

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Petition Of Commnet Four Corners, LLC For Designation As An Eligible Telecommunications Carrier For Purposes of Receiving CAF Phase II Support	Docket No. 18-2609-01
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STIPULATION AND SETTLEMENT AGREEMENT

Commnet Four Corners, LLC (“Commnet” or “Company”), the Division of Public Utilities (“DPU”), and the Office of Consumer Services (“OCS”) (collectively the “Stipulating Parties” or the “Parties”), through their undersigned representatives, enter into this Stipulation and Settlement Agreement (“Stipulation”) regarding the Petition filed by Commnet in this docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (“Commission”) pursuant to the Public Service Commission Administrative Procedure Act Rule R746-1.

PRELIMINARY STATEMENT

1. On May 9, 1997, the Federal Communications Commission (“FCC”) issued its Universal Service Report and Order, 12 FCC Rcd 8776 (1997) (“Universal Service Order”) implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Federal Act”).

2. The Universal Service Order provides that only ETCs designated by a state public utilities commission (“State Commission”) shall receive federal universal service support. Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a

common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provide the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd at 8791.

4. The FCC's supported services set forth in 47 C.F.R. §54.101(a) are:

- a. Voice Telephony Service, consisting of: voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers; and
- b. Broadband Internet access service ("BIAS"), defined by the FCC in 47 C.F.R. § 8.2(a) as "the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that

are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”

5. In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

6. The FCC held Auction 903 to award Connect America Fund (“CAF”) Phase II support for certain rural service areas. On August 28, 2018, the FCC issued a Public Notice closing the Auction and announcing the winning bidders.¹

7. Commnet was among the winning bidders and was awarded the bid for two census block groups, one containing census blocks located in Beaver County and the other containing census blocks located in Kane County. The census block groups for which Commnet was awarded the winning bid are identified in Exhibit 1, hereto. The particular census blocks included within those census block groups for which Commnet has been awarded CAF Phase II support are identified in Exhibit 2, hereto.

8. Commnet is a commercial mobile radio service (“CMRS”) provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).

9. On September 24, 2018, Commnet filed a Petition with this Commission seeking designation as an ETC in the State of Utah (“Petition”), Docket Number 18-2609-01. Commnet

¹ *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 18-887, August 28, 2018 (“Auction Closing Public Notice”) attached as Exhibit 3 hereto.

seeks designation in the areas for which it has been awarded CAF Phase II support via Auction 903, as identified in Exhibit 2.

10. Utah Rural Telecom Association petitioned for intervention on November 1, 2018. Intervention was granted on November 27, 2018.

11. Utah Rural Telecom Association is not a party to this Stipulation, but has represented that it does not oppose the Stipulation.

12. Commnet, the DPU, and the OCS engaged in settlement discussions to resolve any differences regarding issues raised by the Petition.

13. The Parties have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree that this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all testimony, and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Commnet seeks to operate a facilities based network in the areas it will incur service obligations as the result of FCC Auction 903 identified in Exhibits 1 and 2 and to provide voice and broadband services over those facilities consistent with the requirements applicable to CAF Phase II support recipients.

2. Commnet's ETC designation service area will remain coterminous with its service obligation census block geographic areas as awarded by the FCC Auction 903. In the event that the FCC modifies the census blocks or geographic areas where Commnet has service obligations

Commnet's ETC designated service area will be similarly modified to remain coterminous with its service obligation areas.

3. Commnet seeks ETC designation for the limited purposes of providing the services required by the FCC for rural, insular and high cost areas that are supported by the universal service support mechanisms and of receiving federal high cost universal service support from the Connect America Fund Phase II.

4. Commnet's receipt of high cost universal service support furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah.

5. Designating Commnet as an ETC for purposes of receiving CAF Phase II universal service funds will serve the public interest by allowing Commnet to receive support to serve the areas that it is obligated to serve, thereby expanding the number of new locations that will receive coverage for the finite budget available.

6. Commnet provides each of the supported services set forth in 47 C.F.R. § 54.101(a), and the Company has shown an intent and ability to offer those services once designated throughout its requested service areas.

7. Commnet's Petition and pre-filed testimony in this docket outline the measures it will take to implement the conditions imposed by the FCC to receive high cost universal service support from the CAF Phase II.

8. Commnet will also offer Lifeline service as required by CAF Phase II support recipient at all locations where it has been awarded support.

9. The Parties stipulate and agree that designating Commnet as an ETC in the areas it will incur service obligations as the result of FCC Auction 903 serves the public interest, convenience, and necessity, as defined in 47 U.S.C. § 214(e)(2).

10. The Parties stipulate and agree that Commnet shall provide its ETC high cost and Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties recommend that Commnet's provision of its universal service offering as an ETC shall be governed by the following additional requirements:

- a. Commnet will use a Utah-specific fact sheet that provides customers concise and complete information about the services they will receive. Commnet will provide this fact sheet to the Office and the Division prior to providing service to Utah customers. Commnet will also provide the fact sheet to all new customers and make it available on the Company's website. Commnet agrees to promptly update the fact sheet and provide an updated copy to the Office and the Division any time the Company changes its Utah high cost or Lifeline program offerings.
- b. Commnet is not currently seeking any funds from the Utah Universal Public Telecommunications Service Support Fund ("UUSF").
- c. If Commnet seeks UUSF funding in the future, Commnet will file a separate application requesting such state support.
- d. Commnet will comply with all applicable state service quality and consumer protection requirements.

- e. Commnet acknowledges that approval of the Petition will be conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services.
- f. Commnet meets and will continue to meet the requirements for federal ETC designation.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Commnet's Petition and pre-filed Testimony and Exhibits. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an

admission or acknowledgement by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methods used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly identified and resolved by this Stipulation. This Stipulation does not resolve any issues not specifically identified and settled herein. The Parties are free to take any position concerning such issues.

5. The Parties request that the Commission hold a hearing on this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event that any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four (4) immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

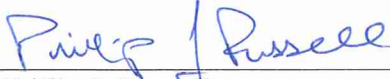
8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five (5) business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two (2) or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

DATED this _____ day of January, 2019.

FOR COMMNET FOUR CORNERS, LLC



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WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

DATED this 17 day of January, 2019.

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WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

DATED this 16th day of January, 2019.

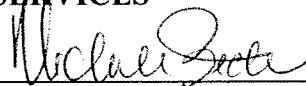
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing by the Utah Division of Public Utilities was emailed on 17 January 2019 to the following in Utah Docket 18-2609-01:

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