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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Applications of E Fiber Moab, LLC)	
and E Fiber San Juan, LLC for Certificates)	
of Public Convenience and Necessity)	Docket No. 20-2618-01
to Provide Facilities-Based Local)	
Exchange Service and Be Designated as Carriers)	
Of Last Resort in Certain Rural Exchanges)	

REBUTTAL TESTIMONY

OF

BROCK JOHANSEN

ON BEHALF OF APPLICANTS

October 16, 2020

List of Exhibits

- Exhibit BJ R-01 Declaration of Brock Johansen
- Exhibit BJ R-02 Frontier's Responses to Applicants DR 2
- Exhibit BJ R-03 Emery – Local – Tariff
- Exhibit BJ R-04 Email from Peter Aimable to Brock Johansen
- Exhibit BJ R-05 E Fiber Network Service Over Fiber
- Exhibit BJ R-06 NECA Reporting Guideline 8.11
- Exhibit BJ R-07 Email from Doug Hintz to Brock Johansen
- Exhibit BJ R-08 Letter from Melody Crane to Brock Johansen
- Exhibit BJ R-09 Frontier's Responses to OCS DR 3
- Exhibit BJ R-10 Frontier's Responses to OCS DR 4
- Exhibit BJ R-11 Frontier CAF II Waiver

1 **INTRODUCTION**

2 **Q. Are you the same Brock Johansen that provided Direct Testimony on behalf of E**
3 **Fiber Moab, LLC and E Fiber San Juan, LLC (collectively the “Applicants”)?**

4 A. Yes.

5 **Q. What is the purpose of your rebuttal testimony?**

6 A. In this rebuttal testimony, I address the Direct Testimony of John E. Hansen and Carl
7 Erhart filed in support of Citizens Telecommunications Company of Utah d/b/a Frontier
8 Communications (“Frontier”).

9 **Q. As a preliminary matter, did you file a Declaration in support of Applicants’**
10 **Memorandum in Opposition to the Motion for Partial Summary Judgment filed by**
11 **Frontier in this proceeding?**

12 A. Yes, I did. My Declaration, which is attached hereto as Exhibit BJ R-01, described the
13 historic telephone voice service architecture; described the voice service provided by
14 Emery Telcom; and described the proposed voice service to be provided by Applicants. I
15 also reviewed the line extension policy contained in Frontier’s Local Tariff.

16 **Q. Do any of the statements you have previously made in your Direct Testimony or**
17 **your Declaration need clarification or modification?**

18 A. Yes. After reading the Direct Testimony of Carl Erhart, there are a few items from my
19 Direct Testimony that need clarification.

20 **Q. What would you like to clarify?**

21 A. First, I need to clarify the Applicants’ position on Frontier’s eligibility for UUSF.

22 **Q. Please explain.**

23 A. When we filed the Applications for competitive entry, we did not request that Frontier be
24 deemed ineligible for UUSF. Our Applications specifically noted that Utah Code 54-8b-
25 2.1 does not require the Commission to eliminate carrier of last resort (COLR)
26 obligations for the incumbent local exchange carriers when it grants competitive entry to
27 another carrier, but the Commission could eliminate COLR obligations of incumbent if
28 found to be in the public interest.

29 In response to our Applications, the Utah Rural Telecom Association (URTA) filed
30 comments raising concerns that it would not be in the public interest for the UUSF to
31 support duplicative networks. Specifically, URTA suggested that only one COLR should
32 be entitled to UUSF in each area, and URTA identified ten factors that the Commission
33 should consider when determining whether to allow competitive entry into exchanges of
34 fewer than 5,000 access lines served by a provider with fewer than 30,000 access lines in
35 the state. The Office of Consumer Services (OCS) also expressed concern about the
36 UUSF supporting duplicative networks in their Comments.

37 In my Direct Testimony, on lines 196-202, I stated that I believed the Commission should
38 decide which COLR, Applicants or Frontier, would be eligible to draw support from the
39 UUSF. I agreed that it is good public policy to only allow one COLR to draw from the
40 UUSF in each exchange, and I stated that Applicants need to know if they will be the
41 COLRs eligible to receive UUSF support before we make the added investment in the
42 Local Exchanges.

43 Q. **Has your view on this matter changed?**

44 A. My view of this matter has evolved. While I still believe it is not in the public interest for
45 the UUSF to support duplicative networks, I believe the Commission can avoid such a
46 result by exercising its statutorily mandated duty to determine the reasonableness of a
47 carrier's expenses.

48 **Q. How can the Commission accomplish this?**

49 A. The Commission should approve the Applications to allow Applicants competitive entry
50 as rate of return regulated COLRs and then annually review each of the COLRs expenses
51 for reasonableness prior to allowing such expenses to be included in the UUSF
52 determination. The Commission has the duty and the authority to determine the
53 reasonableness of costs for UUSF purposes. Further, when there are two COLRs in an
54 area, as contemplated by Utah Code 54-8b-2.1(4), the Commission can provide guidance
55 on the reasonableness evaluation if two COLRs are certificated to serve the same
56 territory.

57 For example, the Commission could inform the COLRs that once fiber facilities are
58 constructed to a particular part of town or subdivision, it would be considered
59 unreasonable for the second COLR to overbuild that area with fiber facilities, absent
60 some particular showing of public interest.

61 **Q. Are there other areas of your testimony that need clarification?**

62 A. Yes. On lines 212 of Mr. Erhart's Direct Testimony, he states that "it is unclear whether
63 Applicants would construct the proposed fiber network if this Commission declines to
64 issue a ruling that Frontier is not eligible to receive UUSF distributions. I want to clarify
65 that if Applicants are granted competitive entry as rate of return COLRs, the Applicants

66 will construct fiber facilities in the Local Exchanges. The only exception to this would be
67 to comply with the Commission's guidance on the reasonableness evaluation if two
68 COLRs are certificated to serve the same territory.

69 **Q. To clarify, are the Applicants seeking an Order that Frontier cannot receive**
70 **distributions from the UUSF.**

71 **A.** No. However, there is a proceeding before the Commission to determine if Frontier is in
72 compliance with Service Quality Rules for Telecommunication Corporations (R746-340-
73 4, 340-5, and 340-7); to determine if Frontier has systemic service quality issues; and
74 whether the Commission should take enforcement action under Utah Code 54-8b-3.3
75 and/or impose penalties on Frontier. The outcome of that proceeding is relevant to these
76 applications. If the Commission were to find that Frontier is not meeting the Service
77 Quality Rules or otherwise not providing adequate service, the Commission could revoke
78 Frontier's CPCN. However, this would leave the residents in the Exchanges unserved.
79 Although I am not asking for the Commission to revoke Frontier's certification, if the
80 Commission were to approve the E Fiber Applications, there would be another
81 certificated provider in each of the Local Exchanges.

82 **Q. Do the Applicants believe that if the Commission declines to issue a ruling that**
83 **Frontier is not eligible to receive UUSF, it would be against public policy for the**
84 **Commission to take action that would result in Applicants being eligible to receive**
85 **UUSF distributions for operations in the Local Exchanges, as Mr. Erhart states on**
86 **Lines 220-224 of his Direct Testimony?**

87 A. No. As stated above, Applicants believe that the Commission can guard against two
88 COLRs receiving UUSF for redundant facilities by utilizing the Commission's statutory
89 obligation to determine each COLR's "reasonable costs."

90 **Q. Are there other areas of your Direct Testimony that need clarification or**
91 **modification?**

92 A. Yes. On lines 264-269 of my Direct Testimony I discuss the possibility of the
93 Commission determining UUSF on an exchange by exchange basis. While, I believe the
94 Commission could do this, I agree that it might be cumbersome. More importantly,
95 however, it is not necessary. The Commission is already tasked with determining the
96 reasonableness of a carrier's expenses. If there are two COLR's in the same exchange, the
97 Commission can avoid UUSF support of redundant infrastructure by reviewing the
98 reasonableness of the investment under the circumstances, and only permitting
99 reasonable costs to be included in the UUSF determination.

100 **Q. Do you have any other modifications to your previous testimony?**

101 A. The remaining clarification will be handled in specific response to the Direct Testimony
102 filed by Frontier.

103 **Response to Direct Testimony of Carl Erhart**

104 **Q. Have you reviewed the Testimony of Carl Erhart?**

105 A. Yes, I have.

106 **Q. Please describe how your rebuttal testimony to Mr. Erhart's Testimony will be**
107 **organized.**

108 A. I will address the issues raised in Mr. Erhart's testimony in the order in which he
109 presented them.

110 **Q. Mr. Erhart testifies that the Applicants are seeking to serve the Frontier exchanges**
111 **with the most access lines. Did you select the Local Exchanges based on the number**
112 **of access lines?**

113 A. No. Applicants selected the Local Exchanges based on their proximity to Emery
114 Telcom's existing facilities and the requests for service we had received. If we were
115 targeting exchanges with the most access lines, we would not seek to serve the
116 Thompson, Bluff, or Mexican Hat Exchanges. We just want to bring service to an under
117 or unserved area of the state.

118 **Q. Why is the average number of access lines relevant in this discussion?**

119 A. I don't think it is relevant to this discussion.

120 **Q. Mr. Erhart states that "generally speaking, the greater the number of access lines in**
121 **an exchange, the less costly it is to provide service to each access line." Does Mr.**
122 **Erhart provide any data to support this general statement?**

123 A. No. In fact, Mr. Erhart acknowledges that Frontier does not keep accounting data of its
124 costs in each exchange. When the Applicants asked Frontier to identify the particular
125 costs of providing service in each exchange, Frontier stated "such an analysis would
126 require a special study with numerous assumptions regarding the allocation of joint and
127 common costs for both expenses and investments." Frontier further admitted that it
128 cannot identify its most costly exchanges in Utah. See Frontier's Responses to Applicants
129 DR 2, attached hereto as Exhibit BJ R-02.

130 **Q. Beginning on line 181, Mr. Erhart also says “By targeting exchanges with more**
131 **access lines, the Applicants seek to serve areas that are generally lower cost per**
132 **access line than Frontier’s overall service area in Utah and certainly lower costs**
133 **than the Frontier exchanges the Applicants do not seek to serve.” Do you agree with**
134 **that statement?**

135 **A.** No, many of the exchanges in the Applications serve relatively few access lines, so I do
136 not believe that Mr. Erhart’s statement is accurate.

137 **Q. On line 186 Mr. Erhart states that “Applicants’ seek competitive entry into the**
138 **Local Exchanges but only under conditions in which Applicants are assured they**
139 **will immediately begin to receive UUSF funding as a rate of return regulated**
140 **competitive local exchange carrier, and Frontier will not.” Do you agree with Mr.**
141 **Erhart’s statement?**

142 **A.** No. Applicants are not requesting that they be assured they will immediately begin to
143 receive UUSF. Applicants are requesting that they be designated as rate of return COLRs
144 so they will be *eligible* to receive UUSF, when the time comes, if their reasonable costs
145 for providing service, as determined by the Commission, plus the required rate of return
146 exceed their revenues from all sources, as provided in Utah Code §54-8b-15(4). The
147 Applicants have not requested approval to receive any particular disbursement of UUSF.
148 In fact, as I discussed in detail in my Direct Testimony, Lines 302-312, any UUSF that
149 Applicants would receive will be received between 13-24 months after the costs are
150 incurred, due to the regulatory lag contained in Utah Administrative Code R746-8-401.
151 Pursuant to Rule, each year the rate-of-return providers file an annual report with the

152 Commission which includes the company's financial information from the year before.
153 The DPU reviews the annual report, determines if the costs incurred are reasonable and
154 prudent, and makes a recommendation regarding the ongoing UUSF support for such
155 provider. If the financial information contained in the annual report of an eligible
156 provider demonstrates that its reasonable costs exceed its revenues, the provider is
157 granted UUSF support beginning January 1 of the following calendar year. There simply
158 is nothing immediate about the process.

159 Additionally, it is important to note that by the time the Applicants might receive UUSF,
160 they will already be providing service using the facilities installed.

161 Finally, as previously stated, Applicants are not seeking a determination that Frontier
162 should not be eligible for UUSF if they otherwise meet the requirements contained in
163 Utah Code 54-8b-15 and Utah Administrative Code R746-8-401.

164 **Q. Beginning on line 265, Mr. Erhart states that "Applicants seek COLR designation**
165 **but admit they cannot meet the COLR obligations." Do you admit the Applicants**
166 **cannot meet this obligation?**

167 **A.** Absolutely not. As I have stated numerous times, the Applicants will construct fiber
168 facilities to the premises in the Local Exchanges if the Applications are granted. We have
169 not yet constructed all of those facilities, and it would be unreasonable to require us, as
170 competitive entrants, to build out the entire service territory before we even have
171 authorization to serve the customers. Further, the fact that the Utah rules contemplate an
172 implementation schedule is evidence that local exchange service is not expected to be
173 provided to all customers immediately upon granting of the CPCN.

174 **Q. Once your buildout is complete, will the Applicants provide service to every**
175 **customer or class of customers who request it pursuant to your tariff?**

176 **A.** Yes.

177 **Q. Are you the Chief Executive Officer of other COLRs in the state?**

178 **A.** Yes. As stated in my Direct Testimony, I am the CEO of Emery Telephone,
179 Carbon/Emery Telcom, Inc. and Hanksville Telcom, Inc (the “Emery Telcom
180 Companies”).

181 **Q. Where does Emery Telephone provide service?**

182 **A.** Emery County.

183 **Q. Has Emery Telephone built its network to provide service to every resident and/or**
184 **location in the county?**

185 **A.** No.

186 **Q. How does a resident receive service in an area where Emery Telephone doesn’t**
187 **currently have facilities?**

188 **A.** The resident would call our office and provide us with the address and request service.

189 **Q. As the COLR do you build to every resident who requests it?**

190 **A.** No, that could be very costly because our service area is vast, and parts are very remote.
191 As indicated in my Declaration, attached hereto, Emery’s tariff, which was approved by
192 the Commission, requires that we extend the line at no charge to the customer if the cost
193 of construction is less than three times the annual primary service revenue.

194 **Q. How often have you had to impose line extension fees to residents who have**
195 **requested service?**

196 A. In the last 10 years I have been with Emery Telephone, we have imposed line extension
197 fees approximately 8 times, 5 for businesses and 3 for residents. This number is a total for
198 all three of the Emery Telcom Companies.

199 **Q. Will the Applicants' tariffs have line extension provisions?**

200 A. Yes, the Applicants will have the same line extension policy as Emery Telephone.

201 **Q. Do the line extension tariffs mean you will be unable or unwilling to serve every**
202 **customer or class of customers in the Local Exchanges?**

203 A. No.

204 **Q. Mr. Erhart states that the Applicants are "asking the Commission to approve them**
205 **as the UUSF eligible COLR for the customers they choose to serve, to require**
206 **Frontier to continue to have COLR obligations during Applicants' buildout for all**
207 **customers, and then to require Frontier to remain as the COLR for all customer**
208 **after the buildout that E Fiber deems too expensive to serve." How do you respond?**

209 A. First, as stated previously, we are not asking the Commission to approve Applicants as
210 the UUSF COLR for the customers we choose to serve. We are asking the Commission
211 to approve each Applicant as a COLR for the Local Exchanges. As demonstrated above,
212 this means the Applicants undertake the obligation to provide service to all customers or
213 classes of customer who request it – not merely those we choose to service. Second,
214 while Frontier will remain a COLR while the Applicants build out the Local Exchanges,
215 Frontier will be eligible for UUSF for its reasonable expenses. Finally, there will be no
216 customers that the Applicants deem too expensive to serve. Rather, pursuant to the
217 Applicants' tariffs, there may be a line extension fee imposed if the cost to build service

218 to a particular customer is beyond 3 times the expected annual revenue from such
219 customer. We anticipate this occurring infrequently, if at all. For any such customers that
220 Frontier serves, Frontier will be eligible to receive UUSF for the reasonable costs
221 incurred in serving such customer. Again, the Commission could provide direction about
222 duplicative facilities and the reasonableness of the costs associated with such facilities in
223 enforcing COLR obligations.

224 **Q. Mr. Erhart claims that the Applicants intend to offer only two types of services: (1)**
225 **wholesale broadband; and (2) voice service using VoIP, neither of which can be**
226 **regulated by the Commission. Do you agree with this statement?**

227 **A.** No. The issue of whether the Applicants' voice service and wholesale broadband internet
228 access service can be regulated by the Commission is the subject of Frontier's Partial
229 Motion for Summary Judgment. By way of summary, neither federal law, nor state law
230 preclude the Commission from regulating either of those services.

231 Additionally, to the extent Mr. Erhart is claiming that Applicants will only be offering
232 voice and wholesale broadband internet access service, such a claim completely ignores
233 the language contained in Applications, my Direct Testimony, and the data request
234 responses provided by Applicants in this proceeding.

235 In the Application, we stated the Applicants are "seeking authority to provide all forms of
236 local exchange public telecommunications services as a carrier of last resort on a
237 facilities-based basis." (Applications, ¶4.c). "Applicants will provide access to ordinary
238 intraLATA and interLATA message toll calling, operator services, directory assistance,

239 directory listings, and emergency services such as 911 and E911 through its own
240 operations.” (Applications, ¶5). My Direct Testimony states the same on lines 439-443.

241 Additionally, the Applicants were asked by the Division and Frontier for a full and
242 detailed list of the services the Applicants intend to offer. In response, Applicants
243 referred to the Local Exchange Tariff filed by Emery Telephone and stated that the
244 Applicants intend to provide all the services identified in the Emery Telephone Tariff,
245 attached hereto as Exhibit BJ R-03. The Applicants intend to offer voice service,
246 wholesale broadband internet access service, and every other public telecommunications
247 service contained in the Emery Telephone Tariff. Mr. Erhart’s statement that the
248 Applicants intend to provide only two services is not accurate.

249 Finally, Mr. Erhart’s testimony that the services proposed cannot be regulated by the
250 Commission is belied by the fact that the Commission has been regulating Emery
251 Telephone and the services it provides since its inception. The Applicants are proposing
252 to provide the very same service as that provided by the Emery Telcom Companies.

253 **Q. On lines 331-394, Mr. Erhart sets forth six public policy concerns associated with**
254 **denying UUSF eligibility to Frontier. Do the Applicants seek to deny UUSF**
255 **eligibility to Frontier in this Application?**

256 A. Again, the answer is no. Applicants do not seek to deny UUSF eligibility to Frontier, so
257 the public policy arguments set forth in lines 331-394 are not relevant to this proceeding.
258 I do, however, want to clear up another misstatement made by Mr. Erhart on lines 371.

259 **Q. What misstatement is that?**

260 A. On line 371, Mr. Erhart states that Applicants will gradually “take away the lowest-cost
261 customers to serve until they leave only the most-costly customer to Frontier.” There is
262 no evidence supporting this statement. Frontier, by its own admission does not track
263 costs on a per exchange basis, so they certainly do not track the cost of customers within
264 an exchange. The construction of the fiber network will begin with the areas identified in
265 the Community Connect and ReConnect Grants received from USDA/RUS. These areas
266 are Castle Valley, LaSal, the outskirts of Monticello and Blanding, Bluff and Mexican
267 Hat. In looking at the density of these areas, according to Mr. Erhart, these customers
268 should be the most costly to serve.

269 **Q. Do you agree that access to UUSF is an incentive for a COLR to invest in**
270 **infrastructure?**

271 A. Yes, generally. However, Frontier has had access to the UUSF for 13 years, and will
272 continue to have access to UUSF distributions, and yet they have not, to date, invested
273 enough in these Local Exchanges to avoid a myriad of outages and customer complaints
274 as evidenced in this proceeding.

275 **Q. Beginning on Line 424 Frontier outlines other competitively neutral ways the UUSF**
276 **could be used to facilitate the deployment of broadband services in rural and high**
277 **cost markers, such as a competitive broadband grant program. What are your**
278 **thoughts on that suggestion?**

279 A. Grant programs alone are problematic for high-cost areas because more often than not,
280 the one-time grants do not cover operation and maintenance costs. So, without an
281 ongoing source of support, the grant recipients install the facilities, but don’t have the

282 funds to upgrade and maintain the facilities, so in ten years, communities are left with
283 dilapidated infrastructure.

284 **Q. On lines 450-462 and 583-585, Mr. Erhart states that the Emery Telecom group of**
285 **companies does not need to provide two new legal entities to expand its competitive**
286 **presence because Emery Telecommunications & Video, Inc already provides voice**
287 **service across the existing coaxial facilities of Emery Telcom Video, LLC, and that**
288 **ET&V could simply offer the services in the Local Exchanges. Do you agree?**

289 A. No. ET&V provides voice service only in Moab and its CPCN prohibits it from
290 providing voice service in the other Local Exchanges due to the rural exemption.

291 **Q. Is it true that the “Applicants have structured their proposal in an effort to gain**
292 **access to tens of millions of UUSF distributions to fund their multi-year buildout of**
293 **a network to provide non-regulated services?**

294 A. No. The Applications were filed to seek authority to provide telecommunications service
295 in the Local Exchanges where residents and business are under or unserved and where
296 there have been numerous service complaints. If Frontier were making the necessary
297 investment in infrastructure, it is unlikely that competitive entry would be in the public
298 interest. Further, the federal grants that ET&V received are only available to areas that
299 are “unserved” for broadband. If Frontier had an upgraded telephone plant in the areas
300 covered by the federal grants, Castle Valley, LaSal, the outskirts of Monticello and
301 Blanding, Bluff and Mexican Hat then the areas would not have been eligible for the
302 federal grants. The Applicants seek to be designated rate of return regulated COLRs so
303 they are eligible for UUSF to assist with the high cost buildout of fiber facilities in areas

304 within the Local Exchanges that are not covered by federal grant funds. As discussed
305 above, the ET&V CPCN does not allow it to provide regulated telephone service in
306 LaSal, the outskirts of Monticello and Blanding, Bluff, or Mexican Hat, so without
307 granting the Applications, the facilities constructed under the federal grants will not be
308 able to provide regulated telephone service in these exchanges. If Applicants did not
309 have access to facilities funded with federal grant funds, the cost to buildout the area with
310 up to date fiber facilities would be significantly higher. The UUSF is available to bring
311 universal service to under and unserved areas in the state. Utilization of the UUSF for
312 that purpose is in the public interest, even if it has an impact on the size of the fund.
313 Furthermore, Applicants are not seeking a blank check. As discussed previously, all of
314 Applicants' costs will be reviewed for reasonableness and prudence prior to being
315 designated as eligible for UUSF support.

316 **Q. Beginning on line 566 of his Direct Testimony, Mr. Erhart questions whether**
317 **Applicants will be authorized to use the infrastructure built by ET&V with grant**
318 **funds. How do you respond?**

319 A. The language quoted by Mr. Erhart speaks in terms of the operation or maintenance of the
320 Project. The Project is defined as the construction of the broadband infrastructure and
321 provision of the broadband service. The Applicants will not be involved in the
322 construction of the infrastructure or the provision of broadband service. Additionally,
323 ET&V has received confirmation from USDA Deputy Assistant Administrator, Portfolio
324 Management and Risk Assessment Division, Rural Development, Peter Aimable, that
325 "the Community Connect and ReConnect Programs are for providing broadband service

326 to the funded area. There are no prohibitions if these projects provide voice service by
327 way of an affiliate through an affiliate agreement.” See Email from Mr. Aimable to Brock
328 Johansen dated October 13, 2020, attached here as Exhibit BJ R-04.

329 **Q. Mr. Erhart claims that the voice service Applicants seek to provide will not be**
330 **subject to any of the regulation that currently applies to plain old telephone service.**

331 **Do you agree?**

332 **A.** No. This issue is discussed in detail in Frontier’s Motion for Summary Judgment, and the
333 Memoranda in Opposition filed by the DPU, the OCS and the Applicants. The
334 Applicants will provide robust local exchange telephone service in exactly the same
335 manner as the Emery Telcom Companies. The Emery Telcom Companies’ service is
336 currently subject to Commission regulation, including the Commission’s rules regarding
337 pricing, service quality, and customer complaints. Applicants’ service will be exactly the
338 same.

339 **Q. Have you discussed the Applicants’ proposed voice service with the National**
340 **Exchange Carriers Association (NECA)?**

341 **A.** Yes. I spoke with my NECA representative Dan Hintz about this issue. I also sent him
342 the E Fiber Network Services Over Fiber Diagram, attached hereto as Exhibit BJ R-05,
343 together with the NECA Reporting Guideline 8.11, attached hereto as Exhibit BJ R-06.
344 After reviewing the E Fiber Network Services Over Fiber Diagram, Mr. Hintz replied that
345 the diagram was “materially the same as scenario #1 in the NECA NRG 8.11”, and that
346 “Many companies are provisioning voice telephony calls across their own fiber networks
347 as VoIP, however at both ends it is still handed off as traditional POTS service. As

348 described in NECA NRG this complies with NECA’s understanding of the FCC
349 guidelines for regulated voice services, NECA would not consider this a non-regulated
350 VoIP service.” See the Email from Mr. Hintz to Brock Johansen, dated September 29,
351 2020, attached hereto as Exhibit BJ R-07. I also received a letter from Melody Crane with
352 NECA. It states, “In response to your inquiry regarding the use of Internet Protocol (IP)
353 technology in provisioning voice service over fiber within a carrier’s network, NECA has
354 reviewed its reporting guideline on this matter: NECA NRG 8.11 – Providing Local
355 Exchange Telephone Service Using Voice over Internet Protocol (VoIP) Technology. It
356 continues to reflect NECA’s understanding of when IP technology can be used to provide
357 a regulated interstate telecommunications service.” See Letter from Melody Crane to
358 Brock Johansen dated October 8, 2020, attached hereto as Exhibit BJ R-08.

359 **Q. Why is NECA’s Reporting Guideline relevant for this discussion?**

360 **A.** NECA is the agency tasked with interpreting FCC rules. See Exhibit BJ 006¹. Rate of
361 return regulated local exchange carriers (like the Emery Telcom Companies) are
362 governed by and bound by NECA’s interpretation of FCC Rules.

363 **Q. Frontier claims that the ten factor test you described in your Direct Testimony is not**
364 **relevant to this docket. Do you have a response?**

365 **A.** In my Direct Testimony I discussed the ten factors that URTA proposed for Commission
366 consideration of the public interest inquiry. I continue to think these are factors the
367 Commission should consider when deciding whether it is in the public interest to admit a

¹ “The FCC has authorized NECA to interpret FCC rules where necessary. Pursuant to this authorization, NECA has published this Reporting Guideline Paper.” NECA Reporting Guideline 8.11, p. 6, citing *Safeguards to Improve the Interstate Access Tariff and Revenue Distribution Processes*, CC Docket 93-6, Report and Order to Show Cause, 10 FCC Red. 6243 (1995).

368 competitive entrant into a small rural exchange. But perhaps the most critical questions
369 the Commission needs to determine are: (1) Whether the incumbent is adequately serving
370 the residents? (2) Is there a critical need for a new provider in the area? (3) If a new
371 provider is admitted to the area, can the Commission protect the UUSF from supporting
372 redundant networks? As I have reviewed the Testimony, Data Requests, and Public
373 Comment, it seems to me that the answers to these questions argue in favor of admitting
374 the Applicants and ensuring that costs incurred in the Local Exchanges are reasonably
375 prudent before they are eligible for UUSF support. Further, approving the Applications
376 provides another service provider in the Local Exchanges to serve customers in the event
377 the Commission determines in the Investigation Docket 19-041-04 that Frontier is not
378 providing adequate service.

379 **Q. What leads you to this conclusion?**

380 **A.** According to Frontier's Responses to the OCS DR 3, attached as Exhibit BJ R-09, and
381 Frontier's Responses to OSC DR 4, attached hereto as Exhibit BJ R-10, Frontier has
382 deployed fiber cable to remotes² capable of supporting CAF II speed and latency
383 requirements. Frontier has not deployed any fiber to the premise in Utah despite
384 receiving \$9.26M in CAF Phase II money to deploy broadband to Utah residents and
385 businesses over six years, by December 30, 2020. Since receiving CAF Phase II funding,
386 Frontier has missed deployment deadlines. See Waiver from FCC, attached hereto as
387 Exhibit BJ R-11. Additionally, according to Frontier's Responses to the OCS DR 4, since

² Frontier's response to OCS DR 4.3 states "'Frontier uses a Packet Optical network infrastructure for broadband services with fiber cable to removes [sic] capable of supporting CAF II speed and latency requirements.'" I have assumed that "removes" should have been "remotes."

388 receiving the award of CAF Phase II funds, Frontier has spent \$3,863,759 of the CAF
389 Phase II funding on network construction as of September 2020 in Utah. Frontier now
390 has 2.5 months to construct the remaining infrastructure in Utah which Frontier estimates
391 will cost \$3,718,925. In other words, Frontier now has approximately 3 months to spend
392 nearly 1/3 of the CAF Phase II money awarded outside of the tribal areas. Additionally,
393 Frontier's service has been the subject of two formal complaints and an ongoing formal
394 investigation. It has had hundreds of hours of FCC reportable outages in the past 5 years.
395 Further, Castle Valley, LaSal, the outskirts of Monticello and Blanding, Bluff and
396 Mexican Hat were eligible for federal grants. This means that the Frontier plant cannot
397 support 10/1 Mbps Broadband, so it is likely dilapidated plant or seriously in need of
398 upgrade. Finally, Frontier is in bankruptcy and according to the bankruptcy documents,
399 Frontier grew exponentially through a series of Growth Transactions in California,
400 Florida, and Texas from 2010 to 2016, more than doubling the size of Frontier.³
401 According to Frontier, it "has not been able to fully realize the economies of scale
402 expected from the Growth Transactions, as evidenced by a loss of approximately 1.3
403 million customers."⁴ It is highly unlikely that in the existing corporate climate at
404 Frontier, the approximately 4,000 residents and 2,300 businesses in the Local Exchanges
405 currently served by Frontier will have access to fiber facilities any time soon, unless the
406 Applicants are granted competitive entry.

³ Direct Testimony of Douglas Meredith, lines 268-276, citing Frontier's Proposed Joint Plan of Reorganization and related Disclosure Statement at 31, filed in the Bankruptcy Proceeding on May 15, 2020.

⁴ Id. at 32.

407 The state legislature recently expanded the UUSF to support networks capable of
408 provide broadband. Clearly the Frontier plant is lacking in this regard. If ensuring
409 advanced, robust, reliable service to the customers of Grand and San Juan counties is in
410 the public interest, the Commission should approve the Applications and further the
411 legislative directive.

412 **Q. Have you independently investigated Frontier’s service?**

413 A. I have been involved in several meetings over the past 12 months where Frontier’s
414 inadequate service was the topic of conversation. Mr. Bushore, with San Juan County,
415 contacted me because the Frontier service was so poor that it was endangering the 911
416 service in San Juan County, and Mr. Bushore was inquiring as to whether ET&V could
417 provide voice service in San Juan County. I informed him that the ET&V CPCN did not
418 allow this. Mr. Bushore has filed public comments in this proceeding.

419 I have also reviewed the Utah Broadband Maps maintained by the Utah AGRC
420 and much of the maps show that Frontier cannot even provide 10/1 Mbps Internet Service
421 in much of the exchanges. I also toured the areas that are subject to the federal grant with
422 a USDA representative. He selected random business and residential customers in those
423 areas to do speed tests and concluded that those areas were not served by 10/1 Mbps.

424 **Response to Direct Testimony of John E. Hansen**

425 **Q. Have you reviewed the Direct Testimony of John E. Hansen?**

426 A. Yes. Mr. Hansen’s Direct Testimony focused on the Applicants’ proposed service and
427 concluded the proposed service will be VoIP or IP-enabled service.

428 **Q. Do you agree with his conclusion?**

429 A. No.

430 Q. **Please explain.**

431 A. Mr. Hansen's description of plain old telephone service (POTS) is not correct. Mr.
432 Hansen states on Line 61 that POTS is a voice service that is provided using Time
433 Division Multiplexing (TDM) to transmit telephone calls within the public switched
434 telephone network (PSTN). This is an inaccurate statement. TDM is a transport system,
435 and POTS does not require TDM transport.

436 In fact, traditional telephones have always used an analog electrical signal.
437 Originally, that analog signal required a continuous electrical circuit between the calling
438 and called party. Eventually the audio signals were converted to digital using the binary
439 code. Once the binary code was used, the continuous voice signal could be divided
440 packaged for transport. TDM (Time-division multiplexing) is not traditional voice, but
441 merely a transport method to transport a digital signal. This digital signal transported
442 across TDM can be a voice call, broadband Internet, or video. TDM is a protocol for
443 transmitting and receiving independent signals over a common path by means of
444 synchronized switches at each end of the transmission line so that each signal appears on
445 the line for only a fraction of time in an alternating pattern. The use of IP transport is
446 similar. IP transport splits the digital signal and instead of sending it across alternating
447 time slots like TDM, it routes the digital signal using IP addressing. The transport method
448 in the middle does not determine whether a call is public telecommunications voice
449 service or VoIP. As stated above, IP transport and TDM are just methods of transport and
450 can carry voice, broadband Internet, or video.

451 While there is no dispute that TDM made telephone service more efficient, TDM
452 is *not* traditional POTS. It is an evolution of POTS transport. TDM and circuit switched
453 transport technology have further evolved and now many carriers, such as the Emery
454 Telecom Companies, employ Internet-protocol transport, in lieu of, or in addition to TDM
455 in their delivery of POTS. The internet protocol transport technology uses privately
456 addressed IP transport in a separate data path from the customer location to the provider's
457 switch. We have found that engineering and cost efficiencies can be recognized when
458 offering voice services using IP transport technology.

459 **Q. When the Emery Telecom Companies use IP transport in the delivery of voice traffic,**
460 **is their voice service converted from POTS to Voice over Internet Protocol?**

461 **A.** No. Service provided to the customer remains the same regulated public
462 telecommunications service the Companies have always provided only the transport in
463 the middle of the service has changed. This is exactly the same as when TDM transport
464 began to be used. The service did not stop being public telecommunications services just
465 because TDM transport replaced continuous analog electrical or digital transport. TDM is
466 just a transport method that can carry any digital signal including voice, broadband
467 Internet, or video.

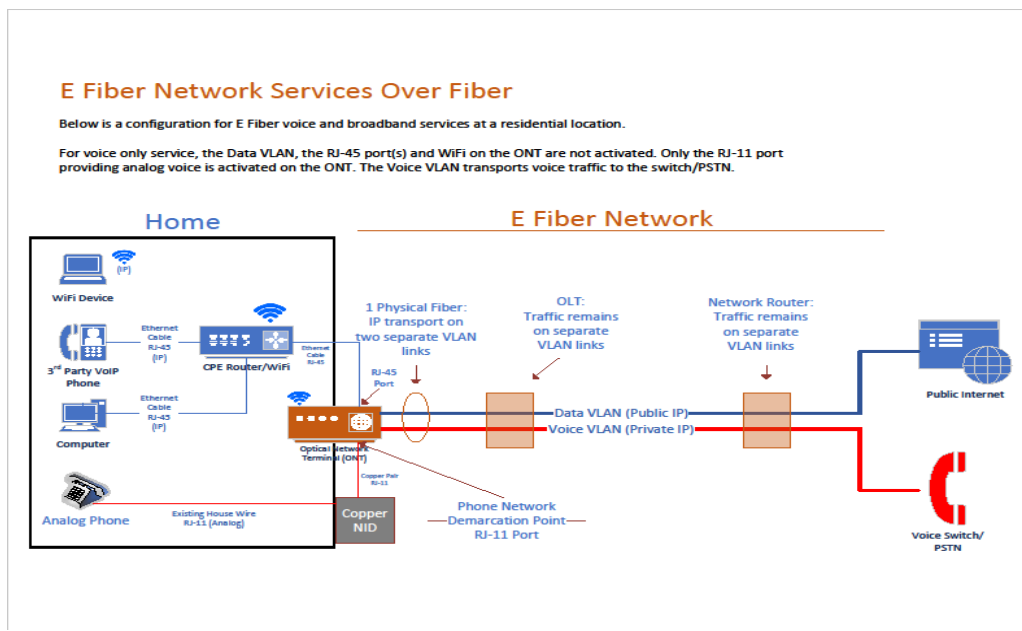
468 **Q. Is the use of IP transport standard in the regulated telecom industry?**

469 **A.** Yes. The use of IP transport is widely used in the industry by regulated local exchange
470 companies, as evidenced by the Reporting Guideline 8.11 promulgated by the National
471 Exchange Carriers Association (“NECA”) entitled “Providing Local Exchange Telephone
472 Service Using Voice over Internet Protocol (VoIP) Technology.”

473 Q. Can you walk us through how the service the Applicants propose to provide
474 compares with the NECA Reporting Guideline 8.11.

475 A. Yes. By way of summary, the Applicants proposed service is nearly identical to the service
476 described in NECA Reporting Guideline 8.11, Diagram 1, and as indicated above our
477 NECA representative has confirmed the service proposed by Applicants will be regulated
478 public telecommunications service.

479 Applicants Service Over Fiber



480

481

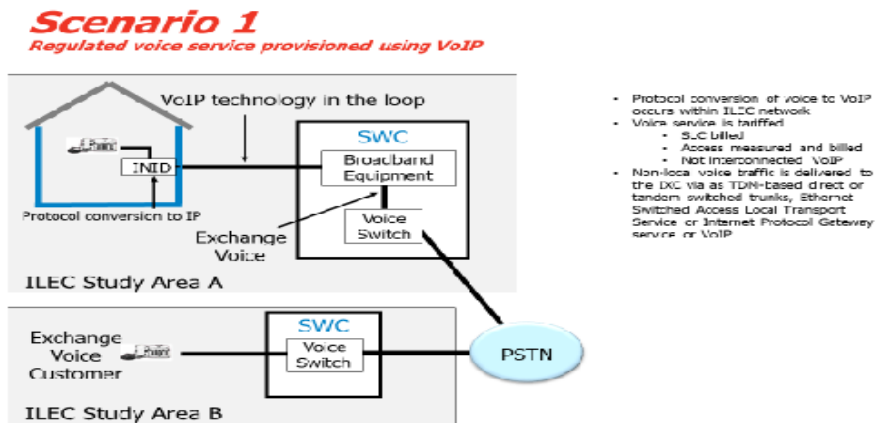
482

NECA Reporting Guideline 8.11, Figure 1

NECA REPORTING GUIDELINE

Guideline: 8.11 Providing Local Exchange Telephone Service Using Voice over Internet Protocol (VoIP) Technology

Figure 1



2/27/19



483

484 Specifically, the protocol conversion of the voice traffic to IP occurs in the Applicants’
485 network at the INID/ONT. The IP technology is used only for transport across the
486 Applicant’s network. The local exchange carrier, Applicants in this case, will bill the
487 customer for the voice service at a tariffed rate, bill the federal subscriber line charge, and
488 measure and bill access, just like voice service provided using TDM transport.

489 **Q. Mr. Hansen describes the differences between POTS voice services and IP-Based**

490 **voice services on Lines 124-142. Do you agree with his analysis?**

491 **A.** No. Mr. Hansen does not distinguish between the use of IP transport across a private
492 network and the transmission of voice calls over the Internet.

493 **Q. Why is that distinction important?**

494 **A.** That distinction is important in this case because the Applicants proposed voice service
495 does not transmit calls over the Internet. Rather, the Applicants' service will transport the
496 digital voice packets over Applicants' private fiber network using IP technology – the same
497 as if the digital voice packets were being transported across the Applicants private fiber
498 network using TDM transport technology. If a voice call transported over fiber using TDM
499 technology can be regulated telephone service, a voice call transported over fiber using IP
500 technology can also be regulated telephone service. As stated above, both TDM and IP
501 transport are just methods of transporting a digital signal, regardless if that signal is voice,
502 broadband Internet, or video.

503 **Q. Please explain.**

504 **A.** As described in detail in our Memorandum in Opposition to Frontier's Motion for Partial
505 Summary Judgment federal and Utah state law prohibit regulation of VoIP service, the
506 definition of VoIP under both federal and state law requires the use of a broadband
507 connection at the user's location.

508 **Q. Does the service proposed to be provided by Applicants require the use of a**
509 **broadband connection at the user's location?**

510 **A.** No. As I have stated in my Declaration and in the data request responses to the DPU, the
511 OCS, and Frontier, the Applicants' voice services does not use, require, or rely in any way,

512 on a broadband connection. Further, on a voice only customer, there is no broadband
513 connection at the home, and the home is not connected to the Public Internet but is only
514 connect to the public switched telephone network.

515 **Q. What is a broadband connection?**

516 **A.** A broadband connection is a high speed (25/3) connection to the Internet. Specifically,
517 Federal Rule, 47 CFR §1.07001(1), defines a broadband connection as a wired line,
518 wireless channel, or satellite service that terminates at an end user location or mobile device
519 and enables the end user to receive information from and/or send information to the internet
520 at transfer rates exceeding 200 kbps in at least one direction. The FCC, by order, has since
521 increased the transfer rate to 25 Mbps down and 3 Mbps up in order for a connection to
522 qualify as a broadband connection.

523 **Q. On lines 165-201 in his Direct Testimony, Mr. Hansen concludes that Applicants**
524 **proposed voice services are IP-enabled services or VoIP services as defined by Utah**
525 **Code. Do you agree with his analysis?**

526 **A.** No.

527 **Q. Please explain.**

528 **A.** On lines 144-146, Mr. Hansen states that VoIP is a service that enables real-time, two-way
529 voice communications originating from or terminating to an end user in Internet Protocol
530 format and uses a broadband connection at the user's home. This definition is incomplete.
531 Under Utah Code Section 54-19-102(2) the service must also permit a user to receive a
532 telephone call that originates on the public switched telephone network and to terminate a
533 call to the public switched telephone network. Nevertheless, the voice service proposed

534 by Applicants does not originate from or terminate to the end user in Internet Protocol
535 format. The Applicants' voice service originates from and terminates to the user's handset
536 (telephone), in analog electrical format, not in Internet Protocol format. It is only converted
537 to IP for transport across the Applicants network.

538 Additionally, contrary to Mr. Hansen's Direct Testimony, as I have stated
539 numerous times in my Declaration, the Data Request responses provided by Applicants to
540 the DPU, the OCS, and Frontier, and Testimony, the Applicants' voice service does not
541 use or rely upon a broadband connection and on a voice only customer, there is no
542 broadband connection.

543 **Q. But Mr. Hansen concludes that the Applicants' voice service uses a broadband**
544 **connection at the user's home. How does he reach this conclusion?**

545 A. Mr. Hansen erroneously concludes that any use of IP transport is a broadband connection.

546 **Q. Why is this conclusion erroneous?**

547 A. As indicated above, a broadband connection is a high-speed connection to the Internet. The
548 VLAN connection from the ONT to the OLT is not a broadband connection. There VLAN
549 provides no access to the Internet, at any speed. This VLAN is just IP transport within and
550 across the Applicants' network.

551 **Q. Mr. Hansen also states that the voice service to be provided by Applicants is Internet**
552 **protocol enabled service as defined by Utah Code §54-19-102. Do you agree with his**
553 **analysis?**

554 A. No. I listened to the hearings on the bill, SB 229, that created Utah Code Section §54-19-
555 101 through 103. In the hearing on February 14, 2012 before the Senate Revenue and

556 Taxation Committee, the bill sponsor, Senator Bramble, stated several times that the intent
557 of SB 229 was to codify the existing practice or existing treatment of voice over internet
558 protocol (VoIP) telecommunications as part of the internet.⁵

559 **Q. Is the E Fiber proposed voice service “part of the internet”?**

560 A. No. As previously stated, the Applicants’ voice service does not touch or utilize the
561 Internet.

562 **Q. In FCC Vonage Holdings Corporation Petition, Memorandum Opinion and Order,**
563 **WC Docket No. 03-211, November 12, 2004, 32, the FCC identified basic IP-Enabled**
564 **characteristics including, but certainly not limited to, “a service offering that includes**
565 **a suite of integrated capabilities and features, able to be invoked sequentially or**
566 **simultaneously, that allows customer to manage personal communications**
567 **dynamically, including enabling them to originate and receive voice communications**
568 **and access other features and capabilities, even video.” Does the Applicants’ voice**
569 **service include that suite of integrated capabilities and features?**

570 A. No. The Applicants’ proposed voice service does not provide any advanced voice features.
571 It will be the same voice service currently provided by the Emery Telcom Companies
572 across their fiber network. In fact, the voice service will be the same service as was
573 previously provided over the Emery Telcom Companies when the voice services was
574 delivered to the customer’s home using copper facilities, and using the same switch
575 currently in use. The Applicants’ voice service will not have any added functionality that

5

<https://le.utah.gov/av/videoClipTest.jsp?meetingType=committee&stream=https://stream1.utleg.gov/vodaudio/mp4:869.mp4/playlist.m3u8&offset=65&endTime=1409>

576 would be expected from an IP-Enabled service.

577 As stated, the only use of IP technology in the Applicants' voice service is in the
578 transport of the voice traffic, which is why NECA, the agency tasked with interpreting FCC
579 rules, treats this service as regulated voice service. The Emery Telcom Companies moved
580 from TDM transport to IP transport because it is more reliable and cost-effective, and
581 represents the standard in the industry. This is the regulated technology the Applicants' are
582 proposing to offer.

583 **Q. Mr. Hansen also claims that the Applicants' proposed service meets the federal**
584 **definition of interconnected VoIP as defined by 47 USC §153(25) and 47 CFR §9.3.**

585 **Does it?**

586 A. No. Interconnected VoIP under Federal Code and Rules requires a broadband connection
587 from the user's location and requires internet protocol-compatible customer premises
588 equipment (CPE). As previously explained, Applicants' proposed service does not require
589 a broadband connection as that term is defined and used by the FCC.

590 Additionally, the Applicants' service will not require internet protocol-compatible
591 CPE. 47 USC §153(16) defines CPE as "equipment employed on the premises of a person
592 (other than a carrier) to originate, route, and terminate telecommunications." Mr. Hansen
593 claims the ONT is CPE because it is "installed on the premises of a person other than the
594 carrier." However, that does not meet the standard. Not all equipment installed on the
595 premise of a person other than the carrier is CPE. For example, the network interface
596 device in a standard copper telephone line installation or a cable operation is not CPE. This
597 is because it does not "originate, route, and terminate telecommunications." There is no

598 dispute that the ONT does not originate or terminate telecommunications. Rather, the
599 handset at the user's location (which is provided by the customer) originates and terminates
600 the telecommunications (voice traffic in this instance). Further the ONT does not route
601 traffic but merely provides a connection to the OLT. Therefore, the ONT is not CPE, and
602 the voice service proposed by Applicants is not preempted from state regulation. Finally, ,
603 all control, ownership, and replacement responsibility of the ONT remains with the
604 Applicants, and the customer does not rent or buy the ONT.

605 **Q. Again, for the sake of clarity, do the Applicants intend to provide service in the same**
606 **manner as the Emery Telcom Companies?**

607 **A.** Yes.

608 **Q. Has the Commission always regulated the Emery Telcom Companies as rate of**
609 **return regulated companies?**

610 **A.** Yes.

611 **Q. Does this conclude your rebuttal testimony?**

612 **A.** Yes.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2020, I served a true and correct copy of the Rebuttal Testimony of Brock Johansen in Docket 20-2618-01 via e-mail transmission to following persons at the e-mail addresses listed below:

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