

Agenda Date: August 10, 2023
Item: A1

Docket: UT-230384
Company: Zply Fiber Pacific, LLC

Staff: Tim Zawislak, Regulatory Analyst
Jonathon Church, Regulatory Analyst
Kyle Wohlenhaus, Telecom Section Manager, Regulatory Services

Recommendation

Deny the petition without prejudice; or in the alternative, initiate an adjudication and set the matter for hearing in Docket UT-230384.

Background

On May 23, 2023, Zply Fiber Pacific, LLC (ZFP, or Company) filed a petition with the Washington Utilities and Transportation Commission (Commission) requesting designation as an Eligible Telecommunications 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. ZFP seeks ETC designation in Washington for the purpose of receiving both federal High-Cost and Low Income (Lifeline) support from the Federal Universal Service Fund (FUSF).

ZFP's petition states that it seeks to be designated on a statewide basis. ZFP's petition is ambiguous as to whether it seeks Lifeline Only (LLO) or High-Cost support, or both. Commission staff (Staff) cannot process the filing the way it is and therefore recommends denial without prejudice which would allow the Company to refile. Otherwise, Staff recommends that the Commission initiate an adjudication and set the matter for hearing in Docket UT-230384.

ZFP's petition does not explain how it will offer facilities-based High-Cost service everywhere in the state all at once. Additionally, the Company has not addressed all of the necessary aspects of WAC 480-123-030 in sufficient detail to sustain the higher level of scrutiny that a High-Cost ETC Designation petition demands.

Discussion

The Commission has jurisdiction over ETC petitions in Washington state. Section 214(e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Funds. Under WAC 480-123-040, the Commission has authority to approve petitions from carriers requesting ETC designation. The Commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.

Under 47 U.S.C. § 214(e)(2), state commissions may 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 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.

Commission staff is concerned that the scope of the requested (statewide) High-Cost designation is not supported by the petition and that the Company needs to provide evidence regarding the facilities that will be used in order to fulfill the high-cost obligation(s) it seeks to be designated for.

An adjudication with a schedule will provide the Company with an opportunity for due process in order to bear the burden of proof in support of its case. Commission staff and the Public Counsel Unit will participate as statutory parties, as well. Denial of the petition (without prejudice for the Company to refile in the future) is Staff’s primary recommendation due to current workload and available resources.

Conclusion

Staff believes that denying the petition (without prejudice) is preferable recommendation; however, initiating an adjudication and setting the matter for hearing in Docket UT-230384 would be the next best outcome in the public interest so that the Commission will have the necessary evidence in order to make an informed decision in this case. If the Commission denies the petition without prejudice the Company could refile in the future once its plans are solidified.