

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

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

On January 17, 2024, the South Dakota Public Utilities Commission (Commission) received a Petition from IM Telecom, LLC dba Infiniti Mobile's (Infiniti or Petitioner) for an Eligible Telecommunications Carrier (ETC) Designation.

On January 18, 2024, the Commission electronically transmitted notice of the filing and the intervention deadline of February 2, 2024, to interested individuals and entities on the Commission's PUC Weekly Filing electronic listserv. On January 22, 2024, the South Dakota Telecommunications Association (SDTA) filed a Petition to Intervene, which was granted by the Commission on February 7, 2024. On January 31, 2024, Infiniti and SDTA filed a Stipulation in which Infiniti agreed to limit its ETC designation to only South Dakota CenturyLink wire centers and to not extend into any rural service areas served by an SDTA member company.

On April 9, June 13 and October 21, 2024, Infiniti filed responses to staff's data requests. On October 31, 2024, Staff filed its memorandum in this matter. On November 8, 2024, the Commission issued an Order Granting Request to Defer to the December 3, 2024, Commission meeting. At the December 3, 2024 Commission meeting, the Commission voted 2-1, Commissioner Nelson dissenting, to deny the Petition, finding the Lifeline plans proposed by Infiniti did not satisfy the public interest standard. However, on December 5, 2024, Commission Counsel filed a Letter Regarding Reconsideration, noting the need to reconsider the December 3 vote for procedural reasons. Therefore, no written order was issued following the December 3 meeting.

On December 10, 2024, Infiniti filed an Amendment to Petition, revising its proposed Lifeline plan offerings. On December 11, 2024, the Parties filed a Joint Stipulation, stipulating to the docket filings as the record for a decision in this matter.

The Commission has jurisdiction in this matter pursuant to 47 U.S.C. § 214(e), 47 C.F.R. § 54.201, SDCL Chapters 1-26, specifically SDCL 1-26-20, and 49-31, ARSD Chapter 20:10:01, ARSD Chapter 20:10:32, specifically ARSD 20:10:32:43 through ARSD 20:10:32:43.07.

At its regularly scheduled meeting on December 17, 2024, the Commission considered this matter. The Commission voted unanimously to reconsider its December 3, 2024 oral decision. Thereafter, the Commission heard from all Parties. The Commission voted unanimously to approve the Joint Stipulation. After reviewing all filings in the docket, considering oral arguments, and asking questions of the Parties, the Commission found that Infiniti has complied with the requirements for designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving federal Lifeline support in nonrural areas.

In order to be designated a Lifeline-only ETC, a carrier must offer voice telephony service or broadband Internet access service as the supported service, using its own facilities or a combination of its own facilities and resale of another carrier's services, throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e); 47 C.F.R. § 54.401(a)(2). Petitioner will provide its wireless service by reselling T-Mobile, Verizon, and AT&T services.¹

The Federal Communications Commission (FCC) has designated the following voice telephony services for support by federal universal service support mechanisms: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other 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; and (4) toll limitation services to qualifying low-income consumers. 47 C.F.R. § 54.101(a). Petitioner has committed to providing the supported services.²

The carrier must also advertise the availability of such services and the charges for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Petitioner stated that it will advertise the availability of its services and the charges in a manner reasonably designed to reach Lifeline-eligible consumers in accordance with all applicable requirements.³ The Commission finds that Petitioner has demonstrated that it will meet the advertising requirement.

ARSD 20:10:32:42 states, 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." However, the FCC has granted forbearance to this requirement for companies seeking Lifeline-only ETC designation in the area of a rural telephone company.⁴ Therefore, the Commission may find this designation to be in the public interest although the company will not offer its services coextensive with the rural telephone company's service area.

Pursuant to ARSD 20:10:32:43, in its Petition and subsequent Data Responses, Petitioner has provided: (1) The name, address, and telephone number of the applicant and its designated contact person;⁵ (2) The proposed effective date of designation of eligible telecommunications carrier status;⁶ (3) Identification of the service area, including a detailed map, for which the designation is sought;⁷ (4) A statement supporting the petition which specifies why the requested designation satisfies the requirements for eligible telecommunications designation and receiving federal universal service support under 47 C.F.R. § 54.201 (January 1, 2006); (5) (not applicable); and (6) A statement specifying why the applicant's proposed designation is in the public interest.⁸

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing

¹ Staff Memorandum, p. 5.

² Petition, p. 8.

³ Petition, p. 10.

⁴ *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.

⁵ Petition, p. 3, 17.

⁶ Petition, p. 2; Petitioner's Response to Staff's Data Request 2-8.

⁷ Petitioner's Supplemental Responses to Staff's Data Requests 2-1 and 2-2.

⁸ Petition, p. 18-21

service to customers making a reasonable request for service in the service area. The Commission finds that Petitioner has made this commitment and therefore satisfies this rule.⁹

ARSD 20:10:32:43.02 requires an applicant requesting designation as an ETC to submit a two-year plan that describes proposed improvements or upgrades to the applicant's network throughout its proposed designated service area. As a Lifeline-only ETC, Petitioner will not be receiving high-cost support as contemplated by this administrative rule. Therefore, the Commission finds this rule is not applicable and a two-year plan is not necessary.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations including a demonstration that it has a reasonable amount of back-up power to remain functional in emergency situations without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. Through the Petition and responses to Data Requests, Petitioner demonstrated that it has the ability to remain functional in emergency situations.¹⁰

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. Petitioner has demonstrated that it will satisfy this rule.¹¹

ARSD 20:10:32:43.05 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. This requirement was removed from federal law back in 2012.¹² Therefore, the Commission finds Petitioner need not submit a local usage plan.

ARSD 20:10:32:43.06 requires an applicant requesting ETC designation to certify that it will provide equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access within the service area. This requirement was removed from federal law in 2012. Therefore, the Commission finds such certification is not required in this matter.

In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest pursuant to ARSD 20:10:32:43.07. The Commission finds that Petitioner's Petition is in the public interest. As a Lifeline-only ETC it would serve the needs of low-income customers by increasing customer choice and offering a zero-cost option for Lifeline customers. After evaluating the public interest considerations, the Commission finds that the designation of Petitioner will bring the benefits of increased consumer choice and it has committed to providing quality services to the designated service area. The Commission finds the designation of Petitioner as a Lifeline-only ETC is in the public interest.

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. The FCC has stated that creamskimming is not a relevant concern regarding the designation of a Lifeline-only ETC.¹³ Furthermore, Infiniti will not provide service in areas served by a rural telephone company,

⁹ Petition, p. 11.

¹⁰ Staff Memorandum, p. 7

¹¹ Staff Memorandum, p. 7.

¹² 47 C.F.R. § 54.202 (2012).

¹³ *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, ¶ 13.

pursuant to the Stipulation between Petitioner and SDTA. Therefore, the Commission finds that a creamskimming analysis is not required.

Pursuant to 47 C.F.R. § 54.201(h), a state commission may not designate a Lifeline-only ETC “unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.” The Petition and Response to Staff Data Request 1-13 provided financial and technical information about Petitioner and KonaTel, Inc. Infiniti is a wholly owned subsidiary of KonaTel, Inc. which acquired Infiniti on January 31, 2019.¹⁴ The Commission finds that Petitioner has demonstrated it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E.

It is therefore

ORDERED, that the Commission hereby reconsiders and vacates its oral decision rendered on December 3, 2024. It is further

ORDERED, that the request for approval of Joint Stipulation is hereby granted. It is further

ORDERED, that Infiniti is hereby designated as an Eligible Telecommunications Carrier in nonrural areas in South Dakota for the purpose of receiving federal low-income universal service support for prepaid wireless Lifeline services. It is further

ORDERED, that this Eligible Telecommunications Carrier designation shall be conditioned upon those representations and commitments made by Petitioner both orally and in writing in this docket as well as upon the terms of the January 31, 2024 Stipulation between Petitioner and SDTA.

Dated at Pierre, South Dakota, this 18th day of December 2024.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u><i>Kristie Fiegen</i></u>
Date: <u>18 Dec 2024</u>

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner

¹⁴ Staff Memorandum, p.4.