

REX W. OLSEN (#4895)  
Assistant Utah Attorney General  
ROBERT J. MOORE (#5764)  
Special Assistant Utah Attorney General  
SEAN D. REYES (#7969)  
Utah Attorney General  
160 East 300 South, 5th Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone: (801) 366-0353  
[rolsen@utah.gov](mailto:rolsen@utah.gov)  
[rmoore@utah.gov](mailto:rmoore@utah.gov)  
*Attorneys for Utah Office of Consumer Services*

Before the Public Service Commission of Utah

<p>In the Matter of Carbon/Emery Telcom, Inc.'s Application for an Increase in Utah Universal Service Fund Support</p>	<p>Docket No. 15-2302-01</p> <p>Office of Consumer Services Motion in Support of the Department of Public Utilities Response to Emery/Carbon's Motion for an Expedited Briefing Schedule and Motions for an Extension of Time and to Vacate Hearing Date</p>
--	--

Pursuant to Utah Code Ann. § 54-4a-1 and Utah Admin. Code r. 746-100, the Utah Office of Consumer Services ("Office") hereby files this Motion in Support of the Utah Division of Public Utilities' ("Division") Opposition to Carbon/Emery Telecom, Inc.'s ("Carbon/Emery") Motion for an Expedited Briefing Schedule and in support of the Division's Motions for an Extension of Time and to Vacate the Hearing Date.

**PROCEEDINGS**

On September 18, 2015, seven business days before the scheduled hearing date in this docket, Carbon/Emery filed its Motions for an Expedited Briefing Schedule and Motion for

Partial Summary Judgment seeking an Order rejecting the depreciation method proposed by the Division through the Direct Testimony of Joseph Hellewell filed on August 21, 2015, twenty-eight days before the filing of Carbon/Emery's instant Motions. (Carbon/Emery's Memorandum in Support of its Motion for Partial Summary Judgment at page 1.) In its Motion for an Expedited Briefing Schedule, Carbon/Emery seeks a schedule allotting the Division and Office ("state agency parties") five business days to file any Response to the Motion for Partial Summary Judgment. Given this condensed proposed briefing schedule, it is reasonable to assume that state agency parties could not possibly file their Responses until the end of the day on the 25<sup>th</sup> of September. This leaves the Administrative Law Judge one business day to review both the Response to Carbon/Emery's Motion and Carbon/Emery's Reply and to Rule on the Motion.

**CARBON/EMERY'S MOTION FOR AN EXPEDITED BRIEFING SCHEDULE  
MUST BE DENIED TO PREVENT EXTREME PREJUDICE TO THE PARTIES AND  
THESE PROCEEDINGS**

Carbon/Emery's Motion for an Expedited Briefing Schedule must be denied because a condensed briefing schedule will result in extreme prejudice to the parties and these proceedings and because Carbon/Emery has not offered an explanation, let alone an excuse, for its late filing. The pending Motion for Summary Judgment presents involved issues of fact and complex issues of state and federal law, legal issues that have not previously been raised in these proceedings. Carbon/Emery has had twenty-eight days to craft its motion yet seeks to leave the state agency parties only five business days to reply. The prejudice from this approach is palpable. The prejudice resulting from the lack of an adequate time to respond to the Motion is compounded by the complexity of the Motion; the fact that this is the first time these legal issues have been raised; the parties' need for time to prepare for the hearing; and that the state agency parties,

unlike presumably Carbon/Emery, have other pressing matters that require their attention. Given these facts, the state agency parties will be extremely disadvantaged in their attempts to fully and fairly rebut the factual and new and complex legal arguments raised in Carbon/Emery's Motion.

Moreover, these proceedings themselves would be prejudiced if Carbon/Emery's Motion is granted. Under Carbon/Emery's proposed schedule the Administrative Law Judge will be forced to decide the motion without a full and fair briefing, and will have only a matter of hours to review both the state agencies Opposition Memorandum and Carbon/Emery's Reply Memorandum and rule on the Motion. This rather herculean task is made more difficult due to the complexity of the Motion, in particular the complexity of the federal legal issues. All of these factors greatly increase the risk of an error that could result in an unjust resolution to these proceedings.

Finally, Carbon/Emery has proffered no explanation as to why it delayed in filing its Motion. No countervailing argument has been made as to why the prejudice imposed on the parties and this proceeding is outweighed by any interest Carbon/Emery has in the expedited briefing schedule or excusing Carbon/Emery's dilatory filing. Given these facts, the Motion for an Expedited Briefing Schedule must be denied.

**THE HEARING DATE MUST BE VACTATED AS THE ONLY FAIR  
RESOLUTION OF PROBLEMS CAUSED BY CARBON/EMERY'S LATE FILING**

The only fair resolution to the difficulties presented by Carbon/Emery's late filing is to vacate the hearing, hold a scheduling conference for a new hearing date and then fully brief the Motion for Summary Judgment. Obviously, the purported need for the expedited briefing schedule and the prejudice caused by any expedited schedule is caused by the fact that Carbon/Emery's Motion was filed so close to the hearing date. Vacating the hearing date resolves all the problems relating to prejudice. Moreover, Emery/Carbon has not argued that

extending the hearing date will result in any difficulties for them. The Office will need a new scheduling conference to insure that the hearing date is in accord with the Offices' out of state expert witnesses' schedules, is set at a date that provides sufficient time for the ALJ to issue a considered ruling, allow the parties to prepare their witnesses in light of this ruling and, if needed, submit additional testimony. This will insure that a date is set that is workable for all parties.

The only other option is to brief the Motion after the hearing. However, having a Motion for Summary Judgment decided after an evidentiary hearing destroys the efficiency and purpose of the Motion. Not only might it result in wasted hearing time and needlessly expose witnesses to cross-examination, but it will prevent the sharpening on the issues presented at the hearing which can be of great help in resolving this factually convoluted case. Thus, the delaying the evidentiary hearing until the summary judgment can be fully and fairly briefed and decided benefits all parties and these proceedings.

**THE OFFICE DOES NOT OPPOSE THE DIVISIONS MOTION FOR AN  
EXTENSION OF TIME**

The Office concurs in the Division's arguments regarding the need for an extension of time. Summary Judgment Motions are by their nature involved and intricate requiring both factual and legal arguments that foreclose all other possibilities but the need for a judgment as a matter of law. Utah R. Civ. P. 56(c). The state and federal legal arguments presented in the instant Motion are extremely complex and require extensive time to address. Moreover, as noted above, Carbon/Emery has had twenty-eight days to craft its Motion. It is reasonable to allow opposing parties twenty-one days to respond.

