

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

IN THE MATTER OF THE COMPLAINT)	ORDER FOR AND NOTICE
FILED BY SPRINT COMMUNICATIONS)	OF HEARING
COMPANY, LP, AGAINST NATIVE)	
AMERICAN TELECOM, LLC REGARDING)	TC10-026
TELECOMMUNICATIONS SERVICES)	

On May 4, 2010, the Public Utilities Commission (Commission) received a complaint from Sprint Communications Company, LP (Sprint) against Native American Telecom, LLC (NAT). On May 5, 2010, Sprint filed an amended complaint. In its amended complaint, Sprint requested: 1) a declaration that the Commission has the sole authority to regulate Sprint's interexchange services within South Dakota; 2) a declaration that the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint; 3) declaration that NAT must seek a certificate of authority from the Commission and file a lawful tariff with the Commission before it can assess charges for switched access service; and 4) an award of money damages in an amount to be determined at a hearing.

Petitions to intervene were filed by the South Dakota Telecommunications Association (SDTA), South Dakota Network, LLC (SDN), Midstate Communications (Midstate), AT&T Communications of the Midwest, Inc., (AT&T), and the Crow Creek Sioux Tribe Utility Authority (CCSTUA). On June 1, 2010, NAT filed a Motion to Dismiss and a Motion to Establish Briefing Schedule for Respondent's Motion to Dismiss. At its June 18, 2010, meeting, the Commission granted Petitions to Intervene to all those who filed to intervene. On July 29, 2010, NAT filed a Motion to Stay this docket.

At its August 10, 2010, meeting, the Commission required that the Motion to Dismiss and Motion to Stay be briefed during the same briefing schedule. The parties subsequently filed briefs on the Motion to Dismiss and Motion to Stay. On October 12, 2010, NAT filed a Motion to Extend Filing Date of NAT's Reply Brief. On October, 13, 2010, Sprint filed a Stipulation to NAT's Request for Additional Time to File Reply Briefs in Support of its Motions to Stay and to Dismiss. On December 13, 2010, Sprint filed a Motion for Leave to File a Supplemental Reply to NAT's Reply Brief, or to Strike. On December 13, 2010, a Supplemental Reply Brief of Sprint was filed. At its January 18, 2011, meeting, the Commission voted to deny Sprint's Motion to Strike and granted Sprint's Motion to File a Supplemental Reply to NAT's Reply Brief. On March 7, 2011, NAT filed a Motion for Protective Order.

At its April 5, 2011, meeting, the Commission voted to deny NAT's Motion to Stay. NAT then requested that its Motion to Dismiss be deferred until after discovery at which time the Commission could have more information on which to base its decision. The Commission voted to grant NAT's request to defer the Motion to Dismiss.¹

¹ On May 17, 2011, the Commission's Order Denying Motion to Stay was appealed to circuit court by NAT. By order dated August 23, 2011, the circuit court affirmed the Commission's Order Denying Stay. *In the Matter of the Complaint Filed by Sprint Communications Company, LP against Native American Telecom, LLC regarding Telecommunications Services*, Memorandum Decision and Order, CIV. 08-11 (August 23, 2011).

On May 12, 2011, Sprint filed a Motion to Compel. On December 27, 2011, Sprint filed a Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement. At its January 31, 2012, meeting, the Commission granted Sprint's Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement. On April 11, 2012, Sprint filed a Motion to Compel NAT to Honor its Agreement to Answer Discovery. On April 23, 2012, NAT filed a Motion to Dismiss Based on Mootness. On December 11, 2012, Sprint filed a Motion for Summary Judgment. On January 14, 2013, NAT Filed a Response to Sprint's Motion for Summary Judgment. On February 1, 2013, AT&T filed a Response in Support of Sprint's Motion for Summary Judgment. On February 4, 2013, SDN filed a Brief in Response to Sprint's Motion for Summary Judgment. On February 20, 2013, Sprint filed a Reply Memorandum of Law of Sprint in Support of Motion for Summary Judgment. On February 22, 2013, NAT filed a letter requesting a new motion date. By Order dated February 28, 2013, the Commission issued an Amended Order Setting Procedural Schedule setting oral argument on Sprint's Motion for Summary Judgment for April 9, 2013.

On April 3, 2013, Sprint filed a Notice of Supplemental Authority. On April 4, 2013, NAT filed a Continuance of Hearing. Argument was held on April 9, 2013, as the parties had agreed that NAT could respond to Sprint's Supplemental Authority at a later time. On April 25, 2013, NAT filed a response to Sprint's supplemental authority and Sprint replied on May 1, 2013. On July 23, 2013, Sprint filed a Statement Regarding Ripeness of Pending Motions for Deliberation and Decision. On July 25, 2013, NAT filed a Motion to Re-Open Discovery and Stay Sprint's Motion for Summary Judgment Due to New Information that has Recently Come to Light. On August 8, 2013, Sprint filed a response opposing NAT's motion to reopen discovery and stay Sprint's summary judgment motion. On August 23, 2013, NAT filed a Notice of Change in Corporate Structure and Affidavit in Support of NAT's Motion to Re-Open Discovery and Stay Sprint's Motion for Summary Judgment Due to New Information that has Recently Come to Light. On August 27, 2013, NAT filed a Declaration of Scott R. Swier in Opposition to Sprint's Motion for Summary Judgment.

At its August 27, 2013, meeting, the Commission considered NAT's Motion to Dismiss; NAT's Motion to Dismiss Based on Mootness; NAT's Motion to Re-Open Discovery and Stay Sprint's Motion for Summary Judgment Due to New Information that has Recently Come to Light; and Sprint's Motion for Summary Judgment. By order dated September 17, 2013, the Commission denied all of the motions.

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-13, and 49-31, including 1-26-15 through 1-26-25, 49-13-1, 49-13-3, 49-13-4, 49-13-13, 49-13-14, 49-13-14.1, 49-13-16, 49-31-1, 49-31-2, 49-31-3, 49-31-4, 49-31-5, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-12 through 49-31-12.4, 49-31-15, 49-31-18, 49-31-19, 49-31-38 through 49-31-38.3, and 49-31-69 through 49-31-77.

A hearing shall be held commencing at 9:00 a.m., with marking of exhibits to begin at 8:30 a.m., on Wednesday, November 6, 2013, in Room 413, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota, and continuing at 8:30 a.m. on Thursday, November 7 in Room 413, State Capitol Building.

The issues for the hearing are whether, and to what extent, Sprint is entitled to a judgment: 1) declaring that the Commission has the sole authority to regulate Sprint's interexchange services within South Dakota; 2) declaring that the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint; 3) declaring that NAT must seek a certificate of authority from the Commission and file a lawful tariff with the Commission before it can assess charges for switched access service; and 4) awarding money damages for amounts Sprint has paid to NAT for intrastate switched access charges.

The hearing will be open to the public. The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and exhibits, if any, offered and received in evidence at the hearing, or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was received in evidence at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission will determine whether, and to what extent, Sprint is entitled to a judgment: 1) declaring that the Commission has the sole authority to regulate Sprint's interexchange services within South Dakota; 2) declaring that the Crow Creek Sioux Tribe Utility Authority lacks jurisdiction over Sprint; 3) declaring that NAT must seek a certificate of authority from the Commission and file a lawful tariff with the Commission before it can assess charges for switched access service; and 4) awarding money damages for amounts Sprint has paid to NAT for intrastate switched access charges. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that the hearing shall be held at 9:00 a.m., with marking of exhibits to begin at 8:30 a.m., on Wednesday, November 6, 2013, in Room 413, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota, and continuing at 8:30 a.m. on Thursday, November 7 in Room 413, State Capitol Building.

Dated at Pierre, South Dakota, this 17th day of October, 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>10.17.13</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner