

Service Date: May 29, 2018

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of ) REGULATORY DIVISION  
Commnet Wireless, LLC for Designation as )  
an Eligible Telecommunications Carrier ) DOCKET NO. D2017.6.50  
) ORDER NO. 7566b

**FINAL ORDER**

**PROCEDURAL HISTORY**

1. On June 6, 2017, Commnet Wireless, LLC (“Commnet”) filed a Petition for Designation as an Eligible Telecommunications Carrier (“ETC”). The petition requests the Commission to designate Commnet as an ETC to offer Lifeline service in Big Horn County (“Petition”).
2. On June 15, 2017, the Commission issued a Notice of Petition, indicating that parties seeking to formally intervene with Commnet’s Petition must notify the Commission by July 5, 2017. The Commission subsequently granted late intervention to the Montana Consumer Counsel (“MCC”) on February 28, 2018.
3. On October 27, 2017, Commnet filed a Motion for Waiver of Mont. Admin. R. 38.5.3213 and Brief in Support (“Motion”). Mont. Admin. R. 38.5.3213 requires ETC applicants to submit a five-year plan which demonstrates how the applicant will serve at least 98% of the customers in the requested designation area.
4. The Commission held an evidentiary hearing on March 5, 2018, to receive additional evidence on Commnet’s Petition.
5. During a regularly scheduled work session on May 8, 2018, the Commission approved Commnet’s Petition, and partially granted its Motion, as discussed below

**BACKGROUND**

6. Commnet is a wholly-owned subsidiary of ATN International, Inc., and is licensed by the Federal Communications Commission (“FCC”) as a facilities-based provider of Commercial Mobile Radio Service. *June 6, 2017 Direct Testimony of Rohan Ranaraja*, at 2 (“Test.”).

7. The Commission previously granted Commnet ETC designation for two tracts of land in the Northern Cheyenne Reservation—one in Rosebud County and one in Big Horn County—conditioned upon Commnet’s successful bid in the FCC’s Tribal Mobility Fund I Auction. *In the Matter of Commnet’s Application for ETC Designation*, Docket D2013.11.80, Order No. 7319 (Dec. 4, 2013). If Commnet was successful in either bid, it could provide ETC services in that respective service territory. *Id.* ¶ 56.

8. Commnet was successful in its bid for Rosebud County, and was awarded \$2,224,051 to develop a 3G network capable of providing coverage for a minimum 75% of the eligible population within Rosebud County. Data Responses (“DR”) PSC-005, -006(b). Currently, Commnet provides coverage to 94.08% of the eligible population, and its network includes, among other things, four cellular tower sites. DR PSC-005; Test. at 4. Commnet spent approximately \$2,089,399 of its total award on the capital cost of the four cellular towers. DR PSC-003. These capital costs include:

<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	\$ 786,037.42
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	\$ 2,089,399.62

DR PSC-003(a), PSC-004(b) (provided in Bates no. Commnet 0105). The remainder of the award was dedicated towards related operation and maintenance expenses. DR PSC-003. Currently, Commnet provides Lifeline services to residents of Rosebud County. In addition to Lifeline reimbursements, Commnet’s Rosebud network generates approximately \$1.38 million in annual revenue from other carrier customers roaming on the network. *Commnet Wireless, LLC’s Responses to Additional Request for Information* (March 23, 2018).

9. Subsequent to Commnet’s buildout in Rosebud County, it has utilized private funds and support from the Northern Cheyenne Tribe to develop a cellular tower in Big Horn

County, near the town of Busby, Montana. Test. at 3; DR PSC-005. The record does not indicate Commnet's exact percentage of network coverage in Big Horn County. *Id.*

10. Commnet's Petition requests designation as an ETC to offer Lifeline service to residents in Big Horn County for the census blocks contained in Attachment A of their Petition. Importantly, this designation and its current designation in Rosebud County would allow Commnet to provide Lifeline services across the entire Northern Cheyenne Reservation. Additionally, Commnet seeks waiver of the Commission's coverage requirements in Mont. Admin. R. 38.5.3213.

### FINDINGS OF FACT

#### **I. Commnet satisfies the requirements for ETC Designation.**

11. The Commission finds that Commnet satisfies the various federal and state requirements for ETC designation, and that designation is in the public interest.

12. The Commission finds that Commnet is a Common Carrier. 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). Test. at 4.

13. The Commission finds that 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. Test. at 4–5.

14. The Commission finds that Commnet's wireless service will comply with the Lifeline program's minimum service standards, outlined in 47 C.F.R. §§ 54.202(a)(1)(i), 54.408. Test. at 5. In addition to providing wireless and data service, Commnet will provide Lifeline subscribers with a Wi-Fi and hotspot enabled smartphone, at no cost, which will allow subscribers to share their service with other household members. *Id.*

15. The Commission finds that Commnet maintains a network control center to monitor and anticipate traffic spikes, and has the ability to remain functional in emergency situations, as required by 47 C.F.R. § 54.202(a)(2). Test. at 5–6. 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 systems and redundant facilities. *Id.*

16. The Commission finds that Commnet will satisfy applicable consumer protection and service quality standards, as required by 47 C.F.R. § 54.202(a)(3) and Mont. Admin. R. 38.5.3209(d). Test. at 6–7. Commnet will comply with the Cellular Telecommunications and

Internet Association’s Consumer Code for Wireless Service to satisfy the consumer protection requirement. *Id.* In addition, Commnet offers its customers online and telephone support for its service. *Id.*

17. The Commission finds that Commnet is financially and technically capable of providing Lifeline-supported services, as required by 47 C.F.R. § 54.202(a)(4), as it is a wholly owned subsidiary of ATN International, a publicly traded corporation with working capital of over \$217 million as of December 2017. Test. at 7.

18. The Commission finds Commnet’s terms and conditions of its Lifeline Service Plan are sufficient, as required by 47 C.F.R. § 54.202(a)(5)-(a)(6); Mont. Admin. R. 38.5.3209(2)(a), (c). Test. at 7–8. Commnet will offer a Lifeline plan for Tribal and Non-Tribal members that includes:

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

*Id.*

19. The Commission finds that Commnet’s advertisement of services and charges are reasonably designed to reach Lifeline-eligible consumers, as required by 47 C.F.R. §§ 54.201(d)(2), 54.405(b)–(c), and Mont. Admin. R. 38.5.3209(2)(b). Test. at 9–10. Commnet will advertise its Lifeline service to residents of Big Horn County through mobile enrollment events and media of general distribution. *Id.*

20. The Commission finds that Commnet will provide service in response to reasonable requests, as required by Mont. Admin. R. 38.5.3209(2)(c) and 47 C.F.R. § 54.202(a)(1)(A). Test. at 9.

21. The Commission finds that Commnet will provide comparable local usage plans, as required by Mont. Admin. R. 38.5.3209(2)(e). Test. at 9. 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. *Id.*

22. The Commission finds that Commnet will comply with additional ETC obligations, as required by 47 C.F.R. § 54.410. Test. at 9. Commnet does not charge a number-portability fee for Lifeline subscribers. *Id.* Commnet is committed to paying all applicable federal, state, and local regulatory fees, including universal service and E911 fees. *Id.*

23. The Commission finds that Commnet will employ procedures to ensure the certification and verification procedures set forth in 47 C.F.R. § 54.410 are met. Test. at 9. Commnet checks each Lifeline applicant against the National Lifeline Accountability Database and its own duplicate checking system prior to initiating service. *Id.* Commnet is committed to utilizing the National Lifeline Eligibility Verifier once the system is available. *Id.*

24. Finally, the Commission finds that granting Commnet designation in Big Horn County is in the public interest for several reasons, as required by Mont. Admin. R. 38.5.3209(2)(f), .3210.

25. First, designation will allow Commnet to provide high quality services at a discounted rate to low-income customers which they otherwise might not afford. Test. at 10. Commnet asserts that Lifeline discounts are critical for residents on the Northern Cheyenne to afford quality wireless service that is also capable of providing access to the internet. *Id.* As of the 2000 census, 24.6% of the residents on the Northern Cheyenne had no telephone service. If approved, Commnet will also offer Lifeline consumers, at no charge, a mobile telephone with hotspot capability. *Id.* 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. *Id.*

26. Second, approval of Commnet's Petition will allow the Company to provide Lifeline service across the entire Northern Cheyenne Reservation, instead of only to Rosebud County residents. Test. at 11. Commnet asserts it is confusing to customers that the Lifeline discount is only available to some residents of the Reservation, but not others, based solely on the customer's county of residence. *Id.*

27. Third, Commnet contends Commission approval of the Petition would have a minimal impact on the Federal Universal Service Fund. Test. at 12. 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. DR PSC-007.

28. Fourth, Commnet has support for this Petition from the Northern Cheyenne Tribe. DR PSC-012. Commnet provided a letter of from L. Jace Killsback, President of the Northern Cheyenne Tribe, who stated that prior to Commnet, there was little to no wireless phone service on the Northern Cheyenne Reservation. *Id.* Mr. Killsback states Commnet has worked cooperatively with the Tribe in locating cell towers and urges the Commission to grant approval of the Petition. *Id.*

**II. The Commission partially grants Commnet's Motion to Waive Mont. Admin. R. 38.5.3213.**

29. Commnet requests the Commission to waive Mont. Admin. R. 38.5.3213, which requires Commnet 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. Mot. at 1. Mont. Admin. R. 38.5.3213 allows the Commission to either modify the five year, 98% coverage plan, or modify the plan if the circumstances demonstrate modification is in the public interest. The Commission can waive any of its ETC regulations for clearly demonstrated good cause. Mont. Admin. R. 38.5.3201(3).

30. Commnet provides three arguments for waiving the coverage requirement. First, Commnet argues that the Commission typically waives administrative rules when they are unnecessary. Mot. at 3–4, citing to *In the Matter of the App. Of Mid-Rivers Tel. Co.*, Docket No. D97.10.208, Order No. 6033 ¶ 8 (waiving an interconnection regulation in Mid-Rivers' application for approval of its first Interconnection Agreement). 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. *Id.* Commnet seeks ETC designation only to offer Lifeline service to those that can be reached by its existing infrastructure. Additionally, federal law imposes no coverage requirement on ETC designation for Lifeline service.

31. Second, Commnet argues that the Commission has previously waived an administrative rule after finding it would prevent a utility and its customers from receiving federal benefits. Mot. at 6, citing to *In re Mount. Water Co.*, Docket No. D2009.12.154, Order No. 7059 ¶ 11 (waiving tariff requirements to avoid the risk of receiving funds under the American Recovery and Reinvestment Act). Similarly, Commnet asserts the Commission should

waive Mont. Admin. R. 38.5.3213 as it cannot economically satisfy the 98% coverage requirement, which would prevent Commnet from providing federal benefits to customers through its Lifeline services in Big Horn County. *Id.*

32. Finally, Commnet argues that as the Commission has partially waived Mont. Admin. R. 38.5.3213 in a prior Commnet petition for ETC designation, that the Commission should similarly waive the requirement in this Petition. *Id.* at 2, citing to *In the Matter of the Application of Commnet Wireless LLC for ETC Designation*, 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 for Rosebud County).

33. The Commission finds that Commnet has clearly demonstrated good cause to partially waive the coverage requirement, and that granting the waiver is in the public interest. The Commission finds that a 98% coverage requirement is not economical for Commnet in Big Horn County, especially as Lifeline services do not require a similar federal buildout. However the Commission finds that a 75% coverage requirement is in the public interest—which is currently required of Commnet in Rosebud County—as residents of Big Horn County should have approximately equal access to services in adjoining counties. Although the prior coverage requirement was for the purposes of Commnet participating in the Tribal Mobility Fund, and not exclusively for Lifeline services, the Commission finds it is in the public interest to require a similar network buildout in adjacent counties, which comprise the entirety of the Northern Cheyenne Reservation.

### CONCLUSIONS OF LAW

34. The Commission can conditionally designate Commnet as eligible for federal universal service support generally, and for Lifeline services specifically. 47 U.S.C. §§ 214(e), 254; Mont. Code Ann. § 69-3-840(1); Mont. Admin. R. 38.5.3206. The Commission can revoke Commnet's ETC status if it fails to comply with Commission conditions. Mont. Admin. R. 38.5.3206.

35. The Commission shall designate Commnet as an eligible telecommunications carrier for Big Horn County if it satisfies various federal and state requirements. 47 U.S.C. § 214(e), 47 CFR § 54.101 et seq.; Mont. Code Ann. § 69-3-840; Mont. Admin. R. 38.5.3201 through 38.5.3230.

36. The Commission requires ETCs to submit coverage plans that demonstrates the percentage of customers who have access to service in their service area. Mont. Admin. R. 38.5.3213. The Commission has authority to waive any of its ETC rules for clearly demonstrated good cause. Mont. Admin. R. 38.5.3201.

37. The Commission concludes that Commnet satisfies the requirements for eligible telecommunications carrier designation required in Title 47, Chapter 5 of the United States Code. 47 U.S.C. § 214(e).

38. The Commission concludes that Commnet satisfies the requirements for eligible telecommunications carrier designation as set forth in Title 47, Section 54 of the Code of Federal Regulations. 47 C.F.R. 54.202(a).

39. The Commission concludes that Commnet satisfies the minimum additional requirements for designation and maintenance of status as an Eligible Telecommunications Carrier outlined in Mont. Admin. R. 38.5.3209(2)(a)-(e).

40. The Commission concludes that conditional designation of Commnet as an Eligible Telecommunications Carrier is in the public interest. 47 U.S.C. § 214(e)(2); Mont. Admin. R. 38.5.3209(2)(f), .3210.

41. The Commission concludes that Commnet will adhere to the certification and verification of subscriber eligibility for Federal Lifeline requirements on Tribal Lands. Mont. Admin. R. 38.5.3230.

42. The Commission concludes that Commnet has demonstrated good cause to partially waive the 98% coverage percentage for Big Horn County. Mont. Admin. R. 38.5.3201(3). The Commission concludes that requiring Commnet to develop a network that provides coverage to 75% of the population of Big Horn County within five years of the service date of this Order is in the public interest. Mont. Admin. R. 38.5.3213, Mont. Admin. R. 38.5.3201.

### **ORDER**

43. Commnet's Petition for designation as an eligible telecommunications carrier to offer Lifeline services in Big Horn County is GRANTED.

44. Commnet's designation is conditioned upon Commnet developing and maintaining a network that provides coverage to 75% of the population in Big Horn County within five years of the service date of this Order. If Commnet fails to meet this coverage in Big

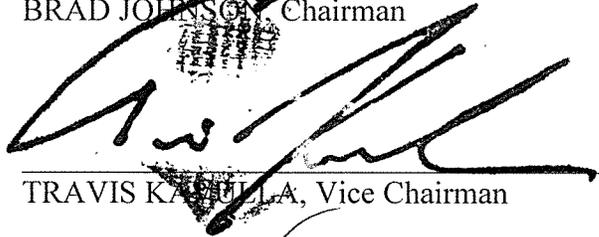
Horn County, its certification is revoked. Commnet must report to the Commission within five years of the date of this Order that it has attained the 75% population coverage.

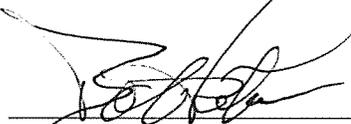
45. The Commission's coverage requirement shall be superseded if the FCC requires a different coverage requirement of Commnet in Big Horn County.

DONE IN OPEN SESSION this 11th day of May, 2018, by a vote of 4-1, Commissioner Koopman dissenting.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
BRAD JOHNSON, Chairman

  
TRAVIS KAVULLA, Vice Chairman

  
BOB LAKE, Commissioner

  
ROGER KOOPMAN, Commissioner (Dissenting)

  
TONY O'DONNELL, Commissioner

ATTEST:  
  
Rhonda J. Simmons  
Commission Secretary

(SEAL)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Final Order issued on March 29, 2018 in D2017.6.50 was served upon the following, by mailing a true and correct copy:

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Dated: May 29, 2018

/s/Sydney Kessel  
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Sydney Kessel, Administrative Assistant