

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
NATIVE AMERICAN TELECOM, LLC FOR A)	MOTIONS TO SUSPEND
CERTIFICATE OF AUTHORITY TO PROVIDE)	TESTIMONY DEADLINE;
INTEREXCHANGE TELECOMMUNICATION)	ORDER GRANTING IN
SERVICES AND LOCAL EXCHANGE SERVICES)	PART MOTION TO
IN SOUTH DAKOTA)	COMPEL/ENFORCE;
)	ORDER DENYING
)	REQUEST FOR FEES
)	
)	
)	TC11-087

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 CenturyLink's 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, Qwest 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. 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 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.

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.

At its May 21, 2013, meeting, the Commission heard arguments regarding Sprint's Motion to Suspend May 8, 2013 Due Date for Intervenor Testimony, SDTA and Midstate's Joint Motion for Suspension of May 8 Deadline for Filing of Intervenor Testimony, and Sprint's Second Motion to Compel/Enforce Prior Commission Order. Regarding its Motion to Suspend, Sprint pointed out that NAT had not filed any supplemental testimony on April 8, 2013, and asked that the Intervenors' deadline to file supplemental testimony be suspended. Sprint stated NAT had advised Sprint that NAT intended to file a new or revised application. Midstate and

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.

SDTA also requested suspension. AT&T and CenturyLink supported the motions. NAT stated that it intended to file an amended application by May 31, 2013, and did not oppose the motions. The Commission unanimously voted to grant the suspension motions. Regarding the Second Motion to Compel/Enforce Prior Commission Order, Sprint had requested that NAT be compelled to respond fully to Sprint's Interrogatories No. 7 and No. 9. At the meeting, Sprint stated that it had just received supplemental responses from NAT for Interrogatory 9. Based on those supplemental responses, Sprint stated that no Commission action was required at this time, but that Sprint would review the supplemental responses in more detail to determine if the responses were complete. For Interrogatory 7, Sprint stated that it had not received a current coverage map and it requested a clear version of a prior map that NAT had provided. Sprint also requested fees pursuant to SDCL 15-6-37(a)(4)(A). For Interrogatory 9, NAT stated that it had informed Sprint that NAT was waiting for audited information and that NAT had received that audited information the previous day and has now provided the information to Sprint. For Interrogatory 7, NAT stated that it would provide a coverage map and hoped it could provide it by the next day. With regard to the prior map, NAT stated that it gave Sprint the best copy that it had. NAT further stated that, under these circumstances, fees would not be appropriate. The Commission unanimously voted to grant the motion to compel for Interrogatory 7, requiring NAT to provide a clear copy of its 2009 map if a clear copy of the map is in its possession or NAT can obtain it and to provide a current coverage map if in its possession. The Commission unanimously voted to deny Sprint's request for fees.

It is therefore

ORDERED, that the motions to suspend the May 8, 2013 date are granted; and it is further

ORDERED, that Sprint's Second Motion to Compel/Enforce 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 30th day of May, 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>5.30.13</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

[Signature]
GARY HANSON, Chairman

[Signature]
CHRIS NELSON, Commissioner

[Signature]
KRISTIE FIEGEN, Commissioner