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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 20-2618-01
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COMMENTS OF FRONTIER COMMUNICATIONS

Citizens Telecommunications Company of Utah d/b/a Frontier Communications (“Frontier”) hereby submits these Comments in response to the Application of E Fiber Moab, LLC (“E Fiber”) seeking a Certificate of Public Convenience and Necessity (“CPCN”), to be designated as a Carrier of Last Resort in the Thompson and Moab exchanges, and for other relief.

BACKGROUND

Frontier

Frontier, a wholly-owned subsidiary of Frontier Communications Corporation, is a Utah wired telecommunications carrier with its principal place of business located at 40 W 100 North, Tremonton, UT 84337-1408. Frontier is an incumbent local exchange carrier (“ILEC”) authorized to provide local exchange service in Utah pursuant to a CPCN acquired after its formation in 1993. *See* Docket No. 93-041-01. It furnishes services in 24 exchanges in rural areas of northern, central, and southeastern Utah, with approximately 8,892 residential and commercial access lines in Utah. Frontier furnishes local exchange services and is the carrier of last resort in the Thompson and Moab exchanges at issue in this docket. As of the end of 2019, Frontier had 238 access lines in the Thompson exchange and 2,029 access lines in the Moab exchange. Because Frontier holds a certificate to provide public telecommunications service within these exchanges, it is granted automatic status as an intervenor in this docket. *See* Utah Code § 54-8b-2.1(3)(b).

Frontier requests that notices regarding this docket be sent to the following:

By email (preferred)

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E Fiber

E Fiber is a newly-formed limited liability company that seeks a CPCN to construct, install, and operate fiber facilities to provide telecommunications services in the Thompson and Moab exchanges. E Fiber is a wholly-owned subsidiary of Emery Telecom HC, Inc., which itself is a wholly owned subsidiary of Emery Telephone (“Emery Telephone”), which provides local exchange services in Emery County, Utah. E Fiber is also an affiliate of Emery Telecommunications & Video, Inc. (“ET&V”) and Emery Telecom Video, LLC. These affiliates, which are not regulated by the Commission, acquired coaxial cable facilities in Grand County approximately 10 years ago. E Fiber proposes to utilize facilities of these unregulated affiliates to provide local exchange services in the exchanges while it builds out its fiber network.

In addition to its request for a CPCN, E Fiber also requests that it be designated as a rate-of-return regulated carrier of last resort in the exchanges and, in connection, seeks approval to receive disbursements from the Utah Public Telecommunications Service Support Fund (“UUSF”). With respect to these requests, Frontier comments as follows:

COMMENTS

A. E Fiber’s Request for a CPCN

E Fiber’s application for a CPCN is governed by Utah Code § 54-8b-2.1, which empowers the commission to “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.” Utah Code § 54-8b-2.1(1). The Commission may issue a certificate permitting competitive entry if “(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.” *Id.* § 54-8b-2.1(2).

When a party applies for authorization to compete in an exchange with fewer than 5,000 access lines, “[a]n incumbent telephone corporation serving fewer than 30,000 access lines in the state,” such as Frontier, “may petition the commission to exclude” that exchange from the application. *Id.* § 54-8b-2.1(3)(c). If the Commission finds that excluding the local exchange from the application is in the public interest, it “shall order that the application exclude such local exchange.” *Id.* In its Application, E Fiber represents that the Thompson exchange has fewer than 5,000 access lines and that the Moab exchange has, historically, had more than 5,000 access lines. As such, Frontier may petition to exclude the Thompson exchange from the Application but may not petition to exclude the Moab exchange. Frontier does not request that the Commission exclude either exchange from the Application. Frontier requests, however, that the Commission consider the concerns raised in Sections B and C, below, when making its public interest determination pursuant to Utah Code section 54-8b-2.1(2)(b).

B. E Fiber’s Request for Designation as a Carrier of Last Resort

E Fiber seeks designation as a carrier of last resort in both the Thompson and Moab exchanges. Utah Code § 54-8b-15(1)(b) defines “carrier of last resort” as follows:

- (b) “Carrier of last resort” means:
 - (i) an incumbent telephone corporation; or
 - (ii) a telecommunications corporation that, under Section 54-8b-2.1:
 - (A) has a certificate of public convenience and necessity to provide local exchange service; and
 - (B) has an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.

Frontier does not object to the Commission designating a second carrier of last resort in either the Thompson or Moab exchanges, but has concerns with E Fiber's request.

It is unclear from E Fiber's application when it will be able to meet carrier of last resort obligations. Expansion of E Fiber's fiber network will take time, and E Fiber does not commit in its Application to build its fiber network to serve all customers in the exchanges. If E Fiber is designated as a carrier of last resort, it must provide services "to any customer or class of customers that requests service within the local exchange." Utah Code § 54-8b-15(1)(b)(ii)(B). E Fiber does not explain how it intends to provide service through its proposed fiber network to any customer in the exchanges that requests service during its build-out phase. In the Application, E Fiber notes that it "anticipates using its own facilities and/or utilizing facilities and network from its affiliates . . . to provide local exchange services while E Fiber Moab builds out its fiber network in the local exchanges." Application, § 3. E Fiber also states that it "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." Application, § 6. These statements demonstrate that E Fiber will not be able to use its fiber network to provide carrier of last resort services to all customers in the Thompson and Moab exchanges. Rather, for at least some period of time—and perhaps indefinitely for some customers in the exchanges—E Fiber will utilize Frontier's existing infrastructure to simply rebrand Frontier services as E Fiber services. It will, for some period of time, do the same with the existing customers of its affiliates. Before E Fiber is designated as a carrier of last resort in the exchanges, it should explain the type of service it will provide to all customers, the number of customers who will have access to its fiber network, and when that access will be available.

To date, E Fiber has not approached Frontier to negotiate the use of Frontier's existing infrastructure. E Fiber has not sufficiently demonstrated that it will be prepared to meet its obligations as a carrier of last resort throughout the exchanges upon issuance of an order by this Commission. Frontier is concerned that E Fiber will not be able to meet its obligations as a carrier of last resort, and that E Fiber will provide services only to those customers that are most economic for E Fiber to serve, leaving Frontier to serve the least economic customers. In making its public interest determination pursuant to Utah Code § 54-8b-2.1(2), this Commission should consider whether E Fiber is capable of meeting its carrier of last resort obligations throughout the exchanges.

As set forth below, Frontier also raises a number of policy concerns related to E Fiber's request to receive UUSF disbursements to provide carrier of last resort services to customers in the exchanges who already receive such services from Frontier.

C. E Fiber's Request for UUSF Disbursements and Whether Granting the Application is in the Public Interest.

E Fiber seeks designation as a rate-of-return regulated carrier of last resort within the Moab and Thompson exchanges so that it will qualify for disbursements from the Utah Public Telecommunications Service Support Fund ("UUSF"). Eligibility to receive UUSF disbursements is governed by Utah Code § 54-8b-15 and Utah Admin. Code R746-8. Specifically, Utah Code § 54-8b-15(3)(c) states that the Commission may grant requests for UUSF disbursements to "fund, for the purpose of providing service to end-users, a rate-of-return regulated . . . carrier of last resort's deployment and management of networks capable of providing: (i) access lines; (ii) connections; or (iii) wholesale broadband Internet access service that is consistent with Federal Communication Commission rules" The question of whether a rate-of-return regulated carrier

of last resort is eligible to receive UUSF disbursements is governed by Utah Code § 54-8b-(4). Frontier offers no comment at this time on whether E Fiber meets those requirements.

Frontier does, however, offer comments for the Commission to consider in determining whether granting E Fiber's Application is in the public interest. As noted above, the Commission's determination to issue a CPCN must be based on a finding that doing so is in the public interest. *See* Utah Code § 54-8b-2.1(2). Moreover, this Commission may not grant a request for competitive entry as a rate-of-return carrier unless it first finds that granting such a request is in the public interest. *See* Utah Admin. Code R746-349-3(15). Frontier questions whether E Fiber's efforts to use UUSF disbursements to build out a fiber network to serve customers that already receive service from Frontier and others in the Thompson and Moab exchanges is in the public interest.

This Commission has previously expressed concerns about the use of UUSF disbursements to fund competitive entry in rural areas of the State that are already served by an incumbent provider. *See In the Matter of the Petition of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier ("Petition of WWC Holding")*, Docket No. 98-2216-01, Report and Order, dated July 21, 2000.¹ In *Petition of WWC Holding*, this Commission denied a petition filed by a wireless telecommunications company for designation as an Eligible Telecommunications Carrier ("ETC"), a designation that would have made WWC Holding eligible to receive UUSF disbursements. WWC Holding sought ETC designation in various local exchanges, some of which were in non-rural areas served by the incumbent local exchange carrier, U.S. West Communications, Inc., and others of which were in rural areas served by members of

¹ A true and correct copy of the Report and Order in Docket No. 98-2216-01 is attached hereto as Exhibit 1.

Utah Rural Telecom Association (“URTA”). The Commission granted the application for ETC designation in the local exchanges served by U.S. West, but noted that, “[w]ith regard to the exchanges in the rural, or independent companies, the Commission is also required to consider if the designation of a second ETC in areas already served is consistent with the public interest.” *Id.*, § 3. The Commission considered the burden on the state fund and any corresponding public benefit if it were to grant ETC designation to WWC Holding and allow it to provide services in rural areas that already receive service, and ultimately determined that it was not within the public interest to grant the application. *Id.*

On appeal, the Utah Supreme Court upheld the Commission’s ruling. *See WWC Holding Co., Inc. v. Public Service Comm’n*, 2002 UT 23, ¶ 15, 44 P.3d 714. The Court recognized that “[t]he PSC declined to grant WWC rural ETC status based on the combination of the possibility that the State Fund might be negatively impacted along with its finding that this likely detriment would not be offset by public benefits.” *Id.*, ¶ 17. The Court rejected WWC Holding’s assertion that the Commission could not consider the potential impact on the UUSF, ruling that “the PSC could legitimately consider impact on the State Fund in determining public interest.” *Id.*, ¶ 15. The Court then found that the Commission properly relied on “expert testimony stating that there was a strong probability that designating a second ETC in many areas would reduce revenues to all ETCs. The Court found that the Commission’s determination that granting the application would not result in public benefits sufficient to justify the impact on the UUSF, citing testimony that granting ETC designation “would not result in lower prices or service to currently unserved areas.” *Id.*, ¶ 18. The Court affirmed the Commission’s ruling because “the PSC’s conclusion that designation of WWC as a rural ETC would be detrimental to the State Fund and would not

result in lower prices or new service to currently unserved areas is supported by substantial evidence in the record.” *Id.*, ¶ 20.

Based on the current record, Frontier questions whether the Application demonstrates sufficient public benefits to justify the potential impact on the UUSF of granting E Fiber a CPCN and allowing it to access state funds to build a fiber network to provide service to customers already served by Frontier in others in the Thompson and Moab exchanges. There are several issues this Commission should consider when determining whether E Fiber’s Application is in the public interest.

First, the Commission should consider whether the public benefits of granting the CPCN and designating E Fiber as a carrier of last resort outweigh the impact on the UUSF of subsidizing E Fiber’s plans to build out a fiber network in the Thompson and Moab exchanges to provide local exchange services to customers that already receive service. As discussed in the WWC Holding matter, above, this Commission can consider the impact on the UUSF and whether disbursements to E Fiber would result in lower prices or service to presently unserved areas. In support of its claim that its Application presents a public benefit sufficient to offset the effects to the UUSF, E Fiber states that it will deploy “up-to-date state-of-the-art fiber facilities in areas where such facilities are lacking,” Application, § 15, and that it will do so as a carrier of last resort throughout the Thompson and Moab exchanges. There is, however, already an incumbent carrier of last resort in these exchanges. Like the applicant in WWC, then, E Fiber does not propose to provide local exchange services to new customers who do not already have it. The Application (at least the public portions of the Application) also fails to identify whether the prices for its services will be higher or lower than the prices currently offered to customers in the exchanges for those same

services. *See WWC Holding Co., Inc.*, 2002 UT 23, ¶ 20 (affirming Commission ruling denying ETC designation when “the PSC’s conclusion that designation of WWC as a rural ETC would be detrimental to the State Fund and would not result in lower prices or new service to currently unserved areas is supported by substantial evidence in the record.”). The Commission must determine whether the fiber network that E Fiber proposes for the exchanges will provide an upgrade in service sufficient to justify the cost. It does not appear that there is sufficient information in the current record to allow the Commission to make that determination.

Second, the Commission should consider whether eliminating ET&V as a competitor in the exchanges is worth the cost of subsidizing E Fiber’s proposed fiber network. E Fiber is part of an affiliated group of companies doing business as Emery Telecom, which already includes an entity, ET&V, that has been providing competing service in the Moab exchange for several years.² E Fiber seeks to utilize UUSF Funds to convert customers of ET&V—which receive services from ET&V’s coaxial facilities—to E Fiber customers, thereby supplanting ET&V in the Moab exchange. *See* Application, § 3 (“As fiber facilities are constructed by E Fiber Moab to replace coaxial cable facilities of its Affiliates, existing Affiliate customers will be transferred to E Fiber Moab.”). The Application does not identify the public benefit of transferring customers from ET&V’s coaxial network to E Fiber’s proposed fiber network, but the Commission should question whether the potential upgrade in service for those customers is worth the UUSF funds required to make that switch.

Third, the Commission should consider the cross-subsidization of E Fiber’s affiliate operations and how E Fiber and its affiliates will use its fiber network. The Application does not

² *See, e.g.*, <https://emerytelcom.com/residential-services/residential-phone.html>.

address protections against cross-subsidization of operations among Applicant's affiliates. E Fiber admits that it will utilize ET&V's existing coaxial network while building out its fiber network, and then convert its those ET&V customers to E Fiber customers. The Application does not say whether the new E Fiber customers would receive only voice and data services, or whether they would also receive retail television services currently provided to ET&V customers. Either way, it seems highly likely that Emery Telecom (through one of its affiliates) intends to use UUSF disbursements to build out a fiber network to offer retail television services customers in the Thompson and Moab exchanges. The Commission should explore this issue further and should consider whether there are mechanisms to protect against this apparent effort to use state funds to expand Emery Telecom's television business by also providing fiber-based voice and data services to customers that already receive those services.


CONCLUSION

In determining whether it is in the public interest to grant E Fiber's request for a CPCN and designation as a rate-of-return carrier of last resort, with access to UUSF funds, this Commission should consider the following:

- E Fiber's ability to provide carrier of last resort services and the extent to which it will provide such services using its proposed fiber network throughout the exchanges;
- The burden on the UUSF of granting the Application and whether there is a sufficient public benefit to justify that burden; and
- Whether granting UUSF support to E Fiber would result in cross-subsidization of supported and unsupported services and costs associated with E Fiber's affiliates.

DATED this 20th day of May, 2020.

Respectfully submitted

By: 

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*Attorneys for Citizen Telecom Company of Utah
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Certificate of Service
Docket No. 20-2618-01

I hereby certify that a true and correct copy of the foregoing was served by email this 20th day of May, 2020, on the following:

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E FIBER MOAB

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/s/ Phillip J. Russell