

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF HINSDALE, STATE OF COLORADO**

RESOLUTION, NO. 10, SERIES 2021

**A RESOLUTION PROVIDING CONDITIONAL USE APPROVAL
FOR A SPECIAL USE PERMIT FOR A COMMUNICATIONS TOWER
AND RELATED FACILITIES AT HILL 71**

WHEREAS, SAC Wireless, LLC, on behalf of Commnet Wireless, LLC (collectively referred to herein as the "applicant" or "permittee") filed an application with Hinsdale County dated April 19, 2021 for a special use permit for a 120-foot tall communications tower along with related facilities to include four (4) 10' by 16' prefabricated equipment shelters, a back-up generator, three (3) 1,000 gallon propane tanks that are approximately 4' x 16', and a 7-foot tall chain link fence around the facilities (the "Special Use Permit"); and

WHEREAS, the communications tower and related facilities are proposed to occur within a 78' by 100' footprint in unincorporated Hinsdale County's Rural Area Zoning District 2 ("RAD-2") at Hill 71; and

WHEREAS, the Special Use Permit project is to occur on lands owned and controlled by the United States Bureau of Land Management ("BLM"); and

WHEREAS, the area comprising the communications tower and related facilities is described as follows:

Lots 6 & 7, Lake San Cristobal Quadrant, SE1/4, Sec. 35, Township 43 N, Range 4W, N.M.P.M., totaling 78 feet by 100 feet,

County of Hinsdale,
State of Colorado; and

WHEREAS, pursuant to Section 2.7-2 of the Hinsdale County Zoning & Development Regulations, communications towers (and related facilities) are special uses allowed by permit only in the RAD-2 Zoning District; and

WHEREAS, the applicant has also filed documentation with the BLM for permission for the communications tower and related facilities and such permission was granted by the BLM, subject to approval of the Special Use Permit by Hinsdale County and receipt of Hinsdale County building permits for the tower and associated structures; and

WHEREAS, the applicant's communications tower and related facilities are subject to any permitting rules, regulations, and conditions instituted by the BLM, or any other permitting authority having jurisdiction over the project; and

WHEREAS, Hinsdale County submitted the Special Use Permit application and associated materials to the U.S. Soil Conservation Service, all divisions of the Colorado Department of Natural Resources, and the Colorado Department of Public Health & Environment for consideration and comments, and Hinsdale County has received no comments from any of these governmental entities in response; and

WHEREAS, Hinsdale County held a public hearing for the proposed Special Use Permit on June 11, 2021, at 9 a.m. in the Coursey Annex meeting room at 311 N. Henson Street, Lake City, CO 81235; and

WHEREAS, notice of the public hearing was published in the *Silver World* newspaper on May 28, 2021 and June 4, 2021; and

WHEREAS, the Hinsdale County Planning Commission discussed and considered the Special Use Permit application at its public meeting on May 20, 2021, and the Planning Commission unanimously recommended that the Hinsdale County Board of County Commissioners ("BoCC") approve of the Special Use Permit application finding that the project should aid in providing additional and enhanced broadband internet and cellphone services in the Lake City area; and

WHEREAS, the BoCC has considered the Special Use Permit application and accompanying information and materials submitted by the applicant, the recommendations from the Hinsdale County Planning Commission, and public comments, if any, on the proposal; and

WHEREAS, pursuant to Section 8.10 of the Hinsdale County Zoning & Development Regulations and based on evidence and information provided by the applicant, and/or additional information that the applicant will be submitting to comply with the conditions of this Resolution stated below, the BoCC hereby finds and determines that the proposed use does not create danger to safety in surrounding areas, does not cause water pollution, and does not create substantial amounts of offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable influences beyond the boundaries of the Special Use Permit project site; and

WHEREAS, at a public meeting on June 11, 2021, the BoCC voted to authorize the Special Use Permit with the conditions as stated in this Resolution, provided that the conditions stated herein below are satisfied prior to the commencement of the project, or otherwise adhered to during the project, as is applicable.

NOW, THEREFORE, BE IT RESOLVED by the Hinsdale County Board of County Commissioners as follows:

1. The above stated factual recitals are true and accurate and are restated herein as if fully set forth.
2. The Special Use Permit is approved, subject to the conditions listed below, for the following:

- A 120-foot-tall self-supporting communications tower constructed on a 17-foot by 17-foot base.
- Four (4) 10-foot by 16-foot prefabricated equipment shelters, each placed on a 14-foot by 20-foot concrete pad.
- A backup generator placed on a 6-foot by 14-foot concrete pad.
- Three 1,000-gallon propane tanks, each approximately 4-foot by 14-foot, placed on interlock pavers.
- A 7-foot-tall chain link fence enclosing the permittee's tower and facilities with an access gate for an area that is approximately 78-feet by 100-feet in total size.

Violation of any condition or other rule or regulation provided in this Resolution shall be a basis for suspension and/or revocation of the Special Use Permit. The conditions of the Special Use Permit are as follows:

a. **Prior to commencement of operations of the Special Use Permit, the permittee shall:**

i. Obtain all local, state, and federal permits required for the Special Use Permit project, structures and operations and provide copies of said permits, or other similar authorizations, to Hinsdale County. These permits, or other authorizations, include, but are not limited to:

A. BLM permit, or similar BLM authorization, confirming the permittee's authority to use BLM's property for the communications tower and related facilities and the continuing uses thereon and related thereto.

B. All building permits required and issued by the Hinsdale County Building Department for the communications tower and the other structures proposed for the Special Use Permit.

C. Any permits, or similar authorizations, required by the Colorado Department of Transportation for the operation of telecommunications facilities.

ii. Provide Hinsdale County with proof of permittee's liability insurance consistent with the requirements of Section 2.n below.

iii. Obtain an electric line extension from Gunnison County Electric Association ("GCEA") for the permittee's facilities and install the same consistent with GCEA regulations and standards. Nothing in this Resolution shall be deemed to grant or provide any electric line extension from Hinsdale County or GCEA, as such line extension shall be contemplated by separate agreement between Hinsdale County, GCEA, and the permittee.

iv. Receive a notice to commence operations from Hinsdale County, which notice shall confirm that all preconditions to the Special Use Permit operations have been satisfied, and the permittee may proceed with the project.

- b. **Federal law compliance.** The permittee shall comply with all Federal Communications Commission ("FCC") rules governing construction, technical standards, interference protection, power and height limitations, electromagnetic radiation, and radio frequency. The permittee shall also comply with all Federal Aviation Administration ("FAA") rules pertaining to location and operations.
- c. **High Voltage Notice.** If high voltage is necessary for the operation of the communications tower, or related facilities, and such high voltages are present in a ground grid or the tower, signs shall be placed on each side of the 7-foot boundary fence displaying the following: "HIGH VOLTAGE - DANGER".
- d. **Colocations.** Colocations of telecommunications equipment related to FirstNet or other service providers shall be permitted on the permittee's communications tower, provided said colocations are otherwise in compliance with this Special Use Permit and any other applicable laws, regulations, rules, etc. from any other permitting/governmental authority for the Special Use Permit project and the continuing use thereof.
- e. **Parking.** There shall be no parking or staging of vehicles on any public rights of way in or around the Special Use Permit site. On-site parking shall be utilized to the extent possible.
- f. **Site Access.** Access to the Special Use Permit site at Hill 71 shall occur from State Highway 149 approximately 5 miles southeast of the Town of Lake City. The access route is then south along the Sawmill Park Road (BLM Road 3322) and then an unnamed U.S. Forest Service/BLM two track road northwest to the top of the ridge. The site is approximately 4.5 miles from State Highway 149. A four-wheel drive vehicle, snow cat or snowmobile is required to access Hill 71, depending on the weather and land conditions and the time of the year in which access is sought.
- g. **Third Parties.** The permittee shares Hill 71 with other users and shall thus only use and access those areas covered by the Special Use Permit. Permittee shall not disturb, access, touch, or use any equipment used or owned by any third party at Hill 71.
- h. **Waste Disposal.** All liquid and solid wastes, as defined in the Solid Wastes Disposal Sites and Facilities Act (C.R.S. § 30-20-100.5), shall be stored and removed for final disposal in a manner that protects against surface and groundwater pollution. No permanent disposal of wastes shall be permitted on the site. All waste materials shall be disposed of off-site in an appropriate waste disposal facility.
- i. **Material Representations.** All submissions, materials, information, and representations (whether written or oral) made by the permittee, and those representing the permittee, shall be adhered to and considered conditions of approval.
- j. **Term.** The Special Use Permit shall remain in effect, unless otherwise terminated by Hinsdale County or the permittee as provided herein. Notwithstanding the foregoing, in the

event the special use activity ceases for a period of 12 consecutive months, the Special Use Permit shall be deemed abandoned by the permittee and become void.

k. **Health & Safety.** If, at any time, Hinsdale County determines that the permittee's special use may be causing health or safety concerns, or significantly impacting any of the adjacent properties, the County may suspend the Special Use Permit and require a hearing for review, continuation of the permit operations, further suspension, and/or termination thereof, as determined at the sole discretion of the BoCC.

l. **Deviations to Special Use Permit.** Upon written notification by Hinsdale County to the permittee during the term of the Special Use Permit, Hinsdale County may require minor deviations to the Special Use Permit, including but not limited to, the terms and conditions thereof. Any such deviation(s) required by Hinsdale County shall serve as an amendment to the Special Use Permit.

m. **Compliance with Law and Permits.** The permittee shall comply with all local, state, and/or federal permit issued for the project. Permittee shall also comply with all applicable local, state, and federal laws, rules, regulations, etc. applicable to the Special Use Permit, its associated operations and the project site.

n. **Limitation of County Liability & Insurance.** The BoCC, by issuance of this Special Use Permit, assumes no responsibility for the Special Use Permit operations, and the permittee hereby covenants and agrees to hold Hinsdale County and its officers, agents, representatives, employees, and attorneys harmless for any injury or damage which may occur, of whatever type or nature, as the result of the operations related to the Special Use Permit. Permittee warrants that appropriate liability and hazard insurance will be obtained and a copy of Permittee's certificate of insurance shall be provided to Hinsdale County prior to commencing operations hereunder. Permittee further warrants and agrees to compensate Hinsdale County for any expenses, including reasonable attorney's fees, incurred by Hinsdale County in the defense of any lawsuit, or other legal action, brought against Hinsdale County as a result of the permittee's operations hereunder.

o. **Binding Contract.** This Special Use Permit shall be a binding contract between Hinsdale County and the permittee. The Special Use Permit is for use only by the permittee.

p. **Right to Enter Site.** Permittee, by accepting this Special Use Permit, irrevocably consents to Hinsdale County, and its agents, employees, representatives, officers, and attorneys, to enter the Special Use Permit site at any time during regular business hours to check for compliance with the Special Use Permit. Hinsdale County has the authority to immediately suspend operations of the Special Use Permit for non-compliance with any Special Use Permit condition, pending a hearing, or otherwise remedying the issue to the satisfaction of Hinsdale County.

q. **Violations.** In the event of a violation of any of the restrictions, rules, or conditions of this Special Use Permit, or in the event of the failure of the permittee to satisfy any of the preconditions to operations, the BoCC may immediately suspend the Special Use Permit,

and upon not less than ten (10) days written notice to the permittee, hold a public hearing to consider the revocation of the Special Use Permit, or take such other action as the BoCC, in its sole discretion deems appropriate, including termination of the Special Use Permit.

r. **Notices.** All notices given hereunder shall be in writing and signed by the party or a duly authorized representative of the party making the same. All notices shall be deemed given when delivered personally, or three (3) days after deposit of the same in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the applicable party as follows:

Permittee:
SAC Wireless, LLC
c/o Cynthia VanDeMark
540 W. Madison Ave., 9th Floor
Chicago, IL 60661

Hinsdale County:
P.O. Box 277
Lake City, CO 81235

with copy to:

Commnet Wireless, LLC
1562 Park St. E
Castle Rock, CO 80109

with copy to:

Michael O'Loughlin
Hinsdale County Attorney
232 W. Tomichi Ave., Suite 204
Gunnison, CO 81230

s. **Termination.** No termination of this Special Use Permit shall occur without good cause shown by Hinsdale County. Upon termination of the Special Use Permit, the communications tower and all other related equipment and facilities shall be completely removed from the site, and the site returned to the same condition as existed prior to the issuance of the Special Use Permit within 12 months of the termination date. Additionally, if the tower or any of the related facilities or equipment become obsolete or are no longer in use, said tower, equipment and/or other facilities, as is applicable, shall be removed from the site within 12 months of said obsolescence or non-use, and the site shall be restored to the same condition that existed prior to the issuance of the Special Use Permit.

t. **Amendment.** Any modification or amendment to this Special Use Permit shall be made only upon written resolution of the BoCC.

ADOPTED by the Hinsdale County Board of County Commissioners on the 11th day of June 2021.

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF HINSDALE, STATE OF COLORADO**

By: 
Kirstie Borckers, Chair

ATTEST:

Jean Roberts
Jean Roberts, County Clerk



The Commissioner vote tally on this Resolution was as follows:

Commissioner Borchers	Aye <u>X</u>	Nay _____
Commissioner Hurd	Aye <u>X</u>	Nay _____
Commissioner Levine	Aye _____	Nay _____

PERMITEE:

SAC Wireless, LLC

By: *Cynthia Vandemark* (sign)

Cynthia VanDeMark (print name)

Its: Zoning and Permitting Specialist (title)

Date: June, 23, 2021

Commnet Wireless, LLC

By: *[Signature]* (sign)

KENNETH J. BARNER (print name)

Its: SUP & GM (title)

Date: JUNE 23, 2021

COMMNET WIRELESS, LLC

WRITTEN CONSENT OF SOLE MEMBER

March 1, 2020

The undersigned, being the sole member (the "Member") of Commnet Wireless, LLC, a Delaware limited liability company (the "Company"), hereby consents, pursuant to the provisions of §18-302 of the Delaware Limited Liability Company Act, to the taking of the following actions for and on behalf of the Company:

Appointment of Members of Advisory Committee

RESOVLED: That the following persons be, and hereby are, appointed as Members of the Company's Advisory Committee. Members shall be appointed from time to time by the Chief Executive Officer of the Company.

Michael T. Prior
Justin D. Benincasa
William Kreisher

Election of Officers

RESOLVED: That the following officers be, and hereby are, elected to the office of the Company set forth next to their names, to serve until his or her successor is duly elected and qualified:

<u>Name</u>	<u>Title</u>
Roderick Nelson	President and Chief Executive Officer
Mark Hlavek	Chief Financial Officer
Kenneth Borner	Senior Vice President Network Operations
Christopher Daly	Vice President, Sales and Marketing
Leonard Westlake	Senior Vice President Network Engineering
Angie Flom	Vice President, Sales Operations
Carl Gunnell	Vice President
Jeffrey Humiston	Vice President
Ketan Kamdar	Vice President
Peter Spouse	Vice President
Mary M. Mabey	Secretary
Justin D. Benincasa	Treasurer
Clay McInnish	Assistant Treasurer
Andrew S. Fienberg	Assistant Treasurer
Michele A. Satrowsky	Assistant Treasurer

RESOLVED:

That the foregoing officers be, and they hereby are, and each of them singly hereby is, authorized and directed to execute and deliver or file, or cause to be executed and delivered or filed, such other instruments and documents, and to do and perform, or cause to be done and performed, such further acts and things, as they, he, or she may determine to be necessary, appropriate, or desirable to effectuate the operation of the Company.

IN WITNESS WHEREOF, the undersigned Member has caused this consent to be executed as of date first written above.

ATN INTERNATIONAL, INC.

By: 

Name: Mary M. Mabey

Title: Senior Vice President & General Counsel