

Anderson OCS – 1R

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Consolidated Matter of E Fiber Moab,)
LLC and E Fiber San Juan, LLC Application) **Docket No. 20-2618-01**
for Certificate of Public Convenience and)
Necessity to Provide Facilities-Based Local) **Rebuttal Testimony of**
Exchange Service and Be Designated as a) **Alyson Anderson**
Carrier of Last Resort in Certain Rural) **On behalf of the**
Exchanges) **Office of Consumer Services**
)

October 16, 2020

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Alyson Anderson. I am a utility analyst for the Office of
3 Consumer Services (“OCS”). My business address is 160 East 300 South,
4 Salt Lake City, Utah.

5

6 **Q. DID YOU FILE DIRECT TESTIMONY ON BEHALF OF THE OCS IN
7 THIS MATTER?**

8 A Yes.

9

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. My rebuttal testimony responds to the direct testimony of Frontier
12 witnesses John Hansen and Carl Erhart.

13

14 **Q. WHAT ARE YOUR CONCLUSIONS AND RECOMMENDATIONS IN
15 REBUTTAL TESTIMONY?**

16 A. Nothing in the testimony of Citizens Telecommunications Company of
17 Utah dba Frontier Communications of Utah (“Frontier”) changes my
18 position that it is in the public interest to grant the applications of E Fiber
19 Moab, LLC and E Fiber San Juan, LLC (“E Fiber”) for Certificates of Public
20 Convenience and Necessity (“CPCN”) and designate the companies as a
21 rate of return regulated Carriers of Last Resort (“COLR”) in the Moab,
22 Thompson, La Sal, Monticello, Blanding (excluding White Mesa), Bluff and
23 Mexican Hat exchanges (collectively “Exchanges”).

24

25 **Q. FRONTIER WITNESSES CARL ERHART AND JOHN HANSEN**
26 **SUGGESTED IN DIRECT TESTIMONY THAT E FIBER'S PROPOSED**
27 **SERVICE OFFERINGS ARE VOIP SERVICES AND CANNOT BE**
28 **REGULATED BY THE UTAH PUBLIC SERVICE COMMISSION**
29 **("PSC").¹ WHAT IS YOUR RESPONSE?**

30 A. As demonstrated in the OCS's September 25, 2020 Supplemental
31 Memorandum In Opposition to Frontier Communication's Rule 56(a) Motion
32 for Partial Summary Judgment, E Fiber's proposed service is not the type of
33 VoIP service that is preempted by federal law or exempted from regulation by
34 Utah Code §54-19-103(1).²

35

36 **Q. MR. ERHART DISCUSSES AT LENGTH THE CHARACTERISTICS OF**
37 **FRONTIER'S EXCHANGES AND ASSERTS THAT E FIBER SEEKS TO**
38 **SERVE FRONTIER'S LOWEST COST EXCHANGES.³ HOW DO YOU**
39 **RESPOND?**

40 A. First, I note that Mr. Erhart states that "All other things being equal, the
41 unit cost (or cost per access line) tends to decline as the number of

¹ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 302-320, 318-319, 613-619, 833-836.

Docket No 20-2618-01 Frontier Direct Testimony John Hansen, Lines 7-11.

² Docket No. 20-2618-01, The Office of Consumer Services Supplemental Memorandum In Opposition to Frontier Communication's Rule 56(a) Motion for Partial Summary Judgement, September 25, 2020.

³ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 112-183.

42 access lines served in an exchange increase.”⁴ This is not the same as
43 providing concrete evidence that certain exchanges served by Frontier
44 are, in fact, higher cost to serve. When asked in discovery if Frontier
45 could identify Frontier’s Utah exchange that was the most costly, Frontier
46 replied, “This type of analysis would require a special study that Frontier
47 has not performed.”⁵

48 Moreover, in my opinion, this argument appears to overlook key facts in
49 this case. It appears to me that E Fiber is seeking to expand into service
50 territories based on geographic proximity, not relative costs as compared
51 to other Frontier exchanges. Since all of the exchanges are relatively high
52 cost, the focus of the current docket is the specific requests of E Fiber, not
53 the exchanges costs relative to other Frontier exchanges.

54

55 **Q. MR. ERHART ADDRESSES EACH SPECIFIC REQUEST OF E FIBER.⁶**
56 **DO YOU HAVE ANY RESPONSES?**

57 A. Yes. I will respond to several of Mr. Erhart’s statements including:

- 58 • The assertion that E Fiber believes if the PSC does not rule
59 Frontier ineligible to receive Utah Universal Telecommunications
60 Service Support Fund (“UUSF”) then it would not be in the public

⁴ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 179-180.

⁵ Frontier Response to E Fiber Data Request 2.4(c).

⁶ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 184-474.

61 interest to take any action that would make E Fiber eligible for
62 UUSF.

- 63 • The statement that Frontier does not object to granting E Fiber a
64 CPCN but does object to designating E Fiber a COLR.
- 65 • The concern that E Fiber will not serve all customers without
66 utilizing a line extension tariff.
- 67 • The statement that Frontier might need to petition for release from
68 COLR obligations.
- 69 • The concern that approval would make E Fiber one of the largest
70 recipients of UUSF and potentially cause a significant increase in
71 disbursements from the fund and may require increased payments
72 into the fund from ratepayers.

73

74 **Q. DO YOU AGREE THAT IF THE PSC DOES NOT RULE FRONTIER**
75 **INELIGIBLE TO RECEIVE UUSF THEN IT WOULD NOT BE IN THE**
76 **PUBLIC INTEREST TO TAKE ANY ACTION THAT WOULD MAKE E**
77 **FIBER ELIGIBLE FOR UUSF?**

78 A. No. As previously discussed in my direct testimony and in the OCS's
79 Memorandum In Opposition to Frontier Communication's Rule 56(a)
80 Motion for Partial Summary Judgement, the PSC does not have to declare
81 Frontier ineligible to receive UUSF to prevent two COLRs from receiving
82 UUSF disbursements to build duplicative infrastructure. The UUSF is
83 protected by the PSC relying on its authority to only authorize recovery for

84 funds expended for investments that are reasonable, and investment in
85 duplicative infrastructure would not be reasonable. This fact resolves the
86 concerns raised by the OCS and the Utah Rural Telecom Association
87 (“URTA”) over two COLRs, both with access to the UUSF operating in the
88 same exchange. Given this, the PSC has several options to deal with the
89 two COLR issue if it approves the E Fiber applications for CPCN and
90 designation as rate of return regulated COLR in the Exchanges. These
91 options include:

- 92 • Issue guidance as part of the order in the current dockets on the
93 criteria to be used in the reasonableness determination regarding
94 the building of duplicative telecom plant.
- 95 • Initiate rulemaking to create and codify the proper tests for recovery
96 from the UUSF in cases where two COLRs are eligible for UUSF
97 disbursement for investment in the same exchange.
- 98 • Determine the reasonableness of any investments in exchanges
99 that have more than one provider eligible for UUSF at the time a
100 provider applies for UUSF reimbursement, ensuring that the UUSF
101 does not support or promote duplicative facilities.

102

103 **Q. HOW DO YOU RESPOND TO THE FACT THAT FRONTIER DOES NOT**
104 **OPPOSE CPCNS FOR E FIBER BUT DOES OPPOSE COLR STATUS?**

105 A. Mr. Erhart’s position is based on a misunderstanding of the relevant
106 statutes. As explained in the OCS’s August 25, 2020 Memorandum in

107 Opposition to Frontier Communication's Rule 56(a) Motion for Partial
108 Summary Judgement, if a telecom is granted a CPCN for competitive
109 entry into a local exchange controlled by an incumbent telephone
110 corporation under section 54-8b-2.1(4), it automatically becomes a COLR
111 under section 54-8b-15(1)(b).⁷

112

113 **Q. WHAT IS YOUR CONCERN REGARDING FRONTIER'S STATEMENTS**
114 **THAT E FIBER WILL NOT REALLY BE SERVING ALL CUSTOMERS**
115 **BECAUSE E FIBER PROPOSES A LINE EXTENSION TARIFF?**

116 A. Mr. Erhart points to E Fiber's proposed line extension tariff in claiming that
117 E Fiber will not be able to meet its COLR obligations in the Exchanges,
118 because it will not serve all customers without imposing additional costs
119 on remote customers.⁸ I share Mr. Erhart's concern about the importance
120 of COLR obligations. However, I am not sure I understand the difference
121 between Frontier's Tariff Schedule No. A-2 Outside Plant Facilities
122 discussing additional charges for the extension of service and E Fiber's
123 proposed line extension tariff.⁹

124

⁷ Docket No. 20-2618-01 Frontier Communication's Rule 56(a) Motion for Partial Summary Judgement, 09-25-2020, Pages 12-13.

⁸ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 286-292.

⁹ http://carrier.frontiercorp.com/crtf/tariffs/u/46/UT/local/Loca_Tariff_UT.pdf, Schedule No.A-2
<https://emerytelcom.com/support/tariffs/Emery-Local-Tariff.pdf>, Sheets No. 17 and 49

125 **Q. HOW DO YOU RESPOND TO FRONTIER'S STATEMENT THAT IT MAY**
126 **NEED TO PETITION TO GET OUT OF COLR OBLIGATIONS?**

127 A. I would agree with Frontier that if the PSC grants the applications and E
128 Fiber obtains reimbursements from the UUSF for the build out of its fiber
129 network, it may be appropriate for Frontier to petition the PSC to be
130 relieved of its COLR obligations.

131

132 **Q. HOW DOES MR. ERHART ADDRESS THE TEN FACTORS FIRST**
133 **PROPOSED BY URTA AND USED BY E FIBER IN ITS DIRECT**
134 **TESTIMONY?**

135 A. Mr. Erhart observed that E Fiber used the ten factors for a different
136 purpose than URTA originally proposed,¹⁰ and he went on to address
137 each of the factors with responses and rebuttals.

138

139 **Q. DO YOU HAVE ANY RESPONSE TO THE ASSERTIONS MADE BY MR.**
140 **ERHART IN RESPONSE TO THE URTA "TEN FACTORS"?**

141 A. Yes, while the OCS does not endorse the ten factors either as proposed
142 by URTA or as used by E Fiber, several statements made by Mr. Erhart
143 need response.

¹⁰ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 633-636.

144 • In response to URTA Factor 3, whether the incumbent has
145 invested in advanced telecommunications infrastructure, and
146 Factor 7, whether the incumbent has a reasonable plan for
147 providing high quality telecommunications services, Mr. Erhart
148 indicated, “Frontier has continued to invest in the deployment of
149 advanced services and the maintenance of its regulated voice
150 services.”¹¹ While it is true that Frontier has invested some in
151 the Exchanges, it is certainly not enough considering its Utah
152 infrastructure is almost completely depreciated and the
153 persistence of Frontier’s service quality issues in the state. We
154 do not know when Frontier will be able to invest adequately in
155 its Utah infrastructure after, and if, it exits bankruptcy. When
156 replying to Factor 7, Mr. Erhart said, “Until Frontier emerges
157 from bankruptcy and obtains all the required regulatory
158 approvals it cannot fully develop its future investment plans.”¹²
159 Therefore, Frontier is unable to invest now and it is unclear
160 whether Frontier will ever be able to invest adequately in
161 infrastructure. As further evidence of this uncertainty, Mr.
162 Hansen indicated in his direct testimony that it “would not be
163 cost effective to invest in fiber.”¹³

¹¹ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 693-694.

¹² Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 775-776.

¹³ Docket No 20-2618-01 Frontier Direct Testimony John Hansen, Lines 150-152.

164 • In response to URTA Factor 4, whether the incumbent is
165 providing high quality, affordable public telecommunications
166 services to all residents and businesses in the Exchanges, Mr.
167 Erhart said, “Yes, Frontier has operated as a COLR for years
168 and as such has built out a network that provides high quality
169 and affordable services to all residents and businesses in its
170 exchanges despite the fact that it has not received UUSF for
171 several years, including the markets where the Applicants have
172 targeted for competitive entry to provide primarily non-regulated
173 services.”¹⁴ However, it is clear that Frontier is NOT providing
174 high quality telecommunications services. The OCS has
175 received communications from individuals and organizations
176 about poor quality telecommunications in San Juan and Grand
177 counties and the resulting safety and economic impacts as well
178 as the overall harm of poor connectivity heightened during this
179 time of global pandemic. This includes emails and statements
180 from the Grand County Commissioners, the San Juan School
181 District, San Juan County, Utah Navajo Health System (in San
182 Juan County) and the Economic Development and Visitor
183 Service in San Juan County.

¹⁴ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 710-714.

184 • In response to URTA Factor 5, whether incumbent is in
185 compliance with service quality rules, and 6, whether there
186 are material unresolved service complaints against the
187 incumbent, Mr. Erhart said, “Yes, Frontier is in compliance
188 with the Commission’s Service Quality rules and no finding
189 has been made to the contrary.” As I showed in my direct
190 testimony, the OCS is uncertain of Frontier’s compliance
191 with PSC Rule 746-340-5(B)(1) and PSC Rule 746-340-5(C).
192 OCS repeatedly requested evidence in data requests that
193 could clear up this confusion. Since Frontier did not provide
194 evidence of compliance, I must assume that they are not in
195 compliance.

196

197 **Q. HOW DO YOU RESPOND TO MR ERHART’S SUGGESTION THAT THE**
198 **OCS’S INVESTIGATION OF FRONTIER’S SERVICE QUALITY IS**
199 **DORMANT¹⁵?**

200 A. The OCS made the intentional decision to hold off on the investigation
201 pending the outcome of this docket. The E Fiber dockets are
202 contemplating some of the same issues at the heart of both the OCS and
203 DPU investigations. These issues are also important in the E Fiber
204 docket, as it pertains to the public interest. Moreover, all discovery

¹⁵ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 729-731.

205 material in the investigation docket has been incorporated into this docket,
206 through the discovery requests of the OCS and E Fiber. Pending the
207 outcome of this docket and the Frontier bankruptcy, the OCS may
208 continue the investigation or ask that it be closed.

209

210 **Q. IF THE PSC APPROVES E FIBER'S APPLICATIONS, DOES THAT**
211 **CREATE A BAD PRECEDENT AS MR ERHART SUGGESTS?¹⁶**

212 A. No. First, I do not believe approval of the current dockets would open the
213 door to multiple new requests for competitive entry into small rural
214 exchanges. This is a unique situation, with the opportunity to bring
215 upgraded telecom service to customers in Grand and San Juan counties
216 that otherwise might not be available, under circumstances that are not
217 likely to be repeated. Second, I note that the OCS has always supported
218 the PSC examining the circumstances of the current requests and future
219 request on a case by case basis. The decision should not be based on a
220 single factor but rather on the totality of the circumstances. If the PSC
221 follows this course of action, it would not set a bad precedence.

222

223 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

224 A. Yes

¹⁶ Docket No 20-2618-01 Frontier CONFIDENTIAL Direct Testimony Carl Erhart, Lines 875-877.

Docket No. 20-2618-01

OCS Exhibit No. 1.1R

Frontier Communications' Response to Applicants Data Request 2.4
Referenced in Rebuttal Testimony of Alyson Anderson (OCS 1R) on Behalf of
The Office of Consumer Services

October 16, 2020

- 2.4 Beginning on Line 173 of Mr. Erhart's testimony, Mr. Erhart states that generally speaking the greater number of access lines in an exchange, the less costly it is to provide service to each access line, but in Footnote 1, Mr. Erhart indicates Frontier does not keep accounting data of its costs in each exchange. Additionally, Mr. Erhart states that "all other things being equal, the unit cost (or cost per access line) tends to decline as the number of access lines served in an exchange increase.
- a. Is Mr. Erhart saying that Frontier is unable to identify the particular costs for providing service in each exchange?
 - b. On Lines 363-377 of his Direct Testimony, Mr. Erhart states that the Applicants want to gradually take away the lowest-cost customers to serve until they leave only the most-costly customers to Frontier. Please provide all data in Frontier's possession or control to support this assertion. Please specifically identify how Frontier will determine the least costly customers to serve and the most-costly customers to service and provide all supporting data.
 - c. Can Frontier identify its most costly exchanges in Utah? If so, please identify the exchanges in order of most costly to least costly?
 - d. Please provide any and all data available to Frontier to support the statement that "Applicants seek to service areas that are generally lower cost per access line that Frontier's overall service area in Utah."
 - e. Does Frontier maintain technicians in the Local Exchanges? Or are technicians dispatched from other areas in the state or out of state?
 - f. If technicians are dispatched from other areas of the state or out of state to service the Local Exchanges, where are such technicians dispatched from? In other words, how far do they have to travel to service the Local Exchanges?
 - g. Do technicians that service the Local Exchanges service other Frontier Exchanges in Utah or out of state?

Frontier Response to E Fiber Data Request 2.4:

- a. Yes, such an analysis would require a special study with numerous assumptions regarding the allocation of joint and common costs for both expenses and investments.
- b. The referenced portion of Mr. Erhart's testimony is based on the statement on page 22 of Mr. Johansen's direct testimony where he describes the existing business strategy of ET&V as it relates to Frontier's Moab exchange, which is the

only Frontier exchange that has ever served more than 5,000 access lines. Mr. Johansen states that “the ET&V fiber facilities were constructed to provide service to primary businesses and certain high-density residential areas in Moab.” Mr. Johansen goes on to explain that as a result of this approach, “the costs associated with construction were relatively low, while the revenues from such customers was relatively high”. Therefore, ET&V’s strategy over the past several years has been to leave Frontier as the COLR with the most-costly customers to serve.

- c. This type of analysis would require a special study that Frontier has not performed.
- d. The statement is based on Frontier’s general agreement with the Testimony of Mr. Woolsey on page 10, where he describes the general “economies of scale” associated with the telecommunications industry where the high fixed costs associated with a network, especially for a carrier with COLR obligations, and the associated labor and other operating costs become more economic as the number of customers increase. Given that the seven exchanges where the Applicants requested certification collectively represent nearly half of the business access lines served by Frontier statewide, it is reasonable to conclude that the costs to provide services to these customers would be lower
- e. Yes, Frontier maintains technicians in the local exchanges. Four technicians are based in Moab and have responsibility for that exchange, as well as for the Thompson and La Sal Exchanges. An additional technician is based in Monticello along with one technician in Blanding. These two technicians have responsibility for the exchanges in which they are based, as well as for the Bluff and Mexican Hat exchanges. While Frontier does not generally dispatch technicians from other parts of the state or from out of state to address issues in the Local Exchanges, in the event of an emergency or natural disaster, Frontier has the ability to call upon additional technicians or other resources from across the entire Frontier affiliates’ footprint.
- f. See the response to e. above.
- g. See the response to e. above

CERTIFICATE OF SERVICE

Docket Nos. 20-2618-01

I CERTIFY that on October 16, 2020, a true and correct copy of the foregoing Rebuttal Testimony for Alyson Anderson on behalf of the Office of Consumer Services was served by electronic mail to the following:

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