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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>IN THE MATTER OF UBTA-UBET COMMUNICATIONS, INC.'S (DBA STRATA NETWORKS) APPLICATION FOR UTAH UNIVERSAL SERVICE FUND SUPPORT</p>	<p><b>DOCKET NO.</b> 15-053-01  STRATA NETWORKS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEPRECIATION METHOD</p>
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Pursuant to Utah Admin. Code R746-100-1.C and R746-100-3.J, and Rules 7 and 56 of the Utah Rules of Civil Procedure, STRATA Networks ("STRATA") files this Memorandum in Support of its Motion for Partial Summary Judgment. In testimony of Paul Hicken for the Division of Public Utilities ("Division") filed in this docket, the Division has recommended that the Commission use single asset straight-line depreciation to calculate STRATA's support from Utah Universal Service Fund ("UUSF"). (Direct Testimony of Paul Hicken, lines 180-181). As a matter of law, under current federal and state rules, the Commission may not impose this change in accounting method without first modifying Utah Admin. Code R746-340-2. D.

STATEMENT OF MATERIAL UNDISPUTED FACTS

1. For decades, STRATA has used the Federal Communications Commission's ("FCC") prescribed Uniform System of Accounts in 47 CFR Part 32 which is reflected in its Application filed in this Docket April 6, 2015.

2. STRATA calculates depreciation expense using a straight-line calculation in conformity with a group plan of accounting required by the FCC in the Code of Federal Regulations, Title 47, Chapter I, Subchapter B, Part 32. FCC part 32.2000 (g)(i) states:

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. (*Emphasis added.*)

3. In Utah Admin. Code R746-320-2 D, the Commission adopted 47 CFR Part 32 as “...the prescribed systems of accounts to record the results of Utah intrastate operations” for telephone utilities, which includes mandatory group asset depreciation.

4. In its Application in this Docket, STRATA applied the depreciation rates set by the Commission in Docket Nos. 94-053-01 and 03-053-01 to its group accounts. (Paul Hicken Direct Testimony, Lines 37-39.)

5. The Division recommends that the Commission require STRATA to change its method of depreciation and use a single asset depreciation method to determine STRATA’s UUSF distribution. (Paul Hicken Direct Testimony, lines 180-181).

## ARGUMENT

### A. ADOPTION OF CARBON/EMERY’S LEGAL ARGUMENTS BY REFERENCE

By this reference, STRATA adopts the legal arguments of Carbon/Emery Telcom, Inc. made in its Memorandum in Support of its Motion for Partial Summary Judgment filed September 18, 2015 Docket No. 15-2302-01 as they apply in this Docket. Carbon/Emery’s Memorandum is attached. Karl Searle filed testimony in this Docket for STRATA using group asset depreciation and Paul Hicken filed testimony for the Division recommending the use of single asset depreciation, but in virtually every other way, the two cases are the same on the issue

of depreciation method. There are no material issues of fact thus making this issue ripe for summary judgment under Rule 56 of the Utah Rules of Civil Procedure.

**B. COMMISSION MAY CHANGE DEPRECIATION RATES BUT MAY NOT CHANGE DEPRECIATION METHOD WITHOUT AMENDING UTAH ADMIN. CODE R746-340-2 D**

For decades, STRATA has used the FCC's prescribed Uniform System of Accounts in 47 CFR Part 32, Section 32.2000 (g)(i) of which 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 Utah intrastate operations. That is what STRATA has always used to calculate depreciation and to report its intrastate results to the Commission. STRATA does not keep two sets of books

In this Docket, Paul Hicken for the Division recommends that the Commission change the depreciation method from "group asset" to "single asset." STRATA does not dispute the Commission's jurisdiction over telephone utilities' depreciation expense under Utah Code Ann. § 54-7-12.1, but the Commission cannot change the method of depreciation without first amending Utah Admin. Code R746-340-2 D and making an exception to the Part 32 mandate. Though STRATA would oppose such a change, it is within the Commission's jurisdiction to do it. Clearly, under its statutory authority the Commission has determined to use the Part 32 group method of accounting for depreciation for the reporting of intrastate activity. The Commission can modify its rule if it determines that is in the public interest and complies with the Rulemaking Act.

In addition, STRATA does not dispute the Commission's jurisdiction to change depreciation rates. Mr. Hicken has proposed to change the rates of certain of STRATA's assets in this Docket, and while STRATA intends to challenge them, it is within the Commission's jurisdiction to change rates if that results in a just and reasonable outcome. What the

Commission cannot do is change the depreciation method without rulemaking since the Commission has established the method in rule. If the rule is changed, it can thereafter only be applied prospectively.

#### CONCLUSION

There are no material issues of fact on the question of the Commission's jurisdiction to change the method of depreciation. When the Commission has adopted that method by rule and parties have relied on it for years to report intrastate results, the Commission must first engage in rulemaking to change the rule or make an exception before it can change the method of depreciation. If the Commission changes the rule, the rule can only take effect prospectively. STRATA therefore moves the Commission for summary judgment prohibiting the Division from seeking the imposition of single asset depreciation in this Docket.

Dated this 9<sup>th</sup> day of October, 2015.

Stephen F. Mecham Law, PLLC

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Partial Summary Judgment on Depreciation Method and Memorandum in Support of Motion for Partial Summary Judgment in Docket No. 15-053-01 were sent to the following individuals by electronic mail this 9<sup>th</sup> day of October, 2015:

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