

Kira M. Slawson (7081)
BLACKBURN & STOLL, L.C.
Attorneys for Carbon/Emery Telcom, Inc.
and Utah Rural Telecom Association
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 521-7900

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF
CARBON/EMERY TELCOM, INC.'S
APPLICATION FOR AN INCREASE
IN UTAH UNVERSAL SERVICE
FUND SUPPORT

CARBON/EMERY TELCOM, INC. AND
UTAH RURAL TELECOM
ASSOCIATION'S OBJECTION TO
ERRATA SHEET FILED BY THE OFFICE
OF CONSUMER SERVICES

DOCKET NO. 15-2302-01

On March 7, 2016, the Office of Consumer Services (“Office”) filed an Errata Sheet identifying 13 errors contained in the Post Hearing Brief filed by the Office on March 2, 2016. Carbon/Emery Telcom, Inc. (“Carbon”) and Utah Rural Telecom Association (“URTA”) hereby object to the Errata Sheet and formally state that several of the “error corrections” identified by the Office are not supported by the testimony; are, therefore, not appropriate; and should not be made or accepted by the Utah Public Service Commission.

BACKGROUND

On April 2, 2015, Carbon filed an Amended Application for Increase in UUSF (the “Application”). The Application was supported by the Direct Testimony of Darren Woolsey and the Direct Testimony of Brock Johansen. Supplemental Testimony was filed by Darren Woolsey to include the audited financial statements of Carbon in support of the Application. Thereafter,

the Division of Public Utilities and the Office filed direct testimony on August 21, 2015. Carbon filed Rebuttal Testimony on September 4, 2015, and Errata Testimony on September 14, 2015.

In response to the Direct Testimony filed by the Office, Carbon filed a Motion for Summary Judgment related to Office proposed adjustment BCO 1. Ultimately, the parties agreed that all parties would withdraw testimony related to adjustment BCO 1, in exchange for Carbon withdrawing its Motion for Partial Summary Judgment. Surrebuttal Testimony was filed by Carbon, the Division, and the Office on September 18, 2015. On December 17, 2015, to clarify the record, all parties filed revised testimony which was supposed to eliminate any and all references to the proposed adjustment BCO 1. On December 18, 2015 Sur-Surrebuttal Testimony was filed by Carbon. The Division filed Sur-Surrebuttal Testimony on January 15, 2016. Upon review of the Office's Revised Direct Testimony of Bion Ostrander, counsel for Carbon noticed that OCS Exhibit 1S-1, attached to the Revised Direct Testimony of Bion Ostrander had not properly eliminated all references to adjustment BCO 1. The Office thereafter submitted a revised Confidential Exhibit 1S-1 to properly eliminate inappropriate references to adjustment BCO 1.

Thereafter, on January 26 and 27, 2016, the Commission conducted a hearing in this matter. All witnesses who had provided pre-filed written testimony were called to the stand to make any necessary corrections to the pre-filed written testimony and to affirm the accuracy of the pre-filed testimony. Specifically, on January 27, 2016, counsel for the Office called David Brevitz to the stand. Mr. Brevitz identified certain corrections to his pre-filed testimony and confirmed that if asked those same questions today, his answers would be the same. (T. 250, Line 25). Similarly on January 27, 2016, counsel for the Office called Bion Ostrander to the

stand. Mr. Ostrander identified several corrections to his pre-filed written testimony, and then stated that if he were asked the questions in his prepared testimony, would his testimony be the same. Mr. Ostrander answered yes. (T. 267, Line 20).

In addition to the pre-filed written testimony filed by Mr. Ostrander and Mr. Brevitz, as corrected at the hearing, both Mr. Brevitz and Mr. Ostrander were asked some questions at the hearing and their testimony was recorded in the Hearing Transcript dated January 27, 2016.

Therefore, the full record of the testimony offered by the Office is as follows:

1. Revised Direct Testimony of Bion Ostrander (and exhibits);
2. Revised Direct Testimony of David Brevitz (and exhibits);
3. Rebuttal Testimony of David Brevitz (and exhibits);
4. Surrebuttal Testimony of Bion Ostrander (and exhibits);
5. Surrebuttal Testimony of David Brevitz (and exhibits).
6. Testimony of David Brevitz and Bion Ostrander offered at Hearing.

On March 2, 2016, the Office filed a Post Hearing brief. On March 7, 2016, the Office filed an Errata Sheet identifying numerous errors in the Office's Post Hearing Brief.

OBJECTION

The Office is correct that its Post Hearing Brief contained numerous errors. To the extent that the Post Hearing Brief inaccurately identified the testimony offered in this case, the errata can appropriately identify the *correct testimony that is already contained in the formal record* of this matter and which *should have been accurately cited* in the Office's Post Hearing Brief. Carbon and URTA do not object to the Office's use of the Errata sheet with respect to these errors. Specifically, Carbon and URTA do not object to the correction of the errors contained in

the Office's Errata Sheet numbers 4 through 10 because these "errors" can be attributed to errors made in the briefing process. In each instance, the "correction" that the Office seeks to make is supported by the evidence in the record (though the Office failed to properly cite to such evidence in the record in its Errata Sheet).

However, with regard to Errors 1-3, and 11-13, Carbon and URTA strenuously object to the "corrections" as proposed by the Office. The "corrections" proposed by the Office are not corrections that need to be made to the Office's Post-Hearing Brief to properly reflect the testimony offered in this case. The "corrections" are not reflected anywhere in the record in this matter. Rather, the "corrections" seek to change the testimony offered by the Office in this matter months after said testimony was presented, and weeks after the record in this matter was closed at the conclusion of the Hearing. The testimony in this case has been submitted and the record is closed. It is wholly inappropriate for the Office to now seek to amend the testimony it presented in this case by use of an Errata Sheet.

Correction No. 1 states: "1.) On page 2 line 1 the number \$816,643 is in error and should read \$573,643."

Carbon and URTA object to this "correction" for two reasons. First, the Errata Sheet does not accurately identify the alleged error. Page 2 line 1 of the Office's Post Hearing Brief does not include the number \$816,643 as suggested in the Errata. Rather, the Office's Brief on page 2, line 1 incorrectly identifies Carbon's request for increase as \$816, 909.

Second, the "correction" in the Errata does not accurately identify the correct amount of Carbon's current UUSF increase request. The pre-filed testimony filed by Carbon properly identifies Carbon's current request as an increase in the amount of \$570,643 (T. 15, Line 3; T. 24, Line 16), not the \$573,643 the Office again mistakenly identifies in the Errata.

Correction No. 2 states: “2.) On page 2 line 2 the numbers \$428,807 is in error and should read \$670,631.”

Carbon and URTA object to this “correction” because the number \$670,631 does not appear in the Office’s pre-filed testimony or in the Hearing testimony. As the record stands, there is no support in the record for this number. The Commission cannot make this correction in the Post-Hearing Brief as requested by the Office.

Correction No. 3 states: “3) On page 2 line 3 the number \$609,907 is in error and should read \$368,083.”

Carbona and URTA object to this “correction” because the number \$368,083 does not appear in the Office’s pre-filed testimony or in the Hearing testimony. Again, there is no support in the record for this number, and the Commission cannot make this correction to the Post-Hearing Brief as requested by the Office.

Correction No. 11 states: “11.) On page 21 line 12 the number \$816,909 is in error and should read \$573,643.”

Carbon and URTA object to this “correction” because it does not accurately identify Carbon’s current requested increase in UUSF. As the testimony demonstrates, Carbon is seeking an increase in UUSF in the amount of \$570,643 (T. 15, Line 3; T. 24, Line 16), not the \$573,643 the Office again mistakenly identifies the amount of Carbon’s UUSF request in the Errata.

Correction No. 12 states: “12.) On page 21 line 12 the number \$428,807 is in error and should read \$670,631.”

Carbon and URTA object to this “correction” because the number \$670,631 does not appear in the Office’s pre-filed testimony or in the Hearing testimony. As stated above, there is no support in the record for this number. Therefore, the Commission cannot make this correction to the Post-Hearing Brief as requested by the Office.

Correction No. 13 states: “13.) On page 21 line 12 [sic]¹ the number \$609,907 is in error and should read \$368,083.”

Carbon and URTA object to this “correction” because the number \$368,083 does not appear in the Office’s pre-filed testimony or in the Hearing testimony. Again, as stated above there is no support in the record for this number. Therefore, the Commission cannot make this correction to the Post-Hearing Brief as requested by the Office.

Carbon and URTA are disturbed by the Office’s attempt to insert new testimony into the record by use of the Errata Sheet. While Carbon and URTA do not dispute that the testimony of Mr. Ostrander contains errors in many of Mr. Ostrander’s calculations related to Carbon’s UUSF request, as demonstrated in the testimony offered by Carbon, the Office’s opportunity for correcting those errors has long passed. The record is closed and the parties are stuck with the testimony contained in the record. The Commission is not permitted to consider the corrections which are proposed by the Office but which are not supported by the testimony as filed.

CONCLUSION

Carbon and URTA object to the corrections identified as numbers 1-3, and 11-13 of the Office’s Errata Sheet for the reasons set forth herein and move to strike them. The Commission should not consider these “corrections” because they are not properly included in the records. Finally, as this Errata Sheet further demonstrates, the testimony of Mr. Ostrander is so fraught with errors that the Commission should limit the weight, if any, given to Mr. Ostrander’s testimony and the positions of the Office based thereon. Additionally, Carbon should be entitled to recover its costs incurred in making this objection.

¹ In fact the number \$609,907 is found on page 21 line 13 (not 12—as misidentified by the Office in the Errata).

Dated this 9th day of March, 2016.

BLACKBURN & STOLL, LC

Kira M. Slawson
Attorneys for Carbon/Emery Telcom, Inc.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Carbon/Emery Telcom, Inc. and Utah Rural Telecom Association's Objection to the Office of Consumer Service's Errata Sheet, Docket No. 15-2302-01 was sent to the following individuals by email and/or mailing a copy thereof via first-class mail, postage prepaid (as indicated), this 9th day of March, 2016:

Justin Jetter
Assistant Attorney General
Division of Public Utilities
jjetter@utah.gov

Chris Parker
William Duncan
Dennis Miller
Joseph Hellewell
Paul Hicken
Division of Public Utilities
chrisparker@utah.gov
wduncan@utah.gov
dennismiller@utah.gov
jhellewell@utah.gov
phicken@utah.gov

Robert Moore
Assistant Attorney General
Office of Consumer Services
rmoore@utah.gov

Michele Beck
Danny Martinez
Office Of Consumer Services
mbeck@utah.gov
dannymartinez@utah.gov

Bion C. Ostrander
Ostrander Consulting
bionostrander@cox.net

David Brevitz
Ostrander Consulting
davidbrevitz@att.net

Kira M. Slawson