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| BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH | |
| In the Matter of the 2022 Annual Report of Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah | UTAH RURAL TELECOM ASSOCIATION’S PETITION FOR LEAVE TO FILE COMMENTS AND PETITION TO INTERVENE DOCKET NO. 23-041-01 |

PETITION FOR LEAVE TO FILE COMMENTS AND INTERVENE

The Utah Rural Telecom Association (“URTA”), on behalf of itself and URTA members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, E Fiber Moab, LLC, E Fiber San Juan, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBTA-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URTA Members”) hereby Petition the Utah Public Service Commission (“Commission”) for leave to intervene and file comments in the above referenced docket.

Counsel for URTA, Kira M. Slawson, failed to properly docket and calendar the deadline for filing comments as October 6, 2023, and as a result failed to timely file comments regarding the 2022 Annual Report of Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (“Frontier”) and the Division of Public Utilities’ (“DPU”) USF Recommendation for Frontier. Due to the short interval between the filing deadline and this Petition, granting the Petition for Leave to File Comments and Intervene will not delay the proceedings or prejudice any party in this proceeding.

Counsel for URТА seeks file the comments and Petition to Intervene as set forth below for good cause shown, based on Counsel for URТА’s error in docketing, and based on the fact that the one business day delay after the Commission imposed deadline will not result in delay or prejudice to any party.

URТА COMMENTS AND PETITION TO INTERVENE

The Utah Rural Telecom Association (“URТА”), on behalf of itself and URТА members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, E Fiber Moab, LLC, E Fiber San Juan, LLC, Emery Telephone, Gunnison Telephone Company, Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., UBТА-UBET Communications, Inc. dba Strata Networks, and Union Telephone Company (“Members” or “URТА Members”) hereby files the following Comments in the above referenced docket:

1. URТА is a Utah non-profit corporation. The URТА members are rate of return regulated local exchange carriers of last resort (“COLRs”) providing public telecommunications services in Utah pursuant to certificates of public convenience and necessity (“CPCN”) issued by the Commission. URТА members provide access lines and connections in the State of Utah, and pursuant to Utah Code Section 54-8b-15 and Utah Administrative Code R746-8-401, are typically eligible for disbursements from the Utah Public Telecommunications Service Support Fund (“UUSF”).

2. For the first time in many years, on September 1, 2022, the DPU recommended that Frontier receive a disbursement from the UUSF in the amount of \$3,934,329 annually (the “DPU Recommendation”). The DPU Recommendation was conditioned upon the Company providing previously requested information to the DPU. On September 26, 2023, the DPU submitted an Amended Recommendation (the “DPU’s Amended Recommendation”), recommending a UUSF disbursement of \$3,798,495 annually (the “DPU Recommendation”) and stating that “the DPU recommends the

Commission review the DPUs analysis, including Commission Rule changes and determine if approving the 2024 Utah USF distribution for Frontier . . . is in the public interest.”¹

3. As the Commission is aware, on May 12, 2021, the Commission issued an Amended Order on Review, Rehearing, or Reconsideration, pursuant to which the Commission approved E Fiber Moab, LLC and E Fiber San Juan, LLC (“E Fiber Entities”²) as rate of return regulated COLRs, issued the E Fiber Entities CPCNs; approved the proposed build out plans by the E Fiber Entities; and concluded that neither the E Fiber Entities nor Frontier would be prohibited from seeking disbursements from the UUSF solely because of having overlapping exchange areas, “subject to any future rule amendments.”³

4. In the Amended Order, however, the Commission concluded that it would not be in the public interest for two COLRs to build duplicative networks and the Commission indicated it would open a separate docket to address the modification of existing administrative rules to address UUSF administration with overlapping COLR exchange areas.⁴

5. On June 16, 2021, in Docket No. 21-R008-03, the Commission issued a Notice and Request for Comments, seeking comments on whether it would be necessary to modify the Commission’s existing administrative rules to address the administration of the UUSF distributions to COLRs with overlapping telecommunications service exchanges. Comments were filed by the DPU, the Office of Consumer Services, URTA, and the E Fiber Entities. After review of the comments, the Commission published the proposed Rule R746-349 in the Utah State Bulletin. That rule was effective November 21, 2022. R746-349 addressed the requirements of competitive entry into an area eligible for Utah Public Telecommunications Service Support Fund. R746-349-10 specifically provides, *inter alia*, that in an area where a competitive COLR has been approved by the Commission, the existing COLR will not be entitled to recover capital expenditures for facilities that duplicate any portion of the competitive entrant

¹ See DPU’s Amended Recommendation dated September 25, 2023, p. 3.

² The E Fiber Entities are URTA Members.

³ Amended Order dated May 12, 2021, Docket No. 20-2618-01 (“Amended Order”), Synopsis paragraph, p. 1.

⁴ Amended Order, p. 26, paragraph (3).

without a showing of good cause and a specific finding by the Commission that the existing COLR's proposed expenditures are cost effective and reasonable costs for UUSF support.⁵

6. In the DPU's Amended Recommendation, the DPU stated:

- a. Frontier had been going through bankruptcy for 5 years and was making only minimal repairs to their network;
- b. The Frontier annual reports indicated that rate base was mostly depreciated and there were very few new assets added to base a return on;
- c. In 2022, the company invested more than \$7 Million in new assets (mostly fiber) to the network, consequently the total average rate based increased to \$13.3 million.

7. In light of the DPU's comments that Frontier has made only minimum repairs to their network over the past 5 years, and that their rate base was "mostly depreciated", the URТА members are concerned that an investment of \$7MM in assets could result in an annual UUSF disbursement of \$3,798,495.

8. Additionally, there is no indication in the DPU Recommendation where the new facilities were added by Frontier, or whether they were duplicative of the E Fiber Entities facilities which were previously approved for construction in Dockets 20-2618-01 and 20-2619-01 (and thus not eligible for inclusion in the UUSF calculation). Based on the comments of the DPU in the DPU Recommendation, it does not appear that the DPU analyzed Frontier's 2022 Annual Report in the context of R746-349-10.

9. The URТА members are concerned that the DPU Recommendation has not been scrutinized in the context of R746-349-10 or the public interest. The URТА members, as rate of return regulated COLRs, request to be permitted to file these Comments and intervene in this Docket to ensure that the process set forth in R746-349-10 is implemented and evaluated.

⁵ R746-349-10(9)(iv).

10. As a result, pursuant to Utah Admin. Rule R746-1-108, and in compliance with Utah Code Section 63G-4-207, URTA seeks to intervene in this proceeding for the purpose of protecting its members' interests, as they may appear, as contributors to, and recipients of, the UUSF.

11. The interests of justice and the orderly and prompt consideration of this proceeding will not be materially impaired by allowing URTA to file these comments and intervene. As demonstrated above, URTA is filing these comments and petition one business day after the comment filing deadline due to counsel's error, but the one business day delay in filing will not delay the proceedings.

12. URTA requests that copies of all notices, pleadings, filings, correspondence and discovery requests and responses in this docket be served on:

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NOW THEREFORE, URTA respectfully requests that the Commission enter an Order granting URTA's Petition for Leave to File Comments and to Intervene in this docket, allowing URTA to participate to the fullest extent allowed by law.

DATED this 9th day of October, 2023.

BLACKBURN & STOLL, LC



Kira M. Slawson
Attorneys for Utah Rural Telecom Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of URTA's Petition for Leave to File Comments and Petition to Intervene, Docket 23-041-01, was served the 9th day of October, 2023 as follows:

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Kira M. Slawson