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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 15-2302-01

DIVISION OF PUBLIC UTILITIES'
RESPONSE TO CARBON/EMERY'S
MOTION FOR EXPEDITED BRIEFING
SCHEDULE ON MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
DEPRECIATION METHOD
and
DIVISION OF PUBLIC UTILITIES'
MOTION FOR AN EXTENTION OF TIME
TO REPLY TO CARBON/EMERY'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON DEPRECIATION
METHOD
and
DIVISION OF PUBLIC UTILITIES'
MOTION TO VACATE HEARING DATE

Pursuant to the Public Service Commission of Utah's (Commission)
administrative rules R746-100-3 and R746-100-4, the Division of Public Utilities
(Division) files its (1) Response to Carbon/Emery's Motion for Expedited Briefing

Schedule on Motion for Partial Summary Judgment on Deprecation Method, (2) Motion for an Extension of Time to Respond to Carbon/Emery's Motion for Partial Summary Judgment on Depreciation Method, and (3) Motion to Vacate Hearing Date. .

Carbon/Emery's motions were filed on September 18, 2015.

Division's Response to Motion for Expedited Briefing Schedule.

The Division opposes Carbon/Emery's Motion for Expedited Briefing Schedule (Expedited Briefing Motion). Carbon/Emery seeks an expedited briefing schedule related to its Motion for Partial Summary Judgment (Partial Summary Judgment Motion) regarding the Division's witness Joseph Hellewell's direct testimony.

Despite witness Hellewell's direct testimony being filed on August 21, 2015, Carbon/Emery delayed until today, Friday, September 18, 2015, to file its Partial Summary Judgment Motion and Expedited Briefing Motion. Further, the company has known the Division's general position as more specifically embodied in Mr. Hellewell's testimony for even longer.¹ Notably, the September 29, 2015 hearing in this case has been scheduled since May 11, 2015.²

Carbon/Emery chose to file its motions at this late date. Carbon/Emery could have, and should have, filed its motions in a more timely manner.³ Only because of its own delay does Carbon/Emery find it necessary to ask for an expedited briefing schedule. The Division should not be prejudiced by having a shortened time to respond to Carbon/Emery's Partial Summary Judgment Motion filed on Carbon/Emery's chosen

¹ See discussion infra p. 3.

² See Commission's Amended Scheduling Order and Notice of Hearing, dated May 11, 2015.

³ Drawing upon R746-100-4, Carbon/Emery's motions should have been filed within 10 days of the filing of Mr. Hellewell's direct testimony

date without warning to the Division. The Division respectfully requests that the Commission deny Carbon/Emery's Expedited Briefing Motion.

Division's Motion for An Extension of Time

On September 18, 2015, only 11 calendar days before the long-scheduled hearing date, Carbon/Emery chose to file its Partial Summary Judgment Motion. The issues appear to involve complex matters of federal and state law. Because of the complexity of the issues raised, the Division requests an extension of time to respond to them. The Division requests its response to the Partial Summary Judgment Motion be due no sooner than October 9, 2015. This date represents a 21 day period from the time of the original motion's filing. The Company has had 28 days between the filing of Mr. Hellewell's testimony and the filing of its motion. It has had 35 days since the filing of Mr. Hellewell's nearly identical testimony in Carbon/Emery's sister company's case on August 14, 2015. The Commission generally allows 15 days for reply or responsive pleadings.⁴ Allowing for a period of time after that for the company's reply likely places the date for the filing of the concluding pleading to October 16, 2015 or later.

Division's Motion to Vacate Hearing Date

The Division requests that the Commission vacate the hearing date. Matters subject to the Partial Summary Judgment Motions should be resolved before the hearing commences. It is unreasonable and inefficient for witnesses to testify about, and for the Commission to hear, issues which may be resolved by the Partial Summary Judgment Motion. It is inappropriate to subject a witness to cross-examination on a matter that may soon be resolved by a Motion for Summary Judgment. Moreover, as

⁴See R746-100-4.D. However, the Commission could find that by its actions Carbon/Emery foreclosed its opportunity to file the motions. See, discussion, supra, p. 2.

has been noted by both the Division and Carbon/Emery, this is not a rate case with a 240-day clock. The Commission is not bound by the 240-day restriction in this case. This case involves only the amount of Utah Universal Service Funds to be given to Carbon/Emery.

Respectfully submitted this ____ day of September 2015.

Patricia E. Schmid
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Public Utilities*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the DIVISION OF PUBLIC UTILITIES' RESPONSE TO CARBON/EMERY'S MOTION FOR EXPEDITED BRIEFING SCHEDULE ON MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEPRECIATION METHOD and DIVISION OF PUBLIC UTILITIES' MOTION FOR AN EXTENTION OF TIME TO REPLY TO CARBON/EMERY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEPRECIATION METHOD and DIVISION OF PUBLIC UTILITIES' MOTION TO VACATE HEARING DATE, Docket No. 15-2302-01 was sent to the following individuals by email this 18th day of September, 2015:

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