- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Carbon/Emery Telcom, Inc. for an Increase in Utah Universal Service Fund Support	DOCKET NO. 15-2302-01 ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

ISSUED: October 15, 2015

I. Procedural History.

On March 27, 2015, Carbon/Emery Telcom, Inc. (Carbon) filed with the Public Service Commission of Utah (Commission) an application for an increase in the financial subsidy the company receives from the Utah Universal Service Fund (UUSF).[1]

On August 21, 2015, the Utah Division of Public Utilities (Division) and the Office of Consumer Services (Office) filed direct testimony in this docket. In relevant part, the Division and the Office both testified that Carbon had improperly depreciated certain assets used to provide basic lifeline service, thus artificially inflating both its total expenses and its total revenue requirement.

On September 18, 2015, Carbon filed this motion for partial summary judgment, arguing that the Commission is prohibited under federal and state rules from requiring Carbon to change the accounting method it has chosen to use in order to calculate asset depreciation.

On October 5, 2015, the Division and the Office filed memoranda opposing Carbon's motion for partial summary judgment. On October 13, 2015, Carbon filed a final reply in support of its motion.

[1] On April 2, 2015, Carbon filed an amended application in order to increase the total amount of support requested under the March 27, 2015 application.

II. Facts.

The following facts are undisputed by the parties:

1. In its application, Carbon used a mass asset group depreciation method (group depreciation) to calculate its depreciation expense.
2. Group depreciation is a recognized method for calculating depreciation expense. However, there is no standard or prescribed formula for group depreciation within the telecommunications industry.
3. In general, a company that uses group depreciation aggregates similar assets into an asset group, and depreciates all assets in the group at the same rate, according to depreciation rates approved and set by the Commission.

III. Parties' Positions.

The Division's position is that, whether federal or state rules are applied, old and new assets may not be indiscriminately included in the same asset group. If they are, the depreciation of the newer assets will be artificially accelerated. As a result, the utility's ratio of income to expense will be skewed to reflect a greater revenue shortfall than in fact exists.

The Division alleges that, in its accounting, Carbon has not configured its asset groups according to the age of the assets. Therefore, the Division considers that Carbon has created asset groups that combine old and new assets, with the result that new assets are fully depreciated over a shorter period of time than that allowed by the Commission.[2]

[2] The Division has indicated in its briefing that any depreciation method that departs from the Commission's approved schedule must be rejected. The Division's argument is relevant and material. However, where the Division has not moved for summary judgment on the question of whether Carbon's depreciation method complies with the Commission's approved depreciation schedule, the question may not be resolved prior to hearing.

The Office's position is that, whether federal or state rules are applied, Carbon has failed to account adequately for assets that were fully depreciated as of the date of application, or that would be fully depreciated within two years of the application date (i.e., prior to the date on which Carbon might be anticipated to again apply for review of its UUSF subsidy).

Carbon does not dispute that its asset groups include both old and new assets or that it accelerates the depreciation of its newer assets. However, Carbon does argue that accelerating the depreciation of its newer assets removes them from the rate base more quickly than would be the case if the newer assets were depreciated under the straight-line method, ultimately reducing the total amount of UUSF support that would be generated for each new asset over its life.

In making this argument, Carbon emphasizes that there is no allegation or evidence that the utility has replaced fully-depreciated assets that in fact had remaining economic life. However, Carbon does not propose, nor does it claim to have, a process through which its fully-depreciated assets might be removed from its rate base—and its UUSF disbursement adjusted accordingly—in years where Carbon does not apply to have its UUSF subsidy increased or otherwise reviewed. This is precisely the concern set forth by the Office.

In order to correct for what the Division considers to be Carbon's artificially accelerated depreciation of newer assets, the Division recommends that Carbon be required to value each individual asset using straight-line depreciation. The Office considers that the Commission has broad discretion to apply whatever depreciation method it deems most appropriate in any given case. Carbon argues that, until the Commission amends its own administrative rules, it may not require Carbon to use straight-line depreciation.

IV. Analysis.

Summary judgment is appropriate if (a) there is no genuine issue as to any material fact; and (b) the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In its motion and supporting memorandum, Carbon relies primarily on 47 CFR Part 32 (Part 32), as promulgated by the Federal Communications Commission (FCC), as the law under which it claims judgment. Part 32 is titled "Uniform System of Accounts for Telecommunications Companies," and has been adopted by the Commission as "the prescribed system of accounts to record the results of Utah intrastate operations" in the context of regulating a utility's service standards. Utah Administrative Code R746-340-2(D).

The Commission rule R746-340-2(D) adopts the FCC's Part 32 expressly for the purpose of evaluating service standards. It does not necessarily follow that the federal rule also applies in calculating a utility's UUSF requirement. However, it is undisputed that a utility is permitted to use a group depreciation system in a UUSF calculation, provided that the utility does so correctly.

Subpart 32.2000(g)(1)(i) of the FCC's Part 32 provides the following:

> (g) 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. [3]

[3] There is no evidence in the record to demonstrate that the FCC has approved or required Carbon to use a method other than group depreciation in relation to its intrastate operations.

This FCC rule acknowledges that there is more than one possible plan by which group depreciation might be calculated. The rule approves only such plans as allow the straight-line method of depreciation to be applied accurately within each asset group. In other words, the FCC rule does not allow a regulated utility to place assets with differing service values into the same asset group so as to fully depreciate newer assets at an accelerated rate. The FCC rule also prohibits an asset group from including fully-depreciated assets, as the expenses associated with such an asset do not fall under the definition of depreciation.[4] Therefore, whether an asset group has been properly configured is a material fact. In this case, the parties have a genuine dispute as to that fact. Specifically, the Division disputes that an asset group is permitted to include assets of different ages, arguing that an asset's age affects its service value. And the Office disputes that Carbon has properly excluded from its asset groups those assets that are, or that will shortly be, fully depreciated.[5]

Further, should the FCC consider that an asset group has been improperly configured, Part 32 is structured to allow the FCC to issue an order requiring a regulated utility to calculate depreciation using a method other than group depreciation; for example, straight-line depreciation. When R746-340-2(D) is applied in a UUSF case, the Commission retains the same

---

[4] Part 32 refers to such expenses as "losses," clearly distinguishing them from depreciation expenses.

[5] In its briefing, Carbon also cites to Subpart 32.9000, which states:

> 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.

This provision governs how an asset group must be adjusted when an individual asset within the group is retired, acknowledging that such individual asset might not be fully depreciated when retired. It does not allow a utility to mingle older and newer assets so as to artificially shorten the service life of the newer assets. Nor does it allow a utility to continue to claim depreciation expense as to a fully-depreciated asset.

ability as the FCC to require straight-line depreciation on an asset-by-asset basis in circumstances where it appears that a utility has improperly configured its asset groups. 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.

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. If the Commission finds credible evidence that Carbon has improperly configured its asset groups, the Commission's rules as currently written allow the Commission to apply a different depreciation method to Carbon's assets and to adjust the utility's depreciation expense accordingly.[6]

ORDER

Carbon's motion for partial summary judgment is DENIED.

[6] In their briefing, the parties dispute whether Utah Code § 54-7-12.1 applies to this case. Section 54-7-12.1 requires the Commission to consider "all relevant factors … [in] determin[ing] the depreciation expense of telecommunications corporations for ratemaking purposes." The Commission has previously ruled that this docket is not governed by Utah Code § 54-7-12(3), which imposes a deadline for Commission action after receiving a complete filing for a rate increase or decrease. Carbon's application is not for a rate increase or decrease. However, it does not necessarily follow that the calculation of its depreciation expense in this docket is entirely unrelated to "ratemaking purposes." That being said, it is not necessary for the Commission to analyze Section 54-7-12.1 at length in this Order. The Commission has concluded that Part 32 does not require, as a matter of law, that Carbon's asset groups and its corresponding group depreciation plan be accepted and credited without evaluation. The Commission needs no additional basis from which to deny summary judgment.

DATED at Salt Lake City, Utah, this 15th day of October, 2015.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#269950

CERTIFICATE OF SERVICE

I CERTIFY that on the 15th day of October, 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

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)

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)

Stephen F. Mecham (sfmecham@cnmlaw.com)

Gregory Monson (gbmonson@stoel.com)

Sharon Mullin (slmullin@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)

Jake Warner (jakew@beehive.net)

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