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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Consolidated Matter of:

The Applications of E Fiber Moab, LLC and
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

Docket No. 20-2618-01

REDACTED DIRECT TESTIMONY OF CARL E. ERHART

Citizens Telecommunications Company of Utah d/b/a Frontier Communications
("Frontier") hereby submits the pre-filed Redacted Direct Testimony of Carl E. Erhart in this
docket.

DATED this 25th day of September, 2020.

JAMES DODGE RUSSELL & STEPHENS, P.C.



Phillip J. Russell
Attorneys for Frontier Communications

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 25th day of September, 2020, on the following:

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/s/ Phillip J. Russell

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Certain Rural Exchanges

Docket No. 20-2618-01

REDACTED Direct Testimony of Carl E. Erhart

On Behalf of

Citizens Telecommunications Company of Utah d/b/a Frontier Communications

REDACTED Frontier Exhibit 1.0

September 25, 2020

INTRODUCTION

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Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Carl E. Erhart. I am Vice President – Regulatory and Governmental Affairs for Frontier Communications Corporation, of which Citizens Telecommunications Company of Utah d/b/a Frontier Communications (“Frontier”) is a wholly owned subsidiary. My business address is 7979 N Belt Line Road, Irving, Texas 75063.

Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelor of Science in Business Administration majoring in Accounting from Robert Morris University in Coraopolis, Pennsylvania and an MBA with a concentration in Finance from George Mason University in Fairfax, Virginia. In 1992, I received a Certified Public Accountant Designation in the State of Indiana. I am a member of the Indiana CPA Society and the AICPA. I began my career in 1983 as an Internal Auditor for Teledyne Industries and in 1984 joined MCI Telecommunications as a Budget Accountant. In September 1984 I joined Contel Service Corporation and held several positions of increasing responsibilities in the Regulatory and Finance Organizations until the merger of Contel and GTE in 1991. In June 1991 I joined GTE Telephone Operations as Manager Regulatory Planning and Management. In 1996, I transferred to GTE Wireless as national Director of Wireline Interconnection and in 1998 transferred to GTE Service Corporation where I served as Assistant Vice President Regulatory Affairs for the Southwest Area until the merger of GTE and Bell Atlantic in June 2000. With that merger and the creation of Verizon, I was named Vice President-Regulatory Affairs

23 for Verizon's Southwest Region and in 2005 was named Vice President-Regulatory and
24 Governmental Affairs for that same region. In July 2008 I was named President of the
25 Southwest Region and in October 2008 assumed responsibility for an additional five
26 states and was named Central Region President, a position I held until September 2011.
27 From September 2011 through December 2015, I served as Vice President – State
28 Government Affairs for Verizon's fifteen state Midwest Area, responsible for all public
29 policy matters. I retired from Verizon at the end of 2015 and in March 2016 accepted my
30 current position with Frontier Communications.

31 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES WITH FRONTIER**
32 **COMMUNICATIONS.**

33 A. I am responsible for Frontier's corporate interests including regulatory affairs, industry
34 relations, and local and state government affairs in several states, including Utah.

35 **Q. HAVE YOU PREVIOUSLY SPONSORED EXPERT TESTIMONY?**

36 A. Yes, over the course of my 37-year career in the industry, I have sponsored testimony
37 before regulatory commissions and state legislatures on many financial and policy
38 matters in the telecommunications industry.

39 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

40 A. Yes, I provided live testimony at the hearing in Docket No. 19-041-01.

41 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?**

42 A. The purpose of my testimony is to address issues raised by the Applications and
43 testimony filed by E Fiber Moab LLC and E Fiber San Juan LLC in these consolidated
44 dockets. I address issues both from the perspective of Frontier and from a public policy

45 standpoint. In my testimony, I'll refer to E Fiber Moab, LLC ("E Fiber Moab") and E
46 Fiber San Juan, LLC ("E Fiber San Juan") collectively as the "Applicants."

47 **Q. CAN YOU SUMMARIZE APPLICANTS' REQUESTS IN THIS DOCKET?**

48 A. Yes. Applicants each seek a Certificate of Public Convenience and Necessity to Provide
49 Facilities-Based Local Exchange Service ("CPCN") and to be designated as a Carrier of
50 Last Resort ("COLR") in certain local exchanges in which Frontier is the incumbent local
51 exchange carrier ("ILEC"). In addition, the Applicants seek to be designated as a rate-of-
52 return regulated carrier, subject to Utah Code § 54-4-4 and § 54-7-12 and to Commission
53 Rule R746-8-200(12). Specifically, E Fiber Moab seeks a CPCN and designation as a
54 rate-of-return regulated COLR in the Moab and Thompson exchanges, and E Fiber San
55 Juan seeks a CPCN and designation as a rate-of-return regulated COLR in the La Sal,
56 Monticello, Blanding, Bluff, and Mexican Hat exchanges (excepting portions of the
57 Blanding exchange that includes the White Mesa community). The exchanges in which
58 the Applicants seek a CPCN and COLR designation in this docket are referred to
59 collectively herein as the "Local Exchanges." Applicants also request that this
60 Commission issue an order that Frontier cannot receive distributions from the state
61 Universal Service Fund.

62 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

63 A. My testimony is organized as follows:

64 First, I describe Citizens Telecommunications Company of Utah ("Frontier") and
65 discuss the Local Exchanges at issue in this docket and compare them to Frontier's other
66 19 exchanges in the State of Utah;

67 Second, I discuss the Applicants’ requests for a CPCN, requests to be designated
68 as rate-of-return regulated carriers of last resort in the Local Exchanges, requests to
69 receive UUSF distributions, and requests that this Commission rule that Frontier be
70 barred from receiving UUSF distributions;

71 Third, I discuss the various policy considerations at issue in this docket; and

72 Fourth, I discuss the ten-factor public interest test proposed by URTA and
73 Applicants in this docket.

74 Fifth, I provide certain recommendations and conclusions.

75 **Q. FRONTIER HAS FILED A MOTION ADDRESSING CERTAIN LEGAL ISSUES**
76 **IN THIS DOCKET. PLEASE DESCRIBE THE MOTIONS.**

77 A. Frontier has filed a motion for partial summary judgment addressing several issues. First,
78 the motion discusses the question of whether this Commission has jurisdiction over the
79 Applicants’ request for relief in this docket or whether federal laws and regulations
80 preempt this Commission from exercising jurisdiction.

81 Second, the motion addresses whether Applicants can qualify as “rate-of-return
82 regulated” carriers of last resort because the two products each intends to offer in the
83 Local Exchanges—wholesale broadband (which service it will sell to its affiliate, which
84 will then sell at retail to end-users in the Local Exchanges) and retail Voice over Internet
85 Protocol (“VoIP”)—are not regulated by this Commission.

86 Third, the motion discusses the question of whether Applicants can qualify as
87 carriers of last resort because they will not be in a position to universally provide their

88 services to customers or classes of customers that requests service within the Local
89 Exchanges, as required to be designated as a carrier of last resort.

90 Fourth, the motion discusses the question of whether this Commission has the
91 legal authority to grant Applicants' request to issue a ruling that Frontier—a rate-of-
92 return regulated carrier of last resort—be designated as ineligible to receive UUSF
93 distributions based on factors other than those set forth in Utah Code § 54-8b-15 and
94 Utah Admin. Code R746-8-401.

95 Frontier believes that the motion raises threshold legal questions that this
96 Commission must address before it can address any of the factual or public policy matters
97 raised by the Applications and testimony. By addressing those factual and public policy
98 matters herein, I do not intend to suggest either that they take precedence over the legal
99 issues raised in the motion or that they can or should change the outcome of the
100 Commission's determination of the motion.

101 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS AND CONCLUSIONS.**

102 A. I recommend that the Commission deny the Applications because the Applicants'
103 requests are not consistent with Utah law and are not in the public interest. Specifically,
104 granting the Applications will ultimately result in UUSF distributions being used to fund
105 competition in the Local Exchanges between Frontier and the Applicants and that result
106 is not in the public interest. Applicants seek to avoid two competing providers in a
107 market from receiving UUSF as rate of return regulated providers by asking the
108 Commission to bar Frontier from receiving UUSF distributions. The Commission does
109 not have the legal authority to bar any rate-of-return regulated ILEC or other COLR from

110 receiving UUSF distributions if it otherwise qualifies under the Utah Code or this
111 Commission's Rules. I discuss these issues in more detail below.

112 **FRONTIER AND THE LOCAL EXCHANGES**

113 **Q. PLEASE DESCRIBE CITIZENS TELECOMMUNICATIONS COMPANY OF**
114 **UTAH ("FRONTIER").**

115 A. Frontier provides voice telecommunications and broadband service in Utah as a wholly
116 owned subsidiary of Frontier Communications Corporation. Frontier is an Eligible
117 Telecommunications Carrier ("ETC") and provides local exchange telephone voice
118 service using a circuit switched network, throughout its 23 designated exchange service
119 boundaries in Utah, including in the Local Exchanges. The 23 exchanges in which
120 Frontier provides local exchange voice service are located in rural areas of the state in
121 three clusters—north-central (including Tremonton and Snowville), west-central
122 (including Delta and Fillmore) and southeast (including the Local Exchanges).

123 Frontier's local exchange service is subject to regulation by the Public Service
124 Commission of Utah ("Commission") as a rate-of-return incumbent telephone
125 corporation with COLR obligations. As an ILEC, Frontier is eligible to receive support
126 from the Utah Universal Service Fund ("UUSF"). A provider that is eligible to receive
127 UUSF support receives support only if its eligible costs exceed its eligible revenues.
128 Frontier has not received UUSF distributions for at least ten years due to its overall rate
129 of return as computed on a total company basis. However, revenue reductions are
130 exceeding Frontier's ability to reduce costs and it is approaching the point where eligible

131 costs will soon exceed eligible revenues, at which point Frontier will once again be
132 entitled to receive UUSF distributions.

133 **Q. PLEASE DESCRIBE THE LOCAL EXCHANGES**

134 A. Compared to Frontier’s north-central and west-central exchanges, the Local Exchanges
135 are relatively rural and less densely populated. Frontier serves fewer than 5,000 access
136 lines in each of the Local Exchanges and each is a “Small Rural Exchange” as referenced
137 in comments and the Petition for Intervention previously filed in this docket by the Utah
138 Rural Telecom Association (“URTA”). As Mr. Johansen notes in his direct testimony,
139 the Local Exchanges are “remote and expensive to serve with relatively few customers.”
140 (Johansen Direct Test., at lines 57-58). The terrain in and around the Local Exchanges
141 can provide challenges to installing and maintaining infrastructure, particularly in the
142 winter.

143 **Q. HOW DO THE CHARACTERISTICS OF THE LOCAL EXCHANGES**
144 **COMPARE WITH THOSE OF FRONTIER’S OTHER EXCHANGES IN UTAH.**

145 A. While the Local Exchanges are remote and expensive to serve, with few customers, they
146 are not as remote and as costly to serve as the remaining 16 exchanges served by Frontier
147 that Applicants have not sought to serve.

148 There are significant differences between the Local Exchanges where Applicants
149 seek to provide competing service and those Frontier exchanges in which Applicants
150 have not sought to compete. Of the 23 exchanges that Frontier serves in Utah, Applicants
151 seek CPCN and COLR designations in portions of at least seven of those exchanges.

152 While those seven exchanges represent 30% (7/23) of Frontier’s exchanges in Utah, those

153 seven exchanges include approximately 46% of the Business access lines and 44% of the
154 total access lines served by Frontier in the state. The average number of total access lines
155 served by Frontier in the Local Exchanges is approximately 558 access lines per
156 exchange. By contrast, the average number of total access lines served by Frontier in its
157 other 16 exchanges not at issue in this docket is 306 total access lines per exchange. That
158 is, the Applicants seek to serve Frontier exchanges with an average number of total
159 access lines that is *nearly double* the number of total access lines per exchange than
160 Frontier's other exchanges.

161 With respect to business access lines, Frontier serves an average of approximately
162 327 business access lines per exchange in the seven Local Exchanges. By contrast,
163 Frontier serves an average of approximately 167 business access lines per exchange in its
164 other 16 exchanges in Utah. That is, the Applicants seek to serve Frontier exchanges
165 with an average number of business access lines that is *nearly double* the number of
166 business access lines per exchange than Frontier's other exchanges.

167 A comparison between the average total access lines and business access lines in
168 the Local Exchanges and Frontier's other exchanges in Utah is shown in the chart below.

169 **Table 1: Comparison of Access Lines per Exchange**

	<u>Local Exchanges (7)</u>	<u>Other Frontier Exchanges (16)</u>
Total Access Lines (per exchange)	558	306
Business Access Lines (per exchange)	327	167

170

171 **Q. DOES THE NUMBER OF ACCESS LINES PER EXCHANGE AFFECT THE**
172 **COSTS TO SERVE CUSTOMERS IN THAT EXCHANGE?**

173 A. Yes. Generally speaking, the greater the number of access lines in an exchange, the less
174 costly it is to provide service to each access line.¹ Each exchange or wire center
175 generally requires land, an environmentally controlled building, power supply equipment,
176 termination equipment (both exchange and inter-exchange), inter-office transport
177 facilities and some form of switching equipment. These are generally scaled based on the
178 size of the wire center and there are generally economies of scale as the size of the
179 exchange or wire center increases. All other things being equal, the unit cost (or cost per
180 access line) tends to decline as the number of access lines served in an exchange increase.
181 By targeting exchanges with more access lines, the Applicants seek to serve areas that are
182 generally lower cost per access line than Frontier's overall service area in Utah and
183 certainly lower cost than the Frontier exchanges the Applicants do not seek to serve.

184 **DISCUSSION OF APPLICANTS' REQUESTS IN THIS DOCKET**

185 **Q. WHAT RELIEF DO APPLICANTS SEEK IN THIS DOCKET?**

186 A. As noted above, Applicants seek competitive entry in the Local Exchanges but only
187 under conditions in which the Applicants are assured that they will immediately begin to
188 receive UUSF funding as a rate-of-return regulated competitive local exchange carrier
189 and Frontier will not. Specifically, Applicants request that this Commission 1) grant
190 Applicants a CPCN in the Local Exchanges, 2) designate Applicants as a rate-of-return

¹ Frontier maintains accounting data in compliance with FCC Part 32 rules and does not keep accounting data of its costs in each exchange. Moreover, it reports rate base components, expenses and taxes to the Commission for its operations throughout the state, rather than on a per-exchange basis.

191 regulated COLR in each of the Local Exchanges, 4) order that Applicants will be eligible
192 to receive UUSF distributions, and 5) order that Frontier is not eligible to receive UUSF
193 distributions.

194 **Q. COULD THE COMMISSION GRANT SOME OF THE APPLICANTS’**
195 **REQUESTS AND NOT OTHERS?**

196 A. The Applicants have indicated that they will not build out the contemplated fiber network
197 unless this Commission grants all of Applicants’ requests. In lines 128-144 of his Direct
198 Testimony, Brock Johansen states that “[a] business case for deploying fiber
199 infrastructure in the Local Exchanges without governmental assistance in the form of
200 grants or universal service fund dollars cannot be made. It is imperative that the
201 Applicants know they can qualify for UUSF support before they undertake construction
202 and significant investment in the Local Exchanges. The Applicants are applying for
203 CPCNs and for designation as carriers of last resort in the Local Exchanges so they can
204 be eligible for UUSF support.” He further states, in lines 196-198, that “the Applicants
205 are not able to make a business case for constructing fiber throughout the Local
206 Exchanges and are unwilling to undertake this construction project without being eligible
207 for support from the UUSF.” As such, Applicants are saying that even if this
208 Commission issues the requested CPCNs, the Applicants will not build out their proposed
209 fiber network in the Local Exchanges unless the Commission *also* designates the
210 Applicants as COLRs *and* determines that Applicants are eligible to receive UUSF
211 distributions as rate-of-return regulated providers.

212 It is unclear whether Applicants would construct the proposed fiber network if
213 this Commission declines to issue a ruling that Frontier is not eligible to receive UUSF
214 distributions. Applicants have, however, stated that it would be against public policy for
215 the Commission to allow both Frontier and Applicants to be eligible to receive UUSF
216 distributions for operations in the same Local Exchanges. Specifically, Mr. Johansen
217 states on lines 198-202 of his Direct Testimony that “it is good public policy to only
218 allow one carrier of last resort to draw from the UUSF in each exchange, and the
219 Applicants need to know if they will be the carriers of last resort eligible to receive UUSF
220 support before they make the added investment in the Local Exchanges.” As such, if the
221 Commission declines to issue a ruling that Frontier is not eligible to receive UUSF
222 distributions, Applicants believe it would be against public policy for the Commission to
223 take action that would result in Applicants being eligible to receive UUSF distributions
224 for operations in the Local Exchanges.

225 **Q. ARE YOU AWARE OF ANY OTHER COMPETITIVE LOCAL EXCHANGE**
226 **PROVIDER THAT HAS BEEN DESIGNATED AS A RATE OF RETURN**
227 **REGULATED COLR IN ORDER TO RECEIVE UUSF TO OVER BUILD AN**
228 **EXISTING ILEC?**

229 **A.** No, I am not.

230 **Q. HOW DOES FRONTIER RESPOND TO THE APPLICANTS’ REQUESTS IN**
231 **THIS DOCKET?**

232 **A.** Frontier asks that the Commission deny each of the Applicants’ requests because, on the
233 whole, they would represent a bad, precedent setting public policy outcome for customers

234 throughout Utah. As discussed in the motions Frontier has previously filed with this
235 Commission, Frontier also believes that the Applicants' requests do not comply with
236 Utah law.

237 **Q. DOES FRONTIER HAVE OBJECTIONS TO ANY OF THE APPLICANTS'**
238 **REQUESTS, TAKEN INDIVIDUALLY?**

239 A. Yes. While Frontier objects to the overall outcome of Applicants' requests taken
240 collectively, it also objects to certain of Applicants' individual requests. Below, I address
241 Frontier's response to each of Applicants' individual requests but, as noted above,
242 Applicants have made clear that their requests are an all-or-nothing proposition and that
243 they will not build the proposed fiber network unless the Commission grants all of their
244 requests. As such, each of the Applicants' individual requests should be viewed as one
245 part of a whole, rather than individual issues that the Commission could view in isolation
246 from the others.

247 Addressing each request on an individual basis, Frontier objects to all but one of
248 the Applicants' individual requests, as discussed below.

249 **Q. DOES FRONTIER OBJECT TO APPLICANTS' REQUEST FOR A CPCN IN**
250 **THE LOCAL EXCHANGES?**

251 A. Frontier does not object to the Applicants' request for CPCNs in the Local Exchanges in
252 and of itself. Frontier discusses the problems it sees with Applicants' other requests in
253 this docket below, but as an isolated issue Frontier does not object to Applicants' requests
254 for a CPCN to expand on their affiliates' existing competitive presence in the Local

255 Exchanges. Frontier recognizes that policies surrounding telecommunications regulation
256 in Utah generally favor (or, at least, do not disfavor) competition.

257 As discussed below, however, Applicants do not seek true competition on a level
258 playing field with Frontier in the Local Exchanges. Rather, Applicants seek to use
259 government funds to tilt the playing field in their favor by asking this Commission for
260 assurance that they (Applicants) will be eligible to receive government assistance through
261 UUSF distributions. Moreover, Applicants seek a decision that their competitor,
262 Frontier, will not. Frontier objects to Applicants' efforts to compete only in this manner.

263 **Q. DOES FRONTIER OBJECT TO APPLICANTS' REQUEST TO BE**
264 **DESIGNATED AS A CARRIER OF LAST RESORT?**

265 A. Yes. Frontier objects to Applicants' requests to be designated as carriers of last resort
266 because Applicants seek the COLR designation but admit that they cannot meet the
267 COLR obligations. Utah Code § 54-8b-15(1)(b) states that a COLR "has an obligation to
268 provide public telecommunications service to any customer or class of customers that
269 requests service within the local exchange."

270 Applicants admit that they cannot meet this obligation in the Local Exchanges. In
271 lines 99-117 of his direct testimony, Applicants' witness Brock Johansen states that
272 Applicants' do not currently have fiber facilities constructed that would enable them to
273 provide service to all customers or classes of customers who request service in the Local
274 Exchanges and that they will take a "phased approach" to building their fiber facilities
275 that will expand their ability to provide service to customers in the Local Exchanges. Mr.
276 Johansen further states in lines 119-134 of his direct testimony that Applicants seek

277 designation as COLRs before they can meet the COLR obligations, that they require the
278 designation to be eligible to receive UUSF distributions, and that without the designation
279 and associated UUSF distributions they will not be able to construct their proposed fiber
280 network.

281 **Q. WILL THE APPLICANTS MEET THE COLR OBLIGATION EVEN AFTER ITS**
282 **PROPOSED FIVE-YEAR BUILDOUT IS COMPLETE?**

283 A. Despite statements throughout Applicants' testimony that they believe the nearly \$15M
284 of net UUSF support over the next five years to the Emery Corporate Family of
285 companies they project is reasonable and necessary to provide advanced
286 telecommunications service to ALL residents and business, they clarify that *all* does not
287 really mean *all*. Mr. Johansen states at lines 332-338 that even *after* the planned build-
288 out is complete, Applicants will not be able to meet their COLR obligations in the Local
289 Exchanges without imposing additional costs on customers in remote locations of the
290 exchanges. In his response Mr. Johansen states that it is "Not Likely" that Applicants
291 will ever provide service to the highest cost customers, unless those customers pay for the
292 extension of that network. Effectively, Applicants are asking the Commission to approve
293 them as the UUSF eligible COLR for the customers they choose to serve, to require
294 Frontier to continue to have COLR obligations during Applicants' buildout for all
295 customers, and then to require Frontier to remain as the COLR for all customers after the
296 buildout that E Fiber deems too expensive to serve. In addition, Applicants propose that
297 Frontier, while it maintains this highest cost COLR obligation, somehow be excluded
298 from UUSF eligibility.

299 **Q. DOES FRONTIER OBJECT TO APPLICANTS' REQUEST TO BE**
300 **DESIGNATED AS A "RATE-OF-RETURN REGULATED" CARRIER OF LAST**
301 **RESORT?**

302 A. Yes. In addition to the fact that Applicants cannot meet their COLR obligations, they do
303 not intend to offer services that are—or can be—regulated by this Commission. Utah
304 Code § 54-8b-15(1)(f) defines a “rate-of-return” regulated carrier is one that is subject to
305 this Commission’s regulation under Utah Code § 54-4-4. To be a “rate-of-return
306 regulated” carrier, then, each of the Applicants must offer a service that, pursuant to Utah
307 Code § 54-4-4, is subject to this Commission’s jurisdiction to set just and reasonable
308 rates and conduct investigations into quality of service and other matters.

309 Each of the Applicants intends to offer two types of services: 1) wholesale
310 broadband (which it will sell to its affiliates, who will provide retail internet and video
311 services to end-users), and 2) voice service using Voice over Internet Protocol (“VoIP”).²
312 While I am not an attorney neither broadband service nor VoIP service can be
313 regulated—either in price or in service quality—by this Commission. Specifically, Utah
314 Code § 54-19-103(1) states that “[a] state agency and political subdivision of the state
315 may not, directly or indirectly, regulate Internet protocol-enabled service or voice over
316 Internet protocol service.” Wholesale broadband service is “Internet protocol-enabled
317 service.” It is unclear how E Fiber can qualify as a “rate-of-return regulated” carrier in

² See Applications at ¶ 15 (indicating that Applicants “will bring updated facilities, access to high speed broadband and state-of-the-art carrier-grade voice over internet protocol telephone service to customers in these exchanges”); Johansen Direct Test. at lines 348-350 (“Our facilities will provide carrier grade Voice over Internet Protocol (“VoIP”) service and high-speed wholesale broadband access with latency suitable for real time applications.”); CONFIDENTIAL Frontier Exhibit 1.7 (Confidential Responses of E Fiber Moab, LLC and E Fiber San Juan, LLC to Frontier Communications’ First Set of Data Requests) at Response to DRs 1.21, 1.32, 1.33.

318 the Local Exchanges if this Commission is barred from regulating, either directly or
319 indirectly, either of the two services that the Applicants intends to offer in those
320 exchanges. Frontier has raised this issue in a motion filed separately with the
321 Commission.

322 **Q. DOES FRONTIER OBJECT TO APPLICANTS' REQUEST TO RECEIVE UUSF**
323 **DISTRIBUTIONS FOR OPERATIONS IN THE LOCAL EXCHANGES?**

324 Yes. As discussed above, and in Frontier's separate motion filed with the Commission,
325 neither of the Applicants can be designated either as "rate-of-return regulated" or as a
326 carrier of last resort and, therefore, neither qualifies to receive UUSF distributions as
327 requested in their Applications.

328 **Q. DOES FRONTIER OBJECT TO APPLICANTS' REQUEST THAT THE**
329 **COMMISSION RULE THAT FRONTIER IS NOT ELIGIBLE TO RECEIVE**
330 **UUSF DISTRIBUTIONS?**

331 A. Yes. There are both significant legal and policy concerns with Applicants' request.
332 Frontier's legal concerns are addressed in its motion previously filed with the
333 Commission and I will not repeat them here. In addition to those legal concerns, this
334 Commission should consider the wide ranging policy implications of Applicants' request.
335 The only reason that Applicants request that the Commission deem Frontier ineligible to
336 receive UUSF distributions is to avoid what they acknowledge as a public policy
337 problem. Applicants' witness Brock Johansen states in lines 198-200 of his direct
338 testimony that he "agree[s] that it is good public policy to only allow one carrier of last
339 resort to draw from the UUSF in each exchange" Applicants' proposal to achieve

340 that “good public policy” outcome in the Local Exchanges—by denying UUSF eligibility
341 to Frontier—creates bad public policy outcomes for customers both in the Local
342 Exchanges and elsewhere in Utah. There are several reasons for this, as outlined below.

343 *First*, Frontier is a rate-of-return regulated COLR in 23 exchanges in Utah, which
344 includes the seven Local Exchanges at issue here. The Commission does not determine
345 UUSF eligibility on a “per-exchange” basis. Rather, eligibility for UUSF distributions is
346 based on costs and revenues from a carrier’s state-wide operations. If the Commission
347 were to deem Frontier ineligible to receive UUSF support, that decision would apply to
348 Frontier’s operations in all 23 exchanges, not just in the Local Exchanges. This outcome
349 would prejudice Frontier’s operations throughout the state without any benefit to the
350 customers in Frontier’s exchanges that aren’t at issue in this docket.

351 *Second*, while it is not uncommon for the PSC to periodically review and revise
352 its rules, such a rulemaking should be open to the entire industry, especially a rule that
353 governs a fund that includes numerous contributing companies with customers across the
354 state that would be directly impacted by an increase in the UUSF per connection fee. If
355 the commission were to undertake such a rulemaking, it may also want to consider other
356 modifications to the existing fund to achieve its policy goals. For example, if the PSC
357 were to find that the designated support area is no longer equal to the total study area, it
358 could further target UUSF support for all COLRs to the highest cost areas without a
359 competitive voice option by any technology throughout the state as a means of further
360 targeting the support and managing the size of the overall fund. To avoid this result, the

361 Commission would have to open a separate docket to make changes to its existing rules
362 regarding the calculation of UUSF distributions.

363 *Third*, as noted above, each of the Applicants admits that it cannot meet COLR
364 obligations during the five-year period in which it will build out its fiber network—and
365 perhaps not even after that build-out is complete. The Applicants necessarily rely on
366 Frontier continuing to operate consistent with its COLR obligations in the Local
367 Exchanges during the build-out phase and even after that period. That is, to ensure that
368 any customer or class of customers in the Local Exchanges that wants service can get it,
369 Frontier would continue to have to provide that service where Applicants cannot or will
370 not. Applicants seek to leverage this obligation imposed on Frontier while they build out
371 their fiber network—gradually taking away the lowest-cost customers to serve until they
372 leave only the most-costly customers to Frontier. Such an outcome is not sustainable—
373 particularly if Frontier is not eligible to receive UUSF distributions. At some point,
374 Frontier would have to petition the Commission for a release from its COLR obligations
375 or pricing restrictions so that Frontier could either decline to provide service to the most-
376 costly customers or charge those customers much higher rates, sufficient to justify the
377 cost of providing service.

378 *Fourth*, access to UUSF distributions is an incentive for a COLR to invest in
379 infrastructure to improve service to existing customers in an exchange and to provide
380 access to service to remote customers that are more costly to serve. As evidence of this
381 principle, this Commission need look no further than the Applications and testimony in
382 this docket, in which Applicants openly admit that they cannot make a business case to

383 build out their proposed fiber network if they are not eligible to receive UUSF
384 distributions. If Frontier is not eligible to receive UUSF distributions, it will not have
385 sufficient funds to make infrastructure investments in the Local Exchanges or in its other
386 exchanges in Utah that would improve service quality or provide service to those who do
387 not currently have access to it.

388 *Fifth*, there is no basis in Utah law or Commission rule for designating Frontier as
389 being ineligible for UUSF. Such a decision would be an unlawful taking of Frontier's
390 eligibility for UUSF.

391 *Sixth*, a Commission decision denying UUSF to an existing provider to fund a
392 new entrant would be a precedent setting policy that would establish a new and
393 inefficient model for market entry across the state that could ultimately result in the
394 undoing of the UUSF.

395 **OTHER PUBLIC POLICY CONCERNS**

396 **Q. PLEASE RESPOND TO APPLICANTS' SUGGESTION THAT THE**
397 **COMMISSION COULD SIMPLY ALLOCATE FRONTIER'S ACCOUNTING**
398 **COSTS TO GEOGRAHPICAL AREAS ON THE BASIS OF ACCESS LINES TO**
399 **DETERMINE FRONTIER'S ELIGIBLILITY FOR UUSF DISTRIBUTIONS IN**
400 **THE EXCHANGES WHERE APPLICANTS DO NOT SEEK CPCNS AND UUSF**
401 **ELIGIBILTY.**

402 **A.** In lines 264-269 of the Direct Testimony of Brock Johansen, Applicants suggest that the
403 Commission could allocate UUSF distributions based on an exchange by exchange basis

404 under certain circumstances, though they acknowledge this would “require additional
405 PSC rules.”

406 Aside from the legal and policy issues addressed earlier in my testimony, this is
407 far from a simple exercise to be able to do accurately given that there are natural
408 variations in the costs of serving different exchanges. In addition, it would impose
409 additional unique regulatory compliance cost on only Frontier and would not be a reliable
410 method of determining the level of need for UUSF.

411 **Q. IS UUSF IN THE PUBLIC INTEREST?**

412 A. Frontier knows as well as other rural telecommunications service providers in Utah that it
413 is a challenge to maintain universal access at affordable rates in rural, high-cost areas.
414 State universal service support is in the public interest, if properly structured and
415 administered. While maintaining reliable and affordable telecommunications in rural,
416 high-cost areas is in the public interest, it is important to also realize that universal
417 service support is not “free money.” Support comes out of the pockets of public
418 telecommunications service customers across the entire state. Good public policy
419 requires that the framework and the administration of state universal service funds are
420 equitable and do not create incentives for manipulation or inefficiencies.

421 **Q. ARE THERE OTHER COMPETITIVELY NEUTRAL WAYS THE UUSF**
422 **COULD BE UTILIZED TO FACILITATE THE DEPLOYMENT OF**
423 **BROADBAND SERVICES IN RURAL AND HIGH COST MARKETS?**

424 A. Yes, Utah could repurpose some or all of the existing UUSF to a competitive broadband
425 grant program as has been done by other states and the FCC, such as the Connect

426 America Fund, the upcoming Rural Digital Opportunity Fund or the RUS grants received
427 by Emery Telecommunications and Video to fund its buildout in certain parts of several
428 Frontier exchanges. As Mr. Johansen correctly points out in lines 128-130 of his direct
429 testimony, “a business case especially for deploying fiber infrastructure in the Local
430 Exchanges without government assistance in the form of grants or universal service fund
431 dollars cannot be made.”

432 **Q. IN YOUR EXPERIENCE IS IT COMMON FOR THERE TO BE MULTIPLE**
433 **COLRS IN THE SAME GEOGRAPHIC AREA?**

434 A. Not as it is proposed by the Applicants. At a minimum, it has the potential to create
435 significant confusion for customers and the providers. Therefore, if the PSC were to
436 adopt the Applicants entire proposal, Frontier should immediately be reclassified as
437 competitive and relieved of its COLR obligation.

438 **Q. DOES THE EMERY CORPORATE FAMILY OF COMPANIES COMPETE**
439 **WITH FRONTIER TODAY?**

440 A. Yes. For a number of years and, based on Frontier’s line loss in its larger exchanges with
441 relatively lower cost areas, it appears that Emery has been successful with a selective
442 deployment strategy of serving primarily business and higher density areas. For example,
443 Emery Telecommunications & Video is a non-regulated provider of voice service in
444 Frontier’s largest exchange of Moab. Presumably, ET&V will continue to build out its
445 network in the Local Exchanges using funds from the RUS grants as discussed in Mr.
446 Johansen’s testimony and will continue to provide the same type of over-the-network
447 service it has provided in the past.

448 **Q. DOES THE EMERY TELECOM GROUP OF COMPANIES NEED TO CREATE**
449 **TWO NEW LEGAL ENTITIES TO EXPAND ITS COMPETITIVE PRESENCE?**

450 A. No. As stated by Mr. Johansen, ET&V already provides voice services across the
451 existing coaxial network of its affiliate Emery Telecom Video, LLC. In fact, the creation
452 of the two new legal entities appears to be solely for the purpose of attempting to qualify
453 for public state universal service fund monies to effectively subsidize, in large part, an
454 upgrade of ET&V's existing non-regulated cable coaxial network and further buildout of
455 a fiber network, instead of using capital generated by the non-regulated operations of
456 Emery's affiliated group of companies. Based on the Testimony of Mr. Johansen, its two
457 non-regulated affiliates have already been successfully competing to serve primarily the
458 lower cost/higher revenue customers in Frontier's largest exchange or the "low hanging
459 fruit" as Mr. Johansen's testimony refers to as their existing business plan. In addition,
460 ET&V has already been awarded multiple USDA grants to fully fund the construction of
461 a fiber-based network in the Local Exchanges, without the need for a CPCN or access to
462 UUSF funding.

463 **Q. SO, WHY DO APPLICANTS SEEK CPCNS WITH COLR STATUS AS RATE-**
464 **OF-RETURN REGULATED COMPETITIVE LOCAL EXCHANGE PROVIDERS**
465 **OF FACILITIES-BASED VOICE SERVICES?**

466 A. Applicants have structured their proposal in an effort to gain access to tens of millions of
467 UUSF distributions to fund their multi-year buildout of a network to provide non-
468 regulated services. Based on Mr. Woolsey's initial projection, the Applicants would
469 quickly become one of the largest recipients of UUSF in the state, potentially requiring a

470 significant increase in the overall fund size and corresponding increase in the state-wide
471 per connection customer fee across all technologies contributing to the fund, assuming no
472 further UUSF increases for any of the other current recipients of UUSF, no other CLECs
473 also seek to be designated as a COLR, and excluding the likely increase in the fund that
474 will be caused by a revenue requirement shortfall for Frontier's other exchanges. Based
475 on Mr. Woolsey's Model and the 2020 size of the fund, he projects that by year 2 E-Fiber
476 would become [REDACTED] and by year 3 [REDACTED]
477 [REDACTED].

478 **Q. DO ALL OF THE EXISTING 16 RURAL UTAH ILECS CLASSIFIED AS RATE**
479 **OF RETURN REGULATED COLRS THAT ARE CURRENTLY ELIGIBLE FOR**
480 **UUSF ACTUALLY RECEIVE FUNDING?**

481 A. No. Based on the Commission's December 2019 Order approving 2020 UUSF
482 payments, there are six ILECs, inclusive of the two Frontier companies operating in Utah,
483 that will not receive any UUSF distributions in 2020. The three Emery Telecom ILEC's
484 collectively receive a total of \$2.8M in 2020, which is approximately 17% of the total
485 \$16.2M in 2020 funding.

486 **Q. DOESN'T MR. WOOLSEY PROJECT THAT THE UUSF SUPPORT FOR THE**
487 **EXISTING EMERY ILECS WOULD DECREASE AS A RESULT OF CERTAIN**
488 **COST ALLOCATION TO THE APPLICANTS?**

489 A. Yes, while Mr. Woolsey testifies that he anticipates a decrease of roughly \$1.9M in total
490 funding paid to the three non-Applicant Emery ILECs over the total of the five year

491 forecast period, he also forecasts on page 10 of his direct testimony that the Applicants
492 would receive \$16.8M in new incremental UUSF for a net increase of \$14.9M.

493 **Q. WHAT WOULD BE THE IMPACT TO THE OVERALL SIZE OF THE FUND**
494 **BASED ON MR. WOOLSEY'S ESTIMATES?**

495 A. Assuming the overall UUSF remains status quo over Mr. Woolsey's five year forecast
496 period, meaning; 1) no changes to the existing fund rules for rate of return regulated
497 COLR's, 2) no funding for non-rate of return regulated COLR's, 3) no changes in the
498 level of funding for the 10 companies receiving UUSF in 2020, and 4) that none of the 6
499 rate of return regulated COLR's not receiving UUSF in 2020 qualify for any funding in
500 the future, the overall size of fund would need to increase by [REDACTED] by year
501 three of Mr. Woolsey's forecast. This would necessitate a similar percent increase in the
502 existing statewide end user surcharge.

503 **Q. WHAT WILL BE THE LIKELY IMPACT OF THE SELECTIVE ENTRY BY**
504 **THE EMERY TELECOM GROUP OF COMPANIES?**

505 A. Emery's proposal will necessitate a material increase in the overall size of the fund from
506 \$16.2M annually in 2020 to [REDACTED] annually by year three of the Applicants
507 forecast. Emery estimates that it would need millions of dollars of ongoing UUSF to
508 fund its initial competitive over build of Frontier's existing network. Until the Staff
509 would complete a review of the actual financials of all the Emery companies, it is not yet
510 clear how much of savings there may be in the fund due to a reduction in the existing
511 UUSF support for the other affiliated Emery Telecom Family of companies that currently
512 receive support due to what Emery witness Woolsey refers to the "Applicants general

513 “economies of scale” effect by diluting fixed costs over more customers, employee
514 hours, equipment, plant, etc.” In other words, Emery will be able to leverage the existing
515 networks, systems, employees, customer relationships, etc. of the Emery family of
516 regulated and non-regulated operations to achieve lower overall operating costs and
517 presumably marketing advantages for the new affiliated group of companies.

518 While it is not yet clear what the net savings would actually be to the Emery
519 Telecom Family of companies, I do not disagree with that expectation. However, the
520 opposite is also likely to be true for Frontier’s operations, meaning that its overall fixed
521 costs, including network that will now be underutilized or even stranded in these seven
522 markets will likely cause a deterioration of its financial results to a level that its overall
523 rate of return would qualify it for UUSF support. Again, these seven exchanges currently
524 account for approximately 44% of Frontier’s total access lines served, so the impact is
525 also likely to be material. In addition, the Applicants’ provide no estimate of the
526 expected impact on the fund beyond their five-year phased in deployment plan. Perhaps
527 more importantly, Commission approval of the Emery proposal would provide a
528 blueprint for other providers to receive UUSF support, resulting in an increase in the
529 level of contribution required to continue support the fund. Therefore, it is possible the
530 total size of the UUSF could increase by more than the initial [REDACTED] estimate if the
531 Commission were to grant the Applications in this docket.

532 **Q. MR. WOOLSEY STATES IN LINES 204-206 OF HIS DIRECT TESTIMONY**
533 **THAT THE NEW INCREMENTAL UUSF REQUIRED TO SUPPORT THE**

534 **APPLICANTS PROPOSED BUILD OUT WOULD BE COMPARABLE TO THAT**
535 **REQUIRED TO SUPPORT OTHER EMERY ENTITIES. DO YOU AGREE?**

536 A. No. While the total dollar amounts of annual UUSF support payments may be similar, it
537 does not reflect how reliant the Applicants business plan would be on continuing UUSF
538 support. For example, Mr. Woolsey's projections show that upon completion of the
539 build-out in year five, the required level of UUSF support would be [REDACTED]
540 of the total forecasted "regulated" revenue of the Applicants as opposed [REDACTED]
541 [REDACTED] for the total of "All Other Emery Entities." Based on the 2019 financial data
542 included in Mr. Woolsey's model, the existing three Emery Telecom ILECs received a
543 total of [REDACTED], which is [REDACTED] of their total "regulated"
544 revenue.

545 This calculation does not include the \$7.2M in federal grant funds received by the
546 ET&V company through the Community Connect and ReConnect programs referred to
547 on page 4 line 67 of Mr. Woolsey's testimony. If this \$7.2M of federal funds were
548 treated as revenue and added to the total 5-year projected proforma UUSF for the
549 Applicants of \$16.8M as discussed by Mr. Woolsey on page 10 of his testimony, then
550 that total of \$24M would represent more than [REDACTED] of the total 5-year revenue of the
551 Applicants based on Mr. Woolsey's model. This creates a number of public policy
552 consideration for the Commission and raises questions of what would happen in the event
553 of a change in the state's UUSF policies or further competitive or technological
554 substitution not included in the Applicants' forecast.

555 **Q. ARE THERE OTHER UUSF CONSIDERATIONS WITH THE APPLICANTS’**
556 **PROPOSAL?**

557 A. Yes. There are several concerns associated with Applicants’ stated intention to leverage
558 ET&V’s federal grant funds with funds from the UUSF to provide fiber infrastructure
559 within certain areas of the Local Exchanges. Mr. Johansen states in his direct testimony
560 that Applicants’ affiliate ET&V has received grants from RUS” through various
561 Community Connect and ReConnect Grants. In response to Frontier’s data request,
562 Applicants produced documents associated with these grant requests, which are attached
563 as Frontier Exhibits 1.1-1.5.³ Applicants also produced a Confidential document showing
564 the portions of the Local Exchanges to be served by these grants, which Confidential
565 document is attached as CONFIDENTIAL Frontier Exhibit 1.6.⁴

566 Applicants claim that the grants to ET&V will reduce the impact on the UUSF,
567 but have not demonstrated how they will make use of grant funds received by ET&V or
568 infrastructure built by ET&V with those grant funds, or whether they will be authorized
569 to do so. The grant documents for each of the grants specifically prohibits anyone other
570 than ET&V from using the grant funds *or* the facilities constructed with those funds. For
571 example, Section 6.2 in each of the Community Connect grants (Frontier Exhibits 1.1-
572 1.4, attached) contains a provision stating that “[t]he Grantee (ET&V) shall not, without

³ See Frontier Exhibit 1.1 (Community Connect Grant to ET&V—Mexican Hat), Frontier Exhibit 1.2 (Community Connect Grant to ET&V—LaSal); Frontier Exhibit 1.3 (Community Connect Grant to ET&V—Castle Valley); Frontier Exhibit 1.4 (Community Connect Grant to ET&V—Old LaSal/Wilson Arch); Frontier Exhibit 1.5 (ReConnect Grant to ET&V—Dove Creek). Exhibits 1-5 were produced in response to Frontier data request 1.14 to E Fiber.

⁴ See CONFIDENTIAL Frontier Exhibit 1.6 (E Fiber Overview). CONFIDENTIAL Exhibit 6 was produced in response to Frontier data request 1.18 to E Fiber.

573 the prior written consent of RUS, enter into any contract or contracts for the operation or
574 maintenance of the Project and shall not enter into any contract for the use by others of
575 the Project.” Similarly, the Section 7.3 of the ReConnect grant (Frontier Exhibit 1.5,
576 attached) states that “[t]he Awardee (ET&V) shall not, without the prior written consent
577 of RUS, enter into any contract or contracts for the operation or management of all or any
578 substantial part of the Project, and shall not enter into any contract for the use by others
579 of all or any substantial part of the Project.” CONFIDENTIAL Exhibit 6 illustrates the
580 areas encompassed by each of these grants. These provisions make clear that ET&V,
581 which was awarded the grants by RUS, cannot simply sell the facilities constructed with
582 those grant funds to Applicants or allow Applicants to use them.

583 Moreover, if ET&V intends to build out the facilities as contemplated by the RUS
584 grant funds, it seems that ET&V could simply offer the services in the areas designated in
585 CONFIDENTIAL Frontier Exhibit 1.6 without Applicants’ involvement.

586 Finally, even if ET&V is ultimately permitted to sell the facilities constructed
587 with grant funds to Applicants or RUS otherwise permits Applicants to utilize those
588 facilities, the Applicants’ proposal to “leverage” grant funds and UUSF funds for services
589 throughout the exchanges raises some potential troubling concerns and creates the
590 potential for the Applicants to “double dip.” The costs of deploying and operating the
591 fiber network that has been funded with federal grants should be excluded from the
592 Applicants’ UUSF eligible cost of service.

593 **Q. THE APPLICANTS STATE THAT THEY ARE SEEKING CPCNs TO PROVIDE**
594 **“LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.” IS THAT**

595 **CONSISTENT WITH THE VOICE PRODUCT LATER DESCRIBED IN THE**
596 **APPLICANTS' TESTIMONY?**

597 A. Again, this is not clear in either the Application or the testimony. In its application,
598 Applicants state that they are each seeking a CPCN in order to “operate as a provider of
599 facilities-based local exchange telecommunications service” in certain exchanges where
600 Frontier is the incumbent local exchange provider. In Utah Code Section 54-8b-2(11),
601 local exchange service “means the provision of telephone lines to customers with the
602 associated transmission of two-way interactive, switched voice communication.” POTS
603 Local exchange telephone service is a service currently regulated by the PSC. Yet, Mr.
604 Johansen’s testimony later further clarifies that Applicants’ planned facilities would
605 provide Voice over Internet Protocol (“VoIP”) service and high-speed wholesale
606 broadband internet service. As discussed in Frontier’s Motion for Partial Summary
607 Judgment previously filed with this Commission, Utah Code Section 54-19-103 restricts
608 any state agency or political subdivision from regulating internet protocol-enabled service
609 or voice over internet protocol service. As such, it appears that neither the Applicants’
610 voice or broadband services, which it proposes to deploy primarily with UUSF funding,
611 will be subject to any of the regulation that currently applies to POTS local exchange
612 telephone service.

613 **Q. WILL THE VOIP VOICE SERVICES DESCRIBED IN THE APPLICANTS’**
614 **TESTIMONY TO BE OFFERED BY THE APPLICANTS BE SUBJECT TO THE**
615 **PSC REGULATION FOR RATES, TERMS OR CONDITIONS?**

616 A. No. IP Enabled or VoIP service is not subject to state regulation, including the
617 Commission's rules regarding pricing, service quality, customer complaints, etc. Nor
618 does it even require a CPCN. State law does not provide an option for "opting-into"
619 Commission regulation.

620 **URTA's PROPOSED TEN-FACTOR PUBLIC INTEREST TEST**

621 **Q. URTA AND APPLICANTS HAVE PROPOSED A TEN-FACTOR PUBLIC**
622 **INTEREST EVALUATION IN THIS DOCKET, DO YOU HAVE A RESPONSE**
623 **TO THAT DISCUSSION?**

624 A. URTA initially proposed the ten-factor test in its May 20, 2020 comments in this docket.
625 In those comments, URTA suggested that this Commission utilize those factors when
626 engaging in a public interest inquiry related to competitive entry in exchanges with fewer
627 than 5,000 total access lines when the ILEC in those exchanges has fewer than 30,000
628 access lines in the state and when the ILEC, pursuant to Utah Code Section 54-8b-2.1(3),
629 requests that the Commission exclude the small rural exchange from the competitive
630 entrant's petition for a CPCN. But Frontier has not petitioned that any exchanges be
631 excluded from this docket, and URTA's proposed ten-factor test is, therefore, not
632 relevant to this docket.

633 In their direct testimony in this docket, Applicants have proposed adopting the
634 ten-factor test for a different purpose than that proposed by URTA. They propose using
635 the ten-factor test in situations where, as here, the Commission is deciding which COLR
636 in a particular exchange should be eligible for UUSF distributions and which should not.
637 Frontier has filed a motion asserting that the only factors this Commission can consider

638 when determining UUSF eligibility are those set forth in Utah Code Section 54-8b-15. I
639 will not repeat that legal discussion here, but for the reasons set forth in Frontier’s
640 Motion, Frontier obviously does not believe a discussion of those factors is relevant to
641 this docket.

642 Nonetheless, I address the factors in the proposed ten-factor test below, subject to
643 and without waiving Frontier’s objections to that test

644 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 1,**
645 **“WHETHER THE INCUMBENT IS RECEIVING OR HAS RECEIVED STATE**
646 **UUSF IN THE PAST 5 YEARS”?**

647 A. As discussed earlier in my testimony, there are four other UUSF eligible ILECs that in
648 addition to the two Frontier companies are not currently receiving UUSF distributions in
649 2020. Frontier has received certain other support from federal programs for its portions
650 of its operations in Utah in recent years but has not qualified for UUSF funding since
651 2007. The fact that Frontier has not qualified for UUSF funding in that time is not
652 indicative of a lack of investment in its Utah operations. Rather, it is the result of the
653 current financial needs test for UUSF distributions, which is determined on a “Total
654 Company” rate of return basis utilizing the weighted average cost of capital rate of return
655 prescribed by the FCC for rate of return regulated carriers.

656 Frontier is not a rate-of-return regulated carrier for its “*interstate*” or FCC
657 regulated operations. Frontier is regulated as a Price Cap carrier at the Federal level. If
658 UUSF eligibility were determined on an “*intrastate*” basis, Frontier’s net operating
659 margin would likely qualify for UUSF or a substantial rate increase if it were to file a

660 traditional rate case. If anything, since Frontier is likely the only rural incumbent local
661 exchange carrier in the state that is regulated on a price cap basis for its *interstate*
662 services, Frontier's UUSF support qualification should be calculated on a purely
663 *intrastate* basis. Moreover, this does not change the fact that Applicants' proposal to
664 qualify for UUSF support to subsidize the build-out of a competitive overlay network
665 providing primarily non-regulated service will have a material negative impact on the
666 overall UUSF as addressed earlier in my testimony.

667 If this factor was relevant to the question of which COLR in the Local Exchanges
668 is eligible to receive UUSF distributions, it would *not* weigh in Applicants' favor and
669 would not justify a finding that Frontier is ineligible for UUSF distributions.

670 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 2,**
671 **“WHETHER THE COMPETITIVE APPLICANT IS PLANNING TO SERVE**
672 **ALL OF THE EXCHANGES OF THE INCUMBENT IN THE STATE”?**

673 A. Frontier serves 23 exchanges in Utah, and Applicants plan to serve only portions of seven
674 of those exchanges. As noted above, the Local Exchanges in which Applicants seek to
675 construct their fiber network have a higher average number of total access lines and
676 business access lines than in Frontier's other 16 exchanges in Utah. As noted above,
677 Applicants efforts to compete with Frontier will likely erode Frontier's revenues in the
678 Local Exchanges and will increase its need for UUSF and make it more likely that
679 Frontier would qualify for UUSF distributions under the current financial needs test, but
680 Applicants' request that Frontier be deemed ineligible to receive UUSF distributions
681 would, if granted, likely constrain Frontier's ability to continue investing in additional

682 infrastructure either in the Local Exchanges or in its other 16 exchanges throughout Utah.
683 Such a result would prejudice the customers in each of Frontier's 23 exchanges,
684 especially those in the 16 exchanges in which E Fiber does not seek to operate.

685 If this factor were relevant to the question of which COLR in the Local
686 Exchanges is eligible to receive UUSF distributions, it would weigh heavily in favor of
687 ensuring that Frontier, and not Applicants, is eligible for UUSF distributions.

688 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 3,**
689 **“WHETHER THE INCUMBENT HAS INVESTED IN THE EFFICIENT**
690 **DEVELOPMENT OF ADVANCED TELECOMMUNICATIONS**
691 **INFRASTRUCTURE AND FACILITIES IN THE SMALL RURAL**
692 **EXCHANGE(S) WHERE COMPETITIVE ENTRY IS SOUGHT”?**

693 A. Frontier has continued to invest in the deployment of advanced services and the
694 maintenance of its regulated voice services. Under the FCC's Connect America Fund,
695 which replaced the FCC high cost universal service fund, Frontier accepted \$15.28
696 million over 6 years to deploy broadband services to 5,140 households in eligible census
697 blocks in its Utah service territory.⁵ In addition, Frontier has been able to also improve
698 connectivity to a number of adjacent non-CAF households. Frontier has continued to
699 invest in its network despite the challenges associated with technological substitution and
700 competitive line loss, especially by non-regulated competitive carriers such as ET&V that
701 target the lowest cost areas of Frontier's largest exchange.

⁵ Connect America Funding was granted on a collective basis to all affiliates within a state. The \$15.28M in CAF II support and the 5,140 households includes funding for both Citizens Telecommunications Company of Utah and its affiliate, Navajo Communications Company's Utah service areas.

702 If this factor were relevant to the question of which COLR in the Local
703 Exchanges is eligible to receive UUSF distributions, it would weigh in favor of a finding
704 that Frontier is eligible.

705 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 4,**
706 **“WHETHER THE INCUMBENT IS PROVIDING HIGH QUALITY,**
707 **AFFORDABLE PUBLIC TELECOMMUNICATIONS SERVICES TO ALL**
708 **RESIDENTS AND BUSINESSES IN THE SMALL RURAL EXCHNAGE(S)**
709 **WHERE COMPETITIVE ENTRY IS SOUGHT”?**

710 A. Yes, Frontier has operated as a COLR for years and as such has built out a network that
711 provides high quality and affordable services to all residents and businesses in its
712 exchanges, despite the fact that it has not received UUSF for several years, including the
713 markets where the Applicants have targeted for competitive entry to provide primarily
714 non-regulated services. As an ETC, Frontier provides tariffed regulated voice services at
715 a discount to low-income consumers under the life-line program. Its tariffed residential
716 voice service is priced below the FCC national benchmark, while its high-speed internet
717 service is very competitively priced. By contrast, Applicants will not provide service to
718 all customers or classes of customers in the Local Exchanges either during the build-out
719 of their fiber network or after that build-out is complete and neither their broadband
720 offering nor their VoIP voice service is subject to state regulation.

721 If this factor were relevant to the question of which COLR in the Local
722 Exchanges is eligible to receive UUSF distributions, it would weigh in favor of ensuring
723 that Frontier, and not Applicants, is eligible for UUSF distributions.

724 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 5,**
725 **“WHETHER THE INCUMBENT IS IN COMPLIANCE WITH THE SERVICE**
726 **QUALITIES FOR TELECOMMUNICATIONS CORPORATION RULES, UTAH**
727 **ADMIN. CODE R746-340-4 THROUGH R746-340-5, AND R746-340-7?**

728 A. Yes, Frontier is in compliance with the Commission’s Service Quality rules and no
729 finding has been made to the contrary. While an investigation into isolated service
730 quality issues has been pending, that investigation is currently in a holding pattern and
731 has been seemingly dormant for several months. It is notable that Applicants intend to
732 offer two types of services—wholesale broadband and retail VoIP service—that are not
733 subject to Commission regulation and cannot be the subject of a Commission
734 investigation into service quality issues. That is, the services Applicants propose to offer
735 in the Local Exchanges are not required to be in compliance with Utah Admin. Code
736 R746-340-4, -5, and -7. If the Commission were to grant Applicants’ requests in this
737 docket and then, several years down the road, were to apply this factor to determine
738 whether to make Frontier eligible again for UUSF distributions and make Applicants
739 ineligible, the Commission would have no way to judge Applicants under this standard.

740 If this factor were relevant to the question of which COLR in the Local
741 Exchanges is eligible to receive UUSF distributions, it would weigh heavily in favor of
742 ensuring that Frontier, and not Applicants, is eligible for UUSF distributions.

743 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 6,**
744 **“WHETHER THERE ARE MATERIAL UNRESOLVED SERVICE**

745 **COMPLAINTS FILED AGAINST THE INCUMBENT IN THE SMALL RURAL**
746 **EXCHANGE WHERE COMPETITIVE ENTRY IS SOUGHT”?**

747 A. In their proposed 10-factor tests, URTA and Applicants have included multiple factors
748 that seem designed to focus this Commission’s attention on an open investigation into an
749 isolated service impacting issue. The Commission should consider whether multiple
750 factors of such a test should be devoted to such issues, or whether (as seems likely) the
751 proposed test is not really intended to address the public interest but is designed instead
752 to reach URTA’s and Applicants’ desired result.

753 However, because Applicants have raised this issue numerous times, I will
754 discuss the matter at issue in the investigation into an isolated service impacting issue that
755 occurred in the Castle Valley community in late 2018 into early 2019 and address the
756 facts of that service disruption. As part of the Frontier CAF build out, the company
757 installed a new radio network to provide for increased bandwidth in the backhaul network
758 connecting Castle Valley to the Moab switching center and that new equipment failed to
759 deliver what Frontier expected from the vendor. The weather that time of year coupled
760 with the rugged terrain hampered the trouble shooting of the new equipment. In the end,
761 Frontier resolved the issues by replacing the equipment and providing all of our
762 customers with full credits on their bills. Finally, given that the Castle Valley event
763 appears to be the basis for several of the URTA’s public interest factors and the proposed
764 justification for funding of competitive entry, it should also be noted that Castle Valley is
765 one of the communities where ET&V received a 2018 Community Connect Grant from
766 the Department of Agriculture to fund the deployment of a competing network. It is my

767 understanding that ET&V has completed the build-out of that network in Castle Valley or
768 will complete that build-out soon.

769 If this factor were relevant to the question of which COLR in the Local
770 Exchanges is eligible to receive UUSF distributions, it would not weigh in Applicants'
771 favor and would not justify a finding that Frontier is ineligible for UUSF distributions.

772 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 7,**
773 **“WHETHER THE INCUMBENT HAS A REASONABLE PLAN FOR**
774 **PROVDING HIGH QUALITY TELECOMMUNICATIONS SERVICES”?**

775 **A.** Until Frontier emerges from bankruptcy and obtains all of the required regulatory
776 approvals it cannot fully develop its future investment plans However, Frontier has
777 continued to invest in the deployment of advanced services and the maintenance of its
778 regulated voice services both before and during the pendency of its bankruptcy
779 proceedings. Under the FCC’s Connect America Fund (“CAF”), which replaced the FCC
780 high cost universal service fund, Frontier accepted \$9.26 million over 6 years to deploy
781 broadband services to 3,867 households in eligible census blocks in its Citizens
782 Telecommunications Company of Utah service territory. This build out includes certain
783 eligible census blocks within the Blanding, La Sal, Monticello, Moab and Thompson
784 Exchanges. In addition, Frontier improved connectivity to many adjacent non-CAF
785 households. As I addressed is several places earlier in my testimony, the Applicants state
786 that they will not build out their proposed fiber network in the Local Exchanges unless
787 the Commission *also* designates the Applicants as a COLR *and* determines that
788 Applicants are eligible to receive UUSF distributions as a rate of return regulated

789 provider because their business plan is premised on the ability to receive tens of millions
790 of UUSF in order to subsidize the build out and ongoing operations.

791 If this factor were relevant to the question of which COLR in the Local
792 Exchanges is eligible to receive UUSF distributions, it would not weigh in Applicants'
793 favor and would not justify a finding that has Applicants have a reasonable plan for
794 providing high quality telecommunications services that is in the public interest.

795 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 8,**
796 **“WHETHER THE COMPETITIVE APPLICANT IS SEEKING TO INVEST IN**
797 **THE EFFICIENT DEVELOPMENT AND DEPLOYMENT OF ADVANCED**
798 **TELECOMMUNICATIONS INFRASTRUCTURE AND FACILITIES EQUAL TO**
799 **OR BETTER THAN THE INFRASTRUCTURE AND FACILITIES OF THE**
800 **INCUMBENT IN THE SMALL RURAL EXCHANGES WHERE COMPETITIVE**
801 **ENTRY IS SOUGHT”?**

802 **A.** This factor may be relevant to the issue for which it was initially proposed—to determine
803 whether competitive entry should be permitted in a Small Rural Exchange over the
804 objection of the incumbent—but is not particularly relevant to a determination of UUSF
805 eligibility. If this factor were used to determine UUSF eligibility, parties would be
806 encouraged to make imprudent investments in increasingly advanced and expensive
807 infrastructure simply to ensure UUSF eligibility.

808 Applicants propose to install a fiber network in at least parts of the Local
809 Exchanges. Frontier is currently deploying broadband infrastructure in certain areas of
810 the Local Exchanges using funds from the Connect America Fund, and will continue to

811 invest in broadband infrastructure. As noted elsewhere in my testimony, Applicants do
812 not intend to extend its fiber network throughout the Local Exchanges and have proposed
813 to require remote high cost customers pay for line extensions to have access to the fiber
814 network.

815 If this factor were relevant to the question of which COLR in the Local
816 Exchanges is eligible to receive UUSF distributions, it would not weigh in Applicants’
817 favor and would not justify a finding that Frontier is ineligible for UUSF distributions.

818 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 9,**
819 **“WHETHER THE COMPETITIVE APPLICANT WILL PROVIDE HIGH**
820 **QUALITY, AFFORDABLE PUBLIC TELECOMMUNICATIONS SERVICES TO**
821 **ALL RESIDENTS AND BUSINESSES IN THE SMALL RURAL EXCHANGE**
822 **WHERE COMPETITIVE ENTRY IS SOUGHT”?**

823 A. Mr. Johansen answers this question in his Direct Testimony by stating that Applicants
824 cannot serve all customers in the Local Exchanges at this time and will “phase in” their
825 service offerings during the five-year build-out process. Moreover, Mr. Johansen states
826 on Page 16 that even after the build out is complete, after having been funded by the
827 UUSF, it is “Not Likely” that the Applicants will be able to serve all of the businesses
828 and residents. He further clarifies that if the requesting customer is willing to pay for the
829 deployment of the extension of the network to the business or residential location
830 Applicants would then build out. However, the Applicants have not provided any details
831 on what those charges would be to build out or an estimate of how many of the existing
832 households and business locations in the Local Exchanges could be subject to these

833 charges. In addition, given the non-regulated status of the Applicants' VoIP voice
834 service, the Commission would have no regulatory oversight authority over any of the
835 terms and conditions associated with these construction charges or the quality of the
836 service once it is installed. Frontier is meeting the COLR obligation by both providing
837 service throughout its entire rural service territory and is providing affordable residential
838 basis local service at rates lower than the \$18 benchmark rate.

839 If this factor were relevant to the question of which COLR in the Local
840 Exchanges is eligible to receive UUSF distributions, it would weigh in favor of a finding
841 that Frontier is eligible for UUSF distributions and that Applicants are not.

842 **Q. PLEASE ADDRESS URTA PROPOSED PUBLIC INTEREST FACTOR 10,**
843 **“WHETHER THE COMPETITIVE ENTRY IS SEEKING UUSF SUPPORT TO**
844 **CONSTRUCT THE FACILITIES AND PROVIDE THE SERVICES, AND IF SO,**
845 **IS THE SUPPORT SOUGHT REASONABLE AND NECESSARY TO PROVIDE**
846 **HIGH QUALITY TELECOMMUNICATIONS SERVICES”?**

847 A. Applicants require UUSF support to economically justify constructing their proposed
848 fiber infrastructure. As I addressed earlier in my testimony, Applicants have testified that
849 even with the nearly \$15m of net UUSF support over the first five years of their
850 operation, it is “not likely” that Applicants will ever provide service to the highest cost
851 customers, unless that customer pays for the extension of that network. Effectively,
852 Applicants are asking the Commission to approve them as the UUSF eligible COLR for
853 the customers they choose to provide service to on a non-regulated basis and require
854 Frontier to remain as the COLR for the duration of buildout for all customers and forever

855 for the customers that the Applicant believes are too expensive and they are “not likely”
856 to ever build out to. In addition, the Applicants further propose that Frontier, while it
857 maintains this highest cost COLR obligation, somehow be excluded from UUSF
858 eligibility. Neither of these proposals is in the public interest. Moreover, Frontier
859 provides high quality affordable telecommunications services throughout the Local
860 Exchanges. As such, it is not necessary to expend UUSF funds to provide high quality
861 services in the Local Exchanges.

862 If this factor were relevant to the question of which COLR in the Local
863 Exchanges is eligible to receive UUSF distributions, it would weigh in favor of a finding
864 that Frontier is eligible for UUSF distributions and that Applicants are not.

865 **Q. ARE THERE OTHER PUBLIC INTEREST FACTORS THE COMMISSION**
866 **SHOULD CONSIDER?**

867 A. Yes, the first is whether it is in the public interest for the Commission to designate a non-
868 regulated competitive carrier as eligible for UUSF support as if it were a rate-of-return
869 regulated incumbent local exchange provider in order to subsidize the build out of a
870 network that will be utilized to provide primarily non-regulated services where the
871 Applicant states that a business case is heavily reliant on subsidy support and cannot be
872 made without such governmental assistance. Other questions include what happens when
873 there is a material impact on the existing UUSF and what happens if the current UUSF is
874 capped, phased down, otherwise modified, transitions to a grant program or is eliminated
875 as has been done in other jurisdictions? Also, does approval of the Applicants’ proposal
876 create precedent for other competitive providers of various technologies to also qualify

877 for one time or ongoing UUSF support or entry into these or other small rural exchanges?
878 Finally, as the competitive and technological landscape in the communications industry
879 continues to evolve, what will be the ultimate impact on the UUSF if the Applicants fail
880 to meet their business case assumptions?

881 **RECOMMENDATIONS AND CONCLUSIONS**

882 **Q. HOW DO YOU RECOMMEND THE COMMISSION RESPOND TO**
883 **APPLICANTS' REQUESTS FOR RELIEF?**

884 A. For all of the reasons discussed above, the Commission should deny each of Applicants'
885 requests for relief in this docket. While Frontier would not oppose Applicants requests
886 for CPCNs in the Local Exchanges if that request were made in isolation, that request
887 cannot be separated from Applicants' other requests, which Frontier does oppose.
888 Frontier's objection to Applicants' requests is not an effort to oppose fair competition in
889 the Local Exchanges. Frontier is already subject to competition in the Local Exchanges
890 from non-regulated services provided by ET&V and will be subject to further
891 competition as ET&V builds the fiber facilities with grant funds in the Local Exchanges.

892 Frontier does, however, oppose Applicants request to impose significant burdens
893 on the UUSF so that it can offer unregulated services to some, but not all, of the
894 customers in the Local Exchanges. Frontier further opposes Applicants' request to be
895 designated rate-of-return regulated carriers of last resort when Applicants will not offer
896 rate-of-return regulated services and cannot meet the carrier of last resort obligations.
897 Finally, Frontier opposes Applicants' request to deny Frontier eligibility to receive UUSF
898 distributions—a request that is not consistent with Utah law, would severely prejudice

899 Frontier, and would adversely impact Frontier's operations in its other 16 exchanges in
900 Utah. For all of these reasons, this Commission should deny the Applications.

901 **Q. DOES THIS CONCLUDE YOUR TESTIMONY**

902 **A.** Yes, it does.