

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

IN THE MATTER OF THE PETITION)	ORDER APPROVING SETTLEMENT
OF NORTH AMERICAN LOCAL, LLC)	STIPULATION; ORDER GRANTING
FOR DESIGNATION AS AN)	LIFELINE-ONLY ELIGIBLE
ELIGIBLE TELECOMMUNICATIONS)	TELECOMMUNICATIONS CARRIER
CARRIER IN THE STATE OF SOUTH)	DESIGNATION IN NON-RURAL AND
DAKOTA)	CERTAIN TRIBAL LANDS' SERVICE
)	AREAS
)	

TC19-009

On April 24, 2019, the South Dakota Public Utilities Commission (Commission) received an Application for Designation as an Eligible Telecommunications Carrier (ETC) for Purposes of Providing Lifeline Only Service (Application or App.) from North American Local, LLC (NAL). According to the Application, NAL is a Commercial Mobile Radio Service provider that uses the facilities of other wireless providers to make available to eligible low-income consumers coverage and services to meet their needs. NAL requested that it be designated as eligible to receive all available support from the federal Universal Service Fund solely for the purpose of obtaining federal Lifeline universal support to serve low-income customers in non-rural telephone company wire centers and rural telephone company study areas, which includes all Tribal areas within the non-rural and rural telephone company areas within the state of South Dakota.

On April 25, 2019, the Commission electronically transmitted notice of the filing and the intervention deadline of May 10, 2019, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On June 3, 2019, the Commission issued an Order Granting Intervention to South Dakota Telecommunications Association (SDTA) and Cheyenne River Sioux Tribe Telephone Authority. On July 1, 2019, the Commission issued an Order Granting Late-Filed Intervention to Boomerang Wireless, LLC dba enTouch Wireless.

NAL filed responses to Commission staff and SDTA's data requests on September 17, 2019; August 31, September 14, October 20, 2020; February 18, July 19, and July 22, 2021. On August 23, 2021, NAL filed a Request for Decision on the Record and a Settlement Stipulation to Amend ETC Application and Condition ETC Designation (Settlement Stipulation). NAL no longer requests statewide ETC designation and is limiting the scope of its service area to South Dakota Qwest Corporation d/b/a CenturyLink QC's (CenturyLink) wire centers and federally recognized Tribal lands in South Dakota, specifically Crow Creek, Flandreau Santee, Lower Brule, Pine Ridge, Rosebud, Sisseton-Wahpeton Oyate, Standing Rock, and Yankton. Cheyenne River is specifically excluded.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, specifically 49-31-78, ARSD 20:10:32:42-46, and 47 U.S.C. § 214.

At its regularly scheduled meeting on September 28, 2021, the Commission considered the Settlement Stipulation to Amend ETC Application and Condition ETC Designation. The Commission voted unanimously to approve the Settlement Stipulation to Amend ETC Application and Condition the ETC Designation as agreed to by the parties and to grant Lifeline-only ETC designation in non-rural service areas and certain Tribal lands' service areas in South Dakota.

In order to be designated a Lifeline-only ETC, a carrier must offer voice telephony service or broadband Internet access service as the supported service, using its own facilities or a combination of its own facilities and resale of another carrier's services, throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e); 47 CFR §54.401(a)(2). However, the Federal Communications Commission (FCC) has granted blanket forbearance from the "own facilities" requirement to Lifeline-only carriers if the carriers comply with certain conditions. *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at ¶ 368 (rel. Feb 6, 2012). NAL was granted forbearance on January 31, 2012. (App. pg. 7). 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. (App. pgs. 6-7; Settlement Stipulation, pgs. 2, 4). NAL's proposed service area covers the service territories of the non-rural telephone company, CenturyLink (App. Attachment A; Settlement Stipulation page 4) and federally recognized Tribal lands in South Dakota, specifically Crow Creek, Flandreau Santee, Lower Brule, Pine Ridge, Rosebud, Sisseton-Wahpeton Oyate, Standing Rock, and Yankton. CRSTTA is specifically excluded. (Settlement Stipulation pg.4).

The FCC has designated the following voice telephony services for support by federal universal service support mechanisms: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) 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 (4) toll limitation services to qualifying low-income consumers. 47 C.F.R. § 54.101(a).

In its filing, NAL stated that it can and will provide all of the supported services. NAL stated that it will provide voice grade access to the public switched network. NAL stated its Lifeline service plans will provide local usage by offering a local usage plan comparable to the one offered by the incumbent local exchange carriers. NAL stated it will provide access to emergency service in conformance with the FCC requirements and will provide its customers with phones capable of delivering automatic numbering information and automatic location information. All wireless handsets will be 911/E911 compliant. NAL will replace, free of charge, any E911 noncompliant handset owned by consumers looking to obtain Lifeline service from NAL. 911 emergency calls will not incur any usage charge and Lifeline customers will be able to make 911 calls regardless of service activation status or availability of minutes services. (App. pg. 5). In addition, its plans include a set number of minutes with no distinction in pricing between local and toll calls. NAL does not differentiate between domestic long-distance and local usage, so toll limitation service (TLS) is not necessary to protect customers from incurring unanticipated toll charges. 47 CFR § 54.401(a) (2). Should toll charges be imposed in the future, NAL will implement TLS. (App. pg. 5-6). The Commission finds that NAL is able to offer the supported services.

The carrier must also advertise the availability of such services and the charges for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). NAL stated that it will advertise the availability of its services and the charges in a manner reasonably designed to reach Lifeline-eligible consumers in accordance with all applicable requirements. NAL will use media of general distribution with methods that may include its website, point of sale materials, customer direct mail, customer brochures, print media, and community events. NAL will follow all Lifeline program rules and guidelines to ensure all applicable requirements are met. (App. pgs. 8-9; Settlement Stipulation, pg. 3). The Commission finds that NAL has demonstrated that it will meet the advertising requirement.

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing service to customers making a reasonable request for service in the service area. NAL stated that it commits to serving all eligible Lifeline consumers throughout its ETC service area. 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. By using the facilities of other carriers, NAL is able to provide consumers in different geographic locations with the best coverage and service availability. (App. pg. 7).

As for the requirements of ARSD 20:10:32:43.02 regarding the submission of a two-year plan, this rule is not applicable for a Lifeline-only ETC that relies on the networks of other service providers.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations including a demonstration that it has a reasonable amount of back-up power to remain functional in emergency situations without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. NAL stated it will remain functional in emergency situations. Its network is redundant with back-office facilities in Georgia and California. It has backup electrical power provided by generators at both locations. NAL is able to reroute traffic in the event of damaged transport facilities or traffic spikes. (App. pg. 9-10).

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. NAL stated that it will comply with all applicable regulations concerning consumer protection and service quality throughout its proposed ETC designated service areas. NAL will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service and any applicable South Dakota consumer protection requirements to ensure NAL offers its subscribers the highest level of protection and quality service. (App. pg. 10).

Pursuant to ARSD 20:10:32:43.05, an applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent carrier. NAL stated it is committed to offering a local usage plan that is comparable to the calling plans offered by the incumbent local exchange carriers in its service area. NAL's rate plan are found on its web page and are continuously updated. (App. pg. 5, 6, 12).

Based on the foregoing, the Commission finds that NAL has met the requirements of ARSD 20:10:32:43.01 through 20:10:32:43.05.

In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest pursuant to ARSD 20:10:32:43.07. The Commission finds that NAL's application to become a wireless Lifeline-only ETC in non-rural areas served by CenturyLink in South Dakota and in federally recognized Tribal lands in South Dakota, specifically Crow Creek, Flandreau Santee, Lower Brule, Pine Ridge, Rosebud, Sisseton-Wahpeton Oyate, Standing Rock, and Yankton in South Dakota is in the public interest. NAL stated that as a Lifeline-only ETC it would serve the needs of low-income customers. NAL stated that its designation as an ETC for the limited purpose of providing Lifeline service to eligible low-income consumers is in the public interest because it will make available, for the first time for many low-income consumers, affordable wireless Lifeline service. Wireless Lifeline service is critically important for low-income consumers, who use wireless service as a "lifeline" for voice and Internet connectivity. (App. pgs. 2-3).

NAL offers low-income consumers prepaid wireless service without hidden costs, without varying monthly charges, and no contractual commitments. Consumers are able to customize their mobile phone service to suit their needs depending upon their voice, text and data needs. NAL offers low-income consumers a competitive option of no contract/no credit check/no deposit service. (App. pg. 12). NAL has been providing Lifeline service with a focus on rural and Tribal areas since September of 2010 and has more than 10,000 customers in 5 states. NAL has never been subject to any complaints, fines, or enforcement action, and is in compliance with all applicable Lifeline requirements, including enrollment and eligibility requirements implemented by the Universal Service Administration Company. (App. pgs. 3-4). No evidence was presented that there were disadvantages to NAL's service offerings. The concerns raised by the Intervenor were addressed in the Settlement Stipulation. There were no allegations of any detrimental effects that designation of NAL as a Lifeline-only ETC would have on the provisioning of universal service by the non-rural incumbent local exchange carrier, CenturyLink, or the rural incumbent local exchange carriers. In addition, there was no indication that designation of NAL as a Lifeline-only ETC would have detrimental impacts on the universal service fund. Regarding the impact of multiple designations on the universal service fund, the incumbent local exchange carrier in the non-rural area is CenturyLink. CenturyLink did not intervene or submit comments in this docket. SDTA did have concerns for the incumbent local exchange carriers in the rural areas and those matters were address in the Settlement Stipulation. The Commission finds that no evidence was presented to show that the designation of NAL as an ETC would have a detrimental effect on the provisioning of universal service by the incumbent local exchange carriers. Lifeline-eligible customers will have a greater choice of providers for accessing telecommunications services that may not be available today. After evaluating the public interest considerations, the Commission finds that the designation of NAL will bring the benefits of increased consumer choice and it has committed to providing quality services to the designated service area. The Commission finds the designation of NAL as a Lifeline-only ETC is in the public interest.

Pursuant to 47 C.F.R. § 54.201(h), a state commission may not designate a Lifeline-only ETC "unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part." NAL's key management personnel have over 20 years of combined telecommunications experience, including experience providing local and long-distance services to residents of rural and urban areas, and in particular, to low-income individuals and families. NAL has demonstrated, over time, its ability to not only provide Lifeline service, but to do so in compliance with all applicable requirements. NAL has never been subject to a fine, penalty or enforcement action at the federal or state level related to its provision of Lifeline service. NAL does not rely exclusively on Lifeline reimbursement to operate, as it receives revenues from a number of other sources which are completely independent from the revenue it receives in the form of Lifeline support. The Company's revenue streams include income from the sale of telecommunications services to small business and other residential customers. Because NAL generates its revenue from a diverse product portfolio and is both financially stable and profitable and does not rely exclusively on Lifeline support for its operating revenues, it is financially capable of providing Lifeline service in compliance with all applicable requirements. (App. pg. 10-11). NAL filed its confidential financial information related to this Application. The Commission finds that NAL has demonstrated that it is financially and technically capable of providing Lifeline service.

It is therefore

ORDERED, that the request for approval of the Settlement Stipulation to Amend ETC Application and Condition ETC Designation is hereby granted, and the Settlement Stipulation is hereby approved. The Settlement Stipulation is incorporated by reference into this Order the same

as if it had been set forth in its entirety herein. It is further

ORDERED, that NAL's request to be designated as an ETC for the purpose of providing Lifeline-only service in the non-rural service areas of South Dakota and certain federally recognized Tribal lands in South Dakota, specifically, Crow Creek, Flandreau Santee, Lower Brule, Pine Ridge, Rosebud, Sisseton-Wahpeton Oyate, Standing Rock, and Yankton is hereby granted, effective September 28, 2021.

Dated at Pierre, South Dakota, this 5th day of October 2021.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karen E. Bremer</u>
Date: <u>10/05/21</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON Chairperson

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner