

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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	<u>DOCKET NO. 21-2618-01</u>
Petition of E Fiber San Juan, 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	<u>DOCKET NO. 21-2619-01</u>
	<u>ORDER</u>

ISSUED: July 22, 2021

INTRODUCTION

On May 28, 2021, E Fiber Moab, LLC and E Fiber San Juan, LLC (collectively “E Fiber”) filed petitions with the Public Service Commission (PSC) for designation as eligible telecommunications carriers (ETC) for certain exchanges within Grand County and San Juan County, Utah (the “ETC Service Areas”)<sup>1</sup> and for the “Local Exchange Areas”<sup>2</sup> to receive federal Rural Digital Opportunity Fund (“RDOF”) support, as well as federal and state Lifeline support (“Petition”). ETC designation would authorize E Fiber to receive (1) the federal RDOF awards; (2) federal universal service Lifeline support for qualifying Utah customers; (3) federal tribal universal service Lifeline support for qualifying Utah customers; and (4) Utah Lifeline support for qualifying customers.

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<sup>1</sup> The ETC Service Areas are identified in the census blocks, and shown on the maps, attached as Exhibits 1 and 2, respectively, to E Fiber’s petitions.

<sup>2</sup> The Local Exchange Areas are the areas in which E Fiber is authorized to provide telecommunications services under its certificates of public convenience and necessity, as described later in this Order.

BACKGROUND

E Fiber holds certificates of public convenience and necessity (CPCN) authorizing it to provide facilities-based local exchange service as a carrier of last resort in the LaSal, Monticello, Blanding, Bluff, Mexican Hat, Thompson, and Moab exchanges in Grand County and San Juan County, Utah (excluding areas within the Ute Mountain Ute Reservation), consistent with the PSC's Amended Order on Review, Rehearing, or Reconsideration, issued May 12, 2021 ("May 2021 Order").<sup>3</sup> The E Fiber entities are wholly-owned subsidiaries of Emery Telcom HC, Inc., a Utah corporation which is wholly owned by Emery Telephone ("Emery"), an incumbent local exchange carrier that has been offering telecommunications services in Utah for decades.

Over the years, Emery has applied for, and been granted, federal funding to deploy broadband services in rural areas in the state of Utah and other surrounding areas. Most recently, on December 7, 2020, the Federal Communications Commission (FCC) awarded Emery funding from the RDOF to provide broadband and voice service in the ETC Service Areas. Emery initially assigned the winning bids to its wholly-owned subsidiary, Emery Telecommunications & Video, Inc. ("ET&V").

ET&V petitioned the PSC for ETC designation ("ET&V Petition")<sup>4</sup> and filed a Stipulation and Settlement Agreement ("Settlement") between ET&V and the Division of Public Utilities (DPU) with the PSC on April 8, 2021.<sup>5</sup> The PSC noticed a hearing to consider the

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<sup>3</sup> See *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.

<sup>4</sup> See *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 Opportunities Fund and Lifeline Support*, Docket No. 21-2272-01.

<sup>5</sup> *Id.*

Settlement which it subsequently canceled pursuant to a motion seeking to withdraw the ET&V Petition (the “Petition to Withdraw”).<sup>6</sup> The Petition to Withdraw states that the May 2021 Order granting E Fiber a CPCN obviates the need for ET&V to seek ETC designation. Instead, ET&V indicates that Emery, with the FCC’s approval, had “reassigned the winning RDOF bids in Utah to [E Fiber] [ ].”<sup>7</sup>

DPU filed its recommendations in the dockets June 28, 2021.<sup>8</sup> DPU supports the ETC designations but recommends the PSC include similar conditions that have been commonly agreed to by other ETCs. DPU recommends the PSC set the following general conditions:<sup>9</sup>

- E Fiber will maintain a fact sheet that provides customers concise and complete information about the services E Fiber will provide. E Fiber will provide its fact sheet to DPU and the Office of Consumer Services (OCS) before initiating service.
- E Fiber 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 its website.
- E Fiber will promptly update the fact sheet anytime it changes its service offerings.

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<sup>6</sup> See Order Granting Motion and Canceling Hearing, Docket No. 21-2272-01, issued May 26, 2021.

<sup>7</sup> Petition to Withdraw, at 2.

<sup>8</sup> Docket Nos. 21-2618-01 and 21-2619-01, Comments (“DPU Comments”).

<sup>9</sup> *Id.*, at 2 (DPU states that these are the same requirements from paragraphs 10 and 11 of the settlement stipulation between ET&V and DPU filed April 8, 2021 in Docket No. 21-2272-01 with the exception of paragraph 10(C) as E Fiber has been granted a CPCN).

- E Fiber 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 (subject to Utah Admin. Code R746-8-403) and the Utah 911 Fund, and must be able to show verified payment of all such applicable fees.
- E Fiber will adopt any changes to the Lifeline certification and verification process required by the FCC or the PSC.
- E Fiber's service offerings will meet all applicable Lifeline requirements.
- Upon implementing any changes to its Lifeline offerings, E Fiber will timely file a notice with the PSC, DPU, and OCS describing the changes.

DPU also states that the “management, facilities, and operations will remain effectively the same as between the two affiliates [ET&V and E Fiber] with common ownership and management personnel. Therefore, [DPU] is comfortable supporting approval of the petitions for ETC status from E Fiber without additional need for discovery or further review. [DPU] supports the efficient process of an informal review given the circumstances. However, [DPU] recommends that the [PSC] include as a condition of approval the terms that had been agreed to in the ET&V [D]ocket [No. 21-2272-01].”<sup>10</sup> DPU states that “[t]hey are primarily obligations that E Fiber would generally be expected to meet as a regulated telecom in Utah and are commonly agreed to by other ETCs in the state.”<sup>11</sup> DPU further states that it “has discussed this

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<sup>10</sup> DPU Comments, at 2-3.

<sup>11</sup> *Id.*, at 3.

with E Fiber and E Fiber does not object to meeting the same terms as those agreed to by ET&V.”<sup>12</sup>

The Ute Mountain Communications Enterprise (UMCE) also filed comments June 28, 2021, opposing the E Fiber San Juan petition for the purpose of receiving RDOF and lifeline support.<sup>13</sup> The UMCE contests the PSC’s jurisdiction to designate E Fiber as an ETC in White Mesa.<sup>14</sup> Further, UMCE explains E Fiber does not meet the statutory requirement of receiving Tribal consent for such an ETC designation.<sup>15</sup> UMCE also states that E Fiber does not currently hold a CPCN authorizing it to provide service in White Mesa.<sup>16</sup> UMCE asserts granting E Fiber ETC status in White Mesa would be counter to the public interest.<sup>17</sup>

On July 13, 2021, E Fiber filed reply comments, amending its Petition to eliminate the White Mesa RDOF Census Blocks, stating it seeks ETC status only for the remaining, non-tribal RDOF Census Blocks in the local exchange areas approved in the May 2021 Order.<sup>18</sup> E Fiber did not object to DPU’s recommended conditions, and no other parties filed comments.

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<sup>12</sup> *Id.*

<sup>13</sup> Comments of Ute Mountain Communications Enterprise in Opposition to Petition of E Fiber San Juan, 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 (“UMCE Opposition”), at 2.

<sup>14</sup> UMCE Opposition, at 4-5.

<sup>15</sup> *Id.*, at 7-9.

<sup>16</sup> *Id.*, at 4.

<sup>17</sup> *Id.*, at 7.

<sup>18</sup> Reply Comments of E Fiber San Juan, LLC and Amendment to Petition of E Fiber San Juan, 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 (“Reply Comments”), at 3.

**FINDINGS, CONCLUSIONS, AND ORDER**

DPU recommends the PSC grant the Petition on the condition that E Fiber be subject to the same requirements its affiliate, ET&V, agreed to in the Settlement. Consistent with the Amended Petition, the DPU Comments, and the Settlement, E Fiber asserts that:

1. E Fiber is a provider of eligible broadband internet access and voice grade services.
2. E Fiber seeks ETC designation authorizing E Fiber to obtain RDOF support to provide voice and broadband services to Utah customers in the areas awarded in the RDOF auction, as amended in its Reply Comments (specifically excluding the White Mesa RDOF Census Blocks), as well as in the Local Exchange Areas.
3. E Fiber will comply with all applicable FCC and Utah ETC requirements.
4. E Fiber commits to 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 50 Mbps.
5. E Fiber will also offer unlimited local voice usage, access to emergency services via 911 and E-911, wherever available from local government or public safety organizations, and operator and directory assistance services.
6. E Fiber will provide toll limitation for qualifying low-income customers.
7. E Fiber 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. E Fiber will comply with applicable Utah ETC and Lifeline requirements.
9. E Fiber's proposed RDOF supported services further the statutory goal that services be available and affordable to all citizens of the State of Utah.

In its Reply Comments, E Fiber withdrew the White Mesa RDOF Census Blocks from its Petition, and correspondingly amended its original petition to reflect the removal of the area (“Amended Petition”). Consequently, there is no opposition to the Amended Petition. Based on this, and after consideration of the Amended Petition, the submitted written testimony, the representations in the DPU Comments, E Fiber’s commitments as referenced in its Amended Petition and in this Order, and E Fiber’s Reply Comments, the PSC finds and concludes that approval of the Amended Petition is in the public interest and that it is just and reasonable in result. The PSC therefore grants the Amended Petition, as conditioned, and so long as E Fiber meets its commitments in the Amended Petition and the requirements set forth in this Order.

DATED at Salt Lake City, Utah, July 22, 2021.

/s/ Yvonne R. Hogle  
Presiding Officer

Approved and Confirmed July 22, 2021, as the Order 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#319673

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.



CERTIFICATE OF SERVICE

I CERTIFY that on July 22, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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Administrative Assistant