

which is within the existing study area of Midstate Communications, Inc. ("Midstate").¹

On November 30, 2011, the Commission issued its "Order Granting Intervention."² On this date, the Commission also served a series of Data Requests on NAT. NAT provided complete and timely Responses to these Data Requests.

On January 27, 2012, NAT filed its Revised Application for Certificate of Authority ("Revised Application") with the Commission. NAT's Revised Application also seeks authority to provide local exchange and interexchange service within the boundaries of the Reservation and within Midstate's existing study area. On January 31, 2012, NAT's Revised Application was "deemed complete" by the Commission's Staff.

On April 2, 2012, two of the intervenors (CenturyLink and Sprint) filed their respective "Motions to Compel Discovery." On April 3, 2012, NAT filed its "Motion to Compel Discovery."

¹ The Reservation is located at Fort Thompson, Buffalo County, South Dakota. Therefore, the venue of this appeal is proper pursuant to SDCL 1-26-31.1(1).

² A copy of the Commission's "Order Granting Intervention" is attached as "Exhibit 1" to the "Affidavit of Scott R. Swier in Support of NAT's Application for Stay of Administrative Proceedings Pending Judicial Review."

On May 4, 2012, the Commission issued its "Order Denying Motion for Summary Judgment; Order Granting Motions to Compel; Order Granting in Part and Denying in Part Motion to Compel."³ In this Order, the Commission denied several of NAT's discovery requests that are essential to the issues presented in this administrative proceeding.

On May 14, 2012, NAT served its "Notice of Appeal" on the parties. NAT's appeal is venued in the First Judicial Circuit, Buffalo County, South Dakota.

The administrative hearing before the Commission is scheduled for *June 7-8, 2012, in Pierre, South Dakota*. Because of the significance of the Commission's above-referenced Orders, the Court should stay this administrative proceeding pending judicial review.

LAW & ANALYSIS

I. THE COURT HAS THE AUTHORITY TO ENTER A STAY OF SDPUC TC 11-087.

SDCL 1-26-32 provides:

An application to the circuit court for a *stay of the agency's decision* may be made only *within ten days of the date of receipt* or failure to accept delivery of *the agency's decision*. Upon receiving a timely application for a stay and notice of hearing thereon, the court may enter a temporary stay pending a hearing on the application. Following a hearing, the

³ A copy of this Order is attached as "Exhibit 2" to the "Affidavit of Scott R. Swier in Support of NAT's Application for Stay of Administrative Proceedings Pending Judicial Review."

court may order a further stay, pending final decision of the court. . . .

(emphasis added).

II. THE COURT SHOULD ENTER A STAY OF SDPUC TC 11-087

The Court should stay all proceedings before the Commission in SDPUC TC 11-087, pending judicial review of the Commission's previous Orders for the following reasons:

1. The Commission's above-referenced Orders permitted the improper intervention of CenturyLink and denied NAT basic discovery that is essential to the issues presented in NAT's application for certificate of authority.
2. If NAT is required to proceed to the June 7-8, 2012, contested case hearing without being allowed to receive judicial review of the Commission's above-referenced Orders, NAT's due process rights will be prejudiced.

WHEREFORE, NAT respectfully requests that the Court stay all proceedings currently before the Commission in TC 11-087, pending the Court's review of the Commission's above-referenced Orders.

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