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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

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Supplemental Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Abdinasir Abdulle, Utility Technical Consultant Supervisor
Paul Hicken, Technical Consultant
Gary Smith, Utility Technical Consultant

Date: October 6, 2023

Re: **Docket No. 23-041-01**, Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah – 2022 Annual Report,
Docket No. 23-2618-01, E Fiber Moab, LLC – 2022 Annual Report; and
Docket No. 23-2619-01, E Fiber San Juan, LLC – 2022 Annual Report.

Response to the Commission

In this memorandum to the Public Service Commission (PSC or Commission), the Division of Public Utilities (DPU or Division) provides further explanation and basis for conclusions and recommendations regarding the review of the 2022 Annual Reports for Frontier Communications of Utah (Frontier), E Fiber Moab, LLC (E Fiber Moab), and E Fiber San Juan, LLC (E Fiber San Juan).

Issue

Utah Administrative Code R746-8-401 requires the DPU to make annual recommendations for monthly Utah Universal Service Fund (UUSF) distributions to eligible incumbent local exchange carriers (ILEC) based on the relevant established FCC rate of return and the ILEC's financial information from its last Annual Report filed with the Commission. Taking effect November 2022, Utah Administrative Code R746-349-10 governs competitive entry of a Carrier of Last Resort (COLR) into an area eligible for UUSF support and outlines capital

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expenditure recovery. During the Division's 2023 UUSF support review, competing COLRs operating within the same exchange service area appeared to be eligible for UUSF distributions based upon each COLR's Annual Report for calendar year 2022.

Background

On September 1, 2023, the Division submitted to the Commission its response to reviews of the 2022 Annual Report of Operations and recommendations for UUSF distributions beginning January 1, 2024, for Frontier, E Fiber Moab, and E Fiber San Juan. On September 26, 2023, the Division submitted an amended response and recommendation for Frontier in Docket No. 23-041-01. On September 29, 2023, the Commission issued a Supplemental Action Request referencing the three dockets requesting further explanation, with a response due date of October 6, 2023. This memorandum represents the Division's comments on the Supplemental Action Request.

Discussion

Utah Administrative Code R746-349-10 states that an existing COLR (in this case Frontier) would not be entitled to recover capital expenditures that duplicate any portion of the approved build-out plan¹ of competing applicant COLR (in this case E Fiber Moab). Frontier's 2022 Annual Report showed more than [REDACTED] of new assets (more than [REDACTED] were reported as fiber assets) added to rate base during 2022. Frontier did not provide the level of detail sufficient to fully verify whether these new assets are duplicative of E Fiber Moab's asset investments for which they were seeking UUSF recovery, therefore rendering those facilities ineligible for UUSF recovery. The Division asked Frontier for additional information on several occasions and held a virtual conference with Frontier's staff seeking to obtain more detail about these assets, including their location, what type of service they provide, and which exchanges were affected. However, Frontier has not yet provided the requested information, and the Division cannot fully verify if these capital expenditures were duplicative of new equipment or network installations of E Fiber Moab. In the absence of the necessary data, the Division applied the standard method of calculating UUSF recovery while continuing to pursue the missing information. This preserves

¹ Utah Administrative Code R746-349-10(9)(a)(iv).

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Frontier's ability to seek UUSF to which it may be entitled while allowing additional time for the Division to pursue additional information and other parties to intervene as necessary in Commission processes designed to evaluate such questions.

On May 12, 2021, in Docket No. 20-2618-01, the Commission granted a Certificate of Public Convenience and Necessity (CPCN) and COLR status to E Fiber Moab and E Fiber San Juan.² In the Commission's amended order, it concluded that both E Fiber Moab and E Fiber San Juan would be eligible to seek UUSF support and not be prohibited solely because of overlapping exchange areas with Frontier, subject to future rule amendments.³ The Commission also concluded that it would not be in the public interest for two COLRs to build duplicative networks.⁴

Utah Administrative Code R746-349-10(9)(a)(iii) states that the Commission shall provide that the existing COLR shall continue to be eligible for ongoing UUSF support on existing used and useful rate base. Frontier included existing rate base in its 2022 Annual Report. Rule 746-349-10(9) also provides that the existing COLR will not be entitled to recover capital expenditures for facilities that duplicate any portion of the approved build-out plan of the competing applicant.⁵ Based on this rule and the absence of sufficient information on Frontier's reported new assets, it is unclear how the Division would determine duplication of facilities to evaluate and recommend UUSF recovery eligibility. In addition, it is unclear if only the competing applicant COLR is required to maintain and file a business plan with the Commission to facilitate this evaluation and whether the rule addresses the determination of UUSF eligibility once the competing applicant COLR's Commission approved build-out plan is complete.

² Amended Order on Review, Rehearing, or Reconsideration. Docket No. 20-2618-01, p.26.

³ Id.

⁴ Id.

⁵ Utah Administrative Code R746-349-10(9)(a)(iv).

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E Fiber Moab and E Fiber San Juan have approved build-out plans established in the CPCN and COLR applications. In addition to the information provided by the E Fiber companies, the Division independently confirmed the E Fiber companies' build out through the Governor's Office of Economic Opportunity, Utah Residential Broadband Map.⁶ A search for Frontier's fiber network on the Utah Residential Broadband Map showed no results, suggesting perhaps Frontier's failure to participate in that process.⁷

There are 2 exchanges in Grand County and 5 exchanges in San Juan County where services overlap between Frontier and the E Fiber companies. However, Frontier operates in 22 exchanges in several counties around the state. Without knowing exactly where the new assets were added and what service they provide, the Division cannot determine if they are duplicative. Also, there may be new assets added to replace old worn-out or obsolete equipment to provide better service. This does not mean it is a duplication, rather a timely replacement of an old non-efficient network. Of note, Frontier emerged from bankruptcy in 2021, and there were some accounting adjustments that affected the rate base significantly. In its 2021 Annual Report, Frontier reported net rate base of [REDACTED], which was not enough to indicate that UUSF support was warranted. Frontier's 2022 Annual Report net rate base, after the accounting adjustment, was [REDACTED], which was a factor in the Division's recommendation.

The ambiguity referred to in the Division's earlier memo includes how to address pre-existing facilities when an accounting adjustment placed into regulatory rate base assets that in some cases likely existed before the E Fiber plan approval. A less rule-based ambiguity also arose concerning what the Division ought to file in light of Frontier's failure to timely provide information that would help resolve remaining questions. Considering these factors, the Division relied on the standard pro forma process to calculate a revenue

⁶<https://broadband.ugrc.utah.gov/#/route/minDownSpeed=7&minUpSpeed=9&transTypes=50|70|71|80&providers=Emery%20Telcom&extent=-12175953|4645769|2311162>

Broadband service is depicted as derived from data assembled by the Utah Broadband Project. Data sources include biannual provider submissions and publicly available sources. Data has been aggregated, where necessary, to meet standards set by the National Telecommunications and Information Administration (NTIA).

⁷ <https://broadband.ugrc.utah.gov/#/route/minDownSpeed=3&minUpSpeed=8&providers=Frontier>

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requirement, trusting the Commission's subsequent processes would either help illuminate these issues or, failing that, leave the record insufficient to grant support.

Conclusion

After reviewing the applications and the submitted information, the Division has determined that E Fiber Moab and E Fiber San Juan implemented its Commission approved build out plans prudently as Utah Administrative Code R746-349-10(9) requires, with some variances in planned timing, and appear eligible under current rule to recover their capital expenditures through the UUSF. The Division reaffirms E Fiber Moab's and E Fiber San Juan's eligibility and recommended UUSF distributions starting January 1, 2024, as reported to the Commission on September 1, 2023. The Division is actively pursuing the missing data for Frontier to determine its eligibility for UUSF recovery.

cc: Jessica Matushek, Director of Accounting, Frontier Communications of Utah.
Brock Johansen, CEO, E Fiber Moab, LLC & E Fiber San Juan, LLC.
Service List