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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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|---|---|-----------------------|
| Application of |) | |
| E Fiber Moab, LLC For a Certificate |) | |
| of Public Convenience and Necessity |) | Docket No. 20-____-01 |
| to Provide Facilities-Based Local |) | |
| Exchange Service and Be Designated as a Carrier |) | |
| Of Last Resort in Certain Rural Exchanges |) | |

APPLICATION

E Fiber Moab, LLC ("E Fiber Moab" or "Applicant"), pursuant to Chapter 8b of Title 54 of the Utah Code; the Commission's Rules of Practice and Procedure, Utah Admin. Code §§ 746-100 *et seq.*; and the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 *et seq.*, hereby applies to the Utah Public Service Commission for a certificate of public convenience and necessity authorizing Applicant to operate as a provider of facilities-based local exchange telecommunications service in the Moab and Thompson exchanges in the State of Utah. In support of its application, E Fiber Moab provides the following information pursuant to Utah Admin. Code R746-349:

1. General Information

a. Corporate Information

Applicant's legal name is E Fiber Moab, LLC. Applicant may be reached at its principal place of business:

E Fiber Moab, LLC
429 East State Road 29
Orangeville, UT 84537
Telephone: (435) 748-2223

E Fiber Moab is a Utah limited liability company organized on February 13, 2020, under the laws of Utah. A copy of E Fiber Moab's Certificate of Existence in Utah is attached hereto as **Exhibit A**. Applicant is a wholly-owned subsidiary of Emery Telecom HC, Inc., a Utah corporation which is a wholly owned subsidiary of Emery Telephone ("Emery Telephone") which provides local exchange services in Emery County, Utah, subject to the jurisdiction of the Utah Public Service Commission.

b. Contact Information

Correspondence or communications pertaining to this Application, and questions concerning the ongoing operations of Applicant following certification should be directed to:

Kira M. Slawson
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

with a copy to:

Brock Johansen
Chief Executive Officer
429 East State Road 29
Orangeville, UT 84537
Telephone: (435) 748-2223

Applicant's registered agent in the State of Utah is:

Kira M. Slawson
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111

c. Customer Service Information

E Fiber Moab's toll-free number for customer inquiries is (888) 749-1090.

2. **R746-349-3(A)(2). Proof of Bond.** Applicant respectfully requests waiver of the bond requirement as the financial information included in **Confidential Exhibits E and F**

successfully demonstrates the financial stability of Applicant and its ultimate parent, Emery Telephone, and demonstrates the adequate resources available to Applicant. Additionally, the bond is intended to provide security for customer deposits or other liabilities to the Applicant's customers. Applicant does not intend to collect customer deposits for its telecommunications services. If Applicant decides to collect customer deposits, Applicant will comply with all Utah laws, rules and regulations.

3. **R746-349-3(A)(3). Facilities to be used.** Applicant anticipates using its own facilities and/or utilizing facilities and network from its affiliates Emery Telecommunications & Video, Inc. ("ET&V") and Emery Telcom Video, LLC (collectively the "Affiliates) to provide local exchange services while E Fiber Moab builds out its fiber network in the local exchanges. As fiber facilities are constructed by E Fiber Moab to replace coaxial cable facilities of its Affiliates, existing Affiliate customers will be transferred to E Fiber Moab.

4. **R746-349-3(A)(4). Services to be offered.**

- a. **R746-349-3(A)(4)(a). Classes of customers.** Pursuant to and consistent with Utah Code 54-8b-2.1(4), Applicant will be designated a carrier of last resort, as that term is defined in Utah Code §54-8b-15(1)(b)(ii), in the exchanges identified in subsection b. below, and will provide public telecommunications service to any customer or class of customer that requests service within the local exchange identified in subsection b. below.
- b. **R746-349-3(A)(4)(b). Location of service.** Applicant intends to provide carrier of last resort service, for which certification is sought hereunder, in the Moab and Thompson exchanges within the State of Utah.

c. **R746-349-3(A)(4)(c). Types of Services to be Offered.** Applicant is seeking authority to provide all forms of local exchange public telecommunications services as a carrier of last resort on a facilities-based basis.

5. **R746-349-3(A)(5). Access to standard services.** Applicant will provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 through its own operations.

6. **R746-349-3(A)(6). Implementation Schedule.** Applicant anticipates offering its services after the approval of its Application for a CPCN and upon negotiation of an interconnection agreement with the incumbent local exchange carrier.

7. **R746-349-3(7). Professional experience and education of managerial personnel and personnel responsible for Utah operations.** Applicant currently has its headquarters in Orangeville, Utah. Responsibility for its operations will be handled by Applicant's current technical and management team from those headquarters. Descriptions of the extensive telecommunications technical and managerial experience of Applicant's key personnel are attached hereto as **Exhibit B**.

8. **R746-349-3(8). Organization Chart.** Applicant's operations will be directed by its management team located in Orangeville, Utah as set forth in the Organizational Chart attached hereto as **Exhibit C**. Additionally, a corporate organizational chart of Applicant's parent company is also attached as **Exhibit C**.

9. **R746-349-3(A)(9). Chart of Accounts.** Applicant's chart of accounts including account numbers, names, and brief descriptions is attached hereto as **Exhibit D**.

10. **R746-349-3(A)(10)(a) through (d). Financial Statements.** Applicant is a newly formed start-up company that is a subsidiary of Emery Telephone. Therefore, consistent with R746-349-3(10)(c), attached as **Confidential Exhibit E** are the financial statements of Applicant including:

- a. The Balance Sheet of the Applicant prepared according to GAAP; and
- b. The Financial Statements of Emery Telephone, its parent corporation (Balance Sheet, Income Statement, and Cash Flow Statement together with accompanying notes, prepared in accordance with GAAP).

11. **R746-349-3(A)(11)(a) through (c). Financial Ability.** Though Applicant is a newly formed entity, it has access to financing and capital necessary to provide public telecommunications services in the exchange requested. See **Exhibit D** for evidence of Applicant's positive net worth. As previously indicated, Applicant is seeking authority to be a carrier of last resort with an obligation to provide public telecommunications service to any customer or class of customer within the local exchanges of Moab and Thompson. In connection with Applicant's application for CPCN, Applicant will be seeking disbursements from the Utah Public Telecommunications Service Support Fund ("UUSF") as a carrier of last resort in the Moab and Thompson exchanges. The Applicant's *proforma* five-year plan, attached hereto as **Confidential Exhibit F**, demonstrates that the Applicant's build-out plan for facilities within the local exchanges, and upon completion of these facilities, will entitle Applicant to disbursements from the UUSF. Distribution to Applicant from the UUSF to construct, install, and operate the fiber facilities necessary to bring advanced telecommunications services, including voice and high-speed broadband, to these exchanges is in the public interest.

12. **R746-349-3(A)(12). Five Year Projection of Expected Operations.**

a. **R746-349-3(A)(12)(a). Proforma Income and Cash Flow Statements.**

See **Confidential Exhibit F** for the Applicant's proforma income statements and cash flow statements.

b. **R746-349-3(A)(12)(b). Technology to be Deployed.** Applicant will

deploy state-of-the-art fiber optic facilities and telecommunications equipment and technology and will utilize the switching facilities of Emery Telephone.

c. **R746-349-3(A)(12)(c). Maps.** Applicant is seeking exchange-wide

authorization for the Moab and Thompson exchanges. See **Exhibit G** for a map of the exchanges where Applicant will deploy facilities.

13. **R746-349-3(A)(13). Implementation schedule.** See Section 6.

14. **R746-349-3(A)(14). Technical and managerial abilities.** Applicant's officers have the necessary managerial and technical resources and qualifications necessary to execute its business plan, to provide its proposed telecommunications services, and to operate and maintain Applicant's facilities over which such services will be deployed. Applicant's technical and management team has extensive experience in the telecommunications industry. Descriptions of Applicant's key personnel are attached hereto as Exhibit B.

a. **R746-349-3(A)(14)(a)-(b). Proof of Certification in other Jurisdictions.**

Neither Applicant, nor its parent company, has been denied requested certification in any jurisdiction, nor has either had a permit, license, or certificate revoked by any authority. Applicant is not currently certificated in any other jurisdiction.

15. **R746-349-3(A)(15). Public interest.** Approval of Applicant's application to

serve the Moab and Thompson exchanges within Grand and San Juan Counties will serve the public interest by deploying up-to-date state-of-the-art fiber facilities in areas where such facilities are lacking. Both public telecommunications services, as defined in Utah Code §54-8b-2(18) and advanced communications services, as defined in 47 U.S.C. §153(1) will be offered using these facilities.

Under Section 54-8b-2.1(4) “if the commission issues a certificate to a competitive telecommunications corporation to provide local exchange services in a local exchange that has fewer than 5,000 access lines and that is controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state, the commission shall impose an obligation on the competitive telecommunications corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange.” This requirement denies potential competitors the ability to cherry pick the populated areas and requires any competitor in such areas to act as the carrier of last resort in such exchanges—this serves the State’s public interest.

In this case, Applicant is seeking certification in the Moab and Thompson exchanges. The Moab exchange has historically been larger than 5,000 access lines, and is currently subject to competition by Applicant’s affiliate, ET&V. The Thompson exchange has fewer than 5,000 access lines. Unlike most competitive providers, however, Applicant, is actively seeking carrier of last resort status in the Moab and Thompson exchanges and will construct fiber facilities within such exchanges. As fiber facilities are constructed by Applicant to replace coaxial cable facilities of its Affiliates, existing Affiliate customers will be transferred to Applicant and will be served by the fiber facilities of the Applicant. The Applicant is promising to provide its robust telecommunications service to any customer or class of customer who requests it. Upon the

granting of this Application, Applicant will be a carrier of last resort in the exchanges and will bring updated facilities, access to high speed broadband and state-of-the-art carrier-grade voice over internet protocol telephone service to customers in these exchanges.¹ The public convenience and necessity, therefore, will be served by the issuance of a CPCN to Applicant authorizing it to provide public telecommunications services as a carrier of last resort in the Moab and Thompson exchanges.

16. **R746-349-3(A)(16). Proof of Authority to Conduct Business in Utah.** See **Exhibit A**, attached hereto.

17. **R746-349-3(A)(17)(a)-(c). Unauthorized switching.** No complaints have been made nor has any investigation been undertaken against Applicant or its parent company for unauthorized switching (“slamming”) or any other illegal activities. Applicant will comply with Utah law and the Federal Communications Commission’s (“FCC’s”) regulations regarding how interexchange carriers may change a consumer's Primary Interchange Carrier. Applicant will also comply with the FCC's regulations regarding how carriers may change a consumer's primary local exchange provider.

18. **R746-349-3(A)(18). Solicitation of New Customers.** Applicant will be a carrier of last resort in the exchanges identified in this Application. As such it will provide service to every customer or class of customer who requests it, subject, of course, to its line extension policies which will be contained in its tariff. Applicant pledges to follow all federal and state specific anti-slamming rules and will not engage in any unauthorized switching or slamming

¹ Though 54-8b-2.1 does not specifically require it, the Commission may determine that the public interest is best served by eliminating carrier of last resort obligations for the incumbent local exchange carrier in the event this Application is found to be in the public interest and granted. Currently, Citizens Telecommunications Company of Utah dba Frontier Communications of Utah (“Frontier”) is the carrier of last resort in the areas where Applicant seeks designation. Frontier does not receive UUSF support for its operations in these exchanges.

practices in compliance with Utah law and FCC regulations.

19. **Rate-of-Return Regulated Carrier.** Applicant affirmatively states that it seeks to be a rate-of-return regulated carrier of last resort, subject to Utah Code §54-4-4 and §54-7-12 and Commission Rule R746-8-200(12). As a rate-of-return facilities-based carrier of last resort Applicant will be eligible for UUSF, subject to Utah Code §54-8b-15 and Commission Rules R746-8-401. Upon approval of the requested CPCN, Applicant will file exchange maps and a tariff as required by R746-340-2(E)(1) and (2).

WHEREFORE, E Fiber Moab, LLC respectfully requests that the Utah Public Service Commission issue a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based, switched and dedicated local exchange telecommunications services in the Moab and Thompson exchanges within Grand and San Juan Counties, State of Utah.

Dated this 14th day of April, 2020.

Respectfully submitted,

E FIBER MOAB, LLC



Kira M. Slawson
Blackburn & Stoll, LC
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2020, I served a true and correct copy of E Fiber Moab, LLC's Application for CPCN and Be Designated as Carrier of Last Resort via e-mail transmission to following persons at the e-mail addresses listed below:

Division of Public Utilities

Chris Parker

Brenda Salter

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/s/Kira M. Slawson

LIST OF EXHIBITS

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|------------------|--|
| EXHIBIT A | Certificate of Existence in Utah |
| EXHIBIT B | Managerial and Technical Qualifications |
| EXHIBIT C | Organizational Chart |
| EXHIBIT D | Chart of Accounts |
| EXHIBIT E | Confidential Financial Statements |
| EXHIBIT F | Confidential Proforma Five-Year Projections and Proforma Financial Statements |
| EXHIBIT G | Map of Exchanges Where Applicant Will Deploy Facilities |