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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF UBTA-UBET COMMUNICATIONS, INC.'S (DBA STRATA NETWORKS) APPLICATION FOR UTAH UNVERSAL SERVICE FUND SUPPORT	DOCKET NO. 15-053-01 STRATA NETWORKS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEPRECIATION METHOD
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Pursuant to the Public Service Commission of Utah's (the "Commission") Order issued in this docket October 14, 2015, Utah Administrative Rules 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 reply in support of its Motion for Partial Summary Judgment on Depreciation Method.

INTRODUCTION

On October 9, 2015, STRATA moved the Commission for partial summary judgment to determine that as a matter of law, the Division and the Commission may not require STRATA to change accounting methods without first engaging in rulemaking to amend Utah Admin. Code Rule R746-340-2. D so that 47 CFR Part 32 would no longer govern asset depreciation for telecommunications corporations in Utah. In addition, STRATA also requested that if the Commission amends the rule, that it only apply the new rule prospectively.

On October 26, 2015, the Division of Public Utilities ("Division") and the Office of Consumer Services ("Office") filed Memoranda in Opposition to STRATA's motion to which

STRATA now replies. This issue is also being litigated in Docket No. 15-2302-01, In the Matter of Carbon/Emery Telcom, Inc.'s Application for an Increase in Utah Universal Service Fund Support. The Commission denied a similar motion Carbon/Emery filed in that docket by order dated October 15, 2015 (“Order”) which is currently subject to a Petition for Review and Clarification filed October 27, 2015. As the matter in the Carbon/Emery proceeding is similar to STRATA’s motion, STRATA will address the parts of the Commission’s analysis in the Order STRATA believes are incorrect.

RESPONSE TO DIVISION’S AND OFFICE’S CLAIMS OF DISPUTED FACTS

In its Motion for Partial Summary Judgment in this proceeding, STRATA enumerated five undisputed facts enabling the Commission to grant the Motion for Partial Summary Judgment:

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.
3. In Utah Admin. Code R746-340-2. D, the Commission adopted 47 CFR Part 32 as “...the prescribed system of accounts to record the results of Utah intrastate operations” for telephone utilities, which includes mandatory group asset depreciation.
4. 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).

In memoranda opposing STRATA's motion, the Division and the Office disputed the second fact claiming STRATA does not calculate depreciation expense in conformity with a group plan of accounting required by the FCC in 47 CFR Chapter I, Subchapter B, Part 32. The Division also disputed the third fact on grounds that the Commission's adoption of Part 32 is a legal conclusion and that the use of group asset depreciation is not mandatory. Neither party disputes the first, fourth, or fifth facts.

The Division's claim that the third fact of whether the Commission adopted Part 32 is actually a conclusion of law supports STRATA's position that the Commission can grant STRATA's motion without further input or argument from the parties. The Commission needs no input from the parties to determine whether, under Part 32 adopted in Utah Admin. Rule R746-340-2. D, it can require STRATA to apply the Division's proposed "single asset" method of depreciation without first amending that rule. STRATA strongly urges the Commission to grant its Motion for Partial Summary Judgment.

ARGUMENT

1. Adoption by Reference

This proceeding is unique in that it is following the Carbon/Emery Telcom ("Carbon/Emery") case, Docket No. 15-2302-01, where the Division is making the same argument to change decades of precedent and recommending that the Commission impose the "single asset" method of depreciation. The parties are litigating the same issues and taking the same positions in that proceeding. STRATA, therefore, adopts by this reference Carbon/Emery's

Reply Memorandum dated October 13, 2015 and its Petition for Review and Clarification dated October 27, 2015 filed in Docket No. 15-2302-01. STRATA also adopts by reference lines 734 - 929 of Karl Searle's rebuttal testimony and lines 451 -726 of Douglas Meredith's rebuttal testimony filed November 3, 2015 in this Docket No. 15-053-01.

2. The Claim that STRATA's Depreciation Calculation Does Not Conform to Part 32 Misses the Mark

In their Memoranda opposing STRATA's Motion for Partial Summary Judgment, the Division and the Office both claim STRATA does not calculate its depreciation "in conformity" with the group plan of accounting as prescribed by the FCC.¹ To these parties and to the Commission in its Order, "in conformity" appears to mean there can be no debate or disagreement over whether STRATA has grouped assets appropriately, applied the correct rates to the groups, or computed depreciation correctly.² This misstates STRATA's position. If depreciation is correctly before the Commission, STRATA accepts that these are legitimate issues in the case. Parties would be free to argue whether assets in a group are appropriately grouped or that fully-depreciated assets that remain in service must be removed from a group. If STRATA's use of single asset depreciation to depreciate its vehicles is not compatible with Part 32, that is another legitimate issue for the case. What is not legitimate is changing the depreciation method and requiring STRATA to disaggregate its groups of assets and depreciate them individually under the "single asset" method of depreciation, at least not until the Commission amends Utah Admin. Code Rule R746-340-2.D. Even then, assuming the

¹ Division Memorandum in Opposition, p.2; Office Memorandum in Opposition, p.2.

² Order, p.6 – "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." This is not what STRATA is requesting. Rather, STRATA is requesting that the Commission not change years of precedent by imposing across-the-board "single asset" depreciation without notice and without engaging in rulemaking with the opportunity for full participation by the affected parties.

Commission determines the public interest supports such a drastic shift in policy, any new rule must only apply prospectively to be just, reasonable, and to avoid the pitfall of retroactive ratemaking.

STRATA has conformed to Part 32 by using the group asset plan established by that Part and adopted by the Commission to calculate its depreciation for intrastate and interstate operations. It has also used straight-line depreciation to depreciate its groups of assets. As STRATA acknowledged above, the issues that address the computation of the group asset plan can be disputed in an appropriate case, but the fact that they are disputed does not mean there remain disputed facts which would prevent the Commission from granting the motion STRATA filed. This is a Motion for Partial Summary Judgment; it would not resolve every issue surrounding depreciation. It would resolve the method of depreciation.

3. Group Asset Depreciation is Mandatory under Part 32

The Division and the Office both argue that Part 32 does not mandate a telecommunications corporation to use a group asset plan to calculate depreciation. The Office even alleges that STRATA has “cherry picked” part of the rule “...to suit its contention that the Commission is bound by Strata’s characterization.”³ Again, this misstates STRATA’s position. 47 CFR Part 32, Section 32.2000 (g)(i) in its entirety states:

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 Office Memorandum in Opposition, p.3.

The highlighted language makes the mandate clear. The FCC can make an exception to it or prescribe another method, but otherwise STRATA must use a group plan to calculate depreciation.⁴ 47 CFR 32.2(c), part of the preface of the rule and cited by the Office, does not address the method of depreciation. It goes to the issues surrounding the computation of depreciation which STRATA has agreed can be argued in this case. The Commission blurred this difference in the Order when it said: “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.”⁵ Carbon/Emery and STRATA have both cited that provision because that is where the FCC mandates the use of a group asset plan. The other provisions of Part 32 give related guidance, but do not affect the mandate. Whether using a group plan is mandatory under Part 32 is part of the issue STRATA has moved the Commission to decide as a matter of law in its motion.

4. Part 32 is an Accounting Rule and Has Nothing to do with Service Quality

The Division, the Office, and the Commission in its Order believe the Commission adopted “...the FCC’s Part 32 expressly for the purpose of evaluating service standards.”⁶ Apparently, the Commission and the parties have become persuaded by the title of Utah Admin. Code Rule R746-340, “Service Quality for Telecommunications Corporations.” In its Petition for Review, Carbon/Emery noted Utah Admin. Code R746-100 1.D which makes clear that section titles are substantively meaningless and are to be used only for convenience.⁷ The subsection in

⁴ By operation of its own rule, the Commission has ceded its authority to determine another method of accounting to the FCC. The Commission is able to change its rule, but until it does, only the FCC is able to prescribe a new depreciation method for STRATA.

⁵ Order, p. 6.

⁶ Order, p.4.

⁷ Petition for Review, p. 6.

which the Commission adopted Part 32 establishes requirements for record keeping and reporting. It has nothing to do with service quality. Part 32 is an accounting rule and the system of accounts prescribed by this Commission for companies like STRATA and Carbon/Emery to record and report the results of their Utah intrastate operations.⁸ Part 32 addresses balance sheets, revenue accounts, expense accounts, and other income accounts. When the Commission adopted Part 32, it adopted the mandatory group asset plan unless the FCC prescribes otherwise. Though STRATA does not recommend it, if the Commission wants to prescribe another method of depreciation like the Division advocates, the only option is to first amend Utah Admin. Code R746-340-2.D, reject Part 32, and establish a new method by rule.

CONCLUSION

STRATA moves the Commission for partial summary judgment to determine that as a matter of law, the Division and the Commission may not require STRATA to change accounting methods without first engaging in rulemaking to amend Utah Admin. Code Rule R746-340-2. D so that 47 CFR 32 would no longer govern asset depreciation for telecommunications corporations in Utah. There are many serious issues related to a policy change of this magnitude and STRATA believes the Commission must engage in rulemaking to enlist the comments and experience of all users of the FCC's Part 32 system of accounting to report their operations. In addition, STRATA also moves that if the Commission amends the rule, that it only apply the new rule prospectively.

There are no material issues of fact about whether the Commission adopted Part 32 and whether Part 32 mandates use of a group asset plan to calculate depreciation. The Commission can decide those issues as a matter of law without further input from the parties.

⁸ Utah Admin. Code R746-340-2. D.

Summary judgment is therefore both warranted and appropriate and STRATA urges the Commission to grant its motion.

Respectfully submitted this 5th day of November, 2015

Stephen F. Mecham

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Memorandum in Support of Motion for Partial Summary Judgment on Depreciation Method in Docket No. 15-053-01 was sent to the following individuals by electronic mail this 5th day of November, 2015:

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