

Agenda Date: July 25, 2024
Item: A1

Docket: UT-240183

Company: Zply Wireless, LLC

Staff: Rebecca Beaton, Infrastructure Analyst
Sean Bennett, Acting Section Manager
Liam Weiland, Assistant Attorney General

Recommendation

Issue an order in Docket UT-240183:

1. Designating Zply Wireless, LLC, as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving Lifeline support from the federal Universal Service Fund and High-Cost ETC designation for the purpose of receiving federal Connect America Fund II (CAF II) support subject to the condition in Attachment 1.
2. Grant an exemption from Washington Administrative Code 480-123-030(1)(d) that requires the filing of a substantive investment plan.

Background

On June 11, 2024, Zply Wireless, LLC (ZW or Company), filed an amended petition with the Washington Utilities and Transportation Commission (Commission) requesting designation as an Eligible Telecommunication Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030.

The Company seeks ETC designation from the Commission for High-Cost Connect American Fund II (CAF II) support and Lifeline service provision.

The Company intends to acquire the assets of Computer 5, Inc., d/b/a. LocalTel. LocalTel is a registered competitive telecommunications company in Washington that holds ETC designation in areas LocalTel has been awarded federal high cost Connect America Fund Phase II (CAF-II) support and is eligible to receive Lifeline support. ZW will acquire LocalTel's CAF-II support and obligations, thus ZW seeks ETC designation from the Commission for a high cost ETC area co-extensive with the high cost areas covered in the CAF-II award.

Zply Wireless complies with the Federal Communications Commission (FCC) requirements for ETC designation for purposes of receiving high-cost and Lifeline funding support as it can certify compliance with the service requirements associated to the support it receives, demonstrates the ability to remain functional in emergency situations, including back up power

and traffic reroute capabilities, consumer protection and service quality standards, financial and technical capabilities of providing high-cost and Lifeline service in compliance with the FCC rules and regulations, submission of terms and conditions of Lifeline plans.

Ziply Wireless is a common carrier with its own transport and telecommunications facilities in Washington state. Ziply Wireless is an affiliate of Ziply Fiber Northwest, LLC (Ziply Fiber) that received ETC designation in Washington state under Docket UT-201008 in 2021. Ziply Fiber is an incumbent local exchange carrier (ILEC).

The LocalTel transaction is part of a larger transaction through which LocalTel will assign substantially all its assets to Ziply Fiber Northwest, LLC and Ziply Wireless. The parties filed a separate joint application for approval of the transfer of LocalTel's domestic and international 214 authorizations and assets to Ziply Fiber Northwest and Ziply Wireless.

LocalTel is a registered competitive telecommunications company in Washington that holds an ETC designation in areas in which LocalTel has been awarded federal CAF II support, and Lifeline support. Ziply Wireless seeks an order from the Commission granting a High-Cost ETC designation conditional on Ziply Wireless's acquisition of LocalTel's CAF II award and assumption of the associated obligations.

The Company requests a waiver of WAC 480-123-030(1)(d)'s to provide a substantive plan of the investments to be made with initial federal support during the first two years in which the support is received.

On July 12, 2024, Ziply Wireless supplemented its petition to include a Declaration in Support of the Request for Waiver WAC 480-123-030(1)(d). Ziply Fiber Northwest, LLC and Ziply Wireless, LLC are acquiring substantially all assets of LocalTel, LocalTel's Rural Digital Opportunity Fund Phase I (RDOF) and Connect America Fund Phase II Model (CAF II) awards and obligations. The transaction is pending and waiting on the Federal Communications Commission (FCC) approval of the transfer of these awards to ZFN and ZW. Once the transaction is completed, LocalTel will not have facilities to meet RDOF and CAF II obligations. The Company has made a commitment to providing a plan to the Commission within 90 days of the closing of the transaction.

Discussion

The Commission has jurisdiction over the ETC petitions in Washington state. Section 214(e) of the Act authorized state regulatory commissions to designate a qualified common carrier as an ETC for the purposes of receiving federal Universal Service Funds. Under WAC 480-120-040, the commission has authority to grant or deny petitions for ETC designation including the authority to impose conditions.

Commission staff (Staff) find that ZW should qualify for ETC designation with the proposed conditions in Attachment 1. Under 47 U.S.C. 214 (e) (2), state commission may designate a carrier as an ETC if such designation is consistent with the public interest, convenience, and

necessity, and the carrier seeking designation as an ETC meets the following two requirements of 47 U.S.C. 214(e)(1):

- (A) Offer the services that are supported by federal universal service support mechanisms under section 254(c), 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 eligible telecommunications carrier): and
- (B) Advertise the availability of such services and the charges therefore using media of general distribution.

Ziply Wireless is capable of providing services supported by the federal universal service mechanism, as defined in 47 C.F.R 54.101(a). The LocalTel transaction is pending with the Federal Communications Commission (FCC) approval of the transfer of these awards to ZFN and Ziply Wireless. Once the transaction is complete, LocalTel will not have facilities to meet CAF II obligations. Designating ZW as an ETC will allow the Company to complete the CAF II obligations under the associated awards and to continue participation in the Lifeline program to qualifying consumers. ZW commits to meeting the construction and deployment CAF II obligations imposed by the FCC into the future and will make service available to all customers in the High Cost ETC service area through its own facilities and wholesale arrangements.

The waiver of the two year investment plan is necessary as ZW intends to follow the Commission-approved investment plans previously submitted by LocalTel. The LocalTel plans are proprietary and cannot be filed in the ETC dockets. Granting the waiver allows Ziply Wireless to continue implementation of the LocalTel deployment plan and immediately begin implementation of the existing plan. This is in the public interest as it provides a means to deploy and provide consistent services to consumers without delay as may occur if the Company is required to seek ETC designation post-closing of the transaction.

The Company declaration enumerates reasons why the waiver is in the public interest including the fact that Ziply Fiber intends to use LocalTel's FCC approved RDOF and CAF II award deployment plans in which the Commission has previously reviewed and approved for LocalTel. The LocalTel deployment plans replace and supplant the two-year substantive investment plans required by WAC 480-120-030(1)(d). Ziply Wireless will use LocalTel's spectrum licenses to fulfill CAF II obligations previously assigned to LocalTel, will use existing agreements LocalTel has in place with Public Utility Districts, and the existing management team for Ziply Wireless has the technical, organizational, regulatory, and management experience building and operating next generation fiber networks and meeting high-cost support obligations.

Granting the Petition is in the public interest as ZW intends to use LocalTel's FCC deployment plans that were previously reviewed and accepted by the Commission. The existing management team for Ziply Wireless has technical, organizational, regulatory, and management experience building and operating next generation fiber networks and meeting high-cost support obligations as it operates Ziply Fiber Northwest's network in its ILEC ETC designated areas. ZW will file an

updated and revised two-year substantive investment plan within 90 days of closing of the transaction, including the original LocalTel plans, and any changes to those plans.

The Company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsection (1)(d),

- WAC 480-123-030(1)(d) requires an ETC petition to provide 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 expenditure will benefit customers. Zply Wireless requests an exemption from the requirement until 90 days after the close of the transaction.

ZW requests an exemption from the requirement WAC 480-123-030(1)(d) substantive plan of investment due to public interest factors and timing related to the transaction and potential delay and impact to Washington consumers. Staff recommends granting the exemption. Granting the exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

The commission granted a similar exemption in its orders designating ETCs such as Boomerang, Sage, Rainier Connect, and TracFone. Although these cases granted the exemptions for lifeline only petitions, because of timing concerns, Zply's lack of access to the previously approved LocalTel plan, and ZW's commitment to provide an updated plan within 90 days of the close of the transaction, Staff supports the exemption.¹

Staff recommends the Commission approve the ZW petition for ETC Designation, along with the exemption from the substantive plan requirement under WAC 480-07-110. The ETC designation is conditional on the LocalTel and Zply transaction completion.

ZW must comply with commitments made in the petition, in the attached Conditions, and in the Commission Order. The Commission may revoke, suspend, or modify a designation subject to the provisions in WAC 480-120-050, in the event that ZW does not adhere to those conditions. Staff believes that designation of ZW as an ETC will deliver benefits to Washington consumers and is therefore in the public interest.

¹ Exceptions and modifications. The commission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Consistent with due process and the public interest, the commission may modify the application of procedural rules in this chapter on its own initiative during a particular adjudication or other docket.

Conclusion

Staff recommends the Commission enter an order designating Ziplly Wireless, LLC as an Eligible Telecommunications Carrier (ETC) designating Ziplly Wireless, LLC, as an Eligible Telecommunications Carrier for the purpose of participating in Lifeline and the Connect America Fund II support programs, subject to conditions in Attachment 1 and grant an exemption from Washington Administrative Code 480-123-030(1)(d) that requires the filing of a substantive investment plan.

Attachments (1)