

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET UT-240233
ZIPLY FIBER NORTHWEST, LLC,	ORDER 01
Seeking Designation as an Eligible Telecommunications Carrier on a Wireless Basis	GRANTING PETITION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS CARRIER WITH CONDITIONS AND EXEMPTION FROM RULE

BACKGROUND

- 1 On June 11, 2024, Ziplly Fiber Northwest, LLC (ZFN or Company) filed a petition with the Washington Utilities and Transportation Commission (Commission) requesting conditional designation as an Eligible Telecommunications Carrier (ETC) in the state of Washington under the Communications Act of 1934, as amended (the Act),¹ applicable FCC rules, and WAC 480-123-030.
- 2 ZFN seeks ETC designation in Washington for the purpose of receiving federal Low Income (Lifeline) support that subsidizes monthly charges for telecommunications service for qualified low-income households. Lifeline support is part of the federal Universal Service Fund (USF).² Further, ZFN seeks High-Cost ETC designation for the purpose of receiving federal Rural Digital Opportunity Fund (RDOF). ZFN also requests an exemption from Washington Administrative Code 480-123-030(1)(d) which require ETC applicants to file a substantive investment plan.
- 3 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 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

¹ 47 U.S.C. § 214 (e)(2).

² The USF subsidizes monthly and, in certain circumstances, initial connection charges for qualified low-income households.

high cost ETC area co-extensive with the high cost areas covered in the RDOF Phase 1 award. The parties filed a separate joint application for approval of the transfer of LocalTel's domestic and international 214 authorizations and assets to Ziplly Fiber Northwest and Ziplly Wireless. ZFN currently has ETC designation in Washington under its authorization to operate as an Incumbent Local Exchange Company (ILEC).

4 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: (i) certify compliance with the service requirements application to the support it receives; (ii) demonstrate the ability to remain functional in emergency situations, including back up power and traffic reroute capabilities; (iii) meet consumer protection and service quality standards; (iv) possesses the financial and technical capabilities to provide high-cost and Lifeline service; (v) submitted terms and conditions of Lifeline plans; (vi) and demonstrate ETC designation is in the public interest.

5 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 ILEC operating as an ETC in this state with its local exchange boundary maps on file with the Commission.

6 The LocalTel transaction is part of a larger transaction through which LocalTel will assign substantially all its assets to Ziplly Fiber Northwest, LLC and Ziplly 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.

7 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.

8 On July 11, 2024, ZFN supplemented its petition to include a Declaration in Support of Request for Waiver WAC 480-123-030(1)(d).³). Ziplly Fiber Northwest, LLC and Ziplly

³ We note that the document was titled as "Declaration of Jessica Eply In Support Of Request For Waiver of WAC 480-120-030(1)(d)," but has been construed as referring to the applicable WAC 480-123-030(1)(d). *See* WAC 480-07-395(4) ("The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission will consider

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 Staff's understanding that LocalTel will voluntarily relinquish its ETC designation. ZFN has made a commitment to file the two year substantive investment plan within 90 days of closing of the transaction.

9 Commission Staff (Staff) agrees with ZFN that the Company meets all applicable regulatory requirements to be designated as an ETC – provided that its acquisition of LocalTel is approved and consummated.

10 Additionally, ZFN's Petition seeks an exemption from WAC 480-123-030(1)(d) which requires high-cost program participants to file a substantive plan of the investments to be made with initial federal support for the first two years of their programs. Staff agrees that waiver of the two year investment plan is necessary as 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.

11 Staff also agrees with and recommends granting ZFN's request for exemptions from the filing requirements of WAC 480-123-030(1)(d), due to the pending acquisition of LocalTel's plan.

DISCUSSION

12 Common carriers receiving designation as ETCs under 47 U.S.C. § 214 are eligible to receive funds from the federal USF for Lifeline services. State utility Commissions are responsible for designating common carriers as ETCs for the purpose of receiving such funds, and may impose conditions on a common carrier so designated.⁴ The Commission

pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.”).

⁴ *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d), (f) and (g); and Designation as an Eligible Telecommunications Carrier for the*

will approve petitions from carriers requesting ETC designation 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.⁵

13 State Commissions shall designate more than one carrier as an ETC in an area if such designation is consistent with the public interest, convenience, and necessity and the carrier seeking ETC designation meets these 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 therefor using media of general distribution.⁶

14 Based on the Company's filings, Staff concludes that the Company is technically and financially capable of providing the supported Lifeline service in compliance with the low-income program rules. We accept Staff's review and recommendation that ZFN has the technical and financial capabilities to provide the supported Lifeline service.

15 We agree with Staff that designating the Company as an ETC will deliver benefits and additional choices to low-income households in Washington and is therefore in the public interest.

16 These services are supported by federal universal service support mechanisms.⁷ Further, ZFN commits to advertise its Lifeline services.⁸ Designating the Company an ETC is consistent with the public interest, convenience, and necessity.

Purpose of Receiving Lifeline Support from the Federal Universal Service Fund, Order 03 (June 24, 2010), UT-093012, ¶ 78.

⁵ WAC 480-123-040.

⁶ 47 U.S.C. § 214(e)(1).

⁷ 47 C.F.R. § 54.101(a).

⁸ Petition at ¶ 10.

- 17 The Company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030; except subsections (1)(d), for which the Company seeks an exemption:
- WAC 480-123-030(1)(d) requires an ETC petitioner 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.”
- 18 The Company declaration enumerates reasons why the waiver⁹ 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.
- 19 Staff also agrees with and recommends granting ZFN’s request for exemption from the filing requirements of WAC 480-123-030(1)(d), due to the pending acquisition of LocalTel’s plan. 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. Staff recommends granting the exemption.

⁹ 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.

20 We agree with Staff's recommendation to grant the Company's request for exemptions from the requirement under WAC 480-123-030(1)(d). Granting the request is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

21 ZFN must comply with commitments made in the petition, in the attached Appendix A, 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.

FINDINGS AND CONCLUSIONS

22 (1) The Commission has jurisdiction over the subject matter of this order and is authorized to designate Eligible Telecommunications Carriers in Washington under 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b)-(c), and WAC 480-123.

23 (2) ZFN is a telecommunications company seeking to do business in the state of Washington. ZFN meets the requirements for designation as an ETC because the company provides services supported by federal universal support mechanisms and because ZFN has committed to advertise the availability of its services and the charges therefor using media of general distribution. ZFN's designation as an ETC will advance the purpose of universal service; ZFN has also demonstrated that its designation as an ETC is in the public interest.

24 (3) The Commission may grant an exemption from any of its rules if consistent with the public interest, the purposes underlying regulation, and applicable statutes. ZFN has demonstrated that the requirements of WAC 480-123-030(1)(d) should not apply to the Company and that granting the requested exemption is in the public interest and consistent with applicable laws, rules, and orders.

25 (4) This matter came before the Commission at its regularly scheduled meeting on July 25, 2024.

ORDER

THE COMMISSION ORDERS:

- 26 (1) Zply Fiber Northwest, LLC's request for designation as an ETC is hereby
GRANTED, subject to the conditions set out in Appendix A.
- 27 (2) Zply Fiber Northwest, LLC's request for exemption from WAC 480-123-
030(1)(d) is hereby GRANTED.
- 28 (3) The Commission retains jurisdiction over this matter for purposes of effectuating
this order.

DATED at Lacey, Washington, and effective July 25, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

APPENDIX A

Washington State Conditions on Designation of Ziplly Fiber Northwest, LLC as an Eligible Telecommunications Carrier

1. Within 90 days of the Computer 5 d/b/a Local Tel transaction closing, Ziplly Fiber Northwest, LLC must file with the Commission the following:
 - a. A substantive plan of the investments to be made with initial federal support during the first two years in which the support is received and a substantive description of how those expenditures will benefit customers in compliance with WAC 480-123-030(1)(d). The substantive plan shall contain sufficiently expansive details and information on planned expenses, timelines, and commitments related to the expenditures.

Commission Staff shall review Ziplly Fiber Northwest, LLC's compliance filing and confirm receipt of the filing and that it contains sufficient and accurate information within the plan.