

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

**IN THE MATTER OF THE PETITION OF NORTH)
AMERICAN LOCAL, LLC FOR DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS CARRIER IN) Docket No. TC19-009
THE STATE OF SOUTH DAKOTA)**

SDTA Petition to Intervene

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26 17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. On or about April 24, 2019, North American Local, LLC (hereinafter referenced as "North American" or "Applicant") filed an Application/Petition with the Commission seeking designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of Lifeline support only in the State of South Dakota. Specifically, as reflected in "Attachment A" to North American's Application, the company requests designation as an ETC for the purpose of providing Lifeline service in "all non-rural telephone company wire centers . . . all rural telephone company study areas . . . and all tribal areas within the non-rural and rural telephone company areas within the state." These statements indicate that North American is seeking a statewide ETC designation.

3. North American notes in its application that it is a Commercial Mobile Radio Service (“CMRS”) provider focused on providing “prepaid wireless service” in rural and Tribal areas. The company further describes itself as being a “facilities-based” common carrier, but also indicates on page 6 of its Application that it was previously granted FCC forbearance from the facilities requirement for purposes of federal Lifeline support.

4. All of the SDTA member companies operate as “rural telephone companies” and “eligible telecommunications carriers” under the Federal Telecommunications Act of 1996 and under applicable state laws. Given that North American’s Application appears to extend to all rural telephone company service/study areas in South Dakota, SDTA seeks intervention in this proceeding based on the individual interests of each of its affected member companies and also their common interests in ensuring that all federal and state requirements pertaining to ETC designation, including the additional public interest protections afforded rural telephone company service areas, are properly considered and applied.

5. In regards to any Petition for ETC Designation extending to rural service areas, the additional “public interest” requirement set forth in 47 U.S.C. § 214(e)(2) and SDCL § 49-31-78 applies and state commission are not obligated to grant multiple ETC designations in such areas. SDTA questions whether granting the additional ETC designation requested by North American would be in the best interest of South Dakota consumers residing in the impacted SDTA member company rural service areas. As the FCC has appropriately noted, the Lifeline Programs do play a role in assisting with telecommunications infrastructure deployment in high cost areas, especially within Tribal areas where the enhanced “Tribal Lifeline discount” is available. And, to the extent any additional ETC designation within a

rural carrier service area, even for Lifeline only purposes, causes end user customers to abandon existing wireline voice or broadband services, incumbent rural carrier end user revenues and high cost funding revenues are impacted putting continued broadband infrastructure deployment and upgrades at risk.

6. SDTA also believes that questions as to whether North American is, in fact, a facilities-based provider remain relevant in this Docket. Eventhough the US. Court of Appeals has found error with the FCC's "2017 Lifeline Order" insofar as that Order imposed a Tribal Lifeline Program "facilities-requirement" and a "Tribal Rural Limitation," the Court with its decision did remand the matter back to the FCC for "a new notice-and-comment rulemaking proceeding."¹ Consequently, after the completion of a new rulemaking proceeding it is still possible that the FCC could make changes to or rescind the prior "blanket forbearance" granted non-facilities based prepaid wireless providers and continue to enforce the provisions of 47 U.S.C. § 214(e)(1)(A) which require ETCs to offer supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services" North American asserts in its Application that it is "facilities-based," generally stating that it "owns and maintains many network facilities to provide Lifeline service." However, no specific supporting information is provided and North America itself gives reason to doubt such claim by merely stating in its Application that

¹ Bridging the Digital Divide for Low-Income Consumers et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd. 10475 (released Dec. 1, 2017) ("2017 Lifeline Order"), 83 Fed. Reg. 2075 (Jan. 16, 2016), and National Lifeline Association, et al., vs. Federal Communications Commission and the United States of America, Case No. 18-1026, United States Court of Appeals for the District of Columbia, *Opinion for the Court* decided February 1, 2019, p. 27.

“[t]hese network facilities may result in North American being classified as a facilities-based provider.” (Application p. 7, *Emphasis added*).

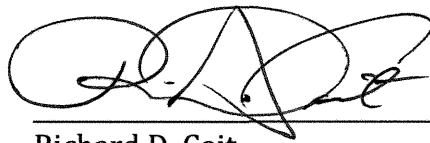
7. SDTA further believes that more information should be supplied by North American regarding its ability to comply with the “minimum service standards” imposed on ETCs designated for Lifeline under 47 C.F.R. § 54.408. As to mobile broadband in particular, the current “data usage allowance” requirement set by the FCC rules is two (2) gigabytes per month. However, this “broadband capacity” standard/requirement is set for an update as of December 1, 2019, and it appears given the specific methods established by the FCC for changing the standard that the current monthly data usage minimum could increase substantially. Given expected changes in the minimum service standards beginning December 1st of this year, additional information should be provided concerning North American’s longer-term service plans, especially in relation to its ability to keep up with the evolving broadband speed and capacity standards. Relatedly, it should be noted that North American states in its Application that “all North American rate plans will meet the FCC’s minimum standards for voice and data services” (*Emphasis added*). A review of the specific rate plans displayed on its web site at <https://www.northamericanlocal.com/sign-up>, however, suggest that this is not the case. This Lifeline sign-up page lists two “Lifeline plans” offering data at less than 2 gigabytes per month.

8. In addition, North American’s Application for ETC designation as filed is deficient for failing to include any financial information supporting its claims that the company does not rely exclusively on Lifeline reimbursement to operate and that it receives revenue from other sources. Applicant makes general statements indicating that “it receives revenues

from a number of other sources” and that “it generates revenue from a diverse product portfolio”, but produces no financial documentation providing the Commission and/or other parties in this Docket an ability to assess compliance with the requirement set forth under 47 C.F.R. 54.202(a)(4) (that carriers seeking ETC designation for Lifeline purposes only prove that they are “financially capable” of providing Lifeline services in accordance with all statutory and administrative rule requirements).

9. Based on the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this 10th day of May, 2019.

A handwritten signature in black ink, appearing to read 'R. D. Coit', written over a horizontal line.

Richard D. Coit
SDTA Executive Director and General Counsel
P.O. Box 57
Pierre, SD 57501

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition for Intervention, dated May 10, 2019, filed in PUC Docket TC19-009, was served upon the PUC electronically, directed to the attention of:

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
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Pierre, SD 57501
patty.vangerpen@state.sd.us

A copy premise was also sent by e-mail and/or US Postal Service First Class mail to each of the following individuals:

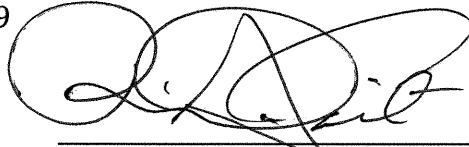
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Dated this 10th day of May, 2019

A handwritten signature in black ink, appearing to read 'Richard D. Coit', written over a horizontal line.

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