

ORDER NO. 21-157

ENTERED May 18 2021

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2148

In the Matter of

FRONTIER COMMUNICATIONS
NORTHWEST, LLC, dba ZIPLY FIBER,

Petition for Designation as an Eligible
Telecommunications Carrier (ETC) and as an
Eligible Telecommunications Provider.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 18, 2021 the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA7

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 18, 2021**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: May 6, 2021

TO: Public Utility Commission

FROM: Bret Farrell

THROUGH: Bryan Conway, Caroline Moore, and Scott Gibbens **SIGNED**

SUBJECT: FRONTIER COMMUNICATIONS NORTHWEST, LLC, DBA ZIPLY FIBER, LLC:
(Docket No. UM 2148)
Application for Designation As An Eligible Telecommunications Carrier and Eligible Telecommunications Provider.

STAFF RECOMMENDATION:

Staff recommends the Commission grant the request of Frontier Communications Northwest, LLC, dba Ziplly Fiber, LLC (Ziplly Fiber) for designation as a federal Eligible Telecommunications Carrier (ETC) for the purposes of receiving Rural Digital Opportunity Fund Phase I (RDOF) and Lifeline federal universal service funds, and for designation as an Eligible Telecommunications Provider (ETP) to participate in the Oregon Telephone Assistance Program (OTAP), in the census blocks listed in Attachment A subject to the following conditions:

- Frontier Communications Northwest is the entity responsible for fulfilling all obligations associated with RDOF in the service area, and complies with all FCC regulations associated with RDOF.
- Frontier Communications Northwest offers the rates and terms of service to consumers in the designated service area that it offers for those services as an Incumbent Local Exchange Carrier (ILEC) in the Provolt exchange.
- Frontier Communications Northwest includes the designated service area in its service quality reporting under the same requirements it follows as an ILEC.

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The designations are prerequisites to Zply Fiber's receipt of federal universal service funds associated with its winning bids in the RDOF Auction 904. These funds will enable Zply Fiber to deliver gigabit-speed internet access service and will also facilitate the expansion of voice and Lifeline services.

To ensure that Zply Fiber meets federal deadlines for this funding, Staff also recommends that a designation order be issued as early as possible, but no later than June 7, 2021.

DISCUSSION:

Issue

Whether the Commission should designate Frontier Communications Northwest, LLC, dba Zply Fiber, LLC as an ETC and ETP in the census blocks listed in Attachment A.

Applicable Law

Section 214(e)(2) of the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), delegates authority to state commissions to designate common carriers that are eligible to receive federal universal service support, i.e., ETCs. State commissions may confer federal ETC status on an ILEC or competitive common carriers that meet the conditions set out in Section 214(e)(1) of the Act. In general, those conditions require that the ETC offer and advertise, throughout its designated service area, the services that are supported by federal universal service support mechanisms. The carrier must provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's service.

Each state may adopt specific requirements for ETC designation that are consistent with requirements of the Act. The Commission updated its own set of requirements for federal ETC designation in Docket No. UM 1648, Order No. 15-382 entered December 1, 2015 (ETC Order). These are listed in Appendix A to the ETC Order.

Federal Communications Commission (FCC) rules require that an ETC offer Lifeline services to qualifying low-income customers within its designated service area. In order to offer Lifeline services in Oregon, a carrier must be designated as an ETP to participate in the OTAP, which is the state-mandated counterpart of the FCC Lifeline program. OTAP requirements are based on Residential Service Protection law found in ORS 759.687 and Chapter 290, Sections 2-6 and 16, Oregon Laws 1987 as amended.

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Commission rules governing OTAP are found in Chapter 860, Division 033 of the Oregon Administrative Rules.

Analysis

The Applicant

Frontier Communications Northwest d/b/a Ziplly Fiber is an ILEC affiliate of Northwest Fiber, LLC d/b/a Ziplly Fiber. Northwest Fiber, LLC d/b/a Ziplly Fiber is a telecommunications company based in Kirkland, Washington, the company started operations on May 1, 2020, when it completed its acquisition of Frontier Communications Northwest operations. Ziplly Fiber's footprint covers the Pacific Northwest region, specifically the states of Washington, Oregon, Idaho, and Montana. Its key offerings include fiber internet and phone for residential customers, and business fiber internet. Ziplly Fiber, through its predecessors in interest, has been in business since 1892, and has approximately 69,632 voice customers and approximately 110,281 broadband customers in Oregon.

The Current Application

On January 5, 2021, Ziplly Fiber filed an initial application, and on March 16, 2021, Ziplly Fiber filed a supplemental application which is at issue here. The company requests designation as a federal ETC and ETP to enable it to receive over \$8.7 million of federal universal service RDOF support for which it had submitted winning bids in the FCC's Auction 904. Ziplly Fiber was awarded a total of 3,706 locations in the FCC's Auction 904, but is only seeking designation in a small portion of those locations since the FCC's geographical designation of census block groups eligible for subsidies under the RDOF program did not line up precisely with Ziplly Fiber's local exchange boundaries in all cases. Ziplly Fiber is a designated ETC within 43 of the 46 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 Oregon exchanges as indicated by its tariffs.

The geographic designation issue arises in two areas of Ziplly Fiber's service area. The first issue pertains to Ziplly Fiber's winning bid to provide gigabit services to FCC-designated census block groups #410333616004 and #410333616005. The Census block group maps do not align completely with Ziplly Fiber's service exchange territory. Census block group #410333616004 lies partially within the Cave Junction exchange and partially within the Provolt exchange, rendering it incapable of being served with either exchange area by itself. Census block group #410333616005 lies entirely within the Cave Junction exchange. Ziplly Fiber's affiliate, Citizens Telephone Company of Oregon, LLC (CTC), serves the Cave Junction exchange and is an ETC and ETP for that exchange. Ziplly Fiber is seeking designation as an ETC throughout census block

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groups #410333616004 and #410333616005, including those portions served by its affiliate CTC, in order to satisfy the FCC's RDOF requirements.

The second designation issue arises from Ziplly Fiber's winning bid to provide gigabit services to FCC-designated census block group #410050235002, covering a portion of Clackamas County just to the south of the city of Sandy. The FCC established this census block group as a single bidding unit consisting of one complete census block and a portion of three additional census blocks. The portions of census blocks 410050235002029, 410050235002037, and 410050235002038 included within the FCC's map of the census block group that lie outside of Ziplly Fiber's exchange cover an area of only 0.15 square miles and represent approximately 19.4 percent of the territory of the FCC's map of census block group #410050235002 awarded to Ziplly Fiber by the FCC. Satellite photographs indicate that there are two potential service locations in the portion of these census blocks that fall within the FCC's map that lie outside of Ziplly Fiber's exchange, out of a total of 45 locations that the FCC has identified in census block group #410050235002.

In order to comply with the FCC's requirements and ensure that Ziplly Fiber is eligible to receive RDOF support for the FCC defined areas within census block group #410050235002, 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 portions of census blocks 410050235002029, 410050235002037 and 410050235002038 that fall outside of Ziplly Fiber's exchange but within the FCC's map of the relevant portion of census block group #410050235002 for which RDOF support is available.

As part of the ETC designation for high-cost funds, Ziplly Fiber is obligated to offer Lifeline services in these areas. ETP designation, which is also required, will enable Ziplly Fiber to participate in the OTAP and offer supplemental support to qualifying low-income consumers.

Ziplly Fiber participated in the RDOF auction as an independent entity. The FCC's December 7, 2020, *Auction 904 Results Notice* announced that Ziplly Fiber was among the winners of the recently concluded RDOF Auction. Specifically, the FCC announced Ziplly Fiber as a winning bidder in 409 Census Blocks in Oregon. In order to complete all requirements and begin receiving support, however, Ziplly Fiber must file documentation of its ETC designation from the Oregon Commission, or seek a waiver of this requirement, by June 7, 2021¹.

¹ FCC Public Notice DA 20-1422, released December 7, 2020.

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The Rural Digital Opportunity Fund was designed to build off of the Connect America Fund auction by using reverse auctions in two phases. The FCC intention was to balance the realities of a finite budget and the high cost of providing broadband in more remote rural areas. To facilitate technological neutrality among various types of network providers, the FCC established four performance tiers (speeds and usage allowances) and two latency tiers (low and high), which were weighted to reflect preferences toward higher speeds and usage allowances, and lower latency. Bidders were required to choose their performance tiers and latency tiers prior to bidding.

Zipty Fiber chose the Gigabit performance tier (speed at least 1 Gbps downstream and 500 Mbps upstream, and a usage allowance of 2 terabytes per month), and the low latency tier (100 milliseconds or less). As a result, Zipty Fiber is obligated to meet these requirements, in addition to other specific requirements (discussed below), in the areas where it will receive RDOF funding.

Staff's Review and Analysis

Staff reviewed the application and issued a data request for additional information that Zipty Fiber had filed with the FCC following the RDOF auction. This included the "long form application" submitted by winning bidders after the auction.

In order to address the geographic issues that arose from Zipty Fiber's winning RDOF bid, Commission Staff met with representatives with the company to discuss solutions.

After consultation, Staff suggested that Zipty Fiber could ask the Commission to update the authority granted in CP 502 to allow it to use its competitive provider authority in the Requested ETC Area; and that Staff would not oppose the request if Zipty Fiber agreed to the following three conditions:

- Frontier Communications Northwest is the entity responsible for fulfilling all obligations associated with RDOF in the service area, and complies with all FCC regulations associated with RDOF.
- Frontier Communications Northwest offers the rates and terms of service to consumers in the designated service area that it offers for those services as an ILEC in the Provolt exchange.
- Frontier Communications Northwest includes the designated service area in its service quality reporting under the same requirements it follows as an ILEC.

Zipty Fiber agreed to Staff's proposal and on April 16, 2021, and filed an application in CP 502 to update its competitive provider authority and agreeing to the three conditions.

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This solution allows Ziplly Fiber to use its competitive provider status in that part of the Requested ETC Area to provide service to potential customers who fall into awarded census blocks that lie outside its defined ILEC exchange boundaries, and the three conditions to which Ziplly Fiber agrees ensure that any potential customers in the same area can access identical rates and terms of service

Ziplly Fiber's application, in conjunction with the company's motion to update its competitive provider authority and agreement to the three conditions laid out as well as the information submitted to the FCC, demonstrates that it satisfies the Commission's ETC requirements as discussed below. The following numbers correspond to the application requirement in Appendix A of the ETC Order.

1. Information regarding applicant and its common carrier status: Ziplly Fiber is a common carrier. Specifically, Ziplly Fiber is an ILEC in Oregon, authorized by the Commission in Order No. 86-1236 in Docket No. UM 62. Ziplly Fiber provides voice and broadband service across its exchange. Staff has examined all financial information pertaining to the funding and financial health of Ziplly Fiber and finds that the company is financially and technically capable of providing the supported services in compliance with FCC and Commission rules.
2. Type of Federal Universal Service support for which designation is requested: Ziplly Fiber requests designation to receive federal high-cost support from the RDOF Auction 904, as well as Lifeline support.
3. Commitment and ability to provide all supported services: Ziplly Fiber offers and commits to provide the supported services within the proposed designated service area. These include voice services as defined in 47 CFR §54.101 (a), with a stand-alone voice service offering, and a broadband internet access service offering that meets the applicable FCC requirements. Ziplly Fiber commits that these services will be provided consistent with applicable high-cost universal service support rules in the RDOF Census Blocks. Ziplly Fiber will also ensure that Lifeline voice and broadband Internet services are offered in accordance with the FCC's rules in all Census Blocks where Ziplly Fiber has been awarded RDOF support. Ziplly Fiber's offerings can be found at <https://get.zipllyfiber.com/internet>.
4. Identification and definition of proposed designated service and commitment to serve: Ziplly Fiber's Requested ETC Area in Oregon consists of portions of three census blocks as depicted on Attachment A and the Cave Junction exchange. No Tribal Lands are included. Ziplly Fiber commits to provide the supported services throughout the designated service area. The FCC requires that Rural

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Digital Opportunity Fund support recipients must offer commercially at least one voice and one broadband service meeting the relevant service requirements to all locations within the awarded area in the following timeframe: 40 percent of the required number of locations in a state by the end of third year of support and an additional 20 percent by the end of the fourth and fifth years of support.²

5. Types of facilities used to provide supported services: Ziplly Fiber uses both traditional copper-based services as well as state-of-the-art fiber networks to serve customers. Ziplly Fiber plans to expand the use of the fiber-based network to serve customers in areas described in its application under the RDOF program. Ziplly Fiber expects to serve customers using its own facilities or those of another authorized carrier. Ziplly Fiber does not have any current interconnection agreements that are relevant to the area in which it now seeks ETC designation.
6. Commitment to use support in accordance with rules: Ziplly Fiber certifies that, in accordance with 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7(a), it will use federal universal service support only for the provision, maintenance, and upgrading of facilities and services for which the universal service support is intended. Ziplly Fiber's application includes an affidavit certifying that it will use the support funds only for the intended purposes. Ziplly Fiber also certifies in its application that it will comply with the service requirements applicable to the support it receives, including without limitation, the Commission's rules and orders governing ETCs and ETPs, and the applicable provisions of the FCC rules, 47 C.F.R. § 54.101, et seq., including all applicable limitations on use of funds and reporting requirements.

Additionally, the ETC Order requires an applicant for high-cost support to submit a five-year network plan demonstrating how the applicant will use the support funds. The FCC waived the requirement that winning bidders filed a five-year plan of its network investments because it found "that such obligations were no longer essential to the [FCC's] ability to monitor ETC use of support for its intended purpose".³ Staff agrees with the FCC's reasoning in this regard. Also, the required buildout targets as described in requirement No. 4 above, in conjunction with network descriptions included in the company's application, meet the intended purpose of a plan.

7. Commitment to advertise high-cost supported services throughout the service area: Ziplly Fiber affirms its commitment to advertise supported services

² FCC Order 20-5, released February 7, 2020, para. 48.

³ FCC Public Notice DA 20-1422 para. 36

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throughout the service area. Ziplly Fiber will publicize the availability of its non-Lifeline service offerings in a manner designed to facilitate consumer awareness of its competitive offerings and attract new customers to Ziplly Fiber. This effort will include advertising through media of general distribution, and Internet advertising.

8. Commitment to offer and advertise Lifeline and OTAP services: Ziplly Fiber commits to offer and advertise Lifeline and OTAP services throughout the designated service area. Ziplly Fiber will continue to offer the Lifeline and OTAP discounts on its voice-only basic telephone service offering that does not currently exceed \$34.99 per month. Eligible low-income customers will also be permitted to apply the Lifeline and OTAP discount to Ziplly Fiber's bundled service plans that include voice and broadband. Ziplly Fiber reaffirms its commitment to advertise the availability of its Lifeline and OTAP service offerings throughout its designated service area in a manner reasonably designed to reach those likely to qualify for the service.

Consistent with FCC rules, Ziplly Fiber will advertise the availability of its Lifeline offerings via media of general distribution (e.g., newspaper, magazine, or radio advertisements as well as direct mailings, bill inserts, or public displays). Ziplly Fiber also reaffirms its commitment to work with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Ziplly Fiber's Lifeline and OTAP service offerings in resource guides and other printed material produced by those organizations, as well as in their offices or other locations visited by potential eligible subscribers. Ziplly Fiber will comply with the requirements of 47 C.F.R. § 54.401(d) in the RDOF Census Blocks after ETC designation is granted by the Commission.

9. Ability to remain functional in emergencies: Ziplly Fiber has sufficient back-up power to ensure functionality in the event of an emergency. In addition, Ziplly Fiber has sufficient excess capacity and/or redundancy in its network that it can re-route traffic around damaged facilities. Ziplly Fiber is also able to manage traffic spikes resulting from emergency situations. Ziplly Fiber commits to comply with Oregon's 9-1-1 emergency reporting system tax requirements as set forth in ORS 403.200 to ORS 403.230.
10. Commitment to service quality and consumer protection standards: Ziplly Fiber commits to comply with applicable high-cost and RDOF Auction rules, as well as all applicable state regulations concerning service quality and consumer protection issues with respect to the voice services offered in the RDOF Census

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Blocks. Zply Fiber commits to resolve customer complaints received by the Commission. Zply Fiber has designated Jessica Epley as the designated contact for resolution of customer complaints.

11. Designation on Tribal Lands: These requirements do not apply as Zply Fiber is not seeking designation on Tribal Lands.
12. Public interest showing: Designation of Zply Fiber as an ETC to receive federal universal service funds is in the public interest. Zply Fiber's designation will bring gigabit-speed internet access service to customers in the designated service area, as well as competitive voice services and Lifeline and OTAP discounts for qualifying low-income customers.
13. Commitment to provide reports as required: Annual reporting requirements for designated ETCs are set forth in Appendix A of the ETC Order 15-382. Zply Fiber agrees to abide by all ETC annual reporting requirements established by the commission. Zply Fiber commits to cooperate with the Commission Staff in providing special weekly, monthly, or quarterly reports that Commission Staff may reasonably find necessary based on program requirements and the circumstances of Zply Fiber.

As to ETP requirements, Zply Fiber requests ETP designation to participate in the OTAP and offer Lifeline services. In response to ETC requirement No. 8 above, commits to abide by all OTAP and Residential Service Protection Fund rules and procedures.

No party filed to intervene in the docket.

Conclusion

Staff finds Zply Fiber's application demonstrates that the carrier has satisfied eligibility requirements for ETC and ETP designation for purposes of receiving RDOF, Lifeline, and OTAP support. Staff finds granting Zply Fiber's application without further review satisfies the public interest. Staff asks that the commission issues an ETC designation order as soon as possible, but not later than June 7, 2021, which will enable Zply Fiber to meet the FCC's deadline to receive funding.

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PROPOSED COMMISSION MOTION:

Approve the request of Frontier Communications Northwest, LLC, dba Ziplly Fiber, LLC to be designated as a federal ETC for purposes of receiving RDOF high-cost and Lifeline federal universal service support funds, and as an ETP to participate in the OTAP, in the census block groups listed in Attachment A subject to the following conditions recommended by Staff:

- Frontier Communications Northwest is the entity responsible for fulfilling all obligations associated with RDOF in the service area, and complies with all FCC regulations associated with RDOF.
- Frontier Communications Northwest offers the rates and terms of service to consumers in the designated service area that it offers for those services as an ILEC in the Provolt exchange.
- Frontier Communications Northwest includes the designated service area in its service quality reporting under the same requirements it follows as an ILEC.

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ATTACHMENT A

CENSUS BLOCKS FALLING OUTSIDE OUR EXCHANGE BOUNDARY IN THE SANDY EXCHANGE:

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410050235002037
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CENSUS BLOCKS FALLING IN THE CITIZENS OREGON EXCHANGE BOUNDARY IN THE CAVE JUNCTION EXCHANGE:

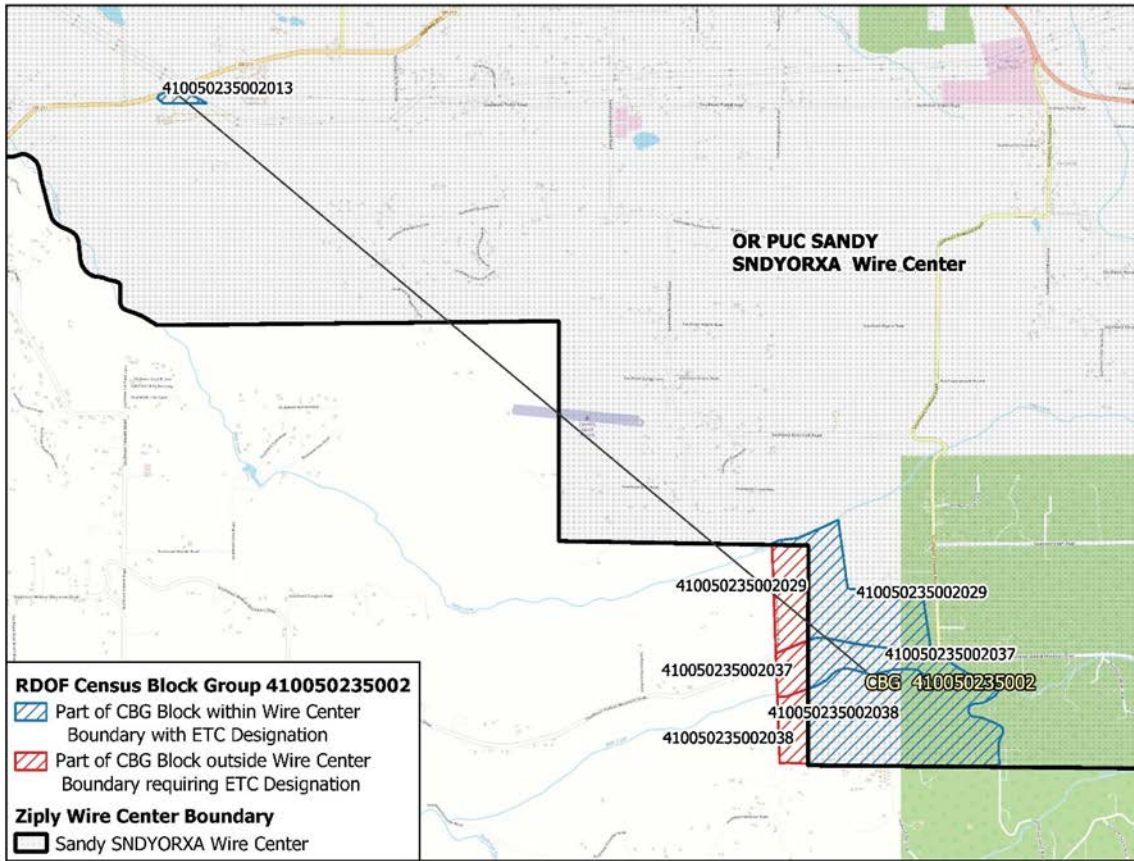
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ATTACHMENT B



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ATTACHMENT C

EXHIBIT C

