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Attorneys for Applicant ExteNet Asset Entity, LLC

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Application of EXTENET ASSET ENTITY, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities- Based Public Telecommunications Services within the State of Utah	Docket No. 21-2628-01 APPLICATION
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APPLICATION

ExteNet Asset Entity, LLC (“EAE” or “Applicant”), by its undersigned counsel and pursuant to Chapter 8b of Title 54 of the Utah Code; the Commission’s Rules of Practice and Procedure, Utah Admin. Code §§ 746-349-1 et seq.; and the federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., hereby applies to the Utah Public Service Commission for a certificate of public convenience and necessity (“CPCN”) authorizing Applicant to operate as a provider of resold and facilities-based public telecommunications services in the State of Utah.

As a result of an intra-corporate assignment transaction (“*Pro Forma* Assignment”),¹ EAE will take over certain operations and assets from EAE’s indirect parent, ExteNet Systems, Inc.

¹ ESI and EAE will separately file an application for approval from the Commission for this *Pro Forma* Assignment.

(“ESI”), which currently holds authority to operate in Utah.² Following the *Pro Forma* Assignment and grant of the CPCN requested herein, EAE will primarily provide services and networks, including dark fiber, targeted to wireless service providers (“WSPs”). ESI will continue to operate under its existing certificate and will focus on continuing to develop, sell, and construct new distributed networks and providing “lit” services to commercial users and new services.

In support of its Application, EAE provides the following information pursuant to Utah Admin. Code R746-349:

I. GENERAL INFORMATION

A. Corporate Information

Applicant’s legal name is “ExteNet Asset Entity, LLC.” Applicant may be reached at its principal place of business:

ExteNet Asset Entity, LLC
3030 Warrenville Road, Ste. 340,
Lisle, IL 60532
Telephone: (630) 505-3800
www.extenetsystems.com

EAE was formed as a Delaware limited liability company on August 24, 2018. EAE’s formation documents and its Utah Certificate of Existence are attached as **Exhibit A** and **Exhibit B**, respectively.

EAE is a direct, wholly owned subsidiary of ExteNet Issuer, LLC, which in turn is wholly owned by ExteNet Guarantor, LLC, which in turn is wholly owned by ESI. ESI is a privately held Delaware corporation and a direct, wholly owned subsidiary of Odyssey Acquisition, LLC (“Odyssey”), a Delaware limited liability company. Odyssey is an indirect, wholly owned

² In Utah, ESI provides services limited to distributed antenna system through which it may provide transport and backhaul services to other carriers and may not offer telecommunications services to the general public pursuant to authority granted by the Commission on March 9, 2016 and CPCN No. 2586.

subsidiary of Mount Royal Holdings, LLC (“Parent”), a Delaware limited liability company. Parent has executive offices located at 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487. Parent has no majority owner, but rather is owned by multiple private equity firms, an insurance company, and certain individuals in management of ESI.

B. Contact Information

Correspondence or communications pertaining to this Application should be directed to:

William J. Evans
Adam E. Weinacker
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
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With a copy to:

Ronald W. Del Sesto
Stephany Fan
Morgan Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, DC 20004
202-739-3000 (tel)
202-739-3001 (fax)
ronald.delsesto@morganlewis.com
stephany.fan@morganlewis.com

Questions concerning the ongoing operations of Applicant following certification should be directed to:

Brian S. Kirk
Deputy General Counsel
ExteNet Systems, Inc.
3030 Warrenville Road, Ste. 340,
Lisle, IL 60532
Phone: 630-505-3800
compliance@util.extenetsystems.com

Applicant’s registered agent in the State of Utah is:

Corporation Services Company
10 E. South Temple, Suite 850
Salt Lake City, UT 84133

C. Customer Service Information

EAE's toll-free number for customer inquiries is 1-888-892-5327.

1. R746-349-3(A)(1). Technical, Financial, and Managerial Abilities

Applicant's indirect parent, ESI, will provide all employees' services required to manage and operate EAE's assets and business in Utah. ESI's financial, technical, and managerial qualifications are stated in the body of this Application, specifically in paragraph 11, and in the Exhibits hereto.

2. R746-349-3(A)(2). Proof of Bond

Applicant provides proof of a bond in the amount of \$100,000 for customer deposits or other customer and state fund liabilities as **Exhibit E**.

3. R746-349-3(A)(3). Facilities to Be Used

The telecommunications services EAE expects to provide initially will include point-to-point telecommunications services. These services will be offered to WSPs, other telecommunications carriers and communications providers. Applicant will initially utilize the existing network infrastructure of ESI in Utah, which will be transferred to EAE as described above in connection with the *Pro Forma* Assignment, but also seeks authority to provide service via resale arrangements. EAE does not intend to furnish switched voice services or dial tone and has no immediate plans to provide service to residential customers or business customers other than WSPs and telecommunications carriers.

(a) Description of network

Founded in 2002, ESI and its subsidiaries (collectively, "ExteNet") design, build, own and operate distributed networks for use by national and regional WSPs in key strategic markets in

North America. Using fiber-fed distributed antenna systems, small cells, Wi-Fi and other technologies, ExteNet deploys distributed networks to enhance coverage and capacity and enable superior wireless service in both outdoor and indoor environments. Primary markets addressed by ExteNet include outdoor distributed networks in a variety of densely occupied or heavily traveled settings, and venues used for sports and entertainment events, the hospitality industry, commercial buildings, and healthcare facilities. ExteNet also provides private lines or IP-based transport services to other carrier and enterprise customers. In Utah, ESI has received authority to create and administer DAS, through which it provides transport and backhaul services to other carriers. *See* Certificate 2586, Docket No. 16-2586- 01 (issued March 9, 2016).

As a result of the *Pro Forma* Assignment, ESI will assign to EAE, and EAE will thereafter, operate certain network infrastructure and related assets, including ESI's customer accounts and contracts, antennas, fiber and other telecommunications equipment, with which EAE will serve the WSP customers which are parties to the assigned contracts. EAE will not furnish switched voice services or dial tone. Instead, it will provide service only to other carriers on a wholesale basis. EAE's services are subject to availability of equipment and technical/economic feasibility of constructing or leasing necessary facilities. EAE installs its equipment on or in existing infrastructure such as utility poles and conduit wherever possible, but it does place its own infrastructure if there are no commercially reasonable options using existing infrastructure.

4. R746-349-3(A)(4). Services to Be Offered

(a) R746-349-3(A)(4)(a). Classes of customers

The Applicant's customer base will be WSPs that will be able to improve their network coverage by filling in "dead spots," or increase their network capacity to provide services in certain geographic areas. Through such arrangements, EAE's wholesale customers will be empowered to provide telephony to their retail end user subscribers without expensive and time-consuming

installation of telecommunications equipment. These wholesale customers will be responsible for determining the actual configuration and combination of services for their retail end user customers.

(b) R746-349-3(A)(4)(b). Location of service

EAE seeks authority to provide service to and from all points in Utah where demand for its services arises except within any local exchange that has fewer than 5,000 lines and that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state.

(c) R746-349-3(A)(4)(c). Types of services to be offered

EAE proposes to operate in Utah offering non-switched point-to-point telecommunications services to wireless carriers on a competitive basis. EAE's communications services will be available on a full-time basis, twenty-four (24) hours a day, seven (7) days a week. EAE does not presently plan to offer local exchange service in Utah. If in the future it desires to offer local exchange service, it will seek the appropriate authority from the Commission.

5. R746-349-3(A)(5). Access to Standard Services

It will be the responsibility of EAE's wholesale customers to provide end user services such as directory assistance, directory listings, operator services and 911 either through their own operations or by making arrangements for those services from underlying carriers.

If EAE desires to provide local exchange service to end users in the future, it will seek to amend its CPCN to provide local exchange service and, at that time, explain how it proposes to provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services.

6. R746-349-3(A)(6). Implementation Schedule

EAE anticipates offering services as soon as reasonably practicable after receiving approval of its Application for a CPCN.

7. R746-349-3(A)(7). Professional Experience and Education of Managerial Personnel

Applicant will be managed and operated by capable, experienced executives and employees of its indirect parent, ESI, which individuals possess extensive managerial, financial and technical experience in the telecommunications industry. ESI's technical and managerial personnel are well qualified to direct the provisioning, delivery, billing and customer service for EAE's proposed services. Descriptions of the extensive telecommunications and managerial experience of ESI's key management personnel and officers are attached as **Exhibit C**.

Corporate Officer and Directors

James Hyde – President
Richard Coyle – Executive Vice President
Garth Williams – Executive Vice President and Treasurer
H. Anthony Lehv – Senior Vice President & Secretary

James Hyde – Director
Marc Ganzi – Director
Brian McMullen – Director

8. R746-349-3(A)(8). Employee Organization Chart

In lieu of an employee organizational chart, EAE offers the biographies of its key personnel set forth in **Exhibit C** to satisfy R746-349-3(A)(8). Although EAE's management team will be based in Illinois, it will utilize local labor and other local services and equipment to construct and maintain networks in Utah.

9. R746-349-3(A)(9). Chart of Accounts

The financial information contained in **Confidential Exhibit D** was compiled in accordance with Generally Accepted Accounting Principles ("GAAP"). The requirement for a

chart of accounts is typically necessary with an entity using regulated rate base or rate of return methodology so that authorities can be confident of the proper classification of revenue and expenses for end user price calculations in a monopoly environment. This is not the financial environment surrounding the services offered by EAE. Therefore, Applicant asks that the requirement for a chart of accounts be waived.

10. R746-349-3(A)(10). Financial Statements

EAE is financially qualified to provide facilities-based and resold public telecommunications services in Utah. In particular, EAE has access to the financing and capital necessary to conduct its telecommunications operations as specified in this application. Given that Applicant does not maintain financial statements separate from the consolidated financial statements of Applicant's parent company, ESI, for purposes of this Application, Applicant will rely on the audited financial statements of ESI to demonstrate Applicant's financial qualification to operate within the State of Utah. Financial information for ESI, Applicant's parent company, is provided as **Confidential Exhibit D**.

ESI is a privately held company, and its financial information is not publicly available. ESI takes all reasonable steps to protect the privacy of its financial information. In situations where ESI must provide its financial information to other public utilities commissions or governmental entities, it does so under seal and requests confidential treatment. Therefore, the information provided in **Confidential Exhibit D** is proprietary and has been attached in a sealed envelope marked "**Confidential – Subject to Utah Public Service Commission Rules R746-1-602 and 603.**" As it contains sensitive information regarding ESI's business operations, EAE respectfully requests that this information be treated confidentially and not be released to any member of the public absent ESI's prior written permission.

(a) R746-349-3(A)(10)(a). Balance sheet, income statement and cash flow statement

The Company's financials are reported on a consolidated basis with its parent company, ESI. A Balance Sheet and Income Statement for ESI are attached hereto as **Confidential Exhibit D**. EAE respectfully requests that this exhibit be treated as Confidential Information subject to R746-1-602 and 603.

(b) R746-349-3(A)(10)(b). Letter from management

Confidential Exhibit D includes a verification attesting to the accuracy of the financial statements and that the statements were prepared according to GAAP.

(c) R746-349-3(A)(10)(c). Start-up company balance sheet

EAE is not a start-up company.

(d) R746-349-3(A)(10)(d). Financial statements of parent corporation

A financial statement for EAE's parent company, ESI, is attached as **Confidential Exhibit D**.

11. R746-349-3(A)(11). Financial Statements to Demonstrate Sufficient Financial Ability on the Part of the Applicant's Statements

(a) R746-349-3(A)(11)(a). Positive net worth

See **Confidential Exhibit D**.

(b) R746-349-3(A)(11)(b). Sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations.

As discussed above, EAE has access to the financing and capital necessary to conduct its telecommunications operations through its parent, ESI. A financial statement for EAE's parent company, ESI, is attached as **Confidential Exhibit D**.

(c) R746-349-3(A)(11)(c). Proof of bond

Applicant provides proof of a bond in the amount of \$100,000 for customer deposits or other customer and state fund liabilities as Exhibit E.

12. R746-349-3(A)(12). Five Year Projection of Expected Operations

(a) R746-349-3(A)(12)(a). Pro-forma income and cash flow statements.

See Confidential Exhibit D for financial status.

(b) R746-349-3(A)(12)(b). Types of technology to be deployed.

EAE will deploy the technology specified above in Section 3 of this Application.

(c) R746-349-3(A)(12)(c). Maps of facilities locations.

EAE does not have any existing facilities in Utah.

13. R746-349-3(A)(13). Implementation Schedule

EAE intends to begin offering its services as soon as reasonably practicable after it receives certification.

14. R746-349-3(14). Technical and Managerial Abilities

Pursuant to a Management Agreement between EAE and ESI, ESI will provide all employees' services required to manage and operate EAE's assets and business. ESI's technical and managerial personnel are well qualified to direct the provisioning, delivery, billing and customer service for EAE's proposed services. The senior management of ESI has great depth of experience in the telecommunications industry, and offers extensive telecommunications business, technical, and managerial expertise to EAE. Descriptions of the extensive telecommunications and managerial experience of ESI's key management personnel and officers are attached as Exhibit C.

(a) R746-3493(14)(a). Proof of certification in other jurisdictions

Applicant is currently authorized to provide intrastate telecommunications service in Delaware, the District of Columbia, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Nevada, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Washington, and Wisconsin. In addition to Utah, Applicant is in the process of seeking authorization to provide intrastate telecommunications services in the following jurisdictions: Arizona and North Carolina. Applicant has not been denied requested certification in any jurisdiction, nor has any certification been permanently revoked by any authority.

To avoid duplication of documents submitted to the Commission, Applicant submits as **Exhibit F** certifications from New York and Tennessee.

(b) R746-349-3(14)(b). 2 years of recent experience providing telecom service

EAE has provided distributed network services (*e.g.*, DAS and small cell) on a wholesale basis for less than two years. However, its indirect parent company, ESI, holds authorizations to provide intrastate telecommunications services in the District of Columbia and every state except Alaska, Iowa, Maine, Montana, North Dakota, Vermont, and Wyoming

15. R746-349-3(A)(15). Public Interest

Granting this Application will promote the public interest by increasing competition in the provision of telecommunications services in Utah. The entry of Applicant into the Utah telecommunications market will enhance competition in the provision of telecommunications services within the State of Utah. By enhancing competition, Applicant will bring significant benefits to telecommunications users within the State of Utah by providing: (a) lower-priced and better-quality service; (b) innovative telecommunications services; (c) efficient use of existing

communications resources; and (d) increased diversification and reliability in the supply of communications services. Given that EAE and ESI share the same management team, EAE's customers will benefit from that team's knowledge and experience in the Utah market. EAE will operate its networks and offer services designed to meet the individual needs of its customers in providing high-quality services to their end user customers in an efficient and cost-effective manner.

16. R746-349-3(A)(16). Authority to Conduct Business in Utah

Please see **Exhibit B.**

17. R746-349-3(A)(17). Unauthorized Switching, Solicitation of New Customers, and Prevention of Unauthorized Switching

No complaints have been made nor has any investigation been undertaken against Applicant or any of its affiliates for unauthorized switching ("slamming") or any other illegal activities. Applicant will not provide dial tone.

18. R746-349-3(A)(18). Applicant's Written Solicitation Policies

Since Applicant does not provide switched voice services to end users currently, Applicant does not have a written solicitation policy. To the extent that EAE provides local exchange services to end users in the future, Applicant will comply with all applicable laws and regulations to prevent the unauthorized switching of local service customers by the Applicant, its employees or agents.

WHEREFORE, EAE respectfully requests that the Utah Public Service Commission issue a Certificate of Public Convenience and Necessity authorizing EAE to provide resold and facilities-based public telecommunications services throughout the State of Utah except in local exchanges that have fewer than 5,000 lines and that are controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state.

Respectfully submitted this 6th day of April, 2021.

/s/ Adam E. Weinacker

William J. Evans

Adam E. Weinacker

Parsons Behle & Latimer

Attorneys for Applicant ExteNet Asset Entity, LLC

LIST OF EXHIBITS

- EXHIBIT A Formation Documents
 - EXHIBIT B Certificate of Authority to Transact Business in Utah
 - EXHIBIT C Management Biographies
 - EXHIBIT D Financial Information – **Confidential**
 - EXHIBIT E Proof of Bond
 - EXHIBIT F Certifications in Other States
- VERIFICATION