JUSTIN C. JETTER (#13257)
PATRICIA E. SCHMID (#4908)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0335
jjetter@agutah.gov
pschmid@agutah.gov
Attorneys for the Utah Division of Public Utilities

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of Emery Telecommunications & Video, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund Support	**Docket No. 21-2272-01**

STIPULATION AND SETTLEMENT AGREEMENT

Pursuant to Utah Code 54-7-1 the Utah Division of Public Utilities ("DPU") and Emery Telecommunications & Video, Inc. ("ET&V"), (collectively the "Stipulating Parties" or the "Parties"), through their respective undersigned representatives enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Petition filed by ET&V in this docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the "Commission" or the "PSC") pursuant to the Commission's Rules of Practice and Procedure, Utah Admin. Code R746-l.

INTRODUCTION

1. On December 7, 2021, the Federal Communications Commission ("FCC") issued its Auction Closing Public Notice for Auction 904 awarding ET&V Rural Development Opportunity Fund ("RDOF") support of $9,822,953.00 over 10 years to provide service to 1602 assigned

locations in the state of Utah.

2. In accordance with the FCC's RDOF requirements for ET&V to receive the RDOF support that it has been awarded, it must demonstrate to the FCC that it has been designated as an ETC in the areas where it was the winning bidder. The FCC's deadline for submitting proof of the ETC designation is June 7, 2021.

3. To be designated as a federal Eligible Telecommunications Carrier ("ETC") under Section § 214(e)(1) of the Communications Act of 1934, an applicant must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its service offerings and the charges therefore, using media of general distribution.

4. The FCC supported services under 47 C.F.R. § 54.101(a) are:

a. Voice telephony service, consisting of voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers; and

b. Broadband Internet access service defined by the FCC in 47 C.F.R § 8.1(b) and 47 C.F.R. § 54.5.

5. On February 9, 2021 ET&V filed a petition for designation as an ETC for purposes of receiving FCC RDOF support.

6. A scheduling conference was held on February 17, 2021 and a schedule was set.

7. On February 24, 2021 ET&V filed Direct Testimony of Brock Johansen.

8. The Parties to this Stipulation have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree this Stipulation should have no legal effect outside of this docket.

AGREEMENT

Based on their review of the testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. ET&V is a provider of broadband internet access and voice services.

2. ET&V seeks ETC designation authorizing ET&V to obtain RDOF support to provide voice and broadband services to Utah customers in the areas awarded in the RDOF auction ("RDOF Areas").

3. ET&V's RDOF Areas are identified on the map included as Attachment A to this Stipulation.

4. ET&V will comply with all applicable FCC and Utah ETC requirements.

5. Under the FCC's requirements, ET&V must commit to provide Internet speeds of 1 Gbps with low latency to a minimum of 1602 locations within the RDOF Areas.

6. ET&V will also offer voice service that includes unlimited local and long distance calling within the United States and access to emergency services via 911 or E-911, wherever available from local government or public safety organizations.

7. ET&V meets and will continue to meet the requirements for federal ETC designation and will comply with all federal requirements for the services it offers in Utah as an ETC.

8. ET&V is not seeking Utah Universal Public Telecommunications Service Support Fund support at this time and reserves the right to file an appropriate application for Utah Lifeline support at a later date. However, ET&V will comply with applicable Utah ETC and Lifeline requirements.

9. ET&V's proposed RDOF supported services, further the statutory goal that services be available and affordable to all citizens of the State of Utah.

10. The Parties stipulate and agree that ET&V shall provide its services, including its ETC Lifeline universal service offerings, in Utah pursuant to this Stipulation. ET&V's provision of its universal service offerings as an ETC shall be governed by the following additional requirements:

A. ET&V will maintain a Utah-specific fact sheet that provides customers concise and complete information about the services ET&V will provide. ET&V will provide its Utah-specific fact sheet to the DPU and OCS prior to initiating service. ET&V will provide the fact sheet to prospective new customers, each new customer at the time of enrollment, and to existing customers upon request and will make the fact sheet publicly available for download by posting it on the ET&V website. ET&V agrees to promptly update the fact sheet anytime it changes its Utah service offers.

B. ET&V will comply with all applicable state service quality and consumer protection requirements.

C. If a Utah CPCN is necessary or becomes necessary for the service offerings provided by ET&V in the RDOF Areas of Utah, ET&V will seek modification of its Utah CPCN.

D. Approval of ET&V's Petition is conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees (subject to Utah Admin. Code R746-8-403), emergency services, and relay services.

E. ET&V agrees to adopt any changes to the Lifeline certification and verification process required by the FCC or by the Commission.

F. Upon implementing any changes to its Lifeline offerings, ET&V will timely file a notice with the Commission, DPU and OCS describing the changes.

11. ET&V will pay all state and local regulatory fees required by applicable laws of the State of Utah, including payments to the Utah Universal Service Support Fund and the Utah 911 Fund.

12. The Parties stipulate and agree that designating ET&V an ETC for the RDOF Areas in Exhibit A to the Petition serves the public interest, convenience, and necessity.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of ET&V's Petition, pre-filed Testimony and Exhibits. This Stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties may not be able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methods used

in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to, any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. The Parties will support the Commission's approval of this Stipulation. As applied to the DPU, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best reasonable efforts to support the terms and conditions of this Stipulation. As applied to the DPU, the phrase "use its best reasonable efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four (4) immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order

within five (5) business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two (2) or more separate, conforming copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 7th day of April, 2021.

THE UTAH DIVISION OF PUBLIC UTILITIES

Chris Parker, Director
160 E 300 S, 4th Floor
Salt Lake City, UT 84114-6751

Dated this 7th day of April, 2021.

FOR EMERY TELECOMMUNICATIONS & VIDEO, INC.

Kira M. Slawson
Attorney for Applicant
257 East 200 South, Suite 800
Salt Lake City, UT 84111

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 7th day of April, 2021.

THE UTAH DIVISION OF PUBLIC UTILITIES

_____

Chris Parker, Director
160 E 300 S, 4th Floor
Salt Lake City, UT 84114-6751

Dated this 7th day of April, 2021.

FOR EMERY TELECOMMUNICATIONS & VIDEO, INC.

_____

Kira M. Slawson
Attorney for Applicant
257 East 200 South, Suite 800
Salt Lake City, UT 84111

CERTIFICATE OF SERVICE

I certify that on April 8, 2021, I caused a true and correct copy of the foregoing to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket 21-2272-01 as indicated below:

BY Electronic-Mail:

Emery Telecommunications & Video, Inc.
Brock Johansen bjohansen@emerytelcom.com

Blackburn & Stoll, LC
Kira M. Slawson kslawson@blackburn-stoll.com

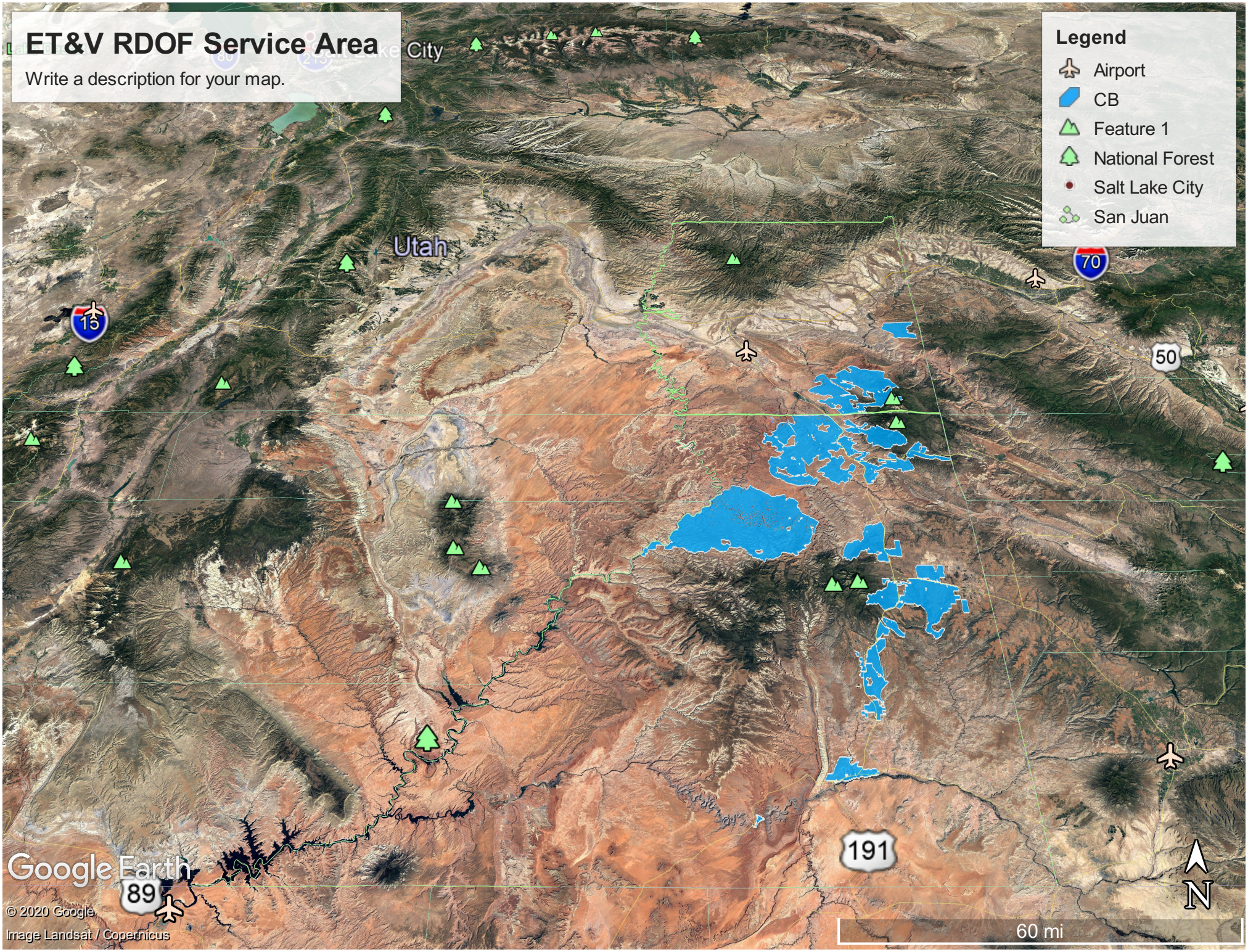
Office of Consumer Services
Alyson Anderson akanderson@utah.gov
Bela Vastag bvastag@utah.gov
Alex Ware aware@utah.gov

Utah Attorney General's Office
Assistant Attorney Generals
Justin Jetter jjetter@agutah.gov
Patricia Schmid pschmid@agutah.gov
Robert Moore rmoore@agutah.gov

/S/ *Madison Galt*
Madison Galt, Legal Assistant
Utah Division of Public Utilities

Attachment A

Map of RDOF Service Area


ET&V RDOF Service Area
Write a description for your map.
Legend
Airport
CB
Feature 1
National Forest
Salt Lake City
San Juan
City
Utah
15
70
50
191
89
Google Earth
© 2020 Google
Image Landsat / Copernicus
N
60 mi