

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of
Carbon/Emery Telcom, Inc. for an Increase
in Utah Universal Service Fund Support

DOCKET NO. 15-2302-01
ORDER ON PETITION FOR REVIEW
AND CLARIFICATION

ISSUED: November 24, 2015

On September 18, 2015, Carbon/Emery Telcom, Inc. (Carbon) filed a motion for partial summary judgment in this docket. The parties briefed the motion, and the Commission issued its order on October 15, 2015.

On October 28, 2015, Carbon filed a petition for review and clarification of the Commission's order. The parties have fully briefed the issues raised by Carbon in its petition. Based on the filings of the parties, the Commission grants Carbon's petition, reviewing and clarifying its October 15, 2015 order as follows.

1. Fully-depreciated assets.

In its order, the Commission stated that "Carbon does not propose, nor does it claim to have, a process through which its fully-depreciated assets might be removed from its rate base—and its UUSF disbursement adjusted accordingly—in years where Carbon does not apply to have its UUSF subsidy increased or otherwise reviewed." Carbon now argues that the statement "presumes that Carbon needs a process by which [it] actively removes fully depreciated [sic] assets from its rate base."

Carbon considers any such presumption to be incorrect. Carbon also argues that it has two methods for removing assets from its rate base and that its UUSF subsidy may be adjusted at

any time the Division might review Carbon's books, determine that an adjustment is necessary, and petition the Commission accordingly.

The Commission's order did not presume that Carbon is required to have, or to demonstrate, a method for removing fully-depreciated assets from its asset groups. The Commission's statement was intended to summarize the position of the Office. The Commission has amended its statement for clarity. The amended order is attached hereto as Exhibit A.

2. Terminology.

Carbon argues that the Commission's order improperly uses the terms "straight-line depreciation" and "single-asset depreciation" interchangeably. The Commission agrees and has corrected the error in its amended order.

3. Rule headings.

In its order, the Commission stated that:

[R]ule R746-340-2(D) adopts the FCC's Part 32 expressly for the purpose of evaluating service standards. It does not necessarily follow that the federal rule also applies in calculating a utility's UUSF requirement. However, it is undisputed that a utility is permitted to use a group depreciation system in a UUSF calculation, provided that the utility does so correctly.

In its petition, Carbon renews its argument that the rule heading under which the Commission adopted Part 32 is meaningless and that, despite the rule heading, Part 32 applies to any circumstance in which it is necessary to "record the results of Utah intrastate operations."

The Commission did not find it necessary in its original order to address the parties' arguments regarding what, if any, dispositive effect should be given to a rule heading. The Commission still considers it unnecessary to make such a ruling. In its original order, the

Commission established that group depreciation as set forth in Part 32 may be applied in a UUSF case, provided it is applied correctly. The parties have a material dispute as to whether Carbon has correctly applied group depreciation, and that is the issue on which the Commission will rule following hearing.

4. Vintage.

In its order, the Commission stated that Part 32 "does not allow a regulated utility to place assets with differing service values into the same asset group so as to fully depreciate newer assets at an accelerated rate." The Commission made a similar statement in its footnote 5. Carbon now argues that the Commission's statement is incorrect; that, in fact, the FCC does allow assets that were acquired on different dates to be depreciated as a single asset.

The Commission does not consider it necessary to verify the FCC's practices, as such practices are not binding here. However, to avoid giving the impression that the Commission intends to adopt and apply the FCC's practices, the Commission has amended its statements.

At hearing, the parties may argue their positions as to whether Carbon's asset groups, which are not configured on the basis of vintage, should be accepted. The Commission will accept evidence as to the FCC's position on the issue, but does not consider itself obligated to act according to what the FCC might be anticipated to do in its place. The Commission will act independently in determining the meaning of its own rules, regardless of the source of the rule language. To that end, the Commission rejects Carbon's argument—which Carbon raises for the first time in this petition—that the FCC is the only regulatory body that may order Carbon to utilize single-asset depreciation. As stated in the original order, in adopting the language of Part

32, the Commission, as the regulatory authority, has discretion to order a methodology other than group depreciation. Nothing in R746-340-2(D) indicates that 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.

5. Adjustment.

In this petition, Carbon agrees that the Commission has the authority to make an adjustment to its calculations should it agree with the Division and/or the Office that Carbon's asset groups are improperly configured. However, Carbon argues that the Commission may not make an adjustment derived from a single-asset depreciation calculation. Rather, Carbon argues that the Commission would be permitted to adjust an asset group and/or the composite percentage rate, while still applying group depreciation.

The Commission agrees that it has available to it the options Carbon advocates. At hearing, the Commission will take argument as to why one adjustment method is preferable to another. However, such issues are beyond the scope of Carbon's motion for summary judgment. The instant motion requests dispositive treatment solely on the question of whether the Commission's rule, as written, allows it to apply a single-asset depreciation calculation and adjustment should it agree with the Division and/or the Office that Carbon's asset groups are improperly configured. The Commission previously found and concluded that it is permitted to make an adjustment that is arrived at through single-asset depreciation, and the Commission's position is unchanged.

6. Regulatory burden.

Carbon argues that applying single-asset depreciation in this case would result in regulatory uncertainty, leaving utilities unable to estimate what level of UUSF support they might claim. Carbon also worries that utilities might have to keep three separate sets of books in order to satisfy both federal and state regulators.

The Commission emphasizes that the Division has not requested that Carbon be required to make any changes in its accounting. Rather the Division has requested that the Commission adjust Carbon'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 Carbon to change any of its record-keeping practices going forward. Should the Commission take that option, Carbon could then evaluate all of the circumstances in order to consider a plan of group depreciation that would meet the expectations of both the FCC and the Commission.

DATED at Salt Lake City, Utah, this 24th day of November, 2015.

/s/ Jennie T. Jonsson
Administrative Law Judge

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Approved and confirmed this 24th 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#270692

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Carbon/Emery Telcom, Inc. for an Increase in Utah Universal Service Fund Support	<u>DOCKET NO. 15-2302-01</u> <u>AMENDED ORDER ON MOTION</u> <u>FOR PARTIAL SUMMARY</u> <u>JUDGMENT</u>
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ISSUED: November 24, 2015

I. Procedural History.

On March 27, 2015, Carbon/Emery Telcom, Inc. (Carbon) 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).¹

On August 21, 2015, the Utah Division of Public Utilities (Division) and the Office of Consumer Services (Office) filed direct testimony in this docket. In relevant part, the Division and the Office both testified that Carbon had improperly depreciated certain assets used to provide basic lifeline service, thus artificially inflating both its total expenses and its total revenue requirement.

On September 18, 2015, Carbon filed this motion for partial summary judgment, arguing that the Commission is prohibited under federal and state rules from requiring Carbon to change the accounting method it has chosen to use in order to calculate asset depreciation.

¹ On April 2, 2015, Carbon filed an amended application in order to increase the total amount of support requested under the March 27, 2015 application.

On October 5, 2015, the Division and the Office filed memoranda opposing Carbon's motion for partial summary judgment. On October 13, 2015, Carbon filed a final reply in support of its motion.

II. Facts.

The following facts are undisputed by the parties.

1. In its application, Carbon used a mass asset group depreciation method (group depreciation) 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 telecommunications industry.
3. In general, a company that uses group depreciation aggregates similar 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.

III. Parties' Positions.

The Division's position is that, whether federal or state rules are applied, 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 Division alleges that, in its accounting, Carbon has not configured its asset groups according to the age of the assets. Therefore, the Division considers that Carbon has created asset

groups that combine old and new assets, with the result that new assets are fully depreciated over a shorter period of time than that allowed by the Commission.²

The Office's position is that, whether federal or state rules are applied, Carbon has failed to account adequately for assets that were fully depreciated as of the date of application, or that would be fully depreciated within two years of the application date (i.e., prior to the date on which Carbon might be anticipated to again apply for review of its UUSF subsidy).

Carbon does not dispute that its asset groups include both old and new assets or that it accelerates the depreciation of its newer assets. However, Carbon does argue that accelerating the depreciation of its newer assets removes them from the rate base more quickly than would be the case if the newer assets were depreciated under the straight-line method, ultimately reducing the total amount of UUSF support that would be generated for each new asset over its life.

In making this argument, Carbon emphasizes that there is no allegation or evidence that the utility has replaced fully-depreciated assets that in fact had remaining economic life. The concern set forth by the Office is that Carbon does not propose, nor does it claim to have, a process through which its fully-depreciated assets might be removed from its rate base—and its UUSF disbursement adjusted accordingly—in years where Carbon does not apply to have its UUSF subsidy increased or otherwise reviewed.

In order to correct for what the Division considers to be Carbon's artificially accelerated depreciation of newer assets, the Division has proposed an adjustment, which the Division

² The Division has indicated in its briefing that any depreciation method that departs from the Commission's approved schedule must be rejected. The Division's argument is relevant and material. However, where the Division has not moved for summary judgment on the question of whether Carbon's depreciation method complies with the Commission's approved depreciation schedule, the question may not be resolved prior to hearing.

calculated by using single-asset depreciation. The Office considers that the Commission has broad discretion to apply whatever depreciation method it deems most appropriate in any given case. Carbon argues that, until the Commission amends its own administrative rules, it may not apply or require Carbon 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, Carbon 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" in the context of regulating a utility's service standards. Utah Administrative Code R746-340-2(D).

The Commission rule R746-340-2(D) adopts the FCC's Part 32 expressly for the purpose of evaluating service standards. It does not necessarily follow that the federal rule also applies in calculating a utility's UUSF requirement. However, it is undisputed that a utility is permitted to use a group depreciation system in a UUSF calculation, provided that the utility does so correctly.

Subpart 32.2000(g)(1)(i) of the FCC's 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.³

This language acknowledges that there is more than one possible plan by which group depreciation might be calculated. However, it approves only such plans as allow the straight-line method of depreciation to be applied accurately within each asset group. Therefore, whether an asset group has been properly configured is a material fact. In this case, the parties have a genuine dispute as to that fact. Specifically, the Division disputes that an asset group is permitted to include assets of different ages, arguing that an asset's age affects its service value. And the Office disputes that Carbon has properly excluded from its asset groups those assets that are, or that will shortly be, fully depreciated.⁴

Under the plain language of Part 32, which the Commission has adopted in full, the regulatory authority has discretion to issue an order requiring a utility to calculate depreciation using a method other than group depreciation; for example, single-asset depreciation. When R746-340-2(D) is applied in a UUSF case, the Commission may similarly apply single-asset

³ There is no evidence in the record to demonstrate that the FCC has approved or required Carbon to use a method other than group depreciation in relation to its intrastate operations.

⁴ In its briefing, Carbon also cites to Subpart 32.9000, which states:

Group plan, as applied to depreciation accounting, means the plan under which depreciation charges are accrued upon the basis of the original cost of all property included in each depreciable plant account, using the average service life thereof properly weighted, and upon the retirement of any depreciable property its cost is charged to the depreciation reserve whether or not the particular item has attained the average life.

This provision governs how an asset group must be adjusted when an individual asset within the group is retired, acknowledging that such individual asset might not be fully depreciated when retired. It does not appear to address whether a utility may use group depreciation so as to artificially shorten the service life of the newer assets. Nor does it appear to address whether a utility may retain fully-depreciated assets within an asset group.

depreciation should the Commission find that the utility has improperly configured its asset groups. In order to argue that the Commission lacks this ability, Carbon cites to only one clause of Part 32, improperly isolating that clause from the remainder of the regulatory language.

In sum, the Commission is not required as a matter of law to accept and credit Carbon's asset groups without question or evaluation. Whether those asset groups have been properly configured is a material fact to which the parties have a genuine dispute. If the Commission finds credible evidence that Carbon has improperly configured its asset groups, the Commission's rules as currently written allow the Commission to apply a different depreciation method to Carbon's assets and to adjust the utility's depreciation expense accordingly.⁵

ORDER

Carbon's motion for partial summary judgment is DENIED.

⁵ In their briefing, the parties dispute whether Utah Code § 54-7-12.1 applies to this case. Section 54-7-12.1 requires the Commission to consider "all relevant factors ... [in] determin[ing] the depreciation expense of telecommunications corporations for ratemaking purposes." The Commission has previously ruled that this docket is not governed by Utah Code § 54-7-12(3), which imposes a deadline for Commission action after receiving a complete filing for a rate increase or decrease. Carbon's application is not for a rate increase or decrease. However, it does not necessarily follow that the calculation of its depreciation expense in this docket is entirely unrelated to "ratemaking purposes." That being said, it is not necessary for the Commission to analyze Section 54-7-12.1 at length in this Order. The Commission has concluded that Part 32 does not require, as a matter of law, that Carbon's asset groups and its corresponding group depreciation plan be accepted and credited without evaluation. The Commission needs no additional basis from which to deny summary judgment.

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DATED at Salt Lake City, Utah, this 24th day of November, 2015.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#270692

CERTIFICATE OF SERVICE

I CERTIFY that on the 24th day of November, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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