

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and be Designated as Carriers of Last Resort in Certain Rural Exchanges

DOCKET NO. 20-2618-01

NOTICE

ISSUED: February 10, 2021

In accordance with Utah Code Ann. § 54-7-14.5, the Public Service Commission (PSC) gives notice that it intends to modify its order issued December 16, 2020 (“Order”). After further consideration of the evidence, legal arguments, and parties’ filings responding to our Order in this docket, we conclude that the legislative intent of the prohibition against the regulation of Voice over Internet Protocol (“VoIP”) services and Internet Protocol Enabled services (“IP-Enabled service”), set forth in Utah Code Ann. §§ 54-19-102 (“VoIP Statute”) and 54-19-103 (“IP-Enabled services Statute”), respectively, is to prohibit the PSC from unilaterally asserting its jurisdiction over VoIP and other IP-Enabled services. We do not believe the prohibition extends to the regulation of IP-Enabled service providers when they voluntarily seek to be regulated, like E Fiber Moab, LLC and E Fiber San Juan, LLC (“E-Fiber”) have done in this docket.

Additionally, we conclude the arguments offered by the Office of Consumer Services criticizing our initial interpretations of the statutes defining IP-Enabled service and VoIP service have merit. It is reasonable, if not required, to apply the words “originate” and “terminate” in the VoIP Statute to the voice communication initiated or received through the analog telephone equipment that is connected to the Optical Network Terminal (ONT) which converts the analog signal to a digital one. Applying this interpretation, we further conclude the services E-Fiber

seeks to provide do not originate and terminate in internet protocol, as those terms are used in the VoIP Statute.

As a separate basis for this decision, we also conclude that the state's clear policy of encouraging broadband deployment, as set forth in the 2017 legislative amendments to the Utah Universal Public Telecommunications Service Support Fund in Utah Code Ann. § 54-8b-15 (the "UUSF Statute"), supports E-Fiber's application. Our reasoning is influenced by the fact that the amendments to the UUSF Statute were made in 2017, and the VOIP Statute and the IP-Enabled Statutes were passed in 2012, before the UUSF amendments were made. The subsequent UUSF Statute not only allows, but encourages, regulated UUSF recipients to provide access line service through broadband technology, as E-Fiber proposes to do with its fiber to the home network. We conclude that our Order would not be consistent with state policy, and would undo the Legislature's intent set forth in the UUSF Statute.

Because our Order denied the application on the basis of the VoIP Statute, it was unnecessary for us to consider additional legal issues that we now must address. Consequently, we direct the Division of Public Utilities (DPU), and request the Office of Consumer Services (OCS), to address at least the following issues:

- Can E-Fiber become a carrier of last resort (COLR) to fewer than all of the current customers of Citizens Telecommunications Company of Utah d/b/a Frontier Communications ("Frontier") in the subject service territory? If so, is it in the public interest?

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- Can the PSC divide potential future UUSF funding between E-Fiber and Frontier, assuming Frontier qualifies for UUSF funds? If so, how would the PSC divide the funding between the two carriers? If not, and assuming E-Fiber does not become a COLR to all of the current customers of Frontier in the subject service territory, how would the PSC decide which COLR should receive the UUSF funding, assuming again Frontier qualifies for UUSF funding?

The PSC requests that DPU and OCS file their comments addressing the two issues on or before **Monday, March 15, 2021**. The PSC requests that DPU and OCS supplement the arguments they have already made in this docket, but it is not necessary to repeat them. Frontier and E-Fiber may also file comments regarding the PSC's intent to modify its Order, and address the issues we mention above. The PSC requests that the comments supplement arguments that have already been made, but it is not necessary to repeat them.

DATED at Salt Lake City, Utah, February 10, 2021.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and confirmed February 10, 2021 as the Notice of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair
/s/ David R. Clark, Commissioner
/s/ Ron Allen, Commissioner

Attest:
/s/ Gary L. Widerburg
PSC Secretary
DW#317333

CERTIFICATE OF SERVICE

I CERTIFY that on February 10, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

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