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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <p>In the Consolidated Matter of:</p> <p>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</p> | <p>Docket No. 20-2618-01</p> |
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REDACTED SURREBUTTAL TESTIMONY OF CARL E. ERHART

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

DATED this 26th day of October 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 26th day of October 2020, on the following:

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/s/ Phillip J. Russell

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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The Applications of E Fiber Moab, LLC and
E Fiber San Juan, LLC for a Certificate of
Public Convenience and Necessity to Provide
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Be Designated as a Carrier of Last Resort in
Certain Rural Exchanges

Docket No. 20-2618-01

REDACTED Surrebuttal Testimony of Carl E. Erhart

On Behalf of

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

Frontier Exhibit 4.0

October 26, 2020

INTRODUCTION

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Carl E. Erhart. My business address is 7979 N Belt Line Road, Irving, Texas 75063.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. 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.

Q. ARE YOU THE SAME CARL E. ERHART THAT SUBMITTED PRE-FILED DIRECT AND REBUTTAL TESTIMONY ON BEHALF OF FRONTIER IN THIS SAME PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. My surrebuttal testimony responds to various issues raised by the Applicants, the Utah Rural Telecom Association (“URTA”), and the Office of Consumer Services (“OCS”).

Q. DOES ANY PARTY DISPUTE THE FACT THAT THE APPLICANTS’ PROPOSAL WOULD RESULT IN A SIGNIFICANT IMPACT TO THE UUSF NECESSITATING AN INCREASE IN THE CONSUMER SURCHARGE?

A. No. Indeed, the Applicants’ financial model shows that within the first two to three years, E-Fiber would become one of the largest recipients of UUSF in the state, necessitating an [REDACTED] increase in the fund. Moreover, the Applicants have not provided any forecast beyond its initial five-year forecast model to allow the

23 Commission to assess the additional long-term impacts on the Fund and consumer
24 surcharge. Even more alarming is the precedent-setting implication of granting the
25 Applicants' request for UUSF eligibility. Approval of this request could well result in
26 the Commission receiving other requests for network overbuilds across the state, largely
27 financed through the UUSF.

28 **Q. HAVE THE APPLICANTS EXPLAINED WHY THE TWO NEW E-FIBER**
29 **ENTITIES ARE NECESSARY WHEN ET&V HAS BEEN A CERTIFICATED**
30 **VOICE PROVIDER IN THE MOAB EXCHANGE SINCE 1999 AND IS THE**
31 **SAME ENTITY THAT HAS RECEIVED THE USDA GRANTS IN CERTAIN**
32 **AREAS WITHIN THE LOCAL EXCHANGES?**

33 A. No. In his rebuttal testimony, Mr. Johansen just states that while ET&V currently
34 provides voice service in Moab, it is not certificated in the other exchanges due to the
35 rural exemption. This does not explain why the Emery family of companies created two
36 new entities to serve the Local Exchanges. ET&V could have sought to expand its
37 existing certification to add the other six Frontier exchanges to the ET&V CPCN that the
38 Commission approved in 1999. There exists only one reasonable explanation as to why
39 ET&V did not seek to expand its existing certification given that ET&V has provided
40 certificated voice service for 20 years in the largest Frontier market it now seeks
41 certification for under E-Fiber and that ET&V is the entity that retains the buildout
42 obligation under the USDA grants it received for portions of the Local Exchanges,
43 including Moab. The creation of the E-Fiber entities is part of an effort to maximize the
44 amount of UUSF these new entities could qualify for by assigning the majority of the

45 assets and expenses to the E-Fiber entities, while the affiliated non-regulated entities
46 leverage the new fiber facilities, the construction of which would largely be funded by
47 the UUSF, to sell the retail broadband and other non-telecom services to the customer
48 and capture the bulk of the product margin. This conclusion is further evidenced by the
49 Applicant's financial forecast, which establishes that the E-Fiber entities will remain
50 heavily reliant on the UUSF throughout their forecast period and likely beyond. The end
51 result of the approval of Emery's proposal would be that the customers of all the
52 contributing carriers to the UUSF would directly subsidize the buildout of a competitive
53 network that ET&V would utilize to provide retail non-regulated, non-
54 telecommunications services. As the FCC has recognized with the Federal USF, these
55 types of rate of return mechanisms are a less efficient method of allocating support and
56 provide incentives to operate in an inefficient manner and unnecessarily increase
57 operating expenses and capital spending to maximize financial returns. From a public
58 policy perspective, this is why the Commission should consider more targeted and
59 efficient ways of making UUSF support available in a more competitively neutral
60 manner.

61 **Q. DO THE OTHER PARTIES PROPOSE A SPECIFIC METHOD FOR HOW**
62 **UUSF SUPPORT WOULD BE DETERMINED FOR THE APPLICANTS AND**
63 **FRONTIER IN THE LOCAL EXCHANGES?**

64 A. No. They only offer general concepts that do not address the complexity and subjectivity
65 required for such a determination. The other parties make reference to a portion of the
66 language in Utah Code Section 54-8b-15 that specifies the carrier of last resort's

67 *reasonable cost*, as determined by the Commission, may be included as part of the
68 current financial revenue requirement calculation. No party provides any detail as to how
69 *reasonable cost* would be determined in a competitive market. This would create
70 uncertainty for Frontier and other telephone providers within the State, inconsistent with
71 the requirement in the statute that the UUSF methodology be predictable. The other
72 parties seem to imply that a reasonable cost could now be limited to costs of the first
73 carrier of last resort that deploys a fiber to the home network at some unspecified
74 geographic level. Mr. Meredith advocates that this approach could be accomplished by
75 having both providers provide network mapping and construction data to the Commission
76 for a determination of which would be eligible or not for UUSF. Mr. Johansen advocates
77 that the Commission could inform the two overlapping COLRs that once fiber facilities
78 are constructed to a particular part of a town or subdivision by one of the COLRs that the
79 Commission would consider any costs of building additional fiber facilities in that same
80 area as “unreasonable,” absent some additional undefined showing of public interest.

81 Neither of these approaches appears to be competitively neutral or consumer
82 friendly. Provision of service to an exchange includes both fixed and variable
83 investments and expenses that cannot neatly be assigned to specific portion of a service
84 area such as a neighborhood or housing development. Many of the investments
85 associated with serving a particular area share joint and common investments for serving
86 other areas. Similarly, operating costs are generally not assignable to a specific
87 geographic customer group. While determination of “reasonable cost” is a relatively
88 manageable concept when considering an entire company’s study area or service area, the

89 complexity of parsing investments and operating expenses on a location by location basis
90 calls for an entirely new basis for determining costs such as a forward-looking cost
91 model.

92 **Q. GIVEN THAT BOTH PROVIDERS WOULD LIKELY EACH HAVE**
93 **CUSTOMERS WITHIN THESE SAME GEOGRPHIC AREAS, DO THESE**
94 **PROPOSALS APPEAR TO BE REASONABLE OR CONSISTENT WITH THE**
95 **STATUTORY PURPOSE OF THE UUSF?**

96 A. No. The statutory purpose of the fund is to provide predictable and sufficient funding for
97 a carrier of last resort. Neither of these proposals would meet that objective when there
98 are two COLRs in the same market. While the Applicants have stated that they need
99 certainty before making certain incremental investments, these proposals would only
100 create additional uncertainty for Frontier and other incumbent local exchange carriers
101 throughout the State, and more importantly for their customers that continue to choose
102 them in these markets. The other parties' proposals would effectively exclude Frontier
103 from being eligible for UUSF support for its network serving these customers if that is an
104 area where one of the Applicants' affiliates has already built fiber to home or has plans to
105 do so.

106 **Q. IS THE STANDARD NOW ADVOCATED BY THE APPLICANTS AND URTA**
107 **OF “REASONABLE COSTS” EQUATING TO FIBER TO THE HOME**
108 **CONSISTENT WITH HOW UUSF IS DETERMINED FOR THE OTHER COLRS**
109 **IN THE STATE OR THE STATUTE?**

110 A. No, it is not. No other COLR in the state has their UUSF support based on the type of
111 technology deployed or speed of their broadband offering.

112 **Q. ARE THERE OTHER OPTIONS AVAILABLE TO THE APPLICANTS OR THE**
113 **COMMISSION TO REVIEW WHETHER THE APPLICANTS’ PROPOSAL**
114 **SHOULD QUALIFY FOR SOME LEVEL OF UUSF?**

115 A. Yes. The Applicants’ applications should be considered under the Commission’s rule for
116 non-rate-of-return regulated providers. This would allow the Commission to establish the
117 appropriate criteria in an industry wide rulemaking and establish rules to provide clarity
118 for the entire industry going forward. This approach would be consistent with one of
119 options proposed in the OCS rebuttal testimony for the Commission to initiate a
120 rulemaking to create rules to determine the proper tests for recovery of UUSF in the cases
121 where two COLRS are eligible for UUSF disbursements for investment in the same area.

122 **Q. ARE THERE OTHER COMPETITIVELY NUETRAL WAYS THAT THE UUSF**
123 **COULD BE RESTRUCTED TO MAKE TARGETED FUNDING AVAILABLE**
124 **FOR THE DEPLOYMENT OF HIGHER SPEED BROADBAND SERVICES?**

125 A. Yes. As Mr. Meredith points out in his rebuttal testimony, several of the URTA member
126 companies have now elected to receive A-CAM model support at the federal level, which
127 is a forward looking model calculation of a specific amount of support in exchange for a

128 commitment to deploy broadband to a specified number of locations at a minimum speed
129 of generally 25Mbps / 3Mbps. This means that these carriers no longer receive federal
130 support on a cost-plus rate of return basis. The A-CAM method of support is similar to
131 the CAF II funding Frontier accepted for a commitment to deploy broadband to a
132 specified number of locations in specific census blocks at a minimum speed of 10Mbps /
133 1Mbps. Each of these programs is effectively a grant program paid out as an annuity
134 where the carrier receives an amount of support computed using a forward-looking cost
135 model. The UUSF could be transitioned to a similar model to create a competitively
136 neutral way to target the use of the UUSF. Such an option would be more consistent with
137 the statutory requirement to determine UUSF based on “reasonable cost” than the
138 proposals advocated by the URTA and the Applicants.

139 **Q. CONSIDERING THE OTHER PARTIES’ TESTIMONY IN THIS CASE, WHAT**
140 **IS YOUR RECOMMENDATION FOR THE OUTCOME OF THIS**
141 **PROCEEDING?**

142 A. Frontier makes three recommendations to the Commission for the outcome of this
143 proceeding:

- 144 1. The Applicants’ request to be designated as a rate-of-return regulated carrier of
145 last resort should be denied for the reasons discussed in Frontier’s motion for partial
146 summary judgment previously filed with the Commission.
- 147 2. Applicants’ requests should be denied for the additional reason that it poses a
148 significant financial burden on the UUSF fund.
- 149 3. The Commission should initiate a separate proceeding to address the precedent

150 setting implications of permitting new competitive entrants with COLR obligations in
151 small rural exchanges who may be eligible for UUSF distributions, and to determine
152 relevant factors and ways to provide certainty for the ILEC and the competitive entrant.

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

154 **A. Yes.**