

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

ZIPLY WIRELESS, LLC

for Designation as an Eligible
Telecommunications Carrier

DOCKET UT-230385

COMMISSION STAFF'S
RESPONSE TO ZIPLY
WIRELESS LLC'S AMENDED
PETITION FOR DESIGNATION
AS AN ELIGIBLE
TELECOMMUNICATIONS
CARRIER

I. INTRODUCTION

1 The Commission should deny and dismiss Ziplly Wireless, LLC's (ZW or Company) amended petition for designation as an Eligible Telecommunications Carrier (ETC) with prejudice. ZW's amended petition does not establish that it meets the standards for designation as an ETC in the proposed service area because ZW has failed to provide evidence that it has adequate facilities to fulfill the high-cost obligations commensurate with that service area and has not met the requirements contained in WAC 480-123-030.

II. BACKGROUND

2 On May 23, 2023, ZW filed a petition with the Commission requesting designation as an ETC under the Communications Act of 1934,¹ applicable Federal Communications Commission (FCC) rules, and Chapter 480-123 of the Washington Administrative Code (WAC). In that petition, ZW sought ETC designation state-wide in Washington for the purpose of receiving both federal high-cost and low income (Lifeline) support from the Federal Universal Service Fund (FUSF).²

¹ 47 U.S.C. § 214(e)(2).

² *In the Matter of the Petition of Ziplly Wireless, LLC*, Docket UT-230385, Petition of Ziplly Wireless, LLC for designation as an Eligible Telecommunications Carrier (May 23, 2023) ("Petition"), 1.

3 On the same date, ZW’s affiliate company, Ziplly Fiber Pacific (“ZFP”), also filed a
petition for ETC designation.³ The two petitions are virtually identical in every respect, only
differing in the name of the petitioning company. Both companies are operating companies of
Northwest Fiber, LLC.⁴

4 Commission Staff reviewed the ZFP Petition and recommended its denial without
prejudice because the petition failed to explain how it will offer facilities-based high-cost service
everywhere in the state and did not address all of the necessary aspects of WAC 480-123-030 in
sufficient detail.

5 The ZFP Petition came before the Commission at its regularly scheduled meeting on
August 10, 2023. Prior to the open meeting, Staff repeatedly reached out to the Company,
advising that the Company could remedy Staff’s concerns by withdrawing the petition and
refiling after narrowing the scope of the petition to ETC designation for the purpose of
receiving Lifeline only support from the FUSF. The Company declined to do so.

6 At the open meeting, the Commission ultimately agreed with Staff’s assessment,
finding that the ZFP Petition contained insufficient data to warrant granting ZFP ETC
designation for the purpose of receiving both federal high-cost and Lifeline support state-
wide in Washington.⁵ The Commission thus entered an order denying the ZFP petition
without prejudice.⁶ The Commission additionally instructed that “ZFP may work with Staff
to provide sufficient data to file a new petition for consideration at a future open meeting.”⁷

³ *In the Matter of the Petition of Ziplly Fiber Pacific, LLC*, Docket UT-230384, Petition of Ziplly Fiber Pacific, LLC for designation as an Eligible Telecommunications Carrier (May 23, 2023) (“ZFP Petition”).

⁴ Petition at 5, ¶ 13; ZFP Petition at 5, ¶ 13.

⁵ *In the Matter of the Petition of Ziplly Fiber Pacific, LLC*, Docket UT-230384, Order 01 (August 10, 2023) (“ZFP Order”), 2, ¶ 9.

⁶ ZFP Order at 3, ¶ 11.

⁷ ZFP Order at 2, ¶ 5.

7 Less than two weeks later, on August 23, 2023, both ZW and ZFP filed amended petitions—both companies again seeking ETC designation state-wide for both federal high-cost and Lifeline support.⁸ Neither ZW nor ZFP made any attempts to communicate or work with staff to provide further data in support of its petition before filing their amended petitions.

III. DISCUSSION

8 Staff respectfully requests that the Commission deny and dismiss ZW’s Amended Petition because ZW has failed to provide (1) evidence that it has adequate facilities to fulfill the high-cost obligations in its requested service area and (2) a substantive plan for the investment to be made with ZW’s expected federal support in accordance with WAC 480-123-030(1)(d).

9 Any petition for ETC designation is required to include “the facts that constitute the basis of the petition and requested relief.”⁹ “The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.”¹⁰ State commissions are authorized to designate a carrier as an ETC for a service area that the state commission designates if the carrier meets the following two requirements of 47 U.S.C. § 214(e)(1) throughout the service area:

(A) offer the services that are supported by federal universal service support mechanisms under [47 U.S.C. § 254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services

⁸ *In the Matter of the Petition of Ziplly Fiber Pacific, LLC*, Docket UT-230688, Amended Petition of Ziplly Fiber Pacific, LLC for designation as an Eligible Telecommunications Carrier (August 23, 2023) (“ZFP Amended Petition”), 1; *In the Matter of the Petition of Ziplly Wireless, LLC*, Docket UT-230385, Amended Petition of Ziplly Wireless, LLC for designation as an Eligible Telecommunications Carrier (August 23, 2023) (“ZW Amended Petition”), 1.

⁹ WAC 480-07-370(3)(b)(ii).

¹⁰ WAC 480-123-040.

(including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.¹¹

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WAC 480-123-030 sets forth the requirements of a petition for ETC designation.

The petition must contain:

- (a) A description of the area or areas for which designation is sought;
- (b) A statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);
- (c) A description of how it will provide each supported service;
- (d) A substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;
- (e) A statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of applicable telephone assistance programs, such as Lifeline, that is reasonably calculated to reach low-income consumers not receiving discounts;
- (f) For wireless petitioners, a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals;
- (g) Information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates that, when commercial power is not available, it has a reasonable amount of backup power (fixed, portable or other backup power source) for its cell sites, and backup power for its switches as prescribed in WAC 480-120-411(3) for LEC central offices; and cell sites do not include any small cell facility as defined in RCW 80.36.375 (2)(d) or any in building wireless installation; and
- (h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-999.¹²

¹¹ 47 U.S.C. § 214(e)(2).

¹² WAC 480-123-030(1).

11 **The term “substantive,” as used in WAC 480-123-030(1)(d), means**

*sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.*¹³

12 The first shortcoming of ZW’s amended petition is that it lacks the required “substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers.”¹⁴ The Amended Petition states that ZW will “use the initial federal support received in the first two years to extend and maintain its network used in the provision of federal USF supported programs.”¹⁵ The Company goes on to state that it “plans to participate in the second phase of the Rural Digital Opportunity Fund auction (‘RDOF Phase II’) in order to obtain the federal funding that will allow it to expand its current support offerings.”¹⁶ The Amended Petition further explains that “ZW anticipates that it will be able to solidify and fully flesh out its deployment plans during its participation in RDOF Phase II” and that it “expects to have a more concrete plan for expanding its network to offer the supportive services,” once the FCC releases its public notice setting out the rules and process for RDOF Phase II.¹⁷

13 These vague and intangible statements plainly do not meet the requirements of a “substantive plan,” as contemplated by Commission rules. Simply stating that ZW intends

¹³ WAC 480-123-020.

¹⁴ WAC 480-123-030(1)(d).

¹⁵ ZW Amended Petition, 8, ¶ 20.

¹⁶ *Id.*

¹⁷ *Id.* at 9, ¶ 21.

to use hypothetical funds from an auction for which the FCC has not yet even issued a public notice does not provide Commission Staff with sufficient detail and technical specifics to evaluate whether ZW will use federal universal service funds to the benefit of Washington customers. ZW has provided no details on the type or amount of high-cost funds it expects to receive, no estimation for when it will be able to invest those funds, and no explanation for how it will employ those funds to expand its network. ZW itself admits that it cannot provide a fully fleshed out plan until RDOF Phase II is underway. At the moment, however, ZW's petition is fatally deficient.

14 More fundamentally, ZW has failed to address any of the Commission's concerns about the lack of evidence regarding the facilities that it will use to fulfill the state-wide high-cost obligations for which ZW seeks to be designated, which were raised during the August 10, 2023 open meeting and subsequent order dismissing the ZFP petition.¹⁸ These concerns apply equally to ZW's petition, which mirrors the ZFP petition in terms of scope and supporting evidence. The obligations of a high-cost ETC imply service, not just to some customers, but all customers reasonably entitled to service. Thus, the state-wide scope of ZW's petition implicates an enormous obligation on behalf of the service provider. ZW completely disregarded the Commission's instruction to its affiliate to work with Staff to provide evidence that it has the facilities to satisfy this obligation and indeed had provided no new substantial evidence in its amended petition. The Amended Petition's statements concerning ZW's "wide suite" of communications services for customers "throughout Washington" are once again cursory and unverified.¹⁹

¹⁸ ZFP Order, August 10, 2023.

¹⁹ ZW Amended Petition, 5, ¶ 14.

15 Staff has seen no data supporting ZW’s assertion that it can offer facilities-based high-cost service everywhere in the state all at once. Nor has ZW provided sufficient detail regarding its planned use of federal funds to determine whether ZW’s investments will benefit customers. The Commission should therefore deny and dismiss ZW’s amended petition for ETC designation with prejudice.

IV. CONCLUSION

16 For the reasons stated above, Staff respectfully requests that the Commission deny ZW’s amended petition on the basis that it fails to meet the requirements for ETC designation set forth in WAC 480-123-040.

DATED this 12th day of September, 2023.

Respectfully submitted,

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