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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matters of:</p> <p>The Application of E Fiber Moab, LLC for a 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</p> <p>The Application of E Fiber San Juan, LLC for a 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</p>	<p>Docket 20-2618-01</p> <p>Docket 20-2619-01</p> <p>COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION</p>
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The Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Beehive Telephone Company, Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, 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, appreciate the opportunity to file comments in response to the Applications for CPCN filed by E San Juan, LLC (“E Fiber San Juan”) and E Fiber Moab, LLC (“E Fiber Moab”) (collectively the “E Fiber

Companies” or “Applicants”).

I. BACKGROUND

On April 14, 2020, the E Fiber Companies filed Applications for Certificate of Public Convenience and Necessity (“CPCN”), and for rate-of-return carrier of last resort (“COLR”) status in several small rural exchanges in San Juan and Grand County, Utah pursuant Utah Code §54-8b-2.1 and Utah Public Service Commission’s Rules of Practice and Procedure, Utah Admin. Code §§ 746-100 *et seq.* (the “Applications”). Through the Applications, the E Fiber Companies are seeking authority to operate as a providers of facilities-based local exchange telecommunications service in the Thompson, Moab, La Sal, Monticello, Blanding,¹ Bluff, and Mexican Hat exchanges in the State of Utah (the “Exchanges”). Each of the Exchanges currently has fewer than 5,000 access lines that are owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state (“Small Rural Exchanges”).² Pursuant to Utah Code §54-8b-2.1(4), if the Utah Public Service Commission (“Commission”) issues the requested CPCNs, the Commission is required to impose upon the Applicants an obligation to serve every customer or class of customer that requests service in the Exchanges.³

Historically, while some applicants have initially sought competitive authority statewide, URTA and its members have resisted the granting of CPCNs in Small Rural Exchanges where the URTA members are the incumbent local exchange carrier of last resort, and have sought to exclude such Small Rural Exchanges from applicants’ CPCN. In each instance, where URTA

¹ E Fiber San Juan is seeking authority to provide service in the Blanding exchange excluding the White Mesa community where E Fiber San Juan does not have the requisite permission from the Ute Mountain Ute Tribe Reservation (“Tribe”) at this time.

² Citizens Telecommunications Company of Utah dba Frontier Communications of Utah (“Frontier”) is the incumbent carrier of last resort in the Exchanges where Applicants seek authority to provide competitive service.

³ The Applicants, acknowledging this fact, have applied to be carriers of last resort in the Exchanges, and have committed to providing service to each customer or class of customers in the Exchanges who requests it.

has raised these objections, the competitive applicant has amended its application to exclude such Small Rural Exchanges from their CPCN. The driving factor behind URTA's members objections to granting a CPCN in the Small Rural Exchanges owned or operated by URTA members is that these areas, and the carriers serving these areas, have historically received distributions from the Utah Universal Public Telecommunications Services Support Fund ("UUSF"), and allowing a competitor into such areas would have a negative impact on the UUSF and would, therefore, not be in the public interest.

Before granting an application for competitive CPCN, Utah Code §54-8b-2.1 requires that the Commission determine that the issuance of a competitive CPCN to the applicant is in the public interest. The statute does not offer any guidance on the factors that should be considered in a public interest inquiry. URTA and its members believe the Commission should take this opportunity to identify factors that should be considered in a public interest inquiry regarding competitive entry. Additionally, because the E Fiber Companies are seeking carrier of last resort status, and have indicated that they will seek UUSF support to build the fiber facilities in the Exchanges, URTA believes the Commission should clarify that only one COLR should be entitled to UUSF in each area.

II. COMMENTS

A. **The Commission Should Identify Factors to be Considered in a Public Interest Inquiry Related to Competitive Entry.**

Utah Code §54-8b-2.1(2) establishes a two-part test for issuance of a CPCN to a competitive applicant:

The commission shall issue a certificate to the applying telecommunications corporation if the commission determines that: (a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and (b) the issuance of the certificate to the applicant is in the public interest.

URTA has no concerns with the first part of this two-part test. URTA and its members believe that the E Fiber Companies have sufficient technical, financial and managerial resources and abilities to provide the public telecommunications services applied for. The Commission's inquiry should focus on whether granting the Applications sought by the E Fiber Companies is in the public interest.

In the case of Small Rural Exchanges, under Utah Code §54-8b-2.1(3) an incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the Commission to exclude from any application for CPCN, any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. "Upon finding that such action is consistent with the public interest, the Commission shall order that the application exclude such [Small Rural Exchanges]."⁴ Thus, before the Commission will exclude a Small Rural Exchange from an application for CPCN, it must find that it is in the public interest to do so.

Utah Code §54-8b-1.1 sets forth certain policy declarations regarding telecommunications in Utah:

The Legislature declares it is the policy of the state to:

- (1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11;
- (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;

⁴ U.C.A. §54-8b-2.1(3)(c).

- (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;
- (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops;
- (5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;
- (6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;
- (7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;
- (8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;
- (9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and
- (10) endeavor to protect customers who do not have competitive choice.

These policy declarations are not the public interest test. Rather, these policy declarations can guide the Commission in developing a list of factors that the Commission should consider when engaging in a public interest inquiry. Ultimately, the Commission's public interest inquiry should focus on the set of criteria applied to the particular circumstances of each application.

URTA and its members believe that when engaging in a public interest inquiry related to competitive entry into Small Rural Exchanges, if the incumbent seeks to exclude a Small Rural Exchange pursuant to Utah Code §54-8b-2.1(3), the Commission should look at the following public interest factors:

1. Whether the incumbent is receiving or has received state UUSF in the past 5 years;
2. Whether the competitive applicant is planning to serve all the exchanges of the incumbent in the state;
3. Whether the incumbent has invested in the efficient development and deployment of advanced telecommunications infrastructure and facilities in the Small Rural Exchange(s) where competitive entry is sought;
4. Whether the incumbent is providing high quality, affordable public

- telecommunications services to all residents and businesses in the Small Rural Exchange(s) where competitive entry is sought;
5. Whether the incumbent is in compliance with the Service Qualities for Telecommunications Corporation Rules, Utah Admin. Code R746-340-4 through R746-340-5, and R746-340-7;
 6. Whether there are material unresolved service complaints filed against the incumbent in the Small Rural Exchange where competitive entry is sought.
 7. Whether the incumbent has a reasonable plan for providing high quality telecommunications services.
 8. Whether the competitive applicant is seeking to invest in the efficient development and deployment of advanced telecommunications infrastructure and facilities equal to or better than the infrastructure and facilities of the incumbent in the Small Rural Exchanges where competitive entry is sought;
 9. Whether the competitive applicant will provide high quality, affordable public telecommunications services to all residents and businesses in the Small Rural Exchange where competitive entry is sought;
 10. Whether the competitive entry is seeking UUSF support to construct the facilities and provide the services, and if so, is the support sought reasonable and necessary to provide high quality telecommunications services

The Commission should examine each of these factors in the context of these particular Applications. Certainly, no one factor is determinative of whether competitive entry into a Small Rural Exchange is in the public interest. Rather, the regulators should weigh each of the factors to determine whether the balance tips in favor of competitive entry:

1. Is Frontier receiving State UUSF or has it received State UUSF support in the last five years? Frontier is not receiving and UUSF in the State of Utah and has not sought or received any UUSF in Utah since 2007. Therefore, any concerns about negative affects to the UUSF resulting from permitting competition in a Small Rural Exchange are not applicable in this case.

2. Are the E Fiber Companies planning to serve all of Frontier's exchanges in Utah? The E Fiber Companies are seeking to serve all of Frontier's exchanges in San Juan and Grand Counties. The E Fiber Companies will not serve any Frontier exchange outside of Grand

or San Juan County.

3. Has Frontier invested in the efficient development and deployment of advanced telecommunications infrastructure and facilities in the Exchanges where the E Fiber Companies seek to provide service? Because the San Juan and Grand County exchanges are small remote rural exchanges one would expect significant investment into upgrading and extending facilities would be expensive and would likely not be covered by customer revenues. Therefore, if Frontier had continued to making investment in these areas and throughout the state, it would likely have been entitled to state UUSF support. The fact that Frontier has not received UUSF support since 2007 is likely evidence that it has not made the required investment to deploy advanced telecommunications infrastructure and facilities. Additionally, according to a Status Report of the Division of Public Utilities (“DPU”) filed in Docket No. 19-041-04, the DPU indicated that it has observed, through annual reports filed with the DPU, that in recent years Frontier has reported declining levels of annual capital investment.⁵ The declining levels of annual capital investment and the increase in service complaints against Frontier led the DPU to initiate an investigation into Frontier’s service quality. Finally, the DPU, in its Response to the Action Request filed in Docket 20-2618-01 (“DPU Response”), indicated “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.”⁶

4. Is Frontier providing high quality, affordable public telecommunications services to all residents and businesses in the Exchanges? As indicated above, the DPU in recommending approval of the Applications, has stated that Frontier has not demonstrated a

⁵ See DPU Status Report, Docket No. 19-041-04, p. 2.

⁶ See DPU Action Request Response, Docket No. 20-2618-01, p. 4.

commitment to providing adequate service quality or to upgrade or modernize its facilities. Additionally, numerous customer complaints have been filed against Frontier, the DPU has launched an investigation, and the Office of Consumer Services has requested agency action against Frontier.

5. Is Frontier in compliance with the Service Qualities for Telecommunications Corporation Rules, Utah Admin. Code R746-340-4 through R746-340-5, and R746-340-7?

This issue is currently being investigated by the DPU and is the subject of Docket 19-041-01. Under Utah Admin. Code R746-8-401(1)(b), a carrier of last resort must be in compliance with Commission orders and rules to be eligible for UUSF support.

6. Have there been material unresolved service complaints filed against the incumbent in the Small Rural Exchange where competitive entry is sought? There are currently formal service claims pending against Frontier in the Grand County exchange. The Commission should consider the merit of service complaint claims when determining whether the competitive entry of the Applicants is in the public interest.

7. Whether the incumbent has a reasonable plan for providing high quality telecommunications services? Utah Code §54-8b-2.1 provides the incumbent the opportunity to demonstrate why competitive entry into a Small Rural Exchange is not in the public interest. As part of this demonstration, the incumbent should be prepared to demonstrate its plan for ensuring high quality service and deployment of advanced telecommunications infrastructure and facilities in the Small Rural Exchanges. If that plan includes UUSF support, the incumbent should be prepared to demonstrate a reasonable estimate of the amount of UUSF needed and demonstrate that the advanced telecommunications infrastructure and facilities that will be deployed by the

incumbent will be technologically equal to or better than those proposed to be deployed by the competitive applicant. This will enable the Commission to effectively determine which carrier of last resort will be entitled to UUSF support in the Small Rural Exchanges. When looking at “equal to or better” technology for wholesale broadband internet access, the Commission should consider latency, broadband speeds, and reliability.

8. Are the E Fiber Companies seeking to invest in the efficient development and deployment of advanced telecommunications infrastructure and facilities that are technologically equal to or better than the incumbent in the Small Rural Exchanges where competitive entry is sought? In these Applications, the Applicants have provided a Five-Year Proforma which demonstrates deployment of fiber facilities throughout the Exchanges. The Commission should consider whether the facilities proposed to be installed by the Applicants are equal to or better than those of the incumbent.

9. Will the E Fiber Companies provide high quality, affordable public telecommunications services to all residents and businesses in the Small Rural Exchange where competitive entry is sought? In these Applications, the Applicants have specifically committed to provide high quality public telecommunications services utilizing fiber optic facilities to all residents and business in the Small Rural Exchanges, subject to line extension tariffs.

10. Are the Applicants seeking UUSF support to construct the facilities and provide the services, and if so, is the UUSF support reasonable and necessary to provide high quality telecommunications services? The Applicants are seeking UUSF support to construct the facilities and provide the high-quality telecommunications services in the San Juan

and Grand County exchanges. Therefore, the Commission should determine whether the estimate of UUSF support provided by the Applicants is reasonable and in the public interest. In making this determination, the Commission should consider the topography, the density, and the proposed technological improvement to services. With regard to wholesale broadband internet access service, the Commission should review the latency, broadband speeds, and reliability proposed by the Applicants as compared to that of the incumbent. In these Applications, the DPU has reviewed the Applicants' Five Year Proforma Projections and has recommended approval of the Applications. Therefore, while URTA has not reviewed the confidential financial exhibits, the recommendation of the DPU appears to indicate that the estimated UUSF is reasonable and in the public interest given the infrastructure and facilities to be installed.

Under Utah law, the Commission is required to determine whether the granting of a competitive CPCN is in the public interest. By identifying the above public interest factors, the Commission can provide a framework for determining whether competitive entry into an area is in the public interest based on the circumstances in each Small Rural Exchange. While no one factor will be dispositive, identifying the various public interest factors provides regulatory certainty and predictability and allows companies seeking competitive entry to weigh such factors before making application. This will result in a more efficient use of regulatory resources. It also provides a framework that incumbent carriers can use to ensure they are making appropriate investment in their infrastructure and facilities and providing high quality, advanced telecommunications services to their customers. This regulatory certainty benefits all Utah telecommunications customers.

Finally, as demonstrated in the section below, public interest requires that only one COLR be eligible for UUSF support in any given area. Analysis of these public interest factors permits the Commission to determine which COLR should be eligible for UUSF support if the Commission grants an application for competitive entry.

B. The Commission Should Clarify that Only One Carrier of Last Resort Should Receive UUSF Support in Each Exchange.

The Applicants have indicated, in their Applications, that the buildout of the fiber networks they are proposing will likely result in expense in excess of revenues, thereby entitling the Applicants to UUSF support as carriers of last resort pursuant to Utah Code §54-8b-15, and Utah Admin. Code R746-8-401. The DPU Response indicates that the DPU has concerns about the potential for two rate-of-return regulated providers serving the same territory and seeking UUSF funds for duplicate services. URTA shares those concerns because it is inefficient for the UUSF to be used to fund duplicate networks in the same area. The Small Rural Exchanges have historically been high-cost areas to serve because of their remote nature and the sparse population density in the areas. It is not a judicious or efficient use of UUSF funds to support duplicate networks in a high-cost, sparsely populated area.

In the context of these Applications, as the DPU points out, the incumbent, Frontier, is not receiving UUSF support in Utah and has not demonstrated a commitment to provide adequate service quality or to upgrade or modernize its facilities, so, currently, the provision of UUSF support to overlapping carriers is not an issue in these Dockets. However, URTA believes it would be prudent, and in the public interest, for the Commission to permit only one carrier of last resort to receive UUSF support in overlapping service areas.

Therefore, when considering an application for competitive entry in a Small Rural

Exchange, if the Commission approves a competitive entry application into a Small Rural Exchange, the Commission should indicate in its order approving competitive entry, whether the incumbent COLR or the competitive COLR will be eligible to receive UUSF for facilities constructed and operated in such area.

III. CONCLUSION

URTA and its members believe the Commission should take this opportunity to identify factors that should be considered in a public interest inquiry regarding competitive entry. URTA has identified several factors which it believes should be included in the public interest inquiry. URTA and its members do not object to these Applications if the Commission adopts and considers the public interest factors identified in these Comments. Additionally, URTA believes that when considering an application for competitive entry into a Small Rural Exchange, the Commission should establish that only one COLR will be eligible to receive UUSF in any overlapping service area, and determine whether that COLR will be the applicant or the incumbent based on the information provided by each party in the proceeding. URTA appreciates the opportunity to provide these Comments.

Dated this 20th day of May, 2020.

Respectfully submitted,

UTAH RURAL TELECOM ASSOCIATION



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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2020, I served a true and correct copy of URTA's Comments in the Matter of E Fiber San Juan, LLC's Application for CPCN and E Fiber Moab, LLC's Application for CPCN via e-mail transmission to following persons at the e-mail addresses listed below:

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