

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

**IN THE MATTER OF THE APPLICATION OF NATIVE)
AMERICAN TELECOM, LLC FOR A CERTIFICATE)
OF AUTHORITY TO PROVIDE INTEREXCHANGE)
TELECOMMUNICATION SERVICES AND LOCAL)
EXCHANGE SERVICES IN SOUTH DAKOTA)**

**ORDER QUASHING
SUBPOENA

TC11-087**

On October 11, 2011, the Public Utilities Commission (Commission) received an application from Native American Telecom, LLC (NAT) for a certificate of authority to provide interexchange long distance service and local exchange services in South Dakota. On October 13, 2011, the Commission electronically transmitted notice of the filing and the intervention deadline of October 28, 2011, to interested individuals and entities. On October 13, 2011, the Commission received a Petition to Intervene by Midstate Communications, Inc. (Midstate). On October 26, 2011, the Commission received a Petition to Intervene by AT&T Communications of the Midwest, Inc. (AT&T). On October 28, 2011, the Commission received a Petition to Intervene from Sprint Communications Company, L.P. (Sprint), Qwest Communications Company LLC dba CenturyLink (CenturyLink), and South Dakota Telecommunications Association (SDTA). On November 1, 2011, CenturyLink re-filed its Petition to Intervene. On November 14, 2011, NAT filed its responses to the petitions for intervention. On November 18, 2011, CenturyLink filed CenturyLink's reply. On November 21, 2011, NAT filed a Notice of Supplemental Authority. On November 22, 2011, the Commission voted unanimously to grant intervention to Midstate, AT&T, Sprint, CenturyLink, and SDTA. On January 12, 2012, NAT filed a Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement.

On January 27, 2012, NAT filed a revised Application for Certificate of Authority. In its revised application, NAT stated that it seeks to provide local exchange and interexchange service within the Crow Creek Sioux Tribe Reservation which is within the study area of Midstate. On January 31, 2012, the Commission granted the Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement. On February 17, 2012, NAT filed its direct testimony. On February 22, 2012, the Commission issued an Order for and Notice of Procedural Schedule and Hearing. On March 26, 2012, Sprint and CenturyLink filed their direct testimony and NAT filed a Motion for Summary Judgment. On March 27, 2012, a Stipulation By and Between NAT, Midstate, and SDTA was filed. On April 2, 2012, Sprint filed a Motion to Compel and CenturyLink filed a Motion to Compel Discovery Responses. On April 3, 2012, NAT filed a Motion to Compel Discovery. Responses and replies were filed to the Motions to Compel and the Motion for Summary Judgment. By order dated April 5, 2012, the Commission issued an Amended Order for and Notice of Procedural Schedule and Hearing. On April 20, 2012, NAT filed its reply testimony. On May 4, 2012, the Commission issued an Order Denying Motion for Summary Judgment; Order Granting Motions to Compel; Order Granting in Part and Denying in Part Motion to Compel.

On May 7, 2011, NAT served a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action on the Commission. NAT's subpoena commanding the Commission to produce documents was issued in the name of Chairman Nelson. The subpoena commanded the production of "confidential" (i.e., non-public) financial statements, consisting of balance sheets, income statements, and cash flow statements (including any audited financial statements) provided by various applicants in dockets regarding certificates of authority filed with the Commission. Exhibit 1 to the subpoena included a list of 339 dockets filed with the Commission from January 1, 2000 to the present date. Exhibit 2 consisted of a protective order that ordered the parties to comply with a confidentiality agreement that had been entered into among the parties to this docket and the confidentiality agreement. There was no indication that the applicants whose confidential information was

being sought were given notice that their confidential information was being requested. The subpoena commanded production of the documents by May 17, 2012.

At its May 14, 2012, ad hoc meeting, the Commission considered the subpoena. Scott Swier, representing NAT, presented NAT's arguments in support of the subpoena and stated that the materials were relevant to NAT's case regarding financial capability and that the Commission's rules regarding access to confidential information did not apply. Rich Coit, representing the South Dakota Telecommunications Association, stated that four of its members were included in the subpoena and that those affected by the subpoena should have received notice and their due process rights should be respected. Bill Van Camp, representing AT&T Communications of the Midwest, stated that due process should be afforded before confidential information is turned over in a blanket subpoena. Margo Northrup, representing SDN Network LLC, stated that SDN had filed for trade secret protection of SDN's audited financials in one of the affected dockets and that SDN had not been afforded due process. Meredith Moore, representing Midstate Communications, agreed with the due process concerns. Kathy Ford, representing Midcontinent Communications, stated that Midcontinent was affected by the subpoena and stated that Midcontinent is not a party to this docket and therefore is not a party to the confidentiality agreement or protective order. She stated there is a process which addresses access to confidential documents and that ARSD 20:10:01:43 should be followed.

The Commission unanimously voted to quash the subpoena pursuant to ARSD 20:10:01:17.01. The Commission finds that the subpoena is unreasonable in that it requests the production, by May 17, 2012, of confidential documents in 339 dockets that were filed by persons who have not been afforded their due process rights to be heard or object regarding the release of information filed as confidential with the Commission. Pursuant to ARSD 20:10:01:39 through 20:10:01:42, a person may file information as confidential with the Commission and the information will be treated as confidential by the Commission. It is likely that the vast majority of those affected by the subpoena were not aware that the material that they had filed as confidential with the Commission was subject to a subpoena. In addition, the Commission points out that the protective order referenced by NAT was an order that granted a motion made by NAT to require the parties and intervenors in this docket to comply with a confidentiality agreement entered into among the parties and intervenors. The Commission further states that, pursuant to ARSD 20:10:01:43, the Commission has a process in place for persons to request access to confidential information that has been filed with the Commission. It is therefore

ORDERED, that NAT's subpoena is quashed.

Dated at Pierre, South Dakota, this 16th day of May, 2012.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u>[Signature]</u></p> <p>Date: <u>5.16.12</u></p> <p align="center">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

[Signature]
CHRIS NELSON, Chairman

[Signature]
KRISTIE FIEGEN, Commissioner

[Signature]
GARY HANSON, Commissioner