

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

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER SETTING</b>
<b>NATIVE AMERICAN TELECOM, LLC FOR A )</b>	<b>DEADLINES</b>
<b>CERTIFICATE OF AUTHORITY TO PROVIDE )</b>	
<b>INTEREXCHANGE TELECOMMUNICATIONS )</b>	<b>TC11-087</b>
<b>SERVICES AND LOCAL EXCHANGE SERVICES )</b>	
<b>IN SOUTH DAKOTA )</b>	

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.<sup>2</sup> 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, CCT<sup>3</sup> 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, NAT<sup>4</sup> 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

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<sup>2</sup> 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."

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

<sup>4</sup> In its motion, NAT reverted to referring to itself as NAT instead of CCT.

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 (Commissioner Nelson, dissenting). The parties agreed to new hearing dates of February 24-26, 2014. By order dated December 31, 2013, the hearing was set for those dates.

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.

At a prehearing conference call held on January 29, 2014, the parties agreed to dates for the filing of additional testimony, witness lists, exhibits, and motions. For the filing of any additional testimony, NAT may file on or before February 7, 2014. Intervenors may file additional testimony on or before February 14, 2014. NAT may file responsive testimony on or before February 19, 2014. The parties shall file a list of witnesses on or before February 10, 2014. The parties shall file a list of exhibits on or before February 10, 2014. However, to the extent further testimony is filed after February 10, 2014 that results in a party adding exhibits, the party shall file a revised exhibit list with the additional exhibits. Any pre-trial motion shall be filed on or before February 10, 2014, with responses due February 17, 2014, and replies by the moving party due February 20, 2014. In addition, the parties agreed to hold a conference call prior to the hearing to discuss stipulating to exhibits. It is therefore

ORDERED, that the parties shall follow the procedures and deadlines as set forth above.

Dated at Pierre, South Dakota, this 30<sup>th</sup> day of January, 2014.

<b>CERTIFICATE OF SERVICE</b>
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>Tina Douglas</u>
Date: <u>1-30-14</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner