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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

CARBON/EMERY TELCOM, INC.'S  
REPLY MEMORANDUM IN SUPPORT  
OF MOTION FOR PARTIAL SUMMARY  
JUDGMENT

DOCKET NO. 15-2302-01

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Pursuant to the Utah Public Service Commission's (the "Commission") Scheduling Order dated September 25, 2015, administrative rules R746-100-1.c and R746-100-3.J, and Rules 7 and 56 of the Utah Rules of Civil Procedure, Carbon/Emery Telcom, Inc. ("Carbon/Emery") hereby files this Reply Memorandum in Support of its Motion for Partial Summary Judgment filed on September 18, 2015 seeking an Order prohibiting the Division of Public Utilities (the "Division") and the Commission from changing accounting methods from a group plan of depreciation to a single asset plan of depreciation without a modification of the current Commission Administrative Rules.

Upon review of the Memoranda in Opposition to Carbon/Emery's Motion for Partial Summary Judgment filed by the Division and the Office of Consumer Services (the "Office"), there seems to be some confusion as to what Carbon/Emery is seeking in its Motion for Partial

Summary Judgment. To clarify, the issue that Carbon/Emery is seeking partial summary judgment on is a legal issue:

1. *Can the Division and the Commission require Carbon/Emery to utilize a single asset method of depreciation without modification of R746-340-2.D?*

Although Carbon/Emery enumerated a very limited number of facts which are not in dispute, the reality is that the issue upon which Carbon/Emery has moved for partial summary judgment is a legal issue that is not dependent on any disputed facts.

### **REPLY TO STATEMENT OF UNDISPUTED FACTS**

In its initial Motion, Carbon/Emery cited the following undisputed facts:

1. *Carbon/Emery uses the FCC prescribed Uniform System of Accounts contained in 47 CFR Part 32. (Direct Testimony of Woolsey, lines 111-113).*

Neither the Office nor the Division disputed this fact.

2. *Carbon/Emery calculates depreciation expense using a straight line calculation in conformity with a group plan of accounting as prescribed by Federal Communications Commission (FCC) in the Code of Federal Regulations, Title 47, Chapter I, Subchapter B, Part 32. FCC part 32.2000 (Testimony of Woolsey, lines 799-802; and Rebuttal Testimony of D Meredith, lines 645-653).*

In its Memorandum in Opposition, the Division disputed that Carbon/Emery calculates its depreciation “in conformity” with the group plan of accounting as prescribed by the FCC. The Office also contests this statement because it has offered testimony that Carbon/Emery does not calculate depreciation expense in conformity with the accounting prescribed by Federal Communications Commission (“FCC”) 47 CFR 32.2000. The question of whether

Carbon/Emery's group plan of depreciation is in conformity with 47 CFR 32 is a question to be determined by the Commission at the hearing on this matter, and is not the question to be answered by the Commission at this time.

While Carbon/Emery maintains that its treatment of assets is in conformity with 47 CFR 32.2000, the material fact for purposes of this Motion for Partial Summary Judgment is not whether Carbon/Emery conforms in all respects to 47 CFR 32.2000, but rather whether Carbon/Emery uses a group plan of accounting, as opposed to a single asset plan. There is no dispute that Carbon/Emery uses a group plan of accounting and depreciation.

3. *Carbon/Emery applies the depreciation rates as set by the Commission in Docket 05-2302-01 to its group accounts. (See Testimony of Hellewell, Lines 114-117; Rebuttal Testimony of D Meredith, Lines 776-781).*

The Division disputes that Carbon/Emery properly uses the group plan of accounting in such a way that depreciation rates set by the Commission are properly applied. Division witness Joseph Hellewell acknowledges that Carbon/Emery uses the Commission approved rates in its initial depreciation calculation, but claims that because the depreciation is accelerated under the group plan of depreciation, Carbon/Emery is not using the Commission approved rates. Again, this argument is a red-herring. The Division's argument addresses the issue of whether Carbon/Emery's application of its group plan of depreciation conforms in all respects with 47 CFR 32. This is not the issue upon which Carbon/Emery has moved for partial summary judgment. Rather, the issue that this Commission is being asked to decide in this Motion is whether the Commission can impose a single asset straight-line depreciation method on Carbon/Emery under the current Utah Administrative Rules. As shown in Carbon/Emery

Memorandum in Support of Motion for Partial Summary Judgment and herein, the Commission may not impose this change in accounting method without first modifying Utah Administrative Code R746-340-2.D.

### **ARGUMENT**

As demonstrated above in the Reply to Statement of Material Facts, there are no disputed material facts. The only critical facts are not disputed: 1) Carbon/Emery uses a group plan of depreciation; and 2) The Division seeks to impose a single asset depreciation method on Carbon/Emery.

The Division and the Office argue that under Utah law the Commission retains the authority to determine the depreciation expense of telecommunications companies. Carbon/Emery agrees. Utah Code Section 54-4-24 gives the Commission the power to require public utilities to carry a proper and adequate depreciation account “in accordance with such rules, regulations, and forms of account as the commission may prescribe. *See U.C.A. §54-4-24.* Additionally, Utah Code Section 54-7-12.1 gives the Commission jurisdiction over telephone utilities’ depreciation expenses in rate cases. *See U.C.A. §54-7-12.1.*<sup>1</sup>

The Division and the Office argue that under Utah law, the Commission is not legally required to adopt a group asset depreciation method, and can adopt a single asset method of depreciation. Again, Carbon/Emery agrees that there is nothing under Utah law that requires the Commission to adopt a group asset plan of depreciation. However, the Commission has, in fact, exercised the broad statutory authority granted to it under U.C.A. §54-4-24, and has adopted R746-340-2.D. R746-340-2.D provides that “the Uniform System of Accounts for Class A and

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<sup>1</sup> As indicated in Carbon/Emery’s Motion Utah Code Section 54-7-12.1 is applicable to applications for rate increases. This Commission has already determined that this proceeding is not a rate case application.

Class B telephone utilities, as prescribed by the FCC at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate operations.”

The FCC’s Uniform System of Accounts, 47 CFR Part 32, Section 32.2000(g)(i) mandates that depreciation expense be calculated using a “group plan of accounting.” The Commission adopted Part 32 in Utah Admin. Code R746-340-2.D for telephone utilities to record and report the results of their intrastate operations. Though the Commission was not required to, it has chosen to adopt a rule to require telecommunications corporations to comply with 47 CFR 32. The Commission must modify or repeal R746-340-2 in compliance with the Utah Administrative Rule Making Act before adopting a single asset method of depreciation.

According to the Utah Administrative Rulemaking Act, an agency is required to make rules when agency action “(a) authorizes, requires, or prohibits an action; (b) provides or prohibits a material benefit; (c) applies to a class of persons or another agency; and (d) is explicitly or implicitly authorized by statute.” *See U.C.A. §63G-3-201*. Furthermore, a rulemaking proceeding is required to modify a current rule, and any such modification requires prospective application only. *See U.C.A. §63G-3-303*.

In this instance, the Division is asking the Commission to apply single asset depreciation to Carbon/Emery which, according to the Division, is an adjustment the Division has consistently applied to each company that uses group depreciation that has applied for UUSF disbursements. (*See Surrebuttal Testimony of Joseph Hellewell, Lines 66-74*). If the Commission adopts this “adjustment” and requires Carbon/Emery to use single asset depreciation, this adjustment will be applied to all telecommunications corporations who use a

group plan of depreciation. This would be a departure from R746-340, and as shown below, it will be a departure from 14+ years of accepted practice.

Carbon/Emery has been using a group plan of depreciation under the Uniform System of Accounts (47 CFR 32) since the Carbon/Emery exchanges were acquired from US West in 2001. Carbon/Emery was using a group plan of accounting in 2005 when it was involved in a contested rate case before the Commission which included a detailed review of Carbon/Emery's depreciation rates. Carbon/Emery was using a group plan of accounting in 2009 when it last filed for an increase in UUSF disbursement. In each instance, Carbon/Emery relied upon the Commission's R746-340-2.D's prescription of 47 CFR 32, Uniform System of Accounts for intrastate operations and the Commission's tacit, if not explicit, approval of a group plan of depreciation. To change the method of depreciation in the middle of a UUSF case is patently unfair and a violation of Carbon/Emery's due process rights. Therefore, as a matter of law, under current state rules adopted by the Commission in R746-340-2.D, the Commission is prohibited from now requiring this change in accounting method for Carbon/Emery without a modification, repeal, or amendment of the current administrative rule.

The Division and the Office also argue that Carbon/Emery's reliance on R746-340-2.D is misplaced because R746-340 is a service quality rule, and it must be interpreted in a manner which is limited to issues of service quality. This argument makes no sense. Although the Division and the Office are correct that the title of R746-340 is "Service Quality for Telecommunications Corporations," the title of the section is irrelevant. Under R746-100-1, the Commission has determined that "headings are for convenience only, and they shall not be used in construing any meaning." Utah Admin. Code R746-100-1.D.

Furthermore, Commission prescription of a Uniform System of Accounts for reporting or accounting purposes has nothing to do with the service provided to end users. Rather, R746-340 sets forth what could more accurately be considered uniform rules related to telecommunications corporations. This is supported by review of the Commission's administrative rules which reveals that for each type of public utility (electric, gas, water, sewer, and telecommunications), the Commission has adopted uniform type rules (R746-310 Uniform Rules Governing Electricity Service; R746-320 Uniform Rules Governing Natural Gas Service; R746-320 Rules for Water and Sewer Utilities Operating in Utah; R746-340 Service Quality for Telecommunications Corporations). In each of the particular rules, the Commission has identified the Uniform System of Accounts to which each particular utility is subject. There simply is no support or justification to limit the rules set forth in R746-340 to "service quality issues." To limit interpretation of R746-340 to service quality issues would put form over substance, and would be wholly contrary to common sense and the plain language of R746-100-1.D.

Both the Division and the Office state that the group plan of depreciation method used by Carbon/Emery is inconsistent with generally accepted accounting principles (GAAP). The Division and the Office offer no statutory or regulatory support for these assertions. Despite the Division and Office statements to the contrary, a group plan of depreciation is a convention of accounting that is considered acceptable pursuant to GAAP.<sup>2</sup> Further, as the Division and the Office are aware, Carbon/Emery's financial statements are audited annually under GAAP, and industry auditors, including Carbon/Emery's auditors, have concluded that GAAP is inclusive of

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<sup>2</sup> Donald E. Kieso, Jerry J. Weygandt, Terry D. Warfield, *Intermediate Accounting*, (Chapter 11, 11th Edition 2003).

both group and composite depreciation applied using straight line methods.<sup>3</sup> Further, the Financial Account Standards Board has determined that a group plan of depreciation is acceptable under GAAP.<sup>4</sup> Because group depreciation is acceptable under GAAP, the concerns raised by the Division and the Office regarding Carbon/Emery's interpretation of R746-340-2.D being inconsistent with R746-340-1.A, R746-349-4.F(4), and U.C.A. Section 54-8b-2(16) are unfounded and should be rejected.

Finally, the Division indicated there is Commission precedent for rejecting the FCC's accounting methods in Part 32 when the results under the FCC's Part 32 rules differ from those the Commission has found just and reasonable. For this premise, the Division cites to the Commission's January 19, 1996 Order *In Re U S West Communications, Inc., Docket No. 95-049-05*. The Division states that the Commission made multiple regulatory adjustments to conform the calculations under the FCC's methods to "Utah regulatory policies and ratemaking principles." Carbon/Emery is not arguing that the Commission is not permitted to make adjustments to Carbon/Emery's depreciation calculations. Rather, Carbon/Emery is arguing that the Commission is not permitted to eliminate a group plan of accounting without a rulemaking procedure to modify R746-340-2.D. Additionally, the Commission may take judicial notice of the fact that the 1995 US West Communications, Inc. docket cited by the Division as

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<sup>3</sup> See Exhibit 1, attached Summary from Moss-Adams regarding Component, Group and Composite Depreciation (U.S. GAAP); and Exhibit 2, Price Waterhouse Coopers, *Accounting for Property, Plant and Equipment, Asset Retirement Obligations and Depreciation*, p.1.

<sup>4</sup> According to FASB Accounting Standards Codification, 360-10-35-4, "The cost of a productive facility is one of the costs of the services it renders during its useful economic life. Generally accepted accounting principles (GAAP) require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (*which may be a group of assets*) in a systematic and rational manner. It is a process of allocation, not of valuation."



Commission precedent involved a general rate case application. Further, at the time of such docket, US West Communications, Inc. was using a group plan of depreciation which was not disturbed by the Commission.<sup>5</sup>

### **CONCLUSION**

In adopting R746-340-2.D, the Commission determined that the Uniform System of Accounts, 47 CFR 32, is the prescribed system of accounts for recording Utah intrastate operations to be used by telephone corporations, including Carbon/Emery. If the Commission now wishes to exercise its statutory authority to modify that rule, it certainly may do so, but such modification should be promulgated under the Utah Rulemaking Act and should be applied on a prospective basis only. As a matter of law, under current state rules adopted by the Commission in R746-340-2.D, the Commission is prohibited from now requiring Carbon/Emery to change to a single asset method of depreciation without a modification, repeal, or amendment of the current administrative rule.

Dated this 13<sup>th</sup> day of October, 2015.

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<sup>5</sup> See Exhibit 3, SEC 10-K Filing by US West Communications, Inc. December 31, 1995, p. 35.

## CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Carbon/Emery Telcom, Inc.'s Reply Memorandum in Support of Motion for Partial Summary Judgment, 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 13<sup>th</sup> day of October, 2015:

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