



South Dakota Telecommunications Association

South Dakota Telecommunications Association
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September 26, 2008

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket TC08-110, Application of Native American Telecom, LLC for a COA to
provide Local Exchange Service on the Crow Creek Reservation

Dear Ms. Van Gerpen:

Enclosed for filing in the above referenced docket you will find the electronic original of a
"SDTA Petition to Intervene."

As is evidenced by the Certificate of Service attached to the Petition, service has been made on
other parties to the docket.

Thank you for your assistance in filing and distributing copies of this Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written in a cursive style.

Richard D. Coit
SDTA Executive Director and General Counsel

**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 LOCAL) Docket No. TC08-110
EXCHANGE SERVICE ON THE CROW CREEK)
INDIAN RESERVATION)

SDTA Petition to Intervene

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. On or about September 9, 2008, Native American Telecom, LLC ("Native Telecom") filed an Application with this Commission seeking a certificate of authority to provide local exchange service on the Crow Creek Reservation. According to the Application, Native Telecom is a joint venture between certain private individuals and the Crow Creek Sioux Tribe. It is indicated in the Application that an actual agreement has been entered into with the Crow Creek Sioux Tribe, yet a copy of this agreement which, apparently, would set forth the particulars of the joint venture to provide telecommunications services has not been submitted with the Application.

3. As is indicated in the "Certificate of Service" attached to the Application, parts of the Crow Creek Reservation are served by Midstate Communications, Inc. ("Midstate") and Venture

Communications Cooperative (“Venture”). Both of these companies are currently members of the SDTA.

3. The Native Telecom application fails to give sufficient information as to how the company will be able to satisfy the rural service area protection/safeguard that is provided for under 47 U.S.C. § 253(f) and also SDCL § 49-31-73. Under 47 U.S.C. § 253(f), states may “require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.” The South Dakota Legislature has also imposed this protection/safeguard as a condition on the certification of competitive local exchange carriers in rural telephone company service areas through the enactment of SDCL § 49-31-73. This Commission has more specifically defined the requirements imposed on competitive carriers pursuant to these federal and state statutes through the adoption of ARSD §§ 20:10:32:15 through 20:10:32:19.

4. Native Telecom’s filing presents several issues to this Commission that are of interest to all SDTA member companies. SDTA is particularly concerned that this Commission in its review of Native Telecom’s application seek to ensure full compliance with the protection/safeguard referenced above that recognizes the special circumstances faced by rural telephone companies in making local exchange service universally available in high cost rural areas. The Application, as filed, indicates that Native Telecom does not intend to provide service throughout the entirety of either Midstate’s or Venture’s existing rural service areas or study areas, but instead will be limiting its local service offerings to territory “within the exterior boundaries of the Crow Creek reservation.” Further, with respect to even those areas within the Crow Creek reservation that Native Telecom proposes to serve, it is unclear from the

Application how the company would in fact meet the additional service obligations described in ARSD § 20:10:32:15. While on page 5 of its Application, Native Telecom states that it “will meet the service requirements imposed on eligible telecommunications carriers . . . as required by § 20:10:32:15,” insufficient information is provided indicating how this would be accomplished. It is stated in the Application that “Native Telecom will provide service to all individuals and organizations residing or doing business within the exterior boundaries of the Crow Creek reservation.” Further, the Application makes it clear that Native Telecom intends to provide service entirely through its own facilities. The company states specifically that it “will not purchase unbundled network elements (“UNEs”) from, or resell the services of, the ILECs.” (Application p. 3). Given the significant territory in South Dakota resting within the Crow Creek reservation and the apparent plans of Native Telecom to use only its own facilities in providing its services, there is good reason to question whether the company is seriously committed to meeting or has the actual ability to meet the ETC service obligations even within the reservation boundaries within the 24 month time frame that is set forth in this Commission’s rules.

5. In regards to the additional service obligations imposed on competitive carriers seeking to enter rural service areas, a process for waiver is provided under the state statutes (SDCL § 49-31-73) and the Commission’s administrative rules (ARSD § 20:10:32:18). Pursuant to this process, however, the Commission may only grant the waiver if, after notice and hearing pursuant to Chapter 1-26, it is established by a preponderance of the evidence that the waiver “would not adversely impact universal service, that quality of service would be continued, and that it would otherwise be in the public interest.” Native Telecom on page 7 of its Application has included a request for such a waiver, yet no supporting information is supplied within the

Application indicating that the granting of such a waiver would be consistent with these legal standards.

6. Given these and related issues, all of the SDTA member companies are interested in this proceeding and stand to be affected by the Commission's decisions herein. SDTA seeks intervention in this proceeding based on the interests of Midstate and Venture, SDTA members, and also the interests of other SDTA member companies that operate as incumbent local exchange carriers and "rural telephone companies" and which may be "bound and affected favorably or adversely" by decisions made in this proceeding. (See ARSD § 20:10:01:15.05).

7. Based on all of the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status

Dated this 26th day of September, 2008.

Respectfully submitted:

SDTA

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a horizontal line.

Richard D. Coit

Executive Director and General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition to Intervention, dated September 26, 2008, filed in PUC Docket TC08-110 was served upon the PUC electronically, directed to the attention of:

Ms. Patty Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was also sent by e-mail and/or US Postal Service First Class mail to each of the following individuals:

Tom Reiman, Registered Agent
Native American Telecom, LLC
6710 E. Split Rock Circle
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