

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

In the Matter of the Petition of)	
North American Local, LLC for)	Docket No. TC19-009
Designation as an Eligible Telecommunications)	
Carrier in the State of South Dakota)	

REQUEST FOR CLARIFICATION

North American Local, LLC (“NAL”) submitted the attached letter to the Commission on March 20, 2022, requesting clarification of the Commission’s designation of NAL as an Eligible Telecommunications Carrier (“ETC”) in South Dakota on October 5, 2021. In its request for clarification, NAL is seeking to resolve an issue raised by the Universal Service Administration Company (“USAC”) that is preventing the company from obtaining support for the provision of Lifeline service in South Dakota, which was the Commission’s intent in designating NAL as an ETC in South Dakota. On April 29, 2022, NAL held a teleconference call with staff to discuss its request for clarification. South Dakota Telecommunications Association (“SDTA”) was invited to participate in the call, but they did not participate. NAL provides the following further explanation of its request for clarification.

NAL is a competitive provider of telecommunications and broadband services in the following seven states: Alabama, Michigan, Minnesota, North Carolina, North Dakota, South Dakota, and Wisconsin. NAL is considered a facilities-based carrier using a combination of its own facilities and those of other carriers. NAL has deployed a centralized network architecture using a switch located in Florida, interconnection connectivity to each state, and last mile facilities of other carriers to reach end user customers, all of which is part of the record in this proceeding. State commissions reviewing NAL’s applications for designation as an ETC for purposes of only Lifeline support have concluded that NAL is a facilities-based carrier, which is necessary to receive federal Lifeline support.¹

¹ Lifeline providers that are not facilities-based carriers, *e.g.*, pure resellers, are only able to obtain Lifeline support if they have an approved Compliance Plan.

In North Dakota, the state commission found that:

“North American has its own facilities and utilizes the last mile facilities of the major GSM wireless carriers such as AT&T, Verizon, T-Mobile and Sprint in order to provide the best coverage and service available for subscribers. North American is currently authorized as a wireless ETC in the states of Minnesota, Michigan, Wisconsin, and Alabama. “

In Minnesota, the state commission concluded that “pursuant to the requirements set forth in Section 54.201(d)(1) of the FCC’s rules, North American provides service through a combination of its own facilities and those of its underlying wireless provider” and therefore is a facilities based carrier eligible for Lifeline support.

In Wisconsin, the state commission found that “North American operates as a facilities-based CLEC in Alabama, where it provides service to its local customers over facilities obtained as UNEs. By doing so, North American meets the “own-facilities” requirement found in 47 U.S.C. § 214(e)(1)(A).”

In Michigan, the state commission stated:

North American is not seeking forbearance from the FCC’s facilities requirement. Therefore, an FCC approved compliance plan is not necessary. 47 USC 214(e)(1)(A). North American will be using a combination of its own facilities and resale of another carrier’s (321 Communications, a Sprint Mobile Virtual Network Operator (Sprint)) facilities to provide service. Where Sprint does not have adequate facilities, North American will provide service by reselling the services of other national carriers.

In South Dakota, the Commission found that “NAL will provide Lifeline services to end user customers by using its own facilities or the antenna towers and radio equipment of facilities-based wireless carriers to serve end user customers.” *SD ETC Order* a p. 3. To serve all consumers within its ETC service area, “NAL will provide its wireless service by reselling T-Mobile, Verizon, and AT&T services in order to offer the services that are supported by Federal universal service support mechanisms” *SD ETC Order* at p. 2). An ETC is considered a facilities-based ETC by “either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier).” 47 CFR § 54.201(d)(1). “A state commission shall not require a

common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support.” 47 CFR § 54.20154.201(g).

Upon its designation as an ETC in South Dakota, NAL requested a Study Area Code (“SAC”) from USAC for purposes of obtaining universal service support. Based upon its interpretation of the *SD ETC Order*, USAC determined that NAL is not a facilities-based carrier and therefore refused to provide NAL with the necessary SAC to receive Lifeline support.² To resolve this situation and enable NAL to fulfill the intent of the *SD ETC Order* (e.g., allow NAL to provide Lifeline service to eligible low-income consumers), NAL is requesting the Commission:

- Clarify the *SD ETC Order* to state that “NAL is a facilities-based carrier,” or, in the alternative:
- Amend the *SD ETC Order* to state that “NAL is a facilities-based carrier, as determined by state commissions in Michigan, Minnesota, North Dakota, and Wisconsin. In South Dakota, NAL will use the last mile facilities of other carriers to provide Lifeline service. The Commission is not addressing whether NAL is a facilities-based carrier in South Dakota for purposes of providing Lifeline service, but did approve NAL’s designation as an ETC in South Dakota to enable the company to provide Lifeline service and receive support for providing service to eligible low-income consumers.”

² Based upon on-going discussions with USAC, NAL believes its designation as an ETC for purposes of providing “Lifeline only” service has caused confusion within USAC, resulting in its refusal to provide NAL with a SAC necessary to receive Lifeline support. To resolve this confusion, the *SD ETC Order* would need to be clarified or amended, as explained herein, or modified to eliminate the “Lifeline only” language in the caption and in the body of the order, which seems to be the cause of some confusion by USAC.

NAL is a facilities-based Lifeline provider in several states using the same network facilities as it does in South Dakota. To the extent the Commission is not prepared to declare NAL a facilities-based carrier in South Dakota, NAL respectfully requests the Commission amend the *SD ETC Order*, as explained herein, or separately provide this clarification to enable NAL to receive support for providing Lifeline service.

Dated: May 7, 2022

Respectfully submitted,

North American Local, LLC

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North American Local, LLC (“NAL”) respectfully requests clarification of the Order Approving Settlement Stipulation; Order Granting Lifeline-Only Eligible Telecommunications Carrier Designation In Non-Rural and Certain Tribal Lands’ Service Areas (“*Order*”) by the Commission on October 5, 2021. Specifically, NAL requests that the Commission clarify NAL’s designation as an ETC is as a facilities-based Lifeline provider eligible for federal Lifeline support. This clarification is required to enable NAL to receive federal Lifeline support, consistent with the purpose and intent of NAL’s ETC designation as a Lifeline provider. NAL is not requesting any other changes in its ETC designation and affirms its on-going compliance with all requirements of the Order, including the terms and conditions of the Stipulation.

Since its designation as an ETC for purposes of Lifeline support, NAL has engaged with the Tribes within its ETC service area in South Dakota and has found there to be significant interest in its Lifeline offerings, resulting in hundreds of residents of Tribal lands becoming customers of NAL. NAL fully intends to implement its Lifeline offerings in South Dakota in accordance with all applicable requirements, including the Lifeline requirements adopted by the Universal Service Administration Company (“USAC”), to ensure that only eligible consumers obtain Lifeline service.

In its *Order*, the Commission recognized that “NAL will provide Lifeline services to end user customers by using its own facilities or the antenna towers and radio equipment of facilities-based wireless carriers to serve end user customers” and that “[b]y using the facilities of other carriers, NAL is able to provide consumers in different geographic locations with the best coverage and service availability.” *Order* at p. 3. USAC is interpreting this language to mean that NAL is a pure wireless reseller in the state of South Dakota, and as such, not eligible to receive federal Lifeline support in South Dakota, even though NAL has hundreds of eligible customers intent on receiving federal Lifeline support through the company. In an email received on February 28, 2022 from Leah Gsell, USAC’s Program Integrity Manager, she stated:

“You are correct – we based our decision on the understanding that North American Local was **not** facilities-based. Yes, if we can confirm that the ETC order from the PUC was based on the company being facilities-based, we can approve the SAC request.”

As the Commission has found, NAL uses a combination of its own facilities and the facilities of other carriers to provide consumers with the best possible coverage and services, consistent with the universal service requirements found in 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(d)(1) (“either using its own facilities or a combination of its own facilities and resale of

another carrier's services"). Notwithstanding the clarification of North American's designation, NAL reaffirms that it will not use its facilities to transport Lifeline services or build out any future facilities within the state of South Dakota, in accordance with the Stipulation Agreement.

NAL respectfully requests the Commission clarify that the Order designates NAL as a facilities-based ETC eligible for federal Lifeline support. NAL has discussed this request with SDTA, who was a party to the Stipulation, and reaffirmed its intent to remain in compliance with all requirements of the Order, including the terms and conditions of the Stipulation.

Respectfully;



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