

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application for)	<u>DOCKET NO.05-2302-01</u>
Increase of Rates and Charges and USF)	
Eligibility for Carbon/Emery Telcom, Inc.)	<u>REPORT AND ORDER</u>
)	

ISSUED: January 3, 2006

SHORT TITLE

Carbon/Emery Rate Increase and USF Application

SYNOPSIS

The Commission approves the Stipulation and Amendment of Stipulation of Carbon/Emery Telcom, Inc. ("Applicant"), the Utah Division of Public Utilities and the Utah Committee of Consumer Services, increasing Applicant's intrastate revenue requirement and Base Affordable Rate, and approving disbursement from the Universal Service Support Fund.

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APPEARANCES:

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" Division of Public Utilities

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By The Commission:

I. PROCEDURAL HISTORY

On June 17, 2005, Carbon/Emery Telcom, Inc. (“Carbon/Emery” or “Applicant”) filed an Application for Increase of Rates and Charges and USF Eligibility (“Application”) seeking the following based on an identified intrastate revenue requirement shortfall of \$2,235,441: (1) increase residential local exchange rate from \$11.93 to \$13.50, (2) increase business local exchange rate from \$19.37 to \$23.00, (3) decrease local switching access rate from \$0.010800 to \$0.00980, (4) increase local transport access charge from \$0.001061 to \$0.01670, (5) eliminate Carrier Common Line originating and terminating charges, and (6) receipt of an annual \$1,584,519 intrastate Universal Service Support Fund (“USF”) distribution.

On July 22, 2005, following a duly noticed scheduling conference held July 18, 2005, the Commission issued a Scheduling Order setting an agreed schedule for this docket culminating in hearings to be held on December 13-14, 2005. On August 1, 2005, pursuant to joint request of the Division of Public Utilities (“Division”) and Applicant, the Commission changed the hearing dates to December 20-21, 2005.

On September 1, 2005, Applicant filed a Supplement to Application (“Supplement”) increasing its claimed intrastate revenue requirement shortfall to \$2,599,846 and increasing its USF distribution request to \$1,770,212.

On September 2, 2005, Applicant filed Direct Testimony in support of its Application and Supplement. The Division and the Committee of Consumer Services (“Committee”) filed testimony on November 16, 2005, and November 17, 2005, respectively.

The Applicant, Division and Committee (hereinafter jointly referred to as the “Parties”) thereafter variously filed supplemental, rebuttal, and surrebuttal testimony.

On December 1, 2005, pursuant to notice, a public witness hearing was held in Price, Utah. Three individuals were sworn and testified in support of Carbon/Emery’s Application. No one appeared in opposition to the Application.

On December 19, 2005, the Parties filed a Stipulation by which they agreed to settlement of all disputes outstanding in this docket. The Stipulation was presented to the Administrative Law Judge at hearing on December 20, 2005, during which Douglas Meredith testified for Applicant in support of the Stipulation. Wesley Huntsman presented testimony for the Division in support of the Stipulation. No party presented testimony in opposition to the Stipulation. The Administrative Law Judge questioned the Parties and witnesses regarding various aspects of the Stipulation and the evidence presented.

Also on December 20, 2005, in response to a request by the Administrative Law Judge, the Parties filed an Amendment to Stipulation (“Amendment”) making explicit their agreement that intrastate common line charges should be eliminated.

II. STIPULATION AND AMENDMENT

Without modifying terms in any way, the following is a brief summary of the Stipulation attached hereto as Appendix A and the Amendment attached hereto as Appendix B:

A. REVENUE REQUIREMENT

The Parties agree to a \$1,200,000 increase in Applicant’s intrastate revenue requirement.

B. BASE AFFORDABLE RATE AND ACCESS RATES

The Parties agree the Base Affordable Rate (“BAR”) for Applicant’s basic local residential and business rates should be set in this docket at \$14.50 per month and \$24.00 per month, respectively. This results in an increase of \$3.47 per month for the basic local residential rate and \$4.63 per month for the basic local business rate.

The Parties agree the local switching rate should be increased from \$0.010800 to \$0.03690 and the local transport charge increased from \$0.001061 to \$0.00560.

The Parties agree the intrastate carrier common line charges should be eliminated as reflected in the Supplement’s Schedule S-2.2.

The Parties agree implementation of these rates will generate \$949,286 of the agreed \$1,200,000 intrastate revenue requirement increase.

C. USF SUPPORT

The Parties agree the balance of the intrastate revenue requirement increase shall be funded by a \$250,714 USF distribution.

D. OTHER PROVISIONS

The following is a brief summary of the Stipulation with respect to other provisions:

Depreciation. The Parties agree the depreciation rate changes proposed by Applicant on Schedule S-6, p. 2 of 2 for accounts #2121 - buildings, #2422 - underground cable, #2423 - buried cable, #2426 - intrabuilding net and #2441 - conduit system should be approved effective with the Commission’s Order in this docket.

EAS or Access Charge Study. Applicant agrees to cooperate with the Division and Committee in any EAS study or Access Charge study performed by the Division.

Effective Date. The Parties agree the increase in the authorized USF distribution¹ should be effective upon issuance of the Commission's Order authorizing such, and that the increase in rates set forth in the Stipulation should be effective upon Applicant's satisfaction of the requirements of Utah Code Annotated § 54-7-12(7).

III. BACKGROUND

As a result of its initial analysis, the Division, in pre-filed testimony, recommended the Commission set Applicant's Base Affordable Rate at \$16.50 and \$26.00 for residential and business rates, respectively. The Division further recommended the Commission increase Applicant's actual residential and business rates to \$12.03 and \$20.37, respectively. The Division concurred with Applicant's requested increase to its local switching rate but recommended an increase in Applicant's local transport charge. The Division concluded the resulting \$162,374 increase in revenues would be sufficient such that Applicant need not receive the requested USF disbursement.

In its pre-filed testimony, the Committee recommended Applicant's intrastate revenue requirement be increased by \$299,423. To generate this increased revenue, the Committee recommended Applicant's local residential and business rates be increased to \$13.20 and \$22.75, respectively, and, like the Division, recommended against any USF disbursement.

¹This paragraph of the Stipulation, paragraph 11, erroneously refers to "paragraph 11" as the Stipulation paragraph describing the agreed USF distribution. At hearing, the Administrative Law Judge confirmed this error with the Parties who concurred the correct reference should be to paragraph 7 of the Stipulation.

At hearing, the Division stated the \$1.2 million revenue requirement increase provided in the Stipulation represents a reasonable resolution of this matter. The Division noted the agreed residential and business rates are above those originally recommended by the Division but that, based on the increased revenue requirement agreed by the Parties, the Division felt it appropriate to correspondingly raise rates.

IV. APPLICABLE LEGAL STANDARD

Settlement of matters before the Commission is encouraged at any stage of proceedings.² The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest.³

V. DISCUSSION, FINDINGS, AND CONCLUSIONS

The Parties to the Stipulation and its Amendment represent the interests of Carbon/Emery, the public interest generally, and the specific interests of residential and small commercial customers. The Parties' agree the terms of the Stipulation and Amendment are fair, just, reasonable, and in the public interest. The unrefuted testimony of Applicant and Division witnesses supports the Stipulation and the Amendment. No party provides testimony in opposition to the Stipulation or Amendment. We therefore conclude the Stipulation and the Amendment foster the policy of encouraging settlement of issues before the Commission.

We note the agreed local residential and business rate increases are larger than those sought by Applicant, as well as those proposed by the Division and Committee in pre-filed

² Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

³ *Id.*

testimony. However, these rates appear reasonable given the magnitude of the agreed revenue requirement increase and USF distribution provided in the Stipulation. We further note the agreed USF distribution is significantly less than that sought by Applicant. Finally, while the Division and Committee initially recommended against any USF disbursement, we find the agreed amount to be just and reasonable based upon the evidence presented and the agreement of the Parties as documented in the Stipulation.

We therefore conclude the rates resulting from the Stipulation and Amendment are just and reasonable and that approval of the Stipulation and Amendment is in the public interest. However, as we have indicated in previous cases, said approval is not intended to alter any existing Commission policy nor to establish any precedent by the Commission.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation and Amendment to Stipulation are approved.
2. Carbon/Emery Telcom, Inc. shall file appropriate tariff revisions based upon the Stipulation, the Amendment, and this Order. The Division shall review the tariff revisions for compliance with the terms of the Stipulation, the Amendment, and this Order.

This Report and Order constitutes final agency action in these dockets. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be

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filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 3rd day of January, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 3rd day of January, 2006, as the Order of the
Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#47038

APPENDIX A: STIPULATION

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE INCREASE OF
RATES AND CHARGES AND USF
ELIGIBILITY BY CARBON/EMERY
TELCOM, INC.

STIPULATION

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STIPULATION

Pursuant to Utah Code Annotated § 54-7-1, Carbon/Emery Telcom, Inc. (the “Applicant”), the Division of Public Utilities (“Division”) and the Committee of Consumer Services (“Committee”), (collectively, the “Parties”), stipulate and move the Public Service Commission of Utah (“Commission”), as follows:

1. Applicant filed its Application for Increase of Rates and Charges and USF Eligibility on June 17, 2005 (the “Application”), pursuant to Utah Code Annotated §§ 54-7-12 and 54-8b-15 and R746-360 of the Commission’s Rules of Practice and Procedure. On September 1, 2005, Applicant filed its Supplement to Application for Increase of Rates and Charges and USF Eligibility (the Application and Supplement to Application are hereinafter collectively referred to the “Application”).
2. The Division conducted an audit of the books and records of the Applicant pertaining to the Applicant’s interstate and intrastate operations. Further, the Parties engaged in the discovery process and the Division and Committee filed testimony in response to the Application and the Applicant’s testimony. The Applicant filed testimony in response to that of the Division’s and the Committee’s. Based upon the audit results and recommendations and the testimony filed by each of the Parties, the Parties engaged in settlement discussions that concluded in the agreement described herein.
3. The Parties agree to an increase in the intrastate revenue requirement for the Applicant of \$1,200,000.
4. The Parties agree, and recommend to the Commission, that the Base Affordable Rate for the Applicant’s basic local residential and business rates be established in this case at \$14.50 per month and \$24.00 per month, respectively. Increases of current rates to the Base Affordable Rate would result in the following:

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- a. Basic local residential rates increased by \$3.47 per month, from \$11.03 per month to \$14.50 per month.
- b. Basic local business rates increased by \$4.63 per month, from \$19.37 per month to \$24.00 per month.

The local residence and business rates of \$14.50 and \$24.00, respectively, constitute for this case the Base Affordable Rate for the Applicant pursuant to Utah Code Annotated § 54-8b-15 and R746-360. The Applicant serves customers only in areas considered rural in Utah.

5. The Parties further agree, and recommend to the Commission, that the intrastate access rates be increased as follows:
 - The local switching rate is increased from \$0.010800 to \$0.03690 in the Carbon/Emery exchanges.
 - The composite local transport charge is increased from \$0.001061 to \$0.00560 in the Carbon/Emery exchanges.
6. Of the \$1,200,000 increase in the intrastate revenue requirement described in paragraph 4 above, \$949,286 would be generated by the implementation of the rate increases described in paragraphs 4 and 5 above.
7. The balance of the increase in the intrastate revenue requirement for the Applicants shall be funded by the intrastate USF in the amount of \$250,714.
8. The Parties agree that the depreciation rate changes proposed by the Applicant on Schedule S-6, p. 2 of 2 for accounts #2121 - buildings, #2422 - underground cable, #2423 - buried cable, #2426 - intrabuilding net and #2441 - conduit system will be approved effective with the Commission's Order.
9. Applicant agrees to cooperate with the Division and Committee in any EAS study or Access Charge Study performed by the Division.
10. The Parties agree that the increase in the revenue requirement, the Base Affordable Rate and the rates, charges and USF eligibility set forth herein are in the public interest of the subscribers of the Applicants and are just and reasonable and should be approved by the Commission.
11. The Parties recommend to the Commission that the increase in the authorized USF distribution described in paragraph 11 be effective upon Commission's order authorizing such and that the increase in rates set forth herein paragraphs 5 and 6 become effective upon the Applicants' satisfaction of the requirements of Utah Code Annotated § 54-7-12(7).

12. The Division and the Committee further recommend that the Commission approve such revised tariff page(s) as may be required to implement the increase in rates set forth in paragraphs 5 and 6 hereof.
13. The Parties agree that this Stipulation represents a resolution among them of the matters in this proceeding included within this Stipulation. As such, all discussions or conduct relating to this Stipulation are privileged and confidential.
14. In the event the Commission or a court rejects all or any portion of this Stipulation as resolving the issues included within this Stipulation, or imposes additional conditions with respect to such issues, each Party reserves the right to withdraw from this Stipulation. In such case, no Party to this Stipulation shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission order, to file any testimony it chooses, to cross-examine witnesses, and in general to put on such case as it deems appropriate. If this Stipulation does not become effective according to its terms, it shall be null and void unless otherwise agreed to by the Parties.
15. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of the Parties' positions on a resolved issue, or (2) asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this or any other proceeding, including those before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the Federal Communications Commission. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation or any Commission order adopting this Stipulation.
16. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties. By entering into the Stipulation, the Parties intend that the Commission exercise only that authority contained in applicable laws.
17. Each Party shall take all actions necessary and appropriate to enable it to carry out this Stipulation, including, providing witnesses and argument in support of the approval by the Commission of the Stipulation.
18. The Parties agree that their obligations under this Stipulation are subject to the Commission's approval of this Stipulation in accordance with its terms and conditions.

19. The Parties recommend that the Commission adopt this Stipulation in its entirety. No Party shall appeal any portion of this Stipulation and no Party shall oppose the adoption of this Stipulation pursuant to any appeal filed by any person not a party to the Stipulation. The Applicants, the Committee, and the Division shall make witnesses available to provide testimony in support of this Stipulation, including testimony to explain the basis of their support for this Stipulation. In the event other parties introduce witnesses opposing approval of the Stipulation, the Parties agree to cooperate in cross-examination and in providing testimony as necessary to rebut the testimony of opposing witnesses.
20. The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions are fair, just and reasonable.
21. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 19th day of December, 2005.

Blackburn & Stoll, L.C.

/s/ _____
Stanley K. Stoll
Attorneys for Carbon/Emery Telcom, Inc

Division of Public Utilities
State of Utah

/s/ _____
Michael Ginsberg
Assistant Attorney General

Committee of Consumer Service

/s/ _____
Paul Proctor
Assistant Attorney General

APPENDIX B: AMENDMENT TO STIPULATION

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE INCREASE OF
RATES AND CHARGES AND USF
ELIGIBILITY BY CARBON/EMERY
TELCOM, INC.

AMENDMENT TO STIPULATION
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AMENDMENT TO STIPULATION

Paragraph 5 of the stipulation is hereby amended as follows:

5. The Parties further agree, and recommend to the Commission, that the intrastate access rates be increased as follows:
 - The local switching rate is increased from \$0.010800 to \$0.03690 in the Carbon/Emery exchanges.
 - The composite local transport charge is increased from \$0.001061 to \$0.00560 in the Carbon/Emery exchanges.
 - The intrastate carrier common line charges are eliminated as reflected in Schedule S—2.2.

DATED this 19th day of December, 2005.

Blackburn & Stoll, L.C.

/s/ _____
Stanley K. Stoll
Attorneys for Carbon/Emery Telcom, Inc

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Division of Public Utilities
State of Utah

/s/

Michael Ginsberg
Assistant Attorney General

Committee of Consumer Services

/s/

Paul Proctor
Assistant Attorney General