

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

**IN THE MATTER OF THE PETITION BY)
NORTH AMERICAN LOCAL LLC FOR)
RECLASSIFICATION AS A FACILITIES BASED) **TC23-046**
ELIGIBLE TELECOMMUNICATIONS CARRIER)
)**

MOTION AND BRIEF IN SUPPORT OF MOTION TO

**DISMISS NORTH AMERICAN LOCAL, LLC’S
PETITION FOR RECLASSIFICATION**

OR ALTERNATIVE

MOTION FOR CLARIFICATION

The South Dakota Telecommunications Association (SDTA), hereby moves the South Dakota Public Utilities Commission (Commission or PUC) for an order to dismiss the North American Local, LLC (NAL) Petition for Reclassification as a Facilities-Based Eligible Telecommunications Carrier (Petition). The Commission should grant SDTA’s Motion because:

(i) In TC19-009 NAL agreed and stipulated that it would operate as a wireless reseller. NAL’s Petition in TC23-046 is in violation of the stipulation. (ii) The Commission’s Order in TC19-009 was based upon the stipulated fact that NAL operates as a wireless reseller. (iii) South Dakota law does not provide for a “reclassification” process.

In short, NAL seeks to shortcut the law. In its “reclassification request” NAL attempts to avoid its burden of proof by relying on the TC19-009 Order despite completely changing a fundamental stipulated fact upon which that Order is based. In the alternative, SDTA requests the Commission clarify that it will evaluate NAL’s TC23-046 Petition as if it were a new request for ETC designation.

BACKGROUND AND INTRODUCTION

In April of 2019 NAL filed an application with the PUC requesting designation as an Eligible Telecommunications Carrier (ETC). SDTA Petitioned for and was granted Intervention status. In its 2019 Application, NAL claimed it was a “facilities-based” provider.¹ Throughout the discovery process, however, it became apparent that NAL was not a facilities-based provider. Rather, NAL agreed it operated as a “reseller” of wireless service.² SDTA and NAL entered into a Stipulation on August 23, 2021 (Stipulation). The Stipulation is based, in part, upon NAL’s acknowledgment and agreement it will operate as a wireless reseller only. On October 5, 2021, in Docket TC19-009, the PUC entered an Order authorizing NAL to “provide its wireless service by reselling T-Mobile, Verizon and AT&T services...” incorporating the Stipulation. (Commission Order).

NAL used the Commission Order to provide ACP benefits in South Dakota. It could not, however, use the Commission Order to provide Lifeline benefits. NAL could not provide Lifeline benefits because Federal Rules and an FCC Order interpreting the same, permit a reseller to provide Lifeline benefits only if it has an FCC approved “*compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations...as well as further safeguards against waste, fraud and*

¹ “North American is a facilities-based Commercial Mobile Radio Service (“CMRS”) provider that also uses the facilities of other wireless providers to make available to consumers the best coverage and services to meet their needs.” Docket TC19-009, Application, Page 1.

² TC09-009 Settlement Stipulation, 8/23/21, Agreement Term 1(b).

abuse...”³ NAL does not have an approved FCC Compliance Plan. NAL was, therefore, limited to the provision of ACP benefits as a reseller of a wireless product.

Then, despite the August 23, 2021, Stipulation and regardless of the October 5, 2021, Commission Order incorporating the same, NAL requested in this docket that the Commission reclassify it as a “facilities based” carrier in South Dakota. More precisely, NAL seeks to disregard the Stipulation and desires for the Commission to Amend its TC19-009 Order. SDTA neither agrees to amend the Stipulation nor does it agree to amend the TC09-009 Commission Order absent a proceeding that considers all relevant laws and facts including ARSD 20:10:32:42 through 20:10:32:46.

ARGUMENT

NAL’s Petition for Reclassification should be dismissed because (i) in TC19-009 it agreed it would operate as a wireless reseller only, (ii) the Commission’s Order in TC19-009 was based upon the stipulated fact that NAL operates as a wireless reseller and (iii) South Dakota law does not provide for a “reclassification” process.

NAL originally sought ETC designation in SD by claiming it was a facilities-based provider.⁴ Identifying the claimed “facilities” became a concern for SDTA and NAL agreed it resells services only and does not have plans to establish facilities in South Dakota. As a result, NAL agreed its ETC application in TC19-009 should be amended. The amended application specifies NAL provides Lifeline services as a wireless reseller. See Settlement Stipulation to

³ 47 USC 214(e)(1)(A) and 2012 Lifeline and Link Up Reform Order, WC Docket No 11.42, Paragraph 368.

⁴ “North American is a facilities-based Commercial Mobile Radio Service (“CMRS”) provider that also uses the facilities of other wireless providers to make available to consumers the best coverage and services to meet their needs.” Docket TC19-009, Application, Page 1.

Amend ETC Application and Condition ETC Designation, page 4, paragraph 1b. As a result of NAL's agreement to amend its ETC Application and condition its provision of Lifeline service, SDTA did not object to designation of NAL as an ETC. On October 5, 2021, the PUC approved the Stipulation and granted NAL's request for ETC designation incorporating the Stipulation into an Order. The PUC Order, therefore, is based upon the fundamental fact that NAL is a reseller of wireless services.

There is no established legal process in South Dakota law to "reclassify" an ETC carrier as NAL requests. Rather, to accomplish what NAL desires, the PUC must amend its October 5, 2021, Order in a way that "undoes" the PUC's approval and incorporation of the Stipulation. However, that is not the legal request NAL makes. Rather, NAL desires the Stipulation and all other PUC findings to remain in place. More specifically, NAL asks the PUC to surgically extract "reseller" language and insert "facilities based" language into an Order that is otherwise based upon all the same facts, findings, and legal conclusions as the 2019 docket. SDTA argues NAL's request is improper because the distinction in how NAL will provide services impacts the foundation of the Stipulation and therefore the PUC's ETC analysis. Commission Orders can certainly be amended. However, to consider an amendment in a way that is responsive to NAL's request, the Commission must reassess all aspects of the NAL ETC application including whether designating NAL as an ETC is in the public interest. (ARSD 20:10:32:43.07.) Furthermore, SDTA must be given the opportunity to determine how its member companies are

impacted by NAL's request.⁵ NAL's Petition for Reclassification, which is nothing more than an attempt at a legal short cut, should therefore be dismissed.

In the alternative, if the Commission does not find NAL's procedural error justifies docket dismissal, SDTA requests procedural clarification. Specifically, if the docket is not dismissed, SDTA asks the Commission to clarify that NAL's request for "reclassification" will be handled as a new request for ETC designation and therefore all relevant laws, rules and regulations will be considered. It is improper, for all reasons previously argued for "facilities" to be considered in isolation.

CONCLUSION

To provide Lifeline services in South Dakota NAL must either receive FCC approval of its compliance plan or be classified by the PUC as a "facilities-based" provider. This docket is NAL's attempt to receive "facilities-based" classification from the PUC. To receive said "facilities-based" designation, however, NAL needs the PUC to amend its TC19-009 Order. NAL's "reclassification" request is, therefore, improper. This docket is NAL attempts to disguise a request to Amend a PUC Order by calling it a "Petition for Reclassification." The PUC should dismiss NAL's request because: (i) In TC19-009 NAL agreed and stipulated that it would operate as a wireless reseller. NAL's Petition in TC23-046 is in violation of the stipulation. (ii) The PUC's Order in TC19-009 was based upon the stipulated fact that NAL operates as a wireless reseller. (iii) South Dakota law does not provide for a "reclassification" process.

⁵ The PUC specifically acknowledged, at page 4 in its October 5, 2021. Order that incumbent local exchange carrier concerns were addressed in the Settlement Stipulation. If the Settlement Stipulation is no longer incorporated into the PUC Order, the parties must be afforded an opportunity to reassess impacts of the ETC Application.

In short, NAL seeks to shortcut the law. In its “reclassification request” NAL attempts to avoid its burden of proof by relying on the TC19-009 Order despite completely changing fundamental stipulated facts upon which that Order is based. In the alternative to a dismissal, SDTA requests the PUC clarify that it will evaluate NAL’s TC23-046 Petition as if it were a new request for ETC designation.

REQUEST FOR RELIEF

1. SDTA requests this docket be dismissed.
2. In the alternative, SDTA requests the Commission clarify that NAL’s Petition in this docket will be handled, procedurally, as a new request for ETC designation.

NOTICE OF HEARING

SDTA requests its Motion be heard at the February 6, 2024 or next available regularly scheduled Commission meeting.

Dated this 22 day of January 2024.

Respectfully submitted:

/s/ Kara Semmler
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