

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0108T

IN THE MATTER OF THE APPLICATION OF COMMNET FOUR CORNERS, LLC FOR EXPANSION OF ITS ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION FOR PURPOSES OF RECEIVING RDOF PHASE I SUPPORT.

**DECISION GRANTING APPLICATION
SUBJECT TO CONDITIONS**

Mailed Date: May 5, 2021
Adopted Date: April 21, 2021

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I. STATEMENT

A. Summary

1. This Decision addresses the Application for expansion of an existing Eligible Telecommunications Carrier (ETC) Designation for Purposes of Receiving Federal Universal

Service Support from the Federal Communications Commission (FCC) Rural Digital Opportunity Fund (RDOF) filed by Commnet Four Corners LLC (Commnet or Applicant) on March 10, 2021, and supplemented on March 25, 2021 (all filings referred to as the Application). We grant the Application subject to the conditions specified below.

B. Background

2. Since 1996, the FCC has provided subsidies (known as federal universal service support), and imposed obligations on the recipients thereof, to provide landline (and since 2011, broadband internet) service to underserved areas. The FCC’s Connect America Fund provides “up to \$1.8 billion to be spent annually to make broadband-capable infrastructure available to as many unserved locations as possible,” and the agency has “adopted rules to apply generally for competitive bidding to award universal service support.” To more efficiently allocate these funds, the FCC periodically undertakes auctions in which providers may bid to provide service and receive federal support. In late 2020, the FCC conducted “Auction 904” to allocate federal universal support to certain underserved census blocks, including some located in Colorado.

3. The RDOF Phase I auction (Auction 904) concluded on November 25, 2020. There were 180 winning bidders, with the budgeted ten-year support amount totaling \$9.23 billion and covering 5,220,833 census locations, in 49 states and 1 territory. Approximately 99 percent of the locations are covered by winning bids. Downstream speeds of at least 100 megabytes per second (Mbps) cover 99.7 percent of these locations and over 85 percent of the locations were covered by gigabit service. The auction was technology-neutral and prioritized bids for higher speeds and lower latency. In Colorado, eight bidders have won RDOF

funding, with assigned support of over ten years totaling \$249,883,710 and a total of 76,216 census blocks awarded.¹

4. Prior to June 7, 2021, winning bidders in Auction 904 must submit to the FCC, financial statements that have been audited by an independent certified public accountant, including the balance sheets, statements of net income and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes. An irrevocable standby letter of credit for each state where the applicant received an award is required. The letter of credit at a minimum must cover the first year of support. The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain service milestones.

5. As well, a professional engineer must certify that they have reviewed each state network diagram and that the network is capable of delivering at least 95 percent of the requisite performance requirements. Lastly, as a condition of receiving the “universal support” resulting from these auctions, auction winners (like the Applicant here) must receive an ETC designation from the public utilities commission(s) in the state(s) in which the winner seeks to provide service.

C. Commnet’s Application for ETC Designation

6. Commnet is currently a Commission designated ETC in Colorado, having received its ETC authorization in Proceeding No. 18A-0665T in Decision No. C18-1094, effective on December 10, 2018, to enable it to receive Connect America Fund Phase II (Auction 903) funding.

¹ The FCC, on December 7, 2020, announced that Commnet was a winning bidder in Auction 904.

7. On March 10, 2021, Commnet filed an Application for an expansion of its Designation as a High Cost Eligible Telecommunications Carrier in the State of Colorado pursuant to Rule 2187 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2. Commnet requests that a final Commission decision be made by June 7, 2021, with a request for expedited consideration.

8. On March 12, 2021, the Commission issued notice of the Application and provided 30 days for interested persons to intervene.

9. On February 18, 2021, the FCC identified Commnet as having complied with the submission of its Long Form (FCC Form 683) requirements, enabling it to continue to the post-auction review process. If Commnet is successful in the review performed by the FCC, it will become eligible to receive monthly RDOF funding for a period of ten years. In Colorado, Commnet was awarded 80 census blocks for a total award of \$3,368,991.²

10. On March 25, 2021, Commnet filed a supplement to its Application confirming its request for three waivers of Commission rules.

11. In its Application, Commnet states that it was a winning bidder in the FCC's RDOF or Auction 904 to provide facilities based mobile voice/broadband and fixed broadband services to serve certain areas in Colorado defined by census blocks that lack these services at minimum speeds.

² FCC Public Notice (DA 21-170).

1. Federal Requirements for ETC Designation

12. In order to be designated as a Federal ETC under the Federal Act, a provider must establish that it will: (a) provide the supported services throughout its designated service areas “either using its own facilities or a combination of its own facilities and resale of another carrier's services;”³ (b) advertise its universal service offerings and the charges thereof, using media of general distribution;⁴ (c) comply with the service requirements applicable to the support that it receives;⁵ and (d) be able to remain functional during emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶

13. In addition, as to supported voice telephony services, the provider must also provide evidence that it will provide: (a) its supported voice services as a common carrier;⁷ (b) voice grade access to the public switched telephone network or its functional equivalent; (c) local usage;⁸ (d) access to emergency services;⁹ and (e) toll-limitation for qualifying low-income consumers.¹⁰

14. RDOF applicants are also subject to multiple obligations, service requirements, service milestones, reporting, and record retention requirements. Annual reporting for high-cost

³ 47 U.S.C. § 214(e)(1)(A); 47 *Code of Federal Regulations* (C.F.R.) § 54.201(d)(1).

⁴ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

⁵ 47 C.F.R. § 54.202(a)(1)(i).

⁶ 47 C.F.R. § 54.202(a)(2).

⁷ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁸ 47 C.F.R. § 54.101(a)(1).

⁹ *Id.*

¹⁰ *Id.*

recipients includes, but is not limited to Annual ETC certification for each state awarded, broadband deployment reporting, including the number of locations deployed and served in each state, including where they are offering service at the required speeds, and the technology used to serve those areas.¹¹

15. In addition, there are FCC deployment obligations. Forty percent of the required number of locations need to be served by the end of the third year, 60 percent by the end of the fourth year, and 80 percent by the end of the fifth year when funding is received. Full deployment is required by the end of the sixth year. The Wireline Competition Bureau will publish updated location counts no later than the end of the sixth year. Annually, RDOF recipients are required to submit deployment data (build out and high-speed internet service by latitude and longitude) to the High Cost Universal Broadband portal (HUBB). HUBB also performs an in depth review to substantiate broadband deployment and confirm carrier build out as required.¹²

16. Finally, as to the supported broadband internet access services, the provider must establish that those services are capable of transmitting and receiving data, excluding dial-up service.¹³ A provider must demonstrate that it will satisfy applicable consumer protection and service quality standings pursuant to 47 C.F.R. § 54.202(a)(1)(ii), (a)(3), respectively.¹⁴

17. Here, in its Application, Commnet states that it will provide broadband supported services using its own facilities, and may use a combination of its own facilities and resale of

¹¹ 47 CFR §§ 54.804(c)(4), 54.320, and 54.806.

¹² <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>.

¹³ 47 CFR §§ 54.804(c)(4), 54.320, and 54.806.

¹⁴ See *WCB Reminds Connect America Fund Phase II Applicants of the Process for Obtaining Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197, 10-90, Public Notice DA 18-714, 2018 FCC LEXIS 1751, *12 (rel. July 10, 2018) (*WCB's Reminder of Process for ETC Designation*).

another carrier's services depending on the deployment scenario,¹⁵ and advertise its universal service offerings and the charges thereof, using media of general distribution.¹⁶ Commnet also states that it will comply with applicable consumer protection and service quality standards,¹⁷ and has the capability to remain functional during emergency situations because it "has adequate amounts of back-up power to ensure functionality without an external power source."¹⁸ Commnet also has redundancy in terms of rerouting traffic and the capability to manage data spikes resulting from emergency situations.¹⁹

18. As to its Voice over Internet Protocol service, Commnet states in its Application that it is "a facilities-based mobile voice/broadband and fixed broadband provider with its own towers, radio equipment, trunking, switching facilities, and other associated facilities" and "meets the applicable facilities-based requirement for ETCs that the supported services must be provided either using its own facilities or a combination of its own facilities and resale of another carrier's service."²⁰ Commnet also affirms that it will provide its proposed services as a common carrier.²¹

19. Finally, Commnet attests in its Application that it will expand its current network and ETC authority to incorporate the census block groups identified in this Application and will provide the voice and data services mandated by the RDOF award.²²

¹⁵ Application, filed March 10, 2021, p. 6.

¹⁶ Application, filed March 10, 2021, p. 8.

¹⁷ Application, filed March 10, 2021, p. 10.

¹⁸ Application, filed March 10, 2021, p. 9.

¹⁹ Application, filed March 10, 2021, p. 9.

²⁰ Application, filed March 10, 2021, p. 6.

²¹ Application, filed March 10, 2021, p. 8.

²² Application, filed March 10, 2021, p. 2.

20. Accordingly, we are satisfied that Commnet has shown it meets the federal requirements for ETC designation under 47 U.S.C. § 214(e) and 47 C.F.R. §§ 54.101(a), 54.201(d), and 54.202(a).

2. Colorado Requirements for ETC Designation

21. Rule 2187 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services sets out requirements for ETC designation. Rule 2187 requires an applicant for ETC designation to: (a) provide a description of the service area for which the applicant seeks designation as an ETC either by metes and bounds or the underlying carrier's exchange area map;²³ (b) establish that it meets the requirements of 47 CFR §§ 54.201(d) and 54.202;²⁴ (c) affirm that it is a common carrier, will advertise the services and associated charges, make Lifeline available in all locations where it has been awarded support, and that it is in compliance with applicable Commission rules;²⁵ (d) establish that it will remain functional in emergency situations;²⁶ (e) satisfy consumer protection and service quality standards;²⁷ and (f) provide a two-year build-out plan.²⁸

22. Here, Commnet's Application establishes the requirements of 47 C.F.R. §§ 54.201(d) and 54.202. In its Application, Commnet confirms that it will provide its services as a common carrier,²⁹ offer Lifeline in all locations where it has been awarded RDOF support,³⁰

²³ Rule 2187(d)(II), 4 CCR 723-2.

²⁴ Rule 2187(d)(III-IV), 4 CCR 723-2.

²⁵ Rule 2187(d)(V-VIII), 4 CCR 723-2.

²⁶ Rule 2187(d)(IX), 4 CCR 723-2.

²⁷ Rule 2187(d)(X), 4 CCR 723-2.

²⁸ Rule 2187(d)(XI), 4 CCR 723-2.

²⁹ Application, filed March 10, 2021, p. 8.

³⁰ Application, filed March 10, 2021, p. 7.

remain functional during emergency situations,³¹ satisfy consumer protection and service quality standards,³² and comply with all applicable Commission rules.³³ Accordingly, we find that Commnet has, with the exception of the three waivers discussed below, met the Commission's Rules and qualifies for the ETC designation it seeks for its RDOF awarded high-cost service areas.

3. Requested Waivers

23. In its Application, Commnet is seeking a waiver of Rule 2187, Section (d)(II), which requires a description of a service area by metes and bounds or underlying carrier exchange area map. Phase I RDOF support has been awarded to Commnet by the FCC on the basis of census block geographic areas. Commnet is asking this Commission to accept a list of its awarded census blocks, in addition to maps of the requested ETC designation areas (both of which it has provided) rather than the metes and bounds description required by the Rule. Because the FCC allocated service areas to winning bidders in Auction 904 by census blocks, it makes sense that we accept those census blocks, along with the maps Commnet provided. Commnet's maps and census block identifiers locate with a good degree of particularity, the areas in which it will offer the services for which it seeks ETC designation, and therefore we find good cause to waive the rule.

24. Commnet is also seeking waivers of Rule 2187(e), which requires an ETC to begin offering supported services within one year of the effective date of the Commission

³¹ Application, filed March 10, 2021, p. 9.

³² Application, filed March 10, 2021, p. 10.

³³ Application, filed March 10, 2021, p. 9.

approving an ETC designation, and Rule 2187 Section (d)(XI), which requires a two-year build-out plan.

25. The FCC's buildout and in-service requirements for RDOF support recipients are somewhat different than those set forth in this Commission's Rules. Rather than a two-year build-out plan, the FCC requires winning bidders to include a detailed system map that is certified by an engineer and sets specific milestones for service implementation. Support recipients are required to have 40 percent of their network built out by the end of the third year of receiving support with full buildout by the end of the sixth year of funding. Providers are required by the FCC to report their network build outs by location into the HUBB. This serves to monitor the service milestones and identify where funding recipients are able to offer service within ten business days as well as to assist in preparing coverage maps. Given that the auction winners are receiving federal support, and that the FCC has robust design, build-out, and in-service requirements, we find good cause to waive our two-year build-out plan and the one-year in-service requirements. We note that the FCC, and the public, can monitor the progress of buildout by using the HUBB.

26. Overall, the Commission finds that Commnet has satisfied the requirements for ETC designation and that granting the Application and designating Commnet as a high cost ETC is in the public interest.

27. Accordingly, the Application shall be granted, subject to the following conditions:

- Commnet must notify the Commission by filing in this proceeding, every six months from the commencement of RDOF funding, a report indicating: (1) the cumulative status and locations of its construction (build out); and (2) In which of its Auction 904 Colorado census blocks it currently offers high speed broadband internet access.

- Commnet shall inform the Commission, by making a filing in this proceeding, of the status of its RDOF approval with the FCC within ten days of notification from the FCC.
- Within 30 days of the date reported to the FCC, Commnet shall notify the Commission by making a filing in this proceeding if it has not met its FCC deployment build out milestones.

28. These conditions will ensure that the Commission and the public are aware of the progress Commnet is making in the important task of bringing broadband to underserved areas in Colorado. Finally, we reiterate that Commnet must comply with all applicable Commission rules, including, but not limited to, remitting its Colorado High Cost Support Mechanism, Telecom Relay Service, and E911 surcharges for its ETC service areas.

II. ORDER

A. The Commission Orders That:

1. The Application for Eligible Telecommunications Carrier designation for purposes of receiving Rural Digital Opportunity Fund Phase 1, filed by Commnet Four Corners, LLC on March 10, 2021, and supplemented on March 25, 2021 is granted, subject to the conditions discussed above.
2. This Proceeding will remain open to allow filings to be made. The filing obligations set forth above will end when full deployment of facilities under the Rural Digital Opportunity Fund program is made and reported to the Federal Communications Commission.
3. This Decision is effective on its mailed date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 21, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners