

**BEFORE THE  
NORTH DAKOTA PUBLIC SERVICE COMMISSION**

Broadband Association of North Dakota	)	
Reply to NDPSC Notice of Opportunity for Hearing	)	
	)	Case No. PU-23-84
In the Matter of DISH Wireless	)	
Lifeline-only ETC Application	)	

**Comments of the Broadband Association of North Dakota (“BAND”)**

The Broadband Association of North Dakota (BAND) presents these comments in response to the “Notice of Opportunity for Hearing” (Notice) issued by the North Dakota Public Service Commission (Commission) in the above captioned proceeding on March 29. As indicated within that Notice, DISH Wireless LLC (DISH) has filed an “application for designation as an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income under 47 CFR Part 54, Subpart E” (hereinafter referenced as the Application). The designation sought is also known as a “Lifeline-only ETC designation.”

Pursuant to the Commission’s Notice, BAND presents these comments to address the following two specific issues referenced in the Commission’s Notice for consideration:

- What ETC universal service support area should be designated?
- Is the designation of the applicant as an ETC in the public interest?

These comments are filed on behalf of all of BAND’s cooperative and commercial “rural telephone companies,” all of which provide voice telephony and broadband internet access services throughout their established service areas as previously designated eligible telecommunications carriers (ETCs). The existing BAND member service areas extend to all counties within the State of North Dakota, covering approximately 67,000 square miles, equaling roughly 95% of the entire State geography. Within such areas, the BAND members currently serve approximately 110,000 broadband and/or voice telephony subscribers.

**A. More information is needed supporting claims made by DISH that its Lifeline services will be available on a statewide basis.**

With its filed Application, DISH states that it is seeking a Lifeline-only ETC designation that is state-wide, including “the entire geographic boundary of the State of North Dakota.”<sup>1</sup> DISH

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<sup>1</sup> See DISH Application, p. 11.

also indicates that pursuant to 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.101(b) it “offers or intends to offer the supported [Lifeline] services on a common carrier basis using either a combination of its own facilities and/or resale of another carriers services.”<sup>2</sup> The Application contains general claims concerning DISH’s ability to expansively offer its wireless voice telephony and broadband services throughout the State of North Dakota, but offers little related supporting evidence, concerning either the wireless network facilities it plans to deploy in North Dakota or the actual wireless coverage of the underlying carriers it will rely on for its Lifeline service offerings (AT&T and T-Mobile). The federal and state ETC provisions, in part, expressly require that eligible telecommunications carriers “shall throughout the service area for which the designation is received” offer all of the required supported services and further specifically condition the granting of any ETC designation on a finding by the State commission that the applying carrier “meets all of the requirements” of 47 U.S.C. § 214(e)(1).<sup>3</sup> This includes the requirement to offer all Lifeline supported services throughout the requested service area.

The Application states that “DISH Wireless is building the nation’s first virtualized, cloud-native, Open RAN-based 5G broadband network,” but more specific information should be provided indicating whether or to what extent any part of this wireless 5G network has already been deployed in North Dakota (the “State”). The Application further notes that DISH has recently launched its 5G broadband service “in over 130 cities and currently offers to more than 20 percent of the U.S. population,” but again nothing specific is offered concerning the status of and/or the future plans for construction of the referenced “5G broadband network” in this State.<sup>4</sup> BAND believes that more detailed information is necessary for the Commission to make any reasonable determinations as to whether DISH, in fact, is able to meet its Lifeline ETC service obligations on a statewide basis. More information regarding DISH’s existing wireless network facilities is also necessary to confirm that DISH qualifies for ETC designation as a common carrier that will either its own facilities or a combination of its own facilities and resale of another carrier’s services to provide its Lifeline services (see 47 CFR § 54.201(d)). The Application at present lacks sufficient information as to which of DISH’s own network facilities will be used in providing its described Lifeline services and how.<sup>5</sup> The Application also raises questions as to whether any DISH wireless facilities will be used in the near term for Lifeline services, stating that DISH’s “Gen Mobile [Lifeline service] plans will be offered in North Dakota initially by reselling AT&T and/or T-Mobile services, and in the future will also be supported by DISH’s own 5G network facilities when feasible.”<sup>6</sup>

The Application states that DISH “requests ETC designation that is statewide . . . to allow the Company to provide Lifeline service wherever [these] . . . underlying, facilities-based providers have wireless coverage.”<sup>7</sup> This appears based on a mere presumption that the wireless voice and

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<sup>2</sup> *Id.* at p. 8.

<sup>3</sup> 47 CFR § 54.201(d)(1) and 47 USC § 214(e)(1).

<sup>4</sup> *Id.* at p.10.

<sup>5</sup> *Id.* at pp. 9,10.

<sup>6</sup> *Id.* at p.12, *Emphasis added.*

<sup>7</sup> *Id.* at p.11.

broadband coverage of these carriers in North Dakota is already universal, capable in all areas of the State of meeting the minimum service standards for Lifeline services.<sup>8</sup> The only “current North Dakota coverage footprint” data provided with the Application is a listing of North Dakota zip codes, attached as “Exhibit 3.” If this Exhibit is offered as evidence of statewide wireless coverage, current FCC mobile wireless coverage maps do not indicate the same. Neither the FCC’s most recent “Mobile LTE Coverage Map” nor its “National Broadband Map,” as displayed online, indicate that the mobile wireless voice and mobile data coverage of both T-Mobile and AT&T cover all areas of North Dakota.<sup>9</sup> The current wireless network coverage of T-Mobile is clearly not statewide and while AT&T’s coverage is extensive, it is not illustrated on either of the FCC maps as covering all parts of the State. Additional information concerning the actual mobile wireless coverage of these two providers should also be required of DISH in support of its requested statewide designation.

BAND views the Application as filed deficient regarding the company’s claims that it is able to offer and provide its Lifeline services throughout the entire State. More information is needed, this is especially true as to the company showing an ability to meet the FCC established minimum mobile broadband speeds and data usage capacity on a statewide basis.

**B. The additional “public interest” standard applicable under federal and state law for additional ETC designations in “rural telephone company” service areas requires a review of individual rural service area circumstances.**

With respect to the “public interest” requirement found in both federal and state law relating to additional ETC designations in the areas served by “rural telephone companies,” the filed Application only offers general statements referencing the importance of promoting competition and increasing customer choice. Given these statements, it appears that DISH is taking the view that additional Lifeline-only ETC designations is always in the public interest and that little evidentiary or factual review by this Commission is necessary. This is best evidenced by the fact that even though DISH requests a designation extending to all rural telephone company service areas (including all BAND member company areas) in North Dakota, it has asked the Commission to “expeditiously approve” its filed Application.

BAND opposes any speedy approval of DISH’s Application that does not involve a meaningful “public interest” review process as to the question of whether all or any of the existing rural telephone company service areas should be part of any Lifeline-only ETC designation granted through this docketed proceeding. Clearly, the “public interest” requirement included within the

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<sup>8</sup> The “current Lifeline minimum service standards” adopted by the FCC are displayed on the Universal Service Administrative Company’s website at <https://www.usac.org/lifeline/rules-and-requirements/minimum-service-standards/>. The minimum offering for “Mobile Voice” is 1,000 MOU per month and for “Mobile Broadband” is a minimum broadband data speed of “3G or better” and a usage allowance of no less “4.5 GB.”

<sup>9</sup> LTE Coverage Map at <https://fcc.maps.arcgis.com/apps/webappviewer/index.html?id=6c1b2e73d9d749cdb7bc88a0d1bdd25b> and FCC National Broadband Map at <https://broadbandmap.fcc.gov/home?version=jun2022> .

federal and state ETC designation provisions is not established as an option for State commissions. A public interest review is mandated and this review, in BAND's view, requires some consideration of actual rural area circumstances relevant to determining whether an additional Lifeline designation would have positive or negative impacts on existing rural service providers and voice and/or broadband consumers. In this Docket, BAND would ask the Commission in conducting its public interest review to, at minimum, consider the following:

(1) All the "rural telephone company" members of BAND provide high quality voice and high-speed broadband services throughout their existing established "service areas" through fiber transport and last-mile network facilities. All these companies operate in areas considered "high cost" for FCC regulatory purposes and the FCC's Federal Universal Service Programs. The companies rely on federal "High-Cost Funds" for reimbursement of a portion of their network and operational costs and, as already designated ETC's, also participate in the FCC's "affordability" related programs, including Lifeline, Enhanced or Tribal Lifeline, and more recently the established Affordable Connectivity Program (ACP). In addition, BAND members for many years have been eligible for and received long term financing through the Rural Utility Service's lower-interest, telecommunications lending programs. These referenced federal programs have been critical for BAND member companies, assisting them in meeting their short-term and long-term cost recovery needs (associated with payment of loan obligations on existing network facilities, the maintenance and updating of existing network and related equipment, and at the same time preserving the affordability of the higher quality voice and broadband services offered). As to the Lifeline and ACP Programs specifically, these programs have contributed greatly in efforts by BAND members to ensure their voice and/or broadband services of BAND members are affordable for low-income users. These programs assist with service affordability in two ways, by not only providing a direct discount to end users on for their voice and/or broadband services, but through increasing the consumer adoption of these services on a company-wide basis bring a second "affordability" benefit (in the form of a reduced per line or location costs, bringing a benefit to all users of the rural telephone company network). The value of this secondary benefit should not be ignored in the Commission's public interest review process under the ETC designation provisions. It can be particularly helpful to rural telephone companies operating in the highest cost, lowest density areas.

(2) The Commission's public interest review should also recognize and consider the fact that existing federal and state grant programs are prioritizing fiber broadband deployments by either encouraging or requiring grant awardees to participate in the Lifeline and/or ACP Programs, and in some cases even requiring further steps by awardees to address service affordability. This includes for example the North Dakota Information Technology (NDIT) "Capital Projects Fund Grant Program"; the Rural Utility Service ReConnect Grant Program, and the "Broadband Equity Access and Deployment" Program (BEAD).

Consistent with these and other similar grant programs, BAND urges the Commission give due consideration to the unmatched data speeds, usage capacity, and longer-term advantages of fiber broadband investments in meeting consumer broadband needs and to avoid additional ETC designations in rural service areas that would disadvantage rather than support these investments.

- (3) In evaluating and weighing public interest benefits of an ETC Lifeline designation for any rural service areas, the Commission should further consider the substantial differences existing in federal law between the current “minimum service standards” imposed by the FCC rules and orders for “Mobile Broadband” services versus “Fixed Broadband” services. Currently, mobile broadband carriers designated as Lifeline ETCs are required to only offer a non-specific mobile broadband speed of “3G or better,” and a monthly “usage allowance” of only “4.5 GB.” These lower reduced mobile service standards are the result of several FCC waiver decisions occurring since the Lifeline and Link Up Programs were reformed and modernized in 2016. A recent “Order” of the FCC released July 1, 2022 granted an additional waiver pausing an increase in the minimum monthly mobile broadband usage allowance for another year.<sup>10</sup> Absent this waiver being granted the minimum monthly mobile broadband data/usage allowance would have risen to 6.5GB. In contrast, the minimum service standards for Lifeline imposed by the FCC on fixed broadband carriers have been revised often. At present the minimum speed required to be offered by fixed broadband carriers is “25/3 Mbps” and the required minimum monthly broadband data/usage allowance is 1,280 GB. These substantial differences in the required broadband speed and data minimums give good reason to question the comparative value of the two different Lifeline benefits and in BANDs view offer further justification for not granting a statewide ETC designation that includes all rural services areas. DISH has indicated in Exhibit 2 filed with its Application that its “Basic” Lifeline service offering mirrors the established FCC monthly data usage minimum of 4.5 GB. It’s described Tribal Lifeline benefit is higher, at 11 GB per month, but still remains far below the usage allowance that must be offered by Fixed Broadband Lifeline providers.

Dated this 12<sup>th</sup> day of May, 2023.

Respectfully submitted

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<sup>10</sup> In the Matter of Lifeline and Link Up Reform and Modernization, Order released July 1, 2022, DA 22-706.