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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: Administration of Utah Universal Service Fund Distributions to Carriers of Last Resort with Overlapping Telecommunications Service Exchanges	COMMENTS OF E FIBER SAN JUAN, LLC AND E FIBER MOAB, LLC Docket 21-R008-03
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E Fiber San Juan, LLC (“EFSJ”) and E Fiber Moab, LLC (“EFM”) (collectively “E Fiber”) appreciate the opportunity to file comments in response to the Notice of Comment Period issued June 16, 2021 (“Notice”) by the Utah Public Service Commission (the “Commission”) in Docket No. 21-R008-03.

I. INTRODUCTION AND BACKGROUND

In the Notice, the Commission seeks Comments on whether it is necessary to modify existing administrative rules to address the administration of the Utah Universal Service Fund (“UUSF”) distributions to carriers of last resort (“COLRs”) with overlapping telecommunications service exchanges. E Fiber believes that the existing statute (Utah Code 54-8b-15), and existing administrative rules (R746-8-401) permit the Commission to appropriately administer the UUSF to COLRs with overlapping local exchanges on a case-by-case basis so that no rule change is needed – particularly in the context of the E Fiber applications for CPCN and the Commission’s granting competitive entry to E Fiber.

However, to the extent the Commission wants to proactively amend its rules to specifically address the administration of the UUSF amongst competing COLRs, E Fiber joins in the Comments filed by the Utah Rural Telecom Association.

II. ANALYSIS OF EXISTING STATUTES AND RULES

E Fiber does not believe a rule change is required to permit the Commission to adequately and fairly administer the UUSF in areas that have competing COLRs.

A. Utah Code §54-8b-2.1 (the Competitive Entry Statute”)

Utah Code §54-8b-2.1 contemplates the possibility of competition in rural exchanges of fewer than 5,000 access lines that are controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state. The Competitive Entry Statute provides that the Commission “may issue a certificate to a telecommunications corporation authorizing it to compete in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation,” provided the applicant has sufficient technical, financial, and managerial resources to provide the telecommunications services, and the Commission finds that granting competitive entry is in the public interest¹

The Competitive Entry statute provides that each telecommunications corporation holding a certificate to provide public telecommunications services within the geographic area where an applicant is seeking competitive entry shall be provided notice of the application, and granted automatic intervenor status.² Moreover, an intervening incumbent serving fewer than 30,000 access lines in the state may petition the Commission to exclude any local exchange with

¹ U. C.A. §54-8b-2.1(1).

² U.C.A. §54-8b-2.1(2)(b).

fewer than 5,000 access lines.³ If the Commission finds it is in the public interest, the Commission shall exclude such local exchange.⁴ If the Commission issues a certificate granting competitive entry in a local exchange with fewer than 5,000 access lines that is controlled by an incumbent with fewer than 30,000 access lines in the state, the Commission is required, by statute, to impose upon the competitive entrant, an obligation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange. Notably, the competitor's obligation to serve shall be no greater than that of the incumbent provider. Pursuant to the Competitive Entry statute, the Commission is permitted to grant competitive entry in small rural exchanges so long as there is a finding of public interest, and the competitor had adequate resources to provide the service.

B. Utah Administrative Code, R746-349-3

Commission rules on competitive entry are found in R746-349. The Commission's existing rules set forth the requirements of an application for competitive entry. The Commission's existing rules require evidence (testimony and exhibits) to support the applicant's technical, financial, and managerial qualification to provide public telecommunications services.⁵ The rules also require statement and/evidence from the applicant as to, *inter alia*:

- Whether the application intends to construct its own facilities or acquire use of facilities from incumbent or another provider;
- A statement of the service to be offered; which classes of customers will be served; the locations where the applicant intends to provide service; and the types of services to be

³ U.C.A. §54-8b-2.1(2)(c).

⁴ *Id.*

⁵ R746-349-3(2).

provided;

- Implementation, including the dates local exchange service for residential service and business customers will begin;
- Detailed map of proposed locations;
- Technical description of types of technology and facilities;
- Financial information including financial statements, demonstration of sufficient projected and verifiable cash flow; 5-year pro-forma; and
- Statement of public interest.

In other words, the existing rules already require the applicant to provide all the data needed for the Commission to determine whether the statutory requirement of Utah Code §54-8b-2.1 have been met. No amendment to the existing rules is needed to enable the Commission to grant competitive entry to a competing COLR.

While the E Fiber docket raised novel issues of competitive entry by seeking competitive entry as a competing COLR, the elements for competitive entry are the same whether an applicant is seeking entry as a competitive carrier, or as a competitive COLR. Utah Code §54-8b-2.1 sets forth the requirements for competitive entry and R746-349-3 sets forth the filing requirement rules. The E Fiber Applications, Testimony, and Exhibits included the necessary information and the Commission granted the CPCN. To the extent the Commission wants to require specific build out milestones or requirements, it can require E Fiber to meet with the Division on such issues and report to the Commission without any formal modification to the rules.

C. Utah Code §54-8b-15 (the “UUSF Statute”)

The statutory requirements related to the administration of the UUSF are contained in Utah

Code §54-8b-15 (the “UUSF Statute”). Other than for Lifeline support, only COLRs are entitled to disbursement of funds from the UUSF.⁶ Specifically, Utah Code §54-8b-2(b) provides that “the [UUSF] fund shall provide a mechanism for qualifying COLRs to obtain, specific, predictable, and sufficient funds to deploy and manage” networks capable of providing access lines, connections, and wholesale broadband internet access service. In particular, when the Commission is addressing the administration of the UUSF for COLRs in overlapping exchange areas, the relevant statute is Utah Code §54-8b-15(4)(a) which provides:

(4) (a) A rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund if:

- (i) the rate-of-return regulated carrier of last resort provides the services described in Subsections (3)(c)(i) through (iii); and*
- (ii) the rate-of-return regulated carrier of last resort's reasonable costs, as determined by the commission, to provide public telecommunications service and wholesale broadband Internet access service are greater than the sum of:*
 - (A) the rate-of-return regulated carrier of last resort's revenue from basic residential service considered affordable by the commission;*
 - (B) the rate-of-return regulated carrier of last resort's regulated revenue derived from providing other public telecommunications service;*
 - (C) the rate-of-return regulated carrier of last resort's revenue from rates approved by the Federal Communications Commission for wholesale broadband Internet access service; and*
 - (D) the amount the rate-of-return regulated carrier of last resort receives from federal universal service funds.*

⁶ U.C.A. §54-8b-15(2)(b).

The UUSF Statute requires the Commission to consider and determine, the rate-of-return regulated COLR's "reasonable costs" of providing public telecommunications services. Only those costs that are determined by the Commission to be reasonable are permitted to be included in the UUSF calculation. As a result, under the existing statutory regime, the Commission is required to review a carrier's costs, and determine they are reasonable, before those costs will be eligible for UUSF reimbursement.

In the case where the Commission approves a competitive COLR in a local exchange, the Commission is still required to review and establish both carriers' reasonable costs to provide telecommunications services. When the Commission approves a competing COLR, the competing COLR will have submitted an application consistent with R746-349-3, which includes, *inter alia*, a statement of the services to be offered; the classes of customers to be served; the locations where the competitor intends to provide service; the types of service to be offered; a five year projection of expected operations; an implementation schedule including the date service is expected to be provided; detailed maps of proposed locations of service; and technical descriptions of the facilities and services to be offered. At the time of approval, the Commission has considered all the information contained in the application, testimony, and exhibits, and has determined that the facilities proposed to be built and the services proposed to be offered, by the competitor are in the public interest. Essentially, the Commission, by granting the competitive entry, has evaluated the existing facilities in the area, the proposed facilities, and services to be offered by the competitor, and is making a determination that it is in the public interest for the competitor to build those facilities and provide those services.

As the facilities are constructed and the services are being provided, the competitor will

file an annual report with the Commission. The Division of Public Utilities will review the Annual Reports, conduct audits as necessary, and make recommendations to the Commission about the reasonableness of the COLR's costs to be included in the UUSF calculation. This entire process is already established in statute and Commission rules.

When an applicant seeks COLR competitive entry pursuant to Utah Code §54-8b-2.1, the applicant must fulfill the requirements of R746-349-3, including demonstrating how it will meet its COLR obligations to all customers or classes of customers who request service. If the Commission ultimately approves the granting of the application, it does so after considering the reasonableness of the competitive entrant's demonstrated build out plan.

With regard to the specific E Fiber competitive entry, the Commission has approved E Fibers' competitive entry and found that it is in the public interest; and in doing so has taken into account the build out proposed by E Fiber to all customers in the exchanges proposed by E Fiber. The Commission in its Order in Docket 20-2618-01 dated May 12, 2021 (the "Order") specifically discussed the needed infrastructure to be provided by E Fiber's build out. In fact, as the Commission is aware F Fiber's approved build out is the only means by which E Fiber can satisfy its COLR obligations. Therefore, all *reasonable* costs associated with E Fiber's build out will be eligible for UUSF disbursement once construction is completed. To the extent Frontier wants to invest in upgraded or expanded facilities, it is on notice, pursuant to the Commission's Order, that costs incurred by Frontier, associated with building duplicate facilities, are unlikely to be reasonable. Specifically, the Commission on approving E Fiber's competitive entry and build out stated, "We conclude, though, that it would not be in the public interest for two COLRs to

build duplicative networks.”⁷ The competitive entry application process for competitive COLRs is workable within the existing statute and rules. No modification of the existing rules is required for the proper administration of the UUSF. However, as indicated above, to the extent the Commission wants to proactively amend its rules to specifically address the administration of the UUSF amongst competing COLRs, E Fiber hereby joins in the Comments filed by the Utah Rural Telecom Association.

III. TWO COLRS ARE UNLIKELY TO SEEK REIMBURSEMENT FOR OVERLAPPING EQUIVALENT FACILITIES

It is extremely unlikely that competing COLRs will seek reimbursement from the UUSF for duplicate facilities in the same local exchange. If the incumbent carrier is engaged in maintaining upgraded and state of the art facilities, it is unlikely that the competitive entry of a competitive COLR will be in the public interest. If an incumbent is not engaged in maintaining upgraded facilities so that competitive entry is in the public interest, it is extremely unlikely that the incumbent will make the investment in its facilities after a competitor has been granted entry. Therefore, it makes little sense to engage in a timely and expensive rulemaking process for a potentiality that may never come to pass – particularly where the existing rules are adequate for the proper administration of the UUSF.

V. CONCLUSION

As indicated above, E Fiber does not believe amendment of the existing rules is necessary for the Commission’s proper administration of the UUSF in local exchanges with competing COLRs. The existing statutory framework and existing administrative rules are

⁷ Order on Review, Reconsideration, or Rehearing dated May 10, 2021, p. 25.

sufficient to permit the Commission to properly administer the UUSF in the unlikely event that two COLRs in a local exchange both seek UUSF disbursements for deploying overlapping equivalent technology. E Fiber appreciates the ability to participate in this docket.

Dated this 2nd day of August, 2021.

Respectfully submitted,

E FIBER MOAB, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2021, I served a true and correct copy of E Fiber's Comments in the Matter of Administration of Utah Universal Service Fund Distributions to Carriers of Last Resort with Overlapping Telecommunications Service Exchanges, Docket 21-R008-03, via e-mail transmission to following persons at the e-mail addresses listed below:

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