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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<p>In the Consolidated Matter of:</p> <p>The Applications of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and Be Designated as a Carrier of Last Resort in Certain Rural Exchanges</p>	<p>Docket No. 20-2618-01</p>
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**COMMENTS OF FRONTIER COMMUNICATIONS  
REGARDING NOTICE OF INTENT TO MODIFY ORDER**

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Citizens Telecommunications Company of Utah d/b/a Frontier Communications (“Frontier”) hereby submits these comments in response to this Commission’s Notice dated February 10, 2021 indicating its intent to modify its Order issued December 16, 2020 (“December 16, 2020 Order”).

The Notice identified two issues that were not addressed in the December 16, 2020 Order, but about which the Commission sought additional discussion. Frontier understands that the Commission does not require parties to repeat arguments previously made and will, therefore, keep these comments brief where possible and cite to portions of the record discussing the matters addressed in the Notice.

**A. E Fiber May Not be Designated as a Carrier of Last Resort to Fewer than All the Frontier Customers in this Docket**

In the Notice, the Commission requests comment on the following questions regarding E Fiber's request to be designated as a carrier of last resort:

*Can E-Fiber become a carrier of last resort (COLR) to fewer than all of the current customers of [Frontier] in the subject service territory? If so, is it in the public interest?<sup>1</sup>*

This question is appropriate given that E Fiber's own projections indicate that, even after the conclusion of its five-year network build-out, it will not serve all customers in the Local Exchanges at issue in the Applications.<sup>2</sup> In fact, Frontier will remain the carrier for the majority of access lines in the Local Exchanges.<sup>3</sup> E Fiber must, therefore, rely on Frontier's continued presence in the Local Exchanges to provide service as the COLR to the customers that are the most expensive to serve. E Fiber cannot be designated as a COLR to only some of the customers in any exchange and *should not* be designated as a COLR unless and until it can fulfill the "obligation to provide public telecommunication service to any customer or class of customers that requests service within the local exchange." Utah Code § 54-8b-15(1)(b)(ii)(B).

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<sup>1</sup> Notice at 2.

<sup>2</sup> See, e.g., Direct Testimony of Carl E. Erhart (9/25/2020) at lines 263-298; Hearing Tr. (10/13/2020) at 154:8-155:9, 196:3-25; Frontier Motion for Partial Summary Judgment (7/27/2020) at 11-12; Frontier's Reply in Support of Motion for Partial Summary Judgment (10/9/2020) at 6.

<sup>3</sup> See Hearing Tr. (10/13/2020) at 154:8-155:9, 196:3-25.

E Fiber cannot be designated as a COLR to fewer than all of Frontier’s current customers in the Local Exchanges—at least not in this docket. Utah Code § 54-8b-15(1)(b) defines “carrier of last resort” as either (i) an “incumbent telephone corporation,” or (ii) a telecommunications corporation that has a CPCN and “an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.” E Fiber is not “an incumbent telephone corporation” in the Local Exchanges and, therefore, to qualify as a “carrier of last resort” it must have a CPCN and “an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.” Utah Code § 54-8b-15(1)(b)(ii)(B). The COLR definition requires that, if E Fiber is designated as a COLR in an exchange, it must be designated as a COLR to *all* of the customers in that exchange.

Pursuant to Utah Code § 54-8b-3 the Commission may issue an exemption to the COLR requirement but may do so only after public notice and a hearing and only after the Commission considers certain public interest factors. The Commission may issue such an exemption only if it determines that the telecommunications corporation is subject to effective competition and only if the exemption is in the public interest. *See* Utah Code § 54-8b-3(4). Before granting the exemption, the Commission must first consider “all relevant factors,” which may include “the extent to which competing telecommunications services are available from alternative telecommunications providers,” “the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonable available at comparable prices, terms, quality, and conditions,” among other factors. In addition, before granting such an exemption the Commission “shall consider, in addition to

other relevant factors, the impact the proposed exemption would have on captive customers of the telecommunications corporation.” *Id.* § 54-8b-3(5). None of the required or relevant factors have been addressed in this docket and, as such, the Commission cannot exempt E Fiber from the COLR requirements in this docket.

E Fiber’s proposal in this docket rather transparently seeks to build a fiber to the home network to provide service to those customers it can most economically serve and to require the most expensive to serve customers to pay the high costs of extending E Fiber’s infrastructure to remote areas or to require Frontier to continue to serve those customers. Under these circumstances, and if E Fiber is granted a CPCN in the Local Exchanges, any future docket opened pursuant to Utah Code § 54-8b-3 to consider exemptions to the COLR requirement should consider whether Frontier, rather than E Fiber, should be exempted from such obligations. That docket is not before this Commission, and E Fiber should not be designated as a COLR unless and until it is prepared to fulfill the required “obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.” Utah Code § 54-8b-15(1)(b)(ii)(B).

**B. This Commission May Not Divide Future UUSF Funding between E Fiber and Frontier based on the Record in this Docket**

In the Notice, the Commission requests comment on the following questions regarding the potential administration of the UUSF if the Commission were to grant the Applications and allow a second UUSF-eligible carrier to provide service in the Local Exchanges:

*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?*

Frontier has previously submitted testimony and comments in this docket addressing this topic and will not repeat the substance of those comments here.<sup>4</sup> E Fiber testified in this docket that it would be good public policy to limit UUSF eligibility to only one rate-of-return regulated COLR in each exchange, and advocated that Frontier be barred from receiving UUSF distributions if E Fiber were granted the requested CPCNs.<sup>5</sup> E Fiber later retracted its request to bar Frontier from receiving UUSF distributions when it became clear that this was not legally supportable,<sup>6</sup> but the public interest concerns that arise from having two rate-of-return regulated carriers of last resort in an exchange remain.

The UUSF Statute gives the Commission some discretion to disallow certain costs to be considered, but there is no basis in the record in this docket for this Commission to make the type of categorical determination contemplated by the questions at issue. As an initial matter, the Utah Legislature established the UUSF to “provide a mechanism for a qualifying carrier of last resort to obtain specific, predictable, and sufficient funds” to provide certain services. Utah Code § 54-8b-15(2)(b). To provide the required level of certainty sufficient for a carrier to invest in new infrastructure, the Legislature created a formula for determining eligibility such that a “rate-of-return regulated carrier of last resort *is eligible* for payment” from the UUSF if it provides certain services and if its “reasonable costs, as determined by the commission” exceed the sum of its revenues from certain sources. *Id.* § 54-8b-15(4) (emphasis added). Once the rate-of-return

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<sup>4</sup> See, e.g., Direct Testimony of Carl E. Erhart (9/25/20) at lines 322-394; Rebuttal Testimony of Carl E. Erhart (10/16/20) at lines 113-156; see also generally Surrebuttal Testimony of Carl E. Erhart (10/26/20).

<sup>5</sup> See Direct Testimony of Brock Johansen (6/24/20) at lines 198-200.

<sup>6</sup> Rebuttal Testimony of Brock Johansen (10/16/20) at lines 20-60.

regulated carrier is deemed eligible by this statutory formula, the carrier “*is entitled* to a rate of return equal to the weighted average cost of capital rate of return prescribed by the Federal Communications Commission for rate-of-return regulated carriers.” Utah Code § 54-8b-15(5)(a) (emphasis added). The statute is designed to provide certainty for a carrier to make investments in the eligible services and does not give the Commission discretion to determine a carrier’s eligibility to receive UUSF distributions on terms different than those set forth in the statute.

The Commission has some limited discretion in determining whether a carrier is eligible to receive UUSF distributions. As noted above, UUSF eligibility is guaranteed for a rate-of-return regulated COLR if its “reasonable costs” exceed certain types of revenues. This Commission has discretion to determine whether a carrier’s reported costs are “reasonable costs.” The Commission’s limited discretion to define “reasonable costs” does not, however, allow the Commission to “divide potential future UUSF funding between E-Fiber and Frontier.” The Commission could not, for instance, issue a ruling that either E Fiber or Frontier is eligible to receive no more than 50% of the UUSF distributions in any of the Local Exchanges. The discretion to determine what costs are “reasonable costs” does not allow the Commission to manipulate the distribution of funds to one carrier or another *after* eligibility is determined.

In addition, there is no basis on the record before this Commission to categorically determine what costs will be “reasonable costs” for E Fiber or Frontier to make. As a carrier of last resort, Frontier has an obligation to provide service to all customers in all parts of each of the Local Exchanges. Any rule the Commission adopts to limit what costs can be deemed “reasonable costs” would limit Frontier’s ability to meet its COLR obligations. Parties in this docket have suggested that the Commission could categorically rule that, once one party deploys fiber facilities

to one area of an exchange, any costs incurred by the other party to deploy fiber to that area are not “reasonable costs.” This type of categorical rule would limit Frontier’s ability to provide upgraded services to customers to whom Frontier retains a COLR obligation. As noted above, Frontier will retain customers in areas where E Fiber has deployed its fiber facilities. A categorical rule that bars Frontier from receiving UUSF funds to provide upgraded fiber-based service to the customers it retains in areas to which E Fiber has deployed fiber facilities would prejudice Frontier’s efforts to provide upgraded services to its customers.

Such a categorical rule would also effectively eliminate competition between Frontier and E Fiber. E Fiber seeks a CPCN pursuant to the “competitive entry” rules established in Utah Code § 54-8b-2.1. That statute allows the Commission to issue a CPCN authorizing a carrier “to compete in providing local exchange services or other public telecommunications services” within an exchange. *See* Utah Code § 54-8b-2.1(1). All but one of the Local Exchanges at issue in this docket are small rural exchanges with fewer than 5,000 access lines and if the Commission grants a CPCN to E Fiber in those exchanges it “shall impose an obligation upon the competitive telecommunications corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange.” Utah Code § 54-8b-2.1(4). The categorical rule limiting UUSF funding as discussed herein could result in either Frontier or E Fiber being effectively prevented from providing competitive service throughout an exchange and/or prevented from providing similar services to their respective customers within an exchange.

The limited discretion available to this Commission in determining UUSF eligibility does not readily allow the Commission to make categorical determinations such as the one proposed by the parties to this docket. Based on the record now before this Commission, there is not a basis

upon which to issue such a categorical determination. As such, Frontier recommends that the Commission decline to do so.

DATED: March 15, 2021

Respectfully submitted,



By:

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Certificate of Service  
**Docket No. 20-2618-01**

I hereby certify that a true and correct copy of the foregoing was served by email this 15th day of March 2021, on the following:

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