
TO: COMMISSIONERS AND ADVISORS

FROM: LOGAN SCHAEFBAUER AND BRITTANY MEHLHAFF

RE: TC24-003 IN THE MATTER OF THE FILING OF IM TELECOM, LLC DBA INFINITI MOBILE'S PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF SOUTH DAKOTA FOR THE LIMITED PURPOSE OF PROVIDING LIFELINE SERVICE TO QUALIFYING CUSTOMERS

DATE: October 31, 2024

Commission Staff (Staff) submits this Memorandum regarding the petition of IM Telecom, LLC dba Infiniti Mobile (Infiniti or Company), for designation as an Eligible Telecommunications Carrier (ETC) in South Dakota.

BACKGROUND

On January 17, 2024, Infiniti filed a petition for designation as an ETC (Petition) throughout the non-rural (CenturyLink) service areas in South Dakota, including federally recognized tribal lands, for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline services.

On January 22, 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) issued an Order Granting Intervention to SDTA. On January 31, 2024, the Commission received a Stipulation between Infiniti and SDTA. The Stipulation states that any ETC designation to result from this docket shall be limited to South Dakota CenturyLink wire centers and shall not extend into any rural service area served by an SDTA member company. If Infiniti later seeks designation as an ETC in any rural telephone company service area, the Stipulation requires Infiniti to come before the Commission in a new ETC proceeding. SDTA agrees to not object to Infiniti's designation as an ETC for the purpose of providing lifeline services to qualifying customers in South Dakota as a result of this Stipulation.

On April 9, 2024, Infiniti responded to Staff's data request. This Memorandum is based on Infiniti's Petition and accompanying filings in Docket TC24-003, Infiniti's responses to Staff's data requests, and Staff's independent research.

OVERVIEW

Staff followed the framework provided by State and Federal rules to ensure Infiniti meets the specific requirements and standards needed 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.

In a previous docket before the Commission, Staff wrote a Memorandum which addressed several South Dakota Administrative Rules (ARSD) that are either outdated or inapplicable in the context of a wireless carrier seeking designation as a Lifeline-only ETC.¹ These include ARSD 20:10:32:42;² 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, in whole or in part, 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 U.S.C. § 214, and 47 C.F.R. § 54.201

ARSD 20:10:32:42 and 47 U.S.C. § 214 alike state:

Upon request and consistent with the public interest, convenience, and necessity, the commission may, in an area served by a rural telephone company, and shall, in all other areas, designate more than one telecommunications company as an eligible telecommunications carrier for a service area designated by the commission, so long as each additional requesting carrier meets the requirements of [47 C.F.R. § 54.201].

Therefore, if the Commission finds that this designation is consistent with the public interest, convenience, and necessity, the Commission must designate Infiniti as an ETC for the requested service area so long as Infiniti meets certain requirements of federal law. These requirements, according to 47 C.F.R. § 54.201(d)(1)-(2), are that Infiniti

- (1) Offer the Services that are supported by federal universal service support mechanisms under [47 C.F.R. § 54.101] and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

Staff will address the public interest requirement later in this Memorandum. Staff will address the requirements of 47 C.F.R. § 54.201 and 47 C.F.R. § 54.101 in the following subsections.

¹ Staff Memorandum, p. 1-2, 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 (hereinafter “Assurance Memo”).

² The latter part of this ARSD states that “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.” In the Assurance Memo, Staff explained how—for Lifeline-only companies—the FCC has granted forbearance from the requirement that a company seeking ETC designation in a rural telephone company’s service area must offer its services coextensive with said service area. Assurance Memo, p. 2. In the docket at hand, Infiniti is not requesting to serve in rural service areas; therefore, this aspect of the rule is not applicable.

ARSD 20:10:32:42 also provides requirements for ETC designation in an area served by a rural telephone company.³ Because Infiniti's petition is limited to CenturyLink wire centers⁴ (non-rural), those parts of this rule are not relevant and Staff need not address them here.

Supported Services Requirement of 47 C.F.R. § 54.201 and 47 C.F.R. § 54.101

In order for Infiniti to be eligible to receive universal service support, Infiniti must offer the following services pursuant to 47 C.F.R. § 54.101:

- 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.

In the Petition, page 8, Infiniti explained that it provides voice grade access to the PSTN "through the purchase of wholesale CMRS services from its facilities-based underlying carriers." On the same page, Infiniti confirmed that it provides customers with local usage minutes free of charge and provides the requisite access to emergency services.

Facilities Requirement of 47 C.F.R. § 54.201(1)

Generally, a Petitioner for ETC designation must provide the aforementioned services using either its own facilities or a combination of its own facilities and resale of another carrier's services. However, the FCC has granted forbearance on this requirement if certain conditions are met.⁵ In 2012, the FCC issued an Order stating that a company seeking designation as a Lifeline-only ETC need not meet the 'own-facilities' requirement so long as the company complies with certain 911 requirements,⁶ and obtains an approved compliance plan with the FCC.

Infiniti confirmed it complies with the relevant 911 requirements established by the FCC. See Petition, page 8; pages 3-4, Infiniti's Amended Compliance Plan, (Exhibit 2). Additionally, Infiniti has an approved Compliance plan with the FCC. See <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions> (providing a list of Bureau-Approved Compliance Plans, one of which is IM Telecom, LLC). Therefore, Infiniti has met the conditions of the FCC and is granted forbearance from the facilities requirement of this law.

³ See ARSD 20:10:32:42 (providing requirements for ETC designation in areas served by a rural telephone company).

⁴ See Stipulation between Infiniti and SDTA, filed with the Commission on January 31, 2024.

⁵ In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, FCC 12-11, ¶ 368.

⁶ Regarding these 911 requirements, the FCC's Order says:

Specifically, our forbearance from the facilities requirement of section 214(e) is conditioned on each carrier: (a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order.

Id. ¶ 373.

47 C.F.R. § 54.201(d)(2)

This law requires a carrier to advertise the availability of their services and charges using media of general distribution.

In the Petition, page 10, section E, Infiniti explains that it will advertise the availability and rates for the described services as required by federal law. Additionally, Infiniti provided a sample advertisement in Exhibit 4. Staff believes Infiniti will comply with this law.

Financial and Technical Capability Requirement of 47 C.F.R. § 54.201(h)

This law provides that a state commission may not grant ETC designation to a company unless the company has demonstrated that it is financially and technically capable of providing Lifeline service.

In Response to Staff Data Request 1-13, Infiniti provided its most recent Form 10-K for KonaTel, Inc. Infiniti is a wholly owned subsidiary of KonaTel, Inc. which acquired Infiniti on January 31, 2019⁷.

In addition, the 2012 Lifeline Reform order 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.

Infiniti addressed these considerations in its Petition and further in response to Staff's data requests. Infiniti states it currently provides service to both Lifeline and non-Lifeline customers⁸. The Company further states it does not offer exclusively Lifeline-supported service and therefore is not exclusively dependent on USF disbursements to operate.⁹ In response to Staff Data Requests 1-14 and 1-15, the Company provided the number of ACP and Lifeline customers it currently serves in each state, separated by Tribal and Non-Tribal. In addition, the Company provided the revenue it generated in 2022 and 2023 in each state from the Lifeline program and outside of the Lifeline program¹⁰. In response to Staff Data Request 2-6, Infiniti clarified that other sources of unsubsidized revenue include prepaid wireless plans, top-up payments, and device sales.

The Company also states it has not been subject to enforcement action and has not been subject to an ETC revocation proceeding in any state, except for Wisconsin which was reinstated¹¹.

⁷ Petition, page 3.

⁸ Petition page 12.

⁹ Petition page 13.

¹⁰ Refer to the response to Staff Data Request 1-29.

¹¹ Petition, pages 12-13, footnote 22, includes additional information regarding the revocation & reinstatement of ETC status in Wisconsin.

Therefore, based on the information provided, Staff believes Infiniti meets this requirement and the considerations stated in the 2012 Lifeline Reform order.

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.”

On page 3 of the Petition, the Company provided the contact information for its attorney, Lance J.M. Steinhart. Further, on page 17 of the Petition, Infiniti provided a designated representative with authority to resolve customer service, quality of service, and/or Lifeline inquiries. The Company designated the Vice President of Operations, Stacey Carmel, and provided associated contact information.

The Company meets the requirements of this subpart.

ARSD 20:10:32:43(2)

This subpart requires the Company provide the proposed effective date of the designation of ETC status.

On page 2 of its Petition, the Company requested that the Commission expeditiously approve the Petition. It did not, however, request a specific effective date.

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”.

On page 9 of its Petition, “Infiniti requests ETC designation throughout the non-rural (i.e. CenturyLink) service areas in South Dakota, including federally recognized tribal lands.” The Company attached as Exhibit 3 the current coverage maps of its underlying carriers: T-Mobile, AT&T, and Verizon. These maps did not distinguish the CenturyLink areas from rural areas and did not separately identify federally recognized tribal lands.

For clarification, Staff requested the Company provide a list of the non-rural wire centers it is requesting to serve and an updated map clearly identifying these non-rural wire centers as well as the boundaries of the tribal areas. A map identifying the tribal area boundaries as well as distinguishing between non-rural and rural wire centers is important because some tribal areas extend into rural areas. Since Infiniti agreed to not serve in rural areas, it must only serve tribal areas that are also in non-rural areas. Infiniti provided the requested wire center list and map in its Supplemental Responses to Staff’s Second Data Request¹². A revised map was filed on October 31, 2024.

Infiniti also explained¹³ its process for ensuring the Company is only enrolling customers located in CenturyLink areas, given its Stipulation with SDTA. The Company will first exclude customers in zip codes not associated with CenturyLink areas. For remaining zip codes, Infiniti will confirm service areas using the entire residential address to ensure it is located in wire centers within the Company’s proposed ETC service area, utilizing either geocoding software or by entering the address into the Study Area Boundaries map as accessed through the Commission’s website. Staff is satisfied with this approach.

¹² See Supplemental Responses to DR 2-1 and 2-2.

¹³ See Supplemental Responses to DR 2-3 and 2-4.

Staff believes Ininiti has met the requirement of this rule. However, the Commission may want to consider whether ETC designation should be granted for any “limited coverage” areas. While the map filed on October 21, 2024, identifies the proposed ETC service area to include only the CenturyLink wire centers, it does not identify areas within the proposed ETC service area that will have limited coverage due to underlying carrier coverage. Staff further addresses these concerns under the public interest section of this memorandum.

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 its Petition, page 11, Ininiti “commits to providing service on a timely basis to requesting customers in its Designated Service Area where the applicant’s network already passes the potential customer’s premises.” Ininiti further requests a waiver of the second part of this rule, ARSD 20:10:32:43.01(2):

- (2) If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost, by:
 - (a) Modifying or replacing the requesting customer's equipment;
 - (b) Extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna, or installing other equipment;
 - (c) Adjusting the nearest cell tower;
 - (d) Adjusting network or customer facilities;
 - (e) Reselling services from another carrier's facilities to provide service; or
 - (f) Employing, leasing, or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment.

Ininiti’s request for waiver of the second part of the above rule seemed to conflict with its response to Staff Data Request 1-30 in which the Company stated it “does not anticipate geographic areas in South Dakota wherein customers may experience service issues due to inadequate coverage by the underlying carriers.” In response to Staff Data Request 2-7 when Staff asked why a waiver was needed if Ininiti does not anticipate inadequate coverage, Ininiti replied that “Ininiti would be unable to make modifications to network facilities as required by ARSD 20:10:32:43.01(2), should the need ever arise – hence the waiver request.” However, in Ininiti’s Supplemental Response to Staff Data Request 2-7, the Company changed its answer to “Ininiti no longer requests a waiver of ARSD 20:10:32:43.01.”

Staff understands this change of response indicates that either Ininiti commits to serve every customer making a reasonable request for service, even in areas it may have limited coverage, or that since as a reseller Ininiti may be unable to extend facilities, adjust cell towers, adjust the network or customer facilities, or add facilities, it would be excessively and unreasonably costly for Ininiti to serve customers in these areas as required by ARSD 20:10:32:43.01(2). Either way, it appears Ininiti meets the

requirements of this rule. Staff will address additional concerns regarding the limited coverage issue further in the public interest section.

ARSD 20:10:32:43.02

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

Infiniti requested a waiver of this rule in its Petition, page 17. Staff agrees that this rule is not applicable to Infiniti since they are not going to be receiving high-cost support, and accordingly, Staff supports Infiniti's request for waiver.

ARSD 20:10:32:43.03

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

Infiniti discusses this requirement on page 11 of its Petition. The Company "understands that its Underlying Carriers' networks have access to a reasonable amount of back-up power to ensure functionality without an external power source, are able to reroute traffic around damaged facilities, and are capable of managing traffic spikes resulting from emergency situations." Infiniti states its customers benefit from the same functionality.

Staff requested additional explanation on how the underlying carriers reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Infiniti's response to Staff Data Request 1-35 simply referred Staff to the terms and conditions of the underlying carriers' websites. While this response was not extremely helpful, Staff has no reason to believe the underlying carriers lack the ability to remain functional in emergency situations. Therefore, Infiniti's demonstration of this requirement is adequate.

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.

Infiniti discusses this commitment on page 12 of the Petition. While Infiniti does not plan to have physical locations and employees in South Dakota, Infiniti provided a toll-free customer service phone number and the applicable days and times customers can reach customer service representatives. Further, Infiniti commits to fully cooperate with the Commission to resolve all consumer complaints and commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

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 Data Request 1-33, Staff requested Infiniti provide the necessary information. In response, Infiniti stated that it has not completed an analysis comparing the local usage plans of the South Dakota ILECs, nor do they have the resources to complete such an analysis.

However, the FCC removed this requirement from 47 C.F.R. § 54.202 in 2012 and our administrative rule has not been revised to reflect that change. Therefore, Staff asserts 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 Data Request 1-34, Staff requested Infiniti provide the necessary information. In response, Infiniti states it is aware of its obligation to 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 addition, after further research, Staff acknowledges that the FCC removed this requirement from 47 C.F.R. § 54.202 in 2012. Our administrative rule has not been revised to reflect this change.

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 the Commission shall 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 on 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

The first item the Commission shall consider when determining whether the ETC designation is in the public interest is the benefits of increased customer choice.

Infiniti states in its Petition, pages 20-21, that “[i]ntroducing Infiniti into the market as an additional wireless ETC provider will afford low-income South Dakota residents a wider choice of providers and available services while creating a competitive marketplace as ETCs compete for a finite number of Lifeline-eligible customers. Increasing the competitive marketplace of providers has the potential to effectively increase the penetration rate and reduce the number of individuals not connected to the PSTN.”

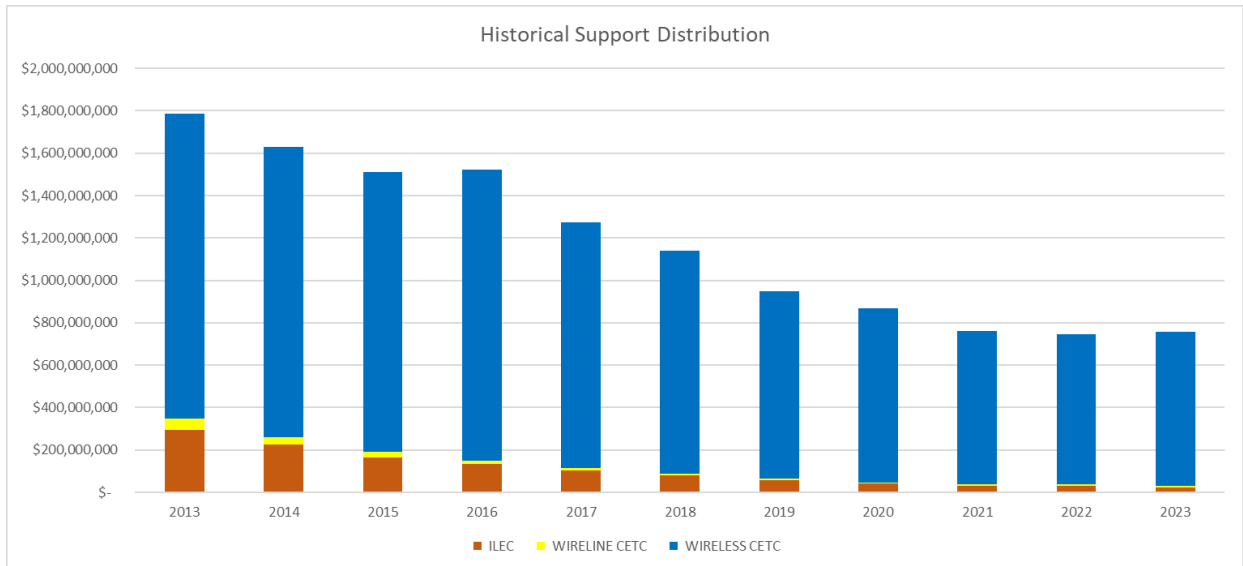
Allowing customers to have more than one option for service, whether it be wireless or wireline service, allows the customer to choose the available offering that best suits their needs. Designating additional wireless ETCs provides additional options and creates competition which should help to incentivize companies to offer better services to customers in order to keep its customers.

Impacts on the Universal Service Fund (USF)

Since Lifeline does not use high-cost support, Staff's comments 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 of 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) 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, wireless CETCs receive an overwhelming majority of disbursements each year. While designating Infiniti as an ETC 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 Infiniti will get customers from wireline CETCs or the ILEC, CenturyLink, to switch to the wireless option offered by Infiniti and drop their wireline product, if they currently have one, or if Infiniti will get other wireless CETC customers to switch to its service. If Infiniti only gets 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.

Furthermore, in response to Staff’s data request 1-11, Infiniti stated that “[n]either Infiniti, nor any other current or previously affiliated company, has been penalized for any sort of waste, fraud, or abuse of the Lifeline program.”

Advantages and Disadvantages of Infiniti’s Lifeline Offering

In response to Staff’s Data Request 1-12, Infiniti stated: “Infiniti cannot specifically compare its product to a carrier that has not been identified. Regardless of product offering, however, it is clear that South Dakota customers are underserved by the existing ETCs in the state.”

While Infiniti did not compare its product offering to other Lifeline providers in the state, Staff provides for the Commission the following information and discussion regarding the advantages and disadvantages of Infiniti’s service offering compared to other providers.

Staff believes the comparison of providers’ service offerings is a valid consideration of the public interest standard according to ARSD 20:10:32:43.07. The tables below provide a side-by-side comparison between Infiniti’s proposed offerings¹⁴, other wireless ETCs approved to offer Lifeline services in South Dakota (enTouch and Assurance¹⁵), and general wireline Lifeline requirements¹⁶. The information for enTouch was obtained from enTouch’s website¹⁷ and the information from Assurance is from Staff’s Memorandum in Docket TC24-002.

Non-Tribal Plan Offerings

	Infiniti		enTouch			Assurance	Lifeline Wireline
Network Provider	AT&T, Verizon, and T-Mobile		T-Mobile			T-Mobile	General Carrier Requirements
Areas Offered	Non-Rural Areas		Non-Rural Areas			Certain rural and non-rural areas	All areas
	Plan 1	Plan 2	Base Plan	Plan 2	Plan 3		
Voice/Texting	1,000 minutes and 1,000 text	3,000 minutes and Unlimited text	300 minutes and 300 text	1,000 minutes and 1,000 text	Unlimited minutes and Unlimited text	1,000 minutes and Unlimited Text	No minimum
Price	\$14.00 per month	\$20.00 per month	Free	\$5.00 per month	\$25.00 per month	Free	varies
Data	1 GB	4.5 GB	4.5 GB	4.5 GB	6 GB	4.5 GB	1,280 GB
Speed	3G or better	3G or better	3G or better	3G or better	3G or better	3G or better	25/3 Mbps
Other comments	Customer must provide device	Customer must provide device	Customer must provide device	Customer must provide device	Customer must provide device	Free Device Available or Customer can provide their own device	

¹⁴ See Petition, Exhibit 7

¹⁵ Note: Assurance did not propose to serve Tribal areas.

¹⁶ Refer to the USAC website.

¹⁷ enTouch offers several Non-Tribal Lifeline Plans. Staff chose 2 non-tribal and 2 tribal plans to display here for comparison purposes. See enTouch’s website for all offerings.

Tribal Plan Offerings

	Infiniti	enTouch		Lifeline Wireline
Network Provider	AT&T, Verizon, and T-Mobile	T-Mobile		General Carrier Requirements
Areas Offered	Non-Rural Areas	Non-Rural Areas		All areas
		Base Plan	Plan 2	
Voice/Texting	3,000 minutes and Unlimited text	Unlimited minutes and unlimited text	Unlimited minutes and unlimited text	No minimum
Price	Free	Free	\$5.00 per month	varies
Data	6 GB	4.5 GB	6 GB	1,280 GB
Speed	3G or better	3G or better	3G or better	25/3 Mbps
Other comments	Free phone or SIM card	Customer must provide device	Customer must provide device	

It is Staff's understanding that for wireline providers, a customer can choose any eligible plan offered by the wireline provider and reduce it by the amount the FCC allows depending on if it's on tribal or non-tribal land¹⁸.

Staff will note that Commission does not approve the rates/plan offerings. The plans in the tables above are current offerings and could change over time. This discussion simply compares Infiniti's proposed Lifeline plans with other providers' current Lifeline plans.

One advantage of Infiniti's Lifeline offerings is it relies on the networks of three underlying carriers as opposed to just one.

One significant disadvantage of Infiniti's proposed offerings is it does not offer a free plan for non-tribal like other wireless ETCs do. Infiniti's proposed base non-tribal plan qualifies as a "voice-only" Lifeline plan since it only offers 1 GB of data. Therefore, it only provides a \$6.00 discount¹⁹ to Lifeline customers and still costs customers \$14.00 a month. Given other companies offer free Lifeline plans with 4.5 GB of data, Infiniti's base plan does not appear to be in customer's best interests.

Infiniti's other non-tribal Lifeline plan is comparable to some of enTouch's other Lifeline plans. Infiniti's plan offers 3,000 minutes and unlimited text messages with 4.5 GB of data for \$20.00 per month. enTouch has a plan offering unlimited talk and text with 4.5 GB of data for \$25.00 per month. However, Assurance is currently offering its Lifeline plan including 1,000 minutes and unlimited text messages with 4.5 GB of data for free.

Infiniti's current plans don't seem to be the best options for customers, but that's not to say Infiniti's plans as well as the other companies' plans couldn't change in the future. More companies offering Lifeline service provides more options for customers and should promote competition to provide the

¹⁸ \$9.25 Lifeline Discount and \$34.25 Tribal Lifeline Discount

¹⁹ The Lifeline Discount is \$5.25 for voice-only. Infiniti's website shows a \$6.00 discount for this plan.

best services for these low-income consumers. More options will just force customers to be more educated on the choices they are making to ensure the plan and company they choose fit their needs the best.

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

Another disadvantage is there are no planned offices in the state of South Dakota. 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 Infiniti via telephone or internet with no offices available for customers to walk into. This could prove difficult for low-income customers to do if the device that isn't working is the only phone/internet they have available at home.

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. If the wireless phone is the only source of internet the customer has at home, 4.5 GB likely will not be enough for the entire household's needs. This is something the consumer needs to be aware of and consider before deciding on which Lifeline option they choose.

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 household phone or internet source. Only the customer can really determine if this truly is a disadvantage to their household situation or not.

Finally, Staff notes that Infiniti is a reseller, not a facilities-based provider. Infiniti differs from the most recently approved ETC in South Dakota, Assurance, in this way. As a reseller, Infiniti lacks the ability to improve or expand its network or fix any problems with the underlying carrier's network that may cause service issues for its customers. However, the Commission has previously designated enTouch as a Lifeline only ETC in non-rural areas only. Given Infiniti has agreed to a Stipulation with SDTA to only serve in CenturyLink territories, granting ETC designation to Infiniti in this docket is no different from the Commission granting ETC designation to enTouch.

Commitment to Provide Quality Telephone Services

In the petition on page 12, Infiniti confirms that it will provide quality services to its customers. Infiniti states that they abide by the Cellular Telecommunication and Internet Association's Consumer Code for Wireless Service (CTIA Consumer Code).

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

On page 11 of the Petition, Infiniti commits to providing service to requesting customers in its service area where the applicant's network already passes the potential customer's premises. Further, on page 11 of the Petition, Infiniti states that the networks of its underlying carriers "are operational and largely built out. Thus, Infiniti will be able to commence offering its Lifeline service to all locations served by its underlying carriers very soon after receiving approval from the Commission."

As discussed above in this petition regarding the requirements of ARSD 20:10:32:43.01(2), Infiniti no longer requests a waiver of the second part of that rule, and therefore commits to serve every customer making a reasonable request for service.

Staff does have some concerns about Infiniti's ability to provide supported services to every customer making such a request. In response to Staff Data Request 1-30, Infiniti stated it "does not anticipate geographic areas in South Dakota wherein customers may experience service issues due to inadequate coverage by the underlying carriers." However, coverage area maps submitted by Infiniti for its underlying carriers do indicate areas of limited or no coverage. Staff acknowledges that Verizon, T-Mobile, and AT&T have vast coverage throughout the state of South Dakota and utilizing all three companies as underlying carriers should help limit the areas of limited or no coverage. However, the coverage indicated is variable and does not envelop the entire state of South Dakota. Limited coverage concerns are likely mitigated by Infiniti agreeing to only serve in CenturyLink areas. CenturyLink areas are often near larger cities in South Dakota; however, this does not mean there are not areas with limited coverage within these wire centers. For instance, there are likely areas in the Black Hills where the underlying carriers will have limited coverage and these areas may be within CenturyLink wire centers. Without a map that overlays the CenturyLink wire centers with the underlying carriers' coverage maps, it is difficult to pinpoint exactly where these limited coverage areas are located within the territory Infiniti seeks to serve. However, it is clear that underlying facilities are not available statewide and there will likely be areas Infiniti cannot provide quality service. The Commission may want to consider whether granting Infiniti ETC designation in all CenturyLink areas, even limited coverage areas, is in the public interest. At the very least, Staff believes Infiniti should inform the potential customer when a request for service is made if it is possible that no underlying carrier can provide quality service. In correspondence between Staff and Infiniti, Infiniti confirmed that, prior to signing up a customer, Infiniti would inform a prospective customer of potential service quality issues due to underlying carrier coverage in that particular area.

This issue is relevant to the Commission's decision regarding public policy. Staff also notes that Assurance chose to not serve in zip codes where it has limited coverage, so as to eliminate this potential issue.

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 Infiniti as an ETC will have a detrimental effect on the provisioning of universal service on the ILEC. As previously noted, Infiniti has agreed to only serve in CenturyLink areas and therefore this designation will have no impact on SDTA companies. One thing to note is that CenturyLink, the ILEC in the territory covered by the remaining 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 Infiniti 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.

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. Because Infiniti is not seeking to provide service in areas served by a rural telephone company, a creamskimming analysis is not necessary here.

Conclusion

As previously stated, this memo was meant to outline the South Dakota rules and the FCC requirements placed on Infiniti's application for designation as a Lifeline-only ETC. Staff believes Infiniti 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 Infiniti as an ETC is in accordance with the public interest, convenience, and necessity of South Dakota.