

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

FRONTIER COMMUNICATIONS
NORTHWEST, LLC d/b/a ZIPLY
FIBER,

For Designation as an Eligible
Telecommunications Carrier.

DOCKET UT-201008

ORDER 01

DENYING REQUEST FOR
PROTECTIVE ORDER

BACKGROUND

- 1 On December 30, 2020, Frontier Communications Northwest, LLC d/b/a Ziply Fiber (Ziply Fiber or Company) filed a petition (Petition) with the Washington Utilities and Transportation Commission (Commission). The Company seeks to be designated as an eligible telecommunications carrier (ETC) in the areas where Ziply Fiber was a winning bidder (yet not already an ETC) in the Federal Communications Commission's (FCC) rural digital opportunity fund auction 904 (RDOF - Phase I Auction 904). To meet the FCC deadline for ETC designation of auction winners, the Commission must issue an order on the ETC petitions of the Washington auction winners, including Ziply Fiber, before the end of May 2021. Commission staff (Staff) is currently reviewing the Petition and will present its recommendations to the Commission at the regularly scheduled open meeting on May 20, 2021.
- 2 As part of its review of the Petition, Staff requested an electronic copy of the RDOF Long Form information the Company filed with the FCC (including engineering diagrams and detailed technology and system design description) and other supporting information for Ziply Fiber's RDOF winning bid(s) in Washington. Staff seeks this information to validate the required contents of the Company's petition as required in WAC 480-123-030(1)(b), (c), and (d); especially substantive plans of the investments to be made with initial federal support during the first two years in which the Company receives that support.
- 3 On March 15, 2021, Ziply Fiber filed a document entitled "Motion for a Protective Order for Confidential and Highly Confidential Information." The Company contends that some of the information Staff seeks is confidential or highly confidential and that a protective order limiting disclosure to Staff, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel), and outside counsel for other parties is necessary to

shield the information from public disclosure. Ziplly Fiber has declined to provide that information to Staff without such a protective order.

4 Staff opposes the request, asserting that the Commission's procedural rules sufficiently protect the confidentiality of Ziplly Fiber's information and that a protective order is available only in an adjudication. Staff proposes that the Commission require the Company to file the information Staff has requested, which Staff has asked of all Auction 904 winners of Washington areas, by April 15, 2021. Staff further recommends that the Company redact from that filing any confidential information solely pertaining to states other than Washington.

DISCUSSION AND DECISION

5 We deny Ziplly Fiber's request. The Commission's authority to shield from public disclosure information that telecommunications companies have designated as valuable commercial information derives from RCW 80.04.095. That statute provides,

Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.

6 The Commission promulgated WAC 480-07-160 as part of its procedural rules to implement this authority. That rule details the requirements for designation and treatment of information the statute authorizes the Commission to protect. If Ziplly Fiber complies with the requirements in WAC 480-07-160, the Commission will protect the information

the Company designates as confidential to the full extent of the Commission's statutory authority. No further action is necessary.

- 7 Zply Fiber nevertheless contends that a protective order is required to protect the Company's highly sensitive competitive information, the release or dissemination of which beyond what is required in this proceeding would result in irreparable harm to Zply Fiber. The Company seeks to ensure that such information can be reviewed only by Staff, Public Counsel, and outside counsel for other parties. Commission protective orders, however, cannot enhance the protections authorized in RCW 80.04.095. Rather, such orders serve only to extend the statutory protections when the Commission allows access to valuable commercial information to persons in addition to the Commission, Staff, and the Washington Attorney General's Office, including Staff counsel and Public Counsel. No additional persons are involved in this proceeding. A protective order, therefore, would not provide any more protection than WAC 480-07-160.
- 8 Nor is a protective order available in this docket. The last sentence in RCW 80.04.095 provides, "Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings." The Commission has consistently considered "contested proceedings" to be adjudications. The Commission's authority to enter protective orders derives from RCW 34.05.446, which is among the Administrative Procedure Act provisions governing adjudications. The Commission rule governing protective orders¹ is included in the procedural rules governing adjudications and is applicable only in such proceedings. The Commission has not commenced an adjudication to consider the Company's Petition. Accordingly, the Commission will not enter a protective order in this docket.
- 9 Ordinarily, the Commission would take no action at this point beyond denying the Company's request for a protective order. Staff, however, is concerned about the Commission timely receiving the information Staff needs to provide a recommendation on whether to grant the Petition. We agree with Staff that time is of the essence in this proceeding. Accordingly, we direct Zply Fiber to file the information Staff has requested – specifically an electronic copy of the RDOF Long Form information the Company filed with the FCC (including engineering diagrams and detailed technology and system design description) and other supporting information for Zply Fiber's RDOF winning

¹ WAC 480-07-420. Similarly, the procedural rules authorizing motions are specific to adjudications and thus unavailable in this docket. The Commission, therefore, exercises its discretion to consider the document Zply Fiber entitled as a "motion" as a "request" as provided in WAC 480-07-395(4).

bid(s) in Washington – on or before April 15, 2021. The Company must submit its valuable commercial information in conformance with the requirements in WAC 480-07-160, and must redact any confidential information that pertains only to states other than Washington. If Zply Fiber continues to refuse to provide the required information, the Company should withdraw its Petition or risk the Commission denying it for lack of sufficient support.

FINDINGS OF FACT

- 10 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 11 (2) Zply Fiber is a public service company regulated by the Commission, providing service as a telecommunications company.
- 12 (3) On December 30, 2020, Zply Fiber filed a petition to be designated as an ETC in the areas where Zply Fiber was a winning bidder (yet not already an ETC) in the FCC’s rural digital opportunity fund auction 904.
- 13 (4) As part of its review of the Petition, Staff requested an electronic copy of the RDOF Long Form information the Company filed with the FCC (including engineering diagrams and detailed technology and system design description) and other supporting information for Zply Fiber’s RDOF winning bid(s) in Washington. Staff seeks this information to validate the required contents of the Company’s petition as required in WAC 480-123-030(1)(b), (c), and (d); especially substantive plans of the investments to be made with initial federal support during the first two years in which the Company receives that support.
- 14 (5) On March 15, 2021, Zply Fiber filed a document entitled “Motion for a Protective Order for Confidential and Highly Confidential Information.” The Company contends that some of the information Staff seeks is confidential or highly confidential and that a protective order limiting disclosure to Staff, Public Counsel, and outside counsel for other parties is necessary to shield the information from public disclosure.
- 15 (6) To meet the FCC deadline for ETC designation of auction winners, the Commission must issue an order on the ETC petitions of the Washington auction winners, including Zply Fiber, before the end of May 2021. To provide the

Commission with a recommendation on the Petition in sufficient time to enable the Commission to meet the FCC deadline, Staff needs the information it has requested from the Company by April 15, 2021.

16 (7) Zply Fiber has declined to provide information it believes is confidential or highly confidential in the absence of a Commission protective order.

17 (8) The Commission considered Zply Fiber's request for a protective order at the Commission's regularly scheduled open meeting on April 8, 2021.

CONCLUSIONS OF LAW

18 (1) The Commission has jurisdiction over the subject matter of, and participants in, this proceeding.

19 (2) RCW 80.04.095 authorizes the Commission to protect from disclosure telecommunications company information designated as valuable commercial information.

20 (3) WAC 480-07-160 implements RCW 80.04.095 and details the requirements for designation and treatment of information the statute authorizes the Commission to protect.

21 (4) Compliance with WAC 480-07-160 will protect Zply Fiber's valuable commercial information to the full extent authorized in RCW 80.04.095.

22 (5) A protective order is neither necessary nor available to protect Zply Fiber's valuable commercial information.

23 (6) The Commission should deny Zply Fiber's request for a protective order and require the Company to file the information Staff has requested – specifically an electronic copy of the RDOF Long Form information the Company filed with the FCC (including engineering diagrams and detailed technology and system design description) and other supporting information for Zply Fiber's RDOF winning bid(s) in Washington, redacting any confidential information pertaining solely to states other than Washington – under the protections afforded in WAC 480-07-160 on or before April 15, 2021.

ORDER

THE COMMISSION ORDERS:

- 24 (1) The Commission denies the request of Frontier Communications Northwest, LLC
d/b/a Ziplly Fiber for a protective order.
- 25 (2) Frontier Communications Northwest, LLC d/b/a Ziplly Fiber must file the
information Commission staff has requested as described in this Order under the
protections afforded in WAC 480-07-160 on or before April 15, 2021.

Dated at Lacey, Washington, and effective April 8, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner