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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Doug Wheelwright, Utility Technical Consultant Supervisor
Abdinasir Abdulle, Utility Technical Consultant Supervisor
Gary Smith, Utility Technical Consultant

Date: September 1, 2023

Re: **Docket No. 23-2619-01**, E Fiber San Juan, LLC - 2023 Annual Review of calendar year 2022 determining UUSF eligibility.

Recommendation (Approve)

The Division of Public Utilities (Division) recommends the Public Service Commission of Utah (Commission) adjust the Utah Universal Service Fund (UUSF) payable to E Fiber San Juan, LLC (Company) to \$1,145,821 annually, or \$95,485.08 monthly, effective January 1, 2024. The Company has \$0 reported Excess Deferred Income Taxes (EDIT) from recent reductions in federal and state taxes, no EDIT related reduction is needed.

Background

In 2021, the Company received its Certificate of Public Convenience and Necessity (CPCN), was granted competitive entry, and was designated a rate-of-return regulated Carrier of Last Resort (COLR) under consolidated Docket Number 20-2618-01 (CPCN Docket). In this docket, the Commission concluded that as a COLR the Company would not be prohibited from seeking disbursements from the Utah Universal Service Fund (UUSF), solely because of an overlapping exchange area with the established regulated COLR. It

Division of Public Utilities

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also concluded that both established COLRs are eligible to seek UUSF support pursuant to Utah Admin. Code R746-8-401, subject to any future amendments. In 2022, Utah Admin. Code R746-349-10 was adopted to clarify and outline requirements for competitive entry into an area eligible for UUSF that included a requirement that each competing COLR maintain an adequate line extension tariff to prevent UUSF from supporting duplicative infrastructure. The Company has a line extension tariff.

On April 15, 2023, the Company filed its first annual report. Pursuant to Utah Admin. Code R746-8-401, the Division reviewed the Company's annual report and issued formal and informal data requests for missing and additional information.

After a review of all information and responses from the Company, the Division has calculated the recommended adjusted amount of UUSF annual eligibility to be \$1,145,821 to be paid in 2024.

The Division included the following in its determination:

- 1) Build-Out Plan – The Company included a build-out plan in its CPCN Docket. The Division compared this build-out plan to the actual completed build-out provided in its annual report and determined that it has been implementing this plan prudently with some variances in planned timing. The Company provided an update to its build-out plan during the Division's review.
- 2) Federal Program Funding and Grants – In the CPCN Docket, the Company informed that it was seeking federal funding and grants to assist in the payment of the build-out. The Company has confirmed receipt of federal and grant funding related to the build-out. Due to the nature of the programs and grants, the Company's parent (Emery Telecom) and its non-regulated company have been allocated some of these revenues and the associated costs. Applications and receipt of federal funding and grants is on-going.
- 3) Rate of Return – The Division used the current FCC prescribed Rate of Return ("ROR") of 9.75% according to Utah Admin. Code R746-8-401(7)(b).

- 4) Allocation Adjustments – The Company adjusted its accounting of shared equipment, reclassifying materials and supplies between regulated and non-regulated companies and operations. Beginning in 2022, E Fiber Moab, LLC and E Fiber San Juan, LLC began regulated operations respectively in Grand and San Juan Counties. The addition of these new entities resulted in changes to allocated costs among its affiliates.
- 5) FCC Excluded Costs – The Company’s Annual Report included expenses disallowed from Federal USF and UUSF reimbursement under The Code of Federal Regulations Part 54.7 and Utah Code 54-8b-15(3). The following expenses were determined not to support the facilities and services for which the Universal Service Fund was intended and were excluded from UUSF calculations:

Category	Excluded Amount
Circuit Equipment Exp	\$ 21
Buried Cable Exp	\$ 75
Provisioning Exp	\$ 5
Engineering Exp	\$ 522
Marketing Exp	\$ 32
Project Management Exp	\$ 90
Customer Services Exp	\$ 98
Executive Exp	\$ 195
Planning Exp	\$ 1,089
Accounting & Finance Exp	\$ 779
External Relations Exp	\$ 290
Human Resources Exp	\$ 395
Other General Exp	\$ 162
Excluded Expense Total	\$ 3,754

The Division's computations, including recommended adjustments as mentioned above, are found in the Revenue Requirement tab of the attached CONFIDENTIAL Excel worksheet - Exhibit 1 (23-2619-01 E Fiber San Juan CONFIDENTIAL DPU Exhibit 1).

Conclusion

The Division recommends an adjusted UUSF distribution for E Fiber San Juan, LLC of \$1,145,821 annually, or \$95,485.08 monthly, effective January 1, 2024.

cc: Brock Johansen – E Fiber San Juan, LLC
Darren Woolsey – E Fiber San Juan, LLC