ROBERT J. MOORE (5764)
Assistant Attorney General
STEVEN W. SNARR (3022)
Special Assistant Attorney General
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0312
Facsimile: (801) 366-0101
E-mail: rmoore@agutah.gov
stevensnarr@agutah.gov
Attorneys for Utah Office of Consumer Services

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Consolidated Matter of: Applications of E Fiber Moab LLC and E Fiber San Juan LLC for Certificates of Public Convenience and Necessity to Provide Facility—Based Local Exchange Services and be Designated as Carriers of Last Resort in Certain Rural Exchanges	Docket No. 20-2618-01 The Office of Consumer Services' Memorandum In Opposition to Frontier Communication's Rule 56(a) Motion for Partial Summary Judgement

Pursuant to Utah Code § 54-10a-301, UTAH ADMIN. CODE r. 746-1-101 through 801 and Utah Rule of Civil Procedure 56(a)(2)-(4), the Office of Consumer Services ("OCS") submits this Memorandum in Opposition to Citizens Telecommunications Company of Utah d/b/a Frontier Communications' ("Frontier") Motion for Partial Summary Judgment ("SJM").

I. RULE 56(a)(3), Utah R. Civ. P., STATEMENT OF BACKGROUND FACTS

On April 20, 2020, E Fiber Moab LLC and E Fiber San Juan LLC (collectively "E Fiber") filed applications, pursuant to Utah Code § 54-8b-2.1, seeking—Certificates of Public Convenience and Necessity ("CPCN") for competitive entry into certain local exchanges services presently served by Frontier as an incumbent telecom, designation as a "rate-of-return"

regulated carrier of last resort ("COLR"), and an order that the E Fiber companies will be eligible to receive distributions from the Universal Public Telecommunications Service Support Fund ("UUSF"). E Fiber Moab LLC Application at ¶¶ 15,19; E Fiber San Juan LLC Application ¶¶ 15,19. ("Applications"). To the OCS's knowledge, this is the first time a telecom company has applied for competitive entry under section 54-8b-2.1 and sought designation as a COLR under 54-8b-15(4)(a). As the OCS's initial comments observed, the applications "could lead to the depletion of the UUSF, potentially raising rates for all customers, only to provide for the build out of duplicative, and therefore unnecessary, telecom infrastructure within the same territory." OCS's May 20, 2020 Comments pg. 4. In their initial comments, the Division of Public Utilities ("DPU") and the Utah Rural Telecom Association ("URTA") raised similar concerns. DPU May 12, 2020 Comments pg. 4; URTA May 20, 2020 Comments pg. 11-12.

On June 24, 2020, pursuant to a June 3, 2020 Scheduling Order, Notice of Hearing and Notice of Consolidation, the E Fiber companies filed the testimony of Brock Johansen and Darren Woolsey in support of the applications. To resolve the issue of the potential of two rate-of-return COLRs both drawing from the UUSF to build out redundant infrastructure, Mr. Johansen testified that in connection with granting the applications the Public Service Commission of Utah ("PSC") should order that only one COLR be entitled to draw from the UUSF and that, based on a proposed ten factor test, the E Fiber companies should be designated as eligible to draw from the fund to the exclusion of Frontier. Johansen's Direct Test. ln. 194-368.

On July 27, 2020, Frontier filed the instant Motion for Partial Summary Judgment ("SJM") making four arguments. One, that because the applications seek to provide service

utilizing voice over the internet protocol ("VOIP") federal law preempts the PSC from exercising subject matter jurisdiction over the applications. SJM at 7-8. Two, also because the applications seek to utilize VoIP, Utah Code § 54-19-103(1) prevents the PSC from regulating the applications proposed services and therefore prevents the E Fiber companies from being designated rate-of-return regulated COLR eligible to receive disbursements from the UUSF. *Id.* at 9-10. Three, the E Fiber companies do not meet the definition of COLR because they will not be able to immediately serve all customers or groups of customers that request service within the local exchange with its proposed fiber technology and propose to use line extension tariffs to serve extremely remote customers. *Id.* at 11-12. And four, Utah Code § 54-8b-15 provides the exclusive criteria for determining a telecom's eligibility to draw from the UUSF and the PSC does not have the statutory authority to impose additional criteria in making a determination that Frontier may not recover from the UUSF. *Id.* at 12-17.

The OCS now files the instant Memorandum in Opposition to the SJM and an accompanying Rule 56(d), Utah R. Civ. P., Motion and Declaration for a Continuance of the PSC ruling on Frontier's first two arguments pending discovery. Specifically, as the OCS's Rule 56(d) Motion argues, not all voice services that utilize internet protocol are preempted by federal law or exempt from PSC regulation under section 54-19-103(1). Rather, the issues of preemption and exemption from regulation turn on the nature of the service offered and the technology employed in providing voice services using internet protocol. Accordingly, the OCS is entitled to conduct discovery into these issues prior to the PSC ruling on Frontier's first two arguments.

In the instant Memorandum, the OCS argues the facts that the E Fiber companies will not be able to serve all customers with advance fiber infrastructure immediately or the fact that the E Fiber Companies will utilize line extension tariffs does not disqualify the E Fiber companies from being designated a COLR, pursuant to Utah Code § 54-8b-15(1)(b)(ii). In addition, reading sections 54-8b-2.1, 54-8b-15(1)(b)(ii) and (4)(a) together in light of the purposes of the statutes, as the PSC must, leads to the inevitable conclusion that the PSC has the express statutory authority to issue a ruling that any expense incurred in building redundant infrastructure is per se unreasonable and therefore unrecoverable under section 54-8b-14(4)(a). This result solves the problems raised in the comments regarding two COLRs in one exchange both with access to the UUSF, regardless of Frontier's argument that the PSC lacks authority to issue a ruling in the E Fiber dockets that Frontier is not eligible to seek any disbursements from the UUSF. SJM at 12-17

FRONTIER'S STATEMENT OF FACTS NOT GENUINELY IN DISPUTE

1. In each of the Local Exchanges, Frontier is the incumbent local exchange carrier a is a rate-of-return regulated carrier of last resort.

Undisputed.

2. E Fiber Moab and E Fiber San Juan are each Utah limited liability companies organized on February 15, 2020.

Undisputed.

3. E Fiber seeks a certificate of public convenience and necessity ("CPCN") to construct,

install, and operate fiber facilities to provide telecommunications services in the Local Exchanges.

Undisputed.

4. E Fiber also requests that it be designated as a rate-of-return regulated carrier of last resort in the Local Exchanges and, in connection, seeks approval to receive disbursements from the UUSF.

Undisputed.

5. E Fiber requests that it be declared "eligible for UUSF support if they provide voice service or wholesale broadband Internet access service and their reasonable costs to provide such services exceed their revenue."

Undisputed.

6. E Fiber proposes to offer two services—wholesale broadband internet service and retail Voice over Internet Protocol ("VoIP") voice service.

Disputed to the extent that this statement implies the type of voice services proposed by the E Fiber companies is the type of voice service that federal law preempts from the PSC's jurisdiction and/or is exempted from the PSC regulatory authority by section 54-19-103(1). Not all voice services that utilize internet protocol are preempted by federal law or exempt from PSC regulation under section 54-19-103(1). As pointed out in the OCS's accompanying Rule 56(d) Motion, the issues of preemption and exemption from regulation turn on the nature of the service offered and the technology employed in providing voice services using internet protocol.

Accordingly, the PSC should not treat this fact as undisputed until the OCS is given the opportunity to conduct discovery into these issues.

7. E Fiber does not "currently have fiber facilities constructed to enable them to provide service to **all customers**, or classes of customers who request service in the Local Exchanges."

Undisputed.

8. E Fiber proposes to conduct a "phased in" approach to building its fiber network and providing service to customers in the Local Exchanges.

Undisputed.

9. E Fiber further states that even after its proposed fiber facilities are completely built out, certain remote locations "may still be subject to line extension tariffs."

Undisputed.

10. E Fiber's application requests that the Commission declare Frontier ineligible to receive UUSF funding under any circumstances based on a proposed ten-factor public policy test.

Undisputed

STATEMENT OF ADDITIONAL MATERIAL FACT

1. The E Fiber companies testimony provides an explanation of how the UUSF is historical managed, in cases of a rate-of-return regulated COLR receive disbursements from the fund,, as follows: "A company makes expenditures associated with providing public telecommunications services in 2019. Those expenditures are included in the 2019 Annual Report filed with the PSC on April 15, 2020. The DPU reviews the 2019 Annual Report and makes a recommendation to the PSC for UUSF support for the company in September of 2020. If such recommendation is approved by the PSC, the company begins receiving that level of

support in January of 2021. So, the UUSF support received in 2021 is based on the company's 2019 financial information." Brock Johansen's June 24, 2020 Direct Testimony, at pg. 9 ln. 176-82.

2. Frontier's tariffs have provisions for charging customers for extension of lines "Outside Plant" providing: " Pole line and buried wire extensions necessary to furnish telephone service will be made by the utility in accordance with the tariff schedules, provided dedicated streets are available, or acceptable easement can be obtained without addition charge or condemnation. Outside plant facility charges are computed in accordance with the regular rates set forth in the tariff schedules and the payment of such charges gives the customer no ownership or control of the extension." Frontier's Tariff OUTSIDE PLANT FACILITIES AND SERVICE CONNECTIONS.

II. ARGUMENT

As indicated above, the only two arguments addressed in full in this memorandum are the arguments that the E Fiber companies are not disqualified from being designated a COLR simply because they (1) will not be able to serve all customers with advance fiber infrastructure immediately and/or will utilize line extension tariffs. and (2) the argument that the PSC cannot impose any restriction on Frontier's access to the UUSF other than the eligibility requirement contained in section 54-8b-15(4). The remaining two arguments regarding federal preemption and section 54-19-103(1) are addressed by the OCS's accompanying Rule 56(d) Motion.

A. Standard of Decision

Rule 56(a), Utah R. Civ. P., made applicable to the PSC through UTAH ADMIN. CODE r. 746-1-105, provides that the PSC "shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law." The OCS agrees that there are no genuine disputes to the material issues of fact regarding the two issues addressed in this Memorandum. To decide these issues, the PSC must apply the Frontier's undisputed material facts and the OCS's additional material facts to the statutes in issue. This is essentially a question of statutory construction and therefore an issue of law appropriately determined on summary judgment. *Board of Educ. of Jordan School Dist. v. Sandy City Corp.*, 2004 UT 37, ¶¶ 5, 9, 94 P.3d 234.

B. Frontier Fails to Establish that the E Fiber Companies Cannot Qualify as Carries of Last Resort.

Frontier argues that the E Fiber companies do not qualify as COLRs because they will not be able to immediately serve all customers or group of customers that requests advance fiber service within the local exchange and because the E Fiber companies propose to use line extension tariffs to serve extremely remote customers. SJM at 11-12. This contention is based on section 54-8b-15(1)(b), providing: "'Carrier of last resort' means: (i) an incumbent telephone corporation; or (ii) a telecommunication 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 telecommunication service to any customer or class of customer that requests service within the local exchange." *Id.* However, nothing in section 54-8b-15(1)(b) requires a telecom to complete a build out to all customers within an exchange before it can seek to recover from the UUSF. Moreover, Frontier's construction of section 54-8b-15(1)(b)

conflicts with other portions of the statute and is contrary to the PSC's long-established practices in managing the UUSF.

In interpreting statutes, the primary objective is to determine the intent of the legislature as evidenced by the plain meaning of the statutory language. *State v. Rushton*, 2017 UT 21, ¶ 11, 395 P.2d 92. The PSC must "'read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters[,] . . . avoid[ing] any interpretation which renders parts or words in a statute inoperative or superfluous . . . .'" *Id., quoting, Monarrez v. Utah Dep't of Transportation*, 2016 UT 21, ¶ 11, 368 P.3d 846 (internal quotation marks omitted, ellipsis and brackets in original).

Frontier's argument is focused on the phrase "obligation to provide . . . services." However, the plain meaning of the term "obligation" does not advance Frontier's argument. Black's Law Dictionary defines obligation as: "A formal binding agreement or acknowledgement of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons." OBLIGATION, Black's Law Dictionary (10th Ed. 2014). There is nothing temporal in this definition requiring the duty to be performed at a certain time. Accordingly, the plain meaning of the word "obligation" does not compel the conclusion that a telecom must complete building out its infrastructure to secure high-quality service to all residence within an exchange before qualifying as a COLR.

Moreover, Frontier's interpretation that a telecom cannot be considered a COLR until it completes building out infrastructure to serve all potential customers within an exchange, conflicts with other portions of section 54-8b-15. Under Frontier's interpretation, a rate-of-return regulated COLR would only receive one disbursement from the UUSF at the completion

of a comprehensive build out of telecom infrastructure. However, section 54-8b-15 is simply not structured that way.

Rather, while section 54-8b-15 provides for a one-time distribution, these distributions are earmarked for nonregulated rate-of-return COLRs, not rate-or-return regulated COLRs. *See* Section 54-8b-15(3)(d). Rate-of-return regulated COLRs obtain disbursements in an ongoing process tied to the PSC's determination of the rate-of-return regulated COLR's rate of return on equity and proper depreciation method to determine the amount of recovery from the fund rather than a one-time distribution. *See* section 54-8b-15(5).

Because of this structure, Frontier's contention conflicts with the long-established practice of how the PSC manages the UUSF. The E Fiber companies' testimony provides an explanation of how the fund has been historically administered, providing: "A company makes expenditures associated with providing public telecommunications services in 2019. Those expenditures are included in the 2019 Annual Report filed with the PSC on April 15, 2020. The DPU reviews the 2019 Annual Report and makes a recommendation to the PSC for UUSF support for the company in September of 2020. If such recommendation is approved by the PSC, the company begins receiving that level of support in January of 2021. So, the UUSF support received in 2021 is based on the company's 2019 financial information." Statement of Additional Material Fact ("SAMF") at 1. This is how the fund has been historically managed not through a one-time disbursement after the completion of a comprehensive build out of infrastructure to server every resident of an exchange.

Finally, the fact that the E Fiber companies propose to use a line extension tariff to serve extremely remote customers does not conflict with section 54-8b-15(1)(b). Nothing in section

54-8b-15(1)(b) requires that all customers, even those in extremely remote locations, pay the same for their telecommunication services. Moreover, section 54-8b-2.1(4) provides that: "The competing telecommunications corporation's obligation to serve shall be no greater than that of the incumbent telephone corporation." And Frontier's tariffs provide for charging customer for line extensions of "Outside Plant." SAMF at 2. Accordingly, Frontier's argument that the E Fiber companies cannot qualify as COLRs because they employ line extension tariffs is meritless.

In sum, the facts that the E Fiber companies do not propose to serve all members of the exchange immediately and propose to use line extension tariffs does not mean they cannot presently be designated as a rate-of-return regulated COLR.

C. The PSC has Express Statutory Authority to Prohibit COLRs from Recovering from the UUSF for the Build Out of Redundant Infrastructure when Approving Competitive Entry Under Utah Code § 54-8b-2.1.

The E Fiber companies argue that in ruling on their application for competitive entry into a territory controlled by an incumbent telecom and request for designation of the E Fiber companies as rate-of-return COLRs, the PSC should order that only one COLR within a territory be allowed to draw from the UUSF. This will prevent the obvious negative public policy implications of two rate-of-return COLRs drawing from the UUSF building redundant infrastructure to provide duplicative services. Frontier Statement of Fact not Genuinely in Dispute ("FSF") at 10. E Fiber proposes a ten-factor test for determining which COLR be allowed recover from the fund. *Id.* Frontier counters by asserting that the PSC does not have authority to "consider any factors other than those in Utah Code § 54-8b-15 and Utah Admin. Code R746-8- 401" in determining whether Frontier, as an incumbent telecom, can draw from

the fund. SJM at 15. Frontier does not address the public policy implications of two COLRs drawing from the fund to construct redundant infrastructures suggesting that this outcome is simply a result of the statutory scheme.

However, when read together, sections 54-8b-2.1(4), 54-8b-15(1)(b) and (4)(a) grant the PSC express statutory authority to issue an order in connection with the granting competitive entry that prevents the build out of duplicative infrastructure. Specifically, section 54-8b-15(a)(ii) only authorizes recovery from the fund for reasonable expenditures giving the PSC authority to rule that it is unreasonable for the fund to pay for redundant infrastructure. This fact resolves the public policy dilemma posed by two rate-of-return COLRs competing within the same territory both with access to the UUSF.

Again, in interpreting statutes, the primary objective is to determine the intent of the legislature as evidenced by the plain meaning of the statutory language. *Rushton*, 2017 UT 21, ¶ 11. The PSC must "'read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters[,] . . . avoid[ing] any interpretation which renders parts or words in a statute inoperative or superfluous . . . .'" *Id.*, *quoting*, *Monarrez*, 2016 UT 21, ¶ 11, (internal quotation marks omitted, ellipsis and brackets in original).

Here, section 54-8b-2.1 read in conjunction with sections 54-8b-15(1)(b)(ii) and 54-8b-15(4)(a)(ii) contemplates that more than one COLR can draw from the UUSF to provide telecom services in the same territory. Section 54-8b-15(4)(a) provides: "A rate-of-return regulated *carrier of last resort* is eligible for payment form the Universal Public Telecommunications Service Fund . . . ." (emphasis added). Section 54-8b-15(1)(b) provides: "'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 conveniences and necessity to provide local exchange service; and (B) has the obligation to provide public telecommunications service to any customer or class of customers that requests service with the local exchange." Finally, section 54-8b-2.1(4) provides for competitive entry into a territory of an incumbent telephone company and imposes "an obligation upon the competitive telecommunication corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange."

However, these sections must be harmonized with section 54-8b-2.1(2)(b) which provides that before a certificate for competitive entry is approved, the PSC must determine that the "issuance of the certificate to the applicant is in the public interest." And, section 54-8b-15(4)(a)(ii) which provides that a rate-of-return COLR "is eligible for payment" from the UUSF if "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" the its eligible revenues as listed in section 54-8b-15(4)(a)(ii)(A)—(D). (emphasis added).

Accordingly, section 54-8b-2.1(4) allows for competitive entry into an incumbent telecom's territory, section 54-8b-15(1)(b) defines COLR as (1) an incumbent telephone corporation or (2) a telecommunication corporation granted entrance into an incumbent's territory pursuant to 54-8b-2.1 and section 54-8b-15(4)(a) allows recovery from the fund if the rate-of-return COLR costs are greater than its eligible revenue. Nevertheless, before a rate-of-return COLR can recover its costs of building out infrastructure the PSC must determine that

these costs are reasonable. Therefore, the very statute that Frontier argues provides the exclusive requirements for its eligibility for UUSF disbursements affords a statutory mechanism to deny an incumbent telecom recovery from the fund if the PSC finds it is unreasonable to recover costs incurred for developing redundant infrastructure .

Moreover, it cannot be plausibly argued that the build out of redundant infrastructure could ever be considered a reasonable recoverable expense because it would deplete the fund without providing for new service to consumers who are either not served or under served. In addition, denying recovery for expenses incurred building redundant infrastructure resolves a circular problem with reading the statutes without this reasonable costs requirement.

That is, the statutes allow for competitive entry into an incumbent telecom's territory which results in both the existing incumbent telecom and the new entrant becoming COLRs eligible for recovery from the UUSF. Both potentially seeking to recover for expenditures to build redundant infrastructure. As noted above, the build out of redundant infrastructure could never be considered reasonable or "in the public interest" and therefore all applications for competitive entry under these circumstances would be denied, pursuant to section 54-8b-2.1(2)(b). However, such a reading of the statutes would impermissibly render section 54-8b-2.1(4) and large sections of 54-8b-15 inoperative. *Rushton,* 2017 UT 21, ¶ 11; *Monarrez,* 2016 UT 21, ¶ 11.[1] Thus, without the reasonableness requirement, it is not possible to comply with

[1] Indeed, appellate courts have regularly held that interpretations that lead to inoperative outcomes must be rejected even going as far as "reforming" clear statutory language to avoid inoperative or absurd results. *See, e.g. Garfield County v. United States*, 2017 UT 41, ¶ 21, $24 P.3d 46 (interpreting statutes of repose as statutes of limitation to "preserve[k] the statutes as operative legislative enactments.")

both section 54-8b-2.1(4)'s provision for competitive entry into rural exchanges and section 54-8b-15(4)(a)(ii)'s requirement that entry must be in the public interests.

While the PSC must eventually make the determination that investments into redundant infrastructure is unreasonable at the time a telecom seeks reimbursement from the fund, it is appropriate for the PSC to order that investments into redundant infrastructure is per se unreasonable at the time it rules on the E Fiber's application. This is the approach the PSC took in *In the Matter of the Petition of WWC Holdings Co. Inc. for Designation as an Eligible Telecommunication Carrier,* Docket 98-2216-01, Report and Order (July 21, 2000, Utah P.S.C.), *affirmed, WWC Holding Co., Inc. v. Public Service Comm'n*, 2002 UT 23, 44 P.3d 714. In *WWC Holdings Co.*, the PSC granted an application for ECT status to a telecom in non-rural exchanges but made that ruling contingent on the applicant complying with several other requirements for ETCs, including charging no more than the affordable base rates, as provided for in UTAH ADMIN. CODE r. 746-360-6(B).[2] *WWC Holdings Co.*, Docket 98-2216-01, Report and Order at 12-13. The PSC should follow its past practice and make any future ruling granting the E Fiber companies competitive entry into the subject exchanges contingent of the ruling that any investment into redundant is per se unreasonable and exempt from recovery from the fund pursuant to section 54-8b-15(4)(a)(ii). *See* Utah Code § 63G-4-403(4)(h)(iii) (failure to follow past practice grounds for reversal unless agency provides "fact and reasons demonstrating a reasonable basis for the inconsistence").

Moreover, a ruling that any investment in redundant infrastructure is per se unreasonable issued at the time of the PSC ruling on competitive entry is consistent with the purposes of

[2] Rule 746-360-6(B) has been amended and renumbered, the OCS cites to the version of the rule as it existed at the time of the decision.

section 54-8b-2.1, specifically, and telecommunications statutes generally, i.e. fostering competition. *See* Utah Code § 54-8b-1.1(8) ("The legislature declares that it is the policy of the state to ; . . . encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry"). Certainly, a telecom would be more willing to enter the territory of an incumbent telecom if it knew ahead of time the confines of what investments would be recoverable from the fund. Accordingly, a ruling that a rate-of-return COLR in a competitive rural exchange cannot recover investment in redundant infrastructure will allow clarity to the decision to enter the territory, pursuant to section 54-8b-2.1, thereby fostering competition.[3]

Finally, the fact that a ruling that investment in redundant infrastructure is per se unreasonable will impact Frontier, or any incumbent telecom, does not affect this analysis. Section 54-8b-2.1(2)(b) provides that in cases of competitive entry into an exchange controlled by an incumbent telecom, the incumbent telecom "shall be provided notice of the application and granted automatic status as an intervenor." Accordingly, Frontier, or any incumbent telecom, will be a party to an application for competitive entry so itis not improper or the final order to affect their rights. Indeed, Frontier has been an active participant in this docket, as evidenced by the instant motion.

In sum, the PSC can, and should, issue an order that under 54-8b-15(4)(a)(ii) that investments in redundant infrastructure are per se unreasonable in connection with ruling on the

[3] The PSC should consider promulgating a Rule on the issue of the confines of recoverability from the fund in cases of competitive entry into a rural exchange after the conclusion of this case. *See* Utah Code § 63G-3-201(6)("agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases").

E Fiber companies' application. Such an order will resolve the dilemma caused by two rate-of-return COLRs in the same territory both with access to the UUSF. Moreover, such an approach is distinguishable from Frontier's arguments that the PSC is without statutory authority to impose conditions to recover from the fund in addition to those outlined in section 54-8b-15, because the approach relies on authority already in the ambit of the PSC's statutory powers.

CONCLUSION

For the reasons outlined above, the PSC should rule that Frontier has not established that the E Fiber companies do not qualify as COLRs. In addition, the PSC should rule that if it approves the E Fiber companies' application it could also order that it is per se unreasonable for a COLR to build duplicate infrastructure. The remaining issues in the SJM should be dealt with in connection with the OCS's Rule 56(d) Motion.

Respect submitted August 25, 2020.

/s/ *Robert J. Moore*
Robert J. Moore
Attorney for the Office of Consumer Services