

Agenda Date: July 25, 2024
Item: A2

Docket: UT-240233

Company: Zply Fiber Northwest, LLC

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

Recommendation

Issue an order in Docket UT-240233:

1. Designating Zply Fiber Northwest, LLC, as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund and federal high-cost Rural Digital Opportunity Fund (RDOF) Phase I support subject to conditions 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 Fiber Northwest, LLC (ZFN 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 and a request for waiver of WAC 480-123-030(1)(d).

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 Rural Digital opportunity Fund Phase 1 (RDOF Phase 1) support and is eligible to receive Lifeline support. ZFN will acquire LocalTel's RDOF Phase 1 support and obligations, thus ZFN seeks ETC designation from the Commission for a high cost ETC area co-extensive with the high cost areas covered in the RDOF Phase 1 award. ZFN currently has ETC designation in Washington under its authorization to operate as an Incumbent Local Exchange Company (ILEC).

The Company 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 application 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 submission of terms and conditions of Lifeline plans.

The Company is a common carrier with its own transport and telecommunications facilities in Washington state. ZFN's ETC designation in Washington state was granted in Docket UT-201008 in 2021. ZFN is an incumbent local exchange carrier (ILEC) operating as an ETC in this state with its local exchange boundary maps on file with the commission.

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

LocalTel is a registered competitive telecommunications company in Washington that holds an ETC designation in areas in which LocalTel has been awarded federal RDOF Phase I, Connect America Fund Phase II (CAF II), and Lifeline support. ZFN seeks an order from the Commission granting ETC designation conditional on the LocalTel acquisition and assumption of the associated obligations.

The Company requests a waiver of WAC 480-123-030(1)(d)'s requirement 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, Zippy Wireless supplemented its petition to include a Declaration in Support of the Request for Waiver WAC 480-123-030(1)(d). Zippy Fiber Northwest, LLC and Zippy Wireless, LLC are acquiring substantially all assets of LocalTel, along with LocalTel's RDOF Phase I and CAF II awards and obligations. The transaction is pending with the Federal Communications Commission (FCC) and approval of the transfer of these awards to ZFN and ZW. Once the transaction is complete, LocalTel will not have facilities to meet RDOF and CAF II obligations and it is Commissions staff's (Staff) understanding that the Company will voluntarily relinquish its ETC designation. The Company has made a commitment to file the two year substantive investment plan within 90 days of closing of the transaction.

Discussion

The Commission has jurisdiction over 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.

Staff find that ZFN 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.

The Company 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 Zply Wireless. Once the transaction is complete, LocalTel will not have facilities to meet RDOF obligations. The ETC designation will allow ZFN to complete its RDOF obligations and continue to participate in the Lifeline program to qualifying consumers. The Company commits to meeting the construction and deployment benchmarks imposed by the FCC and provide service to customers through its own facilities and wholesale arrangements.

The waiver of the two year investment plan is necessary as the LocalTel plans are proprietary and cannot be filed in the ETC dockets until the transaction is complete. Granting the waiver allows ZFN to continue implementation of the LocalTel deployment plan and will give ZFN sufficient time to review and update its own deployment 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 Zply 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). Zply 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 Zply 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 ZFN intends to use LocalTel's FCC deployment plans that were previously reviewed and accepted by the Commission. The existing management team for ZFN has technical, organizational, regulatory, and management experience building and operating next generation fiber networks and meeting high-cost support obligations as it operates Zply Fiber Northwest's network in its ILEC ETC designated areas. ZFN 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 expenditures will benefit customers. Zply Wireless requests an exemption from the requirement until 90 days after the closing of the transaction.

ZFN 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 ZFN'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 ZFN 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.

ZFN 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 ZFN does not adhere to those conditions. Staff believes that designation of ZFN 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 Fiber Northwest, LLC as an Eligible Telecommunications Carrier (ETC) designating Ziplly Fiber Northwest, LLC, as an Eligible Telecommunications Carrier for the purpose of participating in Lifeline and the cost Rural Digital Opportunity Fund Phase I 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)