

Kira M. Slawson (7081)
BLACKBURN & STOLL, L.C.
Attorneys for Carbon/Emery Telcom, Inc.
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 521-7900

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

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

DOCKET NO. 15-2302-01

Pursuant to the Utah Public Service Commission's (the "Commission") 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 Memorandum in Support of its Motion for Partial Summary Judgment filed contemporaneously herewith. In the Testimony of Joseph Hellewell filed by the Division of Public Utilities ("Division") in this docket, the Division has asked the Commission to require Carbon/Emery to use single asset straight-line depreciation for Utah Universal Service Fund ("UUSF") calculation purposes. (See Direct Testimony of Hellewell, lines 190-197). As a matter of law, under current federal and state rules, the Division and the Commission are prohibited from now requiring Carbon/Emery to implement this change in accounting method.

STATEMENT OF MATERIAL 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).
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).
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).
4. The Division recommends the Commission require Carbon/Emery to use a single asset straight-line depreciation method for Carbon/Emery's UUSF disbursement request. (Testimony of Hellewell, lines 190-200).

ARGUMENT

Pursuant to Rule 56(c) of the Utah Rules of Civil Procedure, summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Utah R. Civ. P. 56(c)*.

The material facts to this discussion are set forth above, and are not in dispute. The question is whether the Commission can now require Carbon/Emery to use single asset straight-line depreciation for UUSF calculation purposes as suggested by the Division.

A. Carbon/Emery is Required by State and Federal law to Use the Uniform System of Accounts.

The Uniform System of Accounts (“USOA”) is a historical financial accounting system prescribed by the Federal Communications Commission (“FCC”) which is applicable to regulated telecommunications companies (*47 CFR §32.1*). The USOA is codified in 47 CFR Part 32. The purpose of the USOA under Part 32 is to ensure that telecommunications companies properly allocate costs to and among telecommunications services, facilities, and products [cite].

Part 32 identifies certain accounts which telecommunications companies are required to use to record, in monetary terms, the basic transactions, functions, or activities which occur on a consistent and continuing basis within the operations of the telecommunications company. (*47 CFR §32.2*). The USOA enables regulators to assess cost allocations within a specified accounting period (*47 CFR §32.1*). The accounts as defined under Part 32 are intended to reflect a “functional and technological view of the telecommunications industry” to “provide a stable and consistent foundation for the recording of financial data.” (*47 CFR §32.2(e)*).

The specific “accounts” prescribed by the FCC are contained in Part 32 and are identified by a four-digit number following the identification of the part (i.e. 32.1111 identifies Account number 1111--Land) (*See 47 CFR §32.20*) (“all Part 32 Account numbers contain 4 digits to-the-right-of the decimal point”). In addition to the identification of the particular “accounts,” Part 32 also provides instructions for certain types of accounts, such as telecommunications plant accounts (*47 CFR §32.2000*); depreciation and amortization (*46 CFR §32.3000*); and liabilities and stockholders’ equity (*47 CFR§ 32.3999*). These instructions are critical to the operation of the system of accounts. Without the accompanying instructions, the four-digit numbers would

not achieve the purpose of the system of accounts; to wit, to “provide a stable and consistent foundation for the recording of financial data.” (47 CFR §32.2(e)).

As indicated in the Direct Testimony of Woolsey, lines 111-113, Carbon/Emery uses the Uniform System of Accounts as prescribed by the FCC in 47 CFR Part 32 for its *interstate* and *intrastate* operations. Use of Part 32 is required for interstate operations. With regard to the *intrastate* operations of Carbon/Emery, however, we must look to Utah law¹. Utah law regarding depreciation accounts and funds is found in Utah Code Annotated Section 54-4-24 which provides:

The commission shall have power to require any or all 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.** The commission may from time to time ascertain, determine and, by order, fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. The income upon investments of money in such fund shall likewise be carried in such fund. (U.C.A. §54-4-24)(emphasis added).

The statute provides that the Commission has the power to require any or all public utilities to carry a proper and adequate depreciation account in accordance with the rules, regulations and forms of account as the Commission may prescribe. In this instance, Review of the Commission’s administrative rules reveals that Utah has deferred to federal regulations by

¹ 47 USC §152(b) provides that the states retain jurisdiction with respect to charges, classifications, practices, services facilities, or regulations for or in connection with intrastate communications service and the United States Supreme Court, has found that states may animate their own rules on depreciation for state purposes. *Louisiana Public Service, 106 S. Ct. 1890, 1902 (1986)*.

adopting the FCC's USOA, 47 CFR Part 32. Specifically, Utah Administrative Rule R746-340-2.D provides:

D. Uniform System of Accounts—The Uniform System of Accounts for Class A and Class B telephone utilities, as prescribed by the Federal Communications Commission at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate operations. (*Utah Admin. Code R746-340-2.B*)²

Thus, the Commission, through its promulgated rules requires Carbon/Emery, and other telecommunications corporations in the state, to use 47 CFR Part 32 (“Part 32”) for *intrastate operations*. R746-340-2.D. Importantly, the Commission Administrative Rule R746-340-2.D does not allow for deviations or exceptions from the Part 32 USOA for intrastate purposes. Therefore, Carbon/Emery is obligated to adhere strictly to Part 32 for federal **and** state purposes.

B. Carbon/Emery’s Depreciation Method Complies with 47 CFR §32.

One of the key issues in this docket, and the subject of this Motion for Summary Judgment, is whether Carbon/Emery’s depreciation method is an acceptable method of depreciation pursuant to Part 32. As demonstrated above, Carbon/Emery is bound by Part 32. 47 CFR §32.2000(g)(1)(i) discusses depreciation rates and methods, and provides:

(i) Unless otherwise provided by the Commission [FCC], either through prior approval or upon prescription by the [FCC], 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. (47 CFR 32.2000(g)(1)(i), *emphasis added*).

² Pursuant to 47 CFR §32.11, telecommunication companies are divided into two classes depending upon the companies’ annual revenues from regulated telecommunications operations: Class A companies; and Class B companies. Different accounts are prescribed for Class A and Class B companies. However, a Class B company that desires a more detailed accounting may adopt the accounts prescribed for Class A companies. (*See 47 CFR §32.11(e)*).

Under the plain language of the regulation, telecommunications companies are required, unless otherwise provided by the FCC by prior approval or prescription by the FCC, to use a “group plan of accounting for depreciation.” It is undisputed that Carbon/Emery uses a group plan of accounting for depreciation and has since 2001. (Rebuttal Testimony of D Meredith, lines 645-653, Testimony of Woolsey, lines 799-802). “Group plan” is defined in the Glossary of Terms contained in 47 CFR §32.9000:

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.

Using a group plan of depreciation means that Carbon/Emery places individual assets in “group” accounts and applies a straight-line method of depreciation to the “group” of assets. (Rebuttal Testimony of D Meredith, lines 644-648). Unless and until the FCC approves or prescribes another method, Carbon/Emery is required to use a group plan of accounting for depreciation.

The Division, however, is requesting that the Commission require Carbon/Emery to now change its depreciation method, and adopt a single asset, straight-line depreciation method for purposes of UUSF calculations. The Division may be relying on Utah Code Section 54-7-12.1 for this adjustment. Utah Code Section 54-7-12.1 provides:

In determining the depreciation expense of a telephone corporation in any proceeding under Section 54-7-12, the commission shall consider all relevant factors, including the alteration of asset lives to better reflect changes in the economic life of plant and equipment used to provide telecommunications services. A relevant factor to consider shall be the asset lives of existing and emerging competitive telecommunications providers. Nevertheless, the commission shall retain the authority to determine the depreciation expense of telecommunications corporations for ratemaking purposes. (U.C.A. §54-7-12.1).

However, this reliance would be misplaced. First, Section 54-7-12.1 is applicable in proceedings under Section 54-7-12. A proceeding under Section 54-7-12 is a proceeding for a rate increase or decrease. Carbon/Emery is not seeking a rate increase or decrease in this docket.³ More importantly, however, Section 54-7-12.1 gives the Commission the authority to determine depreciation expense by consideration of relevant factors in the depreciation calculation, such as asset lives. While the Commission can, in rate case proceedings, consider modifications to the lives of the assets to better reflect changes in the economic life of plant and equipment used to provide telecommunications services, this is not what the Division is requesting in this Docket. The testimony is undisputed that 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, in this docket, is not recommending that the Commission modify the rates of depreciation.⁴ Rather, the Division is recommending that the Commission modify the method of depreciation used by Carbon/Emery. The Division is seeking to require Carbon/Emery to use a single asset method of depreciation which is a complete departure from Carbon/Emery's historical method (since 2001—before the current rates of depreciation were set by the Commission), and which is inconsistent with a group plan of depreciation as required by Part 32 Uniform System of Accounts, which has been adopted, by rule by this Commission for intrastate purposes.

³The Commission may take judicial notice of the fact that the Division does not believe that a request for USF support is equivalent to a rate case when customer rates are unaffected, and questions whether rate case rules apply in its Memorandum filed with the Commission in this case on April 9, 2015.

⁴ See 47 CFR 32.2000(g)(2)(ii).

A change from a group plan of depreciation is not permitted under 47 CFR §32.2000(g)(1) without FCC approval or prescription; and is not appropriate under Utah administrative rules without a modification or deletion of R746-340-2.D which requires telephone companies to use 47 CFR Part 32 for intrastate operations. Thus, in the absence of a Utah rulemaking procedure or conferral from the FCC, the Division is barred from requiring Carbon/Emery to adopt a wholesale change in depreciation method from a group plan to a single asset plan. While the Division could arguably require adjustments to the group plan utilized by Carbon/Emery, or utilize one of the other group depreciation methods identified in Mr. Hellewell's testimony, this is not what the Division argues, and this is not the approach the Division has taken with respect to its depreciation calculation in this docket.

CONCLUSION

In the Testimony of Joseph Hellewell filed by the Division of Public Utilities in this docket, the Division has asked the Commission to apply a single asset depreciation method for Carbon/Emery's UUSF disbursement request. As a matter of law, under current federal and state rules, as set forth in 47 CFR Part 32, and as adopted by the Commission in R746-340-2.D, the Division (and the Commission) are prohibited from now requiring this change in accounting method for Carbon/Emery. Under 47 CFR 32.2000(g)(1), applicable pursuant to Utah Admin. Code R746-340-2.D, Carbon/Emery is required to use a group plan of depreciation unless and until the FCC approves or prescribes a different method, or the Commission modifies the current administrative rule by way of a rulemaking procedure on a prospective basis. Carbon/Emery's use of the group asset depreciation is acceptable and required as a matter of law.

Dated this 18th day of September, 2015.

BLACKBURN & STOLL, LC

Kira M. Slawson
Attorneys for Carbon/Emery Telcom, Inc.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Carbon/Emery Telcom, Inc.'s 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 18th day of September, 2015:

Justin Jetter
Assistant Attorney General
Division of Public Utilities
jjetter@utah.gov

Chris Parker
William Duncan
Dennis Miller
Joseph Hellewell
Paul Hicken
Division of Public Utilities
chrisparker@utah.gov
wduncan@utah.gov
dennismiller@utah.gov
jhellewell@utah.gov
phicken@utah.gov

Robert Moore
Assistant Attorney General
Office of Consumer Services
rmoore@utah.gov

Michele Beck
Danny Martinez
Office Of Consumer Services
mbeck@utah.gov
dannymartinez@utah.gov

Bion C. Ostrander
Ostrander Consulting
bionostrander@cox.net

David Brevitz
Ostrander Consulting
davidbrevitz@att.net

Kira M. Slawson