

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of UBTA-UBET Communications, Inc., dba STRATA Networks for an Increase in Utah Universal Service Fund Support

DOCKET NO. 15-053-01  
ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

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ISSUED: November 12, 2015

**I. Procedural History.**

On April 6, 2015, UBTA-UBET Communications, Inc., dba STRATA Networks (STRATA) filed with the Public Service Commission of Utah (Commission) an application for an increase in the financial subsidy the company receives from the Utah Universal Service Fund (UUSF).

On September 25, 2015, the Utah Division of Public Utilities (Division) and the Office of Consumer Services (Office) filed direct testimony in this docket, stating, in relevant part, that STRATA had improperly calculated the depreciation of its assets. Both the Division and the Office proposed adjustments to the depreciation claimed by STRATA. The Division calculated its proposed adjustment by applying single-asset straight-line depreciation to all of STRATA's depreciable assets.

On October 9, 2015, STRATA filed this motion for partial summary judgment.<sup>1</sup> STRATA argues that the Commission is prohibited under federal and state regulations from requiring STRATA to calculate asset depreciation by any method other than mass asset group depreciation (group depreciation).

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<sup>1</sup> STRATA is joined in this motion by the Utah Rural Telecom Association, which was granted intervention on October 20, 2015.

On October 26, 2015, the Division and the Office filed memoranda opposing STRATA's motion for partial summary judgment. On November 5, 2015, STRATA filed a final reply in support of its motion.

**II. Facts.**

The following facts are undisputed by the parties.

1. In its application, STRATA used a group depreciation methodology to calculate its depreciation expense.

2. Group depreciation is a recognized method for calculating depreciation expense.

However, there is no standard or prescribed formula for group depreciation within the telecommunication industry.

3. In general, a company that uses group depreciation aggregates multiple assets into an asset group, and depreciates all assets in the group at the same rate, according to depreciation rates approved and set by the Commission.

4. STRATA has applied a group depreciation calculation to asset groups that combine old and new assets. STRATA's asset groups also include fully-depreciated assets.

**III. Parties' Positions.**

The Division's position is that old and new assets may not be indiscriminately included in the same asset group. If they are, the depreciation of the newer assets will be artificially accelerated. As a result, the utility's ratio of income to expense will be skewed to reflect a greater revenue shortfall than in fact exists.

The Office's position is that, whether federal or state rules are applied, STRATA has failed to account adequately for assets that were fully depreciated as of the date of application, or that will be fully depreciated within a relatively short period of time.

STRATA acknowledges that the Commission has discretion to examine its asset groups and adjust its depreciation calculation should it agree that STRATA's depreciation calculation is flawed. STRATA's sole argument at this stage of the proceedings is that the Commission may not require it to use single-asset depreciation.

**IV. Analysis.**

Summary judgment is appropriate if (a) there is no genuine issue as to any material fact; and (b) the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In its motion and supporting memorandum, STRATA relies primarily on 47 CFR Part 32 (Part 32), as promulgated by the Federal Communications Commission (FCC), as the law under which it claims judgment. Part 32 is titled "Uniform System of Accounts for Telecommunications Companies," and has been adopted by the Commission as "the prescribed system of accounts to record the results of Utah intrastate operations." Utah Administrative Code R746-340-2(D).

Subpart 32.2000(g)(1)(i) of the FCC regulation (Part 32) provides the following:

(g) 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.

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R746-340, which incorporates Part 32, is titled "Service Quality for Telecommunications Corporations." In briefing both this motion and a similar motion filed in Docket No. 15-2302-01, the various parties have debated whether the rule heading limits the application of its substantive provisions. The Division and the Office argue that the rule heading has some meaning and that, therefore, Part 32 has not been adopted by the Commission in every context. The Division and the Office emphasize that to hold otherwise would place the rule in conflict with statutory provisions, which give the Commission explicit discretion to determine depreciation methods in setting rates.

STRATA argues that the heading has no meaning and, therefore, that Part 32 applies strictly in every circumstance where it is necessary to record the result of Utah intrastate operations. STRATA emphasizes that a depreciation calculation is not clearly necessary in, or applicable to, an evaluation of a utility's service quality.

The Commission finds some merit in both positions, but does not consider it necessary to resolve the dispute. The parties agree that group depreciation, as set forth in Part 32, may be used by STRATA, if used appropriately. The parties also agree that the Commission has the authority and discretion to determine whether STRATA has used group depreciation appropriately. The only dispute is as to what action the Commission may take, should the Commission conclude that STRATA has used group depreciation inappropriately. The Division and the Office argue that the Commission may impose an adjustment through single-asset straight-line depreciation. STRATA argues that the Commission must arrive at its adjustment through some other method, but still apply group depreciation.

In making this argument, STRATA relies on a single clause from the Part 32 language: "depreciation percentage rates shall be computed in conformity with a group plan of accounting for depreciation[.]" STRATA argues that any other language found within the regulation gives "related guidance," but does "not affect the mandate" to use a plan of group depreciation. The Commission disagrees.

The introductory phrase of Part 32 states: "*Unless otherwise provided by the Commission, either through prior approval or upon prescription by the Commission ...*" (emphasis added). This introductory language does not provide "guidance" about a utility's use of group depreciation. It states expressly that a utility may be approved or required to calculate depreciation in a manner other than as is further set forth. Most significantly, it does not impose any limitation as to when or why a utility might be approved or required to depart from a plan of group depreciation.

STRATA briefly acknowledges the introductory phrase, but argues that the FCC is the only regulatory body that may order STRATA to utilize single-asset depreciation. STRATA is incorrect. The Commission's rule incorporates by reference the language of Part 32. Under that language, the Commission has discretion to order a depreciation methodology other than group depreciation. Nothing in R746-340-2(D) indicates the Commission has delegated to the FCC its responsibility to adjudicate individual matters under the language of Part 32, a delegation that arguably would exceed the Commission's authority. The Commission has retained its responsibility to determine the methodology by which state funds will be disbursed.

STRATA misconstrues the Division's testimony. STRATA considers that the Division wants the Commission to order STRATA to use single-asset depreciation from this point

forward. STRATA considers that such a requirement would constitute an unfair burden. However, the Division has not requested that STRATA be required to make any changes in its accounting. Rather the Division has requested that the Commission adjust STRATA's depreciation calculation, and the Division has used a single-asset depreciation methodology to calculate the amount of the recommended adjustment. The Commission would be within its discretion to adopt the Division's recommendation without ordering STRATA to change any of its record-keeping practices going forward.

Whether STRATA's asset groups have been properly configured is a material fact to which the parties have a genuine dispute. Specifically, the Division disputes whether an asset group may include assets of varying ages. The Office disputes whether an asset group may include fully-depreciated assets. If the Commission finds credible evidence that STRATA has improperly configured its asset groups, the Commission may adjust STRATA's depreciation expense. If the Commission wishes to calculate that adjustment by applying single-asset straight-line depreciation, it may do so under the rules as currently written. If STRATA believes that a different method for calculating an adjustment would be more appropriate, it may make that argument at hearing.

ORDER

STRATA's motion for partial summary judgment is DENIED.

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DATED at Salt Lake City, Utah, this 12<sup>th</sup> day of November, 2015.

/s/ Jennie T. Jonsson  
Administrative Law Judge

Approved and confirmed this 12<sup>th</sup> day of November, 2015 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#270485

CERTIFICATE OF SERVICE

I CERTIFY that on the 12<sup>th</sup> day of November, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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