

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

IN THE MATTER OF THE APPLICATION OF)	AMENDED ORDER FOR
NATIVE AMERICAN TELECOM, LLC FOR A)	AND NOTICE OF
CERTIFICATE OF AUTHORITY TO PROVIDE)	HEARING
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES AND LOCAL EXCHANGE SERVICES)	TC11-087
IN SOUTH DAKOTA)	

On October 11, 2011, the Public Utilities Commission (Commission) received an application from Native American Telecom, LLC (NAT) for a certificate of authority to provide interexchange long distance service and local exchange services in South Dakota. On October 13, 2011, the Commission electronically transmitted notice of the filing and the intervention deadline of October 28, 2011, to interested individuals and entities.

On October 13, 2011, the Commission received a Petition to Intervene by Midstate Communications, Inc. (Midstate). On October 26, 2011, the Commission received a Petition to Intervene by AT&T Communications of the Midwest, Inc. (AT&T). On October 28, 2011, the Commission received a Petition to Intervene from Sprint Communications Company, L.P. (Sprint), Qwest Communications Company LLC dba CenturyLink (CenturyLink), and South Dakota Telecommunications Association (SDTA). On November 1, 2011, CenturyLink re-filed its Petition to Intervene. On November 14, 2011, NAT filed its responses to the petitions for intervention. On November 18, 2011, CenturyLink filed a reply. On November 21, 2011, NAT filed a Notice of Supplemental Authority. On November 22, 2011, the Commission voted unanimously to grant intervention to Midstate, AT&T, Sprint, CenturyLink, and SDTA. On January 12, 2012, NAT filed a Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement.

On January 27, 2012, NAT filed a revised Application for Certificate of Authority. In its revised application, NAT stated that it seeks to provide local exchange and interexchange service within the Crow Creek Sioux Tribe Reservation which is within the study area of Midstate. On January 31, 2012, the Commission granted the Motion Requesting a Protective Order Requiring the Parties and Intervenors to Comply with a Confidentiality Agreement. On February 17, 2012, NAT filed its direct testimony. On February 22, 2012, the Commission issued an Order for and Notice of Procedural Schedule and Hearing. On March 26, 2012, Sprint and CenturyLink filed their direct testimony and NAT filed a Motion for Summary Judgment. On March 27, 2012, a Stipulation By and Between NAT, Midstate, and SDTA was filed. On April 2, 2012, Sprint filed a Motion to Compel and CenturyLink filed a Motion to Compel Discovery Responses. On April 3, 2012, NAT filed a Motion to Compel Discovery. Responses and replies were filed to the Motions to Compel and the Motion for Summary Judgment. By order dated April 5, 2012, the Commission issued an Amended Order for and Notice of Procedural Schedule and Hearing. On April 20, 2012, NAT filed its reply testimony. On May 4, 2012, the Commission issued an Order Denying Motion for Summary Judgment; Order Granting Motions to Compel; Order Granting in Part and Denying in Part Motion to Compel.

On May 7, 2012, NAT served a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action on the Commission. On May 16, 2012, the Commission issued an Order Quashing Subpoena.

By order dated April 5, 2012, the hearing in this matter was scheduled for June 7, 2012. On May 18, 2012, CenturyLink filed a letter stating that the parties had reached an agreement for a continuance of the hearing set for June 7, 2012.¹

By order dated January 2, 2013, the Commission set the following procedural schedule that was agreed to by the parties:

January 18, 2013	Documents and other discovery as required by the Commission in its May 4, 2012 order shall be produced
April 1, 2013	All discovery to be completed (fact and expert)
April 8, 2013	NAT's supplemental written testimony is due
May 8, 2013	Intervenors' supplemental written testimony is due
May 29, 2013	All parties' pre-hearing motions are due
June 14, 2013	All parties' responses to pre-hearing motions are due

On April 4, 2013, Sprint filed a Second Motion to Compel/Enforce Prior Commission Order. NAT did not file any supplemental written testimony by April 8, 2013. On April 22, 2013, Sprint filed a Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. On April 29, 2013, Sprint filed a letter stating that it agreed to have its Second Motion to Compel/Enforce Prior Commission Order and Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony heard on May 21, 2013, rather than on May 7, 2013. On April 30, 2013, Midstate and SDTA filed a Joint Motion for Suspension of May 8, 2013 Deadline for Filing of Intervenor Testimony. On April 30, 2013, CenturyLink filed its Response to Sprint's Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. On May 2, 2013, AT&T filed its response to Sprint's Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony. At its May 21, 2013, meeting, the Commission granted the suspension motions, granted Sprint's Second Motion to Compel/Enforce Prior Commission Order in part, and denied Sprint's request for fees.

On June 3, 2013, NAT filed an Amended Application for Certificate of Authority. In its amended application, NAT requested a certificate of authority "to provide intrastate interexchange access service for traffic that originates or terminates off of the Crow Creek reservation within the state of South Dakota, pursuant to ARSD 20:10:32:03, 20:10:32:15, and 20:10:24:02." NAT's Amended Application for Certificate of Authority at 1.

By order dated July 3, 2013, the Commission set the following revised procedural schedule that was agreed to by the parties:

July 26, 2013	NAT's supplemental written testimony is due
August 30, 2013	Intervenors' supplemental written testimony is due
September 20, 2013	All parties' pre-hearing motions are due

¹ On May 14, 2012, NAT filed a Notice of Appeal in circuit court regarding the Commission's Order Granting Intervention and the Order Denying Motion for Summary Judgment; Order Granting Motions to Compel; Order Granting in Part and Denying in Part Motion to Compel. On May 31, 2012, NAT filed a Second Notice of Appeal regarding the Commission's Order Quashing Subpoena. By order dated October 17, 2012, the circuit court dismissed the appeal.

October 4, 2013 All parties' responses to pre-hearing motions are due

October 22-24, 2013 Hearing dates (beginning at 1:00 p.m. on October 22)

All parties were required to serve responses to discovery in two weeks.

On July 26, 2013, Sprint filed its Third Motion to Compel. On July 26, 2013, NAT filed Direct Testimony of Jeff Holoubek and Direct Testimony of Brandon Sazue. On August 9, 2013, NAT filed a Notice of Taking Deposition of Randy Farrar and a Notice of Taking Deposition of Sprint. On August 20, 2013, Sprint filed a Motion to Quash Deposition Notices. On August 21, 2013, Sprint filed its Amended Third Motion to Compel. On August 23, 2013, NAT filed a Notice of Change in Corporate Structure.² On August 30, 2013, Sprint filed Direct Testimony of Randy G. Farrar. On August 30, 2013, CenturyLink filed Supplemental Testimony of William R. Easton. On August 30, 2013, Midstate and SDTA filed a letter in lieu of pre-filed testimony. On September 6, 2013, NAT filed its Brief in Opposition to Sprint's Motion to Quash Deposition Notices. By order dated September 27, 2013, the Commission granted in part and denied in part Sprint's Motion to Quash Deposition Notices.

On September 20, 2013, CCT³ filed a Motion for Leave to Take Deposition of Sprint's Expert Randy G. Farrar. CCT also filed a Motion for Grant of Temporary Authority, or in the Alternative, Expedited Decision. On October 3, 2013, Sprint filed a Memorandum in Opposition to CCT's Motion for Leave to Take a Deposition of Randy Farrar and a Memorandum in Opposition to CCT's Motion for Grant of Temporary Authority, or in the Alternative, Expedited Decision. On October 3, 2013, AT&T filed its opposition to CCT's Motion for Grant of Temporary Authority, or in the Alternative, Expedited Decision. On October 3, 2013, CenturyLink filed comments in opposition to CCT's Motion for Grant of Temporary Authority, or in the Alternative, Expedited Decision. By order dated October 23, 2013, the Commission granted CCT's Motion for Leave to Take Deposition and denied CCT's Motion for Grant of Temporary Authority, or in the Alternative, Expedited Decision. By order dated November 8, 2013, the hearing was set for December 11-12, 2013.

On December 3, 2013, NAT⁴ filed a Motion for Continuance of Contested Case Hearing, along with an Affidavit of Scott R. Swier in support of the motion. NAT requested that the hearing be continued because Sprint refused to make its witness, Randy Farrar, available for a deposition on December 5, 2013. NAT stated that NAT and Sprint had previously agreed to the December 5, 2013 date. On December 3, 2013, Sprint filed a Memorandum in Response to NAT's Motion for Continuance, along with an affidavit of Philip R. Schenkenberg supporting its response. Sprint agreed that it and NAT had agreed on the December 5, 2013, date but stated that NAT did not file a Notice of Deposition until November 27, 2013. Sprint stated that since NAT had not filed a notice earlier, Sprint assumed NAT had decided not to conduct the deposition. Sprint stated that its witness was not available to appear as he had other work obligations on that date. Sprint stated that it did not object to NAT's request for a continuance. On December 4, 2013, NAT filed a letter stating that "all the parties to this docket have stipulated to NAT's motion that this contested case hearing be continued by the Commission to a future date." By order dated December 6, 2013, the Commission granted the motion

² The notice stated that NAT "has recently merged into a tribally-chartered Limited Liability Corporation – Crow Creek Telecom, LLC – which is majority-owned and controlled by the Crow Creek Sioux Tribe, and is an arm of the Crow Creek Sioux Tribe. As a result of this merger, all of the rights and assets of NAT, including any rights formerly held by NAT in these proceedings, are now held by Crow Creek Telecom, LLC."

³ The parties began to refer to NAT as CCT based on NAT's Notice of Change in Corporate Structure.

⁴ In its motion, NAT reverted to referring to itself as NAT instead of CCT.

(Commissioner Nelson, dissenting). The parties have subsequently agreed to new hearing dates of February 24-26, 2013.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including SDCL 1-26-17 through 1-26-25, 49-31-3, 49-31-5, and 49-31-69 through 49-31-72. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing shall be held commencing at 9:00 a.m., with marking of exhibits to begin at 8:30 a.m., on Monday, February 24, 2014, and continuing on Tuesday and Wednesday, February 25-26, 2014, in the auditorium of the South Dakota Education Association Building, 411 E. Capitol Ave., Pierre, South Dakota. The hearing is open to the public. All persons testifying shall be subject to cross-examination.

The issue at the hearing is whether to grant NAT a certificate of authority. NAT has requested authority to provide intrastate interexchange access service for traffic that originates or terminates off of the Crow Creek reservation within the state of South Dakota.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during 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 presented 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 to grant NAT a certificate of authority. 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 commence at 9:00 a.m., with marking of exhibits to begin at 8:30 a.m., on Monday, February 24, 2014, and continuing on Tuesday and Wednesday, February 25-26, 2014, in the auditorium of the South Dakota Education Association Building, 411 E. Capitol Ave., Pierre, South Dakota.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 31st day of December, 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>[Signature]</u>
Date:	<u>12.31.13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

[Signature]
GARY HANSON, Chairman

[Signature]
CHRIS NELSON, Commissioner

[Signature]
KRISTIE FIEGEN, Commissioner