

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

IN THE MATTER OF THE)
APPLICATION OF CROW CREEK)
TELECOM, LLC F/K/A NATIVE)
AMERICAN TELECOM, LLC FOR A)
CERTIFICATE OF AUTHORITY TO)
PROVIDE LOCAL EXCHANGE)
SERVICE WITHIN A PORTION OF)
THE STUDY AREA OF MIDSTATE)
COMMUNICATIONS, INC.)

Docket No. TC11-087

**MOTION FOR GRANT OF
TEMPORARY AUTHORITY,
OR IN THE ALTERNATIVE,
EXPEDITED DECISION**

Crow Creek Telecom, LLC f/k/a Native American Telecom, LLC (“CCT”) respectfully moves this Commission for temporary authority to originate and terminate intrastate telecommunications services traffic within the Crow Creek Reservation (the “Reservation”), and which traffic crosses Reservation boundaries within South Dakota, during the pendency of this proceeding, or, in the alternative, for expedited grant of CCT's Application for Certificate of Authority (“Motion”). The public interest would be served by permitting CCT to stop blocking calls between residents and businesses on the Reservation and those in other parts of South Dakota while this proceeding is pending. Denial of this Motion would result in continued harm to both the Tribe and everyone in South Dakota whose calls are being blocked unnecessarily while this proceeding is pending. By contrast, no harm to any party would arise from permitting CCT to stop blocking calls while this proceeding is pending, particularly because the Commission could impose any necessary and valid conditions on CCT upon grant of CCT's Application for Certificate of Authority, retroactive to the date the Commission grants

this Motion. Grant of this Motion would also further the Commission's goal of ensuring the rapid deployment of services to consumers in unserved and underserved areas. For this reason, CCT respectfully requests the Commission to grant this Motion.

BACKGROUND

CCT is a tribally-chartered limited liability corporation providing facilities-based telephone service to business and residential consumers located within the exterior boundaries of the Reservation. CCT is majority-owned and controlled by the Crow Creek Sioux Tribe, and is an arm of the Crow Creek Sioux Tribe. The facilities-based, intrastate telephone services that CCT proposes to provide on the Reservation will complement intra-Reservation and interstate telephone services, and advanced broadband services, which CCT already provides to its customers on the Reservation. Access to CCT's services for consumers and businesses on the Reservation is an important part of the Crow Creek Sioux Tribe's economic plan, and the delay in obtaining full certification unnecessarily, and unjustifiably, harms Tribal interests and the interests of all residents and businesses in South Dakota.

On October 11, 2011, CCT filed an Application for a Certificate of Authority with the Commission to provide facilities-based telephone service within the Reservation, which is located within the study area of MidState Communications, Inc. ("MidState").¹ On June 3, 2013, CCT filed an Amended Application for a Certificate of Authority, providing additional details and clarity about its proposed offerings and limiting its

¹ *In re Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within A Portion of the Study Area of Midstate Commc'ns, Inc.*, Docket No. TC11-087, Application for Certificate of Authority (filed Oct. 11, 2011) ("Initial Application").

request to provide intrastate interexchange access services on the Crow Creek Reservation for (1) traffic that originates on the Crow Creek Reservation and terminates off of the Reservation but within South Dakota, and for (2) traffic that originates in South Dakota off of the Crow Creek reservation and terminates on the Crow Creek Reservation.² Despite nearly two years passing since CCT filed its Initial Application and three months since the CCT filed its Amended Application, CCT has yet to receive its Certificate. As a result, residents and businesses on the Reservation are waiting for the services CCT announced that it was ready and willing to provide more than two years ago, and calls to and from areas off Reservation to CCT's customers on Reservation continue to be blocked unnecessarily. CCT respectfully urges the Commission to take immediate action so that no more calls between locations within South Dakota have to be blocked.

I. THE COMMISSION SHOULD GRANT CCT TEMPORARY AUTHORITY TO PROVIDE SERVICE DURING THE PENDENCY OF THIS PROCEEDING, OR CONCLUDE THE PROCEEDING ON AN EXPEDITED BASIS

Residential and business customers located on the Reservation, and the Crow Creek Sioux Tribe as a whole, should be permitted full access to the suite of services (including intrastate telephone services) offered by CCT during the remaining pendency of its Application. To accomplish this, the Commission should grant CCT temporary authority to originate and terminate intrastate telecommunications services traffic that

² *In re Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within A Portion of the Study Area of Midstate Commc'ns, Inc.*, Docket No. TC11-087, Amended Application for Certificate of Authority (filed June 3, 2013) ("Amended Application").

either originates or terminates off Reservation while the Commission resolves the legal tangle caused by the unnecessary, and legally unjustifiable, interventions in this docket of third-party competitors. Grant of this Motion is necessary to permit calls between the Reservation and all other locations within South Dakota while the proceeding is pending, which would mitigate the ongoing harms to innocent third parties that arises from the currently-mandated call blocking. Failure to grant this Motion would only harm consumers and businesses in South Dakota, which is clearly contrary to the public interest.

Grant of the requested temporary authority would also confirm that the parade of horrors described by third-party interveners in this docket is absurd. Since its Initial Application in October 2011, most of the issues raised by various third parties in the docket have been mooted. In particular, concerns raised by Sprint and Qwest regarding the appropriate rates for access charges and allegations of access stimulation have been mitigated or eliminated by the FCC's *USF/ICC Reform Order*, which established a universal glide-path towards a bill-and-keep mechanism whereby ALL terminating access rates for ALL traffic including, BUT NOT LIMITED TO, access stimulation traffic will decline and eventually reach zero,³ **but which also confirmed the legality of access stimulation traffic**, provided such traffic is exchanged at the newly-established applicable rates. As a result of the *USF/ICC Reform Order*, under FCC rules CCT's interstate and intrastate rates must be set at rates no higher than the interstate rates of

³ *Connect America Fund*, WC Docket No. 10-90, Report & Order & FNPRM, 26 FCC Rcd 17663, ¶¶ 798-846 (2011) (*USF/ICC Reform Order*).

CenturyLink⁴, and CCT's rates are lower than CenturyLink's, which renders any concerns about access stimulation raised by third-party participants empty.⁵

While competitors of CCT may or may not disagree with the rates that CCT intends to charge upon receiving authority to provide service, there can be no reasonable doubt that CCT meets all of the requirements to receive a permanent Certificate of Authority. As CCT's filings and track record of successfully providing Internet and telecommunications services on the Reservation make clear, CCT has the professional and technical expertise, as well as the financial resources, necessary to continue providing Internet and telephone services. The Commission could resolve any issues at a later date and make its ruling retroactive to the date it grants this Motion, which would fully mitigate any potential harm from granting CCT temporary authority while this proceeding is pending. Grant of the requested temporary authority would also provide the Commission with yet more evidence with which it can evaluate CCT's qualifications to provide telecommunications services. By contrast, failure to provide the requested temporary authority serves only to delay economic development on the Reservation, which harms not only the Tribe but all of South Dakota.

If the Commission chooses not to grant the temporary authority CCT requests, the Commission should expedite this proceeding and reach a final decision as soon as the record contains sufficient information to support granting CCT the requested Certificate

⁴ *Id.* ¶¶ 656-701 (establishing rules to determine when a LEC is engaged in access stimulation and requiring the LEC to maintain switched access rates that are equal to or lower than the rates charged by the lowest rate price-cap carrier in the state, which in this case is, presumably, CenturyLink.).

⁵ *Id.*.

of Authority. To be clear, CCT respectfully submits that the record already contains sufficient information to support granting CCT the requested Certificate of Authority. Individuals and businesses located on the Reservation have a right to the affordable and high-quality services CCT plans to offer, including full access to intrastate services, and the Commission should take steps to ensure that those services are made available in as timely a manner as possible. The more than two-year delay in granting CCT's Application has already harmed all consumers and businesses in South Dakota by denying those on the Reservation the ability to make or receive interexchange intrastate calls – further delay would not serve the public interest, only those of CCT's competitors.

CONCLUSION

For the foregoing reasons, CCT respectfully requests the Commission grant this Motion for temporary authority to originate and terminate intrastate telecommunications located within the Reservation during the pendency of this proceeding, or, in the alternative, to grant CCT's Application for Certificate of Authority on an expedited basis.

Respectfully submitted this 19th day of September, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2013, I sent to:

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by electronic mail, a true and correct copy of the foregoing **Motion for Grant of Temporary Authority, Or In The Alternative, Expedited Decision** relative to the above-entitled matter.

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