

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

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER GRANTING )</b>
<b>NATIVE AMERICAN TELECOM, LLC FOR A )</b>	<b>MOTION TO COMPEL IN )</b>
<b>CERTIFICATE OF AUTHORITY TO PROVIDE )</b>	<b>PART )</b>
<b>INTEREXCHANGE TELECOMMUNICATIONS )</b>	
<b>SERVICES AND LOCAL EXCHANGE SERVICES )</b>	<b>TC11-087 )</b>
<b>IN SOUTH DAKOTA )</b>	
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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.<sup>1</sup>

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:

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<sup>1</sup> 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.

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
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. 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.

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31. The Commission may rely upon any or all of these or other laws of this state in making its determination. Transcript citations refer to the September 24, 2013, transcript.

At its September 24, 2013, meeting, the Commission considered Sprint's Amended Third Motion to Compel. In support of its motion, Sprint cited to ARSD 20:10:01:22.01 of the Commission's rules and SDCL 15-6-37(a)(2). ARSD 20:10:22.01 provides that the Commission may issue an order to compel discovery for good cause as shown by a party to the proceeding. Sprint stated that it served its discovery requests on NAT's Amended Application for a Certificate of Authority on June 25, 2013. Sprint's Memorandum in Support of its Amended Third Motion to Compel at 2 (Sprint's Memorandum). Sprint stated that NAT did not respond by July 10, 2013. *Id.* The July 10, 2013 date "allowed for the two weeks set in the parties' stipulated procedural schedule, plus an extra day to account for the July 4 holiday." *Id.* Sprint stated that NAT missed the July 10 deadline and later, on July 15, requested an extension until July 25. *Id.* Sprint did not agree to the extension but agreed "to delay the filing of any motion to compel in consideration of the promise to email responses by that date." *Id.* NAT failed to file responses by July 25. *Id.* NAT did not serve responses until August 5. *Id.* Sprint stated that NAT and Sprint conferred on the responses that Sprint deemed deficient. *Id.* According to Sprint, a few small items were resolved and NAT committed to respond the next week on the remaining issues. *Id.* Sprint stated that NAT failed to respond and, as a result, Sprint filed its Third Amended Motion to Compel. *Id.* at 2-3. At the meeting, Sprint stated that it had received some additional documents since it filed its motion to compel. Tr. at 4. Sprint stated that it had received some of the documents related to Interrogatory Nos. 62-64. *Id.* For Document Requests 20 and 21, Sprint stated that it had received all of the documents so those requests were no longer at issue. *Id.* at 4-5.

NAT did not file any written response to Sprint's Amended Third Motion to Compel. At the meeting, NAT stated that it had multiple conversations with Sprint about the discovery requests and that NAT had provided Sprint with discovery materials that resulted in the issues being narrowed to six interrogatories and two production requests. *Id.* at 7-8.

Interrogatory No. 55 asked whether 911 calls were routed to a PSAP, and if so, the identity of the PSAP and the Federal Communications Commission's ID of the PSAP. Exh. A at 16 (attached to Sprint's Memorandum). Sprint stated that NAT's response was unclear as to whether NAT sends calls to a PSAP. Tr. at 9. NAT stated that the PSAP ID is publicly available information and it had provided information on how it routes 911 calls. *Id.* at 10. Sprint stated that it was unable to confirm that NAT sends its 911 calls to a PSAP. *Id.* at 12. The Commission voted unanimously to grant the motion to compel. The Commission finds that NAT's response failed to fully answer Sprint's questions regarding the routing of 911 calls.

Interrogatory No. 56 requested NAT's monthly terminating minutes of use, by carrier, from January 2012 to the present. Exh. A at 18 (attached to Sprint's Memorandum). Sprint stated that this information was needed to evaluate the financial strength of NAT. Tr. at 14-15. Sprint stated that it would agree to limit the request to January 2013 to present. *Id.* at 15. NAT responded that minutes of use are proprietary confidential business information. *Id.* at 15-16. The Commission voted unanimously to grant the motion to compel, limited to minutes from January 2013 to present and that the minutes do not need to be identified by carrier.

Interrogatory No. 59 related to the timing of payments and the application of those payments. Exh. A at 24 (attached to Sprint's Memorandum); Tr. at 22. Sprint stated this information regarding the timing and application of payments went to the issue of sham relationships. Tr. at 22. NAT stated that the interrogatory was based on a misstatement of facts and covers interstate activities. *Id.* After a discussion, Sprint agreed to withdraw the request based on NAT's commitment that NAT would have a witness that would be able to answer questions about the payment history between Free Conferencing Corporation and NAT, the application of payments made to bills issued, and the interplay among the payments, billing, and the contract that was in effect at the time. *Id.* at 25-26.

Interrogatory Nos. 62, 63, and 64 related to FCC Form 499 filings that NAT submitted to the Universal Service Administrative Company (USAC) to report NAT's revenues. Exh. A at 30-34 (attached to Sprint's Memorandum). Sprint stated NAT had provided some of the information but that it still had not provided the signature pages and/or electronic filing receipts that would show what was signed, what was filed, and when it was filed. Sprint's Memorandum at 11. NAT stated there would not be any ink signatures as the forms are electronically filed and NAT was not aware of any receipts. Tr. at 28. Sprint responded that it believed it had received at least one filing receipt and that USAC sends email receipt confirmations. *Id.* at 29. The Commission voted unanimously to grant the motion to compel for Interrogatory Nos. 62-64. The Commission finds the signature pages and receipts should be provided to the extent they exist.

Document Requests 13, 14, 15, and 16 requested the production of documents identified in certain interrogatories. Exh. A at 38-44 (attached to Sprint's Memorandum). Sprint stated that three documents had not yet been produced. Those documents were a Crow Creek Limited Liability Ordinance and two Tribal Resolutions. Tr. at 31. NAT replied that it would provide these documents, if they exist, immediately. *Id.* The Commission voted unanimously to grant the motion to compel for Document Requests 13 through 16.

Document Request 17 requested a copy of the amended Joint Venture Agreement. Exh. A at 46 (attached to Sprint's Memorandum). Sprint stated that this document was referred to in NAT's Amended Application and that, contrary to NAT's assertions, the Agreement had not yet

been provided to Sprint. Tr. at 32. NAT stated that it thought it had been provided recently but it had not. *Id.* at 33. NAT stated it would be emailed that same day. *Id.* The Commission voted unanimously to grant the motion to compel for Document Request 17.

Sprint requested that it be awarded fees for NAT's failures to respond. Sprint's Memorandum at 17-19. Sprint requested fees pursuant to SDCL 15-6-37(a)(4)(A). The Commission voted unanimously to deny the granting of fees. The Commission points out that Sprint's motion was not granted in its entirety.

It is therefore

ORDERED, that Sprint's Amended Third Motion to Compel is granted in part as set forth above; and it is further

ORDERED, that Sprint's request for fees is denied.

Dated at Pierre, South Dakota, this 4<sup>th</sup> day of October, 2013.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>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.</p> <p>By: <u>Joy Lashley</u></p> <p>Date: <u>10.04.13</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Chairman

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner