 2nd?

25 A. I can't confirm if it was or wasn't.

1 Q. Okay.

2 A. I just don't know.

3 Q. Did you visit Carbon or Emery to inspect its  
4 books and records or plant prior to filing your  
5 testimony in this case?

6 A. No. We --

7 Q. Yes or no?

8 A. We got the indication that DPU was not going  
9 to go and do field work, so we decided if they weren't  
10 going to go that, it probably would not be necessary for  
11 us.

12 Q. Okay. And did you participate in the  
13 conference held at the Office of Consumer Services on  
14 August 24th with the company and the office to go over  
15 some of the details in the testimony that was filed?  
16 Did you participate in that conference?

17 A. Conference call?

18 Q. No. We actually had a conference. I just  
19 wondered if you were there.

20 A. I don't -- I don't believe so.

21 Q. Okay. And one of your adjustments is with  
22 regard to materials and supplies, correct?

23 A. Correct.

24 Q. And you're concerned if Carbon's UUSF is  
25 established when the materials and supplies are what you

1 would call high, then the materials and supplies -- and  
2 if they then decrease or fall off, level off, that  
3 Carbon will over-recover UUSF; is that correct?

4 A. That's correct.

5 Q. And if Carbon -- and if Carbon's levels of  
6 materials and supplies did drop off, it would be  
7 reflected on Carbon's annual report filed with the  
8 Public Service Commission; is that correct?

9 A. For what period?

10 Q. For the period -- for annually. They file  
11 that annually. So the materials and supplies would be  
12 reflected on the annual Public Service Commission  
13 report, correct?

14 A. Yes.

15 Q. Okay. And the division reviews the annual  
16 reports, correct?

17 A. They review the annual reports, but that  
18 doesn't mean they take actions.

19 Q. But they could. If they determined that the  
20 materials and supplies had leveled off or decreased, the  
21 Division of Public Utilities could say, "Hey, you're  
22 over earning." Is that correct?

23 A. I guess they could.

24 Q. Okay.

25 A. But I'm not aware that they've done that.

1 Q. You're not aware that they've done that in  
2 this case, or you're not aware they have done that in  
3 any case?

4 A. I'm not aware that they've done that in a  
5 number of cases that I've been involved in.

6 Q. Okay. But it wouldn't surprise you to know  
7 that they have in fact done that with other telecoms  
8 that you have not provide -- or not been involved with?

9 A. Oh, I'm not disputing that.

10 Q. Okay. You also indicated that in your BCO  
11 Adjustment 2 with regard to the accounting and general  
12 allocator, you don't think billing records as a single  
13 input is appropriate; is that correct?

14 A. That's correct.

15 Q. And yet in Mr. Woolsey's rebuttal testimony,  
16 he included a calculation of the A and G allocator using  
17 billing records, gross plant and payroll, weighted  
18 equally. And the result was within one half of one  
19 percent of the original calculation using billing  
20 records alone, wasn't it?

21 A. He did that, but he included gross plant  
22 instead of net plant. I'm recommending the use of net  
23 plant. So he used -- you know, selected some factors  
24 that I had not used.

25 Q. Gross -- and he select -- selected gross plant

1 so that all of the plant would be -- all of the plant  
2 that might have costs associated would be included in  
3 the calculation, correct?

4 A. Well, the problem with that --

5 Q. Well, just yes or no?

6 A. You've got --

7 MR. MOORE: Your Honor, I believe he is --

8 JUDGE JONSSON: Do you know why Woolsey made  
9 his calculations as he did?

10 THE WITNESS: I --

11 JUDGE JONSSON: Or would you be guessing?

12 THE WITNESS: I don't know why he did what he  
13 did.

14 JUDGE JONSSON: So perhaps that's a question  
15 for your own witness.

16 MS. SLAWSON: Okay. One second. Those are  
17 all the questions I have.

18 JUDGE JONSSON: Any redirect? Oh, sorry.  
19 Justin -- Mr. Jetter. Any cross?

20 CROSS-EXAMINATION

21 BY MR. JETTER:

22 Q. Thank you, your Honor. I just have one kind  
23 of short series of clarification questions, if that's  
24 okay.

25 A. Sure.

1           Q.    In your opening statement you had mentioned  
2   that it was your understanding that the division had  
3   withdrawn its adjustment for cable migration; is that  
4   correct?

5           A.    Had withdrawn its original adjustment.

6           Q.    Okay.  And what is your position with respect  
7   to the -- let me ask a question prior to this one.  Is  
8   it your understanding that the division maintains a  
9   adjustment for cable migration, but it's substantially  
10  smaller than it initially proposed?

11          A.    I think they might have agreed with  
12  Mr. Woolsey's adjustment.

13          Q.    Okay.  If the division continued a small cable  
14  migration adjustment, would you be supportive or opposed  
15  to that or uncertain?

16          A.    I would not agree with that because I do not  
17  agree with Mr. Woolsey's calculation methodology.

18          Q.    Okay.  Thank you.

19                MR. MOORE:  I just have one question, your  
20  Honor.

21                JUDGE JONSSON:  Uh-huh.

22                                REDIRECT EXAMINATION

23  BY MR. MOORE:

24          Q.    Is there a possible mistake in your testimony  
25  regarding the three issues presented to the -- presented

1 **by the commission?**

2 A. There may be a mistake. I'm not sure how this  
3 showed up in the official record, but regarding Question  
4 No. 2, when I responded, I may have left out the word  
5 "not," which would make a big difference in how it  
6 reads.

7 **Q. Uh-huh.**

8 A. So this is really just two sentences. So I'll  
9 just read the second sentence where I may have  
10 inadvertently not included the word "not."

11 "The OCS further asserts that an increased  
12 disbursement or continued disbursement at current levels  
13 would not be equitable because it would allow  
14 Carbon/Emery cost recovery for more than what is  
15 necessary for basic telephone service."

16 MR. MOORE: Thank you. I have no further  
17 questions.

18 JUDGE JONSSON: Ms. Slawson, anything further  
19 for this witness?

20 MS. SLAWSON: No.

21 JUDGE JONSSON: Mr. Jetter?

22 MR. JETTER: No. Thank you.

23 JUDGE JONSSON: Okay. Is that -- does that  
24 conclude your case in chief?

25 MR. MOORE: That concludes the case. The



1 office rests.

2 JUDGE JONSSON: Okay. I spoke with a couple  
3 of the commissioners last night. They are willing to  
4 take closing argument by brief, if that's what the  
5 parties prefer. Ms. Slawson, you've already mentioned  
6 that that would be your preference, correct?

7 MS. SLAWSON: That would be -- one point of  
8 order. We have URTA as an intervenor.

9 JUDGE JONSSON: All right. You are correct.  
10 Very good. Go ahead.

11 MS. SLAWSON: Shall I?

12 JUDGE JONSSON: Uh-huh.

13 MS. SLAWSON: URTA would file -- or would call  
14 Douglas Meredith to the stand.

15 JUDGE JONSSON: Mr. Meredith, you remain under  
16 oath.

17 THE WITNESS: Yes.

18 DOUGLAS MEREDITH,  
19 recalled as a witness at the instance of the intervenor,  
20 URTA, having been first previously sworn, was examined  
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SLAWSON:

24 Q. Good morning, Mr. Meredith.

25 A. Good morning.

1           **Q. You've already stated your name, employer and**  
2           **business address for the record so we'll skip over that.**  
3           **But can you tell us who you are representing?**

4           A. Yes, I'm representing the URTA, the Utah Rural  
5           Telecom Association.

6           **Q. And as URTA's witness, do you have a summary**  
7           **of your testimony that would differ from the summary you**  
8           **previously gave?**

9           A. Yes, just with a little bit more emphasis on a  
10          couple of points that URTA is very concerned about.

11          **Q. Go ahead.**

12          A. Good morning, your Honor. The Utah Rural  
13          Telecom Association or URTA is an association comprised  
14          of 13 members that are incumbent local exchange carriers  
15          operating in Utah. URTA members are regulated by the  
16          commission and provide operational information to the  
17          division and the commission on a regular basis.

18                 URTA is very concerned about the division's  
19          proposed change of a company's decision of its  
20          depreciation method when evaluating Utah USF  
21          disbursements or rate case proposals. This proceeding  
22          is a case of first impression before the commission for  
23          URTA members. This proceeding is the first time a  
24          change in depreciation method has been presented before  
25          the commission to resolve a dispute between the division

1 and a URTA member.

2 URTA recommends that the commission allow URTA  
3 members to use their chosen group asset method, as  
4 prescribed by Part 32 of the code of federal  
5 regulations. And if modifications are needed, use  
6 adjustments to the average service life as described by  
7 Utah Code Annotated 54-7-12.1 that informs the  
8 commission to include the, quote, alteration of asset  
9 lives to better reflect changes in the economic life of  
10 plant and equipment, unquote.

11 This process is contrasted by the division's  
12 single asset straight-line method proposed by witness  
13 Hellewell, that did not evaluate the alteration of asset  
14 lives, nor did he examine Carbon/Emery's FCC method that  
15 addresses the same issue.

16 If the commission ultimately decides to move  
17 away from a URTA member's chosen depreciation method,  
18 this change should be on a prospective basis, used only  
19 for new assets placed into service. Utah Code Annotated  
20 54-4-4 -- 4A Roman F3 informs the commission on judging  
21 the prudence of a company's decision on past -- in the  
22 past and provides guidance in making monumental changes  
23 to company operations.

24 Ultimately, if the commission wanted to adopt  
25 the uniform policy for all companies, URTA recommends

1 that the commission adopt a rule-making process that  
2 would provide for expression by all interested parties.

3 When judging this recommendation, URTA urges  
4 the commission to please reflect on the experience we  
5 had with the capital structure task force. As a  
6 participant in this task force, I witnessed the  
7 development of proposal that addressed and balanced  
8 competing interests.

9 Furthermore, an added benefit of a rule making  
10 process, is that all parties know the proposed policy.  
11 This benefits all parties and serves the public  
12 interest. URTA also observes that a rule making process  
13 would serve the public interest in establishing guiding  
14 principles for the development of an intrastate cost of  
15 equity. Such a process would greatly increase the  
16 precision of an estimate by establishing generally  
17 accepted methods to estimate the cost of equity for a  
18 particular company.

19 I urge the commission to consider these  
20 recommendations as it judges this case. This ends my  
21 URTA summary.

22 MS. SLAWSON: Mr. Meredith is available for  
23 cross-examination.

24 JUDGE JONSSON: Mr. Jetter.

25 CROSS-EXAMINATION

1 BY MR. JETTER:

2 Q. I do have a few questions. Mr. Meredith, good  
3 morning. Are you aware that there are URTA members that  
4 use single asset straight line depreciation?

5 A. Yes, I am aware that some do. Their  
6 circumstances are unique, I would say. I know that at  
7 least one is an average schedule company. But the  
8 decision of a company to use a particular depreciation  
9 method is the company's.

10 Q. And it would be your testimony that the  
11 universal service funds support for a company that is  
12 subject to that decision should vary by company based on  
13 their chosen depreciation method?

14 A. Yes. Because the Utah Code allows for  
15 adjustments to the method that, that reflect what the  
16 commission has described in its order on the motion for  
17 summary judgment.

18 Q. And so it is your testimony then that the  
19 amount that other rate payers for telephone service in  
20 Utah pay to support rural telephone service should vary  
21 based on the, I guess, the whims of an accountant at  
22 each of URTA's members?

23 A. No. No.

24 Q. No. But you did testify that they should be  
25 able to choose whatever depreciation method they wish

1 and that their universal service fund calculation should  
2 then be calculated based on that?

3 A. No, I didn't say that either.

4 Q. You did testify that there are URTA members  
5 that do have different accounting methods; is that  
6 correct?

7 A. Yes.

8 Q. And you don't think those should be adjusted  
9 by the commission?

10 A. No. I didn't say that either. What I said --

11 Q. Go ahead.

12 A. -- was that if there were to be changes to  
13 better reflect the economic life of plant and equipment,  
14 those changes and those adjustments can be made using  
15 what the Utah Code talks about, and what we've described  
16 in this proceeding as adjustment to the average service  
17 life.

18 Q. And that's regardless of the fact that the  
19 choice to use single asset straight line depreciation  
20 would result in a different number for the exact same  
21 scenario with the same company as the choice to use a  
22 group asset method?

23 A. Well, the straight line method is not --  
24 didn't come down from Mount Sinai on tablets.

25 Q. That's not what I asked you.

1           A.     And so what I'm saying is, it's an  
2     approximation.   Straight line method is an  
3     approximation.   The group method is an approximation of  
4     the actual diminution of value of the asset.   And the  
5     commission can judge very, very plainly which better  
6     actual -- which method more accurately attempt -- or  
7     describes the actual.

8           A straight line method as proposed by the  
9     office does not have adjustments contemplated in it.  
10    And so it's, by my judgment, a less accurate  
11    representation of the actual.

12           JUDGE JONSSON:   Did you mean to reference the  
13    division when you mentioned --

14           THE WITNESS:   Division, I'm sorry.   Yes.

15           **Q.     (By Mr. Jetter)   Let me ask you another**  
16    **question.   When is -- are you familiar with the**  
17    **accounting practices of URTA members?**

18           A.     Some of them, yes.

19           **Q.     Do you know when the last depreciation study**  
20    **was done by any URTA member?**

21           A.     URTA members -- depreciation study, I'm not  
22    exactly sure how you're defining that.   But URTA members  
23    do review depreciation and depreciation expenses and  
24    activities continually.

25           **Q.     Do you know the last time that one of them**

1 reviewed their operations, all of their plant and  
2 reviewed the service lives of the current plant and then  
3 adjusted their accounting service lives to match?

4 A. Well, if -- well, they do this continually.  
5 They look at -- they look at whether there's adjustments  
6 that need to be made on a continual basis through --  
7 particularly the cost studies. I can't speak to the  
8 average schedule companies because they have different  
9 procedures. But for a cost company like Carbon/Emery,  
10 and for other cost companies that are URTA members, this  
11 is a continual function.

12 Q. Okay. And so let's talk about that for a  
13 second. Let's say hypothetically you have a building  
14 that you put in your account with, let's say, a 30  
15 year -- let's say a 20 year service life. And you  
16 realize that that building is going to last for 60  
17 years. You would certainly adjust that service life to  
18 60 years, would you not?

19 A. That's a very strange hypothetical. Quite  
20 extreme to go from an estimated service life when it was  
21 placed into service at 20 and then suddenly realize  
22 that, oh, golly, it's going to last for 60.

23 But an adjustment even that extreme is looked  
24 at in evaluation. If it's reasonable to make that type  
25 of a hypothetical extreme, then it would be reasonable



1 to make the adjustment.

2 **Q. It would be unreasonable not to make that**  
3 **adjustment, would it not?**

4 A. In your hypothetical, if you -- if you find a  
5 situation where the expected life of the asset exceeds  
6 or needs to be changed from what is being used,  
7 contemplated with all the assets that are -- with all  
8 the activity and projected activity of that asset, yes,  
9 it's reasonable to make the change.

10 **Q. Okay. And so if I looked at a group of**  
11 **assets, for example, and we saw that more than half of**  
12 **them were beyond their expected service life, and yet**  
13 **the group was remaining with such a large amount of**  
14 **assets and that far exceeding their expected service**  
15 **life, that would indicate that these adjustments were**  
16 **not being made in a timely manner, would it not?**

17 A. No, not at all. Because if an asset is beyond  
18 its expected service life, that means that all the  
19 depreciation expense that would accrue to that asset is  
20 gone. There is no -- there is no depreciation expense  
21 allocated to that asset.

22 And but the asset is still -- is still used  
23 and useful. And so the company still uses it. It  
24 doesn't dispose of that asset if it still has useful  
25 life.

1           Q.     Okay.  How does -- how does the gross value of  
2     that asset that's beyond its service life change the  
3     depreciation diminution of value of a new asset that's  
4     added that's unrelated to that old asset and is the  
5     exception that it happens to be in the same group?

6           A.     Well, technically there is only one asset in a  
7     group.  The group has the asset.  There are units in  
8     that group.  But there's one asset for purposes of  
9     depreciation.

10          Q.     Okay.  I guess we're talking semantics.  So  
11     let's go back and ask the same question.  If we have a  
12     unit in the group that is beyond its expected service  
13     life, and you testified that it would be fully  
14     depreciated, how is that changing the diminution of  
15     value of a new unit that would be added within the same  
16     group?

17          A.     Well, under this particular method, the  
18     proposal, the method prescribes that you use the average  
19     service life of the group.  And so if you were to add a  
20     particular asset to -- a unit to a group asset, then the  
21     average service life would change.

22          Q.     And are you aware of that recalculation having  
23     been done by URITA members?

24          A.     Yes, they -- as I said before, they evaluate  
25     that based upon the expected service life of the -- of

1 all of the units in a group on a continual basis.

2 Q. Okay. And so a building that would last for  
3 60 years being on a 20 year depreciation schedule, how  
4 would that match up with what you're describing?

5 A. Well, I wouldn't see that hypothetical.

6 Q. Okay. What if that was in fact on the books  
7 of one of your URTA members?

8 A. If that was on the books of the URTA members,  
9 then -- well, it's a hypothetical that is just so  
10 extraordinarily odd that can't -- I don't know. I mean,  
11 obviously, I would be saying are you sure you -- go  
12 check the -- go check that 60 year expected life of  
13 that, of the building. Because it's a hypothetical that  
14 is a corner solution. It's way extraordinary.

15 Q. You're happy to discuss hypotheticals with all  
16 of the other URTA members; is that right?

17 A. With -- I'm sorry. Say again.

18 Q. You're happy to discuss hypothetical future  
19 interactions with the commission with the URTA members;  
20 is that correct?

21 A. Well, the only hypothetical that I can recall  
22 in this proceeding was a \$1,000 hypothetical which was  
23 used. And that's, that's a perfectly reasonable  
24 hypothetical because it's very true to what happens.

25 Q. Okay. But a building that, let's say, was

1 \$500,000, but in the same scenario where you fully  
2 depreciated it by year 10 and you're now in 21 adding a  
3 new unit in that group, how does that differ from -- or  
4 other than if you were --

5 A. Well, the asset -- if you add a new unit to a  
6 building group, then you have a change in, as I men --  
7 as I said before, you have a change in the average  
8 service life of that group.

9 Q. Okay.

10 A. And you make the change.

11 Q. But the annual depreciation method then from  
12 that depreciation method of group depreciation would  
13 result in a different number for a particular year than  
14 a single asset straight line; is that correct?

15 A. I think I've already answered that. Correct,  
16 yes.

17 Q. Okay. And so then two companies with the same  
18 facts but different accounting methods would present  
19 different depreciation calculations to the commission?

20 A. They could. Those approximations of  
21 depreciation could differ.

22 Q. Okay. And you do have URTA members that use  
23 varying types of accounting practices; is that correct?

24 A. Yes, as I've said before, they have  
25 different -- they have different depreciation methods.

1 And this is why the alternative, also as I described in  
2 my summary, comes to bear, that if the commission wants  
3 a uniformity, then we should look at this so that all  
4 interested parties are able to talk about it in a  
5 rule-making procedure or task force.

6 **Q. But until then, they should -- you believe**  
7 **that they should receive UUSF based on whatever,**  
8 **whatever they decide to come in with; is that correct?**

9 A. No. The depreciation expense is thoroughly  
10 reviewed by the division. And if it comes to an  
11 adjudicated proceeding, it's reviewed by the commission,  
12 and it would be deemed -- whatever changes or  
13 alterations are made would be deemed -- would be  
14 eventually deemed prudent. And the commission and the  
15 division and the company should receive that, that  
16 assignment.

17 MR. JETTER: Thank you. That's all the  
18 questions I have.

19 MR. MOORE: No questions, your Honor.

20 JUDGE JONSSON: Ms. Slawson, any redirect?

21 REDIRECT EXAMINATION

22 BY MS. SLAWSON:

23 **Q. I just have one question on redirect. You**  
24 **testified that the URTA members have different methods**  
25 **of doing depreciation. They also have different Public**

1 **Service Commission prescribed rates of depreciation,**  
2 **don't they?**

3 A. Yes, I believe they do. They do indeed.

4 MS. SLAWSON: That's all I have.

5 JUDGE JONSSON: Any recross?

6 MR. JETTER: No recross, thank you.

7 JUDGE JONSSON: Thank you. Thank you for  
8 keeping me on my toes. All right. So I believe that  
9 concludes the testimony today; is that correct?

10 MS. SLAWSON: Yes.

11 JUDGE JONSSON: All right. And the  
12 commission, as I mentioned before, is willing to accept  
13 closing arguments by post-hearing brief. And I think  
14 that's the way the parties want to go. So we need to  
15 establish the deadline for that to happen. I also think  
16 it might be worth discussing page limit. And then I am  
17 going to specifically request that the parties deal with  
18 two issues in their closing arguments.

19 One, when we've been talking about  
20 depreciation and about some of the allocated accounts  
21 for materials supplies, things like that, the parties  
22 have all made reference to the possibility that another  
23 rate case might be needed down the road.

24 If Carbon -- Carbon's UUSF is set at a  
25 relatively higher level based on a high depreciation

1 expense and high materials and supplies right now, then  
2 we might need to have a rate case maybe within three  
3 years, five years, whatever, to correct for that, if at  
4 that point it's over-recovering.

5 On the other hand there's also been discussion  
6 that if Carbon's UUSF is set today according to adjusted  
7 depreciation and a more normalized value for materials  
8 and supplies and things like that, then down the road at  
9 some point, if it feels like it's under-recovering, it  
10 can come in for a rate case and that UUSF can be bumped  
11 up.

12 My question for you in your closing arguments  
13 is to give some sort of analysis as to why the  
14 commission should go one way or the other. If there's  
15 going to be a true-up, if you will, needed down the  
16 road, then why should the commission, Carbon, go high  
17 now and true up down later down the road?

18 Division office, why should the commission go  
19 normalized now and if necessary, increase later down the  
20 road? Okay. So I'd like you to address that point.

21 And then also in dealing with depreciation,  
22 there's been some discussion about how the asset -- how  
23 Carbon's assets should be viewed. Carbon, it seems like  
24 your position is to ask the commission to view the  
25 assets and then each asset group were sort of one big

1 machine that's being continually repaired, improved,  
2 whatever, and therefore is being it depreciated all at  
3 once.

4 And the division, the office seem to view the  
5 asset groups as being of a different nature, that when  
6 an addition is made, it's not a new piece to a new  
7 machine. It's a new asset, and the fully depreciated  
8 assets are then skewing that assets depreciation.

9 I believe we have in the record, particularly  
10 in the exhibits, some pretty good list of what Carbon's  
11 assets are. And so I think we have the facts that we  
12 might need in order to decide whose view of the assets  
13 is more accurate. But I would like some discussion in,  
14 in your closing argument briefs as to why these assets  
15 look like a machine versus why these assets don't like  
16 one single machine.

17 And I think that would be helpful to me and to  
18 the commission. Okay. So with that, does any party  
19 want to propose a deadline for closing argument briefs.

20 MR. JETTER: Can I make one request?

21 JUDGE JONSSON: Sure.

22 MR. JETTER: If -- presumably we'll have, as  
23 you discussed, a page limit. I was considering -- I  
24 think it might be worthwhile to have a response that's  
25 somewhat shorter page limit. So to make a response



1 brief, but if parties need to respond to something they  
2 may not have anticipated --

3 JUDGE JONSSON: So you're thinking maybe two  
4 deadlines. One to file final closing arguments, and one  
5 to file a reply to any other party's closing.

6 MR. MOORE: So I would be in support of that  
7 argument as well.

8 JUDGE JONSSON: I'm certainly willing to go  
9 there. I am concerned about the cost of this case.  
10 This case has been protracted. There's been a great  
11 deal of briefing. Every time we go for a new round of  
12 briefing, the costs go up. And so I want you to bear  
13 that in mind as well. What's your --

14 MR. JETTER: And I would be happy to make --

15 JUDGE JONSSON: What's your suggestion?

16 MR. JETTER: Maybe the reply could be one or  
17 two pages.

18 JUDGE JONSSON: Okay.

19 MR. JETTER: Just very brief.

20 MR. MOORE: We would like at least five pages.

21 JUDGE JONSSON: For closing argument?

22 MR. MOORE: For the reply brief.

23 JUDGE JONSSON: For a final reply. What's  
24 your thought Kira, Ms. Slawson?

25 MS. SLAWSON: Well, we're also concerned about

1 the costs. Just kind of thinking out loud here. If it  
2 were a oral closing argument, we'd be limited by  
3 minutes.

4 JUDGE JONSSON: Right.

5 MS. SLAWSON: And we could reserve however  
6 many minutes we thought we might need to reply.

7 JUDGE JONSSON: Right.

8 MS. SLAWSON: So I guess you could set a total  
9 page limit and use it how you want.

10 JUDGE JONSSON: I like that idea.

11 MS. SLAWSON: But as I'm thinking about this,  
12 you know, the initial closing argument then could be one  
13 page, and if they do everything on reply, so the parties  
14 don't have the opportunity to -- the other parties  
15 wouldn't have a opportunity to respond to the actual  
16 closing. They get the last word. So you know --

17 JUDGE JONSSON: Okay. So somebody please make  
18 a proposal.

19 MS. SLAWSON: Maybe.

20 MR. JETTER: I would -- well --

21 MS. SLAWSON: Five pages for the reply seems  
22 fine.

23 JUDGE JONSSON: Okay.

24 MS. SLAWSON: For the closing argument, I mean  
25 there's a lot of evidence in the case, maybe 25 or 30

1 pages.

2 JUDGE JONSSON: Okay. And you don't  
3 necessarily need to repeat the evidence.

4 MS. SLAWSON: Right.

5 JUDGE JONSSON: You can cite to it.

6 MS. SLAWSON: Right.

7 JUDGE JONSSON: Twenty-five and five? Thirty  
8 and five?

9 MR. JETTER: Yeah, I can probably do 10 for a  
10 closing. If we need more, that's fine.

11 MS. SLAWSON: The company has more issues  
12 because we have to address the issues of the division  
13 and the office.

14 JUDGE JONSSON: Both. Correct.

15 MR. MOORE: We would recommend 25 and 5.

16 MS. SLAWSON: That's fine.

17 JUDGE JONSSON: Okay. All right. And then  
18 dates.

19 MR. JETTER: I think we're going to need time  
20 to get a transcript.

21 JUDGE JONSSON: Shall we set the dates after  
22 we see the transcript?

23 MR. JETTER: Sure. Do we -- well --

24 JUDGE JONSSON: Or do you want to just say  
25 like 30 days or X days after the transcript for closing

1 argument, and then X days after that for rebuttal.

2 MR. JETTER: That works for us.

3 JUDGE JONSSON: Okay. So what period do you  
4 need? The commission staff has input. Yes, John.

5 MR. HARVEY: Just what's our 240 deadline to  
6 have an order out?

7 JUDGE JONSSON: We don't have a 240.

8 MS. SLAWSON: Not a rate case.

9 MR. HARVEY: Oh, that's right.

10 JUDGE JONSSON: Okay. How many days?

11 MS. SLAWSON: Does anybody have any idea about  
12 how long the transcript's going to take?

13 (Discussion off the record.)

14 MS. SLAWSON: I'm wondering if for scheduling  
15 purposes it might be easier to set the dates after we  
16 get the transcripts. Because, you know, if the deadline  
17 for filing ends up on a day that somebody has a hearing,  
18 that's going to be anxiety provoking.

19 JUDGE JONSSON: I just don't want to have to  
20 get the parties back together to discuss things. So --  
21 well, again, then we have more cost. So if we can  
22 figure out today how many days you need to put together  
23 your closing argument and how many days you need to put  
24 together your reply, I think that would be best. So I'm  
25 going to push you on that. Three weeks after

1 transcripts?

2 MS. SLAWSON: That's fine.

3 MR. JETTER: Yeah.

4 JUDGE JONSSON: Okay. If there's a holiday in  
5 there, I'll adjust. So when I say three weeks, 21 days  
6 excluding any holidays. Including weekends but  
7 excluding holidays, okay? And then for your reply then,  
8 a week after that?

9 MR. JETTER: I think that's reasonable.

10 MR. MOORE: That's fine, your Honor.

11 MS. SLAWSON: Sure.

12 JUDGE JONSSON: Okay. So when we get the  
13 transcript, I'll issue a scheduling order. But I'll  
14 just do it unilaterally without calling a schedule  
15 conference, and put the actual dates into it. And issue  
16 that.

17 Okay. I think with that, I'm ready to close  
18 the hearing unless I've missed something. Anybody?  
19 Okay. Thank you all very much. This has been extremely  
20 helpful.

21 MS. SLAWSON: Thank you.

22

23 (The proceedings in this matter concluded at  
24 12:17 p.m.)

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C E R T I F I C A T E

STATE OF UTAH )  
COUNTY OF SALT LAKE )

THIS IS TO CERTIFY that the foregoing proceedings were taken before me, Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Utah.

That the proceedings were reported by me in Stenotype, and thereafter transcribed by computer under my supervision, and that a full, true, and correct transcription is set forth in the foregoing pages, Volume 2, numbered 248 through 321 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.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 8th day of February, 2016.



Teri Hansen Cronenwett, CRR, RMR  
License No. 91-109812-7801

My commission expires:  
January 19, 2019

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