

RICHARD A. CUTLER
KENT R. CUTLER
BRIAN J. DONAHOE *[#]
STEVEN J. SARBACKER
JAYNA M. VOSS
MICHAEL D. BORNITZ *
TRENT A. SWANSON
RYAN J. TAYLOR °
KIMBERLY R. WASSINK
MEREDITH A. MOORE
NATHAN S. SCHOEN *^{#†}
ONNA B. HOUCK *
NICHOLE J. MOHNING *
BOBBI L. THURY *[#]
DANIEL J. DOYLE
ALEX S. HALBACH †
JOSEPH M. DYLLA
ROBERT D. TRZYNSKA

CUTLER & DONAHOE, LLP
ATTORNEYS AT LAW

Telephone (605) 335-4950

Fax (605) 335-4961

www.cutlerlawfirm.com

August 30, 2013

JEAN BROCKMUELLER, CPA (Inactive)
BUSINESS MANAGER

*Also licensed to practice
in Minnesota

Also licensed to practice
in Iowa

*Also licensed to practice
in Nebraska

* Also licensed to practice
in Kansas

† Admitted to practice before the
United States Tax Court

*Also licensed as a Certified
Public Accountant (Inactive)

VIA EMAIL TO PATTY.VANGERPEN@STATE.SD.US

Ms. Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: *In the Matter of the Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc. – TC 11-087*

Dear Ms. Van Gerpen:

Midstate Telecommunications, Inc. (“Midstate”) and South Dakota Telecommunications Association (“SDTA”) submit this joint correspondence in lieu of pre-filed testimony in the above-referenced matter. This correspondence confirms Midstate and SDTA’s intentions to honor the terms of their Stipulation with Native American Telecom n/k/a Crow Creek Telecom, LLC (“NAT”), which Stipulation was filed with this Commission on March 26, 2012. Midstate and SDTA assert that the terms and conditions of this Stipulation remain in full force and effect at this time.

By way of background, on January 27, 2012, NAT filed a revised Application for Certificate of Authority, which revised Application stated that NAT “will provide service only within the boundaries of the Crow Creek Sioux Tribe Reservation.” Pursuant to A.R.S.D. 20:10:32:18, the revised Application further requested a waiver of the requirement to serve the entirety of Midstate’s study area as required by A.R.S.D. 20:10:32:15. See revised Application for Certificate of Authority, p. 7, § 9.

Following the filing of NAT’s revised Application for Certificate of Authority, Midstate and SDTA served a joint set of Interrogatories and Requests for Production of Documents upon NAT. The discovery requests, in part, asked NAT to identify that portion of Midstate’s study area for which NAT seeks a Certificate of Authority. In March 2012, NAT responded to the Interrogatories and Requests for Production of Documents, stating that it intends to provide service only within Midstate’s Fort Thompson exchange, all of which is located on the Crow Creek Sioux Reservation. The boundaries of the Crow Creek Sioux Reservation extend beyond the Fort Thompson exchange, however, NAT represented that its services will be limited to the Fort Thompson exchange. In those same discovery responses, NAT further represented that there is no risk for “cherry picking” or “cream skimming” behavior on its part because of the

nature of its request and the location of the Fort Thompson exchange and Crow Creek Sioux Reservation.

Based upon the representations made in NAT's revised Application for Certificate of Authority and discovery responses, on March 26, 2012, Midstate, SDTA, and NAT filed a Stipulation addressing the intended scope of NAT's Application for Certificate of Authority. In that Stipulation, NAT again confirmed its intention to provide service only within Midstate's Fort Thompson exchange. Based upon the Stipulation, Midstate and SDTA stated their respective intentions not to object to NAT's request for waiver of A.R.S.D. § 20:20:32:15. The Stipulation was submitted in lieu of pre-filed testimony on the issues presented by NAT's initial Application for Certificate of Authority and January 27, 2012 revised Application for Certificate of Authority.

On June 3, 2013, NAT filed an Amended Application for Certificate of Authority. In that Amended Application, NAT again confirmed that it "will provide service only within the boundaries of the Crow Creek Reservation." It also renewed its request for "a waiver of any requirement to serve the entire study area of rural telephone companies to the extent one applies in ARSD 20: 10:32: 15." See June 3, 2013 Amended Application for Certificate of Authority, p. 8, § 9. Following the filing of NAT's Amended Application for Certificate of Authority, Midstate and SDTA sought confirmation from NAT that it intended to honor the terms of the parties' March 26, 2012 Stipulation. On June 19 and 20, counsel for NAT, Midstate and SDTA exchanged e-mail correspondence confirming NAT's intention to honor the parties' Stipulation.

To date, in reliance upon the parties' March 26, 2012 Stipulation, as well as subsequent pleadings and correspondence, neither Midstate nor SDTA have submitted pre-filed testimony. If NAT disavows the terms of the parties' Stipulation prior to or at the time of the hearing currently scheduled in this matter, it will result in significant prejudice to both Midstate and SDTA. Accordingly, should NAT fail to honor the parties' Stipulation, Midstate and SDTA expressly reserve their respective rights to supplement the record in this matter and take all other steps necessary to exercise the due process rights afforded to them by this Commission's rules, as well as all applicable South Dakota Rules of Civil Procedure.

Sincerely,

CUTLER & DONAHOE, LLP



Meredith A. Moore
For the Firm

SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION



Richard D. Coit, General Counsel

MAM:lk
cc: Client