

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Carbon/Emery Telcom for an Increase in Utah Universal Service Fund Support	<u>DOCKET NO. 15-2302-01</u>
In the Matter of UBTA-UBET Communications, Inc.'s (dba STRATA Networks) Application for Utah Universal Service Fund Support	<u>DOCKET NO. 15-053-01</u> <u>ORDER REQUIRING THE PARTIES TO FILE POSITION STATEMENTS REGARDING THE APPLICABILITY OF UTAH CODE § 54-7-12(3)</u>

ISSUED: September 23, 2015

On September 18, 2015, Carbon/Emery Telcom (Carbon) filed a motion for partial summary judgment regarding the proper method for calculating depreciation of its assets in order to determine what revenue shortfall, if any, is subject to reimbursement from the Utah Universal Service Fund (UUSF). In addition, Carbon filed a motion for an expedited briefing schedule on the motion for summary judgment.

Also on September 18, 2015, the Division of Public Utilities (Division) filed a response to the motion for expedited briefing. The Division objected to the briefing timeframe proposed by Carbon, and consequently moved to vacate the September 29, 2015 hearing date so as to allow for more thorough treatment of the motion for summary judgment. In moving to vacate the hearing date, the Division asserted that Carbon's application does not trigger any statutory deadline for resolution, including the 240-day deadline set forth in Utah Code § 54-7-12(3), which applies to applications for rate adjustments.

On September 21, 2015, the presiding officer issued a scheduling order on the Division's motion to vacate, requiring responses by September 23, 2015, and any final reply by September 24, 2015.

On September 21, 2015, the Office of Consumer Services (Office) filed a motion in support of the Division's motion to vacate the hearing date. The Office did not comment on the Division's position that this matter is not required to be resolved under Section 54-7-12(3) and within 240 days of Carbon's application date. To date, Carbon has not stated its position regarding the applicability, if any, of Section 54-7-12(3).

After submitting the filings discussed above, the parties agreed to vacate the current hearing date of September 29, 2015, reschedule the hearing to November 2, 2015, and schedule briefing on the motion for summary judgment as appropriate to a November 2, 2015 hearing date.¹

In order to use November 2, 2015 as the hearing date, it would be necessary for the Commission to continue a hearing currently scheduled for that date in the matter of UBTA-UBET Communications, Inc., dba STRATA Networks (STRATA), Docket No. 15-053-01. The STRATA application, like Carbon's, is for UUSF support. The Division represents that STRATA is amenable to a continuation of its hearing, and has suggested November 23-24, 2015.

¹ The Division has suggested that responses to the motion for summary judgment be due no later than October 9, 2015, with any final reply due no later than October 16, 2015. The presiding officer is unable to adopt this suggestion, as she will be out of the state from October 18, 2015 through October 24, 2015. In these circumstances, the presiding officer is not able to ensure that, under the Division's proposed briefing schedule, an order on the motion for summary judgment would issue in a timeframe that would allow an opportunity for the parties to plan and prepare for hearing accordingly. If the hearing is rescheduled, responses to the motion for summary judgment will be due by Monday, October 5, 2015, and any final reply will be due by Tuesday, October 13, 2015.

STRATA's application was filed with the Commission on April 6, 2015. If the application is required to be resolved within 240 days of the application date under Section 54-7-12(3), the Commission's final order would have to issue by December 2, 2015, approximately one week following the hearing dates, which week encompasses the Thanksgiving holiday. Such a schedule is not reasonable.

The Commission is not willing to rule on the issue of whether Section 54-7-12(3) applies to Carbon's and STRATA's applications without input from all parties. Nor is the Commission willing to continue the hearings without ruling on the applicability of Section 54-7-12(3). It is the Commission's position that Section 54-7-12(3), if applicable, sets forth a jurisdictional deadline that may not be waived.

ORDER

The Commission now orders the parties in Docket Nos. 15-2302-01 and 15-053-01, including the Utah Rural Telecom Association (intervener in Docket No. 15-2302-01), to file written position statements addressing the question of whether Section 54-7-12(3) applies to an application for UUSF support. The Commission reiterates that it is not requesting, and will not accept, an agreement by any party to waive a statutory deadline.

If the Commission is satisfied that the 240-day deadline does not apply, it will grant the motion to vacate Carbon's hearing as currently scheduled, and the presiding officer will issue amended scheduling orders accordingly. All parties shall file their position statements no later than end of business on **Thursday, September 24, 2015**.

The scheduling order issued September 21, 2015 in Docket No. 15-2302-01 on the Division's motion to vacate is hereby stayed.

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DATED at Salt Lake City, Utah, this 23rd day of September, 2015.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed this 23rd day of September, 2015 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#269475

CERTIFICATE OF SERVICE

I CERTIFY that on the 23rd day of September, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

Kira Slawson (kiram@blackburn-stoll.com)
Counsel for Carbon/Emery Telcom, Inc.

Brett N. Anderson (bretta@blackburn-stoll.com)
Blackburn & Stoll, LC

Stephen F. Mecham (sfmecham@cnmlaw.com)
Counsel for UBTA-UBET Communications, Inc. dba STRATA Networks

Vicki Baldwin (vbaldwin@parsonsbehle.com)

Sharon Bertelsen (bertelsens@ballardspahr.com)

Larry Bowman (larry.bowman@charter.com)

Brian W. Burnett (brianburnett@cnmlaw.com)

(cflregulatory@chartercom.com)

Eddie L. Cox (ecox@cut.net)

William J. Evans (wevans@parsonsbehle.com)

James Farr (james.farr@centurylink.com)

Amy Gross (agross@tminc.com)

Alan Haslem (ahaslem@mleainc.com)

Ray Hendershot (ray.hendershot@beehive.net)

William Huber (William.huber@questar.com)

Bill Hunt (williamp.hunt@dish.com)

David R. Irvine (Drirvine@aol.com)

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Kristin L. Jacobson (Kristin.l.jacobson@sprint.com)

Brock Johansen (bjohansen@emerytelcom.com)

Dawn Kubota (kubotad@ballardspahr.com)

Jasen Lee (jlee@desnews.com)

Kirk Lee (kirk.lee@ftr.com)

Shirley Malouf (srmalouf@stoel.com)

Jennifer H. Martin (jhmartin@stoel.com)

Gregory Monson (gbmonson@stoel.com)

Sharon Mullin (smullin@att.com)

Thorvald Nelson (tnelson@hollandhart.com)

Janice Ono (Janice.ono@att.com)

Sheila Page (spage@utah.gov)

Mike Peterson (mpeterson@utahcooperatives.org)

Pam Pittenger (pam.pittenger@ftr.com)

Jenny Prescott (jenny.prescott@allwest.com)

Bruce Rigby (bruce@ucmc-usa.com)

Gary Sackett (gsackett@joneswaldo.com)

Alan L. Smith (alanakaed@aol.com)

Ted D. Smith (tsmithlaw@earthlink.net)

Joe Solana (compliancemanager@gsaudits.com)

Kendra Thomas (kthomas@kfrservices.com)

Bruce H. Todd (btodd@stratanetworks.com)

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Jake Warner (jakew@beehive.net)

James H. Woody (jwoody@union-tel.com)

John Woody (jowood@union-tel.com)

Union Telephone Company

Patricia Schmid (pschmid@utah.gov)

Justin Jetter (jjetter@utah.gov)

Rex Olsen (rolsen@utah.gov)

Robert Moore (rmoore@utah.gov)

Utah Assistant Attorneys General

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Administrative Assistant