

**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)
)**

SDTA REPLY TO NAL BRIEF REGARDING:

**MOTION TO DISMISS NORTH AMERICAN LOCAL, LLC'S
PETITION FOR RECLASSIFICATION**

OR ALTERNATIVE

MOTION FOR CLARIFICATION

The South Dakota Telecommunications Association (SDTA), requests South Dakota Public Utilities Commission (Commission or PUC) enter an order to dismiss the North American Local, LLC (NAL) Petition for Reclassification as a Facilities-Based Eligible Telecommunications Carrier (Petition) 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 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. SDTA fully incorporates and reasserts the arguments it made in its February 29, 2024 filing, responsive to Commission Staff's arguments.

In its March 8, 2024 filing, NAL characterized the issue in this docket as: Whether NAL meets the requirements for designation as a facility based ETC in its proposed service area.¹ NAL asserted this as “the issue” when it initiated the docket and all times thereafter. This characterization by NAL as “the issue” in this docket is the cause for SDTA’s Motion to Dismiss or Alternative Motion for Clarification. Based upon its characterization of “the issue,” SDTA believes that NAL desires to limit the Commission’s decision to the sole and isolated topic of whether NAL is a facility-based provider. It may also be that NAL desires to limit the scope of SDTA’s engagement in this docket.² While NAL’s position is not entirely clear, the distinction is irrelevant. NAL’s position, regardless of whether it desires to limit SDTA or the Commission or both, is not supported in law.

There is no process in South Dakota law to “reclassify” an ETC provider. Therefore, “the issue” is not limited in any way and is the same as all other filings by any company for ETC designation. That is, does the applicant meet all requirements of relevant federal and state law? To properly frame this docket, it must either be dismissed or the Commission should clarify it will judge this docket just as any other application for ETC designation. The Stipulation SDTA agreed to in TC19-009 is based on entirely different facts and does not limit the role or position SDTA may take in TC23-046. Likewise, the Order the Commission issued in TC19-009 is based on entirely different facts and does not limit the process all parties must engage in now in TC23-046.

¹ Comments of North American Local and Opposition to South Dakota Telecommunications Association’s Motion to Dismiss and Compel Responses to Discovery, Filed March 8, 2024, page 1.

² NAL alleges, “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.” Id at page 3.

In conclusion, SDTA agrees with Staff: There is no legal authority in South Dakota law to consider only the “facilities-based” aspect of this docket while keeping in place all other aspects of the 2019 Order. Given what NAL submitted on March 8, 2024, SDTA adds: There is no legal authority in South Dakota to limit SDTA’s engagement in this docket to only the “facility-based” facts and arguments.

SDTA maintains its request that the Commission either dismiss the docket or clarify that the TC19-009 Order is not binding upon nor does it limit the necessary analysis in TC23-046. Rather, this docket and all facts will be reviewed and judged in its entirety based upon all applicable law.

Dated this 19 day of March 2024.

Respectfully submitted:

/s/ Kara Semmler
Kara C. Semmler
Executive Director and General Counsel
SD Telecommunications Association.
320 East Capitol Ave.
P.O. Box 57
Pierre, SD 57501

CERTIFICATE OF SERVICE

I hereby certify that: SDTA’s response to NAL Brief regarding SDTA Motion to Dismiss or Alternative Request for Clarification, was filed in PUC Docket TC23-046, and served upon the following parties electronically:

Amanda Reiss PUC, Staff Attorney amanda.reiss@state.sd.us	Mr. Logan Schaeffbauer PUC, Staff Attorney Logan.Schaeffbauer@state.sd.us
Mr. Joseph Rezac Staff Analyst, PUC joseph.rezac@state.sd.us	Mr. Gene DeJordy - Representing: North American Local, LLC Gene@Dakelyn.com Jay Shultz jay@shultzlawsd.com

Dated this 19 day of March, 2024

/s/ Kara Semmler

Kara C. Semmler, General Counsel
South Dakota Telecommunications Association
PO Box 57
320 East Capitol Avenue
Pierre, SD 57501-0057