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Before the Public Service Commission of Utah

<p>In the Matter of UBTA_UBET Communication, Inc.'s (DBA Strata Networks) Application for Utah Universal Service Fund Support</p>	<p>Docket No. 15-053-01</p> <p>Office of Consumer Services Memorandum in Opposition of Strata Networks Motion for Partial Summary Judgment</p>
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Pursuant to Utah Administrative Code, R746-100-1C and R746-100-3.J and Utah Rules of Civil Procedure, Rule 56 the Utah Office of Consumer Services (“Office”) respectfully submits this Memorandum in Opposition to Strata Networks’ (“Strata”) Motion for Partial Summary Judgment which asserts that the Public Service Commission (“Commission”) cannot impose a change in accounting methods without first modifying Utah Administrative Code R746-340-2(D). The challenge by Stata is focused on the proposed adjustments by the Utah Division of Public Utilities (“Division”). However, because the Office has recommended changes in the treatment of depreciation in the Strata filing, it believes the challenge by Strata to the Commission’s authority regarding such adjustments could have an effect on the treatment of the Office’s proposed adjustments.

## STATEMENT OF CONTESTED MATERIAL FACTS

1. 1. STRATA calculates depreciation expense using a straight-line calculation in conformity with a group plan of accounting required by the FCC in the Code of Federal Regulations, Title 47, Chapter I, Subchapter B, Part 32. FCC part 32.2000 (g)(i) states:

Depreciation accounting—(1) Computation of depreciation rates. (i) Unless otherwise provided by the Commission, either through prior approval or upon prescription by the Commission, **depreciation percentage rates shall be computed in conformity with a group plan of accounting for depreciation** and shall be such that the loss in service value of the property, except for losses excluded under the definition of depreciation, may be distributed under the straight-line method during the service life of the property. (*Emphasis added*)

The Office disputes this statement of facts. The Office produced evidence that the manner in which Strata calculates depreciation expense is not in conformity with the accounting prescribed by FCC part 32.2000(47 CFR§ 32.2) because Strata failed to account adequately for depreciation on assets that are either fully depreciated or will be fully depreciated in approximately two years or which have been applied to plant no longer in service (Confidential Direct Revenue Testimony of Bion C. Ostrander, lines 525 – 609.)

## ARGUMENT

### **A. Adoption of the legal arguments of the Office in Docket No. 15-2302-01**

Strata has adopted the legal arguments of Carbon/Emery Telecom, Inc., made in its legal Memorandum in Support of its Motion for Partial Summary Judgment in Docket No. 15-2302-01 filed September 18, 2015. On October 5, 2015 the Office of Consumer Services filed its Memorandum in Opposition of Carbon/Emery Telecom, Inc.’s Motion for Partial Summary Judgment and that memorandum is incorporated herein by reference.

### **B. R746-340-2.D does not constrain the Commission’s ability to require Strata to modify the way it reports depreciation of various assets.**

Utah Administrative Code R746-340-2(D) incorporates 47 CFR 32 as the “prescribed system of accounts to record the results of Utah intrastate operations.” Strata asserts that the incorporation of 47 CFR 32, specifically 32.2000(g)(i), binds the Commission to accept Strata’s calculations and characterization of the way it’s depreciation expense is recorded.

Further, Strata contends that unless R746-340-2(D) is amended to allow an “exception” the Commission lacks the authority to review or change the depreciation method chosen by Strata.

In referring only to 32.2000 Strata is simply cherry picking certain portions of the incorporated federal regulation to suit its contention that the Commission is bound by Strata’s characterizations. Looking at the 47 CFR 32 in its totality we find that 47 CFR 32.2 (c) makes explicit that no such limitation exists and recognizes that a regulated utility’s financial reporting is subject to review. It states “...because of the variety and continual changing of various cost allocation mechanisms, the financial accounts of a company should not reflect an *a priori* allocation of revenues, investments or expenses to products or services, jurisdictions or organizational structures.” (Emphasis in the original). Implicit in this statement is the expectation that such records would be subject to review and modification. The Commission made this explicit in its October 15, 2017 Order on Motion for Partial Summary Judgment in Docket No. 15-2302-01.

Further, should the FCC consider that an asset group has been improperly configured, Part 32 is structured to allow the FCC to issue an order requiring a regulated utility to calculate depreciation using a method other than group depreciation: for example, straight-line depreciation. When R746-340-2(D) is applied to a UUSF case, the Commission retains the same ability as the FCC to require straight-line depreciation on an asset-by-asset basis in circumstances where it appears that a utility has improperly configured its asset groups. (Id. page 5-6)

**C. The Commission has ruled in a similar fact pattern that the proper configuration of depreciation presents an issue of material fact.**

In Docket No. 15-2302-1 Carbon/Emery Telecom sought summary judgement asserting among other things that adjustments to its depreciation schedules proposed by the Division and the Office were precluded as a matter of law. After reviewing the arguments the Commission determined it had the authority to make such adjustments. The Commission further determined that “whether an asset group has been properly configured is a material fact.” (Id at 5). Thus, because the way in which Strata has elected to treat depreciation is being challenged by both the Office and the Division, there exists a genuine dispute of fact in this case making summary judgment inappropriate.

## Conclusion

It is within the sound discretion of the Commission to review, and where appropriate, modify a regulated utility's accounts for purposes of UUSF review consistent with both State and Federal law. Further, the treatment of depreciation assets by Strata presents and issue of material fact that precludes the award of summary judgment to Strata.

Dated this 26<sup>th</sup> day of October, 2015.

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Services*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Extension of Time in Docket No. 15-053-01 were sent to the following individuals by electronic mail this 26<sup>th</sup> day of October, 2015:

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          /s/            
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