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2022 Annual Report of Citizens  
Telecommunications Company of Utah  
d/b/a Frontier Communications of Utah

DOCKET NO. 23-041-01  
ORDER APPROVING 2024 DISTRIBUTION

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ISSUED: December 5, 2023

**PROCEDURAL BACKGROUND**

On March 20, 2023, Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (“Frontier”) filed its Annual Report for Calendar Year 2022 (“Report”) with the Public Service Commission (PSC).

On September 1, 2023, the Division of Public Utilities (DPU) filed its recommendation for the 2024 Utah Universal Public Telecommunications Support Fund (“UUSF”) calendar year distribution (“Initial Comments”).

On September 6, 2023, the PSC issued a Notice of Filing and Comment Period (“Notice”), seeking comments on DPU’s recommendation on or before October 6, 2023.

On September 26, 2023, DPU filed amended comments reducing Frontier’s 2024 recommended UUSF calendar year distribution after receiving additional information and an updated annual report form from Frontier (“Amended Comments”).

On September 29, 2023, the PSC requested from DPU additional analysis of Utah Admin. Code R746-349-10 as applied to its initial recommendation for Frontier’s 2024 UUSF calendar year distribution, because that rule generally prohibits the

reimbursement of duplicate capital expenditures for Carriers of Last Resort (COLR) operating in overlapping service areas, such as Frontier.<sup>1</sup>

On October 6, 2023, DPU submitted supplemental comments (“Supplemental Comments”).

On October 10, 2023, the Utah Rural Telecom Association (URTA) filed a petition for leave to file comments and to intervene (the “Petition”). A scheduling conference was held on October 23, 2023, with representatives for URTA, Frontier, DPU, and the Office of Consumer Services (OCS) attending. During the scheduling conference, URTA stated its intent to withdraw the intervention component of its Petition but maintained the request to file the comments component of the Petition.

On October 25, 2023, URTA filed a stipulated motion to withdraw both components of its Petition.<sup>2</sup> That motion was granted.

On November 1, 2023, DPU filed its final comments which included final recommended UUSF annual disbursements, consistent with Utah Admin. Code R746-8-401(10)(e) (“DPU’s Final Recommendation”).

The PSC received no comments or challenges to DPU’s Final Recommendation by the November 15, 2023, deadline under Utah Admin. Code R746-8-401(10)(f).

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<sup>1</sup> Frontier’s service territory overlaps with the service territories of E Fiber Moab, LLC (“E Fiber Moab”) and E Fiber San Juan, LLC (“E Fiber San Juan”). *See e.g., Application of E Fiber Moab, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and be Designated as a Carrier of Last Resort in Certain Rural Exchanges*, Docket No. 20-2618-01.

<sup>2</sup> *See Stipulated Motion to Withdraw Utah Rural Telecom Association’s Petition for Leave to File Comments and Petition to Intervene*, filed October 25, 2023.

**DPU COMMENTS**

**1. Initial Comments**

The Initial Comments recommend a 2024 UUSF calendar year distribution for Frontier of \$3,934,329.00, to be distributed in twelve monthly payments of \$327,860.75. In its analysis, DPU states Frontier submitted its annual report on an outdated version of the annual report form. DPU also represents that Frontier was in bankruptcy proceedings for the last 5 years and, among other things, had done minimal repairs to its network. DPU states a new carrier was granted COLR status in May 2021<sup>3</sup> and the new carrier was operating in five exchanges within Frontier's service territory. DPU further states that the allocation of UUSF funding for COLRs operating in the same service area is addressed in Utah Admin. Code R746-349-10 but that the rule is ambiguous and DPU lacks sufficient information to determine the basis for granting full or partial support.<sup>4</sup> To calculate its initial 2024 disbursement recommendation, DPU reviewed various information, and indicated its recommendation was conditional on Frontier providing additional information requested by DPU.

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<sup>3</sup> See Initial Comments, at 2 (citing Docket No. 20-2618-01, Order on Review, Rehearing, or Reconsideration, P.24-25).

<sup>4</sup> See *id.*

## 2. Amended Comments

Frontier provided DPU with some of the requested information and the appropriate annual report form. Based on this, the Amended Comments reduced Frontier's 2024 UUSF calendar year distribution to \$3,798,495.00, to be distributed in twelve monthly payments of \$316,541.25. The Amended Comments did not address the issue of possible duplicative capital expenditures between Frontier and E Fiber Moab, and Frontier and E Fiber San Juan, asserting ambiguity in Utah Admin. Code R746-349-10.

## 3. Supplemental Comments

DPU's Supplemental Comments address Utah Admin. Code R746-349-10 and the PSC's request for additional analysis to ensure no UUSF reimbursement of duplicate capital expenditures for COLRs operating in overlapping service areas occurs, such as between Frontier and E Fiber Moab, and Frontier and E Fiber San Juan. DPU's Supplemental Comments (1) state that the competing COLRs (E Fiber Moab and E Fiber San Juan) implemented their PSC-approved plans as required by Utah Admin. Code R746-349-10(9), and (2) reaffirm DPU's earlier recommended 2024 eligibility determinations for E Fiber Moab and E Fiber San Juan.

DPU's Supplemental Comments cite the competing COLRs' status as consistent with their PSC-granted certificates of public convenience and necessity.<sup>5</sup> DPU further

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<sup>5</sup> See e.g., *Application of E Fiber Moab, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and be Designated as a Carrier of Last Resort in*

states that UUSF support is not prohibited solely based on overlapping COLR service areas and “[i]n the absence of the necessary data, the [DPU] applied the standard method of calculating UUSF recovery while continuing to pursue the missing information.”<sup>6</sup> DPU explains that it still does not have all the information requested from Frontier to fully verify that its capital expenditures for new equipment or network installations were not duplicative of those of the other COLRs. DPU explains that it therefore “relied on the standard pro forma process to calculate a revenue requirement, trusting the [PSC’s] subsequent processes would either help illuminate these issues or, failing that, leave the record insufficient to grant support.”<sup>7</sup>

#### 4. DPU’s Final Recommendation

DPU received additional information from Frontier and determined that some of its capital expenditures could be duplicative in nature of actual or planned capital expenditures of other COLRs also seeking reimbursement.<sup>8</sup> DPU’s Final Recommendation states that based on this additional information, it amended its recommended UUSF 2024 calendar year distribution for Frontier to \$3,084,978.00, a difference of about \$849,351 less than DPU’s initial recommendation.<sup>9</sup>

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*Certain Rural Exchanges*, Docket No. 20-2618-01.

<sup>6</sup> Supplemental Comments at 2.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *See* Final Recommendation at 3.

<sup>9</sup> *See id.*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Utah Admin. Code R746-8-401 requires DPU to make annual recommendations to the PSC for adjustments to the monthly UUSF distribution to each provider based on an established Federal Communications Commission rate of return and the provider's most recent financial information reflected in its annual report filed with the PSC. In addition, Utah Admin. Code R746-349-10 generally prohibits reimbursement of duplicate capital expenditures for COLRs operating in overlapping service areas.

In calculating Frontier's eligibility for the recommended 2024 UUSF distribution, DPU reviewed Frontier's rate of return, state and federal income taxes, depreciation, federal USF excluded costs, UUSF eligibility, accumulated deferred income taxes and federal USF assistance. DPU also reviewed additional information filed by Frontier and reviewed the build out plans of E Fiber Moab and E Fiber San Juan, competing COLRs also seeking UUSF reimbursement in the parallel E Fiber Moab and E Fiber San Juan dockets. DPU's analysis and review included a comparison of Frontier's upgrades and capital expenditures with those build out plans to ensure Frontier is not seeking reimbursement for duplicate capital expenditures.

Through several rounds of review and analysis, DPU's Final Recommendation for the 2024 UUSF calendar year distribution for Frontier is \$3,084,978.00, to be distributed in twelve monthly payments of \$257,081.50. In totality, and as illustrated in

Exhibit A, the 2024 UUSF distribution for Frontier comprises 21.71% of the increased funding, and 8.74% of the total 2024 UUSF funding for all eligible carriers. In addition, the cumulative effect of the increase in funding for all UUSF necessitated DPU's recommendation to substantially increase the UUSF surcharge from \$0.36 to \$0.71,<sup>10</sup> beginning January 2024.<sup>11</sup>

The PSC appreciates the DPU's efforts and analysis in this docket, as it was much more involved than has historically been required. This is the first year that COLRs with overlapping service territories seek reimbursement for capital expenditures, which required a careful and thorough analysis of Utah Admin. Code R746-349-10. The PSC finds sufficient evidence exists in the record to conclude that Frontier complies with Utah Admin. Code R746-349-10.

Based on the Report, DPU's several rounds of comments and uncontested Final Recommendation, URTA's withdrawal of the Petition, and there being no opposition comments or reply comments of record, we find and conclude that Frontier is eligible to receive DPU's recommended 2024 UUSF calendar year distribution in the amount of \$3,084,978.00, pursuant to Utah Code Ann. § 54-8b-15.

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<sup>10</sup> See *Miscellaneous Correspondence and Reports Regarding Telecommunications Utility Services, 2023*, Docket No. 23-999-03, DPU Action Request Response filed September 12, 2023. The DPU initially recommended an increase in the surcharge to \$0.74 but modified its recommendation to \$0.71. Accordingly, the PSC has published a rule amendment in the Utah State Bulletin to increase the surcharge to \$0.71.

<sup>11</sup> Consequently, the PSC requests all eligible carriers to closely monitor capital expenditures to ensure they are consistent with the UUSF rules and regulations.

**ORDER**

The PSC approves a 2024 UUSF calendar year distribution of \$3,084,978.00 for Frontier, to be disbursed in twelve equal monthly payments in the amount of \$257,081.50.

DATED at Salt Lake City, Utah, December 5, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

**CONCURRING STATEMENT OF COMMISSIONER JOHN S. HARVEY, Ph.D.**

I concur with the outcome of this docket (for reasons explained below), but not with the finding regarding the reasonableness of the costs incurred by Frontier. Utah Code Ann. § 54-8b-15(4)(a)(ii)<sup>1</sup> requires a finding by the PSC that the claimed incurred costs are reasonable before authorizing reimbursement of those costs. For me, there is insufficient evidence in the record to support that finding. Accordingly, I cannot affix my name to an order that makes such a finding.

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<sup>1</sup> (ii) the rate-of-return regulated carrier of last resort's reasonable costs, as determined by the [PSC], to provide public telecommunications service and wholesale broadband Internet access service are greater than the sum of:

- (A) the rate-of-return regulated carrier of last resort's revenue from basic residential service considered affordable by the [PSC];
- (B) the rate-of-return regulated carrier of last resort's regulated revenue derived from providing other public telecommunications service;
- (C) the rate-of-return regulated carrier of last resort's revenue from rates approved by the Federal Communications Commission for wholesale broadband Internet access service; and
- (D) the amount the rate-of-return regulated carrier of last resort receives from federal universal service funds. (emphasis added).



However, I recognize that predictability in regulatory practice is an important consideration and, therefore, in recognition that the DPU and Frontier acted in accordance with recent practice, I do not desire to penalize Frontier by denying some, or all, of the disbursement approved by this order. But on a going-forward basis I want to be clear that the current practices have not produced a record I consider sufficient to reach the finding of reasonableness.

In reading Utah Code Ann. § 54-8b-15, it is clear the public policy goals are both to (1) significantly subsidize the expansion of broadband with funds collected from the general populace of Utah, while simultaneously (2) prohibiting the PSC from any type of rate setting for the broadband services provided by the rate-of-return utility (or its affiliate) in order to avoid the burden of frequent rate case proceedings. However, the statute as written is not a blank check with respect to the reimbursement of costs incurred; it includes the requirement that the PSC find the utility's costs are reasonable.

I wish to be clear in this concurrence that I am not asking for annual rate cases or for the type of full-fledged accounting of all revenues and costs such an approach requires. I acknowledge statutory law prescribes the inputs into the decision-making process and that those inputs are limited as compared to a rate-case type of approach. I simply desire to establish a process that, in future cases, will allow the DPU to provide the PSC with a set of record evidence that makes a sufficient showing

that the claimed incurred costs by the utility in question are reasonable. In my mind that process requires the utility/DPU to demonstrate that:

1) The utility has applied for (using its best efforts) available federal programs that could be used to offset some, or all, of the costs associated with meeting the public policy objective of providing its customers with broadband services;

2) The utility demonstrates that any incremental level of service (above the federal minimum for broadband service) it has chosen to provision broadband throughout its service territory has been done without incurring additional costs above what would be required to provide the federal minimum level of broadband service, or that such extra costs are either insignificant (compared to the total costs of the project), or that the extra costs can be justified by other public policy considerations. (Note: Fiber to the premise/door/NID provides a faster level of broadband service than is required by the federal standards and provides a faster service than many of the people who are paying most of the subsidies – the population on the Wasatch Front and other large urban areas of the state – are currently receiving.);

3) The utility has conducted a process that demonstrates the design of the network is the least cost design;

4) The utility has chosen the lessor cost option of self-construction versus contracted construction; and,

5) The rate approved by the Federal Communications Commission for wholesale broadband Internet access service which is used for reference pricing is for a comparable level (e.g., speed) of service capability.

**CONCLUSION**

I find the record is insufficient to reach a finding of reasonableness with respect to the costs incurred by Frontier. However, I find that the utility and DPU acted according to the agreed-upon practices in place at the time the DPU recommendation was made and so I decline to advocate for a denial of the recommended disbursement. I request that the PSC schedule a technical conference (or series of technical conferences) very early in 2024 so that parties may discuss the development of procedures that will result in a sufficient record to support a reasonableness finding, before the DPU begins its work on next year's UUSF recommendations.

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#331135

Exhibit A  
Summary of 2024 UUSF Disbursements

	Disbursement 2023	Recommended Disbursement 2024	Increase/ (Decrease)	Individual Change	% of Total Increase <sup>1</sup>	% of 2024 Allocation
All West Communications, Inc.	\$2,080,193.00	\$3,445,674.00	\$1,365,481.00	65.64%	9.61%	9.76%
Bear Lake Communications d/b/a CentraCom	-	-	-	-	-	-
Beehive Telephone Company, Inc. d/b/a Beehive Broadband	\$1,865,082.00	\$2,398,770.00	\$533,688.00	28.61%	3.76%	6.79%
Carbon/Emery Telcom, Inc.	\$1,752,591.00	\$2,262,786.00	\$510,195.00	29.11%	3.59%	6.41%
Central Utah Telephone d/b/a CentraCom	-	\$42,836.00	\$42,836.00	-	0.30%	0.12%
Citizens Telecommunications Company of Utah	-	\$3,084,978.00	\$3,084,978.00		21.71%	8.74%
Direct Communications Cedar Valley, LLC	\$3,094,626.00	\$2,604,685.00	(\$489,941.00)	-15.83%	-	7.38%
E Fiber Moab, LLC	-	\$1,114,971.00	\$1,114,971.00	-	7.85%	3.16%
E Fiber San Juan, LLC	-	\$1,145,821.00	\$1,145,821.00	-	8.06%	3.24%
Emery Telephone d/b/a Emery Telcom	\$1,700,041.00	\$2,392,909.00	\$692,868.00	40.76%	4.88%	6.78%
Gunnison Telephone Company	\$457,054.00	\$454,946.00	(\$2,108.00)	-0.46%	-	1.29%
Hanksville Telcom, Inc.	\$55,417.00	\$51,194.00	(\$4,223.00)	-7.62%	-	0.14%
Manti Telephone Company, Inc.	\$734,580.00	\$919,431.00	\$184,851.00	25.16%	1.30%	2.60%
Navajo Communications Company, Inc. (Utah) d/b/a Frontier Navajo Communications Company	-	\$749,326.00	\$749,326.00		5.27%	2.12%
Skyline Telecom d/b/a CentraCom	-	-	-	-	-	-
South Central Utah Telephone Association, Inc. d/b/a South Central Communications	\$6,139,926.00	\$8,598,237.00	\$2,458,311.00	40.04%	17.30%	24.35%
UBTA-UBET Communications, Inc. d/b/a STRATA Networks	\$3,720,571.00	\$6,049,028.00	\$2,328,457.00	62.58%	16.38%	17.13%
Union Telephone Company	-	-	-			-
Total	\$21,600,081.00	\$35,315,592.00	\$13,715,511.00	63.50%		

<sup>1</sup> These values are normalized to sum to 100%. Without normalizing the data, the sum of the percent of total increase in UUSF disbursement equals 103.62%.

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 5, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

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Office of Consumer Services

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