

On May 7, 2012, NAT served a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action on the Commission. On May 16, 2012, the Commission issued an Order Quashing Subpoena.

By order dated April 5, 2012, the hearing in this matter was scheduled for June 7, 2012. On May 18, 2012, CenturyLink filed a letter stating that the parties had reached an agreement for a continuance of the hearing set for June 7, 2012.¹

By order dated January 2, 2013, the Commission set the following procedural schedule that was agreed to by the parties:

January 18, 2013	Documents and other discovery as required by the Commission in its May 4, 2012 order shall be produced
April 1, 2013	All discovery to be completed (fact and expert)
April 8, 2013	NAT's supplemental written testimony is due
May 8, 2013	Intervenors' supplemental written testimony is due
May 29, 2013	All parties' pre-hearing motions are due
June 14, 2013	All parties' responses to pre-hearing motions are due

On April 4, 2013, Sprint filed a Second Motion to Compel/Enforce Prior Commission Order. NAT did not file any supplemental written testimony by April 8, 2013. On April 22, 2013, Sprint filed a Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. On April 29, 2013, Sprint filed a letter stating that it agreed to have its Second Motion to Compel/Enforce Prior Commission Order and Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony heard on May 21, 2013, rather than on May 7, 2013. On April 30, 2013, Midstate and SDTA filed a Joint Motion for Suspension of May 8, 2013 Deadline for Filing of Intervenor Testimony. On April 30, 2013, CenturyLink filed its Response to Sprint's Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. On May 2, 2013, AT&T filed its response to Sprint's Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. At its May 21, 2013, meeting, the Commission granted the suspension motions, granted Sprint's Second Motion to Compel/Enforce Prior Commission Order in part, and denied Sprint's request for fees.

On June 3, 2013, NAT filed an Amended Application for Certificate of Authority. In its amended application, NAT requested a certificate of authority "to provide intrastate interexchange access service for traffic that originates or terminates off of the Crow Creek reservation within the state of South Dakota, pursuant to ARSD 20:10:32:03, 20:10:32:15, and 20:10:24:02." NAT's Amended Application for Certificate of Authority at 1.

By order dated July 3, 2013, the Commission set the following revised procedural schedule that was agreed to by the parties:

¹ On May 14, 2012, NAT filed a Notice of Appeal in circuit court regarding the Commission's Order Granting Intervention and the Order Denying Motion for Summary Judgment; Order Granting Motions to Compel; Order Granting in Part and Denying in Part Motion to Compel. On May 31, 2012, NAT filed a Second Notice of Appeal regarding the Commission's Order Quashing Subpoena. By order dated October 17, 2012, the circuit court dismissed the appeal.

July 26, 2013	NAT's supplemental written testimony is due
August 30, 2013	Intervenors' supplemental written testimony is due
September 20, 2013	All parties' pre-hearing motions are due
October 4, 2013	All parties' responses to pre-hearing motions are due
October 22-24, 2013	Hearing dates (beginning at 1:00 p.m. on October 22)

All parties will serve responses to discovery in two weeks.

On July 26, 2013, Sprint filed its Third Motion to Compel. On July 26, 2013, NAT filed Direct Testimony of Jeff Holoubek and Direct Testimony of Brandon Sazue. On August 9, 2013, NAT filed a Notice of Taking Deposition of Randy Farrar and a Notice of Taking Deposition of Sprint. On August 20, 2013, Sprint filed a Motion to Quash Deposition Notices. On August 21, 2013, Sprint filed its Amended Third Motion to Compel. On August 23, 2013, NAT filed a Notice of Change in Corporate Structure. On August 30, 2013, Sprint filed Direct Testimony of Randy G. Farrar. On August 30, 2013, CenturyLink filed Supplemental Testimony of William R. Easton. On August 30, 2013, Midstate and SDTA filed a letter in Lieu of Pre-Filed Testimony. On September 6, 2013, NAT filed its Brief in Opposition to Sprint's Motion to Quash Deposition Notices.

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its September 10, 2013, meeting, the Commission considered Sprint's Motion to Quash Deposition Notices. Sprint sought to quash NAT's Notice of Taking Deposition of Randy Farrar and NAT's Notice of Taking Deposition of Sprint. Sprint's Memorandum in Support of Motion to Quash Deposition Notices at 1 (Sprint's Memorandum). Sprint stated that Randy Farrar is a Sprint employee and expert witness. *Id.* Sprint further stated that the "deposition notice of Sprint – the corporate entity – was served under SDCL § 15-6-30(b)(5) and identified 8 testimony topics and demanded production of 15 categories of documents." *Id.* Sprint cited to SDCL 15-6-26(c) and stated that this statute "authorizes the Commission to protect a party from discovery upon a showing of good cause." *Id.* Sprint contended that its motion should be granted because: (1) the depositions are a delay tactic by NAT; (2) NAT's Notice of Deposition of Sprint requests the same information the Commission has already found irrelevant; (3) NAT's Notice of Deposition of Randy Farrar was served in violation of South Dakota law; and (4) the requests seek information the Commission already decided in Docket No. TC09-098 would impose an undue burden on Sprint. *Id.* at 1-2.

NAT stated that it was not seeking to delay this proceeding as Sprint had just filed the amended direct testimony of its expert and that Sprint has also sought further discovery. NAT's Brief in Opposition to Sprint's Motion to Quash Deposition Notices at 2. NAT further stated that it "is entitled to probe and discover the factual basis underlying Sprint's accusations, largely presented through the direct testimony of its expert, Randy Farrar." *Id.* at 4.

With regard to the Motion to Quash the Deposition Notice of Randy Farrar, the Commission voted to grant the motion (Commissioner Fiegen, dissenting). Tr. at 22. As set forth in ARSD 20:10:01:22.01, the Commission follows the rules of civil procedure as used in the

circuit courts for the taking and use of discovery. Under the rules of civil procedure, discovery related to experts is set forth in SDCL 15-6-26(4). Sprint contended that, pursuant to SDCL 15-6-26(b)(4)(A)(ii), additional expert discovery is to be sought through a motion to the court. NAT served the Notice of Deposition of Randy Farrar without seeking to do so through a motion filed with the Commission. NAT stated that the statutory requirement to bring a motion is antiquated and is not a customary practice in South Dakota. Tr. at 16. The Commission finds that the bringing of a motion is required and therefore granted Sprint's Motion to Quash the Deposition Notice for Randy Farrar.

The Commission then considered Sprint's Motion to Quash the Deposition Notice for Sprint. Document Request 1 concerned documents regarding Sprint's wholesale rate decks. NAT's Notice of Taking Deposition of Sprint at 2. After a discussion on this request, NAT agreed that Document Request 1 could be limited to the rates that Sprint charged to other carriers for traffic delivered to NAT. Tr. at 41. With that limitation, the Commission unanimously voted to deny the Motion to Quash Document Request 1. Tr. at 41-42.

Document Requests 2 and 3 referenced documents relating to Sprint's wholesale interstate and intrastate rates to NAT. NAT's Notice of Taking Deposition of Sprint at 2. For Document Requests 2 and 3, NAT agreed that these should be withdrawn so the Commission unanimously voted to grant Sprint's Motion to Quash Document Requests 2 and 3. Tr. at 44-45.

Document Requests 4 and 5 regarded documents supporting certain assertions made by Sprint's expert witness, Randy Farrar. NAT's Notice of Taking Deposition of Sprint at 2. For Document Requests 4 and 5, Sprint stated that it had already identified or attached these documents that support Mr. Farrar's testimony. Tr. at 47-48. NAT stated that it wanted to make sure that Sprint has fully complied with the discovery requests. Tr. at 49. The Commission voted unanimously to deny Sprint's Motion to Quash Document Requests 4 and 5. Tr. at 50.

Document Request 6 requested documents demonstrating profits and/or losses realized by Sprint traffic terminated at the NAT exchange. NAT's Notice of Taking Deposition of Sprint at 2. NAT contended that the information is needed because Sprint is alleging that it is losing money because of NAT. Tr. at 52. Sprint stated Mr. Farrar's testimony does not contend that Sprint is losing money and that is not a position that Sprint will take at the hearing. Tr. at 54. Sprint further stated that this information has nothing to do with this docket, which is whether NAT meets the requirements for a certificate of authority. Sprint's Memorandum at 10-11. Sprint contended that the burden outweighs the benefits. *Id.* at 10. The Commission agrees. The Commission voted to grant Sprint's Motion to Quash Document Request 6 (Commissioner Fiegen, dissenting). Tr. at 55.

Document Request 7 regarded documents related to Sprint's provision of telecommunications services on the Crow Creek Reservation. NAT's Notice of Taking Deposition of Sprint at 2. Sprint contended this was vague and had nothing to do with the issues in the docket. Sprint's Memorandum at 10-11. NAT stated that this was a narrow request that is limited to Sprint's provision of service on the Crow Creek Reservation. Tr. at 55-56. The Commission voted unanimously to deny Sprint's Motion to Quash Document Request 7. Tr. at 57. The Commission finds the request is not vague and is limited to Sprint's provision of telecommunications services on the reservation.

Document Request 8 requested documents related to payments made by Sprint to other local exchange carriers for the termination of conferencing traffic. NAT's Notice of Taking Deposition of Sprint at 2-3. After a discussion of this request, NAT agreed to withdraw it so the Commission voted unanimously to grant Sprint's Motion to Quash Document Request 8. Tr. at 36, 58.

Document Requests 9, 10, and 11 regarded documents related to contacts Sprint has had with tribal officials in order to formulate Sprint's opinion regarding benefits to the tribe and compliance with the FCC's tribal consultation requirements. NAT's Notice of Taking Deposition of Sprint at 3. Sprint stated that these requests have nothing to do with NAT's application for a certificate of authority. Sprint's Memorandum at 13. The Commission voted unanimously to deny Sprint's Motion to Quash Document Requests 9, 10, and 11. Tr. at 59. The Commission notes that Mr. Farrar's prefiled testimony addresses the issue of whether NAT provides benefits to the tribe.

Document Request 12 related to Sprint's wholesale transport and call termination services offered to NAT. NAT's Notice of Taking Deposition of Sprint at 3. Document Request 12(a) regarded Sprint's rate to the NAT exchange as listed in its wholesale rate deck. It appears that this request would be similar to Document Request 1. The Commission denied the Motion to Quash Document Request 1, but with the limitations as noted above. The Commission voted unanimously to deny the Motion to Quash Document Request 12(a). Tr. at 64-65. Document Request 12(b) regarded Sprint's payments to carriers for delivery of traffic to the NAT exchange. The Commission voted to deny the Motion to Quash Document Request 12(b) (Chairman Hanson, dissenting). Tr. at 65. Document Request 12(c) regarded Sprint's profits from this type of traffic sent to the NAT exchange by methods such as non-payment to NAT for the termination of this traffic. As this request is similar to Document Request 6, the Commission voted to grant the Motion to Quash Document Request 12(c) (Commissioner Fiegen, dissenting). Tr. at 68-69.

Document Request 13 requested all documents related to Sprint's payments to local exchange carriers for access stimulation traffic. NAT's Notice of Taking Deposition of Sprint at 3. The Commission voted to deny the Motion to Quash Document Request 13, with the limitation that this covers documents from January 1, 2009 to present (Chairman Hanson, dissenting). Tr. at 69, 75.

Document Request 14 regards documents or written statements signed, adopted or approved, pertaining to NAT's application for a certificate of authority. NAT's Notice of Taking Deposition of Sprint at 3. Sprint stated that the request was vague and sought irrelevant information. Sprint's Memorandum at 14. NAT clarified that NAT was referring to any documents, non-privileged, that relate to NAT's application and that were not included with Mr. Farrar's written testimony. Tr. at 76-77. With that clarification, the Commission voted unanimously to deny the Motion to Quash Document Request 14. Tr. at 78.

Document Request 15 requested documents concerning Sprint's document retention and destruction policies in effect from 2007 to the present. NAT's Notice of Taking Deposition of Sprint at 3. At the meeting, Sprint stated that since its motion was denied as it related to some of its other requests, Sprint would provide the documents but requested that the date be changed to 2009. Tr. at 78-79. NAT did not object to that change. Tr. at 79. The Commission voted unanimously to deny Sprint's Motion to Quash Document Request 15, with the change from 2007 to 2009. *Id.*

NAT and Sprint then agreed to work together on determining whether, after documents are produced, any witnesses would be needed regarding the existence of the documents. *Id.* at 80.

Sprint requested that the Commission grant fees if its Motion to Quash Deposition Notices was granted. Sprint's Memorandum at 16. Given its decision that denied, in part, Sprint's motion, the Commission voted unanimously to deny Sprint's request for fees. Tr. at 81.

It is therefore

ORDERED, that Sprint's Motion to Quash Deposition Notices is granted in part and denied in part as set forth above; and it is further

ORDERED, that Sprint's request for fees is denied.

Dated at Pierre, South Dakota, this 27th day of September, 2013.

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.	
By:	<u>Joy Lashley</u>
Date:	<u>9.27.13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman
(Dissenting in part)

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner
(Dissenting in part)