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## State of Utah

### Department of Commerce Division of Public Utilities

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## Action Request Response

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

Brenda Salter, Utility Technical Consultant Supervisor

Ron Slusher, Utility Technical Consultant

**Date:** May 12, 2020

**Re:** **Docket No. 20-2618-01**, In the Matter of the Application of E Fiber Moab, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange Telecommunications Service in the Moab and Thompson exchanges in the State of Utah and be designated as a Carrier of Last Resort in those exchanges.

### Recommendation (Approval)

The Division of Public Utilities (“Division”) has reviewed the technical, managerial, and financial abilities of the E Fiber Moab, LLC and has found that it has provided the necessary information to fulfill the requirements as stated in the existing Public Service Commission (“Commission”) rules. The public interest will be promoted by better quality service being provided to the Moab and Thomson exchanges. The Division therefore recommends that the Commission grant E Fiber Moab, LLC a Certificate of Public Convenience and Necessity (“CPCN”) to serve in the Moab and Thompson exchanges in the State of Utah and be designated as a Carrier of Last Resort in those exchanges.

The Division also recommends that the \$100,000 bond be waived on the basis that the Applicant will not require customer deposits or prepayments of any kind.

## **Discussion**

On or about April 20, 2020, E Fiber Moab, LLC (“E Fiber or Applicant”) filed an application for a CPCN and carrier of last resort in the Moab and Thompson exchange areas. The Division reviewed the application and found the following:

E Fiber Moab, LLC is a registered corporation within the State of Utah; with its corporate headquarters located at 429 East State Road 29, Orangeville, UT 84537.

The 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 in the Moab and Thompson exchange areas.

Applicant anticipates using its own facilities and/or utilizing facilities and network from its affiliates Emery Telecommunications & Video, Inc. and Emery Telcom Video, LLC to provide local exchange services while it builds out its fiber network in the local exchanges.

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.

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.

Summaries of professional experience and education of its managerial personnel demonstrate that the Applicant has considerable experience in the telecommunications industry.

Applicant is a newly formed start-up company that is a subsidiary of Emery Telephone. It has access to financing and capital necessary to provide public telecommunications services in the

exchange requested. According to financial statements attested to be accurate, objective and with integrity by Brock Johansen, CEO, of E Fiber Moab, LLC the Applicant has a positive net worth and has ample working capital.

The Applicant requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.

E Fiber Moab, LLC is not currently certificated in any other jurisdiction. The Applicant states that its parent company has never been denied requested certification in any jurisdiction, nor has either had a permit, license, or certificate revoked by any authority.

The Applicant states that 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.

The Applicant asserts that approval of its 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. 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 highspeed broadband and state-of-the-art carrier-grade voiceover internet protocol telephone service to customers in these exchanges.

The Division has concerns about the potential for two rate-of-return regulated providers serving the same territory and seeking UUSF funds for duplicate services. However, the incumbent is not receiving UUSF funds and has not demonstrated a commitment to providing adequate service quality or to upgrade or modernize its facilities. The proposed buildout of the fiber network will likely result in significant expenses in excess of revenues. Therefore, approving the application for a CPCN and imposing carrier of last resort obligations on E Fiber Moab will likely result in eligibility for UUSF funds. It may be appropriate to evaluate the prudence of overlapping investments in the future when determining eligibility for UUSF funds if such a scenario arises.

Based on the available information the Division has at this time, it recommends that the public convenience and necessity 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.

Cc: Brock Johansen, CEO, E Fiber Moab, LLC.  
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Justin Jetter, Assistant Attorney General, State of Utah  
Office of Consumer Services, State of Utah