

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION BY )  
NORTH AMERICAN LOCAL LLC FOR )  
RECLASSIFICATION AS A FACILITIES BASED ) TC23-046  
ELIGIBLE TELECOMMUNICATIONS CARRIER )  
)**

**SDTA REPLY TO STAFF BRIEF REGARDING:**

**THE MOTION TO DISMISS NORTH AMERICAN LOCAL, LLC’S  
PETITION FOR RECLASSIFICATION**

**OR ALTERNATIVE**

**MOTION FOR CLARIFICATION**

The South Dakota Telecommunications Association (SDTA), requests South Dakota Public Utilities Commission (Commission or PUC) enter an order to dismiss the North American Local, LLC (NAL) Petition for Reclassification as a Facilities-Based Eligible Telecommunications Carrier (Petition) because: (i) In TC19-009 NAL agreed and stipulated that it would operate as a wireless reseller. NAL’s Petition in TC23-046 is in violation of the stipulation. (ii) The Commission’s Order in TC19-009 was based upon the stipulated fact that NAL operates as a wireless reseller. (iii) South Dakota law does not provide for a “reclassification” process. In the alternative, SDTA requests the Commission clarify that it will evaluate NAL’s TC23-046 Petition as if it were a new request for ETC designation.

On February 26, 2024, the PUC Staff filed a Brief regarding SDTA’s Motion. NAL has yet to make a filing and has not indicated whether it intends to. Its deadline to file, pursuant to Commission Order, was February 26, 2024. Given NAL’s unexcused and unexplained disregard for the PUC Scheduling Order, SDTA requests the Commission either reject an NAL late filing or permit SDTA additional time to respond to an NAL late filing.

Both SDTA and Staff provided background in their filings. However, it appears additional context is necessary. The following points should also be considered when contemplating the history and background in this docket.

- In its original Application for ETC Designation in Docket 19-009, NAL told this Commission that it is “qualified to participate in the lifeline program.” See TC19-009 Application filed on April 24, 2019, page 6. NAL went onto explain that “NAL has been granted forbearance from the facilities requirement for purposes of federal Lifeline support.” Id. Paragraph 15. These statements are untrue. There is no way to give NAL the benefit of the doubt to read these statements as true. Qualification and forbearance require FCC approval of a compliance plan. NAL has never, at any time, received FCC approval.
- The parties agreed, through the April 19, 2021, stipulation signed by SDTA and NAL (Stipulation), that NAL can provide lifeline services in certain areas in SD as a reseller, according to and in compliance with all applicable law. Specifically, see Stipulation page 5, Paragraph 5, “*Applicant shall comply with all applicable Tribal local, state and federal rules and regulations governing the provision of Lifeline service.*”

One such legal requirement is that all wireless resellers must have an FCC approved compliance plan to prevent against waste, fraud and abuse.<sup>1</sup> At the time of signing the Stipulation, NAL did not have an approved compliance plan, and since then NAL had not received FCC approval of its compliance plan. That fact does not make the Stipulation “inconsistent” and SDTA objects to Staff’s description of the Stipulation as such. The Stipulation sets forth an agreed upon path forward for NAL to provide resold lifeline services in South Dakota if or when it receives necessary approval from the FCC.

- Neither the Commission nor the Staff should forget the efforts NAL made, after it signed the Stipulation and after the Commission issued an Order, to manipulate application of the federal law and the TC19-009 Order. The Applicant’s lack of candor with the Commission and its seeming disrespect for the language, spirit and intent of the law is relevant given this Commission’s duty to make a finding on public interest.<sup>2</sup> Specifically:

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<sup>1</sup> *In the matter of Lifeline and Link Up Reform and Modernization*, Report and Order, WC Docket No 11-42, February 6, 2012.

<sup>2</sup> 47 USC §214(e)(2) and 47 CFR §54.201(c)

- On March 21, 2022, through its Managing Partner, NAL requested the Commission disregard facts and classify NAL as facilities based, thus allowing it to avoid an FCC approved compliance plan.
- Then again on May 7, 2022, through its attorney, NAL made the same request. In both the March 21 and May 7, 2022 filings, NAL argues the “reclassification” is a simple administrative fix and that it is just a “clarification.” Again, that is not true. Ultimately, NAL chose not to pursue this argument after questions were raised. This manipulation attempt by NAL is at best disingenuous and at worst intentional misrepresentation of the facts and law. The docket was dismissed, and no Commission action resulted.
- Then in September of 2023, NAL made another filing (docketed as TC23-046) abandoning its prior line of argument and now claims it has legitimate facilities in South Dakota.<sup>3</sup>

NAL’s filings in this docket do not ask the Commission to Amend the prior Order.

Rather, NAL continues to use “reclassification” as the action word. That requested action has no basis in state or federal law. As a result, SDTA made the Motion to dismiss or clarify as filed on January 22, 2024. All ongoing discovery, argument, motions, legal strategy and analysis depend on whether the Commission finds it is appropriate to examine NAL’s “facilities” in isolation.

In conclusion, SDTA agrees with Staff: There is no legal authority in South Dakota law to consider only the “facilities-based” aspect of this docket while keeping in place all other aspects of the 2019 Order. SDTA requests the Commission proceed accordingly, which SDTA maintains may result in dismissal.

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<sup>3</sup> However, to date NAL refuses to provide SDTA any information about said facilities thus preventing SDTA from assessing the legitimacy of NAL’s facilities claims.

Dated this 27 day of February 2024.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that: SDTA’s response to Staff’s Brief regarding SDTA Motion to Dismiss or Alternative Request for Clarification, was filed in PUC Docket TC23-046, and served upon the following parties electronically:

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Dated this 27 day of February, 2024

/s/ Kara Semmler

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