

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

Application of North American Local, LLC)	Docket No. TC19-009
For Designation as an Eligible)	SDTA OBJECTION TO
Telecommunications Carrier for Purposes)	NORTH AMERICAN LOCAL’S
of Lifeline Only in the State of South Dakota)	REQUEST TO AMEND THE
)	OCTOBER 5, 2021 ORDER

On April 24, 2019, North American Local, LLC (NAL) filed an Application for Designation as an Eligible Telecommunications Carrier for Lifeline online only in South Dakota (Application). On or about August 19, 2021, the parties entered into a Settlement Stipulation that modified NAL’s original Application in some respects and resolved all outstanding concerns. On October 5, 2021, the Commission Approved the Settlement and issued an Order (incorporating the Settlement) Granting Lifeline-Only Eligible Telecommunications Carrier Designation to NAL.

Then On March 31, 2022, NAL requested the Commission modify its Order. Despite the terms of the Stipulation, NAL requests the Commission amend the Order and classify it as a “facilities-based” provider. SDTA objects to NAL’s request to modify the Order. For purposes of this objection, the relevant Stipulation term is Recital 2: “The Applicant resells Commercial Mobile Radio Services and does not have current plans to establish facilities in South Dakota.”

SDTA’s objection to NAL’s request is based upon the following: (i) NAL has not demonstrated that it owns facilities in South Dakota for use in the transmission or routing of services designated for support. See 47 CFR §54.201. (ii) The FCC has not approved NAL’s compliance plan for forbearance from the facilities requirement. See Lifeline Reform Order, FCC 12-11. Rather, NAL’s compliance plan is listed as pending with the FCC and can be found at: <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>.

In further support of its objection SDTA provides the following facts and legal argument:

1. 47 CFR §214(e) establishes when a common carrier is eligible to receive universal service support. Specifically, the Code requires the common carrier, “offer services that are supported by the Federal universal service support mechanisms...either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” 47 CFR §214(e)(1)(A).
2. 47 CFR §54.201(d) further sets forth NAL’s obligations as an ETC. Again, the same “facilities” language is included in Code. The law establishes that NAL must provide the supported services throughout its service area either “using its own facilities or a combination of its own facilities and resale of another carrier’s services.” 47 CFR §54.201(d)(1).
3. 47 CFR §54.201(d) directs that “a state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanism exclusive through resale of another carrier’s services.”
4. However, under certain circumstances the FCC chose to eliminate the requirement that providers use their “own facilities.” See 2012 Lifeline and Link Up Reform Order, WC Docket No 11.42. Specifically, at paragraph 368 the FCC Ordered:

“We forbear, on our own motion, from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions noted below... as a result, the Commission will forbear from the “own-facilities” requirement contained in section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements, as explained below; and (2) **the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.** The review and approval of all compliance plans is a **critical element** of our action today. These conditions will give the states and the Commission the ability to evaluate the Lifeline providers’ offerings to low-income consumers and adherence with program rules before such companies may receive any Lifeline funds.” (**emphasis added**)

5. NAL’s compliance plan has not been approved by the FCC. Therefore, the forbearance language in the 2012 Lifeline and Link Up and Reform Order is irrelevant, and NAL must prove it provides the supported services “either using its own facilities or a

combination of its own facilities and resale of another carrier's services." 47 CFR §214(e)(1)(A) and 47 CFR §54.201(d).

6. NAL specifically agreed that it will not have its own facilities in South Dakota. In addition to plain language of the Stipulation, see **Exhibit A** which is an email from Gene DeJordy, counsel for NAL. Only the relevant portion of the email is visible. NAL stated, "for purposes of Lifeline in South Dakota, North American Local would not necessarily be facilities-based."
7. In its March 31, 2022, filing NAL further reaffirms that, "it will not use its facilities to transport Lifeline services or build out any future facilities within the State of South Dakota."
8. In informal correspondence among the parties, NAL claims to have facilities in other states and points to that as sufficient to meet the facilities requirements. However, NAL has not provided any legal authority to demonstrate non-jurisdictional facilities are sufficient for purpose of 47 CFR §214(e)(1)(A) and 47 CFR §54.201(d).

SDTA acknowledges that subsection 47 CFR §54.201(g) prohibits a State Commission from requiring that facilities be located in the service area. However, "service area" is not synonymous with "state." Rather, "service area" is a defined term and means "a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 CFR §54.207(a). The service area established in this docket was also agreed to by the parties and Ordered by the Commission. SDTA does not claim that facilities must be located with that area. Rather, it is SDTA's position that facilities must be located within the State of South Dakota. Furthermore, if non-jurisdictional facilities are sufficient then logically, USAC would not be concerned with the presence of "facilities" in South Dakota. (See attachment to NAL's 4/8/22 Fourth Data Request Response).

Based upon the above information, SDTA objects to NAL's requested modification to the August 9, 2021, Stipulation and October 5, 2021, Commission Order.

Dated this 2 day of May 2022.

/s/ Kara Semmler
Kara Semmler, General Counsel
South Dakota Telecommunications Association
PO Box 57
320 East Capitol Avenue
Pierre, SD 57501-0057
karasemmler@sdtasonline.com