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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of the Petition of E Fiber Moab,
LLC for Designation as an Eligible
Telecommunications Carrier in the State of
Utah for the Purpose of Receiving Rural
Digital Opportunity Fund and Lifeline
Support**

Docket No. 21-2618-01

**PETITION OF E FIBER MOAB, LLC FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
IN THE STATE OF UTAH FOR THE PURPOSE OF
RECEIVING RURAL DIGITAL OPPORTUNITY FUND AND LIFELINE SUPPORT**

I. INTRODUCTION

On December 7, 2020, the FCC issued a Public Notice closing Auction 904 (the “Auction”) and announcing the winning bidders in the Auction. Emery Telephone was selected by the Federal Communications Commission (“FCC”) as a winning bidder in the Rural Digital Opportunity Fund (“RDOF”) to provide broadband and voice service in certain areas in Grand and San Juan Counties, Utah. Pursuant to the procedures developed by the FCC, Emery Telephone initially assigned the winning bids in the Service Area to its wholly owned subsidiary, Emery Telecommunications & Video, Inc. (“ET&V”). On February 9, 2021, ET&V Petitioned the Commission for ETC designation. A Stipulation and Settlement Agreement was reached

between ET&V and the Division of Public Utilities and was filed with the Commission on April 8, 2021.

However, on May 10, 2021, the Utah Public Service Commission (“Commission”) issued an Order granting a Certificate of Public Convenience and Necessity (“CPCN”) to E Fiber Moab, LLC (“E Fiber Moab”) authorizing E Fiber Moab to provide facilities-based local exchange service as a carrier of last resort in the Thompson and Moab exchanges in Grand and San Juan counties in Utah (the “Local Exchange Area”). On May 12, 2021, the Commission issued an Amended Order which included a finding that granting the CPCN to E Fiber Moab is in the public interest (the May 10, 2021 Order Granting the CPCN and the May 12, 2021 Amended Order are hereinafter collectively referred to as the “CPCN Order”). After receiving the CPCN Order, Emery Telephone contacted the FCC and requested that the winning RDOF bids in the RDOF Service Area be reassigned to its wholly owned subsidiaries E Fiber Moab and E Fiber San Juan, LLC (“E Fiber San Juan”) (E Fiber Moab and E Fiber San Juan are collectively referred to as the “E Fiber Entities”). The FCC approved the reassignment to the E Fiber Entities and ET&V moved to withdraw its Petition for ETC Designation on May 25, 2021, which the Commission granted on May 26, 2021. A list of the census block group numbers awarded to E Fiber Moab is attached as Exhibit 1 (the “E Fiber Moab RDOF Service Area”). E Fiber Moab was provisionally awarded \$1,790,011.00 to construct facilities and provide service in the E Fiber Moab Service Area.

Pursuant to 47 U.S.C. §214(e)(2) and 47 C.F.R. §54.101 through §54.207, E Fiber Moab hereby submits this Petition to the Commission for designation as an Eligible Telecommunications Carrier (“ETC”) in the E Fiber Moab RDOF Service Area and the Local Exchange Area in Utah for the purpose of receiving federal RDOF support, as well as federal

and state Lifeline support. A map showing the Local Exchange Area and the E Fiber Moab RDOF Service Area (collectively referred to herein as the “ETC Service Area”) is attached as Exhibit 2.

As the Commission is aware, pursuant to FCC and RDOF requirements, E Fiber Moab is required to be designated as an ETC in the E Fiber Moab RDOF Service Area within 180 days of the Auction Closing Public Notice (June 7, 2021) unless a waiver is sought and approved by the FCC. Under FCC Rules 47 CFR § 1.3, the FCC’s rules may be waived for good cause shown and the Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant deviation from the general rule; and (c) such deviation will serve the public interest. E Fiber Moab is petitioning the FCC for a waiver of the requirement to be designated as an ETC by June 7, 2021 to give this Commission additional time to process and approve E Fiber Moab’s Petition for ETC Designation in the ETC Service Area. However, E Fiber Moab requests expeditious action on this Petition.

Pursuant to 47 U.S.C. §214(e)(2), the Commission has the ability to grant the ETC designation and E Fiber Moab meets all the statutory and regulatory requirements for designation as an ETC. As demonstrated more fully below, granting ETC status to E Fiber Moab will benefit the public interest. In support of this Petition, E Fiber Moab states the following:

II. COMPANY BACKGROUND

A. Company Overview.

The legal name, address and telephone number of the Company, E Fiber Moab, LLC, and its designated contact person is as follows:

E Fiber Moab, LLC
Attn: Brock Johansen

455 East Highway 29
P.O. 629
Orangeville, UT 84537
Tel: 435-748-2223

E Fiber Moab is a Utah limited liability company organized on February 13, 2020 under the laws of Utah. Applicant is a wholly-owned subsidiary of Emery Telcom HC, Inc., a Utah corporation which is a wholly owned subsidiary of Emery Telephone. E Fiber Moab was issued a CPCN on May 10, 2021. E Fiber Moab will provide voice and broadband services in the ETC Service Area in Grand and San Juan Counties, Utah.

B. Identification of ETC Service Area.

The Petitioner seeks designation for the ETC Service Area identified on Exhibit 2, which includes the entire Thompson and Moab Exchanges and the entire E Fiber Moab RDOF Service Area where E Fiber Moab has provisionally been awarded RDOF support.

III. THE COMMISSION HAS AUTHORITY TO GRANT THE ETC DESIGNATION

In 1995, incumbent local exchange carriers were automatically granted ETC status in connection by the FCC. However, as the Commission is aware states are given authority by 47 U.S.C. §214(e)(2) to designate a qualified carrier as an ETC. Section 214(e)(2) specifically states that a State commission has authority to “designate a common carrier that meets the requirements of an ETC “for a service area designated by the State commission.” This Commission has previously exercised its authority to designate qualified carriers as ETCs’ in the petitions brought before the Commission. Historically, and most commonly, the petitions for ETC designation in Utah have been brought by wireless providers who have sought ETC status in Utah for purposes of providing wireless Lifeline service and participating in Federal and State Lifeline support.

More recently, however, the Commission has had the occasion to review petitions for ETC designation brought by applicants who have sought ETC designation for purposes of participating

in CAF Phase II universal service funds,¹ and for other applicants who are seeking ETC designation for RDOF support.² To date, the Commission has not declined to exercise jurisdiction over an application or petition for ETC designation.

Consistent with the Commission's exercise of jurisdiction over the other ETC petitions filed in Utah, E Fiber Moab asks the Commission to exercise similar jurisdiction over this Petition and designate E Fiber Moab as an ETC in the ETC Service Area, as a carrier of last resort, similar to the existing carriers of last resort in the State. Under the Act, a state public utilities commission with jurisdictional authority over ETC designations must designate a common carrier as an ETC if the carrier satisfies the requirements of Section 214(e)(1).

IV. E FIBER MOAB SATISFIES THE FEDERAL REQUIREMENTS FOR DESIGNATION AS AN ETC.

As shown above, Section 214(e)(2) of the Act gives State commissions authority to designate common carriers that meets certain requirements as an ETC for a service area designated by the State commission. The criteria for designation as an ETC are set forth in 47 U.S.C. Section 214(e)(1). Specifically, an applicant must: (i) be a common carrier that (ii) offer services that are supported by Federal Universal Service Support mechanisms either through its own facilities, or a combination of its own facilities and resale of another carrier's services; (iii) advertise the availability of such services and the charges therefor using a media of general distribution (iv)

¹ *In the Matter of the Petition of Viasat Carrier Services, Inc. for Designation as ETC to Receive Connect America Fund Phase II Auction Support for Voice and Broadband Services*, Docket 18-2610-01 ("Viasat Petition"); and *In the Matter of the Petition of Commnet Four Corners, LLC for Designation as an ETC for Purposes of Receiving CAF Phase II Support*, Docket No. 18-2609-01 ("Commnet Petition").

²² *In the Matter of the Application of Starlink Services, LLC for Designation as ETC for Purposes of Receiving RDOF*, Docket 21-2624-01 ("Starlink Application"); and *In the Matter of Albion Telephone Company, Inc. for Designation as ETC for Purposes of Receiving RDOF*, Docket 21-038-01 ("Albion Petition").

make Lifeline service available to qualifying low income consumers; (v) comply with service requirements; (vi) remain functional in emergency situations; (vii) satisfy consumer protection and service quality standards; (viii) will provide local usage plans comparable to ILECs already operating in the Service Area; (ix) will comply with all applicable reporting requirements; and (x) take steps to protect against fraud, waste and abuse of the federal USF. As demonstrated below, E Fiber Moab satisfies each of the above-listed requirements for ETC status.

A. E Fiber Moab is a Common Carrier.

E Fiber Moab is a common carrier as defined by 47 U.S.C. §153(11). 47 U.S.C. §153(11) provides that “common carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy...” E Fiber Moab will provide voice service and broadband Internet access service on a common carrier basis within the ETC Service Area. As such, E Fiber Moab is a common carrier. (See 47 USC §214(e)(1); 47 USC §153(11); and 47 CFR §54.201(d).

B. E Fiber Moab Will Offer Supported Services in the Local Exchange Area Using its Own Facilities and the Facilities of Its Affiliates.

47 USC § 214 (e) of the Act and 47 C.F.R. §54.101 provide that a common carrier seeking ETC designation must provide the services that are supported by Federal universal service support. E Fiber Moab’s service will be provided over E Fiber Moab’s existing facilities and new facilities to be constructed and owned by E Fiber Moab, together with facilities owned by its affiliates E Fiber San Juan and ET&V. Specifically, E Fiber Moab will offer (1) voice grade access to the public switched telephone network (“PSTN”) and eligible broadband internet access service; (2) unlimited local voice usage; (3) 911 & E911 enabled access to emergency services; (4) access to operator services; (5) access to directory assistance; (6) toll limitation for qualifying low-income customers. E Fiber Moab will be a full service wireline carrier. In areas of the Moab Exchange

located south of Moab in San Juan County, where facilities will be constructed by E Fiber San Juan utilizing RDOF funds, E Fiber Moab will utilize those facilities, consistent with the affiliate transaction rules, to serve the Moab Exchange. Similarly, in areas of the Moab Exchange located in Castle Valley, where facilities have been constructed by ET&V using Community Connect funding, E Fiber Moab will utilize those facilities, consistent with the affiliate transaction rules, to serve the Moab Exchange.

1. Voice Grade Access to the Public Switched Network and Eligible Broadband Internet Access Service. E Fiber Moab will provide voice grade access to the PSTN through its network facilities.³ E Fiber Moab's broadband internet access service will have the capability to transmit and receive data by fiber from all or substantially all Internet endpoints, including capabilities that are incidental to and enable the operation of the communications services, but excluding dial-up service.⁴

2. Minutes of Use for Local Service. As part of the voice grade access to the PSTN, an ETC must provide local usage to its customers. Local usage means an amount of minutes of use of exchange service provided free of charge to end users. E Fiber Moab's voice service will offer unlimited local calling at no additional cost to the customer beyond the monthly service charge.

3. Access to 911 and E911 Emergency Service. E Fiber Moab will provide 911 and E911 access for all its customers to the extent local government in its service area has implemented 911 or E911 systems, as required by 47 C.F.R. §54.101(a). E Fiber Moab will meet

³ 47 C.F.R. §54-101(a).

⁴ 47 C.F.R. §54.101(c).

this requirement by providing 911 and E911 service from local public service answering points (“PSAPs”).

4. Access to Operator Services. E Fiber Moab will provide customer access to operator services, which is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.⁵

5. Access to Directory Assistance. The FCC defines directory assistance as a service that “allows subscribers to retrieve telephone numbers of other subscribers.”⁶ E Fiber Moab will provide its customers access to directory assistance.

6. Toll Limitation for Qualifying Low-Income Customers. In its Lifeline Reform Order, the FCC stated that toll limitation would no longer be deemed a supported service.⁷ However, E Fiber Moab has the ability to provide toll limitation services to qualified low-income Lifeline customers.

5. Broadband Services. E Fiber Moab will provide broadband Internet access service that has the capability to transmit data to and receive data from all or substantially all of the Internet endpoints at download speeds in excess of 50Mbps, pursuant to 47 C.F.R. §54.101(a)(2). The rates for broadband service will be reasonably comparable to rates offered in rural Utah.

47 U.S.C Section 214(e)(1)(a) requires that a carrier must use its own facilities or a combination of its own facilities and resale of another carrier’s facilities in order to provide

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19448 ¶ 110 (1996).

⁶ *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking*, 12FCC Rcd 12817, 12823 n.14 (1998).

⁷ In the Matter of Lifeline and Linkup Reform and Modernization, et al., WC Docket 11-42, Report and Order, FCC 12-11, ¶367 (“Lifeline Reform Order”).

universal service supported services. E Fiber Moab does NOT seek forbearance from the “own facilities” requirement as E Fiber Moab will utilize its own facilities, and its affiliates’ facilities to provide its service. This network will be used for all calls to and from E Fiber Moab’s customers in Utah.

C. E Fiber Moab Will Advertise the Availability of Supported Services

E Fiber Moab will offer its voice service and broadband Internet access service to both residential and business customers in the ETC Service Area in Grand and San Juan Counties, Utah, and using media of general distribution such as billboard, radio, newspaper, television, direct mail, and Internet advertising, pursuant to 47 USC §214(e) and 47 C.F.R. §54.201(d), will advertise the availability and rates of the voice and broadband Internet access service throughout the ETC Service Area. E Fiber Moab will also have a website that provides information regarding the voice telephone and broadband Internet access service.

D. E Fiber Moab Will Make Lifeline Service Available to Qualifying Low-Income Consumers.

As required by 47 C.F.R. §54.405, upon designation as an ETC in the Service Area, E Fiber Moab will make available to qualified low-income consumers in the E Fiber Moab Local Exchange Area, a discounted service offering that meets all applicable Lifeline requirements. E Fiber Moab will advertise the Lifeline service by media of general distribution. In addition, E Fiber Moab will comply with the FCC’s revised rules regarding information to be included in marketing materials.⁸ Specifically, E Fiber Moab’s marketing materials will state, in easily understood language, that: (1) it provides a Lifeline service; (2) Lifeline is a government assistance program; (3) the service is non-transferable; (4) only eligible consumers may enroll in the program; (5) documentation is

⁸ See 47 C.F.R. §54.405.

required for enrollment and on-going eligibility; (6) the program is limited to one discount per household; and (7) E Fiber Moab is the provider of the service.⁹ Finally, E Fiber Moab will develop an information sheet that explains the program qualification process.

E. Service Requirements

Pursuant to 47 CFR §54.202(a)(1)(i), E Fiber Moab will provide telecommunications services to all its customers within the ETC Service Area by utilizing its own facilities and the facilities of its affiliates, ET&V and E Fiber San Juan, and certifies that it will comply with the service and performance requirements applicable to the support it receives consistent with 47 CFR §54.202(a)(1)(i).

F. E Fiber Moab Will Remain Functional in an Emergency Situation

Additionally, consistent with FCC rules, E Fiber Moab will have the ability to remain functional in emergency situations. Since E Fiber Moab will provide service using its own or affiliated facilities, E Fiber Moab will provide its customers functionality in emergency situations, including access to back up power, rerouting of traffic around damaged facilities, and managing traffic spikes resulting from emergencies.

G. Commitment to Consumer Protection and Service Quality

Under FCC guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.¹⁰ E Fiber Moab, in general, commits to satisfying all applicable consumer protection and service quality standards applicable to ETC

⁹ For Lifeline Broadband Internet Access Service, the retail service will be provided by E Fiber Moab's affiliate, Emery Telecommunications & Video, Inc., with the underlying wholesale broadband Internet access service provided by E Fiber Moab.

¹⁰ See 47 C.F.R. § 54.202(a)(3). E Fiber Moab notes that the FCC has waived this requirement because the FCC "adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones. *FCC ETC Procedure Notice 4-5*.

designated entities.

H. Protections Against Fraud, Waste and Abuse

E Fiber Moab will take all steps necessary to prevent fraud, waste, and abuse, and will comply with all applicable requirements adopted by the FCC for purposes of preventing fraud, waste, and abuse for Lifeline support, and including the Lifeline enrollment procedures and de-enrollment procedures outlined by the FCC in 47 C.F.R. §54.401 through §54.422.

I. Compliance with Subscriber Eligibility Determination and Certification.

E Fiber Moab will utilize the National Verifier consistent with USAC's policies and procedures. E Fiber Moab's management team has extensive experience with the Lifeline National Verifier and eligibility and certification rules.

J. Compliance with FCC Rules on Deposits, Fees, and Reports.

In compliance with 47 C.F.R. Section 401(c), E Fiber Moab will not collect a deposit in order to initiate service for its Lifeline service plan. Additionally, in compliance with 47 C.F.R. §54.401(e) E Fiber Moab will not charge Lifeline customer a monthly number-portability charge. E Fiber Moab will comply with the FCC's annual reporting requirements for ETCs as set forth in 47 C.F.R. § 54.422.

V. E FIBER MOAB SATISFIES THE STATE REQUIREMENTS FOR RECEIVING STATE LIFELINE SUPPORT FROM THE UUSF.

The Commission has also adopted requirements for Lifeline support which are outlined in Utah Admin Code R746-8-403. The Commission's rules provide that state Lifeline support may not exceed \$3.50 per Lifeline subscriber per month of subscription to a service that (i) provides service over landlines; or (ii) meets FCC broadband requirements as set forth in 47 C.F.R. 54.408

and does not include a voice component.¹¹ The rules also state that the ETC will be eligible for ongoing Lifeline distribution if the company is an ongoing participant in an approved Lifeline program and if the Commission finds it is in the public interest.¹²

As discussed herein, E Fiber Moab's Lifeline offering will include unlimited voice services or fixed broadband Internet access service as follows:

- 25Mb X 5Mb with unlimited usage – \$44.95
- 100Mb X 100Mb with 1TB usage – \$54.95
- Unlimited usage 1G internet – \$64.95

E Fiber Moab's proposed offerings plainly meet the requirements as outlined by the Commission to be eligible for UUSF Lifeline support. E Fiber Moab's offerings also comply with the minimum FCC service standards and will enable Lifeline customers to receive the full value of their Lifeline subsidy. As discussed in Section VI. below, E Fiber Moab's request for ETC designation, including state Lifeline support from the UUSF is in the public interest.

Additionally, as a rate of return regulated carrier of last resort, E Fiber Moab hereby acknowledges it is required to comply with all the rules and regulations of the Commission lawfully imposed upon E Fiber Moab's provision of service contemplated by this Petition. Upon Commission request, E Fiber Moab shall be prepared to answer questions or present additional testimony or other evidence about its services within the state.

VI. DESIGNATION OF E FIBER MOAB AS AN ETC WILL SERVE THE PUBLIC INTEREST

¹¹ R746-8-403(2)(a)(i)-(iii).

¹² R746-8-403(1)

As stated above, under 47 U.S.C. Section 214(e)(2), “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier” for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(1).¹³

Designation of E Fiber Moab in the ETC Service Area is in the public interest. As stated above, E Fiber Moab has been recently granted a CPCN in the Local Exchange Area. In the CPCN designation proceeding, E Fiber Moab’s Chief Executive Officer, Brock Johansen, testified that E Fiber plans to build out fiber to the premise facilities to the residents and businesses in the Local Exchange Area. E Fiber Moab has been provisionally awarded \$1,790,011.00 in federal RDOF support over ten years in the E Fiber Moab RDOF Service Area which will directly benefit the citizen in the ETC Service Area. The FCC has determined that the voice and broadband services that E Fiber Moab will deploy through RDOF support will advance the goal of the RDOF to “ensure continued and rapid deployment of broadband networks to unserved Americans.” RDOF support will allow E Fiber Moab to accelerate deployment of fiber facilities, and ultimately voice and broadband Internet access service to those who need it most in the underserved Local Exchange Area.

Additionally, designation of E Fiber Moab as an ETC will enable it to offer Lifeline services in the ETC Service Area, to bring an affordable voice and broadband service to low-income residents. With regard to Lifeline service, the FCC has stated that “the best way to [increase competition and innovation] is to increase the number of service providers offering Lifeline

¹³ 47 U.S.C. § 214(e)(1).

services.”¹⁴ Designation of E Fiber Moab as an ETC in the ETC Service Area will further the public interest by providing consumers with lower prices and higher quality services.

Finally, the designation of E Fiber Mob as an ETC and allowing it to receive reimbursement from the UUSF for State Lifeline will not have a negative impact on the UUSF. In the case of Lifeline support, an ETC only receives Lifeline support for the customers it obtains. Therefore, if E Fiber Moab’s offerings do not provide consumer benefits, then customers will not elect Lifeline service from E Fiber Moab and E Fiber Moab will receive no Lifeline support from the UUSF. In that case, no consumer or party is harmed and the UUSF is not impacted. On the contrary, if customers do choose the E Fiber Moab’s Lifeline service, there will be an impact to the UUSF, but other competitors will likely respond by improving their service offerings in order to retain or attract customers, and ultimately customers will benefit. To the extent E Fiber “wins” the customer from another Lifeline provider, the net result to the UUSF is the same.

VII. CONCLUSION

E Fiber Moab satisfies the state and federal requirements for ETC designation in the ETC Service, pursuant to 47 U.S.C. Section 214(e)(2), Utah Code Section 54-8b-15, and state and federal rules. Additionally, designating E Fiber Moab as an ETC is in the public interest because it will enable E Fiber Moab, a rate of return regulated, carrier of last resort, to offer Lifeline Service to the residents of the ETC Service Area.

For the reasons set forth herein, E Fiber Moab respectfully requests that the Commission promptly designate E Fiber Moab as an ETC in the ETC Service Area in the State of Utah for the

¹⁴ *In the Matter of Lifeline and Link Up Reform and Modernization et. al.*, WC Docket 11-42, Proposed Rule, FCC 15-71 (FCC rel. June 22, 2015) at ¶121.

purpose of receiving state and federal Lifeline support. E Fiber Moab requests expeditious review of this matter.

Dated this 28th day of May, 2021.

BLACKBURN & STOLL, LC



Kira M. Slawson
Attorneys for E Fiber Moab, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2021, I served a true and correct copy of E Fiber Moab, LLC's Petition for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving State and Federal Lifeline Support via e-mail transmission to following persons at the e-mail addresses listed below:

Utah Public Service Commission

PSC@Utah.gov

Division of Public Utilities

DPUDatarequest@utah.gov

Chris Parker chrisparker@utah.gov

Brenda Salter bsalter@utah.gov

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Office of Consumer Services

Michele Beck mbeck@utah.gov

Alyson Anderson akanderson@utah.gov

Robert Moore rmoore@ag.utah.gov



Kira M. Slawson

EXHIBIT 1

E FIBER MOAB RDOF Service Area - Census Blocks

EXHIBIT 2

E FIBER MOAB ETC SERVICE AREA MAP

E Fiber Moab LLC

Grand County Exchange Boundaries with included RDOF award areas

