

PUBLIC SERVICE COMMISSION OF UTAH

Docket No. 20-2618-01

PUBLIC HEARING REDACTED

November 12, 2020

ADVANCED REPORTING SOLUTIONS

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1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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4 Application of E Fiber Moab, LLC,)
and E Fiber San Juan, LLC, for a)
5 Certificate of Public Convenience) Docket No. 20-2618-01
and Necessity to Provide)
6 Facilities-Based Local Exchange)
Service and be Designated as)
7 Carriers of Last Resort in Certain)
Rural Exchanges)
8 _____)

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15 VIDEO CONFERENCED PUBLIC HEARING TAKEN
16 THROUGH ADVANCED REPORTING SOLUTIONS VIA ZOOM

17 Taken on November 12, 2020

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22 Reported by: Michelle Mallonee, RPR, CCR
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1 P R O C E E D I N G S

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3 HEARING OFFICER HOGLE: We can begin now. Good
4 morning, everybody. It's just past 9:00. And we are
5 here to consider the applications of E Fiber Moab, LLC,
6 and E Fiber San Juan, LLC, for certificates of public
7 convenience and necessity to provide facilities-based
8 local exchange service and be designated as carriers of
9 last resort in certain rural exchanges, in Docket
10 No. 20-2618-01.

11 My name is Yvonne Hogle, and I am the
12 Commission's designated presiding officer for this
13 hearing.

14 And let's take appearances for the record, and
15 save the introductions of your witnesses for when they
16 are actually called onto the stand, starting with the
17 applicant, please.

18 MS. SLAWSON: Good morning. Kira Slawson on
19 behalf of the applicants, E Fiber Moab, LLC, E Fiber San
20 Juan, LLC, and also on behalf of the Utah Rural Telecom
21 Association.

22 HEARING OFFICER HOGLE: Thank you.

23 MR. JETTER: And I am Justin Jetter with the
24 Utah Attorney General's Office. And today I'm here
25 representing the Utah Division of Public Utilities.

1 MR. MOORE: This is Robert Moore. I'm with the
2 Utah Attorney General's Office as well. I'm representing
3 the Office of Consumer Services.

4 MR. RUSSELL: Phillip Russell. I'm representing
5 Citizens Telecommunications of Utah, dba Frontier
6 Communications. Also with us today is in-house counsel,
7 Mr. Gregory Brubaker.

8 HEARING OFFICER HOGLE: Good morning,
9 Mr. Brubaker.

10 MR. BRUBAKER: Good morning.

11 HEARING OFFICER HOGLE: Okay. Thank you,
12 everybody.

13 Ms. Slawson, would you like to call your first
14 witness.

15 MS. SLAWSON: Yes, thank you, your Honor. I
16 would like to call Brock Johansen.

17 HEARING OFFICER HOGLE: Good morning,
18 Mr. Johansen.

19 THE WITNESS: Good morning, your Honor.

20 HEARING OFFICER HOGLE: Okay.

21 THE WITNESS: Can you hear me?

22 MS. SLAWSON: Would you like to swear the
23 witness at this time?

24 HEARING OFFICER HOGLE: Oh, yes, certainly.

25 Mr. Johansen, do you promise to tell the truth?

1 THE WITNESS: Yes.

2 HEARING OFFICER HOGLE: Okay. Please proceed.

3 MS. SLAWSON: Thank you.

4

5 BROCK JOHANSEN,

6 was called as a witness, and having been first duly
7 sworn to tell the truth, the whole truth, and nothing
8 but the truth, testified as follows:

9

10 DIRECT EXAMINATION

11 BY MS. SLAWSON:

12 Q. Would you please state and spell your name for
13 the record.

14 A. My name is Brock Johansen, B-R-O-C-K,
15 J-O-H-A-N-S-E-N.

16 Q. And where are you employed?

17 A. I'm employed as the CEO of Emery Telcom.

18 Q. And did you prepare and cause to be filed
19 rebuttal -- direct testimony, rebuttal testimony, and
20 surrebuttal testimony and exhibits in this case?

21 A. Yes, I did.

22 Q. Okay.

23 MS. SLAWSON: I would move for the admission of
24 direct, rebuttal testimony, and surrebuttal testimony and
25 all exhibits into the record.

1 HEARING OFFICER HOGLE: Any objections?

2 Okay. They're admitted. Thank you.

3 Q. (BY MS. SLAWSON:) Mr. Johansen, do you have any
4 changes to the testimony or exhibits as filed?

5 A. No.

6 Q. And have you prepared a brief summary of your
7 testimony?

8 A. I have.

9 Q. Okay. Would you please proceed with your
10 summary.

11 A. Thank you.

12 For the past several years, I've been aware that
13 the local exchange carrier telephone service and the
14 broadband service in Grand and San Juan Counties have
15 been the subject of various service complaints.

16 In an effort to bring upgraded facilities to the
17 exchanges in Grand and San Juan Counties, on April 14,
18 2020, we filed applications for certificates of public
19 convenience and necessity for two newly-formed companies,
20 E Fiber Moab, LLC, and E Fiber San Juan, LLC.

21 E Fiber Moab seeks to provide rate-of-return
22 regulated service in the Thompson and Moab exchanges.
23 E Fiber San Juan seeks to provide rate-of-return
24 regulated service in LaSalle, Monticello, Blanding,
25 Bluff, and the Mexican Hat exchanges, with the exception

1 of the White Mesa community. White Mesa is located on
2 the Ute Mountain, Ute Tribal Reservation, and we do not
3 have permission from the Tribe to provide service at this
4 time.

5 My direct testimony describes the background for
6 filing the application and identifies the applicants'
7 managerial, technical, and financial resources. Because
8 we are seeking competitive entry into small rural
9 exchanges in Utah, most of which have fewer than 5,000
10 access lines served by the incumbent, Frontier, who has
11 fewer than 30,000 access lines in the state, if the
12 Commission grants the application, it must require the
13 applicants to serve any customer or class of customers
14 who request service in the local exchanges.

15 Applicants have indicated they are willing to
16 undertake the carrier of last resort obligations in the
17 local exchanges. As a rate-of-return regulated carrier
18 of last resort, applicants would be eligible for support
19 from the Utah Public [sic] Telecommunications Service
20 Support Fund, the UUSF.

21 In addition to finding the applicants have the
22 requisite managerial, technical, and financial resources,
23 the Commission must also find that granting the
24 applicants' applications is in the public interest.

25 The comments filed in response to the

1 applications, the Division of Public Utilities, the
2 Office of Consumer Services, and the Utah Rural Telecom
3 Association, identified a potential concern that if the
4 applicants are approved, two companies serving the same
5 local exchanges could qualify for UUSF.

6 To address these concerns in my testimony, I
7 identified and discussed several factors that the
8 Commission can consider to determine whether it is in the
9 public interest to approve our application.

10 I believe that improving the service quality and
11 upgrading the facilities in the local exchanges outweighs
12 any theoretical or potential concern about two companies
13 being eligible for UUSF in the same local exchanges.

14 Additionally, I believe that the Commission can
15 use its existing statutory authority to mitigate
16 overlapping UUSF support; and therefore, granting the
17 applications will be in the public interest.

18 Additionally, in response to the motion for
19 summary judgment filed by Frontier, I provided
20 substantial rebuttal testimony regarding the nature of
21 the public telecommunication service to be provided by
22 the applicants and the particular architecture of our
23 network. We provided a diagram of our network that shows
24 how we provide service over our fiber network. This
25 diagram was attached to my rebuttal testimony and the

1 direct testimony of Douglas Meredith.

2 I also describe in detail the service we will
3 provide and note that we are proposing to provide the
4 exact same service in the exact same way that such
5 services are currently being provided by Emery Telephone,
6 Carbon Emery Telcom, Inc., and Hanksville Telcom, Inc.
7 In fact, I've indicated that the applicants' tariffs will
8 mirror the Emery Telephone local tariff.

9 Our voice service is not voice service over
10 Internet protocol service that is prohibited from state
11 regulation. Rather, the proposed service will be
12 rate-of-return regulated public telecommunication service
13 consistent with the service currently provided by our
14 regulated companies and consistent with the National
15 Exchange Carrier Association, NECA, guidelines.

16 Also, the service will be consistent with Utah
17 Code Annotated 54-8b-15, which requires a carrier of last
18 resort to provide access lines, connections, or wholesale
19 broadband Internet access service.

20 Through our applications, we are offering to
21 install a fiber-to-the-home network in Grand and San
22 Juan -- in the Grand and -- excuse me.

23 Through our applications, we are offering to
24 install a fiber-to-the-home network in the Grand and San
25 Juan County exchanges to upgrade the facilities and

1 infrastructure in those communities and bring reliable,
2 up-to-date service and equipment.

3 We believe we can serve these high-cost areas
4 less expensively than another provider because of our
5 presence in the communities, our expertise in the area,
6 and our access to federal grant funds that we received
7 for parts of the build.

8 As our applications demonstrate, upgrading the
9 facility in these areas will require funds from the UUSF.
10 But we believe bringing service to these underserved
11 areas is worth the UUSF investment.

12 Therefore, we believe it is in the public
13 interest for the Commission to approve our applications
14 and permit our competitive entry into these areas as
15 rate-of-return regulated companies. We urge the
16 Commission to (inaudible) of the Division and the Office
17 to approve the applications.

18 This concludes the summary of my testimony.
19 Thank you.

20 **Q. Thank you.**

21 MS. SLAWSON: Mr. Johansen is available for
22 cross-examination.

23 HEARING OFFICER HOGLE: Okay. Let's go with the
24 Division. Mr. Jetter?

25 MR. JETTER: I have no questions, thank you.

1 HEARING OFFICER HOGLE: Mr. Moore?

2 MR. MOORE: No questions. Thank you.

3 HEARING OFFICER HOGLE: Ms. Slawson, on behalf
4 of URTA, do you have any cross?

5 MS. SLAWSON: No questions, thank you.

6 HEARING OFFICER HOGLE: Mr. Russell?

7 MR. RUSSELL: I do have a few questions, thank
8 you.

9

10 CROSS-EXAMINATION

11 BY MR. RUSSELL:

12 Q. Good morning, Mr. Johansen.

13 A. Good morning, Mr. Russell.

14 Q. I want to start with a discussion, a brief
15 discussion about the existing presence that some of the
16 Emery affiliates have in the local exchanges here.

17 It's my understanding that there's at least two
18 Emery affiliates that have some sort of presence, Emery
19 Telcom Video, LLC, and Emery Telecom & Video, or ET&V; is
20 that right?

21 A. Your name's a little bit off. So there's Emery
22 Telcom Video, LLC, and then Emery Telecommunications &
23 Video Inc. Those both serve in the exchanges.

24 Q. Okay. I will refer to the latter as ET&V; is
25 that okay?

1 A. To Emery Telecommunication Video Inc.?

2 Q. Yes.

3 A. Okay. We refer to the first as ETV and the
4 other one as ET&V, so whatever you want to call them.

5 Q. Well, in order to keep the record straight, I'll
6 probably refer to the first one as Emery Telcom Video.

7 Can you tell me what presence Emery Telcom Video
8 has in the local exchange?

9 A. Emery Telcom Video is a -- was in the exchanges.
10 So if we start -- all right. Let me take a breath.

11 So you're talking about Emery Telcom Video, LLC?

12 Q. Yes.

13 A. Okay. Emery Telcom Video, LLC, is a cable
14 provider in the area. It has cable plants in Moab, the
15 town of Moab, the town of Monticello, and the town of
16 Blanding. And those are its -- that's its only presence
17 there as a cable plant in those areas.

18 Q. And does it serve any end-use customers in those
19 areas?

20 A. Serve them with what types of service,
21 Mr. Russell?

22 Q. Any service.

23 A. Okay. It provides cable TV services.

24 Q. Right. Okay. And then my understanding is that
25 ET&V provides some sort of services in these exchanges as

1 **well. Can you tell me what that is?**

2 A. Yes. ET&V provides Internet services in the
3 area. And it also provides voice service only in the
4 Moab exchange because its CPCN does not allow it to
5 provide voice services in any other of the exchanges that
6 are subject to the application. So it provides voice in
7 the Moab exchange only, and it provides Internet in part
8 of the Moab exchange, part of the Monticello exchange,
9 and part of the Blanding exchange.

10 **Q. Thank you. And what plant does it use to**
11 **provide the Internet and voice services in Moab?**

12 A. So it uses two plants, I guess you could say.
13 It uses its affiliated company's plant, the cable
14 company's plant. But then it has been actively
15 installing fiber facilities in the Moab exchange and in
16 the main corridor of the Blanding and Monticello
17 exchange, so the actual, not -- the towns of Blanding and
18 Monticello, not the full exchanges.

19 **Q. Got it. And using the fiber plants, I assume it**
20 **uses the fiber and the coaxial plant in Moab to provide**
21 **voice exchange as well; is that correct?**

22 A. Can you just restate that?

23 **Q. Yeah. I had asked what plant it uses to provide**
24 **Internet. And you gave me all of the exchanges. And I'm**
25 **now focusing on it's the voice customers that ET&V has in**

1 the Moab area.

2 What plant does it use to provide voice service
3 in Moab?

4 A. So, again, it can only provide voice service
5 only in the exchange of Moab and only in the town, like,
6 up in the center of Moab. And it provides it across both
7 the cable plant and the fiber plant.

8 Q. And my understanding is --

9 A. Can I say one thing? There's not, like, a
10 clear -- the fiber plant -- you know, some of the coax
11 plant has fiber in it, but customers are on coax drops
12 versus fiber drops, so.

13 Q. Gotcha. And it's my understanding from your
14 application and from your testimony that the proposal
15 here includes the transfer of plant from Emery Telcom
16 Video to the E Fiber entities; is that correct? And
17 maybe I'll be more specific.

18 It's my understanding that outside of the Moab
19 exchange, Emery Telcom Video intends to transfer its
20 coaxial plant to the E Fiber entities; is that correct?

21 A. No, that's completely incorrect.

22 Q. Okay. And maybe that's just my
23 misunderstanding.

24 A. I can clarify that.

25 Q. Please do.

1 A. Okay. So again, Emery Telcom Video has the coax
2 plant. That's never going to be transferred onto the
3 regulated entities at all. It's the fiber plant that's
4 owned by Emery Telecommunication & Video that is going to
5 be transferred over to the regulated entities.

6 Q. Okay. I had understood from your testimony that
7 the intention in the San Juan exchanges would be to
8 transfer the customers receiving service on the coaxial
9 plant so that you could provide voice service to them
10 immediately; is that not correct?

11 A. No. That would never be transferred over.

12 We could provide it through an affiliate
13 agreement across that coax plant, but the coax plant is
14 not going to be transferred over.

15 Q. Okay. So the coax plant itself won't be
16 transferred?

17 A. No.

18 Q. But you might use the existing coaxial plant in
19 the San Juan exchanges to provide voice service until the
20 fiber network that is contemplated in these applications
21 is built out?

22 A. That could happen.

23 Q. Is that, in fact, what you're proposing to do?

24 A. Yes. We're -- so the -- right now, the ET&V
25 uses that plant to provide telephone over DOCSIS. Is

1 that what you're asking?

2 Q. No. I'm just asking if the applications are
3 approved, it's my understanding that the proposal here
4 would be outside of the Moab exchange where ET&V already
5 has a CPCN to provide voice service. That in order to
6 more quickly provide voice service in the San Juan
7 exchanges, for instance, that the E Fiber San Juan entity
8 would utilize an existing plant from some Emery entity to
9 provide voice service; is that the cases?

10 A. Again, now the question is a little different.
11 So you just said to provide VoIP service --

12 Q. I didn't say VoIP, I said voice.

13 A. Oh, voice. Okay. Just clarifying because I
14 don't want to say yes to something that isn't.

15 But yes, the ET&V could use the DOCSIS -- excuse
16 me. E Fiber San Juan could use the DOCSIS plant of Emery
17 Telcom Video in Monticello and Blanding to provide voice.

18 Q. Is that, in fact, what you're proposing to do
19 here?

20 A. Yes. So what the proposal is, is the focus is
21 going to be on -- so yes. In the -- where the coax plant
22 is in Monticello and Blanding, we can initially use that
23 coax plant to provide voice through an affiliated
24 agreement and -- while we focus on building out the areas
25 surrounding those coaxial plants.

1 Q. Okay. And in the Moab exchange, you intend to
2 treat that differently, right? There is no intention in
3 the Moab exchange to utilize existing coaxial plant to
4 provide voice service during the buildout; is that right?

5 A. That's correct.

6 Q. And can you tell me why not?

7 A. Because ET&V already has authority to serve
8 there, so it can provide voice. Right now, there's no
9 entity other than Frontier that can provide regulated
10 voice in the San Juan exchanges and Thompson. But ET&V
11 already can. It already is providing voice across the
12 coaxial network.

13 Q. Sure. But if the applications are granted,
14 ET&V -- excuse me, E Fiber Moab would have the authority
15 to provide voice service in the Moab and Thompson
16 exchanges, right? Couldn't it use the existing plant to
17 provide that service?

18 A. It could.

19 Q. But you're not planning to do that, and I'm
20 asking why.

21 A. Because ET&V already is providing -- those are
22 already ET&V customers across the coaxial network. And
23 we don't need the CPCN to provide voice there through the
24 E Fiber Moab entity.

25 Q. But eventually, what you're talking about is

1 overbuilding that existing plant with the fiber network
2 and then transferring them over. So I'm just wondering
3 why not transfer them now while that process is taking
4 place?

5 A. I'd have to look at -- I don't think that
6 that's -- Mr. Russell, if you're getting at that there's
7 some hidden agenda there, there isn't.

8 We really haven't -- I haven't analyzed that to
9 see what effect that would have one way or the other on
10 revenue versus -- and UUSF calculations. I doubt that it
11 would have much of an effect because you got to -- when
12 you bring over the revenue from those customers, you also
13 have to have an associated cost. And the associated cost
14 with adding that voice customer, that DOCSIS plant is
15 going to be relatively small.

16 So I don't think that -- if you're getting at
17 that there's some hidden agenda to maybe increase the
18 amount of UUSF by not transferring those customers, I
19 don't think that there's really going to be much of an
20 effect there. It's more from just a standpoint of we
21 don't have to do all the agreements. We don't have to
22 worry about intercompany transfers back and forth -- or
23 allocations back and forth. It's just how we decide to
24 do it in the application.

25 Q. Well, but you haven't done -- as you've

1 indicated, you haven't done the analysis to determine
2 what effect that might have, I gather --

3 A. I haven't.

4 Q. -- on the UUSF?

5 A. No, I haven't.

6 Q. Can you tell me what the --

7 A. But my expert opinion when I have looked at --
8 and I look at plants all the time -- the costs associated
9 with adding that voice service to our DOCSIS plant in
10 Moab, that already existing plant, is going to be
11 relatively small costs and relatively small revenue. So
12 I don't think it's going to be a big number.

13 But again, if the -- and I'll say this
14 throughout this, Mr. Russell: This is going to be -- if
15 these applications are granted, the Division and Office
16 are going to review our separations. They're going to
17 review our regulated and our nonregulated revenues.
18 They're going to review our regulated and nonregulated
19 expenses. And if they have a problem in any of our
20 annual reports, they will adjust our UUSF numbers
21 accordingly. And so I'm sure this will be looked at in
22 detail by the Division and the Office and approved by the
23 Commission. (inaudible).

24 Q. I want to talk --

25 A. Go ahead.

1 (Court reporter interruption.)

2 THE WITNESS: I just said that the Division will
3 review it every year -- or the Public Service Commission
4 will, the Office and the Division. So there's not going
5 to be any potential for pumping state UUSF. The Division
6 and the Office are going to be watching our regulated
7 versus nonregulated revenues and expenses.

8 Q. (BY MR. RUSSELL:) Let's talk about the
9 capability of the existing coaxial plant that will
10 apparently continue to be owned by E Fiber's affiliates.
11 But that will be used, I gather, to provide some service
12 in the San Juan exchange.

13 What is the capability of that plant, and how
14 old is it? Can you just give me some sense of what it is
15 that that plant can do?

16 A. The plant's really old. I mean, we bought it in
17 '09. It was an existing plant. We've -- so it was
18 completely existing before '09. Most of our areas that
19 we branched out at since '09 have been through fiber.
20 And those assets will be transferred over to the new
21 regulated entities.

22 The old coaxial plant is -- like I said, it was
23 in existence before 2009. We have added a few nodes, and
24 we've added some capacity.

25 The Monticello and Blanding plants are not as

1 good as the Moab plant. The Moab plant, I believe, is a
2 750, but I've got to check that. But we do DOCSIS 3.1
3 across it, and that's the type of plant it is,
4 Mr. Russell.

5 **Q. Can you give me some sense in terms of Internet**
6 **connectivity speed what the capability of that coaxial**
7 **plant is?**

8 A. It can -- it can do just under a gig download
9 and about 100 upload, I believe, but I'd have to check on
10 the upload speeds.

11 **Q. Okay. Thank you.**

12 A. I think we advertise a gig. It's just -- it's,
13 like, right at the edge, and there's some overhead there.
14 So, if you check the website and it says a gig, it's
15 really close, within a little bit.

16 **Q. Why -- why is it reasonable to overbuild the**
17 **existing coaxial plant with the fiber?**

18 A. So this is the perfect question, Mr. Russell.

19 **Q. Thank you.**

20 A. I've been asked by residents all over San Juan,
21 all over Moab, the legislature, the regulators, the
22 economic development people. They say the service is
23 unreliable from Frontier, and it doesn't have decent
24 broadband speeds. It's dilapidated. They don't respond.
25 They don't even turn up at the customers half the time.

1 Even in the subdivisions that you asked for, they claim
2 to have service, they don't have service in those
3 subdivisions and --

4 **Q. Mr. Johansen, I really don't want to cut you**
5 **off, but I think you're answering a question that I**
6 **didn't ask.**

7 A. No, I'm answering the exact question.

8 So the plan, I was asked to come down into this
9 area by numerous people and overbuild it. Now, very
10 little of the exchanges is actually served by our
11 existing plant. If you look at it from a geographic
12 nature, we don't serve in most of the geographic areas of
13 San Juan and Grand Counties. And so the plan is not to
14 come in and use this to overbuild the DOCSIS plant. The
15 plan is to start in the hard-to-reach areas that we don't
16 have a DOCSIS plant, and we've evidenced that by where
17 we've gone out and gotten grants.

18 If you noticed, we have a grant to serve in
19 Castle Valley. We have a grant to serve in LaSalle. We
20 have a grant to serve in Mexican Hat Halchita. We have a
21 federal USF award to build down to Bluff and up to
22 Montezuma Creek.

23 All of these programs, we're trying to find
24 money on the federal side and the state side to build
25 these areas that we don't have a plant. That's going to

1 be our main focus because Frontier has refused to serve
2 them properly. And we've done that, and we've gone into
3 these areas.

4 The federal government, we've gone and toured
5 these areas, and we've said, Are these underserved? And
6 we've been out there with them in cars. And they've
7 driven into these Frontier areas, and they've said, Yep,
8 we've done the tests. These are underserved areas.
9 They're not served well. This is exactly what these
10 grants are for. Come and overbuild them.

11 **Q. Mr. Johansen, that doesn't have anything to do**
12 **with the question I asked, which is why you're planning**
13 **to overbuild your own coaxial plant?**

14 A. And I'm telling you --

15 **Q. Can you give me that answer?**

16 A. Yes. So the plan is to not focus on those. The
17 first three or four years will be completely overbuilding
18 Frontier areas where we don't have the DOCSIS plant.
19 Then, as the DOCSIS plant, most of those electronics have
20 a seven-year life. Most of those upgrades are six- to
21 seven-year upgrade life. That upgrade is a couple years
22 old already.

23 So at that point, we'll have a decision to make:
24 Do we upgrade the DOCSIS plant, or do we go in and
25 overbuild it with fiber through the regulated entities?

1 Now, that's going to be a decision in the future, and so
2 that's not going to be the focus initially. But
3 eventually, that's going to be the question.

4 Now, I will tell you that for the residents down
5 there, fiber is future proof. And so when it comes to
6 that DOCSIS plant needing to be upgraded in five, six
7 years, the reasonable way to upgrade that is with fiber.
8 And it is future proof, and it is in the best interest of
9 the residents down there.

10 And so I just want to be clear: We're not going
11 down Day 1 and saying, Let's overbuild this DOCSIS plant.
12 That's not the plan. The plan is go and overbuild all
13 these areas that Frontier has refused to provide adequate
14 service to. And then when the DOCSIS plant needs to be
15 upgraded, which is four or five years out, we will look
16 at how to upgrade that.

17 I believe that it's reasonable to upgrade a
18 DOCSIS plant to fiber. And here's the interesting thing,
19 and I'm going to put this back on you: If I have a
20 DOCSIS plant back there -- and I followed that line of
21 reasoning that you have right there. And I said, Okay,
22 I've got a DOCSIS plant down there, so it's not
23 reasonable for my regulated company to come in and
24 overbuild, then it's not reasonable for Frontier to come
25 in and overbuild, either. And nobody has ever ruled

1 that. It would be seen as completely reasonable for
2 Frontier to come and overbuild us where we have a DOCSIS
3 plant. And, correspondingly, if our E Fiber entity
4 becomes a regulated telephone, just like it's reasonable
5 for Frontier to come overbuild, it's reasonable for E
6 Fiber to come overbuild.

7 **Q. You're familiar with the pro forma that was put**
8 **together by your colleague, Mr. Woolsey, correct?**

9 A. I am familiar with it. I will just preface that
10 I went over it in detail last April with him. I glanced
11 at the front page of it since then, one time. So you're
12 going to have to go to him for most of the questions.

13 **Q. And I plan to do that. I don't plan to get into**
14 **any confidential information here. I understand that the**
15 **pro forma was submitted and designated confidential.**

16 I just wanted to ask: You're aware, aren't you,
17 that the five-year pro forma that that you-all submitted
18 includes or assumes costs to overbuild a coaxial plant in
19 that five years, right?

20 A. Yes.

21 **Q. Okay. I want to switch gears a bit away from**
22 **the existing plant down there and talk about the service**
23 **that you-all are going to provide. And I think at this**
24 **point, it might be worthwhile for us all to get the**
25 **diagram that you've submitted, which is -- was Exhibit 5**

1 to your direct testimony, or rebuttal testimony, I
2 believe. I can't recall right now.

3 A. Correct. I've got it in front of me, but if
4 somebody wants to pull it up on the screen, I don't know.

5 Q. I think that might be useful. I'll do that.
6 Bear with me for just a moment.

7 A. Sure. I could probably find it or share it.

8 Q. I've got it right now. I'm going to put it up
9 on the screen right now.

10 Do you see that?

11 A. Yes. I see that, Mr. Russell.

12 Q. Okay. So this is marked as Exhibit BJR05, I
13 believe. And it was Exhibit 5, I think, to your rebuttal
14 testimony. It was also a response that E Fiber gave to
15 the Division in Data Request 1.7, if my memory serves.

16 And what I would like to do here is to talk
17 about the infrastructure a little bit, just kind of walk
18 through it, and then talk about the capabilities of the
19 system. And let's talk for a second about the physical
20 fiber that will connect the optical network terminal to
21 the rest of the network. I understand that will be one
22 physical fiber, but it will have two separate VLANs, as
23 it indicates just above that portion, right?

24 A. Do you want to go in detail on it? Because it's
25 partly true.

1 So what it's going to have, it's going to have
2 one physical fiber from the ONT back to the network
3 router -- that network router, so the second box. And
4 then it will be jumping back -- it will be jumping on an
5 IP core from there. So it won't be on that single fiber
6 drop all the way back. Like, the fiber drop doesn't plug
7 into the switch.

8 So to your question, it's not a single fiber
9 drop that's, like, home run all the way to the switch.

10 **Q. Sure. Yeah. That was -- I just meant there was**
11 **a single physical fiber to connect it to the ONT that**
12 **runs out.**

13 A. Correct.

14 **Q. Okay. And, in fact, let's talk about the ONT**
15 **there for a second. That is a piece of equipment that**
16 **will be owned by the E Fiber entities and installed at**
17 **the home, correct?**

18 A. Correct.

19 **Q. Okay. And then that will connect through an**
20 **RJ-11 port to -- either, I guess, directly to a telephone**
21 **or to the existing in-home telephone copper wire network,**
22 **right?**

23 A. Yes. And it will provide -- just like
24 traditional voice, it will provide loop current and ring
25 voltage. So it is just like traditional POTS. It

1 provides an analog signal -- or it can take an analog
2 signal with loop current and ring voltage.

3 **Q. Okay. So this is just for -- I want to ignore**
4 **the Internet customer for a moment and just talk about**
5 **the voice customer.**

6 **So a voice customer keeps its, I guess, 10-digit**
7 **phone number and plugs into a traditional phone, right?**

8 A. In answer to that, Mr. Russell, it's the only
9 thing that can plug in there. You can't plug -- and this
10 is a key differentiator. You can't plug an IP phone into
11 that. It's an RJ-11 jack. And so when that port, when
12 you got a voice-only customer and that's the only port
13 that's activated on that customer, it cannot take an
14 IP-enabled device. It cannot take an IP device. It
15 cannot take a VoIP device. It can only plug into an
16 analog phone through an RJ-11 analog port that receives
17 loop current and ring voltage.

18 **Q. And then so the ONT then converts that analog**
19 **signal to an Internet protocol signal, right?**

20 A. Well, first it converts it to a digital, and
21 then for transport purposes, it converts it to an IP
22 signal.

23 **Q. Okay. And then it sends it on through the**
24 **network off to the right of this diagram, yes?**

25 A. Well, that's a little bit misleading.

1 So the ONT converts the analog signal that's
2 coming from the customer into our device. The ONT
3 converts it to digital, converts it to IP, goes over to
4 the switch. The switch converts it back down to digital,
5 and then it will hand it off TDM to, like, a Frontier
6 customer.

7 **Q. So a customer picks up their phone and dials a**
8 **number. It sends an analog signal to the ONT, which**
9 **converts that analog signal to digital and then to IP for**
10 **transport. And then it runs it to the network router,**
11 **which then -- I'm going to screw this part up, so I'll**
12 **just have you do it.**

13 **Then what? If the call is to somebody who is**
14 **not on E Fiber network?**

15 **A. Okay. And this is the key thing where your**
16 **expert witnesses got wrong because they don't understand**
17 **our network. It has to go to that switch, and that**
18 **switch cannot -- it is only connected to the public**
19 **switched telephone network. That's how it delivers the**
20 **calls.**

21 So before your techs had all this, application
22 servers and a direct line to a VoIP and all of this
23 nonsense, every call goes through that classified switch
24 that is part of the PSTN.

25 So even if it's going back to a customer inside

1 the network, we maintain it through that switch. And the
2 reason we do -- and some companies don't -- but the
3 reason we do is so that we have all the data for that
4 call. So whether it's inside the network, whether it's
5 handing off to Frontier, or whether it's going onto our
6 tandem, it goes through that public switched telephone
7 network switch, that classified switch, that's part of
8 the public switched telephone network. And every call
9 that's coming in or exiting is going to go through the
10 PSTN.

11 **Q. Thank you. The network router, I think I heard**
12 **you say earlier, it then converts the signal from IP to**
13 **something else, is that right, before it sends it to the**
14 **PSTN?**

15 A. No, that's not the router. That's the switch.
16 So the switch is a digital switch. It isn't an IP
17 switch. So the IP trunk is coming into the switch. The
18 switch is going to -- it's a digital switch. It's not an
19 IP switch. It's going to convert it back to digital and
20 switch it digitally.

21 **Q. Where is the switch on this diagram?**

22 A. It's the PSTN voice switch. It's a classified
23 switch registered in the large (phonetic). It's part of
24 the PSTN.

25 **Q. Gotcha. Thank you.**

1 A. Every call goes through the PSTN.

2 Q. All right. And a call that --

3 A. There's no voice calls --

4 Q. -- that would originate at the PSTN would come
5 into, I guess, that voice switch and be converted to IP
6 for transport through the E Fiber system to the ONT; is
7 that right?

8 A. Correct. It converts it to IP-in-the-Middle
9 just for transport. And then --

10 Q. Then the ONT --

11 A. -- convert it back down --

12 Q. And then the ONT would --

13 A. Then it's converted back down to analog.

14 Q. My apologies.

15 A. Sorry.

16 Q. Then the ONT would convert it to an analog
17 signal and send a signal to your phone; is that right?

18 A. That's correct.

19 Q. Okay. Let's talk about the -- well, before we
20 leave the voice customer only, through this
21 infrastructure, the E Fiber end-use voice customer would
22 be able to send or receive voice communications, right,
23 just at its basic level? That's what it can do?

24 A. Say that one more time, Mr. Russell?

25 Q. I said through the infrastructure that we just

1 talked about, at its most basic level, an E Fiber end-use
2 voice customer would be able to send or receive voice
3 communications, right?

4 A. It would be able to send or receive an analog
5 voice signal. It could not send an IP voice signal
6 through an IP phone. And that's key.

7 And I just want to clarify one other point on
8 the prior answer where you talked about converting it to
9 IP. We need to understand that this VLAN is a direct
10 VLAN, a virtual network to the switch. It has no other
11 exit points. It cannot get to the public Internet. So
12 that VLAN, that red VLAN in the diagram -- so if we
13 follow that diagram, that red VLAN goes to the switch.
14 That's the only place it goes. And the traffic on there
15 has a private IP address. If it got pushed out onto the
16 Internet -- let's say it even had a connection to the
17 Internet, it wouldn't go anywhere because the private IP
18 would not be routable on the public Internet.

19 So this traffic that's converted from analog to
20 voice -- to IP-in-the-Middle is on a private VLAN with
21 only one path to the switch, and it's got private IP
22 addresses.

23 Q. Okay. And again, my question, my last question
24 was a bit more basic than a discussion about the various
25 types of signals being sent. I just wanted to ask: A

1 customer who picks up a phone that is a voice customer of
2 E Fiber would be able to send or receive voice signals
3 using this infrastructure we just talked about, right?

4 A. And I just wanted to clarify they'd be able to
5 receive analog voice signal, and not IP.

6 Q. But there is IP -- as we've discussed, IP is
7 used in this process, yes?

8 A. Oh, sure. I think that that's -- it's used --
9 and it's supposed to be used. I mean, even in the new
10 USF statute, S.B. 130, the Public Service Commission now
11 can regulate connections, which are -- which if you read
12 through that, a connection is -- it uses Internet
13 protocol or a functionally equivalent technology standard
14 to enable an end user to initiate or receive a call from
15 the public switched telephone network. The new S.B. 130,
16 which is now codified in 54-8b-15, states that the Public
17 Service Commission has the ability to regulate and can
18 provide USF for connections that have IP protocol that
19 enables an end user to reach the public switched network.

20 Q. And I didn't ask any of that. So why don't you
21 just focus on the question that I actually ask.

22 A. Okay.

23 Q. Let's talk about the classified switch just for
24 a second before we leave this topic. That's a
25 Metaswitch, right?

1 A. It is.

2 **Q. And that's an IP switch?**

3 A. Well, it's a digital switch, but it's called a
4 soft switch.

5 **Q. Okay.**

6 A. And let me give you a little clarification for
7 that, Mr. Russell. So that switch was used back when we
8 had all copper loops, also. So we put that switch in
9 back in 2006. And I think this is important if we want
10 to develop the full record.

11 That is a soft switch, a digital switch. Even
12 when we had a copper loop, we put -- in 2006-2007, we put
13 that Metaswitch in. At that point, we were almost
14 100 percent copper drops. That switch was still
15 switching those copper customers. This isn't a
16 fiber-only switch. It's not a fiber to the prem switch.
17 This switch has been providing public telecommunications
18 services, regulated telecommunications services since '07
19 and '06 with both fiber and copper customers.

20 **Q. I now want to focus using this same diagram on**
21 **the blue lines that will connect, I gather, computers,**
22 **the WiFi device to the ONT?**

23 A. Okay.

24 **Q. So, in fact, let's just talk about it as an**
25 **Internet-only customer. I gather that the Internet-only**

1 customer would be a customer, and end-use customer of
2 ET&V; is that right?

3 A. Right. I mean, under the statute, the regulated
4 company would provide wholesale bias, right, and then the
5 retail customer, the actual customer, would be ET&V's.

6 Q. Right. So E Fiber would build out this system
7 and then sell it wholesale to ET&V. ET&V would then
8 provide the retail service to the customer, yes?

9 A. That's correct.

10 Q. Let's talk about what this system looks like for
11 that Internet-only customer.

12 We've got this same single physical fiber that
13 runs from the ONT to the OLT. And I get there are two
14 separate VLANs, one is the private for the voice,
15 although I guess you wouldn't have that if it's an
16 Internet-only customer. But you have the public IP for
17 the data transfer; is that right?

18 A. Correct. I think -- so that was a long
19 question.

20 Q. It was.

21 A. But your question was would the red line be
22 there?

23 The red line would not be there. We would not
24 turn up that voice VLAN. And we would not activate the
25 RJ-11 port, so it would be active.

1 On a broadband-only customer, there would not be
2 any path to the R switch, to the public switched
3 telephone network, that red VLAN. And that port on the
4 RJ level would not be active. Instead, there would be
5 this public, or this data VLAN with public IP addresses
6 headed to the public Internet and going out the RJ-45
7 port on the ONT.

8 **Q. Right. So I get that. And I apologize for the**
9 **long question. I had forgotten that I had set it up as**
10 **an Internet-only customer.**

11 So if it's a customer receiving retail Internet
12 service from CT&V [sic], they would have some sort of a
13 router. I presume they would have to get their own; is
14 that right?

15 A. No, that's not correct.

16 **Q. Okay. Who would provide that?**

17 A. And that, again, is in the diagram here. If
18 you'll follow the diagram with me as I -- I wish I could
19 grab the screen, right?

20 **Q. Yeah, I know. I hear you.**

21 A. Okay. You've got the blue line coming in. And
22 the ONT, if it's -- it can act as a router. And that's
23 that little WiFi. You see how it got the little --

24 **Q. Yep.**

25 A. -- WiFi?

1 So it can act as its own router, or it can be
2 set to allow for a customer premise equipment router.

3 **Q. Okay.**

4 A. Or the customer to bring their own router.

5 Now, here's a key point on that that I think is
6 very critical for the record. All the cases that have
7 been cited deal with DOCSIS plants. DOCSIS plants have
8 to be agnostic and allow for bring-your-own routers.

9 This, you can't. That ONT is solely -- it can
10 only speak back to our OLT. It's the same brand. And so
11 we have a -- that ONT, that Calix ONT is talking to a
12 Calix OLT that's owned by us. The customer can't bring
13 their own ONT at all. They could add in their router
14 after that RJ-45 port, but it's not like DOCSIS, where
15 you can bring your own router.

16 That ONT is our equipment. It can only talk to
17 our OLT, is controlled by our OLT, and the customer has
18 no control or ownership in that ONT. And it's definitely
19 part of our network.

20 **Q. Okay. So a customer that wanted to have its own**
21 **internal router WiFi would connect that to the ONT**
22 **through an ethernet cable, right?**

23 A. Through that RJ-45 port, correct.

24 **Q. Right. And then they could connect their**
25 **in-home computers or WiFi devices, I gather, to their**

1 in-home router, yeah?

2 A. Or not just their computers, but also a phone.
3 So a device that can originate a call on IP. That's the
4 only way it can connect to our network is through that
5 RJ-45 port, which is headed out to the Internet, not to
6 the switch.

7 Q. Okay. So a customer could -- and, I guess,
8 let's follow the communications from the ONT through the
9 network. So it sends an IP signal from the ONT to the
10 OLT to the router and eventually onto the public
11 Internet; is that right?

12 A. Okay. Sorry, Mr. Russell. I apologize. Say
13 that one more time?

14 Q. Yeah. I just want to follow the communications
15 from the ONT through to the public Internet.

16 So, you know, a customer gets on their computer,
17 they send a signal, they push a button which eventually
18 reaches the ONT.

19 And then it does what with that signal to send
20 it to the public Internet? Maybe you could just walk me
21 through that portion of it.

22 A. So it's got a public IP, or it can be -- and so
23 it's headed out through our network routers. And there's
24 a network, a series of routers that end up at a backbone
25 point to the Internet. We have two backbone points in

1 Salt Lake County and one in Utah County. So that -- so
2 the customers -- let's track an IP VoIP call.

3 It would go through that customer's router into
4 our RJ-45 port, through the data VLAN, out through a
5 series of routers because we have multiple paths in case
6 one of them goes down, up to our entry point to the
7 public Internet. And that happens to be -- there's two
8 in Salt Lake County and one in Utah County.

9 It's not ever going towards where the switch is.
10 The switch is over in the Price CO on a separate VLAN.
11 It's headed out to Utah/Salt Lake County and then the
12 rest of the world.

13 **Q. Okay. And so a customer of ET&V utilizing this**
14 **system, I guess, could send data or video communications**
15 **or receive data or video communications through this**
16 **infrastructure, right?**

17 A. Or voice. Yes, voice, video, or data across
18 that.

19 **Q. Okay. Bear with me for just a second. I think**
20 **we're done with the diagram for now. I think.**

21 A. On the diagram, and just when you're seeing
22 that, I want to clarify one statement you said. You said
23 that the phone could plug directly into the RJ-11, or we
24 could go back to the outside and hit the customer's
25 premises -- well, the ONT can be placed on the inside or

1 the outside. That's up to the customer or if the Public
2 Service Commission had a preference. But to hit the
3 customer's inside wiring, we'd go back outside to the
4 original copper NID, or like you said, we could plug
5 directly into that RJ-11, which is providing loop current
6 and ring voltage.

7 I will say that the placement of that ONT -- in
8 answer to your question on whether the ONT, you have a
9 customer router, we don't make that determination. We
10 want that to be the customer's choice.

11 It's kind of the same with where the placement
12 of the ONT is. So both of those questions, the tech's
13 going to meet with the customer and say, "Do you want the
14 ONT on the outside or the inside?" And some of the HOAs
15 down in Moab do not allow for outdoor ONTs. Some require
16 indoor ONTs.

17 And then, again, the customer will say, Do you
18 we want you to build into the ONT, or do we want to use a
19 router that we bring by ourself that's on the other side
20 of that ONT?

21 **Q. Okay. The conversion of a signal to Internet**
22 **protocol allows the signal to be routed to either the**
23 **public Internet if it's a data signal or to the PSTN if**
24 **it's a voice signal, right?**

25 **A.** That's not a good statement, Mr. Russell. I'm

1 not trying to be antagonistic. The fact that it's IP
2 does not mean it's routable to the Internet.

3 TDM can be used to route to the Internet, too.
4 TDM is just a transport method. It can transport voice,
5 video, or data. So you don't have to send it on an IP
6 signal to go up to the Internet. You can have a TDM path
7 to the Internet. In fact, when I came on, our path
8 backbone to the Internet was a DS3 TDM.

9 So I'm not trying to be antagonistic, I'm
10 clarifying: It's not that the IP allows it to go to the
11 Internet, it's a transport method in the middle, just
12 like TDM.

13 **Q. And that wasn't the purpose of my question. I**
14 **was just trying to get to the point of saying IP allows**
15 **it to route through that system. It eventually ends up**
16 **at public Internet, right, if it's a data signal?**

17 A. Well, IP allows it to route through the VLAN to
18 the switch, too, on a dedicated, so yes. But it can get
19 to the Internet -- on the data link, that top blue line
20 if you had your thing back up -- it can get to the
21 Internet. If it's coming on the -- the analog call never
22 can get there.

23 **Q. Understood. If it's a voice signal on that**
24 **private VLAN, it gets converted to IP. And then it is**
25 **routed to the PSTN if it's a call outside of the network,**

1 **right?**

2 A. Well, it gets routed to the PSTN either way.
3 That switch is part of the PSTN. So that analog voice
4 signal has one path to the PSTN period.

5 **Q. Let's talk a little bit about the capabilities**
6 **of the system once it's built out. I had asked you about**
7 **the coaxial speeds. What will the fiber speeds be? I**
8 **think you said somewhere in your testimony that it's up**
9 **to a gigabyte, but I'll give you the opportunity to talk**
10 **about it.**

11 A. That's the beauty, Mr. Russell, of fiber. So if
12 you put in the current Calix boxes, we are turning up
13 synchronous gig services. But all you gotta do is
14 upgrade the electronics after that, and you can have
15 whatever speed you want. So, for instance, all you've
16 gotta do in the future as the customer needs more and
17 more speeds, instead of going in and redoing your copper
18 or coax plant, you just go to the customer and put a new
19 electrical device on the end, a new ONT, and a new OLT
20 back at your location. And you can turn up 100 by 100
21 gig to that customer. You can turn up 40 channels of 100
22 gig to that customer, if you wanted. And so that's the
23 nice thing.

24 Right now, I'm being asked to quote circuits on
25 one channel at 100 gig by 100 gig. And that's one fiber,

1 and it's just by changing the electronics on the end.

2 That's why it's in the public interest to put
3 fiber networks, because these WiFi networks, the cellular
4 networks, the copper networks have limitations. The
5 fiber, you just replace the electronics and you have more
6 speed.

7 And so you asked what the capability of that
8 fiber plant is? It's endless, Mr. Russell. It's
9 endless.

10 **Q. Give me just a moment to go through my notes**
11 **here, if you don't mind.**

12 A. Sure. And we have customers in Moab that need
13 more than a gig. And we can Day 1, turn up more than a
14 gig to them on fiber. Not possible on any of the
15 existing copper plants in the area, Frontier's or
16 Emery's.

17 **Q. There's not a question pending, sir. Just give**
18 **me a moment if you would.**

19 **I don't have any further questions for**
20 **Mr. Johansen. Thank you, sir.**

21 A. Thanks, Mr. Russell.

22 HEARING OFFICER HOGLE: Mr. Johansen, I have a
23 few. Hold on a minute.

24 THE WITNESS: Sure, your Honor.

25

1 CROSS-EXAMINATION

2 BY HEARING OFFICER HOGLE:

3 Q. So I think in your rebuttal, you testified that
4 the grants that you received from the federal government
5 through that program that you referenced are one-time
6 payouts; and therefore, they're problematic because you
7 need ongoing support to upgrade and maintain the
8 facilities. Do you remember saying that?

9 A. Yes, I do, your Honor.

10 Q. Okay. I'd like you to comment on testimony that
11 was filed in dictating that if we grant -- if the Public
12 Service Commission were to grant your CPCN -- and I don't
13 think you responded to this, so I'm just now asking you
14 to respond, if you don't mind.

15 A. Sure.

16 Q. That the UUSF surcharges would increase
17 23 percent annually in the next five years and would
18 likely continue to increase -- well, I don't know if
19 that's what it says. But -- what would happen to the
20 surcharges, assuming ongoing upgrade and maintenance
21 expenses? So I'd like you to respond to the 23 percent
22 annual increase, if you wouldn't mind. And I can wait
23 for Mr. Woolsey if you -- if that's for him. I'm not
24 sure who your other witness is.

25 A. I think that's a valid question, your Honor.

1 Q. Okay.

2 A. Let me try to muddle through it because you
3 brought up maybe three or four issues.

4 Q. Okay.

5 A. And give me some liberty. If I'm not going down
6 the right path, tell me.

7 Q. Sure.

8 A. Those grants -- so, you brought up a couple
9 issues. The one was why I think that rate of return is
10 better than grants. And that's not a question for this
11 proceeding because the legislature just addresses that in
12 S.B. 130, which is now codified in that section that I --
13 they believe in rate of return. And so we don't really
14 need to talk about it. But that being said, the grants
15 give you a one-time, and that company will come in and
16 upgrade, and then they have no incentive to upgrade until
17 the next grant.

18 So whatever they come in at, that technology --
19 let's say it's even fiber. They have no incentive to
20 upgrade those optics on the end because they don't have
21 somebody paying for it at that point; whereas rate of
22 return is constantly saying, Improve that network.
23 Improve that network. Improve that network.

24 Now, that being said, I'm very thankful for
25 those grants. I mean -- and the whole state of Utah

1 should be. Because if we are granted this CPCN, those
2 grants, we don't get rate of return on that money. So
3 that money in Castle Valley where the federal government
4 has given 80 percent of the build-out costs on that plant
5 to fiber, the State of Utah doesn't -- that amount
6 doesn't go into the rate base. We don't get recovery on
7 it. That amount was just paid for by the fed, handed to
8 the State of Utah. So it effectively reduces the amount
9 of USF that will need to be put in that area.

10 Now, if E Fiber is not granted this application,
11 eventually Frontier or Frontier's predecessor, whoever
12 gets them out of the bankruptcy, has to come in. They're
13 not going to have that federal grant. So when they try
14 to overbuild that area, it's 100 percent on the state
15 USF. That's the difference. And maybe not 100 percent.
16 They might get some programs through RDOF or one of
17 these, but they won't get an 80 percent grant. We've
18 already gotten that.

19 So, that's why I think that it's so critical for
20 the State to take advantage of this. Here, you've got a
21 company who is getting federal grants to serve some of
22 the very hardest areas to serve in the state of Utah:
23 Castle Valley, LaSalle, Mexican Hat Halchita, Bluff.
24 We're down into Bluff, right? And that's because of the
25 grants getting us down.

1 We're using federal dollars to build those areas
2 out, but we're going to go in there and not be able to do
3 voice? That's wrong. That's wrong. So the federal
4 government is going to pay for this.

5 And then if we do not get granted this
6 application, we can't provide voice. The State needs to
7 take advantage of the fact that Emery -- the Emery
8 companies has these grants and has these projects going
9 on. And that's -- this number that you're talking about,
10 this large number of USF, would be larger if anybody else
11 went down in there.

12 We are the best option for the State, for the
13 Public Service Commission because of our capabilities
14 down there, because of these grants, because of our
15 existing network. We are the very least cost.

16 Now, that being said, the Public Service
17 Commission has to be wise stewards of the fund. But they
18 need to take direction from the legislature. There were
19 people at the legislature when S.B. 130 was going
20 through, which is now codified as USCA 54-8b-15. I was
21 on the Hill arguing for the passage of that S.B. 130.
22 Our senator was the one pushing it.

23 There were people saying kill rate of return,
24 it's going to drive up the costs. These -- this new --
25 this new statute expands it to not just access lines --

1 and this is a key point to this whole proceeding. The
2 Utah Code Annotated 54-8b-15 says not only is the UUSF
3 going to support an access line, it's going to support
4 connections.

5 Connections are authorized sessions that use
6 Internet protocol or a functionally equivalent technology
7 standard to enable an end user to initiate or receive
8 calls from the public switched network.

9 Does that sound like the legislature doesn't
10 want you guys to regulate? Internet protocol enabled
11 call to the public switched network? No, they've told
12 you to regulate it and to give it USF and also wholesale
13 broadband Internet access.

14 When they put those in -- I was on the Hill when
15 they were arguing. People said if you add connections
16 and you add wholesale broadband, the size of the fund is
17 going to rise. There were people screaming that. And
18 the legislators said, We know, and we're okay with it.
19 And they passed that bill. They knew the UUSF would go
20 up. They knew that it would if you added connections and
21 wholesale broadband Internet access. They knew we had
22 areas like San Juan, and they passed the bill anyways.
23 It doesn't matter how much it is. The legislature has
24 told us that these people in San Juan need broadband
25 capable networks. They've told us that.

1 Q. Thank you.

2 A. Sorry to be so forceful, but I believe in this,
3 your Honor.

4 Q. That comes across loudly. Yes, you are
5 passionate about the project.

6 A. It's not just passionate about the project, we
7 live here. Okay.

8 Q. All right.

9 A. My wife's a Hole in the Rocker. That's the San
10 Juan people. They call them Hole in the Rockers.

11 Q. Right.

12 A. We believe in this area.

13 Q. Okay. So I think you've heard testimony and
14 read testimony mainly for Frontier but also the Division
15 and maybe the OCS. And the recommendation is that this
16 kind of an issue is something that would affect
17 similarly-situated companies across the state of Utah;
18 therefore, we should, perhaps, take a pause and convene a
19 workshop or set of workshops or rulemaking process to
20 make sure that we get insights from companies that might
21 be affected with our decision today.

22 So my question to you is: Would it be
23 appropriate for the Public Service Commission to
24 condition, assuming that we grant your application as
25 requested -- and that's an assumption. We don't know

1 what we're doing with this.

2 A. Sure.

3 Q. Would it be appropriate for the Commission to
4 grant your CPCN but condition it on you waiting to build
5 until the conclusion of this rulemaking/workshop process?
6 What do you think about that?

7 A. That's interesting. I think there are some
8 concerns. They're raised mostly by the URTA companies.
9 This is -- so the big concern I think we're talking about
10 is where there are dual applicants, or dual -- that's not
11 the -- "applicant" is not the word, but the dual --

12 Q. Carrier of last resorts?

13 A. -- carriers -- right -- that are eligible for
14 the UUSF. And are we going to have dual runs on the
15 USF -- the UUSF?

16 Q. Right.

17 A. One, it's a hypothetical in this situation
18 because Frontier doesn't receive UUSF. Two -- they've
19 stated in their testimony that they don't have any plans
20 of doing fiber to the premises, and so they're not going
21 to build and need that UUSF. So it's all hypothetical.
22 We don't have a situation where there's two seeking that.

23 Second, I do believe that the URTA members have
24 legitimate concerns. Those public interest tests that
25 they have are legitimate. We need to make sure that the

1 UUSF is reasonably managed. I believe that the Public
2 Service Commission has the ability, per statute, to
3 reasonably regulate us. Now, if that means telling us to
4 hold off on future builds, that's reasonable. If that
5 means to report all of our builds and not overbuild each
6 other -- so, if we go in and we build a subdivision and
7 we report it that year and it's not reasonable for
8 Frontier to build; or, if Frontier goes in and builds a
9 subdivision fiber to the home, it's not reasonable for us
10 to go in there. If the Public Service Commission did a
11 rule like that, it's completely within their right.

12 That being said, I have a lot of construction
13 going on right now. I have short timelines on these
14 grants. I can't stop construction. So Castle Valley has
15 a deadline. I'm going to keep putting fiber to the prem
16 in.

17 I know what you're saying, and the Public
18 Service Commission, when you're analyzing that, needs to
19 understand we have these grants that are in process.
20 There's deadlines. We're going to go build.

21 We have -- Castle Valley is being built.
22 LaSalle is being built. Mexican Hat Halchita is being
23 built. We actually are in Bluff right now doing fiber to
24 the prem. We have a contract. We're in there. They
25 have a contract with us. I can't pull it. It's a

1 written agreement. We have a contract for building out
2 the town of Bluff.

3 We also have some subdivisions that we've gone
4 into in Moab, and some of those were on the list that --
5 of the data request to Frontier where Frontier says
6 they're providing service in those. I have been to those
7 subdivisions, they're not providing service there.

8 Some of them are in the phase where we're
9 putting pipe and fiber in the roads. I've got to
10 continue to do that. If we miss the window while the
11 trenches are open, then it's 15 times more expensive
12 because, right now, if there's a developer in Moab
13 putting in a development and they've got the trenches
14 open, and I can say here's 28-cent pipe, will you put it
15 in for me, and they put it in, versus me coming back at
16 \$15 a foot to put that in?

17 So in answer to your question, your Honor, I
18 think that you -- the Public Service Commission has a
19 right to reasonably regulate and make sure the costs are
20 reasonable, make sure that the builds are reasonable. To
21 actually say stop building is going to be hard because
22 I've got a lot of projects in the works. And frankly,
23 Moab is exploding, and every time there's an open trench,
24 we need to get a pipe in it.

25 Frontier is not doing that. Frontier is not

1 putting the pipes in those open trenches. And that's
2 another reason why we're a better to be -- to have COLR
3 down there. We're actively going out and building in
4 those subdivisions.

5 **Q. Okay.**

6 A. Does that answer that question? I think you
7 reasonably can do anything and say, Hold off. Make sure
8 these costs are reasonable before you build. But I have
9 some existing projects that have to keep moving.

10 **Q. And I understand that. I only meant with**
11 **respect to the construction what E Fiber, assuming a CPCN**
12 **is granted, would do. This would not affect whatever**
13 **construction you have ongoing at the moment in order to**
14 **meet the deadlines for those federal projects, for that**
15 **federal funding. That's a separate question.**

16 But I get, and I understand what you're talking
17 about. I do get that, you know, your trenches are open.
18 If you were to get a CPCN, you know, the timing there
19 would be -- you know, we would have to give some
20 consideration there.

21 **Okay. I think you've answered my question.**
22 **Thank you.**

23 A. And one suggestion might be that all those
24 builds in that time period have to be preapproved. So if
25 a contractor came to me and said, Hey, I've got an open

1 trench, I call up the Division and say, I know I'm in a
2 moratorium right here, but can I give them pipe to build
3 into this subdivision? Can I give them the pipe while
4 the trench is open? And maybe it's like that, a little
5 more hands-on with the Division, where we're saying, Hey,
6 I've got this opportunity. Is it reasonable?

7 **Q. Okay. Let me see if I have more questions.**
8 **Hold on. Again, this is a hypothetical. We don't know**
9 **what we're doing.**

10 **But does your -- do you envision a situation**
11 **where in the future you would be seeking permission to**
12 **also be a carrier of last resort in other areas of the**
13 **state?**

14 **A. I don't think that I would right -- and Emery**
15 **Telcom has no -- or its affiliates has no plans other**
16 **than the Four Corners areas.**

17 **The only exception right now might be White**
18 **Mesa. We've excluded that, but that's because I was at a**
19 **meeting with the leadership down there. We were looking**
20 **at applying for a grant, and the leadership said that the**
21 **Tribe might apply for their own grant. I didn't want to**
22 **compete with the Tribe.**

23 **So the only current plans would be to expand in**
24 **that San Juan area. And we have no plans right now.**
25 **Obviously, that would have to be worked out with the**

1 Tribes. But we have no other plans.

2 I do foresee that if Frontier provides poor
3 service in its other exchanges, the Public Service
4 Commission could have others apply for those areas. And
5 Emery Telcom doesn't have any other adjoining facilities
6 by any of the other Frontier exchanges, so it doesn't
7 make sense for us to apply for COLR in any of those other
8 areas. But something could change, but I -- right now,
9 there are no plans.

10 **Q. Thank you. Let me just make sure I don't have**
11 **any more.**

12 **Okay. Those are it. Thank you, Mr. Johansen.**

13 A. Thank you, your Honor.

14 HEARING OFFICER HOGLE: Ms. Slawson?

15 MS. SLAWSON: I'm trying to navigate to the mute
16 button. I don't have any redirect.

17 HEARING OFFICER HOGLE: Okay. Mr. Johansen,
18 thank you for your testimony.

19 And Ms. Slawson, you can call your next witness.

20 MS. SLAWSON: We would call Darren Woolsey to
21 the stand -- or to the screen.

22 HEARING OFFICER HOGLE: Okay.

23 Mr. Woolsey, do you swear to tell the truth?

24 THE WITNESS: I do.

25 HEARING OFFICER HOGLE: Thank you. Please

1 proceed.

2 MS. SLAWSON: Thank you.

3

4 DARREN WOOLSEY,

5 was called as a witness, and having been first duly
6 sworn to tell the truth, the whole truth, and nothing
7 but the truth, testified as follows:

8

9 DIRECT EXAMINATION

10 BY MS. SLAWSON:

11 Q. Would you state and spell your name for the
12 record.

13 A. My name is Darren Woolsey, D-A-R-R-E-N,
14 W-O-O-L-S-E-Y.

15 Q. Thank you. And where are you employed?

16 A. I'm employed at Emery Telcom as the chief
17 financial officer.

18 Q. Okay. And did you have the opportunity to
19 prepare and cause to be filed direct testimony and
20 related exhibits in this case?

21 A. Yes, I did.

22 Q. And do you have any changes to the testimony or
23 the exhibits as filed?

24 A. No.

25 Q. Okay. And if I were to ask you those same

1 **questions today, would your answers be the same?**

2 A. Yes.

3 **Q. Have you prepared a brief summary of your**
4 **testimony?**

5 A. I have.

6 **Q. All right. Please provide that summary at this**
7 **time.**

8 A. Okay. Consistent with Utah Administrative Code
9 R746-349-3, I prepared the five-year pro forma income
10 statement, cash flow, and balance sheet financial
11 statements.

12 HEARING OFFICER HOGLE: Mr. Woolsey?

13 THE WITNESS: I'm sorry?

14 HEARING OFFICER HOGLE: I apologize. Before you
15 proceed.

16 Ms. Slawson, would you like to move for his
17 testimony to be entered into the record?

18 MS. SLAWSON: Yes, thank you. I would like to
19 make that motion. Thank you, your Honor.

20 HEARING OFFICER HOGLE: Okay.

21 Any objections to that?

22 Okay. They're admitted. Thank you.

23 Please proceed, Mr. Woolsey.

24 THE WITNESS: Thank you.

25 I've prepared the financial statements in

1 support of the applications. This pro forma projects the
2 financial data associated with the construction,
3 deployment, and operation of fiber facilities within the
4 Moab, Thompson, LaSalle, Monticello, Blanding, Bluff, and
5 Mexican Hat exchanges.

6 The pro forma also projects the amount of Utah
7 USF that the applicants will require over the next five
8 years.

9 Finally, I testified that I believe the granting
10 of the applications is in the public interest, as it will
11 allow the deployment of upgraded fiber to the home
12 facilities and underserved areas.

13 Additionally, the impact on the USF will be less
14 than if another company were to build out these areas
15 because of the Emery's receipt of federal grants and
16 portions of the local exchanges.

17 This concludes my summary of my testimony.

18 MS. SLAWSON: Mr. Woolsey would be available for
19 cross-examination.

20 HEARING OFFICER HOGLE: Thank you.

21 Mr. Jetter, do you have any cross?

22 MR. JETTER: I have no questions. Thank you.

23 HEARING OFFICER HOGLE: Mr. Moore?

24 MR. MOORE: No questions, thank you.

25 HEARING OFFICER HOGLE: Mr. Russell?

1 MR. RUSSELL: I do have some questions.

2

3 CROSS-EXAMINATION

4 BY MR. RUSSELL:

5 Q. Mr. Woolsey, good morning.

6 A. Good morning.

7 Q. Your testimony included a confidential exhibit.

8 It's a spreadsheet that performs a number of
9 calculations, right?

10 A. Yes.

11 Q. And in your summary, you talked that -- you
12 indicated that one of those calculations was an attempt
13 to calculate the amount of USF or UUSF distributions that
14 the E Fiber entities would require over the next five
15 years, right?

16 A. Yes.

17 Q. You also performed a calculation to address
18 modifications to the UUSF draw from the other Emery
19 entities, right?

20 A. Correct.

21 Q. Okay. And included in the calculations are also
22 the costs that the applicants expect to incur to build
23 the proposed fiber network, right?

24 A. Yes.

25 Q. And in your testimony, you break down the rate

1 **base associated with those costs, right?**

2 A. Yes.

3 **Q. Okay. I want to look at all of that.**

4 MR. RUSSELL: I'm not sure we can do this
5 without going into confidential session, though, your
6 Honor. I've tried to run through this in a way that
7 makes sense, but I'm not sure I can do it.

8 And just to introduce it, there's a spreadsheet
9 with what E Fiber or the applicants have indicated is
10 their confidential information, including some numbers
11 associated with the rate base that I just spoke with
12 Mr. Woolsey about and the numbers associated with the USF
13 calculations. So for your purposes, that's the intention
14 of the next several minutes.

15 HEARING OFFICER HOGLE: Thank you for letting me
16 know. I assume nobody has an objection or problem with
17 us going confidential. So at this point, I would like to
18 ask Ms. Paschal to stop streaming us.

19 (The following was deemed confidential and is
20 bound under separate cover.)

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12 (End of confidential testimony.)

13 HEARING OFFICER HOGLE: And before we proceed,
14 yes, thank you. We are now back streaming.

15 Ms. Slawson, do you have any more witnesses?

16 MS. SLAWSON: We don't.

17 HEARING OFFICER HOGLE: Okay. Thank you,
18 Mr. Woolsey.

19 And I believe the next witness is from the
20 Division; is that correct?

21 MR. JETTER: Yeah. Yes, I think that's correct.
22 Division would like to call --

23 HEARING OFFICER HOGLE: Okay.

24 MR. JETTER: -- and have sworn in Ron Slusher.

25 HEARING OFFICER HOGLE: Good morning,

1 Mr. Slusher.

2 Do you swear to tell the truth?

3 THE WITNESS: Yes.

4 HEARING OFFICER HOGLE: Okay. Thank you.

5

6 RON SLUSHER,

7 was called as a witness, and having been first duly
8 sworn to tell the truth, the whole truth, and nothing
9 but the truth, testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. JETTER:

13 Q. Mr. Slusher, would you please state your name
14 and occupation for the record.

15 A. My name is Ron Slusher, and I am a Division of
16 Public Utilities technical consultant.

17 Q. Thank you. And in the course of your employment
18 with the Division, have you had the opportunity to review
19 the prefiled testimony in this docket along with the
20 application of the Company?

21 A. Yes, I have.

22 Q. And did you create and cause to be filed with
23 the Commission direct testimony filed on September 25,
24 2020, along with two DPU exhibits that are listed as DPU
25 Exhibits 1 and 2?

1 A. Yes, I did.

2 Q. Do you have any corrections or edits or changes
3 you'd like to make to that prefiled testimony?

4 A. I do not.

5 Q. And if you were asked the same questions in that
6 testimony today, would your answers remain the same?

7 A. They would.

8 Q. Thank you.

9 MR. JETTER: I would like to move at this time
10 to enter into the record of the hearing the prefiled
11 direct testimony from Ron Slusher, along with the two
12 exhibits I've identified.

13 HEARING OFFICER HOGLE: Thank you.

14 Does anyone object?

15 Okay. They're admitted. Thank you.

16 Q. (BY MR. JETTER:) Mr. Slusher, have you prepared
17 a brief summary of your testimony in this docket?

18 A. I have.

19 Q. Please go ahead.

20 A. Okay. Good morning. The Public Division, or
21 the Division, has reviewed the technical, managerial, and
22 financial abilities of E Fiber companies and concluded
23 that each have provided the necessary information to
24 fulfill the requirements as stated in the existing Public
25 Service Commission rules for a certificate of public

1 convenience and necessity.

2 The Division believes that the public interest
3 will be served by issuing a CPCN to the E Fiber -- to E
4 Fiber, authorizing it to provide public
5 telecommunications services and as a carrier of last
6 resort.

7 The Division has concerns about the potential of
8 two rate-of-return regulated providers serving the same
9 territory and seeking UUSF funds for duplicate service.
10 However, the incumbent has not been receiving UUSF funds
11 and has not demonstrated a commitment to providing
12 adequate services -- or adequate service, quality, and/or
13 upgrades or modernization to its facilities.

14 The Division believes that as we move forward in
15 this docket, the Commission will need to provide guidance
16 on how to determine reasonableness of expenses where
17 duplicate buildouts might occur so that the utilities
18 will know before they spend money on how the Commission
19 will review and request for recovery.

20 It may be appropriate to evaluate the prudence
21 of overlapping investment in the future when determining
22 eligibility and UUSF funds in such a scenario.

23 **Q. Thank you. Is that the conclusion of your**
24 **summary?**

25 A. Yes, it is.

1 **Q. Thank you.**

2 MR. JETTER: I have no further questions, and I
3 will tender Mr. Slusher for cross-examination and
4 Commission questions.

5 HEARING OFFICER HOGLE: Thank you, Mr. Jetter.

6 Before we proceed, I forgot that there is
7 somebody potentially that is not with us who dropped off
8 for the confidentiality session, and I'm wondering if
9 Mr. Russell has told him that he can come back.

10 MR. RUSSELL: I have asked my client contact,
11 Mr. Brubaker, to do that. Mr. Hansen will come back when
12 he can. We don't need to stall the proceedings for him.

13 HEARING OFFICER HOGLE: Okay. Perfect, thank
14 you, Mr. Russell.

15 Okay. Does Ms. Slawson have any
16 cross-examination for Mr. Slusher?

17 MS. SLAWSON: No, I have no questions. Thank
18 you.

19 HEARING OFFICER HOGLE: Mr. Moore?

20 MR. MOORE: No questions, thank you.

21 HEARING OFFICER HOGLE: Mr. Russell?

22 MR. RUSSELL: Yeah. Just one.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. RUSSELL:

3 Q. Mr. Slusher, you indicated that Frontier is not
4 currently receiving USF distributions; is that right?

5 A. That is correct.

6 Q. It's also true, isn't it, that E Fiber is not
7 receiving USF distributions for operations in the local
8 exchanges, correct?

9 A. That is correct.

10 Q. Okay. Thank you. That's all I had.

11 HEARING OFFICER HOGLE: I have a few questions,
12 Mr. Slusher.

13 THE WITNESS: Okay.

14
15 CROSS-EXAMINATION

16 BY HEARING OFFICER HOGLE:

17 Q. Bear with me a bit.

18 I suppose I can start with the same question
19 that I asked Mr. Johansen. I'll repeat it to you just in
20 case you didn't hear it. But I asked him his thoughts
21 about, assuming that we grant the CPCN application as
22 requested, whether it was appropriate for the Public
23 Service Commission to condition the CPCN on waiting for
24 E Fiber to start any construction until after the
25 conclusion of a rulemaking/workshop sessions or session

1 where we could discuss the very issues that you are
2 concerned about and that you testified to and, again,
3 reiterated today in your summary. And so I wondered what
4 your thoughts were on that.

5 A. Yeah. I think, like Mr. Johansen said, you
6 can't stop construction as it sits now. That's not, I
7 don't think, prudent for anybody.

8 Going forward, I think there has to be some
9 understanding of what either company can provide
10 beforehand. So we can look at it for prudence to see if
11 it's going to be an acceptable build or if somebody
12 overbuilds in an area where, you know, it shouldn't be
13 there. It's going to be a tough deal for the companies
14 to submit, but, you know, there's that lag -- lead lag
15 time between the actual buildout and the actual
16 requesting of funds to replace whatever they've spent
17 that is prudent.

18 So I think that, yeah, I think it's just going
19 to be a case of getting in the middle and digging in deep
20 where we don't have to do that now. I think it's going
21 to be just a different situation to make sure everybody
22 is on the same page when money gets allotted.

23 Q. Okay. And you heard me say that I was not
24 talking about -- when I mentioned the construction, I was
25 not talking about stopping any construction of a sister

1 company or a parent company that was ongoing at the
2 moment. That is not the construction that I'm talking
3 about. I am talking about the construction that the
4 E Fiber companies would undertake for the rest of the
5 buildout.

6 And, as you say, given that there's some
7 uncertainty about, you know, what -- what the Commission
8 would use in order to determine what reasonable costs
9 are, for example, as being one issue that could be
10 discussed in the rulemaking -- assuming there's a
11 rulemaking. This is all just hypothetical, of course --
12 whether it wouldn't be more prudent for not only the
13 companies involved, but really, for the state in general
14 to wait and convene a rulemaking, talk about these
15 issues, make sure that we get everybody's opinion,
16 everybody's input, and then come up with factors, if you
17 will, that the Commission could apply uniformly to all
18 other companies that are similarly-situated so that
19 there's no uncertainty.

20 A. I think that assumption is reasonable. Like I
21 say, it's going to be a tough one to go through and
22 figure out exactly a fair route for all these companies
23 or future companies in the same boat.

24 But yeah, I think it's reasonable to have
25 them -- or to have a rulemaking session beforehand,

1 before something gets spent or ideas of spending. Well,
2 they need an area that they can actually look at and say
3 this is going to be reasonable or not so they're not
4 spending a lot of time or money trying to --

5 Q. Okay.

6 A. -- figure out something that doesn't exist.

7 Q. Another question I wondered, and I'm asking you
8 because you're the Division.

9 How many other companies are in -- potentially
10 would be in Frontier's position, first in the rural areas
11 down there in Utah, and then generally everywhere in Utah
12 that could be impacted by a decision today or a decision
13 in this case? Do you know?

14 A. Without checking, I wouldn't have any idea how
15 to answer that question.

16 Q. Okay. I'm sure you're familiar with the
17 Division's statutory task of assisting the Public Service
18 Commission reach certain objectives, including promoting
19 the economic, efficient, and reliable operation of public
20 utilities, just like Frontier.

21 So as part of that mandate, do you think it's
22 reasonable, one, and in the public interest for the
23 Public Service Commission to consider the possibility
24 that granting the CPCN to E Fiber as requested would have
25 a detrimental effect on Frontier's already precarious

1 financial situation, considering that they're in Chapter
2 11 bankruptcy?

3 A. I'm sorry, would you repeat that one more time?

4 Q. Would it be reasonable for the Public Service
5 Commission to consider the impact that approving the CPCN
6 application as requested by E Fiber, would it be
7 reasonable for the Commission to consider any negative
8 impact that that may have on an already stressed
9 financial situation that Frontier is facing at the
10 moment? Is that a factor that the Commission should
11 consider, given the number of customers that Frontier
12 has, not only in the seven exchanges, but in the balance
13 of the 16 exchanges that Frontier provides service in?

14 A. I think that's a reasonable assumption. But you
15 also have to look at the customers that Frontier is
16 serving or any other company is serving. If they are not
17 providing adequate service, then I think it has to come
18 back to the public interest and are we, as a Division or
19 the Commission, doing that? Are we making sure that they
20 are being served properly? So yeah, I think that all
21 comes into play.

22 Q. And just one more question on that. I believe
23 you read all the testimony in this proceeding.

24 Assuming that Mr. Erhart of Frontier indicated
25 that at some point, given the potentially detrimental

1 impacts to Frontier, Frontier may come before us seeking
2 to withdraw their CPCN. And I'm wondering what you think
3 about that. And assuming again -- there's a lot of
4 assumptions here, assume (inaudible) --

5 (Court reporter interruption.)

6 Q. (BY HEARING OFFICER HOGLE:) Given that E
7 Fiber's approach is a phased-in approach and that it's
8 going to take five years for them to build out the
9 network, what if Frontier comes in on Year 2 and says,
10 We're leaving. We want out. What's going to happen to
11 the customers that are being stranded, for example? What
12 would you advise the Public Service Commission to do in
13 that instance?

14 A. Yeah. On something like that, I would guess,
15 based on Frontier leaving, they're not going to take
16 their equipment, fiber, infrastructure with them. They
17 can't. I don't see them digging out miles and miles of
18 copper or fiber.

19 At that point, E Fiber's system should be able
20 to come in, resume or take over those infrastructures
21 with some form of monetary support back to Frontier and
22 be able to serve those customers. But right off the bat,
23 they shouldn't be -- and no company should be required to
24 serve everybody at the beginning. That's not a
25 reasonable or a feasible thing to do.

1 Q. Right. And I'm not talking about that. I am
2 just considering the situation that we have currently,
3 and that is a company like Frontier facing what is
4 happening and, in particular, the Division's advice to
5 the Public Service Commission on the possibility of that
6 occurring, which I think is something that, you know the
7 Division is tasked with. And was wondering what the
8 Division would advise the Commission to do in that
9 situation. And whether they thought -- you know, the
10 Division would think that that's something that the
11 Commission should appropriately consider as it weighs the
12 public interest factor of issuing the CPCN as requested.

13 A. Again, I'm not really sure how to answer this in
14 a way that's, I don't know, acceptable to somebody to
15 hear. But if E Fiber companies weren't in the area at
16 all, and based on the Chapter 11 that Frontier has filed,
17 if they come back tomorrow after everything is said and
18 done and say, I don't want to serve in this area anymore,
19 I'm going to close up shop. I'm going bankrupt. That's
20 going to leave however many customers down there without
21 service.

22 I mean, we can tell them they have to serve.
23 But if they go bankrupt, what is our ability to tell
24 somebody to serve if they're bankrupt? They're going to
25 be gone, regardless.

1 So if you actually give these companies, E
2 Fiber, the ability to serve, you give them that CPCN,
3 you're going to give somebody the carrier of last resort
4 opportunity. They can pick up. They can cover what
5 customers they can. And they'll build out accordingly to
6 pick up the strandeds, or however you want to put that.
7 And yeah, it will take time, but I think it's reasonable
8 what we're doing. I think the Division would look at
9 that and take the appropriate steps with the information
10 that would be given at that time.

11 I don't know as it's something that I would want
12 to really say off the get-go. But yeah, they would be --
13 if they go bankrupt, they could quit at any time, and
14 we're going to be stuck trying to figure out how to get
15 these customers phone service.

16 **Q. Thank you. You've answered my question, and I**
17 **don't have any more questions. Thank you.**

18 A. Thank you.

19 HEARING OFFICER HOGLE: Mr. Jetter, do you have
20 any additional questions for Mr. Slusher, or is that your
21 only witness?

22 MR. JETTER: I do not have any further
23 questions. And yes, Mr. Slusher was the Division's only
24 witness today. And we have nothing further to add to the
25 hearing unless we end the hearing with some sort of a

1 closing statement or something along those lines.

2 HEARING OFFICER HOGLE: Okay. And we've already
3 established that nobody else has any questions for
4 Mr. Slusher.

5 Thank you very much for your answers,
6 Mr. Slusher.

7 THE WITNESS: Thank you.

8 HEARING OFFICER HOGLE: Mr. Moore, can you
9 please call your witness.

10 MR. MOORE: Yes. The OCS calls Alyson Anderson
11 and asks that she be sworn.

12 HEARING OFFICER HOGLE: Good morning,
13 Ms. Anderson.

14 THE WITNESS: Good morning.

15 HEARING OFFICER HOGLE: Do you swear to tell the
16 truth?

17 THE WITNESS: I do.

18 HEARING OFFICER HOGLE: Okay. Please proceed.

19

20 ALYSON ANDERSON,
21 was called as a witness, and having been first duly
22 sworn to tell the truth, the whole truth, and nothing
23 but the truth, testified as follows:

24

25

DIRECT EXAMINATION

BY MR. MOORE:

Q. Will you state and spell your name for the record.

A. My name is Alyson Anderson, A-L-Y-S-O-N, A-N-D-E-R-S-O-N.

Q. How are you employed?

A. I'm employed by the Utah Office of Consumer Services as a utility analyst.

Q. In your capacity as utility analyst, did you prepare and cause to be filed confidential direct testimony on September 25th, 2020, together with two exhibits; rebuttal testimony on October 16, 2020, with one exhibit; and surrebuttal testimony on October 26, 2020, without any exhibits?

A. Correct.

Q. Do you have any changes or corrections you'd like to make at this time?

A. I do. It is in my surrebuttal testimony on page 3. It's just some typos. Lines -- starting at Line 51, I cite Commission rules, and it should be 746-340-5(B). And then the next rule is 746-340-5(C).

And then down on Line 58, it should read Rule 746-340-C [sic], not 430. And then on Line 61, again, the 340 should replace -- or it should be Rule

1 746-340-5(C).

2 And then finally on Line 67, again, I had a
3 little problem with this rule number, 746-340-5(C). And
4 that's all.

5 **Q. Other than those corrections, if I asked you the**
6 **same questions in your written testimony, would your**
7 **answers be the same?**

8 A. Yes, they would.

9 MR. MOORE: At this point, the Office would move
10 for admission of the testimony and accompanying exhibits.

11 HEARING OFFICER HOGLE: Any objections?

12 They're admitted.

13 **Q. (BY MR. MOORE:) Have you prepared a summary of**
14 **your testimony?**

15 A. I have.

16 **Q. Please proceed.**

17 A. Good morning. My testimony provides the OCS's
18 recommendation regarding the E Fiber Moab, LLC, and the E
19 Fiber San Juan, LLC, applications for certificates of
20 public convenience and necessity and designation as
21 carriers of last resort to provide public
22 telecommunications services in exchanges currently served
23 by the incumbent telephone corporation, Citizens
24 Telecommunications Company of Utah doing business as
25 Frontier Communications of Utah.

1 For the OCS, the driving principle in this case
2 is what outcome best improves telecom service to the Utah
3 exchanges where reliable telecom and Internet service has
4 been problematic.

5 Initially, the OCS raised concerns regarding
6 having two COLRs eligible to receive Utah USF for the
7 same geographic region. However, the solution is not
8 that complicated.

9 As demonstrated in my testimony and the OCS's
10 memorandum in option for Frontier Communication's Rule
11 56(a) motion for partial summary judgment, the PSC will
12 be able to govern the circumstance by relying on its
13 authority and responsibility to authorize Utah USF funds
14 only for recovery of reasonable costs in providing
15 telecom services.

16 This reasonable test should be sufficient to
17 ensure that the goal of the universal service is pursued
18 without duplicative facilities or undue burden on the
19 fund.

20 Ultimately, it is my opinion that it is in the
21 public interest for the PSC to approve these
22 applications. That concludes my summary.

23 MR. MOORE: Ms. Anderson is now available for
24 cross-examination and questions from the Hearing Officer.

25 HEARING OFFICER HOGLE: Thank you.

1 Ms. Slawson?

2 MS. SLAWSON: I have no questions for
3 Ms. Anderson.

4 HEARING OFFICER HOGLE: Mr. Jetter?

5 MR. JETTER: I have no questions. Thank you,
6 your Honor.

7 HEARING OFFICER HOGLE: Mr. Russell?

8 MR. RUSSELL: You know, I don't have any
9 questions for Ms. Anderson. Thank you.

10 HEARING OFFICER HOGLE: Thank you.

11

12

CROSS-EXAMINATION

13 BY HEARING OFFICER HOGLE:

14 Q. Ms. Anderson, I'm going to ask you a couple of
15 questions the same that I asked of Mr. Slusher, and that
16 is, one, would it be appropriate for the Commission to
17 issue a CPCN, a conditional CPCN, and as a condition it
18 would be for E Fiber to wait or for construction of the
19 facilities that E Fiber would be building for the
20 conclusion of a rulemaking or workshop session or
21 sessions in order to ensure that the Commission hears
22 from other similarly-affected companies before E Fiber
23 can start building and whether you think that's a
24 reasonable and appropriate condition?

25 A. Well, certainly I think it's reasonable. I

1 would -- as I indicated in testimony, I don't think --
2 while I think it's important that the companies know what
3 the Commission is going to consider in determining what
4 are reasonable costs, I don't believe that it's paramount
5 to know, for other companies operating in the state of
6 Utah, right this second because I think this is a unique
7 situation.

8 I don't think that there's going to be a run on
9 everybody's service territory. It just happened to be a
10 very unique situation, given the grants that Emery had
11 received, the fact that the service quality is in
12 question in the areas that they're looking to go into.
13 And so it would never be in the public interest if the
14 stars hadn't aligned that way.

15 And so while I think the Commission certainly
16 could do that, and I think it is important for both
17 Frontier and E Fiber companies to know what the
18 Commission is going to consider in determining the
19 reasonableness of the costs, I don't know that it's
20 necessarily -- or that it's necessary to --

21 **Q. To condition it?**

22 A. Yeah, to condition it, I guess, yeah.

23 **Q. Okay. You mentioned that it was a unique**
24 **situation.**

25 **Do you have sort of a sense of if there are any**

1 other companies like Frontier who would be interested in
2 participating in any workshop or rulemaking process that
3 the Commission would undertake as a result of this
4 proceeding?

5 A. I don't. I don't personally know that. But I
6 would assume that, you know, all the parties involved,
7 including URTA, would certainly be interested in
8 participating in some sort of rulemaking.

9 Q. Right. Okay. Thank you for your input there.

10 My second question is the same that I asked of
11 Mr. Slusher, and that is: Given the financially-stressed
12 situation that Frontier faces currently and the
13 explanation and their testimony that as they lose access
14 lines, financially it becomes more difficult to operate
15 generally is what's sort of the sense, should the
16 Commission consider in a public interest -- weighing
17 whether it is in the public interest to allow E Fiber to
18 also become a carrier of last resort?

19 Again, as you mentioned, actually, this is a
20 unique situation. We have a company that's currently in
21 bankruptcy. And so the Commission is, you know, would
22 like your input and how you would advise the Commission.

23 If it turns out that, as Mr. Erhart indicated in
24 his testimony I believe, that at some point there's a
25 possibility that Frontier will come to the Commission

1 seeking withdrawal of its CPCN and the effect that that
2 might have, not only on the seven exchanges that E Fiber
3 seeks to serve, but also the rest of the 16 exchanges and
4 the quality of service and those issues.

5 Is it appropriate for the Commission to take
6 that into consideration in its public interest
7 determination?

8 A. Absolutely. I think part of the problem is that
9 Frontier's financial distress, or current financial
10 distress, is directly related to the quality of service.
11 They've been unable to invest in the area. Even if they
12 emerge from bankruptcy, at what point in time will
13 they -- as they continue to recover, how long is it going
14 to take them before they're able to invest?

15 And, you know, as I indicated in my testimony,
16 especially right now during COVID, our connection, our
17 ability to connect is really important. And the people
18 in Grand and San Juan County right now struggle with that
19 a little bit.

20 And so I think that it's all interrelated, and I
21 do believe that it would be appropriate for the
22 Commission to consider that in determining the public
23 interest.

24 Q. In considering the effect that a withdrawal
25 might have on all of its customers?

1 A. Yeah. Because, as Mr. Slusher indicated, you
2 know, there's the potential for some -- you know,
3 obviously the Grand and San Juan Counties, E Fiber is in
4 the area and would be able to -- you know, they already
5 want to. But if that wasn't the case, they could move in
6 fairly quickly and hopefully serve those customers.

7 But I'm not familiar with the other exchanges to
8 the point with who could serve those people? And would
9 they just be stranded, you know, without service?

10 **Q. Right. Okay. Okay. I don't have any**
11 **additional questions. Thank you very much.**

12 A. Okay.

13 HEARING OFFICER HOGLE: Mr. Moore, do you have
14 any -- not redirect, but any additional questions that
15 you would like to ask Ms. Anderson?

16 MR. MOORE: No more questions, and she is our
17 only witness. So the OCS has nothing more to present.
18 Thank you.

19 HEARING OFFICER HOGLE: Perfect. Thank you very
20 much. Thank you again.

21 Okay. I think we are down to URTA.

22 So Ms. Slawson, you can call your witness,
23 please.

24 MS. SLAWSON: Thank you. URTA would like to
25 call Douglas Meredith and ask he be sworn.

1 HEARING OFFICER HOGLE: Good morning,
2 Mr. Meredith.

3 Do you swear to tell the truth?

4 THE WITNESS: Yes, I do.
5
6

7 DOUGLAS MEREDITH,
8 was called as a witness, and having been first duly
9 sworn to tell the truth, the whole truth, and nothing
10 but the truth, testified as follows:
11

12 DIRECT EXAMINATION

13 BY MS. SLAWSON:

14 **Q. Thank. You would you state and spell your name**
15 **for the record.**

16 A. My full name is Douglas Duncan Meredith,
17 D-O-U-G-L-A-S, D-U-N-C-A-N, M-E-R-E-D-I-T-H.

18 **Q. And where are you employed?**

19 A. I'm employed by John -- or JS, LLC, also known
20 as John Staurulakis, Incorporated, or JSI.

21 **Q. Thank you. And did you prepare and cause to be**
22 **filed direct, rebuttal, and surrebuttal testimony with**
23 **attached exhibits on behalf of the Utah Rural Telecom**
24 **Association in this case?**

25 A. Yes.

1 Q. And do you have any changes to the testimony or
2 exhibits as filed?

3 A. No.

4 Q. And if I were to ask you the questions that were
5 contained in your written testimony today, would your
6 answers be the same?

7 A. Yes.

8 MS. SLAWSON: Okay. I would move for the
9 admission of the direct, rebuttal, and surrebuttal
10 testimony and all exhibits of Mr. Meredith into the
11 record.

12 HEARING OFFICER HOGLE: Any objections?

13 Doesn't look like it. They're admitted. Thank
14 you.

15 MS. SLAWSON: Thank you.

16 Q. (BY MS. SLAWSON:) And, Mr. Meredith, have you
17 prepared a brief summary of your testimony?

18 A. Yes, I have.

19 Q. Will you please provide that to the proceeding?

20 A. Yes, I will.

21 Good late morning to everyone. The applicants
22 are seeking two CPCNs to provide voice service in the
23 exchanges that have been identified.

24 Before the Commission grants the applications,
25 the Commission must determine the granting of the

1 competitive entry is in the public interest.

2 Because all the local exchanges except Moab are
3 local exchanges with fewer than 5,000 access lines served
4 by an incumbent with fewer than 30,000 access lines in
5 the state, I urge the Commission to consider several
6 public interest factors before granting competitive
7 entry. These factors, as I identified in my direct
8 testimony, can be summarized into five major categories.

9 One, will there be duplicative facilities
10 installed by a competitor in an area where the incumbent
11 is receiving Utah or state universal service funds or has
12 recently received state USF support for existing
13 infrastructure?

14 Two, has the incumbent local exchange carrier
15 invested in the efficient development and deployment of
16 advanced telecommunications infrastructure and facilities
17 in the stated or the target exchanges where competitive
18 entry is sought so that the residents and businesses are
19 receiving high quality, affordable public
20 telecommunications services?

21 Three, if the facilities are lacking in a
22 particular local exchange, does the incumbent local
23 exchange carrier have a reasonable plan for providing
24 such high-quality telecommunications services?

25 Four, is the competitive applicant seeking to

1 improve the infrastructure and the facilities in the
2 local exchanges?

3 And five, if Utah or state USF support will be
4 sought, is the impact to the Utah state USF reasonable
5 and necessary?

6 After reviewing the testimony provided by other
7 parties in this matter, I believe the Commission can
8 conclude that the service being provided by Frontier and
9 the local exchange services is not adequate.

10 The service proposed by the applicants would be
11 a substantial upgrade, and the impact to the Utah USF is
12 reasonable. I believe the Commission can determine that
13 granting the applications would be in the public interest
14 to dramatically improve service in the local exchanges.

15 I also provide testimony in rebuttal to
16 Frontier's claim that the service proposed by the
17 applicants cannot be regulated by the State. In
18 particular, I discussed the configuration of applicants'
19 proposed service in detail.

20 By way of summary, the applicants are proposing
21 to provide basic regulated local exchange service using
22 IP transport. This is consistent with the service
23 provided by other regulated companies and is treated as
24 rate-of-return regulated public telecommunication service
25 by the National Exchange Carrier Association's

1 guidelines.

2 This concludes this brief summary of my
3 testimony.

4 HEARING OFFICER HOGLE: Okay. Thank you,
5 Mr. Meredith.

6 MS. SLAWSON: Mr. Meredith would be available
7 for cross-examination and questions by the Commission.

8 HEARING OFFICER HOGLE: Thank you.

9 Mr. Jetter, do you have any questions?

10 MR. JETTER: I have no questions. Thank you,
11 your Honor.

12 HEARING OFFICER HOGLE: Mr. Moore?

13 MR. MOORE: No questions. Thank you.

14 HEARING OFFICER HOGLE: Mr. Russell?

15 MR. RUSSELL: Just one line of questions.

16

17 CROSS-EXAMINATION

18 BY MR. RUSSELL:

19 Q. You mentioned in your summary, Mr. Meredith, the
20 NECA guidelines.

21 A. Yes, the NECA guidelines?

22 Q. Yes. Those address the question of whether a
23 particular network constitutes an information service or
24 a telecommunication service; isn't that correct?

25 A. Yes. It touches on that distinction.

1 **Q. Okay. And isn't that distinction at the heart**
2 **of what federal courts say can and cannot be regulated?**

3 A. For -- yes. The question as to whether a
4 service is an information service or a telecommunication
5 service is a very active topic. The FCC has -- also has
6 another category, which is interconnected Voice over
7 Internet Protocol service, which it's kind of in limbo.
8 It's neither A or B. And so they treat it slightly
9 different. But yes --

10 **Q. Yeah -- sorry, I didn't mean to cut you off.**

11 A. Yes, you're correct. All of that is at the
12 heart of the federal policy.

13 **Q. And that's what's addressed in the NECA**
14 **guidelines, right?**

15 A. Well, the NECA guideline is a guideline of
16 instruction for rural carriers on how this particular
17 service will be regulated at the federal level. And so
18 when the NECA guideline gives guidance to rural carriers
19 or their members, they are giving guidance, saying, Okay,
20 if you do it -- if you follow these parameters, then it
21 will be a regulated telecommunication service for federal
22 purposes.

23 **Q. For federal purposes, right. And that's sort of**
24 **where my questions were going.**

25 **The NECA guidelines do not, however, address**

1 individual state laws that may restrict the jurisdiction
2 of particular Public Service Commissions, right?

3 A. You're absolutely correct. There is a dual
4 regulatory regime in this country, state and federal
5 jurisdiction, and the NECA guidelines really focus on
6 their wheelhouse, which is federal.

7 Q. Okay. Thank you. That's all I had.

8 HEARING OFFICER HOGLE: I think I've gone
9 through all the lawyers, so I do have a couple of
10 questions, Mr. Meredith.

11 THE WITNESS: Yes, your Honor.

12
13 CROSS-EXAMINATION

14 BY HEARING OFFICER HOGLE:

15 Q. So, one, I'm curious about whether you've
16 participated -- I read your background, and I didn't see
17 any of this, but given your qualifications, it wouldn't
18 surprise me -- whether you've participated in a
19 proceeding where -- you know, in a similar proceeding as
20 ours, and that is where you have potentially two carrier
21 of last resort companies that may qualify or qualify for
22 UUSF funding.

23 In your experience, have you seen that anywhere?

24 A. Not precisely, because, obviously, UUSF is
25 particular to Utah.

1 There are two cases that might inform your Honor
2 on this matter. The first one is in a case that occurred
3 in the Terry exchange of what was then Qwest, where a
4 rural carrier had overbuilt the Qwest exchange in Terry,
5 Montana. And the question arose how that carrier would
6 receive incumbent local exchange carrier designation at
7 the federal level, not at the state level.

8 And that issue eventually resolved, and the
9 overbuilding competitor did, indeed, receive incumbent
10 carrier status. That all hinged on a particular section
11 of the Telecommunication Act 254(h) -- I'm sorry, strike
12 that -- 251(h), which defines how a carrier who is a
13 competitor can come in and receive incumbent local
14 exchange carrier status for federal purposes.

15 The second goes -- we have to get into the
16 Wayback Machine on this one, but it goes way back into
17 the late 1990s, where I participated in a case in New
18 York state where a competitor was seeking entry into a
19 citizens exchange. They were not seeking state USF, and
20 neither -- and the Montana case, I might add, didn't
21 address state USF, either.

22 But those are the two closest that maybe touch
23 on some of the issues.

24 **Q. And you mentioned a 1990s experience in New York**
25 **state.**

1 Can you give me a year for the Qwest case in
2 Montana approximately?

3 A. Yes. That was in the early aughts, 2000, maybe
4 as late as 2005. If it would help you, your Honor, I can
5 have that information relayed to you via Ms. Slawson.

6 Q. No. That is quite all right. Thank you.
7 You've been helpful already.

8 Another question that I have for you actually
9 deals with the diagram that has been put on the screen
10 for us today. And I'm asking you because you went
11 through a lengthy discussion of how it all worked and
12 your understanding of the services at issue here.

13 And so I -- my one question for you is looking
14 at that diagram, the red and blue lines that we see, one
15 of them going through the public Internet, if you will,
16 and the other one going through the private portion of
17 the Internet -- or not the Internet, but, you know, the
18 line there.

19 My question to you is whether, as it's
20 traveling, as both -- as the voice on the red line is
21 traveling and as the voice, video, and whatever else can
22 be traveling through the blue line, how do those -- how
23 do they compare with each other? Are they
24 indistinguishable?

25 A. Okay. So as I understand it, we're looking at

1 the figure that was put up, and we have the diagram of
2 the E Fiber network services over fiber, and we have a
3 red line and a blue line.

4 **Q. Right.**

5 A. And your question is -- yes?

6 HEARING OFFICER HOGLE: Ms. Slawson?

7 MS. SLAWSON: Would it be helpful if I had that
8 up on the screen?

9 HEARING OFFICER HOGLE: That would be perfect.
10 Thank you.

11 THE WITNESS: Yes, I used that same exhibit --
12 or similar exhibits as a diagram in my rebuttal testimony
13 on page 6. That's what I'm looking at, but it's
14 essentially the same diagram. I'm not seeing it.

15 HEARING OFFICER HOGLE: And if you can't pull it
16 up, it's okay.

17 MS. SLAWSON: It's not up. Sorry.

18 MR. RUSSELL: I also have it, and I can put it
19 up if it would be useful.

20 HEARING OFFICER HOGLE: That would be useful.
21 Thank you.

22 MR. RUSSELL: Let me know when you see it.

23 THE WITNESS: Thank you, Mr. Russell. I see it.

24 HEARING OFFICER HOGLE: I see it thank you.

25 **Q. (BY HEARING OFFICER HOGLE:) So I think you**

1 understand my question.

2 A. Yes, I believe -- go ahead, your Honor. Go
3 ahead.

4 Q. I'm just wondering whether -- and I don't know
5 how you could observe it -- but whether what is moving
6 across from one end to the other in between the home and
7 the switch and the Internet is distinguishable, if that's
8 clear?

9 A. I think it's clear. I think you're asking
10 essentially if the packets that are traveling between the
11 ONT and the network router, which is the box, the
12 third box to the right, the box that's closest to the
13 public Internet and the voice switch --

14 Q. Okay.

15 A. -- if they are distinguishable. And I -- I
16 believe they are because the data VLAN are public IP
17 addresses. It really boils down to the IP addressing
18 protocol that's being used.

19 The data packets have a public IP address, and
20 the voice packets have a private IP address. And as I
21 understand it from Mr. Johansen is, that the voice
22 packets using private IP is over a separate VLAN
23 configuration and actually has priority over the data
24 packets.

25 And so based on that information, your Honor, I

1 would -- I would suggest that yes, they are
2 distinguishable and that the voice does, indeed, have
3 priority over the data packets that are destined to the
4 public Internet.

5 **Q. Okay. Well, that's very helpful I think. All**
6 **right.**

7 HEARING OFFICER HOGLE: Thank you, Mr. Russell.

8 MR. RUSSELL: Sure.

9 **Q. (BY HEARING OFFICER HOGLE:) Let me make sure**
10 **that I don't have any additional questions, Mr. Meredith.**

11 A. Okay.

12 **Q. I think that's all I have. Thank you for your**
13 **time.**

14 A. You're welcome.

15 HEARING OFFICER HOGLE: Ms. Slawson, do you have
16 any other questions?

17 MS. SLAWSON: I do. I have just a couple of
18 questions on redirect.

19

20 CROSS-EXAMINATION

21 BY MS. SLAWSON:

22 **Q. Mr. Meredith, in response to the question by**
23 **Mr. Russell, you discussed that there are two regulatory**
24 **schemes, a federal regulatory regime and a state**
25 **regulatory regime. You discussed the federal regulatory**

1 regime.

2 Are you familiar with the state regulatory
3 regime?

4 A. Yes.

5 Q. And under the state regulatory regime, would
6 E Fiber's proposed voice service be subject to regulation
7 by the Public Service Commission, in your opinion?

8 A. Yes, it would be considered basic local exchange
9 service per the regulation and rules that the Commission
10 uses.

11 Q. Okay. Thank you. I have no other questions.

12 HEARING OFFICER HOGLE: Okay. Any other
13 questions?

14 All right. I notice that it's about eight
15 minutes to noon. I think -- thank you, Mr. Meredith,
16 again.

17 I think it would be probably a good time to take
18 the lunch break, and then when we come back, we can take
19 the final witnesses, if that's okay with everybody. Is
20 that okay?

21 MR. RUSSELL: Works for me, your Honor. Thank
22 you.

23 HEARING OFFICER HOGLE: Let's be back --
24 Mr. Moore, Mr. Jetter, okay with you guys?

25 MR. JETTER: That sounds great for us.

1 MR. MOORE: That sounds great for the OCS.
2 Thank you.

3 HEARING OFFICER HOGLE: Let's come back at
4 12:15 -- excuse me, 1:15. Thank you.

5 MS. SLAWSON: Thank you.

6 HEARING OFFICER HOGLE: All right? Okay. Thank
7 you.

8 (A break was taken from 11:53 a.m. to 1:15 p.m.)

9 HEARING OFFICER HOGLE: Welcome back.

10 Mr. Russell, do you want to call your first
11 witness?

12 MS. SLAWSON: Yes. Frontier calls John Hansen
13 to the stand.

14 HEARING OFFICER HOGLE: Mr. Hansen, good
15 afternoon.

16 Do you swear to tell the truth? I think you're
17 muted. You're still muted.

18 MR. RUSSELL: Looks like you've removed the mute
19 button, Jack [sic], but I don't think your microphone is
20 working. You may have muted somewhere else.

21 HEARING OFFICER HOGLE: I think the mute button
22 is in the middle of your screen at the bottom. Is
23 that ...?

24 THE WITNESS: I switched over to my display
25 audio because my headset wasn't working. Does that sound

1 okay now?

2 HEARING OFFICER HOGLE: We can hear you.

3 THE WITNESS: I apologize for that. It's a
4 little echoey when I tried to use the headset, so I'll
5 try not to echo too much.

6 HEARING OFFICER HOGLE: I think we'll be okay.

7 Do you swear to tell the truth?

8 THE WITNESS: Yes, I do.

9 HEARING OFFICER HOGLE: I can hear a little bit
10 of background. That may be bothering the reporter,
11 actually.

12 THE WITNESS: Let me try my headset one more
13 time.

14 HEARING OFFICER HOGLE: Speak for us. Can you
15 talk to us?

16 THE WITNESS: Can you hear me.

17 HEARING OFFICER HOGLE: Yes.

18 THE WITNESS: Okay. Good.

19 HEARING OFFICER HOGLE: I think we're good.

20 Okay.

21 Do you swear to tell the truth, Mr. Hansen?

22 THE WITNESS: I do swear. Yes.

23 HEARING OFFICER HOGLE: I hear a little feedback
24 there, so maybe if you turn down your volume a little
25 bit.

1 THE WITNESS: Is that better.

2 HEARING OFFICER HOGLE: Well, I can still hear
3 feedback.

4 Does that bother you, Michelle?

5 (A discussion was held off the record.)

6 HEARING OFFICER HOGLE: Mr. Hansen, do you swear
7 to tell the truth?

8 THE WITNESS: I do.

9 HEARING OFFICER HOGLE: Thank you.

10 Mr. Russell, proceed, please. Thank you.

11 MR. RUSSELL: Thank you.

12

13 JOHN HANSEN,

14 was called as a witness, and having been first duly
15 sworn to tell the truth, the whole truth, and nothing
16 but the truth, testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. RUSSELL:

20 Q. Good afternoon, Mr. Hansen. Can you state and
21 spell your name for the record, please.

22 A. John Hansen, J-O-H-N, H-A-N-S-E-N.

23 Q. And can you tell us who you work for and what
24 your position is.

25 A. I work for Frontier Communications. I'm the

1 vice president of network engineering.

2 Q. And have you offered prefiled testimony in this
3 proceeding?

4 A. I have.

5 Q. And specifically, did you file or prefile direct
6 testimony along with Exhibits A through E as well as
7 surrebuttal testimony?

8 A. Yes, I have.

9 Q. And with respect to that testimony, do you have
10 any corrections to make?

11 A. No, I do not.

12 Q. Okay.

13 MR. RUSSELL: And this point, I'll move for the
14 admission of Mr. Hansen's direct and surrebuttal
15 testimony along with the associated exhibits.

16 HEARING OFFICER HOGLE: Any objections?

17 MR. MOORE: The OSC objects to several portions
18 of the testimony, specifically Lines 143 to 148 in his
19 direct testimony; Lines 161 to 235 in his direct
20 testimony; Lines 18 to 73 in his rebuttal testimony.

21 All this testimony that I have identified are
22 purely legal opinions. I understand that in a technical
23 area like this, the technology and the legal often
24 co-exist and combine. But these are just -- this
25 testimony, we believe, is pure statutory construction and

1 they're purely legal, and therefore inadmissible. Plus,
2 we've already briefed these issues, and we argued them
3 extensively. Thank you.

4 HEARING OFFICER HOGLE: Mr. Russell, do you have
5 a response?

6 MR. RUSSELL: Well, I will need to review the
7 portions of Mr. Hansen's testimony that Mr. Moore just
8 referred to. So if you'll bear with me for a moment,
9 I'll take a look at that.

10 MR. MOORE: Do you have the lines?

11 MR. RUSSELL: Yeah, I wrote them down while you
12 were talking.

13 HEARING OFFICER HOGLE: Okay. Go ahead.

14 MR. RUSSELL: So my understanding was
15 Mr. Moore -- the first portion of Mr. Moore's objection
16 related to Lines 143 to 148, and that question and answer
17 is, What is VoIP?

18 I don't understand Mr. Hansen to be talking here
19 about what is the state law definition of VoIP. Rather,
20 I view this as Mr. Hansen offering testimony from his
21 experience in the industry about what the industry
22 considers to be VoIP. So that's my response to 143 to
23 148.

24 HEARING OFFICER HOGLE: Mr. Moore, before I
25 rule, do you want to reply here?

1 MR. MOORE: There are several legal arguments in
2 connection with that that would require a response, such
3 as VoIP also uses a broadband connection for the end
4 user's location, i.e., their home. I believe that ties
5 in with some of the legal arguments we've had.

6 The rest of it, I have no objection to.

7 HEARING OFFICER HOGLE: Let me ask you this:
8 Would you object to other testimony that has been filed,
9 where I believe witnesses have also testified to VoIP and
10 what their, sort of, view of what it is? And in
11 particular, I'm thinking about Mr. Meredith, for example,
12 who went through a pretty extensive discussion about his
13 understanding of VoIP and that kind of discussion. And
14 so I'm just wondering, you know, what your response to
15 that is.

16 MR. MOORE: Obviously, I haven't objected to
17 that testimony. I think there's a close line between
18 describing the technical aspect of Voice over Internet
19 Protocol and legal analysis of VoIP over the Internet
20 protocol. So I didn't object to Mr. Meredith.

21 But other than 143 and 148, I think the
22 testimony is -- I don't want to get into the other part
23 because we're not there yet and Mr. Russell hasn't had an
24 opportunity to argue that.

25 But to move things forward, I'll withdraw my

1 objection to 143 and 148, and we can discuss the rest of
2 my objection.

3 HEARING OFFICER HOGLE: Okay. Okay. That's
4 fair. Okay.

5 Mr. Russell, do you want to go through the other
6 parts, or do you want to go ahead and direct examine your
7 witness at this point?

8 MR. RUSSELL: I think I need to respond to the
9 remaining portions of Mr. Moore's objection. I
10 understand he objected to Lines 161 to 235 of the direct
11 testimony. I've been through most of it.

12 What I'm seeing here are citations to statutes,
13 which quoting statutes is not a legal conclusion, it is a
14 factual statement: The statute says X.

15 And then Mr. Hansen offer's a discussion of his
16 understanding of E Fiber's network and how it works,
17 which, of course, is not a legal conclusion. You know,
18 I'm looking at any -- including the citation to record
19 evidence and responses to data requests. I'm just not
20 seeing that this testimony matches up with Mr. Moore's
21 objection.

22 I will note that Mr. Meredith offered similar
23 testimony where he cited to certain statutes, as did
24 Mr. Johansen in his rebuttal testimony cite to certain
25 statutes that provided definitions of various components

1 of a network, and nobody has objected to that. I'm not
2 sure why this deserves the objection. So that's my
3 response to 261 to 235.

4 I have not gotten to the portion of the
5 surrebuttal testimony that was the subject of the
6 objection yet, but I will do that.

7 HEARING OFFICER HOGLE: Mr. Moore, do you have
8 any reply to Mr. Russell's explanation?

9 MR. MOORE: This testimony tracks the brief, our
10 briefing almost completely. I think it's just redundant
11 of the other testimony -- of the proper legal argument
12 we've had on this in this area. They cite statutes.
13 They discuss what they are. And then they talk about how
14 the facts that they see, the discovery disputes interact
15 with the statute. That's statutory construction. That's
16 a legal argument.

17 HEARING OFFICER HOGLE: Okay. Let me look at
18 it. And that is in direct, Mr. Moore?

19 MR. MOORE: That's correct. That's in direct.
20 The lines we're looking at are 161 to 235.

21 HEARING OFFICER HOGLE: Okay. Okay. I
22 apologize. I was taking a little bit more time than I
23 thought it would take. I think it's close.

24 However, I think that we will just give it the
25 weight that it's due, given that he is not an attorney,

1 as he states in the language. So I'm going to go ahead
2 and let it in.

3 MR. RUSSELL: And in response to the objection
4 as it relates to the surrebuttal testimony, Mr. Moore has
5 identified Lines 18 through 73 of the surrebuttal
6 testimony. I have had a chance to review that.

7 All of the questions and answers there are
8 Mr. Hansen offering a response to statements of
9 Mr. Johansen and Mr. Meredith, who cite to various
10 statutes and offer testimony about them. If -- frankly,
11 I don't think any of this constitutes a legal conclusion
12 that should be kept out. But if it should, then the
13 testimony to which Mr. Hansen responds should also be
14 stricken for the same reasons.

15 HEARING OFFICER HOGLE: Mr. Moore, do you have a
16 response to that?

17 MR. MOORE: Well, I've already made my arguments
18 with regard to the other issues, and I think you can
19 rule.

20 MS. SLAWSON: I have a response.

21 HEARING OFFICER HOGLE: Okay, Ms. Slawson.

22 MS. SLAWSON: The testimony and exhibits of
23 Mr. Johansen and Mr. Meredith have already been accepted
24 into the record, so that any request that their
25 testimony -- any portions of their testimony be stricken

1 I think is too late.

2 HEARING OFFICER HOGLE: Okay. I'm going to go
3 ahead and let it in. I think he was responding -- again,
4 I think it's close, but I think he was responding to
5 testimony that has already been admitted.

6 So, Mr. Russell, I believe that is all.

7 Is that correct, Mr. Moore?

8 MR. MOORE: Correct.

9 HEARING OFFICER HOGLE: Okay. We will give it
10 the weight that it's due, given, of course, that he is
11 not a lawyer, as he said in the testimony.

12 So with that, let's go to Mr. Russell.

13 MR. RUSSELL: Thank you.

14 **Q. (BY MR. RUSSELL:) Mr. Hansen, have you**
15 **prepared a summary of your testimony for us today?**

16 A. I have.

17 **Q. Please proceed with that summary.**

18 A. In my written testimony, I testified about
19 whether, based upon the applications and testimony filed
20 by the E Fiber entities, the proposed voice services are
21 VoIP or IP enabled services. In doing so, I briefly
22 described how Frontier provisions gets plain old
23 telephone service, or POTS, over copper facilities in
24 Utah; sets forth how POTS can be provisioned over fiber
25 facilities; explained what VoIP is; and based upon the

1 applicants' responses to various data requests, explained
2 how their proposed voice services would be technically
3 structured and be provisioned as IP-enabled services
4 under the state law, VoIP services under the state and
5 federal law.

6 That concludes my summary.

7 **Q. Thank you, Mr. Hansen.**

8 MR. RUSSELL: The witness is available for
9 cross-examination and Commission questions.

10 HEARING OFFICER HOGLE: Thank you.

11 Mr. Russell -- excuse me.

12 Mr. Jetter, do you have any questions?

13 MR. JETTER: I have no questions. Thank you.

14 HEARING OFFICER HOGLE: Mr. Moore?

15 MR. MOORE: No questions.

16 HEARING OFFICER HOGLE: Thank you.

17 Ms. Slawson.

18 MS. SLAWSON: No questions.

19 HEARING OFFICER HOGLE: Okay. And I actually
20 don't have any questions for you, Mr. Hansen. Thank you.
21 Thank you for your participation.

22 THE WITNESS: Thank you, Judge.

23 HEARING OFFICER HOGLE: Mr. Russell, you may
24 call your next witness.

25 MR. RUSSELL: Frontier will call Carl Erhart.

1 HEARING OFFICER HOGLE: Mr. Erhart, good
2 afternoon. Am I pronouncing your last name correctly?

3 THE WITNESS: Yes.

4 HEARING OFFICER HOGLE: Okay. Do you swear to
5 tell the truth?

6 THE WITNESS: I do.

7 HEARING OFFICER HOGLE: Okay. Please proceed.

8

9 CARL ERHART,

10 was called as a witness, and having been first duly
11 sworn to tell the truth, the whole truth, and nothing
12 but the truth, testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. RUSSELL:

16 Q. Good afternoon. Could you state and spell your
17 name for the record, please.

18 A. My name is Carl E. Erhart. It's C-A-R-L, middle
19 initial E, last name E-R-H-A-R-T.

20 Q. And tell us who you work for and what your
21 position is.

22 A. I'm employed by Frontier Communications
23 Corporation as a vice president of regulatory and
24 governmental affairs.

25 Q. And on whose behalf do you offer testimony

1 **today? Is it Frontier, I take it?**

2 A. It is Citizens Telecommunications Company of
3 Utah dba Frontier Communications, which is a wholly-owned
4 subsidiary of Frontier Communications Corporation.

5 **Q. Thank you for that.**

6 **Have you offered -- you've prefiled some**
7 **testimony in this docket, correct?**

8 A. Yes.

9 **Q. Okay. And just to identify it here, you've**
10 **prefiled direct testimony along with Exhibits 1.1 through**
11 **1.7. And in addition, you've prefiled rebuttal and**
12 **surrebuttal testimony in this proceeding, correct?**

13 A. Correct.

14 **Q. With respect to that testimony, do you have any**
15 **corrections to make?**

16 A. I do not.

17 **Q. Okay.**

18 MR. RUSSELL: And I'll move for the admission of
19 Mr. Erhart's testimony.

20 HEARING OFFICER HOGLE: Are there any
21 objections?

22 Okay. Hearing none, they're admitted. Thank
23 you.

24 **Q. (BY MR. RUSSELL:) Mr. Erhart, have you provided**
25 **a summary of your testimony?**

1 A. Yes.

2 **Q. Please proceed with that summary.**

3 A. Thank you. In my testimony, I recommended that
4 the Commission deny the applications because the
5 applicants' requests are not consistent with Utah law and
6 are not in the public interest. Specifically, granting
7 the applications without reforming the UUSF would
8 ultimately result in UUSF distributions being used to
9 fund competition in the local exchanges between Frontier
10 and the applicants. And that result is not in the public
11 interest.

12 Therefore, I also recommended in my testimony
13 that the Commission initiate industry-wide rulemaking to
14 review UUSF support for competitive markets, which would
15 allow input from all stakeholders on an important policy
16 matter that could ultimately impact other markets in the
17 state of Utah.

18 And I also suggested in my rebuttal testimony
19 that one option would be for the Commission to consider
20 the applications under the Commission's rule for non
21 rate-of-return regulated providers and develop rules that
22 would address the appropriate UUSF guidelines for such
23 providers.

24 **Q. Thank you, Mr. Erhart.**

25 MR. RUSSELL: The witness is available for

1 cross-examination and Commission questions.

2 HEARING OFFICER HOGLE: Thank you.

3 Mr. Jetter, do you have any cross-examination
4 for Mr. Erhart?

5 MR. JETTER: I have no questions. Thank you.

6 HEARING OFFICER HOGLE: Mr. Moore, do you have
7 any cross-examination for Mr. Erhart?

8 MR. MOORE: Just a few, thank you.

9 THE HEARING OFFICER: Okay.

10

11

CROSS-EXAMINATION

12 BY MR. MOORE:

13 Q. Hello, Mr. Erhart.

14 A. Good afternoon.

15 Q. May I direct your attention to page 41, Lines
16 875 to 877 in your direct testimony.

17 A. Okay. Just a second. I'm sorry, it was Lines
18 41?

19 Q. No, it was page 41.

20 A. Okay. I'm sorry.

21 Q. Lines 875 to 877.

22 A. Okay. I'm with you.

23 Q. Isn't it true that at this point in your
24 testimony, you're suggesting that allowing competitive
25 entry into the territory of incumbent telecom would set a

1 bad precedent?

2 A. Yes.

3 Q. Is it true that you believe, regardless of what
4 the statutes provide, it is never in the public interest
5 to allow competitive entry into a territory of incumbent
6 telecom?

7 A. No, I did not say that.

8 Q. Oh, I was asking you without reference to your
9 testimony.

10 A. I'm sorry. Could you repeat the question again,
11 then?

12 Q. Do you believe that it would never be -- do you
13 believe that regardless of what the statutes say, it's
14 never in the public interest to grant competitive entry
15 into the territory of incumbent telecom?

16 A. No, I think it really depends on the terms of
17 which that competitive entry is granted.

18 Q. We sent over some cross exhibits earlier on
19 today to your attorney.

20 Do you have access to those?

21 A. I do. I attempted to print those, so bear with
22 me as you go through them.

23 Q. All right. I wanted to draw your attention to
24 Hearing Exhibit No. 1. The hearing exhibits are labeled
25 at the top right-hand corner.

1 A. I think I have it.

2 (OCS Hearing Exhibit 1 was marked for identification.)

3 **Q. (BY MR. MOORE:) This is just lines from**
4 **Mr. Johansen's testimony, and I would ask you to read**
5 **Lines 182 to the first sentence -- or actually, I would**
6 **ask you to read Lines 176 to the first sentence on 184.**

7 MR. RUSSELL: Do you want him to do it out loud?

8 MR. MOORE: Yes, please. Just this one time.

9 THE WITNESS: This is responding to, I guess, a
10 question that's on the previous page. And the response
11 says:

12 "I think an example would be helpful.
13 A company makes expenditures associated with
14 providing public telecommunications services
15 in 2019. Those expenditures are included in
16 the 2019 Annual Report filed with the PSC on
17 April 15, 2020. The DPU reviews the 2019
18 annual report and makes a recommendation to
19 the PSC for UUSF support for the company in
20 September of 2020. If such recommendation
21 is approved by the PSC, the company begins
22 receiving that level of support in January
23 of 2021. So, the UUSF support received in
24 2021 is based on the company's 2019
25 financial information.

1 "This regulatory lag is important to
2 understand because it means Applicants will
3 not be eligible to receive UUSF until well
4 after facilities are constructed and
5 customers are offered service."

6 **Q. (BY MR. MOORE:) Do you have any reason to**
7 **contest this testimony?**

8 A. Well, just clarification maybe on the last
9 sentence.

10 I would agree with the first paragraph that the
11 mechanics of the calculation for the 2021 support is
12 based on the 2019 financial information that's reported
13 to the Commission. And that would include expenditures
14 made in 2019.

15 The last sentence that you had me read, 183 to
16 185, those lines, I have no way to know whether those
17 facilities have actually completed construction and
18 customers are being offered service or if they're in
19 service at that point.

20 **Q. Do you agree that under Utah Code 58-8b-15-4b,**
21 **in making the determination of whether telecom should be**
22 **allowed to recoup from the fund for costs incurred to**
23 **provide telecom service, the Commission must base its**
24 **ruling on whether the costs incurred were reasonable?**

25 A. Yeah, I apologize. I don't have that section of

1 the code in front of me. I may have it in a book back
2 here.

3 Q. Let me ask you that question again. I think
4 maybe you'll be able to answer it without reference to
5 the code.

6 A. Okay.

7 Q. In making the determination of whether a telecom
8 should be able to recoup from the fund for costs incurred
9 to provide telecom service, the Commission must base its
10 ruling on whether the costs incurred are reasonable.

11 Do you agree with that statement?

12 MR. RUSSELL: And I'll just object. Is the
13 question seeking a legal conclusion or something else
14 here?

15 MR. MOORE: I was just asking his understanding
16 of the determination of how the Commission makes their
17 judgment. I think under the ruling we've had previous,
18 that touches on the law. But consistent with the Hearing
19 Officer's ruling before, I think it should be allowable.

20 MR. RUSSELL: And I actually don't disagree with
21 that. I just would ask that we give it whatever weight
22 it's entitled to, consistent with the Hearing Examiner's
23 previous statements.

24 HEARING OFFICER HOGLE: Okay. You may answer,
25 Mr. Erhart.

1 THE WITNESS: And the question was whether that
2 is what the law says today?

3 Q. (BY MR. MOORE:) The question is: You have an
4 understanding that the Commission must make a
5 determination about whether to allow recoupments from the
6 funds, correct?

7 A. Yes.

8 Q. And do you have any understanding that in making
9 that determination the Commission is based -- the
10 Commission's decision is based on whether the costs
11 incurred were reasonable?

12 A. That would be one of the data points, yes.

13 Q. All right. Thank you. Mr. Erhart, may I direct
14 your attention to your direct testimony on page 35.

15 A. Okay.

16 Q. Line 724 through the end of the first sentence
17 of Line 729.

18 A. Okay.

19 Q. Would you read that question and the first
20 sentence of your answer into the record.

21 A. "Please address the URTA Proposed Public
22 Interest Factor 5 whether the incumbent is in compliance
23 with the service qualities for telecommunications
24 corporations rules, Utah Administrative Code" 7 -- I'm
25 sorry, "R746-340-4 through 746-340-5 and R47-340-7."

1 And, "Yes, Frontier's in compliance with the
2 Commission service quality rules, and no finding has been
3 made to the contrary."

4 **Q. Are you aware that Rule -- and again, since**
5 **you're speaking about the service quality rules, are you**
6 **aware that Rule 746-340-5(C) provides, in part, each**
7 **telecommunication corporation shall adopt a program of**
8 **periodic tests, inspection, and preventative maintenance,**
9 **and shall file a description of its inspection and**
10 **testing program with the Commission showing how it will**
11 **be monitored and report compliance with Commission rules**
12 **or standards?**

13 A. I'm sorry, you were referring to Section C?

14 **Q. Section C.**

15 A. Okay.

16 MR. RUSSELL: Mr. Moore, do you have a copy of
17 that that you can share with the witness?

18 MR. MOORE: A copy of the code section?

19 THE WITNESS: I actually have the rule,
20 Mr. Moore, so I have it in front of me.

21 **Q. (BY MR. MOORE:) Thank you. May I direct your**
22 **attention to OCS Cross Exhibit No. 2.**

23 (OCS Hearing Exhibit 2 was marked for identification.)

24 THE WITNESS: Okay.

25 **Q. (BY MR. MOORE:) This is a letter from Frontier**

1 to the Commission.

2 **Could you read the first sentence of the letter**
3 **under the salutations.**

4 A. "In accordance with Utah Administrative Code,
5 Public Service Commission Administrative Rules, Rule
6 746-340-5(C) - Inspections and Tests, Frontier
7 Communications of Utah is hereby submitting for
8 Commission record its program of periodic tests,
9 inspections, and preventative maintenance. The attached
10 program documents the routine tests and inspections, as
11 well as the frequency with which they are performed."

12 **Q. Thank you. Could you read the date on the**
13 **letter as well?**

14 A. March 5th, 2002.

15 **Q. I'm going to represent to you that the OCS**
16 **obtained this letter in the discovery request asking**
17 **Frontier to provide all filings with the Commission**
18 **pursuant to Rule 746-340-2(C).**

19 **Do you have any reason to dispute that?**

20 A. I do not. I will accept that.

21 **Q. Are you aware that Frontier has produced any**
22 **more recent documents filed with the Commission pursuant**
23 **to Rule 746-340-2(C)?**

24 A. Not that I have specifically filed.

25 **Q. You're not maintaining that, despite the rapid**

1 changes in technology in the telecom market, Frontier has
2 not updated its inspection and testing programs for over
3 18 years, are you?

4 A. I do not know that.

5 Q. You do not know whether Frontier has updated its
6 testing and maintenance programs over the last 18 years?

7 A. I'm not involved in the testing and maintenance.
8 I expect the Company has updated those testing and
9 maintenance routines. In fact, in discovery in this
10 case, we've provided more recent updated routines that
11 the Company goes through, especially with respect to the
12 maintenance of its outside plant. And I think that was
13 in response to the OCS data request. And we provided
14 further detail on those inspections in the DPU data
15 request, I believe, in the mid 2019 time frame.

16 Q. But it's true you have not filed -- that
17 Frontier has produced no evidence that it filed with the
18 Commission the information required by Rule 746-340-2(C)
19 in over 18 years; isn't that true?

20 MR. RUSSELL: I'll just object. I think the
21 witness lacks foundation to respond to that question.

22 Q. (BY MR. MOORE:) Mr. Erhart, can I direct your
23 attention to page 31 of your direct testimony, Lines 31
24 through 34 and ask you to read that question and answer
25 into the record.

1 A. Page 31?

2 Q. Yes.

3 A. And that was lines -- which lines?

4 Q. Thirty-one through 34.

5 A. On page 31 of my direct, the line numbers are in
6 the 600 series, 638 through 659.

7 Q. Let me double check that, then. I'm sorry.

8 Could you turn to page 2 of your direct
9 testimony, Lines 33 to 34.

10 A. Page 2, 33 to 34, yes. "I'm responsible for
11 Frontier's corporate interests, including regulatory
12 affairs, industry relations, and local and state
13 governmental affairs in several states, including Utah."

14 Q. Then it's your testimony that the executive at
15 Frontier who is responsible for regulatory affairs in
16 Utah has no knowledge of how or whether Frontier is in
17 compliance with the Commission's service quality rules?
18 Isn't that your testimony today?

19 A. No. Clarify: My role within Frontier, I'm not
20 responsible for regulatory compliance. Frontier has a
21 central organization that handles regulatory compliance,
22 and that would be filing any types of compliance reports
23 that are required by Commission rules.

24 I would note after looking at the rule, also, it
25 doesn't require a plan to be filed at any time interval.

1 It doesn't require an annual update. It doesn't require
2 any update, actually, in the rule.

3 **Q. So your position is your 18-year-old letter**
4 **complies with the rule?**

5 A. No, my position is in my role, I'm not
6 responsible for compliance. I do not know whether
7 Frontier has updated that inspection and maintenance plan
8 that it filed. I understand that was provided in
9 discovery, as you said, in the prior complaint case. But
10 I have no specific knowledge as to whether that is the
11 only document that's been filed.

12 **Q. Let me ask you this: Is Frontier -- is**
13 **Frontier's system of records sufficient for them to**
14 **determine what they have filed with the Commission, in**
15 **your opinion?**

16 A. I would say yes.

17 **Q. Okay. Are you aware that Frontier has never**
18 **filed any update to that discovery request?**

19 A. I'm not aware.

20 **Q. Mr. Erhart, can I direct your attention to**
21 **rebuttal testimony, page 5.**

22 A. Okay.

23 **Q. Lines 96 through the first full sentence on Line**
24 **100. Can I ask you to read that question and the first**
25 **line of your answer into the record.**

1 A. "The OCS asserts that there are questions as to
2 whether Frontier is in violation of PSC Rule
3 746-340-5(B)(1) by failing to keep trouble reports of all
4 customer complaints. Please respond to this assertion.

5 "The reality is there are no such questions."

6 Q. Mr. Erhart, do you have a copy of Rule
7 76-304-5(B)?

8 A. I'm sorry, what was that cite again? 304 --

9 Q. 5(B). Rule 764-340-5B. Should be just above
10 the one we just looked at.

11 A. Okay. I'm there.

12 Q. Would you agree with me that the rule reads in
13 part: "Each telecommunication corporation shall provide
14 for the receipt of customer trouble reports at all hours
15 and shall make a full and prompt investigation and
16 respond to each complaint. The telecom corporation shall
17 maintain a record of trouble reports made by the
18 customer."

19 Is that correct?

20 A. Yes.

21 Q. Now, Mr. Erhart, may I direct your attention to
22 your direct testimony on page 2, Lines 39 to 40, and ask
23 you to read that question and answer into the record.

24 A. I'm sorry, page 2, 39 through 40. Yes.

25 "Have you previously testified before this

1 Commission?

2 "Yes, I provided live testimony at the hearing
3 in Docket No. 19-041-01."

4 Q. You were present, then, when Mr. Giles, manager
5 and witness for Frontier, testified at that hearing as
6 well; isn't that correct?

7 A. I was.

8 Q. Do you understand that there's been a dispute in
9 the discovery proceedings in the investigation docket
10 over whether Mr. Giles' testimony concerning the trouble
11 reports related solely to Sorrel River Ranch or whether
12 the discussion of trouble reports also dealt with
13 Frontier's procedures in general?

14 A. Yes.

15 Q. Let's turn to Cross Exhibit No. 3, which is a
16 transcript of the portion of Mr. Giles' testimony. Can
17 you tell me when you have that exhibit in front of you?

18 A. Okay. I'm with you.

19 (OCS Hearing Exhibit 3 was marked for identification.)

20 Q. (BY MR. MOORE:) Okay. On, not the exhibit,
21 but on the page number up top giving the page of the
22 transcript, on page 56 of this transcript, Lines 12
23 through 21, the question was asked: "What are the
24 procedures that Sorrel River must go through to issue a
25 trouble report?"

1 **Do you see that?**

2 A. Yes.

3 **Q. Will you read the answer into the record,**
4 **please.**

5 A. "They call" --

6 MR. RUSSELL: Before you do that, Mr. Erhart,
7 can I get some clarification about who is the witness
8 that's speaking here?

9 MR. MOORE: This exhibit represents the totality
10 of the cross from the OCS of Mr. Giles.

11 MR. RUSSELL: Okay. Thank you.

12 THE WITNESS: Beginning on Line 14, the answer
13 is:

14 "They call a central location, 800
15 number, and report their -- whatever issues
16 they have to that. That creates a trouble
17 ticket in our system and is subsequently
18 dispatched to whatever group is going to
19 handle that issue. Could be the field where
20 my employees are, it could be a
21 long-distance group, various different
22 areas. Not all of these would come out to
23 the field and require a field visit."

24 **Q. (BY MR. MOORE:) Thank you. Now, I'd like you**
25 **to turn to Cross Exhibit No. 4.**

1 (OCS Hearing Exhibit 4 was marked for identification.)

2 THE WITNESS: Okay.

3 Q. (BY MR. MOORE:) This is in response to
4 discovery requests. Would you please turn to page 3
5 with the response to Discovery Request 4.3 and review
6 that answer to yourself, please.

7 A. Three?

8 Q. Discovery Request 4.3.

9 A. Okay. I have it.

10 Q. Tell me when you're finished reviewing.

11 A. Okay.

12 Q. The answer to that discovery request provides
13 that customer complaints routed through the 800 number
14 are answered at a call center run by a third-party
15 contractor in San Antonio, Texas; isn't that correct?

16 A. Yes, that's what it appears to say.

17 Q. Now, I want to draw your attention to OCS Cross
18 Exhibit No. 5.

19 (OCS Hearing Exhibit 5 was marked for identification.)

20 THE WITNESS: Okay. I have it.

21 Q. (BY MR. MOORE:) This is a document obtained in
22 discovery that explains the process Frontier uses to
23 generate trouble reports.

24 Do you have that in front of you?

25 A. I do.

1 Q. The first page of the document depicts a complex
2 flow chart, illustrating procedures that are involved in
3 generating trouble reports; isn't that true?

4 A. It does reflect a flow chart of the process.

5 Q. Now, I want to direct your attention again to
6 Cross Exhibit No. 3, which is a transcript of Mr. Giles'
7 testimony.

8 A. Okay.

9 Q. May I direct your attention to page 57 of the
10 transcript, Lines 6 through 12.

11 A. Okay.

12 Q. Those lines provide in the 12-month period,
13 Frontier only made one service dispatch to Sorrel River
14 Ranch in response to a trouble ticket; isn't that
15 correct?

16 A. Yes.

17 Q. Now, I direct your attention to the same page,
18 page 57, Lines 13 to 24, and have you review them.

19 A. Okay.

20 Q. That testimony provides that there were an
21 additional six technical visits in that same period in
22 response to Sorrel Rivers emails; do you agree?

23 A. Yes.

24 Q. And on page 57, Line 17, Line 3, Mr. Giles
25 testified that these visits were in response -- I'm

1 sorry, I just read that question, didn't I?

2 Now, could I have you look back to page 57 --
3 page 58, Lines 7 to 10. Mr. Giles was asked: "Is there
4 any specific record that deals with your response to
5 email requests that don't go through the 800 number?"

6 And Mr. Giles' response was, "No"; isn't that
7 correct?

8 A. I'm sorry, I

9 Q. Line 58 -- page 58.

10 A. Page 58.

11 Q. Line 7.

12 A. Line 7, okay.

13 Q. To 10.

14 A. Yes, he responded "No."

15 Q. All right. You understand that Frontier claims
16 it generates trouble reports from communications of
17 customers through emails, Facebook Messenger, and other
18 means outside the 800 number, correct?

19 A. I'm sorry, repeat the question?

20 Q. Is it your position that Frontier generates
21 trouble reports from the communications from customers
22 through emails, Facebook messaging, and other means
23 outside the 800 number?

24 A. I haven't testified to any methodology of which
25 trouble reports are created. And if I might just --

1 Q. Go ahead.

2 A. -- just go back to my original rebuttal
3 testimony. You had me read a portion of it on page 5.
4 But I think if you read the rest of that question, these
5 issues have been briefed multiple times in the prior
6 complaint case. And the Commission has already issued a
7 ruling on this and denied the OCS's motion to compel, and
8 in doing so, noted that OCS had misinterpreted the
9 Commission's rules.

10 Q. Do you understand that the Commission has yet to
11 review the testimony that we've been going over?

12 A. The testimony from the prior case?

13 Q. The testimony that we're discussing today, yes.

14 A. Yes.

15 Q. All right. Well, let's discuss it now.

16 So you have no understanding whether Frontier
17 generates trouble reports through communications other
18 than that 800 number?

19 A. It's not my expertise, that's correct.

20 Q. Would you agree that if Frontier did not
21 generate trouble reports from customer complaints from
22 sources other than the 800 number, it would not be in
23 compliance with Rule 764-340-5(B)?

24 A. I'm sorry, I didn't follow your logic.

25 Q. My logic or my question? Sometimes I speak too

1 **fast.**

2 A. Your question.

3 **Q. Do you agree that if Frontier does not generate**
4 **trouble reports from customer complaints from sources**
5 **other than the 800 number, it would not be in compliance**
6 **with Rule 764-340-5(B)?**

7 MR. RUSSELL: At this point, I'm going to object
8 that I think that counsel is asking for a legal
9 conclusion here. I don't think -- I think we've gone
10 beyond what the facts are, and it appears to me that
11 Mr. Moore is trying to get a statement on the record to
12 assist in another docket on a topic that Mr. Erhart has
13 not testified on in this proceeding.

14 MR. MOORE: Well, if I may?

15 HEARING OFFICER HOGLE: You may.

16 MR. MOORE: Whether Frontier is in compliance
17 with service rules has been a central issue in this case.
18 And Mr. Erhart has offered testimony on that point. So I
19 think the fact that the dockets coalesce doesn't provide
20 grounds for an objection.

21 HEARING OFFICER HOGLE: Okay. I'm going to go
22 ahead and rule on this.

23 I think Mr. Moore is generally correct that
24 service quality has been an issue in this case.

25 Having said that, Mr. Erhart, give us your

1 layman's understanding of -- respond as you would, being
2 a nonlawyer, to Mr. Moore's question if you know at this
3 time.

4 THE WITNESS: Okay. Just reading the first part
5 of Rule (B)(1), it says, "Each telecommunications
6 corporation shall provide for the receipt of customer
7 trouble reports at all hours," which the Company does
8 through its 800 number.

9 Q. (BY MR. MOORE:) Correct.

10 A. And then, "shall make a full and prompt
11 investigation of and respond to each complaint," which
12 the Company does.

13 Q. Correct.

14 MR. RUSSELL: I think also maybe it might help
15 to put Mr. Giles' testimony in context because he was
16 testifying in a specific complaint that was a very unique
17 situation caused by a failure of a piece of equipment of
18 a vendor of Frontier's. And so he knew there was a
19 problem at the time, and he was being as responsive as he
20 could to the customers in that area. So he was accepting
21 a request from those customers at any time by any means
22 and also sending technicians out on his own to do testing
23 and perform the repairs.

24 Q. (BY MR. MOORE:) And his testimony, as we have
25 reviewed, is that he sent technicians out to the field in

1 response to emails from Sorrel River, which no trouble
2 ticket was made from. And he testified that Frontier has
3 no system of records for trouble tickets generated by
4 emails; isn't that true?

5 A. I don't recall what Mr. Giles testified to.

6 Q. Okay. Well, we've gone over it, and it's in the
7 record.

8 MR. MOORE: I think I'm done. Thank you.

9 HEARING OFFICER HOGLE: Thank you, Mr. Moore.

10 Ms. Slawson, do you have any cross-examination?

11 MS. SLAWSON: I do. I just have one brief line
12 of questioning.

13
14 CROSS-EXAMINATION

15 BY MS. SLAWSON:

16 Q. Good afternoon, Mr. Erhart.

17 A. Good afternoon.

18 Q. In your testimony on Lines 434 -- this is your
19 direct testimony -- Lines 434 to 437, you indicated that
20 having two carriers of last resort in the same geographic
21 area has the potential to create significant confusion
22 for customers and providers; therefore, if the Public
23 Service Commission were to adopt the applicants' entire
24 proposal, you indicate that Frontier should immediately
25 be reclassified as competitive and relieved of its COLR

1 obligation.

2 Do you recall that testimony?

3 A. I do.

4 Q. Are you familiar with 47 United States Code
5 Section 214, Subsection (e)(4)?

6 A. No, I'm not. I do not have that in front of me.

7 Q. Okay. I'll just walk you through that section.

8 Under Section 214(e)(4), an eligible
9 telecommunications carrier can petition a state
10 commission to relinquish its designation as a carrier in
11 any area served by more than one ETC.

12 And so as I look at that statute, unless
13 E Fiber's applications are granted, Frontier will not be
14 permitted to be relieved of its carrier of last resort
15 obligations in the local exchanges under federal law; is
16 that correct?

17 A. I believe that's correct.

18 Q. Additionally, if you seek -- if Frontier did
19 seek to relinquish its ETC designation, Frontier would be
20 required to give advance notice to the Public Service
21 Commission under Section 214; is that your understanding?

22 A. Yes.

23 Q. And then prior to permitting Frontier to cease
24 providing universal service in those local exchanges if
25 they were to be served by more than one ETC, the state

1 commission under Section 214, it says, "State commission
2 shall require the remaining ETC to ensure that all
3 customers will continue to be served."

4 Is that your understanding?

5 A. I'm sorry, could you repeat that?

6 Q. Sure. If you were to petition the state
7 commission to be relinquished of your carrier of last
8 resort obligations in local exchanges, before you would
9 be permitted to do that, the state commission would have
10 to require the remaining ETC to ensure that all customers
11 will continue to be served; is that correct?

12 A. Yes, I believe it is.

13 Q. And the state commission will require sufficient
14 notice to permit the purchase or relinquishment of the
15 facilities by any remaining ETC, correct?

16 A. I believe that's correct.

17 Q. As I read that statute, it says that the
18 Commission shall designate a time not to exceed one year
19 from the date the Commission approves the relinquishment.

20 So my question on that issue: Under federal
21 law, Frontier will not be permitted to stop providing
22 service in the local exchanges unless and until you were
23 to give the Commission notice. And the Commission would
24 have to design, so to speak, an off (inaudible) --

25 (Court reporter interruption.)

1 Q. (BY MS. SLAWSON:) Before you would be permitted
2 to relinquish service or to stop providing service in
3 that area, the Commission -- you would have to give the
4 Commission notice so that the Commission could design an
5 off ramp, so to speak, correct?

6 A. Again, I don't have the statute or the
7 Commission's -- the FCC's rules in front of me, so it's
8 hard for me to respond specifically to those rules.

9 Q. But it is your understanding that you'd have to
10 provide notice before just stopping to provide service,
11 correct?

12 A. I believe that's correct.

13 THE WITNESS: I have no other questions.

14 HEARING OFFICER HOGLE: Okay. Thank you.

15 I have a few, Mr. Erhart.

16 THE WITNESS: Yes.

17
18 CROSS-EXAMINATION

19 BY HEARING OFFICER HOGLE:

20 Q. Let me pull them up, please.

21 So in addition to E Fiber, the Division, the
22 Office, and URTA all recommend that the PCS approve the
23 CPCN application here as requested.

24 Despite all of that support (inaudible) in the
25 public interest --

1 (Court reporter interruption.)

2 Q. (BY HEARING OFFICER HOGLE:) So in addition to
3 E Fiber, the Division, the Office, and URTA all support
4 that PSC approve the CPCN application as requested in
5 this hearing in this case.

6 And so why do you think, with all that support
7 and -- you know, the Division represents commercial and
8 consumer customers; the Office, the same thing, small
9 residential customers, maybe small commercial; URTA, of
10 course, is that rural telecommunications association
11 whose members may also be affected here, other members.

12 So despite -- or given all of that support, why
13 is Frontier testifying that it's not in the public
14 interest, given everybody supports it, except, of course,
15 Frontier?

16 A. Sure. Maybe a couple of thoughts. First would
17 be, I think, the way that the application and the
18 affiliated group of Emery companies are structured. As I
19 said in various points in my testimony, it appears that
20 the structure of this proposal is such -- is structured
21 such to maximize the amount of Universal Service Fund
22 support that could be used to upgrade, and, as we heard
23 this morning from some of the testimony of the Emery
24 witnesses, upgrade the existing network of their
25 nonregulated company to the benefit of their existing

1 customers of that nonregulated cable company. So that's
2 one issue.

3 I think the other is that is it competitively
4 neutral? And so early on in the applications -- and the
5 URTA proposals were consistent with this -- the other
6 parties were recommending that Frontier somehow be found
7 ineligible to receive Universal Service Fund support in
8 those markets. And again, as we heard this morning,
9 Emery's own take rate forecast, in other words, what
10 percent of the customers do they expect to win? They
11 testified that it was roughly 1,500, I believe, voice
12 customers that they expected to migrate either from
13 Frontier or potentially from another provider, most
14 likely a wireless provider in the market. Because as I
15 said at various points in my testimony, Frontier has lost
16 over 60 percent of the access lines in those markets. So
17 those customers have adopted wireless technology in a
18 large part.

19 So, assuming that Emery's testimony is correct,
20 that they will sign up over the five-year period roughly
21 1,500 voice customers. If I look at that as a percent of
22 Frontier's access lines in the market, that's roughly a
23 40 percent take rate, so meaning that Frontier will
24 remain the provider of last resort and remain the service
25 provider for the majority of customers in that area.

1 So under the applicant's proposal where Frontier
2 is providing the majority of the voice service, and the
3 majority of the Universal Service Funding that is going
4 to Emery is going to benefit their nonregulated cable
5 company, to me, that's not in the public interest,
6 especially if Frontier is somehow found to be ineligible
7 to receive Universal Service Funding for the customers
8 that it still serves, which in all likelihood are going
9 to be the highest-cost customers.

10 Because as we've seen from Emery's cable company
11 operations in Moab -- and Mr. Johansen testified to this
12 multiple times -- his business plan is focused on
13 primarily the business customers and higher
14 revenue-generating customers. And nowhere in this
15 proceeding has he provided a buildout plan that E Fiber
16 would stick to or any milestones that it would meet or
17 the number of locations that it would cover. We asked
18 him that question in discovery, and he didn't answer.

19 So, again, as I look at all that, my response is
20 that's not a level playing field. And that's why I
21 suggested in my testimony that maybe another option
22 available for the Commission here is to process these
23 applications under the rules for non rate-of-return
24 regulated companies. And the Commission at that point
25 could open a rulemaking and set out guidelines and rules,

1 if you will, for the targeting of Universal Service Fund
2 support because we all agree that the objective is to get
3 more broadband further into the community and higher
4 speed broadband.

5 And Frontier has been working to do that. We've
6 been focused on, for the last five years, on building out
7 in these markets, in five of these markets, under our
8 Connect America funding.

9 And so if you look at what other states -- and
10 take the FCC, for that matter. What they have done with
11 their Universal Service Funds is repurposed them to
12 target the support for the deployment of broadband in
13 underserved and unserved markets, not on a rate of return
14 basis.

15 The FCC has essentially concluded that the rate
16 of return mechanisms are inefficient. That's why for
17 price cap carriers like Frontier, several years ago they
18 went to the Connect America Fund, which is essentially a
19 broadband grant program that's paid out over a six-year
20 annuity for the Company to deploy broadband services.
21 And at that time, the FCC defined broadband at 10 over 1
22 to a specific number of households. And about 3,000 of
23 those households are in census blocks that are within the
24 local exchanges that are subject to this proceeding.

25 And then Mr. Meredith testified that the other

1 RLECs in the state, that many of them have also opted
2 into the FCC's A-CAM form of support for RLECs that were
3 rate-of-return regulated at the federal level. And
4 again, that is essentially a grant program that's paid
5 out on an annuity basis.

6 Now both of those programs, the funding was
7 determined and targeted based on the FCC's mapping of
8 where broadband was and where it was limited and then
9 also based on a forward-looking cost model.

10 So I was suggesting in parts of my testimony
11 that there may be other, more efficient ways for the
12 State to use the scarce resources that are associated
13 with the existing Universal Service Fund. Because, as I
14 pointed out in my testimony -- and I believe, Judge, you
15 pointed this out earlier -- that if Emery's proposal is
16 adopted, it will alone result in a significant,
17 effectively statewide tax increase to fund the additional
18 Universal Service Fund.

19 And I would expect that as a result of Emery's
20 entry into the market -- and let's assume that their
21 forecast is correct, that 40 percent of the customers
22 will migrate to Emery. That loss of revenue will also
23 qualify Frontier to receive Universal Service Fund. In
24 fact, Frontier's Connect America funding expires next
25 year in 2021. And that, alone, the expiration of that

1 federal funding for broadband in these markets, will put
2 both of the Frontier companies in Utah in a position
3 where just the expiration of that money, they will
4 qualify for Universal Service funding. So I guess bottom
5 line is that the fund in the future under the
6 rate-of-return model that exists today is going to
7 increase significantly.

8 And all I was suggesting is that their proposal
9 may not be not only competitively neutral, it may not be
10 in the best interest of consumers. Because those
11 60 percent of consumers that currently receive their
12 service from Frontier -- and even if Emery's forecasts
13 are correct -- still receive their service from Frontier.
14 If Frontier is found to be ineligible to receive
15 Universal Service Fund's support in those markets to
16 support the network, to me, that's not consumer friendly
17 for those customers, either.

18 I'm sorry it was a long-winded answer to your
19 question, but.

20 **Q. Actually, that made me think of another question**
21 **that I think needs to be answered. And if you know, let**
22 **me know.**

23 A. Okay.

24 **Q. With respect to the federal funding, does that**
25 **just go to the carrier of last resort? And if there are**

1 **two of them, what happens to the federal funding?**

2 A. A great question. The programs have varied.
3 The Connect America Fund that I spoke about that Frontier
4 accepted in 2015, it was funding that the FCC made
5 available to the price cap carrier in the state. So for
6 Utah, for the markets that Frontier serves, that funding
7 was made available to Frontier to accept. Frontier had
8 the option to accept the money and build out to the
9 designated number of locations in the census blocks that
10 were designated by the FCC; or if it didn't, that money
11 went back into the FCC fund and was later auctioned.

12 Now, Frontier accepted all of the money that was
13 available to it in the states, but there were some of the
14 larger national ILECs that didn't accept all the money
15 that was available to them, and that money went back
16 into -- and I believe it was last year maybe around this
17 time, maybe the year before, where the FCC held an
18 auction. And they put that money up -- they put those
19 areas up for bid, if you will, and said, Who is willing
20 to provide broadband in these areas, and at what price
21 are you willing to do it?

22 And so they held a reverse auction. There were
23 a number of providers that participated in that. In
24 fact, the FCC -- we're in the middle of that process
25 right now. So the Connect America Fund program, as I

1 explained, expires next year. Frontier will complete the
2 buildout. The FCC right now is holding an auction that
3 they call the "Rural Digital Opportunity Fund." And
4 they've identified areas that were left off of the
5 Connect America Fund because they were too high-cost to
6 serve. And so the FCC is holding a reverse auction right
7 now -- in fact, we're in the quiet period, so I can't say
8 a lot about it -- to release funding to build out
9 broadband in those designated areas. And I expect the
10 results of that auction will probably be known in the,
11 I'd say middle to later part of December.

12 And other states have done similar types of
13 programs, where it is not uncommon for the states to have
14 migrated away from these rate-of-return type mechanisms
15 because, you know, as the FCC and others have found,
16 they're just very inefficient, right? They encourage, if
17 you will, overspending in some cases. And so that's why
18 the FCC has migrated to more of a grant program and not
19 to an auction program, which is the most, kind of,
20 market-based.

21 **Q. Okay. So back to my question.**

22 **Is some of that federal funding that is granted**
23 **by the federal government to help deploy broadband**
24 **digital services, does that -- is that just -- does that**
25 **just go to one carrier of last resort per area? Or can**

1 two of them join in an auction or, you know, compete in
2 an auction, I guess? Do you know? Do you know if
3 that's ...?

4 A. Yeah, I think I understand your question.

5 And maybe the way I would answer it is it
6 would -- the winning provider would be required to
7 provide service to a designated group. Now, that may be
8 an area that is much smaller than an exchange. In the
9 Connect America Fund, for example, it was designated on
10 the basis of a census block.

11 And off the top of my head, I do not recall with
12 the current option that's underway what the geographic
13 area is, but it could be very small, could be very
14 targeted. In other words, the purpose of those programs
15 is to target the amount of public support into specific
16 areas that are found to either be underserved or
17 unserved, not to encourage overbuilding of where service
18 may already be offered.

19 Q. Okay. Thank you. That leads me to my next
20 question. You mentioned in your testimony, I believe,
21 that with the money that you had received from Connect
22 America that you had already deployed some
23 infrastructure. And you mentioned that the
24 infrastructure, some of the infrastructure that E Fiber
25 was going to or was planning to deploy would be

1 **redundant.**

2 **Do you remember that?**

3 A. Yes. And just --

4 **Q. And so -- can I finish my question? I'm sorry.**

5 **So I'm just wondering how much -- how much**
6 **redundancy is there or will there be if we decide to**
7 **approve the CPCN application as requested? Do you know?**

8 A. Hard for me to tell because, one, I don't know
9 where E Fiber is planning on building, right? But I do
10 know the metrics associated with the Connect America
11 Fund.

12 So what Frontier accepted for the state of Utah
13 carried a requirement to build out to just over 5,100
14 locations in certain designated census blocks.

15 So if we look at the local exchanges, my
16 recollection is roughly 60 percent of that. So just over
17 3,000 of those locations are within census blocks within
18 the local exchanges. So at least 3,000 of those
19 locations, Frontier will complete its buildout by next
20 year to offer a broadband service.

21 And again, the way the funding was calculated by
22 the FCC, it was to fund a broadband a service at 10 over
23 1. Now, the RDOF program that's underway now I would
24 expect will fund something higher than that. For
25 example, the A-CAM program that the RLECs are accepting

1 now in some cases is 4:1, but generally, it's 25 over 3
2 in the markets that they accept.

3 Q. Okay.

4 A. Does that answer your question?

5 Q. It does. Thank you.

6 Now, let's go to the service quality issues.
7 You've been cross-examined on your service and your
8 service quality in the state of Utah, including
9 complaints that are currently stayed.

10 First of all, can you tell me what the status of
11 those complaints -- not with respect to here with us at
12 the Public Service Commission -- but have you resolved
13 them? Have those customers' issues been resolved? And,
14 you know, so just tell me how -- what your sense is about
15 your service quality in the state of Utah, in particular,
16 you know, in those areas which are -- you know, in these
17 pandemic days, it's important for them to have good
18 service.

19 So I just want you to tell me, you know, what
20 your position is on that, if there are any open
21 complaints or open, you know, issues that customers have
22 come to Frontier about and, you know, why it is that
23 there are numerous of them out there, just from what I'm
24 hearing.

25 A. Sure. Maybe a couple of comments. First, with

1 respect to the formal complaint case and the docket that
2 Mr. Moore referenced earlier that Mr. Giles testified in,
3 I addressed this somewhat on page 36 of my direct
4 testimony. And this was a unique situation in Castle
5 Valley, which the -- what the Company was doing was
6 upgrading its radio backhaul equipment from Castle Valley
7 down the mountain to the main switching location in Moab.

8 We installed the equipment, and it just -- quite
9 frankly, it failed. It didn't live up to our
10 expectations, what we expected from the vendors. We did
11 our best to try and troubleshoot that with the vendor.
12 Ultimately, we ended up changing out that equipment to a
13 different vendor, which resolved the issue. And then we
14 gave all of the customers in Castle Valley a full credit
15 for four months.

16 In addition to that, as Emery testified earlier,
17 the Castle Valley area is one of the areas that they
18 received a USDA grant that fully funds the buildout and
19 operation of a network in that area. And the main
20 customer that was the complainant in that original case,
21 which is a resort there, has since switched its service
22 to Emery. In fact, Frontier -- and we committed to do
23 this during the complaint case -- the customer had
24 service contracted with us, we let them out of the
25 contract. If they thought they'd be better served with

1 Emery, we let them move their service to Emery.

2 And that really was the driver of the complaint
3 case. And, in fact, this year, I'm not aware that, prior
4 to this case, there was a complaint filed with the PSC
5 regarding the Company's service.

6 Now, since the case has been filed, I'll say
7 there have been complaints that have been solicited in
8 support of the application. And, you know, I understand
9 how that process works.

10 I guess in response to the accusations that the
11 Company is providing somehow a poor service quality
12 experience, I would also point out in the discovery we
13 pointed to a couple of metrics. One was the percent
14 availability of all of our central offices in the state.
15 Over the last two years, we went back and calculated
16 outages and looked at the percent availability of the
17 central offices, and I believe that number was
18 99.9 percent fully functional.

19 The other metric -- and this is common in the
20 industry -- is what is referred to as the "trouble report
21 metric," the trouble report per 100. And again, we
22 provided this in discovery.

23 And year to date, the Company's -- this was, I
24 believe, the middle of the year when we answered that
25 discovery request. Year to date, the Company's trouble

1 report per 100 was at a .76, which is very good in the
2 industry. Many commissions will monitor a number if it's
3 above 5 or 6. Some of them may go lower on an individual
4 or on a statewide basis. But .76 is very good. And I
5 would say that speaks to the health, especially of the
6 outside plant network.

7 **Q. Okay. So you're aware that we regulate the**
8 **voice part of the service --**

9 A. Yes.

10 **Q. -- and not the broadband.**

11 **Can you tell me how much of the service quality**
12 **issues is related to each one of those distinct services?**

13 A. Well, the -- I don't recall now if the Company
14 was providing a broadband service to Sorrel River at the
15 time of the complaint. Certainly it was the voice
16 service.

17 **Q. Okay.**

18 A. And the overlap was the -- the intent of
19 upgrading that backhaul, that radio network, was to
20 provide more bandwidth so that we could provide a more
21 robust broadband service in the area.

22 Now, that same backhaul network handles the
23 voice network. So while the Company was, you know,
24 intending to upgrade its broadband network, it had an
25 impact on the voice. And that's really what generated

1 the original formal complaint.

2 **Q. You also mentioned in your testimony, you**
3 **mentioned the funding from the federal government, that**
4 **you received, I believe -- I don't think this is**
5 **confidential -- 9 million, I believe; is that correct?**

6 A. Yeah. That was the amount that was associated
7 with the Citizens Telecommunications of Utah company.

8 And if I may back up, Frontier operates two
9 separate legal entities, both holding their own
10 certificate in the state. One is Citizens
11 Telecommunications of Utah, which is the company that is
12 the subject of this proceeding. And the other is Navajo
13 Communications that operates on the southern border and
14 offers service on the Navajo Nation, including Arizona
15 and New Mexico.

16 And so overall statewide, the amount of funding
17 from the Connect America Fund over the life of the
18 program was roughly 15 million. And I think our
19 testimony was pointing out that 9 million of that was
20 associated with the citizens' property. And that was to
21 fund the buildout of the designated number of households,
22 locations, and also the operation of that network. So
23 they provide voice service also to those customers.

24 **Q. Okay. And I believe I read in testimony**
25 **regarding some of that, anyway, or -- and I believe it**

1 was in some of it -- that there's a deadline where
2 Frontier must, you know, use those funds and that it's
3 coming up and that Frontier may not be able to expend
4 those funds in the short time that is left.

5 And I guess I'm curious about that and would
6 like you to comment on that.

7 A. Sure. And the measurement, if you will, under
8 the Connect America Fund program is not an expenditure of
9 dollars, if you will. It's the number of locations that
10 have been enabled. And so over -- over the multi-year
11 period, the Company has to report to the FCC and had
12 specific milestones to meet, generally about 20 percent
13 per year, of having those locations pass and enabled to
14 provide broadband and voice service to those locations.

15 It isn't tied to a specific spend because,
16 again, the FCC, in calculating the amount of funding that
17 was made available, did it based on a forward-looking
18 model. So they said, Here's our calculation of an
19 efficient forward-looking model to provide broadband and
20 voice service to this number of locations in these types
21 of high-cost markets. So we'll make that available to
22 you. Now you have to meet the milestone in deploying
23 service to those customers. So the Company is on target
24 to meet that.

25 I think what you may be referring to is -- and I

1 can't remember which party it was -- pointed to the
2 Company asked for a waiver and extension, if you will, of
3 the deadline last year. But that was relative to the
4 Navajo property. And I think somebody even attached the
5 order from the FCC that approved that waiver.

6 And the reason the Company sought that waiver
7 was that there was a dispute, if you will. The Navajo
8 Nation had put an embargo on issuing permits for the
9 Company to be able to place its facilities in the
10 right-of-way.

11 So the Company attempted to resolve the issue
12 with the Bureau of Indian Affairs -- anyhow, ultimately
13 had to go to the FCC and ask for an extension of that
14 waiver. So the Company expects to be fully compliant
15 with its deployment obligations under the Connect America
16 Fund. And if it's not, then there are penalties under
17 the FCC program, financial penalties at that point.

18 **Q. And I think I just have one more question. You**
19 **mentioned that you were intending or planning in the**
20 **future to continue to deploy infrastructure. I'm not**
21 **sure if you said broadband, but certainly upgraded**
22 **infrastructure as well.**

23 **So, I'm wondering if there's any definite plans,**
24 **or is it just a goal of Frontier's? And, you know, any**
25 **more information on that would be helpful to the**

1 **Commission.**

2 A. Sure. And I think we -- it may have been in one
3 of the discovery responses. We said that we haven't
4 finalized the 2021 investment deployment plan at this
5 point. And maybe this is a good point for me to clarify,
6 because there was a lot of discussion earlier about the
7 pending bankruptcy proceeding and even some speculation
8 that Frontier could somehow be liquidated and may have to
9 exit the market. So I just wanted to provide some
10 additional, kind of update and clarity, if you will, on
11 the status of the bankruptcy proceeding.

12 You know, the Company at this point has received
13 either affirmative approval or a determination that
14 approval wasn't necessary in the majority of the 18
15 states that it had to make such a filing. And so -- and
16 we're going through the process, completing the process
17 at the FCC. And I think I said in testimony that in
18 August, the Bankruptcy Court had approved the plan of
19 reorganization, the agreement, if you will, that the
20 Company reached with its debt holders that it would allow
21 it to restructure the Company. So at this point, we
22 anticipate that we're on pace to emerge from bankruptcy
23 by the end of the first quarter of 2021.

24 And what that plan of reorganization will do at
25 a high level is essentially it restructures the parent

1 company balance sheet. And the unsecured debt holders
2 that held about 10 billion of the Company's debt will now
3 become the equity holders of the Company. So at that
4 point, the Company is much stronger financially and has a
5 much greater ability to invest. So it has a stronger
6 balance sheet, if you will, and, upon emergence, will be
7 able to finalize all of those various investment plans.

8 **Q. Is Utah part of that? I'm asking because I also**
9 **read in your testimony, and maybe others, that you've**
10 **been deploying infrastructure in states like California**
11 **and Texas and others, and frankly, not so much in Utah.**
12 **And those are just my words. I think I read something to**
13 **that effect. And I'm just sort of paraphrasing.**

14 **But in your infrastructure plans for 2021 and**
15 **beyond, is Utah included as part of that planning?**

16 **A. Yeah. I'm not sure I can answer your question.**
17 **I am not aware of specific state-by-state plans at this**
18 **point.**

19 **But maybe the way for me to answer your question**
20 **is we did provide in discovery -- and I won't quote the**
21 **numbers because they were provided as confidential. But**
22 **we were asked to provide the amount of capital**
23 **expenditures that the Company has spent over the last**
24 **five years. And we did so, and we provided the amount**
25 **that the Company has invested so far this year, year to**

1 date. So the Company has continued to invest in its
2 network, and there's no reason to believe that it
3 wouldn't continue to do that in the future.

4 So hopefully that answers your question.

5 **Q. That answers my question. Thank you. Let me**
6 **make sure I have everything that I wanted to ask you.**
7 **Those are all the questions I have.**

8 HEARING OFFICER HOGLE: Mr. Russell, do you have
9 any questions that you'd like to come back to?

10 MR. RUSSELL: I do.

11
12 REDIRECT EXAMINATION

13 BY MR. RUSSELL:

14 **Q. I actually had intended to ask Mr. Erhart a**
15 **question before I turned him over for cross-examination**
16 **about some statements that had been attributed to him**
17 **prior to him being sworn in regarding the Company's**
18 **potential plans for potentially requesting that the**
19 **Commission withdraw -- requesting with the Commission to**
20 **withdraw its CPCN. And I wanted to ask him to clarify**
21 **that because I'm not sure that accurately represented his**
22 **testimony. So if I may just ask him to comment on that,**
23 **I think that actually is the only question I have for**
24 **him.**

25 **A. Yeah. Thank you, Phillip. And I went back and**

1 read that and, in hindsight, maybe I could have worded
2 that part of the testimony better. So I can see how
3 people maybe read that into it. So thanks for the
4 opportunity to clarify.

5 What I was attempting to discuss in that part of
6 the testimony was the scenario where, in the applicants'
7 application they were suggesting that Frontier -- and in
8 the testimony of URTA -- that Frontier be found to be
9 ineligible to receive the Universal Service Fund. And we
10 talked about this a little bit earlier in the one
11 response that I gave.

12 And given that, Frontier will remain a provider
13 in that area for years to come, even based on Emery's own
14 forecast. But if Frontier is still a carrier of last
15 resort in that area but also unable to be eligible for
16 Universal Service funding, that's a scenario that becomes
17 untenable from a financial position.

18 So what I was suggesting in my testimony, or
19 attempting to suggest, was that if that was the scenario,
20 then Frontier may need either relief from its carrier of
21 last resort obligations or relief from the pricing
22 restrictions that it's under as a rate-of-return
23 regulated carrier so that it could recover the costs
24 associated with providing service to those several
25 thousand customers that it would continue to be providing

1 service to.

2 Q. Okay. Thank you for that clarification,
3 Mr. Erhart.

4 MR. RUSSELL: That's all I have for this
5 witness.

6 MS. SLAWSON: Your Honor, I have one question,
7 if I may?

8 HEARING OFFICER HOGLE: Sure.

9

10 RE CROSS EXAMINATION

11 BY MS. SLAWSON:

12 Q. Mr. Erhart, we talked a little bit about -- you
13 talked a little bit about the RDOF bid and auction.

14 Isn't it correct that both E Fiber and Frontier
15 can participate in the RDOF bid auction?

16 A. I believe that's correct.

17 Q. And I know it's the quiet period, so I'm not
18 going to ask any additional questions on that.

19 MS. SLAWSON: I don't have any other questions.

20 HEARING OFFICER HOGLE: Okay. Does anybody else
21 have any other questions?

22 MR. MOORE: I have a -- well, I have a request.

23 During my examination, I neglected to move for
24 admission OCS Cross Exhibits 1 through -- I mean 2, 3, 4,
25 5, and 6. And I wonder if there would be any objection

1 if I move for their introduction now.

2 HEARING OFFICER HOGLE: Do we have any
3 objections?

4 Okay. They're admitted, Mr. Moore. Thank you.

5 MR. MOORE: Thank you.

6 (OCS Hearing Exhibits 1, 2, 3, 4, 5, 6
7 were admitted into the record.)

8 HEARING OFFICER HOGLE: Okay. I recall from
9 earlier this morning, Mr. Russell, I think you said
10 something about or mentioned closing arguments. And I'm
11 just wondering if you were just -- I don't know if you
12 were interested in that, if you have discussed that with
13 the parties.

14 MR. RUSSELL: I think that was Mr. Jetter.

15 HEARING OFFICER HOGLE: Mr. Jetter. Excuse me.
16 I think I heard -- I apologize. It was you who suggested
17 that.

18 And I'm wondering if the parties got together
19 before the hearing and sort of agreed that they would all
20 like to make a closing argument, or if that was just your
21 request or if it was just an idea. So I just wanted to
22 come back to that before we close this out.

23 MR. JETTER: A few things to answer that
24 question.

25 I didn't intend to make a request or, I guess,

1 oppose it in either form. I have had a brief discussion
2 with one of the parties about it, but it was -- there is
3 no agreement that I am aware of between the parties on
4 having a closing statement or not. And I personally -- I
5 guess I am somewhat agnostic as to whether we do that or
6 not. I was just wrapping up our witness presentation and
7 had mentioned that, that we didn't have anything else
8 unless that came up.

9 HEARING OFFICER HOGLE: Okay. All right. Does
10 anybody wish to comment on that?

11 MS. SLAWSON: I do, your Honor. Kira Slawson.

12 I think a brief closing argument would be
13 appreciated and helpful. I know that we've had
14 significant briefing, and we had a very long hearing on
15 the motion for summary judgment, so I personally would
16 not intend to rehash all of that.

17 I assume -- and please correct me if I'm
18 wrong -- that those arguments and that hearing will be
19 considered by the Public Service Commission in ruling on
20 this case. But I do think there are a couple of issues
21 that we would like to provide closing argument on today.

22 HEARING OFFICER HOGLE: Okay. So we have at
23 least Ms. Slawson who will be taking advantage of the
24 opportunity for closing argument.

25 Given that, are any of the three remaining

1 counsel interested in also participating in closing
2 argument?

3 MR. RUSSELL: Go ahead, Bob.

4 MR. MOORE: No, no. After you.

5 MR. RUSSELL: Yeah, I was going to say, I,
6 candidly, only would want to offer anything in closing if
7 the Commission thinks it would be useful. So if the
8 Commission thinks it would be useful, Frontier would be
9 happy to participate. Like Mr. Jetter, I'm somewhat
10 agnostic on it.

11 Given that Ms. Slawson intends to offer
12 something, I suppose we probably all will. At least I
13 will, so yes.

14 HEARING OFFICER HOGLE: Okay. Thank you.

15 Mr. Moore?

16 MR. MOORE: Well, given that closing arguments
17 weren't provided in the scheduling order by agreement of
18 the parties, we would ask for maybe a brief recess to --

19 HEARING OFFICER HOGLE: Yes.

20 MR. MOORE: -- to prepare because this hasn't
21 been agreed to beforehand.

22 HEARING OFFICER HOGLE: Right. And I think
23 that's fair, and that was my intent. My intent was to
24 break for however long, not reasonably -- I mean
25 reasonably long, not too long, maybe half an hour at

1 most, 20 minutes would be great, and then come back and
2 just give the closing and adjourn.

3 Does that sound like plan?

4 MR. RUSSELL: Sure.

5 HEARING OFFICER HOGLE: Okay. So it is almost
6 3:00. Why don't we come back at 3:20.

7 MR. RUSSELL: Can we get a little bit of
8 guidance on how long the parties are going to be allowed
9 to speak just so we know what sort of topics, and we can
10 address

11 HEARING OFFICER HOGLE: Right. You know, it's
12 just what you think is important. I think we have --
13 we've developed a pretty good record. I feel like we've
14 developed a pretty good record. You know, anything that
15 you heard today that you think needs to be supplemented
16 or clarified or what have you, that's what I would
17 encourage you to focus on, and then, you know, just your
18 final, sort of, argument for why the Commission should
19 rule your way. So that's the way that I would approach
20 it.

21 And it should not be very long at all. It
22 should be concise and not long because, like I said, we
23 already have a pretty good record. And so we don't need,
24 you know, to rehash everything. Your main points and
25 short and sweet and concise is what I would recommend.

1 MR. RUSSELL: Great. Thank you.

2 HEARING OFFICER HOGLE: I don't know if that's
3 specific enough, Mr. Russell, but that's all I have.

4 MR. RUSSELL: If that's what I can get, that's
5 what I'll get. Thank you.

6 HEARING OFFICER HOGLE: All right. Let's
7 reconvene at 3:20, then.

8 MS. SLAWSON: Thanks.

9 HEARING OFFICER HOGLE: Thank you.

10 (A break was taken from 2:54 p.m. to 3:21 p.m.)

11 HEARING OFFICER HOGLE: Okay. Okay. So we're
12 back on the record.

13 And Ms. Slawson, please proceed.

14 MS. SLAWSON: Thank you. Sorry. I pushed
15 print, and it's printing. So hopefully you cannot hear
16 that. There we go. Thank you.

17 Thank you, your Honor. So I'll try to be brief
18 in the interest of time and everyone's attention.

19 The applicants have filed their applications for
20 CPCN to serve the local exchanges in Grand and San Juan
21 County. As everybody is aware, they're seeking
22 competitive entry under 54-8b-2.1.

23 Under that code section, the Commission shall
24 issue a certificate if it's determined that the
25 applicants have the sufficient technical, managerial, and

1 financial resources. There's -- the record is undisputed
2 on those issues. There's been no testimony offered to
3 dispute the qualifications of the applicant. So that
4 competitive entry marker has been met.

5 The second requirement that needs to be met is
6 for the Public Service Commission to determine that that
7 entry is in the public interest. And so that's where I'm
8 going to kind of spend a little bit of time.

9 The applicants have indicated that they plan to
10 install fiber facilities to the home in the underserved
11 local exchanges. And when we say they're underserved,
12 there's been lots of testimony by our witnesses, the
13 Division's witnesses, and the Office's witnesses about
14 the service quality issues.

15 Mr. Erhart tries to brush off those service
16 quality issues and also the fact that San Juan County
17 won't use Frontier for 911 anymore. But I think that the
18 evidence shows that there are ongoing service quality
19 issues. And also, the evidence shows that there really
20 is no plan by Frontier to address these service quality
21 issues beyond what they've already done.

22 The testimony from Mr. Hansen indicates on Line
23 150, I believe it is, that they don't have any plans to
24 provide -- to install fiber facilities. Mr. Erhart
25 has -- he honestly answered your question that they can't

1 even put an investment plan in place until after they
2 emerge from the bankruptcy, and he has no information
3 whether Utah will be in that plan or not.

4 So the Commission is not being asked to decide
5 between the incumbent's plan to serve or upgrade these
6 facilities and E Fiber's plan to upgrade and serve -- to
7 serve these customers. There's not two plans in place.
8 There's one plan.

9 And so I think from a public interest
10 standpoint, the Public Service Commission needs to decide
11 whether serving the residents and businesses of San Juan
12 and Grand County with upgraded telecommunications
13 services is in the public interest.

14 We've been very forthright with the Commission
15 and all the parties in this case and have shown you how
16 it is that we provide -- plan to provide these services.
17 We've shown you the financial costs associated with
18 providing that service. And we've told you that these
19 are expensive areas to serve, and they will require
20 support from the Utah Universal Service Fund. And that's
21 exactly what the Utah Universal Service Fund is for.
22 It's to serve residents and businesses in rural or
23 high-cost areas. So I think from that big picture, it
24 absolutely is in the public interest. And we're joined
25 in that thinking by the Office and the Division.

1 One thing I did want to touch on. In terms of
2 the impact to the USF, Frontier, in its testimony today,
3 made hay of the fact that E Fiber is only going to take
4 some of the customers. And I just want to ensure that
5 the Commission is aware that the pro forma projections
6 provided by the applicants in this case were
7 conservative. Now, obviously we're going to do
8 everything in our power to take all the customers. And
9 when we take all the customers, the impact to the USF is
10 going to go down because the revenues are going to go up.
11 And so what we tried to do in an effort to be most
12 transparent is show the Commission what we think the high
13 watermark on the USF will be.

14 So we didn't want to come in with overly
15 optimistic estimates on the customer take rate to sell
16 the Commission on the USF, the potential USF impact, and
17 then come back in three years and have, you know, a
18 30 percent higher request for the USF. So that's the
19 high watermark. The applicants are going to do
20 everything that -- they've testified that that is the
21 high watermark, and that they would do everything in
22 their power to exceed that.

23 There are a couple of issues that I wanted to --
24 beyond the public interest issues. I mean, they go to
25 the public interest issues also. I'm not going to rehash

1 the entire argument that we've made in the motion for
2 summary judgment. But I do think that there were a
3 couple of issues that are necessary to be argued in terms
4 of the testimony you've heard here today.

5 The evidence -- Frontier's argued that E Fiber
6 cannot be regulated as a rate-of-return carrier of last
7 resort because it's not going to provide regulated
8 telephone service. We briefed this issue. We've told
9 you that that's not true. We've walked the Commission --
10 the evidence has walked the Commission through the
11 service that E Fiber proposes to provide. And the
12 testimony is undisputed that the service that E Fiber
13 will provide is the exact same service that is being
14 provided and has been provided for decades by Emery
15 Telephone, Carbon Emery Telcom, and Hanksville.

16 Mr. Johansen testified that this service uses
17 IP-in-the-Middle for transporting voice (inaudible). And
18 this service has been consistently regulated by the
19 Commission all the way through the transition from analog
20 voice service to frequency division multiplexing to time
21 division multiplexing to IP transport. And so we think
22 that any claim by Frontier that somehow the Public
23 Service Commission doesn't have the authority to regulate
24 this service is unfounded and untenable.

25 And rather than go through each and every one of

1 the arguments that we made in the motion for summary
2 judgment, I'm just going to focus you on one issue that I
3 think came up in today's testimony.

4 Under Utah Code Section 54-8b-15-2b, that
5 section provides that the Utah Universal Service Fund
6 shall provide a mechanism for a qualifying carrier of
7 last resort to obtain specific, predictable, and
8 sufficient funds to deploy and manage, for the purpose of
9 providing service to end users, networks capable of
10 providing access lines, connections, or wholesale
11 broadband Internet access.

12 And then statute goes on to define a connection.
13 A connection is specifically defined as an authorized
14 session that uses Internet protocol or a
15 functionally-equivalent technology standard to enable an
16 end user to initiate or receive a call from the public
17 switched network.

18 Similarly, wholesale broadband Internet access
19 service is defined as the end user loop component of
20 Internet access provided by a rate-of-return regulated
21 carrier of last resort that is used to provide, at
22 retail, combined consumer voice and broadband Internet
23 access service or standalone consumer broadband-only
24 Internet access service.

25 Therefore, the legislature has specifically

1 expressed an intention to regulate public
2 telecommunications services that use IP-in-the-Middle.
3 The legislature in 2017 specifically included these
4 services, the connections and the wholesale broadband
5 Internet access service that utilizes IP technology, in
6 the services that a rate-of-return regulated carrier of
7 last resort can obtain Utah Universal Service support
8 for.

9 Clearly, the legislature did not intend to
10 eliminate from the regulation all voice services that
11 include IP in the call path; therefore, Frontier's
12 argument that this is IP-enabled service and, therefore,
13 prohibited from being regulated by the Public Service
14 Commission is untenable.

15 Also, I would refer you back to the arguments
16 that we made in terms of the legislative history of
17 54-8b-101. The Commission has been regulating this
18 service and was regulating it before 54-19-101 was
19 enacted. It's been regulating this service since then.
20 And the latest word we have from the legislature is that
21 technology that uses IP-in-the-Middle is subject to
22 support from the Utah Universal Service Fund.

23 So as the -- I've got a couple of other issues
24 that I'd like to just quickly touch on.

25 The Commission has asked questions of several

1 witnesses as to whether, if they were to grant a CPCN, it
2 would be in the public interest for it to be conditional
3 while the Commission engaged in a rulemaking.

4 I think as a demo proposition, the applicants
5 don't have a problem with that. However, I think the
6 condition of granting is not needed in this instance.
7 You don't need to -- you don't need to look at a
8 conditional CPCN in this particular area because of the
9 particular circumstances. The area is underserved.
10 There's plenty of service complaints. More importantly,
11 just from a practical perspective, it's November 11th
12 [sic]. And if you grant the CPCN, I think the order is
13 going to come out sometime in the middle of December.
14 That's winter. The construction -- there's not going to
15 be a lot of construction that goes on over the winter.
16 And I would anticipate if there were a rulemaking, it
17 would happen quickly because if -- if you've got a
18 moratorium. So by the time the construction actually
19 happens, rulemaking would be (inaudible).

20 HEARING OFFICER HOGLE: Excuse me, Ms. Slawson.
21 You cut out a little bit. So I don't know if you want to
22 move a little bit closer to your computer, or maybe slow
23 down a little bit.

24 MS. SLAWSON: Sure.

25 HEARING OFFICER HOGLE: Okay.

1 MS. SLAWSON: Do I need to repeat? How far back
2 did I cut out?

3 HEARING OFFICER HOGLE: I think Ms. Mallonee
4 caught all of that, but let's ask her.

5 (Record read.)

6 MS. SLAWSON: "Completed."

7 And it could be I'm shuffling papers.

8 The only other issue I wanted to bring up in our
9 closing argument here is this -- there's been some
10 testimony about efficiencies and efficiency in the fund
11 and the RDOF federal support and Public Service
12 Commission USF support.

13 I think that the Commission and the Division
14 have the authority to ensure the reasonableness of the
15 expenditures that would be supported by the Utah
16 Universal Service Fund. And I think testimony from the
17 Division and the Office indicate that -- or at least from
18 the Division -- indicate that they believe there is a
19 method for ensuring reasonableness of expenditures
20 supported by the Utah Universal Service Fund. And the
21 Public Service Commission and the Division can therefore
22 manage the efficiency of the Utah USF.

23 HEARING OFFICER HOGLE: Ms. Slawson, I'm sorry.
24 I think if you can talk to the screen, I think that would
25 help. You cut out a little bit at the end there. And I

1 think it could be that you're reading or looking at a
2 paper or something on the side, and so your voice kind of
3 projects away from the microphone, if you will.

4 MS. SLAWSON: Okay. Okay. Does the court
5 reporter need me to go back?

6 THE COURT REPORTER: No, I got it.

7 MS. SLAWSON: Okay. Based on the evidence that
8 has been established in this hearing and the laws that
9 the Commission needs to consider, we think that the
10 applicants have met their burden to establish that they
11 should be granted competitive entry into the local
12 exchanges. And we think that it is in the public
13 interest for the Commission to determine that bringing an
14 upgraded fiber to the home network is in the public
15 interest in these local exchanges.

16 E Fiber -- the E Fiber companies are the only
17 companies that are offering to bring fiber to the home,
18 to the businesses and residents of this area; and
19 therefore, we think that the impact on the Utah Universal
20 Service Fund is justified, prudent, reasonable, and in
21 the public interest. Thank you.

22 HEARING OFFICER HOGLE: Thank you, Ms. Slawson.
23 Mr. Jetter.

24 MR. JETTER: Thank you. I didn't pre-prepare a
25 closing statement for this, and I'll try to keep it

1 relatively brief.

2 With respect to the issue that's been raised in
3 the hearing today about the potential for, I guess, a
4 moratorium on building or something along those lines
5 during the rulemaking process, because of the
6 considerations of efficiency in building and contracting
7 that might already have happened, along with the fact
8 that a lot of the development of subdivisions and those
9 areas may not wait for the utilities, I think potentially
10 something along the lines of a moratorium on construction
11 may not be the ideal solution to that problem.

12 And the suggestion that I might float for the
13 Commission and others would be if the Commission were to
14 go that route, something more along the lines of putting
15 E Fiber on notice that construction during that period
16 may not be fully recovered if it is determined not to be
17 prudent.

18 But in the matter -- in the efforts of
19 efficiency, when these subdivisions are going in, it is a
20 lot less expensive to install conduit at the time of the
21 road building. And we would really prefer that to happen
22 rather than to have to go back in after the roads are
23 completed and spend a lot of additional money to install
24 those utility facilities and right-of-ways.

25 The Division has typically been pretty -- pretty

1 frugal in our view of how we should spend USF money. And
2 it's fairly rare that the Division supports additional
3 USF funds. And so this is a little bit of an anomaly for
4 us to support this type of an expansion of USF funding.

5 The reason we support it is we see an area that
6 is underserved, and there doesn't appear to be a plan or
7 a solid forecast from the company serving this area on
8 how they intend to correct the problems.

9 And so for that reason, we've made our legal
10 arguments and we've provided the testimony that we have
11 in this docket. But that's really the basis for our
12 support is that we can leverage a lot of federal dollars
13 and a little bit of USF to connect those, sort of those
14 fringe customers beyond where the federal dollars will
15 connect. And we think that that, on balance, would be in
16 the public interest for Utah. And that's all I have for
17 a closing statement. Thank you for the time.

18 HEARING OFFICER HOGLE: Thank you.

19 Mr. Russell.

20 MR. RUSSELL: I assume we're going to give
21 Mr. Moore a chance?

22 HEARING OFFICER HOGLE: Apologies, Mr. Moore.
23 Mr. Moore, I truly apologize.

24 MR. MOORE: I was happy about that.

25 MR. RUSSELL: Sorry, Bob.

1 HEARING OFFICER HOGLE: Mr. Moore, please
2 proceed.

3 MR. MOORE: We think -- we are in accord with
4 E Fiber that the only issue before us is a public policy
5 issue. And we think a lot of that public policy issue
6 has been decided by the legislature. The statutes
7 clearly contemplate for competition within an incumbent
8 telecom's territory.

9 That brings up the issue of difficulty with two
10 COLRs in the same territory, but we believe the
11 legislature has solved that as well with their direction
12 to only allow reasonable costs.

13 We don't think Frontier -- given the legislative
14 determination of competition and reasonableness and
15 costs, we don't think that -- Frontier has failed to
16 demonstrate that there is a negative public policy
17 implication with this -- applications -- with the
18 applications. Nor have they, in the face of the
19 testimony of the other parties, have they demonstrated
20 that they are presently providing good service quality.
21 Nor do we think it is clear that they are complying with
22 service quality rules.

23 It's clear these people have argued that there
24 is no plan to going forward for Frontier to invest in
25 these -- in these exchanges. Mr. Erhart's own testimony

1 on page 37 of his confidential direct testimony, Lines
2 775 and 776 states, "Until Frontier emerges from
3 bankruptcy and obtains all necessary regulatory approval,
4 we cannot fully develop its future investment plan."

5 With regards to the Commission -- the
6 Commission's questions concerning a conditional CPN, the
7 OCS is not opposed to that approach as set out -- as
8 stated by E Fiber. And we are cognizant of the
9 Division's issues with regards to starting construction
10 right away. But we do think, given that it is the winter
11 and that we could have an accelerated rulemaking, that
12 might be a reasonable approach.

13 And that's all I have.

14 HEARING OFFICER HOGLE: Thank you, Mr. Moore.
15 Thank you.

16 Mr. Russell, right?

17 MR. RUSSELL: Yes, thank you.

18 HEARING OFFICER HOGLE: I'm not missing anybody?
19 Okay.

20 MR. RUSSELL: Thank you, your Honor. I will
21 divide my comments into, sort of, two categories. The
22 first will be legal issues with the acknowledgment that
23 we spent a lot of time at the October 13th hearing
24 talking about this. I don't intend to go through all of
25 that.

1 But there has been a ruling issued this week
2 indicating that there are some factual issues that the
3 Commission needed to hear. So I'll just briefly
4 summarize our position there.

5 And that position is that none of the facts
6 presented at the hearing change what we believe is the
7 clear conclusion, which is that the services that E Fiber
8 proposes to offer are IP-enabled services. And pursuant
9 to Utah Code Section 54-19-103, this Commission is barred
10 by Utah law from regulating those services and, as such,
11 E Fiber cannot be a rate-of-return regulated carrier.

12 There has been an argument introduced today,
13 which, for what I think was the first time, that Section
14 54-8b-15, which addresses the USF distributions, and in
15 its reference to the term "connections," which are
16 connections -- "connections" are defined as something
17 that allows the use of IP to make a call to the public
18 switched telephone network, that the statute expressly
19 contemplates the use of UUSF for that.

20 But let's look at the actual language. What the
21 actual language of that statute says is that a
22 rate-of-return regulated carrier that deploys networks
23 capable of providing connections can have access to USF
24 funds. That is different from a service utilizing the
25 IP.

1 And the record is clear that E Fiber's system
2 will utilize the IP to enable a customer to send or
3 receive voice data or video communications. They are
4 IP-enabled services, and the Commission is not permitted
5 to regulate them.

6 And I'll simply also reiterate our position that
7 the facts -- none of the facts presented here today
8 change our conclusion that E Fiber's proposed voice
9 service is a VoIP service that this Commission cannot
10 regulate.

11 Then I'll move on to what I think are the public
12 interest questions that have arisen.

13 The application is not in the public interest
14 for several reasons. First is that it represents a
15 significant increase to the -- increase in UUSF
16 distributions. Customers across the state will see an
17 increase in their bills to allow E Fiber to build out its
18 proposed system. The Commission needs to weigh the costs
19 to the UUSF against the potential benefits.

20 A significant portion of the increase in the
21 UUSF distributions will go to overbuild the existing
22 coaxial plant owned by E Fiber's affiliates. Now, those
23 affiliates could have simply proposed to modify their
24 existing CPCN to provide voice service in the other
25 exchanges, and it could use the existing coaxial plant

1 there to do it. That's precisely what E Fiber has said
2 it will do in the San Juan exchanges if the application
3 is granted. But it isn't proposing to do that. It
4 created two new entities to maximize its access to UUSF
5 funds.

6 There has been -- coming back to this discussion
7 about weighing the potential costs of the UUSF against
8 the benefits. There has been no exploration of any
9 service quality issues associated with the existing Emery
10 customers. The parties in support of the application
11 have consistently stated that a factor for this
12 Commission to consider is the upgrade in service quality
13 for a Frontier customer that migrates to this potential
14 E Fiber entity. To my knowledge, there is no record
15 evidence that any of the existing Emery customers will
16 see any upgrade in service quality as a result of the
17 approval of this application, despite the great sums of
18 UUSF money that will be spent to overbuild that system.

19 Frontier is interested in customers in these
20 areas receiving improved service, but it believes the
21 cost to the UUSF represented by these applications is not
22 justified, particularly when you recall that the
23 increased UUSF spending will be paid for by other
24 customers in this state, including Frontier's.

25 Mr. Erhart addressed his concerns about Frontier

1 being shut out of UUSF funding as a result of the
2 applications being granted.

3 E Fiber's application suggests that it will take
4 approximately 1,500 new voice customers after the
5 five-year pro forma. And I take Ms. Slawson's assertions
6 that those estimates are conservative, but they're the
7 estimates that we were given in the application, and so
8 it's what we have to go on.

9 As Mr. Erhart noted, even if all of those voice
10 customers are Frontier customers, if all 1,500 that
11 E Fiber projects that it will sign up -- and they may be
12 mobile-only customers or get their voice service from
13 someone other than Frontier -- but even if they were all
14 Frontier customers, then Frontier would still service
15 approximately 60 percent of its existing customers in the
16 area. And the question before the Commission is: Is the
17 expenditure of the UUSF funds for those new customers of
18 E Fiber worth that cost?

19 Frontier will, of course, work to improve and
20 provide better service to those customers that it
21 retains. But the prospect of having to do that without
22 USF funding while its customers are paying higher prices
23 to fund the USF distributions to E Fiber is simply not in
24 the interest of Frontier's customers or in the public
25 interest.

1 And last, I'll address your Honor's questions
2 relating to a potential rulemaking process or a condition
3 on the approval of the CPCN. And I would just state that
4 I think Frontier would -- not I think, I represent
5 Frontier -- Frontier would support a condition that if
6 the Commission were to determine that it has the ability
7 to regulate these services and that it is in the public
8 interest to grant the CPCNs, then it would be in the
9 public interest to have a rulemaking process that
10 clarifies the issues before us so that the parties will
11 know once Frontier comes out of bankruptcy, or it has the
12 ability to create a more solid forward-looking funding
13 plan, that it will know how it can spend that money and
14 potentially have access to USF funds. We think that's in
15 the interest of the public to have that process play out.

16 HEARING OFFICER HOGLE: Okay. Thank you all for
17 your arguments, and thank you to your witnesses for the
18 time that they gave us today in stating their positions.
19 I think this was very helpful.

20 And I think it's going to be a difficult
21 decision, honestly, based on what I've heard today and
22 the record that we have up to today. And it's going to
23 take the Commission the time that is left before we need
24 to issue that order.

25 I heard today somebody mention an issue date of,

1 I think December 15th is when it was thought that the
2 application was filed. Actually, it was filed on
3 April 20th. And so because of that, I believe that the
4 Commission will issue its order on or before
5 December 16th. And I believe that I had already
6 explained that. But having heard that earlier today, I
7 just wanted to make sure that everybody knew that and
8 expected that to be the case.

9 So thank you. And unless anybody has anything
10 else, thank you so much for your time today.

11 (The matter concluded at 3:52 p.m.)

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CERTIFICATE

1
2
3 State of Utah)
 ss.
4 County of Salt Lake)

5 I, Michelle Mallonee, a Registered
6 Professional Reporter in and for the State of Utah, do
hereby certify:

7 That the proceedings of said matter was
8 reported by me in stenotype and thereafter transcribed
into typewritten form;

9 That the same constitutes a true and correct
10 transcription of said proceedings so taken and
transcribed;

11 I further certify that I am not of kin or
12 otherwise associated with any of the parties of said
cause of action, and that I am not interested in the
13 event thereof.

14 WITNESS MY HAND at Salt Lake City, Utah,
this 17th day of November, 2020.

15
16 

17 _____
18 Michelle Mallonee, RPR, CCR
19 Utah CCR #267114-7801
20 Expires May 31, 2022
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