

May 2, 2018

## MEMORANDUM

TO: The Public Service Commission  
FROM: Mike, Zack  
SUBJECT: Petition of Commnet Wireless, LLC for Designation as an Eligible  
Telecommunications Carrier throughout the Northern Cheyenne Reservation -  
Docket No. D2017.6.50

### PURPOSE

This memorandum summarizes the record of D2017.6.50, and provides staff analysis regarding Commnet's Petition.

### INTRODUCTION

On June 6, 2017, Commnet Wireless, LLC ("Commnet") filed with the Montana Public Service Commission ("PSC" or "Commission") a Petition for Designation as an Eligible Telecommunications Carrier ("Petition") in Big Horn County on the Northern Cheyenne Reservation ("Northern Cheyenne"). The Petition was filed pursuant to the Communications Act of 1934, as Amended, 47 U.S.C. § 214(e)(2), Section 54.101 through 54.207 of the Code of Federal Regulations, Montana Code Annotated § 69-3-840, and the Administrative Rules of Montana 38.5.3201, et. seq.

The Petition requests the Commission to designate Commnet as an Eligible Telecommunications Carrier ("ETC") on additional Tribal Land on the Northern Cheyenne Reservation ("Northern Cheyenne"). The Petition also seeks waiver of Mont. Admin. R. 38.5.3213, which would require Commnet to submit a five-year plan demonstrating how it could serve at least 98% of the customers in the requested designation area.

On February 28, 2018, the Commission granted late intervention to the Montana Consumer Counsel ("MCC"). The MCC did not submit testimony in the docket, and does not oppose Commnet's Petition.

Staff recommend approving Commnet's Petition, as discussed below.

### BACKGROUND

The Northern Cheyenne Reservation is located in both Rosebud County and Big Horn County. In December 2013, the Commission granted Commnet conditional ETC designation on the Northern Cheyenne, contingent upon Commnet receiving FCC Tribal Mobility Funds

("Mobility Fund").<sup>1</sup> Commnet subsequently won its bid to serve the Northern Cheyenne in Rosebud County, and currently holds ETC designation for this county and provides Lifeline services to qualifying residents. However Comment lost its bid to serve residents in Big Horn County.

The Mobility Fund awarded Commnet \$2,224,051 in one-time support to provide 3G or better mobile voice and broadband services in Rosebud County.<sup>2</sup> Commnet spent approximately \$2,089,399 on the capital cost of building four cellular towers to provide 3G service to the area.<sup>3</sup> The remainder of the proceeds were used for O&M expenses related to the towers.<sup>4</sup> Additionally, Commnet has opened a retail store in Lame Deer in July 2017, and began providing Lifeline service to customers who live in Rosebud County on the Northern Cheyenne at that time.

**Table 1. Cost of Network Buildout in Rosebud County**

<b>Capital Cost of Cellular Sites in Rosebud County</b>					
	<u>Ashland</u>	<u>Birney</u>	<u>Lame Deer</u>	<u>Skyline</u>	<b>Total by Category</b>
Construction	\$218,540.22	\$331,570.71	\$317,628.28	\$23,215.02	\$890,954.23
Engineering	\$8,545.76	\$8,140.26	\$9,282.15	\$8,333.58	\$34,301.75
Equipment	\$208,035.29	\$331,929.37	\$234,851.03	\$18,231.54	\$793,047.23
Labor	\$48,023.56	\$47,103.61	\$107,253.52	\$38,278.59	\$240,659.28
Project Management	\$2,658.50	\$4,072.55	\$3,463.59	\$2,589.07	\$12,783.71
Site Prep	\$28,290.19	\$49,367.92	\$29,838.50	\$10,156.81	\$117,653.42
<b>Total by Site</b>	\$514,093.52	\$772,184.42	\$702,317.07	\$100,804.61	<b>\$2,089,399.62</b>

As of July 31, 2017, Commnet served 165 Tribal Lifeline customers in Rosebud County.<sup>5</sup> Staff estimates Commnet served about 260 Tribal Lifeline customers in December 2017. The Lifeline program offers a \$34.25/month reimbursement to carriers for each Tribal Lifeline customer served. Commnet received about \$33,700 in total from the Lifeline fund in 2017. Commnet also receives about \$100,000 per month through roaming fees charged to other carriers for use of Commnet's network in Rosebud County on the Northern Cheyenne.<sup>6</sup> Commnet provided the following profit/loss statement for its operations in Rosebud County.

<sup>1</sup> *In the Matter of the Application of Commnet Wireless LLC for Conditional Designation as an Eligible Telecommunications Carrier for Purposes of Participating in the Tribal Mobility Fund Phase I Auction*, Docket D2013.11.80, Order No. 7319 (Dec. 4, 2013).

<sup>2</sup> Data Response PSC-006(b)

<sup>3</sup> Data Response PSC-003

<sup>4</sup> *Id.*

<sup>5</sup> Data Response PSC-007

<sup>6</sup> Data Response PSC-003

**Table 2. Comment Profit/Loss Statement Provided in Discovery**

<b>CWL MT- Income Statement</b>							
<b>From Jan 2017 to Jun 2017</b>							
	Jan	Feb	Mar	Apr	May	Jun	Total
<b>Wholesale Revenue</b>	\$ 126,505	\$ 108,906	\$ 112,230	\$ 107,525	\$ 106,348	\$ 116,110	\$ 677,624
<b>Retail Revenue</b>	-	-	-	-	-	2,774.00	2,774.00
							-
Telco (Backhaul)	6,991	6,991	6,991	6,991	6,991	6,991	41,946
Utility (Power and Fuel)	725	757	707	822	653	1,190	4,854
Long Distance (Expanded Coverage)	1,584	1,536	1,805	2,153	1,484	1,975	10,538
Switch Fees (Voice and Data)	17,503	15,037	15,823	14,541	14,841	16,306	94,050
Rating/Billing/Registrations	4,880	5,022	5,619	6,682	4,372	4,007	30,582
System/Software Fee (Including NOC monitoring)	500	2,553	1,527	1,527	1,527	1,527	9,160
<b>Cost of Revenues</b>	\$ 32,184	\$ 31,896	\$ 32,473	\$ 32,716	\$ 29,867	\$ 31,995	\$ 191,130
<b>Gross Profit</b>	\$ 94,321	\$ 77,010	\$ 79,757	\$ 74,809	\$ 76,481	\$ 86,889	\$ 489,268
Insurance	45	45	45	45	45	45	270
Repairs & Maintenance (Parts/Labor and Standard Site	3,425	-	378	9,600	-	-	13,403
Management Fee	3,795	3,267	3,367	3,226	3,190	3,483	20,329
Network Support Services - Tech (Selective Router, Site Adm	1,137	1,137	1,137	1,137	1,137	1,137	6,823
Network Operations -Eng (Field Tech, Vehicle, Contractor Fie	4,261	4,261	4,261	4,261	4,261	4,261	25,564
Depreciation	1,772	1,772	1,772	1,772	1,772	1,772	10,632
<b>Net Income</b>	\$ 79,887	\$ 66,528	\$ 68,797	\$ 54,769	\$ 66,076	\$ 76,191	\$ 412,248

Commnet explains in the Petition that a successful deployment of network facilities in Rosebud County, along with support from the Northern Cheyenne Tribe, led the Company to make the decision to expand its network footprint into Big Horn County. According to the Petition, Commnet has already utilized private funds to construct one cellular tower in Big Horn County, near the town of Busby.

Accordingly, Commnet's current Petition requests designation as an ETC in Big Horn County and waiver of ARM 38.5.3213—the same area for which it submitted an unsuccessful bid in the prior Mobility Fund. If approved, Commnet would be permitted to offer Lifeline service to all persons living on the Northern Cheyenne.

Aside from ARM 38.5.3213, Commnet asserts it meets all of the qualifications necessary to be designated as an ETC in Big Horn County on the Northern Cheyenne Reservation.

#### ANALYSIS

##### *GENERAL REQUIREMENTS FOR DESIGNATION AS AN ETC*

To qualify as an ETC, Commnet must satisfy the requirements in 47 U.S.C. 214(e)(2), 47 CFR 54.101 et seq., Mont. Code Ann. § 69-3-840, and Mont. Admin. R. 38.5.3201 through 38.5.3230.

Commnet argues its Petition, through its testimony of its sole witness Mr. Rohan Ranaraja, satisfies the various state and federal requirements to be designated as an ETC Lifeline provider in Big Horn County. Commnet argues:

- i. Common Carrier Status – Commnet will provide wireless service throughout its requested designated service area and is a common carrier as defined in 47 U.S.C. § 153(11).

- ii. Provide the Supported Services – Commnet will provide the supported services specified in 47 C.F.R. 54.101(a) using its own facilities. Commnet’s cellular network consists of switching, trunking, cellular sites, and network equipment.
- iii. Service Requirements, Including Minimum Service Standards – Commnet’s wireless service will comply with the Lifeline program’s minimum service standards. In addition to providing wireless and data service, Commnet will provide Lifeline subscribers with wi-fi and hot-spot enabled smartphone, at no cost, which will allow subscribers to share their service with other household members.
- iv. Ability to Function in Emergency Situations – Commnet maintains a network control center to monitor and anticipate traffic spikes. In the event of an emergency, Commnet will turn on back-up power generators and dynamically re-route traffic around damaged facilities using cell-on-wheels (COW) systems and redundant facilities.
- v. Consumer Protection Requirements – Commnet will comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service to satisfy the consumer protection requirement. In addition, Comment offers its customers online and telephone support for its service.
- vi. Financial and Technical Capabilities to Provide Lifeline Supported Services – Commnet is a wholly owned subsidiary of ATN International, a publicly traded corporation (ATNI) with working capital of over \$217 million as of December 2017.
- vii. Terms and Conditions of Lifeline Plan – Commnet will offer a Lifeline plan for Tribal and Non-Tribal members. The plans are summarized below.

**Table 3. Commnet Lifeline Plans**

	<b>Non-Tribal Lifeline</b>	<b>Tribal Lifeline</b>
Data (3G)	500 MB	3 GB
Voice Minutes	500 Minutes	Unlimited
Texts	Unlimited	Unlimited
Handset	Free	Free
Cost to Lifeline Subscribers	Free	Free

- viii. Advertisement of Services and Charges – Commnet’s advertising complies with 47 C.F.R. § 54.405(c). Commnet will advertise its Lifeline service to residents of Big Horn County through mobile enrollment events and media of general distribution.
- ix. Provision of Service in Response to Reasonable Requests – Commnet commits to provide service throughout its designated area to all customers making a reasonable request for service, consistent with section 54.202(a)(1)(A) of the FCC rules.
- x. Comparable Local Usage Plans – Although the FCC has eliminated this requirement in its recent reform of universal service, Commnet is committed to providing offering local usage plans that are comparable to those offered by incumbent local exchange carriers offering service in the same general area for which Commnet seeks ETC designation.

- xi. Verification of Eligibility – Commnet employs procedures to ensure the certification and verification procedures set forth in 47 C.F.R. § 54.410 are met. Commnet checks each Lifeline applicant against the National Lifeline Accountability Database and its own duplicate checking system prior to initiating service. Commnet is committed to utilizing the National Lifeline Eligibility Verifier once the system is available.
- xii. Additional ETC Obligations – Commnet does not charge a number-portability fee for Lifeline subscribers. Commnet is committed to paying all applicable federal, state, and local regulatory fees, including universal service and E911 fees.

#### *PUBLIC INTEREST REQUIREMENT*

The Commission must find that granting an ETC designation is in the public interest.<sup>7</sup>

According to Commnet, granting its Petition will serve the public interest for several reasons.

First, it will allow Commnet to provide high-quality services at a discounted rate to low-income customers which they otherwise might not afford. Commnet asserts that Lifeline discounts are critical to make it possible for residents on the Northern Cheyenne to be able to afford quality wireless service that is also capable of providing access to the internet. As of the 2000 census, 24.6% of the residents on the Northern Cheyenne had no telephone service.

Second, approval of Commnet's Petition will allow the Company to provide Lifeline service across the entire Northern Cheyenne Reservation, instead of only to those residents that live in Rosebud County. Commnet asserts it is confusing to customers for the Lifeline discount to be available only to some residents of the Reservation, but not others, based solely on the customer's county of residence. According to Commnet, it also makes the program more difficult to administer.

Third, Commnet contends approval of its Petition will allow all Northern Cheyenne residents access to mobile phone and broadband service that is lacking. If approved, Commnet will offer Lifeline consumers, at no charge, a mobile telephone with hotspot capability. It will initially offer 500 MB of data per month with that amount increasing to 2 GB by December 2018. Commnet believes its Lifeline data package, coupled with a hotspot-enabled device, will offer low-income residents and their families increased opportunities for education, employment, and health care that are available on the internet.

Fourth, Commnet contends Commission approval of the Petition would have a minimal impact on the Federal Universal Service Fund. If its Petition is granted, Commnet estimates annual receipts from the Lifeline fund for consumers in Big Horn County would be less than \$100,000.<sup>8</sup>

Fifth, Commnet has support for this Petition from the Northern Cheyenne Tribe. In response to data request PSC-012, Commnet provided a letter of from L. Jace Killsback, President of the

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<sup>7</sup> See 47 U.S.C. 214(e)(2); Mont. Code Ann. § 69-3-840; ARM 38.5.3209(2)(f)

<sup>8</sup> Data Response PSC-007

Northern Cheyenne Tribe. The letter states that prior to Commnet, there was little to no wireless phone service on the Northern Cheyenne. Mr. KILLSBACK states Commnet has worked cooperatively with the Tribe in locating cell towers and urges the Commission to grant approval of the Petition.

#### *REQUEST FOR WAIVER OF ARM 38.5.3213*

Commnet asks the Commission to waive ARM 38.5.3213, which requires ETC applicants to submit a five-year plan which demonstrates how the applicant will be able to serve at least 98% of the customers in the requested designation area. ARM 38.5.3213 allows the Commission to either modify the 5-year, 98% coverage plan, or modify the plan if the circumstances demonstrate modification is in the public interest.

Commnet asserts the rule should be waived in this case because it is unnecessary, and it would prevent Commnet from obtaining federal resources that would benefit the Company and its customers. Additionally, the Commission has previously waived the regulation for Commnet's prior petition.

First, Commnet argues that the Commission has previously waived a different administrative rule after finding it to be unnecessary.<sup>9</sup> Similarly, Commnet asserts Mont. Admin. R. 38.5.3213 is unnecessary and should be waived because it is intended to ensure effective network buildout by ETCs receiving high-cost funds; however, in this case, Commnet not only does not seek high-cost support as an ETC, but it has already used private capital to build out its network in Big Horn County. Commnet seeks ETC designation only to offer Lifeline service to those that can be reached by its existing infrastructure. Federal law imposes no coverage requirement on ETC designation for Lifeline service.

Second, Commnet also argues that the Commission has previously waived its own administrative rule after finding it would prevent benefits that a utility and its customers could receive from federal resources.<sup>10</sup> Similarly, Commnet asserts the Commission should waive ARM 38.5.3213 for similar reasons. Commnet would provide benefits from federal resources to customers through its Lifeline offering in Big Horn County, but Commnet cannot economically satisfy the 98% coverage requirement.

Finally, the Commission has also partially waived Mont. Admin. R. 38.5.3213 in a prior Commnet Petition for ETC designation. In Order 7319, the Commission required Commnet to meet the FCC's 75% coverage requirement to serve the Northern Cheyenne Reservation, as

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<sup>9</sup> *In the Matter of the App. Of Mid-Rivers Tel. Co.*, Order No. 6033, ¶ 8, Docket No. D97.10.208 (waiving Mont. Admin. R. 38.2.305 (an interconnection regulation) in an application of Mid-Rivers for approval of its first Interconnection Agreement).

<sup>10</sup> *In re Mount. Water Co.*, Order No. 7059, ¶ 11, Docket No. D2009.12.154

opposed to the Commission's 98% coverage requirement set forth in ARM 38.5.3213, *for the purposes of participating in the [Tribal Mobility Fund]* (emphasis added).<sup>11</sup>

#### STAFF RECOMMENDATION

Commnet meets all of the requirements necessary for ETC designation across the remainder of the Northern Cheyenne Reservation, not including the coverage requirement set forth in ARM 38.5.3213. Accordingly, Staff recommends granting Commnet's Petition, and partially waive Mont. Admin. R. 38.5.3213 to allow for a more limited build-out of its service territory, as discussed below.

Similar to Commnet's prior petition, Staff recommends that the Commission partially waive Mont. Admin. R. 38.5.3213 and include a less strenuous buildout requirement. Staff recommends the Commission to modify ARM 38.5.3213 in one of two ways:

- 1) Remove the condition from ARM 38.5.3213 which requires the carrier to submit a five-year buildout plan, but retain the 98% coverage requirement for the 5-year mark. Commnet would be exempt from the burden of filing any build-out plans, but would be required to meet the 98% coverage requirement at the five-year mark using the same coverage measurement methodology used for Rosebud County that is reported on Form 690.
- 2) Modify ARM 38.5.3213 to require Commnet to provide coverage in Big Horn County that is equal to or greater than the coverage Commnet has already achieved in Rosebud County (approximately 94.08%), using the same coverage requirement methodology that Commnet uses for Rosebud County. Staff believes it would be reasonable to allow Commnet three years to achieve the coverage requirement if Commnet deploys 3G service as it did in Rosebud County, or four years if it deploys 4G service.

Staff primarily supports the second option. Commnet itself argues that granting its Petition will enable Commnet to provide its services to Lifeline-eligible consumers throughout the Northern Cheyenne Reservation, rather than only those that reside within Rosebud County. Staff believes that, if the Commission grants Commnet's Petition, access to Commnet's services should be more equal between both Rosebud County and Big Horn County. Importantly this should include available coverage. Providing Commnet with three years to match the coverage requirement Commnet achieved in Rosebud County is one year more than the FCC previously allowed for Commnet to deploy 3G service in Rosebud County.

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<sup>11</sup> *In the Matter of the Application of Commnet Wireless LLC for Conditional Designation as an Eligible Telecommunications Carrier for Purposes of Participating in the Tribal Mobility Fund Phase I Auction*, Docket D2013.11.80, Order No. 7319, ¶ 37 (Dec. 4, 2013) (partially waiving Mont. Admin. R. 38.5.3213 for Commnet's Petition, yet conditioning the Petition to a 75% coverage requirement).

Federal policy indirectly supports this build-out requirement. The FCC's most recent Notice on Lifeline reform has emphasized that Lifeline support should be focused to encourage investment in broadband-capable networks, particularly by focusing support to facilities-based carriers (such as Commnet).<sup>12</sup> Staff argues the second option above further supports the FCC's intention by requiring Commnet to build out a network that is at least as robust as the network it has already built on the adjacent census tract on the same Reservation. Even though the recommended coverage requirement is greater than the 75% coverage requirement the FCC set forth in the Tribal Mobility Auction, staff believes the second option is still a reasonable benchmark for Commnet to achieve, considering the amount of revenues that Commnet earns on the Reservation through wholesale roaming agreements.

Finally, staff notes the area for which Commnet seeks ETC designation in this docket is also an eligible area for both the upcoming FCC Mobility Fund Phase II Auction and Tribal Mobility Fund Phase II Auction. Accordingly, Commnet will have the opportunity to apply for additional federal funds to subsidize the buildout of its network in Big Horn County if it determines its private capital is not sufficient to deploy adequate resources.

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<sup>12</sup> *In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, 32 FCC Rcd 10475 (Nov. 16, 2017) ("Notice")