

**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 Exchange Service
Within the Study Area of Midstate
Communications, Inc.**

Docket No. TC11-087

QWEST COMMUNICATIONS COMPANY LLC D/B/A CENTURYLINK'S REPLY

Qwest Communications Company LLC d/b/a CenturyLink ("CenturyLink") respectfully requests that the Commission accept this reply for the limited purposes of addressing Footnote 1 of Native American Telecommunications' ("NAT") Reply and Opposition to the Petitions for Intervention filed by AT&T Communications of the Midwest, Inc., Sprint Communications Company L.P. and Qwest Communications Company LLC d/b/a CenturyLink ("NAT Reply") and to clarify CenturyLink's position on intervention.

FOOTNOTE 1 and INITIAL FILING OF PETITION TO INTERVENE

In Footnote 1 of the NAT Reply, NAT argues that CenturyLink's intervention petition should be denied because it was allegedly filed in violation of unauthorized practice of law rules. NAT also contends that as an IXC, CenturyLink has no interest to warrant intervention. CenturyLink takes South Dakota requirements with respect to the practice of law very seriously, has consistently complied with its understanding of those requirements, and will continue to do so in the future. To the extent there is any need to clarify the ground rules for participation in proceedings before the Commission, CenturyLink will gladly participate and abide by the outcome. Because CenturyLink quickly corrected any alleged improprieties with respect to the October 28 filing and readily agreed to an extension to allow NAT to respond to its petition

to intervene, NAT can claim no prejudice by virtue of this issue. Accordingly, CenturyLink's Petition should be decided on its merits.

BACKGROUND

CenturyLink filed its petition for intervention signed by Jason Topp on Friday, October 28. NAT's counsel emailed a letter asserting that local counsel was required for such a filing at the end of the same day. CenturyLink engaged local counsel the following Monday, contacted counsel for the Commission for advice on how to proceed, and advised counsel for NAT of its planned course of action.

On November 1, local counsel sent an email outlining the plan for addressing the issue:

From: Christopher Madsen [mailto:cwmadsen@bgpw.com]

Sent: Tuesday, November 01, 2011 3:09 PM

To: Scott@SwierLaw.com

Cc: Thomas Welk; Lundy, Todd; Topp, Jason; Carmon, Jeff; Johnson, Wayne

Subject: Native American Telecom Docket TC 11-087

Hi Scott:

Tom Welk and I received a copy of your email correspondence regarding Qwest's filing of its petition to intervene in this docket. We are re-filing the petition to intervene over our signatures and will move for the admission of Jason Topp and Todd Lundy pro hac vice in the immediate future. I believe this should take care of any concerns or potential objections you had.

Christopher W. Madsen

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Counsel for NAT did not respond to this email.

Later on November 1, CenturyLink's local counsel re-filed the petition for intervention with the Commission. The re-filed petition is identical to the original petition and alleged the same grounds as a basis for intervention. The only addition to the re-filed petition was the addition of paragraph 6 to explain the re-filing. Local counsel filed motions for admission of Messrs. Lundy and Topp pro hac vice with the Hughes County District Court on November 4, 2011. On November 2, NAT requested that the Commission delay consideration of the petitions to intervene from the scheduled date of November 8, 2011 to the November 22, 2011 Commission meeting. CenturyLink immediately agreed to support this request, and local counsel expressed support before the Commission at the November 8 meeting.

The Commission agreed to delay consideration of the petitions, resulting in NAT having more time to respond than it would have originally had available had the original petition been filed by local counsel. The pro hac vice motions were granted by Order of the Circuit Court for the Sixth Judicial Circuit dated November 10, 2011. The orders were filed with the Commission on November 16, 2011.

DISCUSSION

The question of whether CenturyLink's filing of October 28 was proper should not impact the Commission's examination of the merits of CenturyLink's petition to intervene. Local counsel has been retained in this proceeding. Local counsel refiled CenturyLink's petition for intervention on November 1, the second business day after the deadline. The refiled petition contains the same language as the original petition. CenturyLink agreed to support a delay in the Commission's consideration of its petition from November 8 to November 22, thereby giving NAT more time to respond than it originally had available under the Commission's initial deadline. NAT claims no prejudice and given the facts cannot do so. Thus, assuming only for

the sake of argument that filing of the original petition was considered ineffective and the re-filed petition is considered untimely, NAT can demonstrate no prejudice and the Commission should still allow CenturyLink to intervene. See *Weimer v. Ypparila*, 504 N.W.2d 333 (S.D. 1993).

Regarding the practice of law in South Dakota by attorneys not licensed in this state, CenturyLink's practice has been to engage local counsel on contested matters but not on uncontested matters. This practice appears consistent with the approach taken by the industry and with Administrative Rule 20:10:01:02 that provides: "Any party to a proceeding may appear before the commission and be heard either in person or by attorney."

Research yielded little in the way of South Dakota Supreme Court opinions or other authority defining what constitutes the practice of law. CenturyLink's historical practice has been to consider a matter contested when the positions of the parties make it clear that a difference exists, typically accompanied by a contested case hearing. At the time of filing, it was unclear whether or not NAT would oppose the intervention petition or whether the filing of a petition to intervene arose to a contested case process. Given these uncertainties, and the typical industry practice, CenturyLink did not yet see this as a contested matter at this preliminary stage.

CenturyLink will continue to vigilantly abide by any requirements with respect to engaging local counsel in Commission proceedings. It believes it has done so but stands ready to engage with other counsel and the Commission either formally or informally to clear up any misunderstandings on this topic and to establish a clear process for the future.

CENTURYLINK MEETS THE TEST FOR INTERVENTION

NAT essentially claims that CenturyLink's allegations that NAT may be participating in traffic pumping can be handled in subsequent proceedings and is not relevant to the

commission's decision in this docket. *See* NAT Reply, ¶ 16. As stated in its petition to intervene, to the extent NAT engages in traffic pumping and seeks to collect switched access charges from CenturyLink for traffic delivered to free calling companies, CenturyLink will be directly and immediately affected. CenturyLink's interest is significantly different than that of a taxpayer or the public in general. The time to address NAT's proposed business plan and the extent it relies on revenues generated by Switched access charges for traffic delivered to free calling companies is now, not at some point in the future.

NAT also asserts in paragraph 19 of its Reply as follows:

A review of the Commission's electronic docket reveals that since 2000, the Commission has never allowed an IXC to intervene in a CLEC's application to provide Interexchange telecommunications services and local exchange services in South Dakota.

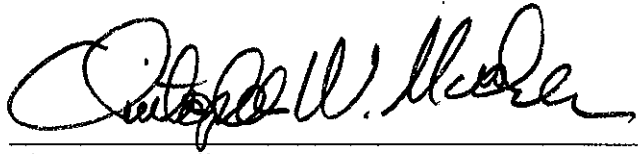
In support of that statement, NAT refers to 49 Telecommunications dockets. A review of the 49 dockets cited reveals that NAT's statement is misleading, at best. No IXC petitioned for intervention in any of the cited dockets. Accordingly, NAT cannot fairly imply that this Commission has never allowed an IXC to intervene in a docket where a Certificate of Authority was sought.

CONCLUSION

CenturyLink's petition for intervention should be decided on its merits. NAT has suffered no prejudice due to any alleged improprieties in the October 28, 2011 filing, given that any issue was immediately corrected and NAT was granted an extended period of time to respond. While CenturyLink maintains that its October 28, 2011 filing was proper it will be vigilant to ensure that local counsel is retained whenever required in South Dakota and is willing and prepared to participate in any discussions or proceedings for the purposes of clarifying those requirements.

Furthermore, under ARSD 20:10:01:15:05 and SDCL 1-26-17.1, CentruyLink is entitled to intervene in this matter and NAT has not substantively addressed CenturyLink's right to do so. For the reasons set forth in its petition and this reply, the Commission should grant CenturyLink's petition to intervene.

Dated this 18th day of November, 2011.



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CERTIFICATE OF SERVICE

I, Christopher W. Madsen, hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P. and that on the 18th day of November, 2011, I electronically filed **Qwest's Reply** and emailed a true and correct copy of the foregoing to the following persons:

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