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**TO:** COMMISSIONERS AND ADVISORS

**FROM:** ERIC PAULSON AND LOGAN SCHAEFBAUER

**RE:** TC24-002 IN THE MATTER OF THE PETITION OF ASSURANCE WIRELESS USA, L.P. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR THE PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFYING CUSTOMERS

**DATE:** May 1, 2024

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Commission Staff (Staff) submits this Memorandum for the petition of Assurance Wireless USA, L.P. (Assurance or the Company), for designation as an Eligible Telecommunications Carrier (ETC) in South Dakota.

## **BACKGROUND**

On January 12, 2024, Assurance filed a petition for designation as an ETC (Petition) to correspond to its wireless coverage service area in South Dakota, including as it may change going forward, exclusive of Tribal lands, including both rural areas and non-rural areas for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline services.

On January 16, 2024, the South Dakota Telecommunications Association (SDTA) filed a petition to intervene in the docket. On February 7, 2024, the South Dakota Public Utilities Commission (PUC or Commission) granted intervention to SDTA. On April 5, 2024, SDTA filed Comments in this docket.

Between February and April, Staff sent several rounds of discovery to Assurance to which Assurance provided answers. This Memorandum is based on Assurance's Petition and accompanying filings in Docket TC24-002, responses to Staff's Data Requests, and Staff's independent research.

## **OVERVIEW**

State and Federal rules have been implemented laying out the framework which Staff followed to ensure Assurance meets the specific requirements and standards to be designated as an ETC in South Dakota. In this section Staff will discuss certain South Dakota rules and subparts of the rules that Staff feels need to be specifically pointed out and discuss the company's responses to those rules.

There is one aspect of this docket that should be addressed at the outset of this section. As Staff was reviewing this petition and the applicable laws and rules, it became apparent to Staff that several of South Dakota's administrative rules, in whole or in part, are either outdated or not applicable in the context of a wireless carrier seeking designation as a Lifeline-only ETC. These include South Dakota Administrative Rules (ARSD) 20:10:32:42; 20:10:32:43.02; 20:10:32:43.05; 20:10:32:43.06; and 20:10:32:43.07. Some of these rules conflict with Federal Communications Commission (FCC) Orders, and others cannot reasonably be applied to petitions for Lifeline-only ETC designation. If the FCC has granted forbearance on a particular requirement, 47 U.S.C. § 160(e) states "a state commission may not

continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying....” Staff will go into more detail on these rules in the following sections as applicable.

***Authority to Designate an ETC***

The State Commission is given authority to decide this matter by the FCC in 47 U.S.C. § 214(e)(2). 47 U.S.C. § 214(e)(2) also begins to lay the groundwork for what to consider when granting a company designation as an ETC.

***ARSD 20:10:32:42, 47 C.F.R. § 54.207(b), and 47 U.S.C. § 214(e)(5)***

ARSD 20:10:32:42 requires, in part, “the commission may not find it to be in the public interest if the telecommunications company requesting such designation is not offering its services coextensive with the rural telephone company’s service area.” 47 C.F.R. § 54.207(b), and 47 U.S.C. § 214(e)(5) define the term “service area” and require that companies seeking ETC designation conform to the defined service areas of the telephone company’s study area to which the company is seeking ETC designation for. This term “service area” as used in the administrative rule appears to refer to a static and constant service area boundary and not a boundary that constantly is changing without some sort of Commission approval.

In *In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform*, Memorandum Opinion and Order, WC Docket No. 11-42, FCC 13-44, ¶ 1 (hereinafter “*Service Area Forbearance Order*”), the FCC provided forbearance to the conformance requirement for those companies seeking Lifeline-only ETC designation in the area of a rural telephone company. One key piece to this forbearance is that it only forbears the requirement of 47 C.F.R. § 54.207(b) and 47 U.S.C. § 214(e)(5) which strictly talk about and reference “study areas”. Therefore, the PUC cannot require Assurance to serve the entire “study area” of the rural telephone company.

***ARSD 20:10:32:43(1)***

This subpart of the rules requires the requesting company to provide “The name, address, and telephone number of the applicant and its designated contact person.”

In the Petition on the cover page, Assurance provided contact information for two attorneys working on the docket. Data request 1-12 requested designated contact information for someone if the Petition is granted, specifically a direct telephone line, should there be any complaints, customer questions/concerns, or general PUC inquiries. The primary item Staff was looking for was complaint contact information for the PUC’s Consumer Affairs staff. A direct line was not provided for any Assurance or T-Mobile employee therefore Staff asked a follow up, Data Request 2-3, to attempt to get a direct line for someone to handle complaints from the PUC office. A direct line was not provided but Assurance stated once someone on the Executive Response Team is assigned the complaint, then they will be accessible by phone.

While Assurance has essentially met the requirement of this rule to provide contact information of a designated contact person by giving their two attorney’s contact information and contact information for other non-complaint purposes, PUC complaints could be an issue if they arise. Just emailing the Executive Response Team and getting on the list for a call back at some point is not the most efficient approach, in Staff’s opinion, and may cause delays for the PUC Consumer Affairs group when handling a complaint or other issue. Since Staff only has generic contact information for complaint matters, if there is a need for an urgent resolution of a complaint or other issue brought to or by the PUC, the only direct

line contact we have is for the attorneys and therefore that will have to be the number that gets called, while still emailing the Executive Response Team email to get on the waitlist, if there is urgency to get a complaint resolved for any reason.

**ARSD 20:10:32:43(3)**

ARSD 20:10:32:43(3) requires the company to provide “identification of the service area, including a detailed map, for which the designation is sought”.

In the initial Petition on page 7, Assurance stated “Assurance requests designation as an ETC to correspond to its wireless coverage service area in South Dakota, including as it may change going forward, exclusive of Tribal lands. A current coverage map is attached hereto as Exhibit 3.” Assurance also stated on page 7, “Exhibit 4 is a list of ILEC wire centers that are, in whole or in part, within Assurance’s proposed designated service area.” Exhibit 3 to the Petition was simply the T-Mobile coverage map.

Staff requested in Data Request 1-2 and 2-1 that the company provide a map, by wire center since the initial Petition provided a list of wire centers, for the areas they request to serve. Response to Data Request 1-2 included the coverage map with all wire centers in the state shown and not clearly labeled as to which wire centers Assurance seeks designation. This map also did not show the tribal areas which Assurance will not serve if approved. Staff requested in Data Request 2-1 that a clearer map showing the specific wire centers Assurance requests designation for within the coverage map as well as marking off the tribal areas Assurance will not serve. Staff and Assurance had a phone call regarding this question and Staff explained, in detail, what we were looking for in terms of a map. Assurance said they would look into the issue and file a new map and exhibit.

In a filing made on April 18, 2024, Assurance filed Attachment 1A – Map to the filing which is an updated map showing the requested service area by zip code and a Revised Exhibit 4 – ETC Service Areas by Zip Codes. In a clarification filing filed on April 24, 2024, Assurance clarified that in the map filed by zip codes, they propose to serve all of the zip codes color coded in green, and the orange and charcoal zip codes are not requested for service at this time.

With the filing of this new map by zip code and the clarification that Assurance will serve within the boundaries of the green zip codes only, Staff’s concern relating to the request for an ever-changing service area is therefore moot. If Assurance decides to serve any zip codes that are colored in orange or charcoal in the future, they will petition for an amended ETC designation with the Commission.

Typically, we have seen maps relating to wire centers. Zip codes can cover both rural and non-rural service areas, therefore in the instance of a company requesting just non-rural areas, zip codes may be more difficult to use to determine if a customer is within the designated service area. In this instance in the Assurance docket, Staff feels the use of zip codes is appropriate since Assurance requests service in both rural and non-rural areas. Zip codes are very easy to know if someone is or is not in a designated service area.

**ARSD 20:10:32:43(6)**

This rule is discussed below in the public interest portion.

**ARSD 20:10:32:43.01**

This ARSD requires “an applicant requesting designation as an eligible telecommunications carrier shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service.” Also included in this rule is ways to remedy when a customer requests service but is outside of the coverage area.

In Data Request 1-54 Assurance objected to Staff’s question seeking for Assurance to provide the information as required under this rule. Ultimately Assurance provided an answer stating, “notwithstanding the inapplicability of ARSD 20:10:32:43.01 to Assurance Wireless’s provision of Lifeline service, Assurance Wireless stated in its Petition that it will provide service on a timely basis to all consumers making a reasonable request for service where wireless coverage is available.”

Staff firmly believes this rule is applicable to Lifeline-only ETC designations and not just high-cost recipients. The requirement to be a “high-cost support” company is not mentioned in this rule. The concept of this rule is to ensure that any company receiving ETC designation for a certain area must provide service to those requesting it as long as “the service does not impose excessive or unreasonable cost”.

This rule also provides options for remedying an issue where the customer is within the designated service area but falls outside of the requesting company’s network coverage area. Both resellers of Lifeline and facilities-based providers have options in this case. This rule does not discriminate between resellers or facilities-based providers and holds both to the same standards. Staff wants to ensure that every eligible customer within the requested service area of Assurance will be served if they request service.

In response to Data Request 3-4 Assurance maintained their opinion on the inapplicability of this rule but states, “Assurance Wireless has stated (see Response to Request 1-54) it will provide service on a timely basis to all consumers making a reasonable request for service where wireless coverage is available.” This commitment satisfies the first part of the rule but does not address or provide commitment to the second part of the rule which pertains to if a customer is within the service area but outside of existing coverage.

In TC19-009, which was a Wireless ETC docket approved in an order dated October 2021, the Commission included this rule in its findings in that docket. To Staff’s knowledge there has been no FCC forbearances or rule changes on this item since that time.

In the filing by Assurance dated April 24, 2024, Assurance commits to provide service for both parts of this rule.

**ARSD 20:10:32:43.02**

This ARSD requires that a two-year plan be submitted with the Petition.

In response to Data Request 1-55, Staff requested Assurance provide the necessary information. Assurance objected to the question but ultimately provided an answer stating the inapplicability of this rule. Staff agrees that this rule is not applicable to Assurance since they are not going to be receiving high-cost support.

**ARSD 20:10:32:43.03**

This ARSD requires that a requesting company provide a demonstration of ability to remain functional in emergency situations.

As Assurance discusses on page 8-9 of the Petition, they believe they satisfy the requirements of this rule because they will utilize the established network of T-Mobile and their facilities. Assurance believes that T-Mobile is capable to handle traffic spikes that may occur in emergency situations and can reroute traffic if need be. Assurance also believes T-Mobile will have sufficient backup power to ensure that the network remains operational if the primary power source goes down. Assurance filed Exhibits 5 and 6 to the Petition. Exhibit 5 is T-Mobile's Business Continuity Program Summary, which shows that T-Mobile has processes in place to ensure its continuing functionality in emergency situations for all its operating subsidiaries, including Assurance. Exhibit 6 is a letter from CTIA confirming T-Mobile's completion of the recertification process for the CTIA Business Continuity/Disaster Recovery Program.

Staff's Data Requests 1-50, 1-64, and 2-8 provide more details on Assurance's ability to remain functional in emergency situations. Staff believes that Assurance has sufficiently demonstrated that they have the ability to remain functional in emergency situations.

**ARSD 20:10:32:43.04**

This ARSD requires an applicant requesting designation as an eligible telecommunications carrier shall demonstrate that it will satisfy applicable consumer protection and service quality standards.

Assurance discusses this on page 9 of the Petition and Exhibit 7 attached to the Petition.

Staff's concern with the discussion of this item is noted in Data Request 1-17. The partial statement of "Initially, Assurance will provide, free of charge to the customer..." was concerning to Staff. Staff understands the future is uncertain and knows at some point in order to offer a Lifeline product companies may need to charge for them. Staff does not want Assurance to advertise and get a bunch of customers to sign up for its services which are "initially" free and then at some point shortly after sign-up be informed that their services will no longer be free and essentially treat the beginning as a free trial period.

Staff feels that the explanation and the commitment for compliance to the rule has satisfied the requirements of the rule.

**ARSD 20:10:32:43.05**

This ARSD requires that a requesting company demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which the applicant seeks designation.

In response to Data Request 1-51, Staff requested Assurance provide the necessary information. Assurance objected to the question stating that it is an obsolete rule but ultimately provided an answer somewhat showing a high-level comparison.

Staff agrees that this requirement was removed from 47 C.F.R. § 54.202 by the FCC in 2012 and our administrative rule has not been adjusted to reflect that change. Therefore, Staff agrees that the information required by this rule is not relevant to this docket.

**ARSD 20:10:32:43.06**

This ARSD requires an applicant requesting designation as an eligible telecommunications carrier shall certify that it will be able to provide equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access within the service area.

In response to Data Request 1-56, Staff requested Assurance provide the necessary information. Assurance objected to the question stating, “The concept of “equal access to long distance carriers,” as set forth in ARSD 20:10:32:43.06, is not a concern now that (a) nearly all telecommunications carriers do not differentiate long-distance calling from local calling and (b) nearly all voice service does not require the customer to choose or rely on a single long-distance carrier. In 2012 the FCC rewrote its regulation at 47 C.F.R. § 54.202 to remove the equal access requirement.” Ultimately Assurance responded to the request and said they do not charge extra for long-distance services, and they do not require to choose or rely on a single long-distance carrier and therefore “complies with the spirit of ARSD 20:10:32:43.06”.

Staff agrees that this requirement was removed by the FCC from 47 C.F.R. § 54.202. Therefore, Staff agrees that the information required by this rule is not relevant to this docket.

**ARSD 20:10:32:43(6) and ARSD 20:10:32:43.07**

These two rules require the company to explain why their services are in the public interest and lays out the guidelines for the Commission to consider but does not limit what the Commission can look at, when making their decision on if the petition to grant designation as an eligible telecommunications carrier is in fact in the public interest.

Staff respectfully defers to the Commission the matter of public interest determination for this docket but provides information gathered in Staff’s data requests and review of the docket for the Commission to weigh in the public interest determination as described in ARSD 20:10:32:43.07 below.

**Benefits of Increased Customer Choice**

One thing to consider when deciding on the public interest standard is the benefits of increased customer choice.

Assurance uses the T-Mobile network and offers a free service option to potential customers. Allowing customers to have more than one option for service, whether it be wireless or wireline service, allows the customer to choose the available offering that best suits their needs. Designating additional wireless ETCs provides these additional options and creates competition to offer better services to customers in order to keep that customer.

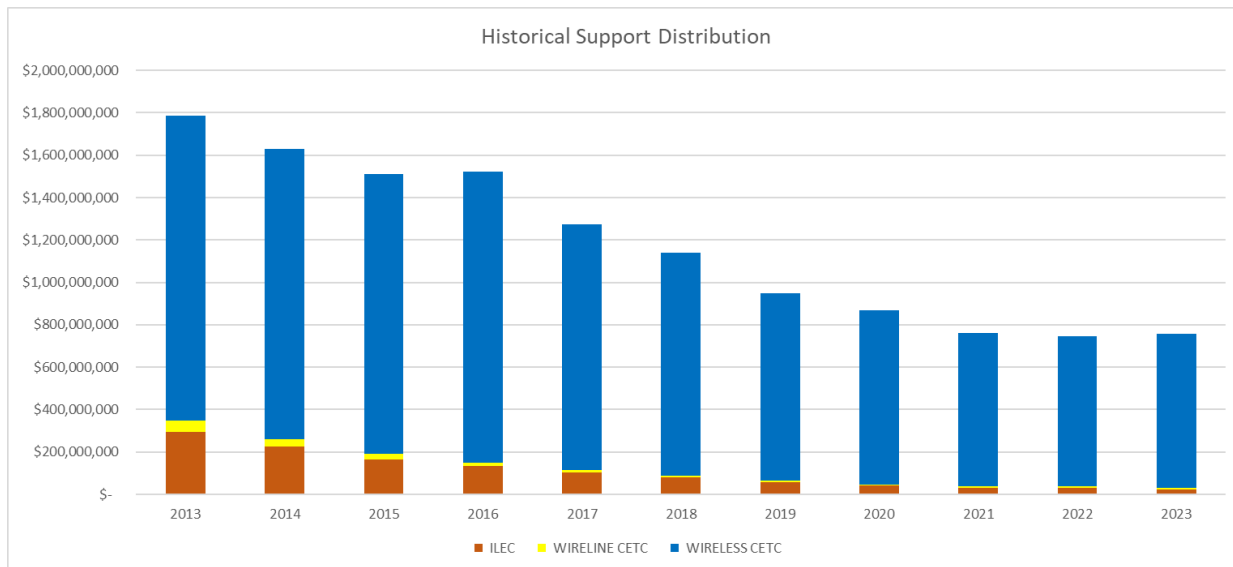
**Impacts on the Universal Service Fund (USF)**

Since Lifeline does not use high-cost support, Staff’s comments will relate to the Lifeline funding only.

In the past there have been multiple reports and studies detailing fraud, waste, and abuse taking place within the Lifeline Program. In January of 2014 the National Lifeline Accountability Database (NLAD) went into effect nationwide attempting to reduce the ability for a company or customer to commit fraud, waste, and abuse the Lifeline program.

As you can see from the graph below based on publicly available Historical Support Distribution data from the Universal Service Administrative Company (USAC) website, (<https://www.usac.org/wp->

[content/uploads/lifeline/documents/Data/20230816\\_Lifeline-Data-and-Statistics.xlsx](content/uploads/lifeline/documents/Data/20230816_Lifeline-Data-and-Statistics.xlsx)) there has been a decline in disbursements since 2013 almost every year and has leveled off since about 2021.



The graph above based on the USAC website data shows the breakdown of total disbursements between wireless competitive ETCs (CETC), wireline CETCs, and incumbent local exchange carriers (ILEC). As you can see from this graph, an overwhelming majority of disbursements are to wireless CETCs each year. While the designation of Assurance could have an effect on the support distribution, it is hard to quantify how much of an effect given the large number of wireless CETC disbursements because it is hard to predict if Assurance will get customers from wireline CETCs or ILECs to switch to the wireless option offered by Assurance and drop their wireline product, if they currently have one, or if they will get other wireless CETC customers to switch to Assurance’s service. If they only get customers from other wireless CETCs, such as enTouch or other ACP and Lifeline providers, the disbursement percentages in the chart above would likely not change significantly. And the fact that Lifeline support disbursements have dropped considerably since the implementation of the NLAD, chances for waste, fraud, and abuse appear to be very small and kept in check thanks to the measures in place to verify potential customers. Also, since disbursements have dropped significantly compared to 2013, it appears there are plenty of available Lifeline funds for more customers when comparing overall disbursement dollars from 2013 to 2023.

**Advantages and Disadvantages of Assurance’s Lifeline Offering**

The tables below provide a side-by-side comparison between Assurance’s offerings, another already approved ETC offering wireless Lifeline services in South Dakota, and general wireline Lifeline requirements. The information for the company other than Assurance that provides wireless Lifeline service approved by the Commission comes directly from that company’s website and the general wireline information is from the USAC website.

	Assurance	enTouch (Non-Tribal)	Lifeline Wireline
Network Provider	T-Mobile	T-Mobile	General Carrier Requirements
Areas Offered	Certain rural and non-rural areas but no tribal	All Non-Rural Areas (tribal as well)	All areas
Voice/Texting	1000 minutes Unlimited Text Messages	300 minutes and 300 text messages	No minimum
Price	Free	Free	varies
Data	4.5 GB	4.5 GB	1,280 GB
Speed	3G or better	3G or better	25/3 Mbps
Other comments	Free Device Available or Customer can provide their own device	Customer must provide device	

It is Staff's understanding that essentially for other wireline non-rural and rural areas, a customer can choose any eligible plan offered by the wireline provider and just reduce it by the amount the FCC allows depending on if it's on tribal or non-tribal land.

Advantages of the Assurance plans include more options for the territories that overlap with other providers, free calling and texting plans, free broadband, free phone if the customer chooses, and being considered a "facilities-based" provider using the T-Mobile network.

Assurance provided some examples of what they believe to be advantages of their service offering. Data Request 1-20 offered Assurance the opportunity to better describe how their product is different from that of other companies, both wireless and wireline companies. Assurance objected to this question as "not relevant to the Commission's review" and that the Request "seeks information that is not within Assurance Wireless's possession or knowledge". Staff believes the question sought relevant information towards the "unique advantages" of Assurance's service offering, a consideration of the public interest standard according to ARSD 20:10:32:43.07. There cannot be a "unique advantage" to Assurance's service offering unless it is somehow different than another company. Whether Assurance is different from existing ETCs in South Dakota is a valid consideration for the Commission regarding the public interest, convenience, and necessity of this designation.

After Assurance's initial objection, Assurance provided an answer to the question. Assurance primarily states the difference will be "T-Mobile's award-winning customer service" and that Assurance is an "experienced and well-established Lifeline provider operating in 40 jurisdictions."

Staff would have anticipated some sort of response comparing Assurance to other providers but given the start of the response to Data Request 1-20 was "regardless of the details of other ETCs' or potential ETCs' service offerings", Assurance made it clear they were not going to compare and contrast other ETCs to better describe any advantages Assurance may have compared to other Lifeline providers.

At this time Staff believes, through its own online research, the primary advantages of Assurance will be their current wireless offering provides more minutes and texts than its wireless competitor as noted previously in the memo, and that Assurance will be considered "facilities based" and not a reseller. The award-winning service is a benefit of T-Mobile, but Staff hopes that T-Mobile is providing their award-



winning customer service to all customers and resellers and not only to direct T-Mobile customers and customers of T-Mobile subsidiaries.

Another key advantage of Assurance's offering, and as with all wireless companies, over wireline companies is the mobility aspect.

And one final key advantage is, to Staff's knowledge, the wireline companies do not offer a free Lifeline service. Having a zero-cost option is significant to lower income individuals.

One big disadvantage will be there are no planned offices in the state of South Dakota, see Data Request 1-60 and 2-12. Having no offices always makes troubleshooting a device more difficult, but not impossible, if the device isn't working for any reason. The customers will have to find some other way to get ahold of Assurance via telephone or internet with no offices available for customers to walk into.

Another disadvantage, when compared to a wireline company, is the data caps. Wireline companies are required to offer 1,280 GB of data and wireless only companies have to offer 4.5 GB of data according to the USAC website.

The last potential disadvantage with all wireless service is, when the wireless device leaves the household, everyone left in the household will be without phone or internet service if this Lifeline product is their only phone or internet source. Only the customer can really determine if this truly is a disadvantage to their household situation or not.

#### Commitment to Provide Quality Telephone Services

In the petition on page 9, Assurance confirms that it will provide quality services to its customers. Assurance states that they abide by the Cellular Telecommunication and Internet Association's Consumer Code for Wireless Service (CTIA Consumer Code).

As noted in Staff Data Requests 1-13, 2-4, and the Petition, Assurance objected to the questions but ultimately did provide a response to both questions stating they will at least provide 3G or better speeds. Staff's primary concern and the need for these questions was the fact that Assurance made sure to point out that T-Mobile has an award winning 5G network but only committed to offer the minimum 3G or better (page 9 of the Petition). While Staff agrees that the FCC only requires a minimum of a 3G network, Staff is concerned all the advertising for this product will be based on the 5G network and some customers might sign up anticipating that 5G speed but then only receive a 3G or 4G product.

This Staff concern may be more geared towards potential advertising if Assurance is designated as an ETC for Lifeline purposes rather than a service quality issue since Assurance does propose to meet the minimum service quality requirements of the FCC and therefore provide a quality telephone service by FCC definitions.

#### Assurance's Ability to Provide Supported Services throughout the Designated Service Area

On pages 7 and 8 of the Petition, Assurance asserts that it will provide the required services throughout its designated service area. Data Requests 1-43 and 1-44 also provide support for Assurance's ability to provide service throughout the designated service area.

With the revised map and exhibit based on zip codes, and the note that the service area is static and if revisions are needed then an amended ETC Petition will need to be filed for Commission approval, Staff

feels more confident that Assurance has the ability to provide supported services throughout the designated service area.

#### *Detrimental Effect on the Provisioning of Universal Service by the ILEC*

The final portion to consider under ARSD 20:10:32:43.07 is whether designation of Assurance as an ETC will have a detrimental effect on the provisioning of universal service on the ILEC. One thing to note is that CenturyLink, the ILEC in the territory covered by the non-rural portion of the request, did not petition to intervene in this docket and as of the date of this memo has not filed any comments in this docket. By CenturyLink's decision not to intervene or comment, we can infer that they do not believe this designation would have a detrimental impact to them or they are not concerned about the effect designation may have. Based on that fact, Staff does not believe that designating Assurance as an ETC in the CenturyLink territories as described in the Petition will have a detrimental impact on the ILEC given the fact that competition is already allowed within the CenturyLink areas and a wireless ETC already serves in CenturyLink areas.

For the rural areas, SDTA intervened in this docket and as noted previously, SDTA filed a letter on April 5, 2024, with their comments on the docket which included a section pertaining to this issue. Staff will stick to the specific Lifeline topic. As shown previously in this memo, Lifeline counts have dropped over time to a point that current funding needs are a small amount compared to 2013. Concerns relating to funding seem lessened given this fact. And getting a free option into the hands of consumers will likely help get a phone and the internet in the hands of someone who otherwise couldn't afford it.

#### *Creamskimming Analysis*

ARSD 20:10:32:43.07 requires the commission to conduct a creamskimming analysis if an applicant seeks designation in the study area of a rural telephone company. However, in the *Service Area Forbearance Order*, the FCC stated that "Any creamskimming concerns in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC." ¶ 13.<sup>1</sup> Therefore, Staff believes a creamskimming analysis is not necessary in this matter.

#### *Additional FCC Requirements*

##### *Facilities-Based*

One of the requirements for ETC designation is that the carrier "offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier's services." 47 U.S.C. § 214(e)(1)(A). Staff initially had concerns about how Assurance could be considered "facilities-based" when it provides service through facilities owned and operated by T-Mobile. Staff's Data Request 1-7 asks about this issue. In response on Page 2 of Assurance's Response to Staff's First Data Requests, Assurance provided a brief overview of the facilities-based consideration before responding to any Data Requests and stated that "entities within a corporate family that enjoy the 'beneficial use' of property may consider that property their own for purposes of ETC designation." After reviewing and researching FCC decisions on the subject,

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<sup>1</sup> "As the Commission previously explained, the amount of Lifeline support is not tied to the cost of serving an area. Rather, Lifeline support is a fixed, per-line amount nationwide, and ETCs are required to pass through the Lifeline support they receive to the benefit of their subscribers. Any creamskimming concerns in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. Creamskimming is not a public-interest consideration in the Lifeline context, whether the competing carrier is offering wireline or wireless service." *Id.* ¶ 13.

Staff agrees that Assurance is considered facilities-based by virtue of the corporate relationship between Assurance and T-Mobile.

47 C.F.R. § 54.101(a)

As stated in the Petition on page 6, Assurance has said they will provide the services required by this rule. By doing so Assurance will provide:

- Voice Grade Access to the Public Switched Telephone Network (“PSTN”);
- Local usage minutes free of charge; and
- Access to emergency services provided by 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.

Financially and Technically Capable of Providing the Supported Lifeline Service

47 C.F.R. § 54.202(a)(4) states, “For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.”

In Response to Staff Data Request 1-3, Assurance provided its most recent Form 10-K for T-Mobile. As noted in the response to this data request, Assurance’s finances are not separated out from T-Mobile’s.

In the most recent financial information updates filed by the company, their net income and other financial information provided is significant and shows that T-Mobile, as a company, has a significant amount of revenues.

Staff does not question the financial or technical capabilities of T-Mobile. T-Mobile has proven they have the ability to operate a nationwide robust wireless system that continues to expand. However, when trying to additionally determine the financial and technical capabilities of the applicant, Assurance, Staff was limited in the information made available to attempt to make this determination. Staff received numerous objections to questions related to non-South Dakota Lifeline items. Some questions were ultimately answered, some were not. Key questions were 1-9, 1-10, 1-28, 1-29, and 2-5.

As noted in confidential response to Data Request 1-10, Assurance originally objected stating the information requested was not relevant but then provided only the South Dakota ACP customer count but not their national customer count.

In response to Data Request 1-28, Assurance originally objected stating the information requested was not relevant but ultimately pointed Staff to the Form 555s filed with the FCC. Staff then went to the FCC website to review the Form 555s filed, the most recent versions for most of the jurisdictions Assurance serves were filed on January 25, 2024. When Staff clicked on the PDFs of the respective states’ forms, the boxes listing the customer counts on page 3 were all blank. The only information available was on page 4 and that was the de-enrollment for non-usage data. In Data Request 2-5, Staff attempted to get the most recent Form 555s filed in the docket to ensure we were looking at the correct files and Assurance again pointed us to the FCC website.

As of this time Staff has been unable to obtain how many Lifeline customers nationwide and how many ACP customers outside of South Dakota Assurance has.

As for Assurance objecting to Staff's questions based on relevancy, the 2012 Lifeline Reform order clearly states in regard to 47 C.F.R. § 54.202 in paragraph 388:

Therefore, in order to ensure Lifeline-only ETCs, whether designated by the Commission or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service. Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

Based on this order from the FCC, Staff requested the ACP and Lifeline customer data to help determine the technical and financial capability of the applicant Assurance, not the parent company T-Mobile. Knowing these customer numbers directly shows "whether the applicant previously offered services to non-Lifeline consumers", "whether the applicant intends to rely exclusively on USF disbursements to operate" and "whether the applicant receives or will receive revenue from other sources". Only knowing the South Dakota ACP numbers and the de-enrollment from other states is simply an incomplete picture of Assurance's business.

For the question of is Assurance "financially and technically capable" to provide service? It is likely safe to assume they are capable given they are backed by a well-known and established parent company and can lean on their expertise and financial backing. Knowing their history serving ACP and Lifeline customers outside of South Dakota would likely only bolster this assumption.

## **Conclusion**

As previously stated, this memo was meant to outline the South Dakota rules and the FCC requirements placed on Assurance's application for designation as a Lifeline-only ETC. While Staff's review would have benefitted from more cooperation in several aspects of discovery, Staff feels Assurance has complied with the applicable laws for ETC applications in South Dakota, although Staff does not make a recommendation on whether or not this ETC designation is in the public interest. Staff respectfully defers to the Commission's decision on whether designating Assurance as an ETC is in accordance with the public interest, convenience, and necessity of South Dakota.