

December 30, 2020

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98503

Re: Frontier Communications Northwest, LLC– Petition for
Designation as an Eligible Telecommunications Carrier

Dear Mr. Johnson:

Enclosed for filing is Frontier Communications Northwest, LLC's Petition for Designation as an Eligible Telecommunications Carrier and Request for Expedited Consideration.

Please contact the undersigned with any questions regarding this filing.

Very truly yours,

Davis Wright Tremaine LLP



Mark P. Trincherro
Attorney for Frontier Communications Northwest, LLC

Received
Records Management
01/06/21 08:10
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE UTILITIES AND TRANSPORTATION COMMISSION
OF WASHINGTON

In the Matter of

Petition of Frontier Communications
Northwest, LLC for Designation as an
Eligible Telecommunications Carrier

PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER AND REQUEST FOR EXPEDITED
CONSIDERATION

I. INTRODUCTION

Frontier Communications Northwest, LLC, dba Ziplly Fiber (“Ziplly Fiber”), pursuant to section 214(e)(1)-(2) of the federal Communications Act of 1934, as amended (the “Act”), section 54.201 of the Federal Communication Commission (“FCC”) rules, and Washington Administrative Code (“WAC”) § 480-123-030 through 040, respectfully submits this petition for modification of its existing designation as an Eligible Telecommunications Carrier (“ETC”) in order to receive federal high-cost and Lifeline support throughout the two census blocks identified in **Exhibit A (“Designated Census Blocks”)**. In addition, Ziplly Fiber requests expedited consideration of this petition in order to complete its long form application as a winning bidder in the FCC’s Rural Digital Opportunity Fund (“RDOF”) reverse auction (also known as “Auction 904”) in the two larger census block groups which include the Designated Census Blocks.

Section 214(e)(2) of the Communications Act of 1934, as amended, places the authority for ETC designation with state commissions. Under sections 214(e)(1) and 254, the Commission has the authority to designate Ziplly Fiber as an ETC for federal universal

service fund ("FUSF") support. In addition, this Commission's rules set forth the requirements for ETC designation petitions. *See* WAC § 480-123-030 through 040. Ziplly Fiber meets all the requirements for federal ETC designation in the Designated Census Blocks. As detailed in Section III, Ziplly Fiber satisfies each of the requirements of both state and federal law. The requested designation of this territory will enable Ziplly Fiber to complete its final application as a winning bidder under the RDOF program for funding to provide fiber optic-based data and telecommunications services in the entire two census block groups in which the Designated Census Blocks fall, covering approximately 511 locations in the State of Washington

II. FACTUAL BACKGROUND

On December 7, 2020, the FCC announced that in Washington, nine bidders had been assigned total RDOF support over ten years of \$ 222,768,532.70 to provide supported services to 100,422 locations.¹ Ziplly Fiber is one of the nine winning bidders in Washington and was assigned the winning bid for 82 census block groups in Washington.² As part of its rules, the FCC requires an Auction 904 winning bidder to be an ETC in the relevant areas for which it will receive support. The FCC permits a winning bidder to obtain ETC designation in the relevant areas after the close of the auction.³ A winning bidder that is not yet an ETC must submit proof of its ETC designation within 180 days of being announced a winning bidder by public notice.⁴ The FCC announced the winning bidders on December 7, 2020, in Public Notice

¹ Public Notice DA 20-1422, Attachment B.

² Public Notice DA 20-1422, Attachment A.

³ 47 C.F.R. §54.803. Rural Digital Opportunity Fund Report and Order, FCC 20-5 (Released February 7, 2020) ("*RDOF Order*") para. 81; *Auction 904 Procedures Public Notice*, FCC 20-77 (Released June 11, 2020) para. 135-136.

⁴ 47 C.F.R. §54.804(b)(5); *RDOF Order*, 35 FCC Rcd at 727-28, para. 92; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 136;

DA 20-1422 which also established Monday, June 7, 2020 as the deadline for Ziplly Fiber to submit proof of ETC designation for all of its winning bids.⁵

Ziplly Fiber is a designated ETC in all of the census blocks within 80 of the 82 census block groups assigned to it as a winning bidder. This designation is based on the Commission's 1997 designation of Ziplly Fiber's predecessor, GTE Northwest, Inc. as an ETC in its Washington exchanges as indicated by its tariffs.⁶

The FCC's geographical designation of census block groups eligible for subsidies under the RDOF program did not, however, line up precisely with Ziplly Fiber's local exchange boundaries in two instances. As described below, the Designated Census Blocks constitute a small portion of the locations to be served by an Auction 904 winner as part of the overall census block groups. Despite being designated as part of census block groups that fall, in all relevant ways, within Ziplly Fiber's ETC territory, the Designated Census Blocks themselves are outside the boundary of Ziplly Fiber's exchanges.

A. First Designated Census Block: Portion of Census Block #530330322152004

Ziplly Fiber was assigned the winning bid to provide fiber optic-based services to FCC-designated census block group #530330322152, covering a portion of King County just to the east of the city of Sammamish. The FCC established this census block group as a single bidding unit consisting of five census blocks. As shown in the maps included in **Exhibit A**, all of the census blocks within this census block group fall within Ziplly Fiber's local exchange, except for a portion of census block 530330322152004, which extends into Qwest Corporation's neighboring exchange.

⁵ Public Notice DA 20-1422, para 17.

⁶ WUTC Docket No. UT-970348, Order Designating Eligible Telecommunications Carriers, December 23, 1997.

The portion of census block 530330322152004 that lies outside of Ziplly Fiber's exchange represents approximately 23% percent of the territory of census block group #530330322152 awarded to Ziplly Fiber by the FCC. The entire portion of census block 530330322152004 that lies outside of Ziplly Fiber's exchange is in Soaring Eagle Regional Park.⁷ Ziplly Fiber can identify no service locations or people residing in this parkland. Nevertheless, in order to comply with the FCC's requirements and ensure that Ziplly Fiber is eligible to receive RDOF support for census block group #530330322152, Ziplly Fiber must be able to demonstrate by June 7, 2021 that it has ETC designation for the relevant areas within the entire census block group, including the portion of census block 530330322152004 that lies outside of Ziplly Fiber's exchange.

B. Second Designated Census Block: Census Block #530599502002002

Ziplly Fiber was also assigned the bid to provide fiber optic-based services to FCC-designated census block group #530599502002, covering an area bordering the Columbia River just east of Washougal in Skamania County. The FCC designated 53 census blocks in this census block group as part of the bidding unit. All of the census blocks within this census block group fall within Ziplly Fiber's service territory except the small, non-contiguous census block 530599502002002, which falls within a neighboring exchange operated by United Telephone Company of the Northwest. Census block 530599502002002 covers approximately .077 square miles, which is roughly 0.5% of the total area of census block group #530599502002. Satellite photographs indicate that there is one potential

⁷Soaring Eagle Regional Park is 600 acres of mature forests, wetlands, and wildlife habitat. Soaring Eagle sits above Patterson Creek on the edge of the Sammamish Plateau along the western flank of the Snoqualmie River Valley. This natural area provides sanctuary for black bear, bobcat, black tail deer and more than 40 species of birds. See <https://www.wta.org/go-hiking/hikes/soaring-eagle-park>.

service location in this census block out of a total of 475 locations that the FCC has identified in census block group #530599502002. Nevertheless, as explained above, in order to follow the FCC's requirements and ensure that Ziplly Fiber is eligible to receive RDOF support for all of census block group #530599502002, Ziplly Fiber must demonstrate by June 7, 2021 that it has ETC designation for census block 530599502002002.

C. Timing of Designation of ETC Area

As previously mentioned, the *RDOF Order* requires that a winning bidder demonstrate that its ETC designation has been granted within 180 days of the announcement of the winning bids, which is June 7, 2021. Therefore, Ziplly Fiber respectfully requests that the Commission issue an Order granting the ETC designation requested in this petition no later than June 4, 2021. For this reason, Ziplly Fiber requests expedited consideration of this petition to ensure that it can demonstrate to the FCC that it has received the required ETC designation by the FCC's June 7, 2021 deadline.

It is important to note that this petition does not seek to change or expand Ziplly Fiber's existing exchanges in the State of Washington, but only for designation as an ETC in the two census blocks listed in **Exhibit A**. This designation is consistent with the FCC's decision to forbear from the study area redefinition requirements of section 214(e)(5) of the Act.⁸ Ziplly Fiber seeks this designation to ensure that there is no question that it is an ETC in all of the relevant areas of the census block groups in which it is the assigned bidder. Through the designation of these small areas, the Commission will enable Ziplly Fiber to complete its application to provide fiber optic based services to approximately 511 locations in these underserved areas of our state.

III. ZIPLY FIBER MEETS ALL THE REQUIREMENTS FOR ETC DESIGNATION

⁸ See *RDOF Order* at ¶¶ 93-96.

Sections 214(e)(2) and 254 of Title 47 of the United States Code expressly authorize the Commission to designate a company that meets the requirements of 47 U.S.C. § 214(e)(1) – such as Zply Fiber – as an ETC. Moreover, Washington State law requires that 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.” As demonstrated in this petition, Zply Fiber meets all state and federal requirements for ETC designation, and, designating Zply Fiber as an ETC in the census blocks listed in **Exhibit A** is in the public interest because it will allow Zply Fiber to utilize RDOF support to provide voice and broadband services in the relevant census block groups.

A. Zply Fiber Meets All State Requirements For ETC Designation.

WAC 480-123-040 states that 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." As explained below, Zply Fiber meets all the requirements of WAC 480-123-030 as follows:

- a) In satisfaction of WAC 480-123-030(a), Zply Fiber identifies the area for which designation is sought in the State of Washington as described in **Exhibit A**.
- b) In satisfaction of WAC 480-123-030(1)(b), Zply Fiber will offer the services supported by federal universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services.
- c) In satisfaction of WAC 480-123-030(1)(c), Zply Fiber refers the Commission to its tariffs and price lists on file with the Commission.

d) In satisfaction of WAC 480-123-030(1)(d), as noted above, Zply Fiber has identified only one potential service location within the Designated Census Blocks. Zply Fiber will determine whether and how to utilize federal support in the Designated Census Blocks as circumstances may dictate.

e) In satisfaction of WAC 480-123-030(1)(e), Zply Fiber states that it 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) Zply Fiber is not subject to WAC 480-123-030(1)(f) which pertains only to providers of commercial mobile radio service (“CMRS”).

g) In satisfaction of WAC 480-123-030(1)(g), Zply Fiber is able to remain functional in emergencies, as described herein (*see also* WAC 480-120-411(1)), including by maintaining at least five hours back up battery power and backup generators at each Class 5 switch site in Washington State;

h) In satisfaction of WAC 480-123-030(1)(h), Zply Fiber commits to abide by all applicable consumer protection and service quality standards of chapter 480-120.

i) Zply Fiber provides herein, as **Exhibit B**, the supporting Declaration of Byron E. Springer, Jr., certifying the information in this petition (WAC 480-123-030(2));

j) Zply Fiber will fully comply with the annual certification requirements adopted by the Commission in WAC 480-123-060, 480-123-070, and 480-123-080, including requesting certification by July 1st each year, certifying that federal high-cost support is used as intended, and reporting the following information on an annual basis with respect to the Designated Service Area:

- i. Use of federal funds and benefits to customers;
- ii. Local service outages;
- iii. The number and details of unfulfilled service requests;
- iv. Complaints per one thousand connections;
- v. Certification of compliance with applicable service quality standards and consumer protection rules;
- vi. Certification of ability to function in emergency situations;
- vii. Advertising certification, including advertisement on any Indian reservations within the Designated Service Area.⁹

As expressly allowed by WAC 480-123-070, Zply Fiber reserves the right to fulfill the reporting requirements of that section by referring the Commission to reports already filed with the FCC or another federal agency.

B. Zply Fiber Meets All Federal Requirements For ETC Designation.

Zply Fiber also meets all criteria for designation as an ETC under federal law, including those in 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, *et seq.* In particular:

- 1) Zply Fiber is a common carrier (see 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));
- 2) As required by 47 C.F.R. § 54.101(b), Zply Fiber will offer the Voice Telephony services supported by federal universal service support mechanisms as defined in 47 C.F.R. § 54.101(a) using its own facilities or a combination of its own facilities and resale of another carrier's services (47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §

⁹ The census blocks listed in **Exhibit A** do not include any Indian reservation lands.

54.201(d)(1)), including the following services:

- a. Voice grade access to the public switched network or its functional equivalent;
- b. Minutes of use for local service at no additional charge to end users;
- c. Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.
- d. Toll limitation services to qualifying low-income consumers as provided in subpart E of 47 C.F.R. Part 54;

3) As described in greater detail below, Ziplly Fiber will make available Lifeline service to qualifying low-income consumers (47 C.F.R. § 54.405(a));

4) Ziplly Fiber will also publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service (47 C.F.R. § 54.405(b));

5) Ziplly Fiber will advertise the availability of its universal service offerings and charges for such offerings using media of general distribution (47 U.S.C. § 214(e)(1)(B);

47 C.F.R. § 54.201(d)(2)), namely through a combination of media, such as advertising via television, radio, newspapers, magazines or other print advertisements, outdoor advertising, direct marketing, or the Internet;

6) Ziplly Fiber will provide the supported services throughout the designated service area (47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));

7) Ziplly Fiber certifies that, in accordance with 47 U.S.C. § 254(e), it will use federal

universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

C. Ziplly Fiber Will Provide Lifeline Service to Qualifying Low-Income Consumers

Upon designation as an ETC, Ziplly Fiber will make a discounted service offering that meets all applicable Lifeline requirements available to qualified low-income consumers. Ziplly Fiber plans to offer the Lifeline discount (currently \$5.25 for voice and \$9.25 for broadband) on all of its service plans that include voice and/or broadband service.

Ziplly Fiber will advertise the availability of services supported by federal universal service mechanisms, including its Lifeline offerings. Ziplly Fiber's advertisements for Lifeline services will be reasonably calculated to reach qualified low-income consumers not receiving discounts. Both the content of Ziplly Fiber's Lifeline advertisements and the modes of advertising selected will be designed to reach qualifying subscribers that would benefit from Lifeline service.

IV. DESIGNATION OF ZIPLY FIBER AS AN ETC IS IN THE PUBLIC INTEREST

Pursuant to WAC 480-123-040, 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.” 47 U.S.C. § 214(e)(2), requires that designation be “in the public interest” only where multiple ETCs are designated for areas served by a rural telephone company, and otherwise requires only that designation meet the lower threshold of being “consistent with the public interest.” Section 214(e)(2) states:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and

consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Granting Ziplly Fiber's petition will serve the public interest by allowing Ziplly Fiber to qualify for RDOF funding to support investment in facilities and equipment that will enable the delivery of broadband and voice services to over 500 unserved and underserved high-cost locations in Washington State. Designation of Ziplly Fiber as an ETC will permit the company to receive Auction 904 funds, directly advancing the goals of the FCC's RDOF program. The resulting deployments will bring expanded voice and broadband connectivity to high-cost areas in Washington, helping to ensure that residents of Washington are not left on the wrong side of the digital divide, and expanding economic opportunity for communities that will benefit from increased connectivity.

The FCC held Auction 904 to promote the public interest by funding improved broadband service in underserved high-cost areas. By selecting Ziplly Fiber as a recipient of Auction 904 funds, the FCC has recognized that the voice and gigabit broadband services that Ziplly Fiber proposes to deploy with RDOF support would advance the goal of Auction 904 and thereby advance the goals of universal service and the public interest. Because designating Ziplly Fiber as an ETC in the census blocks listed in **Exhibit A** will allow it to use the RDOF support as intended to expand voice and broadband service to over 500 locations in two census block groups in Washington, designation of Ziplly Fiber as an ETC is plainly in the public interest.

//

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

V. CONCLUSION

For the reasons stated herein, Zply Fiber respectfully requests that the Commission expeditiously: (i) designate Zply Fiber as an ETC in the areas identified in **Exhibit A**, (ii) send the appropriate notice of the Order designating Zply Fiber as an ETC in those areas listed in **Exhibit A** to the FCC and the Universal Service Administrative Company; and (iii) order such other relief as may be appropriate.

Dated this 30th day of December, 2020.

Respectfully submitted,



Mark P. Trincherro, OSB #083290
Davis Wright Tremaine LLP
1300 SW Fifth Ave, Suite 2400
Portland, OR 97201
(503) 778-5318
marktrincherro@dwt.com
*Representing Zply Fiber Communications
Northwest LLC*

PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER AND
REQUEST FOR EXPEDITED CONSIDERATION

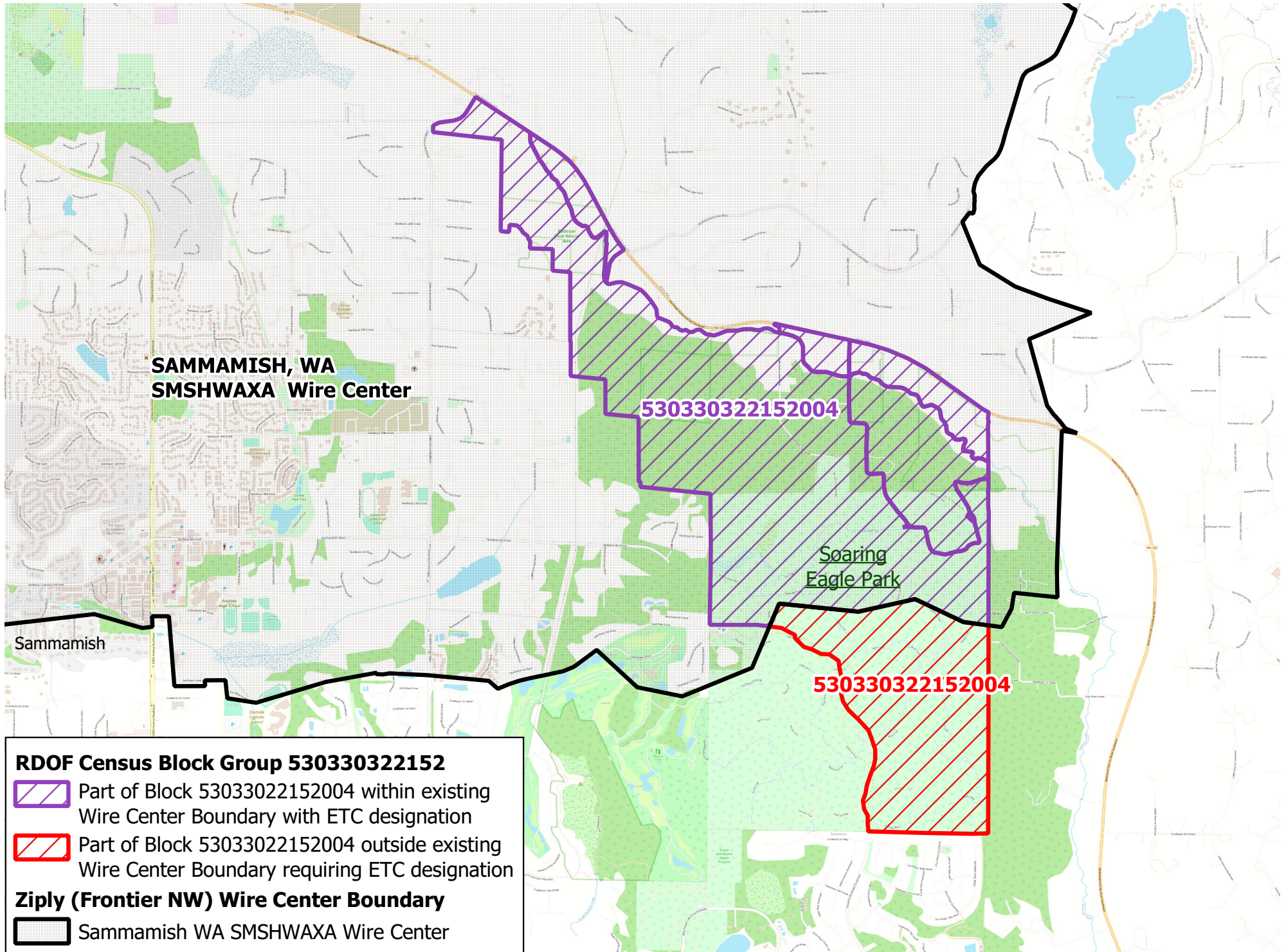
EXHIBIT A

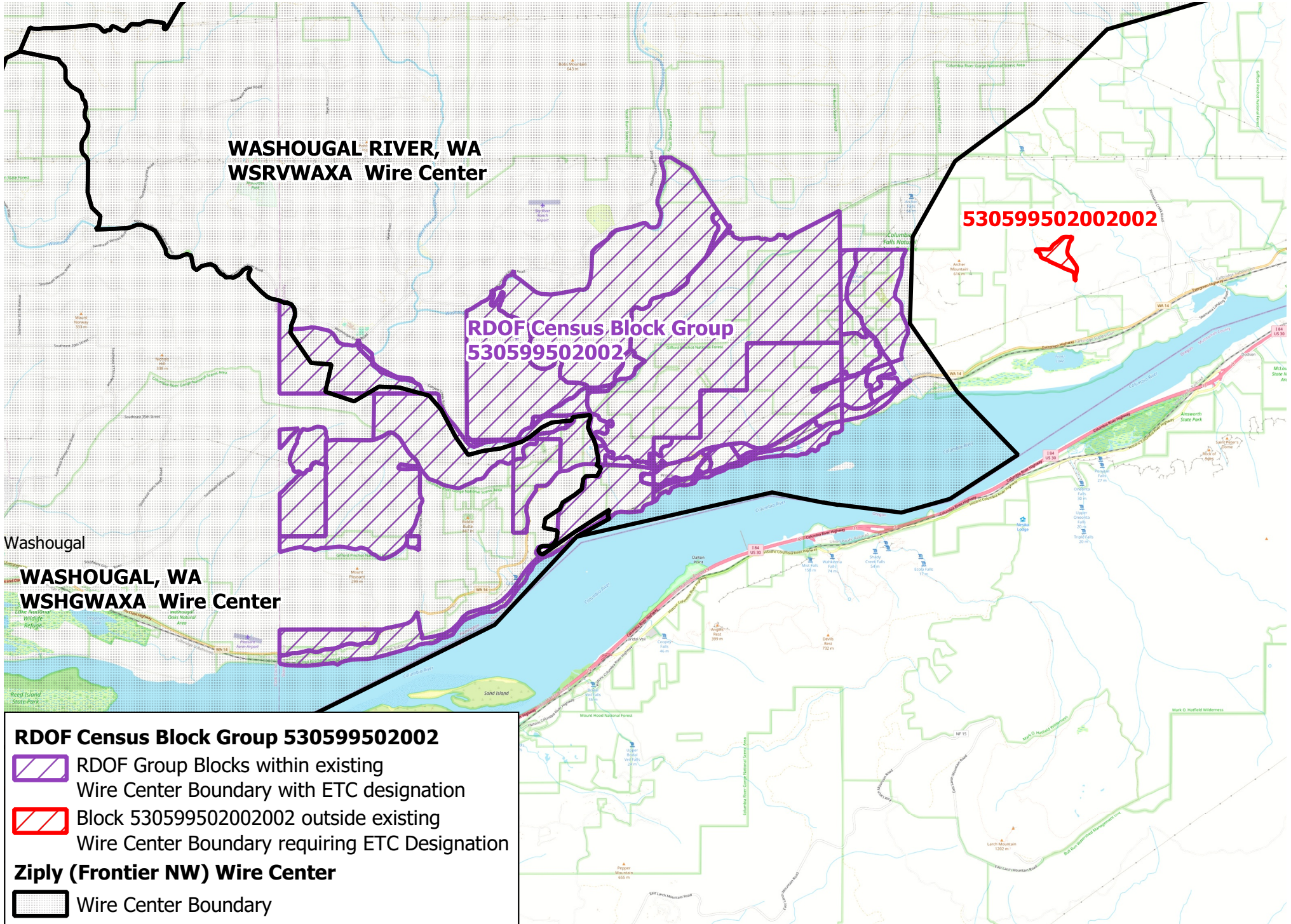
**Areas for which Ziplly Fiber seeks ETC designation
(Designated Census Blocks)**

1. The portion of census block 530330322152004 lying outside Ziplly Fiber's exchange and
2. All of census block 530599502002002.

**Maps of Areas for which Ziplly Fiber seeks ETC designation
(Designated Census Blocks)**

1. ETC Designation Position Attachment A1 (attached)
2. ETC Designation Position Attachment A2 (attached)





BEFORE THE UTILITIES & TRANSPORTATION COMMISSION
OF WASHINGTON

In the Matter of

Petition of Frontier Communications
Northwest, LLC for Designation as an
Eligible Telecommunications Carrier

Docket No. UT - _____

DECLARATION OF BYRON E. SPRINGER, JR.

I, the undersigned, Byron E. Springer, Jr., do hereby declare under penalty of perjury as follows:

1. I am General Counsel of Frontier Communications Northwest, LLC dba Ziplly Fiber, a Delaware limited liability company with its headquarters at 135 Lake Street S., Suite 155, Kirkland, Washington 98033.
2. This Declaration is submitted in support of the Petition of Frontier Communications Northwest, LLC for Designation as an Eligible Telecommunications Carrier (the "Petition").
3. I have reviewed the Petition and that the facts stated therein are true and correct to the best of my knowledge.
4. The federal universal service fund support received by Frontier Communications Northwest LLC, including all support from the Rural Digital Opportunity Fund ("RDOF") (Auction 904) will be used only for the purposes for which the support is intended.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

December 30, 2020 Seattle, WA
(Date and Place)


(Signature)