

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION ) CASE NO. CWL-T-21-01**  
**OF COMMNET WIRELESS, LLC FOR )**  
**DESIGNATION AS AN ELIGIBLE ) ORDER NO. 35049**  
**TELECOMMUNICATIONS CARRIER IN )**  
**IDAHO FOR PURPOSES OF RECEIVING )**  
**RURAL DIGITAL OPPORTUNITY FUND )**  
**SUPPORT )**

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On March 9, 2021, Commnet Wireless, LLC (“Commnet”) applied for designation as an Eligible Telecommunications Carrier (“ETC”) in Idaho. The Commission issued its Notice of Application, Notice of Modified Procedure and Order setting deadlines for interested persons to comment on Commnet’s Application, and for Commnet to reply. The Commission Staff (“Staff”) filed comments on May 6, 2021 and was the only party to do so.

Having reviewed the record in this case the Commission approves Commnet’s Application.

**BACKGROUND**

Under the federal Telecommunications Act of 1996 (“Federal Act”), a carrier designated as an ETC is eligible to receive federal support from the federal Universal Service Fund (“USF”).<sup>1</sup> 47 U.S.C. § 214(e). This Commission has the authority, under the Federal Act, to grant ETC designations within Idaho. 47 U.S.C. § 214(e)(2). Authority for the Commission to designate ETC status is also provided in Idaho law—the Idaho Telecommunications Act of 1988 (“Idaho Act”)—and expounded upon in prior Commission orders. *See Idaho Code* §§ 62-610D(1), 62-615(1); Order No. 29841. Under this authority, this Commission has granted ETC designations to numerous carriers in Idaho, including wireless carriers. *See e.g.*, Order Nos. 32586, 32645, and 34163.

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<sup>1</sup> The Federal Communication Commission (“FCC”) established the federal USF with the intent to make adequate, efficient communications available nationwide, at reasonable charges. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training (“Lifeline and Link Up Reform Order”)* 27 F.C.C.R. 6656, at 6660-62 (Feb. 6, 2012); 47 U.S.C. § 254(b). Lifeline is a program supported by the USF that provides monthly discounts to eligible low-income subscribers to maintain access to communications networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 6662-63. Idaho has an analogous state USF program, established in *Idaho Code* §§ 62-610 and 62-610A-610F, and a Lifeline program known as the Idaho Telecommunications Service Assistance Program (“ITSAP”).

To qualify as an ETC, an applicant must satisfy several requirements established in federal and state law. 47 U.S.C. § 214(e); Order No. 29841. The Federal Act requires the applicant to be a “common carrier,” offering services supported under Section 254(c) of the Federal Act “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear application where consistent with public interest). The Federal Act also requires the applicant “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

Under the Federal Act, state commissions are granted the authority to determine whether ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). In evaluating this public interest element, this Commission has generally considered two factors. *See* Order Nos. 33002 at 2-3; and 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as ITSAP and the Idaho Telecommunications Relay Services (“TRS”) program. *Id.*; *Idaho Code* § 61-1301. Second, the Commission considers if the designation is sought for only part of a rural telephone company’s study area, thus leaving some (perhaps less profitable) customers without service. *See* Order Nos. 33002 at 2-3; and 33226 at 3. Such practice, known as “cream skimming,” has been determined by this Commission to be contrary to the public interest. *Id.*

Federal regulations include these additional requirements, which the Commission has adopted by reference, in evaluating applications for ETC designation: (1) compliance with service requirements applicable to support received; (2) submission of a plan for proposed improvements or upgrades to the network (where applicable); (3) demonstrated ability to remain functional in emergencies without an external power source; (4) demonstrated willingness to satisfy consumer protection and service quality standards; (5) financial and technical capability to provide Lifeline service; and (6) notice to affected Tribes where designation is sought for any part of tribal lands. *See* 47 C.F.R. § 54.202; No. 29841 at 5 and 16. For applicants seeking Lifeline-only ETCs, the FCC has waived the requirement to submit a network improvement and upgrade plan, noting that such ETCs do not receive funds to improve or extend their networks. Lifeline and Link Up Reform Order, 27 F.C.C.R. 6656, ¶ 386. This Commission—which requires a two-year network improvement plan and progress report (Order No. 29841 at 18) where applicable—has also waived the requirement where a Lifeline-only ETC is requested. Order No. 33002 at 3.

## APPLICATION

Commnet is a Delaware limited liability company, authorized to do business in Idaho, with its principal place of business at 400 Northridge Road, Suite 1100, Atlanta, Georgia 30350. *Application* at 2. Commnet “provides voice and broadband service in rural areas; principally in areas with a population of 2500 or less.” *Id.* Commnet states it qualifies for ETC designation under the federal Telecommunications Act of 1996 (47 U.S.C. § 214(e)). *Id.* Specifically, Commnet asserts designating it as an ETC is consistent with the public interest, convenience, and necessity. *Id.* Further, Commnet is a common carrier; will advertise using media of general distribution; will make available Lifeline service; is not seeking ETC status on tribal lands; has the ability and commits to provide supported services; can remain functional in emergency; commits to consumer protection and service; is committed to providing comparable local usage plans; and will comply with all reporting requirements. *Id.* at 3-9.

## COMMENTS

After reviewing the Application, applicable authorities and considering whether designating Commnet as an ETC is in the public interest, Staff recommended the Commission approve the Application.

Staff stated Commnet satisfies the Commission’s traditional public-interest criteria because: (1) Commnet will contribute to appropriate Idaho assistance funds; and (2) no “cream-skimming” concerns exist. Staff noted Commnet would participate in the appropriate Idaho programs, comply with the Commission’s annual reporting requirements, and otherwise comply with Order No. 29841. *Application* at 4-9. Staff stated no “cream-skimming” concerns exist either because Commnet would be an ETC for entire census blocks in unserved, high-cost areas of Idaho. *Id.* at 4, Exhibit 1.

Staff also noted the Commission requires all ETCs receiving high-cost support to provide a two-year network improvement and progress report. Order No. 29841 at 18. However, the FCC waived the requirement for a winning bidder to file a five-year plan as part of the FCC ETC designation process. WCB Reminds Connect Am. Fund Phase II Auction Applicants of the Process for Obtaining A Fed. Designation as an Eligible Telecommunications Carrier, 33 F.C.C. Rcd. 6696 (2018). Staff stated Commnet did not provide a two-year network improvement and progress report as part of its Application. Commnet requests that the Commission waive its two-year network improvement plan. *Application* at 6-7. Due to the FCC’s heightened oversight of

Rural Digital Opportunity Fund (“RDOF”) Auction winners like Commnet, Staff believed it would be appropriate for the Commission to waive the two-year plan requirement.

Staff noted that Commnet certifies it can function in an emergency as required by 47 C.F.R. S 54.202(a)(2) and Commission Order No. 29841.

Staff stated Commnet meets the additional requirements for ETC designation because Commnet: 1) is a common carrier as defined in U.S.C. Title 47; 2) will provide all required services and functionalities as set forth in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)); 3) will advertise the availability and rates for its services described in the Application through media of general distribution as required by 47 U.S.C. § 214(e)(1)(B); 4) will satisfy all applicable state and federal requirements related to consumer protection and service quality standards; and 5) will offer local usage calling plans comparable to those offered by incumbent local exchange carriers in the “Designated Service Area.”

In summary, Staff believed the Application demonstrates Commnet’s commitment to fulfill the obligations of an ETC in Idaho and recommended that the Commission approve it.

### **COMMISSION FINDINGS AND DECISION**

The Commission has authority to grant ETC designation to a telecommunications carrier under federal and state law. 47 U.S.C. § 214(e); and *Idaho Code* §§ 62-610D, 62-615(1). The Commission has reviewed and considered the record, including Commnet’s Application and Staff Comments. We now make the following findings.

#### ***A. Common Carrier, Own-Facilities, and Advertising***

We first address requirements listed in § 214(e)(1) of the Federal Act. That provision requires an applicant to be a “common carrier” offering services “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A), 160(a)(3). Commnet stated it will satisfy this requirement by “utilizing its own facilities or a combination of its own facilities and the resale of another carrier's services.” *Application* at 5. Therefore, we find Commnet will utilize its own facilities as a facilities-based provider. On the record before us, we find Commnet is also a “common carrier.” *See* 47 U.S.C. § 153(11).

An applicant seeking ETC designation must also “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

Based on the record and Commnet's assurances, we find this requirement to also be satisfied. *See Application* at 5-6.

***B. Public Interest and Related ETC Designation Requirements***

Under the Federal Act, state commissions shall determine whether granting the requested ETC designation is "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 214(e)(2).

First, Commnet committed to offering the services that are supported by federal universal service support mechanisms throughout the service area for which designation is received. *Id.* at 5 and 7. Commnet also committed to offering Lifeline services, as required by FCC rules. *See* 47 C.F.R. § 54.101(d). We find Commnet's offering of these services in the auction-awarded service areas promotes the public interest because these services will deploy RDOF auction funds to high-cost areas of Idaho which are unserved or underserved and provide investment in facilities and equipment in these areas. This deployment also furthers this Commission and the FCC's goals of expanding the reach of digital connectivity to promote economic growth in rural areas. In pursuit of deployment, Commnet has committed to satisfying all applicable state and federal requirements related to consumer protection and service quality standards. *Id.* at 8.

We also consider whether Commnet would contribute to the appropriate Idaho funds. Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that Commnet will participate in the appropriate Idaho programs and comply with the Commission's annual reporting requirements. We find that Commnet's commitment to participating in the appropriate Idaho programs advances the public interest.

Next, we consider whether Commnet engaged in "cream skimming," which we have found to be contrary to the public interest. Order Nos. 33002 at 2-3, 33226 at 3. Because Commnet requested ETC designation for entire census blocks in areas in unserved, high-cost areas of Idaho, no cream-skimming analysis is required.

We therefore find that granting Commnet ETC designation in the applied for census blocks satisfies state and federal public-interest requirements.

### ***C. Remaining Requirements***

Finally, we address the six remaining requirements from federal regulations and Order No. 29841. *See* 47 C.F.R. § 54.202.

(1) Service Requirements for Support Received. We find Commnet has sufficiently committed to meeting these requirements. Application at 6.

(2) Plan for Proposed Improvements or Upgrades to the Network. The FCC waived the requirement for a winning bidder to file a five-year plan as part of the ETC designation process, citing its heightened oversight of auction winners. *WCB Reminds Connect Am. Fund Phase II Auction Applicants of the Process for Obtaining A Fed. Designation As an Eligible Telecommunications Carrier*, 33 F.C.C. Rcd. 6696 (2018). Considering the FCC's heightened oversight, we waive in this proceeding our requirement that Commnet's ETC Application include a two-year network improvement plan. *See* Order No. 29841 at 8.

(3) Ability to Remain Functional in Emergencies. We find Commnet has demonstrated sufficient compliance with this requirement. *Id.* at 7.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with Commnet's assurances as to this requirement. *Id.* at 8.

(5) Financial and Technical Capability. Based on Commnet's assurances we also find this requirement to be satisfied.

(6) Notice to Affected Tribes. We find Commnet is not seeking ETC designation for any part of tribal lands. Therefore, no tribes will be affected if Commnet's Application is granted. *See Id.* at 10; *see* 47 C.F.R. § 54.202; Order No. 29841 at 14.

Based on the above findings, we conclude that Commnet has satisfied the federal and state requirements for an ETC designation, and we therefore grant the Application for the Idaho census blocks listed in Exhibit 1 to Commnet's Application.

### **ORDER**

IT IS HEREBY ORDERED that Commnet's Application for designation as an ETC in the Idaho census blocks listed in Exhibit 1 of Commnet's Application is granted.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

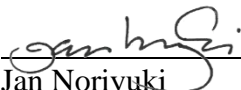
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21<sup>st</sup>  
day of May 2021.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
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ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Jan Noriyuki  
Commission Secretary

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