

Anderson OCS – 1D

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Consolidated Matter of E Fiber Moab, LLC and E Fiber San Juan, LLC Application for Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and Be Designated as a Carrier of Last Resort in Certain Rural Exchanges) Docket No. 20-2618-01)) Direct Testimony of) Alyson Anderson) On behalf of the) Office of Consumer Services)

PUBLIC REDACTED VERSION

September 25, 2020

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Alyson Anderson. I am a utility analyst for the Office of
3 Consumer Services (Office). My business address is 160 East 300 South,
4 Salt Lake City, Utah.

5

6 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.**

7 A I earned a Bachelor of Business Administration in Accounting from Boise
8 State University. Upon graduation, I worked as an auditor for the Idaho
9 Public Utilities Commission. Prior to joining the Office of Consumer
10 Services, I managed several telecommunications programs and worked
11 as a self-employed consultant in the telecommunications field. I have
12 completed The Basics Practical Regulatory Training course through New
13 Mexico State University, as well as the NARUC Regulatory Studies and
14 Advanced Regulatory Studies programs through Michigan State
15 University. I have previously submitted testimony before the Utah Public
16 Service Commission ("PSC").

17

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 A. I will address the Office of Consumer Services' ("OCS") recommendation
20 regarding the E Fiber Moab, LLC and E Fiber San Juan, LLC ("E Fiber or
21 Applicants") applications for Certificates of Public Convenience and
22 Necessity ("CPCN") and designation as Carriers of last resort ("COLR") to
23 provide public telecommunications services in exchanges currently served

24 by Citizens Telecommunications Company of Utah dba Frontier
25 Communications of Utah (“Frontier”). Frontier is an incumbent telecom
26 and therefore a COLR.

27

28 **Q. PLEASE DESCRIBE WHAT APPROVALS E FIBER SEEKS IN ITS
29 APPLICATIONS.**

30 A. On April 20, 2020, E Fiber filed two applications for CPCNs and
31 designation as COLRs for exchanges currently served by Frontier. E
32 Fiber seeks authority to provide all forms of local exchange
33 telecommunications services as rate of return regulated COLRs with the
34 eligibility to draw on the Utah Universal Telecommunications Service
35 Support Fund (“UUSF”) in the exchanges. E Fiber Moab, LLC proposes
36 to serve as a rate of return regulated COLR in the Moab and Thompson
37 exchanges and E Fiber San Juan, LLC proposes to serve as a rate of
38 return regulated COLR in the La Sal, Monticello, Blanding (excluding the
39 White Mesa community pending Tribal permission), Bluff, and Mexican
40 Hat exchanges (collectively “Exchanges”)

41

42 **Q. WHAT ARE THE REQUIREMENTS FOR A TELECOM COMPETITOR
43 TO OBTAIN A CPCN FOR THE SERVICE TERRITORY OF AN
44 INCUMBENT TELECOM COMPANY?**

45 A. Utah Code §54-8b-2.1 provides for competitive entry in the service
46 territory of an incumbent telephone corporation. Specifically, it states the

47 Commission should issue a CPCN if the applicant can demonstrate
48 “sufficient technical, financial, and managerial resources and abilities to
49 provide the public telecommunications services applied for,” and issuance
50 of the CPCN is in the public interest.

51

52 **Q. DOES E FIBER HAVE THE EXPERTISE AND RESOURCES REQUIRED**
53 **FOR COMPETITIVE ENTRY CPCNS?**

54 A. In my opinion, yes. In the application and testimony, E Fiber has provided
55 support for its technical, financial, and managerial resources. The E Fiber
56 companies are wholly owned subsidiaries of Emery Telecom HC, holding
57 company for the Emery group of telecom companies. I have reviewed the
58 application and exhibits, as well as all discovery in this docket. I
59 specifically reviewed the Report of Independent Auditors and
60 Consolidated Financial Statements of Emery Telcom and Subsidiaries
61 provided with the application. E Fiber is backed by the financial stability of
62 the Emery Telcom companies and has access to adequate capital
63 resources. Likewise, E Fiber will take advantage of the
64 telecommunications technical and management expertise of the Emery
65 Telcom management team. E Fiber has access to the requisite technical
66 and managerial expertise as well as the financial resources for a
67 competitive entry CPCN.

68

69 **Q. HOW DID YOU EVALUATE WHETHER IT WOULD BE IN THE PUBLIC**
70 **INTEREST TO GRANT E FIBER COMPETITVE ENTRY INTO THE**
71 **EXCHANGES?**

72 A. I considered the following:

- 73 • What result best serves the residential and small commercial
74 customers in the exchanges;
- 75 • State telecommunications policy;
- 76 • Concerns of potentially two companies being eligible to draw
77 from the UUSF to serve the same geographic regions;
- 78 • If the application is approved, what will be the obligations to
79 consumers of E Fiber;
- 80 • Whether investments in these Exchanges would be
81 redundant;
- 82 • The current quality of service provided to the residential and
83 small commercial consumers, whom we represent, in the
84 Exchanges at issue; and
- 85 • The impact of COVID 19 on telecom service on those
86 customers.

87

88 **Q. WHAT PRINCIPLE DRIVES THE OCS EVALUATION OF PUBLIC**
89 **INTEREST?**

90 A. The driving principle in this case is what outcome best improves telecom
91 service to areas in the State of Utah where reliable telecom and internet

92 services have been problematic. The OCS considers overall impact on
93 the UUSF, as we represent both the customers who pay into the UUSF
94 and receive benefits from outlays of the UUSF. However, we urge the
95 PSC to keep in mind that supporting telecom companies in providing
96 reliable service in rural and high cost areas of Utah is the very purpose of
97 having a state USF.

98

99 **Q. DOES STATE POLICY SUPPORT THIS APPLICATION AS BEING IN
100 THE PUBLIC INTEREST?**

101 A. Yes. Utah Code §54-8b-1.1 outlines the legislative policy declarations
102 governing Chapter 8b “Public Telecommunications Law” of the Utility
103 Code. These declarations adhere to the underlying tenet of providing high
104 quality, affordable public telecommunications services to all residents and
105 businesses in the state of Utah. The declarations mention competition
106 many times throughout and specifically, §54-8b-1.1 (9) declares that it is
107 the Legislature’s policy to, “enhance the general welfare and encourage
108 the growth of the economy of the state through increased competition in
109 the telecommunications industry.” E Fiber proposes to install “state-of-
110 the-art” fiber facilities in the Exchanges and asserts that such facilities are
111 not presently available in the Exchanges. Customers in the Exchanges
112 would benefit from the upgraded facilities, and improved service that
113 comes with those facilities, consistent with the benefits envisioned in the
114 state policy.

115

116 **Q. PLEASE EXPLAIN HOW EFIBER'S APPLICATIONS LEAD TO**
117 **CONCERNS ABOUT TWO COMPANIES QUALIFYING FOR UUSF TO**
118 **SERVE THE SAME GEOGRAPHIC REGION.**

119 A. As I describe below, approval of the applications would impose
120 requirements on E Fiber as well as qualify them to access the UUSF.
121 Thus, the Commission needs to consider how to address the situation of
122 two companies with the potential to draw UUSF funding to serve the same
123 geographic region.

124

125 **Q. IF THE COMMISSION APPROVES E FIBER'S COMPETITIVE ENTRY**
126 **INTO THE EXCHANGES WHAT OBLIGATIONS TO SERVE WILL E**
127 **FIBER HAVE?**

128 A. Utah Code §54-8b-2.1(4) provides that if the Commission approves
129 competitive entry into exchanges with fewer than 5,000 lines and
130 controlled by an incumbent telecom company with fewer than 30,000
131 lines, the Commission shall impose an obligation on the competitive
132 telecom company to provide public telecommunications services to any
133 customer or class of customers that request service within the exchange.

134 Utah Code §54-8b-15 defines a COLR as an incumbent telephone
135 corporation or competitive entry telecommunications company that has a
136 CPCN pursuant to 54-8b-2.1 and has an obligation to serve any customer
137 or class of customers that request service within the local exchange.

138

139 **Q. WHY IS E FIBER SPECIFICALLY REQUESTING DESIGNATION AS A
140 RATE OF RETURN REGULATED COLR?**141 A. It is my understanding that a non-rate of return regulated COLR is only
142 eligible for a one-time distribution from the UUSF. In contrast, the rate of
143 return regulated COLR is eligible for “predictable” ongoing support from
144 the UUSF. The Exchanges at the heart of this docket are remote rural
145 areas of Utah and therefore generally more expensive to serve. E Fiber
146 has indicated that there is not a “business case” for providing fiber
147 infrastructure to serve the exchanges without the assistance from the
148 UUSF.¹

149

150 **Q. WHAT IS THE PURPOSE OF THE UUSF AND HOW DOES IT RELATE
151 TO THE DEVELOPMENT OF RURAL TELECOM INFRASTRUCTURE?**152 A. Generally, universal service funds are designed to support local exchange
153 telecom companies in providing universal telecom service most often to
154 high cost rural areas at reasonable rates. Likewise, the UUSF provides
155 rate of return regulated COLRs with funds to deploy and manage end-user
156 networks capable of providing telecommunications and wholesale
157 broadband services. A surcharge in an amount determined by the PSC is
158 assessed on telecom services to support the UUSF.

¹ Docket No. 20-2618-01, Direct Testimony Brock Johansen, Lines 57-60.

159

160 **Q. HOW DOES THE OCS PROPOSE THAT THE PSC ADDRESS THE**
161 **ISSUE OF MORE THAN ONE COLR QUALIFYING FOR UUSF IN THE**
162 **SAME SERVICE TESTIMONY?**

163 A. In the OCS's Memorandum In Opposition to Frontier Communication's
164 Rule 56(a) Motion for Partial Summary Judgement filed on August 25,
165 2020 the OCS demonstrated that the PSC will be able to govern this
166 situation by relying on its authority to only authorize UUSF funds for
167 investments that are reasonable².

168

169 **Q. WHAT FACTORS SHOULD BE CONSIDERED IN EVALUATING**
170 **WHETHER INVESTMENTS ARE REASONABLE?**

171 A. I recommend that at least three factors be considered. First, whether the
172 proposed infrastructure is redundant of the current telecom infrastructure
173 in the service territory. Second, a key factor in the redundancy review
174 should be the current service quality in the service territory. A final
175 consideration is the commitment level of the provider to provide telecom
176 service to the service territory.

177

178 **Q. IS E FIBER PROPOSING TO INSTALL REDUNDANT**
179 **INFRASTRUCTURE IN THE EXCHANGES?**

² Docket No. 20-2618-01, The Office of Consumer Services' Memorandum In Opposition to Frontier Communication's Rule 56(a) Motion for Partial Summary Judgement, August 25, 2020, Pages 11-17.

180 A. No. E Fiber is proposing to construct and install new fiber facilities
181 throughout the exchanges.³ The new infrastructure will provide “state-of-
182 the-art voice and broadband internet access service with 1 Gbps
183 broadband speeds to residents and businesses of Grand and San Juan
184 counties.”⁴ This proposal is an upgrade to service and not redundant.

185

186 **Q. AS THE INCUMBENT TELECOM PROVIDER IN THE EXCHANGES, IS**
187 **FRONTIER’S SERVICE QUALITY PERTINENT TO E FIBER’S**
188 **REQUEST IN THIS DOCKET?**

189 A. Yes. If Frontier was providing adequate and reliable service, it would be
190 difficult for E Fiber to argue that it is in the public interest to install
191 duplicative, albeit upgraded infrastructure.

192

193 **Q. HAS FRONTIER PROVIDED RELIABLE AND EFFECTIVE SERVICE TO**
194 **THE RESIDENTS OF GRAND AND SAN JUAN COUNTIES?**

195 A. No, Frontier has had and continues to have a myriad of challenges.
196 During 2019, due to some recent and significant outages beginning in
197 2018, Frontier was the subject of complaint dockets 19-041-01 and 19-
198 041-02, as well as the OCS’s request for agency action docket 19-041-04
199 and the Division of Public Utilities’ (“DPU”) undocketed investigation. This

³ Docket No. 20-2618-01, Direct Testimony Brock Johansen, Lines 322-323.

⁴ Docket No. 20-2618-01, Direct Testimony Brock Johansen, Lines 324-325.

200 appears in large part to be the result of delayed maintenance and a lack of
[REDACTED]
[REDACTED] new investment in the Utah system. ***BEGIN CONFIDENTIAL*** [REDACTED]

203 [REDACTED] ***END

204 **CONFIDENTIAL***** Frontier does not appear to have an investment plan
205 to reliably meet the growing needs in its service territory.

206 In May 2020, Frontier filed with the PSC an Application for
207 Acknowledgement of A Transfer of Control Associated with the Joint
208 Chapter 11 Plan of Reorganization of Frontier Communications
209 Corporation and its Subsidiaries⁶. In light of the bankruptcy filing, Frontier
210 is unlikely to be able to invest in infrastructure upgrades to the extent
211 necessary to improve service quality.

212

213 Q. **WHAT SPECIFIC EVIDENCE SUPPORTS YOUR CONCERNS ABOUT**
214 **FRONTIER'S SERVICE QUALITY?**

215 A. OCS has endeavored to obtain specific data to support or refute this
216 concern through the investigation docket. However, due to Frontier's
217 delays in responses and discovery disputes, collecting data has proven
218 more difficult than expected.⁷ Data provided to date leaves questions as

⁵ Division of Public Utilities Undocketed Investigation, Confidential DPU to Citizen's Data Request Set 1, 06-11-2019.

⁶ Docket No. 20-041-02, Application for Acknowledgement of a Transfer of Control

⁷ As of the writing of this testimony the OCS has not received all outstanding discovery from Frontier and reserves the right to comment on outstanding discovery answers in future testimony.

219 to whether Frontier is in violation of PSC Rule 746-340-5(B)(1) by failing to
220 keep trouble reports from all customer complaints. Moreover, Frontier has
221 been unable to produce adequate descriptions of its inspection and testing
222 programs Commission Rule 746-340-5(C) requires Frontier to file with the
223 PSC.

224 However, the OCS was able to obtain Federal Communications
225 Commission (“FCC”) NORS reports from Frontier. To support its goal of
226 ensuring the security and reliability of the nation’s communications
227 infrastructure, the FCC requires telecom providers to report significant
228 outages via the Network Outage Reporting System (“NORS”). Providers
229 must report disruptions or outages to their communications systems,
230 enhanced 9-1-1 facilities and airports that meet certain thresholds.

231 Attached in OCS Exhibit 1.1 D is a summary of 2015-2020 Frontier’s
232 NORS reports for the Exchanges at issue in this docket. During that time,
233 Frontier reported eleven significant outages or disruptions totaling 162
234 hours just in the Moab and Monticello exchanges.⁸ As a point of
235 comparison, during that same period the Emery group of telecom
236 companies reported one incident totaling four hours of outages or
237 disruptions in their whole service territory, which includes exchanges in
238 Emery, Carbon and Wayne Counties.⁹

⁸ Docket No. 20-2618-01, Frontier’s response to OCS #3.2, 09-16-2020.

⁹ Docket No. 20-2618-01, Applicant’s response to OCS #3.1, 09-23-2020.

239

240 **Q. HOW HAS COVID 19/PANDEMIC AFFECTED THE PUBLIC INTEREST**
241 **FACTOR FOR THE UTAH EXCHANGES?**

242 A. The COVID 19 crisis has highlighted the need for effective and reliable
243 communications and broadband internet access as being more important
244 than ever. One outcome of the pandemic is the rapid adoption of remote
245 learning and work. Our communications systems need to support
246 telemedicine, education, and commerce in all off Utah. Amid social
247 distancing, connectivity is what keeps us informed, educated, employed,
248 healthy and safe. For those without reliable communication services, the
249 economic and social impacts of COVID 19 are magnified. In my opinion,
250 the PSC should endeavor to approve uses of the UUSF that mitigate the
251 digital divide, especially during this public health crisis.

252

253 **Q. IS IT IN THE PUBLIC INTEREST TO DESIGNATE E FIBER A COLR**
254 **AND RATE OF RETURN REGULATED TELECOM COMPANY IN THE**
255 **UTAH EXCHANGES?**

256 A. Yes. E Fiber has already secured federal grants for the unserved and
257 underserved areas surrounding the Exchanges. It is reasonable for E
258 Fiber to also serve the residents of the Exchanges. This creates a unique
259 opportunity to provide state of the art services at reasonable rates to all
260 residents of San Juan and Grand counties. The only concern I have
261 identified relates to having two COLRs eligible to receive UUSF for the

262 same geographic regions. However, the OCS has demonstrated that the
263 PSC has the authority to manage that complication since UUSF-supported
264 investments are limited to those found to be reasonable.

265

266 **Q. WHAT IS YOUR RECOMMENDATION IN THIS DOCKET?**

267 A. E Fiber meets the requirement for sufficient technical, financial, and
268 managerial resources. Further, as described above, it is my opinion that it
269 is in the public interest for the PSC to approve these applications.
270 However, I think it would also be in the public interest for the PSC to
271 provide guidance on how it will review whether investments will be found
272 to be reasonable. Such proactive guidance could both ensure that the
273 UUSF is not inappropriately burdened and prevent construction of
274 duplicate facilities.

275

276 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

277 A. Yes