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Ms. Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: UT-230384 Comments Regarding Petition of ZiPLY Fiber Pacific, LLC for Designation as an Eligible Telecommunications Carrier

Dear Director Maxwell:

ZiPLY Fiber Northwest is a current eligible telecommunications carrier (“ETC”) for the purposes of participating in both low income and high-cost programs and operates in more than (HOW MANY?) exchanges in Washington. ZiPLY Fiber Northwest has invested more than \$100 million in Washington state to upgrade its network. As the COVID 19 pandemic progressed, numerous communities approached ZiPLY Fiber Northwest about expanding its network to serve their homes and businesses. In 2022, ZiPLY Fiber Pacific was granted statewide wireline competitive local exchange carrier (“CLEC”) status as an affiliate of ZiPLY Fiber Northwest to answer the needs of these communities outside the ZiPLY Fiber Northwest operating territory. Currently ZiPLY Fiber Pacific operates in Chelan, Douglas, Franklin, Grant, Kitsap, Mason, Pend Oreille, Spokane, Walla Walla and Yakima counties. We are expanding into adjacent counties in the coming months. ZiPLY Fiber Pacific is seeking ETC certification which is the subject of today’s discussion.

In Staff’s review of ZiPLY Fiber Pacific’s petition, Staff has requested reduction of exchanges included in the petition or to limit the petition to seek low income-only certification. Staff has since recommended for denial of the petition on the basis that the petition is ambiguous and does not clearly demonstrate how it will fulfill its obligations if ZiPLY Fiber Pacific is granted ETC status. Staff’s requests and recommendations are in stark contrast to the Legislature’s direction to permit flexible regulation of competitive telecommunications companies. I will discuss these requests and recommendation separately.

Reduction of exchanges

ZiPLY Fiber Pacific chose not to follow this course of action because it possesses a CLEC certificate that allows it to operate statewide, it is constructing network projects in multiple locations in the state and wishes to have the ability to offer low-income support in the immediate future as well as participate in future high-cost opportunities like RDOF across its existing and future footprint.

Change petition to seek only low-income designation

WAC 480-123-020 defines eligible telecommunications carrier or ETC as “a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.” The definition, and the rule, make no distinction between the Federal Universal Service Fund programs.

At present, the Commission has designated Eligible Telecommunications Carriers using six different methods under WAC 480-123-030 in Docket UT-230003:

- **CLEC High Cost** - Charter Fiberlink, Commnet Wireless, Computer 5, Declaration Networks Group and Viasat
- **CLEC Low Income** – Rainier Connect North
- **CLEC High Cost and Low Income** – Salish Networks
- **ILEC High Cost and Low Income** – Asotin, CenturyTel, Consolidated Communications, Hat Island, Hood Canal, Inland, Kalam, Lewis River, McDaniel, Pend Oreille, Pioneer, Qwest, Skyline, St. John, Tenino, Toledo, United, Western Wahkiakum County, Westgate Communications, Whidbey and ZiPLY Fiber Northwest
- **Mobile Carrier High Cost and Low Income** – AT&T Mobility, Inland Cellular and United States Cellular Corporation
- **Mobile Carrier Low Income** – Air Voice Wireless, Assurance Wireless USA, Boomerang Wireless, i-wireless, Q Link Wireless, Sage Telecom, Telrite Corporation and TracFone Wireless

According to the WUTC website¹, the following carriers are also designated as ETCs for low-income support only:

- Global Connection Inc. of America dba "StandUp Wireless"
- YourTel America, Inc. dba "TerraCom"

ZiPLY Fiber Pacific chose not to follow this course of action because it wishes to have the ability to offer low-income support in the immediate future as well as participate in future high-cost opportunities across its existing and future footprint. The Commission has awarded a similarly situated CLEC and direct competitor Salish Networks with such status. Given the affiliation with ZiPLY Fiber Northwest, ZiPLY Fiber Pacific is better positioned to fulfil its obligations as an ETC if awarded.

¹ <https://www.utc.wa.gov/regulated-industries/utilities/telecommunications/federal-universal-service-funds>

Petition ambiguity and demonstration of ability

Throughout the petition, Ziplly Fiber Pacific seeks both low income and high-cost designation. Staff's assertion otherwise is contrary to direct communications Staff has had with Ziplly Fiber over the course of their review. Staff's recommendation to deny a petition that clearly requests designation under both programs appears to be motivated by an interest to delay the resolution of this matter.

Ziplly Fiber Pacific's parent company, Northwest Fiber, LLC, has been extensively studied by the Commission as recently as 2020. Northwest Fiber, LLC has been deemed by the Commission to have the technical, managerial and financial ability to operate an ILEC in Washington state. Furthermore, Ziplly Fiber Pacific was similarly found to have the technical, managerial and financial ability to operate as a CLEC in Washington state in 2022. In the intervening months since this designation was bestowed, Ziplly Fiber Pacific has conducted its operations in accordance with the Commission's rules and has significantly expanded its network. There is no question that Ziplly Fiber Pacific has demonstrated the ability to meet its obligations if awarded ETC status.

As an Affordable Connectivity Fund provider in ten Washington counties, Ziplly Fiber Pacific currently has hundreds of customers receiving subsidies that may expire due to funding in 2024. Ziplly Fiber Pacific wishes to preserve the ACP funds by expanding access to Federal Lifeline which requires an ETC certification. As future opportunities under the high cost fund become available, Ziplly Fiber Pacific wish to participate without the concern for the additional administrative steps necessary to secure and ETC designation for the high cost program in the award acceptance phase of the program.

Staff's actions are contrary to public policy

In RCW 80.36.300 the Legislature directed the Commission to, among other things, "permit flexible regulation of competitive telecommunications companies and services." In this vein, it stands to reason that the streamlined application approach taken by Ziplly Fiber Pacific is consistent with the manner in which the legislature intends. Instead, Staff seeks to generate repeated proceedings for the express purpose of parsing a designation which by existing rule does not require such separation. Staff's recommendation stands in stark conflict with the Legislature's direction.

Respectfully, Ziplly Fiber Pacific requests the Commission grant ETC status.

Sincerely,



Jessica Epley
VP - Regulatory & External Affairs