

**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. TC23-046
Reclassification As A Facilities-Based Eligible	)	
Telecommunications Carrier	)	

**COMMENTS OF NORTH AMERICAN LOCAL AND  
OPPOSITION TO SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION’S MOTION TO  
DISMISS AND COMPEL RESPONSES TO DISCOVERY**

North American Local, LLC (“NAL”) hereby submits these Comments and Opposition To South Dakota Telecommunications Association’s Motion To Dismiss and Compel Responses To Discovery. The filings in this docket establish that NAL has acted in good faith in seeking designation as a facilities-based eligible telecommunications carrier (“ETC”). In contrast, the South Dakota Telecommunications Association (“SDTA”) has pursued a more disingenuous path by making unsupported statements, misleading arguments and information in discovery unrelated to the issue in this docket, which is whether NAL meets the requirements for designation as a facilities-based ETC in its proposed ETC Service Area. As explained here, NAL supports Staff’s recommendations on the outstanding issues, opposes SDTA’s Motion To Dismiss, and agrees to respond to discovery as outlined by Staff.

**Background**

It is important to understand the history and background of NAL’s designation as an ETC in South Dakota. First, NAL sought and obtained designation as an ETC in South Dakota in 2021 for an ETC service area that include all the non-rural telephone company 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 (“ETC Service Area”).<sup>1</sup> No one contested NAL’s ETC designation and a Stipulation

---

<sup>1</sup> On October 5, 2021, the Commission granted ETC status to NAL by its *Order Approving Settlement Stipulation; Order Granting Lifeline-Only Eligible Telecommunications Carrier Designation in Nor-Rural and Certain Tribal Lands’ Service Area* in Docket No. TC19-009 (“NAL ETC Order”).

was reached with SDTA, which was incorporated into the *2021 ETC Order*. Since 2021, NAL has provided affordable service to eligible South Dakota residents through the Affordable Connectivity Program (“ACP”) and has coordinated with the FCC and USAC on obtaining Lifeline support for the provision of Lifeline service, consistent with the purpose and intent of the Commission’s *2021 ETC Order*.

At the time of ETC designation, NAL had network facilities outside the State of South Dakota and anticipated using the last mile facilities of other wireless carriers in South Dakota to provide Lifeline service. Using this type of network deployment – a combination of its own facilities and the resale of other carriers’ services, NAL is a facilities-based carrier, even though it uses other carriers’ facilities within a state and its own facilities located in another state. However, in South Dakota, the Universal Service Administrative Company (“USAC”) interpreted the *2021 ETC Order* that NAL was a wireless reseller. As a wireless reseller with a Lifeline Compliance Plan filed with the FCC, NAL was still not able to obtain Lifeline support because the FCC has not formally approved new Lifeline Compliance Plans since 2014, due, in part, to Lifeline compliance being largely determined by consumer eligibility databases, as opposed to individual Compliance Plans. The inability to obtain Lifeline support in South Dakota is at odds with the Commission’s intent in the *2021 ETC Order*, and NAL’s expectation, that NAL would be eligible to receive Lifeline support for the provision of service to low-income consumers.

On September 29, 2023, NAL filed a Petition with the Commission seeking reclassification as a facilities-based ETC in the State of South Dakota (“*Petition*”). On October 12, 2023, the Commission issued Order Granting Intervention to SDTA and, after discussing its Petition with Staff, on October 29, 2023, NAL filed its Supplement To Petition For Reclassification as a Facilities Based Eligible Telecommunications Carrier (“*Supplement*”) wherein “NAL demonstrates herein that it meets the requirements for designation as a facilities based ETC under the rules of the SDPUC and the FCC.” Supplement at p. 2.

Since it filed its Petition and Supplement, NAL has attempted to work with SDTA to respond to discovery requests, but SDTA has continued to seek information that is either irrelevant, overly broad, or highly confidential customer proprietary network information (“CPNI”) that would be illegal for NAL to disclose. On January 22, 2024, SDTA filed a Motion To

Compel responses to discovery and a Motion To Dismiss NAL's Petition. To resolve outstanding issues with SDTA, NAL proposed the following on February 16, 2024:

North American Local will provide SDTA with the confidential network diagram and description pursuant to a confidentiality agreement limiting access to the confidential information to attorneys and consultants. North American Local will also provide SDTA with a copy of correspondence and filings with USAC pertaining to South Dakota. We are not able to provide SDTA with the names and addresses of North American Local's customers in South Dakota as this is considered customer proprietary customer information (CPNI) and disclosure of CPNI would subject North American Local to potential liability. We are also not able to provide information about network facilities in other states. North American Local is willing to work in good faith with SDTA to address any questions that arise in your review of the information provided in discovery.

SDTA denied NAL's offer and maintained its demand for NAL to respond to all discovery requests. On February 26, 2023, Staff filed its Brief on SDTA's Motion To Dismiss ("Staff's Brief") and its Response to SDTA's Motion To Compel ("Staff's Response"). In its Brief, Staff states that if NAL's intent is to have the Commission examine its Petition as a request for ETC designation, then it "believes the correct path forward is to examine NAL's 2023 Petition anew and determine whether it meets the requirements of 47 U.S.C. § 214(e)(2), 47 C.F.R. Part 54, and ARSD Chapter 20:10:32." Staff's Brief at p. 6. In its Response, Staff's position on the discovery dispute is consistent with NAL's proposal to SDTA on February 16, 2024.

Undeterred in its opposition to NAL's Petition, SDTA filed its response ("SDTA's Response") to Staff's Brief on February 27, 2024, arguing, once again, for the Commission to dismiss NAL's Petition or, in the alternative, require NAL to establish that it meets all the requirements for ETC designation. SDTA's Response does not address Staff's position on NAL discovery responses.

### **SDTA's Motion To Dismiss**

SDTA's arguments for dismissal of NAL's Petition is yet another attempt to delay or hinder NAL's entry into the Lifeline market. SDTA has already stipulated that NAL meets the requirements for ETC designation and that the public interest would be served by NAL's ETC designation. Without any legitimate arguments to oppose NAL's request to be designated as a

facilities-based ETC, SDTA resorts to procedural quarrels and discovery challenges. SDTA claims that NAL is attempting to “surgically extract reseller language and insert facilities based language into an Order that is otherwise based upon the same facts, findings, and legal conclusions at the 2019 docket.” SDTA Motion To Dismiss at p. 4. While this hyperbole may carry the day on the campaign trail, it does not withstand a fact-based review of the record.

After filing its Petition in old ETC Docket No. TC19-009 on September 29, 2023, NAL refiled the Petition on the same day in a new docket, recognizing it would need to reestablish that it meets the requirements for ETC designation as a facilities-based carrier. Furthermore, on October 29, 2023, NAL filed its Supplement establishing it meets all the requirements for ETC designation, which SDTA fails to mention in its unbridled advocacy. In its Brief, Staff recognizes that NAL has made the required filings for an application for designation as an ETC. NAL reaffirms its Petition and Supplement is intended to establish that it meets the requirements for designation as a facilities-based ETC and requests that the Commission should proceed in this docket to consider whether NAL should be designated as a facilities-based ETC.

#### **SDTA Motion To Compel**

To resolve the outstanding discovery dispute with SDTA, NAL agrees to provide the information as recommended by Staff. Specifically, and consistent with NAL previous offer to SDTA, NAL will:

1. make available previously filed confidential information about NAL’s network facilities in South Dakota, subject to a Non-Disclosure Agreement limiting access to confidential information to SDTA’s attorneys and consultants, but not SDTA member companies;
2. make available a copy of NAL’s approval to provide ACP services in South Dakota, along with the Election Notice sent to USAC;
3. make available information about facilities in other states only if those facilities will be used to provide Lifeline service in South Dakota; and
4. not provide a list of all South Dakota ACP customers, including their name address, and phone number, as this information is highly confidential CPNI and it would be a violation of federal law to disclose, and it would be irrelevant to the issue of whether NAL meets the requirements for designation as a facilities-based ETC.

## SDTA Discovery Request No. 7. CPNI

Carriers have a legal obligation under federal law to protect the privacy and security of their customers' service-related and billing information, and may only use, disclose, or permit access to CPNI under very limited situations. Section 222(a) of Communications Act of 1934, as amended, provides:

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

47 U.S.C. § 222(a). Customer proprietary network information or CPNI is defined as:

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

47 U.S.C. § 222(h)(1). The FCC has adopted rules implementing the statutory requirements governing CPNI and establishing further safeguards to protect CPNI. See 47 C.F.R. §§ 64.2001 – 64.2011. There are no exceptions to the disclosure of CPNI that would enable an Intervenor (*e.g.*, SDTA) in a contested case proceeding before a state regulatory commission to gain access to CPNI. Beyond the federal prohibition against the disclosure of NAL's customer information, there is no reasonable basis for disclosure of customer information in this proceeding.

Apparently recognizing the federal prohibition against disclosure of CPNI, SDTA does not address the federal law requirements, and instead resorts to general statements about ACP customer slamming and its desire to conduct a "fishing expedition" to see if NAL has engaged in such activity. SDTA acknowledges that it "has no proof that NAL was involved or caused such a result." SDTA Response at p. 6. Clearly, the Commission should not allow SDTA to use this proceeding to pursue unlawful discovery of CPNI.

#### SDTA Discovery Request No. 4: Facilities In Other States

SDTA continues to argue that NAL's facilities in other states unrelated to the provision of Lifeline service in South Dakota is relevant and should be disclosed. SDTA puts forth several arguments, but does not explain how NAL's facilities in, for example, Alabama is relevant to NAL's designation as a facilities-based ETC in South Dakota. Instead, SDTA states that "NAL did not accurately represent the status of its facilities to the Commission" without identifying the inaccuracy. Attempting to support its arguments, SDTA makes numerous false and misleading statements that are not supported by the law or facts. For example:

- SDTA states that NAL falsely claims it received forbearance from the universal service facilities based requirement. *SDTA Motion To Dismiss* at p. 2. SDTA apparently does not understand federal law and FCC rules and orders. All carriers seeking to provide Lifeline service were granted forbearance from the facilities based requirement. "Upon the effective date of this Order, we grant forbearance from the facilities requirement of section 214(e)(1)(A) of the Act and section 54.201(d)(1), (i) of the Commission's rules, subject to the conditions contained in this Order, to all carriers seeking to provide Lifeline-only service on a non-facilities basis." *See In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at footnote 982, February 6, 2012.
- SDTA implies NAL is not complying with applicable laws governing the provision of Lifeline service because it does not have an approved Compliance Plan. *SDTA Motion To Dismiss* at p. 2-3. NAL is not, however, providing Lifeline service in South Dakota and is not receiving any of the benefits of Lifeline, including Lifeline support. SDTA ignores these facts and makes unsupported arguments not based upon facts or law. NAL is, and has always been, in compliance with all applicable laws governing Lifeline and ACP services in South Dakota and every other state in which it provides these services.
- SDTA claims that NAL has "manipulate[d] application of federal law and the TC19-009 Order," shown a "lack of candor with the Commission," and has exhibited a "disrespect

for the language, spirit and intent of the law.” SDTA Response at p. 2 – 3. SDTA support for these inflammatory claims is NAL’s filings before the Commission seeking reclassification as a facilities-based carrier. It is important, however, to understand the actual facts. NAL is not seeking any change in its service area. NAL is not seeking universal service support beyond Lifeline. NAL is only asking the Commission to consider its regulatory status as a facilities-based carrier. NAL has not argued the Commission’s review of its status is limited or that the Commission should not make a public interest finding as part of its review. As a wireless provider, NAL provides wireless service through its own facilities and a combination of its own facilities and resale of other carriers’ services consistent with federal law governing Commercial Mobile Radio Service (“CMRS”) providers. SDTA apparently believes the Commission’s designation of NAL as an ETC in the *2021 ETC Order*, and the Stipulation reached in that case, somehow prevents NAL from deploying network facilities in South Dakota and seeking designation as a facilities-based ETC. NAL is not able to provide Lifeline service in South Dakota without an approved Compliance Plan or designation as a facilities-based carrier, which is the reason the Company filed its instant request. NAL meets all the requirements for designation as a facilities-based ETC and it has put forth evidence establishing its ETC eligibility and how the public interest would be served by designating NAL as a facilities-based ETC. For SDTA to argue that NAL is somehow trying to circumvent the ETC designation process, along with all applicable requirements or the Commission’s review of its application, is yet another example of SDTA’s attempt to mislead the Commission with egregious statements instead of reasoned arguments based on the facts and the law.

### SDTA Discovery Request No. 3: USAC Filings

SDTA also continues to argue for expanded discovery to receive all of NAL’s filings with USAC unrelated to Lifeline service. Apparently, SDTA views its mandate as including overseeing other carriers’ compliance with federal laws governing the ACP program. However, even SDTA acknowledges that it has no basis to question NAL’s compliance with federal law, stating that

“[i]t is reasonable to believe that if USAC had any question about NAL’s on-going compliance with ACP rules and regulations, it would show up in the annual ACP recertification process” (SDTA Response at p. 2) and “[i]t is reasonable to believe that if NAL had any difficulty complying with the ACP refund rules, that difficulty will be reflected in the Affordable Connectivity Claims System filings” (SDTA Response at p. 2). So, apparently SDTA wants to step into the shoes of the FCC and USAC and conduct its own compliance review. SDTA admits it has no reason to believe NAL is not operating in compliance with all applicable requirements governing the ACP. The Commission should not allow SDTA to use the discovery process as a tool in its incumbent carrier arsenal to stamp out competition.

Conclusion

NAL respectfully requests that the Commission deny SDTA’s Motion To Dismiss and NAL agrees to resolve discovery disputes as recommended by Staff.

Dated: March 7, 2024.

THE SHULTZ LAW FIRM, Prof. LLC

By: /s/ Jay C. Shultz  
Jay C. Shultz  
402 St. Joseph Street, Suite 14  
Rapid City, SD 57701-3081  
(605) 791-1115  
jay@shultzlawsd.com

DAKELYN CONSULTING

By: /s/ Gene DeJordy  
Gene DeJordy  
766 Mill Hill Terrace  
Southport, CT 06890  
(203) 583-0256  
Gene@Dakelyn.com

*Attorneys for North American Local, LLC*



**Certificate of Service**

I hereby certify that a copy of COMMENTS OF NORTH AMERICAN LOCAL AND OPPOSITION TO SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION’S MOTION TO DISMISS AND COMPEL RESPONSES TO DISCOVERY was filed with the South Dakota Public Utilities Commission and served on the following individuals by email on March 7, 2024:

Logan Schaeftbauer, Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave., Pierre, SD 57501  
Logan.schaeftbauer@state.sd.us

Amanda Reiss, Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave., Pierre, SD 57501  
Amanda.Reiss@state.sd.us

Joseph Rezac, Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave., Pierre, SD 57501  
Joseph.Rezac@state.sd.us

Kara Semmler, General Counsel  
South Dakota Telecommunications Association  
P.O. Box 57  
320 East Capitol Ave., Pierre, SD 57501  
karasemmler@sdtanline.com

THE SHULTZ LAW FIRM, Prof. LLC

By: /s/ Jay C. Shultz  
Jay C. Shultz  
402 St. Joseph Street, Suite 14  
Rapid City, SD 57701-3081  
(605) 791-1115  
jay@shultzlawsd.com