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September 16, 2020

Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Attention: Wireline Competition Bureau

**Re: Request for Non-Disclosure/Confidentiality
Northwest Fiber, LLC d/b/a ZiPLY Fiber Telephone Companies: 0028-6052-02
2020 Mid-Year Access Charge Tariff Filing; Transmittal No. 3**

To the Commission:

Pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459 (2019), Northwest Fiber, LLC d/b/a ZiPLY Fiber Telephone Companies ("ZiPLY") respectfully asks that certain demand data provided under Transmittal No. 3, in connection with its 2020 Mid-Year Access Charge Tariff Filing for TARIFF FCC No. 1, 2, & 3 be withheld from public inspection and afforded confidential treatment in accordance with Section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), Sections 0.457(d)(2) and 0.459(b) of the Commission's Rules, 47 C.F.R. §§ 0.457(d)(2), 0.459(b) (2019), and *In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170 (1997) ("Tariff Streamlining Order"). See also Public Notice, "Announcing Procedures for Obtaining Confidential Information for 2020 Annual Access Charge Tariff Filings, WC Docket No. 20-55," DA 20-604 (rel. June 9, 2020).

Section 552(b)(4) of the Freedom of Information Act permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Section 0.457(d)(2) of the Commission's Rules allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure. 47 C.F.R. § 0.457(d)(2). The requirements governing such requests are set forth in Section 0.459(b).

In accordance with Section 0.459 of the Commission's Rules, this request is supported by the following showing:

1. Identification of the specific information for which confidential treatment is sought:

Because of the competitively sensitive nature of the information, ZiPLY seeks to maintain confidentiality for the unredacted supporting materials it has submitted to the Commission in connection with its 2020 Mid-Year Access Charge Tariff Filing for TARIFF FCC No. 1, 2, & 3 under Transmittal No. 3. A copy of the unredacted materials has been uploaded to the Commission via the Electronic Tariff Filing System ("ETFS") annotated to indicate that it "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." A redacted version for public inspection has also been submitted via ETFS.

2. Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:

The 2020 Mid-Year Access Charge Tariff Filing is being made to implement exogenous cost adjustments to reflect changes in the Telecommunications Relay Service (“TRS”) carrier contribution factor, the North American Numbering Plan Administration (“NANPA”) contribution factor, and the annual regulatory fee for Interstate Telecommunications Service Providers (“ITSP”). *See also Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, *Report and Order*, 12 FCC Rcd 2170 (1997) (“Tariff Streamlining Order”).

3. Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged:

The information for which Ziplly seeks confidential treatment is competitively sensitive demand data which, if made available to competitors and alternative providers, would provide such entities with valuable information regarding Ziplly’s customer base in specific exchanges within its service area. This information would assist competitors in targeting their marketing efforts to the areas with the largest concentrations of customers. Ziplly is subject to actual and potential competition with respect to all of its services. The demand data detail the level of success Ziplly is experiencing with specific types of services in particular geographic areas. If competitors are able to gain an unfair advantage by obtaining such a detailed picture of Ziplly’s strategies and successes, they may be able to anticipate Ziplly’s strategic initiatives in a targeted way.

Thus, the filing contains information about the company’s business plans that is clearly “commercial” and “financial” in nature. *See Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms “commercial” and “financial,” as used in Section 552(b)(4), their ordinary meanings). In addition, the information provided is “confidential.” Under well-settled case law, such material “is ‘confidential’ . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

Moreover, the Commission has consistently held that subscriber data satisfy the requirements of Exemption 4. *See, e.g., Cox Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12160, ¶ 12 (2004); *Comcast Cable Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165, ¶ 6 (2004); *Time Warner Cable; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12170, ¶ 5 (2004); and *Altrio Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12176 ¶¶4-5 (2004).

4. Explanation of the degree to which the information concerns a service that is subject to competition:

As explained in the response to Item 3, the information for which Ziplly seeks confidential treatment is competitively sensitive demand data which, if made available to competitors and alternative providers, would provide entities with valuable information regarding Ziplly’s customer base in particular exchanges within its service area.

5. Explanation of how disclosure of the information could result in substantial competitive harm:

As explained in the response to Item 3, the information, if disclosed, would assist competitors in targeting their marketing efforts to the areas with the largest concentrations of customers. Zply is subject to actual and potential competition with respect to all of its services. The demand data describe the level of success Zply is experiencing with specific types of services in particular geographic areas. If competitors are able to gain an unfair advantage by obtaining such a detailed picture of Zply's strategies and successes, they may be able to anticipate Zply's strategic initiatives in a targeted way.

Under these circumstances, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of the Freedom of Information Act, see *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976), and under Sections 0.457(d)(2) and 0.459(b).

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

The company has not made this information available to the public and all previous disclosures of such information to third parties have been limited. Zply protects the information through internal policies designed to keep proprietary information and other information subject to non-disclosure obligations confidential.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

Zply is hereby requesting that such demand data be treated as confidential and be made subject to the standard Protective Order and Declaration adopted by the Commission in the *Tariff Streamlining Order* and published in Appendix B thereof, and in the Commission's Public Notice released June 9, 2020. 47 C.F.R. §§ 0.457, 0.459; 5 U.S.C. § 552(b)(4); Public Notice "Announcing Procedures for Obtaining Confidential Information for 2020 Annual Access Charge Tariff Filings", WC Docket No. 20-55," DA 20-604 (rel. June 9, 2020).

Pursuant to the non-disclosure agreement that provides for review of information granted confidential treatment by interested parties, for the specific purpose of review and comment on the instant transmittal only, Zply will provide access and review of such information to signatories of such an agreement at a mutually agreed upon location.

8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

Zply respectfully requests that this information be accorded confidential treatment until such time as it is publicly disclosed by Zply. An indefinite period of confidentiality is required because Zply cannot predict at this time when the proceeding will be terminated.

9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

As a final matter, should the Commission deny this request for confidentiality, Zply respectfully asks that the document identified in this request be returned in accordance with Section 0.459(e) of the Commission's Rules, 47 C.F.R. § 0.459(e)(2019).

Any questions concerning this filing should be directed to me at (503) 431-0458 or via email at jessica.epley@ziply.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JE' followed by a stylized flourish.

Jessica Epley
Government & External Affairs Director